

DSL Service Agreement

This DSL Service Agreement (the “**Agreement**”) is made by and between the individual or organization using the Service (as defined below) or any part of the Service, hereinafter referred to as “**Customer**,” and ClearCom, Inc. dba Sandwich Isles Broadband Services, hereinafter referred to as “**SIBS**”. This Agreement sets forth the terms and conditions which apply to the use of the Service by Customer. No representation, warranty, term or condition, other than as specifically set forth in this Agreement, shall be binding on SIBS.

No term or condition of this Agreement may be waived or modified except by the prior written agreement or consent of SIBS. SIBS shall have the right to add to, modify or delete any provision of this Agreement at any time subject to applicable law, including but not limited to, SIBS may revise this Agreement by posting a new version on the Web site at <http://www.sandwichisles.com>. SIBS shall use reasonable efforts to make Customer aware of any changes to this Agreement, including but not limited to, sending an e-mail announcement or posting information on the Web site. Customer shall read any SIBS announcements Customer receives and review this Agreement to ensure that Customer’s activities conform to the most recent version. Customer’s continued use of the Service following any notice of a change shall constitute Customer’s acceptance of such change. If Customer does not agree to any change, Customer immediately shall stop using the Service, return the Equipment and notify SIBS that Customer is terminating the subscription to the Service and pay all penalty fees, if any.

1. Acceptance of Agreement

By ordering the Service, using the Service, paying for the Service, or retaining the Equipment (as defined below), Customer confirms Customer’s agreement to these terms and conditions as well as acceptance of the changes SIBS makes to this Agreement. “**Equipment**” shall mean the modem, Ethernet cables, and/or other equipment provided by SIBS or its agents for use with the Service.

Customer further agrees to be responsible for all use of Customer’s account, whether by Customer or any other user of the Service through Customer’s computer. Customer understands this means that Customer accepts full liability and responsibility for the actions of anyone who uses the Service via Customer’s account, with or without Customer’s permission. Customer must take steps to ensure that others do not use Customer’s account to gain unauthorized access to the Service by, for example, strictly maintaining the confidentiality of Customer’s Service login and password. In all cases, Customer is solely responsible for the security of any device Customer chooses to connect to the Service, including any data stored or shared on that device. Any files or devices Customer chooses to make available for shared access on a home LAN, for example, should be protected with appropriate security measures. Customer shall be responsible to secure the Equipment and any other equipment or programs not provided by SIBS that connect to the Service from external threats such as viruses, spam, botnets and other methods of intrusion.

Customer represents and warrants that he/she is at least 18 years of age and that he/she has the legal authority to enter into this Agreement and affirm that the information supplied is correct and complete. Providing false information may result in Service provisioning or delivery delays or the suspension or termination of Service. Customer also agrees to promptly notify SIBS whenever personal or billing information changes (including name, address, telephone number(s), etc.).

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2. Service

(a) SIBS shall provide access to the Internet via a Digital Subscriber Line (“DSL”) network connection service (the “Service”) to the location specified by Customer when ordering the Service. Customer understands and acknowledges that the Service is a fixed location service. This means the Service may not be moved to a different location (even if the telephone number for the Service remains the same), or to a different phone number, without SIBS’ prior consent. If Customer moves its residence, Customer shall contact SIBS by calling the phone number listed on Customer’s billing statement.

(b) SIBS or its suppliers may, at any time, without notice or liability, restrict the use of the Service or limit its time of availability in order to perform maintenance and monitoring activities.

(c) SIBS shall have the right at any time to change or discontinue any aspect or feature of the Service, including but not limited to content, hours of availability, and Equipment.

3. Charges and Billing/Payment Policy

(a) Customer agrees to pay for the Service and all use of Customer’s account, including applicable charges for installation and all applicable taxes and surcharges. The taxes, fees and other charges may vary on a monthly basis. Charges for the Service were supplied to Customer during the ordering process unless otherwise provided for in this Agreement. SIBS will invoice Customer monthly. Set-up fees, activation fees, installation fees, and other non-recurring fees, and Equipment charges, if applicable, will be included in Customer’s first month’s billing statement or when otherwise applicable. Set-up fees are non-refundable. Recurring monthly Service charges will be billed monthly in advance. All charges, including any late charges, are payable upon receipt of the billing statement.

(b) SIBS has the right to change its fees and charges at any time subject to applicable law. Customer’s continued use of the Service and/or Equipment constitutes acceptance of these changes. Customer must immediately stop using the Service and return the Equipment if Customer does not agree to the changes.

(c) The rates supplied to Customer during the ordering process unless otherwise provided for in this Agreement are intended for the sole connectivity and use of the Internet by Customer, and do not afford the economic benefit of commercial re-selling of Internet access. At no time shall Customer resell any Services to any third parties. Customer agrees to abide by the limitations as contained herein.

(d) A late charge of 1.5% per month or part of a month (or the maximum interest allowed by law, whichever is less) may be assessed on past due accounts. SIBS reserves the right to change the late fee amount at any time. Payment for the Service is due upon receipt of the billing statement. Failure to deliver timely payment is a breach of this Agreement. Notice of any disputes must be in writing and received by SIBS within thirty (30) days after receipt of Customer’s billing statement or Customer waives any objection. Mail disputes to Sandwich Isles Communications, Inc. Attention: Service Provisioning Department 77-808 Kamehameha Hwy Mililani, HI 96789-3941.

If any payment obligation is not paid in a timely manner, Customer agrees and promises to pay all costs of collections, including reasonable attorney fees, whether or not a lawsuit commences as part of the collection process.

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(e) All payments shall be paid in the legal currency (cash or check) of the United States of America.

(f) If Service is suspended by SIBS for nonpayment or other cause, a \$45.00 charge will be imposed at reactivation.

(g) A service charge may be imposed for all returned checks, not to exceed the maximum allowed by law.

(h) The waiver of any fee or charge remains solely in the discretion of SIBS.

4. Term/Termination Fee

(a) The term of this Agreement shall be for a twelve month (12) period commencing on the In-Service Date. The “**In-Service Date**” means the third day after the Equipment has been mailed to Customer, or if the Equipment is not mailed then delivered to Customer. At the end of the initial twelve (12) month period, SIBS will continue to provide Service to Customer under this Agreement on a month-to-month basis.

(b) Except as otherwise provided in Section 4(d) below, if Customer fails to continue Service for the initial twelve (12) month period or SIBS disconnects or discontinues Service to Customer for non-payment, or for any misuse or abuse of Service, Customer agrees to pay to SIBS a termination fee of \$95.00 (“**Termination Fee**”) in addition to an Equipment charge of \$50.00. Customer will be given a \$50.00 credit towards the Equipment charge if the Equipment is returned to SIBS offices within fifteen (15) days of termination. Any periods of suspension of Service do not count as part of Customer’s initial twelve (12) month period. Customer acknowledges that the Termination Fee is separate from any termination fee charged by an agent of SIBS, and Customer further acknowledges that SIBS has no control over the termination fee charged by its agents.

(c) At the end of the initial twelve (12) month period, Customer may cancel Service at any time upon prior written notice to SIBS without paying the Termination Fee.

(d) If for any reason Customer cancels the Service within the first thirty (30) days of the initial twelve (12) month period, no Termination Fee shall apply; however, Customer agrees to pay the remaining balance of the fees and charges applicable to the Service through the effective date of termination. Upon termination of the Service within the first thirty (30) days of the initial twelve (12) month period, Customer acknowledges that Customer’s right to possess and use the Equipment shall likewise terminate. In such event, the Equipment shall be returned to SIBS in the same condition as when received, ordinary wear-and-tear accepted. If the foregoing conditions are met, SIBS will not impose a \$50 Equipment charge.

(e) Customer is in default under this Agreement if:

- (1) Customer fails to pay by the due date of each billing statement;
- (2) Customer cancels Service prior to the end of the term of this Agreement;
- (3) Service is stopped for nonpayment;
- (4) Customer fails to comply with any provision of this Agreement, including but not limited to the Acceptable Use Policy;

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- (5) Customer engages in any activity that constitutes illegal or unauthorized use of the Service, including but not limited to copyright infringement claims; or
- (6) Customer uses the Service in such a manner that it interferes with or adversely affects the Service to any other customer.

In the event of default by Customer, SIBS may terminate Service. If Service is terminated, Customer may be required to pay a reactivation fee to reactivate the Service.

(f) Customer agrees that if Service is terminated for any reason at any time, SIBS has the right to immediately delete all data, files, and other information stored in or for Customer's account without further notice to Customer.

(g) If Customer disconnects the Sandwich Isles Communications, Inc. (SIC) voice service or the SIC voice service is otherwise cancelled or terminated, SIBS may in its sole discretion terminate the Service.

5. Equipment

(a) Equipment is provided by SIBS or its agent to Customer. Equipment is mailed directly to the mailing address provided by the Customer. Any SIBS provided modem or gateway will be either a new or a fully inspected and tested refurbished unit.

(b) SIBS will provide basic installation and troubleshooting support as it relates to the Service and establishing Internet connectivity. Any equipment that was not provided to Customer by SIBS is not the responsibility of SIBS, and SIBS will not provide support, or be responsible for ongoing maintenance or management of such equipment.

(c) Customer will safeguard the Equipment from loss or damage of any kind, and (except for any self installation procedures approved by SIBS) will not permit anyone other than an authorized representative of SIBS to perform any work on the Equipment.

(d) If the Equipment is damaged, destroyed, lost or stolen while in Customer's possession, Customer shall be liable for the cost of repair or replacement of the Equipment.

6. Disclaimer of Warranties; Limitation of Liability

(a) Due to the inherent nature of DSL, SIBS cannot guarantee Service that is uninterrupted, error-free, secure, or free of viruses or other harmful components. Service may vary due to installation, geographic and other natural or artificial environmental conditions, and conditions generally beyond the control of SIBS, including but not limited to the type and condition of Customer's equipment and/or quality. SIBS makes no guarantees as to the continuous availability of the Service or any specific feature of the Service. Except for certain products and services specifically identified as being offered by SIBS, neither SIBS nor any of its affiliates, controls any information, products or services on the Internet. Except for such SIBS-identified content, all merchandise, information and services offered, made available, or accessible on the Internet are by third parties who are not affiliated with SIBS or its affiliates. Customer assumes total responsibility and risk for use of the service and the Internet by Customer or authorized users on Customer's account. Neither SIBS nor its affiliates make any express or implied warranties, representations, or endorsements including, but not limited to, warranties of title, non-

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infringement, implied warranties of merchantability or fitness for a particular purpose regarding any merchandise, information or service provided through any SIBS service or through the Internet generally. Neither SIBS nor its affiliates shall be liable for any costs or damage arising directly or indirectly from any such transaction. It is solely the Customer's responsibility to evaluate the accuracy, completeness and usefulness of all opinions, advice, services and other information and the quality and merchantability of all merchandise provided through the service or on the Internet generally. The Service and Equipment are provided on an AS-IS and AS-AVAILABLE basis without warranties of any kind, either express or implied, including but not limited to, warranties of title, non-infringement, or implied warranties of merchantability or fitness for a particular purpose. No advice or information given by SIBS, its affiliates, or its contractors and their respective employees shall create a warranty.

(b) Unless otherwise specifically provided in this Agreement, in no case shall either SIBS or its affiliates, or their respective officers, directors, employees, or any agents be liable to Customer or to any third party for:

- (1) Any direct, indirect, incidental, special, punitive or consequential losses or damages, including loss of profits, loss of earnings, loss of business opportunities and personal injuries (including but not limited to death), resulting directly or indirectly out of, or arising in connection with, the use of the Service by Customer or any other use of the Equipment, including but not limited to, any damage resulting from or arising out of Customer's reliance on or use of the Equipment or Service, or the mistakes, omissions, interruptions, deletion of files, errors, defects, delays in operations, nondeliveries, misdeliveries, transmission or any failure of performance of the Equipment or Service; or
- (2) Any claims, losses, damages, expenses, liabilities or costs of any kind (including but not limited to attorneys' fees and court costs) resulting directly or indirectly out of, or arising in connection with any claim, cause of action, suit, demand, or other proceeding based upon a claim that the use of the Equipment or Service by Customer or a third party infringes the confidentiality, privacy, or intellectual property rights or contractual rights of any third party.

SIBS also is to be known as a "common carrier" and as such is not responsible for the content, lack of content, accuracy, or inaccuracy of any information gathered from Customer's use of the Service. All information is provided as-is without regard to fitness-of-purpose.

(c) SIBS assumes no responsibility or liability for interruptions of Service caused by acts of God, natural disasters or catastrophes, failure of power, restrictive governmental laws or regulations, omissions or errors of third parties, SIBS' efforts to combat fraudulent use, or other reason of a like nature not the fault of SIBS. SIBS' sole and exclusive liability for interruption of the Services caused by SIBS' action or inaction, and not due to the negligence of Customer, shall be:

- (1) A credit to Customer in an amount equal to the daily pro rata monthly charge paid by Customer to SIBS for the period during which Service is interrupted. No credits shall be given for interruptions of Service of less than twelve (12) hours.

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- (2) Claims for reimbursement credit shall be submitted in writing within thirty (30) calendar days of the occurrence. No credit shall be allowed for an amount of less than five dollars (\$5.00).

The provisions of this Section shall not operate to excuse Customer from prompt payment of monthly recurring charges or any other payments required by the terms of this Agreement.

7. Acceptable Use Policy and Customer Conduct

(a) Customer agrees to follow this Acceptance Use Policy. Customer is responsible for obtaining and adhering to the Acceptable Use Policy of any network accessed through the Service.

(b) SIBS prefers to inform customers of inappropriate activities and give them a reasonable period of time in which to take corrective action. SIBS also prefers to have customers directly resolve any disputes or disagreements they may have with others, whether customers or not, without SIBS' intervention. However if the Service is used in a way that SIBS, in its sole discretion, believes violates this Policy, SIBS may take any responsive actions deemed appropriate under the circumstances with or without notice. These actions include, but are not limited to, immediate suspension or termination of all or any portion of the Service. Neither SIBS nor its affiliates, suppliers or agents will have any liability for any of these responsive actions. Nothing herein shall be deemed to limit SIBS' actions or remedies in any way with respect to the above activities. SIBS reserves the right to take any and all additional actions it may deem appropriate with respect to such activities.

SIBS reserves the right to investigate suspected violations of this Agreement, including but not limited to, the gathering of information from the user or users involved and the complaining party, if any, and examination of material on SIBS' servers and network. During an investigation, SIBS may suspend the account or accounts involved and/or remove or block material that potentially violates this Agreement. Customer expressly authorizes and consents to SIBS and its suppliers cooperating with (i) law enforcement authorities in the investigation of suspected legal violations, and (ii) and system administrators at other Internet service providers or other network or computing facilities in order to enforce this Agreement. Upon termination of Customer's account, SIBS is authorized to delete any files, programs, data, e-mail and other messages associated with Customer's account (and any secondary accounts).

(c) SIBS reserves the right without notice to disconnect an account that is the source of spamming, abusive or malicious activities. There will be no refund when an account is terminated for these causes. Moreover, there will be a billing rate of the then current hourly rate charged to such accounts to cover staff time spent repairing subsequent damage. Contact Service Provisioning Department at 808-540-5754 or toll free at 888-995-7274 for more information on the current hourly rate.

(d) Customers are prohibited from using techniques designed to cause damage to or deny access by legitimate users of computers or network components connected to the Internet. SIBS reserves the right to disconnect a Customer site that is the source of such activities without notice.

(e) SIBS does not permit its Services to be used for activities which:

- (1) Exploit minors;

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- (2) Illegally distribute or duplicate unauthorized copyrighted or licensed material;
- (3) Harasses individuals or racial/ethnic groups;
- (4) Attempts or commit unauthorized intrusion into any part of the network
- (5) Uses the Service to harass anyone in any way;
- (6) Is obscene, indecent, pornographic, sadistic, cruel or racist in any nature, or of a sexually explicit or graphic nature;
- (7) Exposes, promotes or incites bigotry, hatred or racism;
- (8) Invades another person's privacy, or access any other person's compute, software, or data of any other person without the knowledge and consent of such person;
- (9) Alters, modifies or tampers with the Equipment or Service or permits any other person to do the same that is not authorized by SIBS;
- (10) Posts or transmits through the Service any material that constitutes or contains advertising or any solicitation with respect to products or services or bulk e-mail;
- (11) Resells the Service or otherwise charges others to use the Service;
- (12) Uses the Equipment or Service in a way that is contrary to any other SIBS policy that may be adopted by SIBS from time to time; or
- (13) Violates any applicable law or regulation, or the terms of this Acceptable Use Policy in any manner.

(f) SIBS reserves the right to terminate the Service and connection to the Internet if this Acceptable Use Policy is violated and SIBS may exercise any and all remedies available to it by law. This Section shall not in any way limit SIBS' rights of termination pursuant to Section 4(e) of this Agreement.

(h) SIBS is committed to complying with U.S. copyright and related laws, and requires all customers of the Service to comply with these laws. Accordingly, Customers may not store material of any type or in any format on, or disseminate such material over, SIBS network or servers in any manner that constitutes illegal or unlawful materials, or an infringement of third party intellectual property rights, including rights granted under the United States copyright laws. In accordance with the Digital Millennium Copyright Act (DMCA) and any other applicable law, it is the policy of SIBS to terminate the Service provided to any Customer or account holder who is deemed to infringe third party intellectual property rights, including repeat infringers. SIBS may terminate the Service at any time with or without notice for any affected customer. Nothing herein shall be deemed to limit SIBS' actions or remedies in any way with respect to above activities. SIBS reserves the right to take any and all additional actions it may deem appropriate with respect to such activities, including but not limited to taking action to recover costs and expenses of identifying offenders and removing them from the Service. In addition, SIBS reserves all rights and remedies available to SIBS at law or equity.

(h) SIBS reserves the right to cooperate with legal authorities and/or injured third parties in the investigation of any suspected crime or civil wrong doing. Such cooperation may include, but not be limited to, provision of account or user information or email as well as monitoring of the SIBS network.

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(i) SIBS may, but is not required to monitor Customer's compliance, or the compliance of other subscribers, with the terms, conditions or policies of this Agreement. SIBS may immediately terminate the Service should SIBS detect any abuse or fraudulent use of the Service by Customer.

(j) Customer agrees to indemnify, hold harmless and defend SIBS and its affiliates, and their respective officers, directors, employees, or any agents, from any claims, losses, damages, liabilities, expenses or costs of any kind (including but not limited to attorneys' fees and court costs) arising from Customer's use or attempted use of the Service, including but not limited to, use of the Equipment or the Service in any manner prohibited under the Acceptance Use Policy. Customer's indemnification obligations shall survive any termination of this Agreement.

8. Anti-Spam

SIBS does not authorize the use of its proprietary computers, servers, routers and computer network to accept, transmit, distribute unsolicited bulk email sent from the Internet to SIBS Customers (or to others). It is a violation of SIBS policy, and the law, to send or cause to be sent to, or through, the SIBS network email that makes use of or contains invalid or forged headers, invalid or non-existent domain names or other means of deceptive addressing. SIBS considers such email to be unlawful and a violation of SIBS policy, and any attempt to send or cause such email to be sent to, or through, the SIBS network is unauthorized. Moreover, any email relayed from a third party's mail servers without the permission of that third party, or any email that hides or obscures, or attempts to hide or obscure, the source of an email constitutes an unauthorized use of the SIBS network. SIBS does not authorize the harvesting or collection of screen names from the Service for the purpose of sending unsolicited email. Unauthorized use of the Services in connection with the transmission of unsolicited email, including the transmission of email in violation of this policy, may result in civil, criminal or administrative penalties against the sender and those assisting the sender.

9. CPNI Customer Notification Policy

(a) SIBS respects the privacy of its customers and observes privacy rules established by applicable regulatory agencies. Certain information related to the account Customer has with SIBS may be "Customer Proprietary Network Information" or "CPNI". CPNI is protected by specific laws and regulations, and accordingly, SIBS is committed to complying with such laws and regulations. Customer acknowledges receipt of SIBS' CPNI Customer Notification policy. SIBS reserves the right to change or modify its policy to better meet our customers' needs. Any changes will be noted in our CPNI Customer Notification policy.

(b) Customer agrees to comply with the terms of the CPNI Customer Notification policy.

10. No Waiver

Forbearance or indulgence by SIBS in any regard whatsoever shall not constitute waiver of any term or condition, nor shall it constitute a waiver as to any future default or defaults, whether of like or different character. Neither the course of conduct between the parties nor trade practice shall act to modify any provision of this Agreement.

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11. Assignment

Customer understands and agrees that Customer may not assign or transfer this Agreement. SIBS may assign or transfer this Agreement at any time without notice and Customer agrees to make all subsequent payments as directed.

12. Severability

If any provision of this Agreement shall be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provision hereof, and this Agreement shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein.

13. Governing Law; Venue

The validity, construction and performance of this Agreement shall be governed by the laws of the State of Hawaii and the United States of America. The venue for any suit or proceeding pertaining hereto shall be maintained in Honolulu, Hawaii. Customer may not bring any claim, suit or proceeding more than one (1) year after the date the cause of action arose.

14. General

This Agreement represents the complete agreement and understanding of the parties with respect to the subject matter herein, and supersedes any other agreement or understanding, written or oral.

**For more information on the
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540-5754 or 888-995-7274**