



STATE OF UTAH COOPERATIVE CONTRACT AMENDMENT

AMENDMENT #: 5

CONTRACT #: AR2492

Starting Date: Unchanged

Expiration Date: Unchanged

TO BE ATTACHED AND MADE PART OF the specified contract by and between the State of Utah Division of Purchasing and Unisys Corporation (Referred to as CONTRACTOR).

BOTH PARTIES AGREE TO AMEND THE CONTRACT AS FOLLOWS:

The attached Hawaiiin Telcom Term and Conditions is made a part of Attachment E

Effective Date of Amendment: The date of last signature on this amendment

All other terms and conditions of the contract, including those previously modified, shall remain in full force and effect.
IN WITNESS WHEREOF, the parties sign and cause this contract to be executed.

CONTRACTOR

STATE OF UTAH

7/29/19

Jul 30, 2019

Contractor's Signature

Date

Director

State of Utah Division of Purchasing

Date

Keith Stock

Contractor's Name (Print)

Client Executive

Title (Print)

Purchasing Agent	Phone #	e-mail	Contract #
Solomon Kingston	801-538-3228	skingston@utah.gov	AR2492

Unisys Scope to NASPO:

Unisys was awarded the opportunity to provide IaaS, PaaS and SaaS services under the NASPO Cloud Solutions contract. It is our goal to provide meaningful and current services to our clients. An aspect of that goal is to foster competition within our provider ecosystem. Competition amongst providers improves service to the Public Sector and should drive costs lower over time. It is with this in mind we are adding Hawaiian Telcom as a cloud option.

Service Description:

ABOUT HAWAIIAN TELCOM

Hawaiian Telcom (HT) has been the State of Hawaii's Local Exchange Carrier (LEC) for over 135 years. With a combined employee count of approximately 1,300, Hawaiian Telcom is the largest provider of information technology services in the State of Hawaii.

HT's Advanced Services portfolio includes:

- 🕒 Physical Colocation
- 🕒 Cloud Computing
- 🕒 Disaster Recovery
- 🕒 Off-site Backup
- 🕒 Managed Network & Security
- 🕒 Consulting & Professional Services

Physical Colocation

Hawaiian Telcom maintains two data centers in Hawai'i to offer customers a solution that meets their needs for colocation, backup and disaster recovery solutions. Our Honolulu colocation site, Endeavor, is a Tier 3 data center featuring state-of-the-art power, environmental, and security systems that allows us to achieve **99.999%** service-level guarantee on power and environmental controls.

- 🕒 Favorable geographic location outside flood and emergency evacuation areas
- 🕒 24/7/365 security personnel providing financial-grade protection
- 🕒 SSAE18 (SOC I and SOC II) type 2 audits completed on physical and virtual colocation solutions
- 🕒 Adheres to ISO 14644 Class 7 or better clean-room environmental rating
- 🕒 Power cleanup and redundancy provided via Uninterruptable Power Sources (UPS) and redundant generator backup with a minimum of 5-day fuel supply
- 🕒 Fire suppression and control systems
- 🕒 Client workroom with computer, printer, phone and Internet access

As an alternative to Oahu-based colocation services, Hawaiian Telcom maintains a facility on the west side of the island of Hawai'i at Kawaihae. This location is ideal for Oahu-based customers that need a backup or DR site off-island in a safe and secure facility.

Cloud Computing

For organizations ready to leave their physical servers behind and the need to maintain them, we offer the ability to move workloads offsite while keeping them hosted in Hawai'i at our secure Tier 3 data center facility. Customers receive the same benefits of traditional data center space, power and cooling without having to provide and manage physical servers, disk storage arrays, operating system licensing and backup solutions.

Our Cloud Computing infrastructure is housed in our Endeavor data center and built and refreshed with industry leading technology solutions.

- 🕒 Flexible virtual machine sizing (vCPU and memory)
- 🕒 Hypervisor, Windows Server and Linux operating system licensing included with
 - virtual machines
- 🕒 Storage provided on RAID-based high performance SAN
- 🕒 VMware Integrated OpenStack (VIO) GUI portal and API for managing VMs quickly and efficiently
- 🕒 Windows Remote Desktop Services and Exchange SAL, SharePoint Server, SQL Server, and other Microsoft licenses available for rental

Customized Hosting Solutions

In addition to our standardized hosting solutions, HT is able to customize a hosted private cloud environment sized and tailored to your needs. Customized solutions can be located in one of our Hawaii data centers, on your premise, or at a Mainland U.S. data center location.

Backup and Disaster Recovery

With organizations so reliant on digital information, it's critical to have a secondary location where data is backed up, or where critical workloads can be spun-up. A disaster recovery scenario could be caused by something as simple as loss of power or network connectivity at your primary hosting site, or a natural disaster that causes permanent damage to facilities and equipment. Hawaiian Telcom has access to multiple sites in Hawai'i or on the Mainland to house back-ups or replicated virtual machines.

For virtual machines and data hosted at Endeavor, we offer fully managed or self-serve Veeam backup solutions. RPO and Retention policies can be customized to meet specific customer requirements. In addition to our standard backup services, we offer customers with Veeam to house secondary back-ups in our Cloud Repository.

Managed Network and Security Solutions

Hawaiian Telcom maintains the largest locally staffed managed solutions practice in Hawai'i. We partner with leading security and network technology manufacturers to offer cutting-edge managed solutions. Your organization depends on your network operating at its best without disruption. This requires day-to-day maintenance and operational support that is costly to manage and sustain internally.

Instead of the "build-your-own" approach, leverage the expertise and state-wide reach of Hawaiian Telcom to monitor and manage your data network 24/7/365, and ensure the stability and quality of your vital communications infrastructure. With Hawaiian Telcom's Network Management services, we allow you to focus on strategic initiatives.

Our range of network solutions includes:

- ⌚ **Device availability and performance monitoring** – We provide around-the-clock monitoring of your equipment's health to detect degraded or out of service conditions so you can be alerted.
- ⌚ **Device configuration management** – During the onboarding process we assess your equipment and configurations to optimized performance and security. We regularly backup configurations, upgrade firmware and execute critical patches. If failures occur, we work with the hardware vendor to resolve software issues and any hardware replacement.
- ⌚ **Turnkey network solutions** – We can provide managed routers, switches, firewalls and Wi-Fi solutions on a monthly rental basis. We take care of the procurement, installation, configuration and ongoing management and monitoring for a monthly charge. No need to track maintenance contracts or device upgrades and lifecycles.

Hawaiian Telcom's Managed Security Services provide a comprehensive solution for your IT security requirements. Our core services ensure your network is protected 24/7 and features programs designed to help you meet your compliance obligations.

Our certified security experts are also available to provide a full range of professional security services including penetration tests, security assessments, InfoSec program development, employee security awareness training, incident response and forensic analysis. Our solutions and goals are to ensure your organization is striking the right balance between securing your environment and doing business efficiently.

Hawaiian Telcom offers a range of consulting and standardized services such as:

- ⌚ Assessment & Planning
- ⌚ Monitoring & Management
- ⌚ Threat & Incident Response
- ⌚ Managed Firewalls
- ⌚ Breach Radar – Client-side security monitoring detects and alerts attempts to compromise computer systems, networks and sensitive data

Professional Services

Hawaiian Telcom maintains a staff of highly skilled network and security professionals with certifications from top vendors and industry organizations. These professionals are available to augment your staff in the areas of network engineering, cyber security services, and data center and cloud services. Services include assessments, design, incident response, policy development and business continuity and disaster recovery planning.

Price List

			Government List Price					Government Price After Discount			
PN	Product Name	Description	NRC	MRC 1 yr Term	MRC 3 yr Term	MRC 5 yr Term	Discount %	NRC	MRC 1 yr Term	MRC 3 yr Term	MRC 5 yr Term
COLO-2RU	Colocation Service Endeavor - Partial Cabinet in 2RU Increments	data center. Includes up to 250 W of single-phase primary and redundant network switched PDUs, 5-day generator backup, 24x7 manned security and video surveillance, 24x7 facility access with biometric identification and security sign-in, combination and key locked cabinets, and advanced fire protection. Power above	\$294.12	\$410.12	\$377.31	\$374.03	15%	\$250.00	\$348.60	\$320.71	\$317.93
COLO-CAB-3KW	Colocation Service Endeavor - Full Cabinet with 3.3kW Power	data center. Includes single-phase 3.3kW primary and redundant network switched PDUs, 5-day generator backup, 24x7 manned security and video surveillance, 24x7 facility access with biometric identification and security sign-in, combination and key locked cabinets, and	\$1,705.88	\$2,782.94	\$2,560.31	\$2,538.04	15%	\$1,450.00	\$2,365.50	\$2,176.26	\$2,157.34
COLO-CAB-5KW	Colocation Service Endeavor - Full Cabinet with 5kW Power	data center. Includes single-phase 5kW primary and redundant network switched PDUs, 5-day generator backup, 24x7 manned security and video surveillance, 24x7 facility access with biometric identification and security sign-in, combination and key locked cabinets, and	\$1,705.88	\$3,178.41	\$2,924.14	\$2,898.71	15%	\$1,450.00	\$2,701.65	\$2,485.52	\$2,463.90
COLO-CC-FBR	Fiber Cross Connect	Cross Connect SMF or MMF up to 10G speeds to Customer Equipment.	\$294.12	\$183.09	\$168.44	\$166.98	15%	\$250.00	\$155.63	\$143.18	\$141.94
COLO-CC-CPR	Copper Ethernet Cross Connect	Customer Equipment. Distance is limited to 300 ft.	\$294.12	\$109.86	\$101.06	\$100.19	15%	\$250.00	\$93.38	\$85.91	\$85.16
COLO-HALF-CAB	Colocation Service Endeavor - 1/2 Cabinet with 2.5kW Power	data center. Includes up to 2.5kW of single-phase primary and redundant network switched PDUs, 5-day generator backup, 24x7 manned security and video surveillance, 24x7 facility access with biometric identification and security sign-in, combination and key locked cabinets, and advanced fire protection. Power above	\$941.18	\$2,197.06	\$2,021.29	\$2,003.72	15%	\$800.00	\$1,867.50	\$1,718.10	\$1,703.16
COLO-QTR-CAB	Colocation Service Endeavor - 1/4 Cabinet with 1.25kW Power	data center. Includes up to 1.25kW of single-phase primary and redundant network switched PDUs, 5-day generator backup, 24x7 manned security and video surveillance, 24x7 facility access with biometric identification and security sign-in, combination and key locked cabinets, and advanced fire protection. Power above	\$588.24	\$1,318.24	\$1,212.78	\$1,202.23	15%	\$500.00	\$1,120.50	\$1,030.86	\$1,021.90
COLO-RH-INST	Remote Hands - Endeavor Data Center	Hourly charge for remote assistance at Endeavor Data Center.	\$229.41	\$0.00	\$0.00	\$0.00	15%	\$195.00	\$0.00	\$0.00	\$0.00
COLO-RH-INST-HI	Remote Hands - Hawaii Island Data Center	Hourly charge for remote assistance at Hawaii Island Data Center.	\$229.41	\$0.00	\$0.00	\$0.00	15%	\$195.00	\$0.00	\$0.00	\$0.00
COLO-SHARED-INST	Colocation Shared Cabinet Installation Fee	Installation charge for shared cabinet colocation.	\$588.24	\$0.00	\$0.00	\$0.00	15%	\$500.00	\$0.00	\$0.00	\$0.00
COLO-CAB-INST	Colocation Cabinet Installation Fee	Installation charge for colocation.	\$1,705.88	\$0.00	\$0.00	\$0.00	15%	\$1,450.00	\$0.00	\$0.00	\$0.00
COLO-CC-INST	Cross Connect Installation	Installation charge for data center cross connect	\$294.12	\$0.00	\$0.00	\$0.00	15%	\$250.00	\$0.00	\$0.00	\$0.00
COLO-CAB	Colocation Service Endeavor - Full Cabinet	data center with 24x7 manned security and video surveillance, 24x7 facility access with biometric identification and security sign-in, combination and key locked cabinets, and advanced fire protection.	\$1,235.29	\$955.89	\$879.42	\$871.77	15%	\$1,050.00	\$812.51	\$747.50	\$741.00
COLO-RPWR-5KW	Colocation Service Endeavor - Redundant Power Service 5kW	redundant power, 30A/208V, 5-day generator backup.	\$235.29	\$740.84	\$681.57	\$675.65	15%	\$200.00	\$629.72	\$579.34	\$574.30
COLO-PPWR-5KW	Colocation Service Endeavor - Primary Power Service 5kW	Endeavor data center single-phase 5kW primary power, 30A/208V, 5-day generator backup.	\$235.29	\$1,481.68	\$1,363.15	\$1,351.29	15%	\$200.00	\$1,259.43	\$1,158.68	\$1,148.60
COLO-CAB-2KW	Colocation Service Endeavor - Full Cabinet with 1.9kW Power	data center. Includes single-phase 1.9kW (20A / 120V) primary and redundant network switched PDUs, 5-day generator backup, 24x7 manned security and video surveillance, 24x7 facility access with biometric identification and security sign-in, combination and key locked cabinets, and advanced fire protection.	\$1,705.88	\$1,683.83	\$1,549.12	\$1,535.65	15%	\$1,450.00	\$1,431.26	\$1,316.75	\$1,305.30
COLO-RPWR-3KW	Colocation Service Endeavor - Redundant Power Service 3.3kW	Endeavor data center single-phase 3.3kW redundant power, 20A/208V, 5-day generator backup.	\$235.29	\$609.02	\$560.30	\$555.42	15%	\$200.00	\$517.67	\$476.25	\$472.11
COLO-PPWR-3KW	Colocation Service Endeavor - Primary Power Service 3.3kW	primary power, 20A/208V, 5-day generator backup.	\$235.29	\$1,218.04	\$1,120.59	\$1,110.85	15%	\$200.00	\$1,035.33	\$952.50	\$944.22
COLO-HALF-CAB-ONLY	Colocation Endeavor - 1/2 Cabinet Only	data cabinet at Tier 3 data center. Includes, 5-day generator backup, 24x7 manned security and video surveillance, biometric identification and security sign-in, combination and key locked cabinets, and advanced fire protection. Customer access to facility requires scheduled escort. Does	\$470.59	\$529.41	\$487.06	\$482.82	15%	\$400.00	\$450.00	\$414.00	\$410.40

PN	Product Name	Description	Government List Price				Discount %	Government Price After Discount			
			NRC	MRC 1 yr Term	MRC 3 yr Term	MRC 5 yr Term		NRC	MRC 1 yr Term	MRC 3 yr Term	MRC 5 yr Term
COLO-RPWR-2KW-NI	Colocation Service Neighbor Island - Redundant Power Service 1.9kW	Kawaihae data center single-phase 1.9kW redundant power, 20A/120V, 5-day generator backup.	\$235.29	\$303.31	\$279.04	\$276.62	15%	\$200.00	\$257.81	\$237.19	\$235.13
COLO-PPWR-2KW-NI	Colocation Service Neighbor Island - Primary Power Service 1.9kW	Kawaihae data center single-phase 1.9kW primary power, 20A/120V, 5-day generator backup.	\$235.29	\$606.62	\$558.09	\$553.24	15%	\$200.00	\$515.63	\$474.38	\$470.25
COLO-CAB-HI	Colocation Service Hawaii Island Full Cabinet	data center. 5-day generator backup, combination and key locked cabinets, and advanced fire protection. Requires escorted	\$1,235.29	\$955.89	\$879.42	\$871.77	15%	\$1,050.00	\$812.51	\$747.50	\$741.00
COLO-HALF-CAB-HI	Colocation Service Hawaii Island 1/2 Cabinet Only	Kawaihae data center. 5-day generator backup, combination and key locked cabinets, and advanced fire protection. Requires escorted	\$470.59	\$529.41	\$487.06	\$482.82	15%	\$400.00	\$450.00	\$414.00	\$410.40
COLO-RPWR-5KW-NI	Colocation Service Neighbor Island - Redundant Power Service 5kW	Kawaihae data center single-phase 5kW redundant power, 30A/208V, 5-day generator backup.	\$235.29	\$889.01	\$817.89	\$810.78	15%	\$200.00	\$755.66	\$695.21	\$689.16
COLO-PPWR-5KW-NI	Colocation Service Neighbor Island - Primary Power Service 5kW	Kawaihae data center single-phase 5kW primary power, 30A/208V, 5-day generator backup.	\$235.29	\$1,778.02	\$1,635.78	\$1,621.55	15%	\$200.00	\$1,511.32	\$1,390.41	\$1,378.32
COLO-RPWR-3KW-NI	Colocation Service Neighbor Island - Redundant Power Service 3.3kW	Kawaihae data center single-phase 3.3kW redundant power, 20A/208V, 5-day generator backup.	\$235.29	\$730.82	\$672.36	\$666.51	15%	\$200.00	\$621.20	\$571.50	\$566.53
COLO-PPWR-3KW-NI	Colocation Service Neighbor Island - Primary Power Service 3.3kW	Kawaihae data center single-phase 3.3kW primary power, 20A/208V, 5-day generator backup.	\$235.29	\$1,461.64	\$1,344.71	\$1,333.02	15%	\$200.00	\$1,242.40	\$1,143.00	\$1,133.07
COLO-SPAC-CUST	Custom Cabinet or Cage	Custom cabinet or cage solution at Endeavor or Neighbor Island facility.					15%	ICB	ICB	ICB	ICB
COLO-PWR-CUST	Custom Power Solution	Island facility.					15%	ICB	ICB	ICB	ICB
COLO-CAB-CSTM	Customer Provide Cabinet	Colocation space at Endeavor or Neighbor Island facility. Customer provides their own cabinet that fits in standard colocation space.	\$1,235.29	\$955.89	\$879.42	\$871.77	15%	\$1,050.00	\$812.51	\$747.50	\$741.00
SVC-ENG-ARCH	Professional Services Hourly Charge - System Architect	include analysis, assessment and architect tasks or similar.	\$276.47	\$0.00	\$0.00	\$0.00	15%	\$235.00	\$0.00	\$0.00	\$0.00
SVC-ENG-SNR	Professional Services Hourly Charge - Senior Engineer	Hourly charge for professional services that include design and configuration tasks or similar.	\$229.41	\$0.00	\$0.00	\$0.00	15%	\$195.00	\$0.00	\$0.00	\$0.00
SVC-ENG-BAS	Professional Services Hourly Charge - Engineer	include software/firmware upgrades and maintenance tasks or similar.	\$217.65	\$0.00	\$0.00	\$0.00	15%	\$185.00	\$0.00	\$0.00	\$0.00
SVC-ANYST-BAS	Professional Services Hourly Charge - Analyst	Hourly charge for professional services that include technical support tasks or similar.	\$188.24	\$0.00	\$0.00	\$0.00	15%	\$160.00	\$0.00	\$0.00	\$0.00
SVC-PM-PROG	Professional Services Hourly Charge - Program Manager	Hourly charge for professional services that include Program Management tasks or similar.	\$264.71	\$0.00	\$0.00	\$0.00	15%	\$225.00	\$0.00	\$0.00	\$0.00
SVC-PM-PROJ	Professional Services Hourly Charge - Project Manager	Hourly charge for professional services that include Project Management tasks or similar.	\$229.41	\$0.00	\$0.00	\$0.00	15%	\$195.00	\$0.00	\$0.00	\$0.00

Terms and Conditions
(Hawaiian Telcom Services Company, Inc.)

These General Conditions, together with any **Services Agreement, Service Quotation (“Quotation”)** or any **Addenda** attached hereto, constitutes the entire agreement (“**Agreement**”) between the parties pertaining to the Service and supersedes all prior oral and written proposals, correspondence and memoranda. HT will provide Customer with the Service described in this Agreement, and the Addenda attached hereto. The Service will be provided, either directly or in conjunction with such subcontractors as HT may select, under the terms and conditions specified in the Services Agreement, Quotation and the applicable Addenda. In the event of a conflict between these **General Terms and Conditions**, any **Services Agreement, Quotation**, or **Addenda**, the order of precedence shall be as follows: (1) **General Terms and Conditions**; (2) **Services Agreement**; (3) **Quotation**; and (4) **Addenda**.

1. Fees and Payment. Service fees are set forth in the applicable Quotation for the specified Service Period or Contract Term. In addition, Customer is responsible for any applicable taxes, tariffs, telecommunications surcharges or other governmental charges. Unless otherwise stated in the Services Agreement, Quotation or Addenda, invoices shall be paid within thirty (30) days of the invoice date (the “Due Date”). Payments not received by HT by the Due Date shall be subject to a late payment charge of one and one-half percent (1.5%) per month or the maximum amount allowed by law. Should Customer dispute an amount invoiced, Customer shall pay the undisputed portion of that invoice and promptly notify HT in writing of the amount and nature of the dispute and the parties shall cooperate to resolve the dispute pursuant to Section 13 of this Agreement. HT reserves the right to suspend or terminate any or all Service or terminate the provision, installation or repair of any or all equipment subject to this Agreement immediately if Customer is more than sixty (60) days overdue for payments that have not been disputed in good faith. HT may assign unpaid delinquent charges to a collection agency for action. In the event HT resorts to legal action to recover monies due, Customer agrees to reimburse HT for all expenses incurred to recover such monies (including attorney’s fees).

1.1. Customer authorizes HT to conduct a credit inquiry that HT may use to determine the credit worthiness of the Customer. HT reserves the right to modify the terms of the Services Agreement, Quotation or Addenda executed by the parties, require additional assurances, or reject such Services Agreement, Quotation or Addenda following credit inquiry if the parties can not mutually agree to new terms.

1.2. In the event suitable facilities are not available to provide the Service at a specific location, Hawaiian Telcom will inform Customer of the additional charges required to install suitable facilities. Hawaiian Telcom will install such facilities only upon mutual written agreement that Customer will pay such additional charges. If Customer does not agree to pay such additional charges, then Hawaiian Telcom may terminate this Agreement, in whole or in part, without application of the termination charges described below for the affected Services.

2 Terms and Termination. The Term of the Service Period, termination rights and renewal terms, if any, are set forth below and in the attached Services Agreement, Quotation or Addenda.

2.1. Unless otherwise stated in the Services Agreement, Quotation or Addenda, this Agreement will be automatically renewed for 1 year successive terms beginning on the day immediately following the end of the initial Service Period (or successive Service Period), unless either party gives the other party one hundred (100) days prior written notice for colocation services, or thirty (30) days prior written notice for all other services, of its intent not to renew this Agreement at the end of the then current term. On or before 100 days prior to the expiration of the initial Service Period (or any subsequent Service Period), HT shall notify Customer of any increase to the monthly fees paid for the Services. Such increase shall automatically be applied for the subsequent Service Period, provided that such increase will not exceed 10 % of the then existing non-discounted monthly fees.

2.2. Customer may terminate the Service at any time by contacting the Account Manager. If Customer terminates during a Service Period or any renewal Service Period, Customer agrees to pay HT (a) all Service fees accrued as of the termination date; (b) an early termination fee equal to one hundred percent (100%) of the Service fees due for the remaining first 12 months of service, and twenty five percent (25%) of the Service fees due for the terminated portion of the Service Period; (c)

any third party termination charges; (d) any non-recurring fees not already paid, including those fees that were waived by HT and (e) any outstanding fees due for non-standard components identified in the Quotation. Notwithstanding the foregoing, in the event of Customer termination due to an uncured material breach by HT, or due to a change of the Service that adversely impacts Customer's use of the Service, Customer will not be responsible for the early termination fee.

23. Either party may terminate this Agreement immediately by written notice in the event the other party (i) materially breaches this Agreement and fails to cure such breach within thirty (30) days following written notice thereof, or if such breach cannot reasonably be cured during that time, fails to use commercially reasonable efforts to cure such breach as soon as practicable but in any event within ninety (90) days; (ii) engages in fraud, criminal conduct or willful misconduct in connection with the business relationship of the parties; or (iii) becomes insolvent, becomes involved in any liquidation or termination of its business, enters bankruptcy proceedings or effects an assignment for the benefit of creditors. In the event this Agreement is terminated pursuant to this Section, Customer shall promptly pay HT for the Service provided up to the date of termination.

24. HT reserves the right to suspend Service immediately if Customer is more than sixty (60) days overdue in payments. HT may also suspend or terminate the Service to Customer as provided in other sections of this Agreement or immediately, in HT's sole discretion, if required by regulation, statute, judicial action or other applicable legal requirement.

25. If either party terminates this Agreement, HT will assist Customer in the orderly termination of Service, including timely transfer of Service to another designated provider. Customer agrees to pay HT the actual costs of rendering such assistance.

3. Cancellation. If Customer terminates this Agreement subsequent to the execution of this Agreement by the Parties but prior to the in-service date, Customer shall pay to HT (a) all costs incurred by HT for contract and service preparation; (b) any non-recurring fees not already paid, including those fees that were waived by HT; and (c) any outstanding fees due for non-standard components set forth in a Quotation. **Third Party Access.** Subject to the terms and conditions of this Agreement, Customer has the non-exclusive right to authorize access to the Service to Customer's employees and/or to any third party for its internal business purposes.

4. Responsibilities of Customer and Use of Service. Customer acknowledges and agrees that:

4.1.1. Customer is responsible for Customer's choice, configuration, and maintenance of Customer's equipment, software and online content; and all other matters related to how Customer uses the Service.

4.1.2. HT reserves the right to prohibit incidences of unacceptable use of e-mail and other unacceptable use of the Service.

4.2.1. Customer is responsible for the manner in which Customer and its end users use the Service, including establishing the policies and procedures Customer uses to protect the security of Customer's data, computer network and other facilities.

4.2.2. It is Customer's ultimate responsibility to design, implement and enforce a comprehensive security program, policies and security violation response procedures.

4.2.3. The Services by themselves do not guarantee network security or prevent security incidents, and HT is not responsible for unauthorized access to Customer's facilities or for damages arising out of unauthorized access.

4.2.4. Customer shall provide HT advanced written notification (no less than 4 hours) prior to Customer conducting penetration testing or staging simulated attacks, reconnaissance, or compromises against Customer's network to test HT's monitoring and response capabilities. Service Level Guarantees shall not apply during the period of such penetration testing or staging.

4.3.1. To the extent any Service includes managed security services, Customer shall not resell the Service or give access to the Service, directly or indirectly, to third parties, unless expressly permitted by HT.

4.3.2. Customer will not use or permit the Services to be used in ways that infringe the rights of others, or interfere with other users of HT's network or other networks.

4.3.3. Customer agrees to be responsible for all communications to and business relationship with Customer's end users.

4.3.4. Customer assumes all responsibility with regard to supporting its end users including, but not limited to, technical and business support, inquiries, problem resolution, installation and maintenance.

4.3.5. Customer will be responsible for any violation of the terms of this Agreement by any end user.

4.3.6. Customer will defend, indemnify and hold harmless HT and its Service Supplier from and against any claims arising out of unauthorized representations made by Customer to its end users and/or any claims made by an end user asserting warranties, liabilities or damages.

4.3.7. Customer is responsible for authenticating and authorizing its end users to the Service.

5. Service Level Guarantee. If applicable, HT will provide Customer with the Service Level Guarantee described in the applicable addendum. Service Level Guarantees shall not be applicable during periods of scheduled or emergency maintenance.

EXCEPT FOR CUSTOMER'S RIGHT TO TERMINATE AS SET FORTH IN THE AGREEMENT, THE SERVICE LEVEL GUARANTEE IS THE SOLE AND EXCLUSIVE REMEDY FOR FAILURE OR DEFECT OF SERVICE AVAILABILITY.

6. Software Provided. In the event HT provides any software to Customer in connection with the Service, HT grants Customer a

personal, non-exclusive, non-transferable license, for the duration of the Service Period, to use such software in object code form only on the hardware on which it is installed for the sole purpose of enabling Customer's end users to use the Service. Customer acknowledges that the software is copyrighted, that title to such software remains with HT or its suppliers and that the content and design of such software are valuable trade secrets. Customer agrees not to a) disclose or make available to third parties any portion of such software without HT's advance written permission; b) copy or duplicate such software; c) reverse engineer, decompile or disassemble such software; or d) modify or make derivative works of such software. Customer further agrees not to use such software after the Service Period without obtaining a valid license from HT or the third party supplier.

7. Compliance with Law. Customer agrees to comply with any applicable federal, state or local laws or regulations and any export law, including, but not limited to U.S. Export laws and regulations concerning the transmission of technical data and other regulated materials via the Service. HT reserves the right to suspend or terminate the Service (or any portion thereof) without notice in the event that Customer's or its end user's use of the Service is in violation of this Section or Section 8.

8. Content Responsibility. Customer understands that neither HT nor its Service Supplier is responsible for content of transmissions that may pass via the Service. Customer agrees that it will not use the Service in ways that violate laws, infringe the rights of others, or interfere with the users, services, or equipment of the network. HT reserves the right to terminate the Service in the event of chronic or uncured violations of this Section. HT shall be under no obligation to monitor the compliance of Customer and its end users.

9. Warranty and Limitation of Liability. CUSTOMER AGREES THAT THE SERVICE IS PROVIDED "AS IS" AND ON AN "AS AVAILABLE" BASIS. HT DISCLAIMS ANY AND ALL WARRANTIES, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO THE IMPLIED WARRANTY OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. HT DOES NOT WARRANT THAT THE SERVICE WILL BE AVAILABLE ON A SPECIFIED DATE OR TIME OR THAT THE SERVICE WILL HAVE THE CAPACITY TO MEET THE DEMAND OF END USERS DURING SPECIFIC HOURS. END USERS MAY BE UNABLE TO ACCESS THE SERVICE AT ANY TIME, AND DISCONNECTION FROM THE SERVICE MAY OCCUR FROM TIME TO TIME. HT WILL NOT BE LIABLE FOR UNAUTHORIZED ACCESS TO CUSTOMER'S OR END USER'S TRANSMISSION FACILITIES OR PREMISES EQUIPMENT OR FOR UNAUTHORIZED ACCESS TO OR ALTERATION, THEFT OR DESTRUCTION OF CUSTOMER'S OR END USER'S DATA FILES, PROGRAMS, PROCEDURES OR INFORMATION THROUGH ACCIDENT, FRAUDULENT MEANS OR DEVICES, OR ANY OTHER METHOD, REGARDLESS OF WHETHER SUCH DAMAGE OCCURS AS A RESULT OF HT'S NEGLIGENCE.

10. Indemnification. HT shall defend, indemnify and hold harmless Customer, its employees, officers, directors, agents and affiliates for damages, costs and attorneys' fees incurred from any claim that the Service infringes any U.S. patent, copyright, trademark, trade secret or other intellectual property right. Customer shall defend, indemnify and hold harmless HT, its employees, officers, directors, agents and affiliates for damages, costs and attorneys fees HT incurs from any claim arising from Customer's use of the Service, Customer's combination of the Service with other products or services not provided by HT, Customer's modification of the Service, Customer's access or use of the Service and related equipment, and Hawaiian Telcom's installation or removal of the Services and related equipment. The indemnifying party shall conduct the defense and shall have control of the litigation. The other non-indemnifying party shall give prompt notice of claims and shall cooperate in defense against such claim.

11. Disclaimer of Consequential Damages. IN NO EVENT WILL HT BE LIABLE FOR ANY SPECIAL, CONSEQUENTIAL, INDIRECT, PUNITIVE OR INCIDENTAL DAMAGES, INCLUDING BUT NOT LIMITED TO LOSS OF DATA, LOSS OF REVENUE OR PROFITS, ARISING OUT OF OR IN CONNECTION WITH THE USE OF OR INABILITY TO USE SERVICES OR PRODUCTS PROVIDED HEREUNDER.

12. Limitation of Damages. THE ENTIRE LIABILITY OF HT, AND THE CUSTOMER'S EXCLUSIVE REMEDY, UNDER THIS AGREEMENT, FOR ANY CLAIM, WHETHER IN CONTRACT, OR IN TORT, SHALL BE LIMITED TO THE TOTAL AMOUNT PAID BY CUSTOMER TO HT UNDER THIS AGREEMENT FOR ONE (1) YEAR OF THOSE SERVICES UPON WHICH THE LIABILITY IS BASED. THIS LIMITATION IS IN ADDITION TO, AND NOT IN PLACE OF, OTHER LIMITATIONS.

13. Dispute Resolution. The parties agree to try and resolve disputes and claims arising under this Agreement in good faith and escalate disputes to senior management when appropriate. In the event the parties are unable to reach a resolution, then the claim shall be resolved according to the terms and conditions set forth in the governing Master Agreement and Participating Addendum.

14. General. (i) Neither party may, without the prior written consent of the other party, assign or transfer this Agreement,

except that either party may assign this Agreement to any affiliated entity, or to a successor entity upon the merger, reorganization, consolidation, or sale of all or substantially all of such party's assets without the other party's consent. Any attempt to assign this Agreement in contravention of this Section shall be void and of no force and effect; (ii) HT will not be liable for delays, damages or failures in performance due to causes beyond HT's reasonable control, including, but not limited to, acts of a governmental body, acts of God, acts of third parties, fires, floods, strikes or other labor-related disputes, or an inability to obtain necessary equipment or services; (iii) If any of the terms or conditions in this Agreement are properly found to be invalid or unenforceable by a government body, the remaining terms or conditions of this Agreement shall not be affected by the finding and shall continue to apply; (iv) This Agreement shall be governed by the laws of the State of Hawaii, without regard to its conflicts of law rules; (v) Except as required by law, each party shall treat this Agreement as confidential and shall not disclose this Agreement or any of its terms to any third party without the other party's prior written consent; (vi) Neither party shall use any trademark, trade name, trade dress or any name, picture or logo which is commonly identified with the other party or its affiliates in any manner without the prior written permission of the other party; (vii) HT may use Customer's name in listings of its customers; (viii) Notices shall be sent by first class mail, postage prepaid, hand delivered, or via overnight mail to the parties at the addresses specified in the Services Agreement. Notices to HT will be sent to the attention of the Director of Business Sales; (ix) This Agreement may not be changed or waived except by a written document that is signed by both parties; and (xi) Each party hereby represents and warrants that the individual executing this Agreement on behalf of such party is an officer or senior executive of such party with authority to enter into this Agreement.