



## DIALUP SERVICE AGREEMENT

### **READ CAREFULLY. THIS AGREEMENT IMPOSES OBLIGATIONS UPON YOU.**

For more information visit us online at [www.tbaytel.net](http://www.tbaytel.net) or call us at 684-3278, or toll free at 1-800-478-0879.

### **Terms & Conditions for the use of TBayTel Dialup Internet**

#### **1.0 Introduction**

This Internet Acceptable Use Policy ("Policy") sets out the principles, terms and conditions that govern the use by TBayTel Internet Customers of the networks, systems, services and products provided by TBayTel Internet. The Policy has been established to protect our Customer's use of the Internet and to promote the integrity, security, reliability and privacy of TBayTel Internet's networks and systems. The Policy is a non-exclusive list of the actions prohibited by TBayTel Internet. TBayTel Internet reserves the right to change the terms, conditions, and notices under which the TBayTel Internet Sites/Services are offered, including but not limited to the charges associated with the use of TBayTel Internet Sites/Services. You are responsible for regularly reviewing these terms and conditions and additional terms. Your continued use of the TBayTel Internet Sites/Services constitutes your agreement to all such terms, conditions and notices.

#### **2.0 Compliance with Law**

Customers shall not post, transmit, re-transmit or store material on or through any of TBayTel Internet's networks, systems, services or products that:

- is in violation of any municipal, provincial, federal, international or any other law or regulation;
- threaten, harass, or are obscene, indecent, defamatory, hateful or that otherwise could adversely affect any individual, group or entity (collectively, "Persons");
- or violate the rights of any Person, including privacy rights and rights protected by copyright, trademark, trade secret, patent or other intellectual property or similar laws or regulations including, but not limited to, the installation or distribution of "pirated" or other software products that are not appropriately licensed for use by Customer.

#### **3.0 Prohibited Uses of TBayTel Internet's Systems, Services and Products**

This Policy identifies the uses and actions that TBayTel Internet considers to be unacceptable and/or abusive, and thus, strictly prohibited. In addition to the other requirements of this Policy, the Customer may only use TBayTel Internet's networks, systems, services and products in a manner that, in TBayTel Internet's sole judgment, is consistent with the purposes of such networks, systems, services and products. The examples of prohibited uses identified below are non-exclusive and are provided, in part, for guidance purposes.

The following uses of TBayTel Internet's networks, systems, services and products are expressly prohibited:

##### **3.01 Prohibited Actions: General Conduct**

- Transmitting on or through any of TBayTel Internet's networks, systems, services, or products any material that is, in TBayTel Internet's sole discretion, unlawful, obscene, threatening, harassing, abusive, libelous, or hateful, or encourages conduct that may constitute a criminal offense, may give rise to civil liability, or otherwise may violate any municipal, provincial, federal, international or other law or regulation.

- Transmission, distribution or storage of any material in violation of any applicable law or regulation is prohibited. This includes, without limitation, material protected by copyright, trademark, trade secret or other intellectual property right used without proper authorization, and material that is obscene, defamatory, constitutes an illegal threat, or violates export control laws.
- Transmission, distribution, or storage of any information, data or material in violation of federal or provincial regulations or laws, or of the common law.
- Violations of the rights of any Person protected by copyright, trademark, trade secret, patent or other intellectual property or similar laws or regulations.
- Actions that restrict or inhibit any Person, whether a Customer of TBayTel Internet or otherwise, in its use or enjoyment of any of TBayTel Internet's networks, systems, services or products.
- Resale of TBayTel Internet's services and products, without the prior written consent of TBayTel Internet.
- Deceptive on-line marketing practices.
- Furnishing false data on the signup form, contract, or on-line application, including fraudulent use of credit card numbers (such conduct is ground for immediate termination and may subject the offender to civil or criminal liability).
- Unauthorized attempts by a user to gain access to any account or computer resource not belonging to that user (e.g., "cracking").
- Obtaining or attempting to obtain service by any means or device with intent to avoid payment.
- Unauthorized access, alteration, destruction, or any attempt thereof, of any information of any TBayTel Internet customers or end-users by any means or device.
- Knowingly engage in any activities that will cause a denial-of-service (e.g., synchronized number sequence attacks) to any TBayTel Internet customers or end-users whether on the TBayTel Internet network or on another provider's network.
- Using TBayTel Internet Products and Services to interfere with the use of the TBayTel Internet network by other customers or authorized users.
- Use the Communication Service in connection with surveys, contests, pyramid schemes, chain letters, junk email, spamming or any duplicative or unsolicited messages (commercial or otherwise).
- Defame, abuse, harass, stalk, threaten or otherwise violate the legal rights (such as rights of privacy and publicity) of others.
- Publish, post, upload, distribute or disseminate any inappropriate, profane, defamatory, infringing, obscene, indecent or unlawful topic, name, material or information.
- Upload files that contain software or other material protected by intellectual property laws (or by rights of privacy of publicity) unless you own or control the rights thereto or have received all necessary consents to do the same.
- Upload files that contain viruses, Trojan horses, worms, time bombs, cancelbots, corrupted files, or any other similar software or programs that may damage the operation of another's computer or property of another.
- Advertise or offer to sell or buy any goods or services for any business purpose, unless such Communication Service specifically allows such messages.
- Download any file posted by another user of a Communication Service that you know, or reasonably should know, cannot be legally distributed in such manner.
- Falsify or delete any author attributions, legal or other proper notices or proprietary designations or labels of the origin or source of software or other material contained in a file that is uploaded.
- Restrict or inhibit any other user from using and enjoying the Communication Services.
- Violate any code of conduct or other guidelines, which may be applicable for any particular Communication Service.
- Harvest or otherwise collect information about others, including e-mail addresses.
- Create a false identity for the purpose of misleading others.

### **3.02 Prohibited Actions: System and Network Security**

Attempting to circumvent user authentication or security of any host, network or account ("cracking"). This includes, but is not limited to, accessing data not intended for the Customer, logging into a server or account the Customer is not expressly authorized to access, or probing the security of other networks (such as running a SATAN or port scan, a Denial of Service attack or similar tools). Effecting security breaches or disruptions of

Internet communications. Security breaches include, but are not limited to, accessing data of which Customer is not an intended recipient or logging onto a server or account that Customer is not expressly authorized to access. For purposes of this section, "disruption" includes, but is not limited to, port scans, ping floods, packet spoofing, forged routing information, deliberate attempts to overload a service, and attempts to "crash" a host. Using any program/script/command, or sending messages of any kind, designed to interfere with a user's terminal session, by any means, locally or by the Internet. Executing any form of network monitoring which will intercept data not intended for Customer.

### **3.03 Prohibited Actions: E-Mail**

- Harassment, whether through language, frequency, or size of messages, is prohibited.
- Sending unsolicited mail messages, including the sending of "junk mail" or other advertising material to individuals who did not specifically request such material ("e-mail spam"). Customers are explicitly prohibited from sending unsolicited bulk mail messages. This includes, but is not limited to, bulk mailing of commercial advertising, informational announcements and political messages. Such material may only be sent to those who have explicitly requested it. If a recipient asks to stop receiving e-mail, the Customer must not send that person any further e-mail. It also includes posting the same or similar message to one or more newsgroups (excessive cross-posting or multiple-posting).
- TBayTel Internet accounts or services may not be used to collect replies to messages sent from another Internet Service Provider where those messages violate this Policy or that of the other provider.
- Creating or forwarding "chain letters" or other "pyramid schemes" of any type, whether or not the recipient wishes to receive such mailings.
- Malicious e-mail, including, but not limited to, "mailbombing" (flooding a user or site with very large or numerous pieces of e-mail).
- Unauthorized use, or forging, of mail header information. (e.g. "spoofing").
- Unauthorized attempts by a user to gain access to any account or computer resource not belonging to that user (e.g., "cracking").
- Obtaining or attempting to obtain service by any means or device with intent to avoid payment.
- Unauthorized access, alteration, destruction, or any attempt thereof, of any information of any TBayTel Internet customers or end-users by any means or device.
- Using a TBayTel Internet or a Customer account to collect replies to messages sent from another provider.
- Use of unsolicited e-mail originating from TBayTel Internet network or networks of other Internet service providers on behalf of, or to advertise any service hosted by TBayTel Internet, or connected via TBayTel Internet network.
- Willful failure to secure open SMTP ports so as to prevent the unauthorized use of Customer resources for the purposes of sending unsolicited e-mail by a third party.
- Knowingly engage in any activities that will cause a denial-of-service (e.g., synchronized number sequence attacks) to any TBayTel Internet customers or end-users whether on the TBayTel Internet network or on another provider's network.
- Using TBayTel Internet Products and Services to interfere with the use of the TBayTel Internet network by other customers or authorized users.

### **4.0 Enforcement**

TBayTel Internet reserves the right to monitor the network and associated services to ensure there are no adverse effects on the network or services. TBayTel Internet may, in its sole discretion, suspend or terminate a Customer's service for violation of any provision of this Policy at any time and without warning. TBayTel Internet's determination whether such violation occurred will be final and conclusive. As a general matter, TBayTel Internet attempts to work with customers to cure violations and to ensure that there is no recurrence of the violation prior to terminating service.

## **5.0 Liability**

The Customer acknowledges that, in addition to any other remedy provided to TBayTel Internet, TBayTel Internet shall be entitled to claim from the Customer damages for any loss incurred by TBayTel Internet or its customers as a result of the Customer being in breach of this Policy. The Customer further acknowledges that if the breach or threatened breach of any provision of this Policy will cause TBayTel Internet significant and irreparable harm, that injunctive relief is accepted by the Customer as an appropriate remedy for any and every breach of this Policy.

In no event will TBayTel Internet be liable to any Customer or third party for any direct, indirect, special or other consequential damages for actions taken pursuant to this Policy, including, but not limited to, any lost profits, business interruption, loss of programs or other data, or otherwise, even if TBayTel Internet was advised of the possibility of such damages.

## **6.0 Miscellaneous**

TBayTel Internet retains the right to modify the Policy at any time and any such modification shall be automatically effective as to all Customers when adopted by TBayTel Internet.

The actions listed herein are also not permitted by Internet Service Providers. Deceptive marketing of any kind whatsoever is not permitted through TBayTel Internet 's networks, systems or services. This Policy applies to other types of Internet -based distribution mediums as well.

TBayTel Internet is not responsible for the content posted on the Internet, whether or not the posting was made by a Customer of TBayTel Internet and expressly disclaims any and all liability of any kind whatsoever for any Customer information or content.

At its sole discretion, TBayTel Internet reserves the right to remove materials from its servers and to terminate Internet access to Customer that TBayTel Internet determines has violated this Policy in addition to any other rights or remedies it may have at law or at equity.

## **7.0 Termination**

You agree that TBayTel Internet, in its sole discretion, may terminate your password, TBayTel Internet Site, use of the Service or use of any other TBayTel Internet service, and remove and discard any Content within the Service, for any reason, including, without limitation, for lack of use or if TBayTel Internet believes that you have violated or acted inconsistently with the letter or spirit of the TOS. TBayTel Internet may also in its sole discretion and at any time discontinue providing the Service, or any part thereof, with or without notice. You agree that any termination of your access to the Service under any provision of this TOS may be effected without prior notice, and acknowledge and agree that TBayTel Internet may immediately deactivate or delete all related information and files in your TBayTel Internet Site and/or bar any further access to such files or the Service. Further, you agree that TBayTel Internet shall not be liable to you or any third party for any termination of your access to the Service.