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## TERMS OF USE

This Web site is owned by Alohana.com, Inc. (“**Alohana.com**”, “**we**”, “**us**” or “**our**”). The terms “**Users**” and “**you**” as used in the following terms and conditions (“**Terms**”) refer to both registered Members (as defined below), and unregistered visitors. By using or accessing this Web site, you agree to comply with and be legally bound by these Terms, as well as our [Privacy Policy](#), whether or not you become a registered Member. These Terms apply to the Web site located at WWW.ALOHANA.COM, and any other Web sites to which these Terms are linked (collectively, the “**Site**”). If you do not fully agree to these Terms, you are not authorized to access or otherwise use the Site. You should carefully read through all these Terms and our Privacy Policy, which is incorporated by reference into these Terms. By accessing or otherwise using the Site, you agree that these Terms and our Privacy Policy constitute a legally binding agreement between you and Alohana.com, Inc. (this “**Agreement**”). You are not authorized to access or otherwise use the Site unless you are able to enter into legally binding contracts.

### 1. KEY DEFINITIONS

- a. “**Accommodations**” refers to a residential or other property available to rent on a temporary basis.
- b. “**Activities**” refers to an activity or service available for booking.
- c. “**Vacation Real Estate**” refers to vacation real estate for sale.
- d. “**Guest**” is a Member who requests information about Accommodations or Activities via the Site, a Member who rents Accommodations and is not the Host for such Accommodations, including all persons in Guest’s party renting Accommodations, or a Member who books Activities and is not the Host for such Activities, including all persons in Guest’s party booking Activities.
- e. “**Host**” is a Member who is a homeowner or a property manager who creates and posts a Listing for Accommodations via the Site, and has the legal right to rent Accommodations, or is an owner or an operator of an activity or service who creates and posts a Listing for Activities via the Site, and has the legal right to provide such activity or service.
- f. “**Buyer**” is a Member who is a prospective purchaser of Vacation Real Estate.
- g. “**Seller**” is a Member who creates and posts a Listing for Vacation Real Estate via the Site.
- h. “**Listing**” is information about Accommodations or Activities created and posted by a Host on the Site, or information about Vacation Real Estate created and posted by a Seller on the Site.

- i. **“Member”** is a User who completes Alohana.com’s account registration process, including, but not limited to Guests, Hosts, Buyers and Sellers.
- 2. ALOHANA.COM IS NOT A PARTY TO ANY RENTAL, BOOKING OR SALES TRANSACTION**

THE SITE IS AN ONLINE MEETING PLACE THROUGH WHICH HOSTS MAY CREATE AND POST LISTINGS FOR ACCOMMODATIONS AND ACTIVITIES, AND SELLERS MAY CREATE AND POST LISTINGS FOR VACATION REAL ESTATE, GUESTS MAY REVIEW LISTINGS AND INQUIRE ABOUT ACCOMMODATIONS AND ACTIVITIES WITH HOSTS, AND BUYERS MAY REVIEW LISTINGS AND INQUIRE ABOUT VACATION REAL ESTATE WITH SELLERS. YOU UNDERSTAND AND AGREE THAT ALOHANA.COM WILL NOT CREATE ANY LISTINGS AND IS NOT A PARTY TO ANY AGREEMENTS ENTERED INTO BETWEEN HOSTS AND GUESTS, OR BETWEEN SELLERS AND BUYERS, NOR IS ALOHANA.COM A REAL ESTATE BROKER, HOST, BUYER, SELLER, DEVELOPER, FRANCHISOR, AGENT OR INSURER. ALOHANA.COM IS NOT AN OWNER, OPERATOR OR PROVIDER OF PROPERTIES OR ACTIVITIES, INCLUDING, BUT NOT LIMITED TO, VACATION REAL ESTATE, TIMESHARES, HOTEL ROOMS, MOTEL ROOMS, OTHER LODGINGS OR ACCOMMODATIONS. ALOHANA.COM DOES NOT OWN, SELL, RESELL, LEASE, SUBLEASE, FURNISH, PROVIDE, RENT, RE-RENT, MANAGE AND/OR CONTROL, NOR CAN WE CONTRACT FOR, PROPERTIES, INCLUDING, BUT NOT LIMITED TO, VACATION REAL ESTATE, TIMESHARES, HOTEL ROOMS, MOTEL ROOMS, OTHER LODGINGS OR ACCOMMODATIONS, TRANSPORTATION, TRAVEL RELATED SERVICES, ACTIVITIES, OR ANY OTHER REAL PROPERTY, PERSONAL PROPERTY, GOODS OR SERVICES ADVERTISED ON THE SITE. ALOHANA.COM IS NOT AN AGENT OR REPRESENTATIVE OF ANY HOST, GUEST, BUYER, SELLER, MEMBER, USER OR ANY OTHER PERSON USING THE SITE. ALOHANA.COM’S ROLE IS SOLELY TO FACILITATE THE AVAILABILITY OF THE SITE SOLELY AS AN ONLINE MEETING PLACE FOR MEMBERS. ALOHANA.COM SHALL NOT BE RESPONSIBLE OR LIABLE FOR THE ACTS OR OMISSIONS OF HOSTS, GUESTS, BUYERS, SELLERS, MEMBERS, USERS OR OTHERS USING THE SITE, OR THE CONDITION OR PROVISION OF ANY ACCOMMODATIONS, ACTIVITIES OR VACATION REAL ESTATE.

### **3. MODIFICATION**

We reserve the right, in our sole and absolute discretion, to modify or revise the Site or these Terms, at any time and without prior notice. If we modify or revise these Terms, the modified Terms will automatically be effective ten (10) days after they are published on the Site and you will be legally bound by the modified Terms ten (10) days after such publication. We will also update the “Last Updated Date” located at the top of these Terms. If the modified Terms are not acceptable to you, your only recourse is to cease using the Site. You should return here regularly to view our most up-to-date Terms. You should also print a copy of these Terms for your records.

#### **4. MUST BE 18 OR OLDER TO USE SITE**

The Site is not intended for individuals under the age of eighteen (18). Any access to or use of the Site by any individual under 18 is strictly prohibited. By accessing the Site, you represent and warrant that you are 18 or older.

#### **5. USE OF THE SITE IS AT YOUR SOLE RISK**

We urge all Users to be responsible about their use of the Site and any transaction entered into as a result of listing Accommodations, Activities or Vacation Real Estate via the Site; offering for rent, or booking, Accommodations; providing, or engaging in, Activities; or offering for sale, or purchasing, Vacation Real Estate. We do not own or manage, nor do we offer or contract for, any Listings on the Site. Instead, the Site acts solely as a venue to allow Hosts to create and post Listings for Accommodations and Activities, and Sellers to create and post Listings for Vacation Real Estate. We are not involved in any transactions between Guests and Hosts, or between Buyers and Sellers, even though we may, from time to time, provide tools that relate to a booking or that may facilitate a transaction. As a result, all portions of any actual or potential transaction between a Guest and a Host, or between a Buyer and a Seller (including the quality, safety or legality of the Accommodations, Activities, or Vacation Real Estate advertised in Listings), the truth or accuracy of any Listing (including the content thereof or any Guest reviews), the ability of a Guest to book Accommodations or Activities, the ability of a Guest to pay for Accommodations or Activities, the ability of a Seller to sell and transfer legal rights to Vacation Real Estate, or the ability of a Buyer to contract and pay for Vacation Real Estate, and all other aspects of such transaction, are solely the responsibility of each Guest, Host, Buyer and Seller. Hosts, not Alohana.com, are solely responsible for honoring any confirmed bookings and making available any Accommodations or Activities. If a Guest desires to enter into a transaction with a Host for the booking of Accommodations or Activities, such Guest agrees and understands that he or she must enter into a direct agreement with the Host, and such Guest agrees to accept any terms, conditions, rules and restrictions imposed by the Host in connection with such Accommodations or Activities. Such Guest and Host acknowledge and agree that they, and not Alohana.com, will be solely responsible for performing the obligations of any such agreements, and that Alohana.com is not a party to such agreements and shall not have any liability arising from or related to any such agreements. If a Buyer desires to enter into a transaction with a Seller for the purchase of Vacation Real Estate, such Buyer agrees and understands that he or she must enter into a direct agreement with the Seller, and such Buyer agrees to accept any terms, conditions, rules and restrictions imposed by the Seller in connection with such Vacation Real Estate. Such Buyer and Seller acknowledge and agree that they, and not Alohana.com, will be solely responsible for performing the obligations of any such agreements, and that Alohana.com is not a party to such agreements and shall not have any liability arising from or related to any such agreements.

**WE ARE NOT RESPONSIBLE FOR THE CONDITION OF THE ACCOMMODATIONS, ACTIVITIES, AND VACATION REAL ESTATE LISTED ON THE SITE OR COMPLIANCE OF THE ACCOMMODATIONS, ACTIVITIES**

AND VACATION REAL ESTATE WITH ANY APPLICABLE LAWS, RULES OR REGULATIONS. WE DO NOT REPRESENT OR WARRANT THAT ANY ACCOMMODATIONS, ACTIVITIES OR VACATION REAL ESTATE LISTED ON THE SITE COMPLY WITH THE AMERICANS WITH DISABILITIES ACT (THE “ADA”), 42 U.S.C. 12101 ET SEQ., EVEN IF A LISTING SPECIFICALLY STATES THAT THE ACCOMMODATIONS, ACTIVITIES OR VACATION REAL ESTATE FEATURED IN SUCH LISTING ARE ADA COMPLIANT.

We do not engage in real estate brokerage, development or other real estate related services, and we do not hold ourselves out as being licensed to perform any such services. Users should make an independent inquiry regarding the licensing or credentials of any User who purports to provide real estate related services. We cannot and do not represent or warrant that any real estate agent, broker, developer or other person who offers real estate related services via the Site is licensed, qualified, or capable of performing any such service. The terms of any agreement between a real estate broker, agent or other person purporting to provide real estate related services, and any User are not endorsed, recommended or otherwise known to or by Alohana.com.

If we provide warnings or messages to Users about potentially fraudulent or other illegal activity of which we become aware, we do not warrant that such messages are accurate or that such messages will reach any or all relevant Users in a timely manner, or at all, or that such messages or measures will prevent any harm, result or action.

We do not represent or warrant that Hosts and Guests speak the same language as each other. We are not responsible or liable for any misunderstandings, miscommunications, disputes or other issues that may arise from any mistakes, or inaccuracies in translations.

## **6. LIMITED LICENSE TO USE THE SITE**

Users are granted a limited, revocable, non-exclusive license to access the Site and the content and services provided on the Site, all in accordance with these Terms. Any use of the Site that is not in accordance with these Terms, or as otherwise authorized by us, in writing, is expressly prohibited.

## **7. UNAUTHORIZED USES OF THE SITE**

The license to use the Site granted to Users in these Terms does not include any right of collection, aggregation, copying, scraping, duplication, display or derivative use of the Site, nor any right of use of data mining, robots, spiders or similar data gathering and extraction tools without our prior written permission; provided, however, that a limited exception from the foregoing exclusion is provided to general purpose Internet search engines and non-commercial public archives that use tools to gather information for the sole purpose of displaying hyperlinks to the Site, provided they each do so from a stable IP address or range of IP addresses using an easily identifiable agent. “General purpose internet search engines” do not include a Web site or search engine or other service that provides classified listings, property rental or real property advertisements, or any subset

of the same, or which is in the business of providing vacation property rental services, travel services, real estate services or other services that compete with us.

Unauthorized uses of the Site also include, without limitation, those listed below. You agree **not** to do any of the following, unless otherwise previously authorized by us, in writing:

- a. Any commercial use (other than by Members with fully paid up Subscription (as defined below) in good standing (a “**Valid Subscription**”)) of the Site or any content on the Site;
- b. Any use of the Site, or the tools and services on the Site, for the purpose of booking or soliciting a rental for a property, other than creating and posting a Listing for Accommodations under a Valid Subscription; for the purpose of booking or soliciting a booking for an activity or service, other than creating and posting a Listing for Activities under a Valid Subscription; or for the purpose of selling or soliciting a sale of real estate, other than creating and posting a Listing for Vacation Real Estate under a Valid Subscription;
- c. Copy, reproduce, upload, post, display, republish, distribute, or transmit any part of the content of the Site in any form whatsoever;
- d. Reproduce any portion of the Site on your Web site or otherwise, using any device including, but not limited to, use of a frame or border environment around the Site, or other framing technique to enclose any portion or aspect of the Site, or mirror or replicate any portion of the Site;
- e. Modify, translate into any language or computer language, or create derivative works from, any content or any part of the Site;
- f. Reverse engineer any part of the Site;
- g. Sell, offer for sale, transfer, or license any portion of the Site in any form to any third parties;
- h. Use any robot, spider, scraper, other automatic device, or manual process to monitor, copy, or keep a database copy of the content or any portion of the Site;
- i. Use the Site and its inquiry functionality other than to advertise and/or research Accommodations, Activities and Vacation Real Estate, and to make legitimate inquiries to our Members or any other use expressly authorized on the Site;
- j. Use the Site or post or transmit information that is in any way false, fraudulent, or misleading, including making any reservation, inquiry or offer under false pretenses, or taking any action that may be considered phishing or that would give rise to criminal or civil liability;

- k. Post or transmit any unlawful, threatening, abusive, libelous, defamatory, obscene, vulgar, indecent, inflammatory, sexually explicit, pornographic, profane or other reasonably objectionable material on the Site;
- l. Violate, plagiarize or infringe the rights of us or third parties including, without limitation, copyright, trademark, patent, trade secrets, rights of publicity or privacy or any other intellectual or proprietary rights; or
- m. Upload or transmit to the Site or use any device, software or routine that contains viruses, Trojan horses, worms, time bombs, or other computer programming routines that may damage, interfere, or attempt to interfere with, or intercept, the normal operation of the Site, or appropriate the Site or any system, or take any action that imposes an unreasonable load on our computer equipment or that infringes upon the rights of any third parties; or
- n. Use or access the Site in any way that, in our sole and absolute discretion, adversely affects or could adversely affect the performance or function of the Site or any other system used by us or the Site.

If you are aware of or experience any content, activity or communication through or in connection with the Site that appears to be in violation of the above restrictions, or in violation of any other provision of these Terms, we ask that you please inform us of any such violation by sending an e-mail to [Legal@Alohana.com](mailto:Legal@Alohana.com).

## **8. PROPRIETARY RIGHTS AND DOWNLOADING OF INFORMATION**

The Site (and all content on the Site) is protected by copyright as a collective work and/or compilation, pursuant to applicable U.S. and international copyright laws and conventions and database rights. You agree to abide by any and all copyright notices, information, or restrictions contained in or relating to any content on the Site. Copying, storing or otherwise accessing the Site or any content on the Site for other than your personal, noncommercial use (or commercial use in accordance with a Valid Subscription) is expressly prohibited without prior written permission from us.

As part of the rental inquiry process, prospective Guests and prospective Buyers may download, display, and/or print one (1) copy of any portion of the Site for their own personal, noncommercial use and not for further distribution, without modification, and must reproduce our copyright notice in the form “© 2011 – Alohana.com, Inc. - All Rights Reserved”, in the form displayed on the relevant portion(s) of the Site that are downloaded, displayed or printed.

## **9. YOUR E-MAIL ADDRESS AND OUR PRIVACY POLICY; DATA TRANSMITTAL**

When you provide your e-mail address in connection with any service or tool provided on the Site, you agree to allow the Site to add your e-mail address to our database of Users. You may receive one or more promotional e-mails from either the Site or one of our

affiliates. You are welcome to opt not to receive such promotional e-mails from the Site or such affiliates at any time. Please review our Privacy Policy for more information regarding our information collection practices and safeguards, and how to opt not to receive such e-mails. Your use of the Site signifies your acknowledgment of, and agreement with, our Privacy Policy.

Each User acknowledges and agrees that, regardless of such User's physical location, we may store and process any data transmitted to the Site from such User at locations both within and outside the United States.

## **10. IDENTITY VERIFICATION**

Identity verification on the Internet is difficult and we will not be responsible or liable for confirming each User's purported identity. We encourage Members to communicate directly with other Members through the tools available on the Site.

You agree to: (a) keep your password and online ID secure and strictly confidential, providing it only to authorized users of your Alohana.com account, (b) instruct each person to whom you give your online ID and password that he or she is not to disclose it to any unauthorized person or entity, (c) notify us immediately and select a new online ID and password if you believe your password may have become known to an unauthorized person or entity, and (d) notify us immediately if you are contacted by anyone requesting your online ID and password. We discourage you from giving anyone access to your online ID and password. However, if you do give someone your online ID and password, or if you fail to adequately safeguard such information, you are solely responsible for any and all transactions that the person performs while using your Alohana.com account, even those transactions that are fraudulent or that you did not intend or want performed.

EACH MEMBER ACKNOWLEDGES AND AGREES THAT: (1) NEITHER ALOHANA.COM NOR ANY OF ITS AFFILIATES WILL BE RESPONSIBLE OR LIABLE TO ANY MEMBER OR USER OR ANYONE ELSE FOR ANY UNAUTHORIZED TRANSACTION MADE USING ANY MEMBER'S PASSWORD THAT OCCURS BEFORE SUCH MEMBER HAS NOTIFIED US OF POSSIBLE UNAUTHORIZED USE OF SUCH PASSWORD AND WE HAVE HAD A REASONABLE OPPORTUNITY TO ACT ON THAT NOTICE; AND (2) THE UNAUTHORIZED USE OF A MEMBER'S ONLINE ID AND PASSWORD COULD CAUSE SUCH MEMBER TO INCUR LIABILITY TO BOTH ALOHANA.COM AND OTHER MEMBERS. FURTHER, WE MAY, WITHOUT NOTICE OR LIABILITY TO YOU, SUSPEND OR CANCEL YOUR LISTING(S) AT ANY TIME, EVEN WITHOUT RECEIVING NOTICE FROM YOU, IF WE SUSPECT, IN OUR SOLE AND ABSOLUTE DISCRETION, THAT YOUR PASSWORD IS BEING USED IN AN UNAUTHORIZED OR FRAUDULENT MANNER.

## **11. LIMITATIONS ON COMMUNICATIONS AND USE OF OTHER USERS' PERSONAL INFORMATION; NO SPAM**

Each User agrees that, with respect to other Users' personal information ("**Personal Information**") – that is, information that identifies a User, or from which a User is identifiable – that any other User obtains through the Site or through any Site-related communication or transaction, we have granted to each User a license to use such Personal Information only for: (a) Site-related communications that are not unsolicited commercial messages, (b) using services offered through the Site, and (c) any other purpose to which a User expressly agrees after another User tells him or her the purpose for which such User would like to use it. In all cases, a User must give another User an opportunity to remove himself or herself from such User's address book or database and a chance to review what information such User has collected about him or her. In addition, under no circumstances, except as defined in this provision, may a User disclose Personal Information about another User to any third party without both our consent and the consent of such User. Each User agrees that other Users may use his or her Personal Information to communicate with him or her in accordance with this provision. Further, each User agrees that he/she/it will protect other Users' Personal Information with the same degree of care that he/she/it protects his/her/its own most confidential information (using at minimum a reasonable standard of care), and he/she/it assumes all liability for the misuse, loss, or unauthorized transfer of such information.

We and our Users do not tolerate spam or unsolicited commercial electronic communications of any kind. Therefore, without limiting the foregoing, a User is not licensed or authorized to add another User, even one who has rented Accommodations from or to such User, to his/her/its mailing list (e-mail or physical mail) without the other User's express consent. Violation of this provision shall be grounds for termination of the violator's Subscription, without notice or refund.

Users may not use the Site or the tools or services on the Site to send spam or unsolicited commercial electronic communications of any kind or in any other way that would violate these Terms or our Privacy Policy.

Users are solely responsible for all content they provide to the Site or through any tool or service provided on the Site.

## **12. RESPONSIBILITY FOR USER-CONTRIBUTED CONTENT; TRANSLATIONS**

We have no duty to pre-screen content posted on the Site by Users (including, without limitation, Guest reviews of, or guest book entries for, any particular Listing)(collectively, "**User-Contributed Content**"), and we are not responsible or liable for User-Contributed Content. We do, however, reserve the right to decline to permit the posting on the Site of, or to remove from the Site, any User-Contributed Content that violates this Agreement. We may also remove User-Contributed Content if it is brought to our attention, such as by notice given to us by a User or any third party that any part of this Agreement, or any other requirements governing the posting of such content, has/have been apparently breached in respect of such content.

All Listings on the Site are submitted by Hosts and Sellers, and are the sole responsibility of such Hosts and Sellers, and we will not be responsible or liable for, and specifically

disclaim, any and all liability arising from any alleged inaccuracy of the Listings, or arising from Guest reviews, guest book entries, or any alleged breaches of contract on a Host's or a Seller's part. Hosts and Sellers are solely responsible for providing accurate, complete and current information in their Listings on the Site, including, but not limited to any and all representations about any Accommodations, Activities and Vacation Real Estate such as amenities, location, price, availability for a specific date or range of dates, or for-sale status. We do not represent or warrant that any of the Listings, Guest reviews, guest book entries, locations, suitability, condition, pricing, availability or status information published on the Site are accurate or up-to-date, even in the case where Guests or Buyers have searched for specific special offers, dates, types of Accommodations, Activities or Vacation Real Estate. Hosts and Sellers are solely responsible for ensuring the accuracy, completeness and currency of any descriptions of Accommodations, Activities and Vacation Real Estate in their Listings, and Guests and Buyers are solely responsible for verifying the accuracy, completeness and currency of such descriptions.

Users are solely responsible for the review and accuracy of any User-Contributed Content that is presented in English, Japanese, or any other language, for display on the Site.

We reserve the right to disclose any User-Contributed Content as permitted by prevailing law to satisfy any law, regulation or government request if we determine, in our sole and absolute discretion, that it would be in our interests to respond to such request.

### **13. NOTIFICATION OF INFRINGEMENT; DIGITAL MILLENNIUM COPYRIGHT ACT POLICY**

Alohana.com does not permit, condone, or tolerate the posting of any content on the Site that infringes any person's copyright. We will terminate, without prior notice and without refund, in appropriate circumstances, the Subscription(s) and Alohana.com account of a Member who is the source of infringements of copyright.

#### **a. Digital Millennium Copyright Act Notification**

If you are a copyright owner, or an agent thereof, and believe that any User-Contributed Content posted on this Web site infringes upon your copyrights, you may submit a notification pursuant to the Digital Millennium Copyright Act by providing Alohana.com's Copyright Agent with the following information in writing (see 17 U.S.C 512(c)(3) for further detail):

- i.** A physical or electronic signature of a person authorized to act on behalf of the owner of an exclusive right that is allegedly infringed;
- ii.** Identification of the copyrighted work claimed to have been infringed, or, if multiple copyrighted works at a single online site are covered by a single notification, a representative list of such works at that site;

- iii. Identification of the material that is claimed to be infringing or to be the subject of infringing activity and that is to be removed or access to which is to be disabled and information reasonably sufficient to permit us to locate the material;
- iv. Information reasonably sufficient to permit us to contact you, such as an address, telephone number, and, if available, an electronic mail;
- v. A statement that you have a good faith belief that use of the material in the manner complained of is not authorized by the copyright owner, its agent, or the law; and
- vi. A statement that the information in the notification is accurate, and under penalty of perjury, that you are authorized to act on behalf of the owner of an exclusive right that is allegedly infringed.

Alohana.com's designated Copyright Agent to receive notifications of claims of copyright infringements is:

Copyright Agent  
Alohana.com, Inc.  
P.O. Box 8212  
Honolulu, Hawaii 96830  
USA  
E-mail: Legal@Alohana.com

You acknowledge that if you fail to strictly comply with all of the requirements discussed above, your Digital Millennium Copyright Act notice may not be valid.

**b. Counter-Notification**

If you believe that your User-Contributed Content that was removed (or to which access was disabled) is not infringing, or that you have the authorization from the copyright owner, the copyright owner's agent, or pursuant to the law, to post and use the material in your User-Contributed Content, you may send a counter-notification containing the following information to Alohana.com's Copyright Agent:

- i. Your physical or electronic signature;
- ii. Identification of the User-Contributed Content that has been removed (or to which access has been disabled) and the location at which the User-Contributed Content appeared before it was removed (or disabled);
- iii. A statement that you have a good faith belief that the User-Contributed Content was removed or disabled as a result of mistake or a misidentification of the User-Contributed Content; and

- iv. Your name, address, telephone number, and e-mail address, a statement that you consent to the jurisdiction of the federal court in Honolulu, Hawaii, and a statement that you will accept service of process from the person who provided notification of the alleged infringement.

If a counter-notification is received by Alohana.com's Copyright Agent, Alohana.com may send a copy of the counter-notification to the original complaining party informing that party that Alohana.com may replace the removed User-Contributed Content or cease disabling it in ten (10) business days. Unless the copyright owner files an action seeking a court order against the User-Contributed Content provider, the removed User-Contributed Content may be replaced, or access to it restored, in ten (10) to fourteen (14) business days or more after receipt of the counter-notification, in Alohana.com's sole and absolute discretion.

## **14. UNSOLICITED IDEAS AND FEEDBACK**

### **a. Unsolicited Ideas**

From time to time, Users submit to us ideas or suggestions pertaining to our business, such as ideas for new or improved products or technologies, Web site or tool enhancements, processes, materials, marketing plans or new product names. We do not solicit such ideas or suggestions and are under no obligation to review or consider them. If you choose to submit any ideas, original creative artwork, suggestions or other works ("**Submissions**") in any form to us, then regardless of what you say, write or provide to us in connection with your Submissions, the following terms shall apply. The sole purpose of this policy is to avoid potential misunderstandings or disputes in the event that any part of our business, such as our services, Web sites, technologies or marketing strategies, seem similar to any of your Submissions. If you provide any Submissions to us, you agree that: (i) your Submissions and their contents will automatically become the property of Alohana.com, without any obligations or compensation to you; (ii) Alohana.com may use, disclose and/or redistribute any such Submissions and portions or all of their contents for any purpose and in any way; (iii) there is no obligation for Alohana.com to review any such Submissions; and (iv) there is no obligation to keep any such Submissions confidential.

### **b. Feedback on Our Business**

We welcome your feedback regarding our business. If you would like to send us your feedback, please contact us at [Comments@Alohana.com](mailto:Comments@Alohana.com). We are not obligated to keep any feedback you provide confidential, and we shall have the right to use or disclose such information in any manner, with attribution to you (including, without limitation, publicly disclose your name).

## **15. LINKS TO THIRD PARTY WEB SITES**

We offer our own services directly to Users. However, we also offer products and services which are made available through or in conjunction with certain third parties, and the Sites contain links and pointers to other Web sites, resources, and sponsors of the Site.

Links to and from the Site to other Web sites maintained by third parties do not constitute an endorsement by us of any third parties, the third party's sites, or the contents thereof. We are not responsible or liable in any way for such third party sites, for the content, terms of use, privacy policies, business practices or products or services offered through those sites, and your use of such sites will not be governed by these Terms. Therefore, please read carefully any privacy policies and terms of use on any third party sites before either agreeing to their terms or using those sites.

## **16. MEMBER ELIGIBILITY; ACCURACY OF INFORMATION; REPRESENTATIONS**

Our services may only be used by Users who can form legally binding contracts under applicable law. If you are registering to become a Member as a business entity, you represent that you have the authority to bind that entity to this Agreement. Each User represents and covenants that all information submitted to us and to the Site during such User's Alohana.com's account registration process to become a Member shall be true, correct and complete. Each Member further agrees to promptly provide notice to Alohana.com regarding any updates to any such contact information previously submitted by such Member to the Site.

Each Member agrees to promptly provide such proof of personal identification, proof of ownership of (or authority to offer for rent and to rent) Accommodations in a Listing; proof of ownership of (or authority to offer for booking and to book) Activities in a Listing; proof of ownership (or authority to offer for sale) Vacation Real Estate in a Listing; proof that the condition, location, or amenities associated with Accommodations, Activities or Vacation Real Estate are accurately described in a Listing; general excise tax identification number; transient accommodation tax identification number; proof of insurance; real estate broker license number; real estate salesperson license number; and any other information as we may request. Each Host and Seller further represents and covenants that he/she/it: (a) owns and/or has all necessary rights and authority to offer for rent and to rent Accommodations in a Listing by such Host; owns and/or has all necessary rights and authority to offer for booking and to book Activities in a Listing by such Host; or owns and/or has all necessary rights to offer for sale Vacation Real Estate in a Listing by such Seller; (b) will not wrongfully withhold a rental or booking deposit in breach of the underlying rental or booking agreement with a Guest, if applicable; (c) will accurately describe his/her/its Accommodations, Activities or Vacation Real Estate; (d) will not fail to disclose any material defect in, or material information relating to his/her/its Accommodations, Activities or Vacation Real Estate that would affect any reasonable Guest's or Buyer's decision to rent, book or purchase such Accommodations, Activities or Vacation Real Estate, including but not limited to: (i) whether any deaths, murders, assaults, burglaries, or other crimes or serious bodily injuries have occurred in or within a fifty (50) yard radius of the Accommodations, Activities or Vacation Real

Estate; (ii) whether any registered sex offenders are inhabiting units in the same project as the Accommodations, inhabiting units in the same project as the Vacation Real Estate, or are inhabiting any property located within one thousand (1000) yards of the Accommodations or the Vacation Real Estate; (iii) the presence of mold, fumes, water leaks, excessive noise or night lighting, pests, and other factors that would disturb or detract from a Guest's stay in Accommodations or from a Buyer's guest's stay in Vacation Real Estate; (iv) prior complaints regarding cleanliness, flooding, odors, noise or pests; (v) privacy and accessibility of bedrooms, bathrooms, kitchens, living rooms, parking stalls, laundry rooms, and any recreational and other facilities; (vi) whether the Accommodations or the Vacation Real Estate have been child proofed; and (vii) ongoing or anticipated construction in and around the Accommodations, Activities or Vacation Real Estate, and any restrictions to full access to the Accommodations, Activities or Vacation Real Estate; (e) will not wrongfully deny access to the Accommodations or Activities to a Guest with a valid reservation or booking; (f) will not fail to promptly provide a refund when due in accordance with the underlying rental or booking agreement with a Guest; and (g) will comply with all applicable laws, rules and regulations, including, without limitation, non-discrimination laws.

## **17. USER-CONTRIBUTED CONTENT, LAYOUT AND COPY**

All User-Contributed Content submitted by Users is subject to review and approval by us in our sole and absolute discretion. We reserve the right to refuse to publish any User-Contributed Content that we determine, in our sole and absolute discretion, does not comply with these Terms or is otherwise unacceptable to us. However, we assume no duty to review User-Contributed Content and we shall not be responsible or liable for any loss or damage resulting from the design or positioning of User-Contributed Content or any change made to any User-Contributed Content submitted by any User. We reserve the right to edit User-Contributed Content submitted to the Site in a non-substantive manner solely to cause the User-Contributed Content to comply with these Terms or with formatting requirements. Users are solely responsible for reviewing and ensuring that any User-Contributed Content displayed on the Site appears as the User intended.

## **18. PHOTOGRAPHS AND VIDEOS**

All printed (paper based) photographs submitted by you will be discarded after we have scanned the same into our electronic database. We have no responsibility to return such photographs to you. We will use reasonable efforts to reproduce accurately any photograph submitted to be posted on the Site, but we are not responsible for any loss or damage resulting from any defect in this regard.

Photographs and videos (or virtual tours) for a Listing should depict the Accommodations, Activities, or Vacation Real Estate as the main subject of the photographs or videos, and shall not include children or adults (unless you provide copies of written model releases allowing commercial use on the Site), or any information that would violate the privacy rights, intellectual property rights or any other rights of a third party. We reserve the right not to display (or to remove) any photographs or videos that we determine, in our

sole and absolute discretion, do not comply with these Terms or are otherwise unacceptable to us.

By submitting a photograph or video either electronically through the Site or by mailing a paper photograph to our offices, you represent and warrant that (a)(i) you own all intellectual property and other rights with respect to each submitted photograph or video and its content, or (ii) you have secured from the copyright owner (and from the owners of any other rights in the photograph or video or its content) all rights necessary to use the photograph or video; (b) any people in the photograph or video have signed written model releases allowing commercial use on the Site; (c) the photograph or video accurately and fairly represents the subject of the photograph or video and has not been altered in any manner that would mislead a viewer of that photograph or video; and (d) you will indemnify, defend and hold harmless the Site and any member of the Alohana.com Group (as defined below) from any demand, claim, cause of action or other liability arising from any violation of the above representations and warranties with respect to any and all photographs or videos so submitted.

Each Host and Seller is solely responsible to obtain all necessary permissions for all photographic, recorded, and other material contained in such Host's Listing(s). Each Host and Seller warrants that he/she/it is the owner of the copyright in such material, or is authorized by the owner thereof to use such material on the Site under these Terms and agrees to provide any proof of such rights to us that we may request.

## **19. COPYRIGHT GRANT**

By accepting these Terms and by posting a Listing on the Site, you grant to the Alohana.com Group and its affiliates a perpetual, worldwide, irrevocable, unrestricted, non-exclusive, royalty-free and fully paid-up license to use, copy, license, sublicense (through multiple tiers), adapt, distribute, display, publicly perform, reproduce, transmit, modify, edit and otherwise exploit any User-Contributed Content you post on the Site or the Web sites of our affiliates, and you grant the Site and the members of the Alohana.com Group the right to protect the User-Contributed Content available via your Listing from the unauthorized use by unaffiliated third parties who may, from time to time, attempt to pirate (or otherwise use without authorization) such information via electronic or other means. This includes, but is not limited to, the right to file suit to seek injunctive relief to protect such material. We need these rights to host and display your Listing. You further agree to assist us—at our expense and control—to protect such copyrighted material from unauthorized redistribution. We are not responsible for any infringement or violation of laws resulting from User-Contributed Content supplied by any User and each User agrees to indemnify, defend and hold harmless the Site and any member of the Alohana.com Group against any action brought for libel, slander, infringement of copyright, violation of the rights of publicity or privacy, or violation of other rights arising from the use of User-Contributed Content supplied by such User. Each User hereby waives and releases all claims against us for any alleged or actual infringement of any proprietary rights, rights of privacy and publicity, moral rights and rights of attribution in connection with any User-Contributed Content posted or provided to us by that User.

Further, each User agrees that we may reproduce in whole or in part any photographic or recorded material supplied by such User on the Site or in promotional materials for the Site.

## **20. USES OF OUR TRADEMARKS OR LOGOS**

You may only refer to Alohana.com in a descriptive manner in your Listing(s) on the Site or in other permissible communications. For example, you may say, “View my vacation rental on Alohana.com,” or “I list properties on Alohana.com.” However, you shall not refer to Alohana.com in any way that might lead someone to believe that your company or Web site is sponsored by, affiliated with, or endorsed by Alohana.com. For example, you may not say “Alohana.com sponsors my vacation rental,” or describe your Accommodations as “Alohana.com’s best vacation rental.”

You may not use the Alohana.com name, trademarks or logos on any other Web site that lists vacation rentals available for booking, activities or services available for booking, or real estate for sale, without our prior written authorization.

## **21. HYPERTEXT LINKS**

We reserve the rights to refuse hypertext links to, or addresses of, other Web sites from Listings, and to remove links or Web addresses without notice at our sole and absolute discretion. Further, we reserve the right to charge for hypertext links appearing in Listings at any time.

## **22. GUEST BOOKS; GUEST REVIEWS**

Any comments entered in the guest book or Guest review section of any Host’s Listing must be genuine comments from Guests unrelated to such Host who have either stayed at such Host’s Accommodations or who have participated in such Hosts’ Activities. Each Host will have an opportunity to review and approve all comments entered in the guest book or Guest review section of his/her/its Listing before such comments are posted on the Site. The e-mail address(es) of the Guest(s) whose comments are given must be supplied by a Host to us upon our request. Violation of this provision shall be a material breach of the Terms. Please be advised that the reviews for Accommodations and Activities previously listed on the Site may, in our sole and absolute discretion, be published when a Host posts a Listing for the same Accommodations or Activities on the Site.

## **23. SUBSTITUTIONS OF ACCOMMODATIONS; ADVERTISING MORE THAN ONE PROPERTY; PROPERTY MANAGERS**

To post a Listing on the Site, a Host or Seller must purchase a subscription (“**Subscription**”) from Alohana.com. Each Subscription must relate to an individual and uniquely identified property, activity or service. This means that:

- a. Accommodations, Activities or Vacation Real Estate in a Listing may not be substituted for other Accommodations, Activities or Vacation Real Estate. If a

Host or Seller submits changes to an existing Listing that, if approved, would substantially alter a Listing to make it for other Accommodations, Activities or Vacation Real Estate, then we reserve the right to terminate such Listing and may choose, in our sole and absolute discretion, to retain any fees associated with the term of the previously existing Listing as compensation for the violation of this condition.

- b. A Listing cannot be a mere example of Accommodations, Activities or Vacation Real Estate in a given area. Only one property, activity or service can appear in each Listing, unless the Listing is for Accommodations with multiple rental units on the same site, Activities with multiple activities or services on the same site, or Vacation Real Estate with multiple units on the same site. We reserve the right to amend a Listing or remove a Listing when more than one property, activity or service is described in such Listing, and we may choose, in our sole and absolute discretion, to retain any Subscription fees associated with the initial term of such non-conforming Listing as compensation for the violation of this condition.
- c. Hosts and Sellers with multiple Accommodations, Activities or Vacation Real Estate should contact Alohana.com to discuss the Subscription that may best suit their needs. All other Subscriptions require one (1) Subscription per Listing (one (1) Subscription per property, activity or service). Please contact Alohana.com at Contact@Alohana.com for additional information regarding Subscriptions.

## **24. UNAUTHORIZED PAYMENT METHODS; SUBSCRIPTION PAYMENTS; AUTOMATIC RENEWAL**

### **a. Payments between Guests and Hosts, and between Buyers and Sellers**

We are not a party to any payment transaction between Hosts and Guests, or between Buyers and Sellers. Guests will remit payment directly to Hosts for Accommodations or Activities they book, and Buyers will remit payment directly to Sellers for Vacation Real Estate they purchase. However, no Host or Seller may request or require any Guest or Buyer to mail cash, or utilize any instant-cash wire transfer service in payment for all or part of a rental transaction, sale, or other transaction. Any violation of this term or any other unacceptable payment methods that may be posted on the Site may result in the immediate removal of the violator's Listing from the Site without notice to the Host or the Seller, and without refund. From time to time, we may become aware of Users attempting to conduct a transaction that would involve an unauthorized payment method or a fraudulent payment method. Ideally, we hope to be able to assist Users in avoiding such transactions, but we shall not be responsible or liable to do so or to inform Users of any such actual or suspected activity.

Users shall not use the Site to contact each other to make offers to conduct rental, sales or other commercial transactions outside the Site. Users shall not use any

information obtained from the Site to contact each other about conducting rental, sales or other commercial transactions outside Alohana.com.

If you receive an offer from a User to conduct a rental, sales or other commercial transaction outside Alohana.com, please do not accept the offer, and immediately report such offer to us at Legal@Alohana.com.

If a User does not comply with this Section 24(a), his/her/its access to or use of the Site may be terminated, without notice or refund, and his/her/its Subscription(s) and Alohana.com account may be terminated.

**b. Payments for Subscriptions**

Payments for Subscriptions to Alohana.com must be made to us in U.S. Dollars, paid either by major credit or debit card, or a check drawn on a U.S. bank.

**c. Automatic Renewal of Subscriptions**

For any Subscription paid for by credit card, such Subscription shall automatically renew at the expiration of the then-current term for an additional term of the same duration as the previous term, and at the then-current non-promotional Subscription rate. If such Subscription was purchased by check or another form of payment other than by credit card (if such other payment form was permitted), such Subscription shall not be automatically renewed. Automatic renewal applies to all Subscriptions purchased by credit card and all Subscriptions in force as of any date we may contact a Host or a Seller to obtain the credit card information in order to facilitate automatic renewal. If a Host or a Seller does not wish for his/her/its Subscription to be automatically renewed, he/she/it must contact Alohana.com at least one (1) month prior to expiration of the then-current term and notify us that he/she/it does not wish for his/her/its Subscription to be automatically renewed. Upon receipt of such notification, his/her/its Subscription will remain active through the expiration of his/her/its then-current Subscription term; however his/her/its Subscription will not be automatically renewed upon the expiration of his/her/its then current term. If a Host's or a Seller's Subscription does not automatically renew or expires at the end of his/her/its then current Subscription term and he/she/it desires to renew his/her/its Subscription, he/she/it will be required to pay the then-current non-promotional Subscription rate to renew his/her/its Subscription or to activate a new Subscription.

If a Host or a Seller does not timely notify Alohana.com that he/she/it does not wish for his/her/its Subscription to be automatically renewed and he/she/it continues to use our Subscription service, he/she/it re-affirms and authorizes us to charge his/her/its credit card at the end of each Subscription term for an additional term of the same duration as the initial term and at the then-current non-promotional Subscription rate for the same Subscription.

If the Subscription a Host or a Seller last purchased has changed in any way or is no longer offered, he/she/it agrees and authorizes us to charge his/her/its credit card at the renewal of his/her/its Subscription term for a Subscription that is the most similar, as determined by us, to the Subscription that he/she/it previously purchased, even if the price of such Subscription is not the same as the prior Subscription that he/she/it purchased. Hosts and Sellers agree to be responsible for any such charges, and we reserve the right to obtain payment directly from Hosts and Sellers, if necessary.

If a Host or a Seller wishes to avoid billing of Subscription fees for the renewal term to his/her/its credit card, he/she/it must notify Alohana.com at least one (1) month prior to the expiration of the then-current Subscription term. If he/she/it wishes to change his/her/its credit card to be charged or if his/her/its credit card information otherwise changes, he/she/it must contact Alohana.com and provide the new or different credit card information.

## **25. LEGAL REQUIREMENTS APPLICABLE TO ACCOMMODATIONS, ACTIVITIES AND VACATION REAL ESTATE**

Hosts and Sellers agree that they are solely responsible for compliance with any and all laws, rules and regulations that may apply to any of their Listings and to the Accommodations, Activities or Vacation Real Estate featured in their Listings on the Site. The Alohana.com Group shall not be responsible or liable for Hosts' or Sellers' compliance or non-compliance with all applicable laws, rules and regulations. Nevertheless, we may determine in our sole and absolute discretion to provide information relating to Listings to governmental bodies or other persons in relation to investigations, litigation or administrative proceedings or as we may otherwise deem advisable.

## **26. REMOVAL REQUEST; TERMINATION OF SUBSCRIPTION; TRANSFER OF LISTING**

### **a. Removal Request**

If a Host or a Seller renews his/her/its Subscription, or if his/her/its Subscription automatically renews under the terms of his/her/its Subscription, his/her/its Listing will remain on the Site for the entire Subscription period, without refund. If a Host or a Seller sells his/her/its Accommodations, or for any reason no longer wishes for the Listing to remain posted on the Site, such Host or Seller should contact us at [Cancel@Alohana.com](mailto:Cancel@Alohana.com) and we can remove the Listing; however, no refund will be owed.

### **b. Right to Terminate a Subscription**

If, in our sole and absolute discretion, any Host or Seller submits unsuitable material to our Site or into our database, misuses the Site or our online system or

is in breach of this Agreement, we reserve the right to terminate such Host's or Sellers' Subscription(s) and Alohana.com account immediately, without notice or refund. In addition, if we become aware of or receive a complaint or a series of complaints from any User or other third party regarding a Host's or a Sellers' Listing, rental or sales practices that, in our sole and absolute discretion, warrants the immediate removal of such Host's Listing(s) from the Site (for example, and without limitation, if a Host double-books a property, activity or service for multiple Guests on the same date, or engages in any practice that, in our sole and absolute discretion, would be considered unfair or improper, or if we receive a complaint that any Listing's content infringes on the rights of a third party), then we may terminate such Host's or Seller's Subscription(s) and Alohana.com account immediately, without further notice or refund, and we may immediately remove the Listing(s) from the Site without notice or refund, while we investigate the basis for the complaint. If we conclude, in our sole and absolute discretion, that any complaint is meritorious, then we may permanently remove the offensive Listing(s) from the Site without notice or refund. We assume no duty to investigate complaints. If any Host or Seller is abusive or offensive to any employee or representative of the Alohana.com Group, we reserve the right to terminate such Host's or Seller's Subscription(s) and Alohana.com account immediately, without further notice or refund. Finally, if any Host or Seller is in breach of this Agreement or its obligations to us then we may terminate such Host's or Seller's Subscription(s) and Alohana.com account immediately, without further notice or refund.

**c. Transfer of Listing**

No Listing may be transferred to another party, except that if a Host sells the Accommodations or Activities featured in a Listing, such Host may transfer his/her/its Listing to the new owner of the Accommodations or Activities featured in the Listing, subject to any transfer fee then in effect.

**27. LIMITATION OF LIABILITY**

**IN NO EVENT SHALL ALOHANA.COM, OR ITS AFFILIATES, OFFICERS, DIRECTORS, MANAGERS, CONSULTANTS, AGENTS AND/OR EMPLOYEES (COLLECTIVELY, THE "ALOHANA.COM GROUP"), OR ANY THIRD PARTY PROVIDER OF A SERVICE OR TOOL OFFERED ON ANY WEB SITE OF A MEMBER OF THE ALOHANA.COM GROUP (EACH A "THIRD PARTY PROVIDER"), BE LIABLE FOR ANY LOST PROFITS OR ANY INDIRECT, CONSEQUENTIAL, SPECIAL, INCIDENTAL, PUNITIVE OR OTHER DAMAGES ARISING OUT OF, BASED ON, OR RESULTING FROM (A) THE SITE; (B) THESE TERMS OF USE; (C) OUR PRIVACY POLICY; (D) ANY BREACH OF THESE TERMS OF USE OR OUR PRIVACY POLICY; (E) USE OF THE SITE, OR TOOLS OR SERVICES ON THE SITE AND/OR (F) ANY ACTUAL OR ATTEMPTED COMMUNICATION OR TRANSACTION BETWEEN USERS, EVEN IF WE HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. THESE LIMITATIONS AND**

**EXCLUSIONS APPLY WITHOUT REGARD TO WHETHER THE DAMAGES ARISE FROM (I) BREACH OF CONTRACT, (II) BREACH OF WARRANTY, (III) STRICT LIABILITY, (IV) TORT, (V) NEGLIGENCE, OR (VI) ANY OTHER CAUSE OF ACTION, TO THE MAXIMUM EXTENT SUCH EXCLUSIONS AND LIMITATIONS ARE NOT PROHIBITED BY APPLICABLE LAW. SOME JURISDICTIONS DO NOT ALLOW THE EXCLUSION OF IMPLIED WARRANTIES OR THE LIMITATION OR EXCLUSION OF LIABILITY. IN SUCH JURISDICTIONS, SOME OF THE LIMITATIONS IN THIS SECTION MAY NOT APPLY TO YOU.**

**IF YOU ARE DISSATISFIED WITH THE SITE, YOU DO NOT AGREE WITH ANY PART OF THESE TERMS OF USE OR OUR PRIVACY POLICY, OR YOU HAVE ANY OTHER DISPUTE OR CLAIM WITH OR AGAINST US OR ANOTHER USER OF THE SITE WITH RESPECT TO THESE TERMS OF USE, OUR PRIVACY POLICY, OR THE SITE, THEN YOUR SOLE AND EXCLUSIVE REMEDY AGAINST US IS TO DISCONTINUE USING THE SITE. IN ALL EVENTS, OUR LIABILITY, AND THE LIABILITY OF ANY MEMBER OF THE ALOHANA.COM GROUP, TO YOU OR ANY THIRD PARTY IN ANY CIRCUMSTANCE ARISING OUT OF OR IN CONNECTION WITH THE SITE, IS LIMITED TO THE GREATER OF (A) THE AMOUNT OF SUBSCRIPTION FEES YOU PAID TO US IN THE TWELVE (12) MONTHS PRIOR TO THE ACTION GIVING RISE TO LIABILITY OR (B) \$100.00 IN THE AGGREGATE FOR ALL CLAIMS.**

## **28. DISCLAIMERS**

**THE SITE, INCLUDING ALL CONTENT, SOFTWARE, FUNCTIONS, MATERIALS AND INFORMATION MADE AVAILABLE ON OR ACCESSED THROUGH THE SITE, IS PROVIDED "AS IS." YOU AGREE THAT YOUR USE OF THE SITE SHALL BE AT YOUR SOLE RISK. TO THE FULLEST EXTENT POSSIBLE UNDER APPLICABLE LAW, WE MAKE NO REPRESENTATIONS OR WARRANTIES OF ANY KIND WHATSOEVER (INCLUDING, WITHOUT LIMITATION, FOR THE CONTENT OF THE SITE; FOR THE MATERIALS, INFORMATION AND FUNCTIONS MADE ACCESSIBLE BY THE SOFTWARE USED ON OR ACCESSED THROUGH THE SITE; FOR ANY PRODUCTS OR SERVICES OR HYPERTEXT LINKS TO THIRD PARTIES; OR FOR ANY BREACH OF SECURITY ASSOCIATED WITH THE TRANSMISSION OF SENSITIVE INFORMATION THROUGH THE SITE OR ANY LINKED SITE, EVEN IF WE BECOME AWARE OF ANY SUCH BREACHES).**

**ALL EXPRESS AND IMPLIED WARRANTIES ARE HEREBY EXPRESSLY DISCLAIMED, INCLUDING, WITHOUT LIMITATION, ALL IMPLIED WARRANTIES OF HABITABILITY, NON-INFRINGEMENT, MERCHANTABILITY, AND FITNESS FOR A PARTICULAR PURPOSE. WE DO NOT WARRANT THAT THE FUNCTIONS CONTAINED IN THE SITE OR ANY MATERIALS OR CONTENT CONTAINED THEREIN WILL BE**

**UNINTERRUPTED OR ERROR FREE, THAT DEFECTS WILL BE CORRECTED, OR THAT THE SITE OR THE SERVER THAT MAKES IT AVAILABLE WILL BE FREE OF VIRUSES OR OTHER HARMFUL COMPONENTS.**

**YOU ACKNOWLEDGE AND AGREE THAT ANY TRANSMISSION TO AND FROM THE SITE IS NOT CONFIDENTIAL, AND YOUR COMMUNICATIONS MAY BE READ OR INTERCEPTED BY OTHERS. YOU FURTHER ACKNOWLEDGE AND AGREE THAT BY SUBMITTING COMMUNICATIONS TO US AND BY POSTING INFORMATION ON THE SITE, INCLUDING LISTINGS, NO CONFIDENTIAL, FIDUCIARY, CONTRACTUALLY IMPLIED OR OTHER RELATIONSHIP IS CREATED BETWEEN YOU AND US, OTHER THAN PURSUANT TO THIS AGREEMENT.**

**YOU ACKNOWLEDGE AND AGREE THAT YOU WILL NOT HOLD OR SEEK TO HOLD US OR ANY THIRD PARTY PROVIDER RESPONSIBLE FOR THE USER-CONTRIBUTED CONTENT, INCLUDING, WITHOUT LIMITATION, ANY TRANSLATION THEREOF, AND YOU FURTHER ACKNOWLEDGE AND AGREE THAT WE ARE NOT A PARTY TO ANY RENTAL, BOOKING OR REAL ESTATE TRANSACTION. WE HAVE NO CONTROL OVER AND DO NOT GUARANTEE (OTHER THAN PURSUANT TO ANY GUARANTEE THAT MAY BE OFFERED ON THE SITE) THE SAFETY OR SUITABILITY OF ANY TRANSACTION, ACCOMMODATIONS, ACTIVITIES, VACATION REAL ESTATE, OR THE TRUTH OR ACCURACY OF ANY LISTING OR OTHER USER-CONTRIBUTED CONTENT PROVIDED ON THE SITE.**

## **29. RELEASE; INDEMNIFICATION**

**IN THE EVENT THAT YOU HAVE A DISPUTE WITH ONE OR MORE OTHER USERS OF THE SITE (INCLUDING, WITHOUT LIMITATION, ANY DISPUTE BETWEEN USERS REGARDING ANY TRANSACTION OR USER-CONTRIBUTED CONTENT), YOU HEREBY AGREE TO RELEASE, REMISE AND FOREVER DISCHARGE EACH MEMBER OF THE ALOHANA.COM GROUP, EACH OF THEIR RESPECTIVE AFFILIATES, OFFICERS, DIRECTORS, MANAGERS, CONSULTANTS, AGENTS, EMPLOYEES AND ALL OTHER RELATED PERSONS OR ENTITIES FROM ANY AND ALL MANNER OF RIGHTS, CLAIMS, COMPLAINTS, DEMANDS, CAUSES OF ACTION, PROCEEDINGS, LIABILITIES, OBLIGATIONS, LEGAL FEES, COSTS, AND DISBURSEMENTS OF ANY NATURE WHATSOEVER, WHETHER KNOWN OR UNKNOWN, WHICH NOW OR HEREAFTER ARISE FROM, RELATE TO, OR ARE CONNECTED WITH SUCH DISPUTE AND/OR YOUR USE OF THE SITE. IF YOU ARE A CALIFORNIA RESIDENT, YOU WAIVE CALIFORNIA CIVIL CODE SECTION 1542, WHICH SAYS: "A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH, IF KNOWN BY HIM**

**MUST HAVE MATERIALLY AFFECTED HIS SETTLEMENT WITH THE DEBTOR.”**

**YOU HEREBY AGREE TO INDEMNIFY, DEFEND AND HOLD EACH MEMBER OF THE ALOHANA.COM GROUP, EACH OF THEIR RESPECTIVE AFFILIATES, OFFICERS, DIRECTORS, MANAGERS, CONSULTANTS, AGENTS, EMPLOYEES AND ALL OTHER RELATED PERSONS OR ENTITIES HARMLESS FROM AND AGAINST ANY AND ALL LIABILITY AND COSTS INCURRED BY THE ALOHANA.COM GROUP IN CONNECTION WITH: ANY CLAIM ARISING OUT OF YOUR USE OF THE SITE OR OTHERWISE RELATING TO THE BUSINESS CONDUCTED ON THE SITE (INCLUDING, WITHOUT LIMITATION, ANY POTENTIAL OR ACTUAL COMMUNICATION, TRANSACTION OR DISPUTE BETWEEN YOU AND ANY OTHER USER OR THIRD PARTY); ANY CONTENT POSTED ON THE SITE; ANY USE OF ANY TOOL OR SERVICE PROVIDED BY A THIRD PARTY PROVIDER; OR ANY BREACH BY YOU OF THESE TERMS, OUR PRIVACY POLICY OR THE REPRESENTATIONS, WARRANTIES AND COVENANTS MADE BY YOU HEREIN, INCLUDING WITHOUT LIMITATION, ATTORNEYS’ AND EXPERTS’ FEES AND COSTS. YOU SHALL COOPERATE AS FULLY AS REASONABLY REQUIRED IN THE DEFENSE OF ANY CLAIM. WE RESERVE THE RIGHT, AT OUR OWN EXPENSE, TO ASSUME THE EXCLUSIVE DEFENSE AND CONTROL OF ANY MATTER OTHERWISE SUBJECT TO INDEMNIFICATION BY YOU AND YOU SHALL NOT IN ANY EVENT SETTLE ANY MATTER WITHOUT OUR PRIOR WRITTEN CONSENT.**

### **30. CHOICE OF LAW AND FORUM**

**THIS AGREEMENT SHALL BE GOVERNED, CONSTRUED AND ENFORCED IN ACCORDANCE WITH THE LAWS OF THE STATE OF HAWAII AND THE UNITED STATES OF AMERICA. THE COURTS OF THE STATE OF HAWAII AND THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF HAWAII, AND NO OTHER COURTS, SHALL HAVE EXCLUSIVE ORIGINAL JURISDICTION OVER ANY DISPUTE RELATING TO THIS AGREEMENT OR OTHERWISE INVOLVING ALOHANA.COM. BY USING THE SITE YOU HEREBY IRREVOCABLY AND UNCONDITIONALLY CONSENT TO THE JURISDICTION OF THE AFORESAID COURTS, AND HEREBY IRREVOCABLY WAIVE ANY CLAIM, AND AGREE NOT TO PLEAD OR CLAIM, THAT ANY SUCH COURTS LACK PERSONAL JURISDICTION OVER YOU, OR THAT VENUE IN SUCH COURTS IS INCONVENIENT. THE PREVAILING PARTY IN ANY DISPUTE RELATING TO THIS AGREEMENT SHALL BE ENTITLED TO AN AWARD OF REASONABLE ATTORNEYS’ AND EXPERTS’ FEES AND COSTS INCURRED IN CONNECTION WITH LITIGATING ANY DISPUTES AND FOR ANY ACTION (INCLUDING ANY APPEAL) NECESSARY TO ENFORCE OR SECURE PAYMENT OF ANY RESULTING JUDGMENT OR AWARD.**

### **31. DISPUTE RESOLUTION**

You and Alohana.com agree that if any dispute, claim or controversy arising out of or relating to this Agreement or the breach, termination, enforcement, interpretation or validity thereof, or to the use of the Site (collectively, “**Disputes**”) cannot be resolved through direct discussion between the parties, you and Alohana.com agree to make reasonable efforts to settle the Disputes by mediation conducted in English in Honolulu, Hawaii, USA before initiating further legal action, except that each party retains the right to seek injunctive or other equitable relief in Hawaii State or Hawaii federal courts to prevent the actual or threatened infringement, misappropriation or violation of a party’s copyrights, trademarks, trade secrets, patents, or other intellectual property rights. If the Disputes cannot be resolved by such mediation within ten (10) days, either party shall submit the Disputes to arbitration administered by Dispute Prevention & Resolution, Inc. (“**DPR**”), and such arbitration shall be held in Honolulu, Hawaii, USA, and conducted in English in accordance with DPR’s Arbitration Rules, Procedures & Protocols. The decision of the arbitrator shall be final and judgment thereon may be entered in any court in the State of Hawaii or in any other court having jurisdiction thereof.

### **32. FORCE MAJEURE**

Except for the obligation to make payments for any Subscription(s) to Alohana.com, neither the Alohana.com Group nor any User will be liable for any failure or delay in its performance under this Agreement due to any cause beyond its reasonable control, including, acts of God, acts of war, acts of terror, earthquake, flood, embargo, riot, sabotage, labor shortage or dispute, governmental act or failure of the Internet (not resulting from the action or inaction of Alohana.com), provided that the delayed party (a) gives the other party prompt notice of such cause; and (b) uses reasonable commercial efforts to promptly correct such failure or delay in performance.

### **33. NO AGENCY**

No agency, partnership, joint venture, employee-employer or franchiser-franchisee relations is intended or created by this Agreement or your use of the Site.

### **34. NOTICES**

Except as explicitly stated otherwise, any notices to Alohana.com shall be given by mail addressed to:

Alohana.com, Inc., Attention: Legal Department, P.O. Box 8212, Honolulu, Hawaii 96830, USA

When we need to send you a notice, it will be sent to the e-mail address you provide to us during the Alohana.com’s account registration process or as later updated in your Alohana.com account (if applicable). Failure to keep your e-mail address, physical mailing address and telephone numbers in your Alohana.com account shall be a material breach of this Agreement. Notice shall be deemed given upon receipt or twenty-four (24)

hours after an e-mail is sent, unless the sending party is notified that the e-mail address is invalid. Alternatively, we may give you notice by certified mail, postage prepaid and return receipt requested, to the physical mailing address provided to us during the registration process or as later updated in your Alohana.com account (if applicable). In such case, notice shall be deemed given three (3) days after the date of mailing to a physical mailing address and one (1) day after mailing to an electronic address.

### **35. NO WAIVER**

We may immediately terminate any User's access to or use of the Site, without refund, due to such User's breach of this Agreement or any other unauthorized use of the Site. However, we do not guarantee that we will take action against all breaches of this Agreement. Our failure to take immediate action with respect to a breach by you or others does not waive our right to act later with respect to such breach or any other breach. Any action or inaction by us in response to any breach of this Agreement does not limit our rights with respect to actions we may take in response to any other similar or different type of breach.

### **36. ASSIGNMENT**

We may assign this Agreement in our sole and absolute discretion. However, Users must obtain our prior written consent to assign this Agreement, which may be granted or withheld by us in our sole and absolute discretion.

### **37. SURVIVAL**

The terms of paragraphs 1 to 5, 7 to 10, 19, 24 to 38 of this Agreement shall survive termination or expiration of this Agreement.

### **38. ENTIRE AGREEMENT, HEADINGS AND SEVERABILITY**

These Terms constitute the entire agreement between us and you with respect to the matters set forth herein, and supersede any prior agreement between us and you with respect to your use of the Site. Headings in this Agreement are for reference only and do not limit the scope or extent of such section. If any portion of this Agreement is found to be invalid or unenforceable by any court of competent jurisdiction, the other provisions of this Agreement shall remain in full force and effect. Further, any provision of this Agreement held invalid or unenforceable only in part or degree will remain in full force and effect to the extent not held invalid or unenforceable.

## **CONTACT US**

If you have any questions about these Terms, our Privacy Policy, the practices of the Site, or your dealings with the Site, please contact us via e-mail at [Contact@Alohana.com](mailto:Contact@Alohana.com), by phone at (808) 391-9771, or by mail at Alohana.com, Inc., P.O. Box 8212, Honolulu, Hawaii 96830, USA.