



PIXI INTERNET ACCESS SUBSCRIPTION AGREEMENT

PIXI Internet Access (hereinafter "PIA") is an Internet access service provided by Pacific Information Exchange, Inc., a Hawaii corporation doing business as PixiNet™ and PacInfoNet™ (collectively "PIXI"), subject to the terms and conditions of this PIA Subscription Agreement ("Agreement"). This Agreement constitutes the entire agreement between you (hereinafter "you" or "Subscriber") and PIXI with respect to PIA. PIXI RESERVES THE RIGHT TO CHANGE THIS AGREEMENT AT ANY TIME BY POSTING CHANGES ONLINE OR VIA EMAIL AT LEAST 30 DAYS IN ADVANCE OF THE EFFECTIVE DATE OF ANY CHANGES. YOU ARE RESPONSIBLE FOR REGULARLY REVIEWING INFORMATION POSTED ONLINE TO OBTAIN TIMELY NOTICE OF SUCH CHANGES. YOUR NON-TERMINATION OR CONTINUED USE OF PIA AFTER CHANGES ARE POSTED CONSTITUTES YOUR ACCEPTANCE OF THIS AGREEMENT AS MODIFIED BY THE POSTED CHANGES. This Agreement takes effect on the date on which you accept this Agreement and continues until your PIA subscription is terminated either by you or by PIXI.

1. Essentials of Your Subscription

1.1 You represent and warrant that you are at least 18 years of age and that you possess the legal right and ability to enter into this Agreement and to use PIA in accordance with this Agreement. You may terminate your PIA subscription at any time, with or without cause, upon notice to PIXI; provided that you are responsible for all charges, which have been submitted, prior to your notice of termination. PIXI may terminate or suspend your PIA subscription at any time, with or without cause, with or without notice. Your PIA subscription is personal to you, you agree not to assign, transfer, resell or sublicense your rights as a subscriber unless specifically allowed by this Agreement.

1.2 PIXI may allow you to have additional member accounts associated to your account ("Associated Accounts"). You may allow other household members (including minors) to use your Associated Accounts, provided that you agree to pay all charges that are incurred by yourself or others utilizing the Associated Accounts. As between PIXI and you, you are solely responsible for all usage of the Associated Accounts, including any violations of this Agreement, which may include, but is not limited to, roaming charges and telecommunication charges for connecting to PIA such as long distance charges. Your subscriber account (including any Associated Accounts) will be terminated for violations of this Agreement by yourself or others utilizing an Associated Account. Your right to the Associated Accounts, if any, is personal to you, no person utilizing an Associated Account has any right to your subscriber account (including your Associated Accounts). You agree not to assign, transfer, resell, sublicense or otherwise distribute your right or access to the Associated Accounts. "You" (and "your") as used throughout the remainder of this Agreement shall mean you and any person utilizing an Associated Account.

1.3 You acknowledge that you are aware that some areas of PIA and the Internet may contain material that is unsuitable for minors, and you agree to supervise usage by minors whom you permit to use your PIA account.

1.4 You acknowledge and agree that the party being billed for your PIA subscription (that is, the party who is responsible for the credit card or other payment account associated with your account) has the right to terminate the subscriber account and all Associated Accounts at any time, make changes to your subscriber account information and Associated Accounts and to request and receive usage information related to such accounts.

2. PIA Usage

2.1

As a condition of your use of PIA, you warrant to PIXI that you will not use PIA for any purpose that is unlawful or prohibited by these terms, conditions, and notices. PIA is provided to individuals only and for personal use only. You agree to use PIA only to send and receive personal messages. Any unauthorized commercial use of PIA, or the resale of its services, is expressly prohibited. You agree to abide by all applicable local, state, national and international laws and regulations. You are solely responsible for all acts or omissions that occur under your account or password, including the content of these transmissions through PIA. You may not modify, copy, distribute, transmit, display, perform, reproduce, publish, license, create derivative works from, transfer, or sell any information, software or services obtained from or through PIA.

2.2

You agree not to do any of the following while being connected to PIA:

- * Use PIA or any of its related services in connection with surveys, contests, pyramid schemes, chain letters, junk e-mail, spamming, or any duplicative or unsolicited messages to parties with whom you have no prior relationship (commercial or otherwise).
- * Send unsolicited e-mail or instant messages through third-party mail servers to relay your message or hide the origination of your message or any other message to others.
- * Use your e-mail accounts in the text of unsolicited e-mail messages or Web sites as an address to which subscribers, members or other Internet users can respond.
- * Mass-post, cross-post, or post off-topic messages to any newsgroup or bulletin board service.
- * Use simultaneous, unattended, or continuous connections to PIA with one account without a subscription permitting such use (if available).
- * Defame, abuse, harass, stalk, threaten, or otherwise violate the legal rights (such as rights of privacy and publicity) of others.

- * Publish, distribute, or disseminate any inappropriate, profane, defamatory, infringing, obscene, indecent, or unlawful material or information.
- * Send unsolicited messages to Internet Relay Chat servers
- * Harvest or otherwise collect information about others, including e-mail addresses, without their consent.
- * Create a false identity for the purpose of misleading others as to the identity of the sender or the origin of a message.
- * Use, download, or otherwise copy, or provide (whether or not for a fee) to a person or entity that is not an PIA member any directory of PIA members, or any other user or usage information or any portion of any of them.
- * Distribute any material that contains viruses, Trojan horses, worms, time bombs, cancelbots, or any other harmful or deleterious programs.
- * Distribute any material that contains software or other material protected by intellectual property laws, rights of privacy or publicity or any other applicable law unless you own or control the rights thereto and have the legal right to do so or have received all necessary consents.
- * Interfere with or disrupt networks connected to PIA or violate the regulations, policies, or procedures of such networks.
- * Attempt to gain unauthorized access to PIA, other PIA accounts, or computer systems or networks connected to PIA, through password mining, hacking or by any other means.
- * Violate any applicable laws or regulations including, without limitation, laws regarding the transmission of technical data or software exported from the United States.
- * Interfere with another member's use and enjoyment of PIA or another individual's or entity's use and enjoyment of similar services.
- * View, intercept, or attempt to intercept e-mail or other private communications not intended for you.
- * Violate any posted guidelines or codes relating to the use of PIA.

Without limiting any of PIXI's rights to terminate your PIA subscription as described elsewhere in this Agreement, PIXI may, without notice, terminate your PIA subscription including all Associated Accounts for violation of any of the foregoing rules by any party utilizing your subscriber account or any Associated Account.

2.3

PIXI has no obligation to monitor anyone's use of PIA or retain the content of any user session. However, PIXI reserves the right at all times and without notice to delete any content and to monitor, review, retain and/or disclose any content or other information in PIXI's possession, however obtained, about or related to you, your use of PIA or otherwise as PIXI deems necessary or useful to satisfy any applicable law, regulation, legal process, or governmental request.

2.4

When using PIA you are subject to all the rules specified by the services and Web sites you visit. This includes other PIXI-branded services and Web sites as well as services and Web sites operated by third parties. If another party reports that you have violated their rules, you agree that PIXI may take appropriate action just as if you had violated this Agreement.

2.5

You must promptly notify PIXI if you become aware of a potential breach of security, such as the unauthorized disclosure or use of your PIA user name or password.

2.6

Your use of third-party software provided by PIXI is subject to the terms and conditions of the license agreements for such software.

Your use of the Brightmail anti-SPAM solution and/or the Anti-Virus solution is subject to the terms of the Brightmail Service Use Agreement, attached hereto as Attachment A, and incorporated fully herein.

3. Charges and Billing

3.1

You agree to pay all charges for your use of PIA at the prices then in effect including any charges for optional, installation and premium services (e.g. DSL service, ISDN service, concurrent connectivity, billable nationwide access, etc.). Certain services may require the payment of additional fees (including, without limitation, set-up, repair, additional equipment, missed appointment, line maintenance, upgrade and repair, reactivation, transfer and relocation) and you agree to pay such fees at the prices then in effect as specified for such service to either PIXI or its designated service provider. You agree that PIXI may pass your credit card information to its designated service provider of such additional services for their use in charging you for appropriate services rendered. Certain PIXI promotions or plans may require termination or cancellation charges. You agree to pay all such termination or cancellation charges as specified in the materials describing such promotions and plans. All PIA charges are exclusive of sales or other taxes. PIA charges, if applicable, will be subject to sales or other taxes as appropriate. PIXI reserves the right to modify or terminate subscription plans, change prices, or institute new charges for PIA at any time with at least thirty (30) days' notice to Subscribers. For DSL and Frame Relay customers, you may terminate your subscription at any time with two weeks notice to PIXI, however, you are responsible for all charges submitted prior to the

termination of your account whether by you or by PIXI, as well as, any applicable cancellation charges incurred in the termination of the subscription.

3.2

It is possible the PIA access number you program your modem to use to connect to PIA may be a telephone number that results in additional or long distance charges being billed to you by a third party even if such number was presented by PIXI as an appropriate access number for your area.

You are solely responsible for determining whether the access number you use is subject to any additional charges. It is your responsibility to contact your telephone company to determine whether the access number you select is subject to additional charges. You agree to pay any charges you incur by using a long distance telephone number to connect to PIA, including those that may be billed to you by a third party. PIA will not reimburse you for any charges incurred by you as a result of selecting an access number that is subject to additional and/or long distance charges.

3.3

You also agree to pay any additional PIA charges you incur if you connect to PIA through an PIA telephone number while you are in a country that is not the country associated with your PIA account (hereinafter referred to as "Roaming Charges"). Roaming Charges are in addition to any long distance telephone charges you may incur when connecting to PIA from another country.

3.4 All periodic charges (that is, monthly, quarterly, annually, and so forth) or charges for prepaid plans are to be paid in advance, or at the time billed by PIXI, as specified for the PIA plan you elect and is pro-rata refundable for sums greater than \$10.00. You agree to pay for all optional and premium services you elect to receive which are not included in your periodic charges or prepaid plan charges. You agree to pay all amounts due upon demand by PIXI. Your non-termination or continued use of PIA reaffirms that PIXI is authorized to charge your account as specified by you (your "Designated Account"). You agree to pay re-activation fees that may be incurred should your PIA account be placed in an administrative hold status due to non-payment of PIA fees. You agree that PIXI may (at its option) accumulate charges incurred and submit them as one or more aggregate charges and that PIXI may delay obtaining authorization from your Designated Account issuer until submission of the accumulated charge(s). This means that accumulated charges may appear on the statement you receive from your designated account issuer. You agree that if you want to see the components of accumulated charges, you will request a detailed statement. You agree to pay all costs incurred in the collection of any delinquent fees due under this Agreement or the enforcement of this Agreement, including attorney fees.

3.5

You agree that PIXI may submit charges for your use of connect time in excess of that provided as part of the PIA subscription plan you select without further authorization from you until you

provide prior notice that you are terminating this authorization or wish to change your PIA subscription plan. Such notice will not affect charges submitted before PIXI reasonably could act on your notice.

3.6

You must promptly notify PIXI of changes to: (a) the credit card or auto-debit bank account number, status, or expiration date of your Designated Account; and (b) your billing address.

3.7

YOU WILL INCUR ADDITIONAL CHARGES IF YOUR USAGE OF PIA EXCEEDS THE NUMBER OF HOURS COVERED BY YOUR APPLICABLE SUBSCRIPTION. YOU MAY ALSO INCUR CHARGES LEVIED BY YOUR LOCAL OR LONG DISTANCE TELEPHONE COMPANY TO ACCESS PIA FOR WHICH YOU ARE RESPONSIBLE. PIXI MAY CAUSE UPGRADED SOFTWARE TO BE DOWNLOADED AUTOMATICALLY TO YOUR COMPUTER, IN WHICH EVENT YOU WILL BE RESPONSIBLE FOR ALL RESULTING CHARGES INCLUDING, WITHOUT LIMITATION, CONNECT TIME CHARGES AND LOCAL OR LONG DISTANCE TELEPHONE CHARGES.

3.8

PIXI will use reasonable commercial efforts to provide you with an online statement of charges; however, any failure of PIXI to provide you with an online statement does not affect your responsibility to pay any incurred charges. Unless you notify PIXI of any errors or discrepancies in any billing within ninety (90) days after they first appear on your Designated Account statement, they will be deemed accepted by you for all purposes, including resolution of inquiries made by the issuer of your Designated Account. WITHOUT LIMITING ANYTHING ELSE IN THIS AGREEMENT, YOU RELEASE PIXI FROM ANY AND ALL LIABILITY AND CLAIMS OF LOSS RESULTING FROM ANY ERROR OR DISCREPANCY THAT IS NOT REPORTED TO PIXI WITHIN NINETY (90) DAYS OF ITS PUBLICATION DATE.

3.9

Without limiting anything else in this Agreement, PIXI reserves the right to suspend or terminate your PIA subscription without notice upon rejection of any charges or if your account issuer (or its agent or affiliate) seeks return of payments previously made to PIXI when PIXI in good faith believes you are liable for the charge. Such rights are in addition to and not in lieu of any other legal rights or remedies available to PIXI. You agree to pay a late charge to PIXI on all amounts due but not timely paid. The late charge will be one and one-half percent (1½%) (which equals eighteen per cent (18%) per annum) on the total amount due but not paid; but if such rate is in excess of any allowable rate, the late charge will be the maximum rate allowed by law. The late charge will be imposed until all of the overdue amounts are paid, but no late charge will be charged on other late charges. PIXI reserves the right to refer your PIXI account to a third party for collection in the event of default and you agree to pay all costs incurred in the collection of any delinquent fees.

3.10

PIA dial-up subscribers must contact PIA Customer Service directly to cancel their existing PIA accounts. All other PIA subscribers must submit a signed letter stating the intent to cancel their existing PIA account.

4. Operation

PIXI reserves complete and sole discretion with respect to the operation of PIA. PIXI may, among other things: (a) take any action (legal and/or technical) that PIXI deems appropriate to prevent bulk e-mail from entering or leaving any PIXI e-mail account; (b) delete e-mail if it has not been accessed by you within a time established by PIXI from time to time, in its sole discretion; (c) subject to the PIXI Internet Access Privacy Statement, make available to third parties information relating to PIXI and its subscribers and members; (d) automatically log off any accounts that are inactive for an extended period of time, as determined by PIXI; and, (e) withdraw, suspend, change, or discontinue any functionality or feature of PIA. You agree that PIXI is not responsible or liable for the loss, deletion or failure to store or accept messages or other information in the log off process. The use of any software that would prohibit PIA's automatic log off system or part thereof from performing as intended is prohibited.

5. Posting to PIA

PIXI does not claim ownership of the materials you provide to PIA (including feedback and suggestions) or post, upload, input, or submit to any PIXI Web Site or its associated services (each a "Submission" and collectively called "Submissions"). However, by posting, uploading, inputting, providing, or submitting your Submission, you are granting PIXI, its affiliated companies and necessary sub-licensees permission to use your Submission in connection with the operation of their Internet businesses including, without limitation, the rights to: copy, distribute, transmit, publicly display, publicly perform, reproduce, edit, translate, and reformat your Submission; and to publish your name in connection with your Submission. No compensation will be paid with respect to the use of your Submission, as provided herein. PIXI is under no obligation to post or use any Submission you may provide and PIXI may remove any Submission at any time, in its sole discretion. By posting, uploading, inputting, providing, or submitting your Submission, you warrant and represent that you own or otherwise control all of the rights to your Submission, as described in this section including, without limitation, all the legal rights necessary for you to provide, post, upload, input, or submit the Submissions.

6. Links To Third Party Sites

THE LINKS INCLUDED WITHIN PIXI AND/OR ITS RELATED WEB SITES MAY LET YOU LEAVE PIXI AND VISIT THIRD PARTY SITES ("LINKED SITES"). THE LINKED SITES ARE NOT UNDER THE CONTROL OF PIXI AND PIXI IS NOT RESPONSIBLE FOR THE CONTENTS OF ANY LINKED SITE OR ANY LINK CONTAINED IN A LINKED SITE, OR ANY CHANGES OR UPDATES TO SUCH SITES. PIXI IS NOT RESPONSIBLE FOR WEBCASTING OR ANY OTHER FORM OF TRANSMISSION RECEIVED FROM

ANY LINKED SITE. PIXI IS PROVIDING THESE LINKS TO YOU ONLY AS A CONVENIENCE, AND THE INCLUSION OF ANY LINK DOES NOT IMPLY ENDORSEMENT BY PIXI OF THE SITE OR ANY ASSOCIATION WITH THEIR OPERATORS. YOU ARE RESPONSIBLE FOR VIEWING AND ABIDING BY THE PRIVACY STATEMENTS AND TERMS OF USE POSTED AT THE LINKED SITES.

ANY DEALINGS WITH THIRD PARTIES (INCLUDING ADVERTISERS) INCLUDED WITHIN PIXI OR PARTICIPATION IN PROMOTIONS, INCLUDING THE PURCHASE OF, DELIVERY OF AND THE PAYMENT FOR GOODS AND SERVICES, AND ANY OTHER TERMS, CONDITIONS, WARRANTIES OR REPRESENTATIONS ASSOCIATED WITH SUCH DEALINGS OR PROMOTIONS, ARE SOLELY BETWEEN YOU AND THE ADVERTISER OR OTHER THIRD PARTY. PIXI SHALL NOT BE RESPONSIBLE OR LIABLE FOR ANY PART OF ANY SUCH DEALINGS OR PROMOTIONS.

7. Installation/Equipment

Where applicable, you acknowledge and agree that PIXI or its designated service provider may be required to access your premises and/or computer in order to install or repair the components necessary for you to access certain services, this may include opening your computer to install, repair or replace equipment and/or installing software on your computer or in your location. By accepting the Agreement you are hereby authorizing PIXI or its designated service providers to access your premises and your computer for the purpose of installing, repairing or replacing the components needed to access such services and to work with your telephone provider, if necessary, to make such service available through your designated telephone number.

You are solely responsible for ensuring that all information and software embodied on your computer is stored or backed up appropriately as necessary, PIXI and its designated service providers shall have no liability whatsoever for any loss of software, data or other information from your computer or for any modifications made to your computer system including modifications or deletion of files.

8. Disclaimers/Limitation Of Liability.

You specifically agree that PIXI shall not be responsible for unauthorized access to or alteration of your transmissions or data, any material or data sent or received or not sent or received, or any transactions entered into through or using PIA. You specifically agree that PIXI is not responsible or liable for any act or omission of any third party including but not limited to any threatening, defamatory, obscene, offensive, or illegal content or conduct of any other party or any infringement of another's rights, including intellectual property rights. You specifically agree that PIXI is not responsible for any content sent using and/or included in PIXI by you or any third party.

YOUR USE OF PIA, ALL EQUIPMENT OR SOFTWARE PROVIDED BY PIXI OR ITS DESIGNATED SERVICE PROVIDERS, AND PIXI SERVICES (INCLUDING INSTALLATION SERVICES) IS AT YOUR OWN RISK. PIXI, ITS RESELLERS,

DISTRIBUTORS, SERVICE PROVIDERS AND/OR SUPPLIERS MAKE NO REPRESENTATIONS ABOUT THE SUITABILITY, RELIABILITY, USABILITY, AVAILABILITY, TIMELINESS, AND ACCURACY OF PIA FOR ANY PURPOSE. PIA AND ALL RELATED EQUIPMENT, SOFTWARE AND SERVICES ARE PROVIDED "AS IS" AND "AS AVAILABLE" WITHOUT WARRANTY OF ANY KIND. PIXI, ITS RESELLERS, DISTRIBUTORS, SERVICE PROVIDERS AND/OR SUPPLIERS DO NOT WARRANT THAT ACCESS TO OR USE OF PIA WILL BE UNINTERRUPTED OR ERROR-FREE, THAT MEMBERS WILL BE ABLE TO ACCESS PIA AT ANY TIME OR IN ANY GEOGRAPHIC AREA, OR THAT PIA, PIXI SOFTWARE, SERVICES OR RELATED EQUIPMENT WILL MEET ANY PARTICULAR CRITERIA OF PERFORMANCE OR QUALITY. PIXI, ITS RESELLERS, DISTRIBUTORS, SERVICE PROVIDERS AND/OR SUPPLIERS HEREBY DISCLAIM ALL WARRANTIES AND CONDITIONS WITH REGARD TO PIA AND ALL RELATED SERVICES, SOFTWARE AND EQUIPMENT, INCLUDING WITHOUT LIMITATION, DUTIES OR CONDITIONS OF MERCHANTABILITY, OF FITNESS FOR A PARTICULAR PURPOSE, OF ACCURACY OR COMPLETENESS OF RESPONSES, OF RESULTS, OF WORKMANLIKE EFFORT, OF LACK OF VIRUSES, AND OF LACK OF NEGLIGENCE AND THE PROVISION OF OR FAILURE TO PROVIDE SUPPORT SERVICES, TITLE, AND NON-INFRINGEMENT.

IN NO EVENT SHALL PIXI, ITS RESELLERS, DISTRIBUTORS, SERVICE PROVIDERS AND/OR SUPPLIERS BE LIABLE FOR ANY INDIRECT, PUNITIVE, INCIDENTAL, SPECIAL, OR CONSEQUENTIAL DAMAGES, OR ANY DAMAGES WHATSOEVER, INCLUDING, WITHOUT LIMITATION, DAMAGES FOR LOSS OF USE, DATA, OR PROFITS, ARISING OUT OF OR IN ANY WAY CONNECTED WITH THE USE OR PERFORMANCE OF PIA, ANY PIXI SOFTWARE, PIXI SERVICES (INCLUDING INSTALLATION SERVICES), RELATED EQUIPMENT OR RELATED WEB SITES, WITH THE DELAY OR INABILITY TO USE PIA, ANY PIXI SOFTWARE, RELATED EQUIPMENT OR RELATED WEB SITES, THE PROVISION OF OR FAILURE TO PROVIDE SERVICES (INCLUDING INSTALLATION SERVICES), LOST, DAMAGED, OR DESTROYED E-MAIL OR THE FAILURE TO DELIVER ANY E-MAIL, OR FOR ANY INFORMATION, SOFTWARE, PRODUCTS, SERVICES AND RELATED GRAPHICS OBTAINED THROUGH PIXI, OR OTHERWISE ARISING OUT OF THE USE OF PIA, WHETHER BASED ON CONTRACT, TORT, NEGLIGENCE, STRICT LIABILITY OR OTHERWISE, EVEN IF PIXI OR ANY OF ITS SUPPLIERS HAS BEEN ADVISED OF THE POSSIBILITY OF DAMAGES. PIXI'S LIABILITY TO YOU FOR BREACH OF THIS AGREEMENT IS LIMITED TO THE AMOUNT ACTUALLY PAID BY YOU TO PIXI FOR ACCESS TO AND USE OF PIA. YOU HEREBY RELEASE PIXI FROM ANY AND ALL OBLIGATIONS, LIABILITIES, AND CLAIMS IN EXCESS OF THIS LIMITATION. BECAUSE SOME STATES/JURISDICTIONS DO NOT ALLOW THE EXCLUSION OR LIMITATION OF LIABILITY FOR CONSEQUENTIAL OR INCIDENTAL DAMAGES, THE ABOVE LIMITATION MAY NOT APPLY TO YOU. IF YOU ARE DISSATISFIED WITH ANY PORTION OF PIA, OR WITH ANY OF THESE TERMS OF USE, YOUR SOLE AND EXCLUSIVE REMEDY IS TO NOT SIGN UP FOR AN PIA ACCOUNT OR TO TERMINATE YOUR PIA ACCOUNT.

9. Indemnification

You agree to indemnify and hold PIXI, its parents, subsidiaries, members, affiliates, officers and employees, harmless from any claim, demand, or damage, including costs and reasonable attorneys' fees, asserted by any third party due to or arising out of your use of or conduct on PIA. PIXI will notify you within a reasonable period of time of any claim for which PIXI seeks indemnification and will afford you the opportunity to participate in the defense of such claim, provided that your participation will not be conducted in a manner prejudicial to PIXI's interests, as reasonably determined by PIXI.

10. Notices; Consent

Notices given by PIXI to you may be given by e-mail, by a general posting on PIA, or by postal mail. Notices given by you to PIXI must be given by postal mail and must be sent to Pacific Information Exchange, Inc., Attention: Customer Service, 1132 Bishop Street, Suite 2102, Honolulu, HI 96813

11. No "Spam"; Damages

PIXI may immediately terminate any subscriber account that it determines, in its sole discretion, is transmitting or is otherwise connected with any "spam" or other unsolicited bulk e-mail. In addition, because damages are often difficult to quantify, if actual damages cannot be reasonably calculated, you agree to pay PIXI liquidated damages of five dollars (U.S. \$5.00) for each piece of "spam" or unsolicited bulk e-mail transmitted from or otherwise connected with your account. Otherwise you agree to pay PIXI's actual damages, to the extent such actual damages can be reasonably calculated. You agree that PIXI may charge such damages to your Designated Account as specified by you for payment of PIA charges.

12. General

12.1

Except where prohibited by applicable law, this Agreement is governed by the laws of the State of Hawaii, USA, and you consent to the exclusive jurisdiction and venue of courts Honolulu, Hawaii for all disputes arising out of or relating to your use of PIA or your PIA subscription. Use of PIA is unauthorized in any jurisdiction that does not give effect to all provisions of these terms and conditions including, without limitation, this paragraph.

12.2

You acknowledge that no joint venture, partnership, employment, or agency relationship exists between you and PIXI as a result of your use of PIA or your PIA subscription. You agree not to represent yourself to be a representative, agent, or employee of PIXI, and that PIXI will not be liable by reason of any representation, act or omission to act by you.

12.3

PIXI reserves the right to disclose any personal information about you or your use of PIA, without your prior permission, if PIXI has a good faith belief that such action is necessary to: (1) comply with governmental, court and law enforcement requests or requirements; (2) protect and defend the rights or property of PIXI or its affiliated companies; (3) enforce this Agreement; or (4) act to protect the interests of its subscribers, members or others. PIXI's performance of this Agreement is subject to existing laws and legal process, and nothing contained in this Agreement is in derogation of PIXI's right to comply with governmental, court and law enforcement requests or requirements relating to your use of PIA or information provided to or gathered by PIXI with respect to such use.

12.4

This Agreement constitutes the entire agreement between PIXI and you with respect to your use of PIA and your PIA subscription (excluding the use of any software which may be subject to an end-user license agreement), and it supersedes all prior or contemporaneous communications and proposals, whether oral or written, between PIXI and you with respect to PIA.

12.5

PIXI may assign this Agreement, in whole or in part, at any time with or without notice to you. You may not assign this Agreement.

12.6

A printed version of this Agreement and of any notice given in electronic form shall be admissible in judicial or administrative proceedings based upon or relating to this Agreement to the same extent and subject to the same conditions as other business documents and records originally generated and maintained in printed form. You and PIXI agree that any cause of action arising out of or related to PIA must commence within one (1) year after the cause of action arises; otherwise, such cause of action is permanently barred. The section titles in the Agreement are solely used for the convenience of the parties and have no legal or contractual significance.

COPYRIGHT AND TRADEMARK NOTICES: All contents of PIA are Copyright © 2002 Pacific Information Exchange, Inc. and/or its suppliers, c/o Pacific Information Exchange, Inc., 1132 Bishop Street, Suite 2102, Honolulu, HI 96813 U.S.A. All rights reserved.

TRADEMARKS.

PixiNet, PacInfoNet and/or other PIXI products and services referenced herein are either trademarks or registered trademarks of PIXI. The names of actual companies and products mentioned herein may be the trademarks of their respective owners.

Any rights not expressly granted herein are reserved.

ATTACHMENT A

USE AGREEMENT

Use of Brightmail Service

You (the 'End User') must read the following End-User License Agreement as a condition of accepting PIA services; the Brightmail anti-SPAM Solution and/or the Anti-Virus Solution.

BY electing PIA services you are accepting this Use Agreement and/or using this software and service offering, you agree that in addition to the terms and conditions of your agreement with PIXI (the "ISP"), you agree to be bound by the terms and conditions of this Use Agreement. If you do not wish to be bound by this Use Agreement, you may not use the software and service offering. PIXI may modify this Agreement at any time, and such modifications shall be effective immediately upon either posting of the modified Agreement or notifying you. You agree to review the Agreement periodically to be aware of such modifications and your continued use of the software and service offering shall indicate your acceptance of the modified Agreement.

This is a binding, legal agreement between you (the 'End User'), your Internet Service Provider (and its superior licensors) "ISP", and Brightmail, Inc. (and its superior licensors) "Brightmail" ("Agreement").

End User is agreeing to use a software and service offering (the "Solution") that detects and deletes from the End User's licensed e-mail inbox, the unsolicited bulk e-mail from the Internet ("SPAM") and/or viruses, as applicable. This Solution deletes the SPAM messages IMMEDIATELY. Due to the volatile nature of the Internet and its offerings, the accuracy of the performance of the Solution is not guaranteed by either the ISP or Brightmail. Unless otherwise performed, any viruses detected shall be automatically deleted. By agreeing to this Agreement, and/or commencing with the use and benefit of the Solution, the End User hereby, irrevocably waives any and all claim, suit, liability, damages or the like which the End User may have, or believe to have, from now into perpetuity, against the ISP and/or Brightmail. To the extent that the forgoing cannot be waived by applicable law(s), then the End User expressly agrees to not enforce any rights contrary to the foregoing sentence.

The End User's license to the Solution is contingent upon the End User's compliance with all of the following use restrictions and requirements:

1. The End-User agrees that the End User will not falsify, forge, or otherwise tamper with any portion of the header or tracking data of any message.
2. The End-User agrees that the End User will not use the ISP's service offerings for the relaying of SPAM, or use its dialup facilities to originate SPAM to be relayed via the facilities or equipment of the ISP(s) or any third parties, or the intentional launching of viruses.

3. The End-User agrees that the End User will not themselves or through any third party send SPAM or intentionally send viruses from any other online service in which the domain name, trademarks, or internet addresses of the ISP (and its superior licensors)' facilities are in any way associated, implicated or identified.

4. The End-User agrees that should the End User's services be terminated for any breach of the above use restrictions and requirements, then, the End User shall not be permitted to open or maintain any other email accounts with the ISP. Any other account(s) under the control of the End-User at the time of any breach by the End-User may be terminated immediately at the sole discretion of the ISP (or any superior licensors), with or without prior notice.

END-USER UNDERSTANDS AND AGREES THAT THE SERVICES PROVIDED BY THE SERVICE AND ITS LICENSORS ARE PROVIDED "AS IS," "WITH ALL FAULTS," AND END USER ACCEPTS THE SOLUTION AS 'PARTS OF' A SOLUTION OFFERING. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, THE ISP, AND BRIGHTMAIL INDIVIDUALLY AND COLLECTIVELY DISCLAIM ANY AND ALL WARRANTIES, EXPRESS OR IMPLIED, WITH RESPECT TO THE SOLUTION PROVIDED HEREUNDER, INCLUDING WITHOUT LIMITATION ALL WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE (EVEN IF ADVISED OF SUCH PURPOSE), TITLE AND NON-INFRINGEMENT, AND AGAINST ERROR-FREE OR UNINTERRUPTED SERVICE.

In the event of any provision of this agreement being held for any reason to be illegal, void, voidable or unenforceable in any respect under the law of any jurisdiction then such provision shall be treated in such jurisdiction as severed from this agreement and shall not affect the validity or enforceability of any other provision of this agreement or of the remainder of this agreement as a whole.

Limitation of Liability

Circumstances may arise where, because of a default on the part of the ISP and/or Brightmail, or other liability, the End User is entitled to recover damages from the ISP and/or Brightmail. In each such instance, regardless of the basis on which the End User may be entitled to claim damages from the ISP and Brightmail, (including fundamental breach, negligence, misrepresentation, or other contract or tort claim), the ISP and Brightmail are liable for no more than 1) damages for bodily injury (including death) and 2) the amount of any other actual direct damages up to the greater of the total fees paid by the End User solely for the Solution.

Because software is inherently complex and may not be completely free of errors, the End User is advised to verify the End User's work and to make backup copies. THE ISP AND BRIGHTMAIL WILL NOT BE LIABLE FOR ANY SPECIAL, INCIDENTAL, OR INDIRECT DAMAGES OR FOR ANY ECONOMIC CONSEQUENTIAL DAMAGES (INCLUDING LOST PROFITS OR SAVINGS), EVEN IF THE ISP AND/OR BRIGHTMAIL, HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

The ISP and/or Brightmail will not be liable for 1) loss of, or damage to, the End User's records or data or 2) any damages claimed by the End User based on any third party claim.

This limitation of liability also applies to any developer of software or services supplied to the ISP and Brightmail. It is the maximum for which the ISP and Brightmail and their suppliers are collectively responsible.

All intellectual property rights in the Solution and other products, including any documentation, are owned by the ISP or Brightmail or their suppliers, and are protected by United States copyright laws, other applicable copyright laws, and international treaty provisions. The ISP and Brightmail retain any and all rights not expressly granted. Nothing in this Agreement affects any statutory rights of consumers that cannot be waived or limited by contract.

The End User agrees to comply with and shall be responsible for compliance with all applicable export laws and regulations. Neither the End User nor the ISP and Brightmail are responsible for failure to fulfill any obligations due to causes beyond its control.

This agreement shall be governed by and interpreted in accordance with the laws of California. Any dispute that arises between the parties concerning this Agreement shall be determined by the California Courts of the United States of America and the parties hereby submit to the non-exclusive jurisdiction of that Court for such purpose.

This Agreement sets forth the entire understanding and agreement of the parties and supersedes all prior or Contemporaneous understandings or agreements related thereto.

RESTRICTED RIGHTS LEGEND: With respect to this agreement's affiliation to Brightmail and subsequent sales to the U.S. Government, the End User is hereby notified that this documentation and the software it accompanies are provided with RESTRICTED RIGHTS. Use, duplication, or disclosure by the U.S. Government is subject to restricted rights as set forth in subdivision (b) (3) (ii) and (c) (1) (ii) of the Rights in Technical Data and Computer Software clause at DFARS 52.227-7013 or subparagraphs (c) (1) and (2) of the Commercial Computer Software Restricted-Rights at 48 CFR 52.227-19, as applicable.

For these purposes, Contractor/Manufacturer is Brightmail Inc., San Francisco, California; and/or Symantec Corporation, USA.

Attn: Legal Affairs
Brightmail Inc.
301 Howard Street, Suite 1800
San Francisco, CA 94105