

Island Technologies Subscriber Agreement

This Island Technologies Subscriber Agreement (the "Agreement") consists of the attached General Terms of Service, and all exhibits attached hereto. This Agreement shall become effective as stated in the General Terms of Service and shall continue in effect for the Term and any subsequent renewal, subject to termination as provided herein.

GENERAL TERMS AND CONDITIONS

The following terms and conditions shall apply to the provision and use of the services ("Service" or "Services") as outlined in the Service Attachment(s).

1.0 DEFINITIONS

1.1 "Island Technologies" shall be defined as Island Technologies and its wholly owned subsidiaries.

1.2 "Subscriber" shall be defined as any person who completes the registration process, either via phone, email, written request and/or the IslandEmail Admin; to open and maintain an account with Island Technologies' Email Services.

1.3 "Throughput" is defined herein as the total amount of all messages processed by Island Technologies pursuant to this Agreement that are addressed to the Subscriber or originate from the Subscriber and/or their email server, measured in megabytes on a monthly basis.

1.4 "Downtime" is defined as any time during which Island Technologies fails to provide any of the Services, measured from the time of actual interruption of the Services, until the time such Services are restored.

1.5 "MX record" shall mean a "mail exchanger" record, which is the resource record used in the domain name system that allows the mapping of a hostname to its mail server.

1.5 "Domain Name Server" shall mean a server which implements the Domain Name System (DNS) that defines procedures for referrals to other name servers and for the use of domain names in the delivery and retrieval of SMTP email on the Internet.

1.6 "Domain Name Host" is the in-house or external organization or entity that is providing the Subscriber with DNS services for the Subscriber's domains.

1.7 "Island Technologies Network" shall mean the network of data centers, data connections and services that Island Technologies maintains to provide services to Subscribers.

1.8 "AUP" shall mean Island Technologies' "Acceptable Use Policy" for the Island Technologies Network. The AUP lists illegal, illicit, damaging and offensive practices that comprise prohibited uses of the Island Technologies Network, Island Technologies's systems, products and services. Island Technologies may expand, amend and update AUP as it deems necessary in its sole discretion to prevent illegal, illicit, damaging and offensive activities.

1.9 "Services" shall be defined as those services subscribed to by Subscriber as detailed on the Service Attachment attached hereto.

1.10 "AUP Website" shall mean the electronic address where the AUP is posted. The AUP Website is located at <http://www.IslandEmail.com/company/aup.html>.

1.11 "Seat" shall mean a recipient on behalf of which e-mail messages are being sent (i) from Subscriber's network(s) or server(s) to the Island Technologies Network or (ii) through the Island Technologies Network for delivery to Subscriber's network(s) or server(s), which send and/or receive a total of 30 or more email messages in a calendar month.

2.0 TERM

2.1 This Agreement shall continue in full force and effect for the period specified ("Term"), unless terminated earlier as set forth herein. At the end of the Term, this Agreement shall continue on a month-to-month basis until cancelled by either party by providing the other party with thirty (30) days prior written notice. If no period specified, agreement will be set forth on a month-to-month basis.

3.0 CHARGES AND BILLING

3.1 The start date ("Start Date") is defined herein as the first day that Island Technologies commences delivery of Services agreed to be provided to Subscriber hereunder, which date shall be the earlier of (i) fifteen (15) days from the day the Agreement has been signed by both parties or, (ii) the day that messages addressed to Subscriber or that originate from the Subscriber's email server first pass through the Island Technologies Network. In the event Subscriber does not initiate Services within fifteen (15) days from the date the Agreement has been signed by both parties, Subscriber will be charged an amount equal to 50% of Subscriber's estimated monthly billing amount in lieu of the Service Fees until Services are initiated.

3.2 Beginning on the start date, Subscriber shall pay for the Services on an agreed payment plan of monthly, semi-annual, or an annual basis. All amounts payable by Subscriber to Island Technologies are exclusive of any sales, use, excise, property or any other similar taxes or fees. Subscriber is responsible for payment of any and all such taxes or fees.

3.3 Island Technologies shall invoice Subscriber on the first day of each month for Services provided during the prior month.

4.0 RESPONSIBILITIES OF SUBSCRIBER

4.1 It is understood that the Services shall not include Subscriber's access connection to the Internet or any equipment necessary for Subscriber to make such connection, which shall be sole responsibilities of Subscriber.

4.2 Subscriber is responsible for establishing and maintaining a suitable Domain Name Server (DNS) either directly in-house or through a third party Domain Name Host. As a subscriber of Island Technologies' services, the Subscriber may have Island Technologies' maintain the subscribers hosted DNS on Island Technologies equipment.

4.3 Subscriber is responsible for notifying its Domain Name Host, if any, that Subscriber's inbound email shall be re-

directed to Island Technologies and Subscriber is also responsible for causing any and all required changes to Subscriber's MX record and, where applicable, to the outgoing mail on the Subscriber's mail server, to facilitate such redirection.

4.4 Subscriber's use of the Services is subject to all applicable local, state, national and foreign laws and regulations. Subscriber agrees to comply with such laws and regulations and with Island Technologies' most current AUP.

4.5 Subscriber is solely responsible for the contents of any and all e-mails originating from Subscriber.

4.6 Subscriber is solely responsible for its activities in using the Services including the activities of its employees and its contractors and all parties that Subscriber allows to have access to the Services provided by Island Technologies.

5.0 RESPONSIBILITIES OF ISLAND TECHNOLOGIES

5.1 Island Technologies shall take commercially reasonable security measures to protect the confidentiality of Subscriber's email. Further, Island Technologies shall not monitor, censor or edit the contents of Subscriber's email messages, unless required to do so by law or in a good faith belief that such action is necessary to protect the safety of the public, Subscriber or Island Technologies. In the event that Island Technologies becomes legally compelled to disclose any of Subscriber's email, it shall provide prompt, prior written notice of such requirement to Subscriber so that Subscriber may seek a protective order or other remedy. For the sole purpose of performing the Services and without reviewing any substantive content pertinent to Subscriber, Island Technologies may track, view and manage email messages which it has good reason to believe are spam or are contaminated by viruses.

5.2 Island Technologies reserves the right to suspend Services to Subscriber if Subscriber uses other services outside of Island Technologies' services and such is used as an open relay that allows third parties to relay e-mail messages through Subscriber's server(s) and/or through a third-party server to other recipients. In such a case, Island Technologies will use its best efforts to immediately contact Subscriber and give Subscriber the opportunity to promptly change the configuration of its server(s) to avoid the use of Subscriber's server(s) as an open relay.

5.3 Island Technologies represents and warrants that it has and shall maintain all rights, licenses and permits necessary and required by law to provide the Services to Subscriber.

5.4 Island Technologies shall not be responsible for backing-up or archiving Subscriber's email after delivery to Subscriber's designated email server and Island Technologies assumes no responsibility for the operation of Subscriber's network or servers or any deletion or failure to store email messages after delivery of the same to Subscriber.

6.0 WARRANTIES AND REMEDIES

6.1 Island Technologies warrants that the Services will be available 99.999% of the total hours during every month Subscriber uses the Services ("Island Technologies Uptime Warranty"). The Island Technologies Uptime Warranty applies only to Downtime due in whole or in part to Island Technologies' inability to provide service to Subscriber which are not attributable to events of Force Majeure as described in

Section 7.0.

6.2 Island Technologies warrants that its Anti-Virus Management Service and its Spam Management Service will filter Subscriber's email to eliminate spam and computer viruses, respectively using a perimeter defense system in accordance with commercially reasonable filtering practices (Island Technologies Filtering Warranty). Subscriber understands and acknowledges that Island Technologies has the right to use outside filtering providers to manage Spam and Viruses. Subscriber understands and acknowledges that Island Technologies can not guarantee that all spam and all viruses will be eliminated, that some legitimate email may be occasionally misdirected as spam, that some software errors and bugs may occasionally affect the performance of the Services, that not every Island Technologies filtering practice can be the most effective in the industry at any given time and that the above warranty does not include any such promises.

6.3 If Subscriber believes that Island Technologies has failed to meet its warranty commitments under either of the above warranties, Subscriber must contact Island Technologies in writing within 15 business days of the end of the month in which Subscriber believes the warranty obligations were not maintained. In the event it is clearly shown that Island Technologies did not meet its warranty commitments, Island Technologies' sole obligation to Subscriber will be to provide a credit to Subscriber against future service fees in an amount equal to the Subscriber's monthly Service charge for the month during which the commitments were not maintained multiplied by: (i) the number of days during which Island Technologies failed to meet its commitments in the month, divided by (ii) the total number of days in that month.

7.0 FORCE MAJEURE

7.1 Neither Island Technologies nor Subscriber shall be liable for any delay, failure in performance, loss or damage due to: fire, explosion, power blackout, earthquake, flood, severe storms, strike, embargo, labor disputes, acts of civil or military authority, war, terrorism, acts of God, acts or omissions of internet traffic carriers, acts or omissions of regulatory or governmental agencies, or other such causes beyond either party's reasonable control.

8.0 DISCLAIMERS, LIMITATIONS OF LIABILITY AND INDEMNIFICATIONS

8.1 EXCEPT AS OTHERWISE PROVIDED HEREUNDER, THE SERVICES PROVIDED BY ISLAND TECHNOLOGIES ARE PROVIDED "AS IS", WITHOUT WARRANTY OF ANY KIND TO SUBSCRIBER OR ANY THIRD PARTY INCLUDING, BUT NOT LIMITED TO, ANY EXPRESS OR IMPLIED WARRANTIES OF: 1) MERCHANTABILITY; 2) FITNESS FOR A PARTICULAR PURPOSE; 3) EFFORT TO ACHIEVE PURPOSE; 4) QUALITY; 5) ACCURACY; 6) NON-INFRINGEMENT; AND 7) QUIET ENJOYMENT. SUBSCRIBER AGREES THAT ANY EFFORT BY ISLAND TECHNOLOGIES TO MODIFY ITS SERVICES SHALL NOT BE DEEMED A WAIVER OF THESE LIMITATIONS, AND THAT ANY ISLAND TECHNOLOGIES WARRANTIES AND REMEDIES ARE EXCLUSIVE, SATISFACTORY AND SUFFICIENT.

8.2 IN NO EVENT SHALL ISLAND TECHNOLOGIES OR ITS SUPPLIERS/LICENSORS BE LIABLE TO SUBSCRIBER WHETHER IN CONTRACT OR IN TORT FOR ANY LOST PROFITS, LOSSES RESULTING FROM

MISSING, CONTAMINATED OR MISDIRECTED EMAIL MESSAGES OR MESSAGE CONTENTS, LOSSES OR EXPENSES RELATING TO INTERRUPTION OF BUSINESS ACTIVITIES, OR ANY DIRECT, INDIRECT, INCIDENTAL, SPECIAL, PUNITIVE OR CONSEQUENTIAL DAMAGES OF ANY KIND, WHETHER UNDER THIS AGREEMENT OR OTHERWISE, EVEN IF ISLAND TECHNOLOGIES WAS ADVISED IN ADVANCE OF THE POSSIBILITY OF SUCH DAMAGES. IN THE EVENT ANY REMEDY PROVIDED HEREUNDER FAILS OF ITS ESSENTIAL PURPOSE OR NO REMEDY IS SPECIFIED FOR A PARTICULAR BREACH OF THIS AGREEMENT ISLAND TECHNOLOGIES AGREES TO REFUND UP ONE MONTH OF SUBSCRIBER'S SERVICE FEES IN PROPORTION TO THE NATURE AND DURATION OF THE PROBLEM. IN NO EVENT WILL ISLAND TECHNOLOGIES'S TOTAL LIABILITY TO ANY SUBSCRIBER FOR ANY CAUSE EXCEED THE SERVICE CHARGES PAID BY SUCH SUBSCRIBER OVER THE PREVIOUS 12 MONTHS.

8.3 Island Technologies agrees to indemnify and hold Subscriber harmless from any claim or demand made by any *** third party arising from Subscriber's use of the Services, the material breach of this Agreement by Island Technologies, or the infringement by Island Technologies of any intellectual property rights of any such third party. However, in no event shall Island Technologies be liable for any claims or demands attributable to the negligence or misconduct of Subscriber, failure of Subscriber to fulfill its responsibilities under this Agreement (or any losses or damages such as consequential damages described in Section 8.2 above). In event of any such claim or demand Subscriber agrees to promptly notify Island Technologies, to allow Island Technologies to control the defense or reasonably settle such claim or demand and in the case of infringement claims to allow Island Technologies to reasonably modify or change the Services to avoid infringement.

8.4 Subscriber agrees to indemnify and hold Island Technologies harmless from any claims or demands against Island Technologies relating to the Services that are attributable to the negligence of Subscriber, any misuse of the Services by Subscriber or the failure of Subscriber to fulfill its responsibilities under this agreement. In event of any such claim or demand Island Technologies agrees to promptly notify Subscriber of the claim or demand and allow Subscriber to control the defense or reasonably settle such claim or demand provided that Island Technologies or its Services are not adversely affected by such control or settlement.

9.0 TERMINATION

9.1 Island Technologies reserves the right at Island Technologies' option to terminate or suspend performance under this Agreement and discontinue providing Services to Subscriber in the event:

(i) Subscriber does not pay any Island Technologies invoice when rightfully due or Subscriber materially breaches one or more of the other terms of this Agreement and such nonpayment or breach is not cured by Subscriber within thirty (30) days after written notice thereof;

(ii) Subscriber becomes insolvent or bankrupt, or insolvency, liquidation or other similar proceedings are commenced by or against Subscriber and not discharged or dismissed within sixty (60) days after commencement; or

(iii) Subscriber materially or repeatedly fails to comply with Island Technologies' AUP (as referenced in Section 1.8). In such an event, Island Technologies shall attempt to notify Subscriber of any violation prior to termination or suspension of this agreement so that Subscriber may have opportunity to cure such failure. Island Technologies reserves the right to take immediate action to suspend any aspect of the Services provided to the Subscriber if Island Technologies determines that the violation or threatened violation of the AUP involves illegal or illicit activities or activities that are materially damaging to Island Technologies or substantially offensive to Island Technologies or its other customers.

9.2 Subscriber reserves the right to terminate this Agreement for:

(i) any material breach by Island Technologies, including but not limited to Island Technologies' failure to provide the Services on a reliable basis provided, however, that Island Technologies shall have thirty (30) days from written notice thereof from Subscriber to cure any such breach; or

(ii) if bankruptcy, insolvency, liquidation or other similar proceedings are commenced by or against Island Technologies and not discharged or dismissed within sixty (60) days after commencement.

9.3 Following termination of this Agreement for any reason:

(i) Island Technologies shall have the right to be immediately paid for all accrued charges due and owing by Subscriber to Island Technologies.

(ii) Island Technologies' indemnification of Subscriber under Section 8.3 and Subscriber's indemnification of Island Technologies under section 8.4 above shall survive any termination of this Agreement for one year.

10.0 GENERAL PROVISIONS

10.1 Island Technologies reserves the right to modify the features and functionality of the Services, at no additional cost to Subscriber, with the objective of providing Subscriber with equal or enhanced services.

10.2 This Agreement may not be assigned by either party without the prior written consent of the other, which consent will not be unreasonably withheld except that the Agreement may be assigned to an affiliate or a successor of Island Technologies or Subscriber.

10.3 This Agreement shall be governed by and construed in accordance with the laws of the State of California without reference to its conflict of law rules. Subscriber agrees that Island Technologies shall have the right to bring suit against Subscriber for any unpaid bills in the state and Federal courts in and for Los Angeles County, California.

10.4 The failure of either party to exercise or enforce any right or provision of this Agreement shall not constitute a waiver of such right or provision or any related right or provision unless such a waiver is acknowledged and agreed to by such party in writing.

10.5 In event of litigation arising out of this Agreement or in connection with this Agreement, the prevailing party shall be entitled to recover reasonable attorneys' fees and costs of suit from the other party.

10.6 Notices for Island Technologies shall be sent to:

Operations Director, Island Technologies; 17408 Chatsworth Street, Suite 200, Granada Hills, CA 91344. Notices to Subscriber shall be sent to the contact so designated on the first page of this Agreement unless Subscriber notifies Island Technologies in writing of a change in Subscriber's contact party.

10.7 If any provision(s) of this Agreement is held by a court of competent jurisdiction to be contrary to law, then such provision(s) shall be construed, as nearly as possible, to reflect the intentions of the parties so far as they can be consistent with

law and remain commercially practical with the other provisions remaining in full force and effect.

10.8 This is the entire Agreement between the parties with respect to the subject matter hereof and is the sole and exclusive statement of the understandings between the parties with respect thereto, and may only be changed by a written Agreement signed by both parties.

ATTACHMENT “A”
SERVICE ATTACHMENT
ISLAND TECHNOLOGIES SUBSCRIBER AGREEMENT

ISLAND TECHNOLOGIES EMAIL HOSTING AND PROTECTION SERVICES:

Service Components:

A. Email Hosted Services include:

- POP3, IMAP, SMTP services
- Webmail access
- Unlimited Email Storage and attachment enclosures
- Email Aliases, Forwards and Auto responders
- Email Admin Login

B. Anti-Virus Management Services include:

- Identification of viruses before they enter a customer’s network
- Virus libraries that are continuously updated 24/7 for viruses as detected throughout the world.
- Implementation with only a change to a company’s DNS configuration
- No software or hardware to implement and maintain either on the respective company’s server or the user desktop

C. Spam Management Services include:

- Analyze subscriber’s incoming email using email scoring, analysis and evaluation applications.

D. Store and Forward Service include:

- Automatic e-mail fail-over storage for up to five (5) days.
- 5 GB of storage allocated per day
- Automatic monitoring of Subscriber’s e-mail server to establish return of service to Subscriber’s server.
- Automatic forwarding of stored email once Subscriber’s email service is restored
- Compatibility with all Internet standard email software server packages

Service Packages

1. Comprehensive Email Services: Includes all features of the Email Hosted service, Anti-Virus Management Service, Spam Management Service and Store and Forward Service for inbound email traffic.

2. Comprehensive Inbound Service. Includes all features of the Anti-Virus Management Service, Spam Management Service and Store and Forward Service for inbound email traffic.