



## **IAF SERVICES, INC. AGREEMENT FOR FAX TELEPHONY SERVICES**

This Agreement is between IAF SERVICES, INC (IAF), an Oregon Corporation, and the Account Holder (ACCOUNT HOLDER) regarding the telephonic services that will be provided by IAF to the ACCOUNT HOLDER. Collectively IAF and ACCOUNT HOLDER are PARTIES.

ACCOUNT HOLDER understands that in accordance with this Agreement that the ACCOUNT HOLDER will be able to send and receive facsimile documents to other individuals or companies using the Public Switched Telephone Network (PSTN). ACCOUNT HOLDER understands that the PSTN is operated by third parties and that IAF cannot guarantee the reliability of the PSTN nor the contents of documents being sent to and/or received from the PSTN.

**PLEASE READ THESE TERMS AND CONDITIONS CAREFULLY. BY SUBMITTING SUBSCRIBER INFORMATION, REGISTERING, AND ACTIVATING AN ACCOUNT FOR IAF SERVICES, YOU ARE AGREEING TO BE BOUND BY AND ARE BECOMING A PARTY TO THIS AGREEMENT.**

### **1. SCOPE**

This Agreement involves the ACCOUNT HOLDER sending and receiving facsimile documents using telephonic services (SERVICES) that is provided by IAF.

### **2. IAF OBLIGATIONS**

- a. SCOPE OF SERVICES – IAF shall provide connectivity for the sending and receiving of fax documents
- b. SERVICE AVAILABILITY - The SERVICE shall be commercially available 99.0 % of the time to CUS Account Holder subject to system maintenance and force majeure. The demarcation point of connectivity shall be either computerized faxing software or an analog telephone adapter.
- c. TECHNICAL SUPPORT - Routine Technical support is provided during normal business hours, 08:00 and 17:00 Pacific Time. Service will be provided to support the telephonic service. IAF will have no obligation to support third party facsimile software.
- d. SECURITY – The SERVICE will be secure to a standard of generally accepted industry practices that are present in the facsimile transmission industry.
- e. TELEPHONE NUMBERS – IAF will comply with number portability requests subject to a listed fee schedule.

### **3. ACCOUNT HOLDER OBLIGATIONS**

- a. ACCOUNT HOLDER will pay any additional fees incurred by fax activity on holders account(s), including those fees that are charged by any governmental authority and or third parties such as, but not limited to IAFax carriers.
- b. ACCOUNT HOLDER is obligated to send fax documents that fully comply with the laws of the applicable governmental jurisdictions, including, but not limited to the TCPA or the Junk Fax Act.
- c. ACCOUNT HOLDER is obligated to send fax documents that do not infringe on any of the intellectual property rights that are owned by third parties.
- d. ACCOUNT HOLDER agrees not to share passwords, nor let a third party use the SERVICE (e.g. Account Holder subcontracting).
- e. ACCOUNT HOLDER agrees to be bound by IAF SERVICES' Acceptable Use Policy found at [www.iafax.com/files/IAFax-AcceptableUsePolicy.pdf](http://www.iafax.com/files/IAFax-AcceptableUsePolicy.pdf)



4. **TERM.** The term of this AGREEMENT will commence on the date the parties execute this contract or the first date the SERVICE is used, whichever is earlier. The term of the AGREEMENT will be as indicated on IAF's Pricing Schedule. On the renewal date, this AGREEMENT will be automatically renewed for the same period as specified on IAF's SALES ORDER or QUOTATION to the ACCOUNT HOLDER.
5. **BILLING.** Customer agrees to pay IAF for the SERVICES which will be contained in the PRICING SCHEDULE or QUOTATION identifying the particular services, rates, specific terms and other information necessary or appropriate for IAF to provide the SERVICES to the ACCOUNT HOLDER. The SERVICES provided by IAF are subject to: (i) the terms and conditions contained in this AGREEMENT and, (ii) the rates and discounts and other applicable terms set forth in the PRICING SCHEDULE or QUOTATION attached hereto from time to time and incorporated herein by reference, and (iii) each IAF SERVICE REQUEST which is accepted hereunder.
  - a) **IAF Service Changes:** ACCOUNT HOLDER's requests to initiate, charge or cancel Services shall be described in an IAF SERVICE REQUEST. An IAF SERVICE REQUEST must specify all reasonable information, as determined by IAF, necessary or appropriate for IAF to provide the Service(s) in question, which shall include without limitation, the type, quantity, the "Requested Service Date", and charges, if any, relevant to the Services described in the Service Request.
  - b) **Unlimited Usage Defined:** ACCOUNT HOLDER agrees that the term "unlimited" shall mean normal calling patterns and is not applicable when the ACCOUNT HOLDER engages in the resale of telephone services, erratic telephone calls, and/or calls that exceed 10 times to ACCOUNT HOLDER's estimate to IAF of the number of facsimiles that will be sent in a time period.
  - c) **International Billing Increments:** All TDM/ SIP Carrier Termination, Origination, 1+ Origination, and End-User Dedicated calls (excluding calls to International Locations, Canada, and Mexico) are per minute will be billed in six (6) second increments and subject to a six (6) second minimum charge. All Switched Access calls (excluding calls to/from Canada) will be billed in six (6) second increments and subject to an eighteen (18) second minimum charge. All calls to International Locations and Canada will be billed in six (6) second increments and subject to a thirty (30) second minimum charge. All calls to/ from Mexico will be billed in sixty (60) second increments and subject to a sixty (60) second minimum charge.
  - d) **Call Time Calculations:** IAF will solely determine the call duration using IAF's monitoring software. Each fax call is charged an 18 second minimum fax and/or call duration. Each fax call is rounded up to 6 second increments. Each fax call charge is rounded up to a whole cent.
  - e) **International Rates:** IAF International Long Distance Services, IAF's dialing code assignments ("International Dialing Codes") for all International locations and Mexico (including mobile dialing code breakouts) as defined by IAF and are subject to change each month. See the sales order addendum.
  - f) **Short Duration Call Surcharge:** IAF reserves the right to charge a Short Duration Call Surcharge in the event that the percentage of Customer's completed calls equal to or less than 6 seconds in length (here defined as a Short Duration Call) for any Billing Cycle that meets or exceeds 10% of the full amount of Billing Cycle calls (the Short Call Percentage Threshold), IAF may charge an additional fee (the Short Call Surcharge) for each Short Duration Call above the 10% threshold during such Billing Cycle. **Short Duration Calls at or under the Short Call Percentage Threshold will not incur additional charges.** The Short Call Surcharge will be applied at the customer account level. See the Sales Order Addendum.
  - g) **Payphone Surcharge:** Unless as otherwise agreed by the parties in writing, payphone surcharges are paid by IAF on behalf of Customer in connection with payphone originated calls (including a reasonable fee for tracking, reporting and paying such charges). Such charges as of the effective date of the Agreement or



Service Schedule Effective Date, as applicable, are equal (in aggregate) on a per call basis to the amount set forth in Customer's Ancillary Services Schedule.

- h) **Toll Free Non-Call Completion:** Non-Call Completion: Inter-State/ Intra-State and International are charged per call; Non Recurring Charges to be paid by Customer if Customer's domestic and international; Non-Call Completions exceed 10% of Customer's Toll Free Usage. See Sales Order Addendum.
- i) **Other Rates/ Charges:** Certain enhanced features and services are subject to additional charges, surcharges, and fees as provided. See the Sales Order Addendum.
- j) **Service Interruptions, Modifications, and Instructions.** The ACCOUNT HOLDER agrees that IAF may, with advance written notice: (i) Temporarily suspend the Services for the purpose of repair, maintenance or improvement of any of Provider equipment or telecommunication services, and any cabinets or ducts enclosing them; (ii) Vary the technical specification of the Services for operational or regulatory reasons; or (iii) Give instructions about the use of the Services resulting from any mandatory government laws and regulations that become applicable during the term of this Agreement. Such instructions shall, while they are in force, be deemed to form part of this Agreement.
- k) **Taxes:** Customer acknowledges and understands that IAF computes all charges herein exclusive of any applicable federal, state or local use, excise, gross receipts, sales and privilege taxes, duties, fees or similar liabilities (other than general income or property taxes), whether charged to or against IAF or ACCOUNT HOLDER because of the Services furnished to ACCOUNT HOLDER ("**Additional Charges**"). ACCOUNT HOLDER shall pay such Additional Charges in addition to all other charges provided for herein. ACCOUNT HOLDER further agrees that it shall be responsible for the collection of all applicable Additional Charges and the remittance of such Additional Charges to the relevant governmental authority.
- l) **Port In/Port Out Charges** IAF shall charge a fee for telephone number ports either to and/or from IAF Services. This will be charged regardless of whether the port was successful from the originating carrier or to the receiving carrier. See the Sales Order Addendum.
- m) **Non IP Calls** IAF shall charge a fee for telephone number that are terminated on Non-IP networks. See the Sales Order Addendum.
- n) **Late Payment** IAF may charge a late fee amounting to 1.5% per month, compounded, for any amounts not paid within thirty (30) days (Net 30 terms).
- o) **Chargebacks** In the event that IAF accepts a credit and/or debit card for services, and the ACCOUNT HOLDER initiates a chargeback.
- p) **Advanced Payments.** Advanced Payments for future services are non-refundable.
- q) **Termination Fees** IAF reserves the right to charge a reasonable termination fee in the event of nonpayment of any invoice.
- r) **Porting / Discontinuing DIDs** The ACCOUNT HOLDER acknowledges and understands responsibility to notify IAF of transfer or discontinuation of DID numbers. Customer will remain responsible for all charges associated with any DID listed to the ACCOUNT HOLDER until notice to IAF of transfer or termination.

**6. WARRANTIES - THE SERVICE IS PROVIDED ON AN "AS IS" AND "AS AVAILABLE" BASIS.** IAF expressly disclaims all warranties of any kind, whether express or implied, including, but not limited to the implied warranties of merchantability and fitness for a particular purpose. IAF makes no warranty that the SERVICE will be uninterrupted, timely, and secure or error free, or that any transmission through the SERVICE will be sent or received. assumes no responsibility for the deletion or failure to store any messages. Any warranty regarding



connectivity software or connectivity devices that enable the sending and/or receiving faxes is expressly disclaimed. No statement, whether oral or written, shall create any warranty not expressly made herein.

**7. LIMITATIONS OF IAF LIABILITY** - IN NO EVENT WILL IAF BE LIABLE TO THE OTHER FOR ANY TYPE OF INCIDENTAL, PUNITIVE, SPECIAL, INDIRECT OR CONSEQUENTIAL DAMAGES ARISING FROM OR RELATING TO THIS AGREEMENT, INCLUDING BUT NOT LIMITED TO LOST REVENUE OR PROFITS; LOSS OF MESSAGES; LOSSES ASSOCIATED WITH TRANSACTIONS ENTERED INTO OR NOT ENTERED INTO THROUGH THE SERVICES; LOSSES RESULTING FROM UNAUTHORIZED ACCESS TO ACCOUNT HOLDERSCRIBER'S TRANSMISSIONS OR DATA, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES AND WHETHER ARISING UNDER ANY THEORY OF CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY OR OTHERWISE. THE SERVICE LIABILITY TO ACCOUNT HOLDERSCRIBER OR ANY THIRD PARTY IS LIMITED TO THE LESSER OF (i) THE AMOUNT PAID BY ACCOUNT HOLDERSCRIBER TO THE SERVICE HEREUNDER DURING THE THREE (3) MONTH PERIOD IMMEDIATELY PRECEDING THE DATE THE LOSS OR DAMAGE FIRST OCCURS OR (ii) THE ACTUAL AMOUNT OF THE DAMAGE.

**8. INDEMNIFICATION** - ACCOUNT HOLDER (the "Indemnifying Party") will indemnify, defend and hold IAF SERVICES, INC harmless from any claims made by third parties against IAF SERVICES as a result of the use of services provided through the Telephone Numbers that are assigned to ACCOUNT HOLDER's customers.

**THIS INDEMNITY SHALL ALSO INCLUDE ANY TCPA DEMANDS MADE AS A RESULT OF THE ACCOUNT HOLDERS USE OF THE SERVICE**

**9. DEFAULT** - EACH OF THE FOLLOWING IS A "DEFAULT": (I) A PARTY FAILS TO PERFORM OR OBSERVE ANY OF ITS OBLIGATIONS UNDER THIS AGREEMENT (OTHER THAN FOR THE PAYMENT OF MONEY) FOR A PERIOD OF THIRTY (30) DAYS FOLLOWING RECEIPT OF NOTICE FROM THE OTHER PARTY; (II) A PARTY FAILS TO PAY, WHEN DUE, ANY AMOUNTS OWING HEREUNDER; (III) A PARTY'S INSOLVENCY OR LIQUIDATION AS A RESULT OF WHICH SUCH PARTY CEASES TO DO BUSINESS; (IV) THE MATERIAL BREACH OF ANY REPRESENTATION OR WARRANTY MADE BY A PARTY IN THIS AGREEMENT, EXCEPT TO THE EXTENT THE BREACH IS SUSCEPTIBLE TO CURE, IN WHICH CASE THERE WILL BE NO DEFAULT UNLESS THE BREACH IS NOT CURED WITHIN 30 DAYS FROM RECEIPT OF NOTICE FROM THE OTHER PARTY OF THE BREACH; (V) ACCOUNT HOLDER'S WEBSITE IS DEEMED PROHIBITED UNLAWFUL, UNLICENSED, ILLEGAL, MISLEADING, OR OBSCENE, OR (VI) UNSOLICITED FAX ADVERTISEMENTS ARE SENT ARE REGULATED IN THE UNITED STATES UNDER THE TELEPHONE CONSUMER PROTECTION ACT OF 1991 (TCPA), AND THE PRIVACY AND ELECTRONIC COMMUNICATIONS REGULATIONS 2003 (EU), OR OTHER JURISDICTIONS.

**10. REMEDIES** - If IAF is in a DEFAULT, ACCOUNT HOLDER will be entitled, as its sole and exclusive remedy, to terminate this Agreement and seek refunds from IAF.

**11. SERVICE AND ACCOUNT TERMINATION** - If ACCOUNT HOLDER has Breached this Agreement, is in DEFAULT, or has violated any State, United States, or International Law, IAF will be entitled to immediately cease providing the SERVICE without notice and then exercise any one or more of the following remedies: (i) to pursue any remedy available at law or in equity, (ii) to terminate this Agreement; and/or (iii) to permanently suspend and refuse to provide the SERVICE.

**12. NON-ASSIGNMENT; NO THIRD-PARTY RIGHTS** - ACCOUNT HOLDER may not assign or transfer this Agreement or any rights hereunder and this Agreement is for the sole benefit of the parties and there are no third party beneficiaries.



**13. INDEPENDENT CONTRACTORS** - The parties are independent contractors, and nothing in this Agreement will be deemed to place them in any other relationship, including principal-agent partners or joint ventures.

**14. NON-WAIVER/SEVERABILITY** - Failure by a party to enforce its rights hereunder will not be deemed a waiver of its future enforcement of such right or other rights. If any term of this Agreement is held to be invalid, the remainder of the Agreement will remain in force.

**15. LICENSE TO USE SOFTWARE** - IAF grants ACCOUNT HOLDER a personal, non-transferable and non-exclusive license (without the right to sublicense) to use any software, in object code form that is associated with the SERVICE. Customer will refrain from taking any steps to reverse assemble, reverse compile or otherwise derive a source code version of the object code of the software. The software shall at all times remain the sole and exclusive property of IAF or its suppliers. To the extent that use of software by a User is required for the use of a service, ACCOUNT HOLDER may use the software licensed under this Agreement for that purpose.

**16. TELEPHONE NUMBER ESCROW** – IAF will escrow telephone numbers upon the termination of the AGREEMENT for a period that is equal thirty (30) days if the customer does not provide destination porting number. During this period no services will be provided to that telephone number.

**17. FORCE MAJEURE** - Either party will be excused from any delay or failure in performance, other than the payment of money, caused by or due to any cause beyond its reasonable control, including but not limited to acts of God, earthquake, flood, third party labor disputes, utility curtailments, power failures, explosions, civil disturbances, vandalism, riots, war, governmental actions and third party acts or omissions. The obligations and rights of the party so excused will be extended on a day-to-day basis for the period of time equal to that of the underlying cause of the delay.

**18. NOTICES** - All notices will be made by fax or paper, signed by the party giving the same and will be deemed properly given and received (i) on the next business day after deposit for overnight delivery by an overnight courier service or (ii) three business days after mailing, by registered or certified mail, return receipt requested.

**19. SURVIVAL** - The obligations of the parties that by their nature would continue beyond the termination of this AGREEMENT.

**20. CHOICE OF LAW AND VENUE** - This contract will be interpreted under the laws of the State of Oregon. Venue of any action shall be in a court of competent jurisdiction in Washington County, Oregon.

**21. DISPUTE RESOLUTION** - Any dispute or claim that arises out of or that relates to this agreement, or to the interpretation or breach thereof, or to the existence, validity, or scope of this agreement or the arbitration agreement, shall be resolved by arbitration in accordance with the then effective arbitration rules of (and by filing a claim with) Arbitration Service of Portland, Inc., and judgment upon the award rendered pursuant to such arbitration may be entered in any court having jurisdiction thereof.