

etherFAX End User License Agreement (EULA) and Service Level Agreement (SLA)

Definitions:

- i. Agreement means this document.
 - ii. Subscriber means the customer that sends and receives faxes via the etherFAX service.
 - iii. Reseller means the company or person who signed up the subscriber.
 - iv. Service means the etherFAX service.
 - v. Effective Date is the date the Agreement is signed by the Subscriber or reseller.
 - vi. Administrative User is the person or persons responsible for the management of the Subscriber's Service.
 - vii. Internet access means an Internet service capable of supporting the Service.
 - viii. Software means the Fax Server software installed and maintained at the Subscriber's preferred location.
1. The Subscribing customer ("Subscriber") for the etherFAX service (the "Service") agrees to the following:
 - a. **Services and Customer Equipment.** Subject to the terms and conditions of this Agreement, during the term of this Agreement, the Subscriber's faxes will be sent and received through the Service. Subscriber is responsible for the Fax Server software and for providing all equipment necessary to run and properly maintain the Fax Server software, including a server and desktop computer equipment and Internet access. The Service shall be available at least 99.99% of the time.
 - b. **Service Maintenance.** Advance indication of scheduled down time, if any, will be sent to subscribers in advance. etherFAX reserves the right to immediately implement critical security patches, critical fixes or software/hardware modifications/updates that repair or prevent a Service impacting situation.
 - c. **Hours of Operation.** Normal Business 09:00 and 18:00 Eastern Time, Monday through Friday.
 - d. **Technical Support.** The Service will provide reasonable amounts of direct consultation via email and telephone, at no charge to the Subscriber's Administrative User, to assist in troubleshooting and resolving installation and operational issues. The Subscriber may open a support ticket by contacting their fax server provider.
 2. **Security of Data** The etherFAX network has implemented a strong security defense to prevent malicious eavesdropping of sensitive information and other nefarious attacks on its overall operation. etherFAX provides its customers protection by adopting security best practices that include encryption and other security mechanisms to assure customer information and data in transit remains protected at all times.
 3. **Fees, billing and payment.** Beginning on the date Subscriber accepts this Agreement (the "Effective Date"), Subscriber will be responsible for paying their Reseller, or etherFAX, for the Service. Payments not received within 15 days of the due date accrue interest at a rate of 1% per month, or the highest rate allowed by law, whichever is lower. The Service will be suspended if the Subscriber is more than 30 days past due.
 4. **Subscriber's Users.** Subscriber agrees that it is responsible for all individual users who access and/or use the Services through Subscriber's account (each, an "End User"). Accordingly, the terms, conditions, restrictions and obligations of this Agreement applicable to Subscriber

(excluding Subscriber's payment obligations) will also apply to all End Users, and Subscriber will be liable for any breach hereof by any End Users.

5. **Subscriber Conduct.** Subscriber is solely responsible for the contents of its transmissions through the Services. The Service reserves the right to take any action with respect to the Services that the Service deems necessary or appropriate if it believes Subscriber or its information may create liability for the Service or compromise or disrupt the Service for other Subscribers. Subscriber agrees: (a) to comply with FCC Regulations regarding unsolicited fax transmissions (b) not to use the Service for illegal purposes, including but not limited to distribution of unsolicited facsimile advertisements; (c) not to use the Service to infringe any third party's copyright, patent, trademark, trade secret or other proprietary rights or rights of publicity or privacy; and (d) not to transmit through the Service any unlawful, harassing, libelous, threatening, vulgar, obscene or otherwise objectionable material. The Service may use filters and other technologies and procedures to terminate unsolicited fax advertisements without delivering them.
6. **Privacy.** The fax images sent by the Subscriber are not stored by the Service and the Subscriber is responsible for maintaining the fax images. Faxes received by the Service are stored only momentarily and once delivered to the Fax Server at the Subscriber's site; the fax is deleted utilizing FIPS 140-2 compliance standards
7. **Re-Assignment of Service Telephone Numbers provided by the Service.** Subscriber understands that the Service, as owner of all Service telephone number(s), will not be liable for any damages whatsoever arising out of any re-assignment of any Service telephone number following termination of this Agreement or deletion by Subscriber of such telephone number from Subscriber's account. Should the Subscriber wish to cancel the Service Agreement and retain the fax numbers provided by the Service, Subscriber shall provide written notice at least thirty (30) days in advance.
8. **No Warranties.** THE SERVICE IS PROVIDED ON AN "AS IS" AND "AS AVAILABLE" BASIS. The Service 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. The Service makes no warranty that the Services or the Software will be uninterrupted or error free. No statement, whether oral or written, obtained by Subscriber from the Service shall create any warranty not expressly made herein. Some jurisdictions do not allow the exclusion of certain warranties, so some of the above exclusions may not apply.
9. **Limitation of Liability.** IN NO EVENT WILL EITHER PARTY 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. THE LIABILITY OF EITHER PARTY TO THE OTHER, OR OF EITHER PARTY TO ANY THIRD PARTY IS LIMITED TO THE LESSER OF (i) THE AMOUNT PAID BY SUBSCRIBER 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.
10. **Term.** The term of this Agreement will commence on the Contract Start Date as outlined on the etherFAX Subscription Agreement and shall remain in effect until the Contract End Date as outlined on the etherFAX Subscription Agreement. The agreement shall automatically renew

with the initial terms as outlined on etherFAX Subscription Agreement. Customer may change plan at any time during the contracted term provided they have not received a high volume discount.

- 11. Early Termination.** Upon termination of this Agreement, Subscriber's right to use the Services immediately ceases and the Service will not be obligated to provide fax communications to Subscriber or its End Users. The Subscriber will be charged with an early termination fee of 25% of the remaining contracted amount for the then current term, unless the Agreement is terminated within 30 days of the Contract Start Date.
- 12. Non-Assignment; No Third-Party Rights.** Subscriber may not assign or transfer this Agreement or any rights hereunder, and any attempt to do so is void. Subject to the foregoing, this Agreement will be binding upon, and inure to the benefit of, the parties and their respective successors and assigns. This Agreement is for the sole benefit of the parties (and the End Users) and there are no third party beneficiaries.
- 13. 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.
- 14. 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.
- 15. Notices.** Except where other means of communication are expressly provided for in this Agreement, all notices provided for hereunder will be in writing, 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.
- 16. Choice of Law, Forum.** This Agreement shall be governed by, construed, and enforced in accordance with the laws of the State of Delaware without regard to conflicts of law principles. The parties irrevocably consent to exclusive jurisdiction and venue in the state and federal courts in the State of Delaware to the extent that such dispute can be properly brought before the state or federal courts in the State of Delaware.
- 17. Entire Agreement.** Any modification of this Agreement or additional obligation assumed by either party in connection with this Agreement shall be binding only if in writing and signed by each party or an authorized representative of each party. This Agreement, together with the pricing addendum and any other agreements executed together with this Agreement, supersedes any other agreement, whether written or oral, that may have been made or entered into by any party (or any officer or officers of any party) relating to the matters covered herein and constitutes the entire agreement of the parties.



Subscriber: _____

etherFAX, LLC

Signed by: _____

Signed by: _____

Signature: _____

Signature: _____

Date: _____

Date: _____

The Telephone Consumer Protection Act (TCPA), 47 U.S.C. § 227, restricts the use of the facsimile machine to deliver unsolicited advertisements. Specifically, the TCPA prohibits the use of “any telephone facsimile machine, computer, or other device to send an unsolicited advertisement to a telephone facsimile machine.” The TCPA applies only to those facsimile messages that constitute “unsolicited advertisements.” The statutory prohibition applies to such advertisements sent both to residential and business facsimile numbers. **Click here for fact Sheet: [Fax Advertising: What You Need to Know](#)**