

VillageFax-MessageVision Client Agreement

MessageVision DOCUMENT DELIVERY SERVICE AGREEMENT

This Document Delivery Service Agreement ("Agreement") sets forth the terms and conditions under which MessageVision will provide facsimile transmission ("fax") services to successful applicants for new accounts and other parties ("Clients").

The terms and conditions in this Agreement, together with the terms and conditions in any MessageVision Price Declaration then in effect for a Client, and any Application for New Account previously submitted by a Client, constitute the entire agreement between MessageVision and its Clients, and supersede all prior agreements and understandings between MessageVision and its Clients relating to the same subject matter.

The use of MessageVision services by any Client confirms its acceptance of the terms and conditions herein, and its agreement to be bound thereby.

MessageVision SERVICES

MessageVision offers fax services through its www.messagevision.com website (together with other websites owned and operated by MessageVision) ("Services"). Individually, these Services are:

- Outbound faxing services
- Inbound faxing services

Clients may request one or both types of Service from MessageVision.

CLIENT RESPONSIBILITIES

Client represents and warrants that it will use MessageVision Services for lawful purposes only, and that its use of such Services will be in compliance with all federal, state and local laws and regulations applicable thereto, including without limitation all provisions relating to intellectual property, defamation, privacy, International communications, exportation of data, business regulation and consumer protection.

Client further represents and warrants that it will not use MessageVision Services to transmit any threatening, abusive, defamatory, obscene, indecent, profane, hateful, or otherwise unlawful, harmful, or objectionable information of any kind, including without limitation the sending of certain unsolicited advertisements in violation of the federal Telephone Consumer Protection Act, 47 U.S.C. § 227, and the sending of any information that encourages conduct that would constitute a criminal offense, infringe third party rights, give rise to civil liability, or violate any federal, state, local, or other law.

Client further represents and warrants that it will not use the Services to distribute any documents, information, property, or other material that is protected by copyright or other intellectual property right without first obtaining any and all authorizations lawfully required to do so.

Client further represents and warrants that it will not use the Services to obtain unauthorized access to any other computer systems, or to interfere with any other party's use or enjoyment of any other services or property.

Client acknowledges that MessageVision expressly forbids the unlawful use of its Services, that Client has full responsibility to ensure that all applicable laws and regulations are adhered to in using the Services.

Client further acknowledges that MessageVision does not (i) make any endorsement or representation concerning the accuracy or reliability of any opinion, advice or statement transmitted for any Client, (ii) assume any liability for any harassing, offensive, obscene or unlawful material distributed for any Client, or (iii) assume any liability for any material transmitted for any Client that violates any third party's legal rights, including without limitation any copyright or other intellectual property rights.

Client further acknowledges that it is responsible for maintaining the security of the Client's MessageVision Account identification and other confidential information relating to its MessageVision account, and for all charges resulting from use of its MessageVision account, including unauthorized use prior to notifying MessageVision of such use and taking all reasonable steps to prevent its further occurrence.

BILLING TERMS, CHARGES AND PAYMENT

Client agrees to pay all charges for the use of MessageVision Services on or before the date on which payment is due, based on the prices and terms then in effect for each Client. All charges will be exclusive of sales and other taxes, unless otherwise required by law.

MessageVision may change prices or institute new charges for Services at any time. MessageVision also may establish specific volume or other requirements for Outbound Services provided to Clients, and require Clients to pay a monthly maintenance fee to continue those Services. Notice of all such changes and new requirements and charges will be sent to Clients via e-mail. For account holders, such notice will be sent to the e-mail address listed as the "Primary Contact" in the account holder's Application for New Account. Use of Services after receiving such notice shall constitute acceptance by Client of the price changes or new charges applicable to such Services.

If the payment method for any MessageVision Services is by credit or debit card and payment is not received by MessageVision from the card issuer or its agents, Client agrees to pay all amounts due upon demand by MessageVision. Further, when such payment method is used, each time MessageVision Services are used, Client agrees that MessageVision is authorized to charge the amount due to the designated credit or debit card. Client further agrees that MessageVision may (at its option) combine one or more charges in submitting same to said credit card issuer for payment. Client further agrees that MessageVision may submit charges for monthly Service fees each month, without further authorization by Client, until Client provides notice (in accordance with any MessageVision' verification procedures then in effect) that this authorization has been terminated and another method of payment has been chosen. Such notice will not affect charges submitted prior to the time when such notice is received or can reasonably be acted upon. Client further agrees that it will promptly notify MessageVision of any changes to: (a) the account number or expiration date of the card used to pay for Services; and (b) Client's billing address. Client must also promptly notify MessageVision if that card is canceled for any reason, including without limitation for loss or theft.

OWNERSHIP OF INBOUND FAX NUMBERS

Client acknowledges that it is not the owner of any inbound fax number assigned by MessageVision to Client's account, and that ownership of any and all such numbers is vested solely in MessageVision.

Client further acknowledges that MessageVision shall, in its sole discretion, select and assign fax numbers to Client's account for use in connection with any Services provided by MessageVision. The selection and assignment of such numbers will be based on available inventory, and Client will have no right to choose or change those numbers or to retain any previously assigned numbers.

Client further acknowledges that MessageVision may from time to time decide to change the inbound fax numbers assigned to Client (whether because of an area code split or any other reason), and also that following the termination of any Client account,

or the discontinuation or suspension of Services to any Client for any reason, any and all such numbers may be reassigned immediately to one or more other Clients for use in connection with Services provided to them.

Client further acknowledges that MessageVision will not be liable for any damages arising out of or relating to any reassignment of numbers by MessageVision, regardless of the reason for such reassignment, including without limitation any consequential or special damages.

PRIVACY POLICY

MessageVision is committed to protecting the confidentiality of information it obtains from its Clients. Set forth below are the procedures applicable to such information, which Client acknowledges and to which it consents.

In the course of providing Services to Clients, MessageVision obtains or gains access to certain information relating to our Clients, those to whom they send faxes, and those from whom they receive faxes. This information may include, for example, names, addresses, telephone numbers, facsimile numbers and messages, e-mail addresses, billing addresses, credit card numbers, IP addresses, domain types, and browser types.

MessageVision utilizes reasonable and appropriate protections to ensure that this information is not misused or accessed without authorization. For example, at MessageVision, access to this information is restricted to those employees and contractors who need to use the information in order to perform legitimate business tasks relating to the Services or to systems maintenance, internal security or related matters.

Despite these efforts, however, it is impossible to guarantee the confidentiality, privacy or security of this information. < are faxes such which from or to numbers the transmits, MessageVision of content access intercept able be still might parties third example,>

MessageVision does not sell, lease or otherwise disclose any of this information to third parties without our Clients' consent, except as authorized by law. For example, MessageVision may disclose such information to law enforcement officers and agencies, other government officials, or other parties in response to criminal or civil subpoenas.

MessageVision also does not sell or resell any lists of its Clients, or of the recipients of the faxes transmitted for our Clients.

Questions regarding MessageVision' Privacy Policy may be directed by e-mail to privacy@messagevision.com or by U.S. Mail or overnight delivery to the following business address: MessageVision, Attn: Privacy Compliance Officer, 1401 N. Tustin Ave. Suite 230, Santa Ana, CA 92705.

MESSAGE CONTENT AND FAX NUMBERS

Client acknowledges that MessageVision does not control or provide either the content of the information MessageVision transmits on behalf of its Clients, or the fax numbers to which such information is transmitted. MessageVision is a passive provider of Services that Clients use to send and receive information of their own choosing to and from persons and entities they themselves select. MessageVision does not review or monitor the contents of the faxes sent or received by its Clients, and does not decide the fax numbers to which such information is sent. Except as stated above, MessageVision does not disclose to third parties such information or numbers.

Client acknowledges, however, that MessageVision may access certain fax numbers and content for technical purposes, such as to ensure that faxes are routed correctly, conform to MessageVision system requirements, do not cause disruptions to the Services or MessageVision systems generally, or for other similar reasons.

CLIENT COMMUNICATIONS

MessageVision communicates with its Clients in a number of ways, in the course of which it acquires certain information from those Clients. Set forth below are the procedures applicable to such information, which Client acknowledges and to which it consents.

When a Client contacts a MessageVision client care representative by telephone, e-mail, fax, or letter, to request information, report a problem, or provide feedback, MessageVision may keep a record of that contact in its files. The client care representative may ask for the Client's name, e-mail address, or other information in order to create a record of the communication and, if necessary, send a reply. The staff in MessageVision' client care group have access to these records to better serve Clients' needs.

When a Client visits the MessageVision website (including without limitation any websites owned and operated by MessageVision) MessageVision may track the Client's traffic pattern, including which web pages the Client views while using the site. For this purpose "cookies" may be written to Clients' computer hard drives. Information gathered in this manner may be used to enhance or modify the Services, identify Client preferences, determine the usefulness of the site, compile demographic information on site users, and diagnose problems with MessageVision servers and software. The use of such "cookies" does not enable third parties to access any Client's customer information.

MessageVision may send Clients periodic e-mails containing information about the company, administrative notices about Client accounts, Service features, Service usage tips, information about third party products and services that are likely to be of interest to MessageVision Clients, and Client satisfaction questions. Clients may "opt-out" from receiving information about third party products and services by sending an email to opt-outofthirdparty@MessageVision.com. Clients with free Outbound user accounts may only "opt-out" from receiving such information by terminating their MessageVision accounts.

ACCOUNT TERMINATION

Clients may terminate their account and discontinue the use of MessageVision Services at any time for any reason. Clients desiring to do so may send an e-mail to terminateMessageVisionaccount@MessageVision.com. The termination of any account shall not relieve Clients of the obligation to pay for any Services provided prior to the date notice of termination is received by MessageVision.

MessageVision may terminate the account of any Client, and discontinue providing services to any Client, at any time for any reason. Reasons for such action may include, without limitation, nonpayment for Services, failure of a credit card issuer to honor a Client request for payment for Services, Client use of Services to engage in conduct that unlawful, interferes with other Clients' use of the Services, is harmful to MessageVision or third parties, violates this Agreement, or violates or may violate any law or regulation.

Client acknowledges and agrees that MessageVision shall not be liable for any damages suffered by Client arising out of or relating to MessageVisions termination of its account, or the discontinuation of any Services by MessageVision.

MODIFICATIONS TO AGREEMENT

MessageVision may amend this Agreement at any time by posting the Agreement in amended form on its website, www.MessageVision.com. Set forth below are the procedures applicable to such amendments, which Client acknowledges and to which it consents.

Client is responsible for reviewing the MessageVision website at regular intervals to determine whether any amendments have been made to the Agreement.

In addition, MessageVision will notify accounts holders when the Agreement has been amended by sending notice of such amendment to such account holder at the e-mail address listed as the "Primary Contact" in the account holder's Application for New Account.

Use of MessageVision Services after the amended Agreement is posted to the MessageVision website and, for account holders, after notice of such amendment has been sent to their Primary Contact's e-mail address, shall be pursuant to the Agreement as so amended.

BILLING DISPUTES

All disputes regarding bills for Services must be detailed, in writing, and submitted with appropriate documentation along with payment of all undisputed amounts due. With respect to any invoice that has been paid, Client shall have an additional thirty (30) calendar days to claim the existence of a dispute with respect to such invoice. Absent such claim, all such invoices shall be deemed correct.

Complete Documentation of all billing disputes must be sent to: MessageVision, Attn: Controller, 1401 N. Tustin Ave. Suite 230, Santa Ana, CA 92705, or by facsimile to (714) 734-1040, with duplicate notification to follow by U.S. Mail or overnight delivery.

An amount will not be considered "in dispute" until Client has provided MessageVision with written notification thereof and complete documentation with respect to same. If resolution of a billing dispute cannot be resolved through normal operational procedures both parties agree to immediately attempt to resolve the dispute through the Informal Dispute Resolution procedure.

DISPUTE RESOLUTION

With the limited exceptions set forth below, Client agrees to arbitrate all disputes with MessageVision arising out of or relating to this Agreement, any transactions hereunder, the provision of any Services, or the payment or nonpayment for any Services provided ("Dispute").

Prior to commencing arbitration with respect to any such Dispute, either party shall first give notice of that Dispute to the other party. That notice shall specifically describe the Dispute, reference this provision, and designate an executive level officer to conduct negotiations with the other party in a good faith effort to resolve the Dispute. Within five (5) business days, the other party shall designate an executive level officer to engage in such negotiations, which shall be conducted thereafter with alacrity.

If the Dispute is not resolved through this informal dispute resolution procedure, either party may commence binding arbitration with respect to such Dispute. Such arbitration shall be conducted under the auspices of the American Arbitration Association ("AAA") and at the office of the AAA located in Orange County, California. The arbitration will be held in accordance with the rules set forth herein, and otherwise under the AAA Rules.

Either party may initiate such arbitration by providing a written demand for arbitration (with a copy to the other party), a copy of this Agreement, and the administrative fee required by the AAA rules to the AAA in Orange County, California. The remaining cost of the arbitration, including arbitrator's fees, shall be shared equally by the parties unless the arbitration award provides otherwise. Each party shall bear the cost of preparing and presenting its case. The parties agree to undertake all reasonable steps to expedite the arbitration process.

One arbitrator will be appointed in accordance with the AAA Rules within thirty (30) calendar days of the submission of the demand for arbitration. The arbitrator shall designate the time and place in Orange County, California for the hearing within thirty

(30) calendar days of his or her appointment. MessageVision and Client agree that the arbitrator's authority to grant relief shall be subject to the provisions of this Agreement, the USAA, and the ABA-AAA Code of Ethics for Arbitrators in Commercial Disputes. The arbitrator shall not be authorized to award, nor shall Client or MessageVision be entitled to receive, any punitive, incidental, consequential, exemplary, reliance or special damages, including damages for lost profits. The arbitrator's decision shall follow the plain meaning of the Agreement and shall be final, binding, and enforceable in a court of competent jurisdiction.

Alternatively, where the Dispute involves the nonpayment of charges for Services provided, and is otherwise within the jurisdiction of the Small Claims Court division of the Superior Court of the State of California for Orange County, and where the amount in dispute does not exceed the jurisdictional limit for such matters to be heard in such court, either party may file suit in such court to resolve such Dispute in that forum instead of by arbitration before the AAA.

Any other litigation brought by Client against MessageVision, whether in aid of arbitration or otherwise, shall be brought only in the United States District Court for the Central District of California, or the Superior Court of the State of California for Orange County.

The laws of the State of California, excluding its conflicts of law rules, shall govern in the resolution of any Dispute, and on all other matters arising out of or relating to this Agreement and any Services provided to Client.

NONWAIVER

The failure of either party any time, or from time to time, to require performance of any obligation under this Agreement shall in no manner affect the right of either party to enforce any provision of this Agreement at a subsequent time and shall not be construed as a waiver of any subsequent breach of that same provision.

FORCE MAJEURE

Neither Client nor MessageVision shall be liable to the other for any delay or failure to perform any part of this Agreement if such delay or failure is caused by a Force Majeure Event. The party claiming relief under this Section shall notify the other in writing of the existence of the Force Majeure Event and shall be excused on a day-by-day basis to the extent of such prevention, restriction or interference until the cessation of the Force Majeure Event.

A "Force Majeure Event" means an unforeseeable event (other than a failure to comply with payment obligations) beyond the reasonable control of a party, including without limitation an act of God, fire, flood, war, civil disorder, labor strike, sabotage, service capacity limitation, material shortages or unavailability or other delay in delivery not resulting from the responsible party's failure to timely act in connection therewith, lack of or delay in transportation, and changes in government codes, ordinances, laws, rules, regulations or restrictions.

NOTICES AND CONSENT

Any notice required hereunder to be delivered to MessageVision shall be delivered by either e-mail to Client's sales representative at MessageVision at sales@MessageVision.com, or by U.S. Mail or overnight delivery to MessageVision, MessageVision, Attn: Privacy Compliance Officer, 1401 N. Tustin Ave. Suite 230, Santa Ana, CA 92705.

Any notice required hereunder to be delivered to Client shall be delivered by either e-mail to the e-mail address listed for Client's "Primary Contact" in Client's application for New Account, or by U.S. Mail or overnight delivery to the address listed for Client's "Primary Contact" in such application.

In any matter requiring the prior consent of either MessageVision or Client, such consent will be deemed given only if given in writing by a duly authorized representative of either MessageVision or Client, and will not be unreasonably denied.

INDEMNIFICATION

Client shall defend, indemnify and hold harmless MessageVision, its officers, directors, employees and agents from any and all damages, claims and expenses, including reasonable attorney's fees, arising out of or relating to Client's use of MessageVision' Services, including without limitation Client's breach of this Agreement, use of any Client account, placement or transmission of any message, information, software or other content, infringement of any intellectual property or other right of any third party, or violation of any laws or regulations pertaining to the sending of unsolicited advertisements.

MessageVision shall provide reasonable notice of any claim, action or demand for which indemnification is sought, but any failure to do so shall not compromise MessageVision' right to indemnification hereunder in the absence of any actual prejudice to Client.

As a condition for MessageVision to provide Services to Client hereunder, Client agrees that under no circumstances, including negligence, shall MessageVision or any officer, director, employee or agent of MessageVision, be liable for any direct, indirect, incidental, special or consequential damages that result from the use of or inability to use the Services, or that result from any mistakes, omissions, interruptions, deletion of files, errors, defects, delays in operation or transmission, or failures of performance relating to the use of the Services.

DISCLAIMER OF WARRANTIES AND LIMITATION OF LIABILITY

MessageVision SERVICES AND PRODUCTS ARE PROVIDED "AS IS." MessageVision MAKES NO EXPRESS OR IMPLIED REPRESENTATIONS OR WARRANTIES RELATING TO THE CONDITION, USE, MERCHANTABILITY, SECURITY, ACCURACY, OR FITNESS FOR PARTICULAR PURPOSE THEREOF. MessageVision ALSO DOES NOT REPRESENT OR WARRANT THAT ITS SERVICES WILL BE UNINTERRUPTED OR WITHOUT ERROR.

CLIENT'S USE OF MessageVision SERVICES AND PRODUCTS IS AT CLIENTÆS OWN RISK. CLIENT ASSUMES FULL RESPONSIBILITY FOR ANY RISK OF LOSS RESULTING THEREFROM.

CLIENT'S EXCLUSIVE REMEDIES WITH RESPECT TO THE USE OF MessageVision SERVICES AND PRODUCTS, AND ANY BREACH OF THIS AGREEMENT, ARE LIMITED TO THE AMOUNTS ACTUALLY PAID BY CLIENT FOR SUCH SERVICES AND PRODUCTS. CLIENT HEREBY WAIVES ANY CLAIMS IT MIGHT OTHERWISE HAVE FOR ANY OTHER REMEDIES, AND RELEASES MessageVision AND EACH OF ITS OFFICERS, DIRECTORS, EMPLOYEES AND AGENTS FROM ANY AND ALL OBLIGATIONS, LIABILITIES AND CLAIMS IN EXCESS OF THIS LIMITATION.

CLIENT WILL NOT RELY ON ANY REPRESENTATION RELATING TO THIS AGREEMENT OR THE SERVICES PROVIDED BY MessageVision THAT IS MADE BY ANY PERSON OTHER THAN AN AUTHORIZED OFFICER OF MessageVision.

SEVERABILITY

If any provision contained in this Agreement shall be held invalid under law, then all other provisions contained herein that can be given effect without such invalid provision shall be given effect.

BINDING AGREEMENT

This Agreement shall inure to the benefit of, and shall be binding upon, MessageVision, its Clients and their respective successors and assigns.

CONVENIENCE ONLY

The captions of sections in this Agreement are for convenience only and do not limit or modify the terms and conditions of this Agreement or any provision herein.