

METROFAX AFFILIATE PROGRAM AGREEMENT

This Agreement, made and entered by and between MetroFax ("we"), and you, the affiliate ("you" or "Affiliate"), contains the complete terms and conditions that apply to your participation in the MetroFax Affiliate Program (the "Affiliate Program" or "Program")

1. ENROLLMENT IN THE PROGRAM

You will submit a complete Affiliate Program application. After we review your application, we will notify you of your acceptance or rejection to the Program. We may reject your application (at our sole discretion) if we feel your site is unsuitable or inconsistent with the mission of MetroFax.

2. PROMOTION OF OUR AFFILIATE PROGRAM

Upon your acceptance as an Affiliate Site, we will make available to you a variety of graphic and textual links (the "Links"), which, subject to the terms and conditions hereof, you may display as often and in as many areas of your site as you desire. The Links will serve to identify your site as a member of our Affiliate Network and will establish a link from your site to ours.

3. PAYMENTS

a. MetroFax Agrees To:

- Pay Affiliate twenty dollars (US \$20) per new MetroFax account subscription that you refer from your site.
- Pay Affiliate on a tiered compensation schedule for confirmed subscriptions. A confirmed subscription is one in which the new account remains active for a minimum of forty-five (45) days. An affiliate is to be paid using the following tiered schedule:
 - Thirty dollars (US \$30) per confirmed subscription when sending between twenty-five (25) and one hundred (100) subscriptions per month.
 - Thirty-eight dollars (US \$38) per confirmed subscription when sending between one hundred and one (101) and three hundred fifty (350) subscriptions per month.
 - Fifty dollars (US \$50) per confirmed subscription when sending three hundred fifty-one (351) or more subscriptions per month.
- No fees shall be payable if the new account is fraudulent.
- Pay Affiliate on a monthly basis when your account has reached the minimum balance threshold, subject to change, as determined by Commission Junction: [Current payment threshold available here.](#)

b. Affiliate Agrees To:

- Place MetroFAX Links on your site.
- Have sole responsibility for the development, operation, and maintenance of your site and for all the materials that appear on your site.
- Ensure that all materials posted on your site are not illegal and do not infringe on the rights of any person or entity of any kind. We disclaim all liability for all materials on your site.
- Indemnify, defend, and hold MetroFAX harmless from all claims, damages, and expenses relating to the development, operation, and contents of your site.

4. Confidentiality

Except as otherwise provided in this Agreement or with the consent of the other party hereto, each of the parties hereto agrees that all information, including, without limitation, the terms of this Agreement, business and financial information, customer and vendor lists, and pricing and sales information, concerning us or you, respectively, or any of our Affiliates provided by or on behalf of any of them shall remain strictly confidential and secret and shall not be utilized, directly or indirectly, by such party for its own business purposes or for any other purpose except and solely to the extent that any such information is generally known or available to the public through a source or sources other than such party hereto or its affiliates.

5. Limitation of Liability and Indemnification

WE WILL NOT BE LIABLE FOR INDIRECT, SPECIAL, OR CONSEQUENTIAL DAMAGES, OR ANY LOSS OF REVENUE, PROFITS, OR DATA, ARISING IN CONNECTION WITH THIS AGREEMENT OR THE AFFILIATE NETWORK, EVEN IF WE HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. FURTHER, OUR AGGREGATE LIABILITY ARISING WITH RESPECT TO THIS AGREEMENT AND THE AFFILIATE PROGRAM WILL NOT EXCEED THE TOTAL COMMISSIONS PAID OR PAYABLE TO YOU UNDER THIS AGREEMENT. YOU AGREE TO HOLD HARMLESS, DEFEND AND INDEMNIFY METROFAX, ITS OFFICERS, DIRECTORS, EMPLOYEES, SUBSIDIARIES, CONTRACTORS, SUBCONTRACTORS, SUPPLIERS, AGENTS, PARTNERS AND AFFILIATES, SUCCESSORS AND ASSIGNS FROM ALL LIABILITIES, CLAIMS, DEMANDS AND EXPENSES, INCLUDING REASONABLE ATTORNEYS' FEES, THAT ARE DUE TO, OR THAT ARISE FROM YOUR USE OR MISUSE OF ANY GOODS OR SERVICES, OR FOR INFRINGEMENT BY YOU OR OTHERS OF INTELLECTUAL PROPERTY RIGHTS OR ANY OTHER RIGHT OF ANY THIRD PARTY. METROFAX MAY ASSUME EXCLUSIVE CONTROL OF ANY DEFENSE OR ANY MATTER SUBJECT TO INDEMNIFICATION BY YOU, AND YOU AGREE TO COOPERATE WITH METROFAX IN SUCH EVENT. Your indemnification will survive any termination.

6. Limited License

We grant you a nonexclusive, nontransferable, revocable right to access our site through the Links solely in accordance with the terms of this Agreement, for the sole purpose of linking your site to our site, solely for the purpose of identifying your site as a participant in the Program and assisting in increasing MetroFAX account registrations. You may not alter, modify, or change the Links in any way. You are only entitled to use the Links to the extent

that you are a member in good standing of the MetroFAX Affiliate Program. We may revoke your license anytime by giving you written notice.

7. Disclaimers

METROFAX'S GOODS AND SERVICES ARE PROVIDED "AS IS" AND IN NO EVENT WILL METROFAX, ITS OFFICERS, DIRECTORS, EMPLOYEES, CONTRACTORS, SUB-CONTRACTORS, SUPPLIERS, AGENTS, AFFILIATES, SUBSIDIARIES, SUCCESSORS OR ASSIGNS BE LIABLE TO YOU FOR INDIRECT, INCIDENTAL, CONSEQUENTIAL, SPECIAL OR EXEMPLARY DAMAGES (EVEN IF THAT PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES), ARISING FROM OR OTHERWISE RELATED TO THIS AGREEMENT, SUCH AS, BUT NOT LIMITED TO, LOSS OF REVENUE, PROFITS, ACCOUNTS OR LOST BUSINESS, AND WHETHER ARISING IN CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY OR OTHERWISE.

8. Termination

The terms of this Agreement will begin upon acceptance of your application. This Agreement shall commence on the date of approval of your Affiliate Program application and shall continue thereafter in full force and effect until terminated at any time by either party by giving the other party written notice of termination. Upon termination of this Agreement for any reason, you will immediately cease use of, and remove from your site, all Links to our site, and all MetroFAX trademarks, trade dress, and logos, and all other materials provided by or on behalf of us to you pursuant hereto or in connection with the Program.

9. Policies and Pricing

Customers who subscribe to MetroFAX services through this Program will be deemed to be MetroFAX customers. Accordingly, all of our rules, policies, and operating procedures concerning customer orders, customer service, and MetroFAX subscriptions will apply to those customers. We may change our policies and operating procedures at any time. For example, we will determine the prices to be charged for services sold under this Program in accordance with our own pricing policies.

10. Modifications

We may modify any of the terms and conditions of this Agreement at any time. You will be notified by email, and a change notice will be posted on our site. If the modifications are unacceptable to you, your only recourse is to terminate this Agreement. Your continued participation in this Affiliate Program after a change notice has been posted will constitute binding acceptance of the change.

11. Independent Contractors

You and MetroFAX are independent contractors and nothing in this Agreement will create any partnership, joint venture, agency, franchise, sales representative, or employment relationship between the parties. You will have no authority to make or accept any offers or representations on our behalf.

12. Representations and Warranties

You hereby represent and warrant to us as follows: This Agreement has been duly and

validly executed and delivered by you and constitutes your legal, valid, and binding obligation, enforceable against you in accordance with its terms. The development, operation, and contents of your site do not infringe upon the copyright, trademark, or any other right of any person or entity.

13. Independent Investigation

You acknowledge that you have read this Agreement and agree to all its terms and conditions. You understand that we may at any time (directly or indirectly) solicit customer referrals on terms that may differ from those contained in this Agreement or operate Websites that are similar to or compete with your Website. You have independently evaluated your desirability of participating in the MetroFAX Affiliate Program and are not relying on any representation, guarantee, or statement other than as set forth in this Agreement.

14. Fraud

If you commit fraud or falsify information in connection with the registration of MetroFAX accounts through the Links on your site, this Agreement will be terminated immediately. In addition, you will be liable to MetroFAX for any and all damages that MetroFAX suffers as a result of such actions. You will also be responsible for returning to MetroFAX all commissions received for fraudulent/falsified accounts, and we will not hesitate to pursue all legal causes of action against you to the fullest extent possible under the law.

15. Anti-Predatory Advertising Policy

Affiliates will be removed from the MetroFAX Affiliate Program and forfeit any pending commissions if they are utilizing or distributing software downloads that potentially enable diversions of commission from other affiliates in our Program. Predatory advertising is defined as any method that creates or overlays links or banners on Websites, spawns browser windows, or any method invented to generate traffic from a Website without that Website owner's expressed, written permission.

16. Email Compliance

For good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Affiliate agrees to comply with the requirements of the CAN-SPAM Act of 2003 in its distribution of email that contains messaging regarding MetroFAX. More specifically, email that meets this criteria:

- May only be sent to recipients who have expressly agreed directly with Affiliate, in advance, to receive such communications from Affiliate;
- Must clearly and conspicuously identify that the message is an advertisement or solicitation, unless recipient has given prior affirmative consent to receipt of the message. Affirmative consent means that the recipient expressly consented to receive the message either in response to a clear and conspicuous request for such consent or at the recipient's own initiative;
- Must clearly and conspicuously notify the recipient of the opportunity to decline to receive further commercial email from Affiliate;
- Must provide a valid physical postal address of Affiliate;

- Must provide a functioning return email address or other Internet-based mechanism, clearly and conspicuously displayed, that a recipient may use to submit, in a manner specified in the commercial email, a reply email or other Internet-based mechanism a request not to receive future commercial email from Affiliate. The return address or Internet-based mechanism must be capable of receiving such messages for at least thirty (30) days after the transmission of the original message. Affiliate may not send subsequent commercial emails more than ten (10) business days after the recipient's request not to receive further emails has been received (unless there is a subsequent affirmative consent by the recipient to receive such emails.) Once Affiliate receives such a request, Affiliate may not sell, lease, exchange or otherwise transfer or release the email address of the recipient.
- May not contain materially false or materially misleading header information, or deceptive subject heading.
- May not contain sexually oriented material.

Affiliate may not initiate or assist in the transmission of commercial email using an email address: (1) that was collected through automated means; from a third party Website in violation of that third party's posted privacy policy, or (2) that was generated through automated means by combining names, letters or numbers into numerous permutations. Affiliate may not conduct fraudulent activities related to electronic mail, including but not limited to the material falsification of header or transmission information, the unauthorized use of someone else's computer to send bulk commercial email, and the registration of an email account that materially falsifies the identity of the actual registrant. Upon MetroFax's request, Affiliate shall provide MetroFax with documentation demonstrating that the recipients consented to receive the email at issue.

17. Public Statements

You agree that we may identify you or Your Site as an Affiliate of the Program as long as you participate in the Program. We may make this identification orally, in writing or electronically.

18. Reservation of Rights

MetroFax may terminate this Agreement at any time if your site is determined (at our sole discretion) to be unsuitable for the Program, even if your site has not changed since the time that your Affiliate Program application was accepted. MetroFax also reserves the right to monitor Affiliate sites at any time to determine whether they are in compliance with this Agreement.

19. Governing Law

You agree, and will not challenge, that the proper forum for jurisdiction and venue for the resolution of any dispute beyond that addressed in the arbitration provision above shall be the courts of the State of Washington, King County. This agreement shall be governed by and interpreted in accordance with the laws of the State of Washington. The parties acknowledge that this agreement evidences a transaction involving interstate commerce.