

THE LAW OFFICES OF
SUSAN B. TERRADO

Susan B. Terrado, Esq.
susan@terradolaw.com
Telephone: 707-637-8021
Toll-Free: 866-643-8880
Fax: 866-638-6660

www.terradolaw.com

4381 Broadway, Suite 102
American Canyon, CA 94503

AGREEMENT TO ACCEPT COMMUNICATIONS BY EMAIL

This Agreement is made by and between _____ (The Attorney)
and the undersigned Client as an Addendum to their Legal Services Agreement .

BACKGROUND

Increasingly, email is becoming the preferred method of communication for business, personal and legal matters. Both the Attorney and the Client derive substantial benefits by the use of email communication: both parties may communicate with each other more quickly, it allows the rapid transmission of information and documents, it fosters the Attorney's ability to keep the Client reasonably informed about the status of the Client's matters, the costs of postage, faxes and copies in the Client's case may be reduced so that legal representation remains reasonably affordable, and the parties can address inquiries from each other from virtually any location where an internet connection can be established and at times beyond normal business hours. The benefits, convenience and expedience of email communications are also accompanied by potential risks, particularly to the confidentiality afforded to communications between attorneys and clients, arising from many factors.

Internet email communications are not completely secure; they are typically sent, in unencrypted format, by land-based phone lines through a number of randomly selected intermediate computers maintained by independent Internet Service Providers (ISPs or routers) which maintain software designed to help an internet email message travel from the sender to the recipient as its final destination. Each ISP is capable of copying messages passing through its network. Every ISP also has a legal, though qualified, right to monitor email passing through or temporarily stored in its network . Risks also arise that an unencrypted Internet email communication between an attorney and a client may be mistakenly and unintentionally sent to a third-party. A further risk to the confidentiality of attorney-client email communications is the possibility of illegal and unauthorized interception, either by a ISP exceeding it's qualified monitoring rights or making unauthorized disclosures, or by third-party hackers who use ISPs as a means of intercepting email not intended for them.

The American Bar Association's Standing Committee on Ethics and Professional Responsibility (the ABA Committee) has concluded that these possibilities present no greater risks to the reasonable expectation of privacy the Parties have in their email communications or the confidentiality of such communications than those that may arise from the use of other traditional forms of communication such as postal and commercial mail services, faxes, or land-line and cellular telephone communications. As a result the ABA Committee issued Formal Opinion 99-413 on March 10, 1999 permitting attorneys to transmit information relating to the representation of a client by unencrypted email sent over the Internet without violating the Rules of Professional Conduct. Such a mode of transmission affords the same reasonable expectation of privacy, from a technological and legal standpoint, as that accorded U.S. and commercial mail, land-line telephonic transmissions, and facsimiles.

NOW THEREFORE, the Parties, understanding both the benefits and risks of using unencrypted Internet email communications as their primary method of communication, agree as follows:

TERMS

- 1) **Email Communication Between the Parties.** The Client and the Attorney both desire and agree to communicate primarily through unencrypted Internet email in connection with the legal services and advice the Attorney is to provide to the Client on the terms set forth in this Agreement.
 - A. The Parties recognize that the use of unencrypted Internet based email communications is an acceptable form of communication between them and authorize its use between themselves, at the email addresses set forth below, as their primary mode of communication for all purposes involved in the Attorney's provision of legal services to the Client.
 - B. Email communications between the Parties may also include the attachment of documents without the need for password protection or locking procedures.

- 2) **Risk Minimization.** To minimize the risks inherent in unencrypted Internet email communications between the Parties, particularly to the confidentiality normally afforded to such communications, the Parties agree that they will, to the best of their ability, comply with the following guidelines in communicating with each other through unencrypted Internet email:
 - A. All unencrypted Internet email communications between the Parties shall be limited to matters in which the Client is seeking legal advice and services from the Attorney in his capacity as a legal professional in the matters specified in the Parties' Legal Services Agreement or to matters in which the Attorney is providing legal advice and services to the Client in his capacity as a legal professional in the matters specified in the Parties' Legal Services Agreement.
 - B. The reasonable expectation of privacy the Parties have in their Internet email communications and the confidentiality of the Client's legal matters and dealings with the Attorney are better protected when the Client reduces the chances that anyone but the Client has access to the Parties' email communications. The Client therefore agrees as follows:
 - (i). All such communications shall be made only between the Client and the Attorney and shall not be sent or reviewed in the presence of third parties, nor shall they be sent from a third-party's network or email account. Allowing a third-party to participate in the sending, receiving or reviewing of email communication between the Parties may eliminate their reasonable expectation of privacy and may destroy the confidential nature of such communications.
 - (ii). The Client shall use a personal email address and not one provided through work or employment. The Client's use of a work or business email network or system to send or review email communications with the Attorney may eliminate their reasonable expectation of privacy and may destroy the confidential nature of such communications.
 - C. The Parties may, but are not required to, place a notice on email messages to each other indicating that it is a privileged and confidential communication only for the intended recipient.
 - (i). The following warning language (or something substantially similar) is suggested for use by the Parties: "This Internet email contains confidential, privileged information intended only for the addressee. Do not read, copy, or disseminate it unless you are the addressee. If you have received this email in error, please call us immediately at (____) ____-____, and ask to speak to the message sender. Also, please email the message back to the sender at _____@_____.com by replying to it and then delete it. We appreciate your assistance in correcting this error."
 - (ii). Using such a warning can help preserve the Parties' privacy expectations in, and the confidentiality of, the email communications between them in the event of the unintentional communication of an email message to third-parties.

- 3) **Additional Obligations.** In order to maximize the benefits of email communications between the Parties they also agree to observe the following obligations:
 - A. **Routine Review of email.** The Parties shall routinely review their email accounts, at a minimum at least one time each day, so as to timely receive and review communications from each other.
 - B. **Acknowledgment of Receipt.** If requested by the sender, the recipient shall acknowledge receipt of an email communication.

- C. **Prompt Response.** The Parties shall strive to respond to any email communications within 24 hours or less.
- D. **Email Attachments.** The Attorney will routinely send the Client copies of letters or emails sent to others in the Client's case, pleadings filed by the Attorney on the Client's behalf or filed by opposing parties, communications the Attorney receives from other parties and other documents pertinent to the Client's case. Most attachments will be in PDF format. The Client may also send attachments to the Attorney, preferably in PDF format. However, the Attorney is also capable of sending, receiving and reviewing attachments in many other formats including, but not limited to, Microsoft Word documents, WordPerfect Documents, Excel and Quattro spreadsheets, Microsoft Power Point presentations and Google Documents.
 - (i). The Parties shall, at a minimum, install and maintain an updated version of Adobe Acrobat Reader (which may be freely downloaded from the Internet) on their systems, so as to permit them to open, review and if necessary, print PDF attachments to the email communications between them. The Parties shall also install and maintain, as needed, updated versions of such other freely downloadable software on their systems, so as to permit them to open, review and if necessary, print other types of attachments to the email communications between them.
 - (ii). If the Attorney sends the Client an attachment requiring the Client's signature, the Client must promptly print, review and sign the attachment. The Client must also advise the Attorney by email that the attachment has been signed and must promptly return the originally signed attachment to the Attorney by way of regular mail or personal delivery.
 - (iii). The Attorney shall keep copies of all email attachments in the Client's file consistent with the Rules of Professional Conduct.
 - (iv). The Client should also maintain copies of all emails and attachments received from the Attorney in a safe place for at least the next ten (10) years.

4). Email Addresses.

- A. The Client's email address is set forth below under the Client's signature of this Agreement. The Attorney will not knowingly disclose this email address to anyone else without the Client's authorization, except as may be necessary for purposes of providing legal services and advice to the Client. On some occasions the Attorney may be required to, or may find it useful to, simultaneously copy the Client on an email communication sent in reply to another party in the Client's matter. In so doing another party may be able to see the Client's email address. However, since the communication is not directly between the Parties as attorney and client, the reasonable expectation of privacy and confidentiality between the Parties will not be affected.
- B. The Attorney's email address is: _____ . This email address is reserved for the exclusive use of the Attorney's clients. The Client will respect the confidentiality of this email address and shall not provide it to anyone else.
- C. The Parties shall promptly notify each other of any change in their respective email addresses.

Date: _____

Client Signature

Attorney Signature

Client Signature

Client Email Address