FASTSMS AFFILIATE PROGRAMME TERMS & CONDITIONS

WHEREAS:

(1) These Terms & Conditions apply to participants in the FASTSMS Affiliate Programme (the "Programme").

(2) In these Terms & Conditions, "Company", "we", "us", and "our" means FASTSMS, a division of NetSecrets Ltd a company registered in England and Wales under number 04439226 whose registered office is at Ayrton House, Buntsford Park Road, Bromsgrove B60 3DX, United Kingdom.

(3) In these Terms & Conditions, "Affiliate", "you" and "your" means the individual or organisation that is applying to become a participant in the Programme and who will accept these Terms & Conditions upon joining the same.

(4) By accepting these Terms & Conditions you agree to be bound by them and shall enter into a binding agreement with us (the "Agreement").

1. Definitions and Interpretation

1.1 In these Terms & Conditions the following terms shall have the following meanings:

"Business Day"	means any day other than Saturday or Sunday that is not a bank or public holiday;
"Cancellations Policy"	means our cancellations/returns policy which can be found at http://www.fastsms.co.uk/information/terms-and-conditions.html.
"Commencement Date"	means the date of your acceptance;
"Commission Rate"	means the rate of commission paid on net sales revenue set out in Schedule 1 of this Agreement;
"Confidential Information"	means all business, technical, financial or other information created or exchanged between the Parties in the course of fulfilling their obligations under the Agreement;
"Current Term"	means the Term that the Parties may be in at any given time;
"Direct Referral"	means a sale of a Service Package to a customer who has been lead to the our website through your website where that customer can be tracked directly from your site to ours without any further intermediaries;
"Intellectual Property Rights"	means any rights subsisting in a copyright work, trade mark, patent or design and shall be construed in accordance with the Copyright Designs and Patents Act 1988, Trade Marks Act 1994 and Patents Act 1977;

"Registered Email Address"	means the email address of the Company as recorded in the affiliate control panel or the email address of the Affiliate as provided in your Registration Data;
"Registration Data"	means the information provided by the Affiliate when registering for enrolment in the Programme;
"Service Package"	means a particular set of services available from us through our website as defined in Clause 7; and
"Term"	means the term of the Agreement, as defined in Clause 17 of these Terms & Conditions, during which you shall participate in the Programme under the terms and conditions set out in the Agreement.

2. Enrolment in the Programme

2.1 By enrolling in the Programme you agree that, at the time of registration, you will provide accurate and complete Registration Data and that you shall inform us of any changes in your Registration Data.

2.2 Upon your acceptance of these Terms & Conditions, subject to our approval and sub-clause 2.4 below, you will be sent an Affiliate Agreement in hard copy to sign and return to us.

2.3 We may, at our sole discretion, review your website following your acceptance of these Terms & Conditions. You will be informed within 7 Business Days of the outcome of your application. Following your acceptance of these Terms & Conditions, you will receive further instructions to allow you to commence marketing our goods.

2.4 We may, in our sole discretion, choose to reject any application for any reason (and are under no obligation to disclose such reasons). Reasons for which an Application may be rejected include, but are not limited to, content on your website that:

2.4.1 is in any way unlawful, harmful, threatening, obscene, harassing, discriminatory, defamatory or otherwise objectionable;

2.4.2 facilitates or promotes violence, terrorism, or any other criminal activity;

2.4.3 is sexually explicit; or

2.4.4 infringes or assists or encourages the infringement of any intellectual property rights belonging to any party.

3. Company / Affiliate Relationship

3.1 Nothing in these Terms & Conditions shall constitute, or be deemed to create, a partnership between the Parties; nor, except as expressly provided, shall it designate, or be deemed to designate, any Party the agent of any other Party for any purpose.

3.2 Subject to any express provisions to the contrary in these Terms & Conditions, you shall have no right or authority to and shall not do any act, enter into any contract, make any representation, give any warranty, incur any liability, assume any obligation, whether express or implied, of any kind on our behalf or bind us in any way.

4. Website Links

4.1 On request we will provide the requisite materials for a hyperlink to our website. These materials will include the HTML code for the link and a selection of graphic files to which the HTML code should be applied.

4.2 The HTML code as provided by us must be copied exactly and not altered in any way. Failure to comply with this condition may result in your receiving no credit for sales of Service Packages that are generated through your website.

4.3 Under no circumstances may any of the graphic files provided by us be modified in any way without our prior written authorisation. You may not use graphic files of your own to link to our site.

4.4 All graphic files that we may provide for use as links may be displayed throughout your website as you deem appropriate, subject to our prior consent (which shall not be unreasonably withheld) which must be obtained in all cases. We reserve the right to request the alteration or removal of a link from your website.

4.5 You are required to assume full responsibility to maintain all links to our website from your website.

5. Site Maintenance and Content

5.1 Each Party shall be exclusively responsible for maintaining and updating its own website. Subject to the provisions of this Clause 5 and Clause 14 below, neither Party shall have any obligations to the other Party in relation to the maintenance or content of their website.

5.2 Subject to Sub-clause 5.3 of these Terms & Conditions, neither Party may host any content that:

5.2.1 is in any way unlawful, harmful, threatening, obscene, harassing, discriminatory, defamatory or otherwise objectionable;

5.2.2 facilitates or promotes violence, terrorism, or any other criminal activity;

5.2.3 is sexually explicit; or

5.2.4 infringes or assists or encourages the infringement of any intellectual property rights belonging to any party.

5.3 Neither Party shall be under any obligation to pre-screen any content added to their website by third parties; however in the event that either Party receives from the other a written notification of any content that falls within that described in Sub-clause 5.2 of this Agreement, such content must be removed within 7 Business Days of receipt of such notice.

6. Display of Company Information

6.1 As an affiliate, you are free to display pricing and other information relating to our Service Packages. It is your responsibility to keep such information up-to-date through your own efforts; we will not provide pricing information updates to you.

6.2 We reserve the right to alter pricing at any time in accordance with our own policies.

7. **Service Packages**

We provide services through our website in packaged form, each package setting out combinations and levels of service, available at different prices. Descriptions of such packages are available on our website at http://www.fastsms.co.uk/prices.html and in Schedule 2 to the Agreement.

8. **Customer Referral Requirements**

8.1 Terms & conditions relating to the referral of customers to us via links on your website can be found on our website at http://www.fastsms.co.uk/information/affiliate-programme.html.

8.2 We reserve the right to alter such terms & conditions at any time and will provide 14 Business Days' written notice to you of any such alteration.

9. **Orders**

9.1 We undertake to use our best and reasonable endeavours to process and fulfil all orders for Service Packages placed by referred customers generated by affiliates.

9.2 We reserve the right to reject any orders that do not comply with the customer referral requirements detailed in Clause 8 of these Terms & Conditions.

9.3 It shall be our full responsibility to ensure that all orders are completed and that the provision of services is undertaken in accordance with our Service Level Agreements. We shall be responsible for order entry, payment processing, cancellations and all subsequent customer service. You shall have no further involvement with the customer or the completion of the transaction and all customers will be made aware of the same.

10. **Affiliate Sales Reporting**

10.1 We will track the following elements of all sales:

10.1.1 origin;

10.1.2 Service Package selected; and

10.1.3 revenue generated.

10.2 Full reports of all sales generated through the links on your website will be available in your affiliate control panel. We reserve the right to alter the form and content of such reports without notice.

11. **Commission and Referral Fees**

11.1 You will be paid commission at the rates set out in Schedule 1 of this Agreement on the net value of sales generated through your referrals with due regard to whether a sale is a New Account or a Top Up or Renewal for an Existing Account..

11.2 In the event that a customer cannot be tracked back to a referral from the Affiliate, no commission will be paid.

11.3 Commission shall be payable only once we have received payment in full from

the customer. Only once payment has been received in full will sales be logged in your affiliate control panel.

11.4 Commission shall be paid to you when your total commission earnings reach £100. Commission will not be added to this total until 7 days after the order has been completed (this time period reflects the time limit set out in our Cancellations Policy).

11.5 In the event of any refunds issued for any reasons including, but not limited to fraud and where such refunds are not incurred through any fault of ours, you may be contacted to arrange for the repayment of any related commission or it may offset against future commissions due.

11.6 Any and all commission paid to you shall be based on sales revenue less any tax due; however you may still be liable to pay tax on your commission. By accepting these Terms & Conditions you hereby acknowledge that you are solely responsible for the payment of tax on any income you may generate through your involvement in the Programme.

11.7 We reserve the right to modify our Commission Rates at any time. You will be given 14 Business Days' prior written notice (the "Notice Period") of any such change. You will be given the option to opt out of the Programme within the Notice Period and will, on the exercise of that option, be paid any Commission due to you.

12. Trade Marks

12.1 Upon your entry into the Programme, we shall grant to you a non-exclusive, non-transferrable, royalty free licence to use our trade marks.

12.2 You may use our Trade Marks only to the extent required to establish links and perform your obligations as an Affiliate under these Terms & Conditions.

12.3 In the event that you wish to use our Trade Marks for any purposes outside of these Terms & Conditions you must not do so without prior written consent, such consent not to be unreasonably withheld.

12.4 By accepting these Terms & Conditions you hereby agree that:

12.4.1 our Trade Marks shall remain the property of NetSecrets Ltd unless and until we assign those marks to a third party;

12.4.2 nothing in these Terms & Conditions shall be deemed to confer any ownership rights in our Trade Marks on you; and

12.4.3 you shall not contest the validity of our trade marks.

13. Intellectual Property

13.1 Unless otherwise expressly indicated we are the sole and exclusive owners of all Intellectual Property Rights ("IPRs") in our website including, but not limited to: all code, text, sound, video, graphics, photographs and other images that form a part of the site. We shall also be the sole and exclusive owners of all IPRs which may subsist in any supporting documentation which shall include, but not be limited to, site plans, maps, design sketches and other preparatory material.

13.2 We shall be the sole and exclusive owners of all IPRs which may subsist in all future updates, additions and alterations to our website, such material including any supporting documentation.

14. Affiliate Warranties and Indemnity

14.1 In accepting these Terms & Conditions you hereby warrant and acknowledge that:

14.1.1 Your website does not and will not contain any content that:

a) is in any way unlawful, harmful, threatening, obscene, harassing, discriminatory, defamatory or otherwise objectionable;

b) facilitates or promotes violence, terrorism, or any other criminal activity;

c) is sexually explicit; or

d) infringes or assists or encourages the infringement of any intellectual property rights belonging to any party.

14.1.2 Your website is and shall remain functional and, subject to the provisions of Clause 19 of these Terms & Conditions, reasonable downtime for maintenance or third-party access restrictions, accessible to all users of the internet;

14.1.3 All necessary authorities, consents and approvals have been obtained in respect of your obligations under these Terms & Conditions and will remain valid and effective throughout the Term;

14.1.4 Your obligations under these Terms & Conditions shall constitute legal, valid and binding obligations on you. Such obligations shall be direct, unconditional and general obligations; and

14.1.5 You will not refer to us in any way in any unsolicited bulk email campaigns or other spamming practices that you may conduct.

14.2 By accepting these Terms & Conditions you agree that you shall indemnify us in full against all liability, loss, damages, costs and expenses (including legal expenses) awarded against or incurred or paid by us as a result of, or in connection with:

14.2.1 breach of any warranty given by you in relation to your website;

14.2.2 any claim that your website infringes the patent, copyright, trade mark or other intellectual property rights of any other person, except to the extent that the claim arises from compliance with any terms stipulated by us; and

14.2.3 any act or omission by you or your employees, agents or sub-contractors in performing your obligations under these Terms & Conditions.

15. Disclaimers

15.1 We make no warranty or representation that our website, the Programme, or Service Packages sold through the Programme will meet your requirements or those of your visitors, that they will be of satisfactory quality, that they will be fit for a particular purpose, that they will not infringe the rights of third parties, that they will be compatible with all systems, that they will be secure and that all information provided will be accurate.

15.2 We make no guarantee of any specific results from the use of our website or

from enrolment in the Programme.

15.3 We make no guarantee that our website shall remain functional and accessible to all users of the internet.

16. Liability

16.1 We shall not be liable to you for any indirect or consequential loss that you may suffer even if such loss is reasonably foreseeable or if we have been advised of the possibility of such loss being incurred.

16.2 Our entire liability to you in respect of any breach of our contractual obligations, any breach of warranty, any representation, statement or tortious act or omission including negligence arising under or in connection with these Terms & Conditions or the Agreement shall be limited to £100.

16.3 Notwithstanding any other provision in these Terms & Conditions, our liability to you for death or injury resulting from our own negligence or that of our employees, agents or sub-contractors shall not be limited.

17. Term and Termination

17.1 These Terms & Conditions and The Agreement shall come into force and become binding on the Commencement Date and shall continue in force for a period of one year from that date (the “Initial Term”). Following the Initial Term, your enrolment in the Programme shall be renewed automatically for successive periods of one year (each a “Renewal Term”) unless and until terminated in accordance with this Clause 17.

17.2 Either Party may terminate the Agreement by giving 30 Business Days’ prior written notice to the other:

17.2.1 at any time where the other Party has committed a material breach of these Terms & Conditions or the Agreement and such breach has remained unremedied 7 Business Days after receiving written notice of that breach; or

17.2.2 if the other Party enters into liquidation whether compulsory or voluntary (except for the purposes of bona fide reconstruction or amalgamation with the prior written approval of the other Party), or compounds with or makes any arrangement with its creditors or makes a general assignment for the benefit of its creditors, or if it has a receiver, manager, administrative receiver or administrator appointed over the whole or substantially the whole of its undertaking or assets, or if it ceases or threatens to cease to carry on its business, or makes any material change in its business, or if it suffers any analogous process under any foreign law.

17.3 Either Party may request the termination of the Agreement at the end of the Current Term for any reason provided that written notice is given at least 30 Business Days before the end of the Current Term.

17.4 Upon the termination of the Agreement for any reason, you shall remove the links established under these Terms & Conditions.

17.5 Upon the termination of the Agreement for any reason, all licenses granted shall also terminate.

17.6 In the event that we terminate the Agreement in accordance with Sub-clause

17.2.1, any Commission owed to you at that time shall be forfeited.

18. Confidentiality

18.1 Each Party (a "Receiving Party") shall keep the Confidential Information belonging to the other Party (a "Supplying Party") confidential and secret and shall not use or disclose or make the Confidential Information available, directly or indirectly, to any person other than its officers and employees who need the Confidential Information to enable the Receiving Party to perform its obligations under these Terms & Conditions and provided that such officers and employees are also obliged to keep such Confidential Information confidential and secret. The foregoing obligations shall not apply to any information acquired by the Receiving Party which:

18.1.1 at the time of its acquisition was in the public domain; or

18.1.2 at a later date comes into the public domain through no fault of the Receiving Party.

18.2 Each Party hereby agrees and undertakes:

18.2.1 that all Confidential Information shall be and shall remain at all times the sole and exclusive property of the Supplying Party;

18.2.2 that its right to use Confidential Information shall wholly cease upon the termination of the Agreement; and

18.2.3 to return to the Supplying Party on termination of the Agreement all material embodying Confidential Information (including information stored on digital media) or any part thereof and all copies thereof.

19. Force Majeure

Neither Party to these Terms & Conditions shall be liable for any failure or delay in performing their obligations where such failure or delay results from any cause that is beyond the reasonable control of that Party. Such causes include, but are not limited to, power failure, Internet Service Provider failure, industrial action, civil unrest, fire, flood, storms, earthquakes, acts of terrorism, acts of war, governmental action or any other event that is beyond the control of the Party in question.

20. Severance

The Parties agree that, in the event that one or more of the provisions of these Terms & Conditions is found to be unlawful, invalid, or otherwise unenforceable, that / those provisions shall be deemed severed from the remainder of these Terms & Conditions. The remainder of the Terms & Conditions shall be valid and enforceable.

21. Notice

Unless otherwise stated in these Terms & Conditions, the Parties agree that all notices to be served under the Agreement shall be in writing and may be sent by email to the other Party's Registered Email Address with a hard copy of the same to be sent by first class post to the addresses detailed at the head of these Terms & Conditions or as provided by you during your registration for the Programme within 7 Business Days of the email.

22. Entire Agreement

22.1 These Terms & Conditions shall embody and set forth the entire agreement and understanding between the Parties and shall supersede all prior oral or written agreements, understandings or arrangements relating to the Programme or the relationship between the Parties. Neither Party shall be entitled to rely on any agreement, understanding or arrangement not expressly set forth in these Terms & Conditions, save for any representation made fraudulently.

22.2 Unless otherwise expressly provided elsewhere in these Terms & Conditions, the Agreement may be varied only by a document signed by both of the Parties.

23. General

23.1 No Waiver
The Parties shall agree that no failure by either Party to enforce the performance of any provision in these Terms & Conditions shall constitute a waiver of the right to subsequently enforce that provision or any other provision of these Terms & Conditions. Such failure shall not be deemed to be a waiver of any preceding or subsequent breach and shall not constitute a continuing waiver.

23.2 Non-exclusivity
The relationship between the Parties shall be and shall remain non-exclusive. Both parties are free to enter into similar relationships with other parties.

23.3 Non-assignment
You may not assign any or all of your rights or obligations under these Terms & Conditions or the Agreement without our prior written consent, such consent not to be unreasonably withheld.

24. Dispute Resolution (Arbitration)

It shall be agreed that where any dispute or difference relating to the Agreement or these Terms & Conditions arises between the Parties that matter shall be referred to the arbitration of a single arbitrator to be agreed between the Parties.

25. Law and Jurisdiction

25.1 These Terms & Conditions and the Agreement shall be governed by the laws of England and Wales.

SCHEDULE ONE – COMMERCIAL DETAILS

COMMISSION RATES:

Commission on New Accounts:

1000 credits	£5.00
5,000 credits	£25.00
10,000 credits	£50.00
25,000 credits	£125.00

Commission on Topups:

1000 credits	£2.50
5,000 credits	£12.50
10,000 credits	£25.00
25,000 credits	£62.50

Commission on Virtual Mobile Numbers:

New numbers	£20
Renewals	£10

Notes:

1. A New Account is a company, individual or organisation introduced by the Affiliate who have not previously held an account with FASTSMS.
2. A Topup is the purchase of additional credits for an account previously referred to FASTSMS by the Affiliate.
3. A New Number is a Virtual Mobile Number registered for one year by a user for the first time.
4. A Renewal is a Virtual Mobile registered for a second or subsequent year.
5. FASTSMS will send a monthly statement which will show all new accounts and all Topups. Commission will be released once the Affiliate account balance reaches £100. If in any month the balance does not reach £100 it will roll over to the next month.
6. Any orders of less than 1000 credits will not attract commission.
7. If no new accounts are sold for a period of 12 months FASTSMS reserve the right to close the Affiliate account and cease further commission payments.
8. Any dispute over commission payments will be referred to the Managing Director of NetSecrets Ltd whose decision will be final and binding on both parties.

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