

TERMS & CONDITIONS OF SALE

A. STANDARD TERMS

1. DEFINITIONS

- A) These terms shall together with any 'Specific' Terms in B. and C. below and any other terms contained in any accepted Order or Contract comprise the whole of the terms ('the Terms') of the agreement ('the Agreement') between the person(s) specified in the Order ('the Customer') and NetSecrets Ltd, of Ayrton House, Buntsford Park Road, Bromsgrove, Worcestershire B60 3DX UK. Company registration No. 4439226 ('the Supplier').
- B) 'Data' means information, graphics, sound and any other form of information supplied as an integral part of any Service or Services.
- C) 'Order' or 'Contract' means a signed and dated order received from the Customer or if applicable a signed and dated written contract entered into by the Customer accepting and resulting in the supply or provision by the Supplier of any Service, Services or Product in accordance with these Terms. For the avoidance of doubt an online signup for a Service, Services or Product shall also constitute an Order for the purposes of this Agreement.
- D) 'Product' means any additional product (if any) specified or referred to in the Order or Contract and provided as part of or to complement the Service or Services.
- E) 'Service', or 'Services' means any service or services provided by the Supplier and/or used by the Customer under the Terms.

2. SERVICE

- A) The provision of a Service, Services, and/or Product following an Order or Contract shall constitute acceptance of that Order.
- B) Any Service or Services or Products must be paid for in full prior to being supplied, or by any agreed stages or dates to ensure continued provision.
- C) Unless stipulated in a specific written quotation or otherwise agreed in writing by the Supplier in an authorised order form signed by one of its agents or employees the price payable for the provision of any Service, Services, and/or Product relevant to any Order or Contract will be the quoted list price of the Supplier at the time of the acceptance of any such Order or the date of any such Contract with the Customer (in each case exclusive of VAT).
- E) The Supplier reserves the right to suspend any or all Services until such time as any payment due has been made in full. Non-payment of an overdue account may result in the suspension of all Services indefinitely and loss of related credit facilities.
- F) All Services and any Product supplied by the Supplier (including if applicable domain names which may still be registered in the name of a third party but which belong to the Supplier) shall remain the property of the Supplier until full and final payment has been made to the Supplier.

3. USE OF SERVICE

- A) Under no circumstances will the storage and transmission of pornographic materials in any form whatsoever be allowed through or on the Supplier's servers and data transmission cables. The

definition of the term pornographic materials is purely at the discretion of the Supplier's Directors and their decision in such matters shall be full and final.

- B) The Customer accepts sole liability for any information or material including but not restricted to, graphics, data, photographic material, sound and any other form of information supplied to the Supplier which is subject to copyright or is judged to be of an unlawful nature or is judged to be in violation of UK or international law or regulation.
- C) The Customer acknowledges that any given Service or Services and/or Product may only be used for lawful purposes and that any information or Data including but not restricted to any graphic, image, photograph or text which is in violation of any UK law or regulation including but not restricted to material which is obscene, indecent, or adjudged by the Supplier to be unlawful in the UK and/or abroad, threatening, damaging (including by virtue of the transfer of any computer virus), in breach of copyright or trade secret, is prohibited whether or not the Customer was aware of the content or material and/or the laws pertaining to the material.
- D) If the Service or Services to be provided consists of hosting or video streaming then the Supplier reserves the right to limit the transfer of Data if such transfer of data is deemed to cause high traffic demands by way of download of files whether through the size of file and/or the number of Customers of a particular service. The Customer will have the right in the event of any such Data transfer limit being imposed to terminate this Agreement and an appropriate refund will be made which will be a percentage of the initial invoice minus any related administration charges (in each case determined by the Supplier).
- E) The Supplier will be entitled to suspend and/or terminate any Service or Services if they deem its or their use by the Customer to be illegal and/or an infringement of the rights of any other parties under UK and International laws or regulations whether due to or arising from the transmission of any information or data by the Customer or otherwise and including but not restricted to material transmitted which is obscene, indecent, libellous or subject to copyright and whether or not the Customer were aware of the content or the laws or regulations pertaining to it both in the UK and Internationally.
- F) the Customer acknowledges and accepts sole liability for and the Customer agrees to pay for and indemnify the Supplier against any loss, costs, damages or other claims arising from or attributable to any such illegal or improper use by the Customer of any Service or Services as is mentioned in any of items 3A) to 3E) above.

4. THE SUPPLIER'S RESPONSIBILITY

The Customer acknowledges and accepts that the Supplier does not:

- A) check, scan or verify content of information and data transmitted.
- B) make judgments with regard to the appropriateness of material for transmission.
- C) guarantee the nature, content, truth, accuracy or reliability of any such material.
- D) warrant or guarantee the security or confidentiality of any such information or data.
- E) offer any opinion or express any view on the nature or content of any such information or data.

5. LIMIT ON LIABILITY

Any liability on the part of the Supplier arising from any breach of its obligations under these Terms, including but not restricted to damages caused or allegedly caused by any failure to provide the agreed Service or Services and/or Products, error, omission, interruption of service and or delay of transmission of service, loss of electronically stored information due to, theft, fire, destruction, unauthorised access to electronic information stored on the Supplier's equipment or third party providers utilised by the Supplier or by any other means and to the extent (if at all) recoverable under these Terms shall be restricted to:

- A) In the case of a subscription based service, including but not limited to hosting, domain names and Virtual Reply Numbers, a maximum of the amount paid or payable by the Customer for the Service or Services in any 12 month period under this agreement.
- B) In the case of a credit based service, including but not limited to SMS message credits, a maximum of the amount paid or payable for those credits which failed to be delivered for reasons within the Supplier's control.

6. PERSONAL DATA

- A) The Customer agrees that the Supplier may hold the Customer's names and other relevant information in a computerised database. The Customer agrees that such data may be processed and may, in certain circumstances, be supplied to and processed by our suppliers, to enable the provision and maintenance of the Service and/or Services and/or Products and any relevant equipment.
- B) The Customer acknowledges and accepts that the Supplier may, from time to time, be required under regulations and/or legislation to co-operate with and/or disclose Customer's data to, government or other bodies and/or authorities.

7. TERMINATION

Without prejudice to any rights that have accrued under this agreement or any of its other rights or remedies, the Supplier may terminate this agreement either with or without notice as the Supplier sees fit without liability to the Customer if:

- A) the Customer fails to pay any amount due under this agreement on the due date for payment (an essential term); or
- B) the Customer commits a material breach of any other material term of this agreement and (if such breach is remediable) fails to remedy that breach within a period of 7 days after being notified to do so (an essential term) ; or
- C) the Customer repeatedly breaches any of the terms of this agreement in such a manner as to reasonably justify the opinion that the Customer's conduct is inconsistent with the Customer having the intention or ability to discharge the Customer's obligations under or give effect to the terms of this agreement; or
- D) Any event occurs, or any proceeding is taken, with respect to the Customer in any jurisdiction to which the Customer is subject as a result of which:
 - (i) The Customer suspends, or threatens to suspend, payment of the Customer's debts or is unable to pay the Customer's debts as they fall due or admits inability to pay the Customer's debts or is deemed unable to pay the Customer's debts within the meaning of either section 123 or section 268 of the Insolvency Act 1986 as appropriate or (being a partnership) has any partner to whom any of the foregoing apply
 - (ii) The Customer is the subject of a winding up or bankruptcy petition as appropriate

- (iii) One or more of the Customer's creditors or encumbrancers attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of the Customer's assets and such attachment or process is not discharged within 14 days; or
- (iv) (If the Customer is acting within the course and scope of the Customer's business) the Customer suspends or ceases, or threatens to suspend or cease, to carry on all or a substantial part of the Customer's business; or
- (v) (Being an individual), the Customer dies or, by reason of illness or incapacity (whether mental or physical), is or becomes incapable of managing the Customer's own affairs or is or becomes a patient under any mental health legislation.

8. GENERAL

- A) No terms, conditions, reservations or variations whether stipulated by the Customer or arising in the course of dealing shall annul, vary or add to any of these conditions unless expressly agreed to in writing by the Supplier.
- B) This Agreement and these Terms represent the entire agreement and understanding between the Customer and the Supplier with regard to the supply of the Service and/or Services or of any Product to the Customer by the Supplier, to the exclusion of all prior agreements, arrangements and understandings.
- C) The Customer acknowledges and agrees that:
 - i) any other term which might be implied or incorporated into the Agreement, by statute, at common law or otherwise, is excluded, to the fullest extent permitted by law;
 - ii) the Supplier shall not be in breach of this agreement, nor liable for any failure or delay in performance of any obligations under this agreement arising from or attributable to acts, events, omissions or accidents beyond its reasonable control;
 - iii) time shall not be of the essence in respect of any of the Supplier's obligations under this agreement;
 - iv) in entering into the Agreement the Customer has not relied upon any oral or written representation, statement or understanding (whether negligently or innocently made) by any of the Supplier's employees, agents, sub-contractors or representatives other than as expressly set out in the Agreement;
 - iv) the Customer will have no remedy in respect of any untrue representation innocently or negligently made by the Supplier or any of its employees, agents, sub-contractors or representatives prior to entering into the Agreement upon which the Customer may claim to have relied in entering into the Agreement whether such representation was made orally or in writing;
 - v) the only remedy available to the Customer for a breach by the Supplier of these Agreement shall be for breach of contract under the terms of the Agreement or for fraudulent misrepresentation.
- D) The Agreement shall be governed by and construed in accordance with the laws of England and Wales and the Customer agrees to submit to the exclusive jurisdiction of the Courts of England and Wales.
- E) In the event that this Agreement is translated into any other language, the English language version shall prevail.

- F) If any provision, clause or sub-clause of the Agreement or the application of it to any person shall, for any reason, be held or adjudged by any competent authority to be void, voidable, illegal, invalid or otherwise unenforceable, but would be valid and/or enforceable if any part of such provision, clause or sub-clause were deleted or modified, then that provision, clause or sub-clause shall apply with such deletion or modification as may be necessary to make it valid and/or enforceable and such judgement shall not affect the remainder of the Agreement which shall continue in full force and effect.
- G) In the event of any inconsistency between the Standard and Specific Terms then the Standard Terms shall prevail
- H) References to:
 - i) the singular include the plural and vice versa;
 - ii) one gender includes all other genders and vice versa.
- I) A person who is not a party to the Agreement has no rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of the Agreement, but this does not affect any right or remedy of any third party which exists or is available apart from that Act.
- J) Neither the Customer nor the Supplier may commence any court proceedings or arbitration in relation to any dispute arising out of any alleged breach of this agreement) until whichever party alleges a breach has occurred has attempted to settle the dispute by mediation and either the mediation has terminated or the other party has failed to participate in the mediation, provided that the right to issue proceedings is not prejudiced by any delay in this respect or (if the Supplier has the right to issue) the only alleged breach involves the non-payment of monies properly owing to the Supplier but not paid by the Customer.

9. NOTICES

- A) The Customer agrees to keep the contact details which the Customer has provided to the Supplier up to date. Any notice or other information to be served by the Supplier on the Customer in accordance with this agreement will be validly served if in writing and sent either by first class post or email to the Customer's last known postal or email address.
- B) Any notice sent by first class post will be deemed served two days after posting. Any notice sent by email will be deemed served on the day that it is sent if evidenced by a valid delivery receipt.
- C) Any notice to be served on the Supplier must be in writing and sent either by pre-paid first class post to our registered office or to such other address as may be specified by us to the Customer for this purpose from time to time. Any notice sent in accordance with this sub-clause will only be deemed served if and when the Customer has received a written acknowledgement from the Supplier.

B. SPECIFIC TERMS – SMS Text Messaging Services

1. NETWORK OPERATOR CONDITIONS

A) Requirements

The Services are provided by the Supplier to the Customer subject to the applicable Network Operator Conditions. The Customer agrees to comply with such Network Operator Conditions and agrees that a breach of, or non-compliance with the Network Operator Conditions by the Customer will be deemed to be a material breach of this Agreement.

B) Reservation of Rights.

If a Network Operator changes the Network Operator Conditions and/or the technical standards for the delivery of Services, the Supplier may modify the terms and conditions governing such Services upon written notice to the Customer. Upon receipt of a notice from the Supplier, the Agreement, Order Form and/or Provisioning Form, as applicable, will be deemed amended and the Customer will (i) comply with such change(s) as of the date stated in the notice; or (ii) request additional time to comply with such change(s), and will suspend any affected usage of the Services as of the date stated in the notice, until such later time as the Customer can comply with such change(s); or (iii) immediately cease using the Services as of the date stated in the notice if the Customer cannot or will not comply with any such change(s).

2. ACCESS AND CONNECTIVITY

A) The Supplier's Network Connection.

The Customer is solely responsible, at its own expense, for establishing and maintaining its equipment, software, facilities, and its connection to the Supplier's Network.

B) No Privacy.

The Customer acknowledges that Messages will be transmitted over the Supplier Network in an unencrypted format. To the extent permitted by law, the Supplier may intercept and disclose any Messages transmitted over the Supplier's Network to the extent reasonably necessary to protect the Supplier's rights or property, including without limitation, to protect the operation of the Supplier's Network, or to comply with any legal, regulatory, governmental and/or Network Operator inquiries or requirements.

3. CUSTOMER RESPONSIBILITIES

A) Subscriber Opt-In/Opt-Out Requirements.

The Customer will send Messages only to Subscribers who have consented or "opted-in" to receiving the quantity, frequency and types of Messages to be sent and who have been informed of their rights to and the free process for cancelling receipt or "opting-out" of receiving future Messages. The Customer will stop sending Messages to a Subscriber who has "opted-out" from receiving such Messages as soon as possible but in no case later than twenty four (24) hours after receipt of the opt-out request (or any shorter time period if necessary to meet or comply with any legal, regulatory, governmental and/or Network Operator request or requirement). The Customer will, within twenty-four (24) hours of receiving a written request from the Supplier, provide the Supplier with proof of Subscriber opt-in requests, opt-out requests and/or the Customer's response time for discontinuing the provision of Messages to the Supplier's satisfaction. The Customer agrees to keep such records during the term of this Agreement and for one (1) year after termination.

B) Provisioning of Projects to Subscribers.

The Supplier shall act as a mere conduit only, and the Customer will be solely responsible for its contractual relationship with its own customers.

C) Customer Content.

The Customer agrees that the Supplier exercises no control whatsoever over the Customer's Content and Messages and is a mere conduit in transmitting and handling Content and Messages. The Customer shall bear sole responsibility for (i) the Content transmitted using the Services; and (ii) any acts, omissions or breaches with respect to the use of the Services and the Messages, including but not limited to the Content.

D) Inappropriate Content.

The Customer will not use the Services or permit the Services to be used to transmit Inappropriate Content. For purposes of this Agreement, "Inappropriate Content" will mean any Content that (i) is unsolicited, including without limitation, "junk mail", "bulk e-mail", spam or other unsolicited advertising material; (ii) causes the introduction of "viruses", "worms", "Trojan horses", "e-mail bombs", "cancelbots" or other similar destructive computer programming routines into the Supplier's Network or Subscribers' handsets; (iii) that violates any legal, regulatory, governmental or Network Operator requirements or codes of practice; (iv) is obscene, offensive, threatening, defamatory, discriminatory, misleading or inaccurate; or (v) infringes the intellectual property of any person or entity.

E) Security Measures.

The Customer will, at its own expense, take all security measures necessary to (i) protect the Supplier's Extranet and the Supplier's Network from unauthorised access, copying or use; and (ii) prevent third party access to the Customer's password(s) to the Supplier's Extranet and the Supplier's Network. Any password issued to the Customer is subject to cancellation or suspension by the Supplier at any time. The Customer will immediately inform the Supplier if the Customer becomes aware of any possible or actual unauthorised use or misuse of the Services or the Messages under any Project.

F) Compliance Audit.

The Customer will promptly provide such information as the Supplier may request, (i) to confirm the Customer's compliance with its obligations under this Agreement, and (ii) in response to any request made by any Network Operator and/or regulatory or governmental, legal or statutory body.

4. WARRANTIES & DISCLAIMER.

A) Legal and Regulatory Compliance.

The Customer warrants and undertakes that it will (i) use the Services for lawful purposes and comply with all laws and regulations and/or Network Operator Conditions relating to the Content, Messages or Services; (ii) continue to obtain all necessary permits, consents, authorisations or certifications for the use of the Content (including without limitation those from owners of database, copyrights or performing rights organisations) and that the Content does not infringe the intellectual property or other rights of any person; (iii) provide promptly any information relating to the Content, Messages or Services reasonably requested by the Supplier or requested by any Network Operator and/or legal, governmental, regulatory or statutory authority; and (iv) immediately comply with such directions as may be issued from time to time by a Network Operator and/or legal, regulatory, governmental and/or statutory authority in relation to the Content, Messages or Services and will fully cooperate with the Supplier's request for assistance in conforming the Services to any new requirements or determinations. The Customer will immediately inform the Supplier if any third party makes or threatens any claim or action against the Customer, or the Supplier, or any other party relating to any Content, Message or Services.

B) Disclaimer

Except as expressly provided in these Terms, the Supplier makes no warranties or representations in connection with the Supplier's Network or the supply of Services as contemplated in this Agreement and disclaims all other warranties, conditions, representations, and terms whether written or oral, contractual or statutory, express or implied or otherwise including, with limitation,

merchantability, fitness for a particular purpose or use, title, interference, non-infringement, reliability timelines, or security and any warranties arising from course of performance, course of dealing or usage or trade. The Customer acknowledges that (i) the Services have not been specifically designed to meet the Customer's, any of the Customer's customers and/or any Subscriber's individual requirements; and (ii) the Services will not be error-free, uninterrupted, free from unauthorised access (including third party hackers or denial of service attacks), or that all messages will be delivered. Except as stated in this Agreement, the Services are provided on an 'as is' and 'as available' basis.

C. SPECIFIC TERMS - MSISDN/Virtual Reply Number ('VRN'): Subscription

1. Annual Contract

This includes:

- A. Access to an allocated 11 digit dedicated UK virtual reply number (VRN). ¹
- B. This allows a Customer to receive inbound SMS text messages to their FASTSMS account.
- C. Additional features included in the annual rental fee include forwarding of all inbound text messages to multiple email addresses and/or a URL. FASTSMS cannot guarantee the time in which the messages will be forwarded as they pass through systems that we have no control over. ²
- D. An additional feature not included in the annual rental but available at additional cost (See 'Costs' below), is the forwarding of the inbound messages to a mobile phone handset. ³

2. Expiry of Annual Contract and Loss of FASTSMS Service:

- A. A FASTSMS VRN is rented on an annual basis with a minimum contract term of 1 year.
- B. Please note that VRNs are a subscription-based service that needs to be renewed and paid for by the Customer 14 days prior to the expiry date of the Customer's annual contract ('expiry date').
- C. FASTSMS will use its best endeavours to remind the Customer of the expiry date of the Customer's annual contract. However ultimately responsibility rests with the Customer to diarise and not miss the expiry date.
- D. If the VRN is not renewed this will result in its permanent removal from the Customer's FASTSMS account. All the Customer's inbound text messages and related data will then be lost. FASTSMS can accept **no** responsibility for the loss of any such messages or any related data.
- E. In addition even if the Customer re-subscribes after the expiry date there is no guarantee that the same VRN will be available. The network could take the number back or we shall be entitled to and may re-allocate it to another client. ⁴
- F. It is the Customer's sole responsibility to update FASTSMS of any changes in the Customer's contact details. ⁵
- G. In view of their importance the Customer's responsibilities to notify us on a timely basis of the above are essential terms of the Customer's contract with us.

3. Withdrawal of service:

- A. FASTSMS reserves the right to replace a client's VRN if for example, the network operator demands the return of a number or if the quality of the VRN service is not, in the opinion of FASTSMS, at a satisfactory level. A replacement VRN will always be provided.
- B. FASTSMS can accept no responsibility for any costs, inconvenience, loss or damage of any kind which the Customer may experience as a result of the changing of a VRN. ⁶

- C. If the Customer's VRN is not renewed in time (as above), FASTSMS will remove the VRN from the Customer's account within 24 hours of the expiry date.

4. Costs:

- A. Annual subscription cost for a dedicated UK Virtual Reply Number: £99 + VAT per annum
- B. The annual subscription cost is subject to change however it will only change when the Customer next renews the Customer's subscription. The Customer will be alerted of any price changes no less than 1 month prior to the Customer's next renewal date.
- C. The cost of sending a text to the Customer's Virtual Reply Number for the sender will be the sender's standard network rate. However, if the sender's network is T-mobile or 3 it is likely to cost more as these networks do not currently recognise VRN's as UK mobiles so charge an international text message fee.
- D. The cost of transferring on VRN messages to a mobile phone will be charged at our current rates as specified in our Price List or on our website.

5. General

- A. In the event that any of the above service details and terms alter all changes will be recorded on the Customer's Order/Renewal Form.
- B. The explanatory footnotes below form part of and relate to these terms

¹ A VRN is an 11 digit mobile phone number (07xxx xxxxxx) that can receive text messages but not voice messages. It acts like a mobile phone as far as the sender of the message is concerned but forwards the text messages it receives to the inbox of the client's FASTSMS account (very similar to the inbox on a Hotmail account) and, optionally, from there to an email address or to another web address.

² The key point is that we cannot guarantee how long it will take for a message sent to a VRN to land at its destination. It's usually reasonably prompt but if any of the relevant webmail account or mobile operators or any other network is experiencing difficulties there is nothing we can do about it!

³ If the Customer chooses this option it will use one of the Customer's FASTSMS account text message credits for every message forwarded out to the designated mobile phone. The message received by the VRN can be forwarded to another mobile phone number (or another VRN for that matter). This incurs the cost associated with sending a text message out from FASTSMS – because that is precisely what is happening.

⁴ So if the Customer has printed materials with the number on them these will have to be altered at the Customer's own expense!

⁵ If we cannot contact the Customer we cannot do our best to help the Customer renew!

⁶ Including (but not limited to) loss of data, numbers re-printing costs, etc.