

SERVICE LEVEL AGREEMENT FOR HOSTING SERVICES

1. DEFINITIONS

- a) These terms and conditions of service shall constitute the whole of the contract between the Customer (herein after referred to as the Customer) and NetSecrets Ltd, Unit 25 Stockwood Business Park, Stockwood, Nr Redditch B96 6SX UK Company registration No. 4439226 (herein after referred to as NetSecrets).
- b) The service, services, product means the electronic transmission of information, graphics, sound and any other form of information transfer through the NetSecrets servers and lines of telecommunication.
- c) All terms and conditions apply to the sale of internet services - internet servers, hosting of internet servers, space on internet servers, hosting of virtual internet servers, website, domain names, electronic transfer of information, design, construction and work involved in the production of such and any other services and products supplied to the Customer and purchased from NetSecrets.
- d) No terms, conditions or reservations stipulated by the Customer and no course of dealing shall annul, vary or add to any of these conditions except in so far as expressly consented to and agreed to in writing by NetSecrets.

2. SERVICE

- a) NetSecrets accepts the Customer's acknowledgement of these terms and conditions breach of any of which may result in termination and or suspension of the Customer's right to use the service.
- b) All services supplied must be paid for in full prior to the provision of any service unless agreed in writing with NetSecrets the price being quoted as the list price of NetSecrets agreed on its behalf at the time of contract or order with the Customer.
- c) All prices quoted verbally or in writing (prices being the NetSecrets list price at exchange of contracts) for provision of service are excluding VAT at the standard rate for the service supplied and are subject to change without notice.
- d) Alterations in the standard price of service supplied will only be accepted by NetSecrets in writing on a NetSecrets authorised order form signed by an agent or employee of NetSecrets.
- e) Order which has been accepted by NetSecrets and signed by the Customer or his/her representative may be cancelled by the Customer or his/her representative within 14 working days at any time of signing of order and on terms that the Customer will indemnify NetSecrets in full against any loss, costs (including the cost of goods ordered for the Customer by NetSecrets on behalf of the Customer for the supply of service ordered), damages, charges and expenses incurred by NetSecrets as a result of cancellation.
- f) NetSecrets reserves the right to suspend any or all services until such time as full payment has been made. Non-payment of an overdue account may result in the suspension of all services indefinitely and loss of credit facilities.
- g) All services and goods supplied by NetSecrets including domain names which may be registered in the actual name of a third party remain the property of NetSecrets until full and final payment has been made to NetSecrets.
- h) Service Level Agreement: Where the Service originates from NetSecrets and is delivered to Customer, the Service will be available for not less than 99.9% of each calendar month. Availability will be calculated and reported in accordance with the rules set out below.
- i) If in any calendar month NetSecrets does not meet this standard of availability, we will compensate the Customer. The amount of compensation will be determined in accordance with the rules set out below. NetSecrets will provide this compensation by making further services or discounts available to you up to the amount of compensation at the applicable rate. This compensation will be the limit of our liability for the non-availability of the Service.

3. PLANNED OUTAGES

- a) All work for the purpose of maintenance or support as part of Planned Outages will take place outside Business Hours. Planned Outages will be notified to you wherever possible on 5 days prior notice unless otherwise agreed. NetSecrets Ltd shall wherever possible ensure that there are no more than 2 planned Outages each month.

4. AVAILABILITY

- a) Availability is calculated at the end of each month in accordance with the following formula:

$$A = T - D$$

Where:

"A" means the Availability of the Service (expressed as a percentage).

"D" means Downtime in the respective month - (expressed in minutes).

"T" means the Total Number of Service Minutes in the respective month.

5. CALCULATION OF DOWNTIME

- a) Downtime is calculated from the time of notification of a fault by either Customer or NetSecrets, and ends when the Service is restored to full working order as determined and certified by us. However, downtime is to be disregarded to the extent it is attributable to Customer failing to keep equipment in standard office environment levels of humidity and temperature, or to any other abuse, misuse or modification of equipment or software by Customer.

6. COMPENSATION CALCULATIONS

- a) If availability falls below the guaranteed levels in any particular month then we shall credit Customer by reference to the following table:

Monthly Network Availability & Reimbursement of Monthly Service Fee

99.00 - 99.99% = 5%

97.00 - 98.99% = 10%

95.00 - 96.99% = 15%

90.00 - 94.99% = 20%

Under 89.99% = 25%

Definitions used:

"Availability" means the availability of NetSecrets network demonstrated by means of either a ping or traceroute program.

"Business Hours" means 09.30 a.m. to 5.30 p.m. on a day other than a Saturday, Sunday, bank or other public holiday in England and Wales.

"Downtime" means in respect of any month the total time during which the Service is not available (other than as a result of Planned Outages).

"Outage" means any period during which any user cannot process an application transaction or send or receive e-mails utilizing the Service.

"Planned Outage," means any period during which any user cannot process an application transaction or send or receive e-mails utilizing the Service caused by work for the purpose of maintenance or support.

"Service Minutes" means minutes of connectivity to NetSecrets.

7. USE OF SERVICE

a) Under no circumstances will the storage and transmission of pornographic materials in any form whatsoever be allowed through or on NetSecrets' servers and data transmission cables. The definition of the term pornographic materials is purely at the discretion of the Directors of NetSecrets and their decision in such matters is full and final.

b) The Customer accepts sole liability for any material including but not restricted to, data, graphic, photo supplied to NetSecrets 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 the service may only be used for lawful purposes any information including but not restricted to, graphic, image, photograph, text in violation of any UK law or regulation including but not restricted to material which is obscene, indecent, judged to be unlawful in the UK and or abroad, threatening, damaging (to include transfer of computer virus), copyright, trade secret, is prohibited whether or not the Customer was aware of the content, material and or the laws pertaining to the material.

d) The purpose of the services provided to you the Customer by NetSecrets is for the storage and transmission of standard web sites, this means that the space provided on NetSecrets Internet network must not be used as an FTP area for the transmission of demo software and other high bandwidth applications, these applications are at the discretion of the Directors of NetSecrets and their decision in such matters is full and final. If such applications are required on a web site then it is suggested that these are posted on dedicated FTP sites which can be reached by appropriate links on the web sites stored on NetSecrets Internet network.

e) NetSecrets Ltd reserve the right to limit the transfer of data if such transfer of data are deemed to cause high traffic demands by way of download of files whether through the size of file and or the number of users of a particular service. The Customer acknowledges their obligation to inform NetSecrets of the exact nature of files by size, type, content and understand that a surcharge may be levied for the additional bandwidth required to accommodate the traffic, the Customer has the right under these conditions to terminate the service contract and an appropriate refund will be made which will be a percentage of the initial invoice minus admin charges.

f) The Customer acknowledges that they shall be solely responsible for any violation of UK law with regard to the remote loading of information of any kind onto the NetSecrets server/computer, to view, download to and or by a third party, NetSecrets will retain the right to suspend and or terminate any remote service which they deem to be in breach of UK law or is of a nature which may be damaging, threatening or judged to include but not restricted to material which is obscene, indecent, libellous, subject to copyright whether or not the Customer was aware of the content or the laws or regulations pertaining to it both in the UK and Internationally.

g) The Customer acknowledges sole liability with regard to any claim by third parties alleging any infringement of rights of any kind due to transmission of any information to view by the Customer and shall include any infringement of rights under UK and International law and or regulation and as such agree to pay to NetSecrets Ltd any costs incurred in the defence of any action brought against them by a third party arising from such claims.

h) Knowledge of the Internet - The Customer agrees to obtain a basic knowledge of the Internet and its operating principles and procedures.

i) Improper Uses - The Customer will avoid violation of certain generally accepted guidelines on Internet usage such as restrictions on mass mailings, mass advertisements, pirating or copying of software, mail bombing or other methods of attempting to deny service or access to other users, and attempts to violate security.

j) Security - The Customer is required to protect the security of its Internet account and usage. The Customer's security policies and procedures, their implementation and their connection to the Internet are the Customer's responsibility. The Customer will treat its password as private and confidential and will not disclose or share it with any third parties. Any packet filtering services provided by NetSecrets provide a base level of protection and cannot be considered to render comprehensive security of any kind. The Customer is responsible for securing its own enterprise network via its own security policies and procedures.

8. DEFINITION OF NETSECRETS RESPONSIBILITY

a) Connection - NetSecrets provides the Customer with a connection to the Internet through its equipment and facilities. Information which passes to or from the Customer over the Internet passes through equipment and facilities which NetSecrets does not own and has no control over. NetSecrets does not provide, exchange or monitor data or information on the Internet. Thus, it follows that:

Content - Other than "packet filtering" at the Customer's request on a NetSecrets provided router or firewall, which will deny entry to unregistered, addressed packets, NetSecrets does not check, scan or verify content of information and data transmitted on the Internet. NetSecrets does not make judgments with regard to appropriateness of material for transmission, or guarantee the nature, content, truth, accuracy or reliability of such material.

Security - NetSecrets does not warrant or guarantee the security or confidentiality of any such information or data.

Opinions - NetSecrets takes no opinion and expresses no views on the nature or content of any such information or data.

9. LIMITED LIABILITY

a) Any liability arising from, including but not restricted to damages caused or allegedly caused by any failure to provide the agreed service, error, omission, interruption of service and or delay of transmission of service, loss of electronically stored information due to, theft, fire, destruction, or by means of unauthorised access to electronic information stored on NetSecrets equipment or third party providers utilised By NetSecrets, shall be restricted to a maximum of the amount paid by the Customer for the service or services provided by NetSecrets or agent of NetSecrets minus administration costs.

b) The headings in these conditions are intended for reference only and shall not effect their construction.

10. PERSONAL DATA

a) You agree that NetSecrets may hold Customer names and other relevant information in a computerised database. You agree 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 Equipment and/or Services.

b) You acknowledge that we may, from time to time, be required under regulations and/or legislation to co-operate with and/or disclose Customer data to, government or other bodies and/or authorities.

11. NOTICES

a) You agree to keep the contact details which you have provided to us up to date. Any notice or other information to be served by us on you in accordance with this Agreement will be validly sent if in writing and sent by either e-mail or first class post to your last known email or postal address. Any notice sent by first class post will be deemed served two days after posting. Any notice sent by e-mail will be deemed served on the day that it is sent.

b) Any notice to be served on us 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 you for this purpose from time to time. Any notice sent in accordance with this sub-clause will only be deemed served if and when you have received a written acknowledgement from us.

12. GENERAL

- a) Breaching of these terms and conditions in any form will allow the Directors of NetSecrets to terminate the contract between you the Customer and NetSecrets, monies outstanding or owed to either parties will be decided by the Directors of NetSecrets and their decision in such matters will be full and final.
- b) Use of NetSecrets services and goods including domain names constitutes acceptance of these terms and conditions. All services provided are stipulated on this invoice, if any additions advertised or inferred by NetSecrets or an agent of NetSecrets do not appear in writing on this invoice then NetSecrets must be informed in writing by you the Customer within 14 days.
- c) This Agreement represents the entire agreement and understanding between you and us with regard to the supply of the Equipment and/or Services, to the exclusion of all prior agreements, arrangements and understandings. The Agreement contains express promises and obligations on our part. You agree that 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.
- d) You acknowledge and agree that in entering into the Agreement you have not relied upon any oral or written representation, statement or understanding (whether negligently or innocently made) by any of our employees, agents, sub-contractors or representatives other than as expressly set out in the Agreement.
- e) You further acknowledge and agree that you will have no remedy in respect of any untrue representation innocently or negligently made by us or any of our employees, agents, sub-contractors or representatives prior to entering into the Agreement upon which you may claim to have relied in entering into the Agreement whether such representation was made orally or in writing.
- f) The only remedy available to you for a breach by us of the Agreement shall be for breach of contract under the terms of the Agreement.
- g) Nothing in the Agreement shall exclude or limit our liability for fraudulent misrepresentation.
- h) The Agreement shall be governed by and construed in accordance with the laws of England and Wales and you agree to submit to the exclusive jurisdiction of the Courts of England and Wales. In the event that the Agreement is translated into any other language, the English language version shall prevail.
- i) If any provision, clause or sub-clause of the Agreement is held 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.
- j) If any part of the Agreement or the application of it to any person shall, for any reason, be adjudged by a competent authority to be invalid, void, voidable, illegal or unenforceable such judgement shall not affect the remainder of the Agreement which shall continue in full force and effect.
- k) References to the singular include the plural and vice versa. References to one gender include all other genders and vice versa.
- l) 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.

13. CANCELLATION OF SERVICE

- a) Cancellation of service must be given in writing 28 days before service is due for renewal. If cancellation is not received in writing within 28 days of renewal then the Customer will be liable for the full renewal fee.

Revision History:

Rev 1 – 13/03/2007 Initial Version