

TERMS AND CONDITIONS OF SERVICE

These Terms and Conditions of Service are effective as of June 1, 2017.

Retarus Messaging Services are provided to Customers under these Terms and Conditions and all proposals, price schedules, policies, service descriptions and other supplemental documents referred to or published by Retarus from time to time (collectively, the “Agreement”).

Messaging Service(s) or Services shall mean the Services as described in the proposal and the respective documentation; namely the transmission, sending, filtering, storing, decryption, encryption, receipt, rendering, deletion, categorizing, digital signing, tagging, conversion, modification and processing of Messages in accordance with the terms and conditions of the Agreement.

By using the Services, Customer confirms acceptance of and agrees to be bound by the Agreement.

A. ACCOUNT PROVISIONING AND ACCOUNT PROVISIONING RELEASE DATE

Retarus shall use commercially reasonable efforts to set up the Retarus System as an interface to the Customer's data communication system and operate such Retarus System separately and independently of the Customer. The Retarus System is defined as those parts of the data communication system and the IT- and telecommunication infrastructure which (i) are owned by Retarus, (ii) are necessary for performing the Services, and (iii) can directly be accessed and controlled by Retarus without involving any (sub-contracting) third party service provider. Therefore, the internet and internet-switch-components operated by the respective internet-service providers are not part of the Retarus System, since they are neither owned nor controlled by Retarus. The non-binding target timeline for the Account Provisioning Release Date shall be mutually agreed upon. During the term of the Agreement, the Customer shall provide and make available, or cause third parties to provide and make available, in working order and on time, the technical infrastructure, all hard- and software devices and the communication connections (other than the Retarus System) required for Account Provisioning and for the Services to be performed. The Customer will not obstruct or prevent the Account Provisioning without just cause.

B. MESSAGES AND MESSAGING ORDER

Commencing on the Account Provisioning Release Date, the Retarus System is (i) ready to receive and/or transmit and/or convert Messages (Fax, E-Mail, SMS/Text) which comply with those formats and protocols that are specified in the applicable documentation. Each Messaging Order requires that the Retarus System actually and without any restriction is in possession of all connecting and content data which are necessary under technical aspects or content wise in order to initiate the respective Service with regard to the respective Message. A messaging job originating from the data communications systems of Customer is deemed to constitute a binding Messaging Order under the Agreement.

C. RECEIPT AND TRANSMITTAL.

As part of the Services, Retarus shall use commercially reasonable efforts to maintain the readiness of the Retarus System to receive Messages and the Retarus System shall perform the agreed number of attempts to transmit Messages.

D. PRICE AND PAYMENT

1. The pricing for the Services shall be as set forth in the proposal provided to Customer.
2. Retarus will invoice according to the respective proposal for the following: applicable one time fees, recurring monthly fees and usage based fees for Services, and Customer will submit payment within thirty (30) days of invoice date. Unpaid invoices shall bear interest at the rate of 1 ½ % or the highest interest rate permitted by law, whichever shall be less. Customer will pay, and Retarus reserves the right to collect in arrears, all sales, use, excise or other taxes (other than taxes based on Retarus' net income), fees or charges for universal support mechanisms (including without limitation any and all federal or state Universal Service Fund charges, payable indirectly to the US government through carrier charges), or other charges of any nature whatsoever, now or hereafter imposed or assessed on Retarus, by any foreign, federal, state/provincial, county or local government authority upon or with respect to the Services provided. If Customer claims exemption from charges, Customer must provide Retarus with a current, valid exemption certificate from the applicable regulatory authority. Customer's payment obligation for the Services shall accrue on the date of Retarus' notification of Account Provisioning (whether or not Customer has initiated use of the Services).

3. In the event a trial period was agreed, Customer shall be entitled to 500 local Fax pages and 1000 E-Mails for test purposes free of charge during the trial period. Transmissions exceeding the aforementioned quantities or usage despite expiration or termination of the trial period will be charged in accordance with Retarus' proposal. Customer shall cease usage and Customer's login shall be locked and deleted upon expiration or termination of the trial period, unless Customer has signed and returned Retarus' commercial proposal that constitutes the agreement for operational Service delivery.

E. CONFIDENTIALITY

1. All information provided by either party to the other in connection with the Services and discussions relative thereto that is designated as confidential, including the terms of the Agreement shall be governed by the following terms and each party agrees to:
 - (i.) keep confidential from third parties the content of the Agreement, as well as any proprietary information or data disclosed by the other party, in whatever form, whether disclosed prior or during the term of the Agreement, including information, documents, details and data, which is marked as such or is to be seen as confidential because of its nature, such as access codes, software, and other data, regardless of content (together, "Confidential Material"); and
 - (ii.) use such Confidential Material solely for purposes of the Agreement and to refrain from using it – wholly or partly – for its own purposes without the prior written consent of the other party.
2. Exceptions. The preceding obligations do not apply to Confidential Material that verifiably is:
 - (i.) part of the current state of technology or is or becomes public domain without any breach of the confidentiality obligations set forth in the Agreement;
 - (ii.) received or has been received by a party from third parties who are not obligated to keep such information confidential;
 - (iii.) already in the receiving party's possession at the time of disclosure, provided the data and information was not obtained in a breach of any obligation to keep such information confidential;
 - (iv.) created independently by the receiving party without reference to any information received by the other party;
 - (v.) required to be disclosed due to a valid order of a court or other government body, or otherwise required to be disclosed by applicable law, or is disclosed in a litigation or dispute proceeding to establish a party's rights under an Agreement;
 - (vi.) disclosed in a dispute proceeding against a third party; or
 - (vii.) required to be disclosed to perform the Services as contemplated in an Agreement.
3. Employees, Affiliates and Agents. The parties shall cause their respective employees, officers, directors, sub-contractors, consultants and agents, their affiliates and parent companies and the employees, officers, directors, sub-contractors, consultants and agents of their affiliates and parent companies, who have access to the Confidential Material because of their duties and responsibilities, to comply with the confidentiality obligations set forth in this section.

4. Duration of the Confidentiality Obligation. These confidentiality obligations shall survive the termination of the Agreement for a period of three (3) years. The confidentiality of trade secrets shall apply for so long as they remain trade secrets.

F. WARRANTIES, WARRANTY DISCLAIMER AND LIMITS OF LIABILITY

1. THE SERVICES ARE PROVIDED ON AN "AS IS" AND "AS AVAILABLE" BASIS AND RETARUS MAKES NO WARRANTIES, EXPRESS OR IMPLIED, AND SPECIFICALLY DISCLAIMS ANY WARRANTY OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE AS TO THE SERVICES PROVIDED TO CUSTOMER UNDER ANY AGREEMENT OR AS TO THE USE OF SUCH SERVICES IN CONJUNCTION WITH EQUIPMENT, PROGRAMS OR OTHER MATERIALS WHICH ARE NOT PROVIDED BY RETARUS. IN ADDITION, RETARUS DOES NOT WARRANT THAT THE SERVICES WILL BE UNINTERRUPTED OR ERROR FREE.
2. Retarus only acts as transmitter of Customer's messages and does not vet or audit their content for legal, substantive, logical, grammatical, spelling or any other purpose. Customer agrees that all use of Services will comply with the applicable documentation which is provided to Customer, and agrees to indemnify Retarus (and its parent, subsidiaries, and their affiliates and directors, officers, employees, agents, representatives, subcontractors, interconnection service providers, and suppliers) from any third party liabilities, including reasonable attorneys' fees, resulting from Customer's use of the Services, in particular the content of Customer's or its end users' messages, including, without limitation, messages which constitute an infringement of any copyright or trademark or a violation of any national security law or of any law or regulation regarding the use of telephones or data lines to transmit unlawful, threatening, abusive, harassing, libelous, deceptive, fraudulent, invasive of another's privacy, vulgar or obscene messages or otherwise contains objectionable material of any kind or nature, the violation of any third party's rights or the violation of any other applicable statutes or regulations in the United States or in other countries in which the Services are used or to which the Services are transmitted. Customer agrees to refrain from distributing prohibited mass advertisements and unsolicited marketing materials, including information subject to the CAN-SPAM Act, and/or the Junk Fax Prevention Act, and/or the Telephone Consumer Protection Act, as amended. Customer warrants to Retarus that any and all distribution lists provided by it to Retarus: (i) are based upon permission or an established business relationship; (ii) have not been obtained through internet harvesting methods or any other unlawful electronic collection of addresses or any other public or private source; and (iii) are complete, accurate and updated for any opt-outs, as applicable and required by law. Customer shall ensure that personal data will be treated in compliance with applicable data protection provisions and not be used for purposes other than those allowed under applicable law.
Customer is responsible for maintaining the confidentiality of, and shall not transfer sell or assign, access numbers, passwords and user names provided by Retarus solely for its use. It is Customer's sole responsibility to use the Services in accordance with all applicable local, state/provincial, federal and foreign laws and regulations, including but not limited to, laws and regulations pertaining to telemarketing, facsimile advertising, commercial E-Mail, personal data privacy and export control.
3. IN NO EVENT SHALL RETARUS OR ITS SUPPLIERS BE LIABLE FOR ANY INCIDENTAL, SPECIAL, CONSEQUENTIAL OR ANY OTHER INDIRECT LOSS OR DAMAGE, INCLUDING LOST PROFITS, ARISING OUT OF ANY AGREEMENT OR ANY OBLIGATION RESULTING THEREFROM, OR THE USE, PERFORMANCE, MODIFICATION, OR DISCONTINUANCE OF ANY SERVICE, WHETHER IN AN ACTION FOR OR ARISING OUT OF ANY CAUSE WHATSOEVER, REGARDLESS OF THE FORM OF ACTION. RETARUS' ENTIRE LIABILITY FOR ANY CLAIM, LOSS, DAMAGE, OR EXPENSE ARISING UNDER OR RELATED TO THE SERVICES, ANY AGREEMENT OR TO ANY OBLIGATION RESULTING THEREFROM, SHALL BE LIMITED TO DIRECT, PROVEN DAMAGES IN AN AMOUNT NOT TO EXCEED TEN THOUSAND DOLLARS (\$10,000) IN THE AGGREGATE FOR ALL SUCH CLAIMS.

THIS LIMITATION OF LIABILITY SHALL APPLY: (A) REGARDLESS OF THE FORM OF ACTION, WHETHER IN CONTRACT, TORT, STRICT LIABILITY OR OTHERWISE; AND (B) WHETHER OR NOT DAMAGES WERE FORESEEABLE. THESE LIMITATIONS OF LIABILITY SHALL SURVIVE FAILURE OF ANY EXCLUSIVE REMEDIES PROVIDED IN THESE TERMS AND CONDITIONS OR IN ANY AGREEMENT.

G. SERVICE LEVEL STANDARDS

1. Availability. The Retarus System shall be available at least ninety-nine point five percent (99.5%) of the time each month during the term of the respective Agreement (24 hours per day, including Sundays and bank holidays). The following periods shall not be considered when calculating any unavailability:
 - (i) unavailability due to emergency maintenance services on the Retarus System, or
 - (ii) downtime due to a Force Majeure Event or any other reason outside the Retarus System. "A Force Majeure Event" is defined as an unforeseeable event that is beyond the reasonable control of a party and the effects of which could not reasonably be avoided by such party, including, without limitation: fire, flood, acts of God, labor disputes, accidents, acts of war or terrorism, interruptions of transportation or communications occurring outside the Retarus System, supply shortages or the failure of any third party to perform any commitment relative to the production or delivery of any equipment, material or services required for such party to perform its obligations hereunder. In the event the Retarus System has an availability of less than 99.5% at any time and for any reason, Retarus shall make (and be permitted by the Customer to make) reasonable efforts to restore the Services as soon as reasonably possible, and the Customer shall fully cooperate with Retarus' efforts to restore such Services.
2. Fax Outbound Traffic. Subject to its availability, as set forth above, the Retarus System shall have a target capacity that allows, on average per calendar month, the first dial attempt to be initiated within fifteen (15) minutes from Retarus' receipt of the respective Messaging Order. A Messaging Order is defined as an order of the Customer to provide Services on a specific Message, provided the order (i) is in compliance with Retarus' required format and transmittal protocol and (ii) the Retarus System is in complete, actual and unrestricted possession of all connection and content data that is technically or content-wise necessary to deliver the requested Services in respect of such Messaging Order. Status Reports regarding Messaging Orders will be available on the Retarus EAS Portal.
3. Fax Inbound Traffic. Subject to its availability as set forth above, the Retarus System shall have a target capacity that allows, on average per calendar month, the first delivery attempt to be initiated within fifteen (15) minutes of completion of processing inbound Fax documents. Provided that the Customer's infrastructure is available, Retarus will deliver to Customer via the agreed pre-designated transmission protocol, i.e., SMTP, web services and/or FTP.

Multiple Messaging Orders within one transmission period to a single destination will be processed in sequence according to Retarus' never-busy message distribution technology.

4. Retarus does not provide any representation or warranty that any Message or group of Messages will be successfully received or transmitted. Furthermore, Retarus is not in any way responsible for technical infrastructure or devices that are outside the Retarus System or that are operated by the Customer or any third party provider, including (i) any devices that are operated by the addressee of a Message, (ii) any communication devices or networks operated by the Customer or other third parties or (iii) any adverse effect that these devices or technical infrastructures may have on the Services. Customer further acknowledges and agrees that even when Services are performed in a timely and professional manner using competent personnel having expertise suitable to their assignments, the technology used to send and receive messages between the Retarus System and Customer may at times experience errors resulting in the loss of messages which is inherent in the nature of the technology and shall not be interpreted to be caused by the fault of Retarus. Anticipated service levels are not, and shall not be construed as, warranties.
5. Support. The Retarus Support Hotline is available during business hours by phone or by E-Mail via the contact details provided to Customer. Support services, which are necessary due to an operation error caused by the Customer or by technical modifications made outside of the Retarus System or support outside of Retarus business hours will be charged according to Retarus' hourly rates for consulting and support services.

H. TERM AND TERMINATION

1. The initial term and renewal and termination provisions of any Agreement shall be as set forth in the proposal.
2. If Customer fails to pay any charge when due and such condition continues unremedied for ten (10) days from written notice or if Customer fails to perform or observe any other material term or condition of the Agreement and such failure continues unremedied for thirty (30) days from Retarus' written notice, Customer shall be in default and Retarus may terminate the Agreement and/or the Services and exercise any available rights.
3. Retarus may immediately suspend or terminate the Agreement or a Service, in whole or part, if Retarus becomes aware of or suspects any unlawful, improper, or unauthorized use of the Services, or any use of the Services that Retarus reasonably determines in its sole discretion is a violation of Customer's obligations under these Terms and Conditions, or may be harmful to Retarus, other customers, or the Services generally.
4. Except as may be otherwise provided in any Agreement, neither party shall incur any liability whatsoever for any damage, loss or expenses of any kind suffered or incurred by the other because of the act of termination or the expiration of this Agreement, in either case in a manner which complies with the terms of the Agreement. Without limiting the foregoing, neither party shall be entitled to any damages on account of prospective profits or anticipated sales.

I. EXPORT CONTROL, OWNERSHIP

Customer hereby assures Retarus that Customer will not, without the prior written consent of Retarus (and, if required, of the U.S. Department of Commerce) sublicense, re-export or transfer ownership rights in any software or documentation or any information licensed to Customer pursuant to the Agreement. In addition, Customer agrees that Customer shall not violate any laws or regulations regarding the export or distribution of software outside the United States, including, but not limited to, encryption software. All intellectual property rights relating to the Services shall remain the exclusive property of Retarus.

J. MISCELLANEOUS

1. It is not the intention of the parties in entering into any Agreement to restrict the right of either of them, whether individually or with any third party, to explore any other business opportunity or to provide any type of services or conduct any type of business whatsoever, even if similar to those described in the respective Agreement, and each party expressly retains the right to do so in its sole discretion. In no event shall anything contained in these Terms and Conditions be construed to imply a joint venture, partnership or principal-agent relationship between the parties, and neither party shall have the right, power or authority to obligate or bind the other in any manner whatsoever.
2. Retarus may issue a joint press release shortly after execution of this Agreement, provided that the release is first approved by Customer, such approval not to be unreasonably withheld. Retarus may utilize the Customer logo both online and in print, provided that the logo meets Customer's brand expectations and guidelines. Official Customer logos will be provided to Retarus by the Customer upon request. Logos can be placed on any, but not exclusive to, the following types of materials: exhibition banners, presentations, web site, press releases. External content, such as in collateral or publications, must be coordinated with the Customer and submitted for approval before publication. The materials may also be used by Retarus internationally. Retarus shall be under no obligation to perform reference customer advertising. The Customer shall be entitled to limit logo usage at any time by fax or in writing. In this case, Retarus will stop any already initiated reference customer advertising. Except as aforesaid in this section, the terms and conditions of this Agreement shall be considered Confidential Material and neither Party may disclose the terms and conditions of this Agreement without the other Party's prior written consent.
3. GOVERNING LAW. THIS AGREEMENT SHALL BE DEEMED TO BE MADE IN AND IN ALL RESPECTS SHALL BE INTERPRETED, CONSTRUED AND GOVERNED BY AND IN ACCORDANCE WITH THE LAW OF THE STATE OF NEW YORK WITHOUT REGARD TO THE CONFLICT OF LAW PRINCIPLES THEREOF THAT WOULD RESULT IN THE APPLICATION OF THE LAWS OF ANOTHER JURISDICTION.
4. Whenever under an Agreement one party is required or permitted to give notice to the other, such notice may be given by E-Mail, Fax or conventional mail (subject, however, to applicable verification procedures to confirm the delivery of any such notice). Notices to Retarus by conventional mail shall be sent to retarus Inc., 300 Lighting Way, Secaucus, New Jersey 07094, USA.
5. If any provision of an Agreement is declared or found to be illegal, unenforceable or void, then both parties shall be relieved of all obligations arising under such provision, but if the remainder of the Agreement shall not be affected by such declaration or finding and is capable of substantial performance, then each provision not so affected shall be enforced to the extent permitted by law.
6. If either party fails to enforce any right or remedy available to it under an Agreement, that failure shall not be construed as a waiver of any right or remedy with respect to any other breach or failure by the other party.
7. Any legal action with respect to an Agreement or any Services contracted for or furnished under this Agreement shall be barred unless suit is commenced within two (2) years after the date the cause of action occurs.

8. Customer may not assign any Agreement, in whole or in part, without the prior written consent of Retarus; provided that Customer may assign its rights and/or obligations under an Agreement to an affiliate, or to a successor entity in the event of an acquisition or divestiture of the majority of such party's common stock or its relevant assets, without Retarus' consent.
9. Any Agreement shall inure to the benefit of the parties hereto and their respective successors and permitted assigns. Neither an Agreement or any provision thereof, nor any schedule, exhibit, certificate or other instrument delivered pursuant thereto, is intended to create any right, claim, or remedy in favor of any person or entity other than the parties thereto and their respective successors and permitted assigns and any other parties specifically entitled to be indemnified thereunder.

EXHIBIT 1 - ADDITIONAL TERMS REGARDING THE PROVISION OF SMS / TEXT SERVICES

1. **“Campaign”** means a marketing, advertising, promotional or informational program or initiative, or other campaign, conducted by the Customer utilizing the Services;
2. **“Content”** means any information or material (including audio, video, textual data or such other material) supplied by the Customer for distribution to Subscribers in Messages as part of a Campaign;
3. **“Message”** means a digital message comprising numerals, text, images, music, games and/or applications in a form for delivery via Short Message Service (SMS), Wireless Application Protocol (WAP), Multi-Media Messaging Service (MMS) technology, or other technology, protocols or standards used to transmit mobile digital content or information;
4. **“Network Operator”** means a mobile telecommunications system network operator which provides wireless or mobile voice and data services to Subscribers;
5. **“Order Form”** means the documents to be used for the orders placed by Customer, which may be made available from Retarus to Customer from time to time and which contains a description of, and pricing for, the Services (including any special terms);
6. **“Provisioning Form”** means a document in the form as provided to the Customer separately, which contains, among other things, a description of the nature and scope of the applicable Campaign, and provides the details of promotional materials;
7. **“Short Code”** means a set of digits, generally four or five digits long, used to enable Subscribers to send text messages, to access various Services and/or to participate in a Campaign;
8. **“Subscriber”** means a person who has entered into an agreement with a Network Operator that allows such subscriber to access one of the systems or networks operated by such Network Operator and, thus, to receive the Content supplied by the Customer.

- I. Retarus may submit a Campaign Provisioning Form to be completed by the Customer in order to approve and conduct a Campaign. Any variation or modification of a Campaign may be subject to the prior amendment of an existing Provisioning Form. Any Campaign Provisioning Form will be incorporated into and governed by the terms of the respective Agreement.
- II. The Customer will comply with any applicable code of conduct released by the authorities (e.g. the FTC's CAN-SPAM Act, the TCPA, the MMA Consumer Best Practice Guidelines and the MMA Code of Conduct) and agrees to indemnify Retarus from any violation thereof pursuant to section F.2. of these Terms and Conditions.
- III. Short Codes. The Customer acknowledges that the Short Codes used to deliver Campaigns remain at all times the property of and are subject to the applicable terms and conditions imposed by the Network Operator or other entity authorised to administer such Short Codes. Short Codes to be used to deliver Services for a Campaign may be obtained by Retarus for the Customer, if requested by the Customer pursuant to the applicable Order Form (if any) and subject to availability.
- IV. The Customer will be solely responsible for its contractual relationship with Subscribers and its conduct towards Subscribers with respect to each Campaign. The Customer will implement valid Campaign terms of use that are consistent with the terms of the Agreement, and at a minimum (i) inform subscribers that the Customer is the source and supplier of the Campaign and the related Messages which must include a source indication within each Message (i.e. mobile telephone number, "From" field in text message, etc.); (ii) comply with the applicable laws and regulations governing the provider identification; and (iii) clearly describe the price and inform Subscriber(s) that charges for any Message will be included on the Subscriber's mobile phone bill. Each party will promptly inform the other party if such party becomes aware of any violation of the terms of this clause.
- V. 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 specified in the applicable Provisioning Form and who have been informed of their rights to and the 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 required by the Network Operator Conditions, the applicable code(s) of conduct or the applicable regulatory entity or regulation). The Customer will, within twenty-four (24) hours of receiving a written request from Retarus, provide Retarus with proof of Subscriber opt-in requests, opt-out requests and/or the Customer's response time for discontinuing the provision of Messages to Retarus' satisfaction. The Customer agrees to keep such records during the term of the Agreement and for one (1) year after termination.