Veterinary Solutions Limited – RxWorks EMEA SMS Agreement

Definitions

In these Conditions, the following terms have the following meanings:
"Confidential Information" means all information belonging to a party which is identified by the party disclosing it as confidential or which, by reason of its characteristics or the circumstances or manner of its disclosure is evidently confidential including (without prejudice to the generality of the foregoing) any information about business plans/proposals relating to the acquisition or disposal of a company or business or proposed expansion or contraction of activities, maturing new business opportunities, research and development projects, designs, secret processes, product or services development and formulae, know how, inventions, sales statistics and forecasts, marketing strategies and plans, costs project and loss and other financial information (save to the extent published in audited accounts) prices and discount structures.

"VSL" means Veterinary Solutions Limited a company registered in England with number 04207571 and having its registered office at Medcare South Bailey Drive, Gillingham Business Park, Gillingham, Kent, ME8 0PZ ("the supplier").

"GDPR" means the EU General Data Protection Regulations (Regulation EU 2016/679) which came into effect on 25 May 2018;

"PECR" means the UK's Privacy and Electronic Communications Regulations

"Data Controller" has the meaning set out in the GDPR;

"SMS Service" means Short Message Service by which a message of up to 160 text characters can be sent or received online via a third party telecommunication provider facilitated by VSL

1. Provision of Services

1.1. VSL agrees to provide SMS Services to the Customer through the RxWorks Practice Management Software in partnership with VSL's network of Telecommunication Service Providers ("Telecommunication Carriers").

1.2. The Customer agrees to use the SMS Service in accordance with these Terms.

2. Pricing & Invoicing

2.1. All setup fees, monthly SMS fees, and report fees will be detailed in initial quote. Unless specified the quote will and all fees will be listed in GBP + VAT.
VSL reserves the right to adjust the pricing with 30 days notice.

2.2. Charges for the SMS Service will be invoiced by VSL to the Customer on a monthly basis on or around the 5th day of each month. Invoices are due and payable on account or by Direct Debit 10 days from the date of issue.

3. Term & Termination

3.1. These Terms commence on the date the Terms are executed and will continue unless otherwise terminated in accordance with this clause.

3.2. The Customer and VSL may terminate these Terms on provision of thirty (30) days written notice. VSL may terminate these Terms if the Customer breaches a material provision of these Terms.

5. Content of SMS Messages

5.1. The Customer agrees not to use the SMS Service to transmit any information or material that violates applicable laws or transmit any material that is in contravention of any privacy or copyright rules or any other proprietary interest.

5.2. The Customer agrees not to use or seek to use the SMS Service for publishing, reproducing or advertising any message, information, symbol or other communication which is offensive or abusive or of an indecent, obscene or menacing character or for the purpose of causing annoyance, inconvenience or needless anxiety to any person, or for any unlawful purpose. The Customer acknowledges that Telecommunication Carriers and VSL may audit Content of services from time to time and that a breach of this condition may result in termination of the Customer's Account

5.3. Customer represents and warrants that it will comply with PECR GDPR and any other data protection legislation that is or may be enacted. Specifically, Customer, as the Data Controller, agrees to the following:

Customer will not send marketing texts to "individual subscribers" without specific Consent (unless an exemption applies).
Customer can send texts without Consent using the PECR "soft opt-in" exemption as long as the following conditions are met:

– Customer has obtained the contact details in the course of a sale (or negotiations of a sale) of a product or service

– Customer is only marketing its own similar products and services

– Customer provided a simple opportunity to refuse or opt-out of the marketing, when Customer first collected the contact details and in every subsequent communication

5.4. The Customer acknowledges that VSL may request explicit confirmation of compliance with this clause from time to time.

5.5. The Customer agrees to comply with any reasonable instructions concerning access to and/or use of the SMS Service that VSL may give to it from time to time and agrees not to do anything that may jeopardise the security or integrity of any part of VSL's or any of the Telecommunication Carrier's systems or platforms.

5.6. The Customer accepts responsibility for all aspects of its account, including the actions of all persons in possession of the Customer's username and password.

5.7. The Customer agrees that the SMS Service is to be used solely for the provision of general information to its customers and the provision of Confidential Information is specifically prohibited. The Customer acknowledges that the Company and /or the Telecommunication Carriers may audit the content of services from time to time and that a breach of this clause may result in a breach of the Customer's obligations under this Agreement, or potentially the termination of this Agreement.

5.8. The Customer agrees not to use the SMS Services, connections, or facilities to:

a. transmit computer worms or viruses;

b. access, any other of the Company's and/or Telecommunications Carrier's computer systems or networks without the Company's consent or disrupt or damage any of

the Company's or Telecommunications Carrier's computer systems or network;

c. forge any messages; or

d. forge headers or otherwise manipulate identifiers in order to disguise the origin of any Content transmitted through the Service.

e. transmit any Content that is unlawful, harmful, threatening, abusive, harassing, menacing, defamatory, vulgar, obscene, libellous, invasive of another's privacy, hateful, or racially, ethnically or otherwise objectionable.

f. upload, send by SMS or otherwise transmit any Content that you do not have a right to transmit under any law or under contractual or fiduciary relationships (such as inside information, proprietary and confidential information learned or disclosed as part of employment relationships or under nondisclosure agreements).

g. upload, send by SMS or otherwise transmit any Content that infringes any patent, trademark, trade secret, copyright or other proprietary rights ("Rights") of any party.

h. send any obscene, sexually explicit, abusive or defamatory;

i. material or material that violates or is contrary to any Commonwealth, State, Territory or local law or regulation or guidelines

j. Distribute any Confidential Information.

6. Information Security

6.1. The Customer accepts responsibility for all aspects of their Account, including the actions of all persons in possession of the Customer's username and password.

6.2. The Customer acknowledges that the internet is not an inherently secure system and undertakes responsibility for the protection of its information and data. The Customer will be responsible at all times for maintaining the security of its and its End User's data.

6.3. The Customer acknowledges that the internet may contain viruses (including other destructive programs), which may, if not eliminated, destroy parts or all of the data contained within its system and agrees to provide its own mechanism for checking its system for viruses.

6.4. The Customer agrees to comply with any instructions concerning access to and/or use of the SMS Service that VSL may give to it from time to time and agrees not to do anything that may jeopardise the security or integrity of any part of VSL's systems or platforms.

7. Disclaimer

7.1. The Customer acknowledges that VSL is in part reliant on Telecommunication Carriers and other third-party suppliers and therefore VSL does not warrant that the SMS Service will be error-free or uninterrupted, or that transmission will be instantaneous.

7.2. The Customer accepts that VSL is reliant on Telecommunications Carriers and other third party suppliers (collectively referred to as "Telecommunication Providers") and the Customer will not hold VSL liable in any way whatsoever for VSL's inability to provide the SMS Service as a result of faults that are the responsibility of the Telecommunication Providers.

7.3. The Customer will be responsible at all times for maintaining the security of its and its customer's data, and VSL bears no liability for the loss or damage in part or whole, of such data, to the extent that such loss or damage has been caused or contributed to by the Customer or VSL.

7.4. The Customer acknowledges that there has been no reliance by it on VSL's skill or judgement or written or oral representations in deciding whether VSL's SMS Messaging Service is fit for a particular purpose or meets particular criteria.

7.5. The Customer acknowledges that the internet is not an inherently secure system and undertakes responsibility for the protection of its information and data. The Customer acknowledges that the internet may contain viruses (including other destructive programs), which may, if not eliminated, destroy parts or all of the data contained within its system, and that VSL has no control over these viruses and does not provide any filtering or checking of data to eliminate these viruses.

8. Confidentiality

8.1. The Customer agrees to VSL disclosing the existence of this Agreement for the purpose of its Telecommunications carriers marketing to current and future clients.

8.2. Subject to clause 7.1, each party undertakes that, in respect of information which is of a confidential nature that may be disclosed to each party, neither party will disclose such information to any third party without the other parties' written consent.

8.3. Notwithstanding any other provision of this Agreement, VSL has the unconditional and irrevocable right to disclose the identity and address of the Customer and any Customer and any end user in the event of any complaint received from any regulatory or Government body or Telecommunications Carrier, in connection with the content made available by the Customer.

9. Indemnities

9.1. The Customer indemnifies VSL from all costs (including legal costs on a full indemnity basis), expenses, loss, liabilities, suits, actions, damages or claims arising or in any other way connected with the Customer's use of their Account or the SMS Service, or any other person using the Customer's username and password.

9.2. Further the Customer, explicitly and unconditionally indemnifies VSL from all acts and omissions of the Customer's end users.

9.3. Any indemnity in this Agreement is a continuing obligation, independent of other obligations under this Agreement and continues after this Agreement ends. It is not necessary for VSL to incur expense or make payment before enforcing a right of indemnity under this Agreement.