



## **EULA (End User License Agreement)**

### ***END CUSTOMER DETAILS (THE CUSTOMER)***

***END CUSTOMER LEGAL NAME:***

***ADDRESS:***

---

---

---

The following terms of service and end user license agreement (“EULA” or “Agreement”) constitute an agreement between The Customer and WEBTEXT (“Company”).

“End Users” means The Customer’s subscribers or The Customer’s clients’ subscribers to specifically include the final recipient of the text message.

“Effective Date” means date first test message is successfully transmitted.

“Quote” means ordering document provided by WEBTEXT to the Customer.

“Services” means any service that WEBTEXT will provide to the Customer, which may include but is not limited to the delivery of SMS messages to WEBTEXT supported wireless carriers and devices, including mobile phones.

“WEBTEXT” means WEBTEXT LLC, a Pennsylvania limited liability company or WEBTEXT Holdings Limited, a company registered in Ireland.

### **USE OF SERVICES.**

The Service(s) provided may be used by The Customer or any lawful affiliate of The Customer only as expressly authorized under these terms and conditions. The Customer shall not make the Service(s) available to any third party through any resale, sublicense, re-marketing or re-packaging. The Customer shall not use any Service(s) in such a manner as to interfere unreasonably with the use of Service(s) by other WEBTEXT Customers or authorized users.

The Customer shall use the Company Services only for the purpose for which they have been supplied and in compliance with all applicable laws (including the Telephone Consumer Protection Act), carrier rules, regulations and Company terms of use as they may be updated from time to time.

The Customer may not use the Company Services to send any advertising, marketing or commercial messages unless it complies with the requirements of the Telephone Consumer Protection Act (“TCPA”).

The Company reserves the right to enforce its terms directly against the Customer in relation to the Company acceptable use policy and general industry best practice where it believes the Customer is violating TCPA.

**INTELLECTUAL PROPERTY.**

All right and title to, and interest in, the Service(s), and any software including all modifications, enhancements, improvements, alterations or updates, utilized by WEBTEXT or licensed to The Customer by WEBTEXT to provide the Service(s) pursuant to these terms and conditions, belong to WEBTEXT or the third party from whom WEBTEXT procures software. Unless specifically stated in these terms and conditions, no licenses, expressed or implied, under any patents, copyrights, trademarks, or other tangible or intellectual property rights are granted by WEBTEXT to The Customer.

The Customer shall not (a) copy the Company Products or any part of any of them except to the extent and for the purposes expressly permitted by this agreement (b) modify, adapt, develop, create any derivative work, reverse engineer, decompile, disassemble or carry out any act otherwise restricted by copyright or other Intellectual Property Rights in the Company Products except and only to the extent that it is expressly permitted by applicable law.

**WARRANTY.**

WEBTEXT warrants that it will provide its Services with due care and in a workmanlike manner. Except for this express warranty, WEBTEXT makes no other representations or warranties, express or implied, including, but not limited to, any warranties of merchantability or suitability, or fitness for a particular purpose or non-infringement of Intellectual Property.

**EXPORT.**

The Customer will not export, directly or indirectly, any technical data acquired from WEBTEXT or any of its Affiliates, or any equipment utilizing any such data without first obtaining the written consent of WEBTEXT to do so.

**CONFIDENTIALITY.**

Neither WEBTEXT nor its Customer will directly or indirectly disclose any information concerning the other's business methods, Customers or finances, or any other information which is disclosed to it, whether or not in writing and whether or not designated as confidential, without the prior written permission of the other, unless such disclosure is specifically required in the course of performance by either of them

**INDEMNITY**

WEBTEXT agrees to indemnify, defend and hold harmless Customer against any and all claims, allegations, suits and proceedings brought by a third party (collectively, "Claims") and all liabilities, damages, losses and expenses including attorneys' fees and cost of suit (collectively, "Damages") incurred by Customer or ordered to be paid to any third party claimant to the extent arising from WEBTEXT's breach or alleged breach of (a) its representations or warranties, (b) the alleged or actual infringement of such third party's rights through Customer's use of the Services in accordance with the terms of this Agreement, or (c) as a result of WEBTEXT's non-compliance with applicable state and Federal Laws.

The Customer will defend, indemnify, and hold harmless WEBTEXT in connection with any claims or proceedings brought against The Customer or WEBTEXT alleging that The Customer, The Customer's

employees or agents, or The Customer's end users' violation of an applicable Acceptable Use Policy or use or misuse of the Service(s) constitutes an infringement of any existing patent, copyright, or trademark of third parties, or violates rights of a third party. The Customer shall indemnify WEBTEXT against all costs, damages, and expenses finally awarded against WEBTEXT attributable to such claim. The Customer is solely responsible for any and all activities that occur on its Services account.

WEBTEXT hereby expressly disclaims any warranties, express or implied, related to intellectual property rights.

#### **LIMITATION OF LIABILITY.**

IN NO EVENT WILL EITHER PARTY OR ITS LICENSORS OR SUPPLIERS (I.E. CARRIERS) HAVE ANY LIABILITY FOR ANY INCIDENTAL, SPECIAL, STATUTORY, INDIRECT OR CONSEQUENTIAL DAMAGES, LOSS OF PROFITS OR REVENUE, LOSS OR CORRUPTION OF DATA, TOLL FRAUD, COST OF COVER, OR SUBSTITUTE GOODS OR PERFORMANCE. THE TOTAL AGGREGATE LIABILITY OF EITHER PARTY FOR ALL CLAIMS ARISING OUT OF OR IN CONNECTION WITH THESE TERMS WILL NOT EXCEED AN AMOUNT EQUAL TO THE TOTAL AMOUNT OF ALL FEES PAID OR PAYABLE BY COMPANY UNDER THESE TERMS IN THE 12 MONTH PERIOD IMMEDIATELY PRECEDING THE DATE OF THE EVENT GIVING RISE TO THE CLAIM. THE LIMITATIONS OF LIABILITY IN THIS SECTION WILL APPLY TO ANY DAMAGES, HOWEVER CAUSED, AND ON ANY THEORY OF LIABILITY, WHETHER FOR BREACH OF CONTRACT, TORT (INCLUDING, BUT NOT LIMITED TO, NEGLIGENCE), OR OTHERWISE, AND REGARDLESS OF WHETHER THE LIMITED REMEDIES AVAILABLE TO THE PARTIES FAIL OF THEIR ESSENTIAL PURPOSE. HOWEVER, THEY WILL NOT APPLY IN CASES OF WILLFUL MISCONDUCT, PERSONAL INJURY OR BREACHES OF COMPANY'S LICENSE RESTRICTIONS. THE LIMITATIONS OF LIABILITY IN THIS SECTION ALSO WILL APPLY TO ANY LIABILITY OF DIRECTORS, OFFICERS, EMPLOYEES, AGENTS AND SUPPLIERS.

#### **MISCELLANEOUS PROVISIONS.**

(a) Force Majeure. Neither WEBTEXT nor The Customer shall be responsible for any failure to perform its obligations hereunder arising from causes beyond its reasonable control that make such performance commercially impracticable or impossible, including, but not limited to, fires, strikes, embargoes, allocations of supplies, wars, floods, earthquakes, nuclear disasters, and acts of God.

(b) No Third-Party Beneficiaries. These terms and conditions are not intended, nor shall they be construed, to create or convert any right in or upon any person or entity other than WEBTEXT and The Customer.

(c) Notices. Any notice or other communication required shall be given in writing. Any notice or other communication required hereunder shall be deemed to have been given when a) delivered personally; or b) receipt returned from registered mail.

(d) Independent Contractor. WEBTEXT will perform its obligations as an independent contractor and not as the employee or agent of The Customer.

(e) Severability. Each provision of these terms and conditions is severable from the whole, and if one provision is declared invalid, the other provisions shall continue in full force and effect.

(f) No Waiver. Any failure to enforce a specific clause of these terms and conditions, or the waiver thereof in any instance, shall not be construed as a general waiver of rights.

(g) Compliance with Laws. Both WEBTEXT and the Customer shall comply with all applicable national, federal, state, and local laws, regulations and codes, including the procurement of permits and licenses, when needed, of their respective states, territories, and/or countries.

(h) Governing Law. For North American Customers all dealings between WEBTEXT and the Customer shall be subject to and interpreted in accordance with the laws of the state of Pennsylvania and the courts of Pennsylvania shall have jurisdiction thereof.

## **CUSTOMER'S RESPONSIBILITIES**

The Customer will:

- maintain the security of, and prevent unauthorized access to the Services.
- Allow WEBTEXT to list the Customer on WEBTEXT's website and in press releases
- provide access to the Services from its network or data processing equipment via the Internet or telephone facilities and pay any service charges and fees associated with such access.
- Co-operate with WEBTEXT, third-party service providers, and governmental authorities in investigations of any alleged or perceived violation of any law, rule, regulation, or the Acceptable Use Policy as detailed in these terms and conditions.
- give all End Users and any third parties located in North America to whom messages may be transmitted and all End Users and any third parties located elsewhere to whom marketing messages may be transmitted using the Services the rights to opt-in (which must be accepted in the affirmative by end user or third party prior to sending a message) and opt-out of the SMS message or marketing message as the case may be. The Customer agrees to indemnify WEBTEXT from any legal claims initiated by either clients, third parties or End Users arising from Customers' failure to follow the opt in and opt out procedures. The Customer understands as the user of WEBTEXT services they have certain obligations under state and Federal law, including what is known as the Telephone Consumer Protection Act (TCPA), Fair Debt Collection Practices Act and Canada's Anti-Spam legislation, or any other local legislation or regulations and nothing in the foregoing relieves The Customer of these obligations and responsibilities.
- The Customer is expressly prohibited from copying, sublicensing, reselling, renting, leasing or otherwise redistributing the Services, or permitting either direct or indirect use of the Services by any third party. The Customer agrees not to modify, disassemble, decompile, reverse engineer, or create derivative works of the Service. In the event any modifications are made to the Services by anyone other than WEBTEXT, any and all warranties with respect to the Services will immediately terminate.

## **SERVICE TERM, TERMINATION AND SUSPENSION**

### **A. Term and Termination**

The minimum period for which the Company will provide its services for is an initial term of three (3) years from the Effective Date ("Initial Term") and shall renew automatically for successive three-year periods ("Renewal Term"), unless written notice to cancel is delivered at least ninety (90) days prior to the end of the Initial Term or any Renewal Term, unless otherwise agreed between the Company and the Customer and documented on the Quote.

In the event of termination, termination fees of 100% of the set up fees and 100% of the aggregated monthly fees for the remainder of the term of the applicable order will apply, unless otherwise agreed between the Company and the Customer and documented on the Quote.

Purchaser may terminate an order for convenience subject to the termination fee above upon thirty (30) days prior written notice.

## B. Termination

Services may be terminated or suspended without notice where it is no longer possible to provide such services due to circumstances outside of the Company's control or where the Company becomes aware of a breach of the end user terms and conditions or any applicable legislation or regulations. Notwithstanding, Customer may terminate for cause where the Company cannot provide the service.

## C. Service Suspension

WEBTEXT may modify, suspend, limit, restrict, and place conditions on the Services, and/or terminate the Services with advance notice, unless advance notice is not feasible or practicable under the circumstances or if there is a known violation of TCPA, if:

- i. necessary to comply with applicable laws, regulations, or requirements of wireless service providers, Short Code providers/licensors, mobile industry associations and regulatory/governmental authorities or other third parties related to the Services;
- ii. a law or regulatory action prohibits, impairs or makes impractical the provision of the Services;
- iii. there is use of the Services which WEBTEXT determines may create liability or may be fraudulent, illegal, unauthorized or in violation of the Acceptable Use Policy;
- iv. there is unauthorized use or disclosure of the API; and/or provided that with respect to any of the foregoing, WEBTEXT and Customer will engage in reasonable and good faith discussions, as soon as reasonably practicable, to explain the reasons for the modification, suspension, limitation, restriction, or condition and to discuss mutually beneficial ways of avoiding, or in the event such actions have occurred, resolving any issues arising from such modification, suspension, limitation, restriction, or condition.

## D. Effects of Termination

- i. Customer is solely responsible for procuring any new or replacement Services upon termination;
- ii. Customer will remain obligated for any fees and costs accrued prior to the termination date and any other amounts owed by Customer accrued prior to termination date unless Customer termination is for cause on the part of the Company.

## **CUSTOMER DATA**

A. The Customer acknowledges that in connection with the Customer's and End Users' use of the Services, WEBTEXT may receive domain names, Customer's End User names, addresses, passwords, telephone and device numbers, the content of messages, data files and other data and information provided by End Users or in connection with the Services (collectively "User Information"). WEBTEXT exercises no control whatsoever over any content or User Information, including the content of messages and information that may be transmitted and/or generated using the Services. WEBTEXT's responsibilities are limited to storing the User Information and transmitting the User Information to and from the Customer, the Customer's End Users, and other third parties identified by the Customer, the Customer's clients, or End Users. WEBTEXT has no obligation and undertakes no responsibility to review User Information to determine whether any such User Information may violate any applicable law or regulation, or create liability to, or on the part of, any third party. The Customer is solely responsible for the content of all User Information and transmissions thereof and use of the Services. Without prejudice to the foregoing, WEBTEXT reserves the right to monitor Customer's, Customer's clients', and End Users' use of the Services for purposes of verifying compliance with the terms and conditions of the AUP provided that WEBTEXT disclaims any obligation to monitor, filter, or edit any of Customer's, Customer's Clients', or End Users' Content.

B. WEBTEXT will not use or disclose confidential Customer or End User Information, except as necessary or required, in any of the following instances:

- i. as required by law, regulation or third parties (e.g. wireless service providers) involved in providing the Services,
- ii. to provide and/or invoice Customer for the Services, and/or
- iii. to protect WEBTEXT, its facilities, network, service, Customers or third parties.

C. Customer acknowledges that (i) End Users who use the Services are also the end user Customers of the carriers whose services are used by WEBTEXT to transmit messages over the carrier networks; and (ii) Carriers assert that information of or about carriers' end user Customers (who may also be Customer's End Users) derived solely by such end user Customers' use of the carriers' networks is confidential information of the carriers and the private information of such end user Customers of the carriers.

### **THIRD PARTY FACTORS AND EXTENT OF CONTROL**

Customer acknowledges that WEBTEXT's provision of the Services is dependent on the facilities, networks, connectivity, and any acts and/or omissions of third party wireless service providers ("Carriers") and/or any third party aggregators (collectively, including the Carriers, "Third Party Factors"). The Customer acknowledges that the performance of the Services may be affected by such Third Party Factors. Third Party Factors are deemed to be outside WEBTEXT's extent of control. WEBTEXT's "Extent of Control" is defined as those areas of functionality and technology used in the provision of the Services that are under the direct control of WEBTEXT (excluding Third Party Factors). WEBTEXT will have no liability for any reduction, interruption, termination or suspension of the Services related to any issues deemed by WEBTEXT to be outside WEBTEXT's span of control. Neither WEBTEXT, its suppliers, nor any carrier:

- will be liable to The Customer or any user for any discrete or individual messages deleted or not delivered, regardless of the reason for deletion or non-delivery including, without limitation, message processing or transmission errors; nor
- makes any representations or warranties regarding the quality, reliability, timeliness or security of the services or that the services will be error-free, uninterrupted, or free from unauthorized access. The Services are provided "as-is", "with all faults". To the maximum extent permitted by applicable law, WEBTEXT expressly disclaims all implied and/or statutory warranties with respect to the services.

### **ACCEPTABLE USE**

A. The Customer and all persons and entities accessing the Services provided to the Customer, including the Customer's End Users, the Customer's Clients, employees, agents, representatives and third-party contractors must comply with WEBTEXT's latest AUP (Schedule A). WEBTEXT serves as a carrier which carries messages and The Customer is solely responsible for any and all activities (including message content) that occur on its Services account.

B. The Customer will defend, indemnify, and hold harmless WEBTEXT from and against all third party Claims arising from The Customer's or the Customer's clients, including Customer's End Users, employees, agents, representatives and third-party contractors' violation of the AUP.

C. Customer agrees to immediately notify WEBTEXT of any unauthorized use of the Services or any other breach of security known to Customer.

D. Because carriers may require changes to the use restrictions imposed on WEBTEXT from time to time, WEBTEXT may modify the AUP from time to time upon receipt of such changes from carriers. WEBTEXT will give Customer prompt written notice of any changes to the AUP.

**MODIFICATION.**

WEBTEXT may revise this Agreement from time to time due to changes by third parties (e.g. carriers) that are necessary to the provision of the Service. If a revision, in WEBTEXT's sole discretion, is material, WEBTEXT will notify Customer (by, for example, sending an email to the email address associated with the applicable account). By continuing to access or use the Services after being notified of any revisions and such revisions become effective, Customer agrees to be bound by the revised Agreement. If Customer does not agree to the revised Agreement terms, Customer may terminate the Services within 90 days of receiving notice of the change.

This Agreement governs access to and use of the Services. By signing below, both Parties agree to the terms and conditions of this Agreement

CUSTOMER

By: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

WEBTEXT LLC

By: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

**Schedule A**  
**ACCEPTABLE USE POLICY**

Customer, Customer's End Users, and all persons and entities accessing the Services must comply with this Acceptable Use Policy ("AUP"). By using the Services, Customer acknowledges, and agrees to ensure compliance with, this AUP.

Restrictions on Use. Without limiting the foregoing, Customer agrees not to permit the Services to be used to transmit or disseminate any:

- i. unsolicited material to persons or entities that have not agreed to receive such material or to whom Customer or its End Users do not otherwise have a legal right to send such material;
- ii. material or data that infringes or violates any third party's intellectual property rights, including patent, copyright, trademark, or trade secret, rights of publicity, privacy, or confidentiality, or the rights or legal obligations of any wireless service provider or any of its Customers or subscribers;
- iii. material or data, that is illegal, or material or data that is harassing, coercive, defamatory, libellous, abusive, threatening, obscene, or otherwise objectionable, materials that are harmful to minors or excessive in quantity, or materials the transmission of which could diminish or harm the reputation of WEBTEXT or any third-party service provider involved in the provision of the Services;
- iv. material or data that violates TCPA and/or local, State or Federal regulation, specifically mentions any wireless carrier or copies or parodies the products or Services of any wireless carrier;
- v. viruses, Trojan horses, worms, time bombs, cancelbots, or other computer programming routines that are intended to damage, detrimentally interfere with, surreptitiously intercept or expropriate any system, data, or personal information;
- vi. material or information that is false or misleading, or likely to mislead or deceive;
- vii. any signal or impulse that could cause electrical, magnetic, optical, or other technical harm to the equipment or facilities of WEBTEXT or any third party.