

13TEXT LTD TERMS AND CONDITIONS

1. TERMS USED IN THIS AGREEMENT

Commencement Date means the date on which the Agreement has been signed by both You and Us.

Fees & Charges Schedule means the schedule of fees and charges payable by You for the use of the 13Text Applications services as set out in Schedule 1 of this Agreement.

Further Term means the further term of this Agreement calculated in accordance with clause 3.2.

Intellectual Property includes but is not limited to present and future trademarks, patent rights, copyright, design rights, trade mark rights, technical information, confidential information, ideas, know-how, expertise, systems, techniques, procedures, policies, manuals, forms and agreements owned by Us and used in relation to the 13Text application services.

Initial Term means the initial term of this Agreement calculated in accordance with clause 3.1.

Support Agreement means the Support Agreement set out in Schedule 2 of this Agreement.

Term means the Initial Term and any Further Term.

Us/We/Our means 13Text Limited ABN 83 113 708 348.

You/Your means the Organisation using the 13Text applications.

2. LICENCE

2.1 We grant You the rights to the use of the 13Text application services during the Term subject to the terms of this Agreement.

2.2 We will include the plural of Brand Words or Key Words if requested by You.

2.3 You are responsible for ensuring that Your Brand Words or Key Words do not infringe upon any legal rights of any other person or company or entity. If you contravene this provision, We may terminate this Agreement at Our complete discretion and in such circumstances You will have no further recourse against Us.

3. TERM

3.1 Initial Term

This Agreement will commence on the Commencement Date and will, subject to clause 10, continue for a period of one (1) year.

3.2 Further Term

(a) At the expiration of the Initial Term, this Agreement will continue for a further period of one (1) year unless either You or We give a notice terminating this Agreement in accordance with clause 10.1 or 10.2.

(b) At the expiration of any Further Term, this Agreement will continue for a further period of one (1) year unless either You or We give a notice terminating this Agreement in accordance with clause 10.1 or 10.2.

4. FEES

4.1 We will charge You the fees & charges set out in the Fees & Charges Schedule 1.

4.2 You agree to pay GST as required in accordance with clause 11 on the services provided pursuant to this Agreement.

4.3 You acknowledge that You must keep the details of the Fees & Charges Schedule and this Agreement generally confidential in accordance with clause 20 of this Agreement.

5. SUPPORT

5.1 We will provide technical support to You in accordance with the Support Agreement. You acknowledge that the response times set out in the Support Agreement are target times only. We will use our best endeavors to meet those target response times however You will have no claim against us if we are unable to meet them. You are entitled, at Your discretion, to terminate this Agreement if We fail to meet those response times on a continual basis.

6. INTELLECTUAL PROPERTY

6.1 You acknowledge that We retain all right, title and interest in the Intellectual Property. We agree that in the course of providing the 13Text application services and support in accordance with this Agreement, we will not do any act or thing which may infringe Your intellectual property rights or the intellectual property rights of any third party. We indemnify You in relation to any loss, costs, damages or expenses that may be suffered or incurred by You as a result of any such infringement.

7. WARRANTIES

7.1 Our Warranty

(a) We warrant that We will supply the 13Text application services to You under the terms of this Agreement.

(b) On agreeing to these terms and conditions We shall make all reasonable attempts to ensure that the 13Text application services are available 24 hours a day 7 days a week.

(c) We will endeavour to provide product support in accordance with clause 5 of this Agreement.

(d) The 13Text application services are currently only available on the Telstra and Optus mobile networks.

(e) We will comply with any and all laws and regulations that govern the provision of the 13Text application services and support.

7.2 Your Warranty

- (a) You will comply with any and all laws and regulations that govern the use of the 13Text application services.
- (b) You have the legal rights to use Your chosen Brand Words or Key Words and Your chosen Brand Words or Key Words will not infringe upon any legal rights of any other person or company or entity.
- (c) You will not sub-license the rights granted under this Agreement to any other person or entity.
- (d) You will not apply for a business name, company name, domain name or any other trading entity that incorporates the 13Text applications in any way.

8. LIMITATION OF LIABILITY

- 8.1 The 13Text application services are delivered over telecommunications carrier networks, and We are therefore not able to guarantee that there will be no interruptions to service. All services are delivered as best efforts.
- 8.2 Performance of the services are dependant on factors outside of our control, including traffic on and technical difficulties with the internet, telephone networks, SMS and email systems where they apply to your service. In no event will either party be liable to the other for any consequential special or incidental damages and including without limitation, damages resulting from loss of profits whether based on breach of contract, tort (including negligence), product liability or otherwise. This limitation will apply even if We have been advised of the possibility of such damages. We shall not be obliged to put in place any substitute or alternative service should there be a failure of or delay in providing the service.
- 8.3 We and Our agents cannot and must not be held responsible or liable for any losses suffered, except in the case of clause 6.1, any breach by Us of this Agreement or any negligent or willful act or omission by Us or Our agents .

9. CUSTOMER COMPLAINTS

- 9.1 We are committed to providing You with excellent service. If Our service or support has not met Your expectations, We would like to know. Your feedback can assist Us in improving Our business.
- 9.2 If You have a complaint or would like to provide Us with feedback on Our services You can contact Us in any of the ways listed below.
 - By email** at support@13text.com.au;
 - By phoning Our Customer Service Team** on 07 3510 2102 during the hours of 8.30am to 5.00pm Monday to Friday;
 - By writing to Us** at PO Box 551, Ashgrove, Queensland 4060; or
 - By sending a fax to Us** to 07 3366 9344.
- 9.3 We will contact You in relation to Your complaint within 48 hours of receiving Your complaint. We will endeavour to resolve Your complaint at that time. If We are unable to resolve your issue at the time, We will give you an estimate on how long We believe it will take to address Your complaint. We aim to resolve all customer complaints within 10 working days.
- 9.4 We endeavour to resolve all customer complaints however if You are unsatisfied with how We have dealt with Your complaint You may contact the Office of Fair Trading (or equivalent consumer body) in Your state for further assistance.

10. TERMINATION

10.1 Notice by You to Terminate

- (a) You may terminate this agreement by providing thirty (30) days notice in writing to Us.
- (b) Notice is required to be via registered mail or by email or facsimile.

10.2 Notice by Us to Terminate

We may terminate this Agreement:

- (a) with effect from the end of any Initial Term or Further Term by giving You at least thirty (30) days notice in writing;
- (b) If You are in breach of this Agreement and fail to rectify such breach within thirty (30) days of Us giving you notice in writing of the nature of the breach and what is required to remedy it; or
- (c) If You become bankrupt or insolvent.

10.3 Effect of Termination

On termination:

- (a) All of Your rights to the use of the 13Text application services immediately cease.

11. GST

- 11.1 Where any Supply under this Agreement is or becomes subject to GST, an amount equal to the GST paid or payable in respect of the Supply will be added to the fee paid or payable for the Supply under this Agreement.
- 11.2 The provisions of this clause 11 apply notwithstanding any other clause of this Agreement whatsoever.
- 11.3 Each party agrees to do all things, including providing invoices and other documentation that may be necessary or desirable to enable or assist the other party to claim any credit, set off, rebate or refund in relation to any amount of GST paid or payable in respect of any Supply under this Agreement.
- 11.4 In this clause 'Supply' means any form of supply whatsoever and includes any supply with in the meaning of any Commonwealth, State or Territory legislation imposing or relating to the imposition of GST.

12. ASSIGNMENT

- 12.1 You agree that this Agreement is personal to You. You must not assign, sub-license, transfer, mortgage or charge this Agreement or any of Your rights under this Agreement.
- 12.2 We may assign this Agreement at any time without Your consent provided that We cause any assignee to enter into a Deed of Assignment and Covenant agreeing to be bound by the terms of this Agreement.

13. SEVERANCE

- 13.1 In the event of any covenant or other provision of this Agreement be acknowledged by the parties or found by a court to be invalid, illegal, unlawful or otherwise being incapable of enforcement such court or other provision will be severed from the remainder of this Agreement and will be deemed never to have been part of it and all other covenants and provisions of this Agreement shall nevertheless prevail and remain in full force and effect and be valid and fully enforceable and no covenant or other provision hereof shall be construed to be dependant upon any covenant or provision unless so expressed therein.
- 13.2 In the event of any such provision being severed pursuant to this clause the parties shall endeavour to agree upon provisions in substitution therefore which are not illegal and which substantially express the meaning of the severed provisions.

14. AMENDMENT

With the exception of any amendment or variation to this Agreement by Us which is specifically permitted under the terms of this Agreement, an amendment or variation to this Agreement is not effective unless it is in writing and signed by the parties.

15. FURTHER ASSURANCES

Each party will (and will procure every other person as required) do all things (including executing all documents) necessary or desirable to give full effect to this Agreement and the transactions contemplated by this Agreement.

16. NOTICES

16.1 Methods of Service

Service of any notice, document, originating process or document in a court proceeding or required to be served under any Act, under or relating to this Agreement shall be sufficiently served:

- (a) if delivered personally to the party to be served;
- (b) if left at or sent by pre-paid registered post to:
 - (i) the address of the party to be served as set out in the description of that party at the beginning of this Agreement;
 - (ii) the last known place of abode or business of the party to be served; or
 - (iii) the registered office of any party to be served which is a company.
- (c) if sent by facsimile or email transmission to the facsimile number or email address of the party to be served as set out at the beginning of this Agreement, provided that no transmission error message is received by the sender.

16.2 Electronic Communications

Subject to clause 10.1, the parties consent to any information, notice, document, originating process or document in a court proceeding in relation to this Agreement being given by electronic communications.

16.3 Receipt of Notices

In the case of:

- (a) serving notice in accordance with clause 16.1(b), such notice shall be deemed to have been duly served and received on the second day after such notice has been posted; and
- (b) serving notice in accordance with clause 16.1(c), such notice shall be deemed to have been duly served and received at the time such facsimile or email transmission is sent.

16.4 Deemed Personal Service

The parties agree and acknowledge that service in accordance with clause 16.1 is deemed to be effective personal service of any notice, document, originating process or document in a court proceeding.

16.5 Non-Merger

This clause 16 shall remain in full force and effect notwithstanding the termination of this Agreement and shall not merge on completion.

17. GOVERNING LAW

This Agreement is governed by and construed in accordance with the laws of the State of Queensland and the parties submit to the non-exclusive jurisdiction of the courts of that state, and courts of appeal from them. Each party waives any right it has to object to an action being brought in those courts, including, without limitation, by claiming that the action has been brought in an inconvenient forum and those courts do not have jurisdiction.

18. WAIVER

- 18.1 A party's failure or delay to exercise a power or right does not operate as a waiver of the power or right.
- 18.2 The exercise of power or right does not preclude either its exercise in the future or the exercise of any other power or right.
- 18.3 A waiver is not effective unless in writing.

18.4 A waiver of a power or right is effective only in respect of the specific instances to which it relates and for the specific purpose for which it is given.

19. COUNTERPARTS

This Agreement may be executed in any number of counterparts and by facsimile counterparts and by different persons on separate counterparts. All such counterparts shall together constitute the one Agreement.

20. CONFIDENTIALITY

20.1 Confidential Information means all financial and business information of whatever kind relating to the disclosing party (including profit projections, research, diagrams, plans, Intellectual Property) or used by the disclosing party and disclosed to the recipient party prior to or at or after the execution of this Agreement and includes:

- (a) the details of the fees & charges set out in the Fees & Charges Schedule;
- (b) the terms of this Agreement;
- (c) all statements whether oral or in writing made to or at or after the execution of this Agreement;
- (d) Any other information disclosed by the disclosing party to the recipient party during the term of this Agreement; and
- (e) All information or knowledge acquired by the recipient party as a result of access to any Confidential Information.

20.2 The recipient party agrees that it will:

- (a) treat the Confidential Information as subject to a duty of confidence and will only use the Confidential Information in a manner consistent with the terms of this Agreement;
- (b) except as is permitted specifically under this Agreement, will not in any other way use the Confidential Information without the prior written consent of the disclosing party;
- (c) ensure that all written material provided by the disclosing party to the recipient party as the result of this Agreement is safely and securely stored when not in use and the recipient party acknowledges that such material including all copies remain the exclusive property of the disclosing party; and
- (d) cause all of its employees to enter into a Confidentiality Agreement in such form as the disclosing party requires from time to time.

20.3 This clause will survive and continue in full effect following termination of this Agreement.

21. CHARITIES AND NOT FOR PROFIT ORGANISATIONS

All the charities and not for profit organisations that appear on our Website have entered into an arrangement with 13Text Ltd, to enable us to collect donations made via our Website on their behalf. We cannot collect donations without their permission. All donations are made in Australian Dollars and are not subject to GST. All donations are to be made via a valid Credit card.

SCHEDULE ONE

Items	Description of Services	
Licence	13Text licence for the following applications: See product descriptions <ul style="list-style-type: none"> • Text2Talk • Click2Talk • Text2Buy • Text2Donate (including: Easy Donor) • SMS2Campaign • HaveYourSay 	
Setup and Configuration	Setup and Configuration of each application <ul style="list-style-type: none"> • SMS Keyword setup • Configuration • Setup of messages, both SMS and Voice • Setup of reporting and email notification 	
Testing	Testing of each application <ul style="list-style-type: none"> • Testing of all scenarios 	
Reporting	Reports contain the following information: <ul style="list-style-type: none"> • Campaign identification • Monthly, Weekly, Daily reports • Reports in CSV format for data base collection • Call cost and call duration • Contact Numbers 	
Email Reports	Reports emailed to a nominated contact <ul style="list-style-type: none"> • Automated immediate notification of customer successful interactions • Automated Daily , Weekly and Monthly summary reports 	
Technical Support	Technical Support and Maintenance <ul style="list-style-type: none"> • Service Level Agreement • 24 /7 Contact Support 	
Consulting & Design & Ongoing Support and Consulting	As part of our Design and setup procedures to maximize your investment we provide the following: <ul style="list-style-type: none"> • A single point of contact from the start to completion • Meet and liaise with all stakeholders if required • Collect and compile data and information for network setup • Demonstrate final solution with client feedback • Make any necessary changes to processes or response criteria 	
Service Numbers	Can use any of the following service numbers <ul style="list-style-type: none"> • 0488-Text-Us (0488-8398-87) 	

	<ul style="list-style-type: none"> • 13Text (138398) 	
Costs	<p>Setup / Configuration Fee (Once Only Cost)</p> <p>\$TBA (Including GST) – dependant on scale and complexity</p>	
Call Costs	<p>Call Costs</p> <p>\$TBA – dependant on scale and volumes</p>	
Service Fee	<p>Service Fee</p> <p>\$TBA – dependant on the application - (To cover all Infrastructure, Technology Costs and SMS Charges)</p>	
NOTE	<p>Agreements can be cancelled at any time with just one months notice – NO LONG TERM CONTRACTS REQUIRED</p>	

SCHEDULE TWO – SUPPORT AGREEMENT

13Text Ltd – Service Level Agreement			
Priority	Critical	Medium	Low
Definition	System is unable to process phone calls. Interruption to critical services. Work around is not available or unacceptable.	Loss of function or resource that does not seriously effect the operations. Work around is available that assists the system to continue operating.	General enquiries. Development enquiries. Documentation enquiries. System does not operate strictly to understanding of specifications.
Target Response	2 x business hours	4 x business hours	1 x business day
Target Analysis	6 x business hours	8 x business hours	2 x business weeks
Target Restoration or Work Around	8 x business hours	2 x business day	Next release
Contact Method	Phone or Phone + email	Phone or Phone + email	Email only
Business Hours	8:30am – 6:00 pm Mon to Fri QLD time excluding QLD public holidays	Business Hours	8:30am – 6:00 pm Mon to Fri QLD time excluding QLD public holidays
Out of Hours Support	When placing a phone call to support outside of our normal business hours, the call will be directed to our 24hour answering service which will obtain your details. The system will then contact the staff on duty 24 hours a day.		
13Text Contact Points	24 hours: Phone +61 7 35-102-102 Fax +61 7 3366 9344 Email: support@13text.com.au SMS the keyword Support to 13TEXT		
Support Contacts	Please contact 13Text directly with any support issues.		
Client Contacts	Customers will nominate a contact who would be familiar with the 13Text service and provide a controlled point of communication.		