

Roisender Terms OF Service

PLEASE READ THESE TERMS OF SERVICE CAREFULLY. THESE TERMS OF SERVICE GOVERN YOUR USE OF THE ROISENDER SERVICE. BY SETTING UP AN ACCOUNT AND CLICKING [I AGREE] OR USING ANY OF THE ROISENDER SERVICES WHICH DO NOT REQUIRE REGISTRATION, YOU AGREE TO BE BOUND BY THIS AGREEMENT. **IF YOU DO NOT AGREE TO BE BOUND BY THIS AGREEMENT, YOU MAY NOT ACCESS OR USE THE ROISENDER SERVICE.**

PREAMBLE AND INTRODUCTORY REMARKS

The Terms of Service (hereinafter: "**Terms**" or "**Agreement**") published on this page apply to all websites and services that are represented by the **Roisender** (unregistered) trademark and govern the setting-up, use and access of the **Roisender Service** and the **www.roisender.com** website, whereby all bolded terms are further defined in point 3.

These **Terms** represent a set of template clauses that form an agreement that may be entered into as described in point 1.1. between the following parties:

- KOMPETENTNOST d.o.o., Žolgarjeva ulica 20, SI-2000 Maribor, Slovenia, EU, Company Registration Number: 6394329000, VAT ID Number: SI 83297286, the owner and supplier of the **Roisender Service** and the **www.roisender.com** website (hereinafter: "**we**", "**us**", "**our**" or "**Provider**") who can be reached or through the messaging application on the aforementioned website,
- and **you** (hereinafter: "**you**", "**your**", "**User**" or "**Customer**") the legal entity that shall be identified as the registered user of the **Service** when you, the duly authorised individual representing said entity, register an account (i.e. perform the actions from point 1.1. in the name the company you represent) is bound to this **Agreement** and the **Roisender Data Processing Agreement** in accordance with the terms herein. The aforementioned also relates to any and all **Permitted Users, Personnel** and **Affiliates**.

Before the application of these **Terms** and the **Roisender Data Processing Agreement** as described in point 1.1. you are asked to dully review, understand and get acquainted with the content of both these **Terms** and the **Roisender Data Processing Agreement**.

All enquiries regarding these Terms, the **Roisender Data Processing Agreement**, pricing and payment terms as well as the **Service** may be directed at support@roisender.com.

1. THE APPLICATION OF THESE TERMS AND THE ROISENDER DATA PROCESSING AGREEMENT

1.1. By setting up an account and clicking [I agree] or using any of the **Roisender Services** which do not require registration, you warrant:

- a. **that you have read, understand, agree to and accepted these Terms and that you have therefore entered into a legally binding agreement with the Provider in the context of the terms and clauses herein, and**
- b. **that you are of legal age to form a binding contract with the Provider that and that you have the authority to enter into the Agreement personally or on behalf of the company you have named as the User, and to bind that company to the Agreement, and**
- c. **that you or the company you have named as the user shall not use the Roisender Service as a natural person or a consumer and that you will exclusively access and use the Roisender Service and the www.roisender.com website as a legal entity conducting its professional or business activities, and**
- d. **that you have also read and agree with the Roisender Data Processing Agreement which you have simultaneously entered into by performing the actions from point 1.1., and under which the Provider shall be deemed as the Processor and you shall be deemed as the Controller of any and all Personal data that shall be sent, transmitted or transferred to the Provider directly or through the use of the Roisender Service or the www.roisender.com website for the performance of the Service by you or any third party. The Roisender Data Processing Agreement forms an integral and indispensable part of this Agreement and your use of the Roisender Service and the www.roisender.com website, whereby the full text of the Roisender Data Processing Agreement can be found www.roisender.com/data-processing-agreement.**

1.2. If you do not agree to these **Terms** or the terms of the **Roisender Data Processing Agreement**, you are not authorised to validly register an account with us as well as access or use the **Roisender Service** and the **www.roisender.com** website, and you must immediately stop doing so.

2. CHANGES

2.1. We may change these **Terms** at any time by notifying you of the change by email or by posting a notice on the **www.roisender.com** website. Unless stated otherwise, any change takes effect from the date set out in the notice. You are responsible for ensuring you are familiar with the latest **Terms**. By continuing to access and use the **Roisender Service** and the **www.roisender.com** website from the date on which the **Terms** are changed, you agree to be bound by the changed **Terms**.

2.2. These Terms were last updated on 12.09.2022.

3. INTERPRETATION

3.1. In these **Terms**:

Affiliate shall mean in respect of the **User** and his legal entity, any other legal entity or private person controlling the **User** or being controlled by the **User**, or acting under the direct influence or instructions of the **User**, whereby “**Controlling**” or “**Controlled by**” shall mean the possession, directly or indirectly, solely or jointly with another person, of power to direct or cause the direction of the management or policies and actions of a legal or natural person (whether through the ownership of securities, other shareholders, partnership or ownership interest, by establishing total or partial identity of individuals in management, by contract or otherwise).

Applicable legislation shall mean but not be limited to the European Union’s General Data Protection Regulation (2016/679) (hereinafter: “**GDPR**”) as well as any and all applicable EU and national laws and other statutes, rules, regulations and codes, as they may apply to the use and the consequences of use of the **Roisender Service** by the **User** in the country where the **User** or his legal entity is established or operates or where the **End User** or other effected natural persons reside, as amended, replaced or superseded from time to time. **Applicable legislation** shall also mean but not be limited to any and all USA equivalents of such laws (e.g. the **California Consumer Privacy Act (CCPA)**, the **Telemarketing and Consumer Fraud and Abuse Prevention Act**, the **Do-Not-Call Implementation Act**, the **Controlling the Assault of Non-Solicited Pornography and Marketing Act of 2003**, the **Children’s Online Privacy Protection Act (COPPA)**, as well as relevant EU directives (e.g. the **Electronic Communications Directive 2002/58/EC (the ePrivacy Directive)**, codes of conduct and industry standards (e.g. the **Cellular Telecommunications Industry Association (CTIA) Messaging Principles**), as amended, replaced or superseded from time to time.

A **Party** shall mean either you or the **Provider** whereby the term also includes that **Party**’s permitted assigns. **Roisender Service** (also called **Service**) shall mean the software program with the core functionality as described on the www.roisender.com website, as the website is updated from time to time, whereby the software is the proprietary intellectual property of the **Provider** and is made available to you and your **Permitted Users** via the www.roisender.com website or by way of download and integration of the **Roisender Plugin** application via the WordPress App Store:

Roisender Data Processing Agreement shall mean the legal agreement that you shall simultaneously enter into together with the **Agreement** from these **Terms** when performing the actions from point 1.1., and under which the **Provider** shall be deemed as the **Processor** and you shall be deemed as the **Controller** of any and all **Personal data** that shall be sent, transmitted or transferred to the **Provider** directly or through the use of the **Roisender Service** or the www.roisender.com website for the performance of the **Service** by you or any third party. The **Roisender Data Processing Agreement** forms an integral and indispensable part of this **Agreement** and your use of the **Roisender Service** and the www.roisender.com website, whereby the **Roisender Data Processing Agreement** is subject to the provisions of Article 28 of the **GDPR** and can be found www.roisender.com/data-processing-agreement.

Consent shall mean any freely given, specific, informed and unambiguous indication of the **Data subject**’s wishes by which he or she, by a statement or by a clear affirmative action, signifies agreement to the processing of personal data relating to him or her, as provided for by Article 4 of the **GDPR** or by any other relevant **Applicable legislation**.

Controller shall mean the natural or legal person, public authority, agency or other body which, alone or jointly with others, determines the purposes and means of the processing of **Personal data**, as provided for by Article 4 of the **GDPR** or by any other relevant **Applicable legislation**. Please note, that even in the event that you are not in fact the **Controller** of **Personal data** that you are using or wish to use in connection with the **Service**, you expressly warrant and represent to the **Provider**, that you have the necessary legal grounds and have obtained the required consent for the processing of the **Data subjects Personal data** in connection with your use of the **Service** from the actual **Controller** of said **Personal data**.

Confidential Information shall mean any information that is not public knowledge and that is obtained from the other **Party** in the course of, or in connection with, the provision and use of the **Roisender Service**. Our **Confidential Information** includes all **Intellectual Property** owned by us (or our licensors), including the proprietary **Roisender Service**, its code, texts, databases and other copyrights, while your **Confidential Information** includes the **Data**.

Data shall mean all data, content, and information (including **Personal data**) owned, held, used or created by you or on your behalf that is stored using, or inputted into, the **Roisender Service**.

End User shall mean a natural or legal person with whom you, your affiliates or agents interact with through the the **Roisender Service** or the www.roisender.com website.

End User Messages shall mean the **SMS Messages** that you send to the **End User** through the **Roisender Service** or the **www.roisender.com** website as an A2P “Application-to-person” message.

Fees shall mean the applicable price per **End User Message** (i.e. the amount that is automatically subtracted from your accounts balance the moment you send a **End User Message** via the **Service**), as listed at the time of sending the **End User Message** our pricing page , as may be updated from time to time in accordance with clause 7.6.

Force Majeure shall mean an event that is beyond the reasonable control of a **Party**, excluding an event to the extent that it could have been avoided by a **Party** taking reasonable steps or reasonable care; or a lack of funds for any reason.

Including and similar words do not imply any limit.

Intellectual Property Rights shall mean all source code, databases, functionality, software, website designs, audio, video, text, photographs, and graphics on the **www.roisender.com** as well as possible trademarks, service marks, and logos contained therein, which are owned or controlled by the **Provider** or are licensed to us and are protected by copyright and trademark laws and various other intellectual property rights and unfair competition laws of the Republic of Slovenia, international copyright laws, and international conventions. The above-mentioned intellectual property and copyrights on **www.roisender.com** website and the **Roisender Service** are provided on a “AS IS” basis for your information and personal use only. Except as expressly provided in these **Terms**, no part of the **Roisender Service** and **www.roisender.com** website may be copied, reproduced, aggregated, republished, uploaded, posted, publicly displayed, encoded, translated, transmitted, distributed, sold, licensed, or otherwise exploited for any commercial purpose whatsoever, without our express prior written permission, which also explicitly includes any enhancement, modification or derivative work.

Objectionable includes being objectionable, defamatory, obscene, harassing, threatening, harmful, or unlawful in any way.

Provider (also **we, us, our**) shall mean KOMPETENTNOST d.o.o., Žolgarjeva ulica 20, SI-2000 Maribor, Slovenia, EU, Company Registration Number: 6394329000, VAT ID Number: SI 83297286, the owner and supplier of the **Roisender Service** and the **www.roisender.com** website who can be reached or through the messaging application on the aforementioned website.

Personal data shall mean any information relating to an identified or identifiable natural person (Herein after: **Data subject**), whereby an identifiable natural person is one who can be identified, directly or indirectly, in particular by reference to an identifier such as a name, an identification number, location data, an online identifier or to one or more factors specific to the physical, physiological, genetic, mental, economic, cultural or social identity of that natural person, as provided for by Article 4 of the **GDPR** or by any other relevant **Applicable legislation**.

Processor shall mean a natural or legal person, public authority, agency or other body which processes **Personal data** on behalf of the **Controller**, as provided for by Article 4 of the **GDPR** or by any other relevant **Applicable legislation**.

Privacy policy shall mean the information to be provided to the **Data subject** where **Personal data** are collected from the **Data subject**, as provided for by Article 13 of the **GDPR** or by any other relevant **Applicable legislation**.

Permitted Users shall mean your personnel who are authorised to access and use the **Roisender Service** or **www.roisender.com** website on behalf of the **User** in accordance with clause 4.4.

Person includes an individual, a body corporate, an association of persons (whether corporate or not), a trust, a government department, or any other entity.

Personnel includes officers, employees, contractors, affiliates and agents of the **User**.

SMS Message shall mean a text message as defined in GSM 3GPP TS 23.038 standard (originally GSM recommendation 03.38). In the context of the **Service**, the message shall mean an A2P “Application-to-person” message.

Start Date shall mean the date that you set up an account/first use the **Roisender Service**.

Terms of Service (also **Terms/Agreement**) shall mean this document.

Underlying Systems shall mean the software, IT solutions, systems and networks (including software and hardware) used to provide the **Roisender Service**, including any third party solutions, systems and networks.

You (also **your, User** or **Customer**) shall mean the legal entity that shall be identified as the registered user of the **Service** when you, the duly authorised individual representing said entity, register an account (i.e perform the actions from point 1.1. in the name the company you represent) is bound to this **Agreement** and the **Roisender Data Processing Agreement** in accordance with the terms herein. The aforementioned also relates to any and all **Permitted Users, Personnel, or your Affiliates**.

3.2. Words in the singular include the plural and vice versa.

3.3. A reference to the **Applicable legislation** or statute includes references to regulations, orders or notices made under or in connection with such legislation, statute or regulations and all amendments, replacements or other changes to any of them.

4. YOUR OBLIGATIONS

4.1. Compliance with Applicable Legislation.

- a. You hereby acknowledge and agree, that compliance with all Applicable Legislation when accessing or using the Roisender Service or the www.roisender.com website is the sole responsibility of the User. With respect to End User Messages you shall be solely responsible for compliance with any and all Applicable legislation that govern consumer protection, A2P “Application-to-person” messaging, data privacy and protection, intellectual property, and the sending of electronic marketing messages, online promotions, discounts, offers, gift cards, coupons, and/or gift certificates, as well as other applicable laws rules and regulations as well as various other national laws, state laws, rules, and regulations that may place restrictions on sending SMS Messages to consumers or business entities where you use the service or where End Users might be effected
- b. You hereby acknowledge and agree, that the Provider bares no responsibility with regards to the form, contents, processing, acceptance, repercussions, (including and without limitation the possible loss of data, profit, business interruptions or damages and legal fees that you and/or any other third party, be it a natural or legal entity, might incur as a result of your use of the Service) and the over-all legality of any and all SMS Messages that you send via the Service. You shall be solely responsible for the contents, form, information, data, links, and other aspects of the End User Messages which result from your use of the Roisender Service or the www.roisender.com website and hereby acknowledge and agree, that you are the “initiator” and/or “maker” of all SMS Messages in the context of Telephone Consumer Protection Act and the Controlling the Assault of Non-Solicited Pornography and Marketing Act.
- c. You hereby acknowledge and agree, that the Provider does not suggest, monitor, inhibit or in any other way influence the contents, form and overall legality of any and all SMS Messages you send via the Service to End Users, and does not warrant or guarantee the results, accuracy, legality and conformity to Applicable Legislation with regards to your use of the Service.
- d. You hereby acknowledge, agree and warrant under civil liability to the Provider, that during your use of the Service (i.e prior to creating and sending SMS Messages to End Users), you will always obtain Consent from any and all End Users with which you wish to interact through the Service (i.e. send an SMS Message) in compliance of Applicable Legislation and point 4.2 of these Terms.
- e. You also hereby acknowledge and agree, that the Provider shall not be held liable by you or any third party with regards to your use of the Service and your obligations under point 4.1. or your other applicable obligations stemming from these Terms or any Applicable Legislation.

4.2. Obtaining and respecting End User Consent at all times during your use of the Roisender Service.

- a. You hereby acknowledge, agree and warrant under civil liability to the Provider, that prior to any and every use of the Roisender Service or www.roisender.com website by you, as well as any and every transfer/processing of End User Personal data, that:
 0. you have set-up the necessary legal means of obtaining **End User Consent** on your/third party website/application/landing site or any other online or offline input form, where such **End Users** will be asked to consensually and legally (as per all **Applicable Legislation**) offer their **Personal data** (namely their telephone number) to you as the **Controller** in connection with your use of the **Service**, and that in doing so,
 1. you have observed and implemented all necessary and mandatory precautions and steps so that the above-mentioned **End User Consent** has been legally obtained by you as the **Controller** of **Personal data**, so that it may be legally submitted to the **Provider** as the **Processor** when you are using the **Service**, as per these **Terms**, the **Roisender Data Processing Agreement** and all **Applicable Legislation**, whereby in order to comply with these two paragraphs of this point 4.2a,
 2. that the **End User** is supplying their own telephone number, and that the **End User** shall notify you, if he is no longer the primary user of the provided telephone number,
 3. you have explicitly offered the necessary information that you are required to legally give to each and every **Data subject** with respect to any and all **Applicable Legislation** prior to obtaining their **Personal data** and sending **End User Messages**, which must include but is not limited to:
 - setting-up or amending your **Privacy Policy** so that it includes the relevant information with regards to your data processing activities in connection with the **Roisender**

Service or **www.roisender.com** (i.e. adding the additional processing information about the obtaining and using **End User** telephone numbers, adding the **Provider** to the list of data **Processors**, etc.),

- a. setting-up or amending the relevant input fields for obtaining **End User** telephone numbers, so that they include a direct link to your **Privacy Policy** and a short explanation of how and on which legal grounds you will carry out the processing in connection with the **Roisender Service** or **www.roisender.com** website,
 - b. setting-up and concluding the necessary data processing agreements with regards to Article 28 of the **GDPR** or any other necessary agreements with regards to the relevant **Applicable Legislation**,
 - c. setting-up and putting in place all other necessary technical, organisational and security measures and other relevant legal measures that are required as per the relevant **Applicable Legislation**,
4. you have consulted a legal professional regarding your implementation of the above-mentioned steps and local legal requirements that govern your intended use of the Service, as well as any possible local or sector-specific risks involved,
 5. in the event that you are not in fact the Controller of Personal data that you are using or wish to use in connection with the Roisender Service or **www.roisender.com** website, you expressly warrant and represent to the Provider, that you have the necessary legal grounds and have obtained the required consent for the processing of the Personal Data of the Data Subjects in connection with your use of the Service from the actual Controller of said Personal data.
- b. The **Provider** may from time to time list “best-practices”, guides, templates as well as other information, that might aid you in meeting your compliance obligations under these **Terms** and the **Applicable Legislation** in the **Roisender Service** or on the **www.roisender.com** website. You hereby acknowledge and agree, that such materials are purely speculative and are in no way intended to be understood or used as legal or other material advice, and that the **Provider** makes no representation or warranty with regards to such materials and information, and that no attorney-client relationship is created should you choose to use or act on such materials and information. You hereby acknowledge and agree, that the **Provider** shall not be held liable by you or any third party with regards to your use of such materials or information.

4.3. Requirements and restrictions regarding End User Messages

- a. You hereby acknowledge, agree and warrant under civil liability to the Provider, that any and all End User Messages that are sent through the Service to End Users as a form an advertisement or a form of marketing, promotion or solicitation, or that could be understood as such or could be understood as sent with the intent to induce the purchase of goods or services or to solicit a charitable contribution, shall meet the following requirements:
 - . that the End User Message is not being sent through the Service to a recipient, who is below the legal age for receiving such forms of communication (e.g. 13 years old /15 years old /18 years old) as the case may under the Applicable Legislation,
 - a. that the End User Message shall not be sent at unlawful times as per the Applicable Legislation (e.g. 9 p.m. to 8 a.m. in the End Users time zone),
 - b. that no End User Message shall be sent in the form, context or manner, so that it could be understood as “SPAM” (e.g. mass sending of End User Messages, sending End User Message even after the End User has opt-ed out, etc.) as per the Applicable Legislation (e.g. the Controlling the Assault of Non-Solicited Pornography and Marketing Act – “CAN-SPAM Act” in the United States of America),
 - c. that prior to sending such End User Message via the Service, you have set-up and included a sufficient opt-out mechanism (e.g. an “unsubscribe” link), that complies with the Applicable Legislation (e.g. expressly providing how the End User may opt-out of receiving any further messages including but not limited to including links
 - d. that in addition to containing a sufficient opt-out mechanism, the **End User Messages** also contains a notice that informs the recipient of the ability and means to avoid future solicited or unsolicited messages from you and that such notice complies with the **Applicable Legislation** (e.g as per Section 310.4(b)(1)(v)(A) of the FTC’s Telemarketing Sales Rule and Section 64.1200(f)(8) of the FCC’s Telephone Consumer Protection Act Rules), whereby the notice must also include, that any opt-out method not expressly provided in your opt-out provision is unreasonable,

- e. that the contents of such **End User Message** can be clearly understood as an advertisement or form of marketing, promotion or solicitation, or understood as being sent with the intent to induce the purchase of goods or services or to solicit a charitable contribution by the **End User** as an average consumer or as per the **Applicable Legislation**,
 - f. that the **End User Message** clearly indicates you as the sender and includes all relevant information which may included but is not limited to your full company name and registration number, your business address, the country you do business from, and other necessary information that should always be given to recipients or consumers in such situations per the **Applicable Legislation**,
 - g. should the **Applicable Legislation** provide (e.g. with regards to **End User Messages** being sent to recipients in the United States of America), that a dispute resolution and/or jurisdiction provision must be added, you shall be obliged to expressly include in such provision, that the **End User** waives the right to any class action litigation and/or action and that the **End User** agrees to resolve all disputes in an amicable way (i.e. arbitration) for any Telephone Consumer Protection Act related claims, whereby you expressly warrant to the **Provider** and agree to include in such provisions, that the **Provider** shall only be a third party with regards to such class action, arbitration or action being filed against you or a third party.
- b. **You hereby acknowledge, agree and warrant under civil liability to the Provider, that any and all End User Messages that are sent through the Service to End Users shall not in any way contain, mention, direct to, advocate, illustrate, condone, link, share, promote, market, advertise, solicit, store, allude to, include or result in:**
- . these Terms being violated,
 - a. any Applicable Legislation or any other national or international laws, statutes, ordinances or regulations being violated (e.g. International Traffic in Arms Regulations, the Modern Slavery Act of 2015, import and export rules and directives, etc.),
 - b. messages promoting products or services which the Applicable Legislation bars from promoting,
 - c. messages, which result in unsolicited, unlawful or non-consent based contact with the End User,
 - d. messages or content which can be objectively identified as "SPAM",
 - e. messages promoting unregistered labour or the performance of unregistered services,
 - f. the violation, infringement or misappropriation of Intellectual Property Rights of the Provider or the intellectual property rights of any third party,
 - g. the violation of privacy rights,
 - h. contents deemed as false advertising and unfair competition,
 - i. contents deemed as racist, promoting segregation, bigotry or discriminating on the basis of age, race, sex, religion, nationality, disability or sexual orientation,
 - j. messages that are intended to prey upon the weak, old, young, disabled or impaired,
 - k. hateful, libellous, threatening, harassing, defamatory contents, or contents which promote violence of any sort
 - l. contents relating to acts of terrorism or know terrorist groups,
 - m. obscene, pornographic or indecent, vulgar, violent, offensive content,
 - n. harmful data (e.g. malware, viruses, Trojan horses, Root-kits, Backdoors, MYSQL Injections, spyware, worms, etc.) as well as malicious or harmful code,
 - o. fraudulent messages or messages promoting illegal MultiLevelMarketing or other illegal schemes,
 - p. contents relating to gambling,
 - q. contents relating to the use of tobacco products or alcohol,
 - r. messages that are intended to illegally interact or redirect traffic to crucial infrastructure providers, life-line services, police lines, safety lines, and other utility-related telephone numbers,
 - s. messages which are sent by bots in order to achieve the denial of service of a third party or the Provider,
 - t. messages sent with the goal of illegally obtaining, scraping, stealing, harvesting or otherwise collecting information,
 - u. messages that intend to stalk, threaten, abuse, harass, blackmail, or cause physical or psychological damage,
 - v. messages sent with the apparent or concealed intent of feigning the identity of the sender or with the intent of impersonating a public authority, natural or legal person,

4.4. Should the Provider have reasonable grounds to believe that you have not complied with any or all of the obligations listed in all of the clauses in section 4., or in situations where the Provider shall be directly or indirectly notified that this is the case by an End User, a public authority, or any third party, the Provider reserves the right to suspend you from accessing and using the Service as stated in section 12., and to seek just compensation from you, for any and all damages that the Provider or any third party seeking compensation from the Provider, has incurred.

4.5. You and your **Personnel** warrant, that you shall:

- a. use the **Service** in accordance with these **Terms** solely for:
 - . your own internal business purposes; and
 - a. other lawful purposes which do not breach these **Terms** and any and all obligation from the clauses in section 4., and
- b. not resell or make available the **Service** to any third party, or otherwise commercially exploit the **Service**.

4.6. When accessing the **Service**, you and your **Personnel** shall:

- a. not impersonate another person or misrepresent authorisation to act on behalf of others or us;
- b. correctly identify yourself as the sender of all electronic transmissions and **End User Messages**;
- c. not attempt to undermine the security or integrity of the **Underlying Systems**;
- d. not use, or misuse, the **Service** in any way which may impair the functionality of the **Underlying Systems** or impair the ability of any other user to use the **Service**;
- e. not attempt to view, access or copy any material or data other than:
 - . that which you are authorised to access; and
 - a. to the extent necessary for you to use the **Service** in accordance with these **Terms**; and
- f. neither use the **Service** in a manner, nor transmit, input or store any **Data**, intellectual property or **Personal Data**, that breaches any third party right (including the **Intellectual Property Rights** of the **Provider** and privacy rights of **End Users**) or is **Objectionable**, incorrect or misleading.

4.7. Without limiting the clauses from section 4., no individual other than a **Permitted User** may access or use the **Service**. You may authorise any member of your personnel to be a **Permitted User**, in which case you must provide us with the **Permitted User's name** and other information that we reasonably require in relation to the **Permitted User**. You must procure each **Permitted User's** compliance with clauses 1, 4.2, 4.3, 4.4 and 4.5 as well as any other reasonable condition notified by us to you.

4.8. A breach of any of these **Terms** by your **Personnel** or any **Permitted User** is deemed to be a breach of these **Terms** by you.

4.9. You are responsible for procuring all licences, authorisations and **Consents** required for you and your **Personnel** to use the **Service**, including to use, store and input **Data** into, and process and distribute **Data** through, the **Service**.

5. PROVISION OF THE SERVICE

5.1. We shall use reasonable efforts to provide the **Service**:

- a. in accordance with these **Terms**, the **Roisender Data Processing Agreement** and the laws of the Republic of Slovenia;
- b. exercising reasonable care, skill and diligence; and
- c. using suitably skilled, experienced and qualified personnel.

5.2. Our provision of the **Service** to you is non-exclusive. Nothing in these **Terms** prevents us from providing the **Service** to any other person.

5.3. We shall use reasonable efforts to ensure the **Service** is available on a 24/7 basis and during normal business hours in terms of offering **User** support. However, it is possible that on occasion the **Service** may be unavailable to permit maintenance or other development activity to take place, or in the event of **Force Majeure**. We shall use reasonable efforts to publish on the www.roisender.com website advance details of any unavailability.

5.4 Through the use of web services and APIs, the **Service** interoperates with a range of third party service features. We do not make any warranty or representation on the availability of those features. Without limiting the previous sentence, if a third party feature provider ceases to provide that feature or ceases to make that feature available on reasonable terms, we may cease to make available that feature to you. To avoid doubt, if we exercise our right to cease the availability of a third party feature, you are not entitled to any refund, discount or other compensation.

6. DATA

6.1. You acknowledge that:

- a. we may require access to the **Data** to exercise our rights and perform our obligations under these **Terms**; and

- b. to the extent that this is necessary, we may authorise a member or members of our personnel to access the **Data** for this purpose.
- 6.2. You must arrange all consents and approvals that are necessary for us to access the Data as described in the clauses from section 4.
- 6.3. You acknowledge and agree that:
- a. we may:
 - . use **Data** (excluding any **Personal information**) and information about your use of the Service to generate anonymised and aggregated statistical and analytical data (herein after: **Analytical Data**); and
 - a. use Analytical Data for our internal research and product development purposes and to conduct statistical analysis and identify trends and insights;
 - b. other aspects of **Data** usage, sharing and processing that involve **Personal Data**, are regulated by the **Roisender Data Processing Agreement**;
 - b. you agree, that the title to, and all Intellectual Property Rights in, **Analytical Data** is and remains our property.
- 6.4. While we will take standard industry measures to back up all **Data** stored using the **Service**, you agree to keep a separate back-up copy of all **Data** uploaded by you onto the **Service**.
- 6.5. You agree that we may store **Data** (excluding any **Personal information**) in secure servers in Frankfurt, Germany and may access that **Data** (excluding any **Personal information**) in the Republic of Slovenia for the purposes of maintenance and service upgrades from time to time.
- 6.6. You indemnify us against any liability, claim, proceeding, cost, expense (including the actual legal fees charged by our solicitors) and loss of any kind arising from any actual or alleged claim by a third party that any **Data** infringes the rights of that third party (including **Intellectual Property Rights** of the **Provider** or intellectual property rights and privacy rights of third parties) or that the **Data** is **Objectionable**, incorrect or misleading.

7. PAYMENT TERMS, TOPPING-UP YOUR ACCOUNT AND FREE TRIAL

7.1. The **Service** is provided on a payable basis whereby any and all use of the **Service**, with the explicit exemption of the "**Free Trial**" or "**Free Credit**", warrants your payment of **Fees** to us.

In order to use and pay for the **Service** your accounts balance needs to have the sufficient amount of funds, which can be achieved by topping-up your account in accordance with point 7.6..

Each time you successfully top-up your accounts balance an invoice shall also be issued and sent to you via email.

Each time you decide to send a **End User Message**, the corresponding **Fee** (i.e. the specified price per **End User Message** amount) is automatically subtracted from your accounts balance the moment you send a **End User Message** via the **Service**.

7.2. All applicable **Fees** and pricing options for individual usage packages are listed on the pricing page on www.roisender.com/pricing/

Any and all discounts, promotions or special offers shall also be clearly displayed and listed on www.roisender.com/pricing/ at the time of their validity.

7.3. Prices and VAT.

All prices listed on www.roisender.com/pricing/ are listed without VAT.

We automatically subtract the value of the applicable VAT from our Fees, so that the Fees you pay are the final payment you are required to make for using our Service, whereby this does not apply to business within European Union who do NOT provide us with their verified VAT registration number when registering their account. To avoid doubt, the prices listed on the www.roisender.com website represent the final amount of Fees you are required to pay for using the **Service**.

You hereby acknowledge and agree, that you are solely responsible for any and all tax related issues with regards to your payment of **Fees** to us.

7.4. You shall pay the Fees:

- a. by way having enough funds on your accounts balance to cover the cost of the **Fees** (or topping-up your accounts balance in the sufficient amount prior to your use of the **Service** as described in clause 7.5), and
- b. allowing the corresponding funds (i.e. **Fee** times the number of **End User Messages** you wish to send) to be automatically subtracted from your accounts balance the moment you send a **End User Message** via the **Service**, whereby this amount is clearly displayed in the **User** dashboard prior to you confirming that the messages are to be sent.

If you do not agree with the abovementioned payment terms and methods, as well as the fact, that all funds that have been topped-up to you account are non-refundable as per point 12.5, you are required to cease all

use of the Service and delete your account prior to any topping-up of funds to your account and any use of the Service.

7.5. Topping-up your account and receiving the Invoice.

In order to top-up your accounts balance, click "Top Up Now" on your User dashboard while registered. Select a top-up amount and currency. Enter your payment method and credit card details. Then select "Review". You will see a pop-up showing the "Payment amount". Select "Pay now" if you are happy with your selection or "Cancel" to select a new amount. If top-up has been successful you should see a screen with a message that starts "You have successfully credited your account in the amount of ..." followed by your account details and the top-up amount. Select "Finish" to complete the transaction.

An invoice corresponding the transaction shall then be e-mailed to the email address that is tied to your User account.

If you would require an invoice to be sent in physical form, please contact us prior to you topping-up your balance at support@roisender.com.

7.6. Increase of Fees and your right to terminate this Agreement.

We may increase the **Fees** by giving at least 15 days' notice. If you do not wish to pay the increased **Fees**, you may terminate these **Terms** and your right to access and use the Service as described in section 12. If you do not terminate these **Terms** and your right to access and use the **Service** in accordance with this clause, you are deemed to have accepted the increased **Fees**.

8. INTELLECTUAL PROPERTY

8.1. Subject to clause 2, title to, and all **Intellectual Property Rights** in, the **Service**, the **Website**, and all **Underlying Systems** is and remains our property (and our licensors' property). You must not contest or dispute that ownership, or the validity of those **Intellectual Property Rights**.

8.2. Title to, and all intellectual property rights in, the **Data** (as between the parties) remains your property. You grant us a worldwide, non-exclusive, fully paid up, transferable, irrevocable licence to use, store, copy, modify, make available and communicate the **Data** for any purpose in connection with the provision of the **Service** and exercise of our rights and performance of our obligations in accordance with these **Terms**.

8.3. To the extent not owned by us, you grant us a royalty-free, transferable, irrevocable and perpetual licence to use for our own business purposes any know-how, techniques, ideas, methodologies, and similar **Intellectual Property** used by us in the provision of the **Service**.

8.4. If you provide us with ideas, comments or suggestions relating to the **Service** or **Underlying Systems** (hereinafter: **Feedback**):

- a. all intellectual property rights in that **Feedback**, and anything created as a result of that **Feedback** (including new material, enhancements, modifications or derivative works), are owned solely by us; and
- b. we may use or disclose the **Feedback** for any purpose.

8.5. You acknowledge that the **Service** may link to third party websites or feeds that are connected or relevant to the **Service**. Any link from the **Service** does not imply that we endorse, approve or recommend, or have responsibility for, those websites or feeds or their content or operators. To the maximum extent permitted by law, we exclude all responsibility or liability for those websites or feeds.

9. CONFIDENTIALITY

9.1. Each **Party** must, unless it has the prior written consent of the other **Party**:

- a. keep confidential at all times the **Confidential Information** of the other **Party**;
- b. effect and maintain adequate security measures to safeguard the other **Party's Confidential Information** from unauthorised access or use; and
- c. disclose the other party's **Confidential Information** to its personnel or professional advisors on a *need to know* basis only and, in that case, ensure that any personnel or professional advisor to whom it discloses the other **Party's Confidential Information** is aware of, and complies with, clauses 1a and 9.1b.

9.2. The obligation of confidentiality in clause 1 does not apply to any disclosure or use of **Confidential Information**:

- a. for the purpose of performing a **Party's** obligations, or exercising a **Party's** rights, under these **Terms**;
- b. required by law (including under the rules of any stock exchange);
- c. which is publicly available through no fault of the recipient of the **Confidential Information** or its personnel;
- d. which was rightfully received by a **Party** from a third party without restriction and without breach of any obligation of confidentiality; or

- e. by us if required as part of a *bona fide* sale of our business (assets or shares, whether in whole or in part) to a third party, provided that we enter into a confidentiality agreement with the third party on terms no less restrictive than this clause 9.

10. WARRANTIES

10.1. Each **Party** warrants that it has full power and authority to enter into, and perform its obligations under, these **Terms**.

10.2. To the maximum extent permitted by law:

- a. our warranties are limited to those set out in these **Terms**, and all other conditions, guarantees or warranties whether expressed or implied by statute or otherwise are expressly excluded and, to the extent that they cannot be excluded, liability for them is limited to EUR 1.000; and
- b. we make no representation concerning the quality of the Service and do not promise that the Service will:
 - . meet your requirements or be suitable for a particular purpose including that the use of the **Service** will fulfil or meet any statutory role or responsibility you may have under the **Applicable Legislation**
- a. be secure, free of viruses or other harmful code, uninterrupted or error free.

10.3. You agree and represent that you are acquiring the **Service**, and accepting these **Terms**, for the purpose of trade. The parties agree that:

- a. to the maximum extent permissible by law, any and all applicable consumer protection legislation does not apply to the supply of the **Service** or these **Terms**; and
- b. it is fair and reasonable that the parties are bound by this clause 3.

10.4. Where legislation or rule of law implies into these **Terms** a condition or warranty that cannot be excluded or modified by contract, the condition or warranty is deemed to be included in these **Terms**. However, our liability for any breach of that condition or warranty is limited, at our option, to:

- a. supplying the **Service** again; and/or
- b. paying the costs of having the **Service** supplied again.

11. LIABILITY

11.1. Our maximum aggregate liability under or in connection with these **Terms** or relating to the **Service**, whether in contract, tort (including negligence), breach of statutory duty or otherwise, must not in any Year exceed an amount equal to the **Fees** paid by you relating to the **Service** in the previous Year (which in the first Year is deemed to be the total **Fees** paid by you from the **Start Date** to the date of the first event giving rise to liability). The cap in this clause 1 includes the cap set out in clause 10.2a.

11.2. Neither **Party** is liable to the other under or in connection with these **Terms** or the **Service** for any:

- a. loss of profit, revenue, savings, business, use, data (including **Data**), and/or goodwill; or
- b. consequential, indirect, incidental or special damage or loss of any kind.

11.3. Clauses 1 and 11.2 do not apply to limit our liability under or in connection with these **Terms** for:

- a. personal injury or death;
- b. fraud or wilful misconduct; or
- c. a breach of clause 9.

11.4. Clause 2 does not apply to limit your liability:

- a. to pay the **Fees**;
- b. to fulfil all of your obligations under section 4.
- c. under the indemnity in clause 6.6; or
- d. for those matters stated in clause 3a to 11.3c.

11.5. Neither **Party** will be responsible, liable, or held to be in breach of these **Terms** for any failure to perform its obligations under these **Terms** or otherwise, to the extent that the failure is caused by the other **Party** failing to comply with its obligations under these **Terms**, or by the negligence or misconduct of the other **Party** or its **Personnel**.

11.6. Each **Party** must take reasonable steps to mitigate any loss or damage, cost or expense it may suffer or incur arising out of anything done or not done by the other **Party** under or in connection with these **Terms** or the **Service**.

12. TERM, TERMINATION AND SUSPENSION

12.1. Unless terminated under this clause 12, these **Terms** and your right to access and use the **Service** starts on the **Start Date** and continues until:

- a. you choose to delete your account via the **User** dash board or by submitting such request to support@roisender.com, or
- b. it is terminated at any time by the **Provider** as a result of any material breach of these **Terms**,

- c. either you or the **Provider** becomes insolvent, liquidated or bankrupt, has an administrator, receiver, liquidator, statutory manager, mortgagee's or chargee's agent appointed, becomes subject to any form of insolvency action or external administration, or ceases to continue business for any reason, whereby such **Party** shall be required to inform the other **Party** with a notice.

12.2. You may also terminate this **Agreement** and your right to access and use the **Service** in accordance with clause 7.6 (increase of **Fees**).

12.3. Termination of this **Agreement** does not affect either **Party's** rights and obligations that accrued before that termination.

12.4. On termination of this **Agreement**, you must pay all **Fees** for the provision of the **Service** prior to that termination.

12.5. No compensation is payable by us to you as a result of termination of this **Agreement** for whatever reason, and you will not be entitled to a refund of any **Fees** that you have already paid or any funds that have been left in your account.

12.6. Except to the extent that a **Party** has ongoing rights to use **Confidential Information**, at the other **Party's** request following termination of this **Agreement** but subject to clause 12.8, a **Party** must promptly return to the other **Party** or destroy all **Confidential Information** of the other **Party** that is in the first **Party's** possession or control, as well as any **Personal Data** as per the **Roisender Data Processing Agreement**.

12.7. At any time prior to one month after the date of termination, you may request:

- a. a copy of any **Data** stored using the **Service**, provided that you pay our reasonable costs of providing that copy. On receipt of that request, we must provide a copy of the **Data** in a common electronic form. We do not warrant that the format of the **Data** will be compatible with any software; and/or
- b. deletion of the **Data** stored using the **Service**, in which case we must use reasonable efforts to promptly delete that **Data**.

To avoid doubt, we are not required to comply with clause 12.8a to the extent that you have previously requested deletion of the **Data**.

12.8. Without limiting any other right or remedy available to us, we may restrict or suspend your access to and use of the **Service** and/or delete, edit or remove the relevant **Data** if we consider that you or any of your personnel have:

- a. undermined, or attempted to undermine, the security or integrity of the **Service** or any **Underlying Systems**;
- b. used, or attempted to use, the **Service**:
 - . for improper purposes; or
 - a. in a manner, other than for normal operational purposes, that materially reduces the operational performance of the **Service**;
- c. transmitted, inputted or stored any **Data** or used the **Service** in a way, that breaches or may breach these **Terms** and specifically the clauses in section 4., or any third party right (including intellectual property rights and privacy rights), or that is or may be **Objectionable**, incorrect or misleading; or
- d. otherwise materially breached these **Terms**.

12.9. Upon any termination or deletion of your account, you hereby acknowledge and agree to destroy any and downloaded materials that relate to the Service or the Intellectual property of the Provider that are in your possession or in the possession of your Personnel or Affiliates whether in electronic or printed format.

13. GENERAL

13.1. Neither **Party** is liable to the other for any failure to perform its obligations under these **Terms** to the extent caused by **Force Majeure**.

13.2. No person other than you and us has any right to a benefit under, or to enforce, these **Terms**.

13.3. For us to waive a right under these **Terms**, that waiver must be in writing and signed by us.

13.4. Subject to providing the **Service** and the **Agreement** you have entered into, you hereby acknowledge and agree, that we are your independent contractor, and no other relationship (e.g. joint venture, agency, trust or partnership) exists under these **Terms**.

13.5. If we need to contact you, we may do so by email or by posting a notice on the **www.roisender.com** website. You agree that this satisfies all legal requirements in relation to written communications. You may give notice to us under or in connection with these **Terms** by emailing support@roisender.com.

13.6. These **Terms**, and any dispute relating to these **Terms**, the **Roisender Data Processing Agreement** or the **Service**, are governed by and must be interpreted in accordance with the laws of the Republic of Slovenia. Each party submits to the exclusive jurisdiction of the Courts of the Republic of Slovenia in relation to any dispute connected with these **Terms** or the **Service**.

13.7. Clauses which, by their nature, are intended to survive termination of these **Terms**, including clauses in section 6., 8, 9, 11, 5 to and including 12.9 and 13.6, continue in force.

13.8. If any part or provision of these **Terms** is or becomes illegal, unenforceable, or invalid, that part or provision is deemed to be modified to the extent required to remedy the illegality, unenforceability or invalidity. If modification is not possible, the part or provision must be treated for all purposes as severed from these **Terms**. The remainder of these **Terms** will be binding on you.

13.9. Subject to clauses 1 and 7.6, any variation to these Terms may only be done by the **Provider** and does not require the signing of both parties.

13.10. These **Terms** set out everything agreed by the parties relating to the Service, and supersede and cancel anything discussed, exchanged or agreed prior to the **Start Date**. The parties have not relied on any representation, warranty or agreement relating to the Service that is not expressly set out in these Terms, and no such representation, warranty or agreement has any effect from the **Start Date**. Without limiting the previous sentence, the parties agree to contract out of sections 9, 12A and 13 of the Fair Trading Act 1986, and that it is fair and reasonable that the parties are bound by this clause 10.

12.11. You may not assign, novate, subcontract or transfer any right or obligation under these Terms without our prior written consent, that consent not to be unreasonably withheld. You remain liable for your obligations under these Terms despite any approved assignment, subcontracting or transfer.