

# Terms of Service

**Terms Version Date: 30 May 2020**

*The text to the left is aimed to give a plain English summary of our Terms of Service. Please ensure you read the main text on the right, as the plain English summary on the left is just a summary and doesn't capture all of the terms.*

## Plain English Summary

## Legal English

*Welcome, here are the terms that you agree to when using UniSender*

The following are the UniSender Terms of Service ("Terms of Service") that define the relationship between ECOMZ Holding Limited ("Company"), doing business as UniSender ("Company", "UniSender" "we" or "us") and you, and govern your use of UniSender's services.

## Agreeing to our Terms

*By agreeing to our Terms, you also conclude License Agreement with us*

Thank you for your interest in UniSender, which owns and operates the UniSender platform ("UniSender").

UniSender provides certain services relating to the development, transmission, analysis, and management of email, SMS and Viber messages through the web site located at [www.unisender.com](http://www.unisender.com) and such other sites as may be designated by us (each, the "Site" or collectively, the "Sites") and/or UniSender API (the "Service").

These Terms of Service contain general terms that apply to you as a user of the Service ("Customer"), along with additional terms that may apply to you as a Customer.

*There are a few other documents that may be applicable depending on how you use the Service. Here are links to the other agreements that may be relevant.*

When using the Service, you will also be subject to the UniSender [Privacy Policy](#) and [Email and Acceptable Use Policy](#) ("EAUP"), [Anti-Spam Policy](#), and any posted guidelines, policies or rules applicable to specific features of the Service, which may be posted from time to time (collectively the "Guidelines"). These Terms of Service, including any other Guidelines and future modifications (collectively, the "Agreement") govern your use of the Service and is a legal contract between you and the Company or UniSender Partner. The Agreement shall be deemed concluded (accepted) from the moment of registration of the Customer on the Site, or registration in any other way (for example, on the Site of a UniSender Partner). If there is any inconsistency between the Terms of Service, and any of the Guidelines, the additional Guidelines will prevail to the extent of the inconsistency. By registering for an account on, or otherwise accessing or using the UniSender, you acknowledge that you have read and agree to be bound by this Agreement. If you are using the Service on behalf of an entity that has a separate written agreement with us, that agreement governs your use of the Service.

UniSender customers ("Customer" or "User") gains access to UniSender through ECOMZ Holding Limited or an authorized (licensed) UniSender Partner in the given region. The list of licensed UniSender Partners can be found at <https://www.unisender.com/en/accounts/>.

*Terms of Service for websites are a little different from paper contracts, although they are just as legally binding. Rather than signing with pen-and-paper, you instead agree to these Terms of Service simply by using our website beyond the homepage.*

If you are entering into this Agreement on behalf of a company or other legal entity, you represent that you have the authority to bind such entity to these terms and conditions, in which case the terms “you”, “your” or “Customer” shall refer to such entity. **If you do not have such authority, or if you do not agree with these terms and conditions, you must not accept this Agreement and may not use the Service.**

*If you do not agree to our Terms of Service, you must not use the Unisender.com website or any of our services.*

PLEASE READ THIS AGREEMENT CAREFULLY. BY SUBMITTING AN ORDER OR BY ACCESSING OR USING THE SERVICES, YOU ACKNOWLEDGE AND AGREE YOU (1) HAVE READ AND AGREE TO BE BOUND BY THIS AGREEMENT; (2) IF AN INDIVIDUAL, ARE 18 YEARS OR OLDER; AND (3) MEET THE OTHER QUALIFICATIONS SET FORTH IN THIS AGREEMENT.

## 1. DEFINITIONS.

*We often use these words in the text of the Terms. That's why we defined them in Section 1 not to define them each time they used*

The following words, when capitalized, have the meaning stated:

“Affiliate” means any legal entity that a party owns, that owns a party, or that is under its common ownership. “Ownership” means, for the purposes of this definition, control of more than a fifty percent interest in an entity.

“Agreement” means, collectively, these Terms of Service, including any other Guidelines and future modifications, and each of the other documents reference in these Terms of Service.

“Business Day” means Monday through Friday, excluding public holidays, in the country whose laws govern the Agreement.

“Confidential Information” means non-public information disclosed by one party to the other in any form that (i) is designated as “Confidential”; (ii) a reasonable person knows or reasonably should understand to be confidential; or (iii) includes either party’s products, customers, marketing and promotions, know-how, or the negotiated terms of the Agreement; and which is not independently developed by the other party without reference to the other’s Confidential Information or otherwise known to the other party on a non-confidential basis prior to disclosure.

“Content” means any content (including, but not limited to: text, graphic, audio, video materials, etc.) contained in the User's messages, uploaded and distributed by the User to/through UniSender.

"Personal Account " means the virtual Customer's personal account located on Company's servers at <https://cp.unisender.com>, which can be accessed upon the authorization (using Customer's login and password) via HTTPS data exchange.

"Customer Data" means all data which you receive, store, or transmit on or using the Software.

"Deliverables" means the tangible or intangible materials which are prepared for your use in the course of provision of the Service and that are specifically identified in a specific Order as Deliverables and described therein.

"EAUP" means UniSender's Email and Acceptable Use Policy at <https://www.unisender.com/en/eaup>.

"Intellectual Property" or "IPR" means patents, copyrights, trademarks, trade secrets, and any other proprietary intellectual property rights.

"Order" means the document which describes the Service you are purchasing, including any online order, process, or tool through which you request provision of Service.

"Privacy Policy" means UniSender's Privacy Policy at <https://www.unisender.com/en/privacy-notice>.

"Promotional and/or Other Messages" mean messages containing advertisement/promotional Content and/or business offers, and/or any other commercial information, and/or congratulatory messages, and/or combination of Transactional Messages and advertisement/promotional content/congratulatory message and messages which cannot be considered as Transactional Messages.

"Representatives" means a party's respective service providers, officers, directors, employees, contractors, Affiliates, suppliers, agent, including UniSender Partners.

"Sensitive Data" means any: (i) personally identifiable information or information that is referred to as personal data (including sensitive personal data), PII (or other like term) under applicable data protection or privacy law and includes information that by itself or combined with other information can be used to identify a person, (ii) trade secrets, (iii) financial records (iv) other sensitive, regulated, or confidential information.

"Service", "Software" or "UniSender" means UniSender software program that includes the functionality and/or Deliverables specified in a particular Order. Service provided on an on-going basis over a defined term is referred to as "Recurring Service" and Service provided on a one-off basis is referred to as "One Time Service".

"SLA" means any provision providing a specified credit remedy for an identified failure to deliver or provide the Service to the identified standard.

“Transactional Messages” mean communications that are sent in response to an action by an email recipient related to a product or service offered by you (e.g. a confirmation email sent in response to a purchase of a product or service through your App or website) or that concern the ongoing use, purchase or subscription by an email recipient of a product or service offered by you.

“UniSender Partner” means an authorized (licensed) reseller of UniSender in the given region.

## 2. UNISENDER SERVICE

*UniSender is licensed for use by you. Under the UniSender SLA, we guarantee access to the software 99% of the time, but the SLA will not apply if you violate the Terms.*

*General.* UniSender will provide the Service in accordance with the Agreement and all laws applicable to UniSender. UniSender’s obligation to grant the right (simple non-exclusive license) to use UniSender software is contingent on verification that you at all times satisfy UniSender’s credit approval criteria. UniSender will only provide support to those individuals listed in the Personal Account and is not obligated to provide any support directly to your end users.

*Service Level Agreement (SLA).* UniSender guarantees that the Service (meaning any or all of the API, SMTP and Outbound Delivery services listed at the Site) will be available 99% of the time in any given monthly billing period, excluding maintenance. You are entitled to a credit of 5% of your given monthly fee for the Service for each 1 hour of UniSender Service unavailability (after the first 1%) in a given monthly period.

*Credit Limitations.* You are not entitled to a credit if you are in breach of the terms governing your use of the Service until you have cured the breach. You are not entitled to a credit if downtime would not have occurred but for your breach of these Terms of Service, including violation of the EAUP (referenced below). You are not entitled to a credit for downtime or outages resulting from denial of service attacks, virus activity, hacking attempts, or any other circumstances that are not within our control. In addition, to receive a credit, you must request a credit by creating a support ticket in the UniSender Personal Account within thirty (30) days following the end of the downtime. You must show that your use of the Service was adversely affected in some way as a result of the downtime to be eligible for the credit. Notwithstanding anything in these Terms of Service to the contrary, the maximum total credit for the monthly billing period, including all guaranties, shall not exceed 100% of the fees for that billing period. Credits that would be available but for this limitation will not be carried forward to future billing periods.

*UniSender will try very hard to deliver your messages, but does not guarantee delivery*

*Delivery & Filtering.* UniSender will use commercially reasonable efforts to deliver your email messages, but UniSender does not guarantee delivery. Third party filtering services and other policies of recipient email services may prevent successful delivery of your messages. While the UniSender does provide some email filtering services designed to filter spam it does not provide virus scanning and UniSender recommends that you employ additional security measures to protect against spam, email phishing attempts and email infected with viruses. You acknowledge that the limitations of the filtering service will likely result in the capture of some legitimate email and the failure to capture some unwanted email, including email infected with viruses.

UniSender is not responsible for any damages arising from the failure of the UniSender's filtering services to filter unwanted email or from the capture of legitimate email, or from a failure of your email to reach its intended recipient.

*We are against spamming, therefore please understand if your mailings (or Account) are blocked based on this ground*

**Anti-Spam Measures.** UniSender reserves the right to take any and all measures it deems necessary or appropriate in its sole discretion (whether legal, technical or otherwise) to prevent the Service from being used to send unsolicited email (i.e. "spam") and to address complaints by third parties regarding the sending of such email. Without limitation, you agree that UniSender may in its sole discretion suspend or cancel your account if it suspects that your account is being used to send unsolicited email.

### 3. USE OF SOFTWARE

*You may not use the Service in violation of these terms or any laws or regulations*

**Generally.** You may use the Service for commercial purposes only and may not use the Service in any situation where failure or fault of the Service could lead to death or serious bodily injury of any person or physical or environmental damage. You must cooperate with UniSender's reasonable investigation of outages, security problems, and any suspected breach of the Agreement. You are responsible for keeping your account permissions, billing, and other account information up to date. You agree that your use of the Service will comply with the EAUP. You agree that you are solely responsible for the suitability of the Service and your compliance with any applicable laws, including export laws and data privacy laws.

*When you create a UniSender account, you have to provide us with accurate information. You are responsible for any activity that occurs on your account, so make sure you have a strong password*

**Account.** You must create an account at UniSender Site to use the Service ("Account"). The Account can only be accessed by using your personal password and login. You are responsible for confidentiality of your personal login and password. You are also responsible for any use of your Account and all activities of other Account users (hereinafter referred to as "Team Members"). Certain features of UniSender software allow you to set up access levels to your Account. It is your sole responsibility to set up the required access levels.

*Don't let anyone else use your UniSender account*

**Documentation.** You agree to comply with the UniSender Guidelines and agree that UniSender may establish new procedures and Guidelines for your use of the Service as UniSender deems necessary for the optimal performance of the Service. An individual email message may not exceed the per-message size limit (including attachments) of 25MB or it may be permanently lost. A Viber message may contain text (up to 1000 characters in any language), images, buttons (linking to a URL-address) in any combination. An SMS message should not exceed 160 latin characters or 70 cyrillic characters. It is also possible to send longer SMS messages, but the price will be increased proportionally to the length of the SMS message.

*We do backups, but we won't copy all of your information.*

**Data Backup.** UniSender shall only back up data to the extent stated on an Order or in the Guidelines. It is your responsibility to ensure the integrity and security of Customer Data and to regularly backup and validate the integrity of backups of Customer Data on an environment separate from Service.

*You agree to be good and do good when using the UniSender. This means you will not use UniSender to generate/send content that is harmful or offensive. It certainly means that you will not use UniSender to produce or mail content that is illegal. Let's be good.*

**Rules of Use and Permitted Uses.** You agree that you will at all times use the Service in a manner consistent with: these Terms, the EAUP and other applicable rules, policies, and guidelines established by UniSender in respect of the Service. Misuse or unauthorized use of the Service and its related systems or networks, or of any information or material available through the Service is strictly prohibited and UniSender reserves the right, at its sole discretion and without liability or prejudice to any other remedies that it may have, to immediately suspend or cancel the account of any user who is using, or who UniSender reasonably believes is using, the Service in violation of these Terms.

**Compliance with Laws.** You represent and warrant that your use of the Service will comply with all applicable laws and regulations, including without limitation, all applicable anti-spam and privacy laws (collectively, the "Regulations"). For greater certainty, the Regulations may include depending upon your use of the Service, but will not necessarily be limited to, CAN-SPAM, CASL, and GDPR. You will be solely responsible for determining whether the Service as used by you comply with the Regulations, and you acknowledge and agree that UniSender will not be liable for any use of the Service by you that violates the Regulations. You are solely responsible for the accuracy, reliability, completeness, legality and quality of Content that you publish or distribute through the Service.

*Your contacts and subscribers must first opt in to receive mailings from you. Afterwards, you may send promotional content or advertising emails to them*

**Consents.** You are authorized to use the Service and send emails to the contacts that provided you with consent to add them to your mailing list with such consent haven't been subsequently revoked ("Contacts"), unless you have a legitimate ground to process Contacts' personal data through the Service. You also represent and warrant that (i) in order to send Promotional and/or Other Messages, you will ensure that the first message sent to each Contact shall be the Transactional Message (as defined below), and (ii) you will not send any emails other than Transactional Messages (as defined below) unless the email recipient provided you with valid consent under the Regulations to receive other messages from you.

*It is important to us that you use UniSender for good causes. We have thus reserved the right to suspend your access to your Account in case of*

**Suspension of Service.** UniSender may suspend the Service or unilaterally terminate this Agreement without liability in the following cases: (a) if the percentage of spam complaints from User's Contacts exceeds 0.5% of recipients number in the delivery list (but not less than 20 people) over 15 consecutive days, and/or (b) Viber Media S.a.r.l. prevents or blocks the provision of Viber Message Service in any form or cancels / revokes the right

*violations. If you breach the Terms, we may also terminate the Agreement with you*

or license required for UniSender to send-out Viber Messages; in this case, UniSender may terminate the Agreement in whole or in part with respect to the sending of Viber Messages by sending an electronic notice of termination to the User with immediate effect; and/or (c) the User violates the provisions of the applicable law, the terms of the Agreement or the Terms, as well as the use of the Software for unlawful, illegal and prohibited activity; and/or (d) The User acts to the detriment of Company, other customers/users of UniSender or other persons, as well as to the name and reputation of UniSender or any other person; and/or (e) there's no activity in the Personal Account of the User within 1 (one) year from the last login to the Personal Account; and/or (f) in case of deletion of his/her Personal Account by the User; and/or (g) in case of non-payment (or late payment) of the fee for the subsequent period of the Software use; and/or (h) in case of provision of incorrect, invalid or false contact information or inability to keep your contact information up to date, and in case of transfer of rights arising under this Agreement to third parties without prior consent of UniSender; and/or (i) if the Company is required to terminate and/or suspend this Agreement in accordance with the law (for example, if provision of the Service to the User has become or becomes illegal).

You agree that if the Service is reinstated after a suspension for non-payment or for your breach of the Agreement (including the EAUP), you will pay a reinstatement fee of \$75.

#### **4. FEES AND PAYMENT**

*You can use UniSender for free to send 1500 emails to 100 contacts. To send more emails, you can use UniSender paid tariffs based on your needs.*

**Fees.** You agree to timely make all payments for using the Service in accordance with your Tariff, contact base size and Tariff Plan, as well as this Agreement. We offer different Tariff plans, monthly and annual tariff options, as well as different limits of contact base size, which differ depending on the Tariff Plan. The current Tariff Plans and Tariff Options can be found on [UniSender Tariffs page](#).

*The payment can be made in a convenient way for you.*

**Payment Methods.** You may pay for the Service by credit card, PayPal or other means, subject to payment methods restrictions in your Personal Account. If you pay by credit card, you agree to use a recurring payment method; under this method, Service fees will be automatically charged according to your Tariff Plan and Tariff Options. Regular payments shall be made on the first day after the end date of the previous subscription (the "regular payment date"). If the regular payment does not go through, we will try to affect the payment transaction on subsequent days, and if it fails for us, it means that the Service is no longer available for you. In the event that your credit card expires or any billing information is modified or outdated, you authorize us to acquire or identify updated or altered information, such as the period of validity or credit card number, for the purpose of ensuring uninterrupted availability of the Service, and authorize further billing on the same terms and conditions, using updated or modified details. We are not responsible for any fees charged by payment processing systems.

*We issue our invoices within 30 days from the date of receipt of payment from you*

**Invoicing.** We will invoice for the Service within 30 days after receipt of each payment. You expressly agree to receive invoices from by electronic means. For settlement purposes, we assume 30 days per month, 360 days per year, and 720 days per two years.

*We reserve the right to change our pricing in the future, with the condition that we provide you with an advance notice.*

*The new tariffs will apply to you after the expiration of the purchased period.*

*By initiating a purchase on UniSender, you agree to pay all charges and taxes associated with your transaction, if your laws required payment of such taxes*

*We offer a 30-day money-back guarantee on your UniSender subscription. More information can be found in our [Refund Policy](#).*

**Fee Increases.** UniSender may revise the pricing terms that apply to your use of the Service at any time by providing you with notice pursuant to Section 17 of these Terms. With respect to Customers that are not party to a then-effective Order, such rate changes will be effective immediately upon the posting of an update to your Personal Account.

**Taxes.** All amounts due to UniSender under the Agreement are exclusive of any value added, goods and services, sales, use, property, excise and like taxes, import duties and/or applicable levies (collectively, "Tax"). You must pay UniSender the Tax that is due or provide UniSender with satisfactory evidence of your exemption from the Tax in advance of invoicing. You must provide UniSender with accurate and adequate documentation sufficient to permit UniSender determine if any Tax is due. All payments to UniSender shall be made without any withholding or deduction for any taxes except for withholding (or similar) taxes imposed on income that may be attributable to UniSender in connection with its provision of the Service that you are legally required to withhold and remit to the applicable governmental or taxing authority ("Local Withholding Taxes"). You agree to timely provide UniSender with accurate factual information and documentation of your payment of any such Local Withholding Taxes. UniSender shall remit such cost to you in the form of a credit on your outstanding account balance following receipt of sufficient evidence of payment of any such Local Withholding Taxes.

**Cancellation.** If you have an annual subscription, you may cancel your automatic renewal at any time. If you cancel your automatic renewal, you will not be charged on your scheduled renewal date.

**Refunds.** If you have a monthly subscription, we do not offer any refund for partial or no usage during the month. For annual subscriptions paid upfront, upon request, we will refund your Subscription fee for the remaining months in your subscription period on a pro-rata basis based on the applicable monthly subscription fee prevailing at that time for the months Service was used. In addition, a 1 month cancellation fee will be levied based on the then applicable monthly subscription fee. The usage months will be computed based on active subscription of at least 1 day within the billing month.

Refunds will be issued to the purchasing Payment Method. Subscription fees charged prior to the effective date of cancellation will not be refunded, in whole or in part. Upon refund of your fee, you will no longer have access to Service according to your Plan and will be automatically downgraded to the Free access tier within the Plan Category initially subscribed to. Eg. Individual Annual Plan subscribers will be downgraded to Individual Free Plan. To request a refund, please send us a request through the Personal Account .

## **5. TERM AND TERMINATION**

*Your Agreement with us is valid until the paid subscription period*

**Term.** The Agreement shall continue until terminated in accordance with its terms or the termination of the final Order, whichever is the later. Unless otherwise stated in the applicable Order, each Order has an initial 30-day term

*expires, but we may terminate it earlier in certain cases (e.g. if you violate the Terms).*

and shall automatically renew on initial term expiry on a rolling thirty day basis unless either party provides the other with written notice of non-renewal at least thirty days prior to the expiration of the then current term.

*Termination for Convenience.* For Recurring Service, unless otherwise stated in the Agreement, you may terminate all or part of any Order for convenience at any time by giving UniSender at least ninety days advance written notice; subject to an early termination fee equal to the monthly recurring fee times the number of months remaining in the then current term of the Order for the Service that have been terminated.

*Termination for Cause.* Either party may terminate the Agreement or the affected Order(s) for cause on written notice if the other party materially breaches the Agreement and, where the breach is remediable, does not remedy the breach within thirty days of the non-breaching party's written notice describing the breach.

If following suspension of your use of Service for non-payment your payment of any invoiced undisputed amount remains overdue for a further ten days, UniSender may terminate the Agreement or the applicable Order(s) for breach on written notice.

Either of us may terminate the Agreement and the Order(s) on written notice if the other enters into compulsory or voluntary liquidation, or ceases for any reason to carry on business, or takes or suffers any similar action which the other party reasonably believes means that it may be unable to pay its debts.

Notwithstanding anything to the contrary in the Agreement, the fees for the Service shall become due immediately on such an occurrence.

## **6. INTELLECTUAL PROPERTY**

*Other than Your content, contact lists and other content inputted by you to generate mailings, which you represent to have full rights to use and distribute, all intellectual property at UniSender is the property of the Company and/or its partners and service providers. You agree not to upload content to UniSender to which you do not have full rights to use and distribute*

*Pre-Existing IPR.* Each party shall retain exclusive ownership of Intellectual Property created, authored, or invented by it prior to the commencement of the Service. If you provide UniSender with your pre-existing Intellectual Property ("Customer IPR"), then you hereby grant to UniSender, during the term of the applicable Order, a limited, worldwide, non-transferable, royalty-free, right and license (with right of sub-license where required to perform the Service) to use the Customer IPR solely for the purpose of providing the Service. You represent and warrant that you have all rights in the Customer IPR necessary to grant this license, and that UniSender's use of such Customer IPR shall not infringe on the Intellectual Property rights of any third party.

*IPR Created by UniSender.* Unless otherwise specifically stated in the applicable Order, and excluding any Customer IPR, UniSender shall own all Intellectual Property created as part of providing the Service or contained in the Deliverables. Unless otherwise specifically stated in the Agreement, and subject to your payment in full for the applicable Service, UniSender grants to you a limited, non-exclusive, non-transferable, royalty-free right and license (without the right to sublicense) to use any Deliverables, and during the term of the Order any Intellectual Property (excluding any Third Party Software and any Open Source Software), provided to you by UniSender as part of the

Service for your internal use as necessary for you to enjoy the benefit of the Service.

*There are various third-party services that are part of your experience at UniSender. By using UniSender, you agree to the terms of these additional third-party services. We use these third-party services to enhance your experience of UniSender*

**Open Source.** In the event UniSender distributes any open source software to you as part of the Service (for example Linux, OpenStack, and software licensed under the Apache, GPL, MIT or other open source licenses, collectively "Open Source Software") then such Open Source Software is subject to the terms of the applicable open source license. To the extent there is a conflict with these Terms of Service, the terms of the applicable open source license shall control.

**Third Party Software.** UniSender may provide third party software for your use as part of the Service or to assist in our delivery of the Service ("Third Party Software"). Unless otherwise permitted by the terms of the applicable license you may not (i) assign, grant or transfer any interest in the Third Party Software to another individual or entity, (ii) reverse engineer, decompile, copy or modify the Third Party Software, (iii) modify or obscure any copyright, trademark or other proprietary rights notices that are contained in or on the Third Party Software, or (iv) exercise any of the reserved Intellectual Property rights provided under the laws governing this Agreement. You may only use Third Party Software provided for your use as part of the Service, subject to any additional restrictions identified in these Terms of Service or Order. You are prohibited from using Third Party Software which UniSender installs in order to assist our delivery of the Service. Upon termination of the Order, you will permit removal of the Third Party Software. UniSender makes no representation or warranty regarding Third Party Software except that UniSender has the right to use or provide the Third Party Software and that UniSender is in material compliance with the applicable license.

*If the legal rights of third parties are violated, we may modify the Service or materials so that they do not violate any of those rights*

**Infringement.** If the delivery of the Service infringes the intellectual property rights of a third party and UniSender determines that it is not reasonably or commercially practicable to obtain the right to use the infringing element, or modify the Service or Deliverable such that they do not infringe, then UniSender may terminate the Order on thirty (30) days' notice and will not have any liability on account of such termination except to refund amounts paid for unused Service (prorated as to portions of Deliverables deemed infringing).

## 7. SECURITY

*UniSender is committed to maintaining good practices to safeguard your personal information. But the reality is even the world's largest and wealthiest governments and corporations are susceptible to loss of data through theft, negligence or sheer bad luck. We promise to be careful with your data – but please be*

**Generally.** UniSender shall provide the Service in accordance with the security and privacy practices set forth in UniSender [Privacy Policy](#) and any additional security specifications identified in the Order or these Terms of Service. You must use reasonable security precautions in connection with your use of the Service, including appropriately securing and encrypting Sensitive Data stored on or transmitted using the Service. Customer Data is, and at all times shall remain, your exclusive property. UniSender will not use or disclose Customer Data except as materially required to perform the Service or as required by law.

*aware that the risk of storing any of your personal information online can never be fully mitigated by anyone.*

*E-mails sent using UniSender may be unsecured and intercepted by other users.*

**Content Privacy.** You acknowledge and understand that the Service includes the transmission of unencrypted email in plain text over the public internet. You are responsible for encrypting any sensitive data you use in conjunction with the Service. Email sent using the Service may be unsecured, may be intercepted by other users of the public internet, and may be stored and disclosed by third parties (such as a recipient's email service provider). Although Service includes support for TLS, content may be transmitted even if the recipient does not also support TLS, resulting in an unencrypted transmission.

## 8. DISCLAIMERS

*You will use the UniSender as is and at your own risk. We do not provide any warranty in relation to the Service, except as limited warranty under our SLA*

UniSender makes no commitment to provide any services other than the Service stated in the Order. UniSender is not responsible to you or any third party for unauthorized access to your Customer Data or for unauthorized use of the Service that is not solely caused by UniSender's failure to meet its security obligations in Section 7 (Security). At your request UniSender may provide services that are not required by the Agreement, any such services shall be provided AS-IS with no warranty whatsoever.

UniSender and its Partners disclaim any and all warranties not expressly stated in the Agreement to the maximum extent permitted by law including implied warranties such as merchantability, satisfactory quality, fitness for a particular purpose and non-infringement.

UniSender makes no representation or warranty whatsoever regarding Open Source Software or with regard to any third party products or services which UniSender may recommend for your consideration.

UniSender provides Users with the technical possibility to use the Software, does not participate in the formation of the Content/information distributed by Users, including the intellectual property rights. UniSender is not responsible for the legality of the actions and information (including, links to the Internet pages where the information is located), posted and distributed by Users by means of the Software, and does not guarantee the quality, completeness and reliability of such Content or information.

To the extent permitted by applicable law, UniSender makes no warranties or representations, express or implied, which might have been made under the law, prior to the oral or written statements of UniSender, in connection with provision of Service to the User. The Licensor also refuses to guarantee the continuous availability and operability of the Site and the Software, as well as their continuous, smooth and safe operation.

## 9. CONFIDENTIALITY

*We are committed to keeping your data safe*

**Generally.** Each party agrees not to use the other's Confidential Information except in connection with the performance or use of the Service, the exercise

*(including contact lists and other information/content that you upload). We will also use all possible efforts to ensure that your data is kept secret.*

*We may use your data to improve our Service and enhance its security*

of its legal rights under this Agreement, or as required by law, and will use reasonable care to protect Confidential Information from unauthorized disclosure. Each party agrees not to disclose the other's Confidential Information to any third party except: (i) to its Representatives, provided that such Representatives agree to confidentiality measures that are at least as stringent as those stated in these Terms of Service; (ii) as required by law; or (iii) in response to a subpoena or court order or other compulsory legal process, provided that the party subject to such process shall give the other written notice of at least seven days prior to disclosing Confidential Information unless the law forbids such notice.

*Routing Data.* Your email messages and other items sent or received via the mail service will include information that is created by the systems and networks that are used to create and transmit the message including information such as server hostnames, IP addresses, timestamps, mail queue file identifiers, and spam filtering information ("message routing data"). You agree that UniSender may view and use the message routing data for our general business purposes, including maintaining and improving security, improving our services, and developing products. In addition, you agree that UniSender may disclose message routing data to third parties in aggregate statistical form, provided that UniSender does not include any information that could be used to identify you.

*Usage Data.* UniSender collects and stores information related to your use of the Service, such as use of the Website, API, SMTP and filtering choices and usage. You agree that UniSender may use this information for our general business purposes and may disclose the information to third parties in aggregate statistical form, provided that UniSender does not include any information that could be used to identify you.

## **10. LIMITATIONS ON DAMAGES**

*Except as stated in the SLA, you agree that UniSender's entire liability to you shall not exceed the total amount you paid to the Company for the last 12 months.*

*You are not entitled to SLA compensation if you violate these Terms*

*Direct Damages.* Notwithstanding anything in the Agreement to the contrary, except for liability arising from death or personal injury caused by negligence, willful misconduct, fraudulent misrepresentation or any other loss or damages for which such limitation is expressly prohibited by applicable law, the maximum aggregate monetary liability of UniSender and any of its Representatives in connection with the Service or the Agreement under any theory of law shall not exceed the total amount paid for the Service that is the subject of the claim in the twelve months immediately preceding the event(s) that gave rise to the claim.

*Indirect Damages.* Neither party (nor any of our Representatives) is liable to the other for any indirect, special, incidental, exemplary or consequential loss or damages of any kind. Neither of us is liable for any loss that could have been avoided by the damaged party's use of reasonable diligence, even if the party responsible for the damages has been advised or should be aware of the possibility of such damages. In no event shall either of us be liable to the other for any punitive damages or for any loss of profits, data, revenue, business opportunities, customers, contracts, goodwill or reputation.

*SLA Credits.* The credits stated in any applicable SLA are your sole and exclusive remedy for UniSender's failure to meet those guarantees for which

credits are provided. The maximum total credit(s) for failure to meet any applicable SLA for any calendar month shall not exceed one hundred (100) percent of the then current monthly recurring fee for the Service. Credits that would be available but for this limitation will not be carried forward to future months. You are not entitled to a credit if you are in breach of the Agreement at the time of the occurrence of the event giving rise to the credit until you have remedied the breach. No credit will be due if the credit would not have accrued but for your action or omission.

## 11. RESTRICTIONS.

*No illegal/shady stuff with UniSender or usage of the site/brand in ways not intended.*

*We can revoke Service at any time. You must ask us and get permission before using or accessing data/Service in ways not clearly intended (e.g. scraping, reselling, reverse-engineering, copying, or redistributing data).*

You acknowledge that the Service, Sites, UniSender Software, and the databases, software, hardware and other technology used by or on behalf of UniSender to provide the Service and operate the Sites (the "Technology") and their structure, organization, and underlying data, information and source code constitute valuable trade secrets of the Company and UniSender. You will not, and will not permit any third party to: (1) access or use the Service or the Sites, in whole or in part, except as expressly provided in this Agreement; (2) use the Site, Service or any Software to harvest or collect e-mail addresses or other contact information of third parties by any means for the purposes of sending unsolicited e-mails or other unsolicited communications; (3) use the Site, Service or any Software in any unlawful manner or in any other manner that could damage, disable, overburden or impair the Site or Service; (4) use automated scripts to collect information from or otherwise interact with the Site, Service or any Software; (5) use the Site, Service or any Software to intimidate or harass any other people or entities; alter, modify, reproduce, create derivative works of the Service, Technology, or any Software; (6) distribute, sell, resell, lend, loan, lease, license, sub-license or transfer any of Your rights to access or use the Service or any Software, including, without limitation, providing outsourcing, service bureau, hosting, application service provider or on-line services to third parties, or otherwise make the Service or any Software, or access thereto, available to any third party; (7) reverse engineer, disassemble, decompile, or otherwise attempt to derive the source code or method of operation of or any trade secrets embodied in the Site, Service, Technology or any Software; (8) attempt to circumvent or overcome any technological protection measures intended to restrict access to any portion of the Sites, Service, Technology, or any Software; or (9) interfere in any manner with the operation or hosting of the Sites, Service, Technology or any Software, or attempt to gain unauthorized access to the Sites, Service, Technology or any Software. You will not allow any access to or use of the Service by anyone other than Your authorized Customers, and any such use will be consistent with the terms, conditions and restrictions set forth in this Agreement.

## 12. INDEMNIFICATION

*If you suffer any loss because of UniSender, we will protect you at our own expense from any such claims against you*

**Indemnity By UniSender.** Except in the case of any Service provided during a Trial/Free Subscription, UniSender will, at its expense, defend You against any claims brought against You by a third party that Your use of the Service in accordance with this Agreement infringes any copyright, trade secret or trademark right. The foregoing obligations of UniSender under this Section 12 are conditioned upon You providing UniSender with: (a) notice of any such claim within ten (10) days after You receive written notice thereof; (b) sole

control over the defense and settlement of such claim; and (c) reasonable assistance (at UniSender's expense) in the defense and settlement of such claim. If You are, or UniSender reasonably believes You may be, enjoined from using the Service, UniSender, at UniSender's option and expense, may procure the right for You to continue using the Service, replace or modify the Services so that they become non-infringing, or provide You a refund of all pre-paid amounts applicable to such Services (if any) and terminate this Agreement with respect to such Services. This Section 12 constitutes sole and exclusive liability of the Company, and Your sole and exclusive remedy, for any infringement or misappropriation of any third party IPR by or through the Site, Service, Technology, UniSender Content or any Software.

*If UniSender suffers any loss or claim related to your content, account or use of Service or your violation of these Terms, any laws or rights of any other person, you will be solely responsible for all the losses.*

**Indemnity By You.** You hereby indemnify, defend, and hold harmless UniSender and its affiliates, Representatives, employees, agents, contractors, assigns, licensees, and successors in interest ("Indemnified Parties") from any and all claims, losses, liabilities, damages, fees, expenses, and costs (including attorneys' fees, court costs, damage awards, and settlement amounts) that result from any claim or allegation against any Indemnified Party arising from Your accessing or using the Site, Service, Software, Your Content, UniSender Content, any email or other communication generated or sent through the Service, or any breach of this Agreement. UniSender will provide You with notice of any such claim or allegation, and UniSender will have the right to participate in the defense of any such claim at its expense.

### 13. LIMITATION ON LIABILITY.

*We do not offer any warranty in relation to the Service, except as limited warranty under our SLA*

IN NO EVENT WILL UNISENDER BE LIABLE FOR ANY INDIRECT, INCIDENTAL, SPECIAL, EXEMPLARY OR CONSEQUENTIAL DAMAGES, HOWEVER CAUSED, UNDER ANY THEORY OF LIABILITY, WHETHER IN CONTRACT, STRICT LIABILITY OR TORT (INCLUDING NEGLIGENCE OR OTHERWISE), ARISING IN ANY WAY IN CONNECTION WITH OR OUT OF THE USE OF THE SITES, SERVICES (OR ANY UNISENDER CONTENT PROVIDED THROUGH THE SITES OR SERVICES), EVEN IF UNISENDER HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, INCLUDING, WITHOUT LIMITATION, ANY LOSS OF DATA, OPPORTUNITY, REVENUES OR PROFITS, BUSINESS INTERRUPTION, OR PROCUREMENT OF SUBSTITUTE GOODS OR SERVICES. UNISENDER'S TOTAL CUMULATIVE LIABILITY IN CONNECTION WITH THIS AGREEMENT AND ALL SERVICES PROVIDED UNDER THIS AGREEMENT, WHETHER IN CONTRACT OR TORT OR OTHERWISE, WILL NOT EXCEED THE FEES PAID TO UNISENDER HEREUNDER IN THE 1 MONTH PRECEDING ANY SUCH INITIAL OCCURRENCE OF LIABILITY (OR, IF NO SUCH FEES HAVE BEEN PAID, \$100). YOU AGREE THAT THE FEES REFLECT THE ALLOCATION OF RISK SET FORTH IN THIS AGREEMENT AND ACKNOWLEDGE THAT UNISENDER WOULD NOT ENTER INTO THIS AGREEMENT WITHOUT THESE LIMITATIONS ON ITS LIABILITY. IN JURISDICTIONS WHERE LIMITATION OF LIABILITY FOR CONSEQUENTIAL OR INCIDENTAL DAMAGES IS NOT PERMITTED, UNISENDER'S LIABILITY IS LIMITED TO THE MAXIMUM EXTENT PERMITTED BY LAW.

### 14. DATA PRIVACY.

*Your personal data (and your contacts) are very important to us and we process your information only as set out in our Privacy Policy.*

*We store your data for a limited period of time. You can learn more about the your data retention periods in our [Privacy Policy](#) and our [Data Security Factsheet](#).*

*We may also use your data to improve our Service.*

*General.* In respect of Your use of the Site and Service and in relation to any personally identifiable and other data and information You provide to UniSender through the Site and Service, You expressly consent to the use and disclosure of that data and information as described in UniSender's then-current privacy policy displayed on the Site ("Privacy Policy"), which is available at <https://www.unisender.com/en/privacy-notice> and is incorporated by reference into these Terms.

*Email Record Retention.* You acknowledge and agree that UniSender may, in its sole discretion, permanently erase email records (e.g. copies of emails sent and certain information relating to sent emails) after thirty-five (35) days of such emails being sent, and UniSender has no obligation to retain such records beyond the thirty-five (35) day period.

*User Content Retention.* UniSender may, in its sole discretion, permanently erase any User Content and any other information or materials associated with your account if your account is suspended or cancelled for thirty (30) days or more.

*Permitted Use by UniSender.* Notwithstanding anything in the Privacy Policy, UniSender will have the right to collect, extract, compile, synthesize, and analyze non-personally identifiable data or information (data or information that does not identify an entity or natural person as the source thereof) resulting from Your access to the Site and Your use and operation of the Service (including, by way of example and not limitation, information relating to volumes, frequencies, recipients, bounce rates, or any other information regarding the email and other communications You generate and send using the Service). To the extent any such non-personally identifiable data or information is collected or generated by UniSender, the data and information will be solely owned by UniSender and may be used by UniSender for any lawful business purpose without a duty of accounting to You, provided that the data and information is used only in an aggregated form, without directly identifying You, any Customer, or any other entity or natural person as the source thereof.

## 15. API TERMS

*We have an API and are happy to provide access to it, if you promise to use our API diligently.*

*Use of API.* Any use of the UniSender API is subject to these Terms, EAUP and Privacy Policy.

*No Abuse or Overuse of the API.* Abuse or excessively frequent requests to UniSender via the API may result in the temporary or permanent suspension of your account's access to the UniSender API. UniSender, in our sole discretion, will determine abuse or excessive usage of the API. We will make a reasonable attempt to warn you via email prior to suspension. You may not share API tokens to exceed UniSender's rate limitations. You may not use the UniSender API for spamming purposes.

## 16. LINKED SITES AND INFRINGEMENT CLAIMS.

We are not responsible for third party sites, even if they can be found through a link on our Site.

The Site and communications sent through the Service may contain links to third-party sites that are not under the control of UniSender, and UniSender is not responsible for any content on any linked site. If you access a third-party site from the Site or from a communication sent through the Service, then you

do so at your own risk. UniSender provides links only as a convenience, and the inclusion of the link does not imply that UniSender endorses or accepts any responsibility for the content on those third-party sites. UniSender welcomes links to the Site.

*If you believe that we violated your rights, you can contact us with a request and we will quickly fix it ☺*

**Claims of Infringement.** Just as UniSender requires users of the Site to respect the IPR of UniSender, its affiliates, and other third parties, UniSender respects the IPR of Customers of the Site and other third parties. If You believe in good faith that Your copyrighted work has been reproduced on the Site without authorization in a way that constitutes copyright infringement, You may notify our designated copyright agent by mail to:

**ECOMZ Holding Limited**

Address: Georgiou Karyou, 6B, office/flat 6B, Dasoupoli, Strovolos, Nicosia, Cyprus  
Attn: Copyright Infringement Agent

E-mail: [privacy@unisender.com](mailto:privacy@unisender.com)

Please provide the following information to UniSender's Copyright Infringement Agent:

1. the identity of the infringed work, and of the allegedly infringing work;
2. Your name, address, daytime phone number, and email address, if available;
3. a statement that You have a good-faith belief that the use of the copyrighted work is not authorized by the owner, his or her agent, or the Law;
4. a statement that the information in the notification is accurate and, under penalty of perjury, that You are authorized to act on behalf of the owner; and

Your electronic or physical signature.

## 17. NOTICES

Here are our official contacts for notices, but you can still use our customer service or contact us through your Personal Account.

Your routine communications to UniSender/Company regarding the Service should be sent to your account team using the Personal Account . To give a notice regarding termination of the Agreement for breach, indemnification, or other legal matter, you must send it by electronic mail and first-class post to:

**ECOMZ Holding Limited**

Address: Georgiou Karyou, 6B, office/flat 6B, Dasoupoli, Strovolos, Nicosia, Cyprus

E-mail: [privacy@unisender.com](mailto:privacy@unisender.com)

UniSender's routine communications regarding the Service and legal notices will be posted on the Personal Account or sent by email or post to the individual(s) you designate as your contact(s) on your account. Notices are deemed received as of the time posted or delivered, or if that time does not fall within a Business Day, as of the beginning of the first Business Day

following the time posted or delivered. For purposes of counting days for notice periods, the Business Day on which the notice is deemed received counts as the first day. Notices must be given in the English language.

## **18. PUBLICITY, USE OF MARKS**

Unless otherwise agreed in the Order, you agree that UniSender may publicly disclose that it is providing Service to you and may use your name and logo to identify you in promotional materials, including press releases. You may not issue any press release or publicity regarding the Agreement, use the UniSender name or logo or other identifying indicia, or publicly disclose that it is using the Service without UniSender's prior written consent.

## **19. ASSIGNMENT/SUBCONTRACTORS**

Neither party may assign the Agreement or any Orders without the prior written consent of the other party except to an Affiliate or successor as part of a corporate reorganization or a sale of some or all of its business, provided the assigning party notifies the other party of such change of control. UniSender may use its Affiliates or subcontractors to perform all or any part of the Service, but UniSender remains responsible under the Agreement for work performed by its Affiliates and subcontractors to the same extent as if UniSender performed the Service itself. You acknowledge and agree that Company's Affiliates and subcontractors may be based outside of the geographic jurisdiction in which you have chosen to store Customer Data and if legally required the parties will enter into good faith negotiations of such agreements as are necessary in order to legitimize the transfer of Customer Data.

## **20. GOVERNING LAW**

The Agreement shall be governed by the laws of Cyprus without regard to its choice or law or conflict of law's provisions. All legal actions in connection with the Agreement shall be brought in the courts located in Nicosia, Cyprus. Any legal actions in connection with the Agreement where the Customer is located within the United States shall be brought in the courts located in Manhattan, New York, NY, USA.

Notwithstanding the exclusive jurisdiction provision above, you agree that UniSender may seek to enforce any judgment anywhere in the world where you may have assets. No claim may be brought as a class or collective action, nor may you assert such a claim as a member of a class or collective action that is brought by another claimant. Each of us agrees that neither UniSender or Customer will bring a claim under the Agreement more than two years after the time that the claim accrued. The Agreement shall not be governed by the United Nations Convention on the International Sale of Goods.

The prevailing party in any action or proceeding relating to this Agreement shall be entitled to recover reasonable legal fees and costs, including attorney's fees.

## **21. MISCELLANEOUS**

*Changes.* UniSender reserves the right to modify, supplement or replace these Terms, effective upon posting an amended version on the Site or notifying you otherwise. Your continued use of the Service following the posting of changes to these Terms or receipt of notice will mean that you accept and agree to such changes. You are responsible for regularly consulting the current version of the Terms prior to your use of the Service.

*Severability.* If any part of the Agreement is found unenforceable, the rest of the Agreement will continue in effect, and the unenforceable part shall be reformed to the extent possible to make it enforceable and give business efficacy to the Agreement. Each party may enforce its respective rights under the Agreement even if it has waived the right or failed to enforce the same or other rights in the past. The relationship between the parties is that of independent contractors and not business partners. Neither party is the agent for the other and neither party has the right to bind the other on any agreement with a third party. The use of the word "including" means "including without limitation".

*Survival.* The following provisions in these Terms of Service shall survive expiration or termination of the Agreement: Intellectual Property, Confidential Information, Indemnification, Limitation on Damages, Governing Law, Notices, Miscellaneous, all terms of the Agreement requiring you to pay any fees for Service provided prior to the time of expiration or termination, or requiring you to pay an early termination fee, and any other provisions that by their nature are intended to survive expiration or termination of the Agreement.

*Viber Terms.* With respect to Viber Messages, the User agrees that Viber Media S.à.r.l. constantly adds additional features to its services and that the applicable legislation changes from time to time, so that the Agreement may be revised with respect to Viber Messages from time to time. The User shall check the current version of the terms and conditions for Viber Messages at <https://www.viber.com/terms/viber-terms-use/> (Viber Terms). The User agrees to be notified of the updated Viber Terms by checking the updated Viber Terms on the Viber Media S.à.r.l. websites.

**The Agreement constitutes the complete and exclusive understanding between the parties regarding its subject matter and supersedes and replaces any prior or contemporaneous representation(s), agreement(s) or understanding(s), written or oral.**

**Entire Agreement.** These Terms, including the Privacy Policy, Email and Acceptable Use Policy and Anti-Spam Policy, together with any changes published by UniSender on the Site or otherwise communicated to you, constitute the entire agreement between you and the Company governing your use of the Service.