

# ***TERMS AND CONDITIONS***

This TERMS AND CONDITIONS (*hereinafter: Terms*) are a legal and binding agreement concluded between: **BSMART PERFORMANCE AGENCY d.o.o.**, Kladezna ulica 10, 1000 Ljubljana, Slovenia, reg. no.: 7078366000, operating under the brand name ROAS monster (*hereinafter: “Company”, “us” or “we”*) and legal entity that uses the Company’s Services, in accordance to the provisions of these Terms, (*hereinafter: “User” or “you”*)

by which Company and the User (*hereinafter collectively referred to as: Parties*) agree upon the following:

## **I. PRELIMINARY PROVISIONS**

### **1. LEGAL IMPLICATIONS OF USE OF THE SERVICES**

- 1.1. The Terms apply to access and use of the Services.
- 1.2. By using the Services, User is confirming and consenting to be bound by the Terms.
- 1.3. In the absence of such consent, or if such consent is validly withdrawn, the Company will not provide the User the access to the Services and the User should immediately discontinue to use the Services.
- 1.4. In the case of the preceding provision (1.3.), the contract shall be deemed not to have been concluded and the Company shall have no contractual or any other obligation toward you whatsoever. Notwithstanding the foregoing, you are liable to the Company for any damages resulting from misconduct or abuse of any kind of the Services or Software in accordance with applicable law and the provisions of these Terms.
- 1.5. The Company may modify these Terms at any time in its sole discretion and without prior notice to the User. Such changes will be posted on the Website and will be effective upon posting. User should review these Terms periodically to ensure familiarity with the current version.
- 1.6. Continued use of the Services shall constitute acceptance of these Terms and Users continued use of the Services following any modification of these Terms shall constitute acceptance to the Terms, as amended. If the User does not agree to the changes, he must discontinue use of the Services. User should read the entire Terms carefully before using the Services.

### **2. DEFINITIONS AND INTERPRETATIONS**

- 2.1. Terms used in these Terms shall have the following definitions:
  - **Account:** means the registered account of the User on the App, which can be accessed with a unique username and password.
  - **Administrator/Admin:** means an appointed person by the User, who shall have access to all available features and information on the App. The Admin can appoint other persons and/or employees of the

User to use some of the features and access some of the information available on the App or provide the appointer persons with a sub-account.

- **API:** refers to application programming interface, used for communication and/or transfer of data between the App and User's various Third-Party accounts.
- **App:** interface (mobile or web application) which provides the Services to the User via Software.
- **Intellectual Property:** any patent, copyright and related rights, registered design, unregistered design right, trademark, domain, source code, images, corporate name, *sui generis rights*, know-how or other industrial and intellectual property or similar right (registered or not registered) owned or used by together with any current applications for any registrable items mentioned beforehand.
- **Licence:** non-exclusive, non-transferable, revocable, worldwide license, without the right to sub-license, subject to the scope and limitations in accordance with provisions of these Terms.
- **Personal Data:** means any information relating to an identified or identifiable natural person; 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, economic, cultural or social identity of that natural person;
- **Privacy Policy:** means the document that contains information about how the Company collects, uses and shares Personal Data and is attached to Terms (via hyperlink) as an integral part of these Terms.
- **Services:** shall have the meaning as described in provision 5. of the Terms.
- **Software:** represents all mobile apps available through "app stores" or installed directly, web applications on the Website, test counterparts and other software of the Company.
- **Third-Party account:** refers to all User's accounts of third-party providers, such as advertisement platforms (e.g. Facebook, Google Ads, LinkedIn, etc) e-commerce platforms (e.g. Shopify, Wix, Woocommerce etc.) and other that are connected to the App via API or built-in data connectors.
- **Website:** Website located on the following domain: roasmonster.com, including relating sub-domains, other Company's powered sites, the Company's mobile applications, any available APIs, and all other related services, websites, applications, and similar tools which serve as a link or host the Services or facilitate the use of the letter.

2.2. In these Terms a reference to:

- a word importing one gender shall (where appropriate) include any other gender and a word importing the singular shall (where appropriate) include the plural and vice versa; and
- any statute or statutory provision includes, except where otherwise stated, the statute or statutory provision as amended, consolidated or re-enacted and includes any subordinate legislation made under the statute or statutory provision (as so amended, consolidated or re-enacted).

## **II. PROVISIONS RELATING TO THE CONTRACTUAL RELATIONSHIP**

### **3. REGISTERED USER**

3.1. To become a User, you must create a user Account on the App.

3.2. With registering an Account, you agree and warrant to/that:

- be legally bound by these Terms, and become a User and a contracting party to these Terms

- create a strong password that shall not be used for any other website or online service;
- provide accurate and truthful information;
- maintain and promptly update Account information;
- maintain the security of the Account by protecting the password and restricting access to the Account;
- promptly notify the Company if any security breaches related to Account are discovered;
- take responsibility for all activities that occur under Account and accept all risks of any authorized or unauthorized access to the Account;
- to appoint an Admin who is eligible to comply with all requirement with these Terms
- you and your authorised representative warrant that:
  - you are authorised under its governing documents and in the jurisdiction in which it is organised and/or regulated to enter into contractual relationship under these Terms,
  - you have no legal incapacity,
  - you are not in bankruptcy or any other insolvency, liquidation or other legal dissolution proceedings.
  - you are able to provide payments in accordance with the Fee Schedule at all times of usage of the Platform.

3.3. After the Company has verified your identity and eligibility to become a User, you shall receive a confirmation e-mail, that shall be sent to the e-mail address as you have specified during the registration.

#### **4. REGISTERED USER IDENTIFICATION**

4.1. When registering for an Account, you must provide required information (e. g. Corporate name, corporate registered office, bank account information, credit card information...) and requested documents for verifying your identification. You agree to provide the Company with all information requested for the purposes of identity verification and permit the Company to keep a record of such information.

#### **5. USE OF SERVICES**

5.1. Services are provided as Software as a service (Saas) licencing model available on the App. User's Account on the App is integrated with User's Third-Party Accounts (via API or built-in data connectors) providing statistics, management, planning, optimizing, monitoring of advertising campaigns, strategies and executions on User's Third Party Accounts made by User on the App.

5.2. Services provided via the App collect relevant data from Third-Party Accounts and provide statistical information and models for optimization of User's marketing and advertising strategies on Third-Party Accounts. The Company does not execute actions on Third-Party Account without User's consent and does not substitute User's discretion. The App acts as a statistical tool to aid the User with advertising strategies and provides facilitated performance of actions on Third-Party Account made by the User. The User acknowledges that the Company does not provide financial advice or any related financial, accounting or similar services.

5.3. The Company does not warrant or guarantee for any specific results or profits of User's advertising or marketing campaigns on Third-Party Accounts. Users is solely responsible for the ads made for a

specific product. The Company does not interfere with the content of the Users ad for a specific product. Advertising or marketing effectiveness is affected by a multitude of factors and products, offered by the User on Third-Party Accounts. You understand and acknowledge that:

- (a) any investments in ads, advertising and marketing is of highly speculative nature and can result in loss,
- (b) you are able to bear the associated risks, including the loss of investment in ads,
- (c) you have sought advertising and marketing advice for specific ads,
- (d) you should not use the Services if you are not fully aware of risks involved or if you do not understand the nature of the Services.

5.4. The Service depend on the availability and operation of third-party platforms and websites, including, without limitation, the applicable platforms connect via Third-Party account and that the Company shall not bear responsibility or liability with respect to such, their operation, rules, functionalities and/or changes made thereto.

5.5. The Company acts solely as a medium between you and your Third-Party Account, transmitting the relevant information and details. Thus, the Company is not a contracting party in relation to the User and the provider of the Third-Party Account nor does the relevant business relationship establish any rights, obligations or liabilities, contractual or otherwise, in relation to the Company. The Company has no control over the performance or any other aspects of providers of Third-Party Accounts.

5.6. The Company is not responsible and shall not be held liable for any damages or claims of any kind which result from lack of entry of data and/or any irregularity or performances of User's Third-Party Accounts. The User must at all times carefully examine data entries and make sure the data is correct.

5.7. The Company collects real time data from numerous sources and provider, however there can be differences between your real statistic, and one shown in the App, because of the dependence of numerous data providers (uptime, accuracy, data speed).

## **6. AVAILABILITY AND MAINTENANCE**

6.1. All services are provided without warranty of any kind, either express or implied. The Company strives to provide you with the constant Service but there are no guarantees that access will not be interrupted, or that there will be no delays, failures, errors, omissions or loss of transmitted information. However, the Company guarantees 90% uptime of the App.

6.2. The Company will use reasonable endeavours to ensure that you can access the Platform in accordance with these Terms. We may suspend use of the Platform for maintenance and will make reasonable efforts to give you a prior notice.

6.3. The Company ensures the agreed operation of the App and will notify the User in the shortest possible time in the event of outages on the part of the Company. If the User is not informed of any errors on the App by the Company, it is considered that the Company is not aware of the malfunction. In case of errors or malfunctions the User must report the error to the Company via the communication interface on the App or by e-mail: [support@roasmonster.com](mailto:support@roasmonster.com) if the communication interface does not work. Depending on the severity of the error, the Company shall start resolving the in response time, as follows:

- **Urgent** - The App does not work - 4 hours
- **Medium** - The App works partially, most functionalities cannot be used - 24 hours
- **Low** – the App works with interference, errors do not jeopardize normal use - 5 days

6.4. If the User does not provide all the necessary information for the successful resolution of the error, the Company shall notify the User of the missing information. The response time starts from the acquisition of all necessary information by the Client. The User will ensure a suitable environment (in accordance with the Company's instructions) for the appropriate elimination of errors within the response time and the participation of the necessary staff, who must participate in the error elimination process. The User will also answer any questions on an ongoing basis and participate in the review of the results for the appropriate elimination of errors.

6.5. After the response time, the Company will start to rectify the error in accordance with the standards of a good expert and try to eliminate the error as soon as possible. In case of unsuitability of the solution, the Company will resume the elimination of the error or offer an alternative solution that does not change the key features of the functionality on the App.

## 7. SUPPORT

7.1. Support is provided regularly between 8.00h and 16.00h CET during working hours from Monday to Friday on working days in the Republic of Slovenia. By special request, the User can order longer terms of the regular part of the support or several hours of flat monthly support.

7.2. The user orders a request for support via the communication interface on the App or to the e-mail address: [support@roasmonster.com](mailto:support@roasmonster.com)

## 8. LIMITATION OF LIABILITY

8.1. You acknowledge that operation of and access to our App may be interfered with as a result of technical issues or other factors outside of our control. You agree that the Company is not responsible for any failures, or temporal or permanent inability to procure the Services at any given time.

8.2. You agree that the Services are being provided to you on an "AS IS" basis. Hence, the Company shall under no circumstances whatsoever be liable to the User, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, for any loss of goodwill, profit, revenue, anticipated savings or any loss that is an indirect or secondary consequence of non-performance or disrupted performance of Services.

8.3. In addition, to the fullest extent permitted by applicable law, the Company is not liable, and you agree not to hold the Company responsible, for any damages or losses resulting in any way for the following:

- Viruses or other malicious software obtained by accessing the App, or tools linked to the Services;
- Glitches, bugs, errors, or inaccuracies of any kind including information and graphics obtained from or in connection to the Services;

8.4. In jurisdictions in which disclaimers listed in this provision are not fully applicable, it is to be deemed, that they must be applied to the fullest extent permitted by applicable law and to be interpreted that the

common and true will of Parties is Company's limitation of liability to the fullest extent permitted by applicable law.

- 8.5. User is aware that Services are internet based and that the Company cannot be liable for any disruption or performance failure of the Services that are a consequence of distortion or fall-out of internet access or connection, regardless of the cause.
- 8.6. The Company is not responsible and cannot be held liable for errors, missing data or misinformation resulting from User's Third-Party Account abnormalities, defect, errors or false data input by the User.
- 8.7. In the event the User, at his judgement, foresees the possibility that he may suffer harm in connection with the use or inability to use the Services, the User shall, in accordance with the principle of conscientiousness and honesty, take all necessary steps to reduce such damage.
- 8.8. The Company shall not be held liable, especially but not exclusively, for any kind of:
  - damages or loss of profit resulting from use or inability to use the App and/or Services;
  - damages or loss of profit resulting from any technical malfunction from or in relation to the App, if such failure is outside the Company's reasonable control, or if such failure occurs despite the Company's required diligence in deterring from such failures,
  - damages or loss of profit or loss of data due to viruses or other malicious software obtained by accessing App, or tools linked to the Services, if the cause of the infection is on the part of the User or due to his lack of required diligence, if the cause of infection cannot be attributed to the Company or if such infection is outside Company's reasonable control, or if such infection occurs despite Company's required diligence in deterring from such infections.
  - User's required diligence in deterring from such failures,
  - expenses and costs arising from the alternative supply of Services or User's duty to mitigate;
  - damages or claims of any kind which result from User's lack of entry of data and / or irregularity of the entered data.

## **9. USER'S OBLIGATIONS**

- 9.1. The User obliges to not use the Services for activities that:
  - violate any law, statute, ordinance or regulation.
  - relate to transactions involving (a) narcotics, steroids, certain controlled substances or other products that present a risk to consumer safety, (b) items that encourage, promote, facilitate or instruct others to engage in illegal activity, (c) stolen goods including digital and virtual goods, (d) the promotion of hate, violence, racial or other forms of intolerance that is discriminatory or the financial exploitation of a crime, (e) items that are considered obscene, (f) ammunition, firearms, or certain firearm parts or accessories,
  - relate to transactions that (a) show the personal information of third parties in violation of applicable law, (b) support pyramid or ponzi schemes, matrix programs, other "get rich quick" schemes or certain multi-level marketing programs, (c) are associated with purchases of annuities or lottery contracts, lay-away systems, off-shore banking or transactions to finance or refinance debts funded by a credit card, (d) are for the sale of certain items before the seller has control or possession of the item, (e) are by payment processors to collect payments on behalf

of merchants, (f) are associated with the sale of traveler's checks or money orders, (h) involve currency exchanges or check cashing businesses, (i) involve certain credit repair, debt settlement services, credit transactions or insurance activities, or (k) involve offering or receiving payments for the purpose of bribery or corruption.

- involve the sales of products or services identified by government agencies to have a high likelihood of being fraudulent.

## **Payment methods**

9.2. User provides to pay the fee provided for in the Fee Schedule for selected features of the Services. The Company shall charge the User in accordance with the Fee Schedule. The user can select one of two payment methods:

### **1. monthly invoice**

Fees are charged for the previous one-month period the User was using the Services. If the month is less than a full calendar month, the Transaction Fees shall be paid for this initial period. User shall be charged by a monthly invoice with the payment deadline of 8 days upon the receipt of the invoice on the User's email. If the payment is not made in the provided deadline, the Company can suspend the provision of Services to the User.

### **2. credit card payment providers**

Purchase of the Services by credit card is made upfront is non-refundable. User can spend the paid one-month period at any time on the App in the absence of termination reasons set out in these Terms.

## **10. FORCE MAJEURE**

10.1. The Company shall not be in breach of these Terms nor liable for delay in performing, or failure to perform, any of its obligations under this agreement if such delay or failure result from events, circumstances or causes beyond their reasonable control. In such circumstances the time for performance shall be extended by a period equivalent to the period during which performance of the obligation has been delayed or failed to be performed. If the period of delay or non-performance continues for 3 months, the User may terminate the Agreement by giving 14 (fourteen) days' written notice to the Company.

## **11. INTELLECTUAL PROPERTY**

11.1. The Company owns all Intellectual Property rights to the Software and any other products the Company developed and/or owned by the Company relating thereto.

11.2. The Company grants the User a Licence to use the Software, Services and the App strictly in accordance with these Terms and only for purposes of performing the Users activity in his professional capacity, for his internal business purposes.

11.3. The User acknowledges the Company's rights to the Intellectual Property used on or in relation to the Services and the goodwill connected with it, as the Company's sole property. User is only permitted to

use the Intellectual Property for the purposes of and during the term of this Agreement, other than to that extent, it has and shall have no right to use, or to allow others to use the Intellectual Property or any part of it, and shall not remove, alter or otherwise tamper with any trademarks, trade names, logos, numbers or other means of identification on the Company, promotional material or any packaging which come into the User's possession, custody or control, and shall not place any trade mark or trade name of its own on the Software or any other property or any packaging or other materials used in connection with them.

- 11.4. User is not allowed to distribute or reproduce Intellectual Property in any form or by any means, without the prior written permission of the Company. All rights not expressly granted herein are reserved to the Company.
- 11.5. Any changes, alterations, improvements, reverse engineering, or similar actions and derivative work conducted on the Software in breach of these Terms shall be deemed to belong to the Company even if they would be regarded to be subject of independent Intellectual property rights under applicable law. In such cases, when it is necessary, the User stipulates to immediately transfer all intellectual property rights constituted by his unlawful actions listed prior, to the Company. The Company shall in any event be entitled to full compensation for damages caused by breach of these provisions of Terms.
- 11.6. License granted to the User under these Terms will automatically terminate if the Company suspends or terminates your access to the Account.

## **12. CONFIDENTIAL INFORMATION**

- 12.1. Information regarding the Fee Schedule, all communication between the Company and the User (including but not limited to communication with support), beta testing of future Services, future upgrades of the Platform is confidential (*hereinafter: Confidential Information*).
- 12.2. User shall not disclose any of the Confidential Information in any manner whatsoever and shall hold and maintain the Confidential Information in strictest confidence. User shall use the Confidential Information solely for the purposes of using the Services under these Terms.
- 12.3. User understands and acknowledges that any disclosure or misappropriation of any of the Confidential Information in violation of these Terms may cause the Company irreparable harm, the amount of which may be difficult to ascertain, and therefore agrees that the Company shall have the right to apply to a court of competent jurisdiction in Slovenia.

## **13. PRIVACY, DATA PROTECTION AND STORAGE**

- 13.1. Information about how the Company collects, uses and shares data is described in the Privacy Policy.
- 13.2. The App does not allow to have insight in the User's data on the App that represent User's data (such business data or personal data). The Company can access this information only with explicit consent by the User.

## **V. FINAL PROVISIONS**



## 14. INDEMNITY

14.1. The User undertakes and agrees at all times during the term of this agreement to indemnify the Company against any liabilities, direct or indirect damages or loss of profit incurred by the Company as a result of the User breaching these Terms or any law in force at any time or which result from or in connection with Services to the full extent permitted by applicable law.

## 15. TERMINATION

15.1. The User may terminate the Agreement at any time except at an inopportune time by deleting his account on the App. Notwithstanding the foregoing, deleting an Account does not in any way affect the user's outstanding obligations under these Terms.

15.2. User hereby consents, that the Company can, at its own discretion, without giving reason, by prior notice:

- terminate the provision of Services,
- discontinue or delay the provision of certain or all features of Services,

15.3. User hereby consents, that the Company can, at his own discretion:

1. terminate the Agreement by:
  - deleting the Account of Registered User,
  - prohibit and disable the use of Services,
  - suspend the provision of Services to the User,should the User:
  - be in breach of provisions of these Terms and/or the Agreement,
  - use the Services for illegal activities of any kind,
  - access the Services without authorisation,
  - be in delay with outstanding liabilities,
2. terminate the Agreement or delay, remove or temporarily disable the Services or some of its features because of:
  - security reasons,
  - Updates to the App or maintenance work on it,
  - unexpected technical difficulties,
  - order of competent authorities, such as law enforcement, government, administrative, court or similar authorities,

15.4. In the cases from the previous provision, the User is not entitled to any compensation or damages.

15.5. Should the User's Account be suspended or deleted, or the User is disabled from the use of Services, access to the Account will be disabled, and provision of Services shall be immediately terminated. In case of account deletion all data received from User is removed from primary server cluster. Users data is still kept in daily backups for 3 years.

## 16. NOTIFICATION

- 16.1. Notifications relating to use and procurement of Services shall be made available to Users by posts on the App or *via* User's e-mail address.
- 16.2. User may contact the Company by email to the address: [support@roasmonster.com](mailto:support@roasmonster.com) If the message is sent on a work free day, it will be considered as received on the first working day at 8.00 AM according to CET and working days in Slovenia.
- 16.3. All communications and notices to be made or given pursuant to these Terms must be made in Slovenian or English language. Communications and notices made in other languages shall be deemed non-existent.

## **17. MISCELLANEOUS**

- 17.1. If any provisions of these Terms are held null or voidable, they are replaced with the provision that is closest to the meaning and effect of such provision and is interpreted to the intent of the original provision. In any case the rest of the Terms will remain in full force and effect.
- 17.2. These Terms shall consist of both the provisions contained therein and all the documents annexed thereto. Such annexes form part of these Terms and shall have effect as if set out in full in the body of these Terms. Any reference to these Terms or vice versa includes the referred document as such annexes.
- 17.3. This Agreement and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and interpreted in accordance with the laws of Republic of Slovenia. The courts of Republic of Slovenia in Ljubljana shall have exclusive jurisdiction to settle any such claims or disputes arising out of or in connection with this agreement or its subject matter or formation (including non-contractual disputes or claims).
- 17.4. Use of Services is permitted for registered legal entities only.

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