



SENDMARC

Channel Partner Terms and Conditions

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1 Definitions

The definitions and rules of interpretation in this clause apply in the Agreement.

- 1.1 **Account:** the account created by Sendmarc for each Customer.
- 1.2 **Agreement:** this agreement between the Channel Partner and Sendmarc.
- 1.3 **Authorised Users:** those employees, agents and independent contractors of the Customer who are authorised by the Customer to use the Services.
- 1.4 **Business Day:** a day other than a Saturday, Sunday or public holiday in South Africa.
- 1.5 **Channel Partner:** any authorised reseller of the Services.
 - a. "The Channel Partner's Group" means the Channel Partner and its subsidiaries;
 - b. "The Channel Partner Group Company" means any company within the Channel Partner's Group;
- 1.6 **Confidential Information:** information that is proprietary or confidential and is either clearly labelled as such or identified as Confidential Information in clause 11.
- 1.7 **Customer:** means persons who acquire the Services for their own use and not for resale or distribution to others;
- 1.8 **Customer Data:** the data inputted by the Customer, or by its Authorised Users, the Channel Partner or Sendmarc on the Customer's behalf for the purpose of using the Services or facilitating the Customer's use of the Services.
- 1.9 **Documentation:** any documents made available to the Customer by or on behalf of Sendmarc which sets out a description of the Services and the user instructions for the Services.
- 1.10 **Effective Date:** shall be the date on which the Customer's account is marked active within the Channel Partner's Sendmarc environment
- 1.11 **Order:** The Customer's order for the Services on the Sendmarc website or otherwise submitted by a Channel Partner.
- 1.12 **Sendmarc:** Sendmarc Pty (Ltd), a private company registered in South Africa registration number 2018/336082/07 whose registered office is at 1 Sturdee Avenue, Rosebank, 2196, Johannesburg, South Africa.
- 1.13 **Services:** the subscription services provided by Sendmarc to the Customer under the Agreement, as more particularly described in the Documentation.
- 1.14 **Software:** the online software applications provided by Sendmarc as part of the Services.
- 1.15 **Subscription:** the online software application as a service (SaaS) subscribed for by each Customer.
- 1.16 **Subscription Fees:** the subscription fees payable by the Customer to Sendmarc or to a Channel Partner, as set out in the Order.
- 1.17 **Term:** the period during which the Services will be provided as specified in the Order.
- 1.18 **Terms of Use:** the Agreement as between the Channel partner and the Customer, detailing the commitments that Sendmarc make to the Customers regarding delivery of the Services.
- 1.19 In the Agreement a reference to one gender shall include reference to every gender; words denoting a singular number include the plural and vice versa; references to persons shall include firms, companies and other organisations; a reference to a statutory provision includes a reference to the same as modified, re-enacted or replaced from time to time and any subordinate legislation made under it; a reference to a legal or regulatory body includes a reference to any successor body or bodies to it; headings shall not affect the interpretation of the Agreement; the words "include", "includes", "including" and "in particular" shall be construed as if they were followed by the words "without limitation". Except as expressly provided in the Agreement, the rights and remedies provided under the Agreement are in addition to, and not exclusive of, any other rights or remedies, whether under the Agreement or provided by law.
- 1.20 Sendmarc's Standard Terms of Use (<https://www.sendmarc.co.za/terms-and-conditions>) shall apply to this Agreement as if specifically incorporated herein.

2 Introduction and scope

- 2.1. Sendmarc is the sole proprietor of the Services.

- 2.2. The Channel Partner can sell the Services throughout the territory as agreed, subject to the terms of this Agreement.
- 2.3. Sendmarc wishes to appoint the Channel Partner and the Channel Partner wishes to accept such appointment to perform and render, or cause to be performed and rendered, sales agent, distribution and or reseller services, as appropriate, to Sendmarc on the terms and subject to the conditions contained in this Agreement.
- 2.4. The Parties wish to record in writing their agreement in this regard as follows.

3 Nature and Duration of Agreement

This Agreement shall commence on the Effective Date and shall endure indefinitely unless terminated:

- a. in accordance with the termination clause below; or
- b. on 30 (thirty) days prior written notice being provided by either party.

4 Appointment

- 4.1. Sendmarc hereby grants to the Channel Partner the non-exclusive, non-transferable right and licence to market, sell and distribute the Services to Customers and prospective Customers, which appointment the Channel Partner accepts.
- 4.2. The Channel Partner is an independent purchaser and Channel Partner of Sendmarc and the Services and nothing contained in this Agreement will create the relationship of joint venture, principal and agent or master and servant between Sendmarc and the Channel Partner. Notwithstanding anything to the contrary contained herein, the Channel Partner shall have the right to appoint any of the Channel Partner Group companies as subcontractor in respect of the whole or any part of the Services.
- 4.3. The Channel Partner or the Channel Partner Group, as the case may be, shall render the Services in compliance with all applicable laws and regulations.
- 4.4. This Agreement shall not prevent Sendmarc from entering into similar agreements with third parties, or from independently developing, using, selling or licensing documentation, Services and/or services which are similar to those provided under the Agreement.

5 Customer Acceptance of the Terms of Use

Each Customer of the Channel Partner must accept the Terms of Use to order the Services from Sendmarc. If Sendmarc updates the Terms of Use then Customer must accept the new Terms of Service at or before renewal of their Subscription.

By placing an order with Sendmarc, the Channel Partner

- a. represents and warrants that Customer has accepted the Terms of Service and
 - b. agrees to pay Sendmarc for all Customer orders it submits for the Services subject to 4.4.1 above. Sendmarc may accept or reject any proposed Customer at its discretion.
- 5.1. **Pricing:** Sendmarc will publish minimum recommended Subscription Fees, from time to time which is a guide to the Channel Partner but not mandatory.
- 5.2. **Subscriptions:** Sendmarc may disable a Customer's Subscription for legal or regulatory reasons or as otherwise permitted under this Agreement and Sendmarc will notify the Channel Partner of within 48 hours. If Sendmarc disables a Customer's Subscription, Sendmarc also will suspend billing to the Channel Partner for that Customer's Subscription until the Subscription is re-enabled.
- 5.3. **Cancellation:** The Channel Partner may cancel a Subscription for a Service for a Customer, however fees due from the Channel Partner in the event of cancellation of a Subscription before its term ends, may be applied.

Upon cancellation, the Customer will have ninety (90) days to migrate any Customer Data to either a new Subscription with the Channel Partner or with Sendmarc directly. Upon request, Sendmarc will assist the Channel Partner with migration of its Customer's Data at an additional charge agreed to between the Channel Partner and Sendmarc.

6 Sendmarc's Obligations

Sendmarc shall:

- 6.1. provide service and support to the Channel Partner as provided for in the Terms of Use and as required;
- 6.2. Upon receipt and acceptance of a valid order for Services, provision the Service for the benefit of the applicable Customer;
- 6.3. Allow the Channel Partner full administrative rights over the Service;
- 6.4. Warrant that it has and will maintain all necessary licences, consents, and permissions necessary for the performance of its obligations under the Agreement.
- 6.5. send direct communications to Customers related to the terms of the Terms of Use or the operation or delivery of the Service. In this regard the Channel Partner will:
 - a. provide Sendmarc with accurate contact information for the administrator of each Customer domain; and
 - b. use commercially reasonable efforts to provide information that is accurate and current.
- 6.6. provide the Channel Partner's employees with the appropriate training, as determined by Sendmarc in accordance with the Partner Plans as referred to in the Partner Agreement, in respect of the Services to enable the Channel Partner's employees and representatives to resell the Services, and the costs of such training will be borne by Sendmarc.

7 Channel Partners Obligations

- 7.1. The Channel Partner will use its best efforts to promote, market and sell the Services to potential customers and otherwise act in accordance with the terms of this Agreement. The Channel Partner shall, As soon as possible and insofar as it is able to, from the Signature Date of this Agreement:
 - a. itself utilise the Services and promote the use thereof;
 - b. notify all of its own customers, affiliates, partners and the like of the Service;
 - c. comply with all international, national and local laws and regulations applicable to the Channel Partner's performance as a sales agent, distributor and or reseller of the Services;
 - d. be solely responsible for the accuracy of the Channel Partner data including the accuracy of the data migrated onto the Account as well as the data constituting the Account thereafter;
 - e. notify Sendmarc immediately of any requirements of suspension of Customers access to the Service. Sendmarc shall disable Customer access upon such notification and will provide the Channel Partner with written confirmation thereof;
 - f. at all times conduct its business in a manner that will reflect favourably on the Service and on the good name and reputation of Sendmarc;
 - g. ensure that all of its employees and representatives who conduct any business in relation to this Agreement, are trained and managed with the relevant degree of technical skill and care, and more specifically, where required, have received the relevant certified Sendmarc analyst ("CDA") and or certified Sendmarc engineer ("CDE") training modules;
 - h. not by itself or with others engage in any illegal, deceptive, misleading or unethical practices including, but not limited to, any practice which may in any way be detrimental to the Service, Sendmarc or the public interest;
 - i. promptly inform Sendmarc of any disputes between the Channel Partner and any of its Customers relating to the Service and comply with all reasonable directions of Sendmarc in relation to such dispute;

- j. promptly inform Sendmarc of any information which is likely to be relevant to the commercial exploitation of the Service, whether advantageous or detrimental to the interests of Sendmarc;
- k. The Channel Partner shall use all reasonable endeavours to prevent any unauthorised access to, or use of, the Services and/or the Documentation and, in the event of any such unauthorised access or use, promptly notify Sendmarc; ensure that its network and systems comply with the relevant specifications provided by Sendmarc from time to time;
- l. be solely responsible for procuring and maintaining its network connections and telecommunications links from its systems to Sendmarc's data centres, and all problems, conditions, delays, delivery failures and all other loss or damage arising from or relating to the Customer's network connections or telecommunications links or caused by the internet; and
- m. provide continuous support to its Customers as required.

7.2. The Channel Partner shall not:

- a. Attempt to copy, duplicate, convert, alter, adjust, modify ,create derivative works from frame, mirror, republish, download, display, transmit, or distribute all or any portion of the Service, its related software and/or Documentation (as applicable) in any form or media or by any means; or
- b. make any attempt to reverse engineer, disassemble, reverse compile, gain unauthorised access, attempt to discover the underlying source code or structure of the Service or otherwise reduce to human-perceivable form all or any part of the Service;
- c. access all or any part of the Services in order to build a Service or service which competes with the Services and/or the Documentation; or
- d. take any action which could be reasonably foreseen to cause a material and adverse effect upon the goodwill of Sendmarc and/or the quality and functionality of the Service;

8 No Authority

Neither Party shall have any authority to bind the other in any way whatsoever, including, but not limited to:

- 8.1. entering into contractual obligations on behalf of the other party;
- 8.2. incurring any liability on behalf of the other party;
- 8.3. settling or waiving any claim against or by the other party;
- 8.4. entering into any oral arrangements, thereby binding either party to such arrangements; or
- 8.5. making any promises, representations, warranties or guarantees in respect of the Services other than those contained in this Agreement.
- 8.6. The Channel Partner may not directly or indirectly, in the name of, on behalf of or for the benefit of Sendmarc offer, promise or authorize to pay, or pay any compensation, or give anything of value to, any official, agent or employee of any government or governmental agency, or to any political party or officer, employee or agent thereof.

9 Charges and Payment

- 9.1. The Channel Partner shall pay the Subscription Fees in accordance with the Order and this clause 9.
- 9.2. The Channel Partner shall on the Signature Date provide to Sendmarc approved purchase order information acceptable to Sendmarc and any other relevant valid, up-to-date and complete contact and billing details.
- 9.3. Sendmarc shall invoice the Channel Partner and the Channel Partner shall pay each invoice in accordance with the Order.

- 9.4. If Sendmarc has not received payment within 30 days after the due date and the Channel Partner has failed to remedy such breach with 7 (seven) days after written notice thereof, then and without prejudice to any other rights and remedies of Sendmarc:
- a. Sendmarc may, without liability to the Channel Partner or its Customer, disable the Customer's password, account and access to all or part of the Services and Sendmarc shall be under no obligation to provide any or all of the Services while the invoice(s) concerned remain unpaid; and
 - b. interest shall accrue on a monthly basis on such due amounts at an annual rate equal to plus 2% at the then current Prime Rate from time to time, commencing on the due date and continuing until fully paid, whether before or after judgment.
- 9.5. All amounts and fees stated or referred to in the Agreement:
- a. shall be payable in South African Rand;
 - b. are, subject to clause 9.4(b), non-cancellable and non-refundable;
 - c. are exclusive of value added tax, which shall be added to the invoice(s) at the appropriate rate.

10 Proprietary Rights

- 10.1. The Channel Partner acknowledges and agrees that Sendmarc and/or its licensors own all intellectual property rights in the Services and the Documentation. Except as expressly stated herein, the Agreement does not grant the Channel Partner any rights to, or in, patents, copyright, database right, trade secrets, trade names, trademarks (whether registered or unregistered), or any other rights or licences in respect of the Services or the Documentation.

11 Confidentiality

- 11.1. Each party may be given access to Confidential Information from the other party in order to perform its obligations under the Agreement. A party's Confidential Information shall not be deemed to include information that:
- a. is or becomes publicly known other than through any act or omission of the receiving party
 - b. was in the other party's lawful possession before the disclosure;
 - c. is lawfully disclosed to the receiving party by a third party without restriction on disclosure;
 - d. is independently developed by the receiving party, which independent development can be shown by written evidence; or
 - e. is required to be disclosed by law, by any court of competent jurisdiction or by any regulatory or administrative body.
- 11.2. Each party shall hold the other's Confidential Information in confidence and, unless required by law, not make the other's Confidential Information available to any third party or use the other's Confidential Information for any purpose other than the implementation of the Agreement.
- 11.3. Each party shall take all reasonable steps to ensure that the other's Confidential Information to which it has access is not disclosed or distributed by its employees or agents in violation of the terms of the Agreement.
- 11.4. Neither party shall be responsible for any loss, destruction, alteration or disclosure of Confidential Information caused by any third party.
- 11.5. The Channel Partner acknowledges that details of the Services, and the results of any performance tests of the Services, constitute Sendmarc's Confidential Information.
- 11.6. Sendmarc acknowledges that the Customer Data is the Confidential Information of the Customer.
- 11.7. No party shall make, or permit any person to make, any public announcement concerning the Agreement without the prior written consent of the other party (such consent not to be unreasonably withheld or delayed), except as required by law, any governmental or regulatory authority (including any relevant securities exchange), any court or other authority of competent jurisdiction.
- 11.8. The above provisions of this clause shall survive termination of the Agreement, however arising.

12 Indemnity

- 12.1. Channel partner shall defend, indemnify and hold harmless Sendmarc against claims, actions, proceedings, losses, damages, expenses and costs (including court costs and reasonable legal fees) arising out of or in connection with the Channel Partner or its Customer/s' use of the Services and/or Documentation in breach of these terms, misuse, modification or alteration of any of the Services.
- 12.2. In the event of any third party claims howsoever arising, Sendmarc shall have sole discretion to defend the claim provided that:
- Sendmarc is given prompt notice of any such claim;
 - both parties provide reasonable co-operation in the defence and settlement of such claim, at their own expense.
- 12.1. In the defence or settlement of any claim, Sendmarc may procure the right for the Channel Partner to continue using the Services, replace or modify the Services so that they become non-infringing or, if such remedies are not reasonably available, terminate the Agreement immediately without any additional liability or obligation to pay liquidated damages or other additional costs to the Channel Partner.
- 12.2. In no event shall Sendmarc, its employees, agents and sub-contractors be liable to the Channel Partner to the extent that the alleged infringement is based on:
- a modification of the Services or Documentation by anyone other than Sendmarc; or
 - the Channel Partner's use of the Services or Documentation in a manner contrary to the instructions given to the Channel Partner by Sendmarc; or
 - the Channel Partner's use of the Services or Documentation after notice of the alleged or actual infringement from Sendmarc or any appropriate authority.
- 12.3. The foregoing states the Channel Partner's sole and exclusive rights and remedies, and Sendmarc's (including Sendmarc's employees', agents' and sub-contractors') entire obligations and liability, for infringement of any patent, copyright, trademark, database right or right of confidentiality.

13 Limitation of liability

- 13.1. This clause 13 sets out the entire financial liability of Sendmarc (including any liability for the acts or omissions of its employees, agents and sub-contractors) to the Channel Partner or any third party:
- arising under or in connection with the Agreement;
 - in respect of any use made by the Channel Partner of the Services or any part of them; and
 - in respect of any representation, statement or deliberate act or omission (including negligence) arising under or in connection with the Agreement.
- 13.2. The Channel Partner acknowledges that although the Services provided by Sendmarc include DMARC configuration, Sendmarc is not in any way responsible for the Domain-based Message Authentication Reporting and Conformance protocol ("DMARC"), including any security breaches or problems with implementation that may arise, these being outside of Sendmarc's control.
- 13.3. Except as expressly and specifically provided in the Agreement:
- all warranties, representations, conditions and all other terms of any kind whatsoever implied by statute or common law are, to the fullest extent permitted by applicable law, excluded from the Agreement; and
 - the Services are provided to the Customer and the Channel partner on an "as is" basis.
- 13.4. Nothing in the Agreement excludes the liability of either party:
- for death or personal injury caused by a party's negligence; or
 - for fraud or fraudulent misrepresentation.
- 13.5. Subject to clause 11.2 and clause 11.4:

- a. Sendmarc shall not be liable whether in delict (including for negligence or breach of statutory duty), contract, misrepresentation, restitution or otherwise for any loss of profits, loss of business, depletion of goodwill and/or similar losses or loss or corruption of data or information, or pure economic loss, or for any special, indirect or consequential loss, costs, damages, charges or expenses however arising under the Agreement; and
- b. Sendmarc's total aggregate liability in contract, delict (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise, arising in connection with the performance or contemplated performance of the Agreement shall be limited to the total Subscription Fees paid during the 12 months immediately preceding the date on which the claim arose.

14 Breach

- 14.1 Should the Channel partner fail to perform any of its obligations in terms of this Agreement or the Partner Agreement as agreed, Sendmarc shall :
- a. notify the Channel Partner accordingly; and
 - b. allow the Channel Partner 7 (seven) days in which to remedy the breach;
- 14.2 Should the Channel Partner fail to remedy such failure after receiving written demand, or in the event that the Channel Partner fails to perform the same obligation more than once, Sendmarc shall be entitled to, in its sole discretion:
- A. terminate this Agreement in accordance with clause 15 below; or
 - B. amend the partner agreement accordingly to ensure the service levels to the client are maintained and to reduce the Channel Partner's discount and or rebate, as applicable.

15 Termination

On termination of the Agreement for any reason:

- a. all licences granted under the Agreement shall immediately terminate;
- b. each party shall return and make no further use of any equipment, property, Documentation and other items (and all copies of them) belonging to the other party;
- c. Subject to clause 5.3 above, Sendmarc may destroy or otherwise dispose of any of the Customer Data in its possession unless Sendmarc receives, no later than ten days after the effective date of the termination of the Agreement, a written request for the delivery to the Channel Partner of the then most recent back-up of the Customer Data. Sendmarc shall use reasonable commercial endeavours to deliver the back-up to the Customer within 30 days of its receipt of such a written request, provided that the Customer has, at that time, paid all fees and charges outstanding at and resulting from termination (whether or not due at the date of termination). The Channel Partner shall pay all reasonable expenses incurred by Sendmarc in returning or disposing of Customer Data; and
- d. any rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination, including the right to claim damages in respect of any breach of the Agreement which existed at or before the date of termination shall not be affected or prejudiced.

16 Force majeure

Sendmarc shall have no liability to the Channel Partner or its Customer under the Agreement if it is prevented from or delayed in performing its obligations under the Agreement, or from carrying on its business, by acts, events, omissions or accidents beyond its reasonable control, including strikes, lock-outs or other industrial disputes (whether involving the workforce of Sendmarc or any other party), failure of a utility service or transport or telecommunications network, act of God, war, riot, civil commotion, malicious damage, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, fire, flood, storm or default of suppliers or sub-contractors, provided that the Channel Partner and or Customer is notified of such an event and its expected duration.

17 Conflict

If there is an inconsistency between any of the provisions in the main body of this Agreement and another document, the provisions in the main body of this Agreement shall prevail.

18 Variation

No variation of the Agreement shall be effective unless it is in writing and signed by the parties (or their authorised representatives).

19 Waiver

No failure or delay by a party to exercise any right or remedy provided under the Agreement or by law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.

20 Rights and remedies

Except as expressly provided in the Agreement, the rights and remedies provided under the Agreement are in addition to, and not exclusive of, any rights or remedies provided by law.

21 Assignment

- 20.1. The Channel Partner shall not, without the prior written consent of Sendmarc, assign, transfer, charge, sub-contract or deal in any other manner with all or any of its rights or obligations under the Agreement.
- 20.2. Sendmarc may at any time assign, transfer, charge, sub-contract or deal in any other manner with all or any of its rights or obligations under the Agreement, and undertakes to inform the Channel Partner as soon as reasonably possible thereof.

22 Notices

- 21.1. Any notice required to be given under the Agreement shall be in writing and shall be delivered by hand or sent by email. Sendmarc's email address is info@Sendmarc.com.
- 21.2. A notice delivered by hand or email shall be deemed to have been received when delivered (or if delivery is not in business hours, at 9 am on the first business day following delivery).

23 Severance

- 22.1.If any provision (or part of a provision) of the Agreement is found by any court or administrative body of competent jurisdiction to be invalid, unenforceable or illegal, the other provisions shall remain in force.
- 22.2. If any invalid, unenforceable or illegal provision would be valid, enforceable or legal if some part of it were deleted, the provision shall apply with whatever modification is necessary to give effect to the commercial intention of the parties.

24 Entire agreement

- 23.1.This Agreement, our Privacy Policy (<https://www.Sendmarc.co.za/privacy-policy>) our Security Policy (available on request), and any other documents referred to in this Agreement, constitute the whole agreement between the parties and supersede any previous arrangement, understanding or agreement between them relating to the subject matter they cover.
- 23.2. Each of the parties acknowledges and agrees that in entering into the Agreement it does not rely on any undertaking, promise, assurance, statement, representation, warranty or understanding (whether in writing or not) of any person (whether party to this Agreement or not) relating to the subject matter of this Agreement, other than as expressly set out in the Agreement.

25 Third party rights

The Agreement does not confer any rights on any person or party (other than the parties to the Agreement and, where applicable, their successors and permitted assigns).

26 Jurisdiction

Each party irrevocably agrees that the Magistrates Court shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with this Agreement or its subject matter or formation (including non-contractual disputes or claims).

27 Governing law

The 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 construed in accordance with the laws of South Africa.