



## SENDCLOUD APP STORE PARTNER AGREEMENT

### Introduction

This Sendcloud App Store Partner Agreement (the “**Agreement**”) is a binding agreement between Sendcloud and the individual or entity registering as a partner in the Sendcloud App Store (“**Partner**”). Sendcloud and the Partner will hereinafter be referred to as “**Party**” separately and “**Parties**” collectively.

If you are an individual using the Sendcloud App Store on behalf of your company, organization or other entity (for example, as an employee), then “you” means your entity and you are binding your entity to this Agreement.

This Agreement does not have to be signed in order to be binding. You indicate your agreement to the terms of this Agreement by (i) checking the box to accept the Agreement that is presented to you as part of the onboarding process of the App Store or (ii) by submitting any App to the App Store.

### 1. Definitions and interpretation

- 1.1. Unless the context requires otherwise, the capitalized terms and expressions in this Agreement are defined terms and expressions which shall have the meaning as described in Appendix A to this Agreement.
- 1.2. In this Agreement, a reference to:
  - 1.2.1. a statutory provision includes a reference to a statutory provision as modified or re-enacted or both from time to time before the date of this Agreement and any subordinate legislation made under the statutory provision before the date of this Agreement;
  - 1.2.2. singular words shall include the plural and vice versa and words in a particular gender shall include all genders, unless the context requires otherwise; and
  - 1.2.3. a person includes any individual, corporation, entity, partnership, association, trust, unincorporated organization, government or corporate body.
- 1.3. In this Agreement, headings are inserted for convenience purposes only and shall not affect the construction or interpretation of this Agreement.
- 1.4. The appendices form an integral part of this Agreement.
- 1.5. In case of conflict between or inconsistency of the provisions of the actual Agreement and the contents of the appendices, the provisions of the actual Agreement shall prevail.
- 1.6. No provision of this Agreement shall be interpreted adversely against a Party solely because that Party was responsible for drafting that particular provision.
- 1.7. The English language used in this Agreement intends to describe Dutch legal concepts only and the consequences of the use of this language in English law or any other law shall be disregarded. In case of conflict between Dutch legal concepts mentioned between brackets and/or in italics in this Agreement and the English translation thereof as used in this Agreement, the Dutch text, and its meaning thereof under Dutch law, will prevail.



## 2. Term and termination

- 2.1. This Agreement will commence on the date on which the Partner has accepted this Agreement as part of the Partner onboarding (the “**Effective Date**”) and shall be effective for an indefinite period.
- 2.2. Termination for convenience. Either Party may terminate this Agreement, without cause, by giving written notice to the other Party at least 90 (ninety) days prior to the effective date of such termination.
- 2.3. Termination for cause. Either Party may terminate this Agreement with immediate effect if:
  - 2.3.1. there is a material breach by the other Party that is not cured after ten (10) days from the receipt of written notification of such breach; or
  - 2.3.2. the other Party enters into voluntary or involuntary bankruptcy, ceases to conduct business, or assigns its interests in this Agreement to a third-party creditor.

## 3. Scope of this Agreement

- 3.1. The scope of the Agreement is limited to the listing in the Sendcloud App Store of the Partner’s App and/or any of its services and products.
- 3.2. Other topics, such as any (i) technical integration between the Sendcloud Platform and any Partner Platform, and/or (ii) commercial arrangements between Parties are out of scope of this Agreement. These topics may be subject to a separate agreement between Parties.

## 4. Partner obligations and representations

- 4.1. Notwithstanding the other obligations under this Agreement, Partner’s obligations and representations under this Agreement shall include the following:
  - 4.1.1. Content. The Partner shall provide Sendcloud with all relevant content, including the App name, logo, graphics and any other info as may be reasonable requested by Sendcloud as part of the onboarding process or at later stage (“**Content**”). The Partner warrants that it has obtained all the necessary rights related to the Content and that the Content does not reach any applicable laws and/or intellectual property rights of third parties. Furthermore, the Partner warrants that it shall not introduce any Virus into the App Store and/or Sendcloud Platform.
  - 4.1.2. Accuracy: Partner is responsible for submitting and maintaining accurate Content and information about its App, products and services as part of the App Store listing.
  - 4.1.3. Support: Partner is responsible for offering support regarding its App, products and services to Customers. The Partner shall provide Sendcloud with the relevant contact information to redirect any requests from end users that are addressed to Sendcloud.
  - 4.1.4. Customer terms and conditions: the Partner must provide its applicable (i) terms and conditions and (ii) privacy policy as part of the App Store listing. The Partner agrees that



Sendcloud shall not have any responsibility for (non-)compliance with the Partner's terms and conditions by the Customers.

## **5. Sendcloud control of App Store**

- 5.1. Sendcloud may determine at its sole discretion to list or delist any App from the App Store with immediate effect.
- 5.2. Due to the evolving nature of the App Store, Sendcloud can make unilateral changes to any and all aspects of the App Store, including but not limited to this Agreement as well as the applicable Partner and/or App requirements. Any such change shall become effective thirty (30) days after notice by Sendcloud (unless Sendcloud specifies a shorter notice period). In case it concerns changes that have a material adverse effect on the Partner and the Partner does not agree with such changes, the sole remedy of the Partner is to terminate this Agreement prior to the date on which the changes take effect.
- 5.3. Security and privacy reviews. Sendcloud, or a third party selected by Sendcloud, is allowed to do checks on the Partner and/or its Apps to check compliance with (i) Partner's obligations under this Agreement and/or (ii) any Applicable Law. Partner will cooperate with such reviews.

## **6. Confidentiality**

- 6.1. Each Party will (a) protect the other Party's Confidential Information against unauthorized access, use and disclosure, (b) use the other Party's Confidential Information only to exercise its rights and perform its obligations under this Agreement, and (c) not disclose the other Party's Confidential Information except to (i) Affiliates, employees, contractors, or anyone acting on its behalf who need to know it in connection with the performance of this Agreement and who have agreed in writing to keep it confidential; or (ii) when legally compelled by a court or other governmental authority, provided, that it provides advance notice to the other Party to the extent permitted under applicable law.
- 6.2. The restrictions in article 6.1 will not apply to any information that: (a) was known by the receiving Party prior to disclosure by the other Party; (b) was in or entered the public domain through no wrongful act of any party; (c) is disclosed to the receiving Party by a third party legally entitled to make such disclosure without violation of any obligation of confidentiality; or (d) is independently developed by the receiving Party without reference to any Confidential Information of the other Party.
- 6.3. Upon request of the other Party or any termination of this Agreement, each Party will destroy (or, upon request of the other Party, return), all Confidential Information of the other Party.

## **7. Intellectual property**

- 7.1. Pre-existing IP rights. Nothing in this Agreement shall constitute a transfer of any rights of intellectual property. Each Party shall retain all intellectual property rights it owned prior to the Effective Date.
- 7.2. License. Subject to this Agreement and its terms, the Partner hereby grants to Sendcloud and its Affiliates a free, non-exclusive, non-transferable and non-revocable world-wide license to use all



Content, including Partner's trademarks, for the purpose of promoting Partner's App(s) and the Sendcloud App Store in general.

## 8. Personal data protection

- 8.1. For the purpose of this clause 8, the terms "personal data", "processing", and "data controller" shall be interpreted in accordance with (i) in EU Member States, Regulation (EU) 2016/679 of the European Parliament and of the Council, of 27 April 2016 (the "**GDPR**") and complementary national data protection laws, including any guidance and / or codes of practice issued by the relevant supervisory authorities within the EU; (ii) in non-EU countries, any applicable data protection laws regarding the safeguarding and lawful processing of personal data ("**Applicable Data Protection Laws**").
- 8.2. The Parties acknowledge that, for the purpose of this Agreement, they may share personal data *inter alia* related to their own employees and/or representatives with each other. Each Party will act as an independent data controller regarding the use of such Personal Data under this Agreement.
- 8.3. The Parties confirm that they will process such Personal Data in compliance with the Applicable Data Protection Laws. The Parties also agree that, where necessary under the Applicable Data Protection Laws, they will enter into EU Standard Contractual Clauses.
- 8.4. Whenever reasonable collaboration or assistance between the Parties is necessary in order for one or both of the Parties to comply with any of its obligations, under the Applicable Data Protection Laws, such reasonable collaboration or assistance will be provided in good faith.

## 9. Liability

- 9.1. The maximum liability of Sendcloud for any damages arising from the performance of this Agreement shall not exceed the total amount of EUR 10,000 (ten thousand euros) per damage inflicting event. In this regard, a series of connected events shall be considered a single event.
- 9.2. Notwithstanding article 9.1, Sendcloud is never liable for consequential damage or loss, including but not limited to lost profits, lost savings, immaterial damage, trading loss or environmental damage, regardless of the basis for liability.
- 9.3. The limitations of liability as described in article 9.1 do not apply if the damage or loss results from the intent or willful recklessness by Sendcloud.

## 10. Indemnity

- 10.1. The Partner shall indemnify, defend, and hold harmless Sendcloud and its Affiliates, and the respective officers, directors, employees, and agents of the foregoing entities from and against any third party action, claim, suit, demand, or cause of action ("**Claim**") brought against Sendcloud to the extent that the Claim is based upon: (a) an allegation a Partner's App and/or any Content infringes any third party patent, copyright, trademark or trade secret.

## 11. Miscellaneous

- 11.1. Assignment. This Agreement shall endure to the benefit of and be binding upon the Parties hereto, their successors and assigns. This Agreement shall not be assigned by the Carrier without the prior written approval of Sendcloud.
- 11.2. Entire Agreement. This Agreement, together with the Appendices, constitute the entire agreement and understanding of Parties with respect to the subject matter and replaces and supersedes all prior agreements, arrangements, undertakings or statements regarding such subject matter.
- 11.3. Amendment. As the Sendcloud App Store evolves over time, we may need to make changes to this Agreement. Sendcloud can make unilateral changes to this Agreement by giving 30 days prior notice to the Partner. In case such changes have a material adverse effect on the Partner, the Partner has the right to terminate this Agreement within 30 days after the Effective Date of the changes to this Agreement.
- 11.4. Severability. If any Article or part thereof of this Agreement is found or held to be invalid, unenforceable or illegal in any jurisdiction in which this Agreement is being performed, the remainder of this Agreement shall be valid and enforceable and the Parties shall negotiate in good faith, a substitute, valid and enforceable Article or part thereof which most nearly effects the Parties' intent in entering into this Agreement.
- 11.5. No waiver. The failure of any Party to enforce at any time any Article or part thereof of this Agreement, or the failure to require timely performance by another Party of any Article or portion thereof, shall in no way constitute a present or future waiver of such Article or portion thereof, nor in any way affect the validity of any Party to enforce each and every Article of this Agreement.
- 11.6. Survival of Termination. Obligations which, by their nature, are intended to continue after termination of this Agreement shall continue to exist for as long as necessary after such termination.
- 11.7. No dissolving or nullification. To the extent permitted by law, the Parties hereby expressly waive the right to dissolve or bring an action to dissolve (*ontbinden*) this Agreement in whole or in part, or to annul or bring an action to annul (*vernietigen*) of this Agreement in whole or in part, or to propose a change of the effects of this agreement pursuant to Section 6:230 of the Dutch Civil Code, for whatever reason (with the exception of annulment in the event of fraud). This Agreement may not be terminated other than as specifically provided herein.
- 11.8. Applicable law. This Agreement and the therefrom resulting rights and obligations are solely governed by and construed in accordance with the laws of the Netherlands, regardless of the conflict of law rules of that country.
- 11.9. Jurisdiction. All disputes arising in connection with this Agreement and all matters relating thereto shall – without prejudice to the right of appeal and cassation – be exclusively settled by the competent court in the district of Oost-Brabant, the Netherlands.



## APPENDIX A: DEFINITIONS

<b>Affiliate</b>	means, with respect to any Party, (i) any person or entity that is controlled by, controls or is under the same control as the Party;
<b>Agreement</b>	means this Sendcloud App Store Partner Agreement, including all its appendices;
<b>App</b>	means all applications, products and services as offered by the Partner via the App Store listing;
<b>App Store</b>	means the interface that Sendcloud makes available for the discovery of Apps;
<b>Applicable Data Protection Laws</b>	shall have the meaning as ascribed thereto in article 8.1 of this Agreement;
<b>Applicable Law</b>	means applicable laws, subordinate legislation, rules, regulations, guidance, ordinances, directives and statutes, and all legally binding requirements and directions (whether contained in authorizations, permits, licenses, notices, instructions, decrees, or other publications) of any authority;
<b>Confidential Information</b>	means all non-public or proprietary information disclosed by the disclosing Party to the receiving Party, including any information disclosed prior to the Effective Date, either directly or indirectly in writing, orally or by inspection of tangible objects (including, without limitation, research, product plans, products, services, equipment, customers, markets, software, inventions, processes, designs, drawings, hardware, formulations, specifications, product configuration information, marketing and finance documents, prototypes, samples, data sets, and equipment), which is either explicitly designated as "confidential" at the time of disclosure or by its nature is reasonably identifiable as confidential;
<b>Claim</b>	shall have the meaning as ascribed thereto in article 10.1 of this Agreement;
<b>Content</b>	shall have the meaning as ascribed thereto in article 4.1.1 of this Agreement;
<b>Customer</b>	means an end customer of Sendcloud or any of its affiliates that has access to the App Store;
<b>Effective Date</b>	shall have the meaning as ascribed thereto in article 2.1 of this Agreement;



<b>GDPR</b>	shall have the meaning as ascribed thereto in article 8.1 of this Agreement;
<b>Partner</b>	shall have the meaning as ascribed thereto in the introduction of this Agreement;
<b>Party / Parties</b>	shall have the meaning as ascribed thereto in the introduction of this Agreement;
<b>Sendcloud</b>	means Sendcloud B.V., a limited liability company, having its registered office at Stadhuisplein 10 (5611 EM) Eindhoven, the Netherlands, and registered with the trade register of the Dutch Chamber of Commerce under number 66572959;
<b>Sendcloud Platform</b>	means Sendcloud's online platform that is used by Customers for <i>inter alia</i> shipping automation;
<b>Virus</b>	means a virus, cancelbot, worm, logic bomb, Trojan horse or any other harmful component of software or data.