



## SERVICE AGREEMENT PMAILER

**\*\*PLEASE TAKE NOTE THAT YOUR ACCESS AND/OR USE OF THE PMAILER SERVICE INDICATES YOUR WILLINGNESS TO ACCEPT THE TERMS AND CONDITIONS OF THE PMAILER SERVICE AGREEMENT BELOW. SHOULD YOU NOT AGREE WITH ANY OF THE TERMS AND CONDITIONS OF THE FOLLOWING AGREEMENT, YOU SHOULD NOT PROCEED TO USE THE PMAILER SERVICE.**

1. **Parties:** The parties to this Service Agreement are Prefix Technologies CK01/054926/23, ("Service Provider"); and the user of the pMailer Service ("Client" or "you").
2. **Definitions:**
  - "Activation Fee" means a once off fee payable by the Client in relation to Prefix's activation of the Client's pMailer Service account;
  - "data" means electronic representations of information;
  - "Mailing List(s)" means the list of email recipients compiled by the Client in relation each instance of the Client's use of the pMailer Service;
  - "[ECT Act](#)": means the Electronic Communications and Transactions Act 25 of 2002;
  - "pMailer Service": means the Prefix bulk email service incorporating licensed use of the related Software;
  - "[RIC Act](#)" means the Regulation of Interception of Communications Act 70 of 2002;
  - "Service Fee" means the fee payable by the Client in consideration for the use of the pMailer Service;
  - "Software" means the software licensed by Prefix to enable the provision of the pMailer Service to the Client;
3. **Commencement:** By accessing and/or using the pMailer Service and/or any part thereof, the Client accepts and agrees to be bound by the terms and conditions of this Agreement. Prefix reserves the right in its sole discretion to deny any prospective Client usage of/access to the pMailer Service.
4. **Termination:** This Agreement may be terminated by the Client upon provision of 30 (thirty) calendar days notice of termination to Prefix and Prefix will be entitled to delete the Client's account and Client data including and without limitation: the Client's mailing list, subscriber data and statistics generated in relation to the Client's use of the pMailer Service, from Prefix systems. Prefix reserves the right to suspend or terminate the pMailer Service to the Client at any time in its sole discretion.
5. **Payment of Service Fee and payment terms:**
  - The Client agrees to payment of the Activation Fee prior to first access and/or use of the pMailer Service;
  - The Client agrees to pay the Service Fee monthly in advance;
  - The Client agrees to periodic escalations and/or adjustments to the Service Fee at the sole discretion of Prefix;
  - The Client agrees to payment of interest at the prime lending rate of Standard Bank in relation to any Service Fee not timeously paid by the Client;
  - Failure by the Client to pay the Service Fee on or before the date on which the Service Fee shall entitle Prefix to terminate the pMailer Service to the Client which termination shall not be subject to further notice to the Client.
6. **Limitation of Liability:**



- Storage: Prefix assumes no responsibility for the deletion or failure to store Client information.
  - Late Delivery/ Failure to Deliver: Email messages sent by the Client may not be delivered or delivered late due to amongst other reasons: Prefix's third party dependencies and technical problems experienced by Prefix and/or its partners, affiliates, agents and suppliers. Prefix assumes no responsibility for any losses suffered by the Client in relation to non-delivery of Client email messages and/or the late delivery of the Client's email messages when using the pMailer Service.
  - Mailing List formatting: Prefix assumes no responsibility for ensuring correct formatting or validation of the Client's mailing list.
  - General: Prefix, its employees, suppliers, internet service providers, partners, affiliates and agents shall not be liable for any damage, loss or liability of any nature incurred by whomever and resulting from use of the pMailer Service and the internet generally, and/or any other reason not directly related to Prefix's gross negligence and the Client expressly acknowledges and agrees that use of the Service is at its own risk. pMailer Service is provided "as is" and "as available" without any warranties or conditions whatsoever, express or implied.
- 7. Indemnification:** The Client agrees to indemnify, hold harmless, and defend Prefix and its affiliates, agents, content providers and service providers, against any and all claims, liabilities, damages, costs and expenses (including, but not limited to, consequential damages, incidental damages, special damages, losses and damages associated with misuse of Client data by Prefix, attorneys' fees and disbursements) arising from or relating to (i) the use of the pMailer Service in any manner which violates the terms of this Service Agreement or otherwise violates any law, rule, or regulation and (ii) any claims made by third parties arising from your use of the pMailer Service, including without limitation any and regulation all third party claims arising from or related to any failure, delay or interruption to the pMailer Service. The Client agrees to cooperate as fully as reasonably required in the defense of any claim against Prefix. Prefix reserves the right, at its own expense, to assume the exclusive defense and control of any matter otherwise subject to indemnification by the Client.
- 8. Prefix Guarantees:** Prefix makes no guarantees as to the continuous availability of the pMailer Service or any specific feature(s) of the Service.
- 9. Prefix Warranties:** Save to the extent expressly provided for herein, Prefix makes no warranties in relation the continuous availability of the pMailer Service, any specific feature of the pMailer Service, the protection and privacy or confidentiality of Client data and back up or storage of Client data.
- 10. Client Duties:**
- The Client assumes responsibility for ensuring that the mailing list used by the Client is formatted correctly. In this regard but without limitation, the Client acknowledges that: where the list must be a text file or CSV file, any other file (i.e. .DOC, .EXE, .XLS etc.) will generate errors or result in corrupted messages being sent or no message going being sent at all.
  - The Client assumes responsibility for all tasks and costs related to obtaining and maintaining all computer hardware, software and communications equipment needed to access the pMailer Service, and for payment of all internet access charges including without limitation ISP and telecommunications costs required for use of the pMailer Service.
  - The Client acknowledges and agrees that there shall be no entitlement on the part of the Client to carry over any unused pMailer Service credits to the months following the month during which such credits first accrued to the Client.
- 11. Client Account, Password, And Security:** To use the pMailer Service, the Client must complete the registration process by providing Prefix with current, complete and accurate information as requested. The Client will be provided with a username and password for accessing the pMailer Service. The Client is entirely responsible for maintaining confidentiality with regard to its password and account information. Furthermore, the Client is entirely responsible for any and all activities that occur under its account. The Client agrees to notify Prefix immediately of any unauthorized use of its account or any actual or suspected breach of security.
- 12. Client Privacy:** Prefix will not intentionally disclose Client's private and/or personal data to unauthorised parties without the Client's permission unless Prefix has a good faith belief that such action is necessary to: (1) conform to legal requirements or comply with legal process; (2) protect and defend the rights or property of Prefix; (3) enforce this Service Agreement or protect Prefix's business or reputation; (4) respond to request for identification in connection



with claim of copyright or trademark infringement by the Client, or a claim by a third party that the Client is using the pMailer Service in connection with an infringing, illegal or improper activity; or (5) act to protect the interests of the Client or others. The Client agrees that Prefix may access its account, including its contents, as stated above or to respond to service or technical issues.

- 13. Client Code of Conduct:** Any unauthorized commercial use by the Client of the pMailer Service, is expressly prohibited. The Client agrees to abide by all applicable local, national and international laws and regulations and is solely responsible for all acts or omissions that occur under its account or password, including the content of any transmissions through the pMailer Service. By way of example, and not as a limitation, the Client agrees not to:
- Use the Service in violation of the ECT Act in relation to unsolicited commercial communications;
  - Unlawfully collect and process personal information, including email addresses, without the relevant email addressee's consent;
  - Safeguard against prohibited data privacy practices such as: use of purchased databases or databases where the Client cannot readily prove that the addressee's consent to receive email communications from the Client was obtained.
  - Create a false identity or otherwise attempt to mislead others as to the identity of the sender or the origin of the email;
  - Transmit through the pMailer Service, associate with the pMailer Service or publishing with the pMailer Service unlawful, harassing, libelous, defamatory, abusive, threatening, harmful, vulgar, obscene or otherwise objectionable data;
  - Transmit any data that may infringe the intellectual property rights or other rights of third parties, including trademark, copyright or right of publicity;
  - Transmit any data that contains viruses, trojan horses, worms and other malicious programs;
  - Gain or attempt to gain unauthorized access to the pMailer Service, other accounts, computer systems or networks connected to the pMailer Service, through password mining or any other means;
  - Engage in any other activity that could subject Prefix to criminal liability, civil penalty or judgment.
- 14. Interception of Communications:** Subject to the provisions of the RIC Act, the Client agrees to Prefix's right to intercept, block, filter read, delete, disclose and use all communications sent or posted by the Client to the Prefix website and to Prefix employees and agents. The Client agrees and acknowledges that the consent provided by the Client above satisfies the "writing" requirement as detailed in the ECT Act and the RIC Act.