

# 1. Introduction to Africa Press List Terms of Use

**IMPORTANT - READ CAREFULLY:** These "Terms of Use" (sometimes referred to as this "Agreement") constitutes a legal agreement between you and Africa Business Communities B.V. a Netherlands limited liability company, ("APL," "we," or "us"). You are a customer ("Member") (or will become a Member if you agree to our Terms of Use by clicking below). The "Term" is the time during which you are entitled to use our website to create and send out electronic newsletters and other digital content. If an individual purports, and has the legal authority, to sign these Terms of Use electronically on behalf of an employer or client, "you" refers to the employer or client. If not, "you" refers to the individual signing hereon. You are responsible for assuring that all the terms and conditions of this Agreement are complied with. By clicking the button to join APL, you will be agreeing to the terms of this Agreement. Furthermore, by clicking that button, after typing in your username, or other indication of your identity, you do confirm to us that typing in such indication of identity constitutes your "signing" of this Agreement for all purposes under applicable law. Any individual clicking the button on behalf of another individual or entity, listed as the Member above, does hereby represent and warrant that such agreement is being made with full authority.

## 2. APL Terms of Use

### 2.1. **WARNINGS OF SERIOUS LEGAL CONSEQUENCES**

Warning: Under these Terms of Use, if you engage in certain conduct, such as violating laws that regulate sending out and the content of bulk email, try to take advantage of us in violation of our Terms of Use by taking such actions as using our servers to host images for your website, instead of just emails you send using APL, sending out emails created using APL through another service or failing to pay an amount you owe us, we will be entitled to collect from you the higher of a pre-set amount or a multiple of your charges for one year on an annualized basis (which is a reasonable pre-estimate of the actual damages we would likely suffer from such conduct) plus attorney fees. We offer very powerful tools at a very low price. In exchange we expect our customers to act with integrity and follow our rules in order to help us maintain our reputation as having customers who only send bulk email to people who have consented to receiving them or with whom they have had a relationship from earlier selling or licensing (or negotiating to sell or license) a product or service and to not otherwise abuse our system.

### 2.2. **General**

(Applies to All Members of APL)

Who We Are : "APL" is a trade name of Africa Business Communities B.V., a Netherlands limited liability company, that owns and operates the website with the URL: <http://www.Africapresslist.com> (the "Website").

#### 2.2.1. *Purpose :*

The purpose of these Terms of Use (this "Agreement") is to set forth the terms and conditions under which you are permitted to use our email/electronic newsletter creation, distribution and management system (the "Services"). Any press release sent out is regarded as email, including but not limited to any email newsletters, sent out using the Services, are referred to herein as an "Email."

#### 2.2.2. *Changes :*

We reserve the right to change any of the terms of this Agreement by posting the revised Terms of Use on our Website and/or by sending an email to the last email address you have given to us. Unless the Term is

terminated within ten (10) days, this new Agreement will be effective immediately with respect to any continued or new use of the Services.

#### *2.2.3. Eligibility :*

We require that any Member be at least eighteen (18) years of age. By using the Services, you represent and warrant that you are at least eighteen (18) years of age and that your use of the Services does not violate any applicable law or regulation. Your uploads may be deleted and your subscription may be terminated without warning, if we have reason to believe you are under eighteen (18) years of age.

### **2.3. Charges and Payments :**

#### *2.3.1. Annual subscription*

Our charges for annual subscriptions are posted on our Website and may be changed from time-to-time. Payments are due for the full year for which any part of the year is included in the "Term." Payments are due for any following year on the same date, or the closest date in the year, to the date of the year you signed up with us and made your first annual payment (the "Pay Date").

Whenever you increase the number of credits you are using or the number of credits that you are going to use so that you are at a more expensive level, we require you to pay the difference in advance before the next press release is sent out.

#### *2.3.2. Pay-as-You-Go-Plans or Single Use*

You may elect to buy "Credits" to use our Services, as explained on the "Costs of Use" page of our website, rather than sign up for an annual subscription. If you elect a "Pay-as-You-Go Plan or Single Use," you will still be considered a "Member" and all the terms of this Agreement will still apply to you other than the requirement that you pay us annually.

#### *2.3.3. Refunds*

We are required to provide a refund only if we terminate our Services to you without cause before the end of a year for which you have paid. There is no other circumstance in which you will be entitled to a refund from us. We may, at our sole discretion, offer refunds in other situations subject to any Member seeking such refund applying for the refund in accordance with the requirements we post on the website, which may be changed from time to time.

#### *2.3.4. Term, Termination and Removal :*

Either party may terminate the Term of this Agreement at any time for any reason by providing Notice to the other party. We may suspend our Services to you at any time with or without cause. We will refund a pro rata portion of your annual prepayment or reimburse you for unused Credits if we terminate you without cause. We will not refund and/or reimburse you in such manner, if there is cause, such as your using our system to send bulk Emails in inappropriate way. Once terminated, we may remove any of your electronic newsletters or other emails and related data and files from our Website and any other storage. Additionally, if you do not log in to your account for 18 or more months, we may deem your account "inactive" and permanently delete your account and all data associated with it.

### **2.4. Account and Password :**

You are responsible for maintaining the confidentiality of any account name and password provided to you. You are solely responsible for uses of any account provided to you, whether or not authorized by you. You agree to immediately notify us of any unauthorized use of any account of yours.

### **2.5. Proprietary Rights Owned by Us :**

You acknowledge that we, or our suppliers, own all proprietary rights in the Website and the software used to provide the Services, including, but not limited to, any patents, trademarks, service marks and copyrights.

## **2.6. Proprietary Rights Owned by You :**

You represent and warrant to us that you will not add or upload any content to the Website to create an electronic mailing, or for any other purpose unless you are the owner of all proprietary rights in that content (or have been given a valid license from the owner of the proprietary rights in such content) and have obtained releases for all related privacy and publicity rights.

## **2.7. General Rules :**

You agree to the following:

- You will not incorporate into your Email any text, photos, graphics or other content that is not created by you, not provided by us for you to incorporate into your Email or you are not otherwise permitted to use.
- You will not post on the Website, including in any Emails created or sent using our Services, any misleading or incorrect name, address, email address, subject line or any other misleading or incorrect information.
- You will not publish any material that contains sexually related text, photographs or other content, or content that is defamatory, obscene, indecent, threatening, abusive or hateful.
- You will not share your password.
- You will not attempt to decipher, decompile, disassemble or reverse engineer any of the software comprising or in any way used or downloaded from the Website.
- You will not include in any Emails any material, including, but not limited to, text and graphics, the inclusion of which is in violation of any other party's rights, including, but not limited to, copyrights and privacy and publicity rights.
- You will not set up multiple accounts for any individual, organization or entity or in order to send substantially similar content unless you are part of a franchise.
- You will not import or incorporate into any lists, emails or uploads to our servers any of the following information: Social Security Numbers, passwords, security credentials, or sensitive personal information of any kind.
- You will not send transactional messages through APL unless you use our Simple Transactional Service or Mandrill.

## **2.8. Anti-Spam and Abuse Related Rules : You agree to the following:**

You should only use APL to send press releases.

If you add people to the list as provided by APL please note the following.

Sending your first campaign to an old list? Many recipients won't remember you, and will report for spamming.

Clean your address list before you import. Take out any addresses older than 6 months. Bad addresses lead to bouncebacks. Too many bouncebacks, and ISPs block APL (and you). We'll shut your account down if you import an old list that gets too many bounces.

Don't just import your entire Outlook Address Book. Export them into a spreadsheet, then take some time to clean out bad addresses (like Sales@Amazon, or Support@Comcast). If you import even one address by mistake, that person can get you blacklisted and shut down.

Before importing any list into APL from your PR-list or any other database you maintain, understand our permission-lists-only rules.

## **2.9. Prohibited Content and Industries**

Don't use APL to send anything offensive, to promote anything illegal, or to harass anyone. You may not send:

- Pornography or other sexually explicit Emails
- Emails offering to sell illegal substances

Also, there are some industries that send certain types of content that result in higher than normal bounce rates and abuse complaints, which in turn jeopardize the deliverability of our entire system. No offense intended, but because we must ensure the highest delivery rates possible for all our customers, we do not allow businesses that offer these types of services, products, or content:

- Illegal goods or services
- Escort and dating services
- Gambling services, products or gambling education
- Pornography or nudity in content
- Adult novelty items or references in content
- List brokers or List rental services

Generally speaking, if you're in an industry that is frequently associated with spam, you know who you are (it's probably why you're reading this far, right?). We make no judgments about your line of business, but we cannot afford to risk our deliverability

### **2.10. Who Can Use APL**

If you do not meet these eligibility requirements, you may not use the APL service:

- You must be at least 18 years of age, and be able to form legally binding contracts under applicable law.
- You must complete the registration process and agree to the terms of this Agreement. All contact information you submit must be true, complete, and up to date.

APL does reserve the right to refuse service or to terminate accounts for any user, and to change eligibility requirements at any time, in its sole discretion.

### **2.11. Data Archival**

Our servers store tons of data. Occasionally, we need to archive and/or delete some of it to make room for new data, so that we don't have to keep raising prices in order to afford more and more servers. Here are our data archiving rules:

You may not use our bandwidth for anything other than your APL press release distribution. In this regard, you agree to the following:

Unlike some other email marketing services, we provide image hosting for your press release distribution totally free. This doesn't mean you can host images on our servers for other uses, like your website. If we detect that you're using our hosting services for anything other than your email campaigns, we have the right to delete the image. Depending on your intent, we may even replace the image with something you don't want to see.

Not to build a campaign in APL, then send it using some other delivery tool. Yeah, we can see when that happens. If you do that we may, and reserve the right to, shut your account down, replace all images in your campaign, and redirect all hyperlinks to point somewhere else. You may not like the replacement images.

### **2.12. Fees, Refunds, Account Suspensions, Etc.**

You agree:

- APL reserves the right to change our fees at any time by posting a new fee structure to our Website and/or sending you a notification of the change by email.
- If a user violates any of the terms of this Agreement, we reserve the right to cancel accounts, or bar access to accounts, without refund.
- If, for some reason, we are unable to process your PayPal order, we will attempt to contact you by email and we will suspend usage of your account until your payment can be processed.

- You agree to pay for all emails you send to your personal additions to mail lists from your account, even if messages are blocked by any third party (we have no control over your recipients' email servers, ISP availability, personal spam filter settings, etc)
- For pay-as-you-go (prepaid) accounts, your email credits "roll over" and do not expire. However, if you do not log in to your account at least once for 18 months, your account (including all campaigns, lists, and other data) may be deleted permanently from our system.

It's in our best interest to keep our system clean, because our reputation and deliverability depends on it. So here's what we do:

#### *2.12.1. Right to Review Email Campaigns*

We, including our employees and independent contractors, are permitted to copy and transmit copies of the content from your email campaigns to develop algorithms, heuristics and computer programs ("Tools") to help us more efficiently spot problem accounts and to use such Tools, together with personal viewing by employees and or independent contractors, to uncover Members who violate either these Terms of Use or applicable law.

#### *2.12.2. Reporting Abuse*

We take abuse reports seriously at APL. If you've notice abuse that you think came from a APL user, we want to hear about it.

If the campaign you received does not contain a CID, it didn't come from APL. It was probably just spoofed to look like it came from APL (something that inevitably happens to everyone online). Learn more about spoofing.

### **2.13. No Warranties :**

to the maximum extent permitted by law, the material on this website and the services (including all content, software, functions, services, materials and information made available herein or accessed by means hereof) are provided as is, without warranties of any kind, either express or implied, including but not limited to, warranties of merchantability and fitness for a particular purpose.

#### *2.13.1. Limitation of Liability :*

to the maximum extent permitted by law, you assume full responsibility and risk of loss resulting from your use of the website and the services including any downloads from the website. under no circumstances shall we or any of our employees or representatives be liable for any indirect, punitive, special or consequential damages even if we or any of our employees or representatives have been advised of the possibility of such damages. our total liability in any event is limited to the amount, if any, actually paid by you for use of the website and the services for the one month period ending on the date a claim is made and you hereby release us and our employees and representatives from any and all obligations, liabilities and claims in excess of this limitation.

#### *2.13.2. Indemnity :*

You agree to indemnify and hold us, and our directors, officers, employees and representatives, harmless from any and all losses (including, but not limited to, attorney fees) resulting from any claims not permitted under this Agreement due to a "Limitation of Liability" or other provision, that you assert, or may assert, based on or relating to your use, or the use of any individual using your password, of this Website or the Services. You further agree to indemnify and hold us, and our directors, officers, employees and representatives, harmless from any and all losses resulting from claims of third parties, including, but not limited to, attorney fees, that result in whole or in part from allegations of conduct by you that, if true, would constitute a violation by you, or any individual using your password, of any of the terms of this Agreement.

### **2.13.3. Liquidated Damages :**

The parties agree that we may recover liquidated damages, in lieu of any other damages that may have been recoverable, for certain types of breaches of these Terms of Use, which we refer to as "Abusive Conduct." Liquidated damages are being made available for specified situations in which proving the actual damages would likely be impossible. The liquidated damages are being set at a reasonable pre-estimate of the damages that would be incurred as a result of the particular type of breach. The particular type of breaches that constitute Abusive Conduct, and the liquidated damages for each type are as follows:

#### **Abusive Conduct            Liquidated Damages**

(a) violations of provisions of this Agreement designed to protect APL from its users taking actions to use APL's resources in a way not permitted hereunder such as using our Services to host images other than for Emails you send out using the Services such as for your website; or sending out any Emails created using the Services, other than via the Services. Four times the total of our then annual charges but not less than \$5.000,-.

(b) not paying an amount due within ten (10) days after a demand by us. Three times the total of our then annual charges but not less than \$4.000 in addition to the sum owed

**Attorney Fees :** In the event we file an action against you claiming you breached this Agreement and seeking to recover liquidated damage and/or other relief, and we prevail, we shall be entitled to recover reasonable attorney's fees in addition to any damages or other relief which we may be awarded.

**Disclaimers :** We disclaim and are not responsible for the behavior of any advertisers, linked websites or other users.

### **2.14. Reporting Violations :**

If you become aware that any other person is violating any of the terms and conditions of this Website, please notify us immediately. If you believe that any person has posted material in violation of any copyrights that you may have, you may notify us in accordance with our Copyright Policy. If you believe that any user of this Website has posted materials in violation of any other rights that you may have, you may notify us in accordance with our Removal Policy.

### **2.15. Assignments :**

You may not assign any of your rights hereunder. We may assign all rights to any other individual or entity at our discretion.

### **2.16. Compliance With Law (general) :**

In using the Services, you agree that you will comply with all applicable laws.

**Applicable Law and Jurisdiction :** This Agreement will be governed by the laws of the Netherlands. Except as otherwise provided in this Section below, each of the parties does hereby agree that any dispute related to this Agreement, any other agreement between the parties, the Privacy Policy or the Services, will be decided by the state and federal courts located in Amsterdam or Haarlem, The Netherlands and agrees that that party is subject to the jurisdiction of such courts in such locality.

### **2.17. Compliance With Law (EEA) :**

(Applies to All Members to the extent they Use APL to Send Any Press release of Email to Residents of the European Economic Area ("EEA") Which Is Composed of the Members of the European Union ("EU") Together with Iceland, Norway and Liechtenstein)

#### **2.17.1. Warranties of Compliance**

You represent and warrant that in compiling your Email distribution list, sending Emails via the APL Services and collecting information as a result of individuals visiting your website or otherwise, with respect to your customers and potential customers who reside in the EEA, you:

(a) Will have clearly described, and will continue to clearly describe, in writing how you intend to use any data collected, including for sending Emails if you obtain express consent from your customers and potential customers to use the data in that manner, and include an express consent to transfer the data to APL as part of this process, and otherwise comply with whatever privacy policy you have posted.

(b) Represent and warrant that you have complied, and will comply, with all data protection and privacy laws and regulations applicable to the countries in which you are sending any form of email via APL including, for example, with respect to the United Kingdom, the Data Protection Act, and the regulations relating to the European Union Privacy and Electronic Communications Directive. In this regard, you represent and warrant that you have collected, stored, used and transferred all data relating to any individual in accordance with all data protection laws and regulations relating to the country in which such individual resides and obtained all necessary consents to enable APL to receive and process that data and forward communications to that individual on your behalf.

You further agree to indemnify and hold us harmless from any losses, including attorney fees, resulting from your breach of any part of the foregoing warranties.

(Additional Provisions Applicable to All Members)

## **2.18. Miscellaneous**

### *2.18.1. Force Majeure :*

We shall not be held liable for any delay or failure in performance of any part of this Agreement from any cause beyond our control and without our fault or negligence, such as acts of God, acts of civil or military authority, then current laws and regulations and changes thereto, embargoes, epidemics, war, terrorist acts, riots, insurrections, fires, explosions, earthquakes, nuclear accidents, floods, strikes, power blackouts, volcanic action, other major environmental disturbances, unusually severe weather conditions, acts of hackers and other illegal activities of third parties, inability to secure products or services of other persons or transportation facilities, or acts or omissions of transportation or telecommunications common carriers or overloading or slow downs over the internet or any third party internet service providers.

### *2.18.2. Survivability :*

The ownership and proprietary rights provisions set forth in this Agreement, and any other provisions that by their sense and context the parties intend to have survive, shall survive the termination of this Agreement for any reason.

### *2.18.3. Severability :*

The unenforceability or invalidity of any term, provision, section or subsection of this Agreement shall not affect the validity or enforceability of any remaining terms, provisions, sections or subsections of this Agreement, but such remaining terms, provisions, sections or subsections shall be interpreted and construed in such a manner as to carry out fully the intention of the parties hereto.

### *2.18.4. Interpretation :*

The fact of authorship by or at the behest of a party shall not affect the construction or interpretation of this Agreement.

### *2.18.5. Amendments :*

No amendment or other change of this Agreement shall be effective except as either expressly permitted under these Terms of Use or agreed to in writing between the parties. Notwithstanding the foregoing, additional terms may be required for certain features of the Service (the "Additional Terms.") The Additional Terms shall be considered incorporated into this Agreement at the time the feature is activated by you. Where there is a conflict between these Terms and the Additional Terms the Additional Terms shall control.

No amendment or other change of this Agreement shall be effective unless and until the revised Agreement is posted by us on the Website.

*2.18.6. Privacy Policy :*

You agree that we may access, collect, use and disclose your information as set forth in our Privacy Policy. In this regard the terms of the Privacy Policy are to be treated as if they were added to and part of this Agreement and shall be binding on all parties hereto.

*2.18.7. Further Actions :*

You agree to execute any and all documents and take any other actions reasonably required to effectuate the purposes of this Agreement.

*2.18.8. Notification of Security Breach :*

In the event of a security breach that may affect you, or individuals listed on one or more of your Email distribution lists (each a "List"), we will notify you of the breach and provide a description. In the event we reasonably determine, and notify you, that it is necessary for all or part of such information to be forwarded on to individuals on one or more of your Lists, you will promptly forward such information to the individuals on such List or Lists.

*2.18.9. No Changes in Agreement at Request of Member :*

Because of our huge number of Members, we cannot, as a practical matter, change this Agreement for any one Member or group of Members. If we did that, keeping up with the changes alone would be a logistical nightmare. In addition one reason we are able to offer one of the most powerful press release distribution and management systems at a low price is that we are able to use this Agreement to reduce our financial risks.

*2.18.10. Entire Agreement :*

The terms of the Privacy Policy posted on this Website are incorporated by reference herein. This Agreement, including such policy which is incorporated by reference herein, embody the entire agreement and understanding of the parties, and supersedes all prior agreements, representations and understandings between the parties hereto, relating to the subject matter hereof.