

Notify 7 Terms of Use

Introduction to Notify 7 Terms of Use

IMPORTANT - READ CAREFULLY: These "Terms of Use" (sometimes referred to as this "Agreement") constitutes a legal agreement between you and Wirevibe, LLC dba Notify 7, a Texas limited liability company, ("Notify 7," "we," or "us"). You are a customer ("Member"). 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 Notify 7, you will be agreeing to the terms of this Agreement.

Notify 7 Terms of Use

WARNINGS OF SERIOUS LEGAL CONSEQUENCES

Warning: 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 Notify 7, sending out emails created using Notify 7 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. 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.

Who We Are : "Notify 7" is a trade name and registered service mark of Wirevibe, LLC, a Texas limited liability company, that owns and operates the website with the URL: <http://www.Notify7.com> (the "Website").

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 email, including but not limited to any email newsletters, sent out using the Services, are referred to herein as an "Email."

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.

Charges and Payments :

Monthly Plans

Our charges for monthly plans are posted on our Website and may be changed from time-to-time. Payments are due for the full month for which any part of the month is included in the "Term." Payments are due for any month on the same date, or the closest date in that month, to the date of the month you signed up with us and made your first monthly payment (the "Pay Date"). For any month for which you have already paid, for which you increase either your number of email addresses or the number of Emails you send out to an amount that causes you to go to another pricing level, except as otherwise provided in this Agreement, you will be required to pay at the higher level on or before the Pay Date for the following month. If the Term ends before such payment is due, you will still be required to make one payment at the higher level.

Whenever you increase the number of email addresses you are using or the number of Emails that you are going to be sending so that you are at a more expensive level, we may, at our sole discretion, require you to pay the difference in the monthly payment before the next Email is sent out.

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 not refund and/or reimburse you in such manner, if there is cause, such as your using our system to send bulk Emails to people with whom your relationship does not meet the requirements of 11(b) below. 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 12 or more months, we may deem your account "inactive" and permanently delete your account and all data associated with it.

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.

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.

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 newsletter, 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.

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 email messages through Notify 7 that will be delivered to recipients as text, sms, or mms messages.

Anti-Spam and Abuse Related Rules : You agree to the following:

Definition of SPAM: We have adopted the definition of Spam set forth on the Spamhaus website at <http://www.spamhaus.org/definition.html> The first line of the Spamhaus definition reads:

The word "Spam" as applied to Email means Unsolicited Bulk Email ("UBE").

It is a concern to us if you use Notify 7 to send any unsolicited email to anyone with whom you have no relationship. It is much more of a concern, and more likely to cause our system to be blocked by various ISP's, for you to send an unsolicited email to an entire list of people you don't know.

Permission Lists Only: You may use Notify 7 only to send Emails to individuals and entities that either:

Possibility 1 - Consent Obtained

A. gave or give you written (including electronic) permission to send Emails to them, without subsequently withdrawing such permission and either:

Consent Given Recently gave you the permission within the prior 12 months; or

Consent Given More Than One Year Earlier you sent them a promotional email, which was not objected to, within the prior 12 months; or

Possibility 2 - Sold or Negotiated to Sell Product or Service

B. gave or give you their name and email address in connection with their purchase, or negotiations to purchase, a product or service from you, have not opted out from receiving your emails and either:

Recent Sale or Negotiation such sale or negotiations occurred within the previous 12 months;
or

Sale or Negotiation Occurred More than One Year Earlier you sent them a promotional email, which was not objected to, within the prior 12 months.

If you send Emails to a list, and you get an unusual amount of SPAM complaints (more than 1 out of 1,000), ISPs will begin blocking future emails from your company. They will also request (that's putting it mildly) that Notify 7 shut down your account. So if you don't have proof that each recipient on

your list has opted-in to receive your emails, or otherwise meets the above requirements, don't import them into Notify 7.

Requirements: You agree that you will use:

No purchased lists (no matter how expensive).

No rented lists (even if they "opted in").

No 3rd party lists whatsoever.

No outside unsubscribe processes.

You should only use Notify 7 to send newsletters, updates, and promotions to people who specifically requested email from you, or otherwise meet the requirements of 11(b) above. Don't have a permission list yet? Maybe your company's too new and you have no customers. Feel free to set up a Notify 7 account, run through the List Setup Wizard, and add a signup form to your website so that you can grow your list.

Before importing any list into Notify 7 from your CRM or any other database you maintain, understand our permission-lists-only rules. Remove any prospects or leads who did not explicitly request email marketing from you or otherwise meet the requirements of 11(b) above. Even if you're sending email marketing to customers who have consented to receive your Email, you are still required, under applicable law, to allow them to opt-out of your email marketing list (you may need to turn that feature ON in your CRM tool). The simple fact that a recipient is "in my CRM" is not the same as "they gave us permission to send them email marketing."

Prohibited Content and Industries

Don't use Notify 7 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

Emails that violate the CAN-SPAM Law

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

Pharmaceutical products

Work from home, Internet Lead-gen, Make money on online opportunities, etc.

Online trading, day trading tips, or stock market related content

Gambling services, products or gambling education

Multi-level marketing

Affiliate marketers

Credit repair, get-out-of-debt content

Mortgages and/or Loans

Nutritional Supplements, Herbal Supplements or Vitamin Supplements

Pornography or nudity in content

Adult novelty items or references in content

List brokers or List rental services

Marketing or sending commercial email without proper permission

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. In fact, most ESPs like Notify 7 will not be able to help you. You will most likely need to look into setting up your own mail servers. The term to search on is "email delivery server." There are many industrial strength MTAs to choose from with built-in delivery and reporting tools for high-volume senders.

Who Can Use Notify 7

If you do not meet these eligibility requirements, you may not use the Notify 7 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.

Notify 7 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.

Bandwidth Abuse: Image hosting, API, Tracking

You may not use our bandwidth for anything other than your Notify 7 email marketing. In this regard, you agree to the following:

Unlike some other email marketing services, we provide image hosting for your email campaigns 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 Notify 7, 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.

If you integrate with Notify 7 using our API, you must use efficient programming, which will not cause too many requests to be made in too short a period. We reserve the right to throttle your API connections, or suspend or terminate your Notify 7 account.

Fees, Refunds, Account Suspensions, Etc.

You agree:

Notify 7 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 credit card 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 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)

Avoiding Spam Related Problems

As an email marketing service provider, we feel it's our duty to be extra vigilant about preventing spam related abuses. It's not just bad for the Internet community in general—if illegal and/or abusive spam gets sent from our system, we'd get blocked by all major ISPs, which would make our system useless for the thousands of users who depend on us.

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:

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.

Feedback Loops w/ISPs

When a recipient clicks their "this is spam" button in their email program, a FBL report is sent to us. We analyze the data, trace it back to the sender that caused the complaint, remove the complainer from the sender's list, and track future complaints about that campaign. If complaints exceed a reasonable threshold based on list size, we take appropriate action (which sometimes means permanently shutting down a Notify 7 account) to keep our servers clean and off blacklists. To prevent this from happening to you, please read section 11(d)(e) and (f) above.

Reporting Abuse

We take abuse reports seriously at Notify 7. If you've received spam that you think came from a Notify 7 user, we want to hear about it. Please report the fact that you received spam from what appears to be a Notify 7 user to us by using this reporting – support@notify7.com

Report Bad Senders

Every campaign sent from Notify 7 has an embedded Campaign Tracking ID (CID) in the email's header that makes it easy for recipients to report suspected spam. Here's how to submit a CID to our abuse desk.

If the campaign you received does not contain a CID, it didn't come from Notify 7. It was probably just spoofed to look like it came from Notify 7 (something that inevitably happens to everyone online). [Learn more about spoofing.](#)

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.

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.

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.

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 avoid Notify 7 being viewed as a source of spam such as sending Emails to people who have not consented to receiving bulk emails from you in the immediately preceding 12 months and to whom you are not otherwise authorized to send Emails under 11(b) above; sending Emails offering the types of products or services set forth in 11(f) above; or sending Emails that include false or misleading headings or other content or otherwise violate anti-SPAM laws, i.e., laws that restrict and regulate the sending of bulk emails. Five times the total of our then current monthly charges over a period of 1 year (i.e. 5 times 12 times our monthly charges), but not less than \$900

(b) violations of provisions of this Agreement designed to protect Notify 7 from its users taking actions to use Notify 7'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 current monthly charges over a period of 1 year (i.e. 4 times 12 times our monthly charges), but not less than \$720

(c) not paying an amount due within ten (10) days after a demand by us. Three times the total of our then current monthly charges over a period of 1 year (i.e. 3 times 12 times our monthly charges), but not less than \$540 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.

U.S. Export Controls : The software that supports the Services (the "Software") is further subject to United States export controls. None of the Software may be downloaded or otherwise exported or re-exported in violation of United States export laws. Downloading or using any of the Software is at your sole risk.

Restricted Rights : Notice to U.S. Government End Users. The Software, including all documentation, are "Commercial Items," as that term is defined at 48 C.F.R. §2.101, consisting of "Commercial Computer Software" and "Commercial Computer Software Documentation," as such terms are used in 48 C.F.R. §12.212 or 48 C.F.R. §227.7202, as applicable, consistent with 48 C.F.R. §12.212 or 48 C.F.R. §§227.7202-1 through 227.7202-4, as applicable. The Commercial Computer Software and Commercial Computer Software Documentation are being licensed to U.S. Government end users (a) only as Commercial Items and (b) with only those rights as are granted to all other end users pursuant to the terms and conditions herein. Published and Unpublished rights are reserved under the copyright laws of the United States. Manufacturer is The Rocket Science Group, LLC, 512 Means Street, Suite 404, Atlanta, Georgia 30318.

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.

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

Compliance With Law : 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 State of Georgia. 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 Fulton County, Georgia and agrees that that party is subject to the jurisdiction of such courts in such locality. If, under applicable law relating to the selection of venue in Georgia, a case may not be brought in a court located in Fulton County, the case may be filed in a state or federal court of competent jurisdiction located in the State of Georgia where the case may be brought.

Warranties of Compliance

You represent and warrant that in compiling your Email distribution list, sending Emails via the Notify 7 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 Notify 7 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 Notify 7 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 Notify 7 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.

