



## Website Terms of Use Agreement

Version 1.0

Effective Date: 8/1/2023

Last Updated Date: 8/1/2023

PLEASE READ THIS WEBSITE TERMS OF USE AGREEMENT (THE “**AGREEMENT**”) CAREFULLY. THIS AGREEMENT IS A BINDING LEGAL DOCUMENT BETWEEN YOU AND 95 PERCENT GROUP LLC (THE “**COMPANY**”).

BY ACCESSING OR USING OUR WEBSITE OR ANY OF OUR SERVICES (COLLECTIVELY, “**SERVICES**”), YOU REPRESENT THAT (1) YOU HAVE READ, UNDERSTAND, AND AGREE TO BE BOUND BY THIS AGREEMENT, (2) YOU ARE OF LEGAL AGE TO FORM A BINDING CONTRACT WITH COMPANY, AND (3) YOU HAVE THE AUTHORITY TO ENTER INTO THESE TERMS OF USE. **IF YOU DO NOT AGREE TO BE BOUND BY THIS AGREEMENT, YOU MAY NOT ACCESS OR USE THE SERVICES.**

**PLEASE BE AWARE THAT SECTION 9 CONTAINS PROVISIONS GOVERNING HOW DISPUTES ARE RESOLVED. IN PARTICULAR, IT CONTAINS AN ARBITRATION AGREEMENT WHICH PROHIBITS CLASS ACTIONS.**

**PLEASE NOTE THAT THE AGREEMENT IS SUBJECT TO CHANGE BY COMPANY IN ITS SOLE DISCRETION AT ANY TIME.** When changes are made, Company will make a new copy of the Terms of Use Agreement available on Company’s website or through the Services. If the changes to this Agreement are material, Company will also send an e-mail to You. Any changes to the Agreement will be effective thirty (30) days after posting/providing notice. If You do not agree to the changes, You must stop using the Services. Otherwise, continued use of the Services constitutes Your acceptance. Company and You may each be referred to herein as a “**Party**” and collectively as the “**Parties**.”

### 1. Company Responsibilities

**1.1. Provision of the Service.** Subject to the terms and conditions of this Agreement and during Your use of the Services (the “**Term**”), Company grants You a non-exclusive, non-transferrable and non-sublicensable right for You to access and use the Service solely for Your internal business operations.

**1.2. Updates and Upgrades.** The terms of this Agreement will also apply to updates and upgrades of the Service subsequently made available by Company to You. Company may update the functionality, user interfaces, and usability from time to time in its sole discretion as part of its ongoing mission to improve the Service.

**1.3. Protection of Your Data.** Company will maintain commercially reasonable administrative, physical, and technical safeguards designed to prevent unauthorized access to or use of Your Data, [in accordance with the Privacy Policy which can be found on Company’s website at <https://www.95percentgroup.com/privacy-policy/>]

### 2. Access to and Use of the Service

**2.1. Account.** Your accounts cannot be shared or used by more than one user. You are responsible for maintaining the confidentiality of its logins, passwords, and accounts and for all activities that occur under Your accounts.

**2.2. Your Responsibilities.** You will: (a) obtain any permissions and consents required for Company to access Your Data in connection with the Service; (b) be responsible for Your compliance with this Agreement; (c) be responsible for the accuracy, appropriateness, and legality of Your Data; (d) use commercially reasonable efforts to prevent unauthorized access to or use of the Service, and promptly notify Company of any such unauthorized access or use; and (e) use the Services only in accordance with applicable laws and government regulations.

**2.3. Usage Restrictions.** You may not: (a) make the Service available to, or use the Service for the benefit of, anyone other than You; (b) upload, post, transmit, or otherwise make available to the Service any content that (i) is unlawful or tortious, or (ii) You do not have a right to make available under any applicable law or under contractual or fiduciary relationships, or that infringes, misappropriates, or otherwise violates any intellectual property, privacy, publicity, or other proprietary rights of any person; (c) sublicense, resell, time share, or similarly exploit the Service; (d) upload, post, transmit, or otherwise make available any content or information designed to interrupt, interfere with, destroy or limit the functionality of any computer software or hardware or telecommunications equipment; (e) reverse engineer, modify, adapt, or hack the Service, or otherwise attempt to gain unauthorized access to the Service or its related systems or networks; or (f) access the Service to build a competitive product or service.

**2.4. Recording Acknowledgement.** Certain Services may involve the use of recording technologies. You hereby acknowledge and agree that Company and/or other users are authorized to capture, record, and replay your voice in connection with the Services provided to you and third parties.

### **3. Proprietary Rights**

**3.1. Company Property.** Subject to the limited rights expressly granted to You hereunder, Company reserves and retains, and as between Company and You, Company exclusively owns, all rights, title, and interest in and to the Service, including all modifications, derivative works, upgrades, and updates thereto, and all related intellectual property rights therein. No rights are granted by Company hereunder other than as expressly set forth herein. If You provide Company any feedback or suggestions regarding the Service, then You grant Company an unlimited, irrevocable, perpetual, sublicensable, royalty-free license to use any such feedback or suggestions for any purpose without any obligation or compensation to You.

**3.2. Your Data.** You grant to Company and its affiliates a worldwide, non-exclusive, limited term license to access, use, copy, transfer, perform, and display means all data, content, and information submitted by You into the Service and the specific output that is generated by Your use of the Service (the “**Your Data**”), and provide necessary access to third party service providers acting on Company’s behalf, such as Company’s hosting services provider, only: (a) to provide, maintain, and update the Service for You; (b) to prevent or address service or technical problems or at Your request in connection with support matters; (c) as compelled by law; or (d) as expressly permitted in writing by You. Subject to the limited licenses granted herein, Company acquires no right, title, or interest under this Agreement in or to any of Your Data.

**3.3. De-identified Data.** You acknowledge and agree that Company may, during and after the Term, collect, use and analyze any de-identified information derived from Your Data (collectively, the “**De-identified Data**”) for Company’s lawful business purposes, including to improve and enhance the Service and for other development, diagnostic, and corrective purposes in connection with the Service, to help You improve efficacy of use of the Service, and to recommend additional or alternative solutions, products, or services to You. Company may disclose De-identified Data solely in aggregate form in connection with its business.

### **4. Confidentiality**

**4.1. Definition.** “**Confidential Information**” means all confidential information disclosed by a Party (“**Disclosing Party**”) to the other Party (“**Receiving Party**”), whether orally or in writing, that is designated as confidential or that reasonably should be understood to be confidential given the nature of the information and the circumstances of disclosure, including all copies thereof. Your Confidential Information includes Your Data, Confidential Information of Company includes the Service (including its software and content, other than Your Data) and the work product created from its performance of any Services, and Confidential Information of each Party includes the terms of this Agreement. However, Confidential Information will not include any information that: (a) is or becomes generally available to the public without breach of any obligation owed to the Disclosing Party; (b) was known to the Receiving Party prior to its disclosure by the Disclosing Party without breach of any obligation owed to the Disclosing Party; (c) is received from a third party without breach of any obligation owed to the Disclosing Party; or (d) was independently developed by the Receiving Party without use of or reliance on the Confidential Information of the Disclosing Party.

**4.2. Protection.** The Receiving Party will: (a) use the same degree of care that it uses to protect the confidentiality of its own confidential information of like kind (but in no event less than reasonable care); (b) not use any Confidential Information of the Disclosing Party for any purpose outside the scope of this Agreement; and (c) except as otherwise authorized by the Disclosing Party in writing, limit access to Confidential Information of the Disclosing Party to those of the Receiving Party’s and its affiliates’ employees, contractors, and agents who need such access for purposes consistent with this Agreement and who are subject to confidentiality obligations at least as restrictive as those herein. The Receiving Party will provide prompt written notice to the Disclosing Party of any unauthorized use or disclosure of the Disclosing Party’s Confidential Information. Upon request of the Disclosing Party during the Term, the Receiving Party will promptly return, or at the Disclosing Party’s option destroy, any or all Confidential Information of the Disclosing Party in the Receiving Party’s possession or under its control.

**4.3. Compelled Disclosure.** The Receiving Party may access or disclose Confidential Information of the Disclosing Party if it is compelled by law to do so, provided the Receiving Party gives the Disclosing Party prior notice of such compelled access or disclosure (to the extent legally permitted) and reasonable assistance, at the Disclosing Party's expense, if the Disclosing Party wishes to contest the access or disclosure.

## **5. Warranties, Disclaimers**

**5.1. Warranty.** You warrant that You have obtained and will maintain all rights, consents, and permissions necessary for You to make available Your Data to Company for its use as contemplated herein.

**5.2. Disclaimer.** THE SERVICE AND ALL RELATED COMPONENTS AND INFORMATION ARE PROVIDED ON AN "AS IS" BASIS WITHOUT ANY WARRANTIES OF ANY KIND, AND COMPANY EXPRESSLY DISCLAIMS ANY AND ALL OTHER WARRANTIES, WHETHER EXPRESS OR IMPLIED, INCLUDING THE IMPLIED WARRANTIES OF MERCHANTABILITY, TITLE, FITNESS FOR A PARTICULAR PURPOSE, AND NON-INFRINGEMENT. COMPANY DOES NOT WARRANT THAT THE SERVICE WILL BE UNINTERRUPTED OR ERROR-FREE.

## **6. Indemnification**

**6.1. Company Indemnification.** Company will defend You from and against any lawsuit or proceeding brought by a third party to the extent alleging that Your use of the Service as permitted hereunder infringes or misappropriates such third party's intellectual property rights, and Company will indemnify You for any damages and any reasonable attorneys' fees finally awarded against them arising from such lawsuit or proceeding; provided, however, that Company will have no liability under this Section to the extent any such lawsuit or proceeding arises from: (a) Your Data or third party products and content; Your negligence, misconduct, or breach of this Agreement.

**6.2. Your Indemnification.** You will defend Company and its affiliates from and against any lawsuit or proceeding brought by a third party to the extent alleging that Your Data infringes, misappropriates, or otherwise violates the rights, including privacy and publicity rights, of any other party, or that Your particular use of the Service violates applicable law, and You will indemnify Company and its affiliates for any damages and any reasonable attorneys' fees arising from such lawsuit or proceeding; provided, however, You will have no liability under this Section to the extent any such lawsuit or proceeding arises from Company's or any of its affiliates' gross negligence, or willful misconduct.

**6.3. Procedures.** The indemnified party will provide the indemnifying party with: (a) prompt written notice of any matter that is subject to indemnification hereunder; (b) the right to assume the exclusive defense and control of any such matter (provided that the indemnified party may participate in the defense at its own expense); and (c) cooperation with any reasonable requests assisting the indemnifying party's defense of such matter. The indemnifying party may not settle any such lawsuit or proceeding without the indemnified party's prior written consent.

**6.4. Exclusive Remedy.** This Section states the indemnifying party's sole liability, and the indemnified party's exclusive remedy, for any type of claim described in this Section.

## **7. Limitation of Liability**

**7.1. Exclusion of Certain Damages.** IN NO EVENT WILL EITHER PARTY HAVE ANY LIABILITY TO THE OTHER PARTY OR TO ANY OTHER PARTY FOR ANY LOST PROFITS OR REVENUES, OR FOR ANY INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL, COVER, OR PUNITIVE DAMAGES, WHETHER OR NOT THE PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. THE FOREGOING DISCLAIMER WILL NOT APPLY TO THE EXTENT PROHIBITED BY APPLICABLE LAW.

**7.2. Liability Cap.** IN NO EVENT WILL COMPANY'S AGGREGATE LIABILITY RELATING TO THIS AGREEMENT EXCEED THE TOTAL AMOUNT ACTUALLY PAID BY YOU TO COMPANY (IF ANY) IN THE 12 MONTHS PRECEDING THE DATE ON WHICH THE FIRST CLAIM GIVING RISE TO LIABILITY AROSE.

**7.3. Scope.** For the avoidance of doubt, the exclusions and limitations set forth in this Section will apply with respect to all legal theories of liability, whether in contract, tort, or otherwise. The Parties agree that the exclusions and limitations set forth in this Section allocate the risks between the Parties under this Agreement, and that they have relied on these exclusions and limitations in determining whether to enter into this Agreement.

**8. Termination.** Company may suspend or terminate Your access to the Service, in whole in part, if: (a) You are using the Service in violation of this Agreement or any applicable law; (b) suspension of the Service is necessary, in Company's reasonable discretion, to protect the security of the Service or the infrastructure of Company or its affiliates; (c) suspension is required by applicable law; (d) any fees owed by You (if any) are overdue; or (e) upon written notice to You. The sections titled "Proprietary

Rights,” “Confidentiality,” “Indemnification,” “Limitation of Liability,” “Termination,” “Survival,” and “General Provisions” will survive any termination of this Agreement.

## **9. General Provisions**

This Agreement, and any disputes arising out of or related hereto, will be governed exclusively by the internal laws of the State of Delaware, without regard to its conflicts of laws rules or the United Nations Convention on the International Sale of Goods. ANY DISPUTE, CLAIM, OR CAUSE OF ACTION IN ANY WAY RELATED TO THE SERVICES SHALL BE RESOLVED BY MANDATORY, CONFIDENTIAL, FINAL, AND BINDING ARBITRATION IN DELAWARE ADMINISTERED BY THE AMERICAN ARBITRATION ASSOCIATION IN ACCORDANCE WITH ITS CONSUMER ARBITRATION RULES. YOU AGREE THAT ALL DISPUTES SHALL BE ARBITRATED ON AN INDIVIDUAL BASIS. YOU UNDERSTAND, ACKNOWLEDGE AND AGREE THAT YOU ARE WAIVING YOUR RIGHT TO A COURT OR JURY TRIAL AND ANY RIGHT TO LITIGATE OR ARBITRATE ANY CLAIM AS A CLASS ACTION, REPRESENTATIVE ACTION, OR CLASS ARBITRATION. THIS SECTION IS GOVERNED BY THE FEDERAL ARBITRATION ACT.

The Parties are independent contractors and this Agreement does not create a partnership, franchise, joint venture, agency, fiduciary, or employment relationship between the Parties. There are no third party beneficiaries to this Agreement. No failure or delay by either Party in exercising any right under this Agreement will constitute a waiver of that right. If any provision of this Agreement is held by a court of competent jurisdiction to be invalid or unenforceable, such provision will be modified by the court and interpreted so as best to accomplish the objectives of the original provision to the fullest extent permitted by law, and the remaining provisions of this Agreement will remain in full force and effect.