

## Terms of Service

**Effective date: January 19, 2022**

Welcome to Membersy. Please read on to learn the rules and restrictions that govern your use of our websites and related materials made available by us from time to time (collectively, the “Website”). If you have any questions, comments, or concerns regarding these terms or the Website, please contact us at:

Email: [hello@membersy.com](mailto:hello@membersy.com)

Phone: (877) 545-4188

Address: 811 Barton Springs Road, Suite 750, Austin, Texas 78704

These Terms of Service (the “Terms”) are a binding contract between you and **MEMBERSY LLC** (“Membersy,” “we” and “us”). Your use of the Website in any way means that you agree to all of these Terms, and these Terms will remain in effect while you use the Website. These Terms include the provisions in this document as well as those in the [Privacy Policy](#).

**These Terms do not govern your subscription to, or enrollment in, any paid products or services offered by Membersy, including any such products or services that may be provided through a web-based interface (“Membersy Products”). Your subscription or enrollment in such Membersy Products, if applicable, will be subject to additional terms and conditions as agreed between you and Membersy.**

**Please read these Terms carefully.** They cover important information about the Website. These Terms include information about [future changes to these Terms](#), [limitations of liability](#), [a class action waiver and resolution of disputes by arbitration instead of in court](#). PLEASE NOTE THAT YOUR USE OF AND ACCESS TO OUR WEBSITE IS SUBJECT TO THE FOLLOWING TERMS; IF YOU DO NOT AGREE TO ALL OF THE FOLLOWING, YOU MAY NOT USE OR ACCESS THE WEBSITE IN ANY MANNER.

**ARBITRATION NOTICE AND CLASS ACTION WAIVER:** EXCEPT FOR CERTAIN TYPES OF DISPUTES DESCRIBED IN THE [ARBITRATION AGREEMENT SECTION BELOW](#), YOU AGREE THAT DISPUTES BETWEEN YOU AND US WILL BE RESOLVED BY BINDING, INDIVIDUAL ARBITRATION AND YOU WAIVE YOUR RIGHT TO PARTICIPATE IN A CLASS ACTION LAWSUIT OR CLASS-WIDE ARBITRATION.

### **Will these Terms ever change?**

We are constantly trying to improve our Website, so these Terms may need to change along with our Website. We reserve the right to change the Terms at any time by providing an updated version on our Website.

If you don’t agree with the new Terms, you are free to reject them; unfortunately, that means you will no longer be able to use the Website. If you use the Website in any way after a change to the Terms is effective, that means you agree to all of the changes.

### **What about my privacy?**

Membersy takes the privacy of its users very seriously. For the current Membersy Privacy Policy, please click [here](#).

### **Children's Online Privacy Protection Act**

The Children's Online Privacy Protection Act ("COPPA") requires that online service providers obtain parental consent before they knowingly collect personally identifiable information online from children who are under 13 years of age. We do not knowingly collect or solicit personally identifiable information from children under 13 years of age; if you are a child under 13 years of age, please do not attempt to register for or otherwise use the Website or send us any personal information. If we learn we have collected personal information from a child under 13 years of age, we will delete that information as quickly as possible. If you believe that a child under 13 years of age may have provided us personal information, please contact us at [hello@membersy.com](mailto:hello@membersy.com).

### **What are the basics of using the Website?**

You represent and warrant that you are an individual of legal age to form a binding contract.

You will only use the Website for your own use, not on behalf of or for the benefit of any third party, and only in a manner that complies with all laws that apply to you. If your use of the Website is prohibited by applicable laws, then you aren't authorized to use the Website. We can't and won't be responsible for your using the Website in a way that breaks the law.

### **No Medical Advice; Not for Emergencies**

**Membersy does not offer medical advice or diagnoses, or engage in the practice of medicine. None of the information provided via our Website is intended to be a substitute for professional medical advice, diagnosis, or treatment and all such information is offered for informational and communicative purposes only. The Website is not intended to be, and must not be taken to be, the practice of medicine, dentistry or the provision of other healthcare advice by Membersy.**

### **What about messaging?**

As part of the Website, you may receive communications, including marketing messages that Membersy sends you (for example, via email or SMS). In the event that you elect to receive SMS messages, your provider's data and message rates will apply.

### **Are there restrictions in how I can use the Website?**

You represent, warrant, and agree that you will not use or interact with the Website in a manner that:

- (a) infringes or violates the intellectual property rights or any other rights of anyone else (including Membersy);

- (b) violates any law or regulation, including, without limitation, any applicable export control laws, privacy laws or any other purpose not reasonably intended by Membersy;
- (c) is dangerous, harmful, fraudulent, deceptive, threatening, harassing, defamatory, obscene, or otherwise objectionable;
- (d) violates the security of any computer network, or cracks any passwords or security encryption codes;
- (e) "crawls," "scrapes," or "spiders" any page, data, or portion of or relating to the Website or Content (through use of manual or automated means);
- (f) copies or stores any significant portion of the Content; or
- (g) decompiles, reverse engineers, or otherwise attempts to obtain the source code or underlying ideas or information of or relating to the Website.

A violation of any of the foregoing is grounds for termination of your right to use or access the Website.

### **What are my rights in the Website?**

The materials displayed or performed or available on or through the Website, including, but not limited to, text, graphics, data, articles, photos, images, illustrations and so forth (all of the foregoing, the "Content") are protected by copyright and/or other intellectual property laws. You promise to abide by all copyright notices, trademark rules, information, and restrictions contained in any Content you access through the Website, and you won't use, copy, reproduce, modify, translate, publish, broadcast, transmit, distribute, perform, upload, display, license, sell, commercialize or otherwise exploit for any purpose any Content not owned by you, (i) without the prior consent of the owner of that Content or (ii) in a way that violates someone else's (including Membersy's) rights.

Subject to these Terms, we grant each user of the Website a worldwide, non-exclusive, non-sublicensable and non-transferable license to use (i.e., to download and display locally) Content solely for purposes of using the Website. Use, reproduction, modification, distribution or storage of any Content for any purpose other than using the Website is expressly prohibited without prior written permission from us. You understand that Membersy owns the Website. You won't modify, publish, transmit, participate in the transfer or sale of, reproduce (except as expressly provided in this Section), create derivative works based on, or otherwise exploit the Website. The Website may allow you to copy or download certain Content, but please remember that even where these functionalities exist, all the restrictions in this section still apply.

### **Who is responsible for what I see and do on the Website?**

Your access to all information and Content posted on the Website is at your own risk, and we aren't liable for any errors or omissions in that information or Content or for any damages or loss you might suffer in connection with it. We cannot control and have no duty to take any action regarding how you may interpret and use the Content or what actions you may take as a result of having been exposed to the Content, and you hereby release us from all liability for you having acquired or not acquired Content through the Website.

The Website may contain links or connections to third-party websites or services that are not owned or controlled by Membersy. When you access third-party websites or use third-party services, you accept that there are risks in doing so, and that Membersy is not responsible for such risks.

Membersy has no control over, and assumes no responsibility for, the content, accuracy, privacy policies, or practices of or opinions expressed in any third-party website or service. In addition, Membersy will not and cannot monitor, verify, censor or edit the content of any third-party site or service. We encourage you to be aware when you leave the Website and to read the terms and conditions and privacy policy of each third-party website or service that you visit or utilize. By using the Website, you release and hold us harmless from any and all liability arising from your use of any third-party website or service.

### **Will Membersy ever change the Website?**

We're always trying to improve our Website, so it may change over time. We may suspend or discontinue any part of the Website, or we may introduce new features or impose limits on certain features or restrict access to parts or all of the Website. We reserve the right to remove any Content from the Website at any time, for any reason (including, but not limited to, if someone alleges you contributed that Content in violation of these Terms), in our sole discretion, and without notice.

### **Does the Website cost anything?**

Your use of the Website is free of charge; however, the products and services provided by Membersy will be subject to the pricing terms set forth in your agreement with Membersy regarding such products and services.

### **What if I want to stop using the Website?**

You're free to do that at any time; please refer to our [Privacy Policy](#), as well as the licenses above, to understand how we treat information you provide to us after you have stopped using our Website.

Membersy is also free to terminate (or suspend access to) your use of the Website for any reason in our discretion, including your breach of these Terms. Membersy has the sole right to decide whether you are in violation of any of the restrictions set forth in these Terms.

Provisions that, by their nature, should survive termination of these Terms shall survive termination. By way of example, all of the following will survive termination: any obligation you have to indemnify us, any limitations on our liability, any terms regarding ownership or intellectual property rights, and terms regarding disputes between us, including the arbitration agreement.

### **What else do I need to know?**

**Warranty Disclaimer.** Membersy and its licensors, suppliers, partners, parent, subsidiaries or affiliated entities, and each of their respective officers, directors, members, employees, consultants, contract employees, representatives and agents, and each of their respective successors and assigns (Membersy and all such parties together, the "Membersy Parties")

make no representations or warranties concerning the Website, including without limitation regarding any Content contained in or accessed through the Website, and the Membersy Parties will not be responsible or liable for the accuracy, copyright compliance, legality, or decency of material contained in or accessed through the Website or any claims, actions, suits procedures, costs, expenses, damages or liabilities arising out of use of, or in any way related to your participation in, the Website. THE WEBSITE AND CONTENT ARE PROVIDED BY MEMBERSY (AND ITS LICENSORS AND SUPPLIERS) ON AN "AS-IS" BASIS, WITHOUT WARRANTIES OF ANY KIND, EITHER EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT, OR THAT USE OF THE WEBSITE WILL BE UNINTERRUPTED OR ERROR-FREE. SOME STATES DO NOT ALLOW LIMITATIONS ON HOW LONG AN IMPLIED WARRANTY LASTS, SO THE ABOVE LIMITATIONS MAY NOT APPLY TO YOU.

Limitation of Liability. TO THE FULLEST EXTENT ALLOWED BY APPLICABLE LAW, UNDER NO CIRCUMSTANCES AND UNDER NO LEGAL THEORY (INCLUDING, WITHOUT LIMITATION, TORT, CONTRACT, STRICT LIABILITY, OR OTHERWISE) SHALL ANY OF THE MEMBERSY PARTIES BE LIABLE TO YOU OR TO ANY OTHER PERSON FOR (A) ANY INDIRECT, SPECIAL, INCIDENTAL, PUNITIVE OR CONSEQUENTIAL DAMAGES OF ANY KIND, INCLUDING DAMAGES FOR LOST PROFITS, BUSINESS INTERRUPTION, LOSS OF DATA, LOSS OF GOODWILL, WORK STOPPAGE, ACCURACY OF RESULTS, OR COMPUTER FAILURE OR MALFUNCTION, (B) ANY SUBSTITUTE GOODS, WEBSITE OR TECHNOLOGY, (C) ANY AMOUNT, IN THE AGGREGATE, IN EXCESS OF ONE-HUNDRED (\$100) DOLLARS OR (D) ANY MATTER BEYOND OUR REASONABLE CONTROL. SOME STATES DO NOT ALLOW THE EXCLUSION OR LIMITATION OF INCIDENTAL OR CONSEQUENTIAL OR CERTAIN OTHER DAMAGES, SO THE ABOVE LIMITATION AND EXCLUSIONS MAY NOT APPLY TO YOU.

Indemnity. You agree to indemnify and hold the Membersy Parties harmless from and against any and all claims, liabilities, damages (actual and consequential), losses and expenses (including attorneys' fees) arising from or in any way related to any claims relating to (a) your use of the Website, and (b) your violation of these Terms.

Assignment. You may not assign, delegate or transfer these Terms or your rights or obligations hereunder in any way (by operation of law or otherwise) without Membersy's prior written consent. We may transfer, assign, or delegate these Terms and our rights and obligations without consent.

Choice of Law. These Terms are governed by and will be construed under the Federal Arbitration Act, applicable federal law, and the laws of the State of Texas, without regard to the conflicts of laws provisions thereof.

Arbitration Agreement. Please read the following ARBITRATION AGREEMENT carefully because it requires you to arbitrate certain disputes and claims with Membersy and limits the manner in which you can seek relief from Membersy. Both you and Membersy acknowledge and agree that for the purposes of any dispute arising out of or relating to the subject matter of these Terms, Membersy's officers, directors, employees and independent contractors ("Personnel") are third-party beneficiaries of these Terms, and that upon your acceptance of these Terms,

Personnel will have the right (and will be deemed to have accepted the right) to enforce these Terms against you as the third-party beneficiary hereof.

(a) *Arbitration Rules; Applicability of Arbitration Agreement.* The parties shall use their best efforts to settle any dispute, claim, question, or disagreement arising out of or relating to the subject matter of these Terms directly through good-faith negotiations, which shall be a precondition to either party initiating arbitration. If such negotiations do not resolve the dispute, it shall be finally settled by binding arbitration in Travis County, Texas. The arbitration will proceed in the English language, in accordance with the JAMS Streamlined Arbitration Rules and Procedures (the "Rules") then in effect, by one commercial arbitrator with substantial experience in resolving intellectual property and commercial contract disputes. The arbitrator shall be selected from the appropriate list of JAMS arbitrators in accordance with such Rules. Judgment upon the award rendered by such arbitrator may be entered in any court of competent jurisdiction.

(b) *Costs of Arbitration.* The Rules will govern payment of all arbitration fees. Membersy will pay all arbitration fees for claims less than seventy-five thousand (\$75,000) dollars. Membersy will not seek its attorneys' fees and costs in arbitration unless the arbitrator determines that your claim is frivolous.

(c) *Infringement Remedy.* Notwithstanding the foregoing obligation to arbitrate disputes, each party shall have the right to pursue injunctive or other equitable relief at any time, from any court of competent jurisdiction, to prevent the actual or threatened infringement, misappropriation or violation of a party's copyrights, trademarks, trade secrets, patents or other intellectual property rights.

(d) *Waiver of Jury Trial.* YOU AND MEMBERSY WAIVE ANY CONSTITUTIONAL AND STATUTORY RIGHTS TO GO TO COURT AND HAVE A TRIAL IN FRONT OF A JUDGE OR JURY. You and Membersy are instead choosing to have claims and disputes resolved by arbitration. Arbitration procedures are typically more limited, more efficient, and less costly than rules applicable in court and are subject to very limited review by a court. In any litigation between you and Membersy over whether to vacate or enforce an arbitration award, YOU AND MEMBERSY WAIVE ALL RIGHTS TO A JURY TRIAL, and elect instead to have the dispute be resolved by a judge.

(e) *Waiver of Class or Consolidated Actions.* ALL CLAIMS AND DISPUTES WITHIN THE SCOPE OF THIS ARBITRATION AGREEMENT MUST BE ARBITRATED OR LITIGATED ON AN INDIVIDUAL BASIS AND NOT ON A CLASS BASIS. CLAIMS OF MORE THAN ONE CUSTOMER OR USER CANNOT BE ARBITRATED OR LITIGATED JOINTLY OR CONSOLIDATED WITH THOSE OF ANY OTHER CUSTOMER OR USER. If however, this waiver of class or consolidated actions is deemed invalid or unenforceable, neither you nor Membersy is entitled to arbitration; instead all claims and disputes will be resolved in a court as set forth in (g) below.

(f) *Opt-out.* You have the right to opt out of the provisions of this Section by sending written notice of your decision to opt out to the following address: 811 Barton Springs Road, Suite 750, Austin, Texas 78704 postmarked within thirty (30) days of first accepting these Terms. You must include (i) your name and residence address, (ii) the email address and/or telephone number

associated with your account, and (iii) a clear statement that you want to opt out of these Terms' arbitration agreement.

(g) *Exclusive Venue*. If you send the opt-out notice in (f), and/or in any circumstances where the foregoing arbitration agreement permits either you or Membersy to litigate any dispute arising out of or relating to the subject matter of these Terms in court, then the foregoing arbitration agreement will not apply to either party, and both you and Membersy agree that any judicial proceeding (other than small claims actions) will be brought in the state or federal courts located in, respectively, Travis County, Texas, or the federal district in which that county falls.

(h) *Severability*. If the prohibition against class actions and other claims brought on behalf of third parties contained above is found to be unenforceable, then all of the preceding language in this Arbitration Agreement section will be null and void. This arbitration agreement will survive the termination of your relationship with Membersy.

*Miscellaneous*. The failure of either you or us to exercise, in any way, any right herein shall not be deemed a waiver of any further rights hereunder. If any provision of these Terms is found to be unenforceable or invalid, that provision will be limited or eliminated, to the minimum extent necessary, so that these Terms shall otherwise remain in full force and effect and enforceable. You and Membersy agree that these Terms are the complete and exclusive statement of the mutual understanding between you and Membersy, and that these Terms supersede and cancel all previous written and oral agreements, communications and other understandings relating to the subject matter of these Terms. You hereby acknowledge and agree that you are not an employee, agent, partner, or joint venture of Membersy, and you do not have any authority of any kind to bind Membersy in any respect whatsoever.

Except as expressly set forth in the section above regarding the arbitration agreement, you and Membersy agree there are no third-party beneficiaries intended under these Terms.

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