

## Terms of Use

**Last updated: June 15 2023**

### TABLE OF CONTENTS

- 1 – Contract
- 2 – Provider
- 3 – Grant of Rights and Restriction
- 3 – Usage Rules
- 4 – Payment
- 5 – Promotions
- 6 – Disclaimer and limitation on liability
- 7 – DMCA Takedown Notices
- 8 – BINDING ARBITRATION AND CLASS ACTION WAIVER
- 9 – Miscellaneous

Access to this website total-protect.net, and any corresponding website, subdomain, substitute, or successor domain (“Site”) is subject to the following general Terms of Use (“Terms”). For the purpose of the Terms, references to “Provider” include Provider’s partners, affiliates, subsidiaries, agents, representatives, successors, and assigns. The name and details of the provider of the Service can be found in the welcome email sent to Customer upon subscribing to the Service. In addition, it can be found after logging in to the Site, in the footer of this website, and on the My Account details page on [total-protect.net/account](https://total-protect.net/account).

Provider offers a subscription service that allows its Customers to access various digital and/or entertainment content through the Site, such as Music, Audiobook, Sports and Movies, including all features and functionalities, recommendations and reviews through the Site (the “Content”), and all content and software associated with the Site (the “Service”).

**PLEASE READ THESE TERMS AND ANY SPECIFIC AND/OR SUPPLEMENTAL TERMS AND CONDITIONS CAREFULLY BEFORE USING THE SERVICE. THESE TERMS GOVERN CUSTOMERS USE OF THE SERVICE IN GENERAL. BY USING THE SERVICE CUSTOMER AGREES TO BE BOUND BY THESE TERMS AND ANY SPECIFIC AND/OR SUPPLEMENTAL TERMS AND CONDITIONS.**

EXCEPT DISPUTES RESOLVED IN SMALL CLAIMS COURT, ANY DISPUTE BETWEEN CUSTOMER AND PROVIDER ARE SUBJECT TO A CLASS ACTION WAIVER AND MUST BE RESOLVED BY INDIVIDUAL BINDING ARBITRATION. PLEASE READ SECTION 8 BELOW RE. ARBITRATION AS IT AFFECTS CUSTOMERS RIGHTS UNDER THIS CONTRACT.

### 1. Agreement

A. Binding Contract. These Terms are a binding contract between Customer and Provider. These Terms apply to Customer whether Customer purchases a subscription to Provider’s Service or if Customer visits, access, browse, use, or attempt to interact with or use any part of Provider’s Service.

B. Agreement. Customer represents to Provider that Customer has read, understood, and expressly agree to be bound by this Agreement, and the terms, conditions, and notices contained or referenced herein, whether Customer has created an account (and agree to this Agreement at the time Customer created that account) or whether Customer simply browses, uses, or accesses the Site or Service offered directly by Provider or through a third party (and agree to this Agreement when Customer browse, use, or access any aspect of the Site or Service). If Customer does not agree to the Agreement, Customer may not use the Service or Site.

C. Supplemental Terms. More specific and/or supplemental terms and conditions may apply to some products, including but not limited to, a particular promotion, software application, promotional code, service or other activity; conditions or other limitations to the Service or certain products for Customers under certain ages; and/or specific terms or restrictions that may accompany certain territories, programs, content, products, websites, applications or other software. Any supplemental terms and conditions are in addition to this Agreement and, in the event of a conflict, the supplemental terms will prevail over this Agreement. If Customer does not agree to the applicable supplemental terms and conditions disclosed, Customer may not use the Service.

D. Amendments. From time to time, Provider may amend these Terms by providing notice to Customer, and any such notice may be provided to Customer through the Service, on any other website maintained by us, by email, by pop-up, or by any other reasonable means. Any such modifications to these Terms will also be posted on the Site and the “Last Updated” date at the top of this webpage will be revised. Customers continued use of the Service following such modifications constitutes Customers acceptance of any modified Terms.

E. Accounts. When subscribing to the Service Provider requires Customer to create an account. Customer agrees that any information Customer provides and maintains is accurate, current and complete, including Customers contact information for notices and other communications from Provider and Customers payment information. Customer agrees not to impersonate or misrepresent Customers [affiliation with any person or entity, including using another person’s name, password or other account information, or another person’s name or likeness, or provide false details for a parent or guardian. Customer agrees that Provider may take steps to verify the accuracy of information Customer provides, including contact information for a parent or guardian.

F. Electronic Notice. Customer consents to receive notices, including agreements, disclosures, and other communications, electronically from Provider at the email address Customer has provided. Customer agrees that these electronic notices satisfy any legal requirements that such communications be in writing.

G. Termination or Suspension. Provider may terminate or suspend Customers access to the Service, and/or terminate this Agreement subject to the survival of terms as provided below, if required by law, or if Provider has objective reason to believe Customer has used the Service in violation of any provision of this Agreement or any supplemental terms, and/or if Customer engages in or encourage infringement or any other illegal conduct as it relates to Customers use of the Service.

## **2. Grant of Rights and Restrictions**

The Service and Content, including, but not limited to, music, movies, games, sports, entertainment or informational programming, trailers, bonus material, scripts, code, images and artwork, are Provider's copyrighted, patented or trademarked property or the copyrighted, patented or trademarked property of Provider's licensors and all copyrights, trademarks, service marks, trade names, trade dress, patents and other intellectual property rights in the Service are owned by Provider or Provider's licensors (who may be third-party beneficiaries of this contract) and protected by copyright, trademark, patent and other laws of the United States and international treaties.

A. Consumer License. Conditioned upon Customers payment of all applicable subscription fees and Customers strict compliance with all terms and conditions set forth in these Terms, Provider hereby grants Customer a non-exclusive, revocable, and non-transferable, non-assignable, non-sublicensable limited right, solely as set forth in this Section and subject to all conditions and limitations set forth in these Terms, to: (a) download, install, and/or use the Service for Customers personal, non-commercial use over the Internet on certain supported Internet-connected TVs, computers, and other devices owned or otherwise controlled by Customer, subject to the total number of devices on which Customer may simultaneously use the Service as determined by Customers Subscription (each, a "Device"); (b) access, stream, and use the Service on such Device and the Content as made available or accessible on or through the Service; (c) depending on the Service, the applicable Content, or the third-party software, temporarily download such Content and/or third-party software on certain supported Devices for offline viewing ("Temporary Download"), which may be subject to certain limitations, including any restrictions on the number of Temporary Downloads per account, the maximum number of Devices that can contain Temporary Downloads, the time period within which Customer will need to begin viewing Temporary Downloads, and how long the Temporary Downloads will remain accessible; and (d) use the Content provided through the Service only in the form and manner presented and provided by us.

B. Prohibited Use. Customer agrees to use the Service only for purposes expressly permitted by these Terms and in compliance with any applicable international, federal, state, and local laws, rules regulations, or other restrictions on the use of the Service and Content herein ("Applicable Law"). Customer shall not:

1. sell, offer for sale, copy, create derivative works, enhancements, or modifications from, upload, reproduce, display, publicly perform, import, distribute, retransmit, or otherwise use the Service or any Content through the Service, in whole or any part thereof, in any way, unless expressly permitted to do so by Provider or these Terms;
2. modify, translate, adapt, or otherwise create derivative works or improvements, whether or not patentable, of the Service;
3. publish, broadcast, frame, excerpt, reverse engineer, disassemble, decompile, decode, or otherwise attempt to derive or gain access to the source code of the Service or any part thereof or otherwise use any data mining, data gathering or extraction method;
4. remove, obscure, or alter any proprietary rights or Intellectual Property notices (including copyright and trademark notices) which may be affixed to or contained on materials accessed within the Service or displayed in any Content or otherwise use or authorize any party to co-brand or frame any aspect of the Service or any Content through the Service without the express prior written permission of an authorized representative of Provider and Provider's licensors or certain other third party suppliers in each instance;

5. rent, lease, lend, sell, sublicense, assign, distribute, publish, transfer, or otherwise make available the Service, or any features or functionality of the Service, to any third party for any reason, including by making the Service available on a network where it is capable of being accessed by more than one Device at any time;
6. remove, disable, circumvent, or otherwise create or implement any workaround to any Intellectual Property or security features in or protecting the Service;
7. post, upload, or link to anything that advertises any commercial endeavor (e.g., offering for sale any products or services) or otherwise engage in any commercial activity (e.g., conducting raffles or contests, displaying sponsorship banners, and/or soliciting goods or services), or solicit funds, advertisers, and/or sponsors for any purpose; or
8. use the Service in any manner that could in any way disable, overburden, damage, or impair the Service or any Content through the Service or otherwise interfere with any other party's use and enjoyment of the Service or otherwise attempt to obtain, maritals, content, or information by any means not expressly made available or provided for through the authorized use of the Service and any Content through the Service.

For purposes of these Terms, "framing" refers to displaying the Service or any Content through the Service within a bordered area of another website, regardless of whether the address of the originating Service is visible. Customer agrees to cease any unauthorized co-branding or framing immediately upon notice from us.

C. Violation. Any attempt to perform any of the restricted actions listed above is a violation of Provider's rights and/or those of the intellectual property rights holder.

D. Export Controls. Customers use of the Service and any Content through the Service may be subject to US export control laws, including the Export Control Reform Act and its associated regulations. Customer shall not, directly, or indirectly, export, re-export, or release the Service or the Content through the Service to, or make the Service or the Content through the Service accessible from, any jurisdiction or country to which export, re-export, or release is prohibited by law, rule, or regulation. Customer shall comply with all Applicable Law and complete all required undertakings (including obtaining any necessary export license or other governmental approval), prior to exporting, re-exporting, releasing, or otherwise making the Service or Content through the Service available outside the US.

### **3. Usage Rules**

A. Changes to the Service or Content. The Service and Content available through the Service are constantly evolving and will change over time. Provider reserves the right to make such changes or, if necessary, discontinue Service and/or Content available through the Service. If required by law, Provider may also need to suspend, restrict, or terminate Customers access to Service and/or Content available through the Service.

B. Third-Party Services or Platforms. The Service may integrate, be integrated into, or be provided in connection with third-party websites, services, applications, platforms, and/or content. Provider does not control those third-parties or the products they make available. Customer should read the terms of use agreements and privacy policies that apply to such third-party products. If Customer accesses the Service using an Apple iOS, Android or Microsoft Windows powered device or Microsoft Xbox One, Apple Inc., Google LLC. or

Microsoft Corporation, respectively, shall be a third-party beneficiary of this contract. However, these third-party beneficiaries are not a party to this contract. Customer agrees that Customers access to the Service using these devices also shall be subject to the usage terms set forth in the applicable third-party beneficiary's terms of service. Customer represents to Provider that Customer has read and agreed to those terms.

C. Internet, Browser and System Requirements. Customer may need a high speed Internet connection and/or minimum system and/or browser requirements to access and use certain aspects of the Service. Customers required to review the minimum requirements necessary for use of the specific Service or Content.

D. Mobile Networks. When Customer accesses the Service through a mobile network, Customers network or roaming provider's messaging, data and other rates and fees will apply. Downloading, installing or using certain Content may be prohibited or restricted by Customers network provider and not all Content may work with Customers network provider or device.

E. Informational and Entertainment Purposes. Customer understands that the Service and Content are for Customers personal, non-commercial use and are intended for informational and entertainment purposes only; the content available does not constitute legal, financial, professional, medical or healthcare advice or diagnosis and cannot be used for such purposes.

## **5. Promotions**

Any promotions in relation to the Service may be subject to official rules and/or conditions that are supplemental to this Agreement. Examples can be eligibility requirements, entry instructions, deadlines, prize information and restrictions. If any such rules and/or conditions conflict with this Agreement, the provisions contained in the official rules and/or conditions govern and control the promotion.

## **6. Disclaimers and Limitation on Liability**

THE SERVICE IS PROVIDED "AS IS" AND "AS AVAILABLE." PROVIDER DISCLAIMS ALL CONDITIONS, REPRESENTATIONS AND WARRANTIES NOT EXPRESSLY SET OUT IN THESE TERMS TO THE FULLEST EXTENT PERMITTED BY LAW.

Please consult Provider's customer support if Customer encounters a problem with Provider's Service.

It is Customers responsibility to ensure Customer follows installation instructions, have the minimum system requirements, update software as recommended, and

Provider shall not be liable for delay or failure in performance for causes beyond Provider's control or any other damage which does not result from a breach of Provider's obligations under this Agreement.

Provider is not liable for business losses. Provider only supplies products for Customers personal, non-commercial, and domestic use. If Customer uses the products for any other

purpose Provider will have no liability to Customer for any loss of profit, loss of business, business interruption, loss of business opportunity, or similar loss.

PROVIDER IS NOT RESPONSIBLE FOR ANY LACK OF FUNCTIONALITY OR FAILURE TO PROVIDE ANY PART OF THE SERVICE(S), OR ANY LOSS OF CONTENT OR DATA THAT IS DUE TO: CUSTOMERS EQUIPMENT, DEVICES, OPERATING SYSTEM OR INTERNET CONNECTION; OR CUSTOMERS FAILURE TO COMPLY WITH SPECIFIED COMPATIBILITY REQUIREMENTS.

PROVIDER SHALL NOT BE LIABLE TO CUSTOMER FOR INDIRECT, INCIDENTAL, SPECIAL OR CONSEQUENTIAL DAMAGES, INCLUDING LOST PROFITS AND PROPERTY DAMAGE, EVEN IF PROVIDER WERE ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, NOR SHALL PROVIDER BE HELD LIABLE FOR DELAY OR FAILURE IN PERFORMANCE RESULTING FROM CAUSES BEYOND PROVIDER'S REASONABLE CONTROL.

IN NO EVENT SHALL PROVIDER'S TOTAL LIABILITY TO CUSTOMER FOR ALL DAMAGES, LOSSES AND CAUSES OF ACTION EXCEED ONE THOUSAND U.S. DOLLARS (US \$1,000).

## **7. DMCA Takedown Notices**

The Digital Millennium Copyright Act of 1998 (the "DMCA") provides recourse for copyright owners who believe material appearing on the Internet infringes their rights under U.S. copyright law. If Customer believes in good faith that materials made available on or accessible through the Service or any Content through the Service infringe Customers copyright, Customer (or Customers agent) may send Provider a notice requesting that Provider to remove or block the materials or disable access to them. If Customer believes in good faith that someone has wrongly filed a notice of copyright infringement against Customer, the DMCA permits Customer to send Provider a counter-notice. Notices and counter-notices must meet the then- current statutory requirements imposed by the DMCA. For purpose of the DMCA, notices and counter-notices can be sent to: [support@total-protect.com](mailto:support@total-protect.com).

## **8. BINDING ARBITRATION AND CLASS ACTION WAIVER**

A. MANDATORY BINDING ARBITRATION. BY USING THE SERVICE, REGARDLESS OF WHERE CUSTOMER LIVES OR IS LOCATED IN THE WORLD, CUSTOMERS CONSENTS TO THESE TERMS AND ANY CLAIMS RELATING TO THE INFORMATION, SERVICES OR PRODUCTS MADE AVAILABLE THROUGH THE SERVICE / SITE WILL BE GOVERNED BY THE LAWS OF THE STATE OF NEW YORK, U.S.A., EXCLUDING THE APPLICATION OF ITS CONFLICTS OF LAW RULES. CUSTOMER AGREES THAT, SUBJECT TO THE FOLLOWING SENTENCE, VENUE FOR ALL ACTIONS, RELATING IN ANY MANNER TO THESE TERMS, WILL BE IN A FEDERAL OR STATE COURT OF COMPETENT JURISDICTION LOCATED IN NEW YORK, NEW YORK. DISPUTES RELATING TO OR ARISING UNDER THESE TERMS AND/OR THE SERVICE SHALL BE SUBMITTED TO BINDING ARBITRATION ADMINISTERED BY THE AMERICAN ARBITRATION ASSOCIATION IN ACCORDANCE WITH ITS INTERNATIONAL ARBITRATION RULES (THE "INTERNATIONAL RULES") BY THREE (3) ARBITRATORS WHO

WILL BE CHOSEN IN ACCORDANCE WITH THE ABOVE INTERNATIONAL RULES; PROVIDED, HOWEVER, THAT PROVIDER (AND/OR PROVIDER'S THIRD PARTY SUPPLIERS OR LICENSORS) MAY ENFORCE PROVIDER'S INTELLECTUAL PROPERTY RIGHTS IN ANY COURT OF COMPETENT JURISDICTION, INCLUDING BUT NOT LIMITED TO EQUITABLE RELIEF.

B. TIME IS OF THE ESSENCE WITH RESPECT TO SUCH ARBITRATION, AND THE ARBITRATOR(S) SHALL BE INSTRUCTED TO BEGIN THE PROCEEDING, CONDUCT THE PROCEEDING AND RENDER A DECISION AS EXPEDITIOUSLY AS PRACTICABLE. NOTWITHSTANDING THE FOREGOING, CUSTOMER AND PROVIDER MAY EACH SEEK EMERGENCY OR INTERIM RELIEF AS PROVIDED BY THE INTERNATIONAL RULES. THE ARBITRATION SHALL BE HELD IN THE ENGLISH LANGUAGE, WITH THE PLACE OF ARBITRATION (i) IN NEW YORK, NEW YORK, UNITED STATES OF AMERICA OR (ii) VIA VIDEOCONFERENCE AS REQUIRED TO ALLOW THE HEARING TO PROCEED AS SCHEDULED AT THE DISCRETION OF THE ARBITRATOR. EXCEPT AS OTHERWISE EXPRESSLY SET FORTH HEREIN, CUSTOMER AND PROVIDER EACH WAIVE ANY OBJECTION THAT IT MAY HAVE TO THE AFOREMENTIONED CHOICE OF LAW OR VENUE. CUSTOMER AND PROVIDER EACH AGREE THAT (y) ANY DISPUTE ABOUT THE ARBITRATOR'S JURISDICTION, EITHER BEFORE OR AFTER INITIATION OF THE ARBITRATION, AND/OR (z) ANY DISPUTE ABOUT THE ARBITRABILITY OF ANY CLAIM, COUNTERCLAIM, OR SET OFF SHALL BE BROUGHT SOLELY AND EXCLUSIVELY IN A COURT OF COMPETENT JURISDICTION IN THE STATE OF NEW YORK; AN ARBITRAL TRIBUNAL MAY NOT DECIDE ITS OWN JURISDICTION OR THE ARBITRABILITY OF ANY MATTER IN THE EVENT OF ANY DISAGREEMENT BETWEEN CUSTOMER AND PROVIDER.

C. THE ARBITRATION AWARD RENDERED BY THE ARBITRATOR(S) SHALL BE FINAL AND BINDING UPON BOTH CUSTOMER AND PROVIDER. THE EXISTENCE, CONTENT, OR RESULTS OF SUCH ARBITRATION PROCEEDING SHALL BE KEPT CONFIDENTIAL, UNLESS APPLICABLE LAW REQUIRES OTHERWISE OR TO THE EXTENT REQUIRED TO COMPEL ARBITRATION, WHEN REQUIRED TO ENFORCE OTHER RIGHTS OR DEFEND OTHER PROCEEDINGS IN SITUATIONS IN WHICH THE FACT OF THE AWARD IS A NECESSARY ELEMENT OF THE CLAIM OR DEFENSE, OR TO OBTAIN INTERIM RELIEF OR TO ENFORCE AN AWARD. ANY AWARD MUST BE MADE IN U.S. DOLLARS AND BE SUBJECT TO THESE TERMS. IN ADDITION TO ALL RIGHTS PROVIDED UNDER THE INTERNATIONAL RULES AND LAW, CUSTOMER AND PROVIDER EACH AGREE THAT ANY JUDGMENT RENDERED BY THE ARBITRATORS MAY BE ENFORCED OR EXECUTED AGAINST THE ASSETS OF ANY SUCH PARTY IN ANY JURISDICTION PURSUANT TO U.S. LAW OR THE NEW YORK CONVENTION, AS APPLICABLE.

D. TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, BOTH CUSTOMER AND PROVIDER EACH HEREBY IRREVOCABLY WAIVE ANY AND ALL RIGHTS TO TRIAL BY JURY IN ANY LEGAL PROCEEDING ARISING OUT OF OR RELATED TO THESE TERMS, THE SERVICE, OR THE TRANSACTIONS CONTEMPLATED HEREBY OR THEREBY.

E. CUSTOMER AGREES THAT ANY CLAIM CUSTOMER MAY HAVE ARISING OUT OF OR RELATED TO CUSTOMER'S USE OF THE SERVICE OR CUSTOMER'S

RELATIONSHIP WITH PROVIDER MUST BE FILED WITHIN ONE (1) YEAR AFTER SUCH CLAIM AROSE; OTHERWISE, TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, CUSTOMER'S CLAIM IS PERMANENTLY BARRED.

F. TO THE FULL EXTENT PERMITTED BY APPLICABLE LAW, BOTH CUSTOMER AND PROVIDER WAIVE THE RIGHT TO BRING ANY DISPUTE AS A CLASS, CONSOLIDATED, REPRESENTATIVE, COLLECTIVE, OR PRIVATE ATTORNEY GENERAL ACTION, OR TO PARTICIPATE IN A CLASS, CONSOLIDATED, REPRESENTATIVE, COLLECTIVE, OR PRIVATE ATTORNEY GENERAL ACTION REGARDING ANY DISPUTE BROUGHT BY ANYONE ELSE.

G. This Section shall survive any termination of these Terms. If any part of this Section, other than waivers of class action rights, is deemed or found to be unenforceable for any reason, the remainder shall remain enforceable. If a waiver of class action rights is deemed or found to be unenforceable for any reason in a case in which class action allegations have been made, the remainder of this Section shall be unenforceable.

## **9. Additional Provisions**

A. Severability. If any provision of this Agreement shall be unlawful, void or for any reason unenforceable, then that provision shall be deemed severable from this Agreement and shall not affect the validity and enforceability of any remaining provisions.

B. Survival. The provisions of this Agreement which by their nature should survive the termination of this Agreement shall survive such termination, including but not limited to the restrictions, disclaimers, limitations, Provider's rights to use submitted content, and rules regarding dispute resolution in Section 2, 3, 6, 7 and 8 as well as the general provisions in this Section 9.

C. Waiver. No waiver of any provision of this Agreement by Provider shall be deemed a further or continuing waiver of such provision or any other provision, and Provider's failure to assert any right or provision under this Agreement shall not constitute a waiver of such right or provision.

D. Notice. Customer agrees that Provider may give Customer notices or otherwise respond to Customer by email or mail (if Provider has it on file) or in any other manner reasonably elected by us. All legal notices to Provider must be sent to the following email address: [support@total-protect.com](mailto:support@total-protect.com).