

## Beyond 12 Website and App Terms of Use

Effective Date: January 11, 2021

These Terms of Use ( “**Terms of Use,**” or “**Terms**”) govern your use of the MyCoach mobile application and the GradGuru mobile application (the “**MyCoach App**” and “**GradGuru App**”, respectively and, collectively, the “**Apps**”), and the Beyond12.org, MyCoachapp.org, and Gradguru.org websites (each a “**Site,**” collectively the “**Sites**”), and any services, content and resources available or enabled via our Apps or Sites (collectively, the “**Beyond 12 Services**”). Through the Beyond 12 Services, Beyond 12, Inc., (“**Beyond 12,**” “**we,**” or “**us**”) provides students with virtual coaching and resources to support their completion of academic programs. In addition to these Terms of Use, please read our Privacy Policy to learn more about on how the content and information you submit through or to the Beyond 12 Services is handled by Beyond 12.

BY CLICKING ON THE “I ACCEPT” BUTTON OR CHECKBOX, COMPLETING THE REGISTRATION PROCESS, DOWNLOADING EITHER APP, AND/OR ACCESSING OR USING ANY OF THE BEYOND 12 SERVICES, YOU REPRESENT THAT (1) YOU HAVE READ, UNDERSTAND, AND AGREE TO BE BOUND BY THESE TERMS OF USE; (2) YOU HAVE READ, UNDERSTAND, AND AGREE TO BE BOUND BY OUR PRIVACY POLICY (3) YOU HAVE THE AUTHORITY TO ENTER INTO THESE TERMS OF USE PERSONALLY; (4) YOU ARE LOCATED IN THE UNITED STATES; AND (5) YOU ARE AT LEAST 18 YEARS OF AGE (OR HAVE REACHED THE AGE OF MAJORITY IF THAT IS NOT 18 YEARS OF AGE WHERE YOU LIVE) OR THAT YOU HAVE REVIEWED THESE TERMS OF USE WITH YOUR PARENT OR LEGAL GUARDIAN AND HE OR SHE AGREES TO THESE TERMS OF USE AND OUR PRIVACY POLICY ON YOUR BEHALF AND TAKES FULL RESPONSIBILITY FOR YOUR COMPLIANCE WITH THESE TERMS OF USE. YOU AGREE THAT YOU (AND YOUR PARENT OR GUARDIAN) ARE FULLY ABLE AND COMPETENT TO ENTER INTO AND COMPLY WITH THESE TERMS OF USE. IF YOU ARE UNDER 18 YEARS OF AGE, YOU UNDERSTAND THAT YOU CANNOT LATER VOID THE AGREEMENT WITH BEYOND 12 AS A MINOR WITHOUT LOSING ACCESS TO YOUR ACCOUNT (AS DEFINED IN SECTION 2.1), AND, AS APPLICABLE THE BEYOND 12 SERVICES, AND YOUR PARENTS ARE RESPONSIBLE FOR YOUR ACTIONS AND ANY OBLIGATIONS YOU HAVE INCURRED WHILE ENJOYING THE BENEFITS OF ACCESS TO THE FEATURES AND FUNCTIONS OF THE BEYOND 12 SERVICES AS IF YOU WERE AN ADULT. THE TERM “**YOU**” REFERS TO THE INDIVIDUAL OR LEGAL ENTITY, AS APPLICABLE, IDENTIFIED AS THE USER WHEN YOU ACCESS OR USE THE BEYOND 12 SERVICES. **IF YOU DO NOT AGREE TO BE BOUND BY THESE TERMS OF USE, YOU MAY NOT ACCESS OR USE THE BEYOND 12 SERVICES.**

**PLEASE BE AWARE THAT SECTION 17 OF THESE TERMS OF USE, BELOW, CONTAINS PROVISIONS GOVERNING HOW CLAIMS THAT YOU AND WE HAVE AGAINST EACH OTHER ARE RESOLVED, INCLUDING, WITHOUT LIMITATION, ANY CLAIMS THAT AROSE OR WERE ASSERTED PRIOR TO THE EFFECTIVE DATE OF THESE TERMS OF USE. IN PARTICULAR, IT CONTAINS AN ARBITRATION AGREEMENT WHICH WILL, WITH LIMITED EXCEPTIONS, REQUIRE DISPUTES BETWEEN US TO BE SUBMITTED TO BINDING AND FINAL ARBITRATION. UNLESS YOU OPT OUT OF THE ARBITRATION AGREEMENT: (1) YOU WILL ONLY BE PERMITTED TO PURSUE CLAIMS AND SEEK RELIEF AGAINST US ON AN INDIVIDUAL BASIS, NOT AS A PLAINTIFF OR CLASS MEMBER IN ANY CLASS OR REPRESENTATIVE ACTION OR PROCEEDING; AND (2) YOU ARE WAIVING YOUR RIGHT TO SEEK RELIEF IN A COURT OF LAW AND TO HAVE A JURY TRIAL ON YOUR CLAIMS.**

Your use of, and participation in, certain Beyond 12 Services may be subject to additional terms (“**Supplemental Terms**”) and such Supplemental Terms will either be listed in these Terms of Use or will be presented to you for your acceptance when you sign up to use the supplemental Beyond 12 Service.

If these Terms of Use are inconsistent with the Supplemental Terms, the Supplemental Terms shall control with respect to such Beyond 12 Service. These Terms of Use and any applicable Supplemental Terms are referred to herein as the **“Agreement.”**

PLEASE NOTE THAT THE AGREEMENT IS SUBJECT TO CHANGE BY BEYOND 12 IN ITS SOLE DISCRETION AT ANY TIME. When changes are made, Beyond 12 will make a new copy of the Terms of Use available on the Sites, and in the Apps and any new Supplemental Terms will be made available from within, or through, the affected Beyond 12 Services. We will also update the “Last Updated” date at the top of the Terms of Use. If we make material changes to the Terms of Use, we may (and, where required by law, will) also provide notification of changes in another way that we believe is reasonably likely to reach you, such as via e-mail if you have an Account (as defined in Section 2.1) or another manner through the Beyond 12 Services (which may include posting an announcement on our Apps). Beyond 12 may require you to provide consent to the updated Agreement in a specified manner before further use of the Apps and/or the Beyond 12 Services is permitted. If you do not agree to any change(s) after receiving a notice of such change(s), you shall stop using the Apps and/or the Beyond 12 Services. Otherwise, your continued use of the Apps and/or Beyond 12 Services constitutes your acceptance of such change(s). PLEASE REGULARLY CHECK THE APPS TO VIEW THE THEN-CURRENT TERMS.

1. **USE OF THE BEYOND 12 SERVICES AND BEYOND 12 PROPERTIES.** Beyond 12 tracks student progress and connects students to resources and virtual coaching. The Beyond 12 Services include the [MyCoach](#) and [GradGuru](#) Apps, each of which allows students to directly engage with coaches, and provides academic tips and alerts to important deadlines. There may be additional components to the Beyond 12 Services which shall be governed by supplemental terms subject to change at any time. You can learn more about the Beyond 12 Services, including the MyCoach and GradGuru Apps, on our Sites. To learn more about how your information is used by us, or how it may be shared with your school and other third parties, please review our Privacy Policy. The Beyond 12 Services, and the information and content available through the Beyond 12 Services (each, a **“Beyond 12 Property”** and collectively, the **“Beyond 12 Properties”**) are protected by U.S. copyright laws. Subject to the Agreement, Beyond 12 grants you a limited, non-exclusive, non-transferable, non-sublicensable, revocable license to reproduce portions of Beyond 12 Properties for the sole purpose of using the Beyond 12 Services for your personal academic purposes. Unless otherwise specified by Beyond 12 in a separate license, your right to use any and all Beyond 12 Properties is subject to the Agreement.

1.1 **Eligibility.** There may be eligibility requirements (which may change from time to time) to access certain Beyond 12 Services, such as individualized virtual coaching through our Sites or our Apps. To learn more, please review our Sites.

1.2 **App License.** Subject to your compliance with the Agreement, Beyond 12 grants you a limited non-exclusive, non-transferable, non-sublicensable, revocable license to download, install and use a copy of each App on a mobile device or computer that you own or control and to run such copy of the App solely for your own personal or internal academic purposes. Furthermore, with respect to any App accessed through or downloaded from the Apple App Store (an **“App Store Sourced Application”**), you will only use the App Store Sourced Application (a) on an Apple-branded product that runs the iOS (Apple’s proprietary operating system) and (b) as permitted by the “Usage Rules” set forth in the Apple App Store Terms of Service. Furthermore, with respect to any App accessed through or downloaded from Google Play (a **“Google Play Sourced Application”**), you may have additional license rights and/or restrictions with respect to use of the Apps.

1.3 **Covid-19 Response.** We are committed to trying to ensure that the closing of college campuses does not derail the education journeys of students who are from low-income communities, or who are the first in their families to attend college. Please review our expanded offerings to address the impacts of COVID-19 here. We reserve the right to modify or discontinue any or all of these offerings at any time, in our sole discretion.

1.4 **Updates.** You understand that Beyond 12 Properties are evolving. As a result, Beyond 12 may require you to accept updates to the Beyond 12 Properties that you have installed on your mobile device. You acknowledge and agree that Beyond 12 may update Beyond 12 Properties with or without notifying you. You may need to update third-party software from time to time in order to use Beyond 12 Properties. Beyond 12 reserves the right to modify or discontinue the Beyond 12 Services at any time (including by limiting or discontinuing certain features of the Beyond 12 Services), temporarily or permanently, without notice to you. We will have no liability on account of any change to the Beyond 12 Services or any suspension or termination of your access to or use of the Beyond 12 Services.

1.5 **Certain Restrictions.** The rights granted to you in the Agreement are subject to the following restrictions: (a) you shall not license, sell, rent, lease, transfer, assign, reproduce, distribute, host or otherwise commercially exploit Beyond 12 Properties or any portion of Beyond 12 Properties, including the Apps, (b) you shall not frame or utilize framing techniques to enclose or use any trademark, logo, or other Beyond 12 Properties (including images, text, page layout or form) of Beyond 12; (c) you shall not use any metatags or other “hidden text” using Beyond 12’s name or trademarks; (d) you shall not modify, translate, adapt, merge, make derivative works of, disassemble, decompile, reverse compile or reverse engineer any part of Beyond 12 Properties except to the extent the foregoing restrictions are expressly prohibited by applicable law; (e) you shall not use any manual or automated software, devices or other processes (including but not limited to spiders, robots, scrapers, crawlers, avatars, data mining tools or the like) to “scrape” or download data from any web pages contained in the Beyond 12 Properties (except that we grant the operators of public search engines revocable permission to use spiders to copy materials from the Beyond 12 Properties for the sole purpose of and solely to the extent necessary for creating publicly available searchable indices of the materials, but not caches or archives of such materials); (f) you shall not access any Beyond 12 Properties in order to build a similar or competitive application or service; (g) except as expressly stated herein, no part of Beyond 12 Properties may be copied, reproduced, distributed, republished, downloaded, displayed, posted or transmitted in any form or by any means; and (h) you shall not remove or destroy any copyright notices or other proprietary markings contained on or in the Beyond 12 Properties. Any future release, update or other addition to Beyond 12 Properties shall be subject to the Agreement. Beyond 12, its suppliers and service providers reserve all rights not granted in the Agreement. Any unauthorized use of any Beyond 12 Property terminates the licenses granted by Beyond 12 pursuant to the Agreement.

#### 1.1 **Beyond 12 Communications.**

(a) **Generally.** By entering into this Agreement or by using the Beyond 12 Properties and strictly subject to the terms in this Section 1.6, you agree to receive certain communications from us. These communications may be delivered via e-mail, texts, calls, push notifications and other mobile application messages, including if you are receiving individualized virtual coaching, calls and text messages sent directly to your mobile device from your coach’s mobile device. WE WILL NOT SEND SHORT-CODE SHORT MESSAGE SERVICE (SMS) MESSAGES (“**SHORT-CODE SMS MESSAGES**”) TO YOUR MOBILE DEVICE UNLESS YOU AFFIRMATIVELY OPT IN TO RECEIVE THEM IN ACCORDANCE WITH SECTION 1.6(C) BELOW.

- For all of our communications, including, if you opted in, for any Short-Code SMS Messages sent on behalf of Beyond 12, you agree that (i) message and data rates may apply to communications between you and Beyond 12; (ii) message frequency varies and depends on the user's interaction; and (iii) texts, calls or prerecorded messages may be generated by automatic telephone dialing systems.
- For our text and SMS messages, you acknowledge and agree that the mobile carriers that support our text and SMS messaging services are not liable for delayed or undelivered texts or SMS messages, and that we may change any telephone number we use to operate such services at any time. You acknowledge that any texts or SMS messages you send to a telephone number we have changed may not be received and we will not be responsible for honoring requests made in such texts or messages.

(b) **Marketing Communications and How to Opt-Out.** If we send marketing or promotional communications, you will have the ability to opt out of receiving such communications by following the instructions in this section. YOU ACKNOWLEDGE THAT YOU ARE NOT REQUIRED TO CONSENT TO RECEIVE PROMOTIONAL EMAILS, TEXTS OR CALLS AS A CONDITION OF USING THE BEYOND 12 PROPERTIES OR RELATED SERVICES. CONSENT TO THESE PROMOTIONAL MESSAGES IS NOT REQUIRED TO ACCESS THE BEYOND 12 SERVICES OR ANY COVID-19 RESPONSE SERVICES (AS OUTLINED IN SECTION 1.3).

(i) Promotional Emails. IF YOU WISH TO OPT OUT OF RECEIVING PROMOTIONAL EMAIL COMMUNICATIONS FROM US, YOU CAN UNSUBSCRIBE FROM OUR PROMOTIONAL EMAIL LIST BY FOLLOWING THE UNSUBSCRIBE OPTIONS IN THE PROMOTIONAL EMAIL ITSELF.

(ii) Marketing Short-Code SMS Messages, Texts and Calls. IF WE SEND MARKETING SHORT-CODE SMS MESSAGES OR OTHER MARKETING TEXTS OR CALLS AND YOU WISH TO OPT OUT OF RECEIVING SUCH MARKETING SHORT-CODE SMS MESSAGES, TEXTS OR CALLS FROM US, YOU MAY OPT OUT, FOR SHORT-CODE SMS MESSAGES, BY FOLLOWING THE INSTRUCTIONS IN SECTION 1.6(c) OR FOR OTHER TEXTS AND CALLS, BY EMAILING US AT [INFO@BEYOND12.ORG](mailto:INFO@BEYOND12.ORG) AND INDICATING YOUR INTENT TO OPT-OUT OF MARKETING TEXTS OR CALLS.

(c) **Short-Code SMS Services.** We may use one or more short-code SMS services to deliver Short-Code SMS Messages to you if you opt-in to a specific call to action for the particular service and provide us with your contact information when you opt-in so that you can receive Short-Code SMS Messages through that service. We will only ever send you a Short-Code SMS Message at the mobile number you provide if you first opt-in to receive Short-Code SMS Messages from us through a particular program. We will always confirm your sign-up by sending a Short-Code SMS Message that welcomes you to the program to the mobile number you used to opt-in.

For the **"HERE4U Service,"** our short-code SMS messaging program associated with the MyCoach App and related services, when you opt-in, you consent to receive Short-Code SMS Messages from us, including marketing messages, at the mobile number you've provided at opt-in. These messages may include, but are not limited to, operational communications concerning your Account or the use of the Beyond 12 Properties, updates concerning new and existing features on the Beyond 12 Properties, communications concerning promotions run by us or our third-party partners, and news concerning Beyond 12 and industry developments. At any time after you opt-in for this service, you can cancel it by

texting the word “STOP” to HERE4U from the mobile device receiving the Short-Code SMS Messages through the HERE4U Service. If at any time you forget what keywords are supported by the service, just text “HELP” to HERE4U, or contact us at support@beyond12.org for assistance. Once you cancel, you will cease to receive any and all Short-Code SMS Messages through the program, including ones related to operational matters.

BY OPTING IN TO THE HERE4U SERVICE, YOU AGREE TO RECEIVE MARKETING SHORT-CODE SMS MESSAGES THROUGH THE SERVICE. HOWEVER, YOU ACKNOWLEDGE THAT YOU ARE NOT REQUIRED TO CONSENT TO RECEIVE ANY SHORT-CODE SMS MESSAGES OR OTHER PROMOTIONAL TEXTS OR CALLS THROUGH THIS SERVICE AS A CONDITION OF USING THE BEYOND 12 PROPERTIES OR RELATED SERVICES. MOREOVER, CONSENT TO RECEIVING PROMOTIONAL SHORT-CODE SMS MESSAGES THROUGH THE HERE4U SERVICE IS NOT REQUIRED TO ACCESS THE BEYOND 12 SERVICES. IF WE SEND SHORT-CODE SMS MESSAGES THROUGH THIS SERVICE AND YOU WISH TO OPT OUT OF RECEIVING THEM, YOU CAN TEXT THE WORD “STOP” TO HERE4U FROM THE MOBILE DEVICE RECEIVING THE MESSAGES. HOWEVER, YOU ACKNOWLEDGE THAT OPTING OUT OF THE HERE4U SERVICE WILL RESULT IN YOU NOT RECEIVING ANY SHORT-CODE SMS MESSAGES THROUGH THE SERVICE SO BEYOND 12 WILL NOT BE ABLE TO PROVIDE YOU WITH ANY SHORT-CODE SMS MESSAGES RELATED TO OPERATIONAL MATTERS, WHICH MAY IMPACT YOUR USE OF THE BEYOND 12 PROPERTIES OR RELATED SERVICES.

(d) **Electronic Communications.** The communications between you and Beyond 12 may take place via electronic means, whether you visit the Beyond 12 Properties or send Beyond 12 e-mails, or whether Beyond 12 posts notices on the Beyond 12 Properties or communicates with you via e-mail or text. For contractual purposes, you (i) consent to receive communications from Beyond 12 in an electronic form; and (ii) agree that all terms and conditions, agreements, notices, disclosures, and other communications that Beyond 12 provides to you electronically satisfy any legal requirement that such communications would satisfy if it were to be in writing. The foregoing does not affect your statutory rights.

1.2 **Third-Party Materials.** As a part of the Beyond 12 Properties, you may have access to materials that are hosted by another party. You agree that it is impossible for Beyond 12 to monitor such materials and that you access these materials at your own risk.

## 2. REGISTRATION.

1.1 **Registering Your Account.** In order to access certain features of the Beyond 12 Properties you may be required to become a Registered User. For purposes of the Agreement, a “Registered User” is a user who has registered an account on one of our Sites or Apps (“Account”).

1.2 **Access Through a SNS.** If we provide the capability for you to access the Beyond 12 Properties through a Social Networking Site (“SNS”) as part of the functionality of either App and/or the Beyond 12 Services, you may be able to link your Account with your SNS accounts (each an “SNS Account”), by allowing Beyond 12 to access your SNS Account, as is permitted under the applicable terms and conditions that govern your use of each SNS Account. You represent that you are entitled to disclose your SNS Account login information to Beyond 12 and/or grant Beyond 12 access to your SNS Account (including, but not limited to, for use for the purposes described herein) without breach by you of any of the terms and conditions that govern your use of the applicable SNS Account and without obligating Beyond 12 to pay any fees or making Beyond 12 subject to any usage limitations imposed by such third-party service providers. By granting Beyond 12 access to any SNS Accounts, you understand

that Beyond 12 may access, make available and store (if applicable) any information, data, text, software, music, sound, photographs, graphics, video, messages, tags and/or other materials accessible through Beyond 12 Properties (collectively, “**Content**”) that you have provided to and stored in your SNS Account (“**SNS Content**”) so that it is available on and through Beyond 12 Properties via your Account. Unless otherwise specified in the Agreement, all SNS Content shall be considered to be Your Content (as defined in Section 5.1) for all purposes of the Agreement. Depending on the SNS Accounts you choose and subject to the privacy settings that you have set in such SNS Accounts, personally identifiable information that you post to your SNS Accounts may be available on and through your Account on Beyond 12 Properties. Please note that if a SNS Account or associated service becomes unavailable or Beyond 12’s access to such SNS Account is terminated by the third-party service provider, then SNS Content will no longer be available on and through Beyond 12 Properties. You have the ability to disable the connection between your Account and your SNS Accounts at any time by accessing the “Settings” section of either App. If you disable the connection between your Account and certain SNS Accounts, some features and functions of the Beyond 12 Services may not remain fully available to you. PLEASE NOTE THAT YOUR RELATIONSHIP WITH THE THIRD-PARTY SERVICE PROVIDERS ASSOCIATED WITH YOUR SNS ACCOUNTS IS GOVERNED SOLELY BY YOUR AGREEMENT(S) WITH SUCH THIRD-PARTY SERVICE PROVIDERS, AND BEYOND 12 DISCLAIMS ANY LIABILITY FOR PERSONALLY IDENTIFIABLE INFORMATION THAT MAY BE PROVIDED TO IT BY SUCH THIRD-PARTY SERVICE PROVIDERS IN VIOLATION OF THE PRIVACY SETTINGS THAT YOU HAVE SET IN SUCH SNS ACCOUNTS. Beyond 12 makes no effort to review any SNS Content for any purpose, including but not limited to, for accuracy, legality or noninfringement, and Beyond 12 is not responsible for any SNS Content.

1.3 **Registration Data.** In registering an Account with Beyond 12, you agree to (a) provide true, accurate, current and complete information about yourself as prompted by the registration form (the “**Registration Data**”); and (b) maintain and promptly update the Registration Data to keep it true, accurate, current and complete. You represent that you are: (m) at least thirteen (13) years old; (n) of legal age to form a binding contract; and (o) not a person barred from using Beyond 12 Properties under the laws of the United States, your place of residence or any other applicable jurisdiction. You are responsible for all activities that occur under your Account. You agree that you shall monitor your Account to restrict use by minors, and you will accept full responsibility for any unauthorized use of Beyond 12 Properties by minors. You may not share your Account or password with anyone, and you agree to (y) notify Beyond 12 immediately of any unauthorized use of your password or any other breach of security; and (z) exit from your Account at the end of each session. If you provide any information that is untrue, inaccurate, not current or incomplete, or Beyond 12 has reasonable grounds to suspect that any information you provide is untrue, inaccurate, not current or incomplete, Beyond 12 has the right to suspend or terminate your Account and refuse any and all current or future use of Beyond 12 Properties (or any portion thereof). You agree not to create an Account using a false identity or information, or on behalf of someone other than yourself. You agree that you shall not have more than one Account per platform or SNS at any given time any given time. Beyond 12 reserves the right to remove or reclaim any usernames at any time and for any reason, including but not limited to, claims by a third party that a username violates the third party’s rights. You agree not to create an Account or use Beyond 12 Properties if you have been previously removed by Beyond 12, or if you have been previously banned from any of Beyond 12 Properties.

1.4 **Necessary Equipment and Software.** You must provide all equipment and software necessary to connect to Beyond 12 Properties, including but not limited to, a mobile device that is suitable to connect with and use Beyond 12 Properties and all required subscriptions to third-party

platforms. You are solely responsible for any fees, including subscription fees for any third-party platforms, Internet connection or mobile fees that you incur when accessing Beyond 12 Properties.

2. **Location Based Services.** Some of the features of the Beyond 12 Services may enable Beyond 12 to access your location in order to tailor your experience with the Beyond 12 Services based on your location (“**Location-based Services**”). If you choose to disable any Location-based Services on your device, you will not be able to utilize certain features of the Beyond 12 Services. By enabling Location-based Services, you agree and acknowledge that: (i) device data we collect from you is directly relevant to your use of the Beyond 12 Services; (ii) Beyond 12 may provide Location-based Services related to and based on your then-current location; and (iii) Beyond 12 may use any such information collected in connection with provision of the Beyond 12 Services.

3. **Fees.** The Beyond 12 Services are not currently fee-based for student users, however Beyond 12 retains the right to implement a fee structure in the future. Beyond 12 will provide notice if it begins to charge fees for the Beyond 12 Services.

#### 4. **RESPONSIBILITY FOR CONTENT.**

4.1 **Types of Content.** You acknowledge that all Content, including Beyond 12 Properties, is the sole responsibility of the party from whom such Content originated. This means that you, and not Beyond 12, are entirely responsible for all Content that you upload, post, e-mail, transmit or otherwise make available (“**Make Available**”) through Beyond 12 Properties (including, but not limited to, the SNS Content) (“**Your Content**”), and that you and other Registered Users of Beyond 12 Properties, and not Beyond 12, are similarly responsible for all Content that you and they Make Available through Beyond 12 Properties (“**User Content**”).

4.2 **No Obligation to Pre-Screen Content.** You acknowledge that Beyond 12 has no obligation to pre-screen Content (including, but not limited to, User Content), although Beyond 12 reserves the right in its sole discretion to pre-screen, refuse or remove any Content. By entering into the Agreement, you hereby provide your irrevocable consent to such monitoring. You acknowledge and agree that you have no expectation of privacy concerning the transmission of Your Content, including without limitation chat, text, or voice communications. In the event that Beyond 12 pre-screens, refuses or removes any Content, you acknowledge that Beyond 12 will do so for Beyond 12’s benefit, not yours. Without limiting the foregoing, Beyond 12 shall have the right to remove any Content that violates the Agreement or is otherwise objectionable.

4.3 **Storage.** Unless expressly agreed to by Beyond 12 in writing elsewhere, Beyond 12 has no obligation to store any of Your Content that you Make Available on Beyond 12 Properties. Beyond 12 has no responsibility or liability for the deletion or accuracy of any Content, including Your Content; the failure to store, transmit or receive transmission of Content; or the security, privacy, storage, or transmission of other communications originating with or involving use of Beyond 12 Properties. Certain Beyond 12 Services may enable you to specify the level at which such Beyond 12 Services restrict access to Your Content. You are solely responsible for applying the appropriate level of access to Your Content. If you do not choose, the system may default to its most permissive setting. You agree that Beyond 12 retains the right to create reasonable limits on Beyond 12’s use and storage of Content, including Your Content, such as limits on file size, storage space, processing capacity, and similar limits described on either App and as otherwise determined by Beyond 12 in its sole discretion.

#### 5. **OWNERSHIP.**

5.1 **Beyond 12 Properties.** Except with respect to Your Content and User Content, you agree that Beyond 12 and its suppliers own all rights, title and interest in Beyond 12 Properties (including but not limited to, any computer code, themes, objects, concepts, artwork, animations, sounds, audiovisual effects, moral rights, and server software). You will not remove, alter or obscure any copyright, trademark, service mark or other proprietary rights notices incorporated in or accompanying any Beyond 12 Properties.

5.2 **Trademarks.** Beyond 12 will own and retain all right, title and interest in its trademarks, related graphics, logos, service marks and trade names (collectively "**Marks**") used on or in connection with any Beyond 12 Properties or Beyond 12 Services. Such Marks are the trademarks of Beyond 12 and may not be used without permission in connection with your or any third-party products or services. Other trademarks, service marks and trade names that may appear on or in Beyond 12 Properties are the property of their respective owners.

5.3 **Other Content.** Except with respect to Your Content, you agree that you have no right, title, or interest in or to any Content that appears on or in Beyond 12 Properties.

5.4 **Your Content.** Beyond 12 does not claim ownership of Your Content. However, when you as a Registered User post or publish Your Content on or in Beyond 12 Properties, you represent that you own and/or have a royalty-free, perpetual, irrevocable, worldwide, non-exclusive right (including any moral rights) and license to use, license, reproduce, modify, adapt, publish, translate, create derivative works from, distribute, derive revenue or other remuneration from, and communicate to the public, perform and display Your Content (in whole or in part) worldwide and/or to incorporate it in other works in any form, media or technology now known or later developed, for the full term of any worldwide intellectual property right that may exist in Your Content.

5.5 **License to Your Content.** Subject to any applicable account settings that you select, you grant Beyond 12 a fully paid, royalty-free, perpetual, irrevocable, worldwide, sublicensable, transferable, non-exclusive right (including any moral rights) and license to use, host, display, publish, license, distribute, reproduce, modify and adapt Your Content (in whole or in part) for the purposes of operating, providing, developing and improving Beyond 12 Properties for you and our other Registered Users; as well as researching and developing new services. You warrant that the holder of any intellectual property rights, including moral rights, in Your Content, has completely and effectively waived all such rights and validly and irrevocably granted to you the right to grant the license stated above.

5.6 **Your Profile.** Any Content posted by you in your profile may not contain nudity, violence, sexually explicit, or offensive subject matter as determined by Beyond 12 in its sole discretion. You may not post or submit a photograph of another person without that person's permission.

5.7 **Feedback.** You agree that your submission of any ideas, suggestions, documents, and/or proposals to Beyond 12 through its suggestion, feedback, wiki, forum or similar pages ("**Feedback**") is at your own risk and that Beyond 12 has no obligations (including without limitation obligations of confidentiality) with respect to such Feedback. You represent and warrant that you have all rights necessary to submit the Feedback. You hereby grant to Beyond 12 a fully paid, royalty-free, perpetual, irrevocable, worldwide, non-exclusive, and fully sublicensable right and license to use, reproduce, perform, display, distribute, adapt, modify, re-format, create derivative works of, and

otherwise commercially or non-commercially exploit in any manner, any and all Feedback in connection with the operation and maintenance of Beyond 12 Properties and/or Beyond 12's business.

6. **USER CONDUCT.** As a condition of your use of the Beyond 12 Services, you agree not to use the Beyond 12 Services for any purpose that is prohibited by these Terms or by applicable law. You shall not (and shall not permit any third party to) take any action, or Make Available any Content on or through the Beyond 12 Services, that: (a) infringes any patent, trademark, trade secret, copyright, right of publicity or other right of any person or entity; (b) is unlawful, threatening, abusive, harassing, defamatory, libelous, deceptive, fraudulent, invasive of another's privacy, tortious, obscene, offensive, or profane; (c) constitutes unauthorized or unsolicited advertising, junk or bulk e-mail; (d) involves commercial activities and/or sales, such as contests, sweepstakes, barter, advertising, or pyramid schemes; (e) impersonates any person or entity, including any employee or representative of Beyond 12; (f) interferes with or attempt to interfere with the proper functioning of the Beyond 12 Services or uses the Beyond 12 Services in any way not expressly permitted by these Terms; or (g) attempts to engage in or engage in, any potentially harmful acts that are directed against the Beyond 12 Services, including but not limited to violating or attempting to violate any security features of the Beyond 12 Services, using manual or automated software or other means to access, "scrape," "crawl" or "spider" any pages contained in the Beyond 12 Services, introducing viruses, worms, or similar harmful code into the Beyond 12 Services, or interfering or attempting to interfere with use of the Beyond 12 Services by any other user, host or network, including by means of overloading, "flooding," "spamming," "mail bombing," or "crashing" the Beyond 12 Services. Without limiting the generality of the foregoing, you agree to comply with all applicable laws, including all applicable data protection laws.

7. **INVESTIGATIONS.** Beyond 12 may, but is not obligated to, monitor or review Beyond 12 Properties and Content at any time. Without limiting the foregoing, Beyond 12 shall have the right, in its sole discretion, to remove any of Your Content for any reason (or no reason), including if such Content violates the Agreement or any applicable law. Although Beyond 12 does not generally monitor user activity occurring in connection with Beyond 12 Properties or Content, if Beyond 12 becomes aware of any possible violations by you of any provision of the Agreement, Beyond 12 reserves the right to investigate such violations, and Beyond 12 may, at its sole discretion, immediately terminate your license to use Beyond 12 Properties, or change, alter or remove Your Content, in whole or in part, without prior notice to you.

## 8. **INTERACTIONS WITH OTHER USERS.**

8.1 **User Responsibility.** You are solely responsible for your interactions with other Registered Users and any third parties with whom you interact; provided, however, that Beyond 12 reserves the right, but has no obligation, to intercede in such disputes. You agree that Beyond 12 will not be responsible for any liability incurred as the result of such interactions.

8.2 **Content Provided by Other Users.** Beyond 12 Properties may contain User Content provided by other Registered Users. Beyond 12 is not responsible for and does not control User Content. Beyond 12 has no obligation to review or monitor, and does not approve, endorse or make any representations or warranties with respect to User Content. You use all User Content and interact with other Registered Users at your own risk.

## 9. **THIRD-PARTY SERVICES.**

9.1 **Third-Party Websites and Applications.** Beyond 12 Properties may contain links to third-party websites (“**Third-Party Websites**”) and third-party applications and services (collectively, “**Third-Party Applications**”), and Beyond 12 may refer to, or suggest such Third-Party Websites or Applications in our communications to you. When you click on a link to a Third-Party Website or Third-Party Application, we will not warn you that you have left the Beyond 12 Properties and are subject to the terms and conditions (including privacy policies) of another website or destination. Such Third-Party Websites and Third-Party Applications are not under the control of Beyond 12. Beyond 12 is not responsible for any Third-Party Websites or Third-Party Applications. Beyond 12 provides these Third-Party Websites and Third-Party Applications only as a convenience and does not review, approve, monitor, endorse, warrant, or make any representations with respect to Third-Party Websites or Third-Party Applications, or any product or service provided in connection therewith. You use all links in Third-Party Websites and Third-Party Applications at your own risk. When you leave the Beyond 12 Properties, the Agreement and policies no longer govern. You should review applicable terms and policies, including privacy and data gathering practices, of any Third-Party Websites or Third-Party Applications, and make whatever investigation you feel necessary or appropriate before proceeding with any transaction with any third party.

9.2 **App Stores.** You acknowledge and agree that the availability of each of the Apps and the Beyond 12 Services is dependent on the third party from whom you received the App license, e.g., the Apple App Store, or Google Play Store (the “**App Store**”). You acknowledge that the Agreement is between you and Beyond 12 and not with the App Store. Beyond 12, not the App Store, is solely responsible for Beyond 12 Properties, including the Apps, the content thereof, maintenance, support services, and warranty therefor, and addressing any claims relating thereto (e.g., product liability, legal compliance or intellectual property infringement). In order to use the Apps, you must have access to a wireless network, and you agree to pay all fees associated with such access. You also agree to pay all fees (if any) charged by the App Store in connection with Beyond 12 Properties, including the Apps. You agree to comply with, and your license to use each App is conditioned upon your compliance with all terms of agreement imposed by the applicable App Store when using any Beyond 12 Property, including the Apps. You acknowledge that the App Store (and its subsidiaries) are third-party beneficiaries of the Agreement and will have the right to enforce it.

10. **Indemnification.** You agree to indemnify and hold Beyond 12, its parents, subsidiaries, affiliates, officers, employees, agents, partners, suppliers, and licensors (each, a “**Beyond 12 Party**” and collectively, the “**Beyond 12 Parties**”) harmless from any losses, costs, liabilities and expenses (including, but not limited to, reasonable attorneys’ fees) relating to or arising out of any and all of the following: (a) Your Content; (b) your use of, or inability to use, any Beyond 12 Property; (c) your violation of the Agreement; (d) your violation of any rights of another party, including any Registered Users; or (e) your violation of any applicable laws, rules or regulations. Beyond 12 reserves the right, at its own cost, to assume the exclusive defense and control of any matter otherwise subject to indemnification by you, in which event you will fully cooperate with Beyond 12 in asserting any available defenses. This provision does not require you to indemnify any of the Beyond 12 Parties for any unconscionable commercial practice by such party or for such party’s fraud, deception, false promise, misrepresentation or concealment, suppression or omission of any material fact in connection with either App or any Beyond 12 Services provided hereunder. You agree that the provisions in this section will survive any termination of your Account, the Agreement and/or your access to Beyond 12 Properties.

## **11. DISCLAIMER OF WARRANTIES AND CONDITIONS.**

**11.1 As Is.** YOU EXPRESSLY UNDERSTAND AND AGREE THAT TO THE EXTENT PERMITTED BY APPLICABLE LAW, YOUR USE OF THE BEYOND 12 PROPERTIES IS AT YOUR SOLE RISK, AND THE BEYOND 12 PROPERTIES ARE PROVIDED ON AN "AS IS" AND "AS AVAILABLE" BASIS, WITH ALL FAULTS AND NO GUARANTEES REGARDING OUTCOMES. OUR COACHES ARE NOT LICENSED HEALTHCARE OR COUNSELING PROFESSIONALS. IF YOU ARE EXPERIENCING A CRISIS, YOU MUST SEEK PROFESSIONAL ASSISTANCE. BEYOND 12 PARTIES EXPRESSLY DISCLAIM ALL WARRANTIES, REPRESENTATIONS, AND CONDITIONS OF ANY KIND, WHETHER EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OR CONDITIONS OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT.

**11.2 No Liability for Conduct of Third Parties.** YOU ACKNOWLEDGE AND AGREE THAT BEYOND 12 PARTIES ARE NOT LIABLE, AND YOU AGREE NOT TO SEEK TO HOLD BEYOND 12 PARTIES LIABLE, FOR THE CONDUCT OF ANY THIRD PARTIES, INCLUDING OPERATORS OF EXTERNAL SITES, AND THAT THE RISK OF INJURY FROM SUCH THIRD PARTIES RESTS ENTIRELY WITH YOU. BEYOND 12 MAKES NO WARRANTY THAT THE GOODS OR SERVICES PROVIDED BY THIRD PARTIES WILL MEET YOUR REQUIREMENTS OR BE AVAILABLE ON AN UNINTERRUPTED, SECURE, OR ERROR-FREE BASIS. BEYOND 12 MAKES NO WARRANTY REGARDING THE QUALITY OF ANY SUCH GOODS OR SERVICES, OR THE ACCURACY, TIMELINESS, TRUTHFULNESS, COMPLETENESS OR RELIABILITY OF ANY USER CONTENT OBTAINED THROUGH BEYOND 12 PROPERTIES.

**11.3 No Liability for Conduct of Other Users.** YOU ARE SOLELY RESPONSIBLE FOR ALL OF YOUR COMMUNICATIONS AND INTERACTIONS WITH OTHER USERS OF THE BEYOND 12 PROPERTIES. YOU UNDERSTAND THAT BEYOND 12 DOES NOT MAKE ANY ATTEMPT TO VERIFY THE STATEMENTS OF USERS OF THE BEYOND 12 PROPERTIES. BEYOND 12 MAKES NO REPRESENTATIONS OR WARRANTIES AS TO THE CONDUCT OF USERS OF THE BEYOND 12 PROPERTIES OR THEIR COMPATIBILITY WITH ANY CURRENT OR FUTURE USERS OF THE BEYOND 12 PROPERTIES. YOU AGREE TO TAKE REASONABLE PRECAUTIONS IN ALL COMMUNICATIONS AND INTERACTIONS WITH OTHER USERS OF THE BEYOND 12 PROPERTIES, PARTICULARLY IF YOU DECIDE TO MEET OFFLINE OR IN PERSON.

## **12. LIMITATION OF LIABILITY.**

**12.1 Disclaimer of Certain Damages.** YOU UNDERSTAND AND AGREE THAT IN NO EVENT SHALL BEYOND 12 PARTIES BE LIABLE FOR ANY LOSS OF PROFITS, REVENUE OR DATA, INDIRECT, INCIDENTAL, SPECIAL, OR CONSEQUENTIAL DAMAGES, OR DAMAGES OR COSTS DUE TO LOSS OF PRODUCTION OR USE, BUSINESS INTERRUPTION, PROCUREMENT OF SUBSTITUTE GOODS OR SERVICES, IN EACH CASE WHETHER OR NOT BEYOND 12 HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, ARISING OUT OF OR IN CONNECTION WITH THE AGREEMENT OR ANY COMMUNICATIONS, INTERACTIONS OR MEETINGS WITH OTHER USERS OF THE BEYOND 12 PROPERTIES, ON ANY THEORY OF LIABILITY, RESULTING FROM: (1) THE USE OR INABILITY TO USE THE BEYOND 12 PROPERTIES; (2) THE COST OF PROCUREMENT OF SUBSTITUTE GOODS OR SERVICES RESULTING FROM ANY GOODS, DATA, INFORMATION OR SERVICES PURCHASED OR OBTAINED OR MESSAGES RECEIVED FOR TRANSACTIONS ENTERED INTO THROUGH BEYOND 12 PROPERTIES; (3) UNAUTHORIZED ACCESS TO OR ALTERATION OF YOUR TRANSMISSIONS OR DATA; (4) STATEMENTS OR CONDUCT OF ANY THIRD PARTY ON BEYOND 12 PROPERTIES; OR (5) ANY OTHER MATTER RELATED TO BEYOND 12 OR THE BEYOND 12 PROPERTIES, WHETHER BASED ON WARRANTY, COPYRIGHT, CONTRACT, TORT (INCLUDING NEGLIGENCE), PRODUCT LIABILITY OR ANY OTHER LEGAL THEORY. THE FOREGOING LIMITS ON LIABILITY SHALL NOT APPLY TO

LIABILITY OF A BEYOND 12 PARTY FOR (A) DEATH OR PERSONAL INJURY CAUSED BY A BEYOND 12 PARTY'S NEGLIGENCE; OR FOR (B) ANY INJURY CAUSED BY A BEYOND 12 PARTY'S FRAUD OR FRAUDULENT MISREPRESENTATION.

**12.2 Cap on Liability.** UNDER NO CIRCUMSTANCES WILL BEYOND 12 PARTIES BE LIABLE TO YOU FOR MORE THAN THE GREATER OF (A) ONE HUNDRED DOLLARS (\$100.00); AND (B) THE REMEDY OR PENALTY IMPOSED BY THE STATUTE UNDER WHICH THE CLAIM ARISES. THE FOREGOING CAP ON LIABILITY SHALL NOT APPLY TO LIABILITY OF A BEYOND 12 PARTY FOR (A) DEATH OR PERSONAL INJURY CAUSED BY A BEYOND 12 PARTY'S NEGLIGENCE; OR FOR (B) ANY INJURY CAUSED BY A BEYOND 12 PARTY'S FRAUD OR FRAUDULENT MISREPRESENTATION.

**12.3 User Content.** EXCEPT FOR BEYOND 12'S OBLIGATIONS TO PROTECT YOUR PERSONAL DATA AS SET FORTH IN THE BEYOND 12'S PRIVACY POLICY, BEYOND 12 ASSUMES NO RESPONSIBILITY FOR THE TIMELINESS, DELETION, MIS-DELIVERY OR FAILURE TO STORE ANY CONTENT (INCLUDING, BUT NOT LIMITED TO, YOUR CONTENT AND USER CONTENT), USER COMMUNICATIONS OR PERSONALIZATION SETTINGS.

**12.4 Basis of the Bargain.** THE LIMITATIONS OF DAMAGES SET FORTH ABOVE ARE FUNDAMENTAL ELEMENTS OF THE BASIS OF THE BARGAIN BETWEEN BEYOND 12 AND YOU.

**13. PROCEDURE FOR MAKING CLAIMS OF COPYRIGHT INFRINGEMENT.** It is Beyond 12's policy to terminate privileges of any Registered User who repeatedly infringes copyright rights upon prompt notification to Beyond 12 by the copyright owner or the copyright owner's legal agent. Without limiting the foregoing, if you believe that your work has been copied and posted on Beyond 12 Properties in a way that constitutes copyright infringement, please provide our Copyright Agent with the following information: (a) an electronic or physical signature of the person authorized to act on behalf of the owner of the copyright interest; (b) a description of the copyrighted work that you claim has been infringed; (c) a description of the location on the Beyond 12 Properties of the material that you claim is infringing; (d) your address, telephone number and e-mail address; (e) a written statement by you that you have a good faith belief that the disputed use is not authorized by the copyright owner, its agent or the law; and (f) a statement by you, made under penalty of perjury, that the above information in your notice is accurate and that you are the copyright owner or authorized to act on the copyright owner's behalf. Contact information for Beyond 12's Copyright Agent for notice of claims of copyright infringement is as follows: 1625 Clay St. Suite 100, Oakland, CA 94612 Attn: Beyond 12 Operations.

#### **14. REMEDIES.**

**14.1 Violations.** If Beyond 12 becomes aware of any possible violations by you of the Agreement, Beyond 12 reserves the right to investigate such violations. If, as a result of the investigation, Beyond 12 believes that criminal activity has occurred, Beyond 12 reserves the right to refer the matter to, and to cooperate with, any and all applicable legal authorities. Beyond 12 is entitled, except to the extent prohibited by applicable law, to disclose any information or materials on or in Beyond 12 Properties, including Your Content, in Beyond 12's possession in connection with your use of Beyond 12 Properties, to (a) comply with applicable laws, legal process or governmental request; (b) enforce the Agreement, (c) respond to any claims that Your Content violates the rights of third parties, (d) respond to your requests for customer service, or (e) protect the rights, property or personal safety of Beyond 12, its Registered Users or the public, and all enforcement or other government officials, as Beyond 12 in its sole discretion believes to be necessary or appropriate.

14.2 **Breach.** In the event that Beyond 12 determines, in its sole discretion, that you have breached any portion of the Agreement, or have otherwise demonstrated conduct inappropriate for the Beyond 12 Properties, Beyond 12 reserves the right to:

- (a) Warn you via e-mail (to any e-mail address you have provided to Beyond 12) that you have violated the Agreement;
- (b) Delete any of Your Content provided by you or your agent(s) to Beyond 12 Properties;
- (c) Discontinue your registration(s) with any of the Beyond 12 Properties, including any Beyond 12 Services or any Beyond 12 community;
- (d) Discontinue your subscription to any Beyond 12 Services;
- (e) Notify and/or send Content to and/or fully cooperate with the proper law enforcement authorities for further action; and/or
- (f) Pursue any other action which Beyond 12 deems to be appropriate.

## 15. TERM AND TERMINATION.

15.1 **Term.** The Agreement commences on the date when you accept them (as described in the preamble above) and remain in full force and effect while you use any Beyond 12 Properties, unless terminated earlier in accordance with the Agreement.

15.2 **Prior Use.** Notwithstanding the foregoing, you hereby acknowledge and agree that the Agreement commenced on the earlier to occur of (a) the date you first used any Beyond 12 Properties or (b) the date you accepted the Agreement and will remain in full force and effect while you use any Beyond 12 Properties, unless earlier terminated in accordance with the Agreement.

15.3 **Termination of Beyond 12 Services by Beyond 12.** If you have materially breached any provision of the Agreement, or if Beyond 12 is required to do so by law (e.g., where the provision of either App, the Software or the Beyond 12 Services is, or becomes, unlawful), Beyond 12 has the right to, immediately and without notice, suspend or terminate your Account and/or any Beyond 12 Services provided to you. You agree that all terminations for cause shall be made in Beyond 12's sole discretion and that Beyond 12 shall not be liable to you or any third party for any termination of your Account.

15.4 **Termination of Beyond 12 Services by You.** If you want to terminate the Beyond 12 Services provided by Beyond 12, you may do so by closing your Account for all of the Beyond 12 Services that you use.

15.5 **Effect of Termination.** Termination of any Beyond 12 Services includes removal of access to such Beyond 12 Services and barring of further use of such Beyond 12 Services. Termination of all Beyond 12 Services may also include deletion of your password and all related information, files and Content associated with or inside your Account (or any part thereof), including Your Content. Upon termination of any Beyond 12 Services, your right to use such Beyond 12 Services will automatically terminate. You understand that any termination of Beyond 12 Services may involve deletion of Your Content associated therewith from our live databases. Beyond 12 will not have any liability whatsoever

to you for any suspension or termination, including for deletion of Your Content. All provisions of the Agreement which by their nature should survive, shall survive termination of the Beyond 12 Services, including without limitation, ownership provisions, warranty disclaimers, and limitation of liability.

**15.6 No Subsequent Registration.** If your registration(s) with or ability to access Beyond 12 Properties, or any other Beyond 12 community is discontinued by Beyond 12 due to your violation of any portion of the Agreement or for conduct otherwise inappropriate for the community, then you agree that you shall not attempt to re-register with or access any Beyond 12 Properties or any Beyond 12 community through use of a different member name or otherwise, and you acknowledge that you will not be entitled to receive a refund for fees related to those Beyond 12 Properties to which your access has been terminated. In the event that you violate the immediately preceding sentence, Beyond 12 reserves the right, in its sole discretion, to immediately take any or all of the actions set forth herein without any notice or warning to you.

**16. DISPUTE RESOLUTION.** *Please read the following arbitration agreement in this Section (“Arbitration Agreement”) carefully. It requires you to arbitrate disputes with Beyond 12 and limits the manner in which you can seek relief from us.*

**16.1 Applicability of Arbitration Agreement.** You agree that any dispute or claim relating in any way to your access or use of the Beyond 12 Properties, to any products sold or distributed through the Beyond 12 Properties, or to any aspect of your relationship with Beyond 12, will be resolved by binding arbitration, rather than in court, except that (1) you may assert claims in small claims court if your claims qualify; and (2) you or Beyond 12 may seek equitable relief in court for infringement or other misuse of intellectual property rights (such as trademarks, trade dress, domain names, trade secrets, copyrights, and patents). **This Arbitration Agreement shall apply, without limitation, to all claims that arose or were asserted before the effective date of this Agreement or any prior version of this Agreement.**

**16.2 Arbitration Rules and Forum.** The Federal Arbitration Act governs the interpretation and enforcement of this Arbitration Agreement. To begin an arbitration proceeding, you must send a letter requesting arbitration and describing your claim to our registered agent Alexandra Bernadotte, 1625 Clay St., Suite 100, Oakland, CA 94612. The arbitration will be conducted by JAMS, an established alternative dispute resolution provider. Disputes involving claims and counterclaims under \$250,000, not inclusive of attorneys’ fees and interest, shall be subject to JAMS’s most current version of the Streamlined Arbitration Rules and procedures available at <http://www.jamsadr.com/rules-streamlined-arbitration/>; all other claims shall be subject to JAMS’s most current version of the Comprehensive Arbitration Rules and Procedures, available at <http://www.jamsadr.com/rules-comprehensive-arbitration/>. JAMS’s rules are also available at [www.jamsadr.com](http://www.jamsadr.com) or by calling JAMS at 800-352-5267. If JAMS is not available to arbitrate, the parties will select an alternative arbitral forum. If the arbitrator finds that you cannot afford to pay JAMS’s filing, administrative, hearing and/or other fees and cannot obtain a waiver from JAMS, Beyond 12 will pay them for you. In addition, Beyond 12 will reimburse all such JAMS’s filing, administrative, hearing and/or other fees for claims totaling less than \$10,000 unless the arbitrator determines the claims are frivolous.

You may choose to have the arbitration conducted by telephone, based on written submissions, or in person in the country where you live or at another mutually agreed location. Any judgment on the award rendered by the arbitrator may be entered in any court of competent jurisdiction.

**16.3 Authority of Arbitrator.** The arbitrator shall have exclusive authority to (a) determine the scope and enforceability of this Arbitration Agreement and (b) resolve any dispute related to the interpretation, applicability, enforceability or formation of this Arbitration Agreement including, but not limited to, any claim that all or any part of this Arbitration Agreement is void or voidable. The arbitration will decide the rights and liabilities, if any, of you and Beyond 12. The arbitration proceeding will not be consolidated with any other matters or joined with any other cases or parties. The arbitrator shall have the authority to grant motions dispositive of all or part of any claim. The arbitrator shall have the authority to award monetary damages and to grant any non-monetary remedy or relief available to an individual under applicable law, the arbitral forum's rules, and the Agreement (including the Arbitration Agreement). The arbitrator shall issue a written award and statement of decision describing the essential findings and conclusions on which the award is based, including the calculation of any damages awarded. The arbitrator has the same authority to award relief on an individual basis that a judge in a court of law would have. The award of the arbitrator is final and binding upon you and us.

**16.4 Waiver of Jury Trial.** YOU AND BEYOND 12 HEREBY WAIVE ANY CONSTITUTIONAL AND STATUTORY RIGHTS TO SUE IN COURT AND HAVE A TRIAL IN FRONT OF A JUDGE OR A JURY. You and Beyond 12 are instead electing that all claims and disputes shall be resolved by arbitration under this Arbitration Agreement, except as specified in Section 17.1 above. An arbitrator can award on an individual basis the same damages and relief as a court and must follow this Agreement as a court would. However, there is no judge or jury in arbitration, and court review of an arbitration award is subject to very limited review.

**16.5 Waiver of Class or Other Non-Individualized Relief.** ALL CLAIMS AND DISPUTES WITHIN THE SCOPE OF THIS ARBITRATION AGREEMENT MUST BE ARBITRATED ON AN INDIVIDUAL BASIS AND NOT ON A CLASS OR COLLECTIVE BASIS, ONLY INDIVIDUAL RELIEF IS AVAILABLE, AND CLAIMS OF MORE THAN ONE CUSTOMER OR USER CANNOT BE ARBITRATED OR CONSOLIDATED WITH THOSE OF ANY OTHER CUSTOMER OR USER. If a decision is issued stating that applicable law precludes enforcement of any of this subsection's limitations as to a given claim for relief, then the claim must be severed from the arbitration and brought into the State or Federal Courts located in Oakland, California. All other claims shall be arbitrated.

**16.6 30-Day Right to Opt Out.** You have the right to opt out of the provisions of this Arbitration Agreement by sending written notice of your decision to opt out to: [operations@beyond12.org](mailto:operations@beyond12.org) within 30 days after first becoming subject to this Arbitration Agreement. Your notice must include your name and address, your Beyond 12 username (if any), the email address you used to set up your Beyond 12 account (if you have one), and an unequivocal statement that you want to opt out of this Arbitration Agreement. If you opt out of this Arbitration Agreement, all other parts of this Agreement will continue to apply to you. Opting out of this Arbitration Agreement has no effect on any other arbitration agreements that you may currently have, or may enter in the future, with us.

**16.7 Severability.** Except as provided in Section 17.5, if any part or parts of this Arbitration Agreement are found under the law to be invalid or unenforceable, then such specific part or parts shall be of no force and effect and shall be severed and the remainder of the Arbitration Agreement shall continue in full force and effect.

**16.8 Survival of Agreement.** This Arbitration Agreement will survive the termination of your relationship with Beyond 12.

**16.9 Modification.** Notwithstanding any provision in this Agreement to the contrary, we agree that if Beyond 12 makes any future material change to this Arbitration Agreement, you may reject that change within thirty (30) days of such change becoming effective by writing Beyond 12 at the following address: 1625 Clay St. Suite 100, Oakland, CA 94612 Attn: Beyond 12 Operations.

## **17. GENERAL PROVISIONS.**

**2.1 Release.** You hereby release the Beyond 12 Parties and their successors from claims, demands, any and all losses, damages, rights, and actions of any kind, including personal injuries, death, and property damage, that is either directly or indirectly related to or arises from your use of the Beyond 12 Properties, including but not limited to, any interactions with or conduct of other Registered Users or third-party websites of any kind arising in connection with or as a result of the Agreement or your use of the Beyond 12 Properties. If you are a California resident, you hereby waive California Civil Code Section 1542, which states, "A general release does not extend to claims which the creditor does not know or suspect to exist in his favor at the time of executing the release, which, if known by him must have materially affected his settlement with the debtor." The foregoing release does not apply to any claims, demands, or any losses, damages, rights and actions of any kind, including personal injuries, death or property damage for any unconscionable commercial practice by a Beyond 12 Party or for such party's fraud, deception, false, promise, misrepresentation or concealment, suppression or omission of any material fact in connection with either App or any Beyond 12 Services provided hereunder.

**2.2 Assignment.** The Agreement, and your rights and obligations hereunder, may not be assigned, subcontracted, delegated or otherwise transferred by you without Beyond 12's prior written consent, and any attempted assignment, subcontract, delegation, or transfer in violation of the foregoing will be null and void.

**2.3 Force Majeure.** Beyond 12 shall not be liable for any delay or failure to perform resulting from causes outside its reasonable control, including, but not limited to, acts of God, war, terrorism, riots, embargos, acts of civil or military authorities, fire, floods, accidents, epidemics, pandemics, strikes or shortages of transportation facilities, fuel, energy, labor or materials.

**2.4 Questions, Complaints, Claims.** If you have any questions, complaints or claims with respect to the Beyond 12 Properties, please contact us at: 1625 Clay St. Suite 100, Oakland, CA 94612, or [info@beyond12.org](mailto:info@beyond12.org). We will do our best to address your concerns. If you feel that your concerns have been addressed incompletely, we invite you to let us know for further investigation.

**2.5 Exclusive Venue.** To the extent the parties are permitted under this Agreement to initiate litigation in a court, both you and Beyond 12 agree that all claims and disputes arising out of or relating to the Agreement will be litigated exclusively in the state or federal courts located in Oakland, CA.

**2.6 Governing Law.** THE AGREEMENT AND ANY ACTION RELATED THERETO WILL BE GOVERNED AND INTERPRETED BY AND UNDER THE LAWS OF THE STATE OF CALIFORNIA, CONSISTENT WITH THE FEDERAL ARBITRATION ACT, WITHOUT GIVING EFFECT TO ANY PRINCIPLES THAT PROVIDE FOR THE APPLICATION OF THE LAW OF ANOTHER JURISDICTION. THE UNITED NATIONS CONVENTION ON CONTRACTS FOR THE INTERNATIONAL SALE OF GOODS DOES NOT APPLY TO THE AGREEMENT.

**2.7 Notice.** Where Beyond 12 requires that you provide an e-mail address, you are responsible for providing Beyond 12 with your most current e-mail address. In the event that the last

e-mail address you provided to Beyond 12 is not valid, or for any reason is not capable of delivering to you any notices required/ permitted by the Agreement, Beyond 12's dispatch of the e-mail containing such notice will nonetheless constitute effective notice. You may give notice to Beyond 12 at the following address: 1625 Clay St. Suite 100, Oakland, CA 94612 Attn: Beyond 12 Operations. Such notice shall be deemed given when received by Beyond 12 by letter delivered by nationally recognized overnight delivery service or first class postage prepaid mail at the above address.

**2.8 Waiver.** Any waiver or failure to enforce any provision of the Agreement on one occasion will not be deemed a waiver of any other provision or of such provision on any other occasion.

**2.9 Severability.** If any portion of this Agreement is held invalid or unenforceable, that portion shall be construed in a manner to reflect, as nearly as possible, the original intention of the parties, and the remaining portions shall remain in full force and effect.

**2.10 Accessing and Downloading the Application from iTunes.** The following applies to any App Store Sourced Application accessed through or downloaded from the Apple App Store:

(a) You acknowledge and agree that (i) the Agreement is concluded between you and Beyond 12 only, and not Apple, and (ii) Beyond 12, not Apple, is solely responsible for the App Store Sourced Application and content thereof. Your use of the App Store Sourced Application must comply with the App Store Terms of Service.

(b) You acknowledge that Apple has no obligation whatsoever to furnish any maintenance and support services with respect to the App Store Sourced Application.

(c) In the event of any failure of the App Store Sourced Application to conform to any applicable warranty, you may notify Apple, and Apple will refund the purchase price for the App Store Sourced Application to you and to the maximum extent permitted by applicable law, Apple will have no other warranty obligation whatsoever with respect to the App Store Sourced Application. As between Beyond 12 and Apple, any other claims, losses, liabilities, damages, costs or expenses attributable to any failure to conform to any warranty will be the sole responsibility of Beyond 12.

(d) You and Beyond 12 acknowledge that, as between Beyond 12 and Apple, Apple is not responsible for addressing any claims you have or any claims of any third party relating to the App Store Sourced Application or your possession and use of the App Store Sourced Application, including, but not limited to: (i) product liability claims; (ii) any claim that the App Store Sourced Application fails to conform to any applicable legal or regulatory requirement; and (iii) claims arising under consumer protection or similar legislation.

(e) You and Beyond 12 acknowledge that, in the event of any third-party claim that the App Store Sourced Application or your possession and use of that App Store Sourced Application infringes that third party's intellectual property rights, as between Beyond 12 and Apple, Beyond 12, not Apple, will be solely responsible for the investigation, defense, settlement and discharge of any such intellectual property infringement claim to the extent required by the Agreement.

(f) You and Beyond 12 acknowledge and agree that Apple, and Apple's subsidiaries, are third-party beneficiaries of the Agreement as related to your license of the App Store Sourced Application, and that, upon your acceptance of the terms and conditions of the Agreement, Apple will

have the right (and will be deemed to have accepted the right) to enforce the Agreement as related to your license of the App Store Sourced Application against you as a third-party beneficiary thereof.

(g) Without limiting any other terms of the Agreement, you must comply with all applicable third-party terms of agreement when using the App Store Sourced Application.

2.11 **Consumer Complaints.** In accordance with California Civil Code §1789.3, you may report complaints to the Complaint Assistance Unit of the Division of Consumer Services of the California Department of Consumer Affairs by contacting them in writing at 400 R Street, Sacramento, CA 95814, or by telephone at (800) 952-5210.

2.12 **Entire Agreement.** The Agreement is the final, complete and exclusive agreement of the parties with respect to the subject matter hereof and supersedes and merges all prior discussions between the parties with respect to such subject matter.