

Beyond 12 Terms of Service

Last revised 10/15/2015.

The following terms and conditions govern your access to and use of the MyCoach mobile and web applications and the websites, including, but not limited to, all content, services, features, activities, products, mobile sites and applications available therein (collectively, the “**Services**”), provided by Beyond 12, Inc. (“**Beyond 12,**” “**we,**” or “**us**”). Beyond 12 furnishes services to schools, college access organizations and scholarship organizations with the goal of providing academic and social support to students to help them attend college. As an additional feature of those services, Beyond 12 provides the Services to students attending those schools. By entering profile data into the Services, you acknowledge that it will be visible to the schools and organizations with which you are associated.

Please carefully review these terms and conditions, which, together with Beyond 12’s Privacy Policy, incorporated by reference herein in their entirety, constitute a legally binding agreement between you and Beyond 12, which conditions your use of the Services (this “**Agreement**”). By using or accessing the Services, you agree to be bound by the terms and conditions of this Agreement. If you do not agree to all the terms and conditions of this Agreement, then you may not access or use the Services.

BY ACCESSING OR USING THE SERVICES, (A) YOU REPRESENT AND WARRANT THAT YOU ARE AT LEAST 13 YEARS OF AGE AND THAT, IF YOU ARE LESS THAN 18 YEARS OF AGE, YOUR PARENT OR LEGAL GUARDIAN HAS READ AND AGREES TO BE BOUND BY THIS AGREEMENT, AND (B) YOU AGREE TO BE BOUND BY THIS AGREEMENT. IF YOU OR YOUR PARENT OR LEGAL GUARDIAN (IF YOU ARE UNDER 18 YEARS OF AGE) DO NOT WISH TO BE BOUND BY THIS AGREEMENT OR YOU ARE UNDER 13 YEARS OF AGE, YOU MAY NOT ACCESS OR USE THE SERVICES.

Certain features of the Services may be subject to additional guidelines, terms, or rules, which will be posted on the Services in connection with such features. All such additional terms are incorporated by reference into this Agreement.

1. User Accounts. When you register for the Services, you must create a user account (“**Account**”). We may request that this Account be linked to your account with a third party service (“**Third Party Account**”), such as Facebook, in which case you will be able to import your profile information from your Third Party Account to help create your Account and to enable you to login to the Services using your Third Party Account login credentials. We may require you to enter additional information to complete the creation of your Account. Your Third Party Account is provided by the applicable third party service, not us, and is subject to that third party service’s separate terms and conditions. You agree to promptly update all Account information to keep it true, accurate, and complete at all times. You are responsible for all activities that occur under your Account, user name, and password and therefore you agree to keep your password confidential. You agree to notify us immediately of any unauthorized use of your user name or password or if you believe that your password is no longer confidential. We reserve the right to require you to alter your user name and/or password if we believe that your Account is no longer secure. You will not: (a) provide any false personal information as part of your Account information or in connection with the Services; (b) create an Account for anyone

other than yourself; (c) create or use more than one Account at any given time; (d) transfer your Account to anyone else; (e) permit others to use your Account; or (f) use or access other persons' Accounts.

2. User Content

2.1 License. By posting or submitting content to the Services (“**User Content**”), you hereby grant Beyond 12 a perpetual, irrevocable, non-exclusive, royalty-free and fully paid, worldwide, transferable license, with the right to sublicense through multiple tiers, to use, reproduce, distribute, modify, edit, translate, publicly display, publicly perform, prepare derivative works of, transmit, and otherwise exploit your User Content in any manner and for any purpose. Except as prohibited by law, you hereby waive, and you agree to waive, any moral rights (including attribution and integrity) that you may have in any User Content, even if your User Content is altered or changed in a manner not agreeable to you. You agree that you shall have no recourse against Beyond 12 for any alleged or actual infringement or misappropriation of any proprietary right in your User Content. You further acknowledge and agree that no compensation will be paid with respect to the use of your User Content or any of the rights granted in this Section 2.1.

You represent and warrant that: (a) you have the right to grant the foregoing license and to post and submit the User Content, all without any obligation of Beyond 12 to obtain consent of any third party and without creating any obligation or liability of Beyond 12; (b) the User Content does not and, as to Beyond 12's permitted uses and exploitation set forth in this Agreement, will not infringe, misappropriate, or violate any third party rights (including any intellectual property rights); and (c) the User Content does not violate this Agreement and complies with all applicable laws and regulations. You are solely responsible for your User Content.

2.2 User Guidelines. You represent, warrant, and agree that:

(a) you will comply with all applicable laws, including privacy laws and intellectual property laws;

(b) you will not post inappropriate, inaccurate, or objectionable content to the Services;

(c) you will not bully, harass or advocate harassment of another user or person;

(d) you will not solicit passwords or personally identifiable information of any kind for commercial or unlawful purposes from other users, or engage in commercial activities and/or sales such as contests, sweepstakes, barter, advertising, and pyramid schemes;

(e) you will not post content that contains “junk mail” or “chain letters”;

(f) you will not post content that is obscene or that promotes racism, bigotry, hatred or physical harm of any kind against any group or individual;

(g) you will not post or upload any virus, time bomb, worm, corrupted file, or other software routine capable of disrupting, disabling, or harming the operation of, or providing unauthorized access, to the Services;

(h) you will not use the Services to do or promote anything that is unlawful, illegal, misleading, defamatory, or libelous; and

(i) you will not promote, or upload or post anything that contains, an illegal and/or unauthorized copy of another person's copyrighted work (whether marked as such or not).

If you violate the guidelines listed above, any other user guidelines posted on the Services, this Agreement, or if Beyond 12 believes that any of your conduct or content is offensive or illegal, violates the rights of, harms, or threatens the safety of third parties, or may create liability for Beyond 12 or third parties, Beyond 12 reserves the right (but is not obligated) to investigate and take any action in its sole discretion, for any reason, including removing such content from the Services, notifying the appropriate authorities regarding the source of such content, barring violators from accessing the Services, and terminating the Accounts of such violators.

2.3 Content Disclaimer. You understand and agree that when using the Services you may be exposed to user content from a variety of sources, and that Beyond 12 is not responsible for the accuracy, usefulness, or intellectual property rights of or relating to such content. You further understand and acknowledge that you may be exposed to user content that is inaccurate, offensive, indecent, or objectionable, and you agree to waive, and hereby do waive, any legal or equitable rights or remedies you have or may have against Beyond 12 with respect thereto. Beyond 12 does not endorse any user content or any opinion, recommendation, or advice expressed therein, and Beyond 12 expressly disclaims any and all liability in connection with such content. If notified by a user or a content owner of user content that allegedly does not conform to this Agreement, Beyond 12 may investigate the allegation and determine, in its sole discretion, for any reason, whether to remove the user content, which it reserves the right to do at any time and without notice.

Pursuant to 47 U.S.C. Section 230(d), as amended, we hereby notify you that parental control protections (such as computer hardware, software, or filtering services) are commercially available that may assist you in limiting access to material that is harmful to minors. Information identifying current providers of such protections is available on the Internet by using search engines to search for "parental control protection," for example.

3. Proprietary Rights

3.1 Use of the Services. Subject to the terms and conditions of this Agreement, Beyond 12 grants you a limited, non-exclusive, non-transferable, non-assignable, revocable license to access and use the Services solely for your personal, non-commercial purposes during the term of this Agreement. You will not: (a) permit any third party to access or use the Services; (b) rent, lease, loan, sell, license, transfer or assign the Services or any part thereof to any third party or exploit the Services for commercial purposes; (c) interfere with, disrupt, alter, translate, or modify the Services or any part thereof, or create an undue burden on the Services or the networks or services connected to the Services; (d) reverse engineer, decompile, disassemble, or reverse compile the Services; or (e) introduce software or automated agents or scripts to the Services so as to produce multiple accounts, generate automated searches, requests and queries, or to strip, scrape, or mine data from the Services.

3.2 Ownership. Beyond 12 and its licensors own the Services and all content (except for your User Content) contained in the foregoing, and all intellectual property rights relating to the

foregoing. Any unauthorized reproduction, modification, distribution, transmission, transfer, sale, publication, exploitation, display, or performance of any portion of the Services or any other content (except for your User Content) contained in the foregoing is strictly prohibited. Beyond 12 and its licensors reserve all rights not expressly granted under this Agreement. There are no implied licenses in this Agreement.

3.3 Feedback. Beyond 12 will treat any feedback or suggestions you provide to it as non-confidential and non-proprietary. Beyond 12 reserves the right to use any feedback or suggestions you provide in any manner and for any purpose without any obligation to compensate you.

4. Third Party Websites and Services. Our Services contain links to Internet sites and services maintained by third parties. These links are provided for your reference only. Access to third party websites is at your own risk, and Beyond 12 is not responsible for the accuracy, availability, or reliability of any information, goods, data, opinions, advice, or statements made available on third party websites. We do not control, operate or endorse in any respect information, products, or services on such third- party sites and are not responsible for their content or for any damage or loss caused or alleged to be caused by or in connection with use of or reliance on any third party website. Many third party sites and services have their own terms of use and privacy policies that differ from ours, thus you are responsible for viewing and abiding by any privacy statements and terms of use posted in connection with third party websites. This Agreement and the Beyond 12 Privacy Policy only apply to our Services and do not apply to any other site or service.

5. Privacy. Beyond 12 may collect your personally identifiable information in connection with the Services. You expressly consent to Beyond 12's collection, use, and disclosure of such information in accordance with the Beyond 12 Privacy Policy [insert link Privacy Policy (“**Privacy Policy**”).

6. Availability and Modification of Service. Beyond 12 reserves the right, from time to time, to suspend, modify, or discontinue the Services, in whole or in part, with or without notice for any reason. You agree that Beyond 12 will not be liable to you or to any third party for any modification, discontinuance, or suspension of the Services, in whole or in part.

7. Termination. Subject to this Section, this Agreement will remain in full force and effect while you use the Services or maintain an Account. You may terminate your Account at any time and for any reason through the appropriate account management page on the Services, if available, or by sending an e-mail to [support@beyond12.org]. Beyond 12 has the right, in its sole discretion, for any reason, and without penalty, to terminate your Account, immediately effective upon sending notice to you at the email address you provide in your Account. Upon termination of your Account by either party, your right to access and use the Services will terminate immediately. You agree that we will have no liability to you for any costs, expenses, losses, damages, or liabilities arising out of or related to our termination of your Account, your access to and use of the Services, or this Agreement. Even after this Agreement is terminated for any reason, the following provisions of this Agreement will remain in effect: Sections 2.1, 3.2, 5, and 7 through 18.

8. Warranty Disclaimer. TO THE EXTENT PERMITTED UNDER APPLICABLE LAWS, BEYOND 12 PROVIDES THE SERVICES “AS-IS” AND “AS AVAILABLE” AND EXPRESSLY DISCLAIMS ALL WARRANTIES, WHETHER EXPRESS, IMPLIED, OR

STATUTORY, INCLUDING THE WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, QUIET ENJOYMENT, ACCURACY, AND NON-INFRINGEMENT. BEYOND 12 MAKES NO REPRESENTATIONS, WARRANTIES OR GUARANTEES AGAINST HUMAN AND MACHINE ERRORS, OMISSIONS, DELAYS, LOSSES (INCLUDING LOSS OF DATA), OR THAT THE SERVICES WILL BE UNINTERRUPTED, FREE OF VIRUSES OR OTHER HARMFUL CODE, TIMELY, SECURE, OR ERROR-FREE. BEYOND 12 DOES NOT ASSUME ANY OBLIGATION TO MONITOR ACTIVITIES CONDUCTED ON THE SERVICES. BEYOND 12 DOES NOT GUARANTEE AND DOES NOT PROMISE ANY SPECIFIC RESULTS FROM THE USE OF THE SERVICES OR THAT YOU WILL BE ADMITTED TO ANY COLLEGE OR OTHER EDUCATIONAL INSTITUTION TO WHICH YOU APPLY. WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, BEYOND 12 MAKES NO REPRESENTATIONS OR WARRANTIES REGARDING ANY LEVEL OF ACADEMIC, PERSONAL, OR PROFESSIONAL ACHIEVEMENT THAT MAY RESULT FROM THE SERVICES, AND WILL NOT BE LIABLE FOR ANY FAILURE OF THE SERVICES TO MEET YOUR EXPECTATIONS.

THIS DISCLAIMER OF WARRANTY CONSTITUTES AN ESSENTIAL PART OF THIS AGREEMENT. IF YOU ARE DISSATISFIED WITH ANY PORTION OF THE SERVICES, OR WITH ANY OF THESE TERMS, YOUR SOLE AND EXCLUSIVE REMEDY IS TO DISCONTINUE USING THE SERVICES AND, WHERE APPLICABLE, TERMINATE YOUR ACCOUNT. TO THE EXTENT THAT YOU MIGHT OTHERWISE BELIEVE THAT ANY WARRANTIES, GUARANTEES, OR REPRESENTATIONS HAVE BEEN MADE TO YOU, YOU HEREBY AGREE THAT SUCH STATEMENTS, WHETHER MADE ORALLY OR IN WRITING, ARE TO BE CONSTRUED AS MERELY NONBINDING EXPRESSIONS OF POLICY RATHER THAN AFFIRMATIVE REPRESENTATIONS, OBLIGATIONS, GUARANTEES, OR WARRANTIES. IN THE EVENT OF ANY CONFLICT BETWEEN THIS SECTION 8 AND OTHER TERMS OR PROVISIONS OF THIS AGREEMENT, THIS SECTION SHALL BE CONSTRUED TO TAKE PRECEDENCE.

9. Limitation of Liability. TO THE EXTENT PERMITTED UNDER APPLICABLE LAWS, NEITHER BEYOND 12 NOR ANY OF ITS SUBSIDIARIES, EMPLOYEES, AGENTS, OFFICERS, OR DIRECTORS SHALL BE INDIVIDUALLY OR CUMULATIVELY LIABLE FOR (A) ANY LOSS OF USE, LOST PROFITS, OR INDIRECT, CONSEQUENTIAL, EXEMPLARY, INCIDENTAL, SPECIAL OR PUNITIVE DAMAGES ARISING FROM OR RELATING TO YOUR USE OF THE SERVICES OR THIS AGREEMENT, EVEN IF BEYOND 12 HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, OR (B) ANY DAMAGES IN EXCESS OF FIFTY U.S. DOLLARS (U.S. \$50). THE EXISTENCE OF ONE OR MORE CLAIMS WILL NOT ENLARGE THIS LIMIT. IN NO EVENT WILL BEYOND 12'S SUPPLIERS HAVE ANY LIABILITY UNDER OR RESULTING FROM THIS AGREEMENT.

10. User Indemnification. You agree to indemnify and hold Beyond 12, its subsidiaries, affiliates, directors, officers, agents, and employees harmless from any loss, liability, claim, damages, demand, costs or debt, obligations, or expenses, including but not limited to reasonable attorney's fees, arising out of or relating to your: (a) User Content; (b) use of or access to the Services; (c) breach of this Agreement; (d) breach or inaccuracy of any representation or warranty made under this Agreement; or (e) violation of applicable laws or any of the rights of third parties.

11. User Disputes and Release. You are solely responsible for your interactions with other users. Beyond 12 reserves the right, but has no obligation, to monitor, or take any action Beyond 12 deems appropriate regarding, disputes between you and other users. To the extent permitted under applicable laws, you hereby release Beyond 12 from any and all claims or liability related to: (a) any content posted on the Services by you or other users; or (b) the conduct, whether online or offline, of any other user.

You hereby waive California Civil Code Section 1542 (and any similar provision in any other jurisdiction) 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.”

12. Copyright Policy. You may not post, distribute, or reproduce in any way any Beyond 12 copyrighted material, trademarks, or other proprietary information unless you have the right to do so. It is Beyond 12’s policy to, in its sole discretion, terminate the Account of any user who repeatedly infringes copyright rights of Beyond 12 or third parties. If you are a copyright owner or an agent thereof and believe that your work has been copied and posted on the Services in a way that constitutes copyright infringement, please follow the requirements for appropriate notifications under the Digital Millennium Copyright Act (DMCA), 17 U.S.C. § 512. At a minimum, you must provide our Copyright Agent with the following information in writing: an electronic or physical signature of the person authorized to act on behalf of the owner of the copyright interest; a description of the copyrighted work that you claim has been infringed; an identification of the location on the Services of the material that you claim is infringing; your address, telephone number, and email address; a written statement by you that you have a good faith belief that the disputed use of the material in the manner complained of is not authorized by the copyright owner, its agent, or the law; and 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. Beyond 12’s Copyright Agent for notice of claims of copyright infringement can be reached by writing the following: [insert e-mail address and mailing address].

If you believe that your content that was removed (or to which access was disabled) is not infringing, or that you have the authorization from the copyright owner, the copyright owner’s agent, or pursuant to the law, to post and use the content on the Services, you may send a counter-notice containing the following information to the Copyright Agent: your physical or electronic signature; identification of the content that has been removed or to which access has been disabled and the location at which the content appeared before it was removed or disabled; a statement that you have a good faith belief that the content was removed or disabled as a result of mistake or a misidentification of the content; and your name, address, telephone number, and e-mail address, a statement that you consent to the jurisdiction of the federal court in San Francisco, California, and a statement that you will accept service of process from the person who provided notification of the alleged infringement.

If a counter-notice is received by the Copyright Agent, Beyond 12 may send a copy of the counter-notice to the original complaining party informing that person that it may replace the removed content or cease disabling it in 10 business days. Unless the copyright owner files an action seeking a court order against the content provider, member or user, the removed content

may be replaced, or access to it restored, in 10 to 14 business days or more after receipt of the counter-notice, at Beyond 12's sole discretion.

13. Disclosures. Beyond 12 is located at [901 Mission Street, Suite 205, San Francisco, CA 94103]. If you are a California resident, 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.

14. Electronic Communications. The communications between you and Beyond 12 use electronic means, whether you use the Services or send us emails, or whether Beyond 12 posts notices on the Services or communicates with you via email. For contractual purposes, you (a) consent to receive communications from Beyond 12 in an electronic form; and (b) 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 in a hardcopy writing. The foregoing does not affect your non-waivable rights.

15. Governing Law; Arbitration. This Agreement, and any claim, dispute or controversy relating to this Agreement, will be governed by the laws of California, without giving effect to any conflicts of laws principles that require the application of the laws of a different jurisdiction. You agree that the Services shall be deemed solely based in California and the Services shall be deemed a passive website that does not give rise to personal jurisdiction over Beyond 12, either specific or general, in jurisdictions other than California. Any action or proceeding relating to this Agreement must be brought in a federal or state court located in San Francisco, California and each party irrevocably submits to the jurisdiction and venue of any such court in any such action or proceeding, except that: (i) a party bringing an action may choose to resolve the dispute through binding non-appearance-based arbitration in accordance with the following: (a) the arbitration will be provided through a nationally-recognized alternative dispute resolution provider mutually agreed upon by the parties; (b) the arbitration will be conducted in one or more of the following manners at the option of the party initiating arbitration: telephone, online, or written submissions; (c) the arbitration will not involve any personal appearances by the parties or witnesses unless otherwise agreed by the parties; and (d) any judgment on the award rendered by the arbitrator may be entered in any court of competent jurisdiction; and (ii) Beyond 12 may seek injunctive relief in any court having jurisdiction to protect its intellectual property or confidential or proprietary information. You expressly waive the right and agree not to bring or participate in any action for equitable or injunctive relief with respect to any dispute under or relating to this Agreement, including in any arbitration. You expressly waive the right and agree not to bring or participate in any class action or joinder or consolidation of claims with respect to any dispute under or relating to this Agreement, including in any arbitration.

16. General. The parties are independent contractors. If any provision of this Agreement is unenforceable, such provision will be changed and interpreted to accomplish the objectives of such provision to the greatest extent possible under applicable law and the remaining provisions will continue in full force and effect. All waivers by Beyond 12 will be effective only if in writing. Any waiver or failure by Beyond 12 to enforce any provision of this Agreement on one occasion will not be deemed a waiver of any other provision or of such provision on any other occasion. You acknowledge that the Services contain valuable trade secrets and proprietary information of Beyond 12, that any actual or threatened breach of Section 3.2 (Ownership) of this

Agreement will constitute immediate, irreparable harm to Beyond 12 for which monetary damages would be an inadequate remedy, and that injunctive relief is an appropriate remedy for such breach. The headings of Sections of this Agreement are for convenience and are not to be used in interpreting this Agreement. "Includes" and "including" are not limiting. This Agreement and the Privacy Policy constitute the final, complete, and exclusive agreement between the parties regarding the subject hereof and supersede all prior or contemporaneous agreements, understandings, and communication, whether written or oral. This Agreement, and any rights and licenses granted hereunder, may not be transferred or assigned by you without Beyond 12's prior written consent, but may be assigned by Beyond 12 without restriction.

17. Changes. We may amend this Agreement from time to time. If we make material changes to the Agreement, we will notify you by posting the change on the Services or sending you an e-mail at your primary email address, as specified in your Account. Any changes to this Agreement will be effective immediately for new users of our Services; otherwise these changes will be effective upon the earlier of thirty (30) calendar days following our dispatch of an e-mail notice to you or thirty (30) calendar days following our posting of a notice on our Services. You are responsible at all times for updating your Account to provide to us your most current e-mail address. If the last e-mail address that you have provided to us is not valid, or for any reason is not capable of delivering to you the notice described above, our dispatch of the e-mail containing such notice will nonetheless constitute effective notice of the changes described in the notice. Continued use of our Services following notice of such changes shall indicate your acknowledgement of, and agreement to be bound by, such changes. Except as otherwise provided in this section, no amendment to this Agreement will be valid unless in a writing hand-signed by the parties.

18. Trademark and Copyright Notice. BEYOND 12 and other names, slogans, graphics, logos, and trade names used on the Services are the trademarks of Beyond 12 and may not be used without Beyond 12's permission. Third-party trademarks, service marks, and trade names that may appear on the Services are the property of their respective owners. You agree not to change or delete any proprietary notices that appear in the Services and all content (except for your User Content) contained in the foregoing. Copyright © 2015, Beyond 12, Inc.