

## **ABOVE THE NOISE FOUNDATION**

### **WEBSITE TERMS OF USE**

**Last Updated February 7, 2018.**

Please read these Terms of Use (“**Terms**”) carefully before using or accessing the Above the Noise Foundation, Inc. (“**Foundation**,” “**us**,” “**our**” or “**we**”) website (“**Site**”) and our related services and offerings (collectively, the “**Services**”). These Terms, which include our **Privacy Policy** [<https://abovethenoisefoundation.org/privacy-policy/>], govern your access to and use of the Services and constitute a binding legal agreement between you and us.

**YOU ACKNOWLEDGE AND AGREE THAT, BY ACCESSING OR USING THE SERVICES, OR BY DOWNLOADING OR POSTING ANY CONTENT FROM OR THROUGH THE SERVICES, YOU ARE INDICATING THAT YOU HAVE READ, AND UNDERSTAND AND AGREE TO BE BOUND BY THESE TERMS.**

If you accept or agree to these Terms on behalf of a family member, company or other legal entity, you represent and warrant that you have the authority to bind that family member, company or other legal entity to these Terms and, in such event, “you” and “your” extends beyond you to also refer and apply to that family member, company or other legal entity.

We reserve the right, at our sole discretion, to change, modify, add, or delete portions of these Terms at any time. Your continued use of the Services after any such changes constitutes your acceptance of the new Terms. If you do not agree to abide by these or any future Terms, do not use or access (or continue to use or access) Services.

#### **License Grant**

When you download the App under these Terms, you are granted a limited, non-exclusive, non-transferable license to use the App and the Services provided through the App on a computer, tablet or mobile device that you own or control. If you have accessed or downloaded the App from any “app” store or distribution platform, such as the Apple App Store or Google Play (“**App Provider**”), you acknowledge and agree that: (i) these Terms and the license granted herein are between you and us only and we are solely responsible for the App; (ii) the App Provider has no obligation to furnish any maintenance and support services for the App; (iii) the App Provider is not responsible for addressing any claims you have or any claims of any third party relating to the App or your possession and use of the App; (iv) the App Provider, and its subsidiaries, are third party beneficiaries of these Terms as related to your license of the App, and that, the App Provider will have the right (and will be deemed to have accepted the right) to enforce these Terms as related to your license of the App against you as a third party beneficiary thereof; and (v) you will comply with all applicable third party terms of service when using the App.

#### **License Limitations**

This license does not allow you to use the Services on any device that you do not own and/or control, and you may not distribute or make the Services available over a network where it could be used by multiple devices at the same time. You may not rent, lease, lend, sell, redistribute or sublicense or otherwise transfer in whole or in part the Services to another party. You may not create, develop, license, install, use, or deploy any third-party software or services to circumvent, enable, modify or provide access, permissions or rights to work around any technical limitations in the Services and these Terms. You may not copy (except as expressly permitted by this license) or publish the

Services for others to copy, decompile, reverse engineer, decompile, disassemble, attempt to derive the source code of, modify, or create derivative works of the Services, any updates, or any part thereof (except as and only to the extent any foregoing restriction is prohibited by applicable law or to the extent as may be permitted by the licensing terms governing use of any open sourced components included with the Services, if any). Any attempt to do so is a violation of our rights. If you breach this restriction, you may be subject to prosecution and damages. You may not use the Services in any way that is against the law.

### **Registration Data**

While using the Services you may be prompted to provide certain personal information such as your name, age, phone number, valid e-mail address, emergency contact, and billing information or other information (“**Registration Data**”). You agree to provide true, accurate, current and complete Registration Data and promptly update the Registration Data, and any other information you provide to us, to keep it accurate, current and complete.

### **Ticket Sales**

We use third parties (i.e. EventBrite, TicketMaster, etc.) for the sale of Foundation event ticket sales. You should review such third-party terms and conditions before entering into any transaction. We are not liable or responsible for such third-party transactions.

You may not transfer your ticket to anyone else. You are responsible for maintaining the security of your ticket. We will not be liable for any loss that you may incur as a result of someone else using your ticket, with or without your knowledge. You may be liable for any losses incurred by us or another party due to someone else using your ticket to gain access to a Foundation event.

### **Login Access**

If any part of our Services requires a login or password, then such login and password are for your personal use only. You may not reveal your login or password to anyone else or permit anyone to use your login or password to access the particular Service. You are responsible for maintaining the confidentiality and security of your login and password and accept responsibility for all activities that occur under your account or password. You must notify us immediately if the security of your login or password has been breached.

### **User Content**

The Services may provide message boards, blog feeds, news groups and/or other interactive tools to its users including links to third party websites, applications or third party “plug-ins.” You are solely responsible for the information, data, (including personal data), opinions, descriptions, photos, profiles, messages, “shouts”, comments, reviews, text, location information and all other content that you upload, publish, modify, or display on or through the Services or transmit to or share with us and other users (collectively the "**User Content**").

By uploading, publishing, modifying or displaying User Content to any part of the Services, you automatically grant, and you represent and warrant that you have the right to grant to us an irrevocable, perpetual, non-exclusive, transferable, fully-paid, worldwide license to use, copy, publicly perform, publicly display, reformat, translate, excerpt (in whole or in part), transmit, and distribute such User Content for any purpose on or in connection with the Services.

Furthermore, you represent and warrant that your User Content will not contain any material that:

- is false, inaccurate, or misleading; infringes any third party's copyright, patent, trademark, trade secret or other proprietary rights, or rights of publicity or privacy; or violates any law or regulation; is defamatory, constitutes trade libel or product disparagement, or is unlawfully threatening, harassing, or contains hate speech; is obscene or contains pornography; or
- contains any computer programming routines such as viruses, Trojan horses, time bombs, or other malicious code or programs that may damage or interfere with the operation of any system, or unlawfully intercept any data or personal information.

You understand and agree that we do not verify or vouch for any such content and if we determine in our sole discretion that any User Content is inaccurate, was posted or uploaded without authorization, or otherwise does or may violate these Terms or applicable laws, we reserve the right, at any time, without prior notice and without limiting any and all other rights we may have, at law or in equity, to (a) modify, refuse, or remove the User Content; (b) revoke the applicable user's right to use the Services; and/or (c) use any technological, legal, operational, or other means available to us to enforce the provisions of these Terms, including, without limitation, blocking specific IP addresses or deactivating the applicable user's registration.

### **Rules of Conduct**

In connection with your use of the Services, you will not: (i) transmit or communicate any data or information that is unlawful, harmful, false, misleading, threatening, abusive, harassing, stalking, defamatory, vulgar, obscene, invasive of another's privacy, hateful, or racially, ethnically or otherwise objectionable; (ii) upload or input to the Services any information which contains software viruses, or any computer code, files or programs designed to interrupt, destroy or limit the functionality of the Services, any computer software or hardware or telecommunications equipment; (iii) impersonate any person or entity or falsely state or otherwise misrepresent your affiliation with a person or entity; (iv) harm minors in any way; (v) forge headers or otherwise manipulate identifiers in order to disguise the origin of any content transmitted to other users; (vi) violate any applicable local, state, federal or international law and any regulations requirements, procedures or policies in force from time to time; (vii) use any automated means, including, without limitation, agents, robots, scripts, or spiders, to access, monitor, or copy any part of the Services; (viii) transmit, access or communicate any content that you do not have a right to transmit under any law or under contractual or fiduciary relationships (such as inside information, proprietary and confidential information learned or disclosed as part of employment relationships or under non-disclosure agreements); (ix) monitor traffic on the Services, obtain or accumulate personal information about individual users or collect or store personal data about other users; (x) modify, delete or damage any information contained on the mobile device or personal computer of any other users; (xi) infringe on the rights of any third party, including but not limited to trademark, copyright or the rights of publicity; (xii) use the Services in any manner that in our sole judgment, adversely affects the performance or function of the Services or interferes with the ability of other users or authorized parties to access the Services; or (xiii) undertake any acts not expressly permitted under the Terms. You warrant and represent that you undertake to use the Services only for purposes that are in strict compliance with (a) the Terms and the license granted hereunder, and (b) any applicable law, regulation or generally accepted practices or guidelines in the relevant jurisdictions (including any laws governing the export of data or software to and from the United States, your country of residence or other relevant countries) and you shall take no actions which would cause us to be in violation of any law, ruling or regulation applicable to it.

## **Copyright Infringement**

You are fully responsible for your User Content. If you submit User Content to the Services that you do not own or otherwise do not have the right to submit, you are responsible for any liability or obligation.

We respect the intellectual property rights of others, and require that people who use the Services do the same. It is our policy to respond to notices of alleged copyright infringement that comply with the Digital Millennium Copyright Act. If you believe in good faith that your copyright has been infringed, please write to us at the address provided below, providing at a minimum the following information:

- 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;
- A description specifying the location on our website of the material that you claim is infringing;
- Your email address and your mailing address and/or telephone number;
- A 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
- A statement by you, made under penalty of perjury, that the information in your notice is accurate and that you are the copyright owner or authorized to act on the copyright owner's behalf.

Please submit your notice to the following address:

Above the Noise Foundation Inc.  
P.O. Box 14  
Harrison, NY  
10528

## **Foundation Content**

All materials (excluding User Content) contained on, in, or available through the Services, including all information, data, text, sound, photographs, graphics, the selection and arrangement thereof, and all source code, software compilations, and other material ("**Foundation Content**") are protected by copyright and other intellectual property laws and may not be copied or imitated in whole or in part, unless as explicitly stated under these Terms. All trademarks, service marks, trade dress and other intellectual property rights, including but not limited to copyrights, neighboring rights, moral rights and mask works, and all derivative works thereof associated with the Services and the Foundation Content, whether registered or not, are our sole property or the property of our third-party partners, users or licensors. Foundation Content may also be protected as a collective work or compilation under U.S. copyright and other laws and treaties. You agree to abide by all applicable copyright and intellectual property laws. We do not convey, through allowing access to the Services, any ownership rights in the Services or in any Foundation Content. You may not modify, copy, distribute, frame, reproduce, republish, download, display, post, transmit, create derivative works from, or broadcast or circulate to any third party (including, without limitation, on or via a third-party web site), or otherwise use, any materials contained within the Services (except for your User Content) without our express prior written consent.

## **Third-Party Websites and Content**

From time to time, we may provide links to other websites for your information or convenience ("**Third-Party Sites**") as well as articles, photographs, text, graphics, pictures, designs, video, audio, information, mobile applications, "plug-ins", offers and other content or items belonging to or originating from third parties ("**Third-Party Applications or Content**"). These Third-Party Sites and Third-Party Applications

or Content operate independently from our Services and may be subject to alternative terms of use, including terms concerning use of your Personal Information (as defined in the Privacy Policy [<https://abovethenoisefoundation.org/privacy-policy>]). We have not reviewed these third-party websites and do not control and are not responsible for any of these websites, their content or their privacy policies. We do not endorse or make any representations about them, or any information, software, or other products or materials found there, or any results that may be obtained from using them. If you decide to access any of the Third-Party Sites or Third-Party Applications or Content linked from our Services, you do so at your own risk.

### **Restriction or Termination of Services**

We have the right to take any of the following actions in our sole discretion at any time and for any reason without giving you any prior notice:

- Restrict, deactivate, suspend, or terminate your access to the Services including deletion of your accounts and all related information and files in your account;
- Refuse, move, or remove for any reason any material that you submit on or through the Services;
- Refuse, move, or remove any material that is available on or through the Services;
- Establish general practices and limits concerning use of the Services.

We may take any of the above actions for any reason, as determined by us in our sole discretion, including, but not limited to, (a) breaches or violations of these Terms or other incorporated agreements or guidelines, (b) requests by law enforcement or other government agencies, (c) a request by you, (d) discontinuance or material modification to the Services (or any part thereof), and (e) unexpected technical or security issues or problems. You agree that we will not be liable to you or any third party for taking any of these actions.

Furthermore, we reserve the right at any time to change, modify, add to, discontinue, or retire any aspect or feature of the Services, including but not limited to availability of the Services on any particular device or communications service. We have no obligation to provide you with notice of any such changes, and we are under no obligation to provide you with any support, error corrections, updates, upgrades, bug fixes, and/or enhancements of the Services.

### **Indemnification**

You agree to defend, indemnify and hold us, our affiliates, partners, officers, directors and employees harmless from any and all claims, liabilities, costs and expenses, including reasonable attorneys' fees, arising in any way from your use of the Services in connection with any claim arising out of your use of the Services, any use or alleged use of your accounts or your passwords by any person, whether or not authorized by you, the content you submit, upload, post, transmit or make available through the Services, your violation or breach of any these Terms, your connection to the Services, or your violation of the rights of any other person or entity (collectively, "**Indemnified Matters**"). We shall control the defense of any Indemnified Matters.

### **DISCLAIMER**

THE SERVICES ARE PROVIDED "AS IS" AND "AS AVAILABLE," WITHOUT WARRANTY OF ANY KIND, EITHER EXPRESS OR IMPLIED. WITHOUT LIMITATION OF THE FOREGOING, WE SPECIFICALLY DISCLAIM, FOR THE AVOIDANCE OF DOUBT (ON OUR BEHALF, OUR SUBSIDIARIES, APP PROVIDERS AND/OR OUR AFFILIATES) ANY AND ALL WARRANTIES, INCLUDING, BUT NOT LIMITED TO ANY WARRANTIES: (i) CONCERNING THE AVAILABILITY, ACCURACY, SECURITY, USEFULNESS, INTEROPERABILITY, OR CONTENT

OF THE SERVICES; AND (ii) OF TITLE, WARRANTY OF NON-INFRINGEMENT, WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. THIS DISCLAIMER OF LIABILITY APPLIES TO ANY DAMAGES OR INJURY CAUSED BY THE SERVICES, INCLUDING WITHOUT LIMITATION AS A RESULT OF ANY FAILURE OF PERFORMANCE, ERROR, OMISSION, INTERRUPTION, DELETION, DEFECT, DELAY IN OPERATION OR TRANSMISSION, COMPUTER VIRUS, COMMUNICATION LINE FAILURE, THEFT OR DESTRUCTION OR UNAUTHORIZED ACCESS TO, ALTERATION OF, OR USE OF RECORD, WHETHER FOR BREACH OF CONTRACT, TORT, NEGLIGENCE, OR UNDER ANY OTHER CAUSE OF ACTION. WE DO NOT WARRANT OR GUARANTEE THAT (1) ALL UPDATES TO THE SERVICES SHALL BE PROVIDED WITH SIMILAR GRADES AND LEVELS OF SERVICE, FEATURES, FUNCTIONALITY AND THE ABILITY TO USE THE SERVICES, AND THAT (2) THE SERVICES (AND FOR LIMITATION OF DOUBT, OUR AFFILIATES), WILL BE UNINTERRUPTED, TIMELY, SECURE, OR ERROR-FREE OR THAT DEFECTS IN THE SERVICES WILL BE CORRECTED. WE DO NOT WARRANT THAT THE SERVICES WILL MEET YOUR REQUIREMENTS OR THAT OPERATION OF THE SERVICES WILL BE UNINTERRUPTED OR THAT THE SERVICES WILL OPERATE ERROR-FREE. YOU ASSUME THE ENTIRE RISK AS TO THE RESULTS AND PERFORMANCE OF THE SERVICES.

### **LIMITATION OF LIABILITY**

IN NO EVENT WILL WE OR ANY OTHER PARTY WHO HAS BEEN INVOLVED IN THE CREATION, PRODUCTION, DISTRIBUTION, PROMOTION, OR MARKETING OF THE SERVICES BE LIABLE TO YOU OR ANY OTHER PARTY FOR ANY SPECIAL, INDIRECT, INCIDENTAL, RELIANCE, EXEMPLARY, OR CONSEQUENTIAL DAMAGES, INCLUDING, WITHOUT LIMITATION, LOSS OF DATA OR PROFITS, OR FOR INABILITY TO USE THE SERVICES, EVEN IF WE OR SUCH OTHER PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. SUCH LIMITATION SHALL APPLY NOTWITHSTANDING ANY FAILURE OF ESSENTIAL PURPOSE OF ANY LIMITED REMEDY AND TO THE FULLEST EXTENT PERMITTED BY LAW. IN NO EVENT, SHALL OUR AGGREGATE LIABILITY TO YOU AND ANY OTHER PARTY, WHETHER DIRECT OR INDIRECT, EXCEED ONE HUNDRED DOLLARS (\$100.00) FOR ANY AND ALL CLAIMS, DAMAGES, AND ANY OTHER THEORIES OF LIABILITY.

SOME U.S. STATES DO NOT ALLOW, AND OTHER JURISDICTIONS MAY NOT ALLOW, THE LIMITATION OF LIABILITY, SO THE FORGOING DISCLAIMER MAY NOT APPLY TO YOU IF PROHIBITED BY APPLICABLE LAW.

### **NON-U.S. USERS**

**IF YOU ARE A USER ACCESSING THE SITE OR SERVICE FROM THE EUROPEAN UNION, ASIA, OR ANY OTHER REGION WITH LAWS OR REGULATIONS GOVERNING PERSONAL DATA COLLECTION, USE, AND DISCLOSURE THAT DIFFER FROM UNITED STATES LAWS, PLEASE BE ADVISED THAT THROUGH YOUR CONTINUED USE OF THE SERVICES, WHICH ARE GOVERNED BY UNITED STATES LAW, THIS PRIVACY POLICY, AND OUR TERMS, YOU ARE TRANSMITTING YOUR PERSONAL INFORMATION TO THE UNITED STATES AND YOU CONSENT TO THAT TRANSMISSION.**

**ADDITIONALLY, YOU UNDERSTAND THAT YOUR PERSONAL INFORMATION MAY BE TRANSMITTED TO AND PROCESSED IN COUNTRIES (INCLUDING THE UNITED STATES) WHERE LAWS REGARDING PROCESSING PERSONAL INFORMATION MAY BE LESS STRINGENT THAN IN YOUR COUNTRY.**

## **General**

These Terms, including the policies and other terms referenced herein, constitute the entire agreement between you and us governing your use of the Services, superseding any prior agreements.

You also may be subject to additional terms and conditions that may apply in Third-Party Sites and Third-Party Applications or Content.

You agree that these Terms and our rights hereunder may be assigned, in whole or in part, by us to any third party, in our sole discretion, including an assignment in connection with a merger, acquisition, reorganization or sale of substantially all of our assets, or otherwise, in whole or in part. You may not assign, sublicense, or delegate your rights hereunder.

The formation, construction and interpretation of these Terms shall be controlled by the laws of the State of New York, giving no effect to choice of law provisions. Any dispute relating to these Terms shall be subject to the exclusive jurisdiction of the state and federal courts in the State of New York, County of New York, U.S.A., and the parties agree to submit to the personal and exclusive jurisdiction of these courts.

You agree that, except as otherwise expressly provided in these Terms, there shall be no third-party beneficiaries to this Agreement.

The failure by us to exercise or enforce any right or provision of these Terms shall not constitute a waiver of such right or provision. If any provision of these Terms is found by a court of competent jurisdiction to be invalid, the parties nevertheless agree that the court should endeavor to give effect to the parties' intentions as reflected in the provision, and the other provisions of these Terms remain in full force and effect.

You agree that regardless of any statute or law to the contrary, any claim or cause of action arising out of or related to use of the Services or these Terms must be filed within one (1) year after such claim or cause of action arose or be forever barred.

## **Questions**

If you have any questions regarding these Terms or the Services, please contact us at [info@abovethenoisefoundation.org](mailto:info@abovethenoisefoundation.org).

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