

## [1 Introduction](#)

Thanks for choosing BEATiFY ("Beatify," "we," "us," "our"). Beatify provides personalized services with social and interactive features for streaming music and other content as well as other products and services that may be developed from time to time. By signing up or otherwise using any of these Beatify services, including all associated features and functionalities, websites and user interfaces, as well as all content and software applications associated with our services (collectively, the "Beatify Service" or "Service"), or accessing any music, videos or other content or material that is made available through the Service (the "Content") you are entering into a binding contract with HWY 11 Entertainment.

Your agreement with us includes these Terms and any additional terms that you agree to, as discussed in the [Entire Agreement](#) section below, other than terms with any third parties (collectively, the "Agreements"). The Agreements include terms regarding [future changes to the Agreements](#), [export controls](#), [automatic renewals](#), [limitations of liability](#), [privacy](#), [waiver of class actions](#), and [resolution of disputes by arbitration](#) instead of in court. If you wish to review the terms of the Agreements, the current effective version of the Agreements can be found on Beatify's website. You acknowledge that you have read and understood the Agreements, accept these Agreements, and agree to be bound by them. If you don't agree with (or cannot comply with) the Agreements, then you may not use the Beatify Service or access any Content.

In order to use the Beatify Service and access any Content, you need to (1) be 18 years or older, or be 13 years or older and have your parent or guardian's consent to the Agreements, (2) have the power to enter a binding contract with us and not be barred from doing so under any applicable international laws. You also promise that any registration information that you submit to Beatify is true, accurate, and complete, and you agree to keep it that way at all times.

## [2 Changes to the Agreements](#)

Occasionally we may make changes to the Agreements. When we make material changes to the Agreements, we'll provide you with notice as appropriate under the circumstances, e.g., by displaying a prominent notice within the Service or by sending you an email. In some cases, we will notify you in advance, and your continued use of the Service after the changes have been made will constitute your acceptance of the changes. Please therefore make sure you read any such notice carefully. If you do not wish to continue using the Service under the new version of the Agreements, you may terminate your account by [contacting us](#). If you received a Trial or a Paid Subscription through a third party, you must cancel the applicable Paid Subscription through such third party.

## [3 Enjoying BEATiFY](#)

Here's some information about all the ways you can enjoy BEATiFY.

### [3.1 Service Options](#)

You can find a description of our Service options on [our](#) website, and we will explain which Service options are available to you when you create a BEATiFY account. Certain options are provided to you free-of-charge. The BEATiFY Service that does not require payment is currently referred to as the "Free Service." Other options require payment before you can access them (the "Paid Subscriptions"). We may also offer special promotional plans, memberships, or services, including offerings of third-party products and services in conjunction with or through the BEATiFY Service. We are not responsible for the products and services provided by such third parties. We reserve the right to modify, terminate or otherwise amend our offered subscription plans and promotional offerings at any time in accordance with these Terms.

The Unlimited Service may not be available to all users. We will explain which services are available to you when you are signing up for the services. If you cancel your subscription to the Unlimited Service, or if your subscription to the Unlimited Service is interrupted (for example, if you change your payment details), you may not be able to re-subscribe for the Unlimited Service. Note that the Unlimited Service may be discontinued in the future, in which case you will no longer be charged for the Service.

If you have purchased or received a code, gift card, pre-paid offer or other offer provided or sold by or on behalf of BEATiFY for access to a Paid Subscription ("Code"), separate terms and conditions presented to you along with the Code may also apply to your access to the Service and you agree to comply with any such terms and conditions. You may also purchase access to a Paid Subscription through a third party. In such cases, separate terms and conditions with such third party in addition to the Agreements may apply to your access to the Service.

## [3.2 Trials](#)

From time to time, we or others on our behalf may offer trials of Paid Subscriptions for a specified period without payment or at a reduced rate (a "Trial"). BEATiFY may determine your eligibility for a Trial, and withdraw or modify a Trial at any time without prior notice and with no liability, to the extent permitted under applicable law.

For some Trials, we'll require you to provide your payment details to start the Trial. By providing such details you agree that we may automatically begin charging you for the Paid Subscription on the first day following the end of the Trial on a recurring monthly basis or another interval that we disclose to you in advance. **IF YOU DO NOT WANT THIS CHARGE, YOU MUST CANCEL THE APPLICABLE PAID SUBSCRIPTION BEFORE THE END OF THE TRIAL BY [CLICKING HERE](#) IF YOU SIGNED UP FOR THE TRIAL THROUGH BEATiFY, OR IF YOU RECEIVED YOUR TRIAL THROUGH A THIRD PARTY, YOU MUST CANCEL THE APPLICABLE PAID SUBSCRIPTION THROUGH THE THIRD PARTY.**

## [4 Payments and Cancellations](#)

### [4.1 Billing](#)

You may purchase a Paid Subscription directly from BEATiFY or through a third party either by (1) paying a subscription fee in advance on a monthly basis or some other recurring interval disclosed to you prior to your purchase; or (2) pre-payment giving you access to the BEATiFY Service for a specific time period ("Pre-Paid Period").

BEATiFY may change the price for the Paid Subscriptions, including recurring subscription fees, the Pre-Paid Period (for periods not yet paid), or Codes, from time to time and will communicate any price changes to you in advance and, if applicable, how to accept those changes. Price changes will take effect at the start of the next subscription period following the date of the price change. Subject to applicable law, you accept the new price by continuing to use the BEATiFY Service after the price change takes effect. If you do not agree with a price change, you have the right to reject the change by unsubscribing from the Paid Subscription prior to the price change going into effect.

#### [4.2 Renewal; Cancellation](#)

Unless your Paid Subscription has been purchased for a Pre-Paid Period, your payment to BEATiFY or the third party through which you purchased the Paid Subscription will automatically renew at the end of the applicable subscription period, unless you cancel your Paid Subscription before the end of the then-current subscription period by [clicking here](#) if you purchased the Paid Subscription through BEATiFY, or if you purchased the Paid Subscription through a third party, by canceling the Paid Subscription through such third party. The cancellation will take effect the day after the last day of the current subscription period, and you will be downgraded to the Free Service. We do not provide refunds or credits for any partial subscription periods.

If you have purchased a Paid Subscription using a Code, your subscription will automatically terminate at the end of the period stated in the Code, or when there is an insufficient pre-paid balance to pay for the Service. If you have purchased your Paid Subscription through a third party, you must cancel directly with that third party.

#### [5 Using our service](#)

The BEATiFY Service and the Content are the property of BEATiFY or BEATiFY's licensors. We grant you limited, non-exclusive, revocable permission to make use of the BEATiFY Service, and limited, non-exclusive, revocable permission to make personal, non-commercial use of the Content (collectively, "Access"). This Access shall remain in effect until and unless terminated by you or BEATiFY. You promise and agree that you are using the BEATiFY Service and Content for your own personal, non-commercial use and that you will not redistribute or transfer the BEATiFY Service or the Content.

The BEATiFY software applications and the Content are not sold or transferred to you, and BEATiFY and its licensors retain ownership of all copies of the BEATiFY software applications

and Content even after installation on your personal computers, mobile handsets, tablets, wearable devices, speakers and/or other devices ("Devices").

All BEATiFY trademarks, service marks, trade names, logos, domain names, and any other features of the BEATiFY brand ("BEATiFY Brand Features") are the sole property of BEATiFY or its licensors. The Agreements do not grant you any rights to use any BEATiFY Brand Features whether for commercial or non-commercial use.

You agree to abide by our [User guidelines](#) and not to use the BEATiFY Service, the Content, or any part thereof in any manner not expressly permitted by the Agreements. Except for the rights expressly granted to you in the Agreements, BEATiFY grants no right, title, or interest to you in the BEATiFY Service or Content.

Third party software (for example, open source software libraries) included in the BEATiFY Service are made available to you under the relevant third party software library's license terms as published in the help or settings section of our desktop and mobile client and/or on our website.

#### [6 Third Party Applications and Devices](#)

The BEATiFY Service is integrated with or may otherwise interact with third party applications, websites, and services ("Third Party Applications") and third party Devices to make the BEATiFY Service available to you. These Third Party Applications and Devices may have their own terms and conditions of use and privacy policies and your use of these Third Party Applications and Devices will be governed by and subject to such terms and conditions and privacy policies. You understand and agree that BEATiFY does not endorse and is not responsible or liable for the behavior, features, or content of any Third Party Application or Device or for any transaction you may enter into with the provider of any such Third Party Applications and Devices, nor does BEATiFY warrant the compatibility or continuing compatibility of the Third Party Applications and Devices with the Service.

#### [7 User-Generated Content](#)

BEATiFY users may post, upload, or otherwise contribute content to the Service (which may include, for example, pictures, text, messages, information, playlist titles, descriptions and compilations, and/or other types of content) ("User Content"). For the avoidance of doubt, "User Content" includes any such content posted to the BEATiFY Support Community as well as any other part of the BEATiFY Service.

You promise that, with respect to any User Content you post on BEATiFY, (1) you own or have the right to post such User Content, and (2) such User Content, or its use by BEATiFY as contemplated by the Agreements, does not violate the Agreements or any other rights set forth within the User guidelines, applicable law, or the intellectual property, publicity, personality, or other rights of others or imply any affiliation with or endorsement of you or your User Content

by BEATiFY or any artist, band, label, entity or individual without express written consent from BEATiFY or such individual or entity.

BEATiFY may, but has no obligation to, monitor, review, or edit User Content. In all cases, BEATiFY reserves the right to remove or disable access to any User Content for any or no reason, including User Content that, in BEATiFY 's sole discretion, violates the Agreements. BEATiFY may take these actions without prior notification to you or any third party. Removal or disabling of access to User Content shall be at our sole discretion, and we do not promise to remove or disable access to any specific User Content.

You are solely responsible for all User Content that you post. is not BEATiFY responsible for User Content nor does it endorse any opinion contained in any User Content. YOU AGREE THAT IF ANYONE BRINGS A CLAIM AGAINST BEATiFY RELATED TO USER CONTENT THAT YOU POST, THEN, TO THE EXTENT PERMISSIBLE UNDER LOCAL LAW, YOU WILL INDEMNIFY AND HOLD BEATiFY HARMLESS FROM AND AGAINST ALL DAMAGES, LOSSES, AND EXPENSES OF ANY KIND (INCLUDING REASONABLE ATTORNEY FEES AND COSTS) ARISING OUT OF SUCH CLAIM.

#### [8 Rights you grant us](#)

In consideration for the rights granted to you under the Agreements, you grant us the right (1) to allow the BEATiFY Service to use the processor, bandwidth, and storage hardware on your Device in order to facilitate the operation of the Service, (2) to provide advertising and other information to you, and (3) to allow our business partners to do the same. In any part of the BEATiFY Service, the Content you access, including its selection and placement, may be influenced by commercial considerations, including BEATiFY 's agreements with third parties. Some Content licensed by, provided to, created by or otherwise made available by BEATiFY (e.g. podcasts) may contain advertising as part of the Content. The BEATiFY Service makes such Content available to you unmodified.

If you provide feedback, ideas or suggestions to BEATiFY in connection with the BEATiFY Service or Content ("Feedback"), you acknowledge that the Feedback is not confidential and you authorize BEATiFY to use that Feedback without restriction and without payment to you. Feedback is considered a type of User Content.

You grant BEATiFY a non-exclusive, transferable, sub-licensable, royalty-free, perpetual, irrevocable, fully paid, worldwide license to use, reproduce, make available to the public (e.g. perform or display), publish, translate, modify, create derivative works from, and distribute any of your User Content in connection with the Service through any medium, whether alone or in combination with other Content or materials, in any manner and by any means, method or technology, whether now known or hereafter created. Aside from the rights specifically granted herein, you retain ownership of all rights, including intellectual property rights, in the User Content. Where applicable and permitted under applicable law, you also agree to waive and not enforce any "moral rights" or equivalent rights, such as your right to be identified as the

author of any User Content, including Feedback, and your right to object to derogatory treatment of such User Content.

## [9 User guidelines](#)

BEATiFY respects intellectual property rights and expects you to do the same. We've established a few ground rules for you to follow when using the Service, to make sure BEATiFY stays enjoyable for everyone. You must follow these rules and should encourage other users to do the same.

The following is not permitted for any reason whatsoever:

copying, redistributing, reproducing, "ripping," recording, transferring, performing or displaying to the public, broadcasting, or making available to the public any part of the BEATiFY Service or the Content, or otherwise making any use of the BEATiFY Service or the Content which is not expressly permitted under the Agreements or applicable law or which otherwise infringes the intellectual property rights (such as copyright) in the BEATiFY Service or the Content or any part of it;

using the BEATiFY Service to import or copy any local files that you do not have the legal right to import or copy in this way;

transferring copies of cached Content from an authorized Device to any other Device via any means;

reverse-engineering, decompiling, disassembling, modifying, or creating derivative works of the BEATiFY Service, Content or any part thereof except to the extent permitted by applicable law;

circumventing any technology used by BEATiFY, its licensors, or any third party to protect the Content or the Service;

selling, renting, sublicensing or leasing of any part of the BEATiFY Service or the Content;

circumventing any territorial restrictions applied by BEATiFY or its licensors;

artificially increasing play counts, follow counts or otherwise manipulating the Service by (i) using any bot, script or other automated process, (ii) providing or accepting any form of compensation (financial or otherwise), or (iii) any other means;

removing or altering any copyright, trademark, or other intellectual property notices contained on the Content or the Service or provided through the Service (including for the purpose of disguising or changing any indications of the ownership or source of any Content);

circumventing or blocking advertisements in the BEATiFY Service, or creating or distributing tools designed to block advertisements in the BEATiFY Service;

providing your password to any other person or using any other person's username and password;

"crawling" the BEATiFY Service or otherwise using any automated means (including bots, scrapers, and spiders) to view, access or collect information from BEATiFY or the BEATiFY Service;

selling a user account or playlist, or otherwise accepting or offering to accept any compensation, financial or otherwise, to influence the name of an account or playlist or the content included on an account or playlist; or

artificially promoting Content by automated means or otherwise.

Please respect BEATiFY, the owners of the Content, and other users of the BEATiFY Service. Don't engage in any activity, post any User Content, or register and/or use a username, which is or includes material that:

is offensive, abusive, defamatory, pornographic, threatening, or obscene;

is illegal, or intended to promote or commit an illegal act of any kind, including violations of intellectual property rights, privacy rights, or proprietary rights of BEATiFY or a third party;

includes your password or purposely includes any other user's password or purposely includes personal data of third parties or is intended to solicit such personal data;

includes malicious content such as malware, Trojan horses, or viruses, or otherwise interferes with any user's access to the Service;

is intended to or does harass or bully other users;

impersonates or misrepresents your affiliation with another user, person, or entity, or is otherwise fraudulent, false, deceptive, or misleading;

involves the transmission of unsolicited mass mailings or other forms of spam, junk mail, chain letters, or similar;

involves commercial or sales activities, such as advertising, promotions, contests, sweepstakes, or pyramid schemes, that are not expressly authorized by BEATiFY;

links to, references, or otherwise promotes commercial products or services, except as expressly authorized by BEATiFY;

interferes with or in any way disrupts the BEATiFY Service, tampers with, breaches, or attempts to probe, scan, or test for vulnerabilities in the Service or BEATiFY 's computer systems, network, usage rules, or any of BEATiFY 's security components, authentication measures or any other protection measures applicable to the Service, the Content or any part thereof; or

conflicts with the Agreements, as determined by BEATiFY.

You acknowledge and agree that posting any User Content that violates these User guidelines (or that BEATiFY reasonably believes violates these User guidelines) may result in immediate

termination or suspension of your BEATiFY account. You also agree that BEATiFY may reclaim your username for any reason.

Please be thoughtful about how you use the BEATiFY Service and what you share. The BEATiFY Service includes social and interactive features, including the ability to post User Content, share content, and make certain information about you public. Remember that shared or publicly available information may be used and re-shared by other users on BEATiFY or across the web, so please use BEATiFY carefully and be mindful of your account settings. BEATiFY has no responsibility for your choices to post material on the Service.

Your password protects your user account, and you are solely responsible for keeping your password confidential and secure. You understand that you are responsible for all use (including any unauthorized use) of your username and password on the Service. If your username or password is lost or stolen, or if you believe there has been unauthorized access to your account by a third party, you must notify us immediately and change your password as soon as possible.

#### [10 Infringement and reporting User Content](#)

BEATiFY respects the rights of intellectual property owners. If you believe that any Content infringes your intellectual property rights or other rights, see BEATiFY ['s copyright policy](#) If BEATiFY is notified by a copyright holder, using the forms provided by BEATiFY, that any Content infringes a copyright, BEATiFY may in its sole discretion remove such Content from the Service, or take other steps that BEATiFY deems appropriate, without prior notification to the user or other party who supplied or posted that Content. If such user or other party believes that the Content is not infringing, he or she may in certain circumstances submit a counter-notification to BEATiFY with a request to restore the removed content, which BEATiFY may or may not honor, in BEATiFY 's sole discretion.

If you believe that any Content does not comply with the [User guidelines](#), please fill out our [notice form](#).

#### [11 Service limitations and modifications](#)

BEATiFY will make reasonable efforts to keep the BEATiFY Service operational. However, certain technical difficulties, maintenance or testing, or updates required to reflect changes in relevant laws and regulatory requirements, may, from time to time, result in temporary interruptions. BEATiFY reserves the right, periodically and at any time, to modify or discontinue, temporarily or permanently, functions and features of the BEATiFY Service, with advance notice where possible, all without liability to you, except where prohibited by law, for any interruption, modification, or discontinuation of the BEATiFY Service or any function or feature thereof. Notwithstanding the foregoing, if you have prepaid fees to BEATiFY for Paid Subscriptions that BEATiFY permanently discontinues prior to the end of the Pre-Paid Period (defined in the [Payments and cancellations](#) section), BEATiFY will refund you the prepaid fees for the Pre-

Paid Period after such discontinuation. You understand, agree, and accept that BEATiFY will make reasonable efforts, although it has no obligation to maintain, support, upgrade, or update the Service, or to provide all or any specific content through the Service. BEATiFY and/or the owners of any Content may, from time to time, remove any such Content without notice. This section will be enforced to the extent permissible by applicable law.

## [12 Brand Accounts](#)

If you establish a BEATiFY account on behalf of a company, organization, entity, or brand (a "Brand," and such account a "Brand Account"), the terms "you" and "your," as used throughout the Agreements, apply to both you and the Brand.

If you create a Brand Account, you represent and warrant that you are authorized to grant all permissions and licenses provided in the Agreements and to bind the Brand to the Agreements.

A Brand may follow users and create and share playlists, provided that the Brand does not take any action that implies an endorsement or commercial relationship between the Brand and the followed user, artist, songwriter, or any other person, unless the Brand has independently obtained the rights to imply such an endorsement. In addition, Brands must be transparent to our users about disclosing any endorsements or consideration provided to artists, songwriters, users, or any other party and must comply with all applicable laws, regulations, and codes of practice when engaging in the foregoing practices.

## [13 BEATiFY Support Community](#)

The BEATiFY Support Community is a place for discussions and exchange of information, tips, and other materials related to the BEATiFY Service. By using the BEATiFY Support Community, you agree to the [Community Terms](#).

## [14 Customer support](#)

For customer support with account-related and payment-related questions ("Customer Support Queries"), please submit a ticket to our Customer Service department using the Customer Service [contact form](#) on the About Us section of our website. We will use reasonable endeavors to respond to all Customer Support Queries within a reasonable time frame but we make no promises that any Customer Support Queries will be responded to within any particular time frame and/or that we will be able to answer any such queries.

## [15 Export control](#)

BEATiFY's products may be subject to U.S. export and re-export control laws and regulations or similar laws applicable in other jurisdictions, including the Export Administration Regulations ("EAR") maintained by the U.S. Department of Commerce, trade and economic sanctions maintained by the Treasury Department's Office of Foreign Assets Control ("OFAC"), and the International Traffic in Arms Regulations ("ITAR") maintained by the Department of State. You warrant that you are (1) not located in any country to which the United States has embargoed

goods or has otherwise applied any economic sanctions; and (2) not a denied party as specified in any applicable export or re-export laws or regulations or similar laws applicable in other jurisdictions.

You agree to comply with all applicable export and reexport control laws and regulations, including the EAR, trade and economic sanctions maintained by OFAC, and the ITAR. Specifically, you agree that you shall not – directly or indirectly – sell, export, reexport, transfer, divert, or otherwise dispose of any products, software, or technology (including products derived from or based on such technology) received from BEATiFY under the Agreements to any destination, entity, or person prohibited by any applicable laws or regulations of the United States or any other jurisdiction without obtaining prior authorization from the competent government authorities as required by those laws and regulations.

#### [16 Term and termination](#)

The Agreements will continue to apply to you until terminated by either you or BEATiFY. However, you acknowledge and agree that the perpetual license granted by you in relation to User Content, including Feedback, is irrevocable and will therefore continue after expiry or termination of any of the Agreements for any reason. BEATiFY may terminate the Agreements or suspend your access to the BEATiFY Service at any time, including in the event of your actual or suspected unauthorized use of the BEATiFY Service and/or Content, or non-compliance with the Agreements, or if we withdraw Services and/or Content (in which case we shall provide you with reasonable notice in advance of doing so). If you or BEATiFY terminate the Agreements, or if BEATiFY suspends your access to the BEATiFY Service, you agree that BEATiFY shall have no liability or responsibility to you, and BEATiFY will not refund any amounts that you have already paid, to the fullest extent permitted under applicable law. You may terminate the Agreements at any time. To learn how to terminate your BEATiFY account, please contact us through the Customer Service [contact form](#) which is available on our About Us page. This section will be enforced to the extent permissible by applicable law.

Sections 7, 8, 9, 11, 15, 16, 17, 18, 19, 20, 21, 22, 23, and 24 herein, as well as any other sections of the Agreements that, either explicitly or by their nature, must remain in effect even after termination of the Agreements, shall survive termination.

#### [17 Warranty disclaimer](#)

YOU UNDERSTAND AND AGREE THAT THE BEATiFY SERVICE IS PROVIDED "AS IS" AND "AS AVAILABLE," WITHOUT EXPRESS OR IMPLIED WARRANTY OR CONDITION OF ANY KIND. BEATiFY AND ALL OWNERS OF THE CONTENT MAKE NO REPRESENTATIONS AND DISCLAIM ANY WARRANTIES OR CONDITIONS OF SATISFACTORY QUALITY, MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR NON-INFRINGEMENT. NEITHER BEATiFY NOR ANY OWNER OF CONTENT WARRANTS THAT THE BEATiFY SERVICE IS FREE OF MALWARE OR OTHER HARMFUL COMPONENTS. IN ADDITION, BEATiFY MAKES NO REPRESENTATION NOR DOES IT WARRANT, ENDORSE, GUARANTEE, OR ASSUME RESPONSIBILITY FOR ANY THIRD PARTY APPLICATIONS (OR

THE CONTENT THEREOF), USER CONTENT, DEVICES OR ANY OTHER PRODUCT OR SERVICE ADVERTISED, PROMOTED OR OFFERED BY A THIRD PARTY ON OR THROUGH THE BEATIFY SERVICE OR ANY HYPERLINKED WEBSITE, OR FEATURED IN ANY BANNER OR OTHER ADVERTISING AND BEATIFY IS NOT RESPONSIBLE OR LIABLE FOR ANY TRANSACTION BETWEEN YOU AND THIRD PARTY PROVIDERS OF THE FOREGOING. NO ADVICE OR INFORMATION WHETHER ORAL OR IN WRITING OBTAINED BY YOU FROM BEATIFY SHALL CREATE ANY WARRANTY ON BEHALF OF BEATIFY. WHILE USING THE BEATIFY SERVICE, YOU MAY HAVE ACCESS TO EXPLICIT CONTENT FILTERING FEATURES, BUT USE OF THESE FEATURES MAY STILL RESULT IN SOME EXPLICIT CONTENT BEING SERVED AND YOU SHOULD NOT RELY ON SUCH FEATURES TO FILTER ALL EXPLICIT CONTENT. THIS SECTION APPLIES TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW.

THIS SECTION DOES NOT AFFECT YOUR STATUTORY RIGHTS AS A CONSUMER.

#### [18 Limitation and time for filing](#)

YOU AGREE THAT YOUR SOLE AND EXCLUSIVE REMEDY FOR ANY PROBLEMS OR DISSATISFACTION WITH THE BEATIFY SERVICE IS TO UNINSTALL ANY BEATIFY SOFTWARE AND TO STOP USING THE BEATIFY SERVICE. YOU AGREE THAT BEATIFY HAS NO OBLIGATION OR LIABILITY ARISING FROM OR RELATED TO THIRD PARTY APPLICATIONS OR THE CONTENT THEREOF MADE AVAILABLE THROUGH OR IN CONNECTION WITH THE BEATIFY SERVICE, AND WHILE YOUR RELATIONSHIP WITH SUCH THIRD PARTY APPLICATIONS MAY BE GOVERNED BY SEPARATE AGREEMENTS WITH SUCH THIRD PARTIES, YOUR SOLE AND EXCLUSIVE REMEDY, AS WITH RESPECT TO BEATIFY, FOR ANY PROBLEMS OR DISSATISFACTION WITH THIRD PARTY APPLICATIONS OR THE CONTENT THEREOF, IS TO UNINSTALL AND/OR STOP USING ANY SUCH THIRD PARTY APPLICATIONS.

IN NO EVENT WILL BEATIFY, ITS OFFICERS, SHAREHOLDERS, EMPLOYEES, AGENTS, DIRECTORS, SUBSIDIARIES, AFFILIATES, SUCCESSORS, ASSIGNS, SUPPLIERS, OR LICENSORS BE LIABLE FOR (1) ANY INDIRECT, SPECIAL, INCIDENTAL, PUNITIVE, EXEMPLARY, OR CONSEQUENTIAL DAMAGES; (2) ANY LOSS OF USE, DATA, BUSINESS, OR PROFITS (WHETHER DIRECT OR INDIRECT), IN ALL CASES ARISING OUT OF THE USE OF OR INABILITY TO USE THE BEATIFY SERVICE, DEVICES THIRD PARTY APPLICATIONS, OR THIRD PARTY APPLICATION CONTENT, REGARDLESS OF LEGAL THEORY, WITHOUT REGARD TO WHETHER BEATIFY HAS BEEN WARNED OF THE POSSIBILITY OF THOSE DAMAGES, AND EVEN IF A REMEDY FAILS OF ITS ESSENTIAL PURPOSE; OR (3) AGGREGATE LIABILITY FOR ALL CLAIMS RELATING TO THE BEATIFY SERVICE, THIRD PARTY APPLICATIONS, OR THIRD PARTY APPLICATION CONTENT MORE THAN THE AMOUNTS PAID BY YOU TO BEATIFY DURING THE PRIOR TWELVE MONTHS IN QUESTION.

Nothing in the Agreements removes or limits BEATIFY's liability for fraud, fraudulent misrepresentation, death or personal injury caused by its negligence, and, if required by applicable law, gross negligence.

YOU AGREE THAT ANY CLAIM AGAINST BEATIFY MUST BE COMMENCED (BY FILING A DEMAND FOR ARBITRATION UNDER SECTION (24.2.1) OR FILING AN INDIVIDUAL ACTION UNDER SECTION (24.2.2) WITHIN ONE (1) YEAR AFTER THE DATE THE PARTY ASSERTING THE CLAIM FIRST KNOWS OR REASONABLY SHOULD KNOW OF THE ACT, OMISSION, OR DEFAULT GIVING RISE TO THE CLAIM; AND THERE SHALL BE NO RIGHT TO ANY REMEDY FOR ANY CLAIM NOT ASSERTED WITHIN THAT TIME PERIOD.

THIS SECTION APPLIES TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW.

#### [19 Third party rights](#)

You acknowledge and agree that the owners of the Content and certain distributors (such as app store providers) are intended beneficiaries of the Agreements and have the right to enforce the Agreements directly against you. Other than as set out in this section, the Agreements are not intended to grant rights to anyone except you and BEATiFY, and in no event shall the Agreements create any third party beneficiary rights. Furthermore, the rights to terminate, rescind, or agree to any variation, waiver, or settlement of the Agreements are not subject to the consent of any other person.

If you have downloaded the App from the Apple, Inc. ("Apple") App Store or if you are using the App on an iOS device, you acknowledge that you have read, understood, and agree to the following notice regarding Apple. This Agreement is between you and BEATiFY only, not with Apple, and Apple is not responsible for the Service and the content thereof. Apple has no obligation whatsoever to furnish any maintenance and support services with respect to the Service. In the event of any failure of the Service to conform to any applicable warranty, then you may notify Apple and Apple will refund any applicable purchase price for the App to you; and, to the maximum extent permitted by applicable law, Apple has no other warranty obligation whatsoever with respect to the Service. Apple is not responsible for addressing any claims by you or any third party relating to the Service or your possession and/or use of the Service, including: (1) product liability claims; (2) any claim that the Service fails to conform to any applicable legal or regulatory requirement; and (3) claims arising under consumer protection or similar legislation. Apple is not responsible for the investigation, defense, settlement and discharge of any third party claim that the Service and/or your possession and use of the App infringe that third party's intellectual property rights. You agree to comply with any applicable third party terms, when using the Service. Apple, and Apple's subsidiaries, are third party beneficiaries of this Agreement, and upon your acceptance of this Agreement, Apple will have the right (and will be deemed to have accepted the right) to enforce this Agreement against you as a third party beneficiary of this Agreement. You hereby represent and warrant that (1) you are not located in a country that is subject to a U.S. Government embargo, or that has been designated by the U.S. Government as a "terrorist supporting" country; and (2) you are not listed on any U.S. Government list of prohibited or restricted parties.

#### [20 Entire Agreement](#)

Other than as stated in this section or as explicitly agreed upon in writing between you and BEATiFY, the Agreements constitute all the terms and conditions agreed upon between you and BEATiFY and supersede any prior agreements in relation to the subject matter of these Agreements, whether written or oral.

Please note, however, that certain aspects of your use of the BEATiFY Service may be governed by additional agreements. That could include, for example, access to the BEATiFY Service as a result of a gift card, free or discounted Trials, or together with other services. When you are presented with an offer for such aspects of your use, you will be presented with any related additional agreement, and you may have an opportunity to agree to additional terms. Some of those additional terms are [listed on BEATiFY's website](#). To the extent that there is any irreconcilable conflict between any additional terms and these Terms, the additional terms shall prevail.

#### [21 Severability, waiver and interpretation](#)

Unless as otherwise stated in the Agreements, should any provision of the Agreements be held invalid or unenforceable for any reason or to any extent, such invalidity or enforceability shall not in any manner affect or render invalid or unenforceable the remaining provisions of the Agreements, and the application of that provision shall be enforced to the extent permitted by law.

Any failure by BEATiFY or any third party beneficiary to enforce the Agreements or any provision thereof shall not waive BEATiFY's or the applicable third party beneficiary's right to do so.

As used in these Terms, the words "include" and "including," and variations thereof, will be deemed to be followed by the words "without limitation."

#### [22 Assignment](#)

BEATiFY may assign the Agreements, and any of its rights under the Agreements, in whole or in part, and BEATiFY may delegate any of its obligations under the Agreements. You may not assign the Agreements, in whole or in part, nor transfer or sub-license your rights under the Agreements, to any third party.

#### [23 Indemnification](#)

You agree to indemnify and hold BEATiFY harmless from and against all damages, losses, and expenses of any kind (including reasonable attorney fees and costs) arising out of or related to: (1) your breach of the Agreements or any one of them; (2) any User Content you post or otherwise contribute; (3) any activity in which you engage on or through the BEATiFY Service; and (4) your violation of any law or the rights of a third party.

#### [24 Choice of law, mandatory arbitration, and venue](#)

## [24.1 Governing Law / Jurisdiction](#)

The Agreements (and any non-contractual disputes/claims arising out of or in connection with them) are subject to the laws of the state of Ontario, Canada without regard to choice or conflicts of law principles.

Further, you and BEATiFY agree to the jurisdiction of the Ontario to resolve any dispute, claim, or controversy that relates to or arises in connection with the Agreements (and any non-contractual disputes/claims relating to or arising in connection with them) and is not subject to mandatory arbitration under Section 24.2.1.

## [24.2 ARBITRATION AGREEMENT](#)

*This Arbitration Agreement applies only to users in the United States.*

### [24.2.1 Dispute resolution and arbitration](#)

You and BEATiFY agree that any dispute, claim, or controversy between you and BEATiFY arising in connection with or relating in any way to these Agreements or to your relationship with BEATiFY as a user of the Service (whether based in contract, tort, statute, fraud, misrepresentation, or any other legal theory, and whether the claims arise during or after the termination of the Agreements) will be determined by mandatory binding individual (not class) arbitration. You and BEATiFY further agree that the arbitrator shall have the exclusive power to rule on his or her own jurisdiction, including any objections with respect to the existence, scope or validity of the Arbitration Agreement or to the arbitrability of any claim or counterclaim. Arbitration is more informal than a lawsuit in court. THERE IS NO JUDGE OR JURY IN ARBITRATION, AND COURT REVIEW OF AN ARBITRATION AWARD IS LIMITED. There may be more limited discovery than in court. The arbitrator must follow this agreement and can award the same damages and relief as a court (including attorney fees), except that the arbitrator may not award any relief, including declaratory or injunctive relief, benefiting anyone but the parties to the arbitration. This arbitration provision will survive termination of the Agreements.

### [24.2.2 Exceptions](#)

Notwithstanding the clause above (24.2.1), you and BEATiFY both agree that nothing in this Arbitration Agreement will be deemed to waive, preclude, or otherwise limit either of our rights, at any time, to (1) bring an individual action in a U.S. small claims court or (2) bring an individual action seeking only temporary or preliminary individualized injunctive relief in a court of law, pending a final ruling from the arbitrator. In addition, this Arbitration Agreement doesn't stop you or us from bringing issues to the attention of federal, state, or local agencies. Such agencies can, if the law allows, seek relief against us on your behalf (or vice versa).

### [24.2.3 No Class Or Representative Proceedings: Class Action Waiver](#)

YOU AND BEATiFY AGREE THAT EACH MAY BRING CLAIMS AGAINST THE OTHER ONLY IN YOUR OR ITS INDIVIDUAL CAPACITY AND NOT AS A PLAINTIFF OR CLASS MEMBER IN ANY PURPORTED

CLASS OR REPRESENTATIVE ACTION. Unless both you and BEATiFY agree, no arbitrator or judge may consolidate more than one person's claims or otherwise preside over any form of a representative or class proceeding. The arbitrator may award injunctive relief only in favor of the individual party seeking relief and only to the extent necessary to provide relief warranted by that party's individual claim. If a court decides that applicable law precludes enforcement of any of this paragraph's limitations as to a particular claim for relief, then that claim (and only that claim) must be severed from the arbitration and may be brought in court.

#### [24.2.4 Arbitration rules](#)

Either you or we may start arbitration proceedings. Any arbitration between you and BEATiFY will take place under the Consumer Arbitration Rules of the American Arbitration Association ("AAA") then in force (the "AAA Rules"), as modified by this Arbitration Agreement. You and BEATiFY agree that the Federal Arbitration Act applies and governs the interpretation and enforcement of this provision (despite the choice of law provision above). The AAA Rules, as well as instructions on how to file an arbitration proceeding with the AAA, appear at [adr.org](http://adr.org), or you may call the AAA at 1-800-778-7879. BEATiFY can also help put you in touch with the AAA.

Any arbitration hearings will take place in the county (or parish) of your billing address, provided that if the claim is for \$25,000 or less, you may choose whether the arbitration will be conducted (1) solely on the basis of documents submitted to the arbitrator; (2) through a non-appearance based telephonic hearing; or (3) by an in-person hearing as established by the AAA Rules in the county (or parish) of your billing address.

If you choose to file an arbitration proceeding and you are required to pay a filing fee, BEATiFY will reimburse you for that filing fee, unless your claim is for greater than US \$10,000, in which case you will be responsible for the filing fee. BEATiFY will pay any other arbitration fees, including your share of arbitrator compensation, unless otherwise required by AAA rules or court order. Regardless of the manner in which the arbitration is conducted, the arbitrator shall issue a reasoned written decision sufficient to explain the essential findings and conclusions on which the decision and award, if any, are based. The arbitrator may make rulings and resolve disputes as to the payment and reimbursement of fees or expenses at any time during the proceeding and upon request from either party made within 14 days of the arbitrator's ruling on the merits.

#### [24.2.5 Notice; Process](#)

A party who intends to seek arbitration must first send a written notice of the dispute to the other, by certified mail, Federal Express, UPS, or Express Mail (signature required), or in the event that we do not have a physical address on file for you, by electronic mail ("NoticeWe agree to use good faith efforts to resolve the claim directly, but if we do not reach an agreement to do so within 30 days after the Notice is received, you or BEATiFY may commence an arbitration proceeding. During the arbitration, the amount of any settlement offer made by you or BEATiFY shall not be disclosed to the arbitrator until after the arbitrator makes a final

decision and award, if any. In the event our dispute is finally resolved through arbitration in your favor, and the arbitrator issues you an award that is greater than the value of BEATiFY's last written settlement offer, then BEATiFY will instead pay you either the amount of the award or \$1,000, whichever is greater. All documents and information disclosed in the course of the arbitration shall be kept strictly confidential by the recipient and shall not be used by the recipient for any purpose other than for purposes of the arbitration or the enforcement of the arbitrator's decision and award and shall not be disclosed except in confidence to persons who have a need to know for such purposes or as required by applicable law.

#### [24.2.6 Enforceability](#)

If this Arbitration Agreement is invalidated in whole or in part, the parties agree that the exclusive jurisdiction and venue described in Section 24.1 shall govern any claim in court arising out of or related to the Agreements.

#### [25 Contact us](#)

If you have any questions concerning the BEATiFY Service or the Agreements, please contact BEATiFY Customer Service by visiting the About Us section of our website.