

**NEXTROUND  
TERMS OF SERVICE**

Last updated 5/10/2021

**Welcome to NextRound!**

The SSC Group, Inc. d.b.a. NextRound (“NextRound,” “we,” “us,” “our”) provides its services (described below) to you through its website located at [www.Nextround.com](http://www.Nextround.com) (the “Site”) and through its mobile applications and related services (collectively, such services, including any new features and applications, and the Site, the “Service(s)”), subject to the following Terms of Service (as amended from time to time, the “Terms of Service”). We reserve the right, at our sole discretion, to change or modify portions of these Terms of Service at any time. If we do this, we will post the changes on this page and will indicate at the top of this page the date these terms were last revised. We will also notify you, either through the Services user interface, in an email notification or through other reasonable means. Any such changes will become effective no earlier than fourteen (14) days after they are posted, except that changes addressing new functions of the Services or changes made for legal reasons will be effective immediately. Your continued use of the Service after the date any such changes become effective constitutes your acceptance of the new Terms of Service.

***PLEASE READ THESE TERMS OF SERVICE CAREFULLY, AS THEY CONTAIN AN AGREEMENT TO ARBITRATE AND OTHER IMPORTANT INFORMATION REGARDING YOUR LEGAL RIGHTS, REMEDIES, AND OBLIGATIONS. THE AGREEMENT TO ARBITRATE REQUIRES (WITH LIMITED EXCEPTION) THAT YOU SUBMIT CLAIMS YOU HAVE AGAINST US TO BINDING AND FINAL ARBITRATION, AND FURTHER (1) YOU WILL ONLY BE PERMITTED TO PURSUE CLAIMS AGAINST COMPANY ON AN INDIVIDUAL BASIS, NOT AS A PLAINTIFF OR CLASS MEMBER IN ANY CLASS OR REPRESENTATIVE ACTION OR PROCEEDING, (2) YOU WILL ONLY BE PERMITTED TO SEEK RELIEF (INCLUDING MONETARY, INJUNCTIVE, AND DECLARATORY RELIEF) ON AN INDIVIDUAL BASIS, AND (3) YOU MAY NOT BE ABLE TO HAVE ANY CLAIMS YOU HAVE AGAINST US RESOLVED BY A JURY OR IN A COURT OF LAW.***

In addition, when using certain services, you will be subject to any additional terms applicable to such services that may be posted on the Service from time to time, including, without limitation, the Privacy Policy located at <http://www.nextroundgifts.com>. All such terms are hereby incorporated by reference into these Terms of Service.

**Access and Use of the Service**

**Services Description:** The Service is designed to allow you to send gifts (in the form of cash) to purchase beverages, among other items, to friends located anywhere and for you and/or your friends to receive gifts. The beverages are merely pictorial descriptions and do not constitute the actual sale of alcohol in any way. The recipient’s decision to use the cash to purchase alcohol is at his or her sole discretion and risk, as the cash transferred can be used for any purpose.

**Age Requirements:** You agree to provide and maintain true, accurate, current and complete information about yourself as prompted by the Service. Our collection and use of such data and certain other information about you are governed by our Privacy Policy. The service is intended for use by individuals over the age of 21. If you are under 21 years of age, you are not authorized to use the Service. By using this Service you are representing that you are at least 21 years of age and that the person receiving the gift is also at least 21 years of age.

**Your Registration Obligations:** You may be required to register with NextRound in order to access and use certain features of the Service. If you choose to register for the Service, you agree to provide and maintain true, accurate, current and complete information about yourself as prompted by the Service’s registration form. Registration data and certain other information about you are governed by our Privacy Policy.

**Member Account, Password and Security:** You are responsible for maintaining the confidentiality of your password and account, if any, and are fully responsible for any and all activities that occur under your password or account. You agree to (a) immediately notify NextRound of any unauthorized use of your password or account or any other breach of security, and (b) ensure that you exit from your account at the end of each session when accessing the Service. NextRound will not be liable for any loss or damage arising from your failure to comply with this Section.

**Modifications to Service:** NextRound reserves the right to modify or discontinue, temporarily or permanently, the Service (or any part thereof) with or without notice. You agree that NextRound will not be liable to you or to any third party for any modification, suspension or discontinuance of the Service.

**General Practices Regarding Use and Storage:** You acknowledge that NextRound may establish general practices and limits concerning use of the Service, including without limitation the maximum period of time that data or other content will be retained by the Service and the maximum storage space that will be allotted on NextRound's servers on your behalf. You agree that NextRound has no responsibility or liability for the deletion or failure to store any data or other content maintained or uploaded by the Service. You acknowledge that NextRound reserves the right to terminate accounts that are inactive for an extended period of time. You further acknowledge that NextRound reserves the right to change these general practices and limits at any time, in its sole discretion, with or without notice.

**Mobile Services:** The Service includes certain services that are available via a mobile device, including (i) the ability to upload content to the Service via a mobile device, (ii) the ability to browse the Service and the Site from a mobile device and (iii) the ability to access certain features through an application downloaded and installed on a mobile device (collectively, the "Mobile Services"). To the extent you access the Service through a mobile device, your wireless service carrier's standard charges, data rates and other fees may apply. In addition, downloading, installing, or using certain Mobile Services may be prohibited or restricted by your carrier, and not all Mobile Services may work with all carriers or devices. By using the Mobile Services, you agree that we may communicate with you regarding NextRound and other entities by SMS, MMS, text message or other electronic means to your mobile device and that certain information about your usage of the Mobile Services may be communicated to us. In the event you change or deactivate your mobile telephone number, you agree to promptly update your NextRound account information to ensure that your messages are not sent to the person that acquires your old number.

By registering for and using NextRound and providing your contact information, you are consenting to be contacted by NextRound or any of its business partners by telephone, automated calling, pre-recorded calling, text message, email, fax, telephone or any means, even if you have opted in to the National Do Not Call List, any state equivalent Do Not Call List or the internal Do Not Call List of any company. In the event you no longer want to receive communications from NextRound or its business partners, you agree to notify NextRound or its business partner directly. You can opt-out of various contact methods using the in app notification options in settings.

By using NextRound to make food and beverage gifts to others, you understand and agree that you will initiate and cause a text message containing the text you provide and the gift you select to be sent to the recipient you designate at the telephone number you provide to NextRound or its business partners, and represent and warrant to NextRound and its business partners that you have the recipient's consent or permission to text him or her at the number you provide. You also understand and agree that you are solely responsible for the text message, the content of the text message, and selecting the recipient of the text message and providing his or number.

## **Conditions of Use**

**User Conduct:** You are solely responsible for all code, video, images, information, data, text, software, music, sound, photographs, graphics, messages or other materials ("content") that you upload, post, publish or display (hereinafter, "upload") or email or otherwise use via the Service. The following are examples of the kind of content and/or use that is illegal or prohibited by NextRound. NextRound reserves the right to investigate and take appropriate legal action against anyone who, in NextRound's sole

discretion, violates this provision, including without limitation, removing the offending content from the Service, suspending or terminating the account of such violators and reporting you to the law enforcement authorities. You agree to not use the Service to:

- a) email or otherwise upload any content that (i) infringes any intellectual property or other proprietary rights of any party; (ii) you do not have a right to upload under any law or under contractual or fiduciary relationships; (iii) contains software viruses or any other computer code, files or programs designed to interrupt, destroy or limit the functionality of any computer software or hardware or telecommunications equipment; (iv) poses or creates a privacy or security risk to any person; (v) constitutes unsolicited or unauthorized advertising, promotional materials, commercial activities and/or sales, "junk mail," "spam," "chain letters," "pyramid schemes," "contests," "sweepstakes," or any other form of solicitation; (vi) is unlawful, harmful, threatening, abusive, harassing, tortious, excessively violent, defamatory, vulgar, obscene, pornographic, libelous, invasive of another's privacy, hateful racially, ethnically or otherwise objectionable; or (vii) in the sole judgment of NextRound, is objectionable or which restricts or inhibits any other person from using or enjoying the Service, or which may expose NextRound or its users to any harm or liability of any type;
- b) interfere with or disrupt the Service or servers or networks connected to the Service, or disobey any requirements, procedures, policies or regulations of networks connected to the Service; or
- c) violate any applicable local, state, national or international law, or any regulations having the force of law;
- d) impersonate any person or entity, or falsely state or otherwise misrepresent your affiliation with a person or entity;
- e) solicit personal information from anyone under the age of 18;
- f) harvest or collect email addresses or other contact information of other users from the Service by electronic or other means for the purposes of sending unsolicited emails or other unsolicited communications;
- g) advertise or offer to sell or buy any goods or services for any business purpose that is not specifically authorized;
- h) further or promote any criminal activity or enterprise or provide instructional information about illegal activities; or
- i) obtain or attempt to access or otherwise obtain any materials or information through any means not intentionally made available or provided for through the Service.

**Payment:** You are fully responsible for all Service(s) you purchase or all gifts you receive. Payment processing services for the Service is provided by Stripe and are subject to the [Stripe Connected Account Agreement](#), which includes the [Stripe Terms of Service](#) (collectively, the "Stripe Services Agreement"). By agreeing to these Terms of Service or continuing to use the Service, you agree to be bound by the Stripe Services Agreement, as the same may be modified by Stripe from time to time. As a condition of NextRound enabling payment processing services through Stripe, you agree to provide NextRound accurate and complete information about you, and you authorize NextRound to share it and transaction information related to your use of the payment processing services provided by Stripe.

Stripe will initiate payment collected from you (less NextRound's commission, applicable fees and taxes). Please note that Company cannot control any fees that may be charged to you by his or her bank related to Stripe's collection or disbursement of such payment, and NextRound disclaims all liability in this regard.

When you arrange for a Service, all charges and any additional fees payable to NextRound will be charged to the credit card or other payment instrument associated with your Stripe account. You agree to pay NextRound the amount that is specified in the payment plan in accordance with the terms of such plan and this Terms of Service. If you dispute any charges you must let NextRound know within thirty (30) days after the date that NextRound invoices you. We reserve the right to change NextRound's service fees. Your continued use of the Service after the price change becomes effective constitutes your agreement to pay the changed amount. You shall be responsible for all taxes associated with the Service other than U.S. taxes based on Company's net income.

**Special Notice for International Use; Export Controls:** Software (defined below) available in connection with the Service and the transmission of applicable data, if any, is subject to United States export controls. No Software may be downloaded from the Service or otherwise exported or re-exported in violation of U.S. export laws. Downloading or using the Software is at your sole risk. Recognizing the global nature of the Internet, you agree to comply with all local rules and laws regarding your use of the Service, including as it concerns online conduct and acceptable content.

**Commercial Use:** Unless otherwise expressly authorized herein or in the Service, you agree not to display, distribute, license, perform, publish, reproduce, duplicate, copy, create derivative works from, modify, sell, resell, exploit, transfer or upload for any commercial purposes, any portion of the Service, use of the Service, or access to the Service. The Service is for your personal use.

### **Third Party Distribution Channels**

NextRound offers Software applications that may be made available through the Apple App Store, Android Marketplace or other distribution channels (“Distribution Channels”). If you obtain such Software through a Distribution Channel, you may be subject to additional terms of the Distribution Channel. These Terms of Service are between you and us only, and not with the Distribution Channel. To the extent that you utilize any other third party products and services in connection with your use of our Services, you agree to comply with all applicable terms of any agreement for such third party products and services.

With respect to Software that is made available for your use in connection with an Apple-branded product (such Software, “Apple-Enabled Software”), in addition to the other terms and conditions set forth in these Terms of Service, the following terms and conditions apply:

- NextRound and you acknowledge that these Terms of Service are concluded between NextRound and you only, and not with Apple Inc. (“Apple”), and that as between NextRound and Apple, NextRound, not Apple, is solely responsible for the Apple-Enabled Software and the content thereof.
- You may not use the Apple-Enabled Software in any manner that is in violation of or inconsistent with the Usage Rules set forth for Apple-Enabled Software in, or otherwise be in conflict with, the App Store Terms of Service.
- Your license to use the Apple-Enabled Software is limited to a non-transferable license to use the Apple-Enabled Software on an iOS Product that you own or control, as permitted by the Usage Rules set forth in the App Store Terms of Service.
- Apple has no obligation whatsoever to provide any maintenance or support services with respect to the Apple-Enabled Software.
- Apple is not responsible for any product warranties, whether express or implied by law. In the event of any failure of the Apple-Enabled Software to conform to any applicable warranty, you may notify Apple, and Apple will refund the purchase price for the Apple-Enabled Software to you, if any; and, to the maximum extent permitted by applicable law, Apple will have no other warranty obligation whatsoever with respect to the Apple-Enabled Software, or any other claims, losses, liabilities, damages, costs or expenses attributable to any failure to conform to any warranty, which will be Nextround’s sole responsibility, to the extent it cannot be disclaimed under applicable law.
- NextRound and you acknowledge that NextRound, not Apple, is responsible for addressing any claims of you or any third party relating to the Apple-Enabled Software or your possession and/or use of that Apple-Enabled Software, including, but not limited to: (i) product liability claims; (ii) any claim that the Apple-Enabled Software fails to conform to any applicable legal or regulatory requirement; and (iii) claims arising under consumer protection or similar legislation.
- In the event of any third party claim that the Apple-Enabled Software or the end-user’s possession

and use of that Apple-Enabled Software infringes that third party's intellectual property rights, as between NextRound and Apple, NextRound, not Apple, will be solely responsible for the investigation, defense, settlement and discharge of any such intellectual property infringement claim.

- You represent and warrant that (i) 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 (ii) you are not listed on any U.S. Government list of prohibited or restricted parties.
- If you have any questions, complaints or claims with respect to the Apple-Enabled Software, they should be directed to NextRound at info@nextroundgifts.com.

NextRound and you acknowledge and agree that Apple, and Apple's subsidiaries, are third party beneficiaries of these Terms of Service with respect to the Apple-Enabled Software, and that, upon your acceptance of the terms and conditions of these Terms of Service, Apple will have the right (and will be deemed to have accepted the right) to enforce these Terms of Service against you with respect to the Apple-Enabled Software as a third party beneficiary thereof.

### **Intellectual Property Rights**

**Service Content, Software and Trademarks:** You acknowledge and agree that the Service may contain content or features ("Service Content") that are protected by copyright, patent, trademark, trade secret or other proprietary rights and laws. Except as expressly authorized by NextRound, you agree not to modify, copy, frame, scrape, rent, lease, loan, sell, distribute or create derivative works based on the Service or the Service Content, in whole or in part, that you legally upload to the Service. In connection with your use of the Service you will not engage in or use any data mining, robots, scraping or similar data gathering or extraction methods. If you are blocked by NextRound from accessing the Service (including by blocking your IP address), you agree not to implement any measures to circumvent such blocking (e.g., by masking your IP address or using a proxy IP address). Any use of the Service or the Service Content other than as specifically authorized herein is strictly prohibited. The technology and software underlying the Service or distributed in connection therewith are the property of NextRound, our affiliates and our partners (the "Software"). You agree not to copy, modify, create a derivative work of, reverse engineer, reverse assemble or otherwise attempt to discover any source code, sell, assign, sublicense, or otherwise transfer any right in the Software. Any rights not expressly granted herein are reserved by NextRound.

The NextRound name and logos are trademarks and service marks of NextRound (collectively the "NextRound Trademarks"). Other company, product, and service names and logos used and displayed via the Service may be trademarks or service marks of their respective owners who may or may not endorse or be affiliated with or connected to NextRound. Nothing in this Terms of Service or the Service should be construed as granting, by implication, estoppel, or otherwise, any license or right to use any of NextRound Trademarks displayed on the Service, without our prior written permission in each instance. All goodwill generated from the use of NextRound Trademarks will inure to our exclusive benefit.

### **Indemnity and Release**

You agree to release, indemnify and hold NextRound and its affiliates and their officers, employees, directors and agents (collectively, "Indemnitees") harmless from any from any and all losses, damages, expenses, including reasonable attorneys' fees, rights, claims, actions of any kind and injury (including death) arising out of or relating to your use of the Service, your connection to the Service, your violation of these Terms of Service or your violation of any rights of another. Notwithstanding the foregoing, you will have no obligation to indemnify or hold harmless any Indemnitee from or against any liability, losses, damages or expenses incurred as a result of any action or inaction of such Indemnitee. If you are a California resident, you waive California Civil Code Section 1542, which says: "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." If you are a resident of another jurisdiction, you waive any comparable statute or doctrine.

### **Disclaimer of Warranties**

YOUR USE OF THE SERVICE IS AT YOUR SOLE RISK. THE SERVICE IS PROVIDED ON AN "AS IS" AND "AS AVAILABLE" BASIS. NEXTROUND EXPRESSLY DISCLAIMS ALL WARRANTIES OF ANY KIND, WHETHER EXPRESS, IMPLIED OR STATUTORY, INCLUDING, BUT NOT LIMITED TO THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE AND NON-INFRINGEMENT.

NEXTROUND MAKES NO WARRANTY THAT (I) THE SERVICE WILL MEET YOUR REQUIREMENTS, (II) THE SERVICE WILL BE UNINTERRUPTED, TIMELY, SECURE, OR ERROR-FREE, (III) THE RESULTS THAT MAY BE OBTAINED FROM THE USE OF THE SERVICE WILL BE ACCURATE OR RELIABLE, (IV) THE QUALITY OF ANY PRODUCTS, SERVICES, INFORMATION, OR OTHER MATERIAL PURCHASED OR OBTAINED BY YOU THROUGH THE SERVICE WILL MEET YOUR EXPECTATIONS (V) ANY FOOD, BEVERAGE, GIFT OR OTHERWISE PROVIDED BY A MERCHANT, OR (VI) ANY DEATH, PERSONAL INJURY OR PROPERTY DAMAGE ARISING FROM NEGLIGENCE OR MISCONDUCT, INCLUDING UNDERAGE DRINKING, INTOXICATION, OR OPERATION OF A VEHICLE AFTER BEING SERVED ALCOHOL.

### **Limitation of Liability**

YOU EXPRESSLY UNDERSTAND AND AGREE THAT NEXTROUND WILL NOT BE LIABLE FOR ANY INDIRECT, INCIDENTAL, SPECIAL, CONSEQUENTIAL, EXEMPLARY DAMAGES, OR DAMAGES FOR LOSS OF PROFITS INCLUDING BUT NOT LIMITED TO, DAMAGES FOR LOSS OF GOODWILL, USE, DATA OR OTHER INTANGIBLE LOSSES (EVEN IF NEXTROUND HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES), WHETHER BASED ON CONTRACT, TORT, NEGLIGENCE, STRICT LIABILITY OR OTHERWISE, RESULTING FROM: (I) THE USE OR THE INABILITY TO USE THE SERVICE; (II) THE COST OF PROCUREMENT OF SUBSTITUTE GOODS AND SERVICES RESULTING FROM ANY GOODS, DATA, INFORMATION OR SERVICES PURCHASED OR OBTAINED OR MESSAGES RECEIVED OR TRANSACTIONS ENTERED INTO THROUGH OR FROM THE SERVICE; (III) UNAUTHORIZED ACCESS TO OR ALTERATION OF YOUR TRANSMISSIONS OR DATA; (IV) STATEMENTS OR CONDUCT OF ANY THIRD PARTY ON THE SERVICE; OR (V) ANY OTHER MATTER RELATING TO THE SERVICE. IN NO EVENT WILL NEXTROUND'S TOTAL LIABILITY TO YOU FOR ALL DAMAGES, LOSSES OR CAUSES OF ACTION EXCEED THE AMOUNT YOU HAVE PAID NEXTROUND IN THE LAST SIX (6) MONTHS, OR, IF GREATER, ONE HUNDRED DOLLARS (\$100). YOU UNDERSTAND THAT THE SERVICES DO NOT INCLUDE AN ACTUAL SALE OF ALCOHOL, BUT MERELY ARE A PITCORAL REPRESENTATION. THE CASH THAT IS TRANSFERRED MAY BE USED BY THE RECIPIENT FOR ANY PURPOSE. IT IS THE SOLE AND EXCLUSIVE RESPONSIBILITY OF THE RECIPIENT (AND ANY THIRD PARTY FROM WHICH BEVERAGES ARE PURCHASED)\_TO ENSURE THAT ANY ACTUAL PURCHASE OF ALCOHOL BY THE RECIPIENT COMPLIES WITH ALL APPLICABLE LAWS REGARDING THE SALE OF APPLICABLE AND THAT HE/SHE IS OF LEGAL AGE TO PURCHASE ALCOHOLIC BEVERAGES. NEXTROUND BEARS NO LIABILITY OR RESPONSIBILITY RELATED THERETO. NEXTROUND HAS NO LIABILITY WHATSOEVER TO ANY RECIPIENT OR PURCHASER OF ITS SERVICES AND MAKES NO REPRESENTATIONS AS TO THE LEGALITY OF ANY ULTIMATE SALE OF ALCOHOL THAT ANY USER OF THE SERVICE CHOOSES TO MAKE.

SOME JURISDICTIONS DO NOT ALLOW THE DISCLAIMER OR EXCLUSION OF CERTAIN WARRANTIES OR THE LIMITATION OR EXCLUSION OF LIABILITY FOR INCIDENTAL OR CONSEQUENTIAL DAMAGES. ACCORDINGLY, SOME OF THE ABOVE LIMITATIONS SET FORTH ABOVE MAY NOT APPLY TO YOU OR BE ENFORCEABLE WITH RESPECT TO YOU. IF YOU ARE DISSATISFIED WITH ANY PORTION OF THE SERVICE OR WITH THESE TERMS OF SERVICE, YOUR SOLE AND EXCLUSIVE REMEDY IS TO DISCONTINUE USE OF THE SERVICE.

IF YOU ARE A USER FROM NEW JERSEY, THE FOREGOING SECTIONS TITLED "DISCLAIMER OF WARRANTIES" AND "LIMITATION OF LIABILITY" ARE INTENDED TO BE ONLY AS BROAD AS IS PERMITTED UNDER THE LAWS OF THE STATE OF NEW JERSEY. IF ANY PORTION OF THESE SECTIONS IS HELD TO BE INVALID UNDER THE LAWS OF THE STATE OF NEW JERSEY, THE INVALIDITY OF SUCH PORTION SHALL NOT AFFECT THE VALIDITY OF THE REMAINING PORTIONS

OF THE APPLICABLE SECTIONS.

**Dispute Resolution By Binding Arbitration: PLEASE READ THIS SECTION CAREFULLY AS IT AFFECTS YOUR RIGHTS.**

**a. Agreement to Arbitrate**

This Dispute Resolution by Binding Arbitration section is referred to in this Terms of Service as the "Arbitration Agreement." You agree that any and all disputes or claims that have arisen or may arise between you and NextRound, whether arising out of or relating to this Terms of Service (including any alleged breach thereof), the Services, any advertising, any aspect of the relationship or transactions between us, shall be resolved exclusively through final and binding arbitration, rather than a court, in accordance with the terms of this Arbitration Agreement, except that you may assert individual claims in small claims court, if your claims qualify. Further, this Arbitration Agreement does not preclude you from bringing issues to the attention of federal, state, or local agencies, and such agencies can, if the law allows, seek relief against us on your behalf. You agree that, by entering into this Terms of Service, you and NextRound are each waiving the right to a trial by jury or to participate in a class action. Your rights will be determined by a neutral arbitrator, not a judge or jury. The Federal Arbitration Act governs the interpretation and enforcement of this Arbitration Agreement.

**b. Prohibition of Class and Representative Actions and Non-Individualized Relief**

***YOU AND NEXTROUND AGREE THAT EACH OF US MAY BRING CLAIMS AGAINST THE OTHER ONLY ON AN INDIVIDUAL BASIS AND NOT AS A PLAINTIFF OR CLASS MEMBER IN ANY PURPORTED CLASS OR REPRESENTATIVE ACTION OR PROCEEDING. UNLESS BOTH YOU AND NEXTROUND AGREE OTHERWISE, THE ARBITRATOR MAY NOT CONSOLIDATE OR JOIN MORE THAN ONE PERSON'S OR PARTY'S CLAIMS AND MAY NOT OTHERWISE PRESIDE OVER ANY FORM OF A CONSOLIDATED, REPRESENTATIVE, OR CLASS PROCEEDING. ALSO, THE ARBITRATOR MAY AWARD RELIEF (INCLUDING MONETARY, INJUNCTIVE, AND DECLARATORY RELIEF) ONLY IN FAVOR OF THE INDIVIDUAL PARTY SEEKING RELIEF AND ONLY TO THE EXTENT NECESSARY TO PROVIDE RELIEF NECESSITATED BY THAT PARTY'S INDIVIDUAL CLAIM(S), EXCEPT THAT YOU MAY PURSUE A CLAIM FOR AND THE ARBITRATOR MAY AWARD PUBLIC INJUNCTIVE RELIEF UNDER APPLICABLE LAW TO THE EXTENT REQUIRED FOR THE ENFORCEABILITY OF THIS PROVISION.***

**c. Pre-Arbitration Dispute Resolution**

NextRound is always interested in resolving disputes amicably and efficiently, and most customer concerns can be resolved quickly and to the customer's satisfaction by emailing customer support at [info@nextroundgifts.com](mailto:info@nextroundgifts.com). If such efforts prove unsuccessful, a party who intends to seek arbitration must first send to the other, by certified mail, a written Notice of Dispute ("Notice"). The Notice to NextRound should be sent to [info@nextroundgifts.com](mailto:info@nextroundgifts.com). The Notice must (i) describe the nature and basis of the claim or dispute and (ii) set forth the specific relief sought. If NextRound and you do not resolve the claim within sixty (60) calendar days after the Notice is received, you or NextRound may commence an arbitration proceeding. During the arbitration, the amount of any settlement offer made by NextRound or you shall not be disclosed to the arbitrator until after the arbitrator determines the amount, if any, to which you or NextRound is entitled.

**d. Arbitration Procedures**

Arbitration will be conducted by a neutral arbitrator in accordance with the American Arbitration Association's ("AAA") rules and procedures, including the AAA's Consumer Arbitration Rules (collectively, the "AAA Rules"), as modified by this Arbitration Agreement. For information on the AAA, please visit its website, <http://www.adr.org>. Information about the AAA Rules and fees for consumer disputes can be found at the AAA's consumer arbitration page, [http://www.adr.org/consumer\\_arbitration](http://www.adr.org/consumer_arbitration). If there is any inconsistency between any term of the AAA Rules and any term of this Arbitration Agreement, the

applicable terms of this Arbitration Agreement will control unless the arbitrator determines that the application of the inconsistent Arbitration Agreement terms would not result in a fundamentally fair arbitration. The arbitrator must also follow the provisions of these Terms of Service as a court would. All issues are for the arbitrator to decide, including, but not limited to, issues relating to the scope, enforceability, and arbitrability of this Arbitration Agreement. Although arbitration proceedings are usually simpler and more streamlined than trials and other judicial proceedings, the arbitrator can award the same damages and relief on an individual basis that a court can award to an individual under the Terms of Service and applicable law. Decisions by the arbitrator are enforceable in court and may be overturned by a court only for very limited reasons.

Unless NextRound and you agree otherwise, any arbitration hearings will take place in Boston, MA. If your claim is for \$10,000 or less, NextRound agrees that you may choose whether the arbitration will be conducted solely on the basis of documents submitted to the arbitrator, through a telephonic hearing, or by an in-person hearing as established by the AAA Rules. If your claim exceeds \$10,000, the right to a hearing will be determined by the AAA Rules. 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 award is based.

#### **e. Costs of Arbitration**

Payment of all filing, administration, and arbitrator fees (collectively, the "Arbitration Fees") will be governed by the AAA Rules, unless otherwise provided in this Arbitration Agreement. If the value of the relief sought is \$75,000 or less, at your request, NextRound will pay all Arbitration Fees. If the value of relief sought is more than \$75,000 and you are able to demonstrate to the arbitrator that you are economically unable to pay your portion of the Arbitration Fees or if the arbitrator otherwise determines for any reason that you should not be required to pay your portion of the Arbitration Fees, NextRound will pay your portion of such fees. In addition, if you demonstrate to the arbitrator that the costs of arbitration will be prohibitive as compared to the costs of litigation, NextRound will pay as much of the Arbitration Fees as the arbitrator deems necessary to prevent the arbitration from being cost-prohibitive. Any payment of attorneys' fees will be governed by the AAA Rules.

#### **f. Confidentiality**

All aspects of the arbitration proceeding, and any ruling, decision, or award by the arbitrator, will be strictly confidential for the benefit of all parties.

#### **g. Severability**

If a court or the arbitrator decides that any term or provision of this Arbitration Agreement (other than the subsection (b) titled "Prohibition of Class and Representative Actions and Non-Individualized Relief" above) is invalid or unenforceable, the parties agree to replace such term or provision with a term or provision that is valid and enforceable and that comes closest to expressing the intention of the invalid or unenforceable term or provision, and this Arbitration Agreement shall be enforceable as so modified. If a court or the arbitrator decides that any of the provisions of subsection (b) above titled "Prohibition of Class and Representative Actions and Non-Individualized Relief" are invalid or unenforceable, then the entirety of this Arbitration Agreement shall be null and void, unless such provisions are deemed to be invalid or unenforceable solely with respect to claims for public injunctive relief. The remainder of the Terms of Service will continue to apply.

#### **h. Future Changes to Arbitration Agreement**

Notwithstanding any provision in this Terms of Service to the contrary, NextRound agrees that if it makes any future change to this Arbitration Agreement (other than a change to the Notice Address) while you are a user of the Services, you may reject any such change by sending NextRound written notice within thirty (30) calendar days of the change to the Notice Address provided above. By rejecting any future change, you are agreeing that you will arbitrate any dispute between us in accordance with the language of this



Arbitration Agreement as of the date you first accepted these Terms of Service (or accepted any subsequent changes to these Terms of Service).

### **Termination**

You agree that NextRound, in its sole discretion, may suspend or terminate your account (or any part thereof) or use of the Service and remove and discard any content within the Service, for any reason, including, without limitation, for lack of use or if NextRound believes that you have violated or acted inconsistently with the letter or spirit of these Terms of Service. Any suspected fraudulent, abusive or illegal activity that may be grounds for termination of your use of Service, may be referred to appropriate law enforcement authorities. NextRound may also in its sole discretion and at any time discontinue providing the Service, or any part thereof, with or without notice. You agree that any termination of your access to the Service under any provision of this Terms of Service may be effected without prior notice, and acknowledge and agree that NextRound may immediately deactivate or delete your account and all related information and files in your account and/or bar any further access to such files or the Service. Further, you agree that NextRound will not be liable to you or any third party for any termination of your access to the Service.

### **User Disputes**

You agree that you are solely responsible for your interactions with any other user in connection with the Service and NextRound will have no liability or responsibility with respect thereto. NextRound reserves the right, but has no obligation, to become involved in any way with disputes between you and any other user of the Service.

### **General**

These Terms of Service constitute the entire agreement between you and NextRound and govern your use of the Service, superseding any prior agreements between you and NextRound with respect to the Service. You also may be subject to additional terms and conditions that may apply when you use affiliate or third party services, third party content or third party software. These Terms of Service will be governed by the laws State of Massachusetts without regard to its conflict of law provisions. With respect to any disputes or claims not subject to arbitration, as set forth above, you and NextRound agree to submit to the personal and exclusive jurisdiction of the state and federal courts located within Boston, MA. The failure of NextRound to exercise or enforce any right or provision of these Terms of Service will not constitute a waiver of such right or provision. If any provision of these Terms of Service 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 of Service 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 Service or these Terms of Service must be filed within one (1) year after such claim or cause of action arose or be forever barred. A printed version of this agreement and of any notice given in electronic form will be admissible in judicial or administrative proceedings based upon or relating to this agreement to the same extent and subject to the same conditions as other business documents and records originally generated and maintained in printed form. You may not assign this Terms of Service without the prior written consent of NextRound, but NextRound may assign or transfer this Terms of Service, in whole or in part, without restriction. The section titles in these Terms of Service are for convenience only and have no legal or contractual effect. Notices to you may be made via either email or regular mail. The Service may also provide notices to you of changes to these Terms of Service or other matters by displaying notices or links to notices generally on the Service.

### **Your Privacy**

At NextRound, we respect the privacy of our users. For details please see our Privacy Policy. By using the Service, you consent to our collection and use of personal data as outlined therein.

### **Questions? Concerns? Suggestions?**

Please contact us at [info@nextroundgifts.com](mailto:info@nextroundgifts.com) to report any violations of these Terms of Service or to pose any questions regarding this Terms of Service or the Service.