**TERMS OF USE**

Last Updated: November 1, 2024

These Terms of Use (the “**Terms**”) are a legal contract between you and the Martha G. Welch Center for Emotional Connection (“**the WELCH CENTER**”). These Terms govern your use of the Site, Application, Content and all other Services (the foregoing capitalized terms defined below).

The WELCH CENTER may modify these Terms at any time in its discretion. If the WELCH CENTER makes any material or substantive change to these Terms, the WELCH CENTER will provide notice to you by publishing the most current version and revising the date at the top of these Terms. If you are an Application User (defined below), the WELCH CENTER will use reasonable efforts to provide additional notice via email (to the email address on file) or via a notice that appears when you log in to your account. By continuing to use the Application, Site or any Service after any change comes into effect, you agree to the revised Terms. If you do not agree with any of the revised Terms or the Privacy Policy, you must stop using the Application, Site and all Services.

**PLEASE READ THESE TERMS OF USE CAREFULLY AS THEY CONTAIN A BINDING ARBITRATION AGREEMENT AND CLASS ACTION WAIVER AS WELL AS OTHER IMPORTANT INFORMATION REGARDING YOUR LEGAL RIGHTS, REMEDIES AND OBLIGATIONS. BY USING THE SITE, APPLICATION OR ANY OTHER SERVICE, YOU ARE AGREEING TO BINDING ARBITRATION AND CLASS ACTION WAIVER AS DESCRIBED HEREIN.**

**WITH LIMITED EXCEPTIONS, THE AGREEMENT TO ARBITRATE REQUIRES THAT: (1) YOU SUBMIT ANY CLAIM THAT YOU MAY HAVE AGAINST THE WELCH CENTER AND/OR ANY WELCH CENTER REPRESENTATIVE TO BINDING AND FINAL ARBITRATION; (2) YOU WILL BE PERMITTED TO PURSUE CLAIMS AGAINST THE WELCH CENTER ONLY ON AN INDIVIDUAL BASIS (NOT AS A PLAINTIFF OR CLASS MEMBER IN ANY CLASS OR REPRESENTATIVE ACTION OR PROCEEDING); (3) YOU WILL BE PERMITTED TO SEEK RELIEF (INCLUDING MONETARY, INJUNCTIVE, AND  DECLARATORY RELIEF) ONLY ON AN INDIVIDUAL BASIS; AND (4) YOU ARE WAIVING YOUR RIGHT TO HAVE ANY CLAIM AGAINST THE WELCH CENTER AND/OR ANY WELCH CENTER REPRESENTATIVE RESOLVED BY A JURY OR IN A COURT OF LAW. SEE SECTION 22 FOR FURTHER DETAILS.**

“**Site**” refers to the WELCH CENTER’s website located at www.emotionalconnection.org together with any future affiliated website(s) and webpages whether accessed via a computer, mobile device or other device or application.

The Site together with the Application and all other applications as well as all resources, products, tools, training, webinars, live streams, live events, blogs, podcasts, videos, tools, strategies, Content (defined in Section 2 below), research, goods, and services offered via the Site or otherwise offered by the WELCH CENTER via communications to you as a result of your interaction with the Site are collectively referred to as the “**Service**” or “**Services**”.

In these Terms and elsewhere in the Agreement (defined below), the WELCH CENTER may refer to you as “**user**”, “**you**” or “**your**”. “**Application User**” refers to a user who has signed up for an account to use the Application.

“**Application**” refers to the platform and tool that allows Application Users to (a) view videos offered by the WELCH CENTER, (b) upload videos prepared by Application Users for assessment, and (c) enjoy other features that may be made available to Application Users via the Application. **PLEASE NOTE:** **As further described in Section 8 below,** **the Application is currently offered as a “beta” offering for testing purpose only. The Application is offered with all faults and without any representations, warranties or assurances of any kind.**

Please note that your use of the Site and any Services is also subject to our Privacy Policy located [here](https://app.termly.io/policy-viewer/policy.html?policyUUID=8a87dd19-52f6-4a60-8bb0-8e69dc3b75bc) (“**Privacy Policy**”) and other policies and terms that you may be required to accept in order to view or use a specific Service. These Terms together with the Privacy Policy and such other policies and terms applicable to a specific Service viewed or used by you form a binding agreement between you and the WELCH CENTER (collectively, the “**Agreement**”).

By (as applicable) visiting, browsing, downloading, installing, accessing, making a purchase on or via, or otherwise using the Site and/or any Service, you acknowledge that you have read, understood these Terms and that you accept, and agree to abide by and be bound by, these Terms and the other applicable terms and conditions of the Agreement. If you do not agree to (or cannot comply with) anything set forth in these Terms, the Privacy Policy or any other terms of the Agreement, you are not permitted to use or access the Site or any Services.

**AS FURTHER DESCRIBED IN SECTION 6 BELOW, NEITHER THE WELCH CENTER NOR ITS FOUNDERS NOR ANY OF ITS OFFICERS, DIRECTORS, BOARD MEMBERS, EMPLOYEES, CONSULTANTS, PRINCIPALS OR REPRESENTATIVES (COLLECTIVELY, “WELCH CENTER REPRESENTATIVE”), IS ENGAGED IN RENDERING ANY MEDICAL, THERAPEUTIC OR CLINICAL SERVICE OR ANY OTHER PROFESSIONAL SERVICE VIA THE SITE, APPLICATION AND/OR ANY OTHER SERVICE, AND YOUR USE OF THE SITE, APPLICATION OR ANY OTHER SERVICE DOES NOT CREATE ANY PHYSICIAN-PATIENT, THERAPIST-PATIENT OR ANY OTHER TREATMENT RELATIONSHIP BETWEEN YOU AND THE WELCH CENTER OR ANY WELCH CENTER REPRESENTATIVE. NO SERVICE AND NONE OF THE INFORMATION, CONTENT, APPLICATIONS OR MATERIAL AVAILABLE VIA THE SERVICES SHOULD BE RELIED UPON AS A SUBSTITUTE FOR THE ADVICE OF, OR CONSULTATION WITH, A QUALIFIED PROFESSIONAL WHO IS FAMILIAR WITH YOUR INDIVIDUAL NEEDS.**

**AS FURTHER DESCRIBED IN SECTION 16 BELOW, BY VISITING THE SITE AND/OR USING A SERVICE, YOU ACKNOWLEDGE AND AGREE THAT ALL INFORMATION, CONTENT, APPLICATIONS AND MATERIAL AVAILABLE VIA THE SITE AND/OR ANY SERVICE ARE PROVIDED “AS-IS” FOR GENERAL INFORMATIONAL PURPOSES ONLY AND ARE NOT INTENDED TO SERVE AS MEDICAL, THERAPEUTIC, CLINICAL OR PROFESSIONAL ADVICE.**

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# Eligibility

In order to use the Site and/or any Service: (a) you must be at least eighteen (18) years old and legally able to form binding contracts, (b) you must agree to and accept all Terms including the waivers and releases included in these Terms, (c) you must not otherwise be suspended, restricted or prohibited from using the Site or Service, and (d) your use the Site and/or Service must be and remain in compliance with all applicable laws, rules and regulations applicable to you. The Services are offered only for your personal, non-commercial use, and not for the use or benefit of any third party.

The right to access and use the Site and/or any or all Services may be revoked at any time if there is a breach of any provision of the Agreement, or if any of these Terms, or use of the Service, is prohibited or conflicts with any applicable law, rule, or regulation.

# License Grant

Provided that you remain in full compliance with these Terms, and subject to the other terms and conditions herein (including payment of the applicable fee), the WELCH CENTER grants you a limited, personal, non-transferable, non-exclusive, non-assignable, non-sublicensable, revocable right and license to access and use the Application, Content and Services on behalf of yourself.

As used herein, “**Content**” means messages, reviews, photos, blogs, podcasts, audio, video, music, images, text, graphics, software, training materials, webinars, tools, strategies, research and any other types of works of authorship of any kind, and information and other materials posted, generated, provided or otherwise made available through the Service.

As further described in Section 11 below, all Content included on the Site or otherwise within the Services is the exclusive property of the WELCH CENTER or its third-party content providers, as applicable, and is protected by national and international copyright and other intellectual property laws.

The Application allows an Application User to submit a video for assessment by the WELCH CENTER. The WELCH CENTER uses the “**Universal Welch Emotional Connection Screen**” (also referred to as “**uWECS**” or “**WECS**”) developed by Dr. Martha G. Welch for purposes of assessing videos and providing feedback. If an Application User elects to submit a video for assessment, the Application User will receive the results of the WELCH CENTER’s assessment delivered to the email address on record for the Application User. No right, title or license in or to the uWECS (including no right, title or license to access, use or otherwise engage with the uWECS) is granted to user or otherwise granted under or pursuant to these Terms. Use of the videos submitted by Application Users is governed by these Terms and the [**Privacy Policy**.](https://app.termly.io/policy-viewer/policy.html?policyUUID=8a87dd19-52f6-4a60-8bb0-8e69dc3b75bc)

# License Restrictions

**Using the Application, Site, Content or any other Service for any purpose other than in connection with your personal, non-commercial use of the same in accordance with this Agreement is strictly prohibited.**

**You may not and shall not: (i) sell, rent, lease, copy, reproduce, hyperlink, mirror, frame, publish, upload, post, modify, transmit, translate, adapt, download, white-label, scrape, extract, wrap, prepare derivative works of, encode, publicly display, publicly perform or distribute in any way via any medium any Application or Content or any part of the Site or Services without the WELCH CENTER’s express prior written consent; (ii) remove any rights notices, indicia or labels on any part of the Application, Site, Content or other Services; (iii) attempt to disable, bypass, modify, defeat, or otherwise circumvent any digital rights management or other content protection system used on or as part of the Application, Site, Content or any other portion of the Service; (iv) reverse engineer, decompile, or disassemble any aspect of the Application, Site or any other Service, in whole or in part, in any form or by any means, whether manual or automatic, without the prior express written consent of the WELCH CENTER in each specific instance; (v) use the Application, Content, Site or any Service for any commercial purpose; or (vi) use the Application, Content, Site or any Service for any illegal or unlawful purpose.**

All rights not expressly granted to you herein are reserved by the WELCH CENTER.

# Privacy

The WELCH CENTER collects registration and other information about you via the Application, Site and other Services. Please review our [**Privacy Policy**](https://app.termly.io/policy-viewer/policy.html?policyUUID=8a87dd19-52f6-4a60-8bb0-8e69dc3b75bc) to learn about our privacy practices including, but not limited to, what information The WELCH CENTER may collect and how The WELCH CENTER collects it, what The WELCH CENTER uses the information for, and with whom the information may be shared.

# User Registration

In order to access and/or use the Application, certain Content and/or other Services, you may be required to register for an account. When you register for an account, you must provide the WELCH CENTER with some basic information (including your first name and last name, date of birth and email address), payment card information (if applicable), as well as a user ID and password. You may also provide additional optional information in response to questions in connection with registration.

You agree to maintain the security and confidentiality of your password and registration information. If someone is using your password or accessing your account without your permission, you must notify the WELCH CENTER at info@emotionalconnection.org and you must change your password.

You may close your account at any time by contacting info@emotionalconnection.org.

# Purchases

The Application as well as other Services may be made available subject to payment of a fee.

All purchases shall be made via a third-party payment processor designated by the WELCH CENTER from time to time and referenced on the payment processing tool.

The payment processor’s terms and conditions apply to your payment transaction. All fees and prices are subject to change at any time in our sole discretion.

The WELCH CENTER has selected a third-party payment processor believed to be qualified to maintain the confidentiality and security of your information. You agree that neither the WELCH CENTER nor any WELCH CENTER Representative shall be responsible or liable for any loss you may suffer if the third-party payment processor allows unauthorized access to any data or personal information that you provide when purchasing any Services.

All payments shall be made in U.S. dollars unless otherwise agreed by the WELCH CENTER in writing. When you make a purchase, in addition to providing general billing information (such as your name, billing address and credit card information), you may also be required to provide additional information to verify your identity before completing your transaction. When making any purchase, you represent that you are providing information about yourself that is true, accurate, current, and complete, including your name, billing address, e-mail address, and any additional information as indicated. The WELCH CENTER reserves the right to suspend or terminate your right to access or use the Services if The WELCH CENTER or any of its third-party service providers determines that the information you provide cannot be verified or is incorrect, invalid or otherwise not acceptable.

Any promotional or “trial basis” discounts offered are temporary and will terminate at the end of the applicable promotional period but may be terminated earlier in the WELCH CENTER’s sole discretion.

You represent and warrant that you are authorized to use the payment method that you have designated, and you authorize our designated third-party payment processor to charge your proffered payment method for the total amount of any fees you owe to the WELCH CENTERincluding applicable taxes and other charges.

# No Medical, Therapeutic or Professional Advice

**PLEASE READ THIS SECTION CAREFULLY AS IT INCLUDES IMPORTANT DISCLAIMERS RELATED TO THE APPLICATION, SITE, CONTENT AND OTHER SERVICES, AND IMPORTANT DISCLAIMERS RELATED TO ANY ADVICE AND OTHER INFORMATION THAT YOU MAY OBTAIN OR ENCOUNTER FROM VISITING AND/OR USING THE APPLICATION, SITE, CONTENT AND/OR ANY OTHER SERVICES.**

**The Application, Site, Content and all other Services are made available to you as self-help tools for general information purposes only. The WELCH CENTER cannot and does not guarantee their accuracy or their applicability to your specific circumstances.**

**Information made available via the Application, Site, Content and/or other Services is not provided to diagnose or treat a health problem, disease, or mental health condition, or prescribe medication or other treatment. Nothing contained in the Application, Site, Content and/or any other Service is intended to be a substitute for a diagnosis and/or recommendations that can and should be provided by your physician, therapist, psychologist, psychiatrist, physician or other qualified health care provider.**

**Neither the Application, Site, Content nor any other Service is intended to replace any relationship that exists, or should exist, between you and your physician, therapist, psychologist, psychiatrist, physician or other health care provider. You should always seek the advice of your therapist, psychologist, psychiatrist, physician or other qualified health care provider regarding any and all emotional, mental, physical and other medical conditions. You are hereby advised by the WELCH CENTER to consult with your physician, therapist, psychologist, psychiatrist, physician or other qualified health care provider for all questions and concerns you have, may have or hereafter have regarding any and all information presented by the Application, Site, Content and/or other Services pertaining to your specific health situation.**

**Do not disregard or delay seeking professional advice because of information you have read on this Site or received through the Application or any other Service. If you have or suspect that you have a medical problem, contact your health care provider immediately.**

**Always consult with your physician or other appropriate health care or mental health professional before accepting advice about pregnancy and birth, lifestyle, diet, exercise, family living, parenting, or any recommendation provided on or through our Site, Application, Content or other Services for you and your family, or before taking any medication or nutritional, herbal or homeopathic supplement, or using any treatment for a health problem.**

**If you are working with the WELCH CENTER through pregnancy, birth, and the postpartum period, you should always seek the advice of your ob/gyn or midwife for all medical concerns relating to your perinatal care. Our services and programs do not replace the expertise and care of your medical** team**, so always consult with them for all questions and concerns that you may have.**

**If you are working with the WELCH CENTER as a parent and have any concerns about your child(ren)'s physical or mental health and/or the parent and child relationship, our intent is NOT to replace any relationship that exists, or should exist, between you and your child's physician, therapist, psychologist, psychiatrist, physician or other qualified health care provider. You always should seek the advice of your physician, therapist, psychologist, psychiatrist, physician or other qualified health care provider regarding any and all medical conditions as well as behavioral/emotional concerns for your child(ren). You are hereby advised to consult with your physician, therapist, psychologist, psychiatrist, physician and/or other qualified health care provider for all questions and concerns that you may have pertaining to your child(ren)'s specific health situation.**

**By using the Site and/or Services, you acknowledge and agree that:**

1. **The Site and any Services are offered for general informational purposes only. The Site and Services are not offered, and should not be viewed, interpreted or considered, as a substitute for any expert medical, physical, mental, or psychological health care, nor are they meant to diagnose, treat, prevent, or cure any physical, medical, mental, emotional, or psychological ailment, disease or condition.**
2. **Neither the Site nor any Service is offered by Martha G. Welch, the WELCH CENTER, the WELCH CENTER Representative or any third party in the capacity of a licensed physician, therapist, clinician, health care professional, social worker or other professional and should not be used as a substitute, replacement, alternative, or proxy for any professional, medical, physical, emotional, mental or psychological care, treatment, counseling, therapy, psychoanalysis, substance abuse treatment, or any other mental or physical health advice, guidance, or counsel. You should maintain a relationship with a physician or other appropriate mental health or other provider who is available to provide mental, physical and urgent care.**
3. **To the extent that the Application, Content or other Services involve any recommendations, such recommendations are designed to function as guides to help the user consider their existing approaches to issues and evaluate alternative approaches to such issues.**
4. **You are responsible for your own well-being and your child’s well-being, including, without limitation, as it relates to issues involving mental health, physical health, psychological health, career, finances, business decisions, and other choices and decisions.**

**The information contained on this Site or otherwise provided via the Application, Content or any other Service has not been evaluated by the Food and Drug Administration and is not intended to diagnose, treat, cure, or prevent any disease.**

**The WELCH CENTER will not be held responsible in any way for the information that you request or receive through, on or via the Application, Site, Content and/or any Service. You accept full responsibility and the consequences for your use, or non-use, of information made available via the Application, Site, Content and/or Services and/or otherwise by the WELCH CENTER. Your use, or non-use, of this information is at your own risk, and you absolve the WELCH CENTER and all the WELCH CENTER Representatives and their successors and assigns of any liability or loss that you and/or any family member may incur from your use, or non-use, of information provided.**

**The WELCH CENTER cannot and does not warrant or guarantee any benefit or effect in working with the WELCH CENTER and/or from using the Application, Site, Content and/or any other Service.**

# Prohibited Conduct and Acceptable Use

By using the Site and/or any Service, you agree NOT to:

(a) Use the Site or Application or any other Service for any illegal purpose or in violation of any local, state, national, or international law, rule or regulation;

(b) Use the Site or Application or any other Service in connection with research, development, or offering of any service that competes with the Application or any other Service;

(c) Obtain, attempt to obtain, or redistribute any Content available through the Services through any means not intentionally made available by the WELCH CENTER, including by any form of automated access, scraping, or similar process, without our express written permission and subject to any conditions on such permission;

(d) Infringe, misappropriate or violate (or encourage another person or entity to infringe, misappropriate or violate) any right of any third party, including by infringing or misappropriating our or any third party’s copyright, patent, trade secret, moral or other intellectual property right or any right of publicity or privacy;

(e) Post, upload, submit or distribute any information, content or material that is unlawful, defamatory, libelous, inaccurate, or that a reasonable person could deem to be objectionable, profane, indecent, pornographic, harassing, threatening, embarrassing, hateful, or otherwise offensive or inappropriate;

(f) Interfere with any security-related feature of the Site, Application and/or Services, including by: (i) disabling or circumventing features that prevent or limit use or copying of the Application or any Content; or (ii) reverse engineering or otherwise attempting to discover the source code of the Application or any other portion of the Services, except to the extent that the activity is expressly permitted by applicable law notwithstanding this limitation;

(g) Interfere with the operation of the Site, Application or any other Service or any user’s enjoyment of any of the foregoing, including by: (i) uploading or otherwise disseminating any virus, adware, spyware, worm, or other malicious code; (ii) making any unsolicited offer or advertisement to another user of the Site, Application or any other Service; (iii) attempting to collect personal information about another user or third party without express written consent; (iv) attempting to access any restricted portion of the Site, Application or any other Service, or (v) interfering with, overburdening, or disrupting any network, equipment, or server connected to or used to provide the Site, Application and/or any other Service, or violating any regulation, policy, or procedure of any such network, equipment, or server;

(h) Perform any fraudulent activity, including impersonating any person or entity, claiming a false affiliation, accessing any other Service account without permission, falsifying any personal information; or using or attempting to use the Application or any other Service under false pretenses;

(i) Sell, transfer or otherwise allow another to gain the access granted under these Terms, or grant any other person or entity the right or ability to view, access, or use the Application or any Content or other Service;

(j) Remove, destroy or alter any copyright, trademark other rights notice contained in the Site, Application, Content or any other Service; or

(k) Attempt to do any of the acts described in this Section 7 or assist or permit any person to engage in any of the acts described in this Section.

We reserve the right, but are not obligated, to remove or disable access to the Application, any Content and/or any other Service, at any time and without notice, including, but not limited to, if we, in our sole discretion, consider any Content to be objectionable or in violation of any of these Terms. The WELCH CENTER maintains the right to investigate violations of these Terms and/or investigate conduct that otherwise affects the Services. The WELCH CENTER may also consult and cooperate with law enforcement authorities to prosecute any person and/or entity that violates the law.

You agree that any information provided by you to use the Application or any Content or other Service, or to otherwise interact with the Site and/or any Service, is accurate and that you will keep all contact, payment (if any) and other information accurate and up-to-date at all times. You shall be responsible and liable for any failure to provide current and accurate information and to update such information as needed, and you are solely responsible for any failure by you to maintain the security and confidentiality of your account.

# Application Is a “Beta” Offering; Changes to the Services

**You acknowledge and agree that the Application is currently offered for “beta” use only. This means that the Application is offered for testing purposes only and that the Application may contain or cause errors and that it may not function as intended or expected. The primary purpose of offering the Application as a beta offering is to gather feedback from users about the Application.**

You acknowledge and agree that the form and nature of the Application, Content, Site and other Services may change from time to time without prior notice to you. Notwithstanding any provision set forth in this Agreement, the WELCH CENTER, in its sole and absolute discretion, with or without notice to you and without any liability to you, may terminate, limit, disconnect, deny access to, discontinue, abandon, modify, or suspend your use of the Application, participation in any beta program, or both, at any time. You also acknowledge that even if you are selected to participate in relation to, or otherwise granted access to or asked to try out, the Application, you are not guaranteed participation in, access to or use of the Application or any offering. You acknowledge that any breach by you of these Terms, may result in immediate suspension, disconnection, or termination of access to and/or the right to use the Application and other Services.

We reserve the right, in our sole determination, to modify, cancel, remove, postpone and/or discontinue all or any part of the Application, Content, Site and/or other Services at any time, temporarily or permanently, at any time without advance notice to you.

# Termination

These Terms begin on the date you first interact with or otherwise use the Site and/or any Service and continue as long as you continue to use the Site and/or any Service. Notwithstanding the foregoing,

We reserve the right to suspend, terminate, or cease providing the Site and any Service at any time, with or without notice to you, including if the WELCH CENTER determines in its sole discretion, that: (a) you have violated these Terms, the Privacy Policy or any other part of this Agreement; (b) the WELCH CENTER will no longer provide the Application or other Service; (c) doing so would be in the best interests of protecting the rights, privacy, safety and/or property of the WELCH CENTER or its officers, directors, employees, members, contractors, agents, partners, administrators, contributors, subsidiaries, joint venturers, successors, assignees, or any other applicable third parties; or (d) for reasons outside of the WELCH CENTER’s control.

You acknowledge and agree that if the WELCH CENTER terminates your rights under these Terms, the WELCH CENTER may immediately deactivate or delete your account and all related information in your account and you must immediately stop all activities authorized by these Terms, including your access to and use of the Application and/or other Services. You acknowledge and agree that, to the fullest extent permitted by applicable law, neither the WELCH CENTERnor any the WELCH CENTER Representativeshall be liable to you or any third party for any termination of your access to the Application and/or other Services. If the WELCH CENTER deletes your account, you may not re-register for or use the Application and/or other Services under any other name, email address, account, username, or profile and the WELCH CENTER reserves the right to block your access to the Application and other Services to prevent re-registration.

Upon termination of these Terms, all licenses granted to you herein will immediately terminate. The preamble and Sections 1 and 3-26 of these Terms shall survive termination or expiration.

In the event of termination or account deletion or cancellation for any reason, any information and materials that you uploaded to the Services may no longer be available. the WELCH CENTER is not responsible for the deletion or loss of such information and/or materials.

# Third-Party Services and Linked Websites

The WELCH CENTERmay provide tools through, and as part of, the Services that enable you to use certain third-party services and to transfer information to or through such third-party services. By using one of these tools, you agree that the WELCH CENTER may transfer your information to the applicable third-party and third-party service. In addition, there may be links on the Site and/or in the Services that let you leave the Site and Services in order to access a linked website that is operated by a third party. the WELCH CENTERdoes not operate, monitor, control, endorse, or guarantee the accuracy or quality of any materials, content, services or goods provided by any third party or on any third-party service or site. You agree that the WELCH CENTERshall not be held liable or responsible, directly or indirectly, for any act or omission of any third party or third-party site or service or the policies adopted by any third party (including, without limitation, the third party’s terms or privacy policies) or for any damages or injury resulting or arising from any content, access to or use of any third party or third-party site or service. Neither these Terms nor the Privacy Policy apply to any service, website or offering of any third party. Links to third party services and websites are exclusively for our users’ convenience, and any use of any third-party service and/or website is at the user’s sole and exclusive risk and liability.

# Ownership and Proprietary Rights

The WELCH CENTER acknowledges and agrees that you own your User Videos (defined in Section 13 below).

You acknowledge and agree that: the Site, Application, uWECS, Materials (defined below) and, except as otherwise expressly specified, all Content and other Services, as well as all copyrights, patents, trademarks, trade names, logos, domain names, designs and other rights (including proprietary rights) used on or in connection with any of the foregoing (collectively, the “**Intellectual Property**”) are the property of, and owned by, the WELCH CENTER and/or the WELCH CENTER’s licensors, and are protected by intellectual property laws and other laws both domestic and foreign. “**Materials**” means all visual interfaces, graphics, designs, compilations, information, data, applications, source code, object code, software, programs and other designs and technical elements of or included in the Application and/or other Services.

Other than the limited license to access and use the Site, Application, Content and other Services as described above, you are not granted any rights in or to the Site, Application, uWECS, Content or other Services or to any Intellectual Property or Materials. The WELCH CENTERand the WELCH CENTER’s Licensors reserve all rights in and to the Site, Application, Services, Content and Materials not expressly granted in these Terms.

The WELCH CENTER respects the intellectual property rights of others and asks that you do the same.

If you provide or make available to the WELCH CENTER any idea, proposal, or suggestion (collectively, “**Feedback**”), whether related to the Application (whether a beta version or production version), the Site, the Content or any other Service or otherwise, you hereby acknowledge and agree that the WELCH CENTER is free to copy, develop and use such Feedback without any obligation (fiduciary or otherwise) to you. All Feedback is gratuitous, unsolicited and provided by you without restriction. The WELCH CENTER is free to secure ownership and intellectual property rights in and to any developments created or prepared by the WELCH CENTER from Feedback without any limit or restriction, payment obligation of any kind and without any attribution obligation.

# Digital Millennium Copyright Act

Notwithstanding anything to the contrary in this Agreement, if you are a copyright owner or an agent thereof and believe that any Content or other material provided as part of the Services infringes upon your copyrights, you may submit a notification pursuant to the Digital Millennium Copyright Act (“**DMCA**”) by providing our Copyright Agent designated below with the following information in writing:

(a) A physical or electronic signature of a person authorized to act on behalf of the owner of an exclusive right that is allegedly infringed;

(b) Identification of the copyrighted work claimed to have been infringed, or, if multiple copyrighted works at a single online site are covered by a single notification, a representative list of such works at that site;

(c) Identification of the material that is claimed to be infringing or to be the subject of infringing activity and that is to be removed or access to which is to be disabled and information reasonably sufficient to permit the service provider to locate the material;

(d) Information reasonably sufficient to permit the service provider to contact you, such as a postal address, telephone number, and email address;

(e) A statement that you have a good faith belief that use of the material in the manner complained of is not authorized by the copyright owner, its agent, or the law; and

(f) A statement that the information in the notification is accurate, and under penalty of perjury, that you are authorized to act on behalf of the owner of an exclusive right that is allegedly infringed.

If notified of an allegation that the Site contains infringing information, materials, or other content, the WELCH CENTER may investigate the allegation and determine in our sole discretion whether to remove or request the removal of such material from the Site, consistent with applicable law. DMCA notices should be sent to copyright@emotionalconnection.org.

# Your Parenting Information

In the course of using the Application, you may be asked to upload or submit a video of your interactions with your child (“**User Videos**”), and/or you may be asked to respond to questions and/or surveys related to your interactions with your child (“**User Responses**”). User Videos and User Responses are collectively referred to as “**User Parenting Information**”). You hereby grant to the WELCH CENTER a nonexclusive right and license to review, edit and use User Parenting Information: (a) to provide recommendations and suggestions to you and your family; (b) for internal validation, internal analysis, error identification and correction, service improvements and for the development of new services and features; and (c) for other purposes as agreed to by you.

Please note, as per our [**Privacy Policy**](https://app.termly.io/policy-viewer/policy.html?policyUUID=8a87dd19-52f6-4a60-8bb0-8e69dc3b75bc), in the event that the WELCH CENTER would like to use any of your User Videos for any training, informational, educational or other similar purpose that is unrelated to providing recommendations and/or suggestions specifically for you and your family, the WELCH CENTER will request your approval of the same. The WELCH CENTER will destroy User Videos in its possession or control upon the earlier of (a) your written request as described in the [**Privacy Policy**](https://app.termly.io/policy-viewer/policy.html?policyUUID=8a87dd19-52f6-4a60-8bb0-8e69dc3b75bc); or (b) nine (9) months after receipt of the User Video from you. Please see our [**Privacy Policy**](https://app.termly.io/policy-viewer/policy.html?policyUUID=8a87dd19-52f6-4a60-8bb0-8e69dc3b75bc) for more details regarding the WELCH CENTER’s privacy practices.

You represent and warrant that: (a) you have all rights necessary to record, upload and grant the WELCH CENTER all rights and licenses granted herein in relation to User Parenting Information (including all content and people depicted therein), and that your provision is accurate and not fraudulent, tortious, or otherwise in violation of any applicable law or any right of any person or entity. You further irrevocably waive any “moral rights” or other rights with respect to attribution of authorship or integrity of materials regarding any of the User Parenting Information. IF YOU CHOOSE TO MAKE ANY OF YOUR USER PARENTING INFORMATION PUBLICLY AVAILABLE VIA A THIRD-PARTY SITE OR ANY OTHER MEDIUM OR MEANS, YOU DO SO AT YOUR OWN RISK.

You may not upload or otherwise publish any information or material (including User Parenting Information) via the Application, Site, or otherwise through the Services, or on any third party platform that administers any such Services, that (a) is untrue, inaccurate, false, or other than an original work of your authorship; (b) impersonates any other person; (c) violates the privacy right or copyright, trademark, patent, or other intellectual property rights of any person or entity; (d) you don’t have the right to upload and publish, or (e) violates any law, or in any manner infringes or interferes with the rights of others, including but not limited to, the use or inclusion of any name, information or material that (i) may libel, defame, or invade the privacy of any third party, (ii) is obscene or pornographic, (iii) is harmful, threatening, offensive, abusive, harassing, vulgar, false or inaccurate, racially, sexually, ethnically, or is otherwise objectionable or otherwise contrary to the laws of any place where such information may be recorded, uploaded or viewed; (iv) constitute personal attacks on other individuals; (v) promote criminal, immoral, or illegal activity; (vi) promote or advertise any person, product, or service or solicit funds; or (vii) itself would be a violation of confidentiality.

You are solely responsible for the User Parenting Information that you submit and their accuracy, and you agree to defend, at the WELCH CENTER’s option and at your sole expense, and to indemnify and hold the WELCH CENTER and the WELCH CENTER Representatives and their successors and assigns harmless from any damages, losses, costs, or expenses, including attorneys’ fees, which the WELCH CENTER and the WELCH CENTER Representative and their successors and assigns may incur as a result of any User Parenting Information. The WELCH CENTER takes no responsibility and assumes no liability for any User Parenting Information posted by you or any third party, and the WELCH CENTER does not endorse any statement, idea, or representation contained in any User Parenting Information. The WELCH CENTER does not guarantee or make any representation regarding the accuracy, integrity, or quality of any of Your Parenting Information. The WELCH CENTER may (but has no obligation to) monitor, evaluate, alter, or remove User Parenting Information before or after they appear through the Services, or analyze your access to or use thereof. The WELCH CENTER may disclose information regarding your access to and use of the Application, Site and our other Services, and the circumstances surrounding such access and use, to anyone for any legitimate reason or purpose.

# Cancellation / Termination of the Site and/or Services

We reserve the right, in our sole determination, to postpone, cancel, or modify the Site, Application and/or other Services for any reason and at any time.

# No Assurance That Any Service Will Be Available

The WELCH CENTER makes no guarantee, warranty or commitment related to the availability, operability of functionality of the Site, Application, Content or any other Service. Availability may be limited and the WELCH CENTER may cease to offer the Application and/or any other Services at any time in its sole discretion. WELCH CENTER will not be responsible for ceasing to offer the Application or any other Service, non-availability of the Application or any other Service or any feature therein, or for any error or failure in the Application or any other Service or caused as a result of using the Application or any other Service. The WELCH CENTER reserves the right to modify, suspend, discontinue, or restrict access to, all or any part of the Application at any time.

# Representations and Warranties

You represent and warrant that you will comply with all terms and conditions of these Terms, and that you will not violate the property, intellectual property or privacy rights of any person or entity. You further represent and warrant that you will not: (a) cause damage to the Site, Application or any other Service; (b) impair the availability or accessibility of the Site, Application or any other Service, including, without limitation, by modifying, adapting, bypassing, or hacking the Site or Application or other Service to change, de-crypt, interrupt, destroy, or limit the functionality of the WELCH CENTER’s, or any user’s computer, server, software, hardware, network, or telecommunications equipment; (c) engage in any activity that interferes with the performance of, or impairs the functionality of, the Site, Application or any other Service; (d) damage the Site, Application or any other Service, or harm any individual, by introducing viruses, trojans, worms, logic bombs, or other material which is malicious or technologically harmful; (e) attempt to gain unauthorized access to the Site, Application or any other Service, or the servers on which any portion of the Site, Application and/or other Services are stored or hosted, or any server, computer, or database connected to the Site, Application or other Service; or (f) attack the Site, Application or other Service via a denial-of-service attack or a distributed denial-of service attack. The WELCH CENTER will report any breach to the relevant law enforcement authorities, and will cooperate with those authorities by disclosing your identity and any other relevant information to them.

# Disclaimer of Warranties

TO THE FULLEST EXTENT PERMITTED UNDER APPLICABLE LAW: (A) THE SITE, APPLICATION, CONTENT AND ALL OTHER SERVICES AND ANY AND ALL THIRD-PARTY MATERIALS ARE MADE AVAILABLE TO YOU ON AN “AS-IS,” “WHERE-IS” AND “WHERE-AVAILABLE” BASIS, WITHOUT ANY REPRESENTATIONS OR WARRANTIES OF ANY KIND, WHETHER EXPRESS, IMPLIED OR STATUTORY; AND (B) THE WELCH CENTER DISCLAIMS ALL REPRESENTATIONS AND WARRANTIES WITH RESPECT TO THE SITE, APPLICATION, CONTENT AND ALL OTHER SERVICES AND ANY AND ALL THIRD-PARTY MATERIALS, INCLUDING ANY WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT, ERROR-FREE OPERATION AND/OR TITLE. THE WELCH CENTER SHALL HAVE NO RESPONSIBILITY OR LIABILITY FOR THIRD PARTY APPLICATIONS, MATERIALS, SERVICES, ACTS OR OMMISSIONS. ALL DISCLAIMERS OF ANY KIND (INCLUDING IN THIS SECTION AND ELSEWHERE IN THESE TERMS AND THE AGREEMENT) ARE MADE FOR THE BENEFIT OF THE WELCH CENTER, THE WELCH CENTER REPRESENTATIVES AND THEIR RESPECTIVE SUCCESSORS AND ASSIGNS.

The WELCH CENTER does not guarantee that the Site, Application, Content or any other Service is or will remain updated, complete, correct, current, reliable, useful, timely, secure, error-free, or virus-free, or that access to any of them will be uninterrupted. The Site, Application, Content and other Services may include inaccuracies, errors and materials that violate or conflict with these Terms or the Agreement. Additionally, third parties may make unauthorized alterations to the Application, Site, Content and/or other Services. YOU EXPRESSLY AGREE THAT YOUR USE OF THE SITE, APPLICATION, CONTENT AND OTHER SERVICES IS AT YOUR SOLE RISK.

# Limitation of Liability

TO THE FULLEST EXTENT PERMITTED UNDER APPLICABLE LAW: (A) NEITHER THE WELCH CENTER NOR ANY THE WELCH CENTER REPRESENTATIVE WILL BE LIABLE FOR ANY INDIRECT, INCIDENTAL, CONSEQUENTIAL, SPECIAL, EXEMPLARY, OR PUNITIVE DAMAGES OF ANY KIND, UNDER ANY CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY OR OTHER THEORY, INCLUDING DAMAGES FOR LOSS OF PROFITS, USE OR DATA, LOSS OF OTHER INTANGIBLES, LOSS OF SECURITY OF INFORMATION (INCLUDING UNAUTHORIZED INTERCEPTION BY THIRD PARTIES OF ANY INFORMATION), EVEN IF ADVISED IN ADVANCE OF THE POSSIBILITY OF SUCH DAMAGES OR LOSSES; (B) WITHOUT LIMITING THE FOREGOING, NEITHER THE WELCH CENTER NOR ANY THE WELCH CENTER REPRESENTATIVE WILL BE LIABLE FOR DAMAGES OF ANY KIND RESULTING FROM YOUR USE OF OR INABILITY TO USE THE SITE OR ANY SERVICE OR ANY THIRD-PARTY MATERIAL, INCLUDING FROM ANY VIRUS THAT MAY BE TRANSMITTED IN CONNECTION THEREWITH; (C) YOUR SOLE AND EXCLUSIVE REMEDY FOR DISSATISFACTION WITH THE SITE OR ANY SERVICE OR THIRD-PARTY MATERIAL IS TO STOP USING THE SITE AND SERVICES; (D) THE MAXIMUM AGGREGATE LIABILITY OF THE WELCH CENTER (ON BEHALF OF THE WELCH CENTER AND ALL THE WELCH CENTER REPRESENTATIVES) FOR ALL DAMAGES, LOSSES, AND CAUSES OF ACTION, WHETHER IN CONTRACT, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE, SHALL IN THE AGGREGATE BE THE GREATER OF (I) THE TOTAL AMOUNT, IF ANY, PAID BY YOU TO THE WELCH CENTER TO USE THE SITE AND ANY SERVICES OVER THE SIX (6) MONTH PERIOD PRECEDING THE CAUSE OF ACTION; AND (II) FIFTY U.S. DOLLARS ($50). ALL LIMITATIONS OF LIABILITY OF ANY KIND (INCLUDING IN THIS SECTION AND ELSEWHERE IN THE TERMS) ARE MADE FOR THE BENEFIT OF THE WELCH CENTER AND ALL THE WELCH CENTER REPRESENTATIVES AND THEIR RESPECTIVE SUCCESSORS AND ASSIGNS. IF YOU LIVE IN A JURISDICTION THAT DOES NOT ALLOW THE EXCLUSION OR LIMITATION, THE ABOVE EXCLUSION AND LIMITATION SHALL BE DEEMED MODIFIED TO THE EXTENT NECESSARY TO ENABLE ENFORCEMENT OF THE SAME WHILE LIMITING THE LIABILITY OF THE WELCH CENTER AND THE WELCH CENTER REPRESENTATIVES TO THE FULLEST EXTENT ALLOWABLE UNDER LAW.

Each provision of these Terms that provides for a limitation of liability, disclaimer of warranties, or exclusion of damages is intended to and does allocate the risks between the parties under these Terms. This allocation is an essential element of the basis of the bargain between the WELCH CENTER and you. The limitations in this Section will apply even if any limited remedy fails of its essential purpose.

# Indemnification

You hereby agree, to the extent permitted by law, to indemnify, defend, and hold harmless the WELCH CENTER and the WELCH CENTER Representatives, including its partners, joint venturers, successors and assigns from and against any and all complaints, charges, claims, damages, losses, costs, liabilities, and expenses (including attorneys’ fees) due to, arising out of, or relating in any way to: (a) your access to or use of the Site (including, without limitation, any Content you submit on or to the Site or the Services; (b) your breach of any representations, warranties, obligations, or any other terms or conditions set forth in the Agreement; (c) your violation of any third-party rights, including without limitation any copyright, trademark, property, publicity, privacy or personal right(s); or (d) any misrepresentation made by you. The WELCH CENTER will promptly notify you of any such claim, suit, or proceeding. The WELCH CENTER reserves the right to assume the exclusive defense and control (at your expense) of any matter that is subject to indemnification under this Section. In such case, you agree to cooperate with any reasonable requests assisting the defense of such matter.

# Safety Warnings

TO THE EXTENT ANY SERVICE INVOLVES MENTAL HEALTH OR WELLNESS INFORMATION, SUCH INFORMATION IS DESIGNED FOR EDUCATIONAL AND INFORMATIONAL PURPOSES ONLY. YOU SHOULD NOT RELY ON THIS INFORMATION AS A SUBSTITUTE FOR, NOR DOES IT REPLACE, PROFESSIONAL MEDICAL OR MENTAL HEALTH, ADVICE, DIAGNOSIS OR TREATMENT. IF YOU HAVE ANY CONCERNS OR QUESTIONS ABOUT YOUR PHYSICAL OR MENTAL HEALTH, YOU SHOULD ALWAYS CONSULT WITH A PHYSICIAN, GENERAL PRACTITIONER OR OTHER MENTAL OR PHYSICAL HEALTH-CARE PROFESSIONAL. DO NOT DISREGARD, AVOID, OR DELAY OBTAINING MEDICAL OR MENTAL HEALTH-RELATED ADVICE FROM YOUR APPLICABLE HEALTHCARE PROFESSIONAL(S) BECAUSE OF SOMETHING YOU MAY HAVE READ ON THE SITE OR HEARD OR LEARNED IN CONNECTION WITH THE SERVICES. THE USE OF INFORMATION PROVIDED THROUGH THE SERVICES IS SOLELY AT YOUR OWN RISK AND IS NOT INTENDED AS MEDICAL OR MENTAL CARE HEALTH ADVICE.

# Changes to these Terms

The “Last updated” date at the top of these Terms indicates when the Terms have last been changed. The version of the Terms posted on the Site and made available via the Application on each respective date you visit or use the same will be the Terms applicable to your access and use of the Site, Application and other Services on that date. The WELCH CENTER’s electronically stored or otherwise properly stored copies of the Terms and Privacy Policy shall be deemed to be the true, complete, valid, and authentic copies of the version of the Terms and Privacy Policy that were in force on each respective date you visited and/or used the Site, Application and/or other Services.

# Arbitration and Class Action Waiver

PLEASE READ THIS SECTION CAREFULLY BECAUSE IT AFFECTS YOUR RIGHTS BY REQUIRING YOU TO AGREE TO RESOLVE CERTAIN DISPUTES BETWEEN YOU AND THE WELCH CENTER THROUGH BINDING INDIVIDUAL ARBITRATION.

This Section provides that all Disputes (defined below) between you and the WELCH CENTER shall be resolved by binding arbitration. Arbitration replaces the right to go to court. In the absence of this arbitration agreement, you may otherwise have a right or opportunity to bring claims in a court, before a judge or jury, and/or to participate in or be represented in a case filed in court by others (including, but not limited to, class actions). Except as otherwise provided, entering into these Terms constitutes a waiver of your right to litigate claims and all opportunity to be heard by a judge or jury. There is no judge or jury in arbitration, and court review of an arbitration award is limited. The arbitrator must follow these Terms and can award the same damages and relief as a court (including attorney’s fees).

WE EACH AGREE THAT, EXCEPT AS PROVIDED BELOW, ANY AND ALL DISPUTES, AS DEFINED BELOW, WHETHER PRESENTLY IN EXISTENCE OR BASED ON ACTS OR OMISSIONS IN THE PAST OR IN THE FUTURE, WILL BE RESOLVED EXCLUSIVELY AND FINALLY BY BINDING ARBITRATION RATHER THAN IN COURT IN ACCORDANCE WITH THIS PROVISION.

1. Pre-Arbitration Claim Resolution. Before making a claim, you and the WELCH CENTER agree to try to resolve any disputes through good faith discussions. For the purpose of this Section 22(a) “the WELCH CENTER” means the WELCH CENTER and the WELCH CENTER Representatives.
2. Definition of “Dispute”. As used herein, the term “**Dispute**” means any dispute, claim, or controversy related to the following (but expressly subject to and excluding any dispute, claim or controversy described in clauses (w), (x), (y) and (z) below):

(i) your use of the Site, Application or any other Services, whether based in contract, statute, regulation, tort (including, but not limited to, fraud, misrepresentation, fraudulent inducement, or negligence), or any other legal or equitable cause of action or claim for relief related to use of the Site, Application and/or other Services (including any results from any such use);

(ii) any claim for fraud, fraudulent inducement, misrepresentation, breach of confidentiality, breach of representation or warranty;

(iii) any claim for breach of payment obligation; and/or

(iv) the validity, enforceability and/or scope of this Section (with the exception of the enforceability of the Class Action Waiver clause below).

The parties expressly acknowledge and agree that any claims related to the following are EXPRESSLY EXCLUDED from the definition of Dispute as used in this Section 22 and that any claim related to the following falls outside the scope of this Section 22 and is not subject to arbitration or the jurisdiction of any arbitrator:

(w) any claim or request that the WELCH CENTER may make for injunctive or other equitable relief;

(x) any claim by you against the WELCH CENTER for defamation, libel or slander;

(y) any claim by the WELCH CENTER or any WELCH CENTER Representative against you for defamation, libel or slander; and/or

(z) any claim by the WELCH CENTER for breach of intellectual property or proprietary rights.

The parties acknowledge and agree that (A) this arbitration clause is intended to be construed narrowly, (B) the agreement to arbitrate only covers those categories of disputes specifically listed in clauses (i)-(iv) above which are not within the scope of any of clauses (w) – (z) above, and (C) the parties do not agree or intend to arbitrate any claim outside the scope of arbitration, or any claim (whether statutory, tort or otherwise) that merely touches on or collaterally relates to the Agreement.

1. Dispute resolution and initiation of Arbitration. You or the WELCH CENTER may initiate resolution of a Dispute by sending to the other party written notice describing the Dispute and the proposed resolution. Written notification by you must include (1) your name, (2) your address, (3) a written description of your Dispute, and (4) a description of the specific relief you seek. In the event that you and the WELCH CENTER cannot resolve the issue within ninety (90) days following receipt of the initial notice, either party may initiate arbitration of the Dispute in accordance with the remainder of this Section 22.
2. Jurisdiction. You agree that the Site, Application and other Services shall be deemed a passive website and service based solely in New York that does not give rise to personal jurisdiction over the WELCH CENTER, either specific or general, in jurisdictions other than New York. These Terms shall be governed by the internal substantive laws of the State of New York, without respect to its conflict of laws principles. Notwithstanding the foregoing, any arbitration conducted pursuant to these Terms shall be governed by the Federal Arbitration Act (9 U.S.C. §§ 1-16). The application of the UN Convention on Contracts for the International Sale of Goods is expressly excluded.  You agree to submit to the personal jurisdiction of the federal and state courts located in New York County, New York for any actions for which the WELCH CENTER may seek injunctive or other equitable relief in a court of competent jurisdiction to prevent the actual or threatened infringement, misappropriation or violation of its intellectual property or proprietary rights, including any provisional relief required to prevent irreparable harm. You agree that New York County, New York is the proper forum for any appeals of an arbitration award or for trial court proceedings in the event that the arbitration provision below is found to be unenforceable.
3. Arbitration Procedures; Location of Arbitration. For any Dispute not settled pursuant to Section 22(a), you and the WELCH CENTER agree to resolve such Dispute by binding arbitration by JAMS, under the Optional Expedited Arbitration Procedures then in effect for JAMS, except as provided herein. The JAMS rules are available at www.jamsadr.com or by calling 1-800-352-5267. This Section governs in the event it conflicts with the applicable arbitration rules. Under no circumstances will class action or representative action procedures or rules apply to the arbitration. The arbitration will be conducted in New York County, New York, unless you and the WELCH CENTER agree otherwise. You may sue in a small claims court of competent jurisdiction without first engaging in arbitration, but this does not absolve you of your commitment to engage in the informal dispute resolution process. Any judgment on the award rendered by the arbitrator may be entered in any court of competent jurisdiction. Nothing in this Section shall be deemed as preventing the WELCH CENTER from seeking injunctive or other equitable relief from the courts as necessary to prevent the actual or threatened infringement, misappropriation, or violation of the WELCH CENTER’s intellectual property rights or other rights in the Site, Application, Content and/or other Services.
4. Class Action Waiver; Jury Waiver. Where permitted under applicable law, you agree to bring claims against the WELCH CENTER only in your individual capacity and not as a plaintiff or class member in any purported class or representative action. Unless the WELCH CENTER agrees, no action or court of law may consolidate more than one person’s claims, or otherwise preside over any form of a representative, consolidated or class proceeding, against the WELCH CENTER. This waiver applies to class arbitration, and, unless the WELCH CENTER agrees otherwise, the arbitrator may not consolidate more than one person’s claims, and may not otherwise preside over any form of a class or representative proceeding or claims (such as a class action, consolidated action, representative action, or private attorney general action). You understand and agree that by entering into these Terms you and the WELCH CENTER are each waiving the right to a trial by jury or to participate in a class action, collective action, private attorney general action, or other representative proceeding of any kind. Notwithstanding the foregoing, per Section 22(g), this Section 22(f) shall be deemed deleted in the event that it is illegal or unenforceable under applicable law.
5. Severability; Survival. If any clause within this Section (other than the Class Action Waiver clause above) is found to be illegal or unenforceable, that clause will be severed from this Section, and the remainder of this Section will be given full force and effect. If the Class Action Waiver clause is found to be illegal or unenforceable, this entire Section will be unenforceable and the Dispute will be decided by a court. This Section shall survive if you cease using any of the Services
6. Enforceability. For any claim described in, or related to, any of clauses (w) – (z) above, the parties agree that the exclusive jurisdiction and venue described in Section 23 below shall govern any claim in court arising out of or related to these Terms. If this arbitration Section is invalidated in whole or in part, the parties agree that the exclusive jurisdiction and venue described in Section 23 below shall govern any claim in court arising out of or related to these Terms.

# Choice of Law and Forum

Your access and use of the Services, all actions contemplated hereunder, and any and all disputes directly or indirectly arising out of or otherwise relating to this Agreement shall be governed by and construed in accordance with the laws of the United States of America and the State of New York as if these Terms were an agreement wholly entered into and wholly performed within the State of New York, without reference to the choice of law rules thereof. The exclusive jurisdiction for any claim or action arising from or relating to these Terms or the use of the Site, Application and/or other Services (except where arbitration is specified) shall be with the state or federal courts located in New York City, New York.

# Force Majeure

Neither party shall be liable for any failure or delay in performance under these Terms of Use (other than for delay in payments) for causes beyond the party’s reasonable control and not caused by that party’s fault, or negligence, including, but not limited to, acts of God, epidemic, pandemic, acts of government, flood, fire, civil unrest, acts of terror, strikes or other labor problems, computer attacks or malicious acts, such as attacks on or through the internet, any internet service provider, telecommunications or hosting facility (each, a “Force Majeure Event”), but in each case, only if and to the extent that the non-performing party is without fault in causing such failure or delay, and the failure or delay could not have been prevented by reasonable precautions and measures and cannot reasonably be circumvented by the non-conforming party through the use of alternate sources, workaround plans, disaster recovery, business continuity measures or other means. Dates by which performance obligations are scheduled to be met will be extended for a period of time equal to the time lost due to any delay so caused.

# Miscellaneous

If any provision of these Terms is held to be invalid or unenforceable, the remaining provisions of these Terms will remain in full force and the unenforceable provision shall be interpreted or reformed to the extent necessary so as to render it enforceable while approximating the parties’ intent as closely as possible.The headings contained in this Agreement are for purposes of convenience only and shall not control or affect the meaning or construction hereof. These Terms together with the rest of the Agreement (defined at the top of these Terms) constitutes the entire agreement between you and the WELCH CENTER with respect to your use of the Site, Application, Content and other Services and supersedes any and all prior understandings or agreements between you and the WELCH CENTER, whether written or oral. You acknowledge that, in providing you with access to and use of the Site, Application, Content and other Services, the WELCH CENTER has relied on your acceptance of these Terms.