

Updated as of: November 17, 2021

## **Welcome to Everland!**

Thank you for signing up to use our products, including the Everland application (the “Everland Platform”), website (the “Site”), and services, features, content, applications and widgets offered on the Everland Platform and Site (together, we’ll call these the “Services”). The Services are provided by 9 Count Inc. (“Everland” or “we”). The term “you” or “User” refers to the person or entity accessing or otherwise using our Services.

These Terms of Service (or “Terms” for short) describe the rules of Everland’s relationship with you and apply to your use of the Services. They are a legal agreement, so please read them carefully.

By registering for and/or using the Services in any manner, including but not limited to by providing your display name, phone number, name, and user name, you agree to all of the terms and conditions contained in these Terms, which also incorporate Everland’s Privacy Policy, Community Guidelines and all other operating rules, policies and procedures that may be published from time to time on the Everland Platform by Everland, each of which may be updated by Everland from time to time without notice to you in accordance with the terms set out under the "Updates to These Terms" section below. In addition, some services offered through the Services may be subject to additional terms and conditions specified by Everland from time to time; your use of such services is subject to those additional terms and conditions, which are incorporated into these Terms by reference. These Terms apply to all users of the Services, including, without limitation, users who are contributors of content, information, and other materials or services on the Site, individual users of the Services, venues that access the Services, and users that have a page on the Services. IF YOU DO NOT AGREE WITH THESE TERMS, PLEASE DO NOT USE THESE SERVICES.

The Everland Platform is a mobile application that gives people access to tools to help them feel better.

ARBITRATION NOTICE. Except for certain kinds of disputes described in Section 15, you agree that disputes arising under these Terms will be resolved by binding, individual arbitration, and BY ACCEPTING THESE TERMS, YOU AND Everland ARE EACH WAIVING THE RIGHT TO A TRIAL BY JURY OR TO PARTICIPATE IN ANY CLASS ACTION OR REPRESENTATIVE PROCEEDING. YOU AGREE TO GIVE UP YOUR RIGHT TO GO TO COURT to assert or defend your rights under this contract (except for matters that may be taken to small claims court). Your rights will be determined by a NEUTRAL ARBITRATOR and NOT a judge or jury. (See Section 16)

## **1. Who Can Use the Everland Platform.**

You may browse the Site and view content without registering or purchasing a subscription, but as a condition to using certain aspects of the Services, you are required to register with Everland and represent, warrant and covenant that you provide Everland with accurate and complete registration information (including, but not limited to display name, user name (“User Name”), e-mail address and/or mobile telephone number, profile name, picture and a password you will use to access the Services) and to keep your registration information accurate and up-to-date. Failure to do so shall constitute a breach of these Terms, which may result in immediate termination of your Everland account. We recommend, but do not require, that you use your own name as your User Name so your friends can recognize you more easily.

Everland will have the right to use your registration information in connection with servicing and operating the Everland Platform. You agree (i) to restrict access by any other person or entity to your password or other login information, (ii) to not knowingly use the name or email of any other person without authorization, (iii) to not use an email or profile name that is profane, offensive or otherwise inappropriate, (iv) to not allow any third party to use your login information, registration information or User account, and (v) to notify Everland of any breach of security by promptly sending Everland an e-mail to [support@everland.la](mailto:support@everland.la). You agree that you will be liable for all activities that occur under your User account, even if such activities were not committed by you. Everland is not responsible for any loss or damage as a result of someone else using your User account, registration information or password with or without your knowledge. You acknowledge and agree that certain User account information (such as your account profile name and/or picture) that you provide in connection with the registration of your account will be publicly viewable by all Users of the Everland Platform.

We want our Service to be as open and inclusive as possible, but we also want it to be safe, secure, and in accordance with the law. So, we need you to commit to a few restrictions in order to be part of the Everland community.

THE SERVICES ARE NOT FOR PERSONS UNDER THE AGE OF 13 OR FOR ANY USERS PREVIOUSLY SUSPENDED OR REMOVED FROM THE SERVICES BY Everland. IF YOU ARE UNDER 13 YEARS OF AGE, THEN YOU MUST NOT USE OR ACCESS THE SERVICES AT ANY TIME OR IN ANY MANNER. Furthermore, by using the Services, you affirm that either you are at least 18 years of age or have been authorized to use the Services by your parent or legal guardian who is at least 18 years of age and entered into these Terms on your behalf. If you are using the Services on behalf of an entity, then you represent and warrant that you have the authority to bind that entity or organization to these Terms and you agree to be bound by these Terms on behalf of that entity or organization.

## **2. Subscriptions**

You may also purchase a Everland subscription, which will entitle you to various perks and benefits. A Everland subscription may be purchased in various packages, such as one-month, three-month, or six-month subscriptions. For all mobile subscriptions, payment will be charged to your iTunes or Google account when you confirm your purchase. Your subscription will renew automatically for the same amount of time as your original subscription unless you switch off the auto-renew feature at least 24 hours before the end of your current subscription. This is because your account may be charged for renewal within 24 hours prior to the end of your current subscription period. You can manage your subscription and switch off auto-renewal by accessing your iTunes or Google account settings. You may not cancel your current subscription during the subscription period, although you may cancel automatic renewal at any time. Both Apple and Google facilitate “free trials” of subscription products (such as Everland) for first-time users and we take advantage of that ability. For example, from time to time we may offer a free initial week to first-time Everland subscribers. Eligibility for any such trial is limited to users who have not previously subscribed to Everland, through either a current or prior Everland account. If you are a previous Everland subscriber and try to claim a free trial, you should be aware that Apple or Google may recognize your ineligibility. If so, you may not receive a free trial, but instead may be charged immediately for your first subscription month. This is a feature controlled by

the Apple App Store or the Google Play Store, depending on which platform you use for Everland. Purchases of Subscriptions are non-refundable and non-transferable, even if they expire or are discontinued. We may change the purchase price for Subscriptions at any time, as well as the features included in Subscriptions. We reserve the right to stop issuing Subscriptions at any time and to set expiration dates for Subscriptions. Subscriptions may not be redeemed for any sum of money or monetary value. If you delete your account or your account is terminated for any reason, you will lose all unused Subscription time without refund or other compensation.

### **3. Your Rights to Use the Services.**

As between any User and Everland, Everland retains all right, title and interest in and to the Everland Platform, throughout the world, in perpetuity, including, without limitation, (i) all text, graphics, typefaces, formatting, graphs, designs, editorial content, HTML, look and feel, software, and data, (ii) all business processes, procedures, methods, and techniques used in the Everland Platform, (iii) all other materials and content uploaded or incorporated into the Everland Platform, including, without limitation, all Everland Platform content (but excluding User Content (defined below), which is owned by the applicable User subject to the User Content license granted to Everland pursuant to these Terms), (iv) all associated trade secret rights and other intellectual property and proprietary rights recognized anywhere in the world; and (v) the coordination, selection, arrangement and enhancement of such intellectual property as a Collective Work under the United States Copyright Act, as amended (collectively, “Everland Platform IP”), and nothing contained herein shall be construed as creating or granting to any User any right, title or interest in and to such Everland Platform IP other than the express license granted therein pursuant to these Terms. Everland Platform IP is protected in all forms, media and technologies now known or hereinafter developed as well as by the domestic and international laws of copyright, trademarks, patents, and other proprietary rights and laws.

You acknowledge and agree that we may generate revenues, increase goodwill or otherwise increase our value from your use of the Services, including, by way of example and not limitation, through the sale of advertising, sponsorships, promotions and usage data, and except as specifically permitted by us in these Terms or in another agreement you enter into with us, you will have no right to share in any such revenue, goodwill or value whatsoever. You further acknowledge that, except as specifically permitted by us in these Terms or in another agreement you enter into with us, you (i)

have no right to receive any income or other consideration from any User Content or your use of any musical works, sound recordings or audiovisual clips made available to you on or through the Services, including in any User Content created by you, and (ii) are prohibited from exercising any rights to monetize or obtain consideration from any User Content within the Services or on any third party service ( e.g. , you cannot claim User Content that has been uploaded to a social media platform such as YouTube for monetization).

Subject to your compliance with these Terms, and any other policies we make available to you from time to time, Everland grants you a personal, worldwide, royalty-free, non-transferable, non-exclusive, revocable, non-sublicensable license to: (a) access and use the Services for your non-commercial use or internal business use, solely as permitted by the tools, products, services, functionalities and/or features of the Everland Platform, subject in all respects to these Terms, and not for redistribution of any kind; (b) download, install and use the Everland Platform on one or more mobile device(s) (e.g. cell phone or tablet), which natively executes an operating system supported by Everland, and that you own or control for your non-commercial use or internal business use; and (c) use products or services offered within the Everland Platform or Site.

You agree that any software that we provide you, including the Everland Platform, may automatically download and install upgrades, updates or other new features and regularly send log information to our servers. You may be able to adjust these automatic downloads through your mobile device settings. These updates and upgrades are designed to improve and enhance our Services and can include bug fixes, enhancements and new modules. You consent to the installation of such software, including updates and upgrades (and authorize us to deliver such software to you) as part of your use of our Services. You may withdraw consent by ceasing to use the Services.

You may not sell, rent, lease, assign, distribute, copy, modify or host any part of our Services. As well, you may not adapt, merge, make adaptations, translations or derivative works of, disassemble, decompile, reverse compile, attempt to discover the source code or reverse engineer any part of the Services, except to the extent these restrictions are expressly prohibited by applicable law.

#### **4. Rights You Give Us.**

### **Through-To-The-Audience Rights.**

All of the rights you grant in your User Content in these Terms are provided on a through-to-the-audience basis, meaning the owners or operators of third party services will not have any separate liability to you or any other third party for User Content posted or used on such third party service via the Services.

### **Waiver of Rights to User Content.**

To learn more about how we use information, and how to control or delete your content, review the Privacy Policy at [www.everland.la/privacy](http://www.everland.la/privacy). You also represent and warrant that you have all necessary rights to perform the foregoing activities in respect of the User Content (including in respect of User Content that contains personal information), having provided all notices and disclosures, obtained all applicable consents and permissions, or otherwise have all authority, in each case as required by applicable laws, to enable us to perform the Services. If you only own the rights in and to a sound recording, but not to the underlying musical works embodied in such sound recordings, then you must not post such sound recordings to the Everland Platform unless you have all permissions, clearances from, or are authorized by, the owner of any part of the content to submit it to the Everland Platform.

Notwithstanding any other provision in these Terms, you represent and warrant that you will comply with all laws and regulations regarding endorsements or testimonials made by you in any User Content, including that you will (i) make only accurate statements that represent your genuine experience with any product, good or service and (ii) make all required disclosures pursuant to the Federal Trade Commission's ("FTC") Guides Concerning the Use of Endorsements and Testimonials in Advertising, as such guides may be amended from time-to-time by the FTC. Follow this link for further information on complying with the FTC's guidance:

<https://www.ftc.gov/sites/default/files/documents/one-stops/advertisement-endorsements/091005revisedendorsementguides.pdf>.

We're always happy to hear from you but if you volunteer any feedback or suggestions about Everland or the Services, you agree that you will not submit to us any feedback

or suggestions that you consider to be confidential or proprietary and that we can use your feedback and suggestions in any manner we deem is appropriate without compensating you.

You acknowledge and agree that Everland may establish general practices and limits concerning use of the Everland Platform, including without limitation the maximum number of days that User Content posted to the Everland Platform will be retained by, or made available through, the Everland Platform, and the maximum storage space that will be allotted on Everland's servers on your behalf. You agree that Everland has no responsibility or liability for the blocking, deletion or failure to store any User Content maintained or transmitted by the Everland Platform. You further acknowledge that Everland reserves the right to change these general practices and limits at any time, in its sole discretion, with or without notice to you.

## **5. Privacy**

Your privacy matters to us. You can learn more about how we handle your information when you use our Services by reading our Privacy Policy at [www.everland.la/privacy](http://www.everland.la/privacy). We encourage you to read it carefully because by using our Services you agree that Everland can collect, use and share your information in the ways described in that policy.

## **6. Safety and Respecting the Rights of Others**

Providing a safe and open service for a broad community requires that we all do our part.

- You can't impersonate others or provide inaccurate information. You must provide us with accurate and up to date information (including registration information). Also, you may not impersonate someone you aren't, and you can't create an account for someone else unless you have their express permission.
- You can't do anything unlawful, misleading, or fraudulent or for an illegal or unauthorized purpose.
- You can't violate (or help or encourage others to violate) these Terms or our policies. Learn how to report conduct or content in our help center.

- You can't do anything to interfere with or impair the intended operation of the Services.
- You can't attempt to create accounts or access or collect information in unauthorized ways. This includes creating accounts or collecting information in an automated way without our express permission.
- You can't attempt to buy, sell, or transfer any aspect of your account (including your username) or solicit, collect, or use login credentials or badges of other users.
- You can't post private or confidential information or do anything that violates someone else's rights, including intellectual property. Learn more, including how to report content that you think infringes your intellectual property rights, at clause 9 of these Terms.
- You can't use a domain name or URL in your username without our prior written consent.
- You can't decipher, decompile, disassemble, reverse engineer or otherwise attempt to derive any source code or underlying ideas or algorithms of any part of the Services (including without limitation any application or widget), except to the limited extent applicable laws specifically prohibit such restriction.

Without limitation to the foregoing, you may not upload, post, send, comment on or store content that:

- violates or infringes any third-party right, including any copyright, trademark, patent, trade secret, moral right, privacy right, right of publicity, or any other intellectual property or proprietary right;
- promotes an illegal activity or that impersonates any other person or entity, including Everland;

You agree not to use the Services to:

- disable, overly burden, impair, or otherwise interfere with servers or networks connected to the Services (e.g. a denial of service attack);
- attempt to gain unauthorized access to the Services or servers or networks connected to the Services (e.g. through password mining); or
- interfere with another user's use and enjoyment of the Services.

You are solely responsible for all of your interactions with the Everland Platform and other Users/User Content on or through the Everland Platform. Notwithstanding the foregoing, Everland reserves the right to determine, in its sole discretion, what constitutes harassment, mischief, or unacceptable conduct and where that has occurred, and may in its sole discretion, partially or completely deny, suspend or terminate access to the Everland Platform to any User that it determines has engaged in such behavior.

## **7. Your Account**

You are responsible for anything that happens in your account, so please keep it secure. You agree that the registration information you give to Everland is true and that you'll keep it up to date.

Also, you agree that you will not:

- create another account if we've disabled one you had unless you have our written permission first;
- buy, sell, rent or lease access to your Everland account or username unless you have our written permission first;
- share your account sign in information with anyone;
- log in or try to log in to access the Services through unauthorized third party applications or clients.

If you think someone has gained access to your account, please contact our Trust & Safety team at [support@everland.la](mailto:support@everland.la)

If you no longer want to use our Services again, and would like your account deleted, we can take care of this for you. Please contact us via [support@everland.la](mailto:support@everland.la) and we will provide you with further assistance and guide you through the process. Once you choose to delete your account, you will not be able to reactivate your account or retrieve any of the User Content or information you have added.

## **8. Data Charges**

You are responsible for any mobile charges when you use the Services including data charges for use of the Services and/or updates or upgrades of new versions of the Services. If you're not sure what those charges may be, please ask your provider before using the Services.

## **9. Ownership**

We, or our affiliates and licensors as applicable, retain all ownership and intellectual property rights in and to: (1) the Services; (2) all Aggregated Statistical Information; and (3) all modifications, improvements, customizations, updates, enhancements, derivative works, translations and adaptations to the foregoing.

## **10. Copyright**

Our policy allows copyright owners to request removal of any infringing materials and for the termination, in appropriate circumstances, of users of our Services who are repeat infringers of intellectual property rights, including copyrights. If you believe that one of our users is using Everland to unlawfully infringe the copyright(s) in a work, and want to have the material removed, please provide the following information in writing to 9 Count Inc. Attn: Copyright Takedown Request, 517 Victoria Ave., Venice, CA 90291, Email: [support@everland.la](mailto:support@everland.la)

Any notice alleging that materials hosted by or distributed through the Services infringe intellectual property rights must include the following information:

- an electronic or physical signature of the person authorized to act on behalf of the owner of the copyright or other right being infringed;

- a description of the copyrighted work or other intellectual property that you claim has been infringed;
- a description of the material that you claim is infringing and where it is located on the Services;
- your address, telephone number, and email address;
- a statement by you that you have a good faith belief that the use of the materials on the Services of which you are complaining is not authorized by the copyright owner, its agent, or the law; and
- a statement by you that the above information in your notice is accurate and that, under penalty of perjury, you are the copyright or intellectual property owner or authorized to act on the copyright or intellectual property owner's behalf.

Everland will promptly terminate the accounts of users that are determined by Everland to be repeat infringers.

## **11. Third Party Services**

If you use a service, feature or product offered by a third party (including those we jointly offer with a third party all together the "Third Party Services"), that third party's terms will govern their relationship with you. Please read and understand those terms and investigate any features that are important to you before using any Third Party Services. Everland is not responsible or liable for the third party terms or content on Third Party Services or actions taken under the third party's terms. Everland does not necessarily conduct a detailed review of and makes no promises about the Third Party Services. By using any Third Party Services, you agree that Everland may transfer the necessary information to the applicable Third Party Services.

## **12. Modifying the Services and Termination**

We are always improving our Services and creating new ones. We may add or remove features, products or functionality, and we may also suspend or stop the Services at any time without notice.

We can also terminate these Terms or deactivate your Everland account or any group you have created or participated in at any time if we think you've violated these Terms or for any reason. We may also reclaim usernames if you've been inactive for at least 3 months or have violated these Terms, including by infringing other people's trademarks.

We can remove any content or information you share on the Services if we believe that it violates these Terms, our policies or we are permitted or required to do so by law, or in response to complaints from other users or third parties, with or without notice and without any liability to you. We have the right to remove, disallow, block or delete any posting you make on our Services if, in our opinion, your message does not comply with the content standards set out in these Terms. We can refuse to provide or stop providing all or part of the Services to you (including terminating or disabling your account) immediately to protect our community or services, or if you create risk or legal exposure for us, violate these Terms or our policies, if you repeatedly infringe other people's intellectual property rights, or where we are permitted or required to do so by law. As a result, we recommend that you save copies of any User Content that you post to the Services on your personal device(s) in the event that you want to ensure that you have permanent access to copies of such User Content. We do not guarantee the accuracy, integrity, appropriateness or quality of any User Content, and under no circumstances will we be liable in any way for any User Content. If you believe your account has been terminated in error, or you want to disable or permanently delete your account, consult our help center.

Content you delete may persist for a limited period of time in backup copies and will still be visible where others have shared it. This paragraph, and the section below called "How We Handle Disputes," will still apply even after your account is terminated or deleted.

We will not be liable to you for terminating this Agreement, including for termination of your Everland account or deletion of your content. No matter who ends this agreement, you and Everland will continue to be bound by Sections 3 (Rights You Give to Us), 6 (Privacy), 7 (Safety and Respecting the Rights of Others), 10 (Ownership), 11 (Copyright), 12 (Third Party Services), 13 (Modifying the Services and Termination), 13 (Additional Terms for Specific Services), 15 (Who is Responsible if Something Happens), 16 (How We Handle Disputes), 17 (Severability), 18 (Final Terms) and 19 (Updating These Terms).

California subscribers: You may cancel your subscription, without penalty or obligation, at any time prior to midnight of the third business day following the date you subscribed. If you subscribed using an external service (e.g., Apple ID, Google Play), you must cancel through your external service. If you subscribed through your Apple ID, refunds are handled by Apple, not Everland. You can request a refund from Apple through your Apple ID account on your phone or at <https://getsupport.apple.com>. All other users may request a refund by contacting Everland's member services at [support@everland.la](mailto:support@everland.la), or by mailing or delivering a signed and dated notice that states that you, the buyer, are canceling this agreement, or words of similar effect. Please also include your name and the email address, phone number, or other unique identifier you used to sign up for your account. This notice shall be sent to: [support@everland.la](mailto:support@everland.la), Attn: Cancellations. You may have these terms of use e- mailed to you by sending a request to Everland's Terms Inquiries, at [support@everland.la](mailto:support@everland.la). In accordance with Cal. Civ. Code §1789.3, you may report complaints to the Complaint Assistance Unit of the Division of Consumer Services of the California Department of Consumer Affairs by contacting them in writing at Consumer Information Division, 1625 North Market Blvd., Suite N112 Sacramento, CA 95834, or by telephone at (800) 952-5210.

### **13. Additional Terms for Specific Services**

Since we have a growing number of Services, we sometimes need to describe additional terms for specific Services. Those additional terms and conditions, which are available with the relevant Services, then become part of your agreement with us if you use those Services. For additional information on how our Services work, you can visit our Help site located at [everland.la](http://everland.la)

### **14. Who Is Responsible if Something Happens.**

TO THE EXTENT PERMITTED BY LAW, Everland, ITS AFFILIATES, AND THEIR RESPECTIVE OFFICERS, DIRECTORS, EMPLOYEES, AGENTS, SUPPLIERS AND LICENSORS (COLLECTIVELY, THE "Everland PARTIES") MAKE NO WARRANTIES OR REPRESENTATIONS ABOUT THE SERVICES AND ANY CONTENT OR FEATURES THEREON AVAILABLE ON THE SERVICES, INCLUDING BUT NOT LIMITED, TO THE ACCURACY, RELIABILITY, COMPLETENESS APPROPRIATENESS, TIMELINESS OR RELIABILITY THEREOF. THE Everland PARTIES WILL NOT BE SUBJECT TO LIABILITY FOR THE TRUTH, ACCURACY OR COMPLETENESS OF ANY CONTENT ON THE

SERVICES OR ANY OTHER INFORMATION CONVEYED TO ANY USER, OR FOR ERRORS, MISTAKES OR OMISSIONS THEREIN, OR FOR ANY DELAYS OR INTERRUPTIONS OF THE DATA, OR INFORMATION STREAM FROM WHATEVER CAUSE. AS A USER, YOU AGREE THAT YOU USE THE SERVICES AND ANY CONTENT THEREON AT YOUR OWN RISK. YOU ARE SOLELY RESPONSIBLE FOR ALL USER CONTENT YOU UPLOAD TO THE SERVICES.

THE Everland PARTIES DO NOT WARRANT THAT THE SERVICES WILL OPERATE ERROR FREE, OR THAT THE SERVICES AND ANY CONTENT OR FEATURES THEREON ARE FREE OF COMPUTER VIRUSES OR SIMILAR CONTAMINATION OR DESTRUCTIVE FEATURES. IF YOUR USE OF THE SERVICES OR ANY CONTENT THEREON RESULTS IN THE NEED FOR SERVICING OR REPLACING EQUIPMENT OR DATA, NO Everland PARTY WILL BE RESPONSIBLE FOR THOSE COSTS. THE SERVICES ARE PROVIDED ON AN “AS IS” AND “AS AVAILABLE” BASIS WITHOUT ANY WARRANTIES OF ANY KIND. WE ALSO DISCLAIM ALL WARRANTIES, WHETHER EXPRESS OR IMPLIED, INCLUDING THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, AND NON-INFRINGEMENT.

IN NO EVENT WILL ANY Everland PARTY BE LIABLE FOR ANY SPECIAL, INDIRECT, PUNITIVE, INCIDENTAL OR CONSEQUENTIAL DAMAGES, LOST PROFITS, OR DAMAGES RESULTING FROM LOST DATA OR BUSINESS INTERRUPTION RESULTING FROM, OR IN CONNECTION WITH, THE USE OR INABILITY TO USE THE SERVICES AND ANY CONTENT THEREON, WHETHER BASED ON WARRANTY, CONTRACT, TORT (INCLUDING NEGLIGENCE), OR ANY OTHER LEGAL THEORY, EVEN IF SUCH Everland PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. Everland’S LIABILITY, AND THE LIABILITY OF ANY OTHER Everland PARTIES, TO YOU OR ANY THIRD PARTIES IN ANY CIRCUMSTANCE IS LIMITED TO U.S. \$100.

We don’t control what people and others do or say, and we aren’t responsible for their (or your) actions or conduct (whether online or offline) or content (including unlawful or objectionable content). We also aren’t responsible for services and features offered by other people or companies, even if you access them through our Services, as noted above under “Third Party Services”.

You agree to defend (at our request), indemnify and hold us harmless from and against any claims, liabilities, damages, losses, and expenses, including without limitation, reasonable attorney's fees and costs, arising out of or in any way connected with these Terms or your use of the Services. You will cooperate as required by us in the defense of any claim. We reserve the right to assume the exclusive defense and control of any matter subject to indemnification by you, and you will not in any event settle any claim without our prior written consent.

## **15. How we Handle Disputes**

In the interest of resolving disputes between you and Everland in the most expedient and cost effective manner, and except as described in this Section 16, you and Everland agree that every dispute arising in connection with these Terms will be resolved by binding arbitration. Arbitration is less formal than a lawsuit in court. Arbitration uses a neutral arbitrator instead of a judge or jury, may allow for more limited discovery than in court, and can be subject to very limited review by courts. Arbitrators can award the same damages and relief that a court can award. This agreement to arbitrate disputes includes all claims arising out of or relating to any aspect of these Terms, whether based in contract, tort, statute, fraud, misrepresentation, or any other legal theory, and regardless of whether a claim arises during or after the termination of these Terms. YOU UNDERSTAND AND AGREE THAT, BY ENTERING INTO THESE TERMS, YOU AND Everland ARE EACH WAIVING THE RIGHT TO A TRIAL BY JURY OR TO PARTICIPATE IN A CLASS ACTION.

Despite the provisions of Section 16, nothing in these Terms will be deemed to waive, preclude, or otherwise limit the right of either party to: (a) bring an individual action in small claims court; (b) pursue an enforcement action through the applicable federal, state, or local agency if that action is available; (c) seek injunctive relief in a court of law in aid of arbitration; or (d) to file suit in a court of law to address an intellectual property infringement claim.

If you do not wish to resolve disputes by binding arbitration, you may opt out of the provisions of this Section 15 within 30 days after the date that you agree to these Terms by sending a letter to 9 Count, Inc., Attention: Legal Department – Arbitration Opt-Out, 517 Victoria Ave., Santa Monica, CA 90291 that specifies: your full legal name, the email address associated with your account on the Services, and a statement that you wish to opt out of arbitration (“Opt-Out Notice”). Once Everland

receives your Opt-Out Notice, this Section 15 will be void and any action arising out of these Terms will be resolved in accordance with Section 18. The remaining provisions of these Terms will not be affected by your Opt-Out Notice.

Any arbitration between you and Everland will be settled under the Federal Arbitration Act and administered by the American Arbitration Association (“AAA”) under its Consumer Arbitration Rules (collectively, “AAA Rules”) as modified by these Terms. The AAA Rules and filing forms are available online at [www.adr.org](http://www.adr.org), by calling the AAA at 1-800-778-7879, or by contacting Everland. The arbitrator has exclusive authority to resolve any dispute relating to the interpretation, applicability, or enforceability of this binding arbitration agreement.

A party who intends to seek arbitration must first send a written notice of the dispute to the other party by certified U.S. Mail or by Federal Express (signature required) or, only if that other party has not provided a current physical address, then by electronic mail (“Notice of Arbitration”). Everland’s address for Notice is: 9 Count, Inc., 517 Victoria Ave., Santa Monica, CA 90291. The Notice of Arbitration must: (a) describe the nature and basis of the claim or dispute; and (b) set forth the specific relief sought (“Demand”). The parties will make good faith efforts to resolve the claim directly, but if the parties do not reach an agreement to do so within 30 days after the Notice of Arbitration is received, you or Everland may commence an arbitration proceeding. All arbitration proceedings between the parties will be confidential unless otherwise agreed by the parties in writing. During the arbitration, the amount of any settlement offer made by you or Everland must not be disclosed to the arbitrator until after the arbitrator makes a final decision and award, if any. If the arbitrator awards you an amount higher than the last written settlement amount offered by Everland in settlement of the dispute prior to the award, Everland will pay to you the higher of: (i) the amount awarded by the arbitrator; or (ii) \$10,000.

If you commence arbitration in accordance with these Terms, Everland will reimburse you for your payment of the filing fee, unless your claim is for more than \$10,000, in which case the payment of any fees will be decided by the AAA Rules. Any arbitration hearing will take place at a location to be agreed upon in Los Angeles, CA, but if the claim is for \$10,000 or less, you may choose whether the arbitration will be conducted: (a) solely on the basis of documents submitted to the arbitrator; (b) through a non-appearance based telephone hearing; or (c) by an in-person hearing as established by the AAA Rules in the county (or parish) of your billing address. If the

arbitrator finds that either the substance of your claim or the relief sought in the Demand is frivolous or brought for an improper purpose (as measured by the standards set forth in Federal Rule of Civil Procedure 11(b)), then the payment of all fees will be governed by the AAA Rules. In that case, you agree to reimburse Everland for all monies previously disbursed by it that are otherwise your obligation to pay under the AAA Rules. Regardless of the manner in which the arbitration is conducted, the arbitrator must issue a reasoned written decision sufficient to explain the essential findings and conclusions on which the decision and award, if any, are based. The arbitrator may make rulings and resolve disputes as to the payment and reimbursement of fees or expenses at any time during the proceeding and upon request from either party made within 14 days of the arbitrator's ruling on the merits.

YOU AND Everland AGREE THAT EACH MAY BRING CLAIMS AGAINST THE OTHER ONLY IN YOUR OR ITS INDIVIDUAL CAPACITY AND NOT AS A PLAINTIFF OR CLASS MEMBER IN ANY PURPORTED CLASS OR REPRESENTATIVE PROCEEDING. Further, unless both you and Everland agree otherwise, the arbitrator may not consolidate more than one person's claims, and may not otherwise preside over any form of a representative or class proceeding.

If Everland makes any future change to this arbitration provision, other than a change to Everland's address for Notice of Arbitration, you may reject the change by sending us written notice within 30 days of the change to Everland's address for Notice of Arbitration, in which case your account with Everland will be immediately terminated and this arbitration provision, as in effect immediately prior to the changes you rejected will survive.

If this Section 15 is found to be unenforceable, or if Everland receives an Opt-Out Notice from you, then the entirety of this Section 15 will be null and void and, in that case, the exclusive jurisdiction and venue described in Section 17 will govern any action arising out of or related to these Terms.

## **16. Severability**

If any part of these Terms is found to be invalid, illegal or unenforceable for any reason, then that provision will be severed from these Terms to the minimum extent such that the remaining provisions of these Terms will continue in full force and effect.

## 17. Final Terms

The laws of the State of California, to the extent not preempted by or inconsistent with federal law, will exclusively govern these Terms and any claim, without regard to conflict of law provisions. To the extent that Everland receives an Opt-Out Notice under Section 16, the parties consent to the exclusive jurisdiction and venue of the state courts located in and serving Los Angeles County, California and the federal courts in the Central District of California in connection with any dispute arising hereunder. You agree that regardless of any law to the contrary, any claim or cause of action arising out of or related to Everland, the Services and/or these Terms must be filed within one (1) year after such claim or cause of action arose or be forever barred.

All rights not granted to you are reserved by Everland and all intellectual property in the Services is owned or licensed by us.

These Terms are the final, complete and exclusive agreement between you and 9 Count Inc. and supersede all prior agreements between us. Except where prohibited by applicable law, we reserve the right to change these Terms at any time without notice. Your continued access to and use of the Services after changes to these Terms indicates your acceptance of such changes. It is your responsibility to review these Terms regularly.

If we don't enforce a part of these Terms, it will not be considered a waiver. You can't transfer your rights or obligations under this agreement without our consent. The word "including" means including without limitation. We may assign these Terms in connection with a merger, acquisition, reorganization or sale of all or substantially all of its assets, or bankruptcy or other operation of law, without your consent.

If we need to contact you about these Terms, you: (1) agree to receive electronic messages from us; and (2) agree that all terms and conditions, agreements, notices, disclosures, and other messages we send to you electronically satisfy all legal requirements as if they were in writing. We agree that these Terms and all related documents are in English.

If you are a California resident, under California Civil Code Section 1789.3, you may contact the Complaint Assistance Unit of the Division of Consumer Services of the California Department of Consumer Affairs in writing at 1625 N. Market Blvd., Suite

S-202, Sacramento, California 95834, or by telephone at (800) 952-5210 in order to resolve a complaint regarding the Services or to receive further information regarding use of the Services.

## **18. Updates to These Terms**

We may change our Services and policies, and we may need to make changes to these Terms so that they accurately reflect our Services and policies. Unless otherwise required by law, we will notify you (for example, through our Services) before we make changes to these Terms and give you an opportunity to review them before they go into effect. Then, if you continue to use the Services, you will be bound by the updated Terms. If you do not want to agree to these or any updated Terms, you can delete your account, [here](#).

## **19. Notice Regarding Apple**

This Section 20 only applies to the extent you are using our mobile application on an iOS device. You acknowledge that these Terms are between you and Everland only, not with Apple Inc. (“Apple”), and Apple is not responsible for the Services or the content thereof. Apple has no obligation to furnish any maintenance and support services with respect to the Services. If the Services fail to conform to any applicable warranty, you may notify Apple and Apple will refund any applicable purchase price for the mobile application to you; and, to the maximum extent permitted by applicable law, Apple has no other warranty obligation with respect to the Services. Apple is not responsible for addressing any claims by you or any third party relating to the Services or your possession and/or use of the Services, including: (a) product liability claims; (b) any claim that the Services fail to conform to any applicable legal or regulatory requirement; or (c) claims arising under consumer protection or similar legislation. Apple is not responsible for the investigation, defense, settlement and discharge of any third party claim that the Services and/or your possession and use of the Services infringe a third party’s intellectual property rights. You agree to comply with any applicable third party terms when using the Services. Apple and Apple’s subsidiaries are third party beneficiaries of these Terms, and upon your acceptance of these Terms, Apple will have the right (and will be deemed to have accepted the right) to enforce these Terms against you as a third party beneficiary of these Terms. You hereby 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.

## **Contact Us**

Everland welcomes your comments, complaints, claims, questions and suggestions. Please send us feedback at [support@everland.la](mailto:support@everland.la).

9 Count Inc. is located in the State of California, United States of America in: Santa Monica, CA 90405.