

immersionED, Inc.

Terms of Use

Last Updated: **November 18, 2023**

PLEASE READ THESE TERMS OF USE CAREFULLY BEFORE USING THIS SITE. IF YOU DO NOT AGREE TO BE BOUND BY THESE TERMS OF USE, PLEASE DO NOT ACCESS THIS SITE, USE THE SERVICES, PERMIT YOUR STUDENTS TO USE THE SERVICES, OR OTHERWISE INDICATE ACCEPTANCE OF THESE TERMS.

These Terms of Use (“**Terms**” or “**Terms of Use**”) constitute an agreement between you (“**you**” or the “**user**”) and immersionED, Inc. and its affiliates, subsidiaries or assigns (collectively, “**immersionED**,” “**we**,” “**us**” or “**our**”). This website, (the “**Site**”), <https://www.immersioned.org/> and our educational immersive video game software (the “**Platform**”) are owned and operated by immersionED. immersionED allows you and your students (“**Students**”) to access and use the Site and Platform, the information we provide, and any other services (together with the “**Site**” and the “**Platform**,” the “**Services**”) on the condition that you accept these Terms of Use.

ARBITRATION NOTICE: EXCEPT FOR CERTAIN TYPES OF DISPUTES DESCRIBED IN THE “**ARBITRATION PROVISION AND CLASS ACTION WAIVER**” SECTION BELOW, AND UNLESS YOU OPT-OUT AS SET FORTH IN THAT SAME SECTION, YOU AGREE THAT DISPUTES BETWEEN YOU AND IMMERSIONED OR OTHER PARTIES DESCRIBED HEREIN WILL BE RESOLVED BY BINDING, INDIVIDUAL ARBITRATION AT THE ELECTION OF EITHER PARTY, AND YOU WAIVE YOUR RIGHT TO A JURY TRIAL AND YOUR RIGHT TO BRING OR RESOLVE ANY DISPUTE AS OR TO PARTICIPATE IN A CLASS, PRIVATE ATTORNEY GENERAL, REPRESENTATIVE, OR COLLECTIVE ACTION IN COURT OR IN ARBITRATION.

We reserve the right at any time to change: (i) the terms and conditions of these Terms of Use; (ii) the Services, including terminating, eliminating, supplementing, modifying, adding or discontinuing any content or feature or data or service on or available through the Services or the hours that they are available; (iii) any fees or charges, if any, related to the use the Services; and (iv) the equipment, hardware or software required to use and access the Services.

Any changes we make to these Terms of Use will be effective immediately upon posting on the Site. Please return to the Site periodically to ensure you are familiar with the most current version of these Terms of Use.

1. YOU AGREE TO OUR PRIVACY POLICY

Please review our Privacy Policy. Our Privacy Policy is incorporated by reference in these Terms. By using the Services, you consent to and agree to be bound by the Privacy Policy.

When you use the Services, you also consent to receive communications from us electronically via the Services, email, or otherwise. You agree to provide accurate, current, and complete information about yourself when you use the Services and to update such information while you continue to use the Services.

2. USE OF THE SERVICES

If you access this Site from outside of the United States, you do so at your own risk and are responsible for compliance with local, national, or international laws. In particular, you understand that this Site, the Services, or both may not be available in all countries and that you are responsible for ensuring that it is lawful for you to use this Site and receive the Services in your location.

Some countries may have laws that forbid participating in the activities we offer on the Site or Services. These restrictions might include a minimum age for using the Internet or entering into contracts like these Terms of Use. You are responsible for making sure you can use the Services in the location you reside in. Continuing to use the Services represents and warrants to us that you have verified that you are permitted to use the Services in your jurisdiction.

To the extent you are a teacher or administrator, to the fullest extent of the law, you agree to these terms and the End User License Agreement on behalf of Students to whom you make the Services available.

3. ELIGIBILITY

You represent and warrant that you: (a) are above the legal age of majority in your jurisdiction of residence; (b) have not previously been suspended or removed from the Site or our Services; and (c) have full power and authority to enter into these Terms, and in doing so will not violate any other agreement to which you are a party.

4. PROCESSING OF PERSONAL DATA

You represent and warrant that you have obtained all necessary consents and permissions from each Student, or the Student's parents or guardians as applicable, required under Data Protection Laws for immersionED's processing of Student Personal Data before the Student uses the Platform. "**Data Protection Laws**" means any applicable international, national, federal, state, local, municipal, or territorial law, regulation, rule, guideline, guidance, or industry standard concerning or relating to data privacy, security, or breach notification, including, but not limited to the Children's Online Privacy Protection Act, the Student Online Personal Information Protection Act, and the Family Educational Rights and Privacy Act. "**Personal Data**" means (i) any information about an identifiable individual; (ii) information that is not specifically about an identifiable individual but, when combined with other information, may identify an individual or household; or (iii) personal data, personal information, personally identifiable information, education records, or an equivalent term under Data Protection Laws. You agree that you will distribute any notices to Students (and their parents or guardians if the Student is under thirteen (13) years old), including without limitation the immersionED Privacy Policy. You further agree that you will not provide students under the age of thirteen (13) with access to the Platform unless you consent on the Student's parent's or guardian's behalf where permitted by COPPA.

You are solely responsible for examining all applicable policies relating to your and your Students' use of the Services, and determining and ensuring that the use of the Services is consistent with your own policies, contracts, and requirements under applicable laws and regulations.

5. MOBILE DEVICES

You understand that wireless service through Wi-Fi or a participating mobile service provider may not be available in all areas at all times and may be affected by product, software, coverage, or other service changes made by your mobile service provider or otherwise. You agree that you are solely responsible for all message and data charges that apply to use of your mobile device to access the Services. All such charges are billed by and payable to your mobile service provider. Please contact your participating mobile service provider for pricing plans, participation status and details.

6. CODE OF CONDUCT

You agree that you will not attempt to, nor permit any third party to, enter restricted areas of immersionED's computer systems or perform functions that these Terms do not authorize you to perform. You accept sole responsibility for all of your activities using the Services. You may not use the Services in a manner that:

- (a) commits or attempts to commit tax fraud or any other violation of applicable tax laws, regulations, rules, or codes;
- (b) harasses, abuses, bullies, stalks, threatens, defames, or otherwise infringes or violates the rights of any party (including but not limited to rights of publicity or other proprietary rights);
- (c) is unlawful, fraudulent, or deceptive;
- (d) uses technology or other means to access content or systems of immersionED in a manner that is not authorized by immersionED;
- (e) uses any robot, spider, site search/retrieval application or other manual or automatic device to retrieve, index, "scrape," "data mine" or in any way reproduce or circumvent the navigational structure or presentation of the Services, without immersionED's express prior written consent;
- (f) uses or launches any automated system, including, without limitation, "robots," "spiders," or "offline readers," to access content or systems of immersionED;
- (g) uses tools which hack or alter the Services, or that allow you to connect to the Services' private binary interface or utilize any interfaces other than those provided by us to you;
- (h) attempts to introduce viruses or any other computer code, files, or programs that interrupt, destroy, or limit the functionality of any computer software, hardware, or telecommunications equipment;
- (i) attempts to gain unauthorized access to immersionED's computer network;
- (j) encourages conduct that would constitute a criminal offense or that gives rise to civil liability;
- (k) violates these Terms or any other immersionED policies;
- (l) attempts to damage, disable, overburden, or impair immersionED servers or networks;
- (m) mirrors or frames any part of the Services without immersionED's express prior written consent;
- (n) fails to comply with applicable third-party terms; or
- (o) constitutes any other inappropriate conduct, as determined by us in our sole discretion.

We reserve the right, in our sole discretion, to take any actions we deem necessary and appropriate to preserve the integrity of the Services.

7. OUR MATERIALS

ImmersionED may make certain digital reproductions of materials, information, content, software, or other materials (including but not limited to intellectual property, database rights, graphics, videos, text, and logos) available to you from the Services from time to time (collectively, the “**immersionED Materials**”). The Services (including its organization, presentation and immersionED Materials) are the property of immersionED and its licensors and may be protected by intellectual property laws including laws relating to copyrights, trademarks, trade names, internet domain names and other similar rights. immersionED or its licensors own all related trademarks and logos, and you agree not to copy or use them in any manner except as permitted.

By using the Services, we grant you a non-exclusive, non-transferrable, non-sublicensable right and license to use the immersionED Materials for your personal use only. If you download, access or use any immersionED Materials, you agree that such materials: (i) may only be used for your personal use; (ii) may not be modified, used to create a derivative work, incorporated into any other work or otherwise exploited without immersionED’s prior written permission; (iii) shall not be submitted to, processed by, or otherwise fed into any artificial intelligence or automated processing software; and (iv) shall only be used in compliance with any additional license terms accompanying such materials.

8. AVAILABILITY

We cannot and do not promise that the Services will be uninterrupted, secure, or error-free. We reserve the right to interrupt/suspend the Services, or any part thereof, with or without prior notice for any reason.

9. ACCESS TO THE INTERNET

You are solely responsible for obtaining and maintaining all internet, computer hardware and other equipment needed to access and use the Services, and you shall be solely responsible for all charges and fees related thereto.

Please note that the Internet is not a fully secure medium and any communication may be lost, intercepted or altered. ImmersionED is not liable for any damages related to communications to, or from, the Services.

10. CURRENCY OF SERVICES

ImmersionED cannot and does not guarantee or accept any responsibility or liability for the accuracy, currency or completeness of the information on this Site and the Services. We have the right, but not the obligation, to correct any errors, inaccuracies or omissions and to change or update the Services (including the immersionED Materials) at any time, without prior notice to you.

11. LINKS TO OTHER SITES AND SERVICES

The Services may contain links to outside services and resources, the availability and content of which immersionED does not control. immersionED does not assume any responsibility or liability for the actions, products, and content of these and any other sites. Any concerns regarding any such services or resources should be directed to the service or resource. The inclusion of these links does not imply that immersionED monitors or endorses these sites.

12. SECURITY

immersionED makes no warranty whatsoever to you, express or implied, regarding the security of the Site, including with respect to the ability of unauthorized persons to intercept or access information transmitted by you through the Site. immersionED is not responsible for any losses resulting from the loss or theft of your device, the loss or theft of your information transmitted from or stored on your devices, or any losses arising from the use of your device by someone whom you have given access. You are required to notify us of any unauthorized use of the Site by using the contact information in the “**Contact Information**” section below.

Due to technical difficulties with the Internet, internet software or transmission problems could produce inaccurate or incomplete copies of information contained on this Site or the Services. Due to the ability to share certain content and materials, computer viruses or other destructive programs may also be inadvertently downloaded from this Site or the Services. immersionED recommends that you install appropriate anti-virus or other protective software.

IMMERSIONED SHALL NOT BE RESPONSIBLE OR LIABLE FOR ANY SOFTWARE, COMPUTER VIRUSES OR OTHER HARMFUL FILES OR PROGRAMS THAT MAY AFFECT YOUR COMPUTER EQUIPMENT OR OTHER PROPERTY FROM USING THIS SITE OR THE SERVICES.

13. SEVERABILITY/NO WAIVER

If any provision of these Terms of Use is found to be unenforceable, then that provision shall be deemed severable from these Terms of Use and shall not affect the validity and enforceability of any remaining provisions. immersionED’s failure to enforce the strict performance of any provision of these Terms or the additional terms and conditions for any Service will not constitute a waiver of our right to subsequently enforce such provision or any other provisions of these Terms or the additional terms and conditions.

14. DISCLAIMERS: SITE, SERVICES AND MATERIALS PROVIDED “AS-IS”

THIS SITE, THE SERVICES AND THE IMMERSIONED MATERIALS ARE PROVIDED “AS IS,” “WHERE IS,” AND “WITH ALL FAULTS,” WITHOUT REPRESENTATION, WARRANTY OR CONDITION OF ANY KIND, EITHER EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED REPRESENTATIONS, WARRANTIES OR CONDITIONS OF MERCHANTABILITY, NON-INFRINGEMENT, OR FITNESS FOR A PARTICULAR PURPOSE. IMMERSIONED DOES NOT REPRESENT OR WARRANT THAT THIS SITE, THE SERVICES, OR THE IMMERSIONED MATERIALS WILL MEET YOUR REQUIREMENTS. NO ADVICE OR INFORMATION, WHETHER ORAL OR WRITTEN, OBTAINED BY YOU FROM IMMERSIONED, OR THROUGH THE SITE SHALL CREATE ANY WARRANTY REGARDING THE SERVICES NOT EXPRESSLY STATED IN THESE TERMS. YOU UNDERSTAND AND ACKNOWLEDGE THAT ADDITIONAL DISCLAIMERS, LIMITATIONS, AND NOTICES REGARDING THE SERVICES AND ITS CONTENT AND DATA MAY BE PROVIDED BY IMMERSIONED FROM TIME TO TIME WITHIN THE SERVICES.

These Terms were written in English (US). Any translated version is provided solely for your convenience using third party translation services such as Google Translate. You understand and agree that immersionED in no way controls or is responsible for any third-party product or service accessed through the Site.

YOUR USE OF THE SERVICES IS SOLELY AT YOUR OWN RISK. THE SITE IS INTENDED FOR GENERAL INFORMATIONAL PURPOSES ONLY. WE MAKE NO REPRESENTATION OR

WARRANTY REGARDING THE ACCURACY OF TRANSLATIONS OF THE SERVICES.
PLEASE SEEK INDEPENDENT TRANSLATION SERVICES TO VERIFY ANY INFORMATION ON WHICH YOU RELY. NOTHING STATED, POSTED, OR AVAILABLE THROUGH ANY SERVICES IS INTENDED TO BE, AND MUST NOT BE TAKEN TO BE, AN OFFICIAL AND VERIFIED TRANSLATION OF THE SERVICES.

Please note that some jurisdictions do not allow the disclaimer of certain representations or warranties, so the disclaimer in this Section 14 will apply to you to the extent permitted by applicable law.

15. LIMITATION OF LIABILITY

YOU AGREE THAT NONE OF THE PROTECTED PARTIES (AS DEFINED BELOW) SHALL HAVE ANY LIABILITY TO YOU UNDER ANY THEORY OF LIABILITY OR INDEMNITY IN CONNECTION WITH YOUR USE OF THE SITE AND/OR SERVICES. YOU HEREBY RELEASE AND FOREVER WAIVE ANY AND ALL CLAIMS YOU MAY HAVE AGAINST THE PROTECTED PARTIES (INCLUDING BUT NOT LIMITED TO CLAIMS BASED UPON THE NEGLIGENCE OF ANY OF THE PROTECTED PARTIES) FOR LOSSES OR DAMAGES YOU SUSTAIN IN CONNECTION WITH YOUR USE OF THE SITE AND/OR SERVICES.

NOTWITHSTANDING THE FOREGOING PARAGRAPH AND TO THE MAXIMUM EXTENT PERMITTED BY LAW, THE TOTAL LIABILITY OF THE PROTECTED PARTIES, FOR ANY CLAIM, COST, DAMAGE, OR LOSS ARISING OUT OF OR RELATING TO THE SERVICES, INCLUDING FOR ANY WARRANTIES THAT MAY NOT BE EXCLUDED, SHALL NOT EXCEED THE LESSER OF THE AMOUNT YOU PAID TO US DURING THE TWELVE (12) MONTHS PRIOR TO THE EVENT GIVING RISE TO THE LIABILITY OR \$10.00 (TEN DOLLARS) (USD) (THE “**LIABILITY CAP**”). IMMERSIONED AND YOU AGREE THAT THE LIABILITY CAP SHALL INCLUDE ALL FORMS OF DAMAGES.

Some jurisdictions do not allow the exclusion or limitation of liability for certain types of damages. In such jurisdictions, our liability is limited to the greatest extent permitted by law.

16. INDEMNIFICATION

You will defend, indemnify, and hold immersionED, each third-party service provider, their respective affiliates, subsidiaries, and parent companies, and their respective officers, directors, employees, agents, information providers, and partners (collectively, the “**Protected Parties**”) harmless from and against any actual or threatened suit, actions, proceedings (at law or in equity), claims, damages, payments, deficiencies, fines, judgments, settlements, liabilities, losses, costs, and expenses (including reasonable attorneys’ fees, costs, penalties, interest, and disbursements) arising from or related to (a) your conduct with respect to the Services and/or (b) violation (or alleged violation) of these Terms by you or any other person accessing the Site or Services on your behalf. Under no circumstance will immersionED be liable for damages of any kind that result from your use of, or the inability to use, the Services.

Please note that some jurisdictions limit the extent to which a party may indemnify another. As such, this provision will apply to you to the extent permitted by applicable law.

17. TERM & TERMINATION

ImmersionED may, from time to time, but is in no way obligated to, permit you to access and use this Site and the Services in accordance with these Terms of Use and in the manner more particularly set out

herein. You acknowledge and agree (i) that access to this Site and the Services may not be available from time to time, may be amended, revised, replaced, suspended or terminated in whole or in part at any time and without notice, and (ii) that immersionED shall not, in any event, be responsible to you in any way should you be unable to access this Site and the Services at any time or from time to time. We may terminate these Terms of Use for convenience with no notice to you.

Upon termination of these Terms of Use, you shall immediately cease and desist from all use of this Site and the Services.

18. ARBITRATION PROVISION AND CLASS ACTION WAIVER

THIS ARBITRATION PROVISION AFFECTS YOUR RIGHTS; PLEASE READ CAREFULLY BEFORE AGREEING TO THESE TERMS OF USE.

Agreement to Arbitrate. Except as otherwise explicitly provided in this Arbitration Provision, immersionED, together with its parent companies, wholly or majority-owned subsidiaries, affiliates, commonly-owned companies, successors, assigns, and any of these entities' employees, officers, directors, and agents and their successors, assigns, affiliates, and service providers (collectively, the "**Transaction Parties**") and you can elect to resolve any past, present, or future dispute or claim ("**Dispute**") arising from or relating in any way to (i) the use of the Services, (ii) these Terms of Use, or (iii) the relationship between you and any Transaction Party in connection with any of the foregoing that cannot be resolved directly between you and a Transaction Party, by binding arbitration under the Consumer Arbitration Rules ("**the Consumer Rules**") of the American Arbitration Association ("**AAA**"), rather than in court. (Solely for purposes of this Arbitration Provision, the term Transaction Parties also includes any third party providing any goods and/or services in connection with the use of the Site and the Services or any of the foregoing on behalf of a Transaction Party, if that third party is named as a defendant along with a Transaction Party in the same proceeding or a related proceeding.)

"Dispute" Defined. Except as otherwise explicitly provided in this Arbitration Provision, "**Dispute**" broadly includes, without limitation: any claims based in contract, statute, constitution, ordinance, tort, fraud, consumer rights, misrepresentation, equity, or any other legal theory; initial claims, counterclaims, cross-claims, and third-party claims; federal, state, and local claims; and claims which arose before the date of your use of the Services, including, but not limited to, any dispute or claim arising before the date you accessed the Site or the Services or agreed to these Terms of Use and any dispute or claim relating to (by way of example and not limitation): (i) the use, denial, or termination of the Services and/or the events leading up thereto; (ii) any disclosure, advertisement, application, solicitation, promotion, or oral or written statement, warranty, or representation made by or on behalf of a Transaction Party; (iii) any product or service provided by or through a Transaction Party or third parties in connection with the use of the Services or the relationship between you and a Transaction Party and any associated fees; (iv) a Transaction Party's use or failure to protect any personal information you give a Transaction Party in connection with the use of the Services or your relationship with the Transaction Party; (v) enforcement of any and all of the obligations a party may have to another party in connection with the use of the Services or agreement governing the same; or (vi) compliance with applicable laws and/or regulations.

Exceptions to "Dispute." Notwithstanding any of the foregoing: (i) disputes or controversies about the validity, enforceability, coverage, or scope of this Arbitration Provision or any part thereof are for a court and not an arbitrator to decide; however, disputes or controversies about these Terms of Use or your agreements governing the use of the Services or with Transaction Parties as a whole are for an arbitrator and not a court to decide; (ii) any Disputes seeking to enforce or protect, or concerning the validity of intellectual property rights, will not be subject to binding arbitration under this Arbitration Provision; and (iii) any party may proceed with their individual claims in small claims court (or an equivalent court) if

that option is available in the applicable jurisdiction and the amount in controversy falls within the small claims court's (or the equivalent court's) jurisdictional limits; but if that action is transferred, removed, or appealed to a different court, arbitration can be elected. Moreover, this Arbitration Provision will not apply to any Dispute that was already pending in court before this Arbitration Provision took effect.

Governing Law. The Federal Arbitration Act (“FAA”), 9 U.S.C. 1 *et seq.*, and federal arbitration law apply to this Arbitration Provision. There is no judge or jury in arbitration and court review of an arbitration award is limited, but an arbitrator can award an individual the same damages and relief as a court in an individual case and must apply and follow applicable substantive law, consistent with the FAA, and the terms of these Terms of Use and any agreement governing the use of the Site and the Services. The arbitrator shall apply applicable statutes of limitations and honor privilege rules. Any judgment on the award rendered by the arbitrator will be final, subject to any appeal rights under the FAA, and may be entered in any court of competent jurisdiction. No arbitration award involving the parties will have any preclusive effect as to issues or claims in any dispute involving anyone who is not a party to the arbitration, nor will an arbitration award in prior disputes involving other parties have preclusive effect in an arbitration between the parties to this Arbitration Provision.

JURY TRIAL WAIVER. YOU UNDERSTAND THAT ABSENT YOUR CONSENT TO ARBITRATION, YOU WOULD HAVE THE RIGHT TO SUE IN COURT AND HAVE A TRIAL BY JURY.

Arbitration Procedures. Either you or a Transaction Party can initiate arbitration through the AAA or by filing a motion to compel arbitration of claims filed in court. Regardless of who elected arbitration or how arbitration was elected, the party asserting the claim (i.e., the party seeking money damages or other relief from a court or an arbitrator) is responsible for starting the arbitration proceeding. If the AAA cannot serve and we cannot agree on a substitute, a court with jurisdiction shall select the arbitrator, who will apply the AAA rules and the procedures specified in this Arbitration Provision. Any arbitrator must be a practicing attorney with ten or more years of experience practicing law or a retired judge. Any arbitration will be governed by the then-current Consumer Rules, and its Procedures for the Resolution of Disputes through Document Submission (“**Document Submission Procedures**”). For more information about the AAA and its rules, you may contact the AAA at American Arbitration Association, 120 Broadway, Floor 21, New York, N.Y. 10271, 1-800-778-7879, www.adr.org. The Document Submission Procedures are included in the Consumer Rules. The parties shall pay filing, administrative and arbitrator fees in accordance with the Consumer Rules. If you cannot afford to pay your share of the fees and cannot obtain a waiver from the AAA, you can make a written good faith request for a Transaction Party to pay or advance such fees. Each party will bear the expense of its own attorneys, experts and witnesses, regardless of which party prevails, unless applicable law, these Terms of Use or an applicable agreement gives a party the right to recover such expenses from the other party. If the arbitrator determines that any party's claim or defense is frivolous or wrongfully intended to oppress or harass the other party, the arbitrator may award sanctions in the form of fees and expenses reasonably incurred by the other party if such sanctions could be imposed under Rule 11 of the Federal Rules of Civil Procedure. The arbitration will be conducted by a single arbitrator solely based on written submissions and will not require any personal appearance by the parties or witnesses unless the arbitrator determines that a telephonic or in-person conference or hearing is necessary based on the request of one or more of the parties. If an in-person hearing is necessary, it will be held in the federal judicial district in which you reside or at another location that is reasonably convenient to all parties.

CLASS ACTION WAIVER. You and the Transaction Parties each agree that if arbitration of a Dispute is elected, the Dispute will be resolved in arbitration (not in court) only on an individual basis and not as a class, collective or other representative action. To the fullest extent permitted under the FAA: (a) no arbitration will be joined or consolidated with any other unless all parties otherwise agree in writing; (b)

there is no right or authority for any Dispute to be arbitrated on a class-action, collective action or private attorney general basis or to utilize class action procedures; and (c) there is no right or authority for any Dispute to be brought in a purported representative capacity on behalf of the general public or any other persons. No arbitrator shall have the authority to issue any relief that applies to any person or entity other than Transaction Parties and/or you individually.

Miscellaneous; Conflicts. Even if all parties have opted to litigate a Dispute in court, a party may elect arbitration with respect to any claim made by a new party or any claim later asserted by a party in that or any related or unrelated lawsuit (including a claim initially asserted on an individual basis but modified to be asserted on a class, representative, or multi-party basis). Nothing in that litigation shall constitute a waiver of any rights under this Arbitration Provision. If any portion of this Arbitration Provision is inconsistent with the Consumer Rules, with these Terms of Use, or your agreements governing the use of the Services, or with an arbitration provision in any agreement with a Transaction Party, this Arbitration Provision shall govern.

Survival; Severance. This Arbitration Provision shall survive termination of the Site and the Services or these Terms of Use or of any agreement into which you enter with a Transaction Party; and, further, you understand and agree that this Arbitration Provision applies not only to these Terms of Use but also to any subsequent agreement (including without limitation any agreement governing the use of Site or Services) into which you enter with a Transaction Party. If any portion of this Arbitration Provision is deemed invalid or unenforceable, it shall not invalidate the remaining portions of this Arbitration Provision, except that: (a) if the Class Action Waiver is limited, voided or found unenforceable with respect to a Dispute that does not seek public injunctive relief and that determination becomes final after all appeals have been exhausted, then this Arbitration Provision (except for this sentence) shall be null and void with respect to such proceeding. The parties acknowledge and agree that under no circumstances will a class action be arbitrated; and (b) if a claim is brought seeking public injunctive relief and a court determines that the restrictions in the Class Action Waiver or elsewhere in this Arbitration Provision prohibiting the arbitrator from awarding relief on behalf of third parties are unenforceable with respect to such claim and that determination becomes final after all appeals have been exhausted, the claim for public injunctive relief will be determined in court and any individual claims seeking monetary relief will be arbitrated. In such a case the parties will request that the court stay the claim for public injunctive relief until the arbitration award pertaining to individual relief has been entered in court. In no event will a claim for public injunctive relief be arbitrated.

RIGHT TO OPT OUT: If you do not want this Arbitration Provision to apply, you must send us a signed notice within thirty (30) calendar days of the date on which you electronically submit an application for a product or service offered by a Transaction Party through the Site or Services. You must send the notice in writing (and not electronically) to 28 Alden Road, Greenwich, CT 06831. You must provide your name, address, telephone number, and state that you “opt out” of the Arbitration Provision. Opting out will not affect the other provisions of these Terms of Use or any other agreement governing the Site or with a Transaction Party. If you do not opt out, you will be bound by this Arbitration Provision in these Terms of Use and any other agreement governing a Service or with a Transaction Party. Please note that if you enter an agreement with a Transaction Party that contains a different arbitration provision with a right to opt out, opting out of this Arbitration Provision is not a rejection of the arbitration provision in the other agreement. You will need to separately opt out of the arbitration provision in the other agreement if you do not want it to apply.

19. MISCELLANEOUS

These Terms constitute the entire agreement of the parties with respect to the subject matter hereof and supersede all previous written or oral agreements between the parties with respect to such subject matter.

No waiver by either party of any breach or default hereunder shall be deemed to be a waiver of any preceding or subsequent breach or default. The section headings used in these Terms shall not be given any legal import.

These Terms of Use shall be governed by and construed in accordance with the laws of the State of Delaware (without regard to provisions relating to conflicts of law), except as to copyright and trademark matters, which are covered by American federal laws. You agree that any legal action or proceeding between immersionED and you for any purpose concerning these Terms or the parties' obligations hereunder shall be resolved individually, without resort to any form of class action, exclusively in the United States District Court for the Southern District of New York, or, if there is not subject matter jurisdiction, in the courts of the State of New York, and you agree to submit to the jurisdiction of these courts. You waive any venue, personal jurisdiction, and inconvenient forum objections or defenses to such courts.

These Terms of Use are not assignable, transferable, or sublicensable by you except with immersionED's prior written consent.

immersionED may assign its rights and duties under these Terms of Use at any time without notice to you.

No waiver by either party of any breach or default hereunder shall be deemed to be a waiver of any preceding or subsequent breach or default.

20. CONTACT INFORMATION

If you need to contact us regarding this Site, the Services or these Terms of Use, please reach out to us at platform_admins@immersioned.org or at 28 Alden Road, Greenwich, CT 06831.