

# Terms of Service

Last Updated: July 5th, 2021

## **Welcome to Einstein Studios!**

These Terms of Service ("Terms of Service") are a legal contract between you and Einstein Studios, Inc. ("Einstein Studios", "we", "us" or "our"). These terms explain how you are permitted to use the website located at the url: [teachwithkoala.com](https://teachwithkoala.com) (the "Site"), and any software and content that we make available for installation and use on any device (each a "Application"). Unless otherwise specified, all references to "Site" include the content and all services made available on the Site. By using the Site, any part thereof, or any of our Applications, you are agreeing to all of these Terms of Service; if you do not agree with any of these terms, do not access or otherwise use the Site, any information contained on the Site, or any of our Applications.

**NOTE: THESE TERMS CONTAIN A DISPUTE RESOLUTION AND ARBITRATION PROVISION, INCLUDING CLASS ACTION WAIVER THAT AFFECTS YOUR RIGHTS UNDER THESE TERMS AND WITH RESPECT TO DISPUTES YOU MAY HAVE WITH EINSTEIN STUDIOS. YOU MAY OPT OUT OF THE BINDING INDIVIDUAL ARBITRATION AND CLASS ACTION WAIVER AS PROVIDED BELOW.**

## **Einstein Studios**

Einstein Studios provides an online platform and Applications through which students and teachers can engage in unique learning experiences through the use of virtual classrooms. Parents may enroll their children in virtual classes taught by instructors who have elected to make their services available via the Application. Different sections of the Site and Terms of Service affect Teachers and Parents differently, so please be sure to read these Terms of Service carefully.

## **Changes**

Einstein Studios may make changes to the Site or Applications at any time. We may also change, update, or add or remove provisions of these Terms of Service at any time by posting the updated Terms of Service on the Site. If you have created an account with us, you will be required to agree to the updated Terms of Service the first time you log in to your account following such update. Any such changes will become effective no earlier than fourteen (14) days after they are posted, except that changes addressing new functions or changes made for legal reasons will be effective immediately. By using the Site or an Application after we have updated the Terms of Service, you are agreeing to all the updated Terms of Service; if you do not agree with any of the updated terms, you must stop using the Site and Applications.

## **Key Terms**

“User” “you” or “your” means a person, organization or entity using the Site or Application, including Parents and Teachers.

“Parent(s)” means a parent or legal guardian who completes Einstein Studios’ account creation process to enroll a child in one or more Classes.

“Teacher(s)” means a person who completes Einstein Studios’ account registration process to give Classes through the Application.

“Class(es)” means any virtual class(es) provided via the

## **Application. Access and Use**

By using the Site and/or a Application, you represent, acknowledge and agree that you are at least 18 years of age, or if you are under 18 years of age (a “Minor”), that you are using the Site or Application with the consent of your parent or legal guardian and that you have received your parent’s or legal guardian’s permission to use the Site or Application and agree to these Terms of Service. If you are a parent or legal guardian of a Minor, you hereby agree to bind the Minor to these Terms of Service and to fully indemnify and hold Einstein Studios harmless if the Minor breaches any of these Terms of Service.

We provide content through the Site and Applications that is copyrighted and/or a trademark of Einstein Studios, our third-party licensors and suppliers and/or other users of the Site and Applications (collectively, the “Materials”). Materials may include logos, graphics, video, images, software and other content.

Subject to these Terms of Service and your compliance therewith, Einstein Studios hereby grants you a limited, personal, non-exclusive and non-transferable license to use and to display the Materials and to access and use the Site solely for your personal use. Except for the foregoing license and as otherwise set forth herein, you have no other rights in the Site or any Materials, and you may not modify, edit, copy, reproduce, create derivative works of, reverse engineer, alter, enhance or in any way exploit any of the Site or Materials in any manner.

If you breach any of these Terms of Service, the above license will terminate automatically, and you must immediately destroy any downloaded or printed Materials.

## Registration

If you desire to register for an account, you may need to submit your name; email address; phone number and other information requested on the account registration page. Users registering as Parents may also be asked to provide additional, optional information about the child who will be taking Classes so that we can provide a more customized experience for that student.

Once you have submitted your account registration information, we will either approve or reject your account, in our sole discretion. If approved, you will be permitted to log into your account with the password that you selected during account registration.

You are responsible for maintaining the confidentiality of your account, and you are responsible for all activities that occur using your account. You agree not to let others access or use your account or do anything else that might jeopardize the security of your account. You agree to notify us if you know of any breach of security in relation to the Site or Applications.

All the information that you provide when registering for an account and otherwise through the Site or Applications must be accurate, complete and up to date. You may change, correct or remove any information from your account by logging into your account directly and making the desired changes.

### Certain Additional Terms Applicable to Teachers:

Einstein Studios has sole discretion as to which Teachers are accepted into the platform and we reserve the right to reject any potential Teacher and remove or suspend any Teacher from the Site for any reason. Einstein Studios may, but is not required to, conduct interviews of Teachers in its discretion and solely for its own benefit. By registering as a Teacher, you agree to participate truthfully in such interviews.

Each Teacher is solely responsible for obtaining all licenses and other permissions required to offer or provide any Classes and Einstein Studios assumes no responsibility for a Teacher's failure to obtain such licenses or permissions or otherwise comply with any applicable laws, rules or regulations.

You acknowledge and agree that, as a Teacher, you are responsible for your own acts and omissions while using the Site and Applications. You further agree that you will not share any Class Recordings (as defined below) made available to you by

Einstein Studios to any third parties unless explicit consent was given by all Parents, Students and Einstein Studios.

### **Class Recordings**

All Classes may be automatically recorded by Einstein Studios for quality and training purposes (“Class Recordings”). We value student and Teacher privacy, and our use of Class Recordings is extremely limited. Specifically, Class Recordings are made available only to the Teacher providing the Class in question, to the Parent and student, and no one else, in order to allow them to (1) provide a viewable copy to students who missed the Class, or who wish to review the Class, for their personal educational purposes; and (2) review the Class Recording personally in order for teachers to improve their Classes. In addition, Einstein Studios may use Class Recordings to provide and improve our Site and Applications, for customer support, and for compliance purposes. Einstein Studios retains Class Recordings for a limited time after the date of the applicable Class, after which they are deleted. Notwithstanding the foregoing, Einstein Studios will also delete Class Recordings earlier under the following circumstances: (a) upon the request of a Parent for the deletion of their child’s personally identifiable information, or (b) upon the reasonable determination of Einstein Studios that a Class Recording should be removed to protect the privacy of certain Users or because of violations of these Terms of Service. By using the Application, you consent to you and/or your child appearing in Class Recordings for the limited purposes set forth above.

### **Electronic Communications**

By using the Site or Applications, you consent to receiving electronic communications from us and from other users of the Site and Applications. These electronic communications may include notices about applicable fees and charges, transactional information and other information concerning or related to the Site or Applications. These electronic communications are part of your relationship with us. You agree that any notices, agreements, disclosures or other communications that we send you electronically will satisfy any legal communication requirements, including that such communications be in writing.

### **Privacy Policy**

Please review our [privacy policy](#) (the “Privacy Policy”) which explains how we use information that you submit to Einstein Studios and that we collect through your use of the Site and Applications.

### **Links to Third-Party Sites**

We occasionally provide links from the Site to third-party websites (“Third-Party Sites”). If you use these links, you will leave the Site. We provide these link as a convenience, and we do not verify, make any representations, or take responsibility for these Third-Party Sites, including the truthfulness, accuracy, quality, or completeness of the content, services, links displayed, or other activities conducted on or through the Third-Party Sites. Therefore, unless specifically stated on the Site, we do not endorse or make any representations about Third-Party Sites or any information, material, or results that may be obtained through the use of Third-Party Sites. If you decide to access any of the Third-Party Sites linked on the Site, you do this entirely at your own risk, and you must follow the privacy policies and the terms and conditions for those Third-Party Sites.

YOU AGREE THAT EINSTEIN STUDIOS WILL NOT, UNDER ANY CIRCUMSTANCES, BE RESPONSIBLE OR LIABLE, DIRECTLY OR INDIRECTLY, FOR ANY GOODS, SERVICES, INFORMATION, RESOURCES, OR CONTENT AVAILABLE ON OR THROUGH ANY THIRD-PARTY SITE, FOR ANY THIRD-PARTY DEALINGS OR COMMUNICATIONS, FOR ANY HARM RELATED TO ANY GOODS, SERVICES, INFORMATION, RESOURCES, OR CONTENT AVAILABLE ON OR THROUGH ANY THIRD-PARTY SITE, OR FOR ANY DAMAGES OR LOSS CAUSED OR ALLEGED TO BE CAUSED BY OR IN CONNECTION WITH YOUR USE OR RELIANCE ON THE CONTENT OR BUSINESS PRACTICES OF ANY THIRD PARTY.

### **Submissions**

You are responsible for any information, messages, comments, photos, videos, graphics and other content or material that you submit, upload, post or otherwise make available on, to or through the Site (each a “User Submission”). You agree that any such User Submission is considered both non-confidential and non-proprietary. We do not guarantee that you will be able to edit or delete any User Submission you have submitted.

By submitting any User Submission, you are promising us that:

- ∞ You own all rights in your User Submissions (including, without limitation, all rights to the reproduction and display of your User Submissions) or, alternatively, you have acquired all necessary rights in your User Submissions to enable you to grant to us the rights in your User Submissions as described in these Terms;

- You have paid and will pay in full all license fees, clearance fees, and other financial obligations, of any kind, arising from any use or commercial exploitation of your User Submissions;
- Your User Submissions do not infringe the copyright, trademark, patent, trade secret, or other intellectual property rights, privacy rights, or any other legal or moral rights of any third party;
- You voluntarily agree to waive all "moral rights" that you may have in your User Submission;
- Any information contained in your User Submission is not known by you to be false, inaccurate, or misleading;
- Your User Submission does not violate any law (including, but not limited to, those governing export control, consumer protection, unfair competition, antidiscrimination, or false advertising);
- Your User Submission is not, and may not reasonably be considered to be, defamatory, libelous, hateful, racially, ethnically, religiously, or otherwise biased or offensive, unlawfully threatening, or unlawfully harassing to any individual, partnership, or corporation, vulgar, pornographic, obscene, or invasive of another's privacy;
- You were not and will not be compensated or granted any consideration by any third party for submitting your User Submission;
- Your User Submission does not incorporate addresses, email addresses, contact information, or phone numbers (other than your own);
- Your User Submission does not contain any viruses, worms, spyware, adware, or other potentially damaging programs or files;
- Your User Submission does not contain any information that you consider confidential, proprietary, or personal; and
- Your User Submission does not contain or constitute any unsolicited or unauthorized advertising, promotional materials, junk mail, spam, chain letters, pyramid schemes, or any other form of solicitation.

By submitting a User Submission, you grant to us an irrevocable, perpetual, transferable, non-exclusive, fully-paid, worldwide, royalty-free license (sublicensable through multiple tiers) to:

- Use, distribute, reproduce, modify, adapt, publish, translate, publicly perform, and publicly display your User Submissions (or any modification thereto), in whole or in part, in any format or medium now known or later developed;

- Use (and permit others to use) your User Submission in any manner and for any purpose (including, without limitation, commercial purposes) that we deem appropriate in our sole discretion (including, without limitation, to incorporate your User Submission or any modification thereto, in whole or in part, into any technology, product, or service);
- Display advertisements in connection with your User Submissions and to use your User Submissions for advertising and promotional purposes.

We may, but are not obligated to, pre-screen User Submissions or monitor any area of this Site through which User Submissions may be submitted. We are not required to host, display, or distribute any User Submissions and may remove at any time or refuse any User Submissions for any reason. We are not responsible for any loss, theft, or damage of any kind to any User Submissions. Further, you agree that we may freely disclose your User Submission to any third party absent any obligation of confidence on the part of the recipient.

### **Unauthorized Activities**

To be clear, we authorize your use of the Site and Applications only for personal use. Any other use of the Site or Applications other than for personal use is prohibited.

Unauthorized use of the Site or Applications may result in violation of various United States and international copyright laws. Because we prefer keeping this relationship drama-free, we want to give you examples of things to avoid. So, unless you have written permission from us stating otherwise, you are not authorized to use the Site or Applications in any of the following ways (these are examples only and the list below is not a complete list of everything that you are not permitted to do):

- For any public or commercial purpose;
- In a manner that modifies, publicly displays, publicly performs, reproduces or distributes any of the Materials;
- In a manner that violates any local, state, national, foreign, or international statute, regulation, rule, order, treaty, or other law;
- To stalk, harass, or harm another individual;
- To impersonate any person or entity or otherwise misrepresent your affiliation with a person or entity;

- To interfere with or disrupt the Site or servers or networks connected to the Site;
- To use any data mining, robots, or similar data gathering or extraction methods in connection with the Site; or
- To attempt to gain unauthorized access to any portion of the Site or any other accounts, computer systems, or networks connected to the Site, whether through hacking, password mining, or any other means.

This list of prohibitions provides examples and is not complete or exclusive. We reserve the right to terminate access to your account, your ability to access the Site or your ability to use the Applications with or without cause and with or without notice, for any reason or no reason, or for any action that we determine is inappropriate or disruptive to this Site or to any other user of this Site and/or Applications. We may report to law enforcement authorities any actions that may be illegal, and any reports we receive of such conduct. When legally required or at our discretion, we will cooperate with law enforcement agencies in any investigation of alleged illegal activity.

You agree to indemnify and hold Einstein Studios and its officers, directors, employees, affiliates, agents, licensors, and business partners harmless from and against any and all costs, damages, liabilities, and expenses (including attorneys' fees and costs of defense that we or any other indemnified party suffers in relation to, arising from, or for the purpose of avoiding, any claim or demand from a third-party that your use of this Site or Applications or the use of this Site or Applications by any person using your account (including without limitation, your participation in the posting areas or, your User Submissions) violates any applicable law or regulation, or the copyrights, trademark rights or other rights of any third-party.

### **Proprietary Rights**

Einstein Studios is a trademark of the Einstein Studios in the United States and various other countries. Other trademarks, names and logos on the Site and found in the Applications are the property of the Einstein Studio and/or our licensors.

Unless otherwise specified in these Terms of Service, all information and content provided via the Site and Applications, including Classes, Class Recordings, documents, services, site design, text, graphics, logos, images and icons, as well as the arrangement thereof, are the sole property of Einstein Studios. All rights not expressly granted herein are reserved. Except as otherwise required or limited by applicable law, any reproduction, distribution, modification, retransmission, or publication of any



copyrighted material is strictly prohibited without the express written consent of the copyright owner or license.

Some parts of the Site and/or Applications allow certain users to upload or post content. If you upload any content on the Site and/or Applications, you shall retain any intellectual property rights that you hold in such content. Einstein Studios does not take or claim any ownership (copyright, trademark, or otherwise) over your content. When you post or upload content to our Site and/or Applications, you hereby grant to Einstein Studios a non-exclusive, irrevocable, perpetual, worldwide, sublicensable right and license to store, use, and display, and provide access to such content you post as necessary or reasonably useful to provide our products and services, such as to make Classes available to other Users and to display and promote your Classes and Einstein Studios' product and service offerings, including through email, and ads on other sites or search engines, and through other marketing campaigns. You hereby further grant a non-exclusive license to each other user participating in any Class in which you upload your content solely to the extent reasonably necessary for such other user to participate in such Class.

The Applications and related documentation are "Commercial Items", as that term is defined at 48 C.F.R. §2.101, consisting of "Commercial Computer Software" and "Commercial Computer Software Documentation", as such terms are used in 48 C.F.R. §12.212 or 48 C.F.R. §227.7202, as applicable. Consistent with 48 C.F.R. §12.212 or 48 C.F.R. §227.7202-1 through 227.7202-4, as applicable, if You are a government entity, the Commercial Computer Software and Commercial Computer Software Documentation are being licensed to U.S. Government end users (a) only as Commercial Items and (b) with only those rights as are granted to all other end users pursuant to the terms and conditions herein. Unpublished rights reserved under the copyright laws of the United States.

### **Intellectual Property Infringement**

We respect the intellectual property rights of others, and we ask you to do the same. You represent and warrant that you have all rights and/or licenses required for any materials that you publish, incorporate or otherwise display in connection with the Site and/or Applications, and you hereby agree that you shall not publish, incorporate or otherwise display any intellectual property of any third party without all necessary rights and licenses. We may, in appropriate circumstances and at our discretion, terminate service and/or access to the Site and/or Applications for users who infringe the intellectual property rights of others. If you believe that your work is the subject of copyright infringement and/or trademark infringement and appears on our Site or in

our Applications, please provide our designated agent with the following information in accordance with the provisions of the Digital Millennium Copyright Act (“DMCA”):

- A physical or electronic signature of a person authorized to act on behalf of the owner of an exclusive right that is allegedly infringed.
- Identification of the copyrighted work and/or trademark 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 copyrighted works at that site.
- 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 at the Site, and information reasonably sufficient to permit us to locate the material.
- Information reasonably sufficient to permit us to contact you as the complaining party, such as an address, telephone number, and, if available, an electronic mail address at which you may be contacted.
- 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 and/or trademark owner, its agent, or the law.

- ∞ 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.

Our agent for notice of claims of copyright or trademark infringement can be reached as follows:

Attn: Xavier Lesage Moretti

[Email: xavier@einsteinstudios.io](mailto:xavier@einsteinstudios.io)

Please also note that for copyright infringements under Section 512(f) of the Copyright Act, any person who knowingly materially misrepresents that material or activity is infringing may be subject to liability.

### Termination of Repeat Infringers

We reserve the right, in our sole discretion, to terminate the account or access of any user of the Site or Applications who is the subject or repeated DMCA or other infringement notifications.

### **Your Relationship With Us; Disputes Among Users**

#### No agency or partnership

No agency, partnership, joint venture, or employment is created as a result of these Terms of Service or your use of any part of the Site or Applications. You do not have any authority whatsoever to bind us in any respect. All Teachers are independent contractors. Neither we nor any users of the Site or Applications may direct or control the day-to-day activities of the other, or create or assume any obligation on behalf of the other.

#### Disputes between users

Your interactions with individuals and/or organizations found on or through the Site and/ or Applications, including the performance of any services by such parties and any other terms, conditions, warranties or representations associated with such transactions or dealings, are solely between you and such individual or organization. You should take reasonable precautions and make whatever investigation or inquiries you deem necessary or appropriate before proceeding with any online or offline transaction with any third party, including without limitation, Parents, Teachers, students and other individuals with whom you may interact through your use of the Site and/or Applications.

You understand that we do not and cannot make representations as to the suitability of any individual you may decide to interact with on or through the Site or Applications and/or the accuracy or suitability of any advice, information, or recommendations made by any individual.

IF THERE IS A DISPUTE BETWEEN USERS OF THE SITE OR APPLICATIONS, OR BETWEEN ANY USER OF THE SITE OR APPLICATIONS AND ANY THIRD PARTY, YOU ACKNOWLEDGE AND AGREE THAT WE ARE UNDER NO OBLIGATION TO BECOME INVOLVED. IN THE EVENT THAT A DISPUTE ARISES BETWEEN YOU AND ANY THIRD PARTY, YOU HEREBY RELEASE US, OUR OFFICERS, MANAGERS, MEMBERS, DIRECTORS, EMPLOYEES, ATTORNEYS, AGENTS, AND SUCCESSORS IN RIGHTS FROM ANY CLAIMS, DEMANDS, AND DAMAGES (ACTUAL AND CONSEQUENTIAL) OF EVERY KIND OR NATURE, KNOWN OR UNKNOWN, SUSPECTED OR UNSUSPECTED, FORESEEABLE OR UNFORESEEABLE, DISCLOSED OR UNDISCLOSED, ARISING OUT OF OR IN ANY WAY RELATED TO SUCH DISPUTES AND/OR THE WEBSITE OR ANY SERVICE PROVIDED THEREUNDER. IF YOU ARE A CALIFORNIA RESIDENT, YOU WAIVE CALIFORNIA CIVIL CODE §1542, WHICH SAYS: "A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS FAVOR AT THE TIME OF EXECUTING THE RELEASE, AND THAT IF KNOWN BY HIM WOULD HAVE MATERIALLY AFFECTED HIS SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY."

**Disclaimer of Warranties**

THE SITE AND APPLICATIONS ARE PROVIDED "AS IS" AND "WITH ALL FAULTS" AND THE ENTIRE RISK AS TO THE QUALITY AND PERFORMANCE OF THE SITE AND APPLICATIONS IS WITH YOU.

WE EXPRESSLY DISCLAIM ALL WARRANTIES OF ANY KIND (EXPRESS, IMPLIED OR STATUTORY) WITH RESPECT TO THE SITE AND APPLICATIONS, WHICH INCLUDES BUT IS NOT LIMITED TO, ANY IMPLIED OR STATUTORY WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR USE OR PURPOSE, TITLE, AND NON-INFRINGEMENT OF INTELLECTUAL PROPERTY RIGHTS.

THIS MEANS THAT WE DO NOT PROMISE YOU THAT THE SITE AND APPLICATIONS ARE FREE OF PROBLEMS. Without limiting the generality of the foregoing, we make no warranty that the Site, Applications or any part thereof will meet your requirements, that your use of the Site or Applications will be uninterrupted, timely, secure, or error free, or that defects in the Site or Applications will be corrected. We make no warranty as to the results that may be obtained from the use of the Site or

Applications, or as to the accuracy or reliability of any information obtained through the Site or Applications. No advice or information, whether oral or written, obtained by you through your use of the Site or Applications or from Einstein Studios shall create any warranty. We disclaim all equitable indemnities.

### **Limitation Of Liability**

YOU ARE USING THE SITE, APPLICATIONS AND ANY THIRD PARTY MATERIALS AT YOUR SOLE RISK. NEITHER EINSTEIN STUDIOS NOR ITS OFFICERS, DIRECTORS, AGENTS, INVESTORS, OR EMPLOYEES SHALL BE LIABLE TO YOU FOR ANY DAMAGES RESULTING FROM YOUR USE OF THE SITE, APPLICATIONS AND/OR THIRD PARTY MATERIALS, OR YOUR DISPLAYING, COPYING, OR DOWNLOADING ANY MATERIALS TO OR FROM THE SITE OR APPLICATIONS. IN NO EVENT SHALL EINSTEIN STUDIOS BE LIABLE TO YOU FOR ANY INDIRECT, EXTRAORDINARY, EXEMPLARY, PUNITIVE, SPECIAL, INCIDENTAL, OR CONSEQUENTIAL DAMAGES (INCLUDING LOSS OF DATA, REVENUE, PROFITS, COST OF SUBSTITUTE GOODS AND SERVICES, USE, OR OTHER ECONOMIC ADVANTAGE) HOWEVER ARISING, EVEN IF WE KNOW THERE IS A POSSIBILITY OF SUCH DAMAGE.

YOU ARE SOLELY RESPONSIBLE FOR ALL OF YOUR COMMUNICATIONS AND INTERACTIONS WITH OTHER USERS OF THE SITE AND APPLICATIONS, AND WITH OTHER PERSONS WITH WHOM YOU COMMUNICATE OR INTERACT AS A RESULT OF YOUR USE THEREOF. YOU UNDERSTAND THAT WE DO NOT MAKE ANY ATTEMPT TO VERIFY THE STATEMENTS OF USERS OF THE SITE OR APPLICATIONS. WE MAKE NO REPRESENTATIONS OR WARRANTIES AS TO THE CONDUCT OF USERS OF THE SITE OR APPLICATIONS OR THEIR COMPATIBILITY WITH ANY CURRENT OR FUTURE USERS OF THE SITE OR APPLICATIONS. YOU AGREE TO TAKE REASONABLE PRECAUTIONS IN ALL COMMUNICATIONS AND INTERACTIONS WITH ANY PERSONS WITH WHOM YOU COMMUNICATE OR INTERACT AS A RESULT OF YOUR USE OF THE SITE OR APPLICATIONS, PARTICULARLY IF YOU MEET OFFLINE OR IN PERSON. WE EXPLICITLY DISCLAIM ALL LIABILITY FOR ANY ACT OR OMISSION OF ANY USER OF THE SITE AND/OR APPLICATIONS AND ALL OTHER THIRD PARTIES.

IF YOU ARE A USER FROM NEW JERSEY, THE FOREGOING SECTIONS TITLED "DISCLAIMER OF WARRANTIES" AND "LIMITATION OF LIABILITY" ARE INTENDED TO BE ONLY AS BROAD AS IS PERMITTED UNDER THE LAWS OF THE STATE OF NEW JERSEY. IF ANY PORTION OF THESE SECTIONS IS HELD TO BE INVALID UNDER THE LAWS OF THE STATE OF NEW JERSEY, THE INVALIDITY OF SUCH

PORTION SHALL NOT AFFECT THE VALIDITY OF THE REMAINING PORTIONS OF THE APPLICABLE SECTIONS.

### **Local Laws; Export Control**

We control and operate the Site and provide the Applications from our headquarters in the United States of America and the entirety of the Site and Applications may not be appropriate or available for use in other locations. If you use the Site or Applications or any part thereof outside the United States of America, you are solely responsible for following applicable local laws. You may not download or install any Materials or the Applications, or otherwise export or re-export any Materials or the Applications in violation of U.S. export laws.

### **Feedback**

If you send or transmit any communications, comments, questions, suggestions, or related materials to us, whether by letter, email, telephone, or otherwise, suggesting or recommending changes to the Site or Applications, including, without limitation, new features or functionality relating thereto (collectively, "Feedback"), all such Feedback is, and will be treated as, non-confidential and non-proprietary. You hereby assign all right, title, and interest in, and we are free to use, without any attribution or compensation to you, any ideas, know-how, concepts, techniques, or other intellectual property and proprietary rights contained in the Feedback, whether or not patentable, for any purpose whatsoever, including but not limited to, developing, manufacturing, having manufactured, licensing, marketing, and selling, directly or indirectly, products and services using such Feedback. Where the foregoing assignment is prohibited by law, you hereby grant us an exclusive, transferable, worldwide, royalty-free, fully paid up license (including the right to sublicense) to use and exploit all Feedback as we may determine in our sole discretion. You understand and agree that we are not obligated to use, display, reproduce, or distribute any such ideas, know-how, concepts, or techniques contained in the Feedback, and you have no right to compel such use, display, reproduction, or distribution.

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

Agreement to Arbitrate: This Dispute Resolution by Binding Arbitration section is referred to in this Terms of Service as the "Arbitration Agreement." You agree that any and all disputes or claims that have arisen or may arise between you and Einstein Studios, whether arising out of or relating to this Terms of Service (including any alleged breach thereof), the Site, the Applications, any advertising, or any other aspect of the relationship or transactions between us, shall be resolved exclusively through final and

binding arbitration, rather than a court, in accordance with the terms of this Arbitration Agreement, except that you or Einstein Studios may assert individual claims in small claims court, if your claims qualify. Further, this Arbitration Agreement does not preclude you from bringing issues to the attention of federal, state, or local agencies, and such agencies can, if the law allows, seek relief against us on your behalf. You agree that, by entering into this Terms of Service, you and Einstein Studios are each waiving the right to a trial by jury or to participate in a class action. Your rights will be determined by a neutral arbitrator, not a judge or jury. The Federal Arbitration Act governs the interpretation and enforcement of this Arbitration Agreement.

Prohibition of Class and Representative Actions and Non-Individualized Relief: YOU AND EINSTEIN STUDIOS AGREE THAT EACH OF US MAY BRING CLAIMS AGAINST THE OTHER ONLY ON AN INDIVIDUAL BASIS AND NOT AS A PLAINTIFF OR CLASS MEMBER IN ANY PURPORTED CLASS OR REPRESENTATIVE ACTION OR PROCEEDING. UNLESS BOTH YOU AND EINSTEIN STUDIOS AGREE OTHERWISE, THE ARBITRATOR MAY NOT CONSOLIDATE OR JOIN MORE THAN ONE PERSON'S OR PARTY'S CLAIMS AND MAY NOT OTHERWISE PRESIDE OVER ANY FORM OF A CONSOLIDATED, REPRESENTATIVE, OR CLASS PROCEEDING. ALSO, THE ARBITRATOR MAY AWARD RELIEF (INCLUDING MONETARY, INJUNCTIVE, AND DECLARATORY RELIEF) ONLY IN FAVOR OF THE INDIVIDUAL PARTY SEEKING RELIEF AND ONLY TO THE EXTENT NECESSARY TO PROVIDE RELIEF NECESSITATED BY THAT PARTY'S INDIVIDUAL CLAIM(S).

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

Exclusions from Arbitration/Right to Opt Out: Notwithstanding the above, you or we may choose to pursue a dispute in court and not by arbitration if: (a) the dispute qualifies for initiation in small claims court; or (b) YOU OPT-OUT OF THESE ARBITRATION PROCEDURES WITHIN 30 DAYS FROM THE DATE THAT YOU FIRST CONSENT TO THIS AGREEMENT (the "Opt-Out Deadline"). You may opt-out of this

Arbitration Agreement by emailing us at [xavier@einsteinstudios.io](mailto:xavier@einsteinstudios.io) the following information: (1) your name; (2) your address; (3) a clear statement that you do not wish to resolve disputes with us through arbitration. Either way, we will not take any decision you make personally. In fact, we promise that your decision to opt-out of this Arbitration Agreement will have no adverse effect on your relationship with us. But, we do have to enforce the Opt-Out Deadline so keep in mind that any opt-out request received after the Opt-Out Deadline will not be valid and you must pursue your dispute in arbitration or small claims court.

Arbitration Procedures: Arbitration will be conducted by a neutral arbitrator in accordance with the American Arbitration Association's ("AAA") rules and procedures, including the AAA's Supplementary Procedures for Consumer-Related Disputes (collectively, the "AAA Rules"), as modified by this Arbitration Agreement. For information on the AAA, please visit its website <https://www.adr.org/>. Information about the AAA Rules and fees for consumer disputes can be found at the AAA's consumer arbitration page, [https://www.adr.org/consumer\\_arbitration](https://www.adr.org/consumer_arbitration). If there is any inconsistency between any term of the AAA Rules and any term of this Arbitration Agreement, the applicable terms of this Arbitration Agreement will control unless the arbitrator determines that the application of the inconsistent Arbitration Agreement terms would not result in a fundamentally fair arbitration. The arbitrator must also follow the provisions of these Terms of Service as a court would. All issues are for the arbitrator to decide, including, but not limited to, issues relating to the scope, enforceability, and arbitrability of this Arbitration Agreement. Although arbitration proceedings are usually simpler and more streamlined than trials and other judicial proceedings, the arbitrator can award the same damages and relief on an individual basis that a court can award to an individual under the Terms of Service and applicable law. Decisions by the arbitrator are enforceable in court and may be overturned by a court only for very limited reasons.

Unless Einstein Studios and you agree otherwise, any arbitration hearings will take place in a reasonably convenient location for both parties with due consideration of their ability to travel and other pertinent circumstances. If the parties are unable to agree on a location, the determination shall be made by AAA. If your claim is for \$10,000 or less, Einstein Studios agrees that you may choose whether the arbitration will be conducted solely on the basis of documents submitted to the arbitrator, through a telephonic hearing, or by an in-person hearing as established by the AAA Rules. If your claim exceeds \$10,000, the right to a hearing will be determined by the AAA Rules. Regardless of the manner in which the arbitration is conducted, the arbitrator shall issue a reasoned written decision sufficient to explain the essential findings and conclusions on which the award is based.



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

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

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

Future Changes to Arbitration Agreement: Notwithstanding any provision in this Terms of Service to the contrary, Einstein Studios agrees that if it makes any future change to this Arbitration Agreement (other than a change to the Notice Address) while you are a user of the Site or Applications, you may reject any such change by sending Einstein Studios written notice within thirty (30) calendar days of the change to the Notice Address provided above. By rejecting any future change, you are agreeing that you will arbitrate any dispute between us in accordance with the language of this Arbitration Agreement as of the date you first accepted these Terms of Service (or accepted any subsequent changes to these Terms of Service).

## **Termination**

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

### **General**

These Terms of Service constitute the entire agreement between you and Einstein Studios and govern your use of the Site and Applications, superseding any prior agreements between you and Einstein Studios with respect to the Site and Applications. These Terms of Service will be governed by the laws of the State of California without regard to its conflict of law provisions. With respect to any disputes or claims not subject to arbitration, as set forth above, you and Einstein Studios agree to submit to the personal and exclusive jurisdiction of the state and federal courts located within San Francisco County, California. The failure of Einstein Studios to exercise or enforce any right or provision of these Terms of Service will not constitute a waiver of such right or provision. If any provision of these Terms of Service is found by a court of competent jurisdiction to be invalid, the parties nevertheless agree that the court should endeavor to give effect to the parties' intentions as reflected in the provision, and the other provisions of these Terms of Service remain in full force and effect. You agree that regardless of any statute or law to the contrary, any claim or cause of action arising out of or related to use of the Service or these Terms of Service must be filed within one (1) year after such claim or cause of action arose or be forever barred. You may not assign this Terms of Service without the prior written consent of Einstein Studios, but Einstein Studios may assign or transfer this Terms of Service, in whole or in part, without restriction. The section titles in these Terms of Service are for convenience only and have no legal or contractual effect.

### **Notice for California Users**

Under California Civil Code Section 1789.3, California users are entitled to the following consumer rights notice: The Site and the Applications are provided by Einstein Studios, Inc., 1007 Chula Vista Avenue, Burlingame, CA 94010. If you have a question or complaint regarding the Site or the Applications, please contact Customer Service at

[xavier@einsteinstudios.com](mailto:xavier@einsteinstudios.com). You may also contact us by writing Einstein Studios, Inc., 1007 Chula Vista Avenue, Burlingame, CA 94010. California residents may reach the Complaint Assistance Unit of the Division of Consumer Services of the California Department of Consumer Affairs by post at 1625 North Market Blvd., Sacramento, CA 95834 or by telephone at (916) 445-1254 or (800) 952-5210 or Hearing Impaired at TDD (800) 326-2297 or TDD (916) 322-1700.

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

Please contact Einstein Studios to report any violations of these Terms of Service or to pose any questions regarding this Terms of Service, the Site or the Applications.