

BREAKOUT, INC.

TERMS OF USE

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Welcome to <https://breakoutedu.com/> (the “**Breakout Site**”), owned and operated by Breakout, Inc. dba Breakout EDU (“**Breakout**,” “**Company**,” “**we**,” or “**us**”). This page explains the terms by which you may use the Breakout Site, and any other website on which we post these Terms of Use, purchase Breakout products, digital games or kits (“**Breakout Games**”) thereon, and access and use our online platform (“**Platform**”) and mobile services (“**App**”), and any software provided on or in connection with the service (collectively, the Breakout Site, Breakout Games, Platform and App, the “**Service**”). By accessing or using the Service, or clicking a button or checking a box marked “I Agree” or something similar, you signify that you have read, understood, and agree to be bound by these Terms of Use (these “**Terms**”), to the collection and use of your information as set forth in the [Breakout Privacy Policy](#), which is hereby incorporated by reference. These Terms apply to all visitors, users, teachers (“**Teachers**”) and others who register for or otherwise access or use the Service (“**Users**”).

Certain services may be subject to additional terms and conditions specified by us from time to time, and your use of such services is subject to those additional terms and conditions, which are hereby incorporated into these Terms by reference.

Please read this agreement carefully to ensure that you understand each provision. These Terms contain a mandatory individual arbitration and class action/jury trial waiver provision that requires the use of arbitration on an individual basis to resolve disputes, rather than jury trials or class actions.

1. Use of Our Service

A. Eligibility

This is a contract between you and Breakout. You must read and agree to these terms before using the Service. If you do not agree, you may not use the Service. You may use the Service only if you can form a binding contract with Breakout, and only in compliance with these Terms and all applicable local, state, national, and international laws, rules and regulations. The Service is not available to any Users previously removed from the Service by Breakout.

B. Terms for Access by Students

Any download, access or use of the Service by anyone under eighteen (18) years of age is strictly prohibited and in violation of these Terms unless you are under the

supervision of your guardians, school, school district, educational institution or Teacher (collectively referred to as “Schools”). If you are under eighteen (18) years of age, your use of the Service may be subject to additional policies and restrictions imposed by your School, with which you must comply.

C. Breakout Service and Apps

The Service allows Teachers to find, create, edit, manage, share digital games, invite to create and participate in digital games.

Subject to the terms and conditions of these Terms, you are hereby granted a non-exclusive, limited, non-transferable, freely revocable license to use the Service for your personal, non-commercial use only and as permitted by the features of the Service. Breakout reserves all rights not expressly granted herein in the Service and the Breakout Content (as defined below). Breakout may terminate this license at any time for any reason or no reason.

We may make available software to access the Service via an App. To use the App you must have a mobile device that is compatible with the App. Breakout does not warrant that the App will be compatible with your mobile device. You may use mobile data in connection with the App and may incur additional charges from your wireless provider for these services. You agree that you are solely responsible for any such charges. Breakout hereby grants you a non-exclusive, non-transferable, revocable license to use a compiled code copy of the App for one Breakout account on one mobile device owned or leased solely by you, for your personal use. You may not: (i) modify, disassemble, decompile or reverse engineer the App, except to the extent that such restriction is expressly prohibited by law; (ii) rent, lease, loan, resell, sublicense, distribute or otherwise transfer the App to any third party or use the App to provide time sharing or similar services for any third party; (iii) make any copies of the App; (iv) remove, circumvent, disable, damage or otherwise interfere with security-related features of the App, features that prevent or restrict use or copying of any content accessible through the App, or features that enforce limitations on use of the App; or (v) delete the copyright and other proprietary rights notices on the App. You acknowledge that Breakout may from time to time issue upgraded versions of the App, and may automatically electronically upgrade the version of the App that you are using on your mobile device. You consent to such automatic upgrading on your mobile device, and agree that the terms and conditions of these Terms will apply to all such upgrades. Any third-party code that may be incorporated in the App is covered by the applicable open source or third-party license end user license agreement, if any, authorizing the use of such code. The foregoing license grant is not a sale of the App or any copy thereof, and Breakout or its third-party partners or suppliers retain all right, title, and interest in the

App (and any copy thereof). Any attempt by you to transfer any of the rights, duties or obligations hereunder, except as expressly provided for in these Terms, is void. Breakout reserves all rights not expressly granted under these Terms. If the App is being acquired on behalf of the United States Government, then the following provision applies. The App will be deemed to be “commercial computer software” and “commercial computer software documentation,” respectively, pursuant to DFAR Section 227.7202 and FAR Section 12.212, as applicable. Any use, reproduction, release, performance, display or disclosure of the Service and any documentation by the U.S. Government will be governed solely by these Terms and is prohibited except to the extent expressly permitted by these Terms. The App originates in the United States and is subject to United States export laws and regulations. The App may not be exported or re-exported to certain countries or those persons or entities prohibited from receiving exports from the United States. In addition, the App may be subject to the import and export laws of other countries. You agree to comply with all United States and foreign laws related to use of the App and the Service.

D. Breakout Accounts

Your Breakout account gives you access to the services and functionality that we may establish and maintain from time to time and at our sole discretion. We may maintain different types of accounts for different types of Users. A Teacher User Account (“**Teacher Account**”) allows a Teacher to create, edit, manage, and share digital games, create class libraries, track digital game results, send notifications and comments to students and use other features and functionalities made available by Breakout from time to time. Breakout reserves the right to modify or discontinue any such features and functionalities at its discretion.

If you open a Breakout account on behalf of a School, company, organization, or other entity, then (i) “you” includes you and that entity, and (ii) you represent and warrant that you are an authorized representative of the entity with the authority to bind the entity to these Terms, and that you agree to these Terms on the entity’s behalf.

You may never use another User’s account. When creating your account, you must provide accurate and complete information, and you must keep this information up to date. You are solely responsible for the activity that occurs on your account, and you must keep your account password secure. We encourage you to use “strong” passwords (passwords that use a combination of upper and lower case letters, numbers, and symbols) with your account. You must notify Breakout immediately of any breach of security or unauthorized use of your account. Breakout will not be liable for any losses caused by any unauthorized use of your account.

Subscription Types and Scope of Use. Breakout offers several subscription types with distinct scopes of use: (a) **Classroom Subscriptions** for a single, named teacher

and **only** the students the teacher directly instructs in that teacher's own class(es); (b) **Department Subscriptions** for groups of teachers with the **same instructional role at different school sites** (e.g., Gifted & Talented teachers) which provision **individual** accounts per teacher; and (c) **School** and **District** Subscriptions that provide access for all teachers (and their students) at the covered school(s) with additional features and services.

Classroom Subscriptions (single-teacher use only). A Classroom Subscription may not be used to serve an entire school or district, and it is **not** intended for school-wide or district-wide roles (e.g., librarians, instructional/technology coaches, media specialists, or trainers who support multiple teachers or all students). It is limited to the named teacher and their own students whom they directly instruct. Any broader use requires a School or District Subscription.

Department Subscriptions (same-role multi-site cohorts). Department Subscriptions are intended for teachers with the **same role** across one or more buildings (e.g., all Gifted & Talented teachers in a district). Each covered teacher receives their **own** credentialed account. Department Subscriptions are not shared logins and are **not** a substitute for school-wide or district-wide access.

School-wide Subscriptions provides a school with accounts for all teacher and student users at a single school site. This school-wide account is intended to provide as many teachers at a single school building access to the Breakout EDU Platform. These accounts are not to be shared across multiple schools or districts. A violation of these terms will result in a full district invoice being sent for immediate collection or termination and deletion of all teacher and student data.

Credentials and Named Users. All accounts must be tied to a **named individual** with a unique school-issued email address. Generic or group email addresses (e.g., *breakout@myschool.org*, *library@district.edu*) are not permitted. **Sharing usernames or passwords is a direct violation** of these Terms and may result in suspension or termination without refund.

Enforcement; Equitable Billing. If Breakout determines that an account (a) shares credentials, (b) is used by multiple teachers, or (c) is used beyond its permitted scope (e.g., a Classroom Subscription used to serve an entire school), Breakout may, in its discretion, (i) suspend or terminate the account, and/or (ii) invoice the school or district for the **applicable School or District Subscription** (pro-rated to the date the misuse began) and seek any other remedies available at law or equity.

Sharing of a teacher account puts student data at jeopardy and can create an unstable situation for our platform. We take the protection of our user data and privacy concerns very seriously and will enforce actions that protect our users when the policy is violated.

Multiple teachers may not use a single teacher account or share a username and password. This is a direct violation of these Terms of Service and will result in possible platform access suspension or termination without refund. In addition, if it is proven that multiple users are sharing an account, the school may receive a bill for the additional cost to become a school-wide license.

Breakout EDU has added SSO options to make rostering and logging in easier for students and teachers.

You may control your User profile and how you interact with the Service by changing the settings in your profile tab in your account. By providing Breakout your email address you consent to our using the email address to send you Service-related notices, including any notices required by law, in lieu of communication by postal mail. We may also use your email address to send you other messages, such as changes to features of the Service and special offers. If you do not want to receive such email messages, you may opt-out by clicking “unsubscribe” or something similar in the body of the email and following the instructions. Opting out may prevent you from receiving email messages regarding updates, improvements, or offers.

E. Service Rules

You agree not to engage in any of the following prohibited activities: (i) copying, distributing, or disclosing any part of the Service in any medium, including without limitation by any automated or non-automated “scraping”; (ii) using any automated system, including without limitation “robots,” “spiders,” “offline readers,” etc., to access the Service in a manner that sends more request messages to the Breakout servers than a human can reasonably produce in the same period of time by using a conventional on-line web browser (except that Breakout grants the operators of public search engines revocable permission to use spiders to copy publicly available materials from the Breakout Site for the sole purpose of and solely to the extent necessary for creating publicly available searchable indices of the materials, but not caches or archives of such materials); (iii) transmitting spam, chain letters, or other unsolicited email; (iv) attempting to interfere with, compromise the system integrity or security or decipher any transmissions to or from the servers running the Service; (v) taking any action that imposes, or may impose at our sole discretion an unreasonable or disproportionately large load on our infrastructure; (vi) uploading invalid data, viruses, worms, or other software agents through the Service; (vii) collecting or harvesting any

personally identifiable information, including account names, from the Service; (viii) using the Service for any commercial solicitation purposes; (ix) impersonating another person or otherwise misrepresenting your affiliation with a person or entity, conducting fraud, hiding or attempting to hide your identity; (x) interfering with the proper working of the Service; (xi) accessing any content on the Service through any technology or means other than those provided or authorized by the Service; or (xii) bypassing the measures we may use to prevent or restrict access to the Service, including without limitation features that prevent or restrict use or copying of any content or enforce limitations on use of the Service or the content therein; (xiii) sharing, posting, or otherwise distributing **links, game codes, deep-links, or access methods** to Breakout Games or Content in a manner that allows access by users **not covered** by your subscription, including posting on public websites, social media, shared drives, or learning management systems accessible to non-licensed users - the only exception is sharing user generated content that you have personally created and the link you are sharing provides access to the game details screen, rather than the game itself for direct play; (xiv) circumventing or attempting to circumvent access controls, rostering, or single-sign-on features of the Service, including any method intended to enable unlicensed users to play or view Breakout Games or Content; and (xv) using a Classroom or Department Subscription to provide access or services that, by scope or design, require a School or District Subscription.

Accessing any audiovisual content that may be available on the Service for any purpose or in any manner other than Streaming (as defined below) is expressly prohibited unless explicitly permitted by the functionality of the Service. “**Streaming**” means a contemporaneous digital transmission of an audiovisual work via the Internet from the Breakout Service to a User’s device in such a manner that the data is intended for real-time viewing and not intended to be copied, stored, permanently downloaded, or redistributed by the User. For clarity, sharing or posting links intended to enable persistent or school-wide access to Breakout Games or Content outside your permitted subscription scope is prohibited.

We may, without prior notice, change the Service; stop providing the Service or features of the Service, to you or to Users generally; or create usage limits for the Service. We may permanently or temporarily terminate or suspend your access to the Service without notice and liability for any reason, including if in our sole determination you violate any provision of these Terms, or for no reason. Upon termination for any reason or no reason, you continue to be bound by these Terms.

You are solely responsible for your interactions with other Breakout Users. We reserve the right, but have no obligation, to monitor disputes between you and other Users.

Breakout shall have no liability for your interactions with other Users, or for any User's action or inaction.

2. User Content

We do not claim ownership of user-generated content and material. Any and all photographs, articles, images, graphics, videos, sounds, music, audio recordings, text, files, profiles, communications, comments, feedback, suggestions, ideas, concepts, questions, data or other content that you (a) submit or post on or through the Service, on any of our blogs, social media accounts or through tools or applications we provide for posting or sharing such content with us; or (b) have posted or uploaded to your social media accounts, including but not limited to Instagram, Twitter(X), Facebook, BlueSky, Tumblr and Pinterest, which are tagged with any Breakout promoted hashtag (collectively "**User Content**") shall be deemed nonconfidential and nonproprietary, as well as your name, persona and likeness included in any User Content and your social media account handle, username, real name, profile picture and/or any other information associated with the User Content, in any commercial or noncommercial manner whatsoever, in whole or in part, in any and all distribution channels, forms, media or technology, whether now known or hereafter developed, including but not limited to in stores, printed marketing materials, emails, web pages, social media accounts and for any other marketing, advertising, public relations, sales or promotional purposes with or without attribution and without further notice to you. Neither you, nor any other person or entity, will have the right to (i) receive any royalty or consideration of any kind for the use of the User Content pursuant to these Terms or (ii) inspect or approve the editorial copy or other material that may be used in connection with the User Content. Breakout will be free to use any ideas, concepts, know-how or techniques contained in such User Content for any purpose whatsoever, including but not limited to developing, manufacturing and marketing products that incorporate or otherwise rely upon such information. Breakout shall have no obligation to monitor User Content, use or display User Content, compensate you for submitting User Content or respond to any User Content. Breakout retains the right, in its sole discretion and without prior notice, to remove, revise or refuse to post any User Content for any reason or no reason. Subject to the licenses granted in these Terms, you retain ownership of any copyright and other rights you may have in the User Content.

By submitting or posting User Content on the Service, on your social media accounts or through any tools or applications we provide for posting or sharing your User Content with us, you represent and warrant that (1) you own or control any and all rights in and to the User Content, and the right to grant all of the rights and licenses in these Terms, and if you are not the holder of such rights, the holder of such rights has completely and effectively waived all such rights and irrevocably granted you the right to grant the licenses stated above without the need for payment to you or any other person or entity;

(2) you have obtained express permission and consent from any individuals that appear in the User Content to use, and grant others the right to use, their name, image, voice and/or likeness without the need for payment to you or any other person or entity; (3) you are 18 years of age or older; and (4) the User Content does not (a) contain false or misleading information, (b) infringe on the intellectual property, privacy, publicity, statutory, contractual or other rights of any individual or third party, (c) contain any libelous, defamatory, obscene, offensive, threatening or otherwise harassing or hateful content, (d) contain any addresses, email addresses, phone numbers or any contact information or (e) contain computer viruses, worms or other harmful files. Upon request by Breakout, you will furnish Breakout any documentation, substantiation or releases necessary to verify your compliance with these Terms. You are solely responsible for the User Content and you hereby agree to indemnify and hold Breakout and its employees, agents, affiliates, assigns and licensees harmless from any and all damages, claims, expenses, costs or fees arising from or in connection with a breach of any of the foregoing representations or your violation of any law or rights of a third party.

Breakout does not guarantee the truthfulness, accuracy or reliability of any User Content or endorse any opinions expressed by you or anyone else. By submitting or posting the User Content you fully and unconditionally release and forever discharge Breakout and its officers, directors, employees and agents from any and all claims, demands and damages (actual or consequential, direct or indirect), whether now known or unknown, of every kind and nature relating to, arising out of or in any way connected with: (i) disputes between you and one or more Users or any other person or entity, or (ii) the use by Breakout or you of the User Content, including, without limitation, any and all claims that use of the User Content pursuant to these Terms violates any of your intellectual property rights, copyrights, rights of publicity or privacy, "moral rights," or rights of attribution and integrity. You acknowledge and agree that Breakout has no control over, and shall have no liability for any damages resulting from, the use (including, without limitation, re-publication) or misuse by you or any third party of any User Content. Breakout acts as a passive conduit for User Content and has no obligation to screen or monitor User Content. If Breakout becomes aware of any User Content that allegedly may not conform to these Terms, Breakout may investigate the allegation and determine in its sole discretion whether to take action in accordance with these Terms. Breakout has no liability or responsibility to Users for performance or nonperformance of such activities.

Breakout has the absolute right to remove and/or delete without notice any User Content within its control that it deems objectionable. You consent to such removal and/or deletion and waive any claim against Breakout for such removal and/or deletion. Breakout is not responsible or liable for failure to store posted content or other materials you transmit through the Service. You should take measures to preserve copies of any

data, material, content or information you post on the Service or any other sites or platforms.

3. **Our Proprietary Rights**

Except for your User Content, the Service, and all materials therein or transferred thereby, including, without limitation, software, images, text, graphics, illustrations, logos, patents, trademarks, service marks, copyrights, photographs, audio, videos, music, Breakout's digital kits, games and instructions, and User Content belonging to other Users (the "**Breakout Content**"), and all Intellectual Property Rights related thereto, are the exclusive property of Breakout and its licensors (including other Users who post User Content to the Service). Except as explicitly provided herein, nothing in these Terms shall be deemed to create a license in or under any such Intellectual Property Rights, and you agree not to sell, license, rent, modify, distribute, copy, reproduce, transmit, publicly display, publicly perform, publish, adapt, edit or create derivative works from any Breakout Content or the content of other users. Use of the Breakout Content for any purpose not expressly permitted by these Terms is strictly prohibited.

You may choose to or we may invite you to submit comments or ideas about the Service, including without limitation about how to improve the Service or our products ("**Ideas**"). By submitting any Idea, you agree that your disclosure is gratuitous, unsolicited and without restriction and will not place Breakout under any fiduciary or other obligation, and that we are free to use the Idea without any additional compensation to you, and/or to disclose the Idea on a non-confidential basis or otherwise to anyone. You further acknowledge that, by acceptance of your submission, Breakout does not waive any rights to use similar or related ideas previously known to Breakout, or developed by its employees, or obtained from sources other than you.

For the purposes of these Terms, "**Intellectual Property Rights**" means all patent rights, copyright rights, mask work rights, moral rights, rights of publicity, trademark, trade dress and service mark rights, goodwill, trade secret rights and other intellectual property rights as may now exist or hereafter come into existence, and all applications therefore and registrations, renewals and extensions thereof, under the laws of any state, country, territory or other jurisdiction.

4. **Payment Terms**

A. **Placing an Order.** Certain aspects of the Service may be provided for a fee or other charge. You agree to our pricing, payment and purchase order terms, currently available at <https://www.breakoutedu.com/pricing/> as we may update them from time to time. The company may add new services for additional fees and charges, or amend fees and charges for existing services, at any time in its sole discretion. Any

change to our pricing or payment terms shall become effective in the billing cycle following notice of such change to you as provided in these Terms. We may use a third-party service provider for payment services, such as Shopify. By using our Service you agree to be bound by Shopify's Terms of Service available at <https://www.shopify.com/legal/terms>.

B. **Payment Methods.** We accept various payment methods through our Service via a third-party service provider. We will bill your payment method when you place an order through the Service. Breakout will not fulfill any order without authorization validation of your purchase from your payment method.

C. **Payment Information; Taxes.** All information that you provide in connection with a purchase or transaction or other monetary transaction interaction with the Service must be accurate, complete, and current. You agree to pay all charges incurred by users of your credit card, debit card, or other payment method used in connection with a purchase or transaction or other monetary transaction interaction with the Service at the prices in effect when such charges are incurred. You will pay any applicable taxes, if any, relating to any such purchases, transactions or other monetary transaction interactions.

D. **Limited Warranty Policy.** By using the Service, you agree to our Limited Warranty Policy currently available at <https://www.breakoutedu.com/warranty>, as we may update them from time to time. Any change to such policy shall become effective in the billing cycle following notice of such change to you as provided in these Terms.

E. **No Other Refunds.** You may cancel your User account at any time; however, there are no refunds for cancellation, except as expressly set forth in above in Section 4(D) (Limited Warranty Policy). In the event that Breakout suspends or terminates your account or these Terms, you understand and agree that you shall receive no refund or exchange for any Breakout Games, any unused time on a subscription, any license or subscription fees for any portion of the Service, any content or data associated with your account, or for anything else.

F. **Supplemental Billing for Unauthorized Use.** If we reasonably determine that your access or use exceeds the scope of your subscribed plan (including credential sharing or school-wide use under a Classroom or Department Subscription), you agree that Breakout may invoice you, your school, or your district for the applicable **School or District Subscription** fees covering the period of unauthorized use, without limiting our right to suspend or terminate access or pursue other remedies. All such amounts are due per the invoice terms. **School and District Subscriptions** are the most equitable and cost-effective way to provide access for all teachers and students and include additional benefits such as integrations (e.g., SSO/rostering), live training and support, and advanced analytics and data dashboards.

G. **No Sales to Children.** Breakout does not sell products through its Service to children, but only to adults, who can purchase with a credit card or other permitted payment method. If you are under eighteen (18) years of age, you may use the Service only with the involvement and consent of a parent/legal guardian or agent of the School such as a teacher..

H. **California Residents.** The provider of services is set forth herein. If you are a California resident, 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 1625 North Market Blvd., Suite N 112 Sacramento, CA 95834, or by telephone at (800) 952-5210 or (916) 445-1254.

5. **Personal Information; Student Data**

A. **Confidentiality and Ownership of Student Data.** When Breakout is used by a School or Teacher, Breakout may collect or have access to personal information of students authorized by the School to access the Service (“Student Data”). Breakout agrees to treat Student Data as confidential and not to share it with third parties other than as described in these Terms, and in our [Privacy Policy](#). As between Breakout and the School, the School owns all right, title, and interest to all Student Data processed by Breakout pursuant and Breakout does not own, control, or license such Student Data, except so as to provide the Services and as described in the Agreement.

B. **Compliance with Laws.** If you are a School, you represent and warrant that you have the authority to provide to Breakout, or permit Breakout to collect, Student Data for the purpose of providing the Service, as described in our Privacy Policy. Breakout and you, individually or on behalf of your School, each agree to uphold our responsibilities under laws governing personal information and Student Data, including, without limitation, the Family Educational Rights and Privacy Act (“**FERPA**”), the Protection of Pupil Rights Amendment (“**PPRA**”), and the Children’s Online Privacy and Protection Act (“**COPPA**”) and any and all applicable state laws. Breakout shall access and process Student Data as a School Official providing an outsourced institutional function pursuant to FERPA, under the direction and control of the School or Teacher. We rely on Schools to obtain and provide appropriate consent and disclosures, if necessary, for Breakout to collect any Student Data, including the collection of Student Data directly from students under thirteen (13) years of age, as permitted under COPPA. You represent and warrant that your use of the Service is in compliance with all applicable data protection laws governing the collection, use and disclosure of personal information and the sharing of student education records.

C. **Use of Student Data.** By submitting or providing us access to Student Data, you agree that Breakout may use and disclose the Student Data solely for the

purposes of (i) providing the Service, (ii) maintaining, supporting, evaluating, diagnosing, improving and developing our Service, (iii) enforcing our rights under these Terms, (iv) as permitted with the School's consent, or (v) as otherwise permitted by applicable laws. For clarity and without limitation, we may use Student Data for adaptive learning purposes or customized student learning and to provide recommendation engines to recommend content or services relating to school purposes or other educational or employment purposes, provided such recommendation is not determined in whole or in part by payment or other consideration from a third party.

D. **Restrictions of Disclosure of Student Data.** Breakout is prohibited from using Student Data to (a) direct targeted online advertising to students; (b) develop a profile of a student other than for the purpose of providing educational services or as authorized by a School or parent/legal guardian; or (c) for any commercial purpose unless authorized by a School or parent/legal guardian or permitted by applicable law. Notwithstanding the foregoing, you agree that Breakout may provide customized content, advertising and commercial messaging to Users from time to time, provided that such advertisements shall not be based upon Student Data relating to individually identifiable students, unless we have received consent from the School or parent/legal guardian to have Student Data used for such purposes and to the extent such data use is permitted by applicable law.

E. **Use of Anonymized Student Data.** You agree that we may collect and, both during and after the term of our agreement, use data derived from Student Data for our own purposes, provided that such data will not be disclosed to a third-party unless it has been de-identified and/or aggregated to reasonably avoid identification of a specific individual.

F. **Breakout's Third-Party Service Providers.** You acknowledge and agree that Breakout may provide access to Student Data to our employees, affiliates, and to certain third-party service providers which have a legitimate need to access such information in order to provide their services to us. We and our employees, affiliates, service providers, or agents involved in the handling, transmittal, and processing of Student Data will be required to maintain the confidentiality of such data.

G. **Student Data Retention and Deletion Requests.** You may request that we delete or retrieve Student Data in our possession at any time by providing such a request in writing, and we shall comply with such request within thirty (30) days. Any request by a parent/legal guardian, user or other individual seeking to access, modify, correct, or delete Student Data will be instructed to contact the School to request data deletion or modification, and we shall cooperate with the School to modify and/or delete Student Data at the School's request or instruction. The School is responsible for maintaining current class rosters and deleting Student Data which the School no longer

needs for an educational purpose through the dashboard or by submitting a deletion request. We retain Student Data for a period of up to two years after termination of the contract to continue to provide the School access to its records, after which the Student Data will be deleted and/or de-identified, unless we receive a deletion request prior to that date. We are not required to delete data that has been de-identified such that it can no longer be used to identify an individual.

H. **Terms of Service changes with respect to Student Data.** We will use our best efforts to provide at least thirty (30) days' notice of a Terms of Service change that may involve collecting, using, storing, or sharing Student Data in a materially different way than was disclosed in our previous Terms of Service, so that you have sufficient time to evaluate the change in practice. If you do not choose to accept the changes, you may opt-out by deleting your account and associated Student Data before the changes take effect.

6. Privacy

We respect your privacy and are committed to protecting it. You understand that by using the Services you consent to the collection, use and disclosure of your personally identifiable information and aggregate and/or anonymized data as set forth in our [Privacy Policy](#), and to have your personally identifiable information collected, used, transferred to and processed in the United States.

7. Security

Breakout cares about the integrity and security of your personal information. However, we cannot guarantee that unauthorized third parties will never be able to defeat our security measures or use your personal information for improper purposes. You acknowledge that you provide your personal information at your own risk. In the event we have a reasonable, good faith belief that an unauthorized party has gained access to or been disclosed your personal information (a "Security Event"), we will conduct an investigation and provide notice to you in accordance with applicable laws. If such Security Event involves Student Data that we have collected or received through the Service, we will promptly notify the School and will cooperate with the School's investigation of the incident. If, due to the Security Event, a notification to an individual, organization or government agency is required under applicable privacy laws, as the owner of the Student Data the School shall be responsible for the timing, content, cost and method of any such legally-required notice and compliance with such laws with respect to all individual students associated with the School's use of the Service.

8. Copyright Complaints

It is our policy to respond to alleged infringement notices that comply with the Digital Millennium Copyright Act of 1998 (“**DMCA**”).

If you believe that your copyrighted work has been copied in a way that constitutes copyright infringement and is accessible via the Service, please notify Breakout’s copyright agent as set forth in the DMCA. For your complaint to be valid under the DMCA, you must provide the following information in writing:

- (A). An electronic or physical signature of a person authorized to act on behalf of the copyright owner;
- (B). Identification of the copyrighted work that you claim has been infringed;
- (C). Identification of the material that is claimed to be infringing and where it is located on the Service;
- (D). Information reasonably sufficient to permit Breakout to contact you, such as your address, telephone number, and, email address;
- (E). A statement that you have a good faith belief that use of the material in the manner complained of is not authorized by the copyright owner, its agent, or law; and
- (F). A statement, made under penalty of perjury, that the above information is accurate, and that you are the copyright owner or are authorized to act on behalf of the owner.

The above information must be submitted to the following DMCA Agent:

Attn: DMCA Breakout, Inc.
Address: PO Box 280
696 Old Bethpage Road
Old Bethpage, NY 11804
Telephone: 646.881.4082
Email: info@breakoutedu.com

Under federal law, if you knowingly misrepresent that online material is infringing, you may be subject to criminal prosecution for perjury and civil penalties, including monetary damages, court costs, and attorneys’ fees.

Please note that this procedure is exclusively for notifying Breakout and its affiliates that your copyrighted material has been infringed. The preceding requirements are intended to comply with Breakout’s rights and obligations under the DMCA, including 17 U.S.C. §512(c), but do not constitute legal advice. It may be advisable to contact an attorney regarding your rights and obligations under the DMCA and other applicable laws.

In accordance with the DMCA and other applicable law, Breakout has adopted a policy of terminating, in appropriate circumstances, Users who are deemed to be repeat infringers. Breakout may also at its sole discretion limit access to the Service and/or terminate the accounts of any Users who infringe any intellectual property rights of others, whether or not there is any repeat infringement.

9. Third-Party Links and Information

The Service may contain links to third-party materials that are not owned or controlled by Breakout. Breakout does not endorse or assume any responsibility for any such third-party sites, information, materials, products, or services. If you access a third-party website or service from the Service or share your User Content on or through any third-party website or service, you do so at your own risk, and you understand that these Terms and do not apply to your use of such sites. You expressly relieve Breakout from any and all liability arising from your use of any third-party website, service, or content, including without limitation User Content submitted by other Users. Additionally, your dealings with or participation in promotions of advertisers found on the Service, including payment and delivery of goods, and any other terms (such as warranties) are solely between you and such advertisers. You agree that Breakout shall not be responsible for any loss or damage of any sort relating to your dealings with such advertisers.

10. Indemnity

You agree to defend, indemnify and hold harmless Breakout and its subsidiaries, agents, licensors, managers, and other affiliated companies, and their employees, contractors, agents, officers and directors, from and against any and all claims, damages, obligations, losses, liabilities, costs or debt, and expenses (including but not limited to attorney's fees) arising from: (a) your use of and access to the Service, including any data or content transmitted or received by you; (b) your violation of any term of these Terms, including without limitation your breach of any of the representations and warranties above; (c) your violation of any third-party right, including without limitation any right of privacy or Intellectual Property Rights; (d) your violation of any applicable law, rule or regulation; (e) User Content or any content that is submitted via your account including without limitation misleading, false, or inaccurate information; (f) your willful misconduct; or (g) any other party's access and use of the Service with your unique username, password or other appropriate security code.

11. No Warranty

The Service is provided on an "as is" and "as available" basis. Use of the Service is at your own risk. To the maximum extent permitted by applicable law, the Service is provided without warranties of any kind, whether express or implied, including, but not

limited to, implied warranties of merchantability, fitness for a particular purpose, or non-infringement. No advice or information, whether oral or written, obtained by you from Breakout or through the Service will create any warranty not expressly stated herein. Without limiting the foregoing, Breakout, its subsidiaries, its affiliates, and its licensors do not warrant that the content is accurate, reliable or correct; that the Service will meet your requirements; that the Service will be available at any particular time or location, uninterrupted or secure; that any defects or errors will be corrected; or that the Service is free of viruses or other harmful components. Any content downloaded or otherwise obtained through the use of the Service is downloaded at your own risk and you will be solely responsible for any damage to your computer system or mobile device or loss of data that results from such download or your use of the Service.

Breakout does not warrant, endorse, guarantee, or assume responsibility for any product or service advertised or offered by a third party through the Service or any hyperlinked website or service, and Breakout will not be a party to or in any way monitor any transaction between you and third-party providers of products or services.

Federal law, some states, provinces and other jurisdictions do not allow the exclusion and limitations of certain implied warranties, so the above exclusions may not apply to you. This agreement gives you specific legal rights, and you may also have other rights which vary from state to state. The disclaimers and exclusions under this agreement will not apply to the extent prohibited by applicable law.

12. Limitation of Liability

To the maximum extent permitted by applicable law, in no event shall Breakout, its affiliates, agents, directors, employees, suppliers or licensors be liable for any indirect, punitive, incidental, special, consequential or exemplary damages, including without limitation damages for loss of profits, goodwill, use, data or other intangible losses, arising out of or relating to the use of, or inability to use, this service. Under no circumstances will Breakout be responsible for any damage, loss or injury resulting from hacking, tampering or other unauthorized access or use of the Service or your account or the information contained therein.

To the maximum extent permitted by applicable law, Breakout assumes no liability or responsibility for any (a) errors, mistakes, or inaccuracies of content; (b) personal injury or property damage, of any nature whatsoever, resulting from your access to or use of our service; (c) any unauthorized access to or use of our secure servers and/or any and all personal information stored therein; (d) any interruption or cessation of transmission to or from the Service; (e) any bugs, viruses, trojan horses, or the like that may be transmitted to or through our service by any third party; (f) any errors or omissions in any content or for any loss or damage incurred as a result of the use of any content posted, emailed, transmitted, or otherwise made available through the Service; and/or

(g) User Content or the defamatory, offensive, or illegal conduct of any third party. In no event shall Breakout, its affiliates, agents, directors, employees, suppliers, or licensors be liable to you for any claims, proceedings, liabilities, obligations, damages, losses or costs in an amount exceeding the amount you paid to Breakout hereunder or one hundred u.s. dollars (usd \$100.00), whichever is greater.

This limitation of liability section applies whether the alleged liability is based on contract, tort, negligence, strict liability, or any other basis, even if Breakout has been advised of the possibility of such damage. The foregoing limitation of liability shall apply to the fullest extent permitted by law in the applicable jurisdiction.

Some states do not allow the exclusion or limitation of incidental or consequential damages, so the above limitations or exclusions may not apply to you. This agreement gives you specific legal rights, and you may also have other rights which vary from state to state. The disclaimers, exclusions, and limitations of liability under this agreement will not apply to the extent prohibited by applicable law.

The Service is controlled and operated from facilities in the United States. Breakout makes no representations that the Service is appropriate or available for use in other locations. Those who access or use the Service from other jurisdictions do so at their own volition and are entirely responsible for compliance with all applicable United States and local laws and regulations, including but not limited to export and import regulations. You may not use the Service if you are a resident of a country embargoed by the United States, or are a foreign person or entity blocked or denied by the United States government. Unless otherwise explicitly stated, all materials found on the Service are solely directed to individuals, companies, or other entities located in the United States.

13. Governing Law, Arbitration, and Class Action/Jury Trial Waiver

A. **Governing Law.** You agree that: (i) the Service shall be deemed solely based in [New York]; and (ii) the Service shall be deemed a passive one that does not give rise to personal jurisdiction over us, either specific or general, in jurisdictions other than [New York]. These Terms shall be governed by the internal substantive laws of the State of [New York], without respect to its conflict of laws principles. The parties acknowledge that these Terms evidence a transaction involving interstate commerce. Notwithstanding the preceding sentences with respect to the substantive law, any arbitration conducted pursuant to the terms of these Terms shall be governed by the Federal Arbitration Act (9 U.S.C. §§ 1-16). The application of the United Nations Convention on Contracts for the International Sale of Goods is expressly excluded. You agree to submit to the personal jurisdiction of the federal and state courts located in [New York City, New York] for any actions for which we retain the right to seek injunctive

or other equitable relief in a court of competent jurisdiction to prevent the actual or threatened infringement, misappropriation or violation of our copyrights, trademarks, trade secrets, patents, or other intellectual property or proprietary rights, as set forth in the Arbitration provision below, including any provisional relief required to prevent irreparable harm. You agree that [New York] is the proper forum for any appeals of an arbitration award or for trial court proceedings in the event that the arbitration provision below is found to be unenforceable.

B. **Arbitration.** Read this section carefully because it requires the parties to arbitrate their disputes and limits the manner in which you can seek relief from Breakout. For any dispute with Breakout, you agree to first contact us at info@breakoutedu.com and attempt to resolve the dispute with us informally. In the unlikely event that Breakout has not been able to resolve a dispute it has with you after sixty (60) days, we each agree to resolve any claim, dispute, or controversy (excluding any claims for injunctive or other equitable relief as provided below) arising out of or in connection with or relating to these Terms, or the breach or alleged breach thereof (collectively, “**Claims**”), by binding arbitration by JAMS, under the Optional Expedited Arbitration Procedures then in effect for JAMS, except as provided herein. JAMS may be contacted at www.jamsadr.com. The arbitration will be conducted in [New York City, New York], unless you and Breakout agree otherwise. If you are using the Service for commercial purposes, each party will be responsible for paying any JAMS filing, administrative and arbitrator fees in accordance with JAMS rules, and the award rendered by the arbitrator shall include costs of arbitration, reasonable attorneys’ fees and reasonable costs for expert and other witnesses. If you are an individual using the Service for non-commercial purposes: (i) JAMS may require you to pay a fee for the initiation of your case, unless you apply for and successfully obtain a fee waiver from JAMS; (ii) the award rendered by the arbitrator may include your costs of arbitration, your reasonable attorney’s fees, and your reasonable costs for expert and other witnesses; and (iii) you may sue in a small claims court of competent jurisdiction without first engaging in arbitration, but this does not absolve you of your commitment to engage in the informal dispute resolution process. Any judgment on the award rendered by the arbitrator may be entered in any court of competent jurisdiction. Nothing in this Section shall be deemed as preventing Breakout from seeking injunctive or other equitable relief from the courts as necessary to prevent the actual or threatened infringement, misappropriation, or violation of our data security, Intellectual Property Rights or other proprietary rights.

C. **Class Action/Jury Trial Waiver.** With respect to all persons and entities, regardless of whether they have obtained or used the Service for personal, commercial or other purposes, all claims must be brought in the parties’ individual capacity, and not as a plaintiff or class member in any purported class action, collective action, private

attorney general action or other representative proceeding. This waiver applies to class arbitration, and, unless we agree otherwise, the arbitrator may not consolidate more than one person's claims. You agree that, by entering into this agreement, you and Breakout are each waiving the right to a trial by jury or to participate in a class action, collective action, private attorney general action, or other representative proceeding of any kind.

14. Additional App Store Terms

A. **App from Apple App Store.** The following applies to any App you acquire from the Apple App Store ("**Apple-Sourced Software**"): You acknowledge and agree that these Terms is solely between you and Breakout, not Apple, Inc. ("**Apple**") and that Apple has no responsibility for the Apple-Sourced Software or content thereof. Your use of the Apple-Sourced Software must comply with the App Store Terms of Service. You acknowledge that Apple has no obligation whatsoever to furnish any maintenance and support services with respect to the Apple-Sourced Software. In the event of any failure of the Apple-Sourced Software to conform to any applicable warranty, you may notify Apple, and Apple will refund the purchase price for the Apple-Sourced Software to you; to the maximum extent permitted by applicable law, Apple will have no other warranty obligation whatsoever with respect to the Apple-Sourced Software, and any other claims, losses, liabilities, damages, costs or expenses attributable to any failure to conform to any warranty will be solely governed by these Terms and any law applicable to Breakout as provider of the software. You acknowledge that Apple is not responsible for addressing any claims of you or any third party relating to the Apple-Sourced Software or your possession and/or use of the Apple-Sourced Software, including, but not limited to: (i) product liability claims; (ii) any claim that the Apple-Sourced Software fails to conform to any applicable legal or regulatory requirement; and (iii) claims arising under consumer protection or similar legislation; and all such claims are governed solely by these Terms and any law applicable to Breakout as provider of the software. You acknowledge that, in the event of any third-party claim that the Apple-Sourced Software or your possession and use of that Apple-Sourced Software infringes that third party's intellectual property rights, Breakout, not Apple, will be solely responsible for the investigation, defense, settlement and discharge of any such intellectual property infringement claim to the extent required by these Terms. You and Breakout acknowledge and agree that Apple, and Apple's subsidiaries, are third-party beneficiaries of these Terms as relates to your license of the Apple-Sourced Software, and that, upon your acceptance of the terms and conditions of these Terms, Apple will have the right (and will be deemed to have accepted the right) to enforce these Terms as relates to your license of the Apple-Sourced Software against you as a third-party beneficiary thereof.

15. General

A. **Assignment.** These Terms, and any rights and licenses granted hereunder, may not be transferred or assigned by you, but may be assigned by Breakout without restriction. Any attempted transfer or assignment in violation hereof shall be null and void.

B. **Notification Procedures and Changes to these Terms.** Breakout may provide notifications, whether such notifications are required by law or are for marketing or other business-related purposes, to you via email notice, written or hard copy notice, or through posting of such notice on our website, as determined by Breakout in our sole discretion. Breakout reserves the right to determine the form and means of providing notifications to our Users, provided that you may opt out of certain means of notification as described in these Terms. Breakout is not responsible for any automatic filtering you or your network provider may apply to email notifications we send to the email address you provide us. Breakout may, in its sole discretion, modify or update these Terms from time to time, and so you should review this page periodically. When we change these Terms in a material manner, we will update the 'last modified' date at the bottom of this page and notify you that material changes have been made to these Terms. Your continued use of the Service after any such change constitutes your acceptance of the new Terms. If you do not agree to any of these terms or any future Terms, do not use or access (or continue to access) the Service.

C. **Entire Agreement/Severability.** These Terms, together with any amendments and any additional agreements you may enter into with Breakout in connection with the Service, shall constitute the entire agreement between you and Breakout concerning the Service. If any provision of these Terms is deemed invalid by a court of competent jurisdiction, the invalidity of such provision shall not affect the validity of the remaining provisions of these Terms, which shall remain in full force and effect, except that in the event of unenforceability of the universal Class Action/Jury Trial Waiver, the entire arbitration agreement shall be unenforceable.

D. **No Waiver.** No waiver of any term of these Terms shall be deemed a further or continuing waiver of such term or any other term, and Breakout's failure to assert any right or provision under these Terms shall not constitute a waiver of such right or provision.

E. **Contact.** Please contact us at info@breakoutedu.com with any questions regarding these Terms.