

## TERMS OF SERVICE

Revised: September 1, 2021

**These Terms of Service contain an arbitration provision. Please review the Arbitration section for details.**

1. **Terms.** These Terms of Service (“Terms”) govern your use of the website at immortals.gg (the “Site”), any Immortal, LLC mobile application, and other related services (“Services”) offered by Immortals, LLC (“we” or “us”). “You” refers to you as the user of the Site or Services. BY USING THE SITE OR SERVICES, YOU ARE AGREEING TO THESE TERMS. PLEASE READ THEM CAREFULLY.

2. **Eligibility.** You must be at least 13 years old to use the Site or the Services. If you are under the age of majority in your state of residence, a minor, your parent or legal guardian must agree to these Terms on your behalf and you may only access and use the Site and Services with permission from your parent or legal guardian.

3. **Use License.** Permission is granted to temporarily download one copy of the materials (information or software) on the Site or Services for personal, non-commercial transitory viewing only. This is the grant of a license, not a transfer of title, and under this license you may not: (a) modify or copy the materials; (b) use the materials for any commercial purpose, or for any public display (commercial or non-commercial); (c) attempt to decompile or reverse engineer any software contained on Immortals, LLC’s website; (d) remove any copyright or other proprietary notations from the materials; or (e) transfer the materials to another person or “mirror” the materials on any other server. This license shall automatically terminate if you violate any of these restrictions and may be terminated by us at any time. Upon terminating your viewing of these materials or upon the termination of this license, you must destroy any downloaded materials in your possession whether in electronic or printed format.

4. **Acceptable Use of the Site and Services.** You are responsible for your use of the Site and Services, and for any use of the Site or Services made using your account. Our goal is to create a positive, useful, and safe user experience. To promote this goal, we prohibit certain kinds of conduct that may be harmful to other users or to us. When you use the Site or Services, you may not:

- a. Violate any law or regulation;
- b. Violate, infringe, or misappropriate other people’s intellectual property, privacy, publicity, or other legal rights;
- c. Post or share anything that is illegal, abusive, harassing, harmful to reputation, pornographic, indecent, profane, obscene, hateful, racist, or otherwise objectionable;
- d. Send unsolicited or unauthorized advertising or commercial communications, such as spam;
- e. Engage in spidering or harvesting, or participate in the use of software, including spyware, designed to collect data from the Site or Services;

- f. Transmit any viruses or other computer instructions or technological means whose purpose is to disrupt, damage, or interfere with the use of computers or related systems;
- g. Stalk, harass, or harm another individual;
- h. Impersonate any person or entity or perform any other similar fraudulent activity, such as phishing;
- i. Use any means to scrape or crawl any Web pages contained in the Site;
- j. Attempt to circumvent any technological measure implemented by us or any of our providers or any other third party (including another user) to protect the Site or Services;
- k. Attempt to decipher, decompile, disassemble, or reverse engineer any of the software or other underlying code used to provide the Site or Services; or
- l. Advocate, encourage, or assist any third party in doing any of the foregoing.

5. User Content.

a. The Site and some of our Services allow you to upload, submit, store, send, or receive content and data ("User Content"). You retain ownership of any intellectual property rights that you hold in that User Content.

b. When you upload, submit, store, send, or receive User Content to or through the Site or Services, you give us permission to reproduce and use your User Content as follows: you grant to us and those we work with a license to use, host, store, reproduce, modify, create derivative works (such as translations, adaptations, or other changes we make so that User Content works better with the Site and Services), publicly perform, publicly display, and distribute your User Content. This license is for the limited purpose of operating, promoting, and improving the Site and Services, and to develop new Services. Our license to your User Content is non-exclusive, meaning you may use the User Content for your own purposes or let others use your User Content for their purposes. This license is fully-paid and royalty free, meaning we do not owe you anything else in connection with our use of your User Content. We may exercise our rights under this license anywhere in the world and in any media. Lastly, this license is perpetual, meaning that our rights under this license continue even after you stop using the Site and Services. In general, however, we will only need to use your User Content for as long as you choose to store it with us using the Site or Services.

c. You promise that:

- i. You own all rights to your User Content or, alternatively, that you have the right to give us the rights described above; and
- ii. Your User Content does not infringe the intellectual property rights, privacy rights, publicity rights, or other legal rights of any third party.

d. We may refuse to accept or transmit User Content for any reason. We may remove User Content from the Site or Services for any reason.

6. Ownership. Other than User Content, we own or license all right, title, and interest in and to: (a) the Site and Services, including all software, text, media, and other content available on the Site and Services ("Our Content"); and (b) our trademarks, logos, and brand elements ("Marks"). The Site and Services, Our Content, and Marks are all protected under U.S. and international laws. The look and feel of the Site and Services are copyright © Immortals, LLC. All rights reserved. You may not duplicate, copy, or reuse any portion of the HTML/CSS, Javascript, or visual design elements or concepts without express written permission from Immortals, LLC.

7. Copyright and Intellectual Property Policy.

a. We respond to notices of alleged copyright infringement and terminate accounts of repeat infringers according to the process set out in the U.S. Digital Millennium Copyright Act. If you believe that your work has been copied in a way that constitutes copyright infringement, please forward the following information to the Copyright Agent named below:

- i. Your address, telephone number, and email address;
- ii. A description of the copyrighted work that you claim has been infringed;
- iii. A description of where the alleged infringing material is located;
- iv. A statement by you that you have a good faith belief that the disputed use is not authorized by you, the copyright owner, its agent, or the law;
- v. An electronic or physical signature of the person authorized to act on behalf of the owner of the copyright interest; and
- vi. A statement by you, made under penalty of perjury, that the above information is accurate and that you are the copyright owner or authorized to act on behalf of the copyright owner.

b. Copyright Agent: General Counsel, 6100 Center Drive, Suite 1050, Los Angeles, CA 90045, [banthony@immortals.gg](mailto:banthony@immortals.gg). For clarity, only copyright infringement notices should go to our Copyright Agent. You acknowledge that if you fail to comply with all of the requirements of this section your notice may not be valid.

c. If you believe the content that was removed (or to which access was disabled) is not infringing, or that you have the authorization from the copyright owner, the copyright owner's agent, or pursuant to the law, to post and use such content, you may submit a counter-notice to the address listed above containing the following information:

- i. Your physical or electronic signature;
- ii. Identification of the content that has been removed or to which access has been disabled and the location at which the content appeared before it was removed or disabled;
- iii. A statement that you have a good faith belief that the content was

removed or disabled as a result of mistake or a misidentification of the content; and

- iv. Your name, physical address, telephone number, and e-mail address, a statement that you consent to the jurisdiction of the federal court in which your physical address is located, or if that physical address is outside of the United States, then to the federal court in Los Angeles, California, and a statement that you will accept service of process from the person who provided notification of the alleged infringement.

d. After we receive your counter-notification, we will forward it to the party who submitted the original claim of copyright infringement. Please note that when we forward the counter-notification, it includes your personal information. By submitting a counter-notification, you consent to having your information revealed in this way. We will not forward the counter-notification to any party other than the original claimant.

e. After we send out the counter-notification, the claimant must then notify us within 10 days that he or she has filed an action seeking a court order to restrain you from engaging in infringing activity relating to the content that was removed or disabled. If we receive such notification, we will be unable to restore the material. If we do not receive such notification, we may reinstate the material.

8. Privacy. Your privacy is very important to us. Our **Privacy Policy** explains how we collect, use, protect, and when we share personal information and other data with others. You are responsible for maintaining the confidentiality of your account information. You are responsible for all activities that occur under your account and you agree to notify us immediately of any unauthorized access or use of your account. We are not responsible or liable for any damage or loss related to any unauthorized access or use of your account.

9. Links. The Site and Services may contain links to other third-party websites and online resources. We have not reviewed all of the sites linked to is the Site and are not responsible for the contents of any such linked third-party site. The inclusion of any link does not imply endorsement by or affiliation with us. You should always read the terms and conditions and privacy policy of a third-party website before using it. Use of any such linked website is at your own risk.

10. Modifications. We enhance and update the Site and Services often. We may change or discontinue the Site or Services at any time, with or without notice to you.

11. Disclaimer and Limitations on Our Liability.

a. YOU USE THE SITE AND SERVICES AT YOUR OWN RISK. THE SITE AND SERVICES ARE PROVIDED ON AN "AS IS" AND "AS AVAILABLE" BASIS. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, OUR COMPANY AND ITS OFFICERS, EMPLOYEES, DIRECTORS, SHAREHOLDERS, PARENTS, SUBSIDIARIES, AFFILIATES, AGENTS, AND LICENSORS ("AFFILIATES") DISCLAIMS ALL WARRANTIES, CONDITIONS, AND REPRESENTATIONS OF ANY KIND, WHETHER EXPRESS, IMPLIED, STATUTORY, OR OTHERWISE, INCLUDING THOSE RELATED TO MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND NON-INFRINGEMENT AND THOSE ARISING OUT OF COURSE OF DEALING OR USAGE OF TRADE.

b. \_\_\_\_\_ IN PARTICULAR, TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, OUR COMPANY AND ITS AFFILIATES MAKE NO REPRESENTATIONS OR WARRANTIES ABOUT THE ACCURACY OR COMPLETENESS OF CONTENT AVAILABLE ON OR THROUGH THE SITE OR SERVICES, OR THE CONTENT OF ANY WEBSITES OR ONLINE SERVICES LINKED TO OR INTEGRATED WITH THE SITE OR SERVICES. OUR COMPANY AND ITS AFFILIATES WILL HAVE NO LIABILITY FOR ANY: (i) ERRORS, MISTAKES, OR INACCURACIES OF CONTENT; (ii) PERSONAL INJURY OR PROPERTY DAMAGE RESULTING FROM YOUR ACCESS TO OR USE OF THE SITE OR SERVICES; (iii) ANY UNAUTHORIZED ACCESS TO OR USE OF OUR SERVERS OR OF ANY PERSONAL INFORMATION OR USER DATA; (iv) ANY INTERRUPTION OF TRANSMISSION TO OR FROM THE SITE OR SERVICES; (v) ANY BUGS, VIRUSES, TROJAN HORSES, OR THE LIKE WHICH MAY BE TRANSMITTED ON OR THROUGH THE SITE OR SERVICES BY ANY THIRD PARTY; OR (vi) ANY LOSS OR DAMAGE OF ANY KIND INCURRED AS A RESULT OF THE USE OF ANY CONTENT POSTED OR SHARED THROUGH THE SITE OR SERVICES.

c. \_\_\_\_\_ YOU UNDERSTAND AND AGREE THAT, TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, ANY MATERIAL OR INFORMATION DOWNLOADED OR OTHERWISE OBTAINED THROUGH THE USE OF THE SITE OR SERVICES IS DONE AT YOUR OWN RISK AND THAT YOU WILL BE SOLELY RESPONSIBLE FOR ANY DAMAGE ARISING FROM DOING SO. NO ADVICE OR INFORMATION, WHETHER ORAL OR WRITTEN, OBTAINED BY YOU FROM US OR THROUGH THE SITE OR SERVICES WILL CREATE ANY WARRANTY NOT EXPRESSLY MADE.

d. \_\_\_\_\_ TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, IN NO EVENT WILL WE BE LIABLE TO YOU OR TO ANY THIRD PARTY FOR ANY INDIRECT, SPECIAL, INCIDENTAL, PUNITIVE, OR CONSEQUENTIAL DAMAGES (INCLUDING FOR LOSS OF PROFITS, REVENUE, OR DATA) OR FOR THE COST OF OBTAINING SUBSTITUTE PRODUCTS ARISING OUT OF OR IN CONNECTION WITH THESE TERMS, HOWEVER CAUSED, WHETHER SUCH LIABILITY ARISES FROM ANY CLAIM BASED UPON CONTRACT, WARRANTY, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY OR OTHERWISE, AND WHETHER OR NOT WE'VE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

e. \_\_\_\_\_ TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, OUR TOTAL CUMULATIVE LIABILITY TO YOU OR ANY THIRD PARTY UNDER THESE TERMS, FROM ALL CAUSES OF ACTION AND ALL THEORIES OF LIABILITY, WILL BE LIMITED TO AND WILL NOT EXCEED THE FEES YOU HAVE ACTUALLY PAID US DURING THE 12 MONTHS PRECEDING THE CLAIM GIVING RISE TO SUCH LIABILITY.

f. \_\_\_\_\_ You understand and agree that we have set our prices and entered into these Terms with you in reliance upon the limitations of liability set forth in these Terms, which allocate risk between us and form the basis of a bargain between the parties.

12. Indemnification. To the maximum extent permitted by applicable law, you agree to indemnify and hold harmless our company and its Affiliates from and against any and all claims, costs, proceedings, demands, losses, damages, and expenses (including, without limitation, reasonable attorney's fees and legal costs) of any kind or nature, arising from or relating to, any actual or alleged breach of these Terms by you or anyone using your account. If we assume the defense of such a matter, you will reasonably cooperate with us in such defense.

13. Arbitration Agreement & Waiver of Certain Rights.

a. \_\_\_\_\_ Except as set forth below, you and we agree that we will resolve any disputes between us (including any disputes between you and a third-party agent of ours) through binding and final arbitration instead of through court proceedings. You and we hereby waive any right to a jury trial of any Claim (defined below). All controversies, claims, counterclaims, or other disputes arising between you and us or you and a third-party agent of ours (each a "Claim") shall be submitted for binding arbitration in accordance with the Rules of the American Arbitration Association ("AAA Rules"). The arbitration will be heard and determined by a single arbitrator. The arbitrator's decision in any such arbitration will be final and binding upon the parties and may be enforced in any court of competent jurisdiction. You and we agree that the arbitration proceedings will be kept confidential and that the existence of the proceeding and any element of it (including, without limitation, any pleadings, briefs or other documents submitted or exchanged and any testimony or other oral submissions and awards) will not be disclosed beyond the arbitration proceedings, except as may lawfully be required in judicial proceedings relating to the arbitration, by applicable disclosure rules and regulations of securities regulatory authorities or other governmental agencies, or as specifically permitted by state law. The Federal Arbitration Act and federal arbitration law apply to this agreement. However, the Arbitrator, and not any federal, state, or local court or agency, shall have the exclusive authority to resolve any dispute relating to the interpretation, applicability, enforceability, or formation of this Agreement including, but not limited to, a claim that all or any part of this Agreement is void or voidable.

b. \_\_\_\_\_ If you demonstrate that the costs of arbitration will be prohibitive as compared to the costs of litigation, we will pay as much of the administrative costs and arbitrator's fees required for the arbitration as the arbitrator deems necessary to prevent the cost of the arbitration from being prohibitive. In the final award, the arbitrator may apportion the costs of arbitration and the compensation of the arbitrator among the parties in such amounts as the arbitrator deems appropriate.

c. \_\_\_\_\_ This arbitration agreement does not preclude either party from seeking action by federal, state, or local government agencies. You and we also have the right to bring qualifying claims in small claims court. In addition, you and we retain the right to apply to any court of competent jurisdiction for provisional relief, including pre-arbitral attachments or preliminary injunctions, and any such request shall not be deemed incompatible with these Terms, nor a waiver of the right to have disputes submitted to arbitration as provided in these Terms.

d. \_\_\_\_\_ Neither you nor we may act as a class representative or private attorney general, nor participate as a member of a class of claimants, with respect to any Claim. Claims may not be arbitrated on a class or representative basis. The arbitrator can decide only your and/or our individual Claims. The arbitrator may not consolidate or join the claims of other persons or parties who may be similarly situated. The arbitrator may award in the arbitration the same damages or other relief available under applicable law, including injunctive and declaratory relief, as if the action were brought in court on an individual basis. Notwithstanding anything to the contrary in the foregoing or herein, the arbitrator may not issue a "public injunction" and any such "public injunction" may be awarded only by a federal or state court. If either party seeks a "public injunction," all other claims and prayers for relief must be adjudicated in arbitration first and any prayer or claim for a "public injunction" in federal or state court stayed until the arbitration is completed, after which the federal or state court can adjudicate the party's claim or prayer for "public injunctive relief." In doing

so, the federal or state court is bound under principles of claim or issue preclusion by the decision of the arbitrator.

e. \_\_\_\_\_ If any provision of this Section is found to be invalid or unenforceable, then that specific provision shall be of no force and effect and shall be severed, but the remainder of this Section shall continue in full force and effect. No waiver of any provision of this Section of the Terms will be effective or enforceable unless recorded in a writing signed by the party waiving such a right or requirement. Such a waiver shall not waive or affect any other portion of these Terms. This Section of the Terms will survive the termination of your relationship with us.

f. \_\_\_\_\_ THIS SECTION LIMITS CERTAIN RIGHTS, INCLUDING THE RIGHT TO MAINTAIN A COURT ACTION, THE RIGHT TO A JURY TRIAL, THE RIGHT TO PARTICIPATE IN ANY FORM OF CLASS OR REPRESENTATIVE CLAIM, THE RIGHT TO ENGAGE IN DISCOVERY EXCEPT AS PROVIDED IN AAA RULES, AND THE RIGHT TO CERTAIN REMEDIES AND FORMS OF RELIEF. OTHER RIGHTS THAT YOU OR WE WOULD HAVE IN COURT ALSO MAY NOT BE AVAILABLE IN ARBITRATION.

#### 14. Other Provisions.

a. Under no circumstances will we be held liable for any delay or failure in performance due in whole or in part to any acts of nature or other causes beyond our reasonable control.

b. These Terms will be governed by and construed in accordance with the laws of the State of California , without giving effect to any conflict of laws rules or provisions.

c. You agree that any action of whatever nature arising from or relating to these Terms, the Site, or Services will be filed only in the state or federal courts located in San Francisco, California . You consent and submit to the personal jurisdiction of such courts for the purposes of any such action.

d. If any provision of these Terms is found to be unlawful or unenforceable, then that provision will be deemed severable from these Terms and will not affect the enforceability of any other provisions.

e. The failure by us to enforce any right or provision of these Terms will not prevent us from enforcing such right or provision in the future.

f. We may assign our rights and obligations under these Terms, including in connection with a merger, acquisition, sale of assets or equity, or by operation of law.

#### 15. Changes to these Terms.

a. From time to time, we may change these Terms. If we change these Terms, we will give you notice by posting the revised Terms on the Site. Those changes will go into effect on the Revision Date shown in the revised Terms. By continuing to use the Site or Services, you are agreeing to the revised Terms.

b. **PLEASE PRINT A COPY OF THESE TERMS FOR YOU RECORDS AND PLEASE CHECK THE SITE FREQUENTLY FOR ANY CHANGES TO THESE TERMS.**

