

## INCITEFUL GAMES HOLDINGS LLC Terms of Use

INCITEFUL GAMES HOLDINGS LLC ("INCITEFUL GAMES") OWNS AND OPERATES THE EATLAS WEBSITE LOCATED AT [WWW.PLAYEATLAS.COM](http://WWW.PLAYEATLAS.COM) ("WEBSITE"), THE EATLAS PLATFORM ("PLATFORM"), AND THE EATLAS APPLICATION (THE "APP"). THESE TERMS OF USE APPLY TO ALL USERS OF THE WEBSITE OR APP ("CUSTOMERS") or USERS OF THE PLATFORM ("BUILDER PARTNERS"), INCLUDING BUILDER PARTNERS WHO UPLOAD ANY MATERIALS TO THE PLATFORM, CUSTOMERS WHO USE EATLAS EXPERIENCES PROVIDED THROUGH THE APP, CUSTOMERS WHO DOWNLOAD THE EATLAS APP AND CUSTOMERS OR BUILDER PARTNERS WHO SIMPLY VIEW THE CONTENT ON OR AVAILABLE THROUGH THE WEBSITE, PLATFORM, OR APP.

BY USING THE WEBSITE, PLATFORM, OR APP YOU INDICATE YOUR ACCEPTANCE OF THESE TERMS OF USE. IF YOU DO NOT ACCEPT THESE TERMS OF USE, THEN DO NOT USE THE WEBSITE, PLATFORM, OR APP OR ANY OF ITS CONTENT OR EXPERIENCES. THESE TERMS OF USE MAY BE AMENDED OR UPDATED BY INCITEFUL GAMES FROM TIME TO TIME WITHOUT NOTICE AND THE TERMS OF USE MAY HAVE CHANGED SINCE YOUR LAST VISIT TO THE WEBSITE, PLATFORM, OR APP. IT IS YOUR RESPONSIBILITY TO REVIEW THESE TERMS OF USE FOR ANY CHANGES. YOUR USE AFTER ANY AMENDMENTS OR UPDATES OF THESE TERMS OF USE SHALL SIGNIFY YOUR ASSENT TO AND ACCEPTANCE OF SUCH REVISED TERMS. ANY NEW FEATURES THAT MAY BE ADDED TO THE WEBSITE, PLATFORM, OR APP FROM TIME TO TIME WILL BE SUBJECT TO THESE TERMS OF USE, UNLESS STATED OTHERWISE. YOU SHOULD VISIT THIS PAGE PERIODICALLY TO REVIEW THESE TERMS OF USE.

### 1. The App

The eAtlas App allows CUSTOMERS to participate in eAtlas EXPERIENCES ("EXPERIENCES") created by BUILDER PARTNERS. EXPERIENCES are Guided Tours, Treasure Hunts, and similar events made up of a mix of audio & video clips, geocoordinates, maps, photos, and text clues or information. Only registered BUILDER PARTNERS are granted access to the Platform and permitted to create and publish EXPERIENCES. The EXPERIENCES are accessible from a Customer's personal mobile device if the Customer has downloaded the App to their device.

### 2. Age of CUSTOMERS

The EXPERIENCES are designed to be used by CUSTOMERS who are over the age of thirteen. The EXPERIENCES are not intended to be used by CUSTOMERS under the "**Designated Age**", which shall be the greater of thirteen or the age designated in your local jurisdiction in respect of processing personal data. If you are a Customer then you represent and warrant that you are over the Designated Age in your jurisdiction or your legal guardian has approved your use of the EXPERIENCES.

### 3. DISCLAIMER OF EXPERIENCES

ALL EXPERIENCES (INCLUDING WITHOUT LIMITATION ANY CONTENT, TASKS, ACTIVITIES, EVENTS, LOCATIONS, LOCAL CONDITIONS AND CIRCUMSTANCES) ARE THE SOLE RESPONSIBILITY OF THE BUILDER PARTNER WHO CREATED AND PUBLISHED THEM. THIS MEANS THAT THE BUILDER PARTNER, AND NOT INCITEFUL GAMES, IS ENTIRELY RESPONSIBLE FOR ALL EXPERIENCES PUBLISHED BY THAT BUILDER PARTNER, AND THE CUSTOMER IS ENTIRELY RESPONSIBLE FOR PARTICIPATING IN THAT EXPERIENCE AND ANY CONSEQUENCE THAT MAY ARISE FROM THEIR PARTICIPATION IN THAT EXPERIENCE.

INCITEFUL GAMES DOES NOT CONTROL OR ACTIVELY MONITOR EXPERIENCES AND, AS SUCH, DOES NOT

GUARANTEE THE SAFETY, INTEGRITY, SUITABILITY OR QUALITY OF ANY SUCH EXPERIENCES. CUSTOMERS AND BUILDER PARTNERS ACKNOWLEDGE THAT BY USING THE APP, THEY MAY BE EXPOSED TO RISKS AND DANGERS, UNSUITABLE EXPERIENCES, AND OTHER CONSEQUENCES. UNDER NO CIRCUMSTANCES WILL INCITEFUL GAMES BE LIABLE IN ANY WAY FOR ANY EXPERIENCES OR ANY CONSEQUENCES ARISING FROM SUCH EXPERIENCES, INCLUDING, BUT NOT LIMITED TO, FOR ANY ERRORS OR OMISSIONS IN ANY EXPERIENCES, OR FOR ANY OFFENSE, INJURY, DEATH, LOSS OR DAMAGE (WHETHER DIRECT OR INDIRECT) OF ANY KIND INCURRED OR SUFFERED AS A RESULT OF PARTICIPATING IN ANY EXPERIENCES MADE AVAILABLE VIA THE APP. FURTHER DISCLAIMERS ARE SET OUT LATER IN THIS AGREEMENT.

#### **4. CONTENT**

All information, data, text, software, music, sound, photographs, graphics, video, messages or other materials, whether publicly posted or privately transmitted to the Website, App, or Social Media Platforms by BUILDER PARTNERS or CUSTOMERS whether in EXPERIENCES or otherwise (the "CONTENT"), is the sole responsibility of such BUILDER PARTNERS or CUSTOMERS. This means that the BUILDER PARTNER or CUSTOMER, and not Inciteful Games, are entirely responsible for all such material uploaded, posted, emailed, transmitted or otherwise made available by using the App. Inciteful Games does not control or actively monitor EXPERIENCE CONTENT and, as such, does not guarantee the accuracy, integrity, suitability or quality of such CONTENT. CUSTOMERS and BUILDER PARTNERS acknowledge that by using the App, they may be exposed to materials that are offensive, indecent or objectionable. Under no circumstances will Inciteful Games be liable in any way for any materials, including, but not limited to, for any errors or omissions in any materials, or for any loss or damage of any kind incurred as a result of the viewing or use of any materials posted, emailed, transmitted or otherwise made available via the App. If your CONTENT will include any personal data of individuals located in the European Economic Area, you are responsible for notifying Inciteful Games and you may be required to enter in a Data Processing Agreement with Inciteful Games in order to use the App.

#### **5. Restrictions on User CONTENT and Use of the App**

Inciteful Games reserves the right at all times (but will have no obligation) to remove or refuse to distribute any CONTENT and to terminate BUILDER PARTNERS or CUSTOMERS or reclaim usernames. We also reserve the right to access, read, preserve, and disclose any information as we reasonably believe is necessary to (i) satisfy any applicable law, regulation, legal process or governmental request, (ii) enforce these Terms of Use, including investigation of potential violations hereof, (iii) detect, prevent, or otherwise address fraud, security or technical issues, (iv) respond to user support requests, or (v) protect the rights, property or safety of our BUILDER PARTNERS or CUSTOMERS and the public.

In using the Website, Platform, and/or App You shall not:

- a. copy any CONTENT previously published on the PLATFORM by a BUILDER PARTNER without the express written consent of that BUILDER PARTNER as facilitated by Inciteful Games;
- b. upload, post, email, transmit or otherwise make available any material that:
  - i. is unlawful, harmful, threatening, abusive, harassing, tortuous, defamatory, vulgar, obscene, pornographic, libelous, invasive of another's privacy, hateful, or racially or ethnically objectionable, encourages criminal behavior, gives rise to civil liability, violates any law, or is otherwise objectionable;

- ii. You do not have a right to make available under any law or under a contractual relationship;
  - iii. infringes any patent, trademark, trade secret, copyright or other proprietary rights of any party (including privacy rights);
  - iv. is or contains unsolicited or unauthorized advertising, solicitations for business, promotional materials, "junk mail," "spam," "chain letters," "pyramid schemes," or any other form of solicitation;
  - v. contains software viruses or any other computer code, files or programs designed to interrupt, destroy or limit the functionality of any computer software or hardware or telecommunications equipment or data or the Website or Platform or that of any CUSTOMERS or viewers of the Website or that compromises a BUILDER PARTNER'S or CUSTOMER's privacy; or
  - vi. contains any falsehoods or misrepresentations or create an impression that You know is incorrect, misleading, or deceptive, or any material that could damage or harm minors in any way;
- c. impersonate any person or entity or misrepresent their affiliation with a person or entity;
  - d. forge headers or otherwise manipulate identifiers in order to disguise the origin of any material transmitted to or through the Website, Platform, or App or impersonate another person or organization;
  - e. interfere with or disrupt the Website or Platform or servers or networks connected to the Website or Platform, or disobey any requirements, procedures, policies or regulations of networks connected to the Website or Platform or probe, scan, or test the vulnerability of any system or network or breach or circumvent any security or authentication measures;
  - f. intentionally or unintentionally violate any applicable local, state, national or international law or regulation;
  - g. collect or store personal data about other BUILDER PARTNERS or CUSTOMERS or viewers;
  - h. license, sell, rent, lease, transfer, assign, distribute, host, or otherwise commercially exploit the Website, Platform, or App; or
  - i. modify, translate, make derivative works of, disassemble, decompile, reverse compile or reverse engineer any part of the Website, Platform or App or any software provided as part of the Website, Platform, or App except to the extent the foregoing restrictions are expressly prohibited by applicable law.

You also agree not to access the Website in a manner that utilizes the resources of the Website more heavily than would be the case for an individual person using a conventional web browser. Notwithstanding the foregoing, operators of public search engines may use spiders or other bots for the purpose of creating publicly available searchable indices of the materials on this Website.

## **6. Ownership and License of Content**

A given EXPERIENCE made available on or through the PLATFORM and APP is the property of the BUILDER PARTNER who created and submitted for publishing the CONTENT from which that EXPERIENCE is assembled. By submitting, posting or displaying CONTENT on or through the Platform or App, you grant us (and our agents) a non-exclusive, royalty-free, world-wide, perpetual license (with the right to sublicense) to use, copy, modify, transmit, display and distribute such CONTENT only to the extent required to provide the Platform or App. Inciteful Games will not be responsible or liable for any use of CONTENT in accordance with these Terms. You represent and warrant that you have all the rights, power and authority necessary to grant the rights granted herein to any CONTENT that you submit. BUILDER PARTNERS may, at their sole discretion, request removal of one or more of their published EXPERIENCES from the Platform and App, such request to be fulfilled by Inciteful Games as promptly as reasonably practicable.

## **7. End User License**

The Website, Platform, and App and the information and materials that it contains, are the property of Inciteful Games and its licensors, and are protected from unauthorized copying and dissemination by copyright law, trademark law, and other intellectual property laws. Subject to the terms of this Agreement, Inciteful Games grants you a non-transferable, non-exclusive, license to (a) use the App for your personal, non-commercial use, and (b) download, install and use one copy of the App on each mobile device that you own or control, in each case solely for your own use (the "**License**"). The Platform or App are licensed to you and not sold. Nothing in the Terms gives you a right to use the Inciteful Games or eAtlas names, trademarks, logos, domain names, and other distinctive brand features without our prior written consent. You shall not attempt to override or circumvent any of the usage rules or restrictions on the Website. Any future release, update, or other addition to functionality of the Website, Platform, or App shall be subject to the terms of these Terms.

## **8. PAYMENT TERMS**

- a. Fees. If there is a payment fee for a specific EXPERIENCE, payment is due before the CUSTOMER starts that specific EXPERIENCE. BUILDER PARTNERS may be charged a monthly or annual fee for access to and use of the Platform.
- b. Payment & Charges. Your access to and use of the App may be subject to Your payment of the applicable fees due for the EXPERIENCE selected by You ("**Fees**") as specified in the App and all other applicable amounts, charges and taxes indicated to You when You purchase an EXPERIENCE (or otherwise notified to You by Inciteful Games from time to time) when you use the App or noted on and viewable in Your account profile. Receipts for purchased EXPERIENCES will be delivered to You electronically.

## **9. Feedback**

If You provide Inciteful Games with any suggestions, comments or other feedback relating to any aspect of the Website, Platform, or App ("**Feedback**"), Inciteful Games may use such Feedback in the Website, Platform, or App or in any other Inciteful Games products or Apps (collectively, "**Inciteful Games Offerings**"). Accordingly, You agree that: (a) Inciteful Games is not subject to any confidentiality obligations in respect to the Feedback; (b) the Feedback is not confidential or proprietary information of You or any third party and You have all of the necessary rights to disclose the Feedback to Inciteful

Games; (c) Inciteful Games (including all of its successors and assigns and any successors and assigns of any of the Inciteful Games Offerings) may freely use, reproduce, publicize, license, distribute, and otherwise commercialize Feedback in any Inciteful Games Offerings; (d) You are not entitled to receive any compensation or re-imbusement of any kind from Inciteful Games or any of the other BUILDER PARTNERS or CUSTOMERS of the Website, Platform, or App in respect of the Feedback; and (e) Inciteful Games reserves the right to delete at our discretion any feedback on our App, Website, Platform, or other forum within which we have the authority to do so.

#### **10. Links & Third-Party Websites**

The Website, Platform, or App (including CONTENT) may contain links to other websites that are not owned or controlled by Inciteful Games. In no event shall any reference to any third-party or third-party product be construed as an approval or endorsement by Inciteful Games of that third-party or third-party product or App. Inciteful Games is also not responsible for the CONTENT of any linked websites. Any third-party websites or Apps accessed from the Website, Platform, or App are subject to the terms and conditions of those websites and or Apps and You are responsible for determining those terms and conditions and complying with them. The presence on the Website, Platform, or App of a link to any other website(s) does not imply that Inciteful Games endorses or accepts any responsibility for the CONTENT or use of such websites, and You hereby release Inciteful Games from all liability and/damages that may arise from Your use of such websites or receipt of Apps from any such websites.

#### **11. DISCLAIMER OF REPRESENTATIONS, WARRANTIES AND CONDITIONS**

THE WEBSITE, PLATFORM, OR APP AND ALL MATERIALS PROVIDED THEREIN ARE PROVIDED "AS IS." INCITEFUL GAMES SPECIFICALLY DISCLAIMS ALL REPRESENTATIONS, WARRANTIES AND CONDITIONS, EITHER EXPRESS, IMPLIED, STATUTORY, BY USAGE OF TRADE, COURSE OF DEALING OR OTHERWISE INCLUDING BUT NOT LIMITED TO ANY IMPLIED WARRANTIES OF MERCHANTABILITY, NON-INFRINGEMENT, TITLE, SATISFACTORY QUALITY OR FITNESS FOR A PARTICULAR PURPOSE. ANY INFORMATION OR MATERIAL DOWNLOADED OR OTHERWISE OBTAINED THROUGH THE USE OF THE WEBSITE, PLATFORM, OR APP IS AT YOUR OWN DISCRETION AND RISK AND YOU WILL BE SOLELY RESPONSIBLE FOR ANY DAMAGE TO YOUR COMPUTER SYSTEM, LOSS OF DATA, OR ANY OTHER LOSS THAT RESULTS FROM DOWNLOADING OR USING ANY SUCH MATERIAL. INCITEFUL GAMES DOES NOT WARRANT, ENDORSE, GUARANTEE, PROVIDE ANY CONDITIONS OR REPRESENTATIONS, OR ASSUME ANY RESPONSIBILITY FOR ANY PRODUCT OR APP ADVERTISED OR OFFERED BY ANY THIRD PARTY THROUGH THE WEBSITE, PLATFORM, OR APP OR IN RESPECT TO ANY WEBSITE THAT CAN BE REACHED FROM A LINK ON THE WEBSITE, PLATFORM, OR APP OR FEATURED IN ANY BANNER OR OTHER ADVERTISING ON THE WEBSITE, PLATFORM, OR APP, AND INCITEFUL GAMES SHALL NOT BE A PARTY TO ANY TRANSACTION THAT YOU MAY ENTER INTO WITH ANY SUCH THIRD-PARTY. INCITEFUL GAMES WILL NOT BE LIABLE FOR ANY TYPE OF CONTENT EXCHANGED BY MEANS OF THE WEBSITE, PLATFORM, OR APP.

#### **12. LIMITATION OF LIABILITY**

UNDER NO CIRCUMSTANCES SHALL INCITEFUL GAMES BE LIABLE FOR ANY DIRECT, INDIRECT, INCIDENTAL, SPECIAL, CONSEQUENTIAL, EXEMPLARY OR OTHER DAMAGES WHATSOEVER, INCLUDING, WITHOUT LIMITATION, ANY DAMAGES THAT RESULT FROM (I) YOUR USE OF OR YOUR INABILITY TO USE THE WEBSITE, PLATFORM, OR APP, (II) THE COST OF PROCUREMENT OF SUBSTITUTE GOODS, DATA, INFORMATION OR APPS, (III) ERRORS, MISTAKES, OR INACCURACIES IN THE MATERIALS ON THE

WEBSITE, PLATFORM, OR APP, (IV) PERSONAL INJURY OR PROPERTY DAMAGE OF ANY KIND WHATSOEVER ARISING FROM OR RELATING TO YOUR USE OF THE WEBSITE, PLATFORM, OR APP, ANY BUGS, VIRUSES, TROJAN HORSES, OR ANY OTHER FILES OR DATA THAT MAY BE HARMFUL TO COMPUTER OR COMMUNICATION EQUIPMENT OR DATA THAT MAY HAVE BEEN TRANSMITTED TO OR THROUGH THE WEBSITE, PLATFORM, OR APP, OR (V) ANY ERRORS OR OMISSIONS IN ANY MATERIAL ON THE WEBSITE, PLATFORM, OR APP OR ANY OTHER LOSS OR DAMAGE OF ANY KIND ARISING FROM OR RELATING TO YOUR USE OF THE WEBSITE, PLATFORM, OR APP. THESE LIMITATIONS SHALL APPLY EVEN IF INCITEFUL GAMES HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED HEREIN, INCITEFUL GAMES' LIABILITY TO YOU FOR ANY DAMAGES ARISING FROM OR RELATED TO THIS AGREEMENT (FOR ANY CAUSE WHATSOEVER AND REGARDLESS OF THE FORM OF THE ACTION), WILL AT ALL TIMES BE LIMITED TO THE GREATER OF (A) FIFTY U.S. DOLLARS (\$50) OR (B) AMOUNTS YOU'VE PAID INCITEFUL GAMES IN THE PRIOR 12 MONTHS (IF ANY) THE FOREGOING LIMITATIONS SHALL APPLY TO THE FULLEST EXTENSION PERMITTED BY LAW IN THE APPLICABLE JURISDICTION.

### **13. INDEMNIFICATION**

YOU SHALL INDEMNIFY AND HOLD INCITEFUL GAMES AND ITS SUBSIDIARIES, AFFILIATES, OFFICERS, AGENTS, AND EMPLOYEES, HARMLESS FROM ALL CLAIMS, ACTIONS, PROCEEDINGS, DEMANDS, DAMAGES, LOSSES, COSTS, AND EXPENSES (INCLUDING REASONABLE ATTORNEYS' FEES), INCURRED IN CONNECTION WITH ANY MATERIALS SUBMITTED, POSTED, TRANSMITTED OR MADE AVAILABLE BY YOU THROUGH THE WEBSITE, PLATFORM, OR APP AND/OR ANY VIOLATION BY YOU OF THESE TERMS OF USE.

### **14. Termination**

Inciteful Games may, under certain circumstances and without prior notice, immediately terminate Your ability to access the Website, Platform, or App or portions thereof. Cause for such termination shall include, but not be limited to, (a) breaches or violations of these Terms of Use or any other agreement that You may have with Inciteful Games (including, without limitation, non-payment of any fees owed in connection with the Website, Platform, or App or otherwise owed by You to Inciteful Games), (b) requests by law enforcement or other government agencies, (c) a request by You, (d) discontinuance or material modification to the Website, Platform, or App (or any part thereof), (e) unexpected technical, security or legal issues or problems, and/or (f) participation by You, directly or indirectly, in fraudulent or illegal activities. Termination of Your access to the Website, Platform, or App may also include removal of some or all of the materials uploaded by You to the Website, Platform, or App. You acknowledge and agree that all terminations may be made by Inciteful Games in its sole discretion and that Inciteful Games shall not be liable to You or any third-party for any termination of Your access to the Website, Platform, or App or for the removal of any of the materials uploaded by You to the Website, Platform, or App. Any termination of these terms of use by Inciteful Games shall be in addition to any and all other rights and remedies that Inciteful Games may have. The following sections shall survive any termination or expiration of this Agreement: 3, 6, 8, 9, 11, 12, 13, 17, 18 and 19.

### **15. Availability & Updates**

Inciteful Games may alter, suspend, or discontinue the Website, Platform, or App at any time and for any reason or no reason, without notice. The Website, Platform, or App may be unavailable from time to

time due to maintenance or malfunction of computer or network equipment or other reasons. Inciteful Games may periodically add or update the information and materials on the Website, Platform, or App without notice.

#### **16. Security**

Information sent or received over the Internet is generally unsecure and Inciteful Games cannot and does not make any representation or warranty concerning security of any communication to or from the Website, Platform, or App or any representation or warranty regarding the interception by third parties of personal or other information. You are responsible for safeguarding the password that you use to access the Website, Platform, or App and you are responsible for any activities or actions under your password. You agree to keep your password secure. Inciteful Games will not be liable for any loss or damage arising from your failure to comply with these requirements.

#### **17. Choice of Law**

These Terms and any action related thereto shall be governed by and construed in accordance with the laws of the state of Illinois and the federal laws of the United States applicable therein, without regard to conflicts of law principles. The Parties hereby irrevocably attorn to the exclusive personal jurisdiction and venue of the courts sitting in Lake County, Illinois.

#### **18. General**

These Terms of Use, together with any privacy policy that may be published on the Website, constitutes the entire agreement between the parties relating to the Website, Platform, or App and all related activities. These terms of use shall not be modified except in writing signed by both parties or by a new posting of these terms of use issued by Inciteful Games. If any part of these Terms of Use is held to be unlawful, void, or unenforceable, that part shall be deemed severed and shall not affect the validity and enforceability of the remaining provisions. The failure of Inciteful Games to exercise or enforce any right or provision under these Terms of Use shall not constitute a waiver of such right or provision. Any waiver of any right or provision by Inciteful Games must be in writing and shall only apply to the specific instance identified in such writing. You may not assign the terms of use, or any rights or licenses granted hereunder, whether voluntarily, by operation of law, or otherwise without Inciteful Games' prior written consent.

If you have any questions about these Terms or if you wish to make any complaint or claim with respect to the Website, Platform, or App, please contact us at: [Admin@IncitefulGames.com](mailto:Admin@IncitefulGames.com).

*Effective Date: February 28<sup>th</sup>, 2021*