

and you won't be entitled to any refunds. We also reserve the right to terminate any other accounts you may create or have created.

### **13.5 Indemnification**

If someone sues Build A Rocket Boy or any other Build A Rocket Boy Party, you may have to pay for their defense and legal fees. You agree to defend, indemnify and hold Build A Rocket Boy and all other Build A Rocket Boy Parties (including their respective partners, representatives, agents, and licensees) and any of their respective officers, directors, shareholders, employees, or independent contractors harmless from and against any claims asserted against any of them arising out of or relating to your use or actual or alleged misuse of the Services, violation of these Terms of Use or any other Terms, your content/UGC, or your negligence or misconduct. This applies to all liabilities or expenses arising from claims, losses, damages, judgments, fines, litigation costs, and legal fees. You shall cooperate as fully as reasonably required in the defense of any such claim. Any Build A Rocket Boy Party reserves the right, at its own expense, to assume the exclusive defense and control of any matter subject to indemnification by you.

### **13.6 Resolving Disputes; Agreement To Arbitrate; Class Action and Jury Waiver**

*Last Updated: 01 May 2025*

**PLEASE READ THIS SECTION (THE "ARBITRATION AGREEMENT") CAREFULLY. THIS ARBITRATION AGREEMENT IS EFFECTIVE TO THE EXTENT PERMITTED BY APPLICABLE LAW AND IT AFFECTS YOUR LEGAL RIGHTS. IT PROVIDES FOR RESOLUTION OF MOST DISPUTES THROUGH INDIVIDUAL ARBITRATION INSTEAD OF COURT TRIALS AND CLASS ACTIONS. THIS SECTION ALSO CONTAINS A JURY TRIAL WAIVER AND A WAIVER OF ANY AND ALL RIGHTS TO PROCEED IN CLASS, COLLECTIVE, PRIVATE ATTORNEY GENERAL, REPRESENTATIVE, OR CONSOLIDATED ACTION IN ARBITRATION OR LITIGATION TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW. UNLESS YOU OPT OUT IN ACCORDANCE WITH THE OPT-OUT PROCEDURES DESCRIBED BELOW OR THIS ARBITRATION AGREEMENT IS OTHERWISE PROHIBITED BY APPLICABLE LAW, YOU WILL BE BOUND BY THIS ARBITRATION AGREEMENT.**

#### ***a. Definitions***

Capitalized words not otherwise defined have the meanings given to them in this Definitions section or otherwise defined throughout.

**"Build A Rocket Boy Parties"** means Build A Rocket Boy and Build A Rocket Boy's predecessors in interest, successors, parents, subsidiaries, affiliates, and assigns, as well as each of their respective past, present, and future employees, directors, officers,

shareholders, independent contractors, parents, subsidiaries, affiliates, predecessors in interest, successors, and assigns.

**“Dispute”** means any dispute, claim, or controversy between you and Build A Rocket Boy Parties (defined above), including but not limited to disputes, claims, or controversies related to or arising from the Services, or these Terms of Use or other Terms, including, without limitation, those relating to the formation, breach, termination, enforcement, interpretation, validity, scope, or applicability of these Terms of Use or other Terms, and this Arbitration Agreement.

**“FAA”** means that Federal Arbitration Act, 9 U.S.C. § 1 et seq.

**“NAM”** means National Arbitration and Mediation ([www.namadr.com](http://www.namadr.com)).

**“NAM Rules”** means NAM’s Comprehensive Dispute Resolution Rules and Procedures and, as applicable, Mass Filing Supplemental Dispute Resolution Rules and Procedures, then in effect.

**“Notice of Dispute”** or **“Notice”** means a notice of Dispute from you to any Build A Rocket Boy Party.

***b. Mandatory Individual Arbitration***

Any Dispute, whether such Dispute arose before, on, or subsequent to you entering these Terms, and if not resolved through the informal dispute resolution procedure set forth in subsection 13.6(c) below, shall be exclusively resolved by individual, binding arbitration in accordance with this Arbitration Agreement. The arbitrator, and not any federal, state, or local court or agency, shall have exclusive authority to resolve any Disputes relating to the interpretation, applicability, enforceability, or formation of this Arbitration Agreement, including any Dispute that all or any part of this Arbitration Agreement is void or voidable. The arbitrator shall also be responsible for determining all threshold arbitrability issues, including issues relating to whether these Terms are unconscionable or illusory, in whole or in part, and any defense to arbitration, including waiver, delay, laches, or estoppel.

Notwithstanding the foregoing and the Class Action/Jury Trial Waiver below, you and Build A Rocket Boy Parties (defined below) each 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 a party’s copyrights, trademarks, trade secrets, patents, or other IP rights. Any legal action by Build A Rocket Boy Parties against a non-consumer or its interactions with governmental and regulatory authorities shall not be subject to arbitration. Either party may also elect to have Disputes heard in small claims court seeking only individualized relief, so long as the action is not removed or appealed to a court of general jurisdiction.

To the fullest extent permissible by applicable law, all Disputes against Build A Rocket Boy Parties, including but not limited to Disputes arising out of or relating in any way to the Services or the Terms, must be filed within one year after such Disputes or cause of action arose or it will be forever barred.

If any Dispute is determined not to be subject to arbitration or resolution in small claims court, the exclusive jurisdiction and venue for proceedings concerning such Dispute shall be the federal or state courts of competent jurisdiction in New York County, New York. Any Dispute and these Terms shall be governed by and construed in accordance with the substantive and procedural laws of the state of New York, without regard to choice or conflict of law principles.

If any court or arbitrator determines that this Arbitration Agreement is void or unenforceable for any reason as to Disputes arising before the date of posting of this Arbitration Agreement, then you may still be bound to previous versions of this Arbitration Agreement by reason of your separate agreement to those previous versions.

If you or Build A Rocket Boy Parties files or causes to be filed in court (other than small claims court) a complaint alleging a Dispute that is subject to arbitration under this Arbitration Agreement, the defendant/respondent will notify the party or the party's attorney (if an attorney has entered an appearance) of the existence of this Arbitration Agreement, and request that the complaint be withdrawn. If the party does not withdraw the action within 10 calendar days of service of that notice, and the defendant/respondent successfully moves to compel arbitration of the Dispute, the defendant/respondent shall be entitled to its costs and fees (including reasonable attorneys' fees) incurred in seeking to enforce this Arbitration Agreement.

### ***c. Class Action / Jury Trial Waiver***

You and Build A Rocket Boy Parties agree that, to the fullest extent permitted by law, each party is waiving the right to a trial by jury or to participate as a plaintiff, claimant, or class member in any class, collective, private attorney general, representative, or consolidated proceeding (other than the permitted Mass Filing Procedures). This means that you and Build A Rocket Boy Parties may not bring a Dispute on behalf of a class or group and may not bring a Dispute on behalf of any other person unless doing so as a parent, guardian, or ward of a minor or in another similar capacity for an individual who cannot otherwise bring their own individual Dispute. This also means that you and Build A Rocket Boy Parties may not participate in any class, collective, private attorney general, representative, or consolidated proceeding (other than the permitted Mass Filing Procedures) brought by any third party.

Unless both you and Build A Rocket Boy Parties agree in writing, any arbitration will be conducted only on an individual basis and not in a class, collective, representative, or consolidated proceeding (other than the permitted Mass Filing Procedures).

Notwithstanding the foregoing, you or Build A Rocket Boy Parties may participate in a class-wide settlement.

#### ***d. Opt-Out Procedures***

To opt out of this Arbitration Agreement, you must send us a written notice (“Opt-Out Notice”) by email at [ArbitrationOptOut@buildarocketboy.com](mailto:ArbitrationOptOut@buildarocketboy.com) no later than 30 days after you first agreed to this Arbitration Agreement (“Opt-Out Period”). The Opt-Out Notice must contain your full legal name, your complete mailing and email address and phone number, a clear statement that you wish to opt out of this Arbitration Agreement, and your signature. If your Opt-Out Period has passed, you are not eligible to opt out of this Arbitration Agreement, and you will be bound to the terms and conditions of this Arbitration Agreement.

If you opt out of this Arbitration Agreement, all other provisions of the Terms will continue to apply to you. Additionally, if you opt out of this Arbitration Agreement, you may still be bound to previous versions of this Arbitration Agreement or other arbitration agreements by reason of your separate agreement to them. In other words, opting out of this Arbitration Agreement shall have no effect on any previous arbitration agreements you entered into with Build A Rocket Boy Parties. If you timely provide Build A Rocket Boy Parties with a valid Opt-Out Notice, and you are not bound to any previous or other arbitration agreements with Build A Rocket Boy Parties, all Disputes between you and Build A Rocket Boy Parties shall be subject to the exclusive jurisdiction of, and you consent to venue in, the state and federal courts located in New York County, New York, and all Disputes shall be interpreted, governed, and enforced in accordance with substantive and procedural law of the State of New York, without regard to choice or conflict of law principles.

If Build A Rocket Boy Parties make any future changes to this Arbitration Agreement (other than a change to the Notice Address or other non-material changes), Build A Rocket Boy Parties will provide you with notice (to the extent we have your contact information). You may reject any such change by sending an email to Build A Rocket Boy Parties at [ArbitrationOptOut@buildarocketboy.com](mailto:ArbitrationOptOut@buildarocketboy.com) within 30 days of the posting of the amended arbitration agreement that provides: (i) your full legal name, (ii) your complete mailing address, (iii) your phone number, (iv) the change(s) you are rejecting, (v) and, if applicable, the username or email address associated with any purchase or Services/Game access from Build A Rocket Boy Parties. This is not an opt-out of arbitration altogether. Your continued use of the Services after this 30-day period constitutes acknowledgment of, and agreement to, the changes to the Arbitration Agreement.

#### ***e. Rules and Governing Law***

**Mandatory Pre-Arbitration Notice and Informal Dispute Resolution Procedures:** You and we agree that good-faith, informal efforts to resolve disputes often can result in a prompt, cost-effective and mutually beneficial outcome. Therefore, in the event of a Dispute, you and Build A Rocket Boy Parties each agree to send the other party a written Notice of Dispute. A Notice of Dispute from you to Build A Rocket Boy Parties must be emailed to the Notice Address. Any Notice of Dispute must include (i) the claimant's full legal name, complete mailing address, and email address; (ii) a description of the nature and basis of the Dispute; (iii) any relevant facts regarding claimant's use of the Services, including whether claimant receives any emails associated with the Services, whether claimant accesses the Services (including which Games, if any) from Build A Rocket Boy, whether claimant has made a purchase from Build A Rocket Boy Parties, and if so, the date(s) of the purchase(s); and (iv) a personally signed statement from the claimant (and not their counsel) verifying the accuracy of the contents of the Notice. The Notice must be individualized, meaning it can concern only your dispute and no other person's dispute.

Build A Rocket Boy Parties will send any Notice of Dispute to you at the email address or mailing address it has for you, if any.

After receipt of a Notice of Dispute, the parties shall engage in a good faith effort to resolve the Dispute for a period of 60 days (which can be extended by agreement). You and we agree that, after receipt of the Notice of Dispute, the recipient may request an individualized telephone or video settlement conference (which can be held after the 60-day period) and both parties will attend (with counsel, if represented). You and we agree that the parties (and counsel, if represented) shall work cooperatively to schedule the conference at the earliest mutually-convenient time and to seek to reach a resolution.

Compliance with this Mandatory Pre-Arbitration Notice and Informal Dispute Resolution Procedures subsection is a condition precedent to initiating arbitration. Any applicable limitations period (including statute of limitations) and any filing fee deadlines shall be tolled while the parties engage in the informal dispute resolution procedures set forth in this subsection. All of the Mandatory Pre-Arbitration Notice and Informal Dispute Resolution Procedures are essential so that you and Build A Rocket Boy Parties have a meaningful opportunity to resolve disputes informally. If any aspect of these requirements has not been met, the parties agree that a court of competent jurisdiction may enjoin the filing or stay the prosecution of an arbitration. Nothing in this paragraph limits the right of a party to seek damages for non-compliance with these Procedures in arbitration.

If the parties cannot resolve the Dispute through the Informal Dispute Resolution Procedures above, you and Build A Rocket Boy Parties each agree that all Disputes shall be resolved exclusively through final and binding individual arbitration, rather than in

court. The parties may agree to waive hearings and resolve Disputes through submission of documents. Any arbitration hearing will be conducted remotely by telephone or video conference to the extent possible, but if the arbitrator determines, or the parties agree, that a hearing should be conducted in person, the arbitration hearing will take place as close to your residence as practicable, or another agreed upon locale, and shall be before one arbitrator.

All Disputes shall be submitted to NAM, for arbitration before one arbitrator. The arbitration will be administered by NAM in accordance with the NAM Rules, except as modified by this Arbitration Agreement. A party who desires to initiate arbitration must provide the other party with a written demand for arbitration as specified in the NAM Rules. A form for initiating arbitration proceedings is available on NAM's website at [www.namadr.com/resources/rules-fees-forms/](http://www.namadr.com/resources/rules-fees-forms/). You and we agree that the party initiating arbitration must submit a certification that they have complied with and completed the Mandatory Pre-Arbitration Notice and Informal Dispute Resolution Procedures requirements referenced above, and that they are a party to the Arbitration Agreement enclosed with or attached to the demand for arbitration. The demand for arbitration and certification must be personally signed by the party initiating arbitration (and their counsel, if represented). The parties agree that submission of the certification shall be required for the Dispute to be deemed properly filed. For additional information on how to commence an arbitration proceeding, you can contact NAM at [customerservice@namadr.com](mailto:customerservice@namadr.com).

If NAM notifies the parties in writing that it is not available to arbitrate any Dispute, or if NAM is otherwise unable to arbitrate any Dispute, that Dispute shall be submitted to ADR Services, Inc. ("**ADR Services**") for final and binding individual arbitration before one arbitrator. The arbitration will be administered by ADR Services in accordance with the ADR Services rules and procedures then in effect (the "**ADR Services Rules**"), except as modified by this Arbitration Agreement.

Notwithstanding any choice of law or other provision in these Terms, the parties agree and acknowledge that this Arbitration Agreement evidences a transaction involving interstate commerce and that the FAA, will govern its interpretation and enforcement and any proceedings under it. It is the intent of the parties that the FAA and the NAM Rules or ADR Services Rules (as applicable) shall preempt all state laws to the fullest extent permitted by law. If the FAA and the NAM Rules or ADR Services Rules (as applicable) are found to not apply to any issue that arises under this Arbitration Agreement, then that issue shall be interpreted, governed, and enforced in accordance with substantive and procedural law of the State of New York, without regard to choice or conflict of law principles.

At the conclusion of the arbitration proceeding, the arbitrator shall issue a reasoned written decision sufficient to explain the essential findings and conclusions on which

the award is based. An arbitrator's award that has been fully satisfied shall not be entered in any court.

As in court, you and Build A Rocket Boy Parties agree that any counsel representing a party in arbitration certifies when initiating and proceeding in arbitration that they are complying with the requirements of Federal Rule of Civil Procedure 11(b) and any applicable state laws of similar import, including certification that the Dispute or relief sought is neither frivolous nor brought for an improper purpose. The arbitrator is authorized to impose any sanctions under the NAM Rules or ADR Services Rules (as applicable), Federal Rule of Civil Procedure 11, or applicable federal or state law, against all appropriate represented parties and counsel.

Except as expressly provided in the Arbitration Agreement, the arbitrator may grant any remedy, relief, or outcome that the parties could have received in court, including awards of attorneys' fees and costs, in accordance with applicable law.

Mass Filing Procedures: If NAM determines that 25 or more substantially similar arbitration demands presented by or with the assistance, coordination, or cooperation of the same law firm, group of law firms, cooperating law firms, or organization are allowed to be submitted for arbitration, NAM's mass filing fee structure shall apply and the parties agree that the arbitrations will proceed in accordance with the batching process as follows: (i) NAM shall administer the arbitration demands in batches of at least 25 demands for arbitration, with the discretion to create additional batches if NAM finds that they are necessary to facilitate the efficient resolution of demands; (ii) NAM shall provide for the concurrent resolution of each batch as a single consolidated arbitration with one procedural calendar and one hearing (if any) and one final award; and (iii) following such determination of a mass filing, NAM shall apply a single set of admin and panel prep fees per batch in accordance with NAM's fee schedule. All parties agree that arbitrations are of a "substantially similar nature" for purposes of these Mass Filing Procedures if they arise out of or relate to the same event or factual scenario and raise the same or similar legal issues and seek the same or similar relief.

If there are 20 or more substantially similar Disputes that are allowed to be submitted for arbitration but cannot be arbitrated by NAM, and are presented to ADR Services by or with the assistance, coordination, or cooperation of the same law firm, group of law firms, cooperating law firms, or organization, ADR Services shall administer those Disputes concurrently in accordance with the ADR Services Rules, except as modified by this Arbitration Agreement, and in accordance with the Mass Filing Procedures set forth above (except that batches may be of at least 20 demands for arbitration). ADR Services shall apply a single initial filing fee and administrative fee per batch for each side with respect to the fees set forth in ADR Services' then-current Mass Consumer Non-Employment Arbitration Fee Schedule.

Build A Rocket Boy Parties reserve all rights and defenses as to each and any Dispute, Demand for Arbitration, and claimant. These Mass Filing Procedures shall in no way be interpreted as authorizing class arbitrations of any kind.

*Arbitrator's Fees:* You and we agree that arbitration should be cost-effective for all parties and that any party may engage with NAM, ADR Services (as applicable), and/or the arbitrator to address the apportionment of the arbitrator's fees.

*Confidentiality:* The parties agree that the arbitrator is authorized to issue an order requiring that confidential information of either party disclosed during the arbitration (whether in documents or orally) may not be used or disclosed except in connection with the arbitration or a proceeding to enforce the arbitration award and that any permitted court filing of confidential information must be done under seal to the furthest extent permitted by law.

*Requirement of Individualized Relief:* The parties agree that, to the fullest extent permitted by law, the arbitrator is authorized, upon either party's request, to award declaratory or injunctive relief only in favor of the individual party seeking relief and only to the extent necessary to provide relief warranted by that party's individual Dispute.

***f. Severability & Survival***

If any provision of this Arbitration Agreement, or a portion thereof, is found to be void, invalid, or otherwise unenforceable, then that portion shall be deemed to be severable and, if possible, superseded by a valid, enforceable provision, or portion thereof, that matches the intent of the original provision, or portion thereof, as closely as possible. The remainder of this Arbitration Agreement shall continue to be enforceable and valid according to the terms contained herein. Notwithstanding the foregoing, if any court or arbitrator determines that the Class Action/Jury Trial Waiver set forth in this Arbitration Agreement is void or unenforceable for any reason, or that your Dispute can proceed on a class, collective, representative, or consolidated basis (other than the Mass Filing Procedures), then, after the exhaustion of all appeals of that determination, you and Build A Rocket Boy Parties shall be deemed not to have agreed to arbitrate Disputes, and your Dispute must be litigated in a federal or state court of competent jurisdiction in New York County, New York, and shall be interpreted, governed, and enforced in accordance with substantive and procedural law of the State and governed by New York law, without regard to choice or conflict of law principles. In addition, if the Mass Filing Procedures apply to your Dispute, and any court or arbitrator determines that the Mass Filing Procedures are void or unenforceable for any reason, then, after the exhaustion of all appeals of that determination, you and Build A Rocket Boy Parties shall be deemed not to have agreed to arbitrate that Dispute, and it must be litigated in a federal or state court of competent jurisdiction in New York County, New York, and shall be interpreted,

governed, and enforced in accordance with substantive and procedural law of the State and governed by New York law, without regard to choice or conflict of law principles.

This Arbitration Agreement shall survive termination of these Terms. Except as provided in Sub-Sections 13.6(a) and 13.6(c) above, the terms and conditions of this Arbitration Agreement shall supersede and replace any and all previous arbitration and class action/jury waiver agreements you may have entered into with Build A Rocket Boy Parties.

#### **14. Data Protection and Privacy**

14.1 For information regarding the processing and protection of personal data, please see our [Privacy Notice](https://www.buildarocketboy.com/privacy-notice) (available at <https://www.buildarocketboy.com/privacy-notice>).

#### **15. Online Safety**

15.1 Build A Rocket Boy cares about your personal safety and about the safety of your information.

15.2 We encourage you to be aware of the general risks to personal information and personal security in an online environment.

15.3 If you see any content or materials on our Services or in our Games that appear to endanger the personal or information safety of yourself or others, please contact us at [support@buildarocketboy.com](mailto:support@buildarocketboy.com).

#### **16. Liability and Compensation**

16.1 We constantly strive to keep our Services and Games safe, secure, and functioning properly, but we cannot guarantee the continuous operation, real time availability, and access to our Services and Games, which may be subject to delays beyond Build A Rocket Boy's control.

16.2 To the maximum extent permitted by applicable law, we (including our affiliates, directors, agents, employees, operators of Third Party Stores (as defined in Section 20) and their affiliates) shall not be liable to you under contract, tort (including negligence) or otherwise for any losses, such as loss of data, profits, revenue, business, opportunity, goodwill, reputation or business interruption or for any losses which are not reasonably foreseeable by us, arising, directly or indirectly from:

- (a) your use of or your inability to use our Services and any Games;
- (b) delays or disruptions in our Services and any Games;
- (c) viruses or other malicious software obtained by accessing, or linking to, our Services and any Games;
- (d) glitches, bugs, errors, or inaccuracies of any kind in our Services and any Games;