

# End User Licence Agreement (EULA)

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Effective from June 2021 (Version 06.21)

This EULA applies when you access, use participate in or view any Immersive Labs platform under the terms of an agreement between you and one of our third-party resellers, distributors or managed service providers.

Please read this EULA carefully before signing up for, accessing, using, participating in or viewing any platforms hosted on the [immersivelabs.com](https://immersivelabs.com) or [immersivelabs.online](https://immersivelabs.online) domains (and all related domains and subdomains) (**Platforms**) including but not limited to the Digital Cyber Academy platform (**DCA Platform**) the Cyber Crisis Simulator App and Content Builder under the terms of an agreement between you and one of third-party resellers, distributors or managed service providers (**Reseller**). We recommend that you download a copy of these terms for your future reference.

These terms should be read in conjunction with our Acceptable [Use Policy](#) (which apply to all guest and registered users of our Platforms) and our [Privacy Notice](#) and [Cookie Notice](#), which explain what personal data we collect about you, what we use it for and who we share it with, as well as explaining your rights and what to do if you have concerns.

**Any breach of this EULA may result in us suspending or terminating your or your organisation's access to the Platforms and taking legal action against you or your organisation.**

## 1. WHO WE ARE

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We are Immersive Labs Group (**Immersive Labs, we or our**), which includes:

- Immersive Labs Holdings Limited (registered in England and Wales under company number 11439032 with its registered office at Runway East, 1 Victoria Street, Bristol BS1 6AA)
- Immersive Labs Limited (registered in England and Wales under company number 10553244 with its registered office at Runway East, 1 Victoria Street, Bristol BS1 6AA)
- Immersive Labs Corporation (registered in the State of Delaware, USA, with its office at WeWork, 200 Berkeley St, Boston, 02116 MA, USA)
- Immersive Labs GmbH (registered in Germany with its office at Immersive Labs, c/o RSM GmbH, Georg-Glock-Straße 4, 40474 Düsseldorf, Germany)

## 2. RELATIONSHIP BETWEEN YOU, US AND THE RESELLER

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- (a) We have agreed to provide you with access to our Platforms under the terms of an agreement between us and the Reseller. We may be required to suspend or terminate your access to our Platforms if you breach the terms of the agreement between you and the Reseller.
- (b) If you have purchased licences to our Platforms from a Reseller that you have granted limited management access and control over your account to (**Managed Service Provider**), you:
  - i. confirm and give us authority on your behalf to grant the Managed Service Provider with such management access and control, which may include the ability for the Managed Service Provider to set objectives for you and your authorised users, viewing user profiles and complete and incomplete labs and related information (**Management Functions**); and
  - ii. agree that we will not be liable to you or your authorised users or any other person for the Managed Service Provider's acts or omissions.
- (c) This EULA does not entitle you to any implementation, training or other services which may be provided by the Reseller.
- (d) When you check the "I agree to the terms of the End User Licence Agreement" box on any of our Platforms, you will be deemed to accept the terms of this EULA and you warrant that you:
  - i. are at least 13 years of age (or the age of majority in your country or territory);
  - ii. have the authority to bind your organisation to the terms of this EULA; and
  - iii. you or any entity or person you are connected with are not subject to sanctions or designated on any list of prohibited and restricted parties (including those maintained by the UN, US, UK, EU, EU member states or other applicable government authorities).
- (e) Your continued access to our Platforms is conditional upon you complying with the terms of this EULA and your authorised users complying with our [Acceptable Use Policy](#) at all times. We may suspend or terminate your access (or that of any authorised user) to our Platforms if there is any breach of our Acceptable Use.
- (f) If you subscribe to our Cyber Crisis Simulator product, the additional terms in Appendix 1 will apply. If there is any conflict between the terms of Appendix 1 and the terms of this EULA in relation to such product, the terms of Appendix 1 will prevail.
- (g) When we refer to **Affiliates** in this EULA, this means you and any other entity that (directly or indirectly) controls, is controlled by or is under common control with you.

## 3. CHANGES TO THIS EULA

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Except for any changes required by applicable law or regulation, we may change this EULA at any time to reflect changes to the law or our Platforms. You should check these terms regularly to take notice of any changes as they will be binding on you with effect from the date stated in them.

## 4. ACCESSING AND USING OUR PLATFORMS

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- (a) Subject to you complying with the terms of this EULA and your authorised users complying with our [Acceptable Use Policy](#) at all times, we grant you a non-exclusive, non-transferable, non-sublicensable, limited and revocable right to access and use our Platforms and the content made available through them (**Content**).
- (b) You will be responsible for the acts and omissions of your authorised users (and any unauthorised users that have gained access to our Platforms resulting from your authorised users sharing their account details with them) as though they were your own.
- (c) Our Platforms have been developed to be accessed via the Internet using a compatible browser. You are responsible for ensuring that your authorised users meet the [Minimum System Specification](#) for accessing our Platforms.
- (d) In order to protect our legitimate business interests, you hereby agree, for yourself and as agent for each of your group companies, that you shall not and shall procure that no member of your group or any personnel of you or your group company shall:
  - i. use, access or otherwise utilise the product, software, Platform or services to:
    - i. create;
    - ii. provide; or
    - iii. assist in any way the creation of,  
any software, platform or services which is substantially similar to the product, software, Platform or services during the term of this agreement and for a period of 6 months after termination or expiry of this agreement; and
  - ii. shall otherwise:
    - i. carry on;
    - ii. be engaged, concerned or interested in; or
    - iii. assist in any way,  
any business concern which is in competition with us in the UK, the US or Europe or the jurisdiction in which you are domiciled during the term of this agreement and for a period of 6 months after termination or expiry of this agreement.
- (e) You shall be bound by the covenant set out in 4(d) during the term of this agreement, and for a period of 6 months after termination or expiry of this agreement.

## 5. RIGHTS IN OUR PLATFORMS AND CONTENT

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- (a) We are the owner or licensee of all intellectual property rights in and to our Platforms and Content. Those works are protected by copyright laws and treaties around the world and all such rights are reserved.
- (b) You agree that our Platforms and Content are made available under licence and not sold to you.
- (c) To the extent permitted by applicable law, you must not, or allow any other person to:

- i. copy, display, distribute, modify or in any way make available or commercially exploit our Platforms and Content;
  - ii. combine or otherwise allow any part of our Platforms and Content to become incorporated into any other program or service or develop any derivative works based on them;
  - iii. attempt to reverse engineer, decompile, extract or store any part of our Platforms and Content; or
  - iv. observe or test the performance and functionality of our Platforms and Content for the purposes of developing any competing products or services.
- (d) You agree to use reasonable efforts to protect our Platforms and Content from infringement, misuse or unauthorised access and will notify us promptly and within 48 hours if you become aware of the same.

## **6. TERM AND TERMINATION**

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- (a) This EULA will become binding on the earlier of your subscription to access and use our Platforms under the terms of an agreement between you and the Reseller or your access to our Platforms and will continue in force until terminated as set out below.
- (b) We may terminate this EULA immediately without notice and without liability to you upon the expiry or termination of the agreement between you and the Reseller. We will not be liable to you if the Reseller unlawfully terminates such agreement.
- (c) Upon the termination of this EULA, all licences granted to you under it will terminate and you must cease accessing and using our Platforms and Content immediately.
- (d) Sections 5 (Rights in our Platforms and Content), this Section 6, 7 (Our liability to you), 8 (Your liability to us) and 10 (Other important terms) will survive termination of this EULA.

## **7. OUR LIABILITY TO YOU**

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- (a) To the extent permitted by applicable law:
  - i. our Platforms are provided on an 'as is' and 'as available' basis and we do not guarantee that our Platforms or any Content will always be available, uninterrupted or error-free;
  - ii. we may change or discontinue all or any part of our Platforms and Content at any time without notice; and
  - iii. we do not guarantee that our Platforms and Content will achieve any outcomes or results.
- (b) To the extent permitted by applicable law:
  - i. we exclude all representations, warranties or other terms that may be implied by law;
  - ii. we will not be liable for direct or indirect loss of anticipated savings, revenue or profits, loss of or corruption to data, business opportunity, goodwill or reputation, business interruption, or for any indirect, consequential or special loss or damage;

- iii. we will not be liable to you for any costs, damages or other losses (whether in contract, tort (including negligence) or otherwise) for any use of, or inability to use, our Platforms or for any use of or reliance upon any content made available through our Platforms; and
- iv. our total maximum liability will be limited to 100% of the charges paid or payable by the Reseller to us in the immediately preceding 12-month period.

## 8. YOUR LIABILITY TO US

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You agree to fully reimburse us for any costs, damages or other losses (whether in contract, tort (including negligence) or otherwise) arising from any claim by a third party because of any breach by you or your authorised users of this EULA.

## 9. DATA PROTECTION

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- (a) Definitions.
  - i. **Controller, data controller, processor, data processor, data subject, personal data, processing and appropriate technical and organisational measures** or equivalent or similar terms: as set out in the Data Protection Legislation in force at the time.
  - ii. **Data Protection Legislation:** all legislation and regulatory requirements in force from time to time relating to the use of personal data and the privacy of electronic communications, including, without limitation (i) any data protection legislation from time to time in force in the UK including the Data Protection Act 2018 or any successor legislation, as well as (ii) the General Data Protection Regulation ((EU) 2016/679) and any other directly applicable European Union regulation relating to data protection and privacy (for so long as and to the extent that the law of the European Union has legal effect in the UK) (iii) any applicable local data protection law or regulation or relevant provisions in the local laws to which the Permitted Recipients are subject to which relate to the protection of individual's rights in their personal data and the protection of their privacy.
- (b) Both parties will comply with the Data Protection Legislation.
- (c) You are the controller and we are the processor in respect of all personal data processed by us pursuant to this EULA. The description of the processing is set out in Appendix 2 to this EULA (Description of Processing).
- (d) We shall:
  - i. act only on your written instructions and directions, including those contained in this EULA, comply with all such instructions and directions received from you from time to time, and not process personal data for any purpose other than as set out in Appendix 2 to this Agreement (Description of Processing) or to the extent reasonably necessary for the performance of the EULA;
  - ii. ensure that any personnel with access to personal data are bound by confidentiality obligations in respect of access, use or processing of such personal data;

- iii. implement and maintain appropriate technical and organisational measures to protect personal data processed in connection with this Agreement from accidental or unlawful destruction, loss, alteration, unauthorized disclosure or access, as required under the Data Protection Legislation;
  - iv. provide reasonable assistance to you at the your cost, if requested, to assist you with complying with your obligations under Articles 32 to 36 of the GDPR (if applicable), taking into account the nature of processing by, and information available to us;
  - v. on termination or expiry of this EULA, at your request, delete or return all personal data and delete copies of such personal data except where necessary to retain copies of the personal data for the purposes of compliance with Data Protection Legislation or any other applicable laws;
  - vi. promptly assist you (at the your cost) in responding to any request from a data subject;
  - vii. promptly notify you on becoming aware of a Personal Data Breach;
  - viii. notify the you if, in our opinion, any instruction or direction from you infringes Data Protection Legislation; and
  - ix. maintain a record of its processing activities and provide cooperation and information to you as is necessary for you to demonstrate compliance with your obligations pursuant to Data Protection Legislation, including, provided the scope, nature, timing and duration is agreed in writing between the parties beforehand, permitting audits conducted by you or a supervisory authority no more than once in any 12 month period.
- (e) You agree that we may engage those sub- processors listed at [www.immersivelabs.co.uk/legal](http://www.immersivelabs.co.uk/legal), in the provision of the Platform and associated support. We remain fully responsible for the acts, omissions and defaults of our sub-processors as if they were our own. Where we use a sub-processor, we ensures that access to personal data is limited to that which necessary to perform the relevant services and we will ensure we have a written agreement in place with them relating to access to and use of personal data.
- (f) For transfers of personal data outside the EEA, we shall employ any of the following legally valid data transfer mechanism(s) to govern the transfer: (i) any relevant adequacy decision as described in Article 45 of the GDPR; (ii) the SCCs; or (iii) any alternative agreement/legally valid data transfer mechanism consented to by the parties in writing (the consent of either party not to be unreasonably withheld or delayed).
- (g) You can execute the SCCs with us [here](#). You are the data exporter and we are the data importer (for an on behalf of our subprocessors). Upon execution by the you, the SCCs are hereby incorporated by reference into the terms of this EULA.
- (h) You shall:
- i. ensure that your instructions always comply with all applicable laws;
  - ii. (and hereby does) warrant and represent that you have a lawful basis for sending, storing and receiving the personal data and that you are entitled to transfer the personal data to us and our sub-processors so that we and our authorised sub-processors may process them in accordance with this EULA; and
  - iii. (and hereby does) acknowledge our reliance on this clause.

## 10. CONFIDENTIALITY

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- (a) Each party shall take all reasonable steps to ensure that the other party's information that is proprietary or confidential in nature (Confidential Information) to which it has access is held in confidence and shall not make it available to any third party or use it for any purpose other than the implementation of this agreement. A party's Confidential Information does not include information that: (i) is or becomes publicly known other than through any act or omission of the receiving party; (ii) is in the other party's lawful possession before the disclosure; (iii) is lawfully disclosed to the receiving party by a third party without restriction on disclosure; or (iv) is independently developed by the receiving party, which can be demonstrated by written evidence.
- (b) A party may disclose Confidential Information to the extent that the disclosure is required by law, any governmental or regulatory authority or by a court or other authority of competent jurisdiction, provided that (to the extent it is permitted to do so) it gives as much notice as possible to the disclosing party.

## 11. OTHER IMPORTANT TERMS

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- (a) Assignment: We may, after giving prior written notice to you, assign or transfer any or all of our rights and obligations under this EULA to any person to whom we transfer our business, provided that the assignee undertakes in writing to be bound by our obligations under this EULA. You may not assign, transfer or deal in any other manner with any or all of your rights and obligations under this EULA with our prior written consent.
- (b) Compliance with laws and controls: You are responsible for complying with all applicable laws and regulations and obtaining any applicable licences or permissions (including export and import control licences) relating to your access to and use of our Platforms in your territory. If any licence or permission is not granted, you or we may terminate this EULA without liability to the other on giving 30 days' written notice.
- (c) Entire agreement: This EULA, together with any other terms referred to in it, contains the entire agreement between you and Immersive Labs relating to its subject matter and supersedes all prior representations and agreements (both oral and written).
- (d) Force majeure: Neither you nor we will have any liability to the other for any failure or delay in the performance of our respective obligations under this EULA caused by reasons beyond our reasonable control including any matters relating to transfer of data over public communications networks and any delays or problems associated with any such networks or with the Internet.
- (e) Relationship between us: Nothing in this EULA creates, or will be deemed to create, any agency or partnership or relationship of employer or employee between us.
- (f) Rights of third parties: Except for our licensors, which will be entitled to enforce this EULA as third-party beneficiaries, no other person has any rights under this EULA which represent an agreement between you and Immersive Labs.

- (g) **Sanctions:** You represent and warrant that neither you nor any Affiliate which is intended to benefit from our Platforms and Content is subject to any embargoes or sanctions administered or enforced by the US Department of Treasury’s Office of Foreign Assets Control, the United Nations Security Council, the European Union or any of its member states, Her Majesty’s Treasury in the United Kingdom or any other relevant embargoes or sanctions (**Sanctions**) nor are you or any Affiliate located, organised or resident in any country or territory that is the subject of any Sanctions (**Sanctioned State**). The representations and warranties set out in this Section 10(g) will be deemed repeated by you on each day during the term of this EULA and you will promptly notify us or the Reseller if you become subject to any Sanctions or become located, organised or resident in any Sanctioned State and we may terminate this agreement immediately without notice and without liability to you if we become aware that this is the case.
- (h) **Severance:** Each section of this EULA operates separately. If any court or relevant authority decides that any of them are unlawful, the remaining sections will remain in full force and effect.
- (i) **US Federal Government End Users:** We provide our Platforms, including related software and technology, for ultimate federal government end use in accordance with the following: our Platforms consist of “commercial items,” as defined at FAR 2.101. In accordance with FAR 12.211-12.212 and DFARS 227.7102-4 and 227.7202-4, as applicable, the rights of the U.S. Government to use, modify, reproduce, release, perform, display, or disclose commercial computer software, commercial computer software documentation, and technical data furnished in connection with the Services will be as provided in this EULA, except that, for U.S. Department of Defense end users, technical data customarily provided to the public is furnished in accordance with DFARS 252.227-7015. If a government agency needs additional rights, it must negotiate a mutually acceptable written addendum to this EULA specifically granting those rights.
- (j) **Waiver:** If we do not insist immediately that you do anything you are required to do under these terms, or if we delay in taking steps against you in respect of your breach of these terms, that will not mean that you do not have to do those things and it will not prevent us taking steps against you later.
- (k) **Governing law, jurisdiction and notices:**

If the Reseller is domiciled in	The contracting Immersive Labs Group entity with you is	Notices should be address to	Governing law is	Courts with exclusive jurisdiction are
Globally, other than North or South America or the DACH region	Immersive Labs Ltd., a company registered in England and Wales with company number 10553244	Legal team, Immersive Labs, Runway East, 1 Victoria St, Bristol, BS1 6AA, England, United Kingdom	England and Wales	England and Wales



North or South America	Immersive Labs Corporation, a Delaware corporation	Chief Revenue Officer, Immersive Labs, WeWork, 200 Berkeley St, Boston, MA 02116, USA	Massachusetts (without regard to its conflicts of law rules)	Boston, Massachusetts
DACH region (Germany, Austria or Switzerland)	Immersive Labs GmbH, registered in Germany	Immersive Labs, c/o RSM GmbH, Georg-Glock-Straße 4, 40474 Düsseldorf, Germany	England and Wales	England and Wales

## APPENDIX 1 – ADDITIONAL TERMS APPLICABLE TO CYBER CRISIS SIMULATOR

If you purchase the Cyber Crisis Simulator (as defined below), the terms of this Appendix 1 shall apply. Solely in connection with the sale of Cyber Crisis Simulator, in the event of any conflict between the terms of this EULA and the terms of Appendix 1, the terms of Appendix 1 shall prevail.

**Definitions:** All capitalised terms used in this Appendix are defined in the EULA and Acceptable Use Policy. In addition, the following definitions apply:

**Background:** any assets and materials, and any rights in the nature of intellectual property rights in them, that are either: (i) owned by a party or its licensors prior to the date of the relevant PO; or (ii) developed or acquired independently of a party's activities under this EULA or any relevant PO.

**Cyber Crisis Simulator:** the real-time interactive simulators of targeted cyberattacks and incidents.

**Materials:** any content and materials provided by you to us for incorporation in or development of any Project Results.

**PO:** the Managed Service Provider's purchase order documentation. If you are domiciled in North or South America, the PO must be addressed to Immersive Labs Corporation; if you are domiciled globally other than North or South America, the PO must be addressed to Immersive Labs Limited.

**Project Results:** any output and deliverables, and any rights in the nature of intellectual property rights in them, created by or with our support specifically for the purposes of this EULA or any PO. Project Results includes any Tailored Scenarios but does not include the Materials.

**Tailored Scenario:** a Cyber Crisis Simulator scenario created for you or through your use of the Cyber Crisis Simulator content builder (**Content Builder**).

1. **Grant of licence:** Subject to payment of the relevant charges, we will grant you a licence to Cyber Crisis Simulator on the terms set out in Section 4(a) of the EULA which will be subject to the terms of the agreement or PO with the Managed Service Provider which sets out:
  - a. which existing Cyber Crisis Simulator scenarios are to be made available to you;
  - b. the number and content of Tailored Scenarios to be created for you;
  - c. the extent to which Materials are to be provided by you (and if relevant, Managed Service Provider); and
  - d. the extent to which you (and if relevant, the Managed Service Provider) will use the Content Builder.
2. **Ownership of rights:**
  - a. All rights in and to the Background are and will remain the exclusive property of the party owning them.
  - b. All rights in and to Cyber Crisis Simulator and any ideas or suggestions as to how we may improve Cyber Crisis Simulator, together with any improvements, will be treated as our Background and may be used by us without restriction and without any obligation on us to pay any compensation or remuneration to you.

- c. Each party grants the other a non-exclusive, royalty-free, non-sublicensable (except to those of its Affiliates), revocable licence to use its Background to the extent necessary to perform its obligations under the EULA, this Appendix 1 and any PO.
  - d. You warrant that you have and will continue to have all necessary rights in and to the Materials you provide to us and you grant us a non-exclusive, royalty-free, revocable licence to the Materials to enable us to create the Project Results, provide Cyber Crisis Simulator to you and your Affiliates (and their respective authorised users) and performs our obligations under the EULA, this Appendix 1 and any PO.
  - e. All rights in and to the Project Results will belong to us and you hereby assign all such rights to us absolutely by way of present and future assignment. You agree to take all actions reasonable requested by us to ensure the effective assignment of such rights to us.
  - f. We grant you a non-exclusive, non-transferable, non-sublicensable, revocable licence to access and use the Project Results to the extent required for the Managed Service Provider to fulfil any Management Functions and any other obligations under the agreement between you and them.
3. Our obligations: We will use the Materials to create Tailored Scenarios for you. If relevant, the Managed Service Provider will perform the Management Functions to support that process.
4. Your obligations:
- a. You will ensure that the Materials are fit for purpose. You acknowledge that we have no control over the Materials and will have no liability in the event that they are not fit for purpose, inaccurate or incomplete, or if their use infringes any third-party rights.
  - b. You will provide us with access to, and use of, such information, data and documentation as is reasonably required by us for the performance by us of our obligations under this Appendix 1.
  - c. You acknowledge that our ability to provide the Cyber Crisis Simulator to you is dependent upon your full and timely co-operation (which you agree to provide). To the extent a delay by us is attributable in part to your default or delay in complying with your obligations under this Appendix 1, we will not be liable to you for any such delay or non-performance.

## APPENDIX 2 - Description of Processing

Description	Details
<b>Subject matter of the processing</b>	Such processing operations necessary for performance of the Services under this Agreement.
<b>Duration of the processing</b>	Unless the personal data is otherwise deleted by you, the Term of this Agreement.
<b>Location of processing</b>	United Kingdom, United States of America and Europe
<b>Nature and purpose of the processing</b>	As necessary to provide the Services under this Agreement and to facilitate contract management.
<b>Type of Personal Data</b>	Email addresses, first and last names, user-name, user's profile avatar, IP address, time zone, addresses in the form of web logs (for security purposes).
<b>Categories of Data Subjects</b>	Your employees, workers, contractors, consultants, directors. A detailed description of the uses, purposes of the processing of personal data is set out in the privacy notice at <a href="http://www.immersivelabs.co.uk/legal">www.immersivelabs.co.uk/legal</a>