

# ExPrep Terms of Use

**Last Updated: 12/5/19**

## **Terms**

IMPORTANT NOTICE: READ THESE TERMS OF USE CAREFULLY. THESE TERMS REQUIRE BINDING ARBITRATION TO RESOLVE ANY DISPUTE OR CLAIM RELATING TO THESE TERMS, THE SERVICES OR PROPERTIES OR ANY RELATIONSHIP BETWEEN US. ANY SUCH DISPUTE OR CLAIM WILL BE RESOLVED ONLY ON AN INDIVIDUAL BASIS AND NOT IN A CLASS, CONSOLIDATED OR REPRESENTATIVE ACTION OR ARBITRATION. THESE TERMS ALSO CONTAIN A DISCLAIMER OF WARRANTIES AND A DISCLAIMER OF LIABILITY, AS WELL AS A RELEASE AND INDEMNIFICATION BY YOU.

## **Agreement to Terms**

This terms of use agreement (these "Terms") constitutes a legally binding contract between you, individually and/or as an agent on behalf of an entity or another registered user ("you" or "User") and ExPrep, LLC, a New York limited liability company ("ExPrep," "we," or "us"), with respect to your use of all properties, including the ExPrep website, associated services, and product applications (collectively, the "Services" or the "Site"). By accessing or using the Services, you acknowledge that you have read, understood, and agree to be bound by these Terms and our Privacy Policy, including any updates posted here or otherwise communicated to you. If you do not agree to the Terms and Privacy Policy, please do not use the Services.

## **Changes**

We reserve the right to modify these Terms and our Privacy Policy at any time by posting a revised version, the date of which is the "Last Updated" date first listed above. Any changes to the Terms will be effective immediately upon posting. Please review the Terms each time you use the Services as your continued use of the Services after such changes will constitute acceptance of, and agreement to, such changes. You waive any right you may have to receive specific notice of such changes.

## **Accounts**

### **Registration**

ExPrep offers multiple products and maintains different accounts for different types of Users. If you are accepting these Terms and using the Services on behalf of an institution, employer, or other legal entity, then (a) "you" includes you and that entity, and (b) you represent and warrant that you are an authorized representative of the entity with the authority to bind the entity to these Terms, and that you agree to these Terms on the entity's behalf. Children under the age of 18 require the consent of their guardian or institution to register an account to use the Services.

### **Use**

You may never use another User's account. You are responsible for safeguarding any password that you use to access the Services and for any activities or actions under your password. You agree to notify us of any unauthorized use of your account and password access the Services and also ensure that you exit from your account at the end of each session. You may use the Services only in compliance with these Terms,

any agreement entered into by your institution, employer, or other legal entity, relating to the services, and all applicable laws and regulations.

## **Your Rights and Limitations**

### **Children**

We do not knowingly collect any information from children under the age of 13 unless and until the relevant guardian or institution has provided consent and authorization for a student under 13 to use the Services and for us to collect information from such student User.

If you believe we have inadvertently collected personal information from a child under 13 without proper consent, please contact us immediately at [contact@excelpreparation.com](mailto:contact@excelpreparation.com) so that we can delete such information.

### **Limited License to ExPrep**

Subject to your compliance with these Terms and any agreement entered into by your institution or employer relating to the Services, we hereby grant you, as a User, a limited, revocable, non-exclusive, non-transferable, and non-sublicensable right to access and use the Services for your personal and informational use only.

### **Your Content and License Grant to ExPrep**

You own the information and content you submit to the Services and you grant ExPrep and our affiliates a non-exclusive, worldwide, transferable, and sub-licensable right to use the information you provide through our Services so that we can provide the services. You can end the license by deleting your account, except to the extent you shared content with others and taking into account reasonable time for ExPrep to remove content from backup systems. If you submit suggestions or other feedback regarding our Services to ExPrep, you agree that we have the irrevocable right to use and/or share such feedback for any purpose without compensation to you. Without limitation, you are responsible for all content you submit to the Services.

### **Limits**

ExPrep reserves the right to limit your use of the Services. ExPrep reserves the right to restrict, suspend, or terminate your account if ExPrep believes that you may be in breach of these Terms or for any other reason whatsoever.

### **Availability**

ExPrep may change or abandon any of its Services at any time without notice. We don't promise to store or display any information or content that you have shared. We have no obligation to store, maintain, or provide a copy of any content or information except as required by applicable law.

### **Our Services Protected**

The Services, including all materials and information, and the selection, arrangement, and composition of such information ("Materials") are proprietary property of ExPrep, its suppliers, and licensors and are protected by United States and international intellectual property laws, including but not limited to trademark and copyright laws. You agree not to remove, alter, or obscure any copyright, trademark or proprietary rights notice incorporated in or accompanying the Services. Except for the limited license explicitly granted to you under these Terms, no other license is granted to you, whether by implication,

estoppel or otherwise and all rights are explicitly reserved. You may not reverse engineer, decompile, disassemble, or otherwise attempt to derive the source code or architectural framework for the Services (except to the extent specifically permitted by applicable law). You also may not access, download, monitor, or copy any information or content contained on or in the Services through automated or artificial means (including, but not limited to, screen and database scraping, spiders, robots, crawlers, deep-link, or any similar or equivalent automatic or manual process), or in any way obtain or attempt to obtain any content or information through any means that ExPrep does not intentionally make available through the Services. However, general purpose Internet search engines and non-commercial public archives that use tools to gather information for the sole purpose of displaying hyperlinks to the Services are granted a limited exception from the foregoing exclusion, provided that they do so from a stable IP address or range of IP addresses using an easily-identifiable agent that adheres to all limitations set forth in any applicable robots.txt file. You may not harvest information for any purpose. You may not frame any part of our Services. You may not use, or attempt to use, the Services through any means not explicitly and intentionally made available, provided or intended with respect to the Services (including, but not limited to, attempting to gain unauthorized access to any portion of the Services, or any other systems connected to the Services). You may not use or access the Services in any manner that could damage, disable, overburden, or impair the Services or that could interfere with the rights of or otherwise harm ExPrep, any users, or any other person.

### **Third-Party Sites and Intellectual Property**

All non-ExPrep trademarks, product names and logos appearing on our Services are property of their respective owners. The Services may contain materials from third party websites, advertisements, services, offers, activities or other content (collectively, "Third Party Materials"). These Third-Party Materials are not owned or controlled by ExPrep. These Third-Party Materials are provided for your reference and convenience only, and do not imply any endorsement, sponsorship, or recommendation by ExPrep. Third Party Materials may be subject to their own privacy policies and terms of use that explain and govern your use of those Third-Party Materials. Specifically for ExPrep Grader services, the institutions learning management system will have its own privacy policies and terms of use that will govern your relationship with those entities.

### **Consent to Doing Business Electronically**

By choosing to use the Site from time to time you will receive disclosures, notices, documents and information ("Communications") from ExPrep or our respective agents (collectively, "we" or "us"). We can only give you the benefits of our service by conducting business through the Internet, and therefore we need you to consent to our giving you Communications electronically. This section informs you of your rights when receiving Communications from us electronically. We may discontinue electronic provision of Disclosures at any time in our sole discretion.

Your consent to the Terms of Use means that Communications ExPrep provides to you electronically shall have the same meaning and effect as if provided in paper form, regardless of whether you actually view those Communications, unless you have withdrawn your consent as stated below.

Scope of Consent: You are agreeing and consenting to our providing you all Communications in electronic form, meaning email, phone call or SMS. This means that we will not provide paper Communications to you unless and until you withdraw your consent as provided below.

Minimum Requirements: You understand that, in order to view and/or retain copies of the Disclosures, you may need a computer with an Internet connection (PCs should be running Windows 7 or higher and Internet

Explorer 10 or higher, Chrome, or Firefox; Macs should be running OSX and Safari, Chrome, or Firefox); a mobile device (iOS 6.0 or higher devices running Safari or Chrome; Android 4.0 or higher devices running Android Browser or Chrome), a valid email address, a working mobile telephone number that can receive text messages, sufficient storage space to save Disclosures or the capability to print the Disclosures from the device on which you view them.

**Withdrawing Consent:** You may withdraw your consent to receive Communications electronically by contacting us at [contact@excelpreparation.com](mailto:contact@excelpreparation.com). If you withdraw your consent, we reserve the right to limit or close your account. The withdrawal of your consent will not affect the legal validity and enforceability of any pending agreements obtained through ExPrep. You agree to pay any amount owed to ExPrep even if you withdraw your consent and we close or limit access to your account.

**Updating Records:** Please keep us informed of any changes in your email so that you continue to receive all Communications without interruption. To change this information, email us at [contact@excelpreparation.com](mailto:contact@excelpreparation.com).

### **Monitoring of the Site**

ExPrep has no obligation to monitor the Site; however, you acknowledge and agree that ExPrep has the right to monitor the Site electronically from time to time and to disclose any information as necessary or appropriate to satisfy any law, regulation or other governmental request, to operate the Site, or to protect itself or other users of the Site.

### **Submissions to the Site**

All feedback communicated to ExPrep through this Site (collectively, "Submissions") will be deemed and remain the property of ExPrep, and ExPrep is entitled to use any Submission for any purpose, without restriction or compensation to the individual who has provided the Submission. ExPrep shall not be subject to any obligations of confidentiality regarding Submissions except as expressly agreed by ExPrep or as otherwise required by applicable law. Nothing herein contained shall be construed as limiting ExPrep's responsibilities and obligations under its Privacy Policy. Nothing herein shall be construed as granting ExPrep rights in any excel files uploaded to the Site.

### **Use of Personally Identifiable Information**

ExPrep's practices and policies with respect to the collection and use of personally identifiable information are governed by ExPrep's Privacy Policy.

### **Accessibility**

This Site is not intended for distribution to, or use by, any person or entity in any jurisdiction or country where such distribution or use would be contrary to applicable law or regulation. By offering this Site and Content no distribution or solicitation is made by ExPrep to any person to use the Site or Content in jurisdictions where the provision of the Site and/or Content is prohibited by law.

### **Copyright Complaints**

If you believe, in good faith, that any materials on the Site infringe your copyrights, notifications of claimed copyright infringement should be sent to ExPrep's designated agent. Notification should include: an electronic or physical signature of the person authorized to act on behalf of the owner of the copyright interest; a description of the copyrighted work that you claim has been infringed; a description of where the material you claim is infringing is located on the Site; a statement by you that you have a good faith belief

that the disputed use is not authorized by the copyright owner, its agent or the law; and a statement by you, made under penalty of perjury, that the above information in your notice is accurate and that you are the copyright owner or duly authorized to act on the copyright owner's behalf. You may contact ExPrep's agent for notification of claimed copyright infringement by e-mail at [contact@excelpreparation.com](mailto:contact@excelpreparation.com).

## **Special Terms – ExPrep Grader**

ExPrep Grader is an automation tool. However, professors have the obligation to confirm grading and always have the final say in the grades students receive.

## **Purchases and Payment**

ExPrep services are sold through a variety of channels, including direct to consumer, as well as through institutions and employers. For Users registering directly with ExPrep, you agree to make payment using the payment method selected at the time of registration. You agree to pay ExPrep all charges at the prices then in effect for the products you or other persons using your billing account may purchase, and you authorize ExPrep to charge your chosen payment provider for any such purchases. Currently, ExPrep uses Paypal as a third-party payment processor. We encourage you to review Paypal's [legal terms](#) and [privacy policy](#) since your relationship with Paypal shall be governed by those agreements. If you have ordered a product or service that is subject to recurring charges then you consent to our charging your payment method on a recurring basis without requiring your prior approval from you for each recurring charge until such time as you cancel the applicable product or service. Company may change prices at any time. All payments shall be in U.S. dollars.

## **Disputes, Arbitration, and Limitation of Liability**

### **Disputes**

You will resolve any claim, cause of action or dispute (claim) you have with us arising out of or relating to these Terms or ExPrep exclusively in the U.S. District Court for the Western District of North Carolina or a state court located in Mecklenburg County, and you agree to submit to the personal jurisdiction of such courts for the purpose of litigating all such claims. The laws of the State of North Carolina will govern these Terms, as well as any claim that might arise between you and us, without regard to conflict of law provisions.

### **Indemnification**

You agree to release, defend, indemnify, and hold ExPrep and its affiliates and subsidiaries, and their respective officers, directors, employees and agents, harmless from and against any claims, liabilities, damages, losses, and expenses, including without limitation reasonable legal and accounting fees, arising out of or in any way connected with your access to or use of the Services or your violation of these Terms. Specifically, you agree to indemnify ExPrep arising out of your submission to the Site of excel files created by a third party which did not consent to your use of their intellectual property.

### **Binding Arbitration**

YOU AGREE THAT ANY DISPUTE OR CLAIM ARISING OUT OF OR RELATING IN ANY WAY TO THESE TERMS, THE PRIVACY POLICY, YOUR ACCESS TO OR USE OF THE SERVICES OR THE PROPERTIES OR ANY RELATIONSHIP BETWEEN US (ANY OF THESE, A "DISPUTE")

WILL BE RESOLVED BY BINDING ARBITRATION RATHER THAN IN COURT. THERE IS NO JUDGE OR JURY IN ARBITRATION, AND COURT REVIEW OF AN ARBITRATION AWARD IS LIMITED.

The arbitration will be conducted by the American Arbitration Association (AAA) under its then-applicable rules, including (as appropriate) its Supplementary Procedures for Consumer-Related Disputes. The AAA's rules are available at <http://www.adr.org/>. Payment of all filing, administration and arbitrator fees will be governed by the AAA's rules. The arbitration shall be conducted in the English language by a single, independent, and neutral arbitrator. For any hearing conducted in person as part of the arbitration, you agree that the hearing will be conducted in Mecklenburg County, North Carolina. The decision of the arbitrator shall be final and binding. Judgment on the arbitral award may be entered in any court of competent jurisdiction.

### **Class Action Waiver**

ANY DISPUTE WILL BE CONDUCTED ONLY ON AN INDIVIDUAL BASIS AND NOT IN A CLASS, CONSOLIDATED OR REPRESENTATIVE ACTION OR ARBITRATION OR AS A NAMED OR UNNAMED MEMBER IN A CLASS, CONSOLIDATED, REPRESENTATIVE OR PRIVATE ATTORNEY GENERAL LEGAL ACTION. YOUR ACCESS AND CONTINUED USE OF THE PROPERTIES AND/OR THE SERVICES SIGNIFIES YOUR EXPLICIT CONSENT TO THIS WAIVER. IF FOR ANY REASON A CLAIM PROCEEDS IN COURT RATHER THAN IN ARBITRATION, WE EACH WAIVE ANY RIGHT TO A JURY TRIAL AND AGREE THAT SUCH CLAIM SHALL BE BROUGHT ONLY IN COURTS OF COMPETENT JURISDICTION LOCATED IN MECKLENBURG COUNTY, NORTH CAROLINA. YOU HEREBY SUBMIT TO THE PERSONAL JURISDICTION AND VENUE OF SUCH COURTS AND WAIVE ANY OBJECTION ON THE GROUNDS OF VENUE, FORUM NON-CONVENIENS OR ANY SIMILAR GROUNDS WITH RESPECT TO ANY SUCH PROCEEDING.

Notwithstanding anything to the contrary, you and ExPrep may seek injunctive relief and any other equitable remedies from any court of competent jurisdiction to protect intellectual property rights, whether in aid of, pending or independently of the resolution of any Dispute pursuant to the arbitration procedures set forth above.

### **Limitation of Liability**

YOU ACKNOWLEDGE AND AGREE THAT, TO THE MAXIMUM EXTENT PERMITTED BY LAW, ALL RISK ARISING OUT OF YOUR ACCESS TO AND USE OF THE SERVICES REMAINS WITH YOU. NEITHER EXPREP NOR ANY OTHER PARTY INVOLVED IN THE SERVICES WILL BE LIABLE (WHETHER BASED ON WARRANTY, CONTRACT, TORT (INCLUDING NEGLIGENCE), PRODUCT LIABILITY OR ANY OTHER LEGAL THEORY, AND WHETHER OR NOT EXPREP HAS BEEN INFORMED OF THE POSSIBILITY OF SUCH DAMAGE, EVEN IF A LIMITED REMEDY SET FORTH HEREIN IS FOUND TO HAVE FAILED OF ITS ESSENTIAL PURPOSE) FOR: (A) ANY INCIDENTAL, SPECIAL, EXEMPLARY OR CONSEQUENTIAL DAMAGES, INCLUDING LOST PROFITS, LOSS OF DATA OR LOSS OF GOODWILL; (B) SERVICE INTERRUPTION, COMPUTER DAMAGE OR SYSTEM FAILURE; (C) THE COST OF SUBSTITUTE PRODUCTS OR SERVICES; (D) ANY DAMAGES FOR PERSONAL OR BODILY INJURY OR EMOTIONAL DISTRESS ARISING OUT OF OR IN CONNECTION WITH THESE TERMS; (E) THE USE OF OR INABILITY TO USE THE SERVICES; OR (F) ANY COMMUNICATIONS, INTERACTIONS OR MEETINGS WITH OTHER USERS OF THE SERVICES OR OTHER PERSONS WITH WHOM YOU COMMUNICATE OR INTERACT AS A RESULT OF YOUR USE OF THE SERVICES.

IN NO EVENT SHALL THE TOTAL, AGGREGATE LIABILITY OF EXPREP AND ITS AFFILIATES AND SUBSIDIARIES, AND THEIR RESPECTIVE OFFICERS, DIRECTORS, EMPLOYEES AND AGENTS, ARISING FROM OR RELATING TO THE TERMS AND SERVICES, OR FROM THE USE OF OR INABILITY TO USE THE SERVICES OR INTERACTIONS WITH ANY OTHER USERS EXCEED THE TOTAL AMOUNT OF FEES ACTUALLY PAID TO EXPREP BY YOU ACCORDING TO THE TERMS, OR ONE HUNDRED US DOLLARS (\$100) IF NO SUCH PAYMENTS HAVE BEEN MADE.

### **Disclaimer**

Your access to and use of the Services is at your own risk. You understand and agree that the Services are provided to you on an “AS IS” and “AS AVAILABLE” basis. Without limiting the foregoing, to the maximum extent permitted under applicable law, EXPREP DISCLAIMS ALL WARRANTIES AND CONDITIONS, WHETHER EXPRESS OR IMPLIED, OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR NON-INFRINGEMENT. ExPrep does not guarantee that the Services will be error-free.

### **Miscellaneous Terms**

This Agreement is effective until terminated by ExPrep. ExPrep may terminate this Agreement at any time without notice or suspend or terminate your access and use of the Site at any time, with or without cause, in ExPrep’s sole discretion and without notice. The following provisions of this Agreement shall survive termination of your use or access to the Site: the sections concerning Disputes, Indemnification, Binding Arbitration, Class Action Waiver, Limitation of Liability, and Miscellaneous Terms, and any other provision that by its terms is intended to survive your use or access to the Site.

These Terms, and any rights and licenses granted hereunder, may be transferred or assigned by you only with ExPrep's prior written consent, but may be assigned by ExPrep without restriction and without notice to you.

#### **Disclaimer.**

These Terms constitute the entire agreement between you and ExPrep concerning the Services and supersede all prior or contemporaneous communications of any kind between you and ExPrep with respect to the Services. If any provision of these Terms is held by a court or other tribunal of competent jurisdiction to be invalid, void, or unenforceable, such provision shall be limited or eliminated to the minimum extent necessary and replaced with a valid provision that best embodies the intent of these Terms, and the remainder of these Terms shall remain in full force and effect.

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

We reserve the right to modify, restrict access to, or discontinue the Services (or any portion of the Services), temporarily or permanently, with or without notice to you, and we are not obligated to support or update the Services. Unless explicitly stated otherwise, any new features that result in a change the current Services shall be subject to these Terms.

Neither these Terms nor the Privacy Policy create any right of action on the part of any third party, except for the ExPrep Parties and suppliers or others who are party to written agreements with us explicitly giving them third party beneficiary rights.

**Contact Us**

If you have questions about these Terms, please contact us by email at [contact@excelpreparation.com](mailto:contact@excelpreparation.com).