

*Updated: October 21, 2022*

## **PREPLY BUSINESS TERMS**

By agreeing to an order form or any other document that incorporates Preply Business Terms (an “**Ordering Document**”) Preply, Inc. (also referred to as “**Preply**”, “**we**” and “**us**”), a corporation registered and organized under the laws of the State of Delaware with its principal place of business at 1309 Beacon Street, Suite 300, Brookline, MA 02446, USA and the Customer (as defined below) agree that these Preply Business Terms (“**Business Terms**”) shall govern the relationship between the parties as to any services provided or to be provided to the Customer as outlined in such Ordering Document.

The Ordering Document may include specific terms governing one or more of the following services: (a) the right to access and use the Preply online language learning platform (the “**Platform Services**“), (b) account management and support services, or (c) any other services including language placement testing or trials, and access to Preply Materials as defined below, and together with any other services provided by Preply, shall be defined as the “**Preply Business Services**“.

The Ordering Document and these Business Terms together constitute the agreement between the parties and are referred to collectively herein as the “**Agreement**”. In the event of any conflict or inconsistency between the Ordering Document and these Business Terms, the Ordering Document shall prevail.

### **1. DEFINITIONS**

**Authorized Users** – employees or contractors of the Customer (or other individuals to the extent explicitly permitted in the Ordering Document) selected by the Customer to access and use the Platform Services according to an applicable Ordering Document, which are students of Preply Platform.

**Confidential Information** – any written, oral, machine-readable, or graphic information disclosed or provided by either party to the other under the Agreement, that is designated as confidential at the time of disclosure or which is of such a nature that a person exercising reasonable business judgment would understand to be confidential or proprietary.

**Customer** (whether identified as “**you**”, “**Customer**”, or “**Client**”) – the entity that signs the Ordering Document.

**Effective Date** – the earliest to occur of the effective date of the initial Ordering Document that references these Business Terms, or the date you first access or use any Platform Services.

**Fees** – all amounts payable for Preply Business Services under an applicable Ordering Document.

**Intellectual Property Rights** – patents, utility models, rights to inventions, copyright and neighboring and related rights, moral rights, trademarks and service marks, business names and domain names, rights in get-up and trade dress, goodwill, and the right to sue for passing off or unfair competition, rights in designs, rights in computer software, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how and trade secrets) and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world.

**Preply Materials** - proposals, presentations, reports, language assessment tests and results, other related information, and documents, that the Customer or its Authorized Users can download, print, save, or that which are incorporated into other materials or the Preply Platform, and which constitute Preply’s Intellectual Property.

**Preply Business** – Preply offering, specifically tailored for companies (legal entities), wishing to provide language training as a perk to their employees or contractors.

**Preply Business Balance** – payment made by the Customer against the language learning allowance, which is converted into credits on the Preply Platform, which can then be allocated among the Authorized Users.

**Preply Platform** - website located at [www.preply.com](http://www.preply.com) and its sub-domains, related mobile application, and software.

## **2. PREPLY BUSINESS SERVICES**

**2.1. Platform Services.** Preply provides access to the e-learning platform available at [www.preply.com](http://www.preply.com) allowing Authorized Users to connect with tutors for online language learning. Platform Services are provided on a pre-paid, subscription basis. You and your designated Authorized Users may access and use the Platform Services during the Term subject to the terms of the applicable Ordering Document.

### **2.2. Preply Success Program and Business Activation Services:**

**2.2.1.** Preply will provide you and your Authorized Users with the account management and support services included under the Preply Success Program or Business Activation as specified in the Ordering Document.

**2.2.2.** If such services are not specified on an Ordering Document, your support shall be limited to Help Center documentation available at <https://help.preply.com/en/> and Preply’s online support available on the Preply Platform.

### 3. AUTHORIZED ACCESS AND USE

#### 3.1. Authorized Users:

- 3.1.1. The Customer shall be entitled to designate persons as Authorized Users up to the number of Authorized Users subscribed as stated in the Ordering Document. Should the Customer designate additional persons as Authorized Users beyond the number subscribed, such designation may be deemed by Preply, to be confirmed by notice to the Customer, as Customer's subscription to such additional number of Authorized Users. In the event of such subscription, Preply may charge the Customer a corresponding additional Fee equal to the prevailing per-Authorized User rate multiplied by the period from the date of notice hereunder until the end of the then-current Term.
- 3.1.2. The number of Authorized Users subscribed as stated in the Ordering Document may not be decreased during the subscription period.
- 3.1.3. Subscriptions are for named Authorized Users only and cannot be shared or used by more than one person. The Customer may reassign Authorized User designations at any time during the subscription period, replacing those who no longer require the use of the Platform Services.
- 3.1.4. Separate credentials (e.g., user IDs and passwords) must be obtained via the Platform Services for each Authorized User.
- 3.1.5. Sharing of the Authorized User credentials is not permitted.

- 3.2. **Responsibility for the Authorized Users.** The Customer shall at all times be responsible for and expressly assumes the risks associated with the use of the Preply Business Services under an Authorized User's account (including for the payment of Fees related to such use), provided such action was not (a) taken by Preply or by a party acting under Preply's direction, or (b) an action by a third party Preply should reasonably have prevented.

### 4. TERM, TERMINATION, AND EFFECT OF TERMINATION

- 4.1. **Term.** The term of this Agreement shall commence on the Effective Date and continue until the stated term in all Ordering Documents has expired or has been terminated. Subscriptions to the Preply Business Services commence on the subscription start date and are for a period, as set forth in the applicable Ordering Document ("**Initial Term**").
- 4.2. **Automatic Renewal.** Except as otherwise expressly outlined in an Ordering Document, upon the expiry of the Initial Term, subscriptions to the Preply Business

Services will automatically renew for additional periods of the same duration (each a “**Renewal Term**” and collectively with the Initial Term, the “**Term**”), unless either party gives the other notice of non-renewal at least 30 days prior to the end of the then-current Term.

- 4.3. **Termination.** This Agreement may be terminated (a) by Preply upon 30 days prior written notice if the Customer fails to pay the Fees pursuant to the operative Ordering Document, or (b) by either party upon giving to the other party a 30 days prior written notice if the other party is in material breach of the Agreement and the breaching party fails to cure such breach prior to the end of the notice period.
- 4.4. **Effect of Termination.** In the event this Agreement is terminated due to a material breach on Preply’s side, Preply shall refund to the Customer the portion of unused Fees related to the Preply Business Services not yet provided. Upon termination or expiry of the Agreement, the obligations which by their nature are intended to survive the termination or expiry of the Agreement shall survive.

## 5. FEES AND TAXES

- 5.1. **Prepaid Services.** Preply Business Services are provided on a prepaid basis. You acknowledge and agree that your and your Authorized Users’ continued access to the Preply Business Services is contingent upon the timely payment of Fees.
- 5.2. **Invoicing and Payment.** The first invoice under this Agreement shall be issued to the Customer upon the signing of the Ordering Document. Thereafter, the Customer shall be invoiced in accordance with the billing frequency and payment terms set forth in the Ordering Document for the amount(s) outlined therein. Notwithstanding the foregoing, invoices shall be issued in the event the Customer wishes to designate new Authorized Users.
- 5.3. **Late Payment.** If the Customer fails to timely pay the Fees, Preply may, without limiting its rights and remedies: (a) suspend the Customer and its Authorized Users’ access to the Preply Business Services until the amounts owed are paid in full; (b) terminate the Agreement, or (c) accelerate the payment of the Fees such that all unpaid Fees shall be immediately payable; and (d) charge the Customer interest on the outstanding amount at the rate of 1.5% per month or the maximum rate permitted by law, whichever is lower. Such suspension of the access to the Preply Business Services shall not release the Customer from its obligation to pay the Fees or extend the subscription period.
- 5.4. **Currency and Taxes.** Fees are in US Dollars and exclude sales tax, use tax, withholding tax, and VAT, where applicable.

**5.5. Transactional Charges.** All charges of correspondent banks are at the parties' own expense.

**5.6. Refund.** Except as otherwise expressly stated in the Ordering Document, all Fees paid to Preply are nonrefundable.

## **6. CONFIDENTIALITY**

Each party shall treat all Confidential Information received from the other party as strictly confidential, use it exclusively for the purpose of fulfilling its undertakings as set out in the Agreement, and shall not disclose any portion of it to any third party, without obtaining the prior written permission of the disclosing party. The receiving party shall restrict access to Confidential Information, and may only distribute it on a strictly need-to-know basis to affiliates, employees, consultants, subcontractors, or corporate officers who have entered into corresponding confidentiality obligations and who need access to the Confidential Information for performing obligations under the Agreement.

The party receiving Confidential Information shall not under any circumstances use a lesser degree of care in safeguarding the Confidential Information than it uses for its own confidential information, and upon discovery of any unauthorized disclosure of Confidential Information, it shall immediately notify the disclosing party and use its best efforts to prevent any further disclosure or unauthorized use thereof.

The foregoing shall not apply to any Confidential Information that: (a) is in the public domain at the time of disclosure or later becomes part of the public domain through no fault of the receiving party; (b) was known to the receiving party prior to disclosure by the disclosing Party without obligation of confidentiality or is independently developed by the receiving party (without any use of Confidential Information), in each case as evidenced by the receiving party; (c) is disclosed to the receiving party by a third party who had the right to furnish such Confidential Information; (d) is required to be disclosed by operation of law or court order and is not protected by any claim of privilege, provided the receiving party attempts to notify the disclosing party prior to disclosure and any available governmental or judicial protection is obtained by the receiving party; or (e) is required to be disclosed under a party's contract with a recognized stock exchange.

## **7. INTELLECTUAL PROPERTY**

**7.1. Right to access and use the Preply Business Services and Preply Materials.** Preply grants to the Customer a revocable, non-transferable, non-sublicensable, non-exclusive, limited right to access and use the Preply Business Services and Preply Materials during the Term and under the terms and conditions set forth herein.

- 7.2. Ownership of Preply Business Services and Preply Materials.** Except for the limited right expressly set forth herein, Preply retains all Intellectual Property Rights and all other proprietary rights related to Preply Business Services and Preply Materials. The Customer agrees that the Preply Business Services and Preply Materials are provided on a non-exclusive basis and that no transfer of ownership of Intellectual Property Rights will occur. The Customer further acknowledges and agrees that portions of the Preply Business Services and Preply Materials, including but not limited to the source code and the specific design and structure of individual modules or programs, constitute or contain trade secrets and other Intellectual Property Rights of Preply.
- 7.3. Feedback.** You are under no obligation to provide any suggestions, enhancements, or requests for improvement or modification, comments, ideas, reviews, recommendations, corrections, or other feedback regarding Preply Business Services (“**Feedback**”). If you decide to provide Feedback to us, you hereby grant Preply a worldwide, perpetual, irrevocable, royalty-free right to use, disclose, and incorporate into the Preply Business Services, or any future Preply, its affiliates, or partners’ product or service, without Customer’s consent, at Preply’s sole discretion, any such Feedback. For the avoidance of doubt, Feedback shall not be considered Confidential Information under the Agreement.

## **8. DATA PROTECTION**

The Customer, as an employer, hereby confirms that it collects and processes the personal data of its Authorized Users on a legal basis. The Customer is entitled to share its Authorized User’s personal data (name and contact details) with Preply as necessary in order to provide the Customer and its Authorized Users with the Platform Services.

The parties agree that, for the purposes of applicable data protection legislation, Preply, to the extent it processes Personal Data of the Customer’s Authorized Users, processes Personal Data as an independent data controller in its own right. Preply shall fulfill the relevant obligations under applicable data protection legislation in this regard. Upon the activation of the Authorized User account on the Preply Platform by a Customer’s employee or contractor, their personal data shall be processed and used in accordance with [Preply Privacy Policy](#).

## **9. LIABILITY**

### **9.1. Warranty Disclaimer**

Preply hereby specifically disclaims all implied warranties, conditions, and other terms, including, without limitation, implied warranties of merchantability, satisfactory quality, non-infringement of third-party rights, or fitness for a particular purpose. Notwithstanding

anything to the contrary contained in the Agreement, Preply is not responsible for results obtained from the use of Preply Business Services.

## **9.2. Limitation of Liability**

Except with respect to liability that cannot be excluded or limited by applicable laws, neither party will have any liability for (i) indirect, incidental, special, punitive, or consequential loss or damages; (ii) lost profits or revenue; (iii) loss from damage to business or goodwill; (iv) loss of data; or (v) loss arising from unexpected results arising from the use of the Preply Business Services, regardless of whether such party has been advised of the possibility of such losses or damages arising.

Except with respect to liability arising out of personal injury or death caused by the negligence of a party, its employees, affiliates, or agents, in no event will the aggregate liability of each party arising out of or related to the Agreement exceed the total amount paid by the Customer for the Preply Business Services giving rise to the liability in the 12 months preceding the first incident out of which the liability arose. The foregoing limitation will apply whether an action is in contract or tort and regardless of the theory of liability.

Notwithstanding anything contained herein, any liability relating to the Preply Business Services provided free of charge or during a free trial period, will be limited to five hundred US Dollars (USD 500.00).

## **9.3. Waiver of Class Action**

Any claims brought by you or Preply must be brought in that party's individual capacity, and not as a plaintiff or class member in any purported class or representative proceeding.

## **10. REFERENCES**

Preply may disclose the fact that the Customer is a customer of Preply to its existing and potential customers and reference the Customer or Customer's business in the normal course of Preply's business, subject to Preply's confidentiality obligations set forth in this Agreement. The Customer hereby agrees that Preply may use the Customer's name and logo for its marketing efforts unless and until such authorization is revoked in writing.

## **11. EXPORT COMPLIANCE**

The Customer represents that it is not named on any U.S. government list of persons or entities with which U.S. persons are prohibited from transacting, nor owned or controlled by or acting on behalf of any such persons or entities, and the Customer will not (a) access or use the Preply Business Services in any manner that would cause any party to violate any U.S. or international embargo, export control law, or prohibition; (b) permit access to or use of any Preply Business Services in any country where such access or use is subject to a trade embargo or prohibition, or

(c) use the Preply Business Services in support of any controlled technology, industry, or goods or services without having a valid governmental license, authority, or permission to engage in such conduct.

## **12. AMENDMENTS TO THESE BUSINESS TERMS**

Preply may suggest amendments or modifications to these Business Terms at any time, by posting a revised version on the [www.preply.com](http://www.preply.com) website. Preply will provide you with notice whenever such amendments are material. Nevertheless, during the Initial Term, the relationships between the Customer and Preply are subject to the then-current Terms as of the Effective Date. Within each Renewal Term, the most current version of the Business Terms shall apply. Without limiting the foregoing, no Customer's purchasing document (including, but not limited to terms of purchase, master services agreement, order form, or purchase order) will be deemed to modify this Agreement unless expressly pre-authorized in writing by Preply.

## **13. NOTICES**

You hereby agree to the use of (a) electronic means to conduct this Agreement and deliver any notices under these Business Terms, and (b) electronic records to store information related to these Business Terms or your use of the Preply Business Services.

Any notice delivered to you by Preply under these Business Terms will be delivered by email to the email address indicated in the Ordering Document. Any notice delivered by you to Preply under these Business Terms will be delivered by contacting Preply at [enterprise@preply.com](mailto:enterprise@preply.com).

## **14. DISPUTE RESOLUTION**

If the respective dispute resulting from these Business Terms could not be settled by negotiations, then the dispute shall be finally resolved as set forth below.

All disputes arising out of or relating to these Business Terms shall be finally resolved by individual arbitration. The arbitration will be conducted in Delaware, USA. The individual arbitration must be before a single arbitrator conducted in the English language under the Commercial Arbitration Rules of the American Arbitration Association (AAA).

Any arbitration under these Business Terms will be between you and Preply. To the fullest extent permitted by applicable law, and except as expressly provided below, you and Preply expressly waive any entitlement to resolve disputes in court or on a class, collective or representative basis. You and Preply shall appoint as sole arbitrator a person mutually agreed by you and Preply or, if you and Preply cannot agree within 30 days of either party's request for arbitration, such single arbitrator shall be selected by the AAA upon the request of either party.

The parties shall bear equally the cost of the arbitration except (a) to the extent prohibited by applicable law; (b) that if the arbitrator determines that costs unique to arbitration (i.e., filing,



administration and arbitrator's fees) would preclude a Student from asserting a claim in arbitration, the arbitrator may require Preply to pay a greater share of such costs unique to arbitration; and (c) the prevailing party shall, to the extent permitted or required by applicable law, be entitled to an award of reasonable attorneys' fees and costs incurred in connection with the arbitration in such an amount as may be determined by the arbitrator.

All decisions of the arbitrator shall be final and binding on both parties and enforceable in any court of competent jurisdiction. Notwithstanding this, application may be made to any court for a judicial acceptance of the award or order of enforcement. Notwithstanding the foregoing, each party shall be entitled to seek temporary injunctive relief, security or other equitable remedies from the United States District Court for the District of Delaware or any other court of competent jurisdiction.

## **15. GOVERNING LAW**

These Business Terms shall be governed by and construed in accordance with the laws of the State of Delaware.

## **16. NON-SOLICITATION AND NON-CIRCUMVENTION**

The Customer agrees that during the Term of this Agreement and for 1 year after its termination or expiry, the Customer will not solicit, seek or offer any employment or business cooperation to employees or consultants, who were during the Term of this Agreement, employed by or providing services to Preply or were involved in any form or capacity in the performance of the Agreement.

The Customer agrees that during the Term of the Agreement and for a period of 1 year after its termination or expiry, the Customer will not provide or accept services, solicit or seek business in any form or capacity, in each case whether directly or indirectly, from any tutor providing tutoring services to the Authorized Users via the Preply Platform, without Preply's prior written consent.

## **17. SEVERABILITY**

If any provision of these Business Terms is held to be unlawful, void, or unenforceable, such provision will be deemed severable and shall not affect the validity and enforceability of the remaining provisions. In that event, the parties shall replace the affected provision with an enforceable provision that, to the greatest extent possible, approximates the intent and economic effect of the affected provision.

## **18. CONTACTS**

For additional information and in case you have any questions about these Business Terms, please contact [business.solutions@preply.com](mailto:business.solutions@preply.com).