

# ExpressVPN Terms of Service

**Commented [WF1]:** Last Updated: Generally, a TOS agreement should start with when it was last updated. **This one does not.**

This Terms of Service document (the “**Terms**”) outlines the terms and conditions of use of the VPN services (the “**Services**” or “**Service**”) provided by Express VPN International Ltd. (“**ExpressVPN**”). These Terms also govern the use of and access to ExpressVPN’s content (the “**Content**”), which includes the ExpressVPN website (the “**Site**”), applications (the “**Apps**”), and any software provided by ExpressVPN (the “**Software**”).

**Commented [WF2]:** Clear articulation of equal terms as used in Terms of Service Agreement.

By agreeing to these Terms, you are also agreeing to the Privacy Policy (“**Privacy Policy**”), which you can read here.

**Commented [WF3]:** Privacy Policy is located on a separate page of the website. No hyperlink provided on this page.

## 1. Acceptance

By accessing the Content or Services, you are agreeing on behalf of yourself or those you represent (“you”) to comply with and be legally bound by these Terms in their entirety. These Terms constitute a legally binding agreement (the “**Agreement**”) between you and ExpressVPN. If you do not agree with any part of the Terms, you may not use our Services.

By creating an account for using our Services, you represent that you are at least eighteen (18) years of age or that you are a valid legal entity, and that the registration information you have provided is accurate and complete.

## 2. Modification

ExpressVPN may update the Terms from time to time **without notice**. If you continue to use ExpressVPN's Services, Content, Site, Apps, or Software after these changes take effect, then you agree to the revised Terms. The current version of the Terms is available on the Site. You understand and agree that it is your obligation to review these Terms from time to time in order to stay informed on current rules and obligations. Notification on **any core changes** to the Terms will be provided to subscribers through an email message or update to the Site. Your use of the Content or Services following the changes to these Terms constitutes your acceptance of the changed Terms.

**Commented [WF4]:** Without notice is a common standard. However, without a **Last Updated** section this method of notice is inadequate.

**Commented [WF5]:** Vague – undefined term for when email/website update is provided.

Consider adding "What constitutes a core change will be determined at our sole discretion."

## 3. Privacy Policy

ExpressVPN is committed to your privacy and does not collect or log browsing history, traffic destination, data content, or DNS queries from Subscribers connected to our VPN. During your registration, we may collect some sensitive personal information, such as your email address and payment

information. We only collect information that are necessary for the proper delivery of the Site and Services.

**Commented [WF6]:** \*GRAMMAR\* is

For the sake of clarity and transparency, we have placed all information related to data collection in a separate document known as the Privacy Policy, which is available on the Site. Please review the Privacy Policy in its entirety to get a clear understanding of how we handle your sensitive data.

**Commented [WF7]:** Entire section is not needed because there is a separate Privacy Policy, and this TOS already discusses how to access it.

## 4. Subscriptions

**Commented [WF8]:** This section clearly laid out Subscription information and ExpressVPN's policy regarding changes to subscriptions.

ExpressVPN Services are available to you upon registration on the Site. By subscribing to the Services, you agree to become a subscriber ("Subscriber") for the period you have elected. A full list of subscription plans and pricing is available on the Site. ExpressVPN reserves the right to amend subscription fees or institute new fees at any time upon reasonable advance notice posted on the Site or sent via email. Any changes to the pricing will not affect the Subscriber's current subscription period and will become effective upon subscription renewal.

When supported by your payment method, plans renew automatically by default at the completion of the billing term. By default, the renewal term is for the same duration as the billing term for the original subscription. The subscription fee will be charged automatically to the payment method you last selected. If you would like to discontinue automatic renewal, you may sign in to the Site and turn off auto-renewal. By default, auto-renewal is turned on when you use a payment method that supports auto-renewal (such as a credit card or Paypal), and turned off when you use a payment method that does not support auto-renewal (such as bitcoin).

Each paid subscription grants you one (1) license to use on three (3) different devices at any given time. If you want to use the Services on more than three devices at a time, then you can either (i) use ExpressVPN on your router, (ii) purchase additional subscription plans, or (iii) purchase additional licenses through the 'volume licensing' option. For more information on 'volume licensing' program, please contact Support.

## 5. Refund Policy

You may cancel your account with a full refund within 30 days of your initial purchase ("Money Back Guarantee").

Refunds beyond the 30-day purchase window will be considered, at the sole discretion of ExpressVPN, if a Subscriber can demonstrate that the Service was not available or usable during the subscription period and that reasonable attempts were made to contact ExpressVPN to resolve the issue. In this case, ExpressVPN may provide the Subscriber with a pro-rata refund of service fees paid during the period when the Service was not available or usable.

Refunds are generally processed within seven (7) days, and are made to the original form of payment used for purchase. All refunds are sent in USD and therefore the refund amount could differ from the amount originally paid in local currency or bitcoin.

Any change to the original purchase, such as upgrading to an extended billing term or purchasing of additional licenses under the same account, shall constitute a waiver of the Money Back Guarantee option. To request a refund

under the Money Back Guarantee, send an email with your request to the following email address:

[support@expressvpn.com](mailto:support@expressvpn.com)

## 6. Acceptable Use Policy

ExpressVPN Services may be accessed from all around the world, so it is your responsibility to assess whether using the Site, Apps, Software, or Services is in compliance with local laws and regulations. Whenever you use the Site, Apps, Software, or Services, you should comply with these Terms and applicable laws, regulations, and policies.

**Commented [WF9]:** \*\*\*REPLACE\*\*\* all

You understand that it is your responsibility to keep your ExpressVPN account information confidential. You are responsible for all activity under your account. If you ever discover or suspect that someone has accessed your account without your authorization, you are advised to inform us immediately so that we may revoke your account credentials and issue new ones.

**Commented [WF10]:** \*\*\*Clarity Edit\*\*\*By agreeing to these Terms, [y]ou understand...

ExpressVPN aims to provide the best service possible to all of our Subscribers. In that sense, we require that you do not misuse our Content or Services. A misuse refers to any use, access, or interference with the Content or Services contrary to the Terms or applicable laws and regulations.

In order to protect the Services from being misused or used to harm someone, ExpressVPN reserves the right to take appropriate measures when our Services are being used contrary to these Terms and applicable laws. You

agree that ExpressVPN may terminate your account, without providing a refund for Services already paid, if you misuse the Service.

In using our Services, you agree not to:

- Send or transmit unsolicited advertisements or content (i.e., "spam") over the Service;
- Send, post, or transmit over the Service any content which is illegal, hateful, threatening, insulting, or defamatory; infringes on intellectual property rights; invades privacy; or incites violence.
- Upload, download, post, reproduce, or distribute any content protected by copyright or any other proprietary right without first having obtained permission from the owner of the proprietary content.
- Upload, download, post, reproduce, or distribute any content that includes sexual or explicit depictions of minors.
- Engage in any conduct that restricts or inhibits any other Subscriber from using or enjoying the Service.
- Attempt to access, probe, or connect to computing devices without proper authorization (i.e., any form of "hacking").
- Attempt to compile, utilize, or distribute a list of IP addresses operated by ExpressVPN in conjunction with the Service.
- Use the Service for anything other than lawful purposes.

**Commented [WF11]:** \*\*\*GRAMMAR/CLARITY\*\*\* "[While] using . . ."

**Commented [WF12]:** \*\*\*PUNCTUATION\*\*\* All bullet points should end with ";" except for the final bullet point.

## 7. License

Subject to your compliance with these Terms, ExpressVPN grants to you a non-exclusive and limited license to download and use the Software. Modifying, distributing to unauthorized parties, reverse engineering, or otherwise using the Software in any way not expressly authorized by ExpressVPN is strictly prohibited.

Usage of any material which is subject to ExpressVPN's intellectual property rights is prohibited unless you have been provided with explicit written consent by ExpressVPN.

## 8. Language and Translation of Content

All of our Content was originally written in English. Any translation of our Content is done on a best-effort basis. We cannot guarantee the accuracy of translated Content. In the event of any discrepancy between the translated Content and the English Content, the English Content shall prevail.

**Commented [WF13]:** This borders on unfair business practice. If an individual receives a faulty translation of services to another language this section put the liability directly on the customer.

## 9. Third-party Websites

ExpressVPN may provide you with content belonging to Third Parties ("Third Parties") or links leading to third-party websites. ExpressVPN is not responsible for the availability of the content provided by Third Parties as they

are not under the control or supervision of ExpressVPN, and they may have different terms of use and policies. Your access through our Services to any website, service, or content provided by Third Parties does not indicate any relationship between ExpressVPN and such Third Parties.

**Commented [WF14]:** Depending on the link(s) ExpressVPN allows on their website there could be an issue with intervening sites and user privacy.

## 10. Disclaimers

We will strive to prevent interruptions to the Site and Services. However, these are provided on an “as-is” and “as-available” basis, and we do not warrant, either expressly or by implication, the accuracy of any materials or information provided through the Site or Service, or their suitability for any particular purpose. We expressly disclaim all warranties of any kind, whether express or implied, including but not limited to warranties of merchantability or fitness for a particular purpose, or non-infringement. We do not make any warranty that the Services will meet your requirements, or that it will be uninterrupted, timely, secure, or error-free, or that defects, if any, will be corrected. You acknowledge that you access the Site and Services at your sole risk and discretion.

VPN service coverage, speeds, server locations, and quality may vary. ExpressVPN will attempt to make the Service available at all times. However, the Service may be subject to unavailability for a variety of factors beyond our control, including but not limited to emergencies; third-party-service failures; or transmission, equipment, or network problems or limitations, interference, or signal strength; and may be interrupted, refused, limited, or curtailed. We are not responsible for data, messages, or pages lost, not delivered, delayed, or misdirected because of interruptions or performance issues with the Service, communications services, or networks. We may impose usage or Service



limits, suspend Service, terminate VPN accounts, or block certain kinds of usage in our sole discretion to protect Subscribers or the Service. The accuracy and timeliness of data received is not guaranteed; delays or omissions may occur.

ExpressVPN reserves the right to investigate matters we consider to be violations of these Terms. We may, but are not obligated to, in our sole discretion and without notice, remove, block, filter, or restrict by any means any materials or information that we consider to be actual or potential violations of the restrictions set forth in these Terms, and any other activities that may subject ExpressVPN or our customers to liability. ExpressVPN disclaims any and all liability for any failure on our part to prevent such materials or information from being transmitted over the Service and/or into your computing device.

Commented [WF15]: \*\*\*REPLACE\*\*\* all

## 11. Limitations of Liability

ExpressVPN shall not be liable and shall not have responsibility of any kind to any Subscriber or other individual for any loss or damage that you incur in the event of:

- i. any failure or interruption of the Site or Service;
- ii. any act or omission of any Third Party involved in making the Site or Service or the data contained therein available to you;
- iii. any other cause relating to your access or use, or inability to access or use, any portion of the Site or its Content;

- iv. your interactions on the Site or Service;
- v. your failure to comply with this Agreement;
- vi. the cost of procurement of substitute goods or services; or
- vii. unauthorized access to or alteration of your transmissions or data, whether or not the circumstances giving rise to such cause may have been within the control of ExpressVPN or of any vendor providing software, services, or support for the Site or Service.

In no event will ExpressVPN, its partners, affiliates, subsidiaries, members, officers, or employees be liable for any direct, special, indirect, consequential, or incidental damages, or for any other loss or damages of any kind, even if they have been advised of the possibility thereof. The foregoing shall not apply to the extent prohibited by applicable law.

## 12. Indemnification

You agree to indemnify, defend, and hold harmless ExpressVPN, its officers, directors, employees, members, partners, agents, and suppliers, and their respective affiliates, officers, directors, employees, members, shareholders, partners, and agents, from any and all claims and expenses, including attorneys' fees, arising out of your use of the Content and Service, including but not limited to your violation of this Agreement. We may, at our sole discretion, assume the exclusive defense and control of any matter subject to indemnification by you. The assumption of such defense or control by us, however, shall not excuse any of your indemnity obligations.

## 13. Choice of Law

This Agreement shall be governed by and construed in accordance with the laws of the **British Virgin Islands**, excluding its rules governing conflicts of law.

**Commented [WF16]:** Does not appear to fall under EU law, although there were no immediate sources on local law and the industry tends to follow EU law.

## 14. Arbitration

All disputes arising out of or relating to this Agreement or the use of the Site or Services shall be finally settled under the Rules of Arbitration (“Rules”) of the International Centre for Dispute Resolution (ICDR) by one arbitrator (“Arbitrator”) appointed in accordance with said Rules. The arbitration shall be conducted in Road Town, Tortola, British Virgin Islands, unless all parties agree otherwise by a signed written agreement.

**Commented [WF17]:** Mandatory arbitration typically favors the business and not the individual user.

There are more comments below, but the arbitration section is my biggest issue with the TOS agreement. As you will see below the terms are inconsistent.

(Ex: In one area ExpressVPN claims one can only recover the cost of the service, yet a few paragraphs below the agreement outlines other costs that can be recovered (i.e. attorney fees, costs of arbitration, and the fact the arbitration is non-binding))

The Arbitrator must be qualified and have a background in the area of computer networks, including but not limited to the internet.

The Arbitrator shall have the authority to permit an expedited exchange of documents, but any discovery shall be limited to document requests and interrogatories. The Arbitrator shall have no power or authority to add to or detract from this Agreement, and the costs of the arbitration shall be borne equally, except as described below.

The arbitration shall be conducted on an expedited schedule. The arbitration must be concluded, and an award issued, no later than one hundred and twenty (120) days following the filing of the demand for arbitration, unless all

parties to the arbitration proceeding agree in writing to an extension of time or continuance.

Subject to any applicable law to the contrary, you agree that any cause of action arising out of or related to the use of our Site or Services must be commenced within one (1) year after the cause of action accrues, or such action will be permanently barred.

**Commented [WF18]:** \*\*\*SPELLING\*\*\* country

**Commented [WF19]:** Limitation periods in the BVI are as follows (BVI Limitation Act 1961): Contract and **tort** claims: six years from the date on which the cause of action accrued.

\*\*Bad Section

In the event that ExpressVPN is the respondent in any such arbitration, damages awarded against ExpressVPN may not exceed the amount you have paid ExpressVPN for use of the Service.

**Commented [WF20]:** Liquidated damages? Generally, damages are for the arbitrator to decide and not the terms proving for an arbitrator.

The Arbitrator shall have the authority to grant any temporary, preliminary, or injunctive relief in a form substantially similar to that which would otherwise be granted by a court of law. The Arbitrator shall have no authority to award punitive damages. The resulting arbitration award may be enforced, or injunctive relief may be sought, in any court of competent jurisdiction in the British Virgin Islands. Reasonable costs (including all costs of arbitration) and attorney's fees shall be awarded against the party that commenced the arbitration, in the event that party does not prevail in the arbitration.

**Commented [WF21]:** Non-binding arbitration.

The parties subject to this arbitration provision include ExpressVPN, its officers, directors, and employees, and any company or legal entity which is a parent, subsidiary, or sister company to ExpressVPN, or with which ExpressVPN has contracted to provide services to Subscribers through ExpressVPN.

## 15. Final Provisions

If any provision in this Agreement is held invalid or unenforceable, that provision shall be construed in a manner consistent with applicable law to reflect the original intent of the provision, and the remaining provisions of this Agreement shall remain in full force and effect. Any failure to exercise or enforce any right or the provision of this agreement shall not constitute a waiver of such right or provision.

### More Comments:

I use a list necessary sections for Terms of Service agreements and Privacy Policies to determine whether all the necessary components of the policy were present. In this case I found everything except for a **(Last Updated)** section was included in ExpressVPN's disclosures. Generally, all agreements must have a date that tells a user when the Privacy Policy and Terms of Service Agreement were last updated. ExpressVPN does not.

### Section 8. Language and Translation of Content.

- This section puts the liability for mistranslations from English to any other language of the VPN software onto the consumer. While not unethical, it was an odd addition, given how easy it is to update software and remedy language errors.

### Section 14. Arbitration

- The arbitration clause has a few inconsistencies. First, it imposes a 1 year Statute of Limitations on claims against ExpressVPN, Limitation periods in the British Virgin Islands, where this organization operates, are as follows, "(BVI Limitation Act 1961): Contract and **tort** claims: six years from the date on which the cause of action accrued."
- There are also some contradictory terms. For example – it offers a single remedy for arbitration in one paragraph (i.e. payment in full for services), and then offers alternative remedies in the next paragraph (i.e. attorney fees, damages).
  - o Generally the rules in the British Virgin Islands will apply

