

TERMS OF SERVICE

Effective: June 7, 2024

Welcome to our website (the “**Site**”), owned and operated by Excel Sports Management, LLC (the “**Company**”, “**we**”, “**us**”, “**our**”). Please read these Terms of Service (the “**Terms**”) carefully before using the Services (as defined below). These Terms govern your use of and access to the Site, all related mobile apps, tools, downloads, products and services that we may offer from time to time (collectively, the “**Services**”).

THIS IS A LEGAL AGREEMENT (“**AGREEMENT**”) BETWEEN YOU, THE END USER, AND THE COMPANY. PLEASE READ THIS AGREEMENT CAREFULLY BEFORE CONTINUING TO USE THE SERVICES. BY USING THE SERVICES, YOU ARE AGREEING TO BE BOUND BY, AND ARE BECOMING A PARTY TO, THIS AGREEMENT. IF YOU DO NOT AGREE TO THE TERMS OF THIS AGREEMENT, DO NOT USE ANY SERVICES. YOUR USE OF THE SERVICES MEANS THAT YOU AGREE TO THE TERMS OF THIS AGREEMENT.

BY ACCESSING OR USING THE SERVICES, (1) YOU ACKNOWLEDGE THAT YOU HAVE READ, UNDERSTAND, AND AGREE TO BE BOUND BY THIS AGREEMENT, AND (2) YOU REPRESENT AND WARRANT THAT YOU ARE NOT PROHIBITED BY LAW FROM ACCESSING OR USING THE SERVICES IN YOUR JURISDICTION. THIS AGREEMENT CONTAINS, AMONG OTHER THINGS, AN ARBITRATION PROVISION CONTAINING A CLASS ACTION WAIVER. PLEASE READ THE “**ARBITRATION**” SECTION BELOW FOR ADDITIONAL INFORMATION.

Any new features or tools we add to the Site shall also be subject to the Terms. You can review the most current version of the Terms at any time on this page. We reserve the right to update, change or replace any part of these Terms by posting updates and/or changes to our Site. It is your responsibility to check this page periodically for changes to these Terms. Your continued use of or access to the Site following the posting of any changes constitutes acceptance of those changes.

Section 1 – Privacy

Please [click here](#) to read and review the Company Privacy Notice (as amended by us from time to time, our “**Privacy Notice**”), which describes our privacy policies and practices with respect to this Site and is hereby incorporated as part of these Terms. Your submission of personal information through the Site is governed by our Privacy Notice. We advise you to check our Privacy Notice periodically for changes. You hereby consent to our collection, use and disclosure of your personal information in accordance with the terms of and for such purposes described in our Privacy Notice.

Section 2 – Eligibility

The Services are offered and available to natural persons who are 18 years of age or older, or the legal age of majority. If you are not 18 or older, or the legal age of majority, you must not access or use the Site without valid parental consent.

Section 3 – Intellectual Property Rights

You acknowledge and agree that we or our licensors own all legal right, title and interest in and to all elements of the Services. The Services, and all of its contents, including without limitation, the Company name and logo (and all related names, logos, domains, designs and slogans), and all text, photographs, images, illustrations, graphics, video material, audio material, blog posts, software, tools, logos, titles, names, button icons and the selection and arrangement thereof on the Site (collectively “**Site Content**”), are or may be protected by copyright, trademark and other laws of the United States, as well as international conventions and the laws of other countries. The Site Content is owned or controlled by us or by other parties that have provided us with rights thereto.

Except as expressly set forth herein, you may not, and agree that you will not, use, publish, reproduce, display, distribute or modify the Site Content or any portion thereof, for any purpose or by any means, method, or process. All names, logos, product and service names, designs and slogans on the Services are the trademarks of their respective owners, and you agree to not take any action inconsistent with such ownership. Images of people, places and/or products posted on this Site are either the property of the Company or are used with express permission to the Company. Modification of the materials appearing on the Services or use of such materials for any purpose not expressly set forth herein is a violation of our copyright and other proprietary rights. Any use of the Site Content or materials on this Site can only be made with the prior written and express authorization of the Company. We reserve all rights in and to the Site Content, other than the limited license granted to you in this Agreement.

Section 4 – License

You are hereby granted a limited, non-exclusive, non-transferable, non-sublicensable, and personal license to access and use the Services and Site Content; provided, however, that such license is subject to the terms of this Agreement and does not include any right to (a) sell, resell or use commercially the Services or Site Content, (b) distribute, publicly perform or publicly display any Site Content, (c) modify or otherwise make any derivative uses of the Services or Site Content, or any portion thereof, (d) use any data mining, robots or similar data gathering or extraction methods, (e) download (other than page caching) any portion of the Services or Site Content, except as expressly permitted by us, or (f) use the Services or Site Content other than for their intended purposes.

Section 5 – User Conduct

You are responsible your use of the Site and your compliance with these Terms. In addition to other restrictions as set forth in these Terms, you are prohibited from using the Site: (a) for any unlawful purpose; (b) to solicit others to perform or participate in any unlawful acts; (c) to violate any international, federal, provincial or state regulations, rules, laws, or local ordinances; (d) to infringe upon or otherwise violate our intellectual property rights or the intellectual property rights of others, including rights of publicity; (e) to harass, abuse, insult, harm, defame, slander, disparage, intimidate, or discriminate based on gender, sexual orientation, religion, ethnicity, race, age, national origin, or disability; (f) to submit false or misleading information; (g) to upload, store or transmit viruses or any other type of malicious code that will or may be used in any way that will disrupt or otherwise affect the functionality or operation of the Site, other websites or the Internet; (h) to collect or track the personal information of others; (i) to spam, phish, pharm, pretext, spider, crawl, or scrape; (j) for any obscene or immoral purpose; or (k) to interfere with or circumvent the security features of the Site, other websites or the Internet.

Section 6 – Third-Party Websites, Services and Applications

The Services may contain links to third-party websites, services, and applications that are not owned, operated or controlled by us. All such links are provided solely as a convenience to you. We do not control, recommend or endorse and are not responsible for these websites, services or applications or their content, products, services or privacy policies or practices. When you access these third-party websites, services, or applications, you leave our Services, and we are not responsible for, and do not control, the content, security, or privacy practices employed by any third-party websites, services, or applications. In no event shall we be liable, directly or indirectly, to you or any other person or entity for any loss or damage arising from or occasioned by the creation or use of the third-party websites, services, or applications, or the information or material accessed through these third-party websites, services, or applications. If you decide to access any other website or application linked to or from the Services, you do so entirely at your own risk and subject to the terms and conditions of use for such third-party websites, services, or applications.

Section 7 – Disclaimer

VISITORS TO THE SITE OR SERVICES AGREE THAT THEIR USE OF, AND RELIANCE ON, ANY ADVICE OR INFORMATION OBTAINED FROM OR THROUGH THE SITE OR SERVICES IS AT THEIR SOLE RISK. THE SITE, THE SERVICES AND ALL SITE CONTENT ARE PROVIDED “AS IS” AND “AS AVAILABLE.” THE COMPANY MAKES NO WARRANTY, AND EXPRESSLY

DISCLAIMS, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY WARRANTY OF ANY KIND, EITHER EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION: (I) ANY WARRANTIES CONCERNING THE ACCURACY, TIMELINESS, OR COMPLETENESS OF THE CONTENT ON THE SITE OR SERVICES; AND (II) ANY WARRANTIES OF NON-INFRINGEMENT, TITLE, MERCHANTABILITY, FUNCTIONALITY OR FITNESS FOR A PARTICULAR PURPOSE AS TO THE SITE, SERVICES, OR SITE CONTENT. WE DO NOT REPRESENT, WARRANT OR GUARANTEE: (1) THAT THE SERVICES, ANY PORTION OF THE SITE OR SERVICES, OR E-MAILS SENT FROM OR ON BEHALF OF THE COMPANY ARE OR WILL BE FREE FROM VIRUSES, SCRIPTS, WORMS, TROJAN HORSES, OR ANYTHING ELSE CONTAINING DESTRUCTIVE PROPERTIES; (2) THAT ACCESS TO THE SITE OR SERVICES WILL BE UNINTERRUPTED, TIMELY, SECURE, OR ERROR-FREE; OR (3) THE SITE OR SERVICES WILL BE ACCURATE, RELIABLE, COMPLETE, LEGAL, OR SAFE. WE WILL NOT BE LIABLE FOR ANY LOSS OF ANY KIND FROM ANY ACTION TAKEN OR TAKEN IN RELIANCE ON MATERIAL OR INFORMATION CONTAINED ON THE SITE OR SERVICES. WHILE THE COMPANY ATTEMPTS TO MAKE YOUR ACCESS TO AND USE OF THE SERVICES AND SITE CONTENT SAFE, THE COMPANY CANNOT AND DOES NOT REPRESENT OR WARRANT THAT THE SERVICES, SITE CONTENT, OR OUR SERVERS ARE FREE OF VIRUSES OR OTHER HARMFUL COMPONENTS. WE CANNOT GUARANTEE THE SECURITY OF ANY DATA THAT YOU DISCLOSE ONLINE. YOU ACCEPT THE INHERENT SECURITY RISKS OF PROVIDING INFORMATION AND DEALING ONLINE OVER THE INTERNET AND WILL NOT HOLD US RESPONSIBLE FOR ANY BREACH OF SECURITY IN ANY MANNER.

WE WILL NOT BE RESPONSIBLE OR LIABLE TO YOU FOR ANY LOSS RELATED TO YOUR USE OF THE SERVICES, INCLUDING BUT NOT LIMITED TO ANY LOSSES, DAMAGES OR CLAIMS ARISING FROM: (A) USER ERROR, SUCH AS MISTYPED ADDRESSES; (B) SERVER FAILURE OR DATA LOSS; (C) UNAUTHORIZED ACCESS TO APPLICATIONS; OR (D) ANY UNAUTHORIZED THIRD-PARTY ACTIVITIES, INCLUDING WITHOUT LIMITATION THE USE OF VIRUSES, PHISHING, BRUTEFORCING OR OTHER MEANS OF ATTACK AGAINST THE SERVICES.

THE FOREGOING DOES NOT AFFECT ANY WARRANTIES WHICH CANNOT BE EXCLUDED OR LIMITED UNDER APPLICABLE LAW. SOME JURISDICTIONS DO NOT PERMIT THE LIMITATION OR EXCLUSION OF CERTAIN WARRANTIES, SO THE FOREGOING EXCLUSIONS MAY NOT APPLY TO YOU.

Section 7 – Indemnification

By using the Site and Services, you agree to indemnify, defend and hold the Company and its past, present and future parent, affiliates and subsidiaries, and each of their respective officers, directors, members, managers, employees, service providers, agents, contractors, successors and assigns (collectively, the “**Indemnified Parties**”) harmless from and against any and all claims, demands, actions, damages, losses, liabilities, penalties, fines, judgments, settlements, costs and expenses (including without limitation, reasonable attorneys’ fees and expenses, including any incurred in enforcement of this indemnity) (collectively, “**Losses**”) arising in any way from or in connection with (i) your use, or misuse, of the Site or Services; (ii) any violation by you of this Agreement, our Privacy Notice or any other policy posted on the Site applicable to your use of the Site or the Services; and (iii) any violation of the rights of a third party. The Indemnified Parties reserve the right to assume the exclusive defense and control of any matter subject to indemnification hereunder, in which event, you agree to assist and cooperate with us in the defense or settlement of any Losses.

Section 8 – Limitation of Liability

TO THE FULLEST EXTENT PERMISSIBLE BY APPLICABLE LAW, IN NO EVENT SHALL THE COMPANY, OUR PAST, PRESENT OR FUTURE PARENT, AFFILIATES OR SUBSIDIARIES, OR ANY OF OUR OR THEIR RESPECTIVE OFFICERS, DIRECTORS, MEMBERS, MANAGERS, EMPLOYEES, SERVICE PROVIDERS, AGENTS, CONTRACTORS, SUCCESSORS OR ASSIGNS BE LIABLE TO YOU OR ANY THIRD PARTY FOR DAMAGES OF ANY KIND, UNDER ANY LEGAL THEORY, ARISING OUT OF OR RELATED TO THE AVAILABILITY, USE, RELIANCE ON, OR INABILITY TO USE, THE SITE, SERVICES, ANY SITE CONTENT OR OTHER MATERIALS, OR ANY THIRD-PARTY SITES OR PRODUCTS, INCLUDING ANY INDIRECT, SPECIAL, EXEMPLARY, INCIDENTAL, CONSEQUENTIAL OR PUNITIVE DAMAGES, INCLUDING BUT NOT LIMITED TO, PERSONAL INJURY, PAIN AND SUFFERING, EMOTIONAL DISTRESS, LOSS OF REVENUE, LOSS OF PROFITS, LOSS OF BUSINESS OR ANTICIPATED SAVINGS, LOSS OF USE, LOSS OF GOODWILL, LOSS OF DATA, AND WHETHER CAUSED BY TORT (INCLUDING NEGLIGENCE), BREACH OF CONTRACT OR OTHERWISE, EVEN IF FORESEEABLE AND EVEN IF THE COMPANY HAS BEEN

ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. TO THE FULL EXTENT PERMISSIBLE UNDER APPLICABLE LAW, COMPANY'S AGGREGATE LIABILITY TO YOU OR ANY THIRD PARTY IN ANY CIRCUMSTANCE IS LIMITED TO THE LESSER OF (I) THE AGGREGATE OF ALL AMOUNTS PAID BY YOU TO THE COMPANY FOR SERVICES DURING THE TWELVE (12) MONTH PERIOD IMMEDIATELY PRECEDING THE EVENT GIVING RISE TO THE FIRST CLAIM OR (II) \$100.

THE FOREGOING DOES NOT AFFECT ANY LIABILITY WHICH CANNOT BE EXCLUDED OR LIMITED UNDER APPLICABLE LAW.

Section 9 – Arbitration

A. Disputes. Any and all controversies, disputes, demands, counts, claims, or causes of action (including the interpretation and scope of this clause, and the arbitrability of the controversy, dispute, demand, count, claim, or cause of action) arising out of or in any way related to these Terms (a "**Dispute**") between you and Company or its successors or assigns shall exclusively be settled through binding and confidential arbitration, unless earlier resolved in accordance with Section 9(B), below.

B. Pre-Arbitration Dispute Resolution. In the event of any Dispute arising between you and Company, one party must first send a written notice of the Dispute to the other party by email with a delivery receipt requested ("**Notice**"). Company's email address for Notice is privacy@excelsm.com. The Notice must describe the nature and basis of the Dispute and set forth the specific relief sought (the "**Demand**"). The parties shall first meet and confer by such method as the parties may mutually agree, to attempt to resolve the Dispute. The parties shall work together in good faith to attempt to resolve the Dispute directly for thirty (30) days after the Notice is received, or such further period as the parties may mutually agree. In the event that the Dispute is not resolved by the end of such thirty (30) day (or longer) period, then either party may commence arbitration, as further described below.

C. Arbitration. If the parties are unable to resolve a Dispute through the good faith negotiation procedure set forth in Section 9(B), then you and Company agree that such Dispute will be resolved by binding arbitration. Arbitration is less formal than a lawsuit in court. Arbitration uses a neutral arbitrator instead of a judge or jury, may allow for more limited discovery than in court, and can be subject to very limited review by courts. Arbitrators can award the same damages and relief that a court can award. This agreement to arbitrate Disputes includes all claims arising out of or in any way related to these Terms of Service, including your receipt of email messages from the Company or its service providers, whether based in contract, tort, statute, fraud, misrepresentation, or any other legal theory, and regardless of when a claim arises. YOU UNDERSTAND AND AGREE THAT, BY AGREEING TO THESE TERMS OF SERVICE, YOU AND COMPANY ARE EACH WAIVING THE RIGHT TO A TRIAL BY JURY OR TO PARTICIPATE IN A CLASS ACTION.

D. Exceptions. Notwithstanding subsection (C) above, nothing in these Terms will be deemed to waive, preclude, or otherwise limit the right of either party to: (i) seek injunctive relief in aid of arbitration from a court of competent jurisdiction; or (ii) file suit on an individual basis in small claims court for applicable claims.

E. Arbitration Process. Unless otherwise agreed upon by the parties in writing, the arbitration will be conducted before one arbitrator in New York, New York, or by video conference (at the claimant's election) and will be governed by National Arbitration and Mediation's ("**NAM**") Comprehensive Dispute Resolution Rules and Procedures (the "**NAM Rules**"), as may be modified by these Terms of Service. The NAM Rules and filing forms are available online at www.namadr.com, by calling NAM at 1-800-358-2550, or by contacting the Company. The arbitrator has exclusive authority to resolve any dispute relating to the interpretation, applicability, or enforceability of this binding arbitration agreement. In the event that any Dispute is held not to be arbitrable in accordance with this Section 16, each party consents to the exclusive jurisdiction of the state or federal courts, as applicable, located in New York, New York.

F. Fees. If you commence arbitration in accordance with this Section 9, you will pay the Initial Administrative Fee in accordance with NAM's then-applicable fee schedule. If the claim is for \$15,000 or less, you agree that the

arbitration will be conducted solely on the basis of documents submitted to the arbitrator. If the arbitrator finds that either the substance of your claim or the relief sought in the Demand is frivolous or brought for an improper purpose (as measured by the standards set forth in Federal Rule of Civil Procedure 11(b)), then the payment of all fees will be governed by the NAM Rules. In that case, you agree to reimburse us for all monies we previously paid to NAM pursuant to the NAM Rules. Regardless of the manner in which the arbitration is conducted, the arbitrator must issue a reasoned written decision sufficient to explain the essential findings and conclusions on which the decision and award, if any, are based. Each party agrees that such written decision, and information exchanged during arbitration, will be kept confidential except as may be required by law or to the extent necessary to enforce or permit limited judicial review of the award. The arbitrator may make rulings and resolve disputes as to the payment and reimbursement of fees or expenses at any time during the proceeding and upon request from you or us, which is made within 14 days of the arbitrator's ruling on the merits. In addition, the arbitrator may award any individual relief or individual remedies that are permitted by applicable law.

G. No Class Actions. TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, YOU AGREE THAT ANY CLAIMS BROUGHT BY YOU AGAINST COMPANY MUST BE BROUGHT IN YOUR INDIVIDUAL CAPACITY, AND NOT AS A PLAINTIFF OR CLASS MEMBER IN ANY PURPORTED CLASS OR REPRESENTATIVE PROCEEDING. THE ARBITRATOR MAY NOT CONSOLIDATE MORE THAN ONE PERSON'S CLAIMS, MAY NOT OTHERWISE PRESIDE OVER ANY FORM OF A REPRESENTATIVE OR CLASS PROCEEDING, AND MAY NOT AWARD CLASS-WIDE RELIEF.

H. Enforceability. In the event that the class action waiver in Section 16(G), above, is found to be unenforceable for any reason, the remainder of this Section 16 shall also be unenforceable.

Section 10 – Severability

If any provision of these Terms is determined to be unlawful, void or unenforceable, such provision shall nonetheless be enforceable to the fullest extent permitted by applicable law, and the unenforceable portion shall be deemed to be severed from these Terms, such determination shall not affect the validity and enforceability of any other remaining provisions.

Section 11 – Termination

Notwithstanding any of these Terms, we reserve the right, without notice or attendant liability, and in our sole discretion, to terminate your license to use this Site and to block or prevent your future access to and use of this Site for any reason or no reason. If we do terminate, you will continue to be personally liable for any liabilities that you incurred prior to termination. Termination will not waive or affect any other right or relief to which we may be entitled, at law or in equity and, if we do terminate your license to use this Site, these Terms will continue to apply.

Without limiting the foregoing, we may also terminate all or any portion of the Site or the Services at any time, in our sole discretion, without prior notice to you and without any further liability.

Section 12 – Miscellaneous

Our failure to exercise or enforce any right or provision of these Terms shall not constitute a waiver of such right or provision.

Any ambiguities in the interpretation of these Terms shall not be construed against the drafting party.

The headings used in this agreement are included for convenience only and will not limit or otherwise affect these Terms.

Section 13 – Governing Law

These Terms shall be governed by and construed in accordance with the laws of the State of New York without regard to its conflict of law provisions. You agree that any dispute arising under or related to this Agreement will be

governed by, and construed in accordance with, the laws in effect in the State of New York, without regard to its conflicts of law principles. Notwithstanding the arbitration provisions above, in the event that we elect to seek injunctive or other equitable relief, or there is a dispute that is otherwise not subject to arbitration, you expressly and irrevocably consent to the exclusive jurisdiction of the state or federal courts, as applicable, located in New York, New York, and to the exercise of personal jurisdiction in such courts in connection with any such dispute.

Section 13 – Contact Us

Please send us any questions you have about these Terms at privacy@excelsm.com.