



Terms of Service Agreement

This page contains the Terms of Service under which you ("User") may use the ioMail service provisioned by Mesa Group Pty Ltd, including email sites that are owned and operated by Excedent Technologies, Inc. ("Service Provider"). If you accept these Terms of Service, you are indicating that you have read, understand and agree to be bound by all of the terms, conditions and policies set forth herein, including any future amendments (collectively, the "Agreement").

Description of Services

Service Provider will provide the User with a capability to send and receive electronic mail ("email") through the Web via the SMTP, POP3 and IMAP4 protocols through a local email client on their desktop and to access their mail via the Internet and a Web browser ("Email Services"). Service Provider acknowledges that User has selected a specific package of Email Services and will provide only those Email Services that User has selected to receive. User acknowledges that extra storage, customizable Webmail sites, and other features may be available on an upgrade basis. Service Provider is not responsible for providing User's access to the Internet or paying for such services. Service Provider is not responsible for providing any equipment necessary for User to make a connection to the Internet, including but not limited to computers and modems.

If any information provided by the User is false or inaccurate, Service Provider retains the right to terminate the User's right to use the Email Services.

Service Level Agreement ("SLA")

Service Provider guarantees that the Email Services will be available 99.99% of the time in a given month, excluding scheduled maintenance. Uptime includes the functioning of all network infrastructure within the Service Provider facilities, the mail servers that provide SMTP, POP3, IMAP and Webmail access, and the software that is run on those servers (collectively, the "Service Provider Network"). Downtime exists when User is unable to send and receive email as a result of a failure of the Service Provider Network. This Service Level Agreement does not cover User's connection to the Internet or any systems or software outside of the Service Provider Network.

If for some reason the Email Service does not meet these standards, User may request a refund in the amount of 5% of their monthly fee for each 30 minutes of continuous downtime (up to 50% of User's monthly fee).

Alternatively, if no single period of downtime was 30 minutes or greater, User may request a refund equal to the percentage of downtime during the affected month multiplied by User's monthly Email Service fee. In either case, such refund will be User's sole remedy for the failure of Service Provider to maintain 99.99% uptime during a given month.

Refunds will be issued in the form of a credit towards User's next invoice, unless the affected month is User's last month of service, in which case the refund will be issued via check or credit card within 60 calendar days.

Maintenance Windows

Service Provider makes every effort to perform all system maintenance activities during a scheduled maintenance window. The maintenance windows are currently scheduled for Saturdays and Sundays from 12:00 am to 4:00am Eastern (USA), though not every maintenance window is utilized. If system downtime is planned during a maintenance window, Service Provider will make an announcement prior to the date of the activity.

In Case of Modifications to Terms of Service Service Provider may modify this Agreement at any time, at which point notices will be sent to the User using any of the contact methods provided by User. The User's continued use of the Email Services for twenty-four (24) hours after notice of the modification is dispatched will constitute an affirmative acknowledgment by the User of the Agreement and its modifications as well as an agreement to abide by such terms.

Renewal Fees

Service fees for each Renewal Period ("Renewal Fees") will be invoiced thirty (30) days prior to the commencement of the Renewal Period. The Renewal Fees will be due in full one (1) day prior to the commencement of the Renewal Period, and will be automatically debited from User's credit card prior to that date, unless other payment arrangements are made between User and Service Provider.

Termination and Non-Renewal

Upon termination or non-renewal of service, User agrees that Service Provider and the Service Provider Network shall no longer support User's Email Services and shall no longer be required to store any of User's data. In the event of termination or non-renewal of service, Service Provider may delete all of User's information and email data after thirty (30) days. Exports of the database that contains User's information and email data are available upon request. Requests for such data must be made at least thirty (30) days prior to the termination or non-renewal of services. Upon receiving the request for such data, Service Provider shall make the data available to User within fourteen (14) days. Service Provider reserves the right to charge a fee for providing data exports when the request is not related to termination or non-renewal of services.

Understanding for Termination

The User agrees that Service Provider may terminate the User's use of the Email Services if it believes that the User has violated or acted inconsistently with the letter or spirit of this Agreement, or that the User has violated the rights of Service Provider or other Users or parties.

Service Provider may also terminate the User's use of the Email Services if User's payment for any Service Fee or Renewal Fee is returned for insufficient funds, rejected by bank card processing services, or otherwise any situation in which the Email Services provided by Service Provider remains unpaid after its due date ("Overdue Balance"). In a situation where User has an Overdue Balance, Service Provider will make a reasonable effort to contact User using the contact methods previously provided by User, in order to obtain full payment for the Overdue Balance, before terminating User's use of the Email Services.

Email Message Filtering

Service Provider may optionally provide filtering of email messages that pass through the Service Provider Network for the purpose of identifying Spam, known viruses and other disruptive content (collectively "Junk

Email"). Service Provider makes reasonable effort to configure its automated software to accurately identify Junk Email, however User acknowledges and agrees that it is not possible to identify such content with 100% accuracy and that Service Provider is not obligated to do so. Service Provider does not guarantee that it will identify and block all of the Junk Email that User receives through the use of the Email Services, nor does Service Provider guarantee that the emails that are identified or blocked by the filtering software truly contain Junk Email content. User acknowledges that it is always a good idea to run a desktop virus scanner and firewall on computers that are connected to the Internet as a secondary line of defense in case such content slips through the email message filters and to reduce the risk of User's systems being infected by viruses that spread via other methods besides email.

User agrees to and understands the risks associated with using the Email Services and receiving and transmitting email messages via the Internet. User agrees to hold harmless and indemnify Service Provider from and against any liabilities, damages, losses, costs and expenses, including attorney's fees, of every kind and nature, caused by or arising out of claims based upon the receipt, transmission or loss of any content.

Email Message Storage

The Email Services have a fixed storage limit per mailbox, which upon request can be upgraded for a fee. Email messages when received may not be stored if the size of such email would put the destination mailbox over its storage limit. It is User's responsibility to monitor the size of their mailboxes in order to prevent it from reaching its storage limit. Service Provider assumes no responsibility for the deletion of or failure to store email messages.

Data Backup and Restore Policy

User's email messages are backed up to separate storage systems daily for the purpose of recovery from errors or system failure ("Data Backups"). The Data Backups consist of a snapshot of the contents within each mailbox at a specific moment in time. The Data Backups may not store every email that is transferred or received using the Email Service, but rather it stores a copy of the email messages that exist within each mailbox during the time the Data Backups are processed each day. Copies of email messages may remain in the Data Backups for approximately two (2) weeks, even after User deletes the email messages from their mailbox or after termination of Email Services. Service Provider employees do not access email messages in the Data Backups unless a data restore is needed.

In the event that User deletes email messages from their mailbox as a result of something other than a failure of the Service Provider Network, and wishes for those email messages to be restored, User may request a data restore from any of the recent Data Backups snapshots. User will be charged a fee per mailbox for each restore.

User Responsibilities

This section describes User's additional responsibilities under this Agreement.

User is solely responsible for Content, including any subsequent changes or updates made or authorized by User. User represents and warrants that Content: (a) will not infringe or violate the rights of any third party including, but not limited to, intellectual property, privacy or publicity rights of others; (b) is not abusive, profane or offensive to a reasonable person; or (c) will not be hateful or threatening. Violations of the foregoing by User may result in early termination of services by Service Provider in Service Provider's sole discretion.

User is solely responsible for the Content of its transmissions and the transmissions of third parties accessing the Email Services through User. User agrees to comply with U.S. law with regard to the transmission of technical data, which is exported from the United States through the Email Services. User further agrees not to use the Email Services (a) for illegal purposes or (b) to interfere with or disrupt other network Users, network services or network equipment. Interference or disruptions include, but are not limited to, distribution of unsolicited advertising or chain letters, propagation of computer worms and viruses, and use of the network to make unauthorized entry to any other machine accessible via the network. Violations of the foregoing by User may result in early termination of services by Service Provider in Service Provider's sole discretion.

Acceptable Use Policy

Service Provider and User will adhere to the Acceptable Use Policy with respect to the use of the Email Services.

Privacy Policy

Service Provider and User will adhere to the Email Privacy Policy with respect to the collection and use of User's personal information by Service Provider. Rights Notwithstanding anything to the contrary stated herein, Service Provider maintains all rights, title and interest in the Email Services, Service Provider Software, Project Software and Work Product, and User may not claim ownership of or use the Email Services, Service Provider Software, Project Software and Work Product in a resale capacity or allow access to the Email Services, Service Provider Software, Project Software and Work Product by any third parties.

Service Provider reserves all rights to use the Email Services, Service Provider Software, Project Software and Work Product in whatever manner it chooses, including for other Service Provider clients.

Disclaimer of Warranties

THE USER EXPRESSLY AGREES THAT USE OF THE SERVICE IS AT THE USER'S SOLE RISK. THE SERVICE IS PROVIDED ON AN "AS IS" AND "AS AVAILABLE" BASIS. SERVICE PROVIDER EXPRESSLY DISCLAIMS ALL WARRANTIES OF ANY KIND, WHETHER EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT. NEITHER SERVICE PROVIDER NOR ANY BUSINESS AFFILIATES OF SERVICE PROVIDER (INCLUDING ANY SUCH BUSINESS AFFILIATE THROUGH WHICH USER BECAME A CLIENT OF THE SERVICE) MAKES ANY WARRANTY THAT THE SERVICE WILL MEET USER REQUIREMENTS, OR THAT THE SERVICE WILL BE UNINTERRUPTED, TIMELY, SECURE, OR ERROR FREE; NOR DOES SERVICE PROVIDER MAKE ANY WARRANTY AS TO THE RESULTS THAT MAY BE OBTAINED FROM THE USE OF THE SERVICE OR AS TO THE ACCURACY OR RELIABILITY OF ANY INFORMATION OBTAINED THROUGH THE SERVICE OR THAT DEFECTS IN THE SOFTWARE WILL BE CORRECTED.

THE USER UNDERSTANDS AND AGREES THAT ANY MATERIAL AND/OR DATA DOWNLOADED OR OTHERWISE OBTAINED THROUGH THE USE OF THE SERVICE IS DONE AT THE USER'S OWN DISCRETION AND RISK AND THAT USER WILL BE SOLELY RESPONSIBLE FOR ANY DAMAGE TO THE USER'S COMPUTER SYSTEM OR LOSS OF DATA THAT RESULTS FROM THE DOWNLOAD OF SUCH MATERIAL AND/OR DATA. NEITHER SERVICE PROVIDER NOR ANY BUSINESS AFFILIATES OF SERVICE PROVIDER (INCLUDING ANY SUCH BUSINESS AFFILIATE THROUGH WHICH USER BECAME A CLIENT OF THE SERVICE) MAKES ANY WARRANTY REGARDING ANY GOODS OR SERVICES PURCHASED OR OBTAINED THROUGH THE SERVICE OR ANY TRANSACTIONS ENTERED INTO THROUGH THE SERVICE.

NO ADVICE OR INFORMATION, WHETHER ORAL OR WRITTEN, OBTAINED BY USER FROM SERVICE PROVIDER OR THROUGH THE SERVICE SHALL CREATE ANY WARRANTY NOT EXPRESSLY MADE HEREIN.

SOME STATES DO NOT ALLOW THE EXCLUSION OF IMPLIED WARRANTIES, SO SOME OF THE ABOVE EXCLUSIONS MAY NOT APPLY TO YOU.

Limitation of Liability

NEITHER SERVICE PROVIDER NOR ANY BUSINESS AFFILIATES OF SERVICE PROVIDER (INCLUDING ANY SUCH BUSINESS AFFILIATE THROUGH WHICH USER BECAME A CLIENT OF THE SERVICE) SHALL BE LIABLE FOR ANY INDIRECT, INCIDENTAL, SPECIAL OR CONSEQUENTIAL DAMAGES OR FOR INTERRUPTED COMMUNICATIONS, LOST DATA OR LOST PROFITS ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT, EVEN IF SERVICE PROVIDER HAS BEEN ADVISED OF THE POSSIBILITY OF DAMAGES. SOME JURISDICTIONS DO NOT ALLOW THE LIMITATION OR EXCLUSION OF LIABILITY FOR INCIDENTAL OR CONSEQUENTIAL DAMAGES, SO SOME OF THE ABOVE LIMITATIONS MAY NOT APPLY TO YOU.

No Resale or Profiteering of the Service

Although a User may choose to register multiple accounts, any account of the User is understood as a standalone single account. The User may choose whether the account shall be used for personal or corporate purposes. However, the User agrees not to resell or make any commercial use (leasing or selling of accounts) of Email Services, without the express consent of Service Provider.

Indemnification

The User agrees to defend, indemnify and hold harmless Service Provider, its employees, directors, officers, agents and business affiliates (including any such business affiliate through which User became a Client of the Service), and their respective successors and assignees from, and against, any and all liabilities, damages, losses, costs and expenses, including attorney's fees, caused by or arising out of claims based upon the use of your account or the content contained in any email that has been sent or received through the Email Services, including any claim of libel, defamation, violation of rights of privacy or publicity, loss of service by other subscribers and infringement of intellectual property or other rights.

Right to Set-Off

If, under this Agreement, Service Provider becomes obligated or liable to pay money to User, that sum may at the election of Service Provider, and without limiting or waiving any right or remedy against User, be set-off against and applied to any amounts which are due and owing by User to Service Provider until such amount has been completely set-off.

Entire Agreement

This Agreement comprises the entire Agreement between User and Service Provider and supersedes any and all prior agreements between the parties regarding the subject matter contained herein.

Non-Waiver

Failure of Service Provider to insist upon strict performance of any of the Terms of Service contained herein shall not be deemed a waiver of any right or remedy that Service Provider shall have in respect thereof, and shall not be deemed a waiver of any subsequent default in performance of the Terms of Service.

Provision of Notice

All notices to a party shall be in writing and shall be made either through email or conventional mail. Service

Provider may broadcast notices or messages through the service to inform Users of changes to this Agreement, the service, or other matters of importance; such broadcasts shall constitute notice to the Users.

Applicable Laws

The agreement shall be governed by and construed in accordance with the laws of the Commonwealth of Virginia, USA, excluding that body of law known as conflicts of laws and the United Nations Convention on Contracts for the Sale of Goods. The User and Service Provider agree to submit to the exclusive jurisdiction of the courts of the Commonwealth of Virginia, USA. If any provision(s) of this Agreement is held by a court of competent jurisdiction to be contrary to law, then such provision(s) shall be construed, as nearly as possible, to reflect the intentions of the parties with the other provisions remaining in full force and effect. Service Provider's failure to act with respect to a breach by the User or others does not waive its right to act with respect to subsequent or similar breaches. This Agreement sets forth the entire understanding and agreement between the User and Service Provider.