



# Terms of Service

\_\_\_\_\_ (“Customer”) and EXCEED TECHNOLOGIES, Inc. (“Contractor”) of 2605 Cleda Drive, P.O. Box 8947, Columbus, MS 39701, in consideration for the promises made in this Agreement and intending to be legally bound, agree as follows:

## 1. SERVICES PROVIDED BY CONTRACTOR

Upon Customer’s request, Contractor may provide advice, sales, custom design(s), service, and support for technology-related areas, including but not limited to:

Internet-related technologies including but not limited to dialup, ISDN, ADSL, Cable Internet, Wireless, frame-relay, T1, and all other forms of Internet access, all forms of broadband Internet, resold Internet services; Local and long distance service; Hardware for Computers, including but not limited to input/output devices, computer accessories, and operating systems; Hardware for servers, including but not limited to input/output devices, server accessories, and operating systems; Hardware for network equipment, including but not limited to routers, switches/hubs, cabling, firewalls, VPN routers, modems, monitoring software, packet sniffers, network security, email security, website security, or any other network-related security; Telephone system hardware, including but not limited to telephone systems, handsets, wiring; Software Solutions, including but not limited to OEM software, resold software, custom software; Data Backup Solutions, including but not limited to remote data backups, onsite backups, backup drives or devices, backup rotation schedules, backup software; Data Transmissions including but not limited to wireless transmissions, email services, web traffic, website content, website hosting, and all technology-related data transmissions.

## 2. ARBITRATION CLAUSE

Any controversy or claim arising out of, or relating to, this contract, or its breach, shall be settled by arbitration, in accordance with the rules, then obtaining, of the American Arbitration Association, and judgment on the award rendered, if any, may be entered in any court having jurisdiction.

## 3. LIMITATION OF WARRANTIES; DISCLAIMER OF WARRANTIES

The parties agree that Contractor makes no warranties, either express or implied, unless otherwise contained in writing within this agreement. Any warranties that exist do not apply to any defect occurring from accident, overload, misuse, or abuse of the equipment or services. Neither Contractor nor any of its underlying service providers, subcontractors, information providers, licensors, employees, or agents warrant that the network and equipment services, as described in this agreement, will be uninterrupted or error free; nor does Contractor nor any of its underlying service providers, subcontractors, information providers, licensors, employees, or agents warrant as to results to be obtained from the use of the services, Customer agrees that the services are provided on an “as-is” “as-available” basis without warranties of title particular purpose or otherwise, other than those warranties (if any) which are implied by and incapable of exclusion, restriction, or modification under the laws applicable to the contract and these terms and conditions all such warranties being expressly disclaimed.

## 4. EXCLUSIVE REMEDY

The parties agree that the remedies set forth in this agreement shall constitute the sole and exclusive remedies available for any breach of this agreement, including any breach of warranty, whether express or implied. Contractor’s sole obligation and Customer’s exclusive remedy for any warranty failure is the correction or replacement of the nonconforming software or hardware products or services or the refund of an amount not to exceed the actual payments paid by Customer to Contractor for the nonconforming products or services.

## 5. FORCE MAJEURE

This contract is subject to force majeure, and is contingent on strikes, accidents, acts of God, weather conditions, inability to secure labor, regulations or restrictions imposed by any government or governmental agency, or other delays beyond the control of the parties. If Contractor’s services within contract time are prevented by any cause of force majeure, then this contract shall be void without penalty to either party for such portion not delivered.

## 6. INTEGRATION CLAUSE

This agreement embodies the whole agreement of the parties. There are no promises, representations, terms, conditions, or obligations other than those contained in writing within this agreement, and this agreement shall supersede all previous communications, representations, or agreements, whether verbal or written, between the parties. Neither Customer nor Contractor can alter this agreement by any oral representation or agreement.

## 7. REQUIRED PROCEDURE FOR REPORTING PROBLEMS

Customer shall maintain a designated individual(s) who shall be responsible for placing a “trouble ticket” in the event that there arises a problem that cannot be corrected either by the Customer’s local technician. If such time arises, cell phone calls, office calls, or pages will be returned as soon as possible.

## 8. BACKUP AND DATA RETENTION POLICY

Customer agrees and understands that Contractor creates and maintains backups on a best efforts basis only. Contractor does not make any specific guarantee regarding the availability of backup copies of client files, e-mail, databases, or other server data. Customer agrees and understands that events including but not limited to accidental deletion, hardware failure, software failure, natural disaster, or power surges may occur, and agrees that Contractor shall not be held liable or responsible for such events.

## 9. LIMITATION OF LIABILITIES

In conjunction with the Exclusive Remedy provision contained within this agreement, the parties agree that under no circumstance shall Contractor be liable for damages in any form or for any amount in excess of the amount of money received by Contractor in connection with the products sold or services rendered pursuant to this agreement. Customer expressly understands and agrees that Contractor shall not be liable for any direct, indirect, incidental, special, consequential, or exemplary damages for loss of profits, goodwill, use, data, or other intangible losses (even if Contractor had been advised of the possibility of such damages), resulting from: (i) downtime or lost profits due to delays in rendering services; (ii) the cost of procurement of substitute goods and services resulting from any goods, data, information or services purchased or obtained or messages received or transactions entered into through or from the service; (iii) unauthorized access to or alteration of Customer’s transmissions or data; (iv) statements or conduct of any third party on the service; or (v) any third party on the service; or (vi) any other matter relating to the service.

## 10. LIMITATION OF LIABILITY FOR CONSEQUENTIAL DAMAGES

The parties expressly agree that Exceed shall not be liable for consequential damages, including but not limited to acts of third parties, whether authorized or unauthorized, that cause any type of loss, loss of data for any reason, damage to equipment caused by electrical surges, static charges, or other related causes, or loss of business opportunities or actual losses related to equipment or service failure.

## 11. INDEMNIFICATION

Customer agrees to indemnify, defend and hold Contractor harmless for all third party claims, causes of action, complaints, and damages of any kind arising from services provided pursuant to this agreement.

## 12. GOVERNING LAW

This Agreement and the Services shall be governed by the laws of the State of Mississippi, without regard to its conflicts of laws provisions. If any provision or provisions hereof shall be held to be invalid, illegal, or unenforceable, the validity, legality, and enforceability of the remaining provisions shall not be in any way affected or impaired thereby.

## 13. TERM

Customer and Contractor agree that this agreement may be terminated by either party. The terminating party will provide written notification of termination at least fourteen (14) days prior to termination.

## 14. ENTIRE AGREEMENT

This Contract shall constitute the entire agreement between Customer and Contractor relating to this Contract or the Services and may not be modified or amended other than by a written instrument executed by both parties

IN WITNESS WHEREOF, Contractor and Customer have caused this Contract to be executed and delivered by their duly authorized representatives, effective upon execution by Customer and acceptance by the Contractor.

By: \_\_\_\_\_  
(Authorized Signature)  
Name: \_\_\_\_\_  
(Print or Type)

Title: \_\_\_\_\_  
Date: \_\_\_\_\_