

EXECONNECT™ TERMS OF SERVICE AND USE

Greeting

A very warm welcome to EXECONNECT, an executive meeting company with a unique program designed for corporate charitable giving. EXECONNECT is (i) a facilitator for arranging meetings between companies for the purpose of business development; and (ii) an online resource for hosting communications between and among executives on the Executive Private Network. More information about our website can be found at the Privacy Policy and the Copyright Policy.

➤ *License Rights*

With respect to hosted communications between company executives on the Executive Private Network of EXECONNECT, each company representative who uploads and posts content, information, and/or materials to and from our website will be required to grant to EXECONNECT a non-exclusive, irrevocable, perpetual, transferable, fully paid, and worldwide license (together with the right to sublicense) to use, copy, publicly perform, publicly display, reformat, translate, excerpt (in whole or in part), and sell, distribute, and profit from that content, information, and/or materials and/or any copyrightable work originated by the user through his or her efforts alone or in collaboration with others.

Terms of Service and Use

➤ *Date of Most Current Version – February 22, 2008*

By accessing and using our website located at www.execonnect.com, you signify that you have read, understand, and agree to be bound by this Terms of Service and Use.

Due to the nature of the Internet and the offerings provided on our website, we reserve on a continuing basis the right, at our sole discretion, to change, modify, add, or delete portions of this Terms of Service and Use at any time. If we do this, we shall both post the changed version of this Terms of Service and Use on this page, and will send to each user an E-Mail communication indicating the date upon which such changes were made together with a request that you review them online. Notwithstanding such E-Mail communication and whether or not you review the changed, your continued use of our website after the date any such changes become effective constitutes your unqualified acceptance of the changed Terms of Service and Use. If you do not agree to abide by this Terms of Service and Use or any future changes to them, do not use or access our website.

PLEASE READ THIS TERMS OF SERVICE AND USE CAREFULLY FOR THEY CONTAIN IMPORTANT INFORMATION REGARDING YOUR LEGAL RIGHTS, REMEDIES, AND OBLIGATIONS. THEY INCLUDE VARIOUS DISCLAIMERS, INDEMNIFICATIONS, LIMITATIONS OF LIABILITY, A DISPUTE RESOLUTION CLAUSE THAT GOVERNS HOW DISPUTES WILL BE RESOLVED, AND GOVERNING LAW AND VENUE CLAUSE ALL OF WHICH HAVE A BEARING ON YOUR USER RELATIONSHIP WITH OUR WEBSITE.

➤ *Eligibility for Use of Our Website*

Our website is intended only for company executives, as set forth above, by persons who are 18 years of age or older. Any registration by and/or the use of or access to our website by a user who is under 18 years of age is unauthorized and in complete violation of this Terms of Service and Use. By registering as a user on our website, you represent and warrant that you are 18 years of age or older and you agree to and abide by all of the provisions of this Terms of Service and Use.

In connection with your registration to become a user of our website or your meeting offer, you agree to provide accurate, current, and complete information about you when prompted by the registration dialogue script immediately following this Terms of Service and Use, to promptly update your registration data in order for such data to be accurate, current, and complete, and to be fully responsible for all use of your account and for any actions that take place using your account.

➤ ***Acceptable Use Policies for Users of Our Website***

You agree not to use our website to:

- ❖ make such use in any unlawful manner or in any manner that could damage, disable, overburden, or impair our website;
- ❖ use automated scripts to collect information from or otherwise interact with our website;
- ❖ register for more than one account as a user, register for an account as a user on behalf of an individual other than you, or register for an account as a user on behalf of any group or entity;
- ❖ impersonate any person or entity or falsely state or otherwise misrepresent yourself or your age;
- ❖ be solely responsible for your interactions with other users of either class, and not to expect that EXECONNECT will monitor or resolve such between you and other users;
- ❖ harvest or collect E-Mail addresses or other contact information of other users on our website by electronic or other means for the purposes of sending unsolicited communications to them;
- ❖ upload, post, transmit, share, store, or otherwise make available any content, information, and/or materials that are deemed to be harmful, threatening, unlawful, defamatory, infringing, abusive, inflammatory, harassing, vulgar, obscene, pornographic, fraudulent, invasive of privacy or publicity rights, hateful, or racially, ethnically, or otherwise objectionable;
- ❖ upload, post, transmit, share, or otherwise make available any unsolicited or unauthorized advertising, solicitations, promotional materials, "junk mail", "spam", "chain letters", "pyramid schemes", or any other form of solicitation;
- ❖ upload, post, transmit, share, or otherwise make publicly available any content, information, and/or materials of any person or entity other than you, including, but not limited to, addresses, telephone numbers, E-Mail addresses, Social Security numbers, and credit card numbers;
- ❖ upload, post, transmit, share, or otherwise make available any content, information, and/or materials that contain software viruses or any other computer code, Trojan horses, time bombs, and/or files or programs designed to interrupt, destroy, harm, or limit the functionality of any computer software, hardware, or telecommunications equipment;
- ❖ upload, post, transmit, share, or otherwise make available any content, information, and/or materials that would constitute, encourage, or provide instructions for a criminal offense, violate the rights of any third party, or that would otherwise create liability by reason of a violation of any local, state, national, or international statute, regulation, or ordinance; and
- ❖ upload, post, transmit, share, or otherwise make available any content, information, and/or materials that, in the sole judgment of EXECONNECT, is objectionable or that restricts or inhibits any other person from using or enjoying our website, or that may expose EXECONNECT, any of our officers, directors, employees, or agents, and/or any of our users to any harm or liability of any type.

You further agree that:

- ❖ you are solely responsible for the content, information, and/or materials that you upload, post, publish, display, and/or download through our website, or transmit to or share with others;
- ❖ you may not upload, post, display, or transmit to or share with others content, information, and/or materials on or through our website that you did not create or that you do not have permission to post;
- ❖ EXECONNECT may, but is not obligated to, review the content, information, and/or materials uploaded and posted to and stored on our website and delete or remove (without notice to you)

any of that content, information, and/or materials that in our sole judgment violates this Terms of Service and Use, that might be offensive or illegal, or that might violate the rights, harm, or threaten the safety and/or liability of users or third parties;

- ❖ you are solely responsible, at your sole cost and expense, for creating backup copies and replacing any content, information, and/or materials you upload, post, or store on our website;
- ❖ you represent and warrant that none of nor any part of the content, information, and/or materials uploaded, posted, published, displayed, transmitted, or shared by you on or through our website, whether in human readable or digital form, violates or infringes upon the rights of any third party where such rights include, but not are limited to, copyright, trademark, privacy, publicity, or other personal or proprietary rights, and that such content, information, and/or materials contain no libelous, defamatory, or unlawful content; and
- ❖ when you upload and post content, information, and/or materials on or through our website, then, except with respect to hosted communications between and among executives on the Executive Private Network of EXECONNECT, you grant to EXECONNECT a non-exclusive, irrevocable, perpetual, transferable, fully paid, and worldwide license (together with the right to sublicense) to use, copy, publicly perform, publicly display, reformat, translate, excerpt (in whole or in part), and sell, distribute, and profit from both that content, information, and/or materials and any copyrightable work originated by the user through his or her efforts alone or in collaboration with others.

➤ ***Termination of a User***

EXECONNECT may terminate your user status on our website, delete any or all of your content, information, and/or materials that you have uploaded and posted on our website, and/or prohibit you from using or accessing our website for any reason, or no reason, at any time in its sole discretion, with or without notice, including, but not limited to, if we believe that you are not of the requisite age for which you have registered.

In the event of such a termination, the provisions of this Terms of Service and Use will be deemed to survive the effective date of such termination.

➤ ***Copyright Complaints From Other Users or Third Parties***

As more fully described in the [Copyright Policy](#) of EXECONNECT, when we receive a proper Notification of Alleged Copyright Infringement (see [Copyright Policy](#)), we shall promptly remove or disable access to the allegedly infringing content, information, and/or materials and terminate the account of any user who is a repeat infringer in accordance with the [Digital Millennium Copyright Act](#) (17 United States Code Section 512). If you believe that any content, information, and/or materials on our website infringes upon any copyright that you own or control, you may send a written notification of that infringement by adhering to the procedures in the [Copyright Policy](#). In accordance with the [Digital Millennium Copyright Act](#) and other applicable law, EXECONNECT has adopted a policy of terminating, in appropriate circumstances and at our sole discretion, users who we deem to be repeat infringers. We may also, in appropriate circumstances and at our sole discretion, limit access to our website and/or terminate the access right of any users who infringe any intellectual property rights of others, whether or not there is any repeat infringement.

➤ ***Third Party Websites and Their Content***

Our website contains links to third party websites and may also include third party content such as articles, photographs, text, graphics, pictures, designs, music, sound, video, information, applications, software and other content or items that belong to or originate from third parties. These third party websites and that third party content are not investigated, monitored or checked for accuracy, appropriateness, or completeness by EXECONNECT, and we are not responsible for any third party websites or that third party content accessible or available from, or installed or posted on, our website, including, but not limited to, the content, accuracy, offensiveness, opinions, reliability, privacy practices, or other policies of or contained in the such third party websites or related to that third party content. The inclusion of, linking to, or permitting the use or installation

of any third party websites or downloading of any third party content does not imply any approval or any endorsement of them by EXECONNECT. If you decide to leave our site and access any third party websites or to use or install any third party content, you agree that you do so at your own risk and you should be aware that this Terms of Service and Use no longer will govern your Internet session. Therefore, you are then strongly advised to review and understand the applicable terms and policies, including privacy and data gathering practices, of any third party website to which you navigate from our website or relating to any third party content you use or install from a third party's website.

➤ **Privacy**

EXECONNECT cares very much about the privacy of our users. Therefore, we encourage you to review and understand our [Privacy Policy](#). By using our website, you are consenting and agree to have your personal data transferred to and processed only within the United States.

➤ **Operational and Warranty Disclaimers and Indemnifications of EXECONNECT**

Our website may be temporarily unavailable from time to time for maintenance, enhancement, or other reasons. EXECONNECT assumes no responsibility for any errors, omissions, interruptions, deletions, defects, and delays in the operation of our website or for any transmission, communications line failure, or unauthorized access to or alteration of any communications by a user's communications. Further, EXECONNECT is not and will not be responsible for any technical malfunction or other problems of any telephone network or service, computer systems, servers, providers, computer or mobile phone equipment, software, failure of E-Mail on account of technical problems or traffic congestion on the Internet, at any website, or any combination of them, including injury or damage to a user's or to any other person's computer, mobile phone, or other hardware or software, related to or resulting from using, uploading, or downloading content, information, and/or materials related to our website or to or from any other third party website on the Internet. In addition, under no circumstances will EXECONNECT be responsible for any loss or damage (i) to any user's content, information, and/or materials causing personal injury or death; (ii) directly or indirectly resulting from any person's use of our website, any third party website, or third party content posted on or accessed through our website or that may be transmitted to users; or (iii) arising from any interactions between users of our website, whether online or offline.

OUR WEBSITE AND THE CONTENT, INFORMATION, AND/OR MATERIALS UPLOADED AND POSTED ON IT ARE PROVIDED "AS IS", AND EXECONNECT DISCLAIMS ANY AND ALL REPRESENTATIONS AND WARRANTIES, WHETHER EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, THE WARRANTY OF TITLE AND THE IMPLIED WARRANTIES MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND NON-INFRINGEMENT.

EXECONNECT CANNOT AND DOES NOT (i) GUARANTEE OR PROMISE ANY SPECIFIC RESULTS FROM THE USE OF OUR WEBSITE; (ii) REPRESENT OR WARRANT THAT THE OPERATION OF OUR WEBSITE OR THE INFORMATION AND/OR MATERIALS POSTED ON IT ARE ACCURATE, COMPLETE, RELIABLE, CURRENT, OR THAT OUR WEBSITE IS FREE OF VIRUSES, TROJAN HORSES, OR OTHER HARMFUL COMPONENTS.

THEREFORE, YOU ARE ADMONISHED TO EXERCISE CAUTION BY USING INDUSTRY-RECOGNIZED SOFTWARE TO DETECT, DISINFECT, AND/OR DISABLE VIRUSES AND TROJAN HORSES. WITHOUT LIMITING THAT ADMONITION, YOU UNDERSTAND AND AGREE THAT IF YOU DOWNLOAD OR OTHERWISE OBTAIN CONTENT, INFORMATION AND/OR MATERIALS FROM OUR WEBSITE OR ACCESS ANY THIRD PARTY'S WEBSITE OR THIRD PARTY'S CONTENT POSTED ON OR ACCESSED THROUGH OUR WEBSITE, YOU DO SO AT YOUR OWN DISCRETION AND RISK, AND THAT YOU WILL BE SOLELY RESPONSIBLE FOR YOUR USE OF THEM AND ANY DAMAGES TO YOU AND/OR YOUR EQUIPMENT OF ANY TYPE, LOSS OF DATA, OR OTHER HARM OF ANY KIND THAT MAY RESULT.

YOU AGREE TO INDEMNIFY AND HOLD EXECONNECT AND ITS OFFICERS, DIRECTORS, EMPLOYEES, AND AGENTS HARMLESS FROM AND AGAINST ANY AND ALL LOSSES, LIABILITIES, CLAIMS, DEMANDS, DAMAGES, COSTS, AND EXPENSES, INCLUSIVE OF REASONABLE ATTORNEYS' FEES AND COSTS INCURRED BY THEM OR EITHER OF THEM, ARISING OUT OF OR IN CONNECTION WITH YOUR USE OF OUR WEBSITE, YOUR UPLOADING, DOWNLOADING, OR OTHERWISE OBTAINING INFORMATION AND MATERIALS FROM OUR WEBSITE, YOUR ACCESSING ANY THIRD PARTY'S WEBSITE OR THIRD PARTY'S CONTENT POSTED ON OR ACCESSED THROUGH OUR WEBSITE, AND/OR ANY VIOLATION OF OR FAILURE TO FULLY COMPLY BY YOU WITH THIS TERMS OF SERVICE AND USE, ANY APPLICABLE LOCAL, STATE, NATIONAL, OR INTERNATIONAL STATUTE, REGULATION, OR ORDINANCE, OR THE RIGHTS OF ANY THIRD PARTY.

➤ ***Limitation of Liability***

IN NO EVENT WILL EXECONNECT OR ANY OF ITS OFFICERS, DIRECTORS, EMPLOYEES, OR AGENTS BE LIABLE TO YOU OR ANY THIRD PERSON FOR ANY INDIRECT, CONSEQUENTIAL, EXEMPLARY, INCIDENTAL, SPECIAL, OR PUNITIVE DAMAGES, INCLUDING, BUT NOT LIMITED TO, ANY LOST PROFITS OR LOST DATA ARISING FROM YOUR USE OF OUR WEBSITE, INCLUSIVE OF YOUR UPLOADING, DOWNLOADING, OR OTHERWISE OBTAINING CONTENT, INFORMATION AND/OR MATERIALS FROM OUR WEBSITE OR ACCESSING ANY THIRD PARTY'S WEBSITE OR THIRD PARTY'S CONTENT POSTED ON OR ACCESSED THROUGH OUR WEBSITE, EVEN IF EXECONNECT IS AWARE OR HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. IN NO EVENT WILL THE LIABILITY OF EXECONNECT TO YOU FOR ANY CAUSE WHATSOEVER, AND REGARDLESS OF THE FORM OF THE ACTION, EVER EXCEED \$100.00 (USD).

SEVERAL STATES IN THE UNITED STATES AND SEVERAL FOREIGN COUNTRIES HAVE LAWS THAT, IN CERTAIN SPECIFIED CIRCUMSTANCES, DO NOT ALLOW LIMITATIONS ON IMPLIED WARRANTIES OR THE EXCLUSION OR LIMITATION OF CERTAIN DAMAGES. IF ANY OF THESE LAWS APPLY TO YOU UNDER THE SPECIFIED CIRCUMSTANCES PROVIDED BY THOSE LAWS, THEN SOME OR ALL OF THE PREVIOUSLY SET FORTH DISCLAIMER OF WARRANTIES AND LIMITATION OF LIABILITY MAY NOT APPLY TO YOU, AND YOU MAY HAVE ADDITIONAL RIGHTS.

➤ ***Governing Law, Limitation on Filing Suit, and Venue and Jurisdiction***

Despite differing laws existing at diverse points of access to our website, by becoming a user of our website you agree that only the laws of the State of California, without regard to its conflict of laws rules, will (i) govern this Terms of Service and Use; and (ii) any controversy, dispute, or claim of any type or description that may arise between you, on the one hand, and EXECONNECT, on the other hand. This Terms of Service and Use will be given a fair and reasonable construction in accordance with their respective terms and without any construction in favor of or against either you or EXECONNECT

YOU ACKNOWLEDGE AND AGREE THAT YOU HAVE AN AFFIRMATIVE OBLIGATION TO PARTICIPATE IN GOOD FAITH IN THE MEDIATION PROCESS DESCRIBED BELOW WITH RESPECT TO ANY CONTROVERSY, DISPUTE, OR CLAIM OF ANY TYPE OR DESCRIPTION THAT MAY ARISE BETWEEN YOU, ON THE ONE HAND, AND EXECONNECT, ON THE OTHER HAND.

YOU FURTHER ACKNOWLEDGE AND AGREE THAT YOU ARE PRECLUDED BY THIS PARAGRAPH AND THE IMMEDIATELY PRECEDING PARAGRAPH FROM FILING OR COMMENCING ANY LEGAL PROCEEDING OF ANY TYPE OR DESCRIPTION AGAINST EXECONNECT WITH ANY COURT, GOVERNMENTAL AGENCY, OR ARBITRATION FORUM ANYWHERE IN THE WORLD UNTIL YOU HAVE FIRST PARTICIPATED IN GOOD FAITH IN THE MEDIATION PROCESS DESCRIBED BELOW. YOU AGREE THAT THIS PARAGRAPH MAY BE PLEADED AGAINST YOU TO HAVE ANY SUCH LEGAL PROCEEDING COMMENCED BY YOU IT DISMISSED OR STAYED.

WITH RESPECT TO ANY CONTROVERSY, DISPUTE, OR CLAIM OF ANY TYPE OR DESCRIPTION THAT MAY ARISE BETWEEN YOU, ON THE ONE HAND, AND EXECONNECT, ON THE OTHER HAND, THAT IS UNABLE TO BE RESOLVED BY YOUR PARTICIPATION IN GOOD FAITH IN THE MEDIATION PROCESS DESCRIBED BELOW,

THEN YOU AGREE NOT TO COMMENCE ANY LEGAL PROCEEDING OF ANY TYPE OR DESCRIPTION AGAINST EXECONNECT WITH ANY COURT, GOVERNMENTAL AGENCY, OR ARBITRATION FORUM ANYWHERE IN THE WORLD OTHER THAN IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF CALIFORNIA, OR IF IT LACKS JURISDICTION, IN THE SUPERIOR COURT OF CALIFORNIA IN AND FOR THE COUNTY OF SAN CLARA. IN SO AGREEING, YOU AGREE TO SUBMIT TO THE PERSONAL JURISDICTION OF SUCH COURTS AND TO FOREVER WAIVE ALL DEFENSES OF A LACK OF PERSONAL JURISDICTION AND/OR A LACK OF A CONVENIENT FORUM WITH RESPECT TO THE AGREED UPON JURISDICTION AND VENUE OF THE COURTS NAMED ABOVE.

➤ ***Mediation Process***

In the event of any controversy, dispute, or claim of any type or description arising between you, on the one hand, and EXECONNECT, on the other hand, that cannot be resolved between parties, then either one of us will refer that controversy, dispute, or claim in writing to the San Jose, California Dispute Resolution Center of JAMS (<http://www.jamsadr.com>) for mediation, that is, an informal, non-binding conference or conferences between you and EXECONNECT in which a retired judge or justice will seek to guide all of the parties to a resolution of the controversy, dispute, or claim. You and EXECONNECT will be free to select any mutually acceptable panel member from the list of retired judges and justices at JAMS whose names and backgrounds are available on the Internet at <http://www.jamsadr.com>, provided that you select as a mediator a retired judge or justice having experience in resolving contract, intellectual property, Internet, and/or electronic commerce matters.

If you and EXECONNECT are unable to agree upon a mediator within 10 business days after its receipt of a written referral from you, then, at the written request by any of the parties to JAMS, an ADR Specialist with JAMS will forward to each of us a list of 5 available mediators having background and experience as set forth above with the request that each of us independently rank all 5 mediators in order of preference with the single use of a numeral between one and five, and return such ranking within 5 business days of the receipt of such list from JAMS. Based upon the rankings, the ADR Specialist will select the mediator.

Subsequent to the selection of a mediator, whether by the parties or by an ADR Specialist with JAMS, he or she will promptly set a date and time for the initial session or telephone conference with the parties, but not later than 30 days after the date of his or her selection. Each of us agrees that, in addition to counsel, a representative of each of us, other than counsel, who has full settlement authority will be required to be present at all mediation sessions. In addition, each of us may bring such additional persons as may be, in your or our sole determination, needed to respond to questions, contribute information, and participate in the sessions. The number of such additional persons must be agreed upon in advance with the assistance and advice of the mediator. No later than 5 business days before such initial session, each of us will deliver a concise written summary of its position together with any appropriate documents and a proposed solution to the matters in controversy to the mediator and also serve a copy on the other of us.

In the event the mediation process does not result in a mutually acceptable resolution of the controversy, dispute, or claim, only then will either of us will have the right to commence litigation only in the courts named above.

This required mediation process is to be considered settlement negotiations for the purposes of all Federal and state rules in the United States protecting disclosures made during such conferences from later discovery or use in evidence.

The costs of the mediator will be borne equally by each of us.

The provisions for this required mediation process will be deemed arbitration provisions *solely and exclusively* for the purpose of enforcing compliance with the obligation of each of us to fully comply with those provisions for this required mediation process. In the event either of us is required to commence legal proceedings to enforce the other's compliance with the provisions for this required mediation process, then the one of us bringing the

enforcement proceeding will, if successful, be entitled to an award of his, her, or its reasonable attorneys' fees and costs incurred in connection with such enforcement proceeding. This provision does not nor is it intended to provide for an award of reasonable attorneys' fees and costs incurred in connection with a resolution or the outcome of the underlying matters that are subject to the required mediation process.

➤ ***Applicability of this Terms of Service and Use***

This Terms of Service and Use collectively constitute the entire agreement between you and EXECONNECT regarding you as a user of our website and your use of our website, and they supersede any prior agreements between you and EXECONNECT relating to you as a user of our website and your use of our website. The failure of EXECONNECT to exercise or enforce any right or provision of this Terms of Service and Use will not constitute a waiver of such right or provision in that or any other instance. If any provision of this Terms of Service and Use is determined to be invalid or unenforceable in any respect under the governing law set forth above, then such term or condition will be deemed modified so as to have the most nearly similar permissible economic or other effect in order to be valid and enforceable under the governing law set forth above.

➤ ***Further Questions Regarding This Terms of Service and Use***

For further assistance, please send EXECONNECT an E-Mail with your specific question(s) set forth in detail to help@execonnect.com. You will receive a prompt reply E-Mail.

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