

TOTLCOM Inc.
MASTER CUSTOMER SERVICES AGREEMENT



MASTER AGREEMENT NUMBER:

This Master Customer Services Agreement (this "Agreement") is between **TOTLCOM INC.**, a California corporation that maintains its headquarters office at 65A Hangar Way, Watsonville, CA 95076 ("**TOTLCOM**"), and [REDACTED], maintaining an office for business at [REDACTED] ("**Customer**"). The Agreement shall be effective as of the latest date of the signatures of the parties below ("Effective Date"). The parties agree as follows:

- 1) **SCOPE OF SERVICES.** TOTLCOM agrees to assist Customer with professional data hosting and project services as set forth in the appropriate Schedule, Appendix or Attachment (A, B, C, etc.), or as may be set forth in applicable Statements of Work or attachments that may be executed from time-to-time by both parties under this Agreement (collectively, the "Services"). Each Statement of Work, Schedule or Attachment shall reference this Agreement and shall automatically be deemed a part of the terms of this Agreement. TOTLCOM shall perform all Services in accordance with the relevant best practices for the managed service provider industry.
- 2) **PAYMENT.** Unless otherwise stated in a statement of work, Payment is due within fifteen (15) calendar days from the date Customer receives an invoice for Services from TOTLCOM. For prepaid fees or fees paid pursuant to a service plan, payment must be made in advance of work performed. Support service may be temporarily suspended if payments are not received within 10 days of the due date. TOTLCOM reserves the right to suspend all service if any Customer invoices are not paid within the terms of said invoices. Customer shall be liable for all reasonable attorneys' fees as well as costs incurred in collection of past due balances
- 3) **AUTHORIZED CONTACT PERSON.** Customer shall designate one or more authorized contact person(s) ("Authorized Contacts") with whom TOTLCOM will conduct Service-related communications. Each Authorized Contact shall be authorized to provide, modify and approve on Customer's behalf, work direction, Statements of Work, and Change Orders.
- 4) **ACCESS TO PREMISES.** When Services are performed on Customer's premises ("Premises"), Customer hereby grants to TOTLCOM the right of ingress and egress over the Premises. When Services are provided to Customer on property other than the Premises, it is Customer's responsibility to secure, any necessary rights of entry necessary for TOTLCOM to provide Services. Customer will provide TOTLCOM passwords or keys that TOTLCOM requires to provide the Services to Customer. TOTLCOM shall not be liable for delay in performance or nonperformance of any term or condition of this Agreement resulting from Customer's delays or denial to TOTLCOM of full and free access to Customer's systems and components.
- 5) **WARRANTIES; LIMITATIONS OF LIABILITY.**
 - a) Any third-party products provided to Customer pursuant to this Agreement, including but not limited to third party hardware, software, peripherals and accessories (collectively, "Third Party Products") shall be provided to Customer "as is". TOTLCOM shall use reasonable efforts to assign all warranties (if any) for the Third-Party Products to Customer but will have no liability for such third-party products. All Third-Party Products are provided WITHOUT ANY WARRANTY between TOTLCOM and Customer. TOTLCOM shall not be held liable as an insurer or guarantor of the performance or quality of Third-Party Products.
 - b) TOTLCOM assumes no liability for failure of equipment or software or any losses resulting from such failure.
 - c) Customer warrants and represents that it shall not use the System for any purposes or activities that violate the laws of any jurisdiction, including the sending of unsolicited, bulk commercial email (*i.e.*, SPAM).
 - d) IN NO EVENT SHALL EITHER PARTY BE LIABLE FOR ANY SPECIAL, INDIRECT, EXEMPLARY OR CONSEQUENTIAL DAMAGES, OR FOR LOST REVENUE, LOSS OF PROFITS, SAVINGS, RANSOMWARE OR OTHER ECONOMIC LOSS ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT, ANY STATEMENT OF WORK(S) OR ANY SERVICES PERFORMED OR PARTS SUPPLIED HEREUNDER, ANY LOSS OR INTERRUPTION OF DATA, TECHNOLOGY OR SERVICES, OR FOR ANY BREACH HEREOF OR FOR ANY DAMAGES CAUSED BY DELAY IN FURNISHING SERVICES UNDER THIS AGREEMENT OR ANY STATEMENT(S) OF WORK EVEN IF SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. EACH PARTY'S AGGREGATE LIABILITY TO THE OTHER FOR DAMAGES FROM ANY AND ALL CAUSES WHATSOEVER AND REGARDLESS OF THE FORM OF ACTION, WHETHER IN CONTRACT, TORT OR NEGLIGENCE, SHALL BE LIMITED TO THE AMOUNT OF THE AGGRIEVED PARTY'S ACTUAL DIRECT DAMAGES NOT TO EXCEED THE AMOUNT OF FEES PAID BY CUSTOMER TO TOTLCOM FOR THE SERVICES DURING THE THREE (3) MONTHS IMMEDIATELY PRIOR TO THE DATE ON WHICH THE CAUSE OF ACTION ACCRUED. IT IS UNDERSTOOD AND AGREED THAT THE COSTS OF HARDWARE OR SOFTWARE (IF ANY) PROVIDED TO CUSTOMER UNDER THIS AGREEMENT SHALL NOT BE INCLUDED IN THE CALCULATION OF THE LIMITATION OF DAMAGES DESCRIBED IN THE PRECEDING SENTENCE.
- 6) **INDEMNIFICATION.** Each party (an "Indemnifying Party") hereby agrees to indemnify, defend and hold the other party (an "Indemnified Party") harmless from and against any and all loss, damage, cost, expense or liability, including reasonable attorneys' fees, (collectively, "Damages") that arise from, or are related to the negligent acts, negligent omissions or intentional wrongful misconduct of the Indemnifying Party and/or the Indemnifying Party's employees or subcontractors, and from any Damages arising from or related to the Indemnifying Party's uncured, material breach of this Agreement. The Indemnifying Party further agrees to indemnify, defend, save and hold harmless the Indemnified Party.

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- 7) **COPYRIGHTS AND OTHER INTELLECTUAL PROPERTY.** Each party (a “Creating Party”) owns and retains all intellectual property rights in and to all of the Creating Party’s works of authorship, including all plans, software or software modifications developed by the Creating Party, During the term of this Agreement, Customer may use and modify any intellectual property provided to Customer by TOTLCOM pursuant to this Agreement, provided that such modifications do not result in or cause the infringement of any intellectual property rights of any third party. Each party’s limited right to use the other party’s intellectual property as described herein automatically terminates upon the termination of this Agreement.
- 8) **TERMINATION.**
- a) *Without Cause.* Either party may terminate this Agreement or any Statement of Work for any reason by providing the other party with thirty (30) days prior written notice to the anniversary date of any Statement of Work or Attachment. Termination of one Statement of Work shall not act as a termination of any other Statement of Work or of this Agreement as a whole. Termination of this Agreement as a whole however, shall act as a termination of all Statements of Work then pending.
 - b) *Consent.* The parties may mutually consent, in writing, to terminate this Agreement or any Statement of Work at any time.
 - c) *Default.* In the event that one party (a “Defaulting Party”) commits a material breach of this Agreement or a Statement of Work, the non-Defaulting Party shall have the right, but not the obligation, to terminate immediately this Agreement or the relevant Statement of Work provided that (i) the non-Defaulting Party has notified the Defaulting Party of the specific details of the breach in writing, and (ii) the Defaulting Party has not cured the default within ten (10) days following receipt of written notice from the non-Defaulting Party.
 - d) *Equipment Removal.* Upon termination of this Agreement for any reason, Customer shall provide TOTLCOM with access, during normal business hours, to Customer’s premises (or any other locations at which TOTLCOM-owned equipment is located) to enable TOTLCOM to remove all TOTLCOM-owned equipment from such premises
 - e) *Transition.* In the event this Agreement is terminated for any reason, all Customer data held by TOTLCOM shall be returned to the Customer in a commercially reasonable manner and time, not to exceed fifteen (15) calendar days following the date of request of the return. If Customer requests TOTLCOM’s assistance to transition to a new provider, it will do so provided that all fees owing to TOTLCOM are paid in full prior to TOTLCOM providing its assistance and Customer agrees to pay TOTLCOM its then-current hourly rate for such assistance. **TOTLCOM shall have no obligation to store or maintain any Customer data in TOTLCOM’s possession or control beyond fifteen (15) calendar days following the termination of this Agreement.** TOTLCOM shall be held harmless for and indemnified by Customer against any and all claims, costs, fees, or expenses incurred by either party that arise from, TOTLCOM’s deletion of Customer data beyond the time frames described in this Section.
 - f) *No Liability:* Unless expressly stated in this Agreement, neither party shall be liable to the other party for any, losses, expenses, costs or damages (collectively, “Damages”) arising from the termination of this Agreement for any reason or arising from TOTLCOM’s disclosure of information pursuant to any valid legal request to which TOTLCOM is required to comply. This waiver of liability shall include, but shall not be limited to, the loss of actual or anticipated profits, anticipated or actual sales, and of expenditures, investments, or commitments in connection with such party’s or any third party’s goodwill or business.
- 9) **CONFIDENTIALITY.**
- a) TOTLCOM shall keep Customer’s Confidential Information confidential and shall not use or disclose such information to any third party for any purpose except as expressly authorized by Customer, or as needed to fulfill TOTLCOM’s obligations under this Agreement. If TOTLCOM is required to disclose the Confidential Information to any third party, then TOTLCOM shall ensure that such third party is required, by written agreement, to keep the information confidential under terms that are at least as restrictive as those stated in this Section.
 - b) *Due Care.* TOTLCOM shall exercise the same degree of care with respect to the Confidential Information it receives from Customer as TOTLCOM normally takes to safeguard and preserve its own information, which in all cases shall be at least a commercially reasonable level of care.
 - c) *Compelled Disclosure.* If TOTLCOM is legally compelled to disclose any of the Confidential Information, TOTLCOM shall immediately notify Customer in writing of such requirement so that Customer may seek a protective order or other appropriate remedy and/or waive TOTLCOM’s compliance with the provisions of this Section. Failing the entry of a protective order or the receipt of a waiver hereunder, TOTLCOM may disclose, without liability hereunder, that portion (and only that portion) of the Confidential Information that TOTLCOM has been advised by written opinion of counsel reasonably acceptable to TOTLCOM that it is legally compelled to disclose.
- 10) **MISCELLANEOUS.**
- a) *Assignment:* This Agreement or any Statement of Work may not be assigned or transferred by TOTLCOM without the prior written consent of the Customer. Notwithstanding the foregoing, TOTLCOM may assign its rights and obligations hereunder to a successor in ownership provided such assignee expressly assumes the assignor’s obligations hereunder.

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- b) *Time Limitations.* The parties mutually agree that any action for breach of or upon a matter arising out of this Agreement or any Statement of Work must be commenced within six (6) months after the cause of action accrues or the action is forever barred.
- c) *Severability.* If any provision hereof or any Statement of Work is declared invalid by a court of competent jurisdiction, such provision shall be ineffective only to the extent of such invalidity, the remainder of that provision and all remaining provisions of this Agreement or any Statement of Work shall be valid and enforceable.
- d) *Merger.* This Agreement, together with any Statement(s) of Work, sets forth the entire understanding of the parties and supersedes any and all prior agreements, or understandings related to the Services. TOTLCOM shall not be bound by any agents' or employees' representations, promises or inducements not explicitly set forth herein.
- e) *Force Majeure.* TOTLCOM shall not be liable to Customer for delays or failures to perform its obligations under this Agreement or any Statement of Work because of circumstances beyond its reasonable control. Such circumstances include, but shall not be limited to, any acts or omissions of any governmental authority, natural disaster, terrorism, riot, sabotage, disputes or differences with workmen, power failure, communications delays/outages, delays in deliveries of supplies or materials, acts of God, or any other events beyond the reasonable control of TOTLCOM.
- f) *Non-Solicitation.* Customer acknowledges and agrees that during the term of this Agreement and for a period of one (1) year following the termination of this Agreement, Customer will not, individually or in conjunction with others, directly or indirectly solicit, induce or influence any of TOTLCOM's employees to discontinue or reduce the scope of their business relationship with TOTLCOM, or recruit, solicit or otherwise influence any employee or agent of TOTLCOM to discontinue such employment or agency relationship with TOTLCOM. In the event that Customer violates the terms of the restrictive covenants in this Section 12(j), the parties acknowledge and agree that the damages to TOTLCOM would be difficult or impracticable to determine, and agree that in such event, as TOTLCOM's sole and exclusive remedy therefore, Customer shall pay TOTLCOM as liquidated damages and not as a penalty an amount equal to fifty percent (50%) percent of that employee or subcontractor's first year of base salary with Customer (including any signing bonus).
- g) *Insurance.* TOTLCOM and Customer shall each maintain, at their own expense, all insurance reasonably required in connection with this Agreement or any Statement of Work, including but not limited to, workers compensation and general liability. TOTLCOM agrees to maintain a general liability policy with a limit not less than \$1,000,000 per occurrence, and an automobile liability insurance policy of not less than \$250,000 bodily injury per person, \$250,000 per accident, and \$100,000 property damage liability.
- h) *Venue.* This Agreement and any Statement of Work shall be governed by, and construed according to, the laws of the California. Customer hereby consents to the exclusive jurisdiction and venue of the federal and state courts in Santa Cruz County, in the State of California, for any and all claims and causes of action arising from or related to this Agreement. THE PARTIES AGREE THAT THEY WAIVE ANY RIGHT TO A TRIAL BY JURY FOR ANY AND ALL CLAIMS AND CAUSES OF ACTION ARISING FROM OR RELATED TO THIS AGREEMENT.
- i) *No Third-Party Beneficiaries.* The Parties have entered into this Agreement solely for their own benefit. They intend no third party to be able to rely upon or enforce this Agreement or any part of this Agreement.
- j) *Independent Contractor.* Each party is an independent contractor of the other, and neither is an employee, partner or joint venturer of the other.
- k) *Subcontractors.* TOTLCOM may subcontract part or all of the Services to one or more third parties provided, however that TOTLCOM shall be responsible for, and shall guarantee, all work performed by any TOTLCOM-designated subcontractor as if TOTLCOM performed such work itself. Notwithstanding the foregoing, TOTLCOM shall not delegate or subcontract any Services that are expressly designated as being non-delegable by Customer on a statement of work.
- l) *Onboarding:* For the purposes of this Agreement, "Onboarding" will mean those hours or days during which time TOTLCOM will conduct the onboarding of your System, or portions thereof. We will use our best efforts to provide you with at least twenty-four (24) hours of notice prior to scheduling the onboarding.
- m) *Onboarding Exemption.* It is agreed that prior to and during the onboarding period, TOTLCOM will not be responsible under any circumstances for any delays or deficiencies, any viruses, breaches, hidden malware, or other cyber attacks on the System, We will not assume any responsibility where the System is or has been compromised and Customer shall not file any such claim against TOTLCOM or its insurance provider and Customer shall indemnify TOTLCOM if any claims are filed by third parties whose Material is compromised, including HIPAA claims.

AGREED AND ACCEPTED:	
Date: _____	Date: _____
TOTLCOM Inc.	Customer: _____
By: _____	By: _____
Print Name / Position: _____	Print Name / Position: _____

Re

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