

TOTLCOM Inc.

MASTER CUSTOMER SERVICES AGREEMENT



Customer Initial _____

MASTER AGREEMENT NUMBER: _____

Rev: 4-18-2023

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 _____, maintaining an office for business at _____ ("Customer").

This Agreement shall be effective as of the latest date of the signatures of the parties below ("Effective Date") and shall always remain in effect when the Customer subscribes to TOTLCOM services, whether that be one-time engagements, or recurring contractual services.

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 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 suspended temporarily 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) **PASS-THROUGH EXPENSES** Customer shall pay TOTLCOM's reasonable out-of-pocket expenses, including travel expenses, lodging, meals, or other similar expenses, which may be incurred by TOTLCOM in performing Services. Any such "Pass-Through Expenses" will be billed at cost and invoiced monthly.
- 4) **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.
- 5) **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.

TOTLCOM Inc.

MASTER CUSTOMER SERVICES AGREEMENT



Customer Initial _____

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.

6) 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. **TOTLCOM IS NOT RESPONSIBLE FOR THE ACTS OR OMISSIONS OF THIRD-PARTY SERVICE PROVIDERS. CUSTOMER'S RIGHTS REGARDING CLAIMS AGAINST THIRD-PARTY SERVICE SHALL BE GOVERNED BY END USER LICENSE AGREEMENT TERM AND CONDITIONS.**
- b) TOTLCOM assumes no liability for failure of equipment or software or any losses resulting from such failure.
- c) 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.
- d) **Unsupported Software** TOTLCOM shall not be responsible or liable to Customer for any consequences from the use of software no longer under manufacturer product support or no longer supported by the software publisher ("Unsupported Software"). This includes extra labor or other charges by TOTLCOM for expenses incurred troubleshooting those issues. **THEREFORE, CUSTOMER AGREES TO HOLD TOTLCOM HARMLESS FROM ANY LOSS, INJURY OR DAMAGE TO CUSTOMER OR ANY HARDWARE, SOFTWARE, AND/OR COMPUTER DATA OF CUSTOMER CAUSED BY ANY USE OF UNSUPPORTED SOFTWARE.**

TOTLCOM Inc.

MASTER CUSTOMER SERVICES AGREEMENT



Customer Initial _____

- 7) **THIRD-PARTY SERVICE PROVIDERS** : Unless expressly undertaken by TOTLCOM in writing, Customer is responsible for any third-party vendor or service (the "Third-Party Service Providers") charges and to arrange for disconnection or termination and payment of charges related to the disconnection or
- 8) **Termination of any related services with Customer's current carrier(s) or service provider(s).** TOTLCOM is not responsible for any acts or omissions of Third-Party Service Providers. TOTLCOM does not warrant beyond any warranty offered by its Third-Party Service Providers. In the event that a claim arises from any act or omission of a third-party Provider. Customer agrees that Customer's sole remedy will be against that third-party.
- 9) **THIRD-PARTY CRIMINAL ACTIVITY:** TOTLCOM is not responsible for criminal acts of third parties, including but not limited to intrusions or unauthorized access of any kind, hackers, phishers, crypto-locker, and any network environment subject to ransom. **CUSTOMER AGREES TO PAY RANSOM OR HOLD TOTLCOM HARMLESS FOR ANY ACTIVITY AFFECTING NETWORK SECURITY ON CUSTOMER'S ENVIRONMENT RELATED TO THIRD-PARTY CRIMINAL ACTIVITY, NETWORK SECURITY OR PRIVACY.** Costs and fees to for rebuilding or service will be billed at TOTLCOM's then-prevailing hourly rates.
- 10) **VIRUSES:** Anti-virus solution must be in place, updated, with valid update subscription. TOTLCOM is not responsible for any harm that may be cause by Customer's access to third party application programming interfaces or the execution or transmission of malicious code or similar occurrences, including without limitation, disabling devices, drop dead devices, time bombs, trap doors, Trojan horses, worms, viruses and similar mechanisms. Any costs or fees to rebuild or service machines are provided and sold separately by TOTLCOM.
- 11) **PASSWORD MANAGEMENT SERVICES:** If TOTLCOM provides password management services to Customer, Customer shall be responsible and liable for any unauthorized use of passwords. THEREFORE, CUSTOMER AGREES TO HOLD TOTLCOM HARMLESS FROM ANY LOSS, INJURY OR DAMAGE TO CUSTOMER OR ANY THEFT OF PASSWORDS CAUSED BY SUCH USE OF THE PASSWORD SERVICES BY CUSTOMER.

12) **DISCLAIMER OF WARRANTY**

TOTLCOM DOES NOT WARRANT THAT THE SERVICES WILL BE PERFORMED ERROR-FREE OR UNINTERRUPTED, THAT TOTLCOM WILL CORRECT ALL SERVICES ERRORS, OR THAT THE SERVICES WILL MEET CUSTOMER'S REQUIREMENTS OR EXPECTATIONS, OR THAT THE SERVICE WILL BE COMPLETELY SECURE. THERE ARE RISKS INHERENT IN INTERNET CONNECTIVITY THAT COULD RESULT IN THE TEMPORARY LOSS OF SERVICE AVAILABILITY. TOTLCOM IS NOT RESPONSIBLE FOR ANY ISSUES RELATED TO THE PERFORMANCE, OPERATION OR SECURITY OF THE SERVICES THAT ARISE FROM CUSTOMER'S CONTENT OR THIRD-PARTY CONTENT OR SERVICES PROVIDED BY THIRD PARTIES. TOTLCOM SHALL HAVE NO OBLIGATION WITH RESPECT TO A WARRANTY CLAIM (i) IF NOTIFIED OF SUCH A CLAIM AFTER THE WARRANTY PERIOD OR (ii) IF THE CLAIM IS THE RESULT OF THIRD-PARTY HARDWARE OR SOFTWARE FAILURES, OR THE ACTIONS OF CUSTOMER OR A THIRD PARTY.

FOR ANY BREACH OF THE SERVICES WARRANTY, CUSTOMER'S EXCLUSIVE REMEDY AND TOTLCOM'S ENTIRE LIABILITY SHALL BE THE CORRECTION OF THE DEFICIENT SERVICES THAT CAUSED THE BREACH OF WARRANTY, OR, IF TOTLCOM CANNOT SUBSTANTIALLY CORRECT THE DEFICIENCY IN A

TOTLCOM Inc.

MASTER CUSTOMER SERVICES AGREEMENT



Customer Initial _____

COMMERCIALY REASONABLE MANNER, CUSTOMER MAY END THE DEFICIENT SERVICES AND TOTLCOM WILL REFUND TO CUSTOMER THE FEES FOR THE TERMINATED SERVICES THAT CUSTOMER PRE-PAID TO TOTLCOM FOR THE PERIOD FOLLOWING THE EFFECTIVE DATE OF TERMINATION.

TO THE EXTENT NOT PROHIBITED BY LAW, CUSTOMER ACKNOWLEDGES THESE WARRANTIES ARE EXCLUSIVE AND THERE ARE NO OTHER EXPRESS OR IMPLIED WARRANTIES OR CONDITIONS BY THE TOTLCOM OR ANY THIRD-PARTY VENDORS' INCLUDING FOR SOFTWARE, HARDWARE, SYSTEMS, NETWORKS OR ENVIRONMENTS OR FOR MERCHANTABILITY, SATISFACTORY QUALITY AND FITNESS FOR A PARTICULAR PURPOSE, AND THAT THOSE THIRD-PARTY VENDORS DISCLAIM ANY AND ALL LIABILITY, WHETHER DIRECT, INDIRECT OR CONSEQUENTIAL, ARISING FROM THE SERVICES.

TOTLCOM MAY LINK TO OR OFFER THIRD-PARTY SERVICES FOR RESALE. ANY PURCHASE, ENABLING, OR ENGAGEMENT OF THIRD-PARTY SERVICES, INCLUDING BUT NOT LIMITED TO IMPLEMENTATION, CUSTOMIZATION, CONSULTING SERVICES, E-MAIL, WEB HOSTING, SERVER HOSTING, PHONE SERVICE, AND ANY EXCHANGE OF DATA BETWEEN CUSTOMER AND ANY THIRD-PARTY SERVICE, IS SOLELY BETWEEN CUSTOMER AND THE APPLICABLE THIRD-PARTY SERVICE PROVIDER AND IS SUBJECT TO THE TERMS AND CONDITIONS OF SUCH THIRD-PARTY PROVIDER. TOTLCOM DOES NOT WARRANT THIRD-PARTY SERVICES AND IS NOT RESPONSIBLE OR LIABLE FOR SUCH SERVICES OR ANY LOSSES OR ISSUES THAT RESULT FROM CUSTOMER'S USE OF SUCH SERVICES. IF CUSTOMER PURCHASES, ENABLES OR ENGAGES ANY THIRD-PARTY SERVICE FOR USE IN CONNECTION WITH THE SERVICES, CUSTOMER ACKNOWLEDGES THAT TOTLCOM MAY ALLOW THIRD-PARTY SERVICES PROVIDER TO ACCESS CUSTOMER DATA USED IN CONNECTION WITH THE SERVICES AS REQUIRED FOR THE INTEROPERATION OF SUCH THIRD-PARTY SERVICES WITH THE SERVICES. CUSTOMER REPRESENTS AND WARRANTS THAT CUSTOMER'S USE OF ANY THIRD-PARTY SERVICE SIGNIFIES CUSTOMER'S INDEPENDENT CONSENT TO THE ACCESS AND USE OF CUSTOMER'S DATA BY THE THIRD-PARTY SERVICE PROVIDER AND THAT SUCH CONSENT, USE, AND ACCESS IS OUTSIDE OF TOTLCOM'S CONTROL. TOTLCOM WILL NOT BE RESPONSIBLE OR LIABLE FOR ANY DISCLOSURE, MODIFICATION OR DELETION OF DATA RESULTING FROM ANY SUCH ACCESS BY THIRD-PARTY SERVICE

- 13) **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.
- 14) **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.

TOTLCOM Inc.

MASTER CUSTOMER SERVICES AGREEMENT



Customer Initial _____

14) TERMINATION.

- a) **Month to Month Services:** If the Order specifies no Initial Term with respect to any or all Services, then TOTLCOM will deliver those Services on a month-to-month basis until one party provides written notice to the other party of its intent to terminate those Services, in which case TOTLCOM will cease delivering those Services at the end of the following calendar month in which following receipt such written notice is received by the other party.
- b) **Without Cause.** Either party may terminate this Agreement or any Statement of Work for any reason by providing the other party with forty five (45) days prior written notice to the anniversary date of any recurring Agreement, Statement of Work or Attachment. Termination of one Agreement, Statement of Work or Attachment 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 Master Customer Service Agreement as a whole however, shall act as a termination of all Statements of Work then pending.
- c) **Consent.** The parties may mutually consent, in writing, to terminate this Agreement or any Statement of Work at any time.
- d) **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.
- e) **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.
- f) **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.

TOTLCOM Inc.

MASTER CUSTOMER SERVICES AGREEMENT



Customer Initial _____

- g) **Off-Boarding.** Customer's cancellation, termination, or transition of the Services to Customer's control ("Off-Boarding") may trigger a billable project. Any Off-Boarding projects will be subject to a separate Order or Project Service Attachment or Statement of Work, which will be billed at TOTLCOM's then current rates.
- h) **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) **NON-Disclosure and 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) DISPUTE RESOLUTION

Arbitration Procedures: Each party shall attempt to settle amicably by mutual discussions any disputes, differences, or claims related to this Agreement within sixty (60) days of the date any such dispute arises. Failing such amicable settlement, any such dispute, including claim related to the existence, validity, interpretation, performance, termination or breach of this Agreement, is to be settled by arbitration in accordance with the Arbitration Rules of the American Arbitration Association ("AAA"). The arbitration will be conducted in English and will have one (1) arbitrator. The Arbitrator will not have the authority to award punitive damages to either party. Each party will bear its own expenses, but shall share equally the expenses of the Arbitration Tribunal and the AAA. Any arbitration award will be final, and judgment

TOTLCOM Inc.

MASTER CUSTOMER SERVICES AGREEMENT



Customer Initial _____

thereon may be entered in any court of competent jurisdiction. The arbitration will be held in the city where TOTLCOM's headquarters are located, or at another location upon which the parties may agree. Notwithstanding the foregoing, claims for preliminary injunctive relief, other pre-judgment remedies, and claims for Customer's failure to pay for Services may be brought in a state or federal court in the United States with jurisdiction over the subject matter and parties.

Continued Service Unless TOTLCOM is bringing an action for Customer's failure to make payments for Services not otherwise in dispute, TOTLCOM will continue to provide Services under this Agreement, and Customer shall continue to make payments to us, in accordance with this Agreement, during the period in which the parties seek resolution of the dispute.

Attorneys' Fees In the event that there is any dispute, difference, or claim related to this Agreement that is resolved either through arbitration or through litigation, the prevailing party will be entitled to an award of reasonable attorneys' fees incurred while defending or prosecuting such dispute, difference, or claim.

11) 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.
- 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.

TOTLCOM Inc.

MASTER CUSTOMER SERVICES AGREEMENT



Customer Initial _____

- 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. CUSTOMER Obligations:** Customer shall maintain a minimum of One Million Dollars (US \$1,000,000) in insurance coverage through its respective carriers. Such insurance must include, at a minimum, commercial general liability, workers compensation coverage, and first party cyber liability. **TOTLCOM Obligations:** TOTLCOM agrees to maintain during the Term, professional liability insurance including errors and omissions with aggregate limits of at least One Million Dollars (US \$1,000,000). Customer's insurance shall be primary over TOTLCOM's insurance. Customer agrees to waive and to require its insurers to waive any rights of subrogation or recovery they may have against TOTLCOM, its agents, officers, directors and employees.
- 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 TOTLCOMdesignated 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.

TOTLCOM Inc.

MASTER CUSTOMER SERVICES AGREEMENT



Customer Initial _____

- 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.
- n) **Updates and changes to this Agreement:** Updates will be made periodically to the Master Customer Services Agreement. This Agreement is posted with a link to the document on the TOTLCOM Webpage in a drop down menu on the upper right hand corner of the home page. Notification of updates will be made by email and Customer acknowledges that unless there is a written disagreement within 30 days, by continuing to use our services you are agreeing to the updates.

AGREED AND ACCEPTED:

Date: _____

Date: _____

TOTLCOM Inc.

Customer: _____

By: _____

By: _____

Name /Position:

Name / Position: