



Master Services Agreement

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This Master Services Agreement (“Service Agreement”) is the collection of terms set forth in this document and the attached Specifications and Service Order (“Service Order”), the Support Coverage Agreement (“Support Agreement”), the Custom Terms Agreement (“Custom Terms”), the Service Level Agreement (“SLA”), and the Acceptable Usage Policy (“AUP”) on our Web site. The Agreement governs the terms of use by the client listed on the Service Order (“Client”) described herein as offered by Tilted Planet, Ltd (“Provider”).

The Agreement is made between Client and Provider on the date listed on the Service Order. The Master Services Agreement is maintained independently of any other agreement between Provider and Client, even if Provider and Client are engaged in other service arrangements such as Web or software development, or dedicated Internet access.

1. Services.

1.1 Web Hosting. An Internet Web hosting service rendered by Provider that includes the installation, maintenance, repair, and the 24 hour Internet connection of one or more physical computers (“Servers”) for use by Client as listed in the Service Order.

1.2 Network Data Transfer. A finite amount of Provider’s Network Data Transfer capability for use by Client using the Servers as listed the Service Order.

1.3 Technical Support. Technical phone and email support is provided to the Client’s Technical Contacts only for the description of services in items Support Agreement and does not include software support, security upgrades, training, nor general Internet training unless otherwise listed the Support Agreement.

1.4 Colocation. A hosting service rendered by Provider that includes the physical installation and the 24 hour Internet and power connections of one or more physical computers (“Servers”) for use by Client as listed in the Service Order.

2. Standard Fees.

2.1 Setup fee. Client agrees to pay in full the amount of item “(fee1) Total non-recurring setup charge” listed in the Service Order prior to any equipment acquisition or installation by Provider.

2.2 Recurring fee. Client agrees to pay recurring monthly fees of item “(fee2) Total recurring monthly charge” at the beginning of each month first starting on the activation date.

2.3 Payment terms. For accounts that are paid initially by credit card, Client expressly authorizes Provider to charge recurring billing, until Client gives written notice otherwise to Provider or the Agreement is ended. Accounts that pay by check or wire transfer will be mailed or emailed an invoice each billing cycle, and is due upon receipt.

2.4 Collections. Accounts that are past due by more than 15 days are subject to interruption of all services either by disabling telnet/FTP access or by disabling the connection to the Servers. Provider will make reasonable attempts to contact Client 15 days prior to disconnection. In the event of disconnections, a \$150 administrative reinstatement fee will apply to reactivate the service, in addition to full payment of the balance due on the account. All accounts that have not been paid in full after sixty (60) business days will be sent to a collection agency. All accounting issues should be addressed to billing@corp.tilted.com.

3. Overage Fees.

3.1 Network Data Transfer. Should Client exceed the total amount of combined Network Data Transfer as noted in the Service Order, Client understands that overage fees will apply as per the item “Network Data Transfer” in the Service Order, in each month that the overage occurs.

3.2 Technical Support. Client understands that technical support requested outside of the support descriptions listed in the Support Agreement will result in additional fees as listed in the Support Agreement.

4. Term. This Agreement shall be effective as of the date specified on the service order and shall continue for a term specified on the Service Order. This Agreement shall automatically, in full, continually renew for the term specified on the Service Order unless Client or Provider notifies the other party in writing thirty (30) days in advance of the termination of the current period. Client shall pay any applicable federal, state or local use, franchise, excise, sales or privilege taxes, duties, fees or similar liabilities chargeable to or against Provider resulting from the services furnished by Provider. Provider will provide Client with 30 days notice prior to termination (for any reason) by Provider. Provider reserves the right to terminate immediately if extending 30 days notice to Client would cause serious injury to Provider's ability to provide service to Provider's other clients. Example situations include, but are not limited to, the following: continuing to send or relay unsolicited email despite warnings, failing to repair a compromised server or a situation allowing simple compromises, etc.

5. Mutual Cancellation. This Agreement may be terminated for cause by either Client or Provider as applicable upon (a) an uncured material breach by the other party of any term herein or in any attached document after thirty days written notice; (b) the other party's failure to function as an ongoing concern or operate in the ordinary course; (c) assignment of the other party for the benefit of creditors; or (d) voluntary or involuntary bankruptcy filing by or against the other party. If Client terminates this Agreement without cause prior to the end of the term, Client shall pay all amounts then due and unpaid plus seventy-five percent of the amount Client would otherwise have had to pay to Provider over the remainder of the term ("Cancellation Fee") calculated based on the remaining number of months of the term. The Cancellation Fee also applies at Provider's election upon its termination of this Agreement for Client's material breach, without any offset or mitigation of damages required therefor. Client agrees to pay any Cancellation Fee within thirty days of any specified early termination event. Client acknowledges that such Cancellation Fee is

not a penalty but is in the nature of liquidated damages.

6. Acceptable Use. Client's use of Provider's services is further governed by the Provider's Acceptable Usage Policy which promotes safe computing practices. Provider may at its sole discretion change, update and revise the Acceptable Usage Policy. Provider's AUP is located online at <http://www.tilted.com/aup.html> and will be incorporated herein by URL reference.

7. Compliance with Law. Client will use the services offered by Provider in a manner consistent with all applicable local, state and federal laws and regulations.

8. Common Carrier. Provider and Client agree that Provider is solely acting as a common carrier in its capacity of providing services hereunder, is not a publisher of any material or information and has no right to edit or censor the material at the Servers in use by the Client. Provider is not responsible nor pre-approves any of Client's Web site content. All material submitted by Client for publication will be considered publicly accessible. Provider does not screen in advance Client's material submitted to Provider for publication. Provider's publication of material submitted by Client does not create any express or implied approval by Provider of such material, nor does it indicate that such material complies with the terms of this Agreement.

9. Availability of Service. Client understands and agrees that interruptions of Services may occur due to scheduled maintenance and repair by Provider, or by strikes, riots, vandalism, fires, inclement weather, third-party provider outages, cable cuts, power crisis shortages, acts of terrorism, and or uncontrollable acts of God, or other causes beyond Provider's control, as defined by standard practices in the industry. Client agrees that under no circumstances will Provider be held liable, except as provided herein, for any financial or other damages due to such interruptions. In no event shall Provider be liable to Client or any other person for any special,

incidental, consequential or punitive damages of any kind, including, without limitation, refunds of fees, loss of profits, loss of income or cost of replacement services. Such failure or delay shall not constitute a default under this Agreement.

10. Limitation/Disclaimer of Liability. Provider is not liable for protection or privacy of electronic mail or other information transferred through the Internet or any other network provider or services its Clients may utilize. Client acknowledges that security practices are ever-changing to accommodate escalating and diverging threats. Provider will use industry accepted practices while providing security related services.

11. DISCLAIMER OF WARRANTIES. PROVIDER'S SERVICE IS PROVIDED ON AN "AS IS, AS AVAILABLE" BASIS. PROVIDER SPECIFICALLY DISCLAIMS ANY OTHER WARRANTY, EXPRESS OR IMPLIED, INCLUDING ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. IN NO EVENT SHALL PROVIDER BE LIABLE FOR ANY CONSEQUENTIAL, INDIRECT, SPECIAL OR INCIDENTAL DAMAGES, EVEN IF PROVIDER HAS BEEN ADVISED BY CLIENT OF THE POSSIBILITY OF SUCH POTENTIAL LOSS OR DAMAGE. IF PROVIDER'S SERVICE TO CLIENT IS INTERRUPTED OR MALFUNCTIONS FOR ANY REASON, PROVIDER SHALL NOT BE RESPONSIBLE FOR LOSSES OF INCOME DUE TO DISRUPTION OF SERVICE, BEYOND THE FEES PAID BY CLIENT TO PROVIDER FOR SERVICES, DURING THE PERIOD OF DISRUPTION OR MALFUNCTION.

12. Indemnity. Client agrees to defend, indemnify and hold Provider harmless from and against any and all claims, losses, liabilities and expenses (including attorneys' fees) related to or arising out of the use of services provided by Provider to Client under this Agreement, including claims made by third parties (including clients of Client) related to any false advertising claims, liability claims for products or services sold by Client, claims for patent, copyright or trademark infringement by Client, claims from

clients of Client due to disruption or malfunction of services provided hereunder (up to the limits provided by the Service Level Agreement), or for any content submitted by Client for publication by Provider, but excluding those related to the negligence of Provider.

13. Force Majeure. Provider shall not be liable to Client or any other person, firm or entity for any failure of performance under this Agreement if such failure is due to causes beyond the reasonable control of Provider including, but not limited to vandalism, fires, inclement weather, third-party provider outages, cable cuts, power crisis shortages, acts of terrorism, and or uncontrollable acts of God, or other similar occurrences; any law, order, regulation, direction, action or request of the United States government or of any other government (including state and local governmental agency, department, commission, court, bureau, corporation or other instrumentality of any one or more of said governments) or of any civil or military authority; national emergencies, insurrections, riots, wars; or strikes, lockouts, or work stoppages or other labor difficulties.

14. Liability of Client. Any mistakes, accidents, omissions, interruptions, delays, errors or defects in transmission or Service which are caused or contributed to, directly or indirectly, by an act or omission of the Client or by the use of Client-provided facilities or equipment, or by the use of facilities or equipment furnished by any other person using Client's facilities which are connected to Provider's facilities, shall not result in the imposition of any liability upon Provider and Client shall pay to Provider any reasonable costs, expenses, damages, fees or penalties incurred by Provider as a result thereof, including costs of local exchange company, labor and materials.

15. Nondisclosure. Provider and Client shall use their best efforts to keep the provisions (including price) of the Agreement from the public, competitors, or others who may gain benefit from such knowledge unless required by law to divulge such information to

regulatory authorities or unless required in connection with enforcing that party's rights hereunder.

16. Governing Law/Venue. This Agreement shall be governed by the laws of the State of Illinois. The parties irrevocably consent to the exclusive jurisdiction of the Circuit Court of Cook County, Illinois and the United States District Court for the Northern District of Illinois, Eastern Division.

17. Relationship of the Parties. The parties intend that an independent contractor relationship will be created by this Agreement, and that no additional partnership, joint venture or employee/employer relationship is intended.

18. Advertising. Provider may include Client's name and contact information in directories of Provider's service subscribers and/or other advertising and marketing materials for the purpose of promoting the use of Provider's services.

19. Taxes. If any federal, state or local governmental entity with taxing authority over the services provided under this Agreement imposes a tax directly on the services provided by Provider to Client under this Agreement (excluding any income, business and occupation, capital gain, death or inheritance, or other indirect taxes), then Provider may pass the direct amount of such cost on to Client, and Client shall promptly pay such cost.

20. Waiver. Any party's failure to insist on compliance or enforcement of any provision of this Agreement shall not affect its validity or enforceability or constitute a waiver of future enforcement of that provision or of any other provision of this Agreement.

21. Attorneys' Fees. If a legal proceeding is commenced to enforce or obtain a declaration of rights under this Agreement, the prevailing party in such proceeding shall be entitled to recover its reasonable attorneys' fees and costs incurred in the proceeding from the non-prevailing party, as well as any reasonable attorneys' fees and costs that the

prevailing party incurred prior to commencing the proceeding.

22. Notices. Any notice under this Agreement may be e-mailed, delivered personally or mailed by registered mail to the addresses as specified on the Service Order or as the parties may otherwise designate by notice here-under.

23. Data Back-up. Provider is not responsible for Client's data residing on Provider's servers. Client is solely responsible for backup of data stored on Provider's servers. If Client has requested backup services from Provider, Provider will be liable solely for the performance of the backup routine as scheduled, with tape rotations occurring between 8:30am and 10:00am. While Provider will perform the backup routine according to industry standard practices, Provider will not be held liable in any way for the integrity of Client's data.

24. IP Addresses. Provider maintains control and ownership of any and all IP numbers and addresses that may be assigned to Client and reserves in its sole discretion the right to change or remove any and all IP numbers and addresses. Provider will give Client 14 days notice of changes to IP numbers.

25. Domain Names. Throughout the course of service rendered to Client by Provider, Client will remain the full owner and controlling entity for the Client's established domain name. Registration and modification of domain name status, including name server location is handled by independent domain name registrars.

26. Colocated Equipment Disposition. In the event that Provider ceases operation as a business entity and the Client is in good standing, Provider will release Client's colocated equipment to Client. Colocation of Client's equipment within Provider's facilities does not infer ownership rights upon Provider, and Client may terminate this agreement and remove Client's equipment upon being notified of Provider's intent to cease business operations.

Support Coverage Agreement

1. Standard Hardware Support. Provider offers technical support to Client as it relates to the physical maintenance and repair of the Server(s) and the related network. Provider will repair or replace any physical component of the Servers at no cost to Client that malfunctions or otherwise ceases to operate. Part replacement will generally occur within the 24 hours once identified by Provider. Client agrees that requests to perform service beyond the items listed in item 1.1 will be charged at the rate of \$125.00 per hour in 6 minute increments, with a 12 minute minimum unless otherwise noted in the section "Extended Hardware Support".

1.1 Included: Tangible items related to Servers owned by Provider.

1.2 Not included: Firmware upgrades, upgrade enhancements (such as adding memory or storage).

2. Extended Hardware Support. Provider offers extended technical support to Client for the following special circumstances.

2.1 Provider allows certain hours of no-cost configuration and testing Services as specified in the Service Order.

3. Standard Software Support. Provider offers technical support to Client for the following specific software services pre-installed on the Server(s). Client agrees that requests to perform service beyond the items listed in items 3.1, 3.3, 3.5, 3.7 will be charged at the rate of \$125.00 per hour in 0.1 hour increments, with a 0.2 hour minimum unless otherwise noted in the Custom Terms or Service Order.

3.1 Included (Operating System). Basic functionality of the requested operating system to insure that it is installed correctly and responding to the network.

3.2 Not Included (Operating System). Upgrades, patches, new releases, security upgrades.

3.3 Included (Web Server). Provider will use best practices to install the Web server, and test to make sure it is serving Web pages. Should Web server fail during the course of service, Provider will provide Client a series of basic troubleshooting tests that may include testing a configuration file, and/or restarting the specific software service.


3.4 Not Included (Web Server). Provider will NOT perform extensive troubleshooting or configuration such as editing virtual host directives, loading or compiling modules, or security or performance enhancements.

3.5 Included (FTP Server). Provider will use best practices to install the FTP server, and test to make sure it is accepting connections, and that one administrative user can upload and download data to the server. Should the FTP server fail during the course of service, Provider will provide Client a series of basic troubleshooting tests that may include testing a configuration file, and/or restarting the specific software service .

3.6 Not Included (FTP Server). Provider will NOT perform extensive troubleshooting or configuration that includes adding additional users, setting permissions, loading or compiling modules, or security or performance enhancements or configure or troubleshoot Client's FTP client.

3.7 Included (Email Server). Provider will use best practices to install the email server, and test to make sure it is accepting connections, and that one administrative user can send and receive email. Should the Email server fail during the course of service, Provider will provide Client a series of basic troubleshooting tests that may include testing a configuration file, and/or restarting the specific software service.

3.8 Not Included (Email Server). Provider will NOT perform extensive troubleshooting or configuration that includes adding additional users, editing or creating aliases, editing or creating virtmap entries, or loading or compiling modules, or security or



performance enhancements or configure or
troubleshoot Client's email client.

4. Colocation Support. Provider is not responsible for providing support related to Servers other than rebooting Servers as requested by Client as specified in the Service Order, or as requested through other channels. Access to collocated hardware is available during standard business hours, or after hours in emergencies only by contacting Provider by telephone. After-hours emergency access is escorted by Provider's personnel, and Client may be charged for such access according to standard support rates as listed in Support Coverage Agreement Section 1.