

**HIPAA AGREEMENT**

This Agreement (“Agreement”) is made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ by and between

\_\_\_\_\_  
(COVERED ENTITY)

and

**TOTLCOM Inc. (TOTLCOM)**

**WHEREAS**, COVERED ENTITY will make available and/or transfer to TOTLCOM certain information in conjunction with goods or services that are confidential and must be afforded special treatment and protection.

**WHEREAS**, TOTLCOM will have access to and/or receive from COVERED ENTITY certain information, that can be used or disclosed only in accordance with this Agreement and the Department of Health and Human Services (“HHS”) HIPAA Privacy and Security, Social Security Act, and the HIPAA HITECH Standards.

**NOW THEREFORE**, the Parties agree as follows:

1. To the limitations on use and disclosure as established under the terms of this contract.
2. TOTLCOM hereby agrees to refrain from the use or disclosure of the information provided or made available other than as expressly permitted or required under this contract.
3. TOTLCOM shall establish and maintain appropriate safeguards to prevent the use or disclosure of information and implement and maintain administrative, physical and technical safeguards that reasonably and appropriately protect the confidentiality, integrity and availability of any electronic protected health information that TOTLCOM receives from COVERED ENTITY or that TOTLCOM creates, receives, maintains or transmits on behalf of COVERED ENTITY.

The term of this Contract shall commence as of \_\_\_\_\_ and shall expire when all  
(Effective Date)

information provided by the COVERED ENTITY to TOTLCOM is destroyed or returned to the COVERED ENTITY.

**THE PARTIES HEREBY AGREE** that TOTLCOM shall be permitted to use and/or disclose information provided or made available from the COVERED ENTITY for the following stated purposes:

System maintenance and Security (protection of information)

**OTHER PERMITTED USES AND DISCLOSURES BY TOTLCOM**

Except as otherwise limited in this Agreement:

- a) TOTLCOM is permitted to use information if necessary to properly manage and/or administer its commerce (excluding support for marketing)
- b) TOTLCOM may use information to provide Data Aggregation services to COVERED ENTITY as permitted by 45 CFR § 164.504(e)(2)(i)(B).
- b) TOTLCOM may use information to report violations of law to appropriate Federal and State authorities, consistent with 45 CFR § 164.502(j)(1).

## **REPORTS OF IMPROPER USE OR DISCLOSURE**

TOTLCOM hereby agrees to immediately report to COVERED ENTITY any and all breaches or improper uses or disclosures aside from those permitted in this Agreement or by the Health Insurance Portability and Accountability Act (HIPAA).

## **SAFEGUARDS TO PREVENT IMPROPER DISCLOSURES**

TOTLCOM agrees to use appropriate safeguards to prevent use or disclosure of the Protected Health Information in any manner other than as provided for by this Agreement and as required by the Health Insurance Portability and Accountability Act. Upon request, TOTLCOM shall allow COVERED ENTITY to review such safeguards and security measures and procedures.

## **MITIGATION PROCEDURES**

TOTLCOM agrees to mitigate, to the maximum extent practicable, any harmful effect that is known to TOTLCOM from use or disclosure of information in a manner contrary to terms of this Agreement or according to the Health Insurance Portability and Accountability Act.

## **SUBCONTRACTORS AND AGENTS EMPLOYED BY TOTLCOM**

TOTLCOM hereby agrees that any and all information provided or made available to its subcontractors or agents shall be executed under same terms, conditions, and restrictions on use and disclosure of information as agreed upon in this contract between COVERED ENTITY and TOTLCOM.

## **SANCTION PROCEDURES**

TOTLCOM agrees to develop/implement a punitive course of action for its employees, subcontractors, or agents who violate terms of this contract or privacy regulations under the Health Insurance Portability and Accountability Act.

## **RIGHT TO ACCESS BY THE FEDERAL GOVERNMENT'S DEPARTMENT OF HEALTH AND HUMAN SERVICES**

TOTLCOM hereby agrees to make its internal practices (including policies and procedures), books, and records relating to use or disclosure of information gained or received under terms of this Agreement available to the Secretary of the Department of Health and Human Services or the Secretary's designee for purpose of determining compliance with Privacy and Security standards under the Health Insurance Portability and Accountability Act.

## **RIGHTS OF INDIVIDUALS TO ACCESS INFORMATION**

TOTLCOM hereby agrees to make available and provide individuals the right to inspect and receive a copy of their protected health information in accordance with 45 CFR § 164.524.

TOTLCOM agrees to cooperate in making protected health information available to individuals for amendment and agrees to document explicit modifications by the individual in accordance with 45 CFR § 164.526.

TOTLCOM agrees to provide an account of protected health information disclosures to an individual in accordance with 45 CFR §. 164.528.

## **ELECTRONIC TRANSACTIONS**

If TOTLCOM conducts any HIPAA Standard Transaction for or on behalf of COVERED ENTITY, TOTLCOM shall comply in accordance with 45 CFR § 162.

## **PROPERTY RIGHTS**

Shared information, including de-identified protected health information, shall be and remains property of COVERED ENTITY. TOTLCOM agrees that it acquires no title or rights to an individual's protected health information as a result of this contract.

## **TERMINATION FOR CAUSE**

TOTLCOM agrees that COVERED ENTITY has the right to immediately terminate this Agreement and seek relief under Disputes Article if COVERED ENTITY determines that TOTLCOM has violated a material term of this Agreement.

## **RETURN OR DESTRUCTION OF INFORMATION**

Upon termination of this Agreement for any reason, TOTLCOM hereby agrees to return or destroy all information received or created on behalf of COVERED ENTITY. TOTLCOM agrees not to retain any copies of information after termination of this Agreement. If return or destruction of the information is not feasible, TOTLCOM agrees to extend protections outlined in this Agreement and agrees to limit all further use or disclosure and agrees to provide COVERED ENTITY with written confirmation that the information has been destroyed.

## **COMPLIANCE WITH STATE LAW**

TOTLCOM acknowledges that by accepting the information from COVERED ENTITY, it becomes a holder of medical records information under the state Privacy laws and is subject to the provisions of that law. If the HIPAA Privacy or Security Rules and the state Privacy law conflict regarding the degree of protection provided for protected health information, TOTLCOM shall comply with the more restrictive protection requirement.

## **GROUND FOR BREACH**

Non-compliance by TOTLCOM (or any of its subcontractors or agents) with any terms of this Agreement or the Health Insurance Portability and Accountability Act will automatically be considered grounds for breach.

## **INJUNCTIVE RELIEF**

Notwithstanding any rights or remedies provided for in this contract, COVERED ENTITY retains all rights to seek injunctive relief to prevent or stop unauthorized use or disclosure of information by TOTLCOM or any agent, contractor, or third party that received information from TOTLCOM.

## **GOOD FAITH**

Parties agree to exercise good faith in performance of this contract.

## **INDEMNIFICATION**

Both parties shall indemnify the other party and hold it harmless from and against any penalties, losses, claims, damages or liabilities (or actions in respect thereof) to which it may become subject insofar as such penalties, losses, claims, damages or liabilities (or actions in respect thereof) arise out of or are based upon any unauthorized use or disclosure of Protected Health Information.

## **DISPUTES**

Any controversy or claim arising from or relating to the terms defined under this contract are subject to settlement by compulsory arbitration in accordance with the Commercial Arbitration Rules of the American Arbitration Association, except for injunctive relief.

**ATTORNEY FEES**

Each party agrees to bear its own legal expenses and any other cost incurred for actions or proceedings brought about by enforcement of this contract, or from an alleged dispute, breach, default, misrepresentation, or injunctive action associated with the provisions of this contract.

**ASSIGNMENT**

Neither party has the authority to reassign this agreement without the other’s written consent.

**ENTIRE AGREEMENT**

The terms of this Agreement consist of this document and constitute the entire agreement between the stated parties.

**AMENDMENT**

Both Parties agree to take such action as is necessary to amend this Agreement from time to time as is necessary for them to comply with the requirements of the Health Insurance Portability and Accountability Act.

**INTERPRETATION**

Any ambiguity in this Agreement shall be resolved to permit COVERED ENTITY and TOTLCOM to comply with the Health Insurance Portability and Accountability Act.

**AGREED:**

<b>COVERED ENTITY:</b>	<b>TOTLCOM:</b>
_____	<b>TOTLCOM Inc. HQ</b>
<b>Address:</b> _____	<b>65A Hangar Way</b>
_____	<b>Watsonville, CA 95076</b>
_____	<b>Tel: 831-728-5000</b>
<b>Tel:</b> _____	<b>Fax: 831-728-8228</b>
_____	<b>Email: support@totlcom.com</b>
<b>Fax:</b> _____	
<b>Email:</b> _____	
_____	_____
<b>Signature</b>	<b>Signature</b>
_____	_____
<b>Name</b>	<b>Name</b>
_____	_____
<b>Title</b>	<b>Title</b>
_____	_____
<b>Date</b>	<b>Date</b>