

tummy.com

We Solve Linux Problems

Attachment A: Standard Terms and Conditions

- 1. Scope of Agreement.** These STANDARD TERMS and CONDITIONS are attached to and are a part of tummy.com, Ltd.'s ("Company") Master Services Agreement.
- 2. Definitions.** "Agreement" means the Master Services Agreement executed by Company and Customer together with all of its attachments, appendices and schedules, as the same may be amended in writing by the parties from time to time in accordance herewith.

"Billing Commencement Date" means the date Company notifies Customer that their ordered services are ready for use by the Customer. Company shall use its commercially reasonable efforts to notify Customer of the anticipated Billing Commencement Date at least 5 business days in advance thereof.

"Intellectual Property" means, with respect to such person or entity, all of such person's or entity's: (i) trademarks, service marks, trade dress and trade names; (ii) domain names; (iii) copyrights; (iv) product configuration or design rights; (v) patents; (vi) plans, designs, and engineering information pertaining to equipment, processes, methods or techniques; (vii) trade secrets; (viii) database rights, know-how and other proprietary rights of any type under the laws of any government authority, domestic or foreign; and (ix) rights in and to all applications, patents and registrations relating to any of the foregoing.

"Network" means the Company owned and operated Internet Protocol (IP) routing infrastructure consisting solely of measurement devices at selected points in its infrastructure, and the connections between them in Company's Internet data center.

"Service(s)" means the services specified in the Service Order.

"Service Order" means the Service Order Form – Attachment A to this agreement and provides the details necessary for Company to successfully provide services hereunder.

"Solo Server(s)" means a computer provided by the Company for exclusive use by the Customer for the term of the agreement that remains the property of Company.

"Virtual Server(s)" means a computer provided by the Company for the non-exclusive use of the Customer for the term of the agreement that remains the property of Company.
- 3. Authorized Use.** Customer may use Services only for authorized and lawful purposes. Company has the right to reasonably limit the manner in which any portion of its Network and Facilities are used, to protect the technical integrity of the Network. Customer (a) will comply with all applicable laws, rules and regulations in Customer's

use of the Services, and (b) will not use the Customer space, equipment, or the Services to directly or indirectly deliver, offer, or aid any spamming, spoofing, pornography, crime, or any activity prohibited in the then-current Company Acceptable Use Policy ("AUP"), available on Company's web site. Company shall promptly notify Customer of any change to the AUP following the date thereof.

4. **Price & Charges.** Customer shall pay the fees and costs set forth in any Service Order.
5. **Payment Terms.** On the Effective Date Customer shall deliver payment for: (a) initial one-time installation and set-up charges, and (b) the first month of Services. Billing shall commence on the Billing Commencement Date, regardless of whether Customer: (a) has installed its communication equipment, (b) procured needed equipment or services from any other carrier(s) or vendors, or (c) is otherwise prepared to accept delivery of ordered Services from Company. Invoices are issued monthly. Company bills in advance for Services to be provided during the upcoming month, except for charges that are dependent up on usage of Service as specified in Attachment A, which are billed in arrears. Billing for partial months is prorated based on a calendar month. All invoices are due upon receipt, and become past due thirty (30) days after the invoice date. Past due amounts bear interest at a rate of 1.5% per month (prorated on a daily basis beginning on the past due date), or the highest rate allowed by law, whichever is less. Any reasonable expenses of collection (including, without limitation, attorney's fees, collection agency fee and disbursements) will be born by the Customer. If Customer reasonably disputes any portion of a Company invoice, Customer must submit a written claim regarding the disputed amount. All claims must be submitted to Company within thirty (30) days of receipt of invoice for these. If the dispute is resolved in favor of Customer, Company shall refund or provide a credit of all amounts due to the Customer within ten (10) days of resolution.
6. **Taxes and Fees.** Company's prices do not include, and Customer shall not be responsible for any sales, use, manufacturing, excise processing and other taxes either presently existing or which may be imposed based on Company's net income and ad valorem personal or real property taxes imposed on Company's property. Subject to the foregoing sentence, Customer is responsible for payment of all sales, use, gross receipts, excise, access, bypass, franchise, special district, and other local, state and federal taxes, fees, charges, or surcharges, however designated, imposed or based upon the provision, sale or use of the Service. Customer is responsible for payment of all income, ad valorem, and personal property taxes imposed on Customer's property. Any such taxes shall be added to the prices charged to the Customer unless an appropriate tax-exempt or resale certificate is on file at Company before services are rendered. Subject to the first sentence of this paragraph, Customer agrees to reimburse, indemnify and hold Company harmless from any and all taxes that Company may pay or collect under any existing or future law in connection with the Services. The provisions of this paragraph shall not constitute a waiver or relinquishment of any and all rights or remedies of Company, as set forth herein, all of which are hereby

endlessly reserved.

7. **Term.** This Agreement shall commence on the Effective Date and continue for the term set forth in the Service Order (“Term”). If no term specified in the Service Order, then the term shall be one (1) year. Thereafter, this Agreement shall continue on a month-to-month basis until the parties enter into a new agreement or either party provides the other party thirty (30) days written notice of termination. The foregoing notwithstanding, in no event shall this Agreement be construed to extend beyond the term of the underlying lease or other superior interest in the Company's Data Center. Any new agreement entered into by Customer and Company following the initial Term of this Agreement shall be subject to the then current available products, at rates and charges agreed upon by Company.

Upon expiration of this Agreement, Services not previously terminated by Customer shall remain in effect for the term specified in the applicable Service Order for each affected Service, and the terms and conditions of this Agreement will continue to apply to such Services. Upon termination of this Agreement, all rights of Customer to order new Services cease and Company has no further obligation to furnish new Services to Customer.

8. **Termination by Company.** After providing Customer with prior written notice, and an opportunity for customer to cure within twenty (20) days from the date such notices is received, Company may terminate this Agreement or any Service Order hereunder, or suspend Services upon (a) Customer's failure to pay any amounts as provided herein (provided that the cure period shall be 10 days rather than the 20 days referenced above); (b) Customer's breach of any provision of this Agreement or any law, rule or regulation governing the Services; (c) any insolvency, bankruptcy assignment for the benefit of creditors, appointment of trustee or receiver or similar event with respect to Customer; or (d) any governmental prohibition or required alteration of the Services. Upon providing Customer with written notice and, if practical, an opportunity to cure within ten (10) days from the receipt of such notice, Company may terminate or suspend Services if: (x) reasonably necessary to protect Company's Network; (y) Company has reasonable evidence of Customer's fraudulent or illegal use of Services; or (z) required by legal or regulatory authority. Any termination shall not relieve Customer of any liability incurred prior to such termination, or for payment of unaffected Services. All terms and conditions of this Agreement shall continue to apply to any Services not so terminated, regardless of the termination of this Agreement. If the Service provided under any Service Order hereunder has been terminated by Company in accordance with this section, and Customer wants to restore such Service, Customer must first pay all past due charges a reasonable non-recurring reconnection charge and a deposit equal to 2 month's recurring charges.
9. **Termination Liability.** If Customer terminates this Agreement or any Service Order(s) hereunder prior to the end of the term of such Service Order(s) for any reason other than Company's material breach of this Agreement that remains uncured after

written notice and a 20 day cure period, Customer shall pay to Company within 30 days of such termination all monthly recurring charges associated with the terminated Service(s) for the balance of the term in such Service Order(s), or 3 full months of recurring charges associated with the terminated service, whichever is less.

- 10. Press Releases and Promotional Materials.** Each party shall submit to the other party any marketing, advertising, press releases, or other promotional materials that use the other party's names, logos, or other identifying marks for approval before the first use of such materials. Each party shall comply with the other party's standards for appearance of such party's names, logos, or other identifying marks as provided in writing from time to time, and shall make any reasonable changes in such use requested by the other party.
- 11. Rights of Ownership and Content of Communications.** Each party warrants that it has the right to possess and use all software used by it under this agreement. Customer shall indemnify and hold Company harmless from any liability arising out of or in connection with the content of any communications or data transmitted by Customer via the Services and/or the Network including without limitation any liability for libel, slander, defamation, invasion of privacy or infringement of any Intellectual Property right, spamming (sending bulk unrequested email or other transmissions), spoofing (impersonating the identity of any entity or party), or any other offensive, harassing, prohibited or illegal conduct, or any other damage arising from Customer's action or equipment. Customer agrees at Customer's sole expense promptly to defend any claim, demand, and action or proceeding to which Company may be a party arising out of or in connection with any of the foregoing pursuant to the indemnity provisions contained herein. Except as stated otherwise in the Agreement, all present and future rights, title and interest to a party's Intellectual Property, including any rights in and to any information or works contributed by a party under this agreement, shall at all times be and remain the sole and exclusive property of such party.
- 12. Grant of License to Company.** Customer hereby grants to Company, and Company hereby accepts, a non-exclusive, royalty-free limited license during the term of this Agreement to use, reproduce, distribute, display, perform, encode, and transmit Customer communications and data, and Customer Intellectual Property for the sole and exclusive purposes of providing Services under this agreement.
- 13. Warranties of Customer.** Customer hereby warrants, represents, and covenants to Company that it shall not violate any laws or regulations, or infringe upon or misappropriate any Intellectual Property or proprietary rights of any third party, including, without limitation, copyright, trademark, obscenity, rights of publicity or privacy, and defamation laws, nor violate the then current AUP (provided that changes to the AUP [following the date hereof] shall not apply to Customer until customer shall have received notice of same).
- 14. Right to refuse service.** Upon providing Customer with written notice, and, if practical, an opportunity to cure within ten (10) days from the receipt of such notice,

Company may refuse, without liability, to perform services that are deemed unlawful in the written opinion of outside counsel, or for which Company has received notification of illegality from a government source with appropriate jurisdiction. Company will use reasonable efforts to give Customer prior notification in the event of such determination.

15. **Service Level Agreement.** Company may provide specific remedies regarding performance and availability of Services in a Service Level Agreement, attached to this Agreement, which states Customer's sole and exclusive remedies for any Services problems.
16. **Warranties of Company.** Company hereby warrants, represents, and covenants to Customer that use of the Network does not violate any laws or regulations, or infringe upon or misappropriate any Intellectual Property or proprietary rights of any third party, including, without limitation, copyright, trademark, rights of publicity or privacy, and defamation laws, other than any violations that may result from Customer or any other customer or third party.
17. **No Other Warranties.** EXCEPT AS SET FORTH IN THIS AGREEMENT AND ANY APPLICABLE SERVICE LEVEL AGREEMENT, COMPANY MAKES NO, AND COMPANY HEREBY SPECIFICALLY DISCLAIMS, ANY REPRESENTATIONS OR WARRANTIES, EXPRESS OR IMPLIED, REGARDING THE PRODUCTS AND SERVICES CONTEMPLATED BY THIS AGREEMENT, INCLUDING ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS OR A PARTICULAR PURPOSE AND IMPLIED WARRANTIES ARISING FROM COURSE OF DEALING OR COURSE OF PERFORMANCE, AND DOES NOT WARRANT THAT THE SERVICE(S) WILL BE UNINTERRUPTED, COMPLETELY SECURE, OR ERROR-FREE.
18. **Limitation of Liability.** THE LIABILITY OF COMPANY FOR ANY BREACH OF ITS OBLIGATIONS UNDER THIS AGREEMENT OR OTHERWISE RELATING TO THIS AGREEMENT SHALL BE LIMITED TO THE AGGREGATE AMOUNTS ACTUALLY PAID OR OWED BY CUSTOMER TO COMPANY UNDER THIS AGREEMENT (EXCEPTS FOR AMOUNTS PAYABLE UNDER THE INDEMNITY PROVISIONS HEREOF). IN NO EVENT SHALL EITHER PARTY BE LIABLE TO THE OTHER PARTY FOR ANY LOST PROFITS OR OTHER CONSEQUENTIAL, INCIDENTAL, INDIRECT OR PUNITIVE DAMAGES ARISING OUT OF OR IN RELATION TO THIS AGREEMENT, OTHER THAN AS MAYBE INDEMNIFIED AGAINST BY THE INDEMNITY PROVISIONS HEREOF, EVEN IF SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES EXCEPT FOR THE PAYMENT OF ANY MONIES OWED FOR SERVICES ACTUALLY PERFORMED UNDER THIS AGREEMENT, NEITHER PARTY SHALL BE HELD LIABLE OR RESPONSIBLE TO THE OTHER PARTY, NOR BE DEEMED TO HAVE DEFAULTED UNDER OR BREACHED THIS AGREEMENT, FOR FAILURE OR DELAY IN

FULFILLING OR PERFORMING ANY TERM OF THIS AGREEMENT TO THE EXTENT, AND SO FOR SO LONG AS SUCH DELAY IS CAUSED BY ANY FORCE MAJEURE EVENTS, PROVIDED THAT AND FOR SO LONG AS THE PARTY SO AFFECTED HAS USED AND CONTINUES TO USE ITS BEST EFFORTS TO PERFORM DESPITE THE FORCE MAJEURE EVENT.

19. **Indemnification.** Each party shall, at its own expense, indemnify, defend, and hold harmless the other party, and such party's employees, directors, officers, members, managers, representatives, and agents (collectively referred to as the "Indemnified Parties") against any claim, suit action, liabilities, costs, and expenses, including any other proceeding brought by a third party against the Indemnified Parties (collectively referred to as "Claims"), to the extent that such Claim is based on or arises from the breach of any representation, warranty or covenant of the indemnifying party contained in this Agreement or arising out of or related to any damage to tangible property, personal injury or death caused by such party's negligence or willful misconduct. In addition, Customer shall indemnify, defend, and hold harmless the Company Indemnified Parties against any Claim that the Customer infringed any Intellectual Property right of any third party, or any right of publicity or privacy, or is libelous or defamatory. The indemnifying party will pay any and all costs, damages, and expenses, including, but not limited to, reasonable attorney's fees and costs awarded against or otherwise incurred by the Indemnified Parties in connection with or arising from or attributable to any such Claim. The Indemnified Parties, at their own expense, shall have the right to employ separate counsel and participate in the defense thereof. In no event may either party enter into any third-party agreements that would in any manner affect the rights of, or bind, the other party in any manner to such third party, without the prior written consent of the other party.
20. **Confidential Information.** Each party agrees that the following materials and information and all copies thereof of whatever nature are confidential and are the proprietary information and trade secrets of the disclosing party: (1) the computer software and algorithms possessed by either party and all source documents relation to such software and algorithms; (ii) proprietary information of either party (including, without limitation, the names and addresses of customers, Content providers, and suppliers), and information that either party does not generally make available to the public; (iii) the methods, means, personnel, equipment, and software by and which which Customer provides its products and services and by and with which Company provides the Company network and its other products and services; (iv) the terms of this Agreement; and any other information that either party reasonably considers to be confidential or proprietary "Confidential Information"). Except as expressly permitted herein, neither party shall use the Confidential Information of the other party and each party shall keep the Confidential Information of the other party secret to the degree such party keeps secret its own confidential or proprietary information, and in any case using no less than reasonable care. Confidential Information of the disclosing party shall not be disclosed by the party who receives such information except: (i) to a

party's accountants, auditors, agents, legal counsel, and parent companies; provided, however, that such parties agree to be bound by these confidentiality provisions; or (ii) as may be required by any legal process, court order, or governmental agency, in which event the party making such disclosure shall so notify the other as promptly as practicable prior to making such disclosure and shall seek confidential treatment of such information. No information that would otherwise be Confidential Information shall be subject to the restrictions on disclosure in the event and to the extent that: (i) such information is in, or becomes part of, the public domain otherwise than through the fault of the receiving party; (ii) such information was known to the receiving party prior to the execution of the Agreement as proven by the receiving party's written records; (iii) such information was revealed to the receiving party by a third party having no obligation to hold such information confidential; or (iv) such information is developed independently of any of the disclosing party's Confidential Information by the receiving party. This paragraph shall be in addition to and not supersede any separate confidentiality or non-disclosure agreement executed by the parties. In the event of a conflict between this paragraph and any such agreement, the provisions of such agreement shall prevail.

21. **Assignment.** Neither party may assign this Agreement, in whole or in part, without the other party's prior written consent, which consent shall not be unreasonably withheld or delayed. Notwithstanding the foregoing, either party may assign this Agreement and its rights and obligations hereunder: (a) in connection with the transfer or sale of all or substantially all of its assets; (b) to a wholly owned subsidiary; or (c) in the event of its merger or consolidation with another company at any time during the term of this Agreement. This Agreement will bind and inure to the benefit of each party's permitted successors and assigns.
22. **Notices.** All notices under this Agreement, or with respect thereto shall be in writing. Any notices hereunder shall be given by email, personal delivery, telecopy, facsimile, U.S. registered or certified mail (postage prepaid), or by overnight courier to the appropriate party at the address set forth in the Service Order and shall be deemed given on the date of such personal delivery, or the date emailed or telecopied or faxed, or a date three (3) business days after the date mailed if mailed in the United States or five (5) business days after the date mailed if mailed outside the United States. If such notice is sent by overnight courier, notice shall be deemed given twenty-four (24) hours after delivery to such overnight courier service.
23. **Partial Invalidity.** In the event that any portion of this Agreement is invalid or unenforceable, the remaining terms and conditions shall nevertheless remain in full force and effect as though the invalid or unenforceable portion were not included.
24. **Captions for Convenience.** All headings or captions used herein are for convenient reference only and shall not be used in any way in connection with the interpretation, construction or enforcement of this Agreement.
25. **No Waiver.** Neither the failure of Company to insist upon Customer's performance of

any of Customer's obligations hereunder nor the waiver of any provision of this Agreement or of any default hereunder shall effect Company's rights thereafter to enforce such provision or any other provision hereunder nor shall the failure of the Company to exercise any right or remedy which Company may have hereunder or under the law be construed as a waiver of any other right or remedy which Company may have hereunder or under the law.

26. Consent to Jurisdiction and Forum Selection. The parties hereto agree that all actions or proceedings arising in connection with this Agreement shall be tried and litigated exclusively in the State courts located in Larimer County, Colorado or the Federal courts located in Denver, Colorado. The aforementioned choice of venue is intended by the parties to be mandatory and not permissive in nature, thereby precluding the possibility of litigation between the parties with respect to or arising out of this Agreement in any jurisdiction other than that specified in this paragraph. Each party hereby waives any right it may have to assert the doctrine of forum non conveniens or similar doctrine or to object to venue with respect to any proceeding brought in accordance with this paragraph, and stipulates that the State courts located in Larimer County, Colorado or the Federal courts located in Denver, Colorado, shall have in personam jurisdiction and venue over each of them for the purpose of litigating any dispute, controversy, or proceeding arising out of or related to this Agreement. Each party hereby authorizes and accepts service of process sufficient for personal jurisdiction in any action against it as contemplated by this paragraph by registered or certified mail, return receipt requested, postage prepaid, to its address for the giving of notices as set forth in this Agreement. Any final judgment rendered against a party in any action or proceeding shall be conclusive as to the subject of such final judgment and may be enforced in other jurisdictions in any manner provided by law.

27. Ambiguities. Each party and its counsel have participated fully in the review and revision of this Agreement. Any rule of construction to the effect that ambiguities are to be resolved against the drafting party shall not apply in interpreting this Agreement. The language in this Agreement shall be interpreted as to its fair meaning and not strictly for or against any party.

28. Force Majeure. Neither party shall be liable for any failure or delay in its performance under this Agreement due to causes beyond its reasonable control, including but not limited to: acts of God, acts of civil or military authority, fires, floods, earthquakes, riots, wars, sabotage, network failures, error in the coding of electronic files, software limitations, inability to obtain telecommunications services, or governmental actions, provided, however, that such affected party takes reasonable effort to mitigate the effects of such causes.

29. Relationship of Parties. Neither this Agreement, nor any terms and conditions contained herein may be construed as creating or constituting a partnership, joint venture, or agency relationship between the parties. Neither party will have the power

to bind the other or incur obligations on the other's behalf without the other's prior written consent.

30. **Cumulative Remedies.** All rights and remedies belonging to a party hereunder or under law shall be deemed cumulative and not exclusive of one another and the exercise by a party of any right or remedy it may have.

31. **Modification.** This Agreement, including these terms and conditions can only be modified by an instrument in writing signed by the parties.