



# ITNet™ OPERATOR AGREEMENT

**IMPORTANT!!**  
**THIS DOCUMENT MUST BE SIGNED AND ON FILE WITH INCREDIBLE TECHNOLOGIES, INC. FOR  
YOUR GOLDEN TEE LIVE, SILVER STRIKE LIVE AND/OR POWERPUTT LIVE MACHINES  
TO RECEIVE ONLINE FEATURES OR TECHNICAL SUPPORT.**

This AGREEMENT is entered into by Incredible Technologies, Inc., an Illinois corporation, (hereinafter, "IT"), whose address is 200 Corporate Woods Parkway, Vernon Hills IL 60061, and \_\_\_\_\_, (hereinafter, "OPERATOR") whose address is \_\_\_\_\_, with an Effective Date as of the date that IT signs below.

WHEREAS, IT is the manufacturer of coin-operated video games, including Golden Tee®, an interactive golf simulation video game and the game is marketed as a packaged hardware and software unit ("Game Machine");

WHEREAS, OPERATOR is skilled in the operation and management of coin-operated video games and represents that it is in the business of operating and managing the same.

IT and OPERATOR, in consideration of the promises and covenants set forth herein and such other valuable consideration, the receipt and sufficiency of which is hereby acknowledged, and intending to be legally bound, hereby agree as follows:

1. Purpose. The parties wish to enter into this AGREEMENT to set forth the terms under which OPERATOR shall operate all games purchased by OPERATOR from IT ("GAMES") that are capable of connecting to IT's Incredible Technologies Network ("ITNET"), whether or not OPERATOR elects to connect GAMES to ITNET for the purpose of obtaining additional services, including enabling additional game play features.

2. Term; Termination. This AGREEMENT shall commence on the effective date and continue for one year. Thereafter, this AGREEMENT shall automatically renew for successive one-year terms. Notwithstanding the foregoing, this AGREEMENT may be terminated by IT for any reason immediately upon notice to OPERATOR, however, this Agreement may be terminated by OPERATOR only upon no less than 30 days' written notice to IT.

3. Territory. The GAMES shall be limited to use in Canada.

4. Intellectual Property. OPERATOR agrees that IT has the right, at its sole discretion, to include any images and text ("CONTENT") with GAMES, or to push CONTENT to GAMES through ITNET or other suitable transmission or transfer means, which display in the GAMES. Ownership of all copyright, patents, trademarks and other intellectual property rights associated with GAMES shall at all times remain with IT.

5. IT Obligations.

a. IT shall administer ITNET and offer skill-based contests on a regular and periodic basis throughout the year; and allow GAMES to be included in such contests, provided that OPERATOR complies with this AGREEMENT and all ITNET rules and regulations, which are subject to change at IT's sole discretion without notice.

b. IT shall pay and distribute all IT-sponsored contest prizes.

c. IT shall provide technical support to technical representatives of OPERATOR in the installation and maintenance of GAMES, and, if applicable, in the connection of GAMES to ITNET, as set forth in sales agreements and accompanying manuals and warranties.

d. IT shall make billing statements available to OPERATOR at least 4 business days prior to the date of automatic debiting of amounts owed to IT for ITNET related fees.

e. IT shall provide usual and customary accounting and related services for ITNET. This includes fees, prizes, Canada Revenue Agency Reporting, etc.

f. IT shall use its best reasonable efforts to positively promote the ITNET program.

6. OPERATOR Obligations.

a. OPERATOR shall operate all GAMES and ITNET according to the terms of this AGREEMENT, including adherence to the terms and conditions of ITNET.

b. OPERATOR shall complete and submit all forms required by IT for the purposes contemplated in this AGREEMENT including, but not limited to, the Game Registration Form, attached hereto marked as Exhibit A and made a part hereof, and the Payor's Authorization For Pre-Authorized Debits Form ("PAD Form"), attached hereto marked as Exhibit B and made a part hereof.



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c. OPERATOR shall comply with the rules and regulations of ITNET, which are subject to change at IT's sole discretion, without notice; and, OPERATOR shall report non-compliance or cheating immediately upon OPERATOR'S knowledge or belief of same.

d. OPERATOR shall provide prompt and courteous technical support and service to locations where GAMES have been placed in service.

e. OPERATOR shall pay all money owed to IT, including, but not limited to, any and all ITNET fees incurred on GAMES registered to OPERATOR'S account, by depositing such amounts in the account that OPERATOR has established under the PAD Form, prior to the date that such amount will be automatically debited.

f. OPERATOR shall only operate GAMES at locations where OPERATOR has independently verified that the operation of GAMES and related game play features are in compliance with all local, state, and any other applicable laws and regulations.

g. OPERATOR shall operate GAMES only in traditional coin-operated amusement environments.

h. OPERATOR shall use its best reasonable efforts to positively promote the ITNET program.

i. OPERATOR shall re-register GAMES when any relevant information changes, including, but not limited to, moving GAMES to a new location or selling GAMES to a new operator. OPERATOR shall pay all ITNET Fees incurred by GAMES, unless and until GAMES are either registered to a new operator or unregistered to OPERATOR.

7. Independent Contractors. Nothing in this AGREEMENT shall be deemed to place the parties in the relationship of employer-employee, principal-agent, partners or joint venture partners. IT shall not be liable to OPERATOR for any action or lack of action except as herein set forth.

8. Indemnification, Representations.

a. The parties represent and warrant each to the other that they are duly incorporated or otherwise formed in their jurisdictions, that they are and will be duly licensed to perform those functions required under the terms of this AGREEMENT, and that they will use reasonable efforts not to negatively affect, either through act or omission, the ability of the other to conduct business within highly regulated industries. The obligations of

this paragraph shall last so long as OPERATOR has possession or control of GAMES.

b. OPERATOR agrees to indemnify and hold harmless IT for any action or lack of action by OPERATOR which results in actual liability on the part of IT.

c. OPERATOR represents and warrants that it will not disturb any IT-placed labeling on GAMES without the express written consent of IT.

d. OPERATOR agrees to indemnify and hold harmless IT for any losses due to theft or tampering with GAMES settings.

e. Each party represents and warrants to the other that this AGREEMENT constitutes a valid, legal and binding obligation, enforceable against it, in accordance with its terms and that the execution, delivery and performance of this AGREEMENT will not constitute a violation of any law, rule, regulation or court order applicable to it.

f. The Party requesting indemnification (the "Indemnified Party") shall promptly notify the other Party (the "Indemnifying Party") in writing of any suits, claims or demands for which the Indemnifying Party is responsible under this AGREEMENT and shall give the Indemnifying Party full opportunity and authority to assume the defense of such suits. The Indemnified Party shall furnish to the Indemnifying Party upon request reasonable information and assistance for defense against any such claim, suit or demand.

9. Equipment and Performance Warranties.

a. Equipment Warranty. Equipment warranties shall be as provided in GAMES manuals and accompanying documentation.

**b. OPERATOR'S EXCLUSIVE REMEDY FOR BREACH OF WARRANTY WILL BE LIMITED TO REPAIR OR REPLACEMENT BY IT, AT IT'S OPTION.**

**10. DISCLAIMER OF ALL WARRANTIES AND REPRESENTATIONS. THE EXPRESS WARRANTIES AND EXPRESS REPRESENTATIONS SET FORTH IN THIS AGREEMENT ARE IN LIEU OF, AND IT DISCLAIMS, ANY AND ALL OTHER WARRANTIES, CONDITIONS, OR REPRESENTATIONS (EXPRESS OR IMPLIED, ORAL OR WRITTEN), WITH RESPECT TO GAMES OR ANY PART THEREOF, INCLUDING ANY AND ALL IMPLIED WARRANTIES OR CONDITIONS OF TITLE, NONINFRINGEMENT, MERCHANTABILITY, OR FITNESS OR SUITABILITY**

FOR A PARTICULAR OR ANY PURPOSE (WHETHER OR NOT IT KNOWS, HAS REASON TO KNOW, HAS BEEN ADVISED, OR IS OTHERWISE IN FACT AWARE OF ANY SUCH PURPOSE), WHETHER ALLEGED TO ARISE BY LAW, BY REASON OF CUSTOM OR USAGE IN THE INDUSTRY, OR BY COURSE OF DEALING. IN ADDITION, IT EXPRESSLY DISCLAIMS ANY WARRANTY OR REPRESENTATION TO ANY PERSON OTHER THAN OPERATOR WITH RESPECT TO THE GAMES OR ANY PART THEREOF. UNDER NO CIRCUMSTANCES SHALL IT BE LIABLE FOR SPECIAL, INDIRECT, OR CONSEQUENTIAL DAMAGES. IT SHALL NOT BE LIABLE IN ANY RESPECT FOR THE ACCEPTANCE OF COUNTERFEITS AND/OR FRAUDULENT MATERIALS. ANY UNAUTHORIZED MODIFICATION, ALTERATION, OR REVISION OF ALL OR ANY PORTION OF THE GAMES, SHALL CAUSE ANY WARRANTY NOT DEEMED TO HAVE BEEN DISCLAIMED ABOVE TO BE NULL AND VOID. IT, ITS AFFILIATES, SUBSIDIARIES, REPRESENTATIVES, AND AGENTS MAKE NO OTHER WARRANTY, EXPRESS OR IMPLIED.

11. MAXIMUM AGGREGATE LIABILITY. NOTWITHSTANDING ANYTHING TO THE CONTRARY IN THIS AGREEMENT, IN NO EVENT SHALL IT'S AGGREGATE LIABILITY TO OPERATOR (INCLUDING LIABILITY TO ANY PERSON OR PERSONS WHOSE CLAIM OR CLAIMS ARE BASED ON OR DERIVED FROM A RIGHT OR RIGHTS CLAIMED OR CLAIMABLE BY OPERATOR), WITH RESPECT TO ANY AND ALL CLAIMS AT ANY AND ALL TIMES ARISING FROM OR RELATED TO THE SUBJECT MATTER OF THIS AGREEMENT, IN CONTRACT, TORT, OR OTHERWISE, EXCEED THE TOTAL AMOUNT PAID UNDER THIS AGREEMENT BY OPERATOR TO IT WITHIN THE MOST RECENT 6-MONTH PERIOD.

12. EXCLUSION OF INCIDENTAL AND CONSEQUENTIAL DAMAGES. NOTWITHSTANDING ANYTHING IN THIS AGREEMENT, NEITHER PARTY WILL BE LIABLE TO THE OTHER PARTY (NOR TO ANY PERSON CLAIMING RIGHTS DERIVED FROM THE OTHER PARTY'S RIGHTS) FOR INCIDENTAL, CONSEQUENTIAL, SPECIAL, PUNITIVE, OR EXEMPLARY DAMAGES OF ANY KIND – INCLUDING LOST PROFITS, LOSS OF BUSINESS, OR OTHER ECONOMIC DAMAGE, AND FURTHER INCLUDING

INJURY TO PROPERTY – AS A RESULT OF BREACH OF ANY WARRANTY OR OTHER TERM OF THIS AGREEMENT, REGARDLESS OF WHETHER THE PARTY LIABLE OR ALLEGEDLY LIABLE WAS ADVISED, HAD OTHER REASON TO KNOW, OR IN FACT KNEW OF THE POSSIBILITY THEREOF.

13. Pricing. Payment. OPERATOR agrees to timely pay all monies due IT in the normal course of business. OPERATOR agrees that IT may sweep OPERATOR'S bank accounts as set forth in the relevant PAD Form between IT and OPERATOR for monies due IT, including monies due for products and services purchased by OPERATOR and not paid for by separate check or wire transfer. OPERATOR further agrees that IT shall have the right to limit the online access of, or disable, any GAMES owned by OPERATOR for which any payments, including but not limited to ITNet Fees or upgrade payments, are not paid timely. Any amounts not paid in accordance with the terms of this AGREEMENT which remain unpaid 15 days following written notice from IT, shall, in addition to any other remedies IT may have, bear interest from the date due until the date paid at the rate of 1% per month or the maximum rate permitted by law, whichever is less. OPERATOR shall be responsible to IT for all costs and expenses of collecting overdue accounts, including, if any amount is collected by or through an attorney, reasonable attorney's fees.

14. Taxes. OPERATOR agrees to pay all taxes, fees, and assessments of any kind which may be assessed by any governmental body on the fees generated by GAMES.

15. Confidentiality. Each party (the "Recipient") agrees that all confidential documents, work product and information (including all computer code and related materials, sales and patron information, business projections, and all non-public information (collectively "Confidential Information") disclosed by the other party (the "Disclosing Party") pursuant to this AGREEMENT will be received in strict confidence and will be used only for the purposes contemplated in this AGREEMENT. Without obtaining the prior written consent of the Disclosing Party, the Recipient will not disclose any Confidential Information to any third party, and will disclose such information only to such of its officers, employees and agents who have a need to know such information for the purposes contemplated by this AGREEMENT. Provided, however, that the Recipient may disclose Confidential Information of the Disclosing Party in the following circumstances: (a) where, prior to disclosure, such information has become public without any failure of the Recipient to comply with the provisions of this paragraph; (b) in response to any subpoena or other legal process or if Recipient is required by applicable law to disclose such Confidential



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Information, provided that in all such cases, unless prohibited by applicable law from doing so, prior to disclosure, Recipient notifies the Disclosing Party of the demand for disclosure and provides the Disclosing Party with the opportunity to oppose same. Notwithstanding the forgoing, OPERATOR may share such financial information relating to GAMES as OPERATOR deems appropriate with the locations in which the GAMES are operated, and IT may list or otherwise publish such non-financial information regarding OPERATOR and the locations at which GAMES are operated on its website(s). Furthermore, IT may disclose such information as is reasonably necessary to collect unpaid accounts to debt collection agencies and/or its legal representatives. This provision shall survive the termination or expiration of this agreement for a period of two years from the date thereof

## 16. General.

a. Governing Law. This AGREEMENT shall be governed as to performance and interpretation in accordance with the laws of the State of Illinois. OPERATOR irrevocably submits itself to the original jurisdiction of those courts located in the County of Cook, State of Illinois, with regard to any controversy arising out, or relating to, or in any way concerning the execution or performance of this AGREEMENT. OPERATOR agrees that service of process on OPERATOR may be made, at the option of IT, by either registered or certified mail to the address and to the person set forth in the Notice Provision of this AGREEMENT, to such other address or person as may be designated by OPERATOR in writing, to the office actually maintained by OPERATOR or by personal delivery on any officer, director or managing or general agent of OPERATOR. If any action is brought by OPERATOR against the IT concerning this AGREEMENT, the action shall only be brought in those courts located within the County of Cook, State of Illinois.

b. Force Majeure. Neither party shall be deemed in default of this AGREEMENT to the extent that performance of their obligations or attempts to cure any breach are delayed or prevented by reason of any act of God, fire, natural disaster, accident, act of government, shortages of material or supplies of any other cause beyond the control of such party (including delay wrongfully caused solely by the other party) ("Force Majeure"), provided that such party gives the other party written notice thereof promptly, and in any event, within fifteen (15) days of discovery thereof; PROVIDED, however, that in any event the time for performance or cure shall be extended only for a period equal to duration of the Force Majeure but not in excess of six (6) months.

c. Assignment. This AGREEMENT may not be assigned in whole or in part by either party without consent of the other, except that either may assign any or all of their rights under this AGREEMENT to any third party which succeeds by operation of law to, purchases or otherwise acquires substantially all of the assets of that party and assumes their obligations hereunder, upon written notice to the other party.

d. Interpretation. This AGREEMENT shall be fairly interpreted in accordance with its terms and without any strict construction in favor or against one party or the other.

e. Severability and Headings. Should any provision of this AGREEMENT be held void, invalid or inoperative, the remaining provisions of this AGREEMENT shall not be affected and shall continue in effect as though such provisions were deleted. Headings of this AGREEMENT are illustrative only and shall not control the effects of terms contained herein.

f. Notices. All notices, demands, requests and other communications required or permitted to be given to any other Party hereto in connection herewith (1) must be in writing and (2) may be served either by (A) depositing the same in the mail, full postage prepaid, certified or registered with return receipt requested, (B) delivering the same by an internationally recognized air courier service, full delivery cost paid, (C) delivering the same in person, (D) sending a telecopy of same, confirming with a copy thereof delivered either by mail or air courier service, or (E) sending a copy of same via email to the email address identified below, confirming a copy thereof delivered either by mail or air courier service. Any notice, demand, request or other communication shall be deemed given upon receipt. For the purposes hereof, the addresses, email and telecopy numbers of the Parties hereto are as follows:

If to OPERATOR:

Attn: \_\_\_\_\_

\_\_\_\_\_

Fax: \_\_\_\_\_

Email: \_\_\_\_\_

With a copy to:



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If to IT:

Incredible Technologies, Inc.  
Attn: General Counsel  
200 Corporate Woods Parkway  
Vernon Hills, IL 60061  
Email: legal@itsgames.com

or to such address as either Party may designate in writing to the other.

g. Entire Agreement. This AGREEMENT states the entire agreement between the parties with respect to the subject hereof and supersedes all prior negotiations, understandings and agreements between the parties hereto concerning the subject matter hereof. No amendment or modification of this AGREEMENT shall be made except by an instrument in writing

signed by both parties which specifically and particularly refers to this AGREEMENT.

h. Counterparts. This AGREEMENT may be executed in any number of counterparts, each of which when so executed and delivered will be deemed to be an original and all of which taken together shall constitute one and the same instrument.

i. Effect of Termination. No termination shall affect any right, liability, or obligation, which accrues prior to such termination. Additionally, termination shall not affect either party's obligations to the other which by the nature thereof are intended to survive any such termination, including, but not limited to, the obligations of maintaining confidentiality as well as the obligations for payment of any outstanding monies that may be owed by one party to another and related remedies.

IN WITNESS WHEREOF, the respective parties have caused this AGREEMENT to be executed as of the date(s) set forth below.

**INCREDIBLE TECHNOLOGIES, INC.**

**OPERATOR**

Signature: \_\_\_\_\_

Signature: \_\_\_\_\_

By: James M. Doré

By: \_\_\_\_\_

Title: COO

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_



**Exhibit A**  
**Game Registration Form**



**Exhibit B**  
**Payor's Authorization for Pre-Authorized Debits Form**





**ITNet™  
OPERATOR AGREEMENT**

COMPLETE THIS FORM AND SEND VIA MAIL OR FAX TO:

Incredible Technologies, Inc.  
200 Corporate Woods Parkway  
Vernon Hills, IL 60061  
Phone: (847) 870-7027  
Fax: (847) 454-9155

Allow up to ten (10) business days for processing.

**IMPORTANT!!**

**THIS DOCUMENT MUST BE SIGNED AND ON FILE WITH INCREDIBLE TECHNOLOGIES, INC.  
FOR YOUR GOLDEN TEE LIVE MACHINES TO RECEIVE ONLINE FEATURES. YOU MUST ALSO  
RETURN ALL NECESSARY IRS FORMS BEFORE YOUR ACCOUNT CAN BE ENABLED AND ONLINE  
FEATURES ACCESSED.**