

**GENESIS NETWORKS, INC.  
MASTER SERVICE AGREEMENT  
TERMS AND CONDITIONS**

**1. Definitions**

1.1 In this Agreement, except so far as the contrary is provided or the context otherwise requires, the following expressions have the meanings respectively assigned to them:

"Due Date" means five days prior to the first day of the month to which payment applies;

"Fiber Optic Audio / Video Channel" means a 24-hour dedicated and equipped simplex fiber optic audio / video circuit;

"Master Service Agreement" means Genesis' outlined terms and conditions that are to govern over any and all current and future Service Schedules unless otherwise specified within the Service Schedule;

"Service" means the Genesis service referenced to and set forth in the attached Service Schedules to this Agreement; and

"Service Schedule" means Genesis' outline of the service to be provided to the Customer. The Service Schedule is to act as an amendment to the Master Service Agreement, stating any change to the terms and conditions agreed on by both parties;

1.2 Section headings are inserted for convenience only and shall not affect the construction of this Agreement.

1.3 References to Sections are to the Sections of this Agreement and, unless the context otherwise requires, words importing the singular include the plural and vice versa, words importing one gender include every gender and references to persons include bodies corporate and unincorporated.

**2. Genesis Service.**

2.1 Genesis shall provide Customer the Service set forth in the attached Service Schedules of this Agreement ("Genesis Service Description and Charges").

**3. Term.**

3.1 The initial Term of the Agreement shall commence when the Service set forth in the attached Service Schedules are first available to the Customer for use (the "Service Availability Date"). Genesis shall advise the Customer in writing of Service Availability Date and append such letter to this Agreement as an Addendum. Unless otherwise agreed in writing by the parties, all Services shall be for a minimum one year term, subject to the automatic renewal provisions of Section 4.1, below.

**4. Automatic Renewal.**

4.1 Unless otherwise agreed in writing by the parties, all Services provided under this Agreement shall automatically renew for continuous one year terms from the Service Availability Date (each such term end of the one year anniversary of the Service Availability Date (the "Anniversary Date").

4.2 Either party may not renew the Service by giving advance written notice to the other (the "Non-Renewal Notice"). Such Non-Renewal Notice shall be provided in writing no less than 90 days prior to the Anniversary Date of the initial service term or any subsequent renewal terms, and shall be effective on the next such Anniversary Date. (By way of example, should a Service Availability Date for a particular Service be January 1 in any given year, the Anniversary Date would be the following January 1. The Non-Renewal Notice must be received no later than October 1, and such non-renewal would only be effective on the next Anniversary Date of January 1.)

**5. Charges and Payment**

5.1 Customer agrees to pay Genesis the recurring charges set forth in the attached Service Schedules for the Service provided by Genesis under this Agreement.

5.2 All recurring charges shall be paid to Genesis five days prior to the first day of each month the service is to be performed (i.e., charges for January 1 – January 31 shall be paid by December 26) (the "Due Date"). If the availability of the Service under this Agreement should commence or terminate on a day other than the first or last day of the month, Customer shall pay Genesis for such Service, a prorated amount per day for each day that the Service is available during such month.

5.3 Customer shall make payment of the recurring monthly charges for the Service (the "Monthly Service Fees" on or before the Due Date. Customer acknowledges that timely payment for the Service is of the essence of this Agreement. All payments by Customer to Genesis shall be made in US Dollars unless otherwise agreed in writing by the parties. All payments to Genesis shall be considered paid upon receipt of collected funds by Genesis. Any and all fees associated with the payment of the invoice are the responsibility of the Customer.

5.4 If any undisputed amount due under this Agreement shall remain unpaid ten (10) days from the Due Date, Customer shall be liable for an additional fee equal to 1.5% of the outstanding and unpaid charges, for each month, or portion thereof, that such charges remain outstanding.

5.5 All amounts quoted herein are exclusive of any Taxes (as defined below) that may be imposed on or applicable to the Services being provided by Genesis pursuant to this Agreement, all of which shall be paid by Customer in addition to such amounts.

(a) For the purposes of this Section, the terms "Tax" or "Taxes" shall mean all federal, state, local, foreign, tribal or provincial taxes, charges, fees, levies, imposts, duties, tariffs, surcharges, or other assessments, including, without limitation, sales, use, transfer, gross receipts, excise, withholding, Universal Service Fund assessments or any similar charges or assessments, value added, goods and services, and all taxes, charges, fees, levies, imposts, duties, tariffs, surcharges, or other assessments placed by, or replacing, any of the above, or other tax or governmental fee of any kind whatsoever imposed by any governmental authority, including any interest or penalties or additions thereto, whether disputed or not, provided, however, that the term Tax or Taxes shall not include any taxes imposed on Genesis's net income.

(b) Customer shall provide Genesis with all applicable certificates of waiver, exemption, relief, or other reasonably satisfactory evidence of waiver, exemption or relief that may be

required by any federal, state, local or foreign Tax authority pursuant to which Genesis would be relieved of its obligation to charge Customer Tax in connection with this Agreement.

5.6 In the event that any payment required by any governmental authority has the effect of increasing the cost of the facilities provided to Genesis or by any carrier that provides facilities or services associated with Customer's use of such services, any such increase shall be passed on to Customer at a rate not to exceed the amount of the cost increase to Genesis, apportioned pro rata against all customers using similar facilities or services. Any increase pursuant to this Section may only be made on and after the annual anniversary date of this Agreement. Increases will be passed on to the Customer as follows:

- a) Increase of ten (10) percent or less will automatically be passed onto the Customer of the applicable invoice;
- b) Increases greater than ten (10%) percent of the applicable invoice will be imposed only with the consent of Customer, which consent will not be unreasonably withheld or conditioned.

5.7 Customer may remit payment to Genesis by either of two (2) methods:

- (a) via check to Genesis Networks, Inc. One Penn Plaza, Suite 4530, New York, NY 10119;
- (b) via wire transfer to Silicon Valley Bank, Santa Clara, 3003 Tasman Drive, Santa Clara, CA 95054 Account Name: Genesis Networks, Inc., Account Number: 3300535019, Bank ABA Number: 121140399
- (c) Customer shall be responsible for any and all transaction fees, currency exchange or other fees associated with the cost of a wire transfer.

## 6. Obligations of Customer.

6.1 Customer may use the Service for any lawful purpose provided that such use shall not interfere with any other service utilizing Genesis's fiber optic network ("the Genesis network") so as to impair the privacy of any communications being transmitted on the Genesis network. Customer is solely responsible for the content of transmissions that it provides to Genesis for transmission on the Genesis network.

6.2 Customer acknowledges that Genesis and its agents shall be required to install certain equipment and facilities at Customer's premises. Customer shall be responsible for arranging and providing access to any space necessary for such purpose and to permit Genesis and its agents to repair, maintain, inspect, replace or remove any such equipment and facilities. Access to such space shall be available during normal business hours upon reasonable notice by Genesis or its agents to Customer. Access to such space and power must be provided on a timely basis. Customer shall make available a representative to accompany any Genesis employee or its agent while on Customer's premises. Customer shall also provide the electrical power and space necessary to locate and terminate the facilities on Customer's premises without charge to Genesis or its agents. Any equipment and facilities installed by Genesis shall remain the exclusive property of Genesis and its agents, and Customer shall take reasonable care of such equipment and facilities while it is on Customer's premises to protect it the same from fire, theft, vandalism or other loss. Customer shall be responsible for loss or

damage caused by the negligence of its employees and / or its agents. Customer shall not permit or create any liens or encumbrances on Genesis's or its agents' equipment or facilities.

6.3 Customer shall obtain and maintain, or cause to be obtained and maintained, during the term of this Agreement all applicable licenses, authorizations, permits and rights to the audio/video signal(s) being transmitted through the Service.

## 7. Interruptions in Service.

7.1 An Interruption in the Service shall be deemed to have occurred when such Service is reasonably deemed by Customer to be unusable, such that the Service is precluded from being used for its intended commercial purpose.

7.2 An Interruption period ends when the Service is operative.

7.3 Measurement of periods of Interruption or Failure shall commence only upon: a) Customer's written or verbal notification in English to Genesis's Network Operations Center (the "NOC") in New York; or b) when the Genesis NOC becomes aware of such loss of Service, whichever is sooner. For purposes of notification of Interruption or Failure, Customer shall contact the supervisor on duty at Genesis's Network Operations Center at the following address and telephone number:

Genesis Networks, Inc.  
One Penn Plaza, Suite 4530  
New York, New York 10119  
Attn: Network Operations Center  
Telephone: (212) 962-1722

## 8. Credit Allowances.

8.1 In the event that there is an Interruption of the Service not caused by Customer or Customer provided equipment, facilities or power, a credit allowance shall be given by Genesis for each incidence of Interruption of more than five (5) minutes and shall be given in one (1) minute increments. No more than one full day's recurring charges under this Agreement shall be credited for any period of 24 hours.

8.2 The credit allowances identified above shall not apply in the event that a Service Interruption exists due to any of the following:

- (a) Interruptions caused by the negligence, error or omission of Customer or others authorized by Customer;
- (b) Interruptions due to failure of power at a Customer's premise or to the failure of Customer-provided equipment;
- (c) Interruptions during any period where Customer has agreed not to use its Service so that Genesis can maintain or rearrange Service or install Service pursuant to a purchase order.; or
- (d) An interruption during any period when Customer does not agree to refrain from using its Service for testing and/or repair and continues to use the Service on an impaired basis.

## 9. Termination.

9.1 Genesis may suspend the Service, without prior written notice, for non-payment of an invoice for thirty (30) days beyond the Due Date.

9.2 Subject to the other provisions of this Section 9, no early termination is allowed under this Agreement. Therefore, in the event that the Customer terminates this Agreement effective on any date prior to the Anniversary Date established by Section 4.2, or if this Agreement is terminated by Genesis due to Customer's breach of this Agreement an early termination charge ("Early Termination Charge") shall apply.

9.3 The Early Termination Charge shall be equal to the lesser of : a) the Monthly Service Fees for the remainder of the Service Term; or b: if the remainder of the Service Term is greater than 12 months, an amount equal to twelve Monthly Service Fees.

9.4 All termination notifications or disconnection of circuits must be sent to the following party in writing for acceptance via mail, fax and/or email communications in English:

Genesis Networks, Inc.  
One Penn Plaza, Suite 4530  
New York, New York 10119  
Attn: Contracts Administrator  
Email: contracts@gen-networks.com  
Telephone: (212) 962-1776  
Facsimile: (212) 962-1610

## 10. Maintenance

10.1 Maintenance events shall be categorized as the following:

(a) Scheduled Maintenance - includes any maintenance events that are scheduled in advance and shall take place after 72 hours of the maintenance notification. This is an action managed by Genesis networks that may need to be performed by the underlying long distance fiber provider, local access provider or directly by Genesis Networks, Inc.

- Maintenance shall be scheduled at the Customer's convenience, and is usually done overnight in a 3-5 minute window.

(b) Preventive Maintenance - actions performed on a regular interval (every three months) or pre-scheduled basis as preventative maintenance, required to maintain the quality of service (the most common examples below).

- Reset a piece of equipment
- Perform software upgrades
- Perform firmware upgrades
- Upgrade of the underlying fiber carrier's network augmentation backbone and associated node equipment
- Replacement of a piece of equipment
- Maintenance shall be scheduled at the Customer's convenience, and is usually done overnight in a 3-5 minute window.

(c) Emergency Maintenance - events where Genesis operations or engineering determines that there is an urgent need to prevent a possible impairment of the Service. Genesis

shall attempt to coordinate the maintenance with Customer to occur in a time interval with less than 72 hour notification.

Emergency maintenance events may include (the most common examples below):

- Reset a piece of equipment
- Clear an alarm
- Change out a piece of equipment
- Perform intrusive diagnostics

10.2 Customer must allow Genesis to perform maintenance deemed to be necessary by Genesis for the proper operation of equipment for Services pursuant to Section 2 of this Agreement.

10.3 Genesis Shall not be responsible for any outage or interruption in Service caused by the Customer's refusal to allow maintenance deemed to be necessary by Genesis, and no service credits shall be issued.

## 11. Assignment.

11.1 Neither Customer nor Genesis shall have the right to assign this Agreement to any third party without the consent of the other, whose consent shall not be unreasonably withheld or conditioned. Notwithstanding the foregoing, Customer or Genesis may assign its interests, rights, and obligations in and under this Agreement, in whole or in part, to any affiliated entity, including its parent, subsidiaries and affiliated companies and to any entity which acquires all or substantially all its assets or all or substantially all of the assets of such a subsidiary or affiliated company without having first obtained the consent of the other party.

11.2 In the event of any assignment of this Agreement by either party pursuant to Section 11.1, the assigning party shall remain fully liable for all of its obligations under this Agreement.

## 12. Confidentiality.

12.1 Confidential Information. The term "Confidential Information," as used in this Agreement, shall mean any oral or written information that relates to this Agreement and the Service provided hereunder and is received by one party (the "Receiving Party") from the other (the "Disclosing Party").

12.2 Trade Secrets. The term "Trade Secrets," as used in this Agreement, shall mean any oral or written information or information that is stored by electronic means that: (a) derives economic value, actual, or potential, from not being generally known to, and not being readily ascertainable by proper means by other persons who can obtain economic value from its disclosure or use; and (b) is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.

12.3 Public Information. The terms "Confidential Information" and "Trade Secrets" do not include information that:

(a) Is already known to the Receiving Party as evidenced by prior documentation thereof:

(b) Is or becomes publicly known though no wrongful act of the Receiving Party;

(c) Is rightfully received by the Receiving Party from a third party without restriction and without breach of this Agreement or any other agreement; or

(d) Is approved for release by written authorization of the Disclosing Party.

12.4 Limitations on Disclosure and Use. For the Term of this Agreement plus three (3) years, the Receiving Party shall not disclose to others, or use for any purpose other than as described in this Agreement, any Confidential Information obtained from the Disclosing Party or from an affiliated entity of the Disclosing Party as a result of work done pursuant to this Agreement, or generated or developed in anticipation of or in the performance of work during the Term of this Agreement. With respect to Trade Secrets, the Receiving Party shall not disclose to others or use for any purpose other than as described in this Agreement at any time during or after the term of this Agreement or until such Trade Secrets lose their status as such under applicable law.

### 13. Indemnity.

13.1 Each party shall indemnify, defend, and hold harmless the other party, its parent, its subsidiaries and affiliates, and the directors, employees, agents and subcontractors of all of them against all claims, losses, or damages resulting from the use of the Service furnished pursuant to this Agreement, involving:

(a) Claims for libel, slander, invasion of privacy, infringement of copyright, infringement of moral rights or any claim based on the content of any transmission arising from any communication transmitted on the Service;

(b) Claims for infringement of patents or other intellectual property arising from any communication transmitted on the Service or by combining or using the Service furnished by Genesis in connection with services, facilities, or equipment furnished by third parties; or

(c) All other claims arising out of any act or omission of third parties relating to the Service provided pursuant to this Agreement.

13.2 Provided, that in the case of any claims or proceedings covered by such indemnities, the indemnified party shall notify the indemnifying party of such claim or proceedings as soon as practicable and shall permit the indemnifying party to have conduct and control of any proceedings and related negotiations and the indemnified party shall offer all necessary assistance (at the indemnifying party's expense) in the resolution of such proceedings.

### 14. Warranties and Limitation of Liabilities.

14.1 Excepting only liability for Genesis's gross negligence or willful misconduct, Genesis's liability arising out of its provision of the service hereunder, including but not limited to liabilities arising out of Genesis's mistakes and omissions, interruptions, delays, errors, or other defects in such service or arising out of the failure to furnish such service, whether caused by acts of commission or omission, shall in no event exceed an amount equal to its cumulative past and future fixed monthly or other charges allocable to the faulty or defective service as outlined under the terms of this agreement.

14.2 Neither party shall be liable to the other for failure to comply with its commitments under this agreement due to labor actions; laws, regulations, orders, or other actions or inactions of any governmental authority; civil commotions; acts of God, and other circumstances beyond such party's reasonable control. Each such event shall constitute a force majeure.

14.3 Any and all expressed and implied warranties relating to the service, including but not limited to warranties of merchantability or fitness for a specific purpose or use, are expressly disclaimed.

14.4 In no event shall either party be liable for any incidental or consequential damages (including, but not limited to, lost profits, savings or revenues of any kind), or any special, consequential or punitive damages as a result of its performance or non performance of the terms of this agreement, regardless of the foreseeability thereof or occasioned by the termination of Genesis's rights to provide, the preemption of or the failure of, or the loss of technical quality of the services or by any delay in commencement of this agreement.

14.5 Genesis and its agents shall not be responsible for any damages to property at customer's premise(s) resulting from the installation, maintenance, repair or removal of equipment, fiber optic audio / video circuits and associated facilities unless such damage is caused by Genesis's or its agents' misconduct or negligence. Neither Genesis nor customer nor their respective agents shall be liable for any delay in or failure of performance for any reason beyond their reasonable control.

### 15. Representations and Warranties.

Genesis and Customer each represents and warrants to, and agrees with, the other that:

15.1 Authority. It has the right, power and authority to enter into and perform its obligations under this Agreement.

15.2 Corporate Approvals. It has taken all requisite corporate action, as applicable; to approve execution, delivery and performance of this Agreement, and this Agreement constitutes a legal, valid and binding obligation upon itself.

15.3 Consents. The fulfillment of its obligations shall not constitute a material violation of any existing applicable law, rule, regulation or order of any governmental authority. All necessary public or private consents, permissions, agreements, licenses or authorizations to which it is subject have been obtained, or it shall use all reasonable efforts to obtain, in a timely manner.

### 16. Notices.

16.1 Any payments, notices, documents, statements or other writings to be given hereunder by either party shall be in writing, in English, and shall be hand delivered, sent by overnight delivery service, sent by telex, fax or telegram, or mailed by first-class certified mail, return receipt requested, to Genesis as follows:

#### To Genesis:

Genesis Networks, Inc.  
One Penn Plaza, Suite 4530  
New York, New York 10119  
Attn.: Contract Administrator  
Email: [contracts@gen-networks.com](mailto:contracts@gen-networks.com)  
Facsimile: (212) 962-1610

16.2 All payments, notices, documents, statements or other writings to be given hereunder by either party, shall be deemed to be received when actually received if personally delivered, upon acknowledgement of receipt if sent by facsimile, or upon expiration of the third business day after being deposited in United States mails, postage prepaid, certified or registered.

## **17. Information Service.**

17.1 Customer acknowledges and understands that the Service Genesis provides pursuant to this Agreement involves net protocol conversion and thus is regulated as an information service under the Communications Act of 1934, as amended (47 U.S.C. §§ 151 *et seq.*), and current FCC regulations.

## **18. Entire Agreement.**

18.1 These terms and conditions, together with the agreement made initiating service, constitute the sole understanding between the parties hereto with respect to the subject matter hereof superseding all previous agreements or understandings between them and shall not be modified except in writing.

## **19. No Waiver/Cumulative Remedies.**

19.1 No failure to exercise and no delay in exercising, on the part of any party, of any right, remedy, power or privilege under this Agreement shall operate as a waiver thereof; nor shall any single or partial exercise of any right, remedy, power or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, remedy, power or privilege. The rights, remedies, powers and privileges herein provided are cumulative and not exclusive of any rights, remedies, powers and privileges provided by law.

19.2 No waiver by either party of any breach of this Agreement by the other shall be deemed to be a waiver of any preceding or subsequent breach hereof.

## **20. Governing Law.**

20.1 This Agreement shall be governed by and construed under the laws of the State of New York applicable to Agreements wholly made and to be performed therein.

## **21. General Obligations.**

21.1 Nothing contained in this Agreement shall preclude either party from seeking injunctive relief to prevent a willful breach or to compel performance in the event of a willful failure to comply with this Agreement.

## **22. Third Party Beneficiaries/Independent Contractor.**

22.1 Nothing herein contained shall be deemed or construed by either party hereto or by any third party to create any rights, obligations, or interests in any third party, or to create any association, partnership, joint venture, the relation of principal or agent, the relation of employer and employee, or any fiduciary relationship of any kind between the parties hereto, it being understood that each party shall perform all services hereunder as an independent contractor.

## **23. Publicity and Advertising.**

23.1 Customer shall not in any way or in any form publicize or advertise in any manner the fact that it is obtaining Service from Genesis pursuant to this Agreement, without the express advance written approval for each item of such advertising or publicity from Genesis, which shall not unreasonably be withheld. The foregoing prohibition shall include, but not be limited to, news releases, letters, correspondence, literature, promotional materials or displays of any nature or form. Each request for approval hereunder shall be submitted in writing to Genesis; and approval in each instance shall be effective only if in writing. Notwithstanding the foregoing, Customer may refer to the fact that it is securing Service from Genesis without Genesis's prior approval so long as such statements are limited to a statement of such fact and are not an endorsement of any product or service by Genesis.

## **24. Succession.**

24.1 This Agreement shall inure to the benefit of and be binding upon the respective successors and permitted assigns of the parties hereto.

## **25. Miscellaneous.**

25.1 Customer acknowledges and agrees that any performance or partial performance by the Customer under this Agreement, including, without limitation, any use of the Service shall constitute acceptance by the Customer of all of the terms and conditions contained in this Agreement.

25.2 Nothing contained in this Agreement shall be construed so as to require the commission of any act contrary to law. If any provision of this Agreement shall be invalid or unenforceable, the provisions of this Agreement so affected shall be curtailed and limited only to the extent necessary to permit compliance with the minimum legal requirements.

## **26. Arbitration.**

26.1 All disputes arising in connection with the present Agreement shall be finally settled under the Rules of Conciliation and Arbitration of the American Arbitration Association ("AAA Rules") by one or more arbitrators appointed in accordance with said AAA Rules. The arbitration shall take place in New York City, New York, United States of America, and shall be conducted in English. The arbitrator shall apply the substantive (not the conflicts) law of the state specified in the choice of law provision set forth elsewhere in this Agreement. The arbitrator shall not limit, expand or modify the terms of this Agreement nor award damages in excess of compensatory damages, and each party waives any claim to such excess damages. The award shall be in United States dollars. Judgment upon the award rendered in the arbitration may be entered in any court having jurisdiction thereof. Each party shall bear its own expenses (including attorney's fees) and an equal share of the expenses of the arbitrator and the fees of the arbitration. Nothing in this Agreement shall be construed to preclude any party from seeking injunctive relief in order to protect its rights pending arbitration. A request by a party to a court for such injunctive relief shall not be deemed a waiver of the obligation to arbitrate.