

TERMS AND CONDITIONS FOR GENESIS HOSTING SOLUTIONS SHARED VIRTUAL INFRASTRUCTURE

SERVICES

By ordering virtual infrastructure services from Genesis Hosting Solutions, LLC ("Genesis"), you ("you" or "Customer") agree to the terms and conditions set forth herein.

1. SUBJECT OF THE AGREEMENT

The Agreement governs the provision of virtual infrastructure services (the "Services") to the Customer by Genesis and certain administration and servicing thereof. The Services comprise making available for use by the Customer a portion of a VMware ESX cluster with certain, limited server functions granted to the customer via a software control (hereafter, the "Virtual Infrastructure"). The Virtual Infrastructure is not a dedicated server, and access to certain functions of the system hardware and software are limited.

2. SERVICES PROVIDED

Genesis agrees to provide the use of the Virtual Infrastructure to Customer, for the exclusive use of Customer at the price agreed upon before the initiation of service, for the term as defined below. Customer represents and warrants that Customer has or has access to the knowledge and expertise necessary to configure, maintain, monitor, and secure the Virtual Infrastructure. Genesis further agrees to maintain the hardware on which the Virtual Infrastructure is located. Genesis further agrees to provide phone and e-mail support as defined by the Service Level Agreement (the "SLA") agreed upon before the initiation of service.

3. FEES

Fees for the Services shall be charged in accordance with the schedule of fees set and adjusted by Genesis from time to time. Published fees include initial setup and installation services as set by Genesis, and are non-refundable. Credit will be provided as per the SLA.

4. TERM

Subject to termination in conformity with Section 10 of this Agreement, the initial term of this Agreement shall be one (1) month with automatic renewal for one subsequent additional month after the expiration of the initial term and each such renewal term (each such month a "Contract Term"). Genesis reserves the right to accept pre-payment of renewal periods and may from time to time offer financial incentives for such pre-payment. The Contract Term, however, shall remain one (1) month. Notwithstanding the provisions of this Section to the contrary, Genesis may offer certain packages for which the initial term of this Agreement shall be longer than one month (the "Extended Term Package"), at the end of which this Agreement shall renew automatically on a month-to-month basis pursuant to the terms of this Section. Any and all service fees for the Extended Term Package are due and payable for the entire initial term thereof, and should you terminate, attempt to terminate, or otherwise default on this Agreement prior to the end of the initial term you authorize Genesis to charge your credit card or send an invoice by U.S. Mail or e-mail for all such fees and charges for the remainder of such initial term. For the purposes of this Section, any modification of the Extended Term Package shall be deemed a termination and shall entitle Genesis to the fees owing on the Extended Term Package. Fees paid for the Extended Term Package are not refundable unless this Agreement is terminated by Genesis without cause pursuant to Section 10 or as otherwise agreed to in writing by Genesis in its sole discretion.

5. ADMINISTRATIVE ACCESS

Access to the Virtual Infrastructure is limited to you and your authorized agents. Genesis has limited access to the contents of your Virtual Infrastructure. Genesis reserves the right to require, at its discretion, software upgrades for the purposes of maintaining security and stability of the services provided and may require the installation of such upgrades. Standard fees for such upgrades shall be set by Genesis from time to time.

6. NETWORK DATA TRANSFER CHARGES

There shall be no charge for monthly aggregate or daily average network transfer within the allowance of the Virtual Infrastructure package purchased, depending on the terms agreed upon at purchase, as measured during any 30-day period. Monthly aggregate or daily average network traffic in excess of the pre-arranged allowance shall incur an additional fee as set by Genesis. Payment of this fee will be required in order to maintain service. Network traffic shall be measured by Genesis and may include all forms of traffic to and from the Virtual Infrastructure.

7. HARDWARE AND SOFTWARE CONFIGURATION

All Virtual Infrastructure must use software configurations that conform with Genesis' requirements. Use of any particular software configuration may be declined at the sole discretion of Genesis. Customers have no right or expectation to receive a hardware or software configuration on their Virtual Infrastructure that is more capable than that which was initially ordered from Genesis, nor can a Customer expect to receive support from Genesis with respect to the correction of errors caused by mistakes, faulty settings, and installation errors caused by the Customer.

8. CUSTOMER CONDUCT

8.1.

Genesis services and Virtual Infrastructure may only be used for lawful purposes. Any use which violates any local, state, federal, or international laws which may apply to Genesis, Customer's local jurisdiction, or any jurisdiction that Customer or Customer's site may be subject to is strictly prohibited.

8.2.

While using Genesis supplied Virtual Infrastructure, Customer will not:

8.2.1.

Restrict or inhibit any other user from using and enjoying the Internet;

8.2.2.

Post or transmit any unlawful, threatening, abusive, or otherwise objectionable information of any kind, including without limitation any transmissions constituting or encouraging conduct that would constitute a criminal offense, give rise to civil liability, or otherwise violate any local, state, federal or international law, including without limitation the U.S. export control laws and regulations, and laws protecting intellectual property including copyright, trademark, trade secret, misappropriation and anti-dilution laws;

8.2.3.

Post, publish, transmit, reproduce or distribute any information or software which contains a virus or other harmful component;

8.2.4.

Operate an open mail relay;

8.2.5.

Transmit any unsolicited commercial or bulk e-mail or engage in any activity known or considered to be "spamming" or "Mail Bombing";

8.2.6.

Use any Genesis Virtual Infrastructure or service to carry out, or assist in the carrying out of, any "denial of service" attacks on any other website or internet service.

9. INDEMNIFICATION

9.1.

You agree to fully defend and indemnify and hold harmless Genesis of and from any and all third party claims, causes of action, demands, costs, damages including both direct and consequential damages, specifically including attorneys fees and costs, expert fees and costs and mediation and/or arbitration fees and costs incurred (whether paid or not) as the result of any breach or claim of breach of this agreement or your negligence whether active or passive or any negligence of Genesis in any way related to your use of the Genesis Services or any portion thereof.

9.2.

You agree to fully defend and indemnify and hold harmless Genesis of and from any and all third party claims, causes of action, demands, costs, damages including both direct and consequential damages, specifically including attorneys fees and costs, expert fees and costs and mediation and/or arbitration fees and costs incurred (whether paid or not) as the result of any violation or claimed violation of any copyright or other intellectual property right of any third party which is in any way related to your use of the Genesis Services or any portion thereof. Choice of counsel remains exclusively that of Genesis.

9.3.

For purposes of this Section 9, Genesis includes Genesis Multimedia Solutions, as well as its parent company or companies, its subsidiaries and affiliated companies.

10. TERMINATION

Either party can terminate this Agreement upon 30 days' written notice prior to the end of the then-current Contract Term. Genesis can terminate this contract for any reason upon thirty (30) days' prior notice. Any such termination shall take effect at the end of the month after the end of the thirty-day notice period. Genesis reserves the right to terminate this contract without notice in the event that Genesis believes, in its sole discretion, that you have breached any provision(s) of Section 8 of this Agreement, or any provisions of the GT&C, and Genesis may without any liability to you, and in addition to any other remedies, erase or purge any related content or information from Genesis's Equipment without prior notice to you. Genesis may deny Customer access to Virtual Infrastructure without notice if Customer engages in any conduct or activities that Genesis in its sole discretion believes to be in violation of any of the terms and conditions of this Agreement or the GT&C. Genesis shall have no responsibility to notify any third-party providers of services, merchandise, or information, nor any responsibility for any consequences resulting from such discontinuance or lack of notification. Customer agrees that Genesis has the right, but not the obligation, to monitor the Virtual Infrastructure electronically from time to time and to disclose any information as necessary under the law, or to protect itself from claims by a third party or parties. Genesis reserves the right to remove or remove access to any information or materials, in whole or in part, that, in its sole discretion, are unacceptable, offensive, or in violation of this Agreement.

11. OWNERSHIP OF SERVER

All servers and other Equipment shall at all times remain the property of Genesis and are not subject to customer demands.

12. LIMITED WARRANTIES

12.1.

Genesis makes every reasonable effort to maintain the uninterrupted operation of the Genesis Services, subject to regularly scheduled server and network maintenance cycles. However because many events and circumstances are beyond the control of Genesis, Genesis does not in any way warrant or otherwise guarantee the availability of the Genesis system or servers, including but not limited to Virtual Infrastructure, and is not responsible for any delay or loss of data, lack of connection, slow connection, or any other such issues. Genesis may, at its sole discretion, limit or deny access to its servers, including but not limited to Virtual Infrastructure, if, in the judgment of Genesis, such limitations or denials of access are required to assure the security of the network, the integrity of the network structure, or to prevent damage to the network, the software or the data stored on the Genesis system.

12.2.

ALL GENESIS SERVICES ARE PROVIDED TO YOU ON AN "AS IS" BASIS, AND WITHOUT ANY WARRANTY OF ANY KIND, WHETHER EXPRESS OR IMPLIED, INCLUDING, BUT WITHOUT LIMITATION, ANY IMPLIED WARRANTY OF MERCHANTABILITY, OR FITNESS FOR A PARTICULAR PURPOSE.

12.3.

THE TOTAL SOLE AND EXCLUSIVE REMEDY AVAILABLE TO YOU AS THE RESULT OF ANY BREACH OF THIS AGREEMENT, NEGLIGENCE, OR ANY ACTION OR FAILURE TO ACT WHETHER INTENTIONAL OR OTHERWISE SHALL BE LIMITED TO THE TOTAL AMOUNT OF SERVICE FEES PAID BY YOU TO GENESIS IN THE SIX (6) MONTHS IMMEDIATELY PROCEEDING ANY ALLEGATION OF ENTITLEMENT TO SUCH REMEDY, BUT IN NO EVENT TO EXCEED TEN THOUSAND DOLLARS (\$10,000). IN NO EVENT SHALL GENESIS BE LIABLE FOR ANY INDIRECT, SPECIAL, EXEMPLARY, PUNITIVE, INCIDENTAL OR CONSEQUENTIAL DAMAGES, LOSS OF PROFITS OR LOSS OF BUSINESS AS THE RESULT OF ANY SUCH ACTION OR INACTION WITHOUT REGARD TO THE LIKELIHOOD OF ANY SUCH DAMAGES.

12.4.

Customer understands that by placing information on the Virtual Infrastructure, depending on the configuration of the Virtual Infrastructure, such information may be accessible to all Internet users. Genesis does not limit or restrict access to such information, nor protect any such information from copyright infringement or other wrongful activity. Customer assumes full responsibility and risk for their use of the Virtual Infrastructure. It is the Customer's sole responsibility to evaluate the accuracy, completeness and usefulness of all opinions, advice, services, and other information, and the quality and merchantability of all merchandise, provided through Genesis or on the Internet generally.

13. IDENTIFICATION INFORMATION

Customers must be at least 18 years of age or require the approval of the minor's legal guardian. Customer agrees to supply Genesis with a current and truthful full name, e-mail address, postal address, and telephone number and, in case the Customer is a minor, with the current and truthful full name, e-mail address, postal address, and telephone number of at least one legal guardian. Customer agrees to keep this information current and to inform Genesis whenever any of this information changes.

14. NO INTERFERENCE WITH OPERATION OF SYSTEM

14.1.

Customer agrees not to maliciously or intentionally interfere with the proper operation of the server and network, including but not limited to defeating identification procedures, obtaining access beyond that which Customer is authorized for, and impairing the availability, reliability, or quality of service for other customers. Customer further agrees not to interfere with the proper operation of other systems reachable through the Internet, including any attempt at unauthorized access. Customer agrees to follow the Acceptable Use Policy of any network or service to which Customer connects.

14.2.

Customer agrees to adhere to all system policies of Genesis, as such may be published by Genesis online from time to time, including restrictions on services available, restrictions on certain features, and all other policies designed to protect and enhance the quality and reliability of the services of Genesis. Customer agrees to abide by any and all future policy decisions by Genesis.

15. SECURITY

15.1.

Except with respect to issues concerning the physical security of Genesis's data center facilities, Customer agrees that the security of the Virtual Infrastructure and all Services is solely Customer's responsibility. It is the sole responsibility of the Customer to maintain and update security software on the Virtual Infrastructure. Under no circumstance will Genesis be held liable for security breaches and damage caused by the Customer's failure to maintain or update the security software or to maintain adequate security protocols in the administration of the Virtual Infrastructure.

15.2.

To secure the Virtual Infrastructure from external misuse, Customers are encouraged to utilize packet filtering technology.

15.3.

Customer agrees that if the security of Customer's Virtual Infrastructure has been compromised in any way, Customer will notify Genesis immediately in writing as set forth in Section 22 herein. Customer shall be held fully responsible for any misuse or compromise of Customer's Virtual Infrastructure. Customer agrees that if any security violations are believed to have occurred in association with Customer's Virtual Infrastructure, Genesis has the right to suspend access to the Virtual Infrastructure pending an investigation and resolution. Customer also agrees that Genesis has the right to cooperate in any government or legal investigation regarding any aspect of its services, including any servers or Virtual Infrastructure used by Customer. Any use of Genesis's system to engage in software piracy or other violations of law will result in service suspension and be immediately reported to the appropriate authorities.

16. TRANSMITTAL OF MATERIALS

Customer agrees not to transmit unsolicited or prohibited advertising or other harassing or illegal materials through electronic mail, Usenet postings, or other Internet media. The use of Genesis or any other service with reference to services obtained through Genesis, for unsolicited mass mailings, postings, or other activities considered an annoyance to others, commonly referred to as "spamming", is strictly prohibited and may cause Customer's services to be terminated immediately and without warning, and Customer will be held fully responsible for any damages to Customer, Genesis, or any other party or parties resulting from any such conduct.

17. PAYMENT

17.1.

Payment of fees must be made by Credit Card (American Express, Visa, MasterCard, and Discover) or by check with a purchase order. Payment for the Services is due in advance, unless specifically stated otherwise in the offer or promotion pursuant to which you have ordered or are ordering the Services. All payments shall be made in United States Dollars.

17.2.

Prior to activation of your user account and at any applicable time thereafter you authorize Genesis to charge the credit card provided by you or invoice you by U.S. Mail or by e-mail for the amount of the fees due for Services, together with any applicable set-up charges or any other charges outlined herein as may be applicable. You further authorize Genesis to charge your credit card or invoice you by U.S. Mail or by e-mail for all subsequent period fees at, or a reasonable period in advance of, the commencement of any such subsequent period. Should you fail to provide credit card authorization or agree to pay an invoice for the Services, Genesis, at its sole discretion will have the right to suspend or terminate the Services. Refusal or rejection of any charge or any portion thereof is grounds for termination or suspension of the Services, at the sole option of Genesis.

17.3.

Refunds of Service fees will be made only for pre-payment of Service fees beyond the renewal date following the effective notice and termination of this Agreement as provided for herein. All refunds shall be pro-rated based upon the number of days for which Services remain unused as of that renewal date. Genesis may grant refunds under any other circumstance it deems appropriate without waiving any other rights hereunder.

18. PRIOR AGREEMENTS

This Agreement supersedes any written, electronic, or oral communication Customer may have had with Genesis or any agent or representative thereof, and constitutes the complete and total agreement between the parties.

19. SEVERABILITY

If any provision of this Agreement is determined to be invalid or unenforceable, all other provisions shall remain in full force and effect and said provision shall be reformed only to the extent necessary to make it enforceable.

20. JURISDICTION

This Agreement shall be interpreted under the laws of Illinois, without regard to any conflict of laws provisions.

21. DISPUTE RESOLUTION

Any claim, dispute or controversy with respect to, in connection with or arising out of this Agreement shall be subject to and decided by arbitration in the City of Chicago, Cook County of the State of Illinois.

22. NOTICE

Any notice under this Agreement shall be given by Genesis to you via e-mail at the address provided by you to Genesis at the commencement of this Agreement or as Genesis is subsequently advised pursuant to the requirements of Section 14 hereof. Notice to you at this address is deemed sufficient regardless of your receipt of such e-mail.

23. NO AGENCY

Nothing contained herein shall be interpreted as creating an agency, partnership or joint venture between Genesis and the Customer.

24. AMENDMENT

Genesis may without advance notice amend this Agreement and any fee schedules related thereto from time to time, and will do so by posting the new Agreement on the Genesis website in place of the old or by U.S. Mail or e-mail. Each and every such amendment shall become effective immediately for all pre-existing and future accounts. It is your responsibility to periodically check the Genesis website for updates of this Agreement.

25. PRIVACY

25.1.

It is Genesis' policy to respect your privacy. Genesis will not monitor, edit, or disclose any personal information about you or your account, including its contents, without your prior consent unless Genesis deems it necessary, in its sole discretion, to:

25.1.1.

comply with legal process or other legal requirements, including but not limited to responding to civil or criminal subpoenas, search warrants, national security letters, or other requests for information from law enforcement officials;

25.1.2.

protect and defend the rights or property of Genesis or its officers, agents, affiliates, and licensees;

25.1.3.

enforce this Agreement; or

25.1.4.
protect the interests of other Genesis customers.

25.2.
NOTWITHSTANDING THE PROVISIONS OF THIS AGREEMENT TO THE CONTRARY, GENESIS RESERVES THE RIGHT (SUBJECT TO APPLICABLE LOCAL LAW), IN ITS SOLE DISCRETION, TO MONITOR YOUR ACCOUNT, INCLUDING BUT NOT LIMITED TO THE USE OF A USER'S MAIN ACCOUNT AND ANY SUB-ACCOUNTS, FOR THE PURPOSE OF INVESTIGATING VIOLATIONS OF THIS AGREEMENT OR TO ASSIST WITH CRIMINAL OR CIVIL INVESTIGATIONS.

25.3.
INTERNATIONAL CUSTOMERS UNDERSTAND AND AGREE THAT GENESIS' SERVICES ARE PROVIDED BY GENESIS HOSTING SOLUTIONS, LLC IN THE UNITED STATES OF AMERICA. THE PERSONAL INFORMATION WHICH YOU GIVE GENESIS WILL BE TRANSFERRED TO AND MAINTAINED IN THE UNITED STATES. IF YOU DO NOT CONSENT TO THIS TRANSFER, DO NOT ACCEPT THE TERMS AND CONDITIONS FOR GENESIS' SERVICE. INTERNATIONAL CUSTOMERS FURTHER UNDERSTAND AND AGREE THAT GENESIS MAY DISCLOSE PERSONAL INFORMATION ABOUT THEM AND THEIR WEBSITE OR DOMAIN NAMES PURSUANT TO THIS SECTION, AND WAIVE ANY RIGHTS TO PRIVACY OR PROTECTION OF PERSONAL DATA RELATING TO SUCH INFORMATION TO THE FULLEST EXTENT PERMITTED UNDER NATIONAL AND INTERNATIONAL LAW.

26. FORCE MAJEURE

26.1.
In the event of "force majeure" (as defined below), Genesis may terminate this Agreement without liability to you. For purposes of the Agreement, "force majeure" shall mean circumstances or occurrences beyond Genesis' reasonable control, whether or not foreseeable at the time of entering into the Agreement, in consequence of which Genesis cannot reasonably be required to perform its obligations hereunder or otherwise perform its obligations under the Agreement. Such circumstances or occurrences include, but are not limited to: acts of God, war, civil war, insurrection, fires, floods, labor disputes, epidemics, governmental regulations and/or similar acts, embargoes, termination or temporary unavailability of any computer hardware or software, server, or network on which the Genesis Services are located or maintained or through which Genesis' Services are provided, and non-availability of any permits, licenses and/or authorizations required by governmental authority.

26.2.
Genesis reserves the right at any time and from time to time to modify or discontinue, temporarily or permanently, Genesis' Services (or any part thereof) with or without notice under extraordinary circumstances only. If Genesis asserts Force Majeure as an excuse, Genesis shall will be required to prove that reasonable steps were taken (under the circumstances) to minimize delay or damages caused by foreseeable events, that all non-excused obligations were substantially fulfilled, and that Customer was timely notified of the likelihood or actual occurrence which would justify such an assertion, so that other prudent precautions could be contemplated.

27. NO ASSIGNMENT BY YOU; ASSIGNMENT BY GENESIS

This Agreement and the rights pertaining hereto may not be assigned, resold, or otherwise transferred in whole or in part by you without Genesis' prior written consent. In particular, you may not sell accounts or subaccounts to third parties. Notwithstanding the above, this Agreement shall be binding upon your successors and assigns, if any. Genesis may assign or license any or all of its rights and/or obligations hereunder in its free, sole, and unfettered discretion.

28. ARBITRATION AND WAIVER OF JURY TRIAL

28.1.
ANY AND ALL DISPUTES AS TO THE INTERPRETATION OF OR ANY PERFORMANCE UNDER THIS AGREEMENT WHICH ARE NOT FIRST RESOLVED INFORMALLY, SHALL BE DETERMINED BY BINDING ARBITRATION IN CHICAGO, ILLINOIS IN ACCORDANCE WITH THE RULES OF JUDICIAL ARBITRATION AND MEDIATION SERVICES, INC ("JAMS") AND IN ACCORDANCE WITH THE RULES OF JAMS. Any award arising out of such arbitration shall be subject to entry as a judgment by any court of competent jurisdiction in the United States. You consent to personal jurisdiction and venue in such courts and you waive any challenge to personal jurisdiction or venue in such courts. You further agree that Genesis shall be entitled to collect its attorneys' fees, costs and other expenses in the event that Genesis acts to enforce this arbitration and forum selection clause, regardless of whether Genesis prevails in the underlying action. The final award in any such arbitration proceeding shall be subject to entry

as a judgment by any court of competent jurisdiction, provided that such judgment does not conflict with the terms and provisions hereof. The jurisdiction of the arbiter (or arbiters) with respect to legal matters shall be limited only by the statutory and common law of the State of Illinois and the federal law of the United States of America. There are no exceptions to these mandatory arbitration provisions except as set forth in Sections 28.2 and 28.3.

28.2.

Notwithstanding the provisions of Section 28.1, if you fail to timely pay amounts due Genesis may assign your account for collection and the collections agency may pursue such claims in court limited strictly to the collection of the past due debt and any interest or cost of collection permitted by Law or this Agreement.

28.3.

Nothing in Section 28.1 shall preclude Genesis from: (i) seeking and obtaining any injunctive relief or attachment and expedited discovery or other equitable relief to enforce the terms of this Agreement or to remedy a breach thereof, or (ii) bringing an action to enforce this Agreement or the provisions hereof in the event JAMS will not or cannot arbitrate a particular dispute. Any action under this section 28.3 may be brought in either the United States District Court for the Northern District of Illinois, and each party's consent to the in-person jurisdiction of such Courts for the purpose of any such action or proceeding. Each party hereby waives all rights it has or which may hereafter arise to contest such exclusive jurisdiction of the United States District Court for the Northern District of Illinois.

28.4

In addition to the foregoing, YOU HEREBY AGREE THAT AS A PART OF THE CONSIDERATION FOR THIS AGREEMENT, YOU WAIVE THE RIGHT TO A TRIAL BY JURY FOR ANY DISPUTE ARISING BETWEEN YOU AND GENESIS THAT IS IN ANY WAY RELATED TO THE SUBJECT MATTER OF THIS AGREEMENT, and that such waiver shall be enforceable up to and including the day that trial is to start, and even if the arbitration provisions of this paragraph are waived.

28.5

Neither you nor Genesis may be a representative of other potential claimants or a class of potential claimants in any dispute concerning or relating to this Agreement, nor may two or more individuals' disputes be consolidated or otherwise determined in one proceeding. YOU AND GENESIS ACKNOWLEDGE THAT THIS SECTION 28.5 WAIVES ANY RIGHT TO PARTICIPATION AS A PLAINTIFF OR AS A CLASS MEMBER IN ANY CLASS ACTION

28.6

This Agreement shall be interpreted according to the laws of the State of Illinois, United States of America, and, where applicable, the federal law of the United States of America, without regard to conflicts of law principles

29. STATUTE OF LIMITATIONS

You agree that regardless of any statute or law to the contrary, any claim or cause of action arising out of or related to use of the Service or this Agreement must be filed within one year after such claim or cause of action arose or be forever barred.

Acceptance of Terms and Conditions

Company

Printed Name of Customer

Title

Signature of Customer

Date

Please fax signed copy to (847) 438-0197 or email a scanned copy to contracts@genesishosting.com.