

Appendix E
to DIR-TSO-2247
VENDOR MANAGEMENT & SOFTWARE AGREEMENT

This Vendor Management & Software Agreement (“Agreement”), is made this ____ day of _____, 2013 (“Effective Date”), by and between Genesis Networks Enterprises, LLC (“Genesis”) having an office at 600 N Loop 1604 E, San Antonio, TX 78232 and _____ (“Customer”), a governmental entity in the State of Texas, having an office at _____ (Genesis and Customer are each a “Party” and, collectively, the “Parties”).

WHEREAS, Customer requires services to provide a Vendor Management Solution (“VMS” or “Software”) to Customer; and

WHEREAS, Genesis is in the business of providing VMS Services; and

WHEREAS, Customer has access to Texas Department of Information Resources (“DIR”) contracts and Genesis has entered into a service contract with DIR (the “DIR Contract”, DIR-TSO-2247) for the Contracted Services described herein; and

WHEREAS, Customer desires to purchase and Genesis desires to provide the VMS Services described below.

NOW THEREFORE, in consideration of the mutual covenants set forth herein and for other good and valid consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

1. SCOPE OF AGREEMENT

For the term of this Agreement Genesis will provide VMS Services to Customer. VMS, shall include, but not necessarily be limited to, access to and use of the SaaS VMS in accordance with the End User License Agreement attached hereto as Exhibit D and incorporated herein.

2. TERM AND TERMINATION

The initial term of this Agreement will be for three (3) years commencing on the Effective Date and will have annual renewal options thereafter for consecutive one (1) year terms. Termination provisions in the DIR Contract, DIR-TSO-2247 (Standard Terms and Conditions, Section 10.B) apply to this Agreement

3. DEFINITIONS

Supplier – An entity that provides Contractors to Genesis for the Contracted Services under this Agreement. A Supplier may be selected by Customer or by Genesis.

Contractor – An individual, temporary worker furnishing Contracted Services to Customer under this Agreement. A Contractor may either be a direct employee of or subcontractor to Genesis or an employee of a Supplier.

Contracted Services – Services provided by s under this Agreement to meet Customer’s requirements. Contracted Services may include MSP Services, including the Contractors supporting such services, and / or VMS.

Core Team –The Genesis team performing the MSP Services under this Agreement. Core Team members may be employees, representatives, subcontractors or agents of Genesis.

Genesis Employee - All individuals performing MSP Services or Contracted Services employed or engaged directly by Genesis and not through a Supplier under this Agreement.

MSP Services – Services performed by Genesis in support of the provision of Contracted Services to the Customer under this Agreement.

Vendor Management Solution (“VMS”) – The software solution provided to Customer under an end user license agreement, including access to and use of the SaaS VMS.

4. RESPONSIBILITIES

Genesis responsibilities under this Agreement are set forth in Schedule A and Customer responsibilities under this Agreement are set forth in Schedule B. Both schedules are attached hereto and made a part hereof.

5. PRICING AND COMPENSATION

In consideration of Genesis’s provision of the services hereunder, Genesis shall be compensated as follows:

- a) Genesis may invoice Customer for Contractors under this Agreement at the approved bill rates as specified in Appendix C, Pricing Index of the DIR Contract, DIR-TSO-2247.
- b) Other Fees:
 1. Travel expense reimbursement shall be in accordance with Section 4.G of the DIR Contract, DIR-TSO-2247.
 2. Genesis will provide all necessary VMS configurations and modifications during implementation that are necessary to meet Customer’s requirements including any integration with existing Customer systems. Rates for implementation are covered in a separate Statement of Work. If the purchase of any third party software is specified by Customer to meet integration requirements, it will be a billable item to Customer or Customer will need to procure the third party software separately.

6. INVOICING

Invoicing shall be in accordance with Appendix A, Section 7.B of the DIR Contract No. DIR-TSO-2247. Genesis will invoice Customer once a month for Contracted Services provided under this Agreement. Genesis will comply with Customer’s directives relative to the specific procedures to be followed relative to invoicing hereunder.

The invoicing provisions of the DIR Contract, DIR-TSO- 2247 (Standard Terms and Conditions, Section 7) apply.

7. REPRESENTATIONS AND WARRANTIES

Genesis represents and warrants to Customer that all Contracted Services provided hereunder will be performed diligently, timely and professionally in accordance with all applicable professional and industry standards.

8. CONFIDENTIALITY

“Confidential Information” means the proprietary and confidential information of either Party, to the extent allowable under the Texas Public Information Act, including, without limitation, all information, know-how, marketing and development plans, techniques and materials, customer names and other information related to customers, pricing policies and financial information, technical and product information, methods of production, use, operation and application, the terms of this Agreement and Genesis’s invoices (i) which are not generally known to the public and (ii) in which such Party has rights.

Notwithstanding the foregoing, no information shall be deemed to be Confidential Information if such information:

- (a) was disclosed to the Party receiving same under this Agreement at another time by a third party without the violation of any confidentiality obligation;
- (b) became known to the general public without the imposition of any obligation of confidentiality by either Party to this Agreement;
- (c) was previously known by the Party receiving the disclosure without confidentiality constraints; or
- (d) was disclosed by either Party through the operation of law; or
- (e) is required to be disclosed pursuant to the Texas Public Information Act.

Each Party will and will obligate its employees to use the Confidential Information of the other Party solely in the performance of its obligations under this Agreement and only to the extent allowable under the Texas Public Information Act, shall not disclose the Confidential Information other than to those with a bona fide need to know.

Each Party shall use commercially reasonable efforts, and in no event less than the same efforts such Party uses to protect its own valuable proprietary information and data, to maintain the confidentiality of the Confidential Information of the other Party. Such efforts shall include obtaining suitable confidentiality agreements from members of the respective parties receiving or having access to Confidential Information.

If requested by Customer, Genesis will direct all Contractors on assignment to Customer to execute any Customer required confidentiality agreement applicable to Customer’s Contractors.

The confidentiality provisions of the DIR Contract (Standard Terms and Conditions, Section 9.H) apply hereto.

9. NON-SOLICITATION

During the term of this Agreement and for a period of one (1) year following the termination of this Agreement, Genesis and Customer agree not to solicit or attempt to solicit employees of the

other Party without the written consent of the other Party. Employment resulting from generally advertised opportunities does not violate this provision.

10. FORCE MAJEURE

Force Majeure shall be in accordance with Appendix A, Section 10.C of the DIR Contract No. DIR-TSO-2247.

11. INDEMNIFICATION

Indemnification shall be in accordance with Appendix A, Section 9.A of the DIR Contract, DIR-TSO-2247.

12. INDEPENDENT CONTRACTOR

Genesis and all individuals and entities furnished by Genesis (the "Genesis Group") to perform the services are independent contractors and nothing in this Agreement shall result in the members of the Genesis Group being deemed to be agents, employees, partners or joint venturers of Customer. Except as may be set forth in this Agreement, the members of the Genesis Group shall have no authority to bind, commit, or otherwise obligate Customer in any manner whatsoever. Genesis is wholly responsible for withholding and payment of all applicable federal, state and local income and other payroll taxes with respect to all members of the Genesis Group, including contributions from them as required by law.

Genesis further agrees that any of Genesis's Employees who is or becomes a 'leased employee' (as defined in Section 414(n) of the Internal Revenue Code) of Customer during the term of this Agreement, shall not be covered by, and shall be excluded from participation in, any employee benefit plan maintained by Customer.

Genesis will insure that all Contractors furnished by or through Genesis under this Agreement execute an "Acknowledgement of Temporary Work Assignment" which will be substantially in the form attached hereto as Schedule C.

13. STAFFING CHANGES

If, in Customer's reasonable judgment, a Contractor furnished through Genesis or a Supplier under this Agreement is not performing the services for which the Contractor was hired to the satisfaction of Customer, Customer will notify Genesis in writing of such non-performance. Upon receipt of such written notice from Customer, Genesis will, at Customer's option, either remove the Contractor immediately from performing any Contracted Services, or work with the Contractor to gain the desired level of performance.

14. JOB SITE

Customer represents and warrants that its work location(s) provided under this Agreement are safe and comply with all Occupational Safety and Health Act (OSHA), Americans with disabilities Act (ADA) and other applicable laws, rules and regulations.

15. NOTICES

All routine, operational communications relating to the day to day operations, excluding routine telephone conversations, shall be in writing and delivered by United States mail, or other acceptable

courier or express delivery service, postage prepaid to the applicable addresses and parties as named from time to time during the term of this Agreement. The Parties may also communicate via confirmed electronic mail messages and confirmed facsimile transmissions.

All notices required or provided for under this Agreement shall be given to the Parties in writing as follows:

- (a) by registered or certified United States mail, return receipt requested and postage prepaid to the applicable addresses below, or to such other addresses as the parties may substitute by written notice given in the manner prescribed in this Section;
- (b) by hand delivery, including courier service delivery, to such addresses; or
- (c) by facsimile machine transmission, to the numbers provided below or
- (d) by e-mail:

If to Genesis:

At the location provided above
ATTN: Sean Nelson
Facsimile: (210) 568-4925
Email: sean.nelson@genesisnet.com

If to Customer:

ATTN:
Facsimile:
Email:

Such notices shall be deemed to have been duly given either three (3) Business Days after the date of mailing as described above or one (1) Business Day after being given to an express courier, or when the facsimile transmission confirmation or email read-receipt confirmation is received

16. ASSIGNMENT

Assignment shall be in accordance with Appendix A, Section 4.D of the DIR Contract, DIR-TSO-2247.

17. OWNERSHIP OF INVENTIONS

Genesis shall require each Genesis Employee and all Contractors providing Contracted Services hereunder to agree, in writing, that, to the maximum extent permitted by law, all ideas, inventions, developments or improvements conceived or created while engaged in rendering Services under this Agreement that relate to work or projects being performed for Customer, shall be the sole and exclusive property of Customer. Genesis will and will require each Genesis Employee and all Contractors providing Contracted Services hereunder to execute and deliver all documents necessary or requested by Customer to achieve Customer's sole and exclusive ownership right, title and interest to the property, including but not limited to assignments of any Letter Patents, Copyrights and applications therefore in all countries.

18. INFRINGEMENT

Infringement shall be in accordance with Appendix A, Section 9.A.2 of the DIR Contract, DIR-TSO-2247.

19. INSURANCE

Genesis shall secure and maintain, at its own expense, insurance as required in the DIR Contract, DIR-TSO-2247 (Standard Terms and Conditions, Section 9.N).

20. LIMITATION OF LIABILITY

Limitation of Liability shall be in accordance with Appendix A, Section 9.K of the DIR Contract, DIR-TSO-2247.

21. COMPLIANCE WITH LAWS

Genesis shall comply with the Fair Labor Standards Act, Occupational Safety and Health Act, Americans with Disabilities Act, Title VII of the Civil Rights Act, Age Discrimination in Employment Act, Immigration Reform and Controls Act, Family and Medical Leave Act, and any and all other federal, state and local laws, statutes, ordinances, rules, regulations, codes, orders and/or programs including but not limited to identification and procurement of required permits, certificates, approvals and inspections, labor and employment obligations, affirmative action, wage and hour laws and any other laws which are or subsequently become applicable to Genesis or Genesis Employees in providing services hereunder.

22. DISPUTE RESOLUTION

The dispute resolution policy of the DIR Contract, DIR-TSO-2247 (Standard Terms and Conditions, Section 10.A) applies hereto.

23. GOVERNING LAW

This Agreement shall be governed by, interpreted and construed in accordance with the laws of the state of Texas. Venue shall reside exclusively in the state courts of Travis County, Texas. Nothing herein shall be construed to waive the sovereign immunity of the State of Texas.

24. SEVERABILITY

If any provision of this Agreement is found by a court of competent jurisdiction to be invalid or unenforceable for any reason, the remainder of this Agreement shall continue in full force and effect.

25. SURVIVAL OF OBLIGATIONS

All provisions of this Agreement and related obligations concerning indemnification, security, examination/audit, refunds, non-publicity, non-solicitation and representations, warranties and covenants shall survive the termination of this Agreement.

26. WAIVER

The failure of a Party to enforce at any time the provisions of this Agreement shall not be construed as a waiver of any provision of this Agreement, or of the right of such Party thereafter to enforce each and every provision of this Agreement.

27. COMPLETE AGREEMENT

The DIR Contract, DIR-TSO-2247 and this Agreement and its Schedules will constitute the entire agreement between the parties with respect to the matters of this Agreement. This Agreement may not be modified or amended except by a writing signed by a duly authorized representative of Genesis and Customer. The provisions of this Agreement supersede all prior oral and written quotations, communications, agreements and understandings of the parties.

IN WITNESS WHEREOF, the parties hereto have signed this Agreement as of the date first above written.

Genesis Networks Enterprises, LLC

BY: _____

BY: _____

NAME: _____

NAME: _____

TITLE: _____

TITLE: _____

Date: _____

Date: _____

SCHEDULE A

GENESIS'S VENDOR MANAGEMENT SERVICES RESPONSIBILITIES

The following is a listing of the responsibilities of Genesis under this Agreement. This listing should not be construed to limit the responsibilities of Genesis hereunder.

1. Genesis will furnish the Core Team to be located at a mutually agreed upon location to provide services related to the centralized acquisition, management and administration of Contractor workforce ("MSP Services"). The size, makeup and location of the initial Core Team shall be mutually agreed upon by Genesis and Customer and may change from time to time as mutually agreed upon by Genesis and Customer. The Core Team will provide coverage between the hours of 8AM and 5 PM Central Time (CT), Monday through Friday, excluding Customer holidays, or during such alternative time periods as mutually agreed upon by Customer and Genesis.
2. If requested by Customer, perform, monitor and control the acquisition process for Contractors in accordance with the Customer's requirements as provided to Genesis by Customer. Customer's pre-engagement screening requirements are attached hereto as Schedule D.
3. Provide the necessary installation, project management, training, ongoing assistance to Customer, Suppliers and Contractors and other required services, as applicable, regarding the use of the VMS, if provided under the Agreement.
4. Serve as the primary interface between Customer and the Contractors and Suppliers.
5. If requested by Customer, qualify, manage and evaluate a base of Suppliers that will be used for the sourcing of the Contracted Services required by Customer hereunder. If requested, Genesis will develop a comprehensive set of performance metrics to be approved by Customer that will serve as the basis of such evaluations. Genesis will conduct performance reviews with Suppliers at least annually.
6. Genesis will insure an adequate representation of HUB Suppliers among its subcontractor network to support Customer to assist Customer in the attainment of its HUB goals. Genesis will make available to Customer real-time, on-demand reports to track Customer's expenditures with HUB Suppliers. These reports will be reviewed and discussed at intervals to be agreed upon by Customer and Genesis.
7. Execute and cause all Contractors to execute Customer's confidentiality agreements and other forms as may be required by Customer.
8. Comply with Customer's policies and procedures as requested by Customer while performing Services on Customer's site.
9. Genesis will provide a Help Desk during hours to be agreed upon by Genesis and Customer.

SCHEDULE B

CUSTOMER RESPONSIBILITIES

The following is a listing of the Customer responsibilities under this Agreement. This listing should not be construed to limit the responsibilities of the Customer hereunder.

1. If Customer elects to have the Core Team located at a Customer work location, Customer agrees to furnish, at no charge to Genesis, mutually agreed upon office space, office furniture, equipment, including computers and telephones, copiers, facsimile machines and any other furniture or equipment that may be reasonably required by Genesis to provide the Services hereunder. Customer also agrees to be responsible for all telephone and other related communications charges related to the provision of Services by Genesis's Core Team located at Customer's work locations.
2. Customer agrees to provide Genesis's Core Team the necessary access to Customer's internal e-mail system and any other Customer system to the extent necessary for Genesis's Core Team to carry out their functions under this Agreement. Genesis agrees that, as a condition of access to these systems, Genesis Employees will comply at all times with Customer's internal policies and procedures, including any security guidelines, applicable to the access to these systems to the extent that Genesis Employees have been advised of any such policies and procedures by Customer.
3. Customer agrees to provide a central point of contact for Genesis to facilitate Genesis's carrying out of its responsibilities under this Agreement.
4. Customer will be responsible for issuing any internal correspondence related to the inception of Genesis's provision of Services to Customer and for compliance by Customer's associates with the procedures set forth herein for the placement of Contractors hereunder.

SCHEDULE C

ACKNOWLEDGEMENT OF TEMPORARY ASSIGNMENT

I, the undersigned, an employee of the VENDOR named below, agree to accept a temporary work assignment to _____ ("CUSTOMER"). As a precondition to receiving such work assignment, I acknowledge the following:

1. I understand that I am an employee of the VENDOR and not of CUSTOMER and that I will be paid directly by the VENDOR.
2. I understand that the work assignment is a temporary one for a defined period of time, the length of which may be increased or decreased.
3. I understand that if I do not perform to the complete satisfaction of CUSTOMER, or leave my assignment prior to completion of my assigned work, I may not be assigned any continuing or additional temporary work at CUSTOMER.
4. I understand that any problems or complaints I may have regarding the work assignment must be directed to my vendor supervisor and not to CUSTOMER.
5. I understand that my rate of pay from the VENDOR may be greater or lesser than that received by other individuals who are performing similar services for CUSTOMER, regardless of whether they are employees of CUSTOMER or other agencies.
6. I understand that there have been and will be no representations as to any assurance or possibility of being hired as a regular employee of CUSTOMER, and that since I am not an employee of CUSTOMER, no promotions or other forms of advancement or transfer by CUSTOMER are available now or in future.
7. I understand that my work assignment may be contingent upon execution of a Confidentiality Agreement and, if so, I have read and signed same.

(Date)

(Signature)

(Name of Vendor)

(Typed or Printed Name)

(Social Security Number)

SCHEDULE D

CONTRACTOR SCREENING REQUIREMENTS

(This Schedule will incorporate all applicable Customer requirements for pre-engagement screening such as background checks, drug screens, credit checks, physical examinations, etc. It will also include reference to any required forms that must be completed by Contractors prior to the initiation of their assignments with Customer.)

SCHEDULE E

SERVICE LEVEL AGREEMENT

(This Schedule will incorporate all applicable metrics that will establish the expectations for Genesis's performance under this Agreement.)

SCHEDULE F

EUL Agreement