

# GRANICUS, INC.

## SERVICES AGREEMENT

THIS AGREEMENT, dated as of \_\_\_\_\_, 2008 is between GRANICUS, INC., a California Corporation and the City of Rapid City, South Dakota (the "Client").

A. Granicus, Inc. has developed a streaming media solution and Media Management Software that specializes in Internet Broadcasting.

B. The Client desires to (i) purchase the Granicus Solution which will facilitate streaming and distribution of live and archived video and audio content, (ii) engage Granicus, Inc. to integrate its Media Management Software onto the Client's existing website, and (iii) contract with Granicus, Inc. to administer the Streaming Solution through a Managed Services solution.

NOW, THEREFORE, in consideration of the foregoing and the mutual agreements, covenants, representations and warranties herein contained, the parties hereto agree as follows:

1. GRANICUS SOLUTION; INSTALLATION; MAINTENANCE; PAYMENT.

1.1 Installation of Granicus Solution.

(a) Granicus, Inc. shall have the following obligations in connection with the installation of the Granicus Solution:

(i) install, set-up and test the Granicus Solution, including, if necessary, installing the computers, and loading any necessary software;

(ii) conduct one initial "train the trainer" training session, using a combination of written procedures (in English) and hands-on training, on the use of the Granicus Solution; and

(b) The Client shall have the following obligations in connection with the installation of the Granicus Solution:

(i) provide physical space at the site locations that is appropriate and sufficient for the Granicus Solution, including a controlled access area for the computers and associated hardware, equipment and accessories; and

(ii) Compensate all costs related to the installation and deployment of the Granicus solution as described in Section 1.3.

(iii) Compensate all Managed Services payments as described in Section 5.2.

1.2 Maintenance of Equipment.

(a) For three (3) years after the Purchase Date, Granicus, Inc. shall repair or replace any Dell or Tangent Equipment, provided directly from Granicus, Inc., that fails to

function properly due to normal wear and tear, provided that any such failure is not covered by insurance maintained by the Client. For one (1) year after the Purchase Date, Granicus, Inc. shall repair or replace all other Equipment, provided directly from Granicus, Inc., that fails to function properly due to normal wear and tear, provided that any such failure is not covered by insurance maintained by the Client. Granicus, Inc. shall not be responsible, however, for any such failure that is due to other causes, such as power surge, fire, flood or other casualty, accident, vandalism, misuse or abuse, alteration of the Equipment or failure of the Client to maintain a proper environment or otherwise properly care for the Equipment.

(b) Granicus, Inc. has the technology in place to continually monitor all equipment and should any malfunction appear Granicus, Inc. shall immediately notify the Client. Granicus, Inc. shall respond to requests to repair or replace any non-functioning Equipment, provided directly from Granicus, within twenty-four (24) hours from the time that notice is received, and the Client shall grant Granicus, Inc. or its Representative's access to the Equipment for this purpose at reasonable times. Granicus, Inc. will keep the Client informed regarding the time frame and progress of the repairs or replacements.

(c) Granicus, Inc. shall offer continuous customer support to the Client and shall be dedicated to ensuring that the Client is completely satisfied with Granicus products and services. Granicus staff shall be available to the Client twenty-four (24) hours a day, three-hundred and sixty-five (365) days a year, via the customer support lines. All support numbers are listed at the end of this Agreement.

1.3 Payment.

(a) Upon execution of this Agreement, Granicus, Inc. shall invoice and the Client agrees to pay Granicus, Inc. fifty percent (50%) of the cost of software and services as outlined in the Proposal, totaling \_\_\_\_\_ dollars and \_\_\_\_\_ cents (\$\_\_\_\_.\_\_\_\_), including the first month's Managed Service Fees.

(b) Upon the successful delivery of Equipment, Granicus, Inc. shall invoice and the Client agrees to pay Granicus, Inc. the cost of hardware (including shipping costs) in full as outlined in the Proposal, totaling \_\_\_\_\_ dollars and \_\_\_\_\_ cents (\$\_\_\_\_.\_\_\_\_).

(c) Upon the successful completion of Client training, Granicus, Inc. shall invoice and the Client agrees to pay Granicus, Inc. the remaining fifty percent (50%) of the cost of software and services as outlined in the Proposal, totaling \_\_\_\_\_ dollars and \_\_\_\_\_ cents (\$\_\_\_\_.\_\_\_\_).

(d) Client agrees to pay all invoices from Granicus, Inc. within thirty (30) days of receipt of invoice. Granicus, Inc. shall send all invoices to:

---

---

---

2. USE OF MEDIA MANAGEMENT SOFTWARE.

2.1 Use. Granicus, Inc. agrees to provide Client with a Revocable, non-transferable

and non-exclusive account to access the Media Management Software; and grants Client a Revocable, non-sublicensable, non-transferable and non-exclusive right to use the Media Management Software. The Media Management Software is proprietary to Granicus, Inc., and protected by intellectual property laws and international intellectual property treaties. Client's access to, and use of the Media Management Software is licensed and not sold. Client will be responsible for any applicable costs and taxes associated with Client's use of the Services, or use of the Services through Client's account.

3. CONTENT PROVIDED TO GRANICUS, INC.

3.1 Responsibility for Content. The Client shall have sole control and responsibility over the determination of which data and information shall be included in the Content that is to be transmitted, including, if applicable, the determination of which cameras and microphones shall be operational at any particular time and at any particular location. The Client shall not provide to Granicus, Inc., or permit to be provided to Granicus, Inc., any Content that (a) infringes or violates any third parties' Intellectual Property Rights, rights of publicity or rights of privacy, (b) contains any defamatory material, or (c) violates any federal, state, local or foreign laws, regulations or statutes.

4. OWNERSHIP; INTELLECTUAL PROPERTY RIGHTS & SECURITY.

4.1 Content Ownership. The Client shall own all right, title and interest in and to all Content on a worldwide basis, including, without limitation, all Intellectual Property Rights relating thereto, (i) with respect to Content captured by cameras or microphones at the venue, at the time such Content is so captured and prior to the time it is transmitted to the computer at the venue and (ii) with respect to all other Content, at the time such Content is transmitted or otherwise provided to Granicus, Inc. pursuant to this Agreement. To the extent that any such Content is protectable by copyright, such Content shall be deemed to be "works made for hire" under the copyright laws of the United States.

4.2 Trademark Ownership and License.

(a) The Client shall retain all right, title and interest in and to its Trademarks, including any goodwill associated therewith, subject to the limited license granted to Granicus, Inc. pursuant to Section 4.2 hereof.

(b) Granicus, Inc. shall retain all right, title and interest in and to the Granicus, Inc. Trademarks, including any goodwill associated therewith, subject to the limited license granted to the Client pursuant to Section 4.2 hereof.

(c) Each party grants to the other a non-exclusive, non-transferable (other than as provided in Section 6.1 hereof), limited license to use the other party's Trademarks as is reasonably necessary to perform its obligations under this Agreement, provided that any promotional materials containing the other party's trademarks shall be subject to the prior written approval of such other party, which approval shall not be unreasonably withheld.

(d) Neither party shall use the other party's Trademarks in a manner that disparages the other party or its products or services, or portrays the other party or its products or services in a false, competitively adverse or poor light. Each party shall comply with the other party's requests as to the use of the other party's Trademarks and shall avoid any action that diminishes the value of such Trademarks.

4.3 Security of Data. Granicus, Inc. will take commercially reasonable efforts to protect and control access to Client Content. However, Granicus, Inc. makes no guarantee and assumes no liability for the security of any of Client Content or other data provided to Granicus, Inc., including any of Client Content or data placed on any servers including "secure servers." Client will be responsible for the creation and protection of username and password. In no event shall Granicus, Inc. be liable for any direct, indirect or other damages arising out of any breach of security or otherwise.

5. MANAGED SERVICES FEES

5.1 Terms of Agreement

(a) Granicus, Inc. agrees to provide the Client the hosting, storage, and bandwidth necessary for the Client to broadcast its content to the Internet for at least one (1) year in accordance with the Granicus Managed Services defined in the Proposal.

(b) The Client agrees to purchase hosting, storage, and bandwidth necessary for the Client to broadcast its content to the Internet for at least one (1) year in accordance with the Granicus Managed Services defined in the Proposal.

5.2 Payment of Maintenance Fees

(a) Upon execution of this Agreement, the Client agrees to pay Granicus, Inc. the first month's Managed Service Fees as described in Section 1.3.

(b) Upon completion of training, the invoicing for the monthly Managed Service Fees shall begin. Client agrees to pay all invoices from Granicus, Inc. within thirty (30) days of receipt of invoice.

5.3 Cancellation of Managed Service Plan

(a) In the event of a cancellation of Managed Services by Client within twelve (12) months of the "Live" date, the Client will be responsible for paying the amount due for the remainder of the first year.

(b) Cancellation of the Client's Managed Services will also result in the immediate termination of the Client's Media Management Software license as described in Section 2.1.

6. CONFIDENTIAL INFORMATION & OWNERSHIP.

6.1 Disclosure. Except to the extent necessary as contemplated by this Agreement, each party agrees not to disclose any Confidential Information to any person and agrees to use its best efforts to prevent inadvertent disclosure of any Confidential Information to any person. Without limiting the generality of the preceding sentence, each party agrees to treat the Confidential Information of the other party with at least the degree of care that such party treats similar information of its own. Each party may disclose such Confidential Information to a court or other governmental authority to the extent that such disclosure is required by governmental order or by law; provided that the receiving party shall (i) notify the disclosing party in writing of such required disclosure as soon as reasonably possible prior to such disclosure, specifying in detail the reasons why such disclosure is required, (ii) use its commercially reasonable efforts at its

expense to cause such disclosed Confidential Information to be treated by such governmental authority as trade secrets and as confidential, and (iii) use its commercially reasonable efforts at its expense to obtain such other protective orders and protections with respect thereto as the disclosing party may reasonably request.

6.2 Use. Each party agrees not to use any Confidential Information for any purpose whatsoever except to the extent necessary as contemplated by this Agreement. Each party agrees not to disclose the Confidential Information to any of its Representatives except those who are required to have the Confidential Information in connection with such purpose and then only if such Representative is either subject to a written confidentiality agreement that would cover the confidential treatment of the Confidential Information or otherwise subject to fiduciary obligations of confidentiality that would cover the confidential treatment of the Confidential Information.

6.3 Termination of Confidentiality Obligations. The obligations of this Section 6 shall terminate with respect to any particular portion of the Confidential Information when receiving party can prove by appropriate documentation that such Confidential Information (a) was previously known to the receiving party as shown by the receiving party's files at the time of disclosure thereof, (b) was already in the public domain at the time of the disclosure thereof, or (c) entered the public domain through no action of the receiving party subsequent to the time of the disclosure thereof.

## 7. DISCLAIMER OF WARRANTY; LIMITATION OF LIABILITY.

7.1 Disclaimer of Warranty. EXCEPT AS EXPRESSLY PROVIDED IN THIS AGREEMENT, NEITHER PARTY MAKES ANY WARRANTY IN CONNECTION WITH THE SUBJECT MATTER OF THIS AGREEMENT AND HEREBY DISCLAIMS ANY AND ALL IMPLIED WARRANTIES, INCLUDING, WITHOUT LIMITATION, ALL WARRANTIES REGARDING MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

7.2 Limitation of Liability. IN NO EVENT SHALL EITHER PARTY BE LIABLE FOR ANY SPECIAL, EXEMPLARY, PUNITIVE, INCIDENTAL OR CONSEQUENTIAL DAMAGES OF ANY KIND (INCLUDING WITHOUT LIMITATION LOST PROFITS OR LOST SAVINGS), WHETHER BASED IN CONTRACT, TORT OR OTHERWISE, REGARDLESS OF WHETHER THAT PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

## 8. TERM AND TERMINATION.

8.1 Term. The term of this Agreement shall commence on the date hereof and shall continue in full force and effect for one (1) year after the date hereof. This Agreement shall automatically renew for additional three (3) terms of one (1) year each, unless either party notifies the other in writing at least thirty (30) days prior to such automatic renewal that it does not wish to renew this Agreement.

8.2 Termination. This Agreement may be terminated, in whole or in part, pursuant to the following terms and conditions:

- (a) by mutual written consent of the parties hereto;
- (b) by either party if there has been a material default or breach on the part of

the other party in any of its representations, warranties, covenants or obligations contained in this Agreement and such default or breach is not cured within ninety (90) days following written notice from the non-breaching party;

8.3 Obligations Upon Termination. Upon any termination of this Agreement, the following shall apply:

(a) The parties shall remain responsible for any payments that have become due and owing as of the effective date of termination.

(b) The provisions of Articles 6 and 7 hereof (together with all other provisions that reasonably may be interpreted as surviving termination of this Agreement) shall survive termination of this Agreement and continue in full force and effect.

(c) Except as provided in Article 8 hereof, no party shall have any liability upon any termination of this Agreement.

9. MISCELLANEOUS.

9.1 Assignment; Successors and Assigns. Neither this Agreement nor any rights or obligations herein may be assigned by either party, by operation of law or otherwise, without the written consent of the other party; provided, however, that, without the consent of the Client, Granicus, Inc. may assign this Agreement in connection with a merger, consolidation, assignment, sale or other disposition of substantially all of the assets or business relating to the portion of the Granicus, Inc.' operations that is the subject of this Agreement. This Agreement shall be binding on and inure to the benefit of the parties hereto and their heirs, legal representatives, successors and permitted assigns.

9.2 Amendment and Waiver. This Agreement may be amended, modified, waived or canceled only in writing signed by each of the parties hereto or, in the case of a waiver, by the party waiving compliance. No failure or delay by either party in exercising any right or remedy under this Agreement shall waive any provision of this Agreement nor shall any single or partial exercise by either party of any right or remedy under this Agreement preclude either of them from otherwise or further exercising these rights or remedies or any other rights or remedies granted by any law or any other document.

9.3 Governing Law. The laws of the State of South Dakota shall govern the validity, construction, and performance of this Agreement, without regard to the conflict of laws provisions of any jurisdictions. Any legal proceeding related to this Agreement shall be brought in an appropriate South Dakota court, and each of the parties hereto consents to the exclusive jurisdiction of that court for this purpose.

9.4 Construction. Wherever possible, each provision of this Agreement shall be interpreted so that it is valid under applicable law. If any provision of this Agreement is to any extent invalid under applicable law in any jurisdiction, that provision shall still be effective to the extent it remains valid. The remainder of this Agreement also shall continue to be valid, and the entire Agreement shall continue to be valid in other jurisdictions.

9.5 Counterparts. This Agreement may be executed in two or more counterparts, each of which shall constitute an original, but all of which, when taken together, shall constitute one and the same instrument.

9.6 Entire Agreement. This Agreement supersedes all previous and contemporaneous oral negotiations, commitments, writing, and understandings among the parties hereto concerning the matters in this Agreement.

9.7 Notices. All notices and other communications required or permitted under this Agreement must be in writing and must be hand delivered or sent by registered first-class mail, postage prepaid or by overnight courier service. Such notices or other communications shall be effective upon receipt if hand delivered, and ten (10) business days after mailing (or, for overnight courier, the number indicated in the mailing instructions) if sent, in the case of the Client, to the address set forth below and, in the case of Granicus, Inc., to its principal executive offices to the attention of the Chief Executive Officer, or at such other address for a party as may be specified by like notice.

9.8 Specific Performance; Remedies Cumulative. The parties acknowledge that a breach of this Agreement shall result in irreparable and continuing damage and cannot be adequately compensated for by money damages and agree that specific performance is an appropriate remedy for any breach or threatened breach hereof. Accordingly, in addition to any other remedies available to a party at law, in equity or by statute, the parties (a) consent to the issuance of any injunctive relief or the enforcement of other equitable remedies against it (without bond or other security) to compel performance of any of the terms of this Agreement, and (b) waive any defenses thereto, including without limitation, the defenses of failure of consideration, breach of any other provision of this Agreement, and availability of relief in damages. All remedies, whether under this Agreement, provided by law, or otherwise, shall be cumulative and not alternative.

## 10. DEFINITIONS.

In addition to the capitalized terms otherwise defined herein, the following additional capitalized terms shall have the meanings set forth below, unless the context clearly otherwise requires:

10.1 "Confidential Information" shall mean all business, technical and other information (including without limitation, all product, services, financial, marketing, engineering, research and development information, product specifications, technical data, data sheets, programs, software, inventions, processes, know-how, chip designs, mask works, designs, drawings and any other documentation), disclosed from time to time by the disclosing party to the receiving party, directly or indirectly in any manner whatsoever (including without limitation, in writing, orally, electronically, in all types of disks, diskettes, computer memory or storage or other media, or by drawings or inspection of physical items, and whether or not modified or merged into other materials); provided, however, that the term "Confidential Information" shall not include the Content that is intended to be published on the Website.

10.2 "Content" shall mean any and all, documents, graphics, video, audio, images, sounds and other content that is streamed or otherwise transmitted or provided by, or on behalf of, the Client to Granicus, Inc.

10.3 "Granicus Solution" shall mean the product specified in Client's proposal henceforth identified as Proposal hereto.

10.4 "Equipment" shall mean the hardware components of the Granicus Solution.

10.5 “Purchase Date” shall mean the date on which Granicus purchases Equipment from the manufacturer on behalf of the Client.

10.6 “The Proposal” shall mean the document which specifies the Products or Services the Client chooses to utilize from Granicus, Inc.

10.7 “Media Management Software” shall mean all software included with the Granicus Solution including but not limited to the web application used to administer streaming media.

10.8 “Intellectual Property Rights” shall mean all right, title and interest in and to any and all intellectual property rights throughout the world, including, without limitation, any and all patents, patent applications, copyrights, copyright applications, moral rights, trademarks, trade secret rights, rights to know-how, inventions and algorithms, and any and all similar or equivalent rights throughout the world.

10.9 “Representatives” shall mean the officers, directors, employees, agents, attorneys, accountants, financial advisors and other representatives of a party.

10.10 “Trademarks” shall mean, with respect to each party to this Agreement, all trademarks, trade names and logos of such party listed on Exhibit A attached hereto and any other trademarks, trade names and logos that such party may specify in writing to the other party from time to time.

10.11 “Managed Services” shall mean monthly fees paid to Granicus, Inc. by Client for bandwidth usage associated with live and archived Internet streaming, data storage, and Granicus Solution maintenance and monitoring.

10.11 “Live” shall mean the time at which “Managed Services” are activated and monthly billing begins.

10.12 “Revocable” shall mean that Client’s right to use or access the media management software shall be annulled because Client has either discontinued their use of a Granicus Managed Services program, failed to pay any Granicus fees for more than thirty (30) days, or breached the terms of this Agreement.



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

GRANICUS, INC.

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

Thomas A. Spengler

Its: Chief Executive Officer

Address:

568 Howard St., Suite 300  
San Francisco, CA 94105

CLIENT

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

Name: \_\_\_\_\_

Its: \_\_\_\_\_

Address:

\_\_\_\_\_  
\_\_\_\_\_

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

Granicus, Inc. Support Information

*Address:*

Granicus, Inc.  
568 Howard Street, Suite 300  
San Francisco, CA 94105

*Phone:*

Direct (8:00am to 6:00pm Pacific time): 415-357-3618  
Toll Free (8:00am to 6:00pm Pacific time): 877-889-5495  
On-call Technical Support (available 24 hours, 7 days a week): 415-637-0520  
Fax: 415-618-0201

*Web:*

Site: [www.granicus.com](http://www.granicus.com)  
Email: [support@granicus.com](mailto:support@granicus.com)

## EXHIBIT A

### Granicus Registered Trademarks ®



Granicus logo as a mark

### Granicus Trademark Names ™

OutCast™

MediaManager™

MediaVault™

StreamReplicator™

MobileEncoder™

MinutesMaker™

### Client Trademarks