

TERMS AND CONDITIONS

IMPORTANT – READ CAREFULLY

THE CUSTOMER IS INVITED TO SAVE AND/OR TO PRINT THESE TERMS AND CONDITIONS IN ORDER TO KEEP A COPY FOR FUTURE REFERENCE.

PLEASE READ THESE TERMS AND CONDITIONS CAREFULLY BEFORE ACCEPTANCE.

By Ordering or using the Services, You (“the Customer”) acknowledge having read and accepted, without reservation, to be bound by these Terms and Conditions. Genesys may make future changes or modifications to these Terms and Conditions at any time without notice. Your subsequent access or use of the Services will constitute your agreement to any changes and modifications and to the most current version of these Terms.

You represent and warrant that you are being duly authorized to commit the entity on behalf of which you are acting.

These Terms and Conditions are intended for the exclusive use of professionals.

1 Definitions.

“**Affiliates**” in relation to a Party means the Party or any other entity which directly or indirectly controls, is controlled by, or is under common control with the Party, now or in the future. An entity shall be regarded as in control of another entity if it owns, or directly or indirectly controls, at least fifty percent (50 %) of the voting stock or other ownership interest of the other entity. Each Party is primarily liable to the other Party for the acts and omissions of its Affiliates.

“**Agreement**” means the entirety of the following: the Master Services Agreement (if there is one) signed between Genesys and the Customer, these Terms and Conditions and any Order or Reservation pursuant to the Master Services Agreement or pursuant to these Terms and Conditions;

“**Conference**” means a telephone, video or web-based conference call;

“**Confidential Information**” means information in oral, written or electronic form disclosed by either Party, relating to negotiations and discussions between the Parties as to the provision of Services, or to any details as to the business of either Party, whether marked as confidential or identified as confidential in any way, or that by its nature should be reasonably understood to be confidential, including, but not limited to, trade secrets, processes, techniques, software (including source codes and object codes), computer records, hardware configuration, algorithms, designs, plans, developments, inventions, drawings, product information, business and marketing plans and projections, details of agreements or arrangements with third parties, customers, customer lists pricing, business strategies, finances, procedures, methods, internal operations, know-how, research and development, and any information the Parties create [and/or exchange] in connection with this Agreement, except for information which is generally available to the public through no fault of the disclosing Party;

“**Documentation**” means manuals and user information relating to the Services;

“**End User**” means any person designated by Customer, who manages or leads a Conference (“Moderator”) and/or any person who attends a Conference irrespective of whether such person has a relationship with Customer;

“**Genesys Group**” means Genesys S.A. and its subsidiaries or affiliates.

“**Genesys Web Site**” means www.genesys.com with local country options;

“**Losses**” means any loss, liability, claim, damage, cost, expense (including, without limitation reasonable attorney’s fees), suit and/or demand, whether or not involving a third-party claim;

“**Order**” means a written or e-mail order for Services issued by Customer and accepted by Genesys;

“**Promotional Materials**” means all advertising, press releases, publicity, presentations, marketing or other materials, promotional letters and other communications, in written, oral or electronic form, of either Party;

“**Provider**” means the relevant Affiliate of the Genesys Group which has received the Reservation from the Customer;

“**Reservation**” means a communication issued by Customer and accepted by Provider booking a Service for a specific time and date;

“**Schedules**” means the schedules attached to the Agreement;

“**Services**” means one or any combination of the services as set forth in the relevant Order.

2 Agreement Application and Interpretation. These Terms and Conditions, the Agreement, the Orders, and the Reservations and other Schedules that may be added to the Orders, are to be interpreted so that all of the provisions are given as full effect as possible. All of the terms of this Agreement shall apply to each Order or Reservation unless otherwise agreed in writing by the Parties on an Order or Reservation. Any other business conditions of the Parties are not applicable. In the event of a conflict between the provisions of these Terms and Conditions or the Agreement or its schedules, the terms of the Agreement and its amended schedules if applicable, shall prevail. This Agreement does not permit Customer to resell the Services provided by Genesys Group.

3 Orders and Reservations. Customer may order Services by sending Provider an Order (in writing or by e-mail) or making a Reservation with reference to this Agreement; Customer will then be bound by the provisions of this Agreement. Provider does not accept liability for any Order or Reservation that does not reach Provider in sufficient time to provide the applicable Service.

4 Provision of Services.

4.1 Genesys, through the Genesys Group, will provide the Services in accordance with the terms of this Agreement and the Order nor Reservation.

4.2 Genesys may from time to time, upon reasonable advance notice to Customer, modify the Services and the Documentation as Genesys feels is appropriate, provided that, any such modification does not materially adversely affect the quality of the Services.

4.3 Genesys reserves the right, upon reasonable advance notice, where practicable, to suspend the performance of its obligations under this Agreement in any of the following circumstances: (i) force majeure events affecting the Services, subject to the provisions in clause 13; (ii) if Customer has materially breached this Agreement; or (iii) for the purposes of improving or maintaining the quality of the Services.

5 Prices. Prices shall be as set forth on the Order or otherwise set forth in the Agreement or Schedules as payable in respect of the Services under this Agreement and any Order or Reservation entered into pursuant to this Agreement.

6 Terms of Payment.

6.1 Invoices will be issued monthly by Provider in its local currency. Customer will pay all undisputed invoices, or undisputed portion thereof, within thirty (30) calendar days after the date of the invoice. Customer is obligated to pay any invoiced amounts that have arisen due to authorized or unauthorized use of Customer’s access to the Services by a third party, unless Customer is not in any way responsible for such use.

6.2 In the event Customer disagrees with the amount of an invoice, or any portion thereof, Customer shall notify Genesys of such dispute within thirty (30) days of Customer’s receipt of the invoice. The Parties shall work together to resolve the dispute, including escalating such dispute to appropriate personnel with the knowledge and authority to resolve such dispute. Both Parties shall use their reasonable best efforts to resolve disputes

within forty-five (45) days of notice of the same. For such period of time during which a dispute is unresolved, Customer shall incur no penalty or late payment fee for any invoice, or portion thereof, which remains unpaid if Customer has notified Genesys of a dispute as provided for under this clause 6.2. Genesys shall have no right to terminate this Agreement, or refuse to accept any Order or Reservation, for non-payment of any amount due hereunder that Customer has properly disputed as set forth in this clause 6.2. If Provider has already deleted connection data at the time the objection was raised due to legal regulations or an express instruction on the part of the Customer, Provider shall not be obliged to prove the accuracy of an invoice and the final invoiced amount shall be deemed accepted by Customer.

6.3 Except for all properly disputed invoices, or portion thereof, if payment is not received on the due date, Genesys will be entitled, without limiting any other rights Genesys may have and subject to applicable law, (i) to suspend any of the Services, (ii) to terminate any of the Orders and the Agreement, and (iii) to charge Customer the greater of (a) interest on the outstanding amount accruing daily at the rate of 8% per annum from the due date until the outstanding undisputed amount is paid in full or (b) a late fee equal to 40 Euros per month per invoice; however such amount charged can never exceed the maximum amount permitted by law.

7 Conditions of use.

7.1 Customer shall use the Services for its own benefit and in accordance with the Documentation and all applicable laws and regulations.

7.2 Information as to compatibility is provided in the Documentation and on the Genesys Web Site. It is Customer’s obligation to ensure that its systems and equipment are so compatible. Genesys will, upon request, test Customer’s system for compatibility, for which Genesys may charge Customer a fee agreed upon between the Parties in advance of any such testing.

7.3 Customer shall not use the Services (i) for the transmission of any message or material (a) which is harassing, defamatory, threatening, obscene, indecent, or is otherwise unlawful, (b) that could give rise to civil liability, or (c) that constitutes or encourages conduct that could constitute a criminal offence, under any applicable law or regulation, or (ii) in a manner that constitutes a violation or infringement of the rights of any person or entity, including, but not limited to, rights of copyright or confidentiality.

7.4 The Customer agrees that Genesys is not responsible for any content of the Customer’s communications. Notwithstanding the foregoing sentence, if Genesys believes the content may be in violation of Clause 7.3, Genesys may delete such content at any time without notice.

7.5 Customer shall be responsible for (i) End User communications (ii) the content of any Conference communications, including but not limited to confidential communications and disclosures made through the use of the Services, and (iii) obtaining any necessary consents or waivers of copyright holders, music licensing organizations, performers’ representatives or any other necessary parties (“Consents”).

7.6 The Customer is responsible for maintaining the confidentiality of any account number, conference codes, passwords and personal identification numbers used in conjunction with the Services.

8 Account Management.

8.1 The Parties may decide to designate and maintain during the Term or for a specified term, a representative employee (the “Account Manager”) who shall be authorized to act generally as the primary point of contact for each Party and to coordinate all activities relating to this Agreement, including, but not limited to, marketing and communications plans, and volume discount administration.

8.2 If Account Managers are designated, the Parties shall identify such employees in writing. Either Party may appoint another employee as its Account Manager upon giving notice to the other Party.

9 Warranties of Genesys.

9.1 Genesys represents and warrants that the Services shall be provided to Customer in accordance with the standard of care, skill and diligence normally provided by a skilled, professional person or firm in the performance of services similar to the Services provided hereunder. The foregoing warranty is exclusive and in lieu of all other warranties or remedies, whether express, implied or statutory, including, without limitation, implied warranties of merchantability and fitness for a particular purpose.

9.2 Customer recognizes and accepts that, while Provider uses networks and technical protective security programs such as firewalls in conjunction with its Services, no warranty, whether express or implied, of security and protection to Customer with respect to the Services or content or communication associated thereon is given by Provider.

9.3 Customer accepts that in order to bring the Services to Customer, the Parties may use networks, facilities and technology, which are not in the Parties’ possession or under Parties’ control and, therefore, Provider cannot provide warranties relating to such networks, facilities and technology.

10 Intellectual Property Rights.

10.1 The copyright, trademark or other intellectual property rights in the Services and the Documentation will, unless otherwise agreed in writing by the Parties, belong to Provider or its suppliers (as applicable), subject only to Customer’s non-exclusive right to use the same under the terms of this Agreement.

10.2 Customer shall not, nor will Customer authorize or assist others to: (a) produce, manufacture, distribute or copy all or any portion of the Services, except as expressly permitted by this Agreement, (b) disassemble, reverse engineer or decompile all or any portion of the Services, (c) modify, translate, or alter all or any portion of the Services or (d) license, sublicense, assign, transfer, rent, lease, sell, resell, encumber or otherwise transfer title or any other rights in all or any portion of the Services. The foregoing restrictions shall not apply to the content of a Conference, including any Conference transcript, recording, translation or summary, or any documentation supplied by Customers or its Affiliate related to the Conference.

- 10.3 Neither Party may use the other Party's name, trademarks or trade names in any advertising or marketing material nor release any public announcements referring to the other Party or this Agreement without the prior written approval of the other Party. Notwithstanding the preceding, Customer hereby authorizes Genesys to mention the Customer's name in a list of references during the term of the Agreement.
- 10.4 In the event that Genesys is notified or reasonably believes that any Genesys provided technology in connection with the Services infringes a third party's intellectual property, Genesys will do one of the following as its sole obligation and as Customer's sole remedy: (i) at Genesys' cost, obtain for Customer the right to continue to use the Genesys technology; (ii) at Genesys' cost, replace or modify the Services so that it is no longer infringing; or (iii) after giving Customer notice in writing, terminate the Agreement without incurring any liability to Customer. Genesys will indemnify and hold Customer harmless from any Losses arising out of any claim alleging that the Services, or any portion thereof as furnished under this Agreement and used within the scope of the licenses granted to Customer; provided that Customer gives prompt, reasonable notice and assistance to Genesys in connection with the defense and/or settlement of such claim; and Genesys directs and controls the defense of or any settlement of such claims. However, Genesys will have no liability if the infringement claim is due to: (x) the unauthorized modification of the Services or any Genesys provided software or other intellectual property; (y) use of the Services, or Genesys provided software or other intellectual property in combination with any service, product, equipment or facilities not furnished by Genesys or (z) designs or specification provided by Customer
- 11 Remedies.**
- 11.1 Genesys will remedy any delays, interruptions, omissions, mistakes, accidents or errors in the Services for which it is responsible and cause such Services to comply with this Agreement.
- 11.2 The aggregate liability of Genesys to Customer under this Agreement or any agreement entered into pursuant hereto will be limited to the amount paid by the Customer for the same Service which has failed in the month prior to the claimed failure by Genesys.
- 11.3 To the maximum extent permitted by applicable law, notwithstanding any provision of this Agreement, each Party will not be liable to the other Party for: (i) any incidental, indirect, special or consequential damages; (ii) any loss of revenue, business, contracts, anticipated savings, or profits; (iii) any Losses resulting from loss of use of data; (iv) any Losses resulting from the use, availability, and quality of public telecommunication, infrastructure and facilities; (v) any Losses resulting from any failure of Customer's facilities or any equipment or materials in Customer's possession or under Customer's control; (vi) any Losses resulting from problems in the performance of the Services that are caused by problems or malfunctions in the performance of services provided by third parties; and (vii) any Losses unless Customer has served notice of the same on Genesys within the earlier of: 6 months of the date of the event which caused the Losses or the date on which Customer should have reasonably known of such event.
- 11.4 If a number of events give rise to substantially the same Loss these events shall be regarded as only one event, and shall be deemed to have occurred on the earliest date thereof.
- 12 Indemnification.**
- 12.1 Each Party shall indemnify, defend and hold harmless the other Party and the other Party's Affiliates and their respective officers, directors, employees, and agents, from and against all Losses arising from: (i) death of or injury to any agent, employee, invitee, visitor or other person to the extent caused by the conduct of the indemnitor, its Affiliates, or their respective employees, agents or contractors; or (ii) any violation of law by the indemnitor.
- 12.2 Customer agrees to indemnify, defend and hold harmless the Genesys Group and its officers, directors, employees and agents, from and against any Losses arising out of or related to: (i) transmission contents; content of a Conference, including any Conference communications by End Users; the production, reproduction, sale, circulation and use of any Conference transcript, recording translation or summary; and any documentation supplied by Customer for distribution, publication or broadcast to others; (ii) Customer's use of the Services; Customer's infringement, or infringement by any employee or agent of Customer, or caused by the use of the Services in conjunction with other equipment, software or services not supplied by Genesys or infringements caused by designs or specifications made by, or on behalf of, Customer; and Customer's failure to obtain Consents; and (iii) Customer's breach of any provisions in this Agreement.
- 13 Force Majeure.** In no event shall either Party be liable to the other for any delay or failure to perform hereunder (other than for payment) when such delay or failure to perform is due to causes beyond the reasonable control of said Party including, but not limited to, government restrictions, exchange or market rulings, labour strike, war, act of civil or military authority, act of terrorism, sabotage, computer/internet viruses, electrical power or communication shortages, epidemic, flood, earthquake, fire, other natural disaster, or any other event, condition or occurrence beyond the reasonable control of such Party.
- 14 Insurance:** Each Party shall at its own expense effect and maintain adequate insurance coverage in respect of its potential liabilities under this Agreement with an insurance office of repute. Genesys shall produce on demand such certificates of insurance and the receipt for the current year's premium in respect thereof.
- 15 Termination.**
- 15.1 Either Party may cancel any Order hereunder at the end of the Initial Period or any Renewal Term by giving, in writing or by e-mail, the other Party not less than ninety (90) days advance notice terminating this Agreement and/or an Order.
- 15.2 Either Party may terminate this Agreement or any Order in the event that the other is unable to fulfil its obligations pursuant to this Agreement because of a Force Majeure event, subject to clause 13, which continues in effect for thirty (30) consecutive days. Notwithstanding the provisions hereof, in every case, the party claiming Force Majeure shall exercise all reasonable efforts to mitigate the extent of such delay or failure.
- 15.3 Genesys reserves the right to amend the prices set forth in the Order, or the Documentation or Services as further set forth in clause 4.2, by giving one (1) month prior written notice to Customer. If any such amendment by Genesys results in a disadvantage to Customer, Customer may terminate this Agreement and/or any applicable Order by giving notice prior to the effective date of the amendment. The right of termination under this clause 15.3 shall lapse if Customer fails to exercise it within one (1) month of Customer's receipt of Genesys' notification of such amendment.
- 15.4 In the case where this Agreement is terminated pursuant to clauses 15.1 through 15.3, Customer shall not order any new Services, and this Agreement will continue up to and until the last Order and/or Reservation has been fulfilled, unless Customer decides to terminate the Services in addition to the Agreement. Customer shall be responsible for informing End Users of the service termination and in the event that End Users continue use of the Service, Customer has continued responsibility for payment.
- 15.5 Either Party may terminate this Agreement for a material breach of this Agreement by the other Party that is not cured within thirty (30) days of the breaching party's receipt of a written notice of intent to terminate, where such notice specifies the nature of the breach and indicates that this Agreement will be terminated if such breach is not cured. Genesys shall not be deemed to be in breach of this Agreement if Genesys suspends performance due to Customer's failure to pay any undisputed amounts due to Genesys as further set forth in clause 6.
- 16 Consequences of Termination.**
- 16.1 From the date of termination of this Agreement, for whatever reason, Customer will immediately:
- (i) Cease to use the relevant Services;
 - (ii) Delete or uninstall, as applicable, any Software supplied by Genesys (if any) and installed on Customer property;
 - (iii) Pay all outstanding invoices, and any and all other sums owed to Genesys according to the terms of payment agreed to by the Parties.
- 16.2 Clauses 10-23 shall survive termination of this Agreement.
- 17 Confidentiality.**
- 17.1 Each Party shall use no less than the same degree of care it uses to protect its own similar confidential and proprietary information but, in any event, not less than reasonable care, to prevent the disclosure and to protect the confidentiality of the Confidential Information of the disclosing Party. The contents of any Conference and all information regarding Conference Participants are deemed to be Confidential Information. The Parties will not disclose Confidential Information to any person (except to a Party's own employees, agents or sub-contractors and then only to those persons who need to know the information) without the other Party's written permission. This clause 17 will not apply to information which: (i) was rightfully in a Party's possession before the negotiation leading to this Agreement; (ii) is already public knowledge or becomes so at a future date other than from a Party breaching the provisions of this clause 17; or (iii) is disclosed to meet any law or court order as long as the other Party is given reasonable notice of the law or order.
- 17.2 Each Party shall use commercially reasonable efforts to ensure that its employees, including employees of an Affiliate, or sub-contractors or agents, comply with the terms of this clause 17.
- 18 Data Protection:** In performing this Agreement, each Party will comply with all applicable Personal Data protection and Privacy laws existing in all jurisdictions in which its obligations are performed (together, the "Data Protection Laws"). Genesys acknowledges that it may, in providing the Services, have access to "personal data" under the terms of the Data Protection Laws. Genesys hereby undertakes that it will: - (i) Use any such personal data solely for the purpose of providing the Services; - (ii) Process the same only in accordance with Customer's instructions; - (iii) Take appropriate technical and organizational measure to prevent unauthorized or unlawful processing or, accidental loss or destruction of or damage to such personal data; and
- For the avoidance of doubt and subject to the provisions of this clause, the Customer being the data controller retains full responsibility for the data processed on his behalf by Genesys acting as data processor.
- The Customer is informed and hereby accepts that for the purpose of providing the Services the whole or any part of its personal data may be processed by Genesys affiliates within the Genesys group (in the USA, European Union and the rest of the world).
- 19 Assignment.** Neither Party may assign this Agreement without the prior written consent of the other Party, which will not be unreasonably withheld, provided that the intended assignee: (a) agrees in writing to be bound by the terms of this Agreement; and (b) has the financial ability to meet the contractual obligations of the assignor under this Agreement. Nevertheless, each Party may assign or subcontract its obligations under this Agreement to any of its Affiliates, and in connection with a sale of such Party, provided that the intended assignee meets the requirements hereinabove. This Agreement shall be binding upon and inure to the benefit of each Party's heirs, executors, legal representatives, successors and permitted assigns.
- 20 Severability.** If any provision of this Agreement is held by a court or other tribunal of competent jurisdiction to be illegal, invalid or unenforceable, such provision shall be limited or eliminated to the minimum extent necessary so that this Agreement shall otherwise remain in full force and effect.
- 21 Notices.**
- 21.1 Any notice will be considered to have been given two business days after the day it is sent if sent by express mail. Notices under this Agreement may also be sent by email, fax or other electronic media and will be considered given upon receipt of confirmation of a successful transmission report. Notices shall be in English.
- 21.2 Notices to Genesys shall be sent to the address mentioned in the order with a courtesy copy to Genesys S.A., Office of General Counsel, 215, rue Samuel Morse, 34967 Montpellier Cedex 2, FRANCE, fax: +33 4 99 13 27 90.
- 22 Headings; Counterparts.** Clause headings contained in this Agreement are for convenient reference only, and shall not in any way affect the meaning or interpretation of this Agreement. This Agreement may be executed in one or more counterparts, including by means of faxed signature pages, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.
- 23 Dispute Resolution. Governing Law.** Except for any dispute as discussed in clause 6, any dispute regarding this Agreement will be resolved as specified in this subsection. Upon the written request of either Party, each Party will appoint a designated representative to try to resolve such dispute. Such representatives will negotiate in good faith to try to resolve the dispute. If the representatives do not resolve the dispute within ten (10) days after the date a Party requested the appointment of representatives, then the Parties may initiate court proceedings as follows, without giving effect to applicable conflict of laws provisions:
- (i) If Customer is incorporated or registered in Europe, the Middle East or Africa, this Agreement shall be governed by and construed in accordance with the laws of France. The Parties hereby agree to submit to the exclusive jurisdiction of the competent Court in Montpellier, France any dispute or claim arising out of or relating to this Agreement or any Services provided by Genesys.
 - (ii) If Customer is incorporated or registered in Asia or Pacific region, this Agreement shall be governed by and construed in accordance with the laws of Singapore. The Parties hereby agree to submit to the exclusive jurisdiction of the competent Court in Singapore, any dispute or claim arising out of or relating to this Agreement or any Services provided by Genesys.
 - (iii) If Customer is incorporated or registered in USA or in any other region, this Agreement shall be governed by and construed in accordance with the laws of the State of Virginia, USA. The Parties hereby agree to submit to the exclusive jurisdiction of the competent Court of the State of Virginia, USA, any dispute or claim arising out of or relating to this Agreement or any Services provided by Genesys.