**GENESYS COE APPFOUNDRY APPLICATION EVALUATION** **AGREEMENT**

This Evaluation Agreement (the **“Agreement”**) contains the terms and conditions that govern your access to and use of the Genesys Cloud COE Appfoundry Application (“Application”), as described at [Genesys AppFoundry - SPC Portal](https://appfoundry.genesys.com/filter/genesyscloud/listing/2da7506b-b088-404b-96cd-b92e86fd8bdc), and related documentation, materials, and information. This constitutes an agreement by and between Choose a Genesys Entity (**“Genesys”**) and [customer’s name] (**“Customer”**). This Agreement is effective as of the date the last party signs (the **“Effective Date”**).

1. **Limited Grant of Rights**. The Application is copyrighted and owned by Genesys. Subject to the terms of this Agreement, Genesys grants Customer a non-transferable, non-sublicensable, non-exclusive, revocable, royalty-free right to authorize a maximum of five (5) users within Customer’s organization to access and use the Application and its associated documentation during the Evaluation Period (as defined below), without charge, solely for the purpose of evaluating the Application internally in a non-production environment and in accordance with the limitations and terms set forth in this Agreement. We reserve the right to remove or change the Application, or their features included within the Application at any time during the Evaluation Period. Should you wish to purchase the Application, such purchase shall be via a separate Services Order or Statement of Work (SOW) and the terms of such Services Order or SOW, and the master agreement reference in such agreement, will apply. The terms of this Agreement apply only to the use of the Application and only during the Evaluation Period. For clarity, it does not apply to any Service Orders submitted (previously or in the future) by Customer for any Genesys product or service.
2. **Evaluation Period**. Customer will have the right to use and evaluate the Application under this Agreement for 90 days beginning on the date when access is granted for the first time (“Evaluation Period”). Any extension of the Evaluation Period will be at Genesys’s sole discretion, however, if Genesys so agrees, the terms of this Agreement will apply during the extension period.
3. **Use of Application**. Customer will not and will not permit or authorize any third party to: (a) sell, rent, lease, sublicense or otherwise make the Application and associated documentation available to any third party except as expressly authorized by this Agreement; (b) modify or create any derivative works, functionally equivalent works, or translations of the Application and associated documentation; (c) copy any feature, design or graphic in or disassemble, reverse engineer or decompile the Application and associated documentation or remove or modify any proprietary markings or restrictive legends placed on the Application and associated documentation; (d) access or use the Application and associated documentation to compete with Genesys or to assist anyone else to compete with Genesys; (e) remove or modify any proprietary markings or restrictive legends placed on the Application and associated documentation; (f) take any action that jeopardizes Genesys’ rights or the rights of Genesys’ business partners, licensors or suppliers in the y Application and associated documentation; (g) violate any Laws; (h) use the Application and associated documentation in a manner that is defamatory, harassing, infringing or otherwise causes damage or injury to any person or property; (i) transmit viruses or other deleterious code; (k) perform unauthorized penetration testing or vulnerability scans; (l) damage, disable, overburden or impair the Application and associated documentation or any other party’s use of the Application and associated documentation. Customer is responsible for the use of the Application and associated documentation by its affiliates. Customer takes full responsibility for ensuring that all of its personnel, third party service providers, and all other third parties that access or use the Applications comply with this Agreement, and Customer will be liable for their acts and omissions.
4. **Use in Production**. Customer shall not use the Application in a production environment unless the Application is purchased via Services Order or an SOW, in which case the terms of such agreement will apply.
5. **Disclaimer of Warranty**. CUSTOMER EXPRESSLY ACKNOWLEDGES AND AGREES THAT USE OF THE APPLICATION IS AT CUSTOMER’S SOLE RISK. THE APPLICATION (ALONG WITH ANY OTHER MATERIALS OR SERVICES PROVIDED HEREUNDER) IS PROVIDED “AS IS” AND WITHOUT WARRANTY OF ANY KIND. GENESYS AND ITS LICENSORS AND SUPPLIERS EXPRESSLY DISCLAIMS ALL WARRANTIES, CONDITIONS, REPRESENTATIONS, INDEMNITIES AND GUARANTEES, WHETHER EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF MERCHANTABILITY, SATISFACTORY QUALITY, TITLE, NON-INFRINGEMENT, SECURITY, QUIET ENJOYMENT AND FITNESS FOR A PARTICULAR PURPOSE. GENESYS DOES NOT WARRANT THAT THE USE OF THE APPLICATION WILL BE UNINTERRUPTED OR ERROR-FREE. TO THE EXTENT GENESYS CANNOT DISCLAIM A WARRANTY AS A MATTER OF APPLICABLE LAW, THE SCOPE AND DURATION OF SUCH WARRANTY WILL BE THE MINIMUM PERMITTED UNDER SUCH LAW.

6. **Limitation of Liability**. THE APPLICATION IS BEING PROVIDED FREE OF CHARGE AND, THEREFORE, GENESYS AND ITS LICENSORS AND SUPPLIERS SHALL NOT BE LIABLE UNDER ANY THEORY FOR ANY DAMAGES SUFFERED BY CUSTOMER OR ANY USER OF THE APPLICATION. UNDER NO CIRCUMSTANCES, INCLUDING NEGLIGENCE, SHALL GENESYS BE LIABLE FOR ANY INCIDENTAL, DIRECT, SPECIAL, INDIRECT OR CONSEQUENTIAL DAMAGES ARISING OUT OF OR RELATING TO THIS AGREEMENT. THIS SECTION WILL NOT APPLY TO DAMAGES THAT CANNOT BE LIMITED OR EXCLUDED BY LAW (IN WHICH EVENT THE LIMITATION WILL BE THE MINIMUM AMOUNT REQUIRED BY LAW).

7. **Proprietary Rights**. Genesys (along with its licensors and suppliers) retains all rights, title and interest, including without limitation, all patent rights, copyrights, trademarks and trade secrets, in and to the Application or in any other materials or services provided hereunder. Customer hereby assigns (and shall cause its personnel, its contractor(s) or agent(s) as the case may be to assign), to Genesys all rights (including without limitation, moral rights), title and interest in and to any report, feedback or other information concerning the Application provided by Customer to Genesys hereunder. Customer shall have only those rights in or to the Application expressly granted to Customer pursuant to this Agreement.

## 8. Confidential Information

## (a) “Confidential Information” means all information and material disclosed by the disclosing party (“Discloser”) to the receiving party (“Recipient”) (whether in writing, or in oral, graphic, electronic or any other form) that is marked as (or provided under circumstances reasonably indicating it is) confidential or Confidential, or if disclosed orally or in other intangible form or in any form that is not so marked, that is identified as confidential at the time of such disclosure. Confidential Information, includes without limitation, the Application, the provisions of this Agreement and any trade secrets, know-how, inventions (whether or not patentable), techniques, processes, programs, ideas, algorithms, formulas, schematics, testing procedures, software design and architecture, computer code, internal documentation, design and function specifications, product requirements, problem reports, performance information, software documents, and other technical, business, product, marketing and financial information, plans and data. Customer acknowledges and agrees that the Application embodies substantial creative efforts and constitutes and contains valuable trade secrets and confidential information of Genesys and its licensors and suppliers.

## (b) Recipient shall hold all Confidential Information in strict confidence and shall not disclose any Confidential Information to any third party, other than to its employees or agents who need to know such information to perform Recipient’s obligations or exercise Recipient’s rights hereunder and who are bound by restrictions regarding disclosure and use of such information comparable to and no less restrictive than those set forth herein. Recipient shall not use any Confidential Information for the benefit of itself or any third party or for any purpose other than the performance of Recipient’s obligations or exercise of Recipient’s rights hereunder. Recipient shall take the same degree of care that it uses to protect its own confidential and Confidential information and materials of similar nature and importance (but in no event less than reasonable care) to protect the confidentiality and avoid the unauthorized use, disclosure, publication or dissemination of the Confidential Information. Recipient shall not make any copies of the Confidential Information except as necessary to perform its obligations or exercise its rights hereunder, unless otherwise approved in writing in advance by Discloser.

## (c) The foregoing restrictions on disclosure and use shall not apply with respect to any Confidential Information which the Recipient reasonably demonstrates: (i) was or becomes publicly known through no act or omission of Recipient; (ii) was known by Recipient before receipt from Discloser or (iii) becomes known to Recipient without confidential or Confidential restriction from a source other than Discloser that does not owe a duty of confidentiality to Discloser with respect to such Confidential Information. In addition to the foregoing, Recipient may disclose Confidential Information to the extent (A) approved by Discloser or (B) Recipient is legally compelled to disclose such Confidential Information; provided that Recipient shall (1) promptly notify Discloser of the notice compelling disclosure, (2) reasonably cooperate with Discloser in protecting against any such disclosure and/or obtaining a protective order narrowing the scope of such disclosure and/or use of the Confidential Information, (3) reproduce any confidentiality or Confidential markings appearing on the Confidential Information in the copies of such Confidential Information, (4) only furnish the portion of the Confidential Information that it is required to disclose and (5) use reasonable efforts to obtain reliable assurances that the disclosed Confidential Information shall be treated confidentially. Notwithstanding any such compelled disclosure by the Recipient, such compelled disclosure shall not otherwise affect the Recipient’s obligations hereunder with respect to Confidential Information so disclosed.

(d) Recipient acknowledges and agrees that due to the unique nature of Discloser’s Confidential Information, there may be no adequate remedy at law to compensate Discloser for the breach of any provision of Sections 1, 3, 7 and 8; that any such breach may result in irreparable harm to Discloser that would be difficult to measure and that upon any such breach or threat thereof, Discloser shall be entitled to seek injunctive and other appropriate equitable relief (without the necessity of proving actual damages), in addition to whatever remedies it may have at law.

9. **No Other Services**. No services (maintenance, support, installation or otherwise) or other products are provided herewith. Customer must enter into a separate agreement with Genesys for the provision of services or other products.

10. **Term and Termination**

(a) The Agreement shall commence on the Effective Date and, unless otherwise terminated pursuant to this Section 10, continue in effect until expiration of the Evaluation Period. Either party may terminate this Agreement at any time by delivering written notice of termination to the other party.

(b) If either party terminates this Agreement, Customer shall promptly (not to exceed thirty (30) days) deliver to Genesys or destroy all copies of the Genesys Confidential Information, including without limitation, all extracts of the foregoing and all documents, notes and other materials relating to Customer’s testing and evaluation of the Application, and, upon request, shall furnish to Genesys written confirmation that that such delivery or destruction has been completed.

(c) Any termination of this Agreement by either party shall not act as a waiver of any breach of this Agreement and shall not act as a release of either party from any liability for breach of such party’s obligations under this Agreement. Neither party shall be liable to the other for damages of any kind solely as a result of terminating this Agreement in accordance with its provisions, and termination of this Agreement by a party shall be without prejudice to any other right or remedy of such party under this Agreement or applicable law.

11. **General Provisions**

(a) **Governing Law**. This Agreement shall be governed by the laws set forth at <https://www.genesys.com/company/legal-docs/governing-law-jurisdiction-and-notices> based on Customer’s domicile, without reference to conflicts of law provisions. The parties irrevocably agree to submit to the personal and exclusive jurisdiction of the courts set forth therein and that the venue therein is proper and convenient. Any judgment or order by any court having proper jurisdiction against a Party may be enforced in any court having jurisdiction over such Party or its assets. If any legal action, including, without limitation, an action for injunctive relief, is brought arising out of or relating to this Agreement or the breach hereof, the prevailing Party in any final judgment, or the non-dismissing Party in the event of a voluntary dismissal by the Party instituting the action, shall be entitled to the full amount of all reasonable expenses, including all court costs and actual attorney fees paid or incurred in good faith.

(b) **Assignment**. This Agreement may not be assigned, in whole or part, whether voluntarily, by operation of law or otherwise, by Customer without the prior written consent of Genesys. Subject to the preceding sentence, the rights and liabilities of the parties hereto shall bind and inure to the benefit of their respective assignees and successors, and is binding on the parties and their successors and assigns. Any attempted assignment other than in accordance with this Section 11(b) shall be null and void.

(c) **Relationship of the Parties**.Nothing contained in this Agreement shall be deemed or construed as creating a joint venture, partnership, agency, employment or fiduciary relationship between the parties. Neither party has any authority of any kind to bind the other party in any respect whatsoever, and the relationship of the parties is, and at all times shall continue to be, that of independent contractors.

(d) **Notices**. All notices under the Agreement shall be in writing and shall be deemed to have been given when (a) provided via the Genesys AppFoundry site located at https://appfoundry.genesys.com/ or within the Application portal; (b) sent by electronic facsimile transmission; or (c) sent by registered mail, postage prepaid (which notice shall be deemed to have been received on the third (3rd) business day following the date on which it is mailed); or (d) sent overnight by a commercial overnight courier that provides a receipt (which notice shall be deemed to be received on the next business day after mailing). Notices to either party shall be sent to the applicable address set forth in the preamble of the Agreement or such other address as a party may notify the other party of in writing. In the case of Genesys, notice shall be sent to the address for the applicable Genesys entity as set forth at <https://www.genesys.com/company/legaldocs/governing-law-jurisdiction-and-notices>, with a mandatory copy to the attention of General Counsel, Legal, at the same address. In the case of Customer, notice shall be sent to the email address provided in the enrollment process.

(e) **Waiver**.The waiver by either party of a breach of or a default under any provision of this Agreement shall be in writing and shall not be construed as a waiver of any subsequent breach or default under this Agreement, nor shall any delay or omission on the part of either party to exercise or avail itself of any right or remedy that it has or may have hereunder operate as a waiver or any right or remedy.

(f) **Counterparts**.This Agreement may be executed in counterparts and, in the absence of an original signature, faxed signatures shall be considered the equivalent of an original signature.

(g) **Complete Agreement**. This Agreement constitutes the entire agreement between Customer and Genesys with respect to the use of the Application for evaluation purposes only and supersedes all prior or contemporaneous discussions, proposals, negotiations, conditions, agreements and communications, whether oral or written, between the parties relating to the subject matter of this Agreement and all past courses of dealing or industry custom. Except as otherwise expressly stated herein, no amendment to or modification of this Agreement will be binding unless in writing and signed by each party.

12. **EU Data Privacy.** Customer acknowledges that Genesys may process all Personal Data through the Customer’s use of the Genesys Services, and this processing will require transfers of Personal Data outside of the Customer’s country and region. Customer gives its general consent to Genesys to use subprocessors and to process Personal Data outside of the European Economic Area (“EEA”). For the processing of the Personal Data outside of the EEA, Genesys has entered into Standard Contractual Clauses (“SCCs”) with subprocessors in accordance with The Commission Implementing Decision (EU) 2021/914. Genesys may utilize additional subprocessors, depending on which services, features, and functionality are selected by Customer during the life of this Agreement. Customer acknowledges that consent for such additional subprocessors will be considered given as a results of features and functionalities configuration selected by the Customer or by the Customer ordering any new services in future.

13. **Security**

1. The Application is located on servers that are controlled by Amazon Web Service (“AWS”) within the European Economic Area (EEA). Customer shall comply with the AWS Acceptable Use Policy found at <https://aws.amazon.com/aup/>. You may access and use the software but have no right to receive a copy of the object code or source code to the software.
2. Security Awareness and Training. Genesys has developed and will maintain an information security and awareness program that is delivered to all employees and appropriate contractors at the time of hire or contract commencement and annually thereafter. The awareness program is delivered electronically and includes a testing aspect with minimum requirements to pass.
3. Change Management. Genesys will utilize a change management process based on industry standards to ensure that all changes to the Application are appropriately reviewed and tested.
4. Anti-Virus or Anti-Malware Protection. Genesys will utilize industry standard anti-virus or anti-malware protection solutions to ensure that all servers in its cloud hosting environment are appropriately protected against malicious software such as trojan horses, viruses, and worms. The Application will be centrally managed and configured to ensure updates are applied in a timely manner. Genesys will use industry standard practices to ensure that the cloud hosting, as delivered to Customer, does not include any program, routine, subroutine, or data (including malicious software or “malware,” viruses, worms, and Trojan Horses) that are designed to disrupt the proper operation of the cloud hosting.
5. Data Destruction. Genesys will follow industry standard processes for the secure destruction of Customer’s data that is no longer required under the trial within 90 days.
6. **Genesys’ User Access**.  Genesys employees approved to access SPC portal required to use multi-factor authentication, but VPN is not required.  Genesys employee accounts are reviewed at least every 90 days.
7. **Customer’s User Access**.  Customer is solely responsible for managing User access controls within Customer’s SPC instance
8. Services Improvements. Genesys may use Customer’s non-Personal and non-Confidential data and information related to the performance, operation and use of the Application to create statistical analyses, perform benchmarking, conduct research and development, and carry out other similar activities (“Service Improvements”).  Genesys will not incorporate Customer’s Personal Data or Confidential Information in Service Improvements in a form that could identify the Customer or Customer’s customers.

Signature Page to Follow

By executing this Agreement, Customer represents and agrees: (i) that it is authorized to consent to this Agreement on behalf of the entity it represents; and (ii) to legally bind such entity. This constitutes an electronic signature as defined under applicable law.

|  |  |  |
| --- | --- | --- |
| Choose a Genesys Entity |  | **[Customer Name]** |

|  |  |  |  |
| --- | --- | --- | --- |
| By: | \Signature1\  \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ | By: | \Signature2\  \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |
| Name: | \SignerFullName1\  \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ | Name: | \SignerFullName2\  \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |
| Title: | \Title1\  \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ | Title: | \Title2\  \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |
| Date: | \Date1\  \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ | Date: | \Date2\  \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |