

Condeco Terms of Service

1. Background

- 1.1. When a Customer enters into an Agreement with Condeco the Order Form sets out the Services which are to be provided by Condeco over the Term and these Terms of Service govern the provision of those Services.

2. Commencement, Term, Fees and Termination

- 2.1. The Agreement shall commence on the Effective Date and shall continue for the Term unless terminated under these Terms of Service.
- 2.2. The Customer shall pay all Fees specified in the Order Form. Fees are based on Services purchased, not actual usage, and apply throughout the Term
- 2.3. Unless stated otherwise on the Order Form, invoiced Fees are due net 30 days from the invoice date.
- 2.4. If any invoiced amount is not received by Condeco by the due date, then without limiting Condeco's rights or remedies, those Fees may accrue late interest at the rate of 0.5% of the outstanding balance per month, or the maximum rate permitted by law, whichever is lower.
- 2.5. If any Fees owing by the Customer under this Agreement remain unpaid after the payment date(s) agreed in 2.3 Condeco may, without limiting its other rights and remedies suspend all Services under any agreements between the parties until such amounts are paid in full. Customer recognises that suspension may impact all users of the URL assigned to the Customer.
- 2.6. The Fees in respect of Software Services shall be invoiced annually in advance (or in accordance with any different billing frequency stated in the applicable Order Form) with the Software Service subscription commencing on the Effective Date.
- 2.7. The Fees in respect of HaaS shall be invoiced annually in advance (or in accordance with any different billing frequency stated in the applicable Order Form) with the HaaS subscription period commencing on the Effective Date.
- 2.8. The Fees in respect of Purchased Hardware shall be invoiced on, or any point after, dispatch of the Purchased Hardware. Title to the Purchased Hardware passes to Customer when the Purchased Hardware is paid for in full.
- 2.9. The Fees in respect of Professional Services shall be invoiced in full prior to the Professional Services commencing (unless the Order Form sets out an alternative invoice schedule). Condeco shall be entitled to charge reasonable travel and subsistence costs in respect of providing the Professional Services as agreed in the Order Form or SOW.
- 2.10. All amounts specified in the Order Form or SOW shall be invoiced in and paid in the currency stated in the Order Form or SOW, are exclusive of VAT or any other sales or other tax (which must be paid in addition) and are not refundable or cancellable.
- 2.11. The Customer is responsible for providing complete and accurate billing and contact information to Condeco and notifying Condeco of any changes to such information.

- 2.12. Where a purchase order number is given by the Customer, Condeco shall include such purchase order number on the invoice. For the avoidance of doubt, the validity of any invoice is not conditional upon the inclusion of any purchase order number (or similar) and the Customer's failure to provide a purchase order number shall not relieve the Customer of its obligation to pay the invoice by the due date.
- 2.13. On termination of the Agreement, howsoever arising:
 - 2.13.1. the Customer shall immediately cease use of the Services;
 - 2.13.2. the Customer shall immediately return any HaaS to Condeco at the Customer's expense;
 - 2.13.3. the Customer shall pay all outstanding Fees due under the Agreement;
 - 2.13.4. the Customer shall be entitled to request a copy of the most recent backup of the Customer Data. This request must be made in writing within 60 days of the effective date of termination. Condeco shall have no obligation to retain Customer Data after that time; and
 - 2.13.5. any rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination and any clauses that expressly or impliedly are intended to survive termination of the Agreement shall continue in full force and effect.
- 2.14. Without affecting any other right or remedy available to it, either party may terminate the Agreement with immediate effect by written notice to the other party if the other party i) commits a material breach of the Agreement which is irremediable, or fails to remedy within 30 days after being notified to do so; ii) is subject to any insolvency procedure; or iii) ceases or threatens to cease trade.

3. Condeco Obligations

- 3.1. Condeco shall provide the Services in accordance with the Agreement and using reasonable care and skill.
- 3.2. Provision of any Software Service shall be as set out in the Software Service Schedule, provision of any HaaS shall be governed by the HaaS Schedule and provision of any Purchased Hardware shall be governed by the Purchased Hardware Schedule.
- 3.3. Condeco shall make the Software Service available 24 hours a day, seven days a week in accordance with and subject to the Software Service Schedule, excluding any planned or emergency maintenance.
- 3.4. Condeco shall endeavour to give the Customer notice of any maintenance taking place outside of the maintenance window set out in the Software Service Schedule but reserves the right to carry out emergency maintenance when required without liability.
- 3.5. Condeco shall comply with all applicable laws and regulations with respect to the provision of the Services and shall maintain, all necessary licences, consents and permissions necessary for the performance of its obligations under these Terms of Service.

4. Customer Obligations

- 4.1. The Customer shall meet all its responsibilities as set out in the Agreement.
- 4.2. The Customer shall pay all Fees in the Order Form by the due date.
- 4.3. The Customer shall provide Condeco with correct contact information for the Customer's primary point of contact in relation to the Agreement and shall promptly inform Condeco of any changes to such primary point of contact.
- 4.4. The Customer shall be responsible for:
 - 4.4.1. ensuring it has appropriate infrastructure and expertise to access and use the Services;
 - 4.4.2. ensuring that the Authorised Users use the Services in accordance with the Agreement;
 - 4.4.3. any Authorised User's breach of the Agreement; and
 - 4.4.4. compliance with all applicable laws and regulations with respect to its activities under the Agreement.
- 4.5. The Customer shall not, except as expressly permitted under the Agreement or otherwise agreed in writing by Condeco, or as may be allowed by any applicable law which is incapable of exclusion by agreement between the parties, use the Services to provide services to third parties or attempt to obtain, or assist third parties in obtaining access to the Services or license, sell, rent, lease, transfer, assign, distribute, display, disclose, or otherwise commercially exploit, or otherwise make the Services available to any third party except the Authorised Users.
- 4.6. The Customer warrants that any individual executing any document on behalf of the Customer is properly authorised to do so.
- 4.7. If the Customer fails to carry out all its responsibilities under the Agreement in a timely and efficient manner Condeco may adjust any agreed timetable or delivery schedule as reasonably necessary and charge for any additional Services that are required due to such failure.

5. Intellectual Property

- 5.1. Subject to the limited rights expressly granted hereunder, Condeco and its licensors reserve all of their rights, title and interest in and to the Services, including all of their related intellectual property rights. No rights are granted to Customer hereunder other than as expressly set forth herein
- 5.2. The Customer shall retain all rights in and ownership of the Customer Data and shall be solely responsible for the legality, reliability, integrity, accuracy and quality of the Customer Data.

6. Confidentiality

- 6.1. Each party shall hold the other's Confidential Information in confidence and not disclose such Confidential Information to any third party, unless required by law or necessary for the provision of the Services or use the other party's Confidential Information for any purpose other than as allowed or contemplated under the Agreement.
- 6.2. Information shall not be considered to be Confidential Information where i) it is or becomes publicly known other than through any act of omission of the disclosing party; ii) it was in the other party's lawful possession prior to the disclosure; iii) it is or was lawfully disclosed to the receiving party by a third party without restriction on disclosure; or iv) it is independently developed by the receiving party and can be demonstrated to have been so developed.

- 6.3. Neither party shall be liable for any loss, damage, alteration, disclosure or destruction of Confidential Information caused by any third party.

7. Liability

- 7.1. Nothing in the Agreement shall serve to exclude or limit either party's liability for death or personal injury arising from negligence or for any fraudulent misrepresentation.
- 7.2. Save in respect of any liability arising under clause 7.1 above, neither party's total aggregate liability, whether in tort (including negligence or breach of statutory duty), misrepresentation or otherwise, under the Agreement shall exceed the level of the total Fees paid in respect of this Agreement by the Customer to Condeco in the 12-month period immediately preceding the event giving rise to the claim.
- 7.3. Subject to clause 7.1 neither party shall be liable whether in tort (including for negligence or breach of statutory duty), contract, misrepresentation, restitution or otherwise for any loss of profits, loss of business, depletion of goodwill and/or similar losses or loss or corruption of data or information, or pure economic loss, or for any special, indirect or consequential loss, costs, damages, charges or expenses however arising under this Agreement.
- 7.4. Except as expressly and specifically provided in this Agreement, all warranties, representations, conditions and all other terms of any kind whatsoever implied by statute or common law are, to the fullest extent permitted by applicable law, excluded from this Agreement.
- 7.5. The Customer is responsible for, and Condeco accepts no responsibility for, the content of any Customer Data.
- 7.6. In the event of any loss or damage to the Customer Data, howsoever caused, the Customer's sole remedy shall be for Condeco to recover the Customer Data from the latest available version of any back-up taken by Condeco.
- 7.7. The parties agree that where the Customer Data contains data which relates to an identified or identifiable natural person then Condeco's processing of such data shall be subject to the Data Protection Schedule.

8. General

- 8.1. Condeco reserves the right to amend or update the Schedules at any time, provided that, such amendments or updates shall not materially adversely impact on the provision of the Services and the Customer is notified.
- 8.2. No failure or delay by either party to exercise any right or remedy under the Agreement or under any law shall constitute a waiver of such right or remedy.
- 8.3. If any provision (or part of a provision) of these Terms of Service is found by any court or administrative body of competent jurisdiction to be invalid, unenforceable or illegal, the other provisions shall remain in force and such provision shall apply with whatever modification required to give effect to the commercial intention of the parties.
- 8.4. The Agreement, and any documents referred to in it, constitute the whole agreement between the parties in relation to the provision of the Services.
- 8.5. Each of the parties acknowledges and agrees that in entering into the Agreement it does so as a business, and not as a partner or agent of Condeco, and that it does not rely on any undertaking,

promise, assurance statement, representation, warranty or understanding (whether in writing or not) of any person (whether party to the Agreement or not) relating to the subject matter of the Agreement, other than as expressly set out in the Agreement.

- 8.6. Neither party shall, without the prior written consent of the other party, assign, transfer, charge, sub-contract or deal in any other manner with all or any of its rights or obligations under the Agreement, unless, in respect of Condeco, such assignment, transfer or sub-contracting is to another member of the Condeco's corporate group.
- 8.7. The Agreement does not confer any rights on any person or party (other than the parties to the Agreement and, where applicable, their successors and permitted assigns).
- 8.8. Any notice required to be given under the Agreement shall be in writing in the English language and shall be posted to the other party's address stated in the Order Form or emailed to the other party's primary contact. Such notice will be deemed delivered at the time at which it would have been delivered in the normal course of business.
- 8.9. The Agreement and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the domestic law of Condeco. For Customers contracting with Condeco Software Inc, New York law shall apply.
- 8.10. Each party irrevocably agrees that the courts of Condeco's domestic jurisdiction shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with the Agreement or its subject matter or formation (including non-contractual disputes or claims). For Customers contracting with Condeco Software Inc, the courts of New York state shall have exclusive jurisdiction.

9. Definitions

- 9.1. In these Terms of the Service, the below expressions shall have the following meanings:

Agreement means the Order Form, these Terms of Service (including any applicable Schedules) and any SOW.

Authorised Users means those employees, agents and independent contractors of the Customer (or any entity associated with the Customer) who are authorised by the Customer to use the Services.

Condeco means the Condeco entity named in an Order Form and/or SOW as providing the Services.

Confidential Information means any confidential information concerning the business, affairs, customers, clients or suppliers of the other party or any of its associated entities, including Customer Data and including information relating to a party's operations, processes, plans, product information, know-how, designs, trade secrets, software, market opportunities and customer, this Agreement or any other information that is proprietary or confidential and is either clearly labelled as such or identified as Confidential Information under these Terms of Service.

Customer means the individual, corporate or other entity named in an Order Form and/or SOW.

Customer Data means the data provided by the Customer or any Authorised Users for the purpose of using the Services or facilitating the Customer's use of the Services.

Data Protection Schedule means the document set out on the Website, or as otherwise provided to the Customer by Condeco, setting out Condeco's role and obligations as a data processor on the Customer's behalf.

Effective Date means the date stated as the 'Effective Date' set out in the applicable Order Form and/or the SOW.

Fees means the fees set out in the Order Form(s) and/or SOW(s) payable by the Customer for the provision of the Services.

HaaS means the Hardware as a Service product involving the rental from Condeco by the Customer of hardware as set out in an Order Form and / or SOW.

HaaS Equipment means the hardware rented by Condeco to the Customer as part of the HaaS.

HaaS Schedule means the document specific to HaaS as located on the Website, or as otherwise provided to the Customer by Condeco, as amended from time to time.

Hardware means either the Purchased Hardware or the HaaS Equipment or both as applicable.

Order Form means the order form which sets out the details about the Services which are to be provided to the Customer and which has been executed by the parties.

Purchased Hardware means Condeco hardware products to be sold by Condeco to the Customer as set out in an Order Form and / or SOW.

Purchased Hardware Schedule means the document specific to the Purchased Hardware as located on the Website, or as otherwise provided to the Customer by Condeco, as amended from time to time.

Schedules means the Software Service Schedule, the HaaS Schedule, the Purchased Hardware Schedule and / or the Data Protection Schedule.

Services means the services provided by Condeco to a Customer as set out in the Agreement.

Software Service means the software service made available by Condeco, including screen management software, enterprise software and sensing software and any other software set out in the SOW and/or Order Form or necessary to deliver the Services.

Software Service Schedule means the document specific to the Software Service as located on the Website, or as otherwise provided to the Customer by Condeco, as amended from time to time.

SOW means the Statement of Work document which sets out the Condeco and Customer responsibilities in order to enable Condeco to deliver and the Customer to access the Services.

Term means the period stated as the term in the Order Form. If no term is stated in the Order Form then the term shall be 3 years.

Website means www.condecosoftware.com/terms