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 ensure that all Fees specified in the Order Form are paid in accordance with the payment terms stated on the Order Form. Fees are based on Services purchased, not actual usage, and apply throughout the Term

2.3. If any Fees properly owing to Condeco under this Agreement remain unpaid 30 days after the due date then Condeco may, without limiting its other rights and remedies, and provided that it has given a minimum of seven days advance written warning, suspend all Services under any agreements between the parties until such amounts are paid in full. The Customer recognises that suspension may impact all users of the Services assigned to the Customer.

2.4. The Fees in respect of Software Services shall be invoiced annually in advance with the Software Service subscription commencing on the Effective Date.

2.5. The Fees in respect of Hardware shall be invoiced on, or any point after, dispatch of the Hardware. Title to the Hardware passes to Customer when the Hardware is paid for in full.

2.6. The Fees in respect of Professional Services shall be invoiced in full prior to the Professional Services commencing. Condeco shall be entitled to charge reasonable travel and subsistence costs in respect of providing the Professional Services as agreed in writing, in advance by the Customer.

2.7. 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 except as may be set out in these Terms of Service.

2.8. The Customer is responsible for providing complete and accurate billing and primary contact information to Condeco and notifying Condeco of any changes to such information.

2.9. Where a purchase order number is given by the Customer, Condeco shall include such purchase order number on the invoice, however, if the Customer fails to provide a purchase order number then it shall not be relieved of its obligation to pay an invoice by the due date.

2.10. On termination of the Agreement, howsoever arising:

2.10.1. the Customer shall immediately cease use of the Services;

2.10.2. the Customer shall pay all outstanding Fees properly due under the Agreement;

2.10.3. the Customer shall be entitled to request, and on such request Condeco shall provide, a copy of the most recent backup of the Customer Data. This request must be made in writing within 30 days of the effective date of termination. Condeco shall have no obligation to retain Customer Data after that time; and

2.10.4. 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.

2.11. 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.

2.12. If the Customer validly terminates the Agreement under clause 2.11 i) then Condeco shall refund to the Customer, on a pro-rata basis, any prepaid Fees which relate to the period after termination.

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 and the purchase of Hardware shall be governed by the 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.

3.4. 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 including ensuring payment of all properly due and owing Fees by the due date.

4.2. The Customer shall be responsible for:

4.2.1. ensuring it has appropriate infrastructure to access and use the Services;

4.2.2. ensuring that the Users use the Services in accordance with the Agreement;

4.2.3. any User's breach of the Agreement; and

4.2.4. compliance with all applicable laws and regulations with respect to its activities under the Agreement.

4.3. Unless agreed otherwise by Condeco or required by law, the Services are intended for internal use by the Customer and its Affiliates and the Customer may not allow anyone other than the Users to access the Services.

4.4. The Customer warrants that any individual executing any document on behalf of the Customer is properly authorised to do so and that

all internal approvals that the Customer may require have been obtained prior to the Order Form being executed.

4.5. If the Customer fails to carry out all its responsibilities under the Agreement in the agreed manner Condeco may adjust any agreed timetable or delivery schedule as reasonably necessary.

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. Condeco grants to the Customer a limited, non-transferable, non-sublicensible licence for the Term as needed for the Customer and the Users to make use of the Services.

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, content and quality of the Customer Data supplied by Customer or Users to Condeco.

5.3. Condeco shall indemnify the Customer against any claims that the use of the Services infringes any third party intellectual property rights, provided that (i) Condeco is given prompt notice of any such claim; (ii) Condeco is given sole authority to defend any such claim; and (iii) the Customer provides all reasonable cooperation to Condeco in defending such claim.

5.4. In the defence or settlement of any claim under clause 5.3, Condeco may at its own cost and in its own discretion (i) procure the right for the Customer to continue to use the Services; (ii) replace or modify any element of the Services so they become non-infringing provided there is no material degradation in the functionality of the Services; or (iii) terminate the Agreement with immediate effect without any additional liability pay liquidated damages or other additional costs to the Customer arising from such termination save for providing a pro-rated refund of any prepaid Fees which relate to the period after termination.

5.5. In no event shall Condeco be liable for any claim to the extent that the alleged infringement is based on (i) any modification of the Services by Customer or Users; (ii) any use of the Services contrary to Condeco's instructions; or (iii) the Customer's continued use of the Services after notice of the alleged or actual infringement from Condeco or any appropriate authority.

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 (excluding its Affiliates), 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. This confidentiality obligation shall apply for the Term and a period of 5 years thereafter.

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 receiving 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.

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 or for any other liability which cannot be excluded or limited by law.

7.2. Save in respect of any liability arising under clause 7.1 above or in respect of any claim relating to Condeco's processing of personal data, 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 to Condeco in the 12-month period immediately preceding the event giving rise to the claim.

7.3. Condeco's liability for any claim in respect of its' processing of personal data on behalf of the Customer shall not exceed a total of one million pounds (£1,000,000.00) or equivalent in the currency stated in the Order Form (calculated by reference to the exchange rate on the date of signature of the Order Form).

7.4. 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 pure economic loss, or for any special, indirect or consequential loss, costs, damages, charges or expenses however arising.

7.5. 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.

7.6. 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 and, any additional data processing terms which may be agreed between the parties.

8. General

8.1. Condeco reserves the right to update the Schedules at any time, provided that, such updates shall not materially adversely impact on the provision of the Services and advance notice is given.

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.

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 this 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.

Definitions

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

Affiliate means any entity, individual, firm, or corporation, which is directly or indirectly, through one or more intermediaries, controlling, controlled by, or under common control with one of the parties

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

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 either a Direct Customer or an End Customer.

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

Data Protection Schedule means the schedule set out on the Website, setting out Condeco's role and obligations as a data processor on the Customer's behalf.

Direct Customer means the individual, corporate or other entity named in an Order Form and/or SOW which contracts directly with Condeco including in respect of payment of the Fees.

End Customer means the individual, corporate or other entity named in an Order Form and/or SOW but which contracts with a Partner in respect of the payment of the Fees.

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.

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

Hardware Schedule means the schedule specific to the Hardware as located on the Website, as amended from time to time.

Order Form means the order form, or other agreed document, which sets out the details about the Services which are to be provided to the Customer and which has been executed by the parties, or in the case of an End Customer, may have been executed by the Partner.

Partner means the reseller of Condeco's products and services with which the End Customer contracts for payment of the Fees.

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

Services means the services to be provided by Condeco 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 schedule specific to the Software Service as located on the Website, 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.

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 or receive the benefit of the Services.

Website means https://www.condecosoftware.com/terms/