Condeco End Customer Terms

By using the Software, you are accepting the terms of these End Customer Terms. If you do not accept these End Customer Terms then you must not use the Software. Your right to use the Software is for a limited period of time, as set out below, and can be terminated by Condeco under certain circumstances.

1. Background

1.1. These End Customer Terms apply where the End Customer has purchased a subscription to Condeco's Software Service via a Partner rather than directly from Condeco.

1.2. These End Customer Terms are the only terms and conditions under which Condeco will make the Software Service available to the End Customer.

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 End Customer Terms.

2.2. The End Customer shall pay all fees in relation to the Software Service to the Partner according to the agreement between the End Customer and the Partner.

2.3. Continued access to the Software Service is dependent on Condeco receiving payment from the Partner for the Software Service. If Condeco does not receive payment from the Partner then Condeco reserves the right to suspend or terminate the End Customer's access to the Software Service and, in such circumstances, the End Customer accepts that it has no cause of action against Condeco arising from such suspension or termination.

2.4. On termination of these End Customer Terms, howsoever arising:

2.4.1. the End Customer shall immediately cease use of the Software Service.

2.4.2. the End Customer shall be entitled to request a copy of the most recent backup of the End Customer Data. This request must be made in writing within 20 days of the effective date of termination. Condeco shall have no obligation to retain End Customer Data after that time; and

2.4.3. 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.

2.5. Without affecting any other right or remedy available to it, either party may terminate these End Customer Terms 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 Software Service using reasonable care and skill.

3.2. Condeco shall endeavour to make the Software Service available 24 hours a day, seven days a week, excluding any planned or emergency maintenance.

3.3. Condeco shall endeavour to give notice of any maintenance taking place outside of normal maintenance hours but reserves the right to carry out emergency maintenance when required without liability.

3.4. Condeco shall comply with all applicable laws and regulations with respect to the provision of the Software Service and shall maintain, all necessary licences, consents and permissions necessary for the performance of its obligations under these End Customer Terms.

4. End Customer Obligations

4.1. The End Customer shall provide Condeco with correct contact information for the End Customer's primary point of contact in relation to the provision of the Software Service and shall promptly inform Condeco of any changes to such primary point of contact.

4.2. The End Customer shall be responsible for:

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

4.2.2. ensuring that the Authorised Users use the Software Service in accordance with these End Customer Terms;

4.2.3. any Authorised User's breach of these End Customer Terms; and

4.2.4. compliance with all applicable laws and regulations with respect to its activities under these End Customer Terms.

4.3. The End Customer shall not, except as expressly permitted under these End Customer Terms 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 Software Service to provide services to third parties or attempt to obtain, or assist third parties in obtaining access to the Software Service or license, sell, rent, lease, transfer, assign, distribute, display, disclose, or otherwise commercially exploit, or otherwise make the Software Service available to any third party except the Authorised Users.

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 Software Service, including all of their related intellectual property rights. No rights are granted to the End Customer hereunder other than as expressly set forth herein

5.2.   The End Customer shall retain all rights in and ownership of the End Customer Data and shall be solely responsible for the legality, reliability, integrity, accuracy and quality of the End 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 Software Service or use the other party's Confidential Information for any purpose other than as allowed or contemplated under these End Customer Terms.

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.

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 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, neither party's total aggregate liability, whether in tort (including negligence or breach of statutory duty), misrepresentation or otherwise, shall exceed the level of the total fees received by Condeco from the End Customer, or the End Customer's specific Partner, in respect of the End Customer's Software Service 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 End Customer is responsible for, and Condeco accepts no responsibility for, the content of any End Customer Data.

7.6.   In the event of any loss or damage to the End Customer Data, howsoever caused, the End Customer's sole remedy shall be for Condeco to recover the End Customer Data from the latest available version of any back-up taken by Condeco.

8. General

8.1.   No failure or delay by either party to exercise any right or remedy under these End Customer Term or under any law shall constitute a waiver of such right or remedy.

8.2.   If any provision (or part of a provision) of these End Customer Terms 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.

8.3.   Each of the parties acknowledges and agrees that in entering into these End Customer Terms 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 these End Customer Terms, other than as expressly set out in the Agreement.

8.4.   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 these End Customer Terms, unless, in respect of Condeco, such assignment, transfer or sub-contracting is to another member of Condeco's corporate group.

8.5.   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).

8.6.   Any notice required to be given under the Agreement shall be in writing in the English language and shall be sent to the other party's primary contact via post or email. Such notice will be deemed delivered at the time at which it would have been delivered in the normal course of business.

8.7. These End Customer Terms 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 law of England and Wales.

8.8. Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out this of or in connection with these End Customer Terms or its subject matter or formation (including non-contractual disputes or claims).

9.   Definitions

9.1. In these End Customer Terms, the below expressions shall have the following meanings:

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

Condeco means Condeco Group Limited, a company registered in England and Wales.

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 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.

End Customer means the individual, corporate or other entity wishing to make use of the Software Service under an agreement with a Partner.

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

Effective Date means the date on which the End Customer is given access to the Software Service.

Partner means an individual, corporate or other entity which is authorised to resell the Software Service and which has entered into a contract with the End Customer.

Software Service means the software service made available by Condeco, including screen management software, enterprise software and sensing software and any other software provided by Condeco.

Term means 3 years from the Effective Date or such other period agreed between the Partner and the End Customer.