Terms of Service

1. Background

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

2. Definitions

2.1. **"Affiliate"** means any entity which directly or indirectly Controls, is Controlled by, or is under common Control by either Provider or Customer. "Control" means direct or indirect ownership or control of more than 50% of the voting interests of the subject entity.

2.2. **"Agreement"** means the Order Form, these Terms of Service (including the DPA, the Hardware Addendum and the SLA) and any SOW.

2.3. **"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 Standard Personal 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.

2.4. **"Customer"** means either a Direct Customer or an End Customer.

2.5. **"DPA"** means the data protection addendum set out at www.condecosoftware.com/terms, setting out Provider's role and obligations as a data processor on the Customer's behalf.

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

2.7. **"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.

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

2.9. **"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.

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

2.11. **"Hardware Addendum"** means the addendum specific to the Hardware as located at www.condecosoftware.com/terms, as amended from time to time.

2.12. **"InitialTerm"** means the period stated as the term in the Order Form

2.13. **"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

2.14. **"Partner**"means the reseller of Provider's products and services with which the End Customer contracts for payment of the Fees.

2.15. **"Provider"** means the entity named in an Order Form and/or SOW as providing the Services.

2.16. **"Renewal Term"** has the meaning in clause 3.2.

2.17. **"Sensitive Data"** means an (i) individual's government-issued identification number (including Social Security number (or equivalent), driver's license number, or state-issued identification number); (ii) sexual preference or activities, marital status, nationality, racial or ethnic origin; (iii) financial account number, credit card number, debit card number, credit report information, with or without any required security code, access code, personal identification number or password that would permit access to an individual's financial account; (iv) religious or philosophical beliefs or affiliations, political party membership, or labor or trade union membership; or (v) biometric, genetic, health, medical, or medical insurance data.

2.18. **"Services"** means the services to be provided by Provider as set out in the Agreement.

2.19. **"Software Service"** means the software service made available by Provider, including screen management software, enterprise software and sensing software, visitor management software (including ProxyClick) and any other software set out in the SOW and/or Order Form or necessary to deliver the Services.

2.20. **"SLA"** means the service level addendum specific to the Software Service as located at www.condecosoftware.com/terms, as amended from time to time.

2.21. **"Standard Personal Data"** means any information relating to an identified or identifiable individual, including but not limited to: name, business email, employer ID, job title, phone numbers, mail stop, room location, desk location submitted by Customer to the Software Service, as well as other standard personal information specific to the work environment and office and facilities management.

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

2.23. **"Term"** means the Initial Term plus any Renewal Term

2.24. **"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.

3. Commencement, Term, Fees and Termination

3.1. The Agreement shall commence on the Effective Date and shall continue for the Term unless terminated in accordance with these Terms of Service.

3.2. Unless stated otherwise on the Order Form, upon expiration of the Initial Term, the Services will automatically renew for additional one year periods (each a "**Renewal Term**"). Each Party must provide at

least 60 days' written notice if it intends for the Services to expire at the end of the then-current Term.

3.3. 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. Provider reserves the right to increase Fees annually during the Term.

3.4. If any undisputed Fees properly owing to Provider under this Agreement remain unpaid 30 days after the due date then Provider may, without limiting its other rights and remedies, and provided that it has given a minimum of seven days advance written notice, 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.

3.5. Except where specified differently in the Order Form, any Fees in respect of Software Services shall be invoiced annually in advance with the Software Service subscription commencing on the Effective Date.

3.6. Except where specified differently in the Order Form, any Fees in respect of Hardware shall be invoiced within 30 days of dispatch of the Hardware. Title to the Hardware passes to Customer when the Hardware is paid for in full.

3.7. Except where specified differently in the Order Form, any Fees in respect of Professional Services shall be invoiced in full prior to the Professional Services commencing. Provider shall be entitled to charge reasonable travel and subsistence costs in respect of providing the Professional Services as agreed in advance in writing by the Customer.

3.8. 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.

3.9. If Provider has a legal obligation to pay or collect taxes for which Customer is responsible under this Agreement, the appropriate amount will be invoiced to and paid by Customer, unless Customer provides Provider with a valid tax exemption certificate authorized by the appropriate taxing authority. If Customer is required by any applicable laws to account for or pay any withholding for any tax, duty, or other charge in respect of any invoice issued by the Provider ("**WHT**"), Customer will (i) gross up the amount payable under the invoice to apply the rate of WHT so that, after payment of any WHT, the net amount received by Provider from Customer will be equal to the actual amount payable under the invoice; (ii) pay the WHT to the relevant taxing or other governmental authority; and (iii) promptly provide evidence of such payment. Customer shall indemnify, and hold Provider and its Affiliates harmless from and against third party claims, damages, losses, liabilities, costs and expenses arising from non-payment of any WHT.

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

3.11. Where a purchase order number is given by the Customer, Provider shall include such purchase order number on the invoice. 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.

3.12. On termination of the Agreement, howsoever arising:

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

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

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

3.12.4. 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.

3.13. 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:

3.13.1. commits a material breach of the Agreement which is irremediable, or fails to remedy within 30 days after being notified to do so;

3.13.2. is subject to any insolvency procedure; or

3.13.3. ceases or threatens to cease trade.

3.14. If the Customer validly terminates the Agreement under clause 3.11 then Provider shall refund to the Customer, on a pro-rata basis, any prepaid Fees which relate to the period after termination.

4. Provider Obligations

4.1. Provider shall provide the Services in accordance with the Agreement and using reasonable care and skill.

4.2. Provision of any Software Service shall be as set out in the SLA and the purchase of any Hardware shall be governed by the Hardware Addendum.

4.3. Provider shall make the Software Service available 24 hours a day, seven days a week in accordance with and subject to the SLA.

4.4. Provider shall comply with all applicable laws and regulations (including, for the avoidance of doubt, the UK Modern Slavery Act 2015 or any analogous legislation to which Provider is subject, the UK Bribery Act 2010 and the US Foreign and Corrupt Practices Act 1977 or any analogous legislation to which Provider is subject) 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.

4.5. Provider shall have and maintain in place throughout the Term, its own policies and procedures designed to ensure compliance with clause 4.4.

5. Customer Obligations

5.1. 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.

5.2. The Customer shall be responsible for:

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

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

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

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

5.3. Customer will not and will not permit any of its Users to: (a) modify, copy or create any derivative works based on the Services; (b) license, sublicense, sell, resell, rent, lease, transfer, assign, distribute, time share, offer in a service bureau, or otherwise make the Services available to any third party, other than to Authorized Users as permitted herein; (c) reverse engineer or decompile any portion of the Services; (d) access the Services or use any Documentation in order to build a similar product or competitive product; (e) copy any features, functions, integrations, interfaces or graphics of the Services; (f) submit any infringing or otherwise unlawful or tortious material to the Service, including material that violates privacy rights; (g) intentionally interfere with or disrupt the integrity or performance of the Service; (h) circumvent or disable any security or features of the Services, or attempt to probe, scan, gain access to, or test the vulnerability of Provider's network and/or Services or any systems, networks, servers, computers, devices, or equipment owned, controlled, or used by Provider to provide the Services; (i) frame or mirror any portion of the Services; (j) use any robot, spider, site search/retrieval application or other manual or automatic device to retrieve, index, "scrape," "data mine" or otherwise gather Service content, or reproduce or circumvent the navigational structure or presentation of the Services; (k) engage in any conduct that is likely to result in Services being the target of a denial of service (DoS) attack, or interfere with or disrupt the integrity or performance of the Services or any related data; (l) remove any copyright notices, trademarks and any other proprietary marks of Provider, its Affiliates and its suppliers from any Documentation or Services; or (m) upload, transmit or store any Sensitive Data through the Services.

5.4. During the Term, Customer (a) shall be solely responsible for the integrity, accuracy, legality, and quality of the Standard Personal Data; (b) shall be responsible for procuring any necessary consents or having other legal basis to upload and store Standard Personal Data in the Services; (c) shall be responsible for ensuring that its internet connections and hardware are compatible with the Services as set forth in the relevant Documentation; (d) shall not upload any data in the Services that it knows or has reason to know: (i) infringes another's intellectual property rights, or (ii) invades any privacy laws including without limitation another's right to privacy and/or any privacy policies of Customer or any third-party; (e) shall not: (i) engage or facilitate any unethical, deceptive or misleading practices in connection with the use of the Services, (ii) use the Service to send unsolicited messages (commercial or otherwise), and/or (iii) provide data to be transmitted in the Services which is defamatory, libelous, obscene, pornographic, threatening, defamatory, or is otherwise harmful; and/or promotes violence, discrimination, illegal activities, gambling, alcoholic beverages, guns or tobacco; (f) acknowledges that it is responsible for implementing and maintaining reasonable security precautions in connection with its use of the Services; and (g) agrees to (i) identify and authenticate all Users, (ii) approve access by such Users to the Subscription Services; and (iii) promptly deactivate access to terminated personnel or known unauthorized personnel.

5.5. Unless agreed otherwise by Provider 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.

5.6. 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.

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

5.8. Customer will defend, indemnify, and hold Provider, its Affiliates, suppliers, and licensors harmless from and against any Claims arising out of or relating to: (a) Standard Personal Data and any other content provided to Provider; (b) breach of clauses 5.3 and 5.4; (c) alleged infringement or misappropriation of third-party's intellectual property rights resulting from Standard Personal Data or other content provided to Provider; or (d) Customer's gross negligence, willful misconduct, or fraud.

6. Intellectual Property

6.1. Subject to the limited rights expressly granted hereunder, Provider and its licensors reserve all of their rights, title and interest in and to the Services, including all of their related intellectual property rights. Provider 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.

6.2. The Customer shall retain all rights in and ownership of the Standard Personal Data and shall be solely responsible for the legality, reliability, integrity, accuracy, content and quality of the Standard Personal Data supplied by Customer or Users to Provider.

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

6.4. In the defence or settlement of any claim under clause 5.3, Provider 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.

6.5. In no event shall Provider 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 Provider's instructions; or (iii) the Customer's continued use of the Services after notice of the alleged or actual infringement from Provider or any appropriate authority.

7. Confidentiality

7.1. 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 without limitation of time.

7.2. 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.

8. Liability

8.1. 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.

8.2. 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 Provider in the 12-month period immediately preceding the event giving rise to the claim.

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

8.4. 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.

8.5. The parties agree that where the Standard Personal Data contains data which relates to an identified or identifiable natural person then Provider's processing of such data shall be subject to the DPA and, any additional data processing terms which may be agreed between the parties.

9. General

9.1. Provider reserves the right to update the DPA, the SLA and the Hardware Addendum at any time, provided that such updates shall not materially adversely impact on the provision of the Services and advance notice is given.

9.2. 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.

9.3. 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.

9.4. During the Term and for twelve (12) months thereafter, neither party will, directly or indirectly, induce or attempt to induce any employee or consultant of the other party or any of its Affiliates engaged in the provision, receipt, review or management of the Services to leave the employment of the other party. Nothing in this section will preclude either party from publishing or otherwise making general solicitations of employment not specifically directed towards personnel or hiring personnel because of such general solicitation.

9.5. Provider may identify Customer as a customer of Provider on Provider's website as well as within any written and/or electronic marketing material relating to Provider's products and/or services.

9.6. As defined in Federal Acquisition Regulation ("FAR") section 2.101, Defense Federal Acquisition Regulations Supplement ("DFARS") section 252.227-7014(a)(1) and DFARS section 252.227-7014(a)(5) or otherwise, all software and accompanying documentation provided in connection with the Agreement are "commercial items," "commercial computer software," and or "commercial computer software documentation." Consistent with DFARS section 227.7202 and FAR section 12.212, any use, modification, reproduction, release, performance, display, disclosure or distribution thereof by or for the U.S. Government shall be governed solely by the Agreement as specified in 48 C.F.R. 12.212 (Computer Software) and 12.211 (Technical Data) of the FAR and its successors, or if purchased by any agency in the Department of Defense, as specified in 48 C.F.R. 227.7202-3 of the DFARS and its successors. Customer will ensure that each copy used or possessed by or for the government is labeled to reflect the foregoing.

9.7. Each party warrants that it is not named on any U.S. or U.K.government or United Nations list of persons or entities with which U.S. or U.K. persons or United Nations members are prohibited from transacting, nor owned or controlled by or acting on behalf of any such persons or entities, and Customer will not permit any Authorized User to access or use the Services in any manner that would cause any party to violate any U.S., U.K or international embargo, export control law, or prohibition.

9.8. The Agreement, and any documents referred to in it, constitute the whole agreement between the parties in relation to the provision of the Services.

9.9. 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 Provider, 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.

9.10. 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.

9.11. 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).

9.12. 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.

9.13. 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 Provider. For Customers contracting with a Provider which is a US entity New York law shall apply.

9.14. Each party irrevocably agrees that the courts of Provider'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 a Provider which is a US entity, the courts of the state of New York shall have exclusive jurisdiction.