ConSynSys Technologies Developer Agreement

Last updated: May 2024

This agreement is between you and ConSynSys Technologies, Inc. ("**ConSynSys**"), and consists of the terms below ("**Developer Terms**") and the ConSynSys Privacy Statement available at https://consynsys.com/legal/documentation (together, "**Agreement**").

If you are entering into this Agreement on behalf of an entity, such as your employer, you represent that you have the legal authority to bind that entity. If you specify a company name in connection with signing up for or ordering a Service, you will be deemed to have placed that order and to have entered into this Agreement on behalf of that organization or company. Key terms are defined in Section 11.

1. API's

Your access and use of ConSynSys's application programming interfaces ("**API's**") are governed by certain terms and conditions. As the developer, you're responsible for your application and compliance with all the laws and regulations applicable to your use of ConSynSys's APIs, including those laws and regulations that apply to privacy, biometric data, data protection, and confidentiality of communications. Nothing in our governing agreements, or this Agreement, shall be construed as creating a joint controller or processor–sub processor relationship between you and ConSynSys. Your use of ConSynSys's APIs is governed by the terms under which you obtained access. If you access APIs that present accompanying terms ("**Accompanying Terms**"), then such Accompanying Terms, along with the ConSynSys Privacy Statement, will apply to your access and use of the Service. In particular, the ConSynSys API is provided pursuant to the terms at [API Terms link].

2. Services.

a. **Right to use.** We may grant you the right to access and use the Services in accordance with this Agreement.

b. **Manner of use.** You may not:

. reverse engineer, decompile, disassemble or work around technical limitations in the Services, except to the extent that applicable law permits it despite these limitations;

. disable, tamper with or otherwise attempt to circumvent any mechanism that limits your use of the Services;

. rent, lease, lend, resell, transfer, or sublicense any Services or portion thereof to or for third parties, except as explicitly permitted herein or in license terms that accompany any Services component;

. use the Services in a way prohibited by law, regulation, governmental order, or decree or by this Agreement;

. use the Services in any manner that could damage, disable, overburden, or impair any ConSynSys service, or the network(s) connected to any ConSynSys service;

. use the Services to violate the rights of others;

. use the Services to try to gain unauthorized access to or disrupt any service, device, data, account or network;

. use the Services to spam or distribute malware;

. use the Services in a way that could harm the Services or impair anyone else's use of;

. engage in activity that is fraudulent, false or misleading (e.g., asking for money under false pretenses, impersonating someone else, manipulating the Services to increase play count, or affect rankings, ratings, or comments).

. scrape, build databases or otherwise create copies of any data accessed or obtained using the Services (including end users or their contacts), except as necessary to enable an intended usage scenario for your application;

. use the Services in any application or situation where failure of the Services could lead to the death or serious bodily injury of any person, or to severe physical or environmental damage; or

. help others break these rules.

b.   Updates. Unless ConSynSys otherwise specifies, ConSynSys may make commercially reasonable changes to a Service or feature from time to time. ConSynSys may further modify or terminate a Service in any country where ConSynSys is subject to a government regulation, obligation or other requirement that (1) is not generally applicable to businesses operating there, (2) presents a hardship for ConSynSys to continue operating the Service without modification, or (3) causes ConSynSys to believe these terms or the Service may conflict with any such requirement or obligation.

c.   Preview features. We may make features available on a Preview basis. Previews are provided "AS-IS" and are excluded from warranties in Section 7 below. Previews may be subject to reduced or different security, compliance, privacy, availability, reliability, and support commitments, as further explained in the Privacy Statement, and any additional notices provided with the Preview. We may change or discontinue Previews at any time without notice. We also may choose not to release a Preview into "General Availability", and if we do make Previews "Generally Available" we may charge for any such features.

3.   Software and ConSynSys Content

a.   Using ConSynSys Software and ConSynSys Content outside the Service. ConSynSys may provide you with ConSynSys Software or ConSynSys Content through or as a part of the Services. Termination or suspension of this Agreement or of your use or access to the Services terminates your right to possess or use any such ConSynSys Software or ConSynSys Content unless separately licensed to you. The suspension or termination of a User Plan terminates that user's right to possess or use any such ConSynSys Software or ConSynSys Content associated with, or contingent upon that User Plan. You must delete all copies of such ConSynSys Software or ConSynSys Content licensed under this Agreement and destroy any associated media upon the termination of the associated possession or usage rights. This subsection (a) does not apply to ConSynSys Software addressed in subsection (b) below.

b.   Software and Content on Documentation Portals. Third-party software and Content accessible on the Documentation Portals is made available by the designated publisher under the associated license terms.

c.   Scope of rights. All ConSynSys Software and ConSynSys Content are licensed, not sold, and may not be transferred without ConSynSys's prior written consent.

d.   Third-party software or Content. The Services do include access to and communication with third party software that is permitted onto the Platform by us. Your communications with such third party software must be routed through the Platform and be subject to the Platform's security framework. You are solely responsible for any other third-party software or Content that you install, connect, or use with any Service. Such other third party software or Content may not be routed through the ConSynSys EDGE device. We will not run or make any copies of such third-party software or Content outside of our relationship with you. You may only install or use any third-party software or Content with any Service in a way that does not subject our intellectual property or technology to any terms governing such software or Content. We are not a party to and are not bound by any terms governing your use of any third-party software or Content. We do not grant any licenses or rights, express or implied, to such third-party software or Content.

e.   Open source software as part of the Service. If the Service uses or distributes any third-party software with open source software license terms ("**Open Source**"), then such Open Source is licensed to you under the applicable open source terms. Copies of those applicable Open Source licenses and any other notices, if any, are included for your information only.

4.   Security and privacy

a.   Security. We maintain technical and organizational measures, internal controls, and data security routines intended to protect User Data against accidental loss or change, unauthorized disclosure or access, or unlawful destruction.

b.   **Compliance with applicable laws; deletion of Personal Data.**

  i. You must comply with all laws and regulations applicable to your use of the Services and all data and Content accessed through the Services including without limitation, laws related to privacy, biometric data, data protection, and confidentiality of communications.

  ii. Your use of the Services and Content is conditioned upon implementing and maintaining appropriate protections and measures for your service and application, and that includes your responsibility to the data obtained through the use of the Services.

  iii. You must: (a) implement and maintain privacy protections and measures in your products and services, including obtaining necessary consents prior to use of data (and obtain additional consent prior to changing use or purpose of data), and proper data retention periods, (b) comply with applicable notification requirements, (c) maintain and comply with a written privacy policy that describes your privacy practices regarding data and information you collect and use, and which is at least as protective of users as the Privacy Statement, (d) include an accessible link to your privacy policy within your application, and in any app store that so allows, and (e) obtain consent from end users that is sufficient for the purposes of your agreement with the end user prior to giving us information that you independently collected from them.

  iv. In addition to complying with your obligations under applicable law (including General Data Protection Regulation (GDPR) (EU) 2016/679) you will use current data. You may keep your data current by regularly refreshing the data, interfacing with a ConSynSys API or other processes that ensure changes to ConSynSys data are accurately reflected.

  v. Except as otherwise set forth herein, you will promptly delete all data and Content collected or processed through the Services, when: (a) a user abandons your application, uninstalls your application, closes their account with you, or otherwise abandons the account, or (b) you cease use of the Services. You may, however, keep aggregated data, provided that no information identifying a specific person could be inferred or created from such data and such actions otherwise comply with this Agreement and applicable law.

  vi. Unless you have a lawful basis for retaining Personal Data (as defined in the GDPR), you must delete all Personal Data accessed or processed through the Services within 30 days of receiving the data.

c.   **Compliance with law.** We will comply with all laws applicable to our provision of the Services, including applicable security breach notification laws, but not including any laws applicable to you or your industry that are not generally applicable to information technology services providers. You will comply with all laws applicable to your user data, and use of the Services, including any laws applicable to you or your industry.

d.   **Certifications and compliance.** The Developer Services shall be subject to any security, privacy, and compliance practices specifically described for the Developer Services. These obligations do not apply to any other elements of the Services.

e.   **Monitoring; Audit**. We may monitor your access and use of the Services (including applicable products and services, website, Content, and data) for purposes of monitoring your compliance with this Agreement. Further, your access and use of the Services and for five years after, you must, upon reasonable notice from ConSynSys, permit ConSynSys or its auditor, at ConSynSys's cost, to conduct audits in connection with your use of the Services, to verify that your compliance with this Agreement. You must give ConSynSys reasonable access to any personnel, premises, information, systems, books, and records relating to your use of the Services to enable ConSynSys to conduct the audit. If requested, you must provide us with proof of your compliance with this Agreement.

5.   Customer accounts, customer conduct, and feedback

a.   **Your conduct and the availability of third-party content and links to third-party content.** We have no obligation to monitor the content and communications of third parties on the Services; however, we reserve the right to review and remove any such materials posted to the Documentation Portals in our sole discretion. Third parties that participate on the Services are not authorized ConSynSys spokespersons, and their views do not necessarily reflect those of ConSynSys.

b.   **Submissions and feedback**. We do not claim ownership of any Submission unless otherwise agreed to by the parties. However, by providing a Submission, you are irrevocably granting ConSynSys and its affiliates the right to make, use, modify, distribute and otherwise commercialize the Submission in any way and for any purpose (including by granting the general public the right to use your Submissions in accordance with this Agreement, which may change over time). For Submissions provided to the Documentation Portals, you further grant the right to publish specific identifying information detailed in the Privacy Statement in connection with your Submission. These rights are granted under all applicable intellectual property rights you own or control. No compensation will be paid with respect to the use of your Submissions. ConSynSys is under no obligation to post or use any Submission, and ConSynSys may remove any Submission at any time. By providing a Submission, you warrant that you own or otherwise control all of the rights to your Submission and that your Submission is not subject to any rights of a third-party (including any personality or publicity rights of any person).

6.   Termination and suspension

a.   **Your termination**. You may terminate this Agreement at any time. If you have purchased access to Services , then you must pay any amounts due and owing as of termination.

b.   **ConSynSys termination**. We may terminate this Agreement, any rights granted herein, or your license to the Services, in our sole discretion at any time, for any reason.

Suspension. We may suspend or terminate your use of the Services if: (1) reasonably needed to prevent unauthorized access to User Data; (2) you fail to respond to a claim of alleged infringement within a reasonable time; or (3) you violate, or we reasonably suspect you have violated, this Agreement. We will attempt to suspend access to the minimum necessary part of the Services while the condition or need exists. We will give notice before we suspend or terminate, except where we reasonably believe we need to suspend or terminate immediately. If you do not fully address the reasons for the suspension within 60 days after we suspend, we may terminate this Agreement and delete your User Data without any retention period.

c.   **Termination for non-usage**. We may suspend or terminate a Service account after a prolonged period of inactivity or for failing to respond to ConSynSys communications. For Services, if you have a free account we may terminate this Agreement and/or delete any User Data automatically generated during the Services sign up process if you fail to upload or create any User Data within 90 days of your initial provisioning of the Service. We will provide you with notice prior to any account suspension or termination, or User Data deletion.

d.   **Your data post-termination.** We do not access, copy or maintain your data, and have no obligation to transfer any data back to you at, prior to or after termination.

7.   Warranties

a.   No warranties. EXCEPT AS WARRANTED IN ACCOMPANYING TERMS, CONSYNSYS AND ITS RESPECTIVE AFFILIATES AND SUPPLIERS PROVIDE THE SERVICES (INCLUDING THE CONSYNSYS CONTENT AND CONSYNSYS SOFTWARE) "AS IS," "WITH ALL FAULTS" AND "AS AVAILABLE." YOU BEAR THE RISK OF USING IT. WE PROVIDE NO WARRANTIES, GUARANTEES OR CONDITIONS, WHETHER EXPRESS, IMPLIED, STATUTORY, OR OTHERWISE, INCLUDING WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT. YOU MAY HAVE ADDITIONAL RIGHTS UNDER YOUR LOCAL LAWS WHICH THIS AGREEMENT CANNOT CHANGE. THESE DISCLAIMERS WILL APPLY TO THE FULLEST EXTENT PERMITTED UNDER APPLICABLE LAW, INCLUDING APPLICATION TO THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT.

b.   Third-party content and materials. CONSYNSYS DOES NOT CONTROL, REVIEW, REVISE, ENDORSE, OR ACCEPT RESPONSIBILITY FOR ANY THIRD-PARTY CONTENT, INFORMATION, MESSAGES, MATERIALS, PROJECTS ACCESSIBLE FROM OR LINKED THROUGH THE SERVICES, AND, EXCEPT AS WARRANTED IN A SEPARATE AGREEMENT, CONSYNSYS MAKES NO REPRESENTATIONS OR WARRANTIES WHATSOEVER ABOUT AND SHALL NOT BE RESPONSIBLE FOR ANY OF THE FOREGOING. ANY DEALINGS YOU MAY HAVE WITH SUCH THIRD PARTIES ARE AT YOUR OWN RISK.

8.   Defense of claims

a.   **Defense**. We will defend you against any claims made by an unaffiliated third-party that the Services or Software infringe its patent, copyright or trademark or makes unlawful use of its trade secret. You will defend us against any claims made by an unaffiliated third-party arising from (1) your misuse or your end user's misuse of the Services, ConSynSys Content, or ConSynSys Software; (2) your violation or your end user's violation of this Agreement; (3) any Content or data routed into or used with the Services, those acting on your behalf, or your end users.

b.   **Limitations**. Our obligations in Section 8(a) will not apply to a claim or award based on: (i) User Data, Non-ConSynSys Product, modifications you make to the Services, or materials you provide or make available as part of using the Services; (ii) your combination of the Services with, or damages based upon the value of, a Non-ConSynSys Product, data or business process; (iii) your use of a ConSynSys trademark without our express written consent, or your use of the Services after we notify you to stop due to a third-party claim; or (iv) your redistribution of the Services to, or use for the benefit of, any unaffiliated third-party.

c.   **Remedies**. If we reasonably believe that a claim under Section 8(a) may bar your use of the Services or Software, we will seek to: (i) obtain the right for you to keep using it; or (ii) modify or replace it with a functional equivalent. If these options are not commercially reasonable, we may terminate your rights to use the Services or Software.

d.   **Obligations**. Each party must notify the other promptly of a claim under this Section 8. The party seeking protection must (i) give the other sole control over the defense and settlement of the claim; and (ii) give reasonable help in defending the claim. The party providing the protection will (iii) reimburse the other for reasonable out-of-pocket expenses that it incurs in giving that help and (iv) pay the amount of any resulting adverse final judgment (or settlement that the other consents to). The parties' respective rights to defense and payment of judgments or settlements under this Section 8 are in lieu of any common law or statutory indemnification rights or analogous rights, and each party waives such common law rights.

9.   Limitation of liability

a.   **Limitation.** The aggregate liability of each party under this Agreement is limited to direct damages up to the amount paid under this Agreement for the Developer Services giving rise to that liability during the 12 months before the liability arose, or for Services provided free of charge, Five Hundred United States dollars ($500.00 USD).

b.   **Exclusion. NEITHER PARTY, NOR ITS SUPPLIERS WILL BE LIABLE FOR LOSS OF REVENUE, LOST PROFITS, OR INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL, PUNITIVE, OR EXEMPLARY DAMAGES, EVEN IF THE PARTY KNEW THEY WERE POSSIBLE.**

c.   **Exceptions to Limitations.** The limits of liability in this Section 9 apply to the fullest extent permitted by applicable law, but do not apply to: (i) the parties' obligations under Section 8; or (ii) breach of Sections 3(b) to 3(d) or violation of the other's intellectual property rights.

10. Miscellaneous

a.   **Reservation of Rights**. All rights not expressly granted herein are reserved by ConSynSys. You acknowledge that all intellectual property rights within the Services remain the property of ConSynSys and nothing within this Agreement will act to transfer any of these intellectual property rights to you.

b.   **Notices**. You must send notices by mail to: ConSynSys, 1771 South Sutro Terrace, Carson City, Nevada, 89706, USA.

You agree to receive electronic notices from us related to the Services, which will be sent by email to your specified end user or administrator contact information or presented to you in the Service experience. You must keep your contact information updated. Notices are effective on the date on the return receipt for mail, the date sent for email, and the date presented if within the Service experience.

c.   **Assignment and Delegation**. You may not assign or delegate any rights or obligations under this Agreement either in whole or in part, including in connection with a change of control. Any purported assignment and delegation by you shall be ineffective. We may freely assign or delegate all rights and obligations under this Agreement, fully or partially, without notice to you.

d.   **Severability**. If any part of this agreement is held unenforceable, the rest remains in full force and effect.

e.   **No Waiver**. Failure to enforce any provision of this agreement will not constitute a waiver.

f.   **No agency**. We are independent contractors. This agreement does not create an agency, partnership or joint venture.

g.   **No third-party beneficiaries**. There are no third-party beneficiaries to this agreement.

h.   **Applicable law and venue**. If you live in (or, if a business, your principal place of business is in) the United States, the laws of the state where you live (or, if a business, where your principal place of business is located) govern all claims, regardless of conflict of laws principles, except that the Federal Arbitration Act governs all provisions relating to arbitration. You and we irrevocably consent to the exclusive jurisdiction and venue of the state or federal courts in Carson City, Nevada, for all disputes arising out of or relating to these Terms or the Services that are heard in court (excluding arbitration and small claims court).

i.   **Entire agreement**. This agreement is the entire agreement concerning its subject matter and supersedes any prior or concurrent communications.

j.   **Survival**. <u>Sections 2(b)</u>, <u>3(b)–(e)</u>, <u>4(b)</u>, <u>4(e)</u>, <u>5(b)</u>, <u>6</u>, <u>7</u>, <u>8</u>, <u>9</u>, and <u>10</u>, and all definitions used therein, shall survive the termination or expiration of this Agreement.

k.   **U.S. export jurisdiction**. The Services are subject to U.S. export jurisdiction. You must comply with all applicable laws, including the U.S. Export Administration Regulations, the International Traffic in Arms Regulations, and end–user, end–use and destination restrictions issued by U.S. and other governments.

l.   **International availability**. Availability of the Services, including specific features and language versions, varies by country.

m.   **Force majeure**. Neither party will be liable for any failure in performance due to causes beyond its reasonable control (such as fire, explosion, power blackout, earthquake, flood, severe storms, strike, embargo, labor disputes, acts of civil or military authority, war, terrorism including cyber terrorism), acts of God, epidemic or pandemic, acts or omissions of Internet traffic carriers, actions or omissions of regulatory or governmental bodies (including the passage of laws or regulations or other acts of government that impact the delivery of Services). Notwithstanding the foregoing, if you are paying form the Services, in no event will ConSynSys be required to provide the Services where you are not paying for them.

n.   **Modifications**. We may modify this agreement at any time with or without individual notice to you by posting a revised version on the "Legal" page of our website, or by notifying you in accordance with <u>Section 10.b</u>. Any modifications will be effective upon notice to you or posting. Your use of the Services after the changes become effective means you agree to the modifications to the Agreement. If you do not agree to the new Agreement, you must stop using the Services.

11.   Definitions

"**ConSynSys Content**" means Content on the Services provided by ConSynSys and its suppliers.

"**ConSynSys Software**" means ConSynSys software and computer code, including sample code and Developer Software.

"**Content**" means documents, photographs, videos, data, and other graphical, textual, or audio–visual content.

"**Developer Services**" means services we identify as governed by this Agreement.

"**Developer Software**" means ConSynSys software we provide to you as part of the Developer Services for use with the Developer Services.

"**Documentation Portals**" means the site available at http://msdn.ConSynSys.com, http://technet.ConSynSys.com, /, https://developer.ConSynSys.com, or at alternate sites we identify.

"**Non-ConSynSys Product**" is any software, data, service, website or other product licensed, sold or otherwise provided to you by an entity other than us, whether you obtained it via our Services or elsewhere.

"**Offer Details**" means the pricing and related terms applicable to paid Developer Services.

"**Platform**" means ConSynSys's proprietary ProCaaSo™ software platform.

"**Preview**" means preview, beta, or other pre-release versions of the Developer Services or Developer Software offered by ConSynSys.

"**Services**" means the Developer Services, Documentation Portals, and ConSynSys Software we make available to you under this Agreement.

"**Submissions**" means Content, code, comments, feedback, suggestions, information or materials that you provide via the Documentation Portals or any Services for public access (rather than for your personal use or use by your authorized users). Submissions do not include User Data.

"**User Plan**" means a per-user based subscription, trial, or other ConSynSys granted benefit that permits access to and account services for the Developer Services.

"**we**" and "**us**" means ConSynSys.

"**you**" and "**your**" means the person or entity accepting this Agreement to use the Services.