

**Aconex (North America) Inc.**

**Company Address:** 1111 Bayhill Drive, Suite 480, San Bruno, CA 94066

**Company Website:** www.aconex.com

**Carahsoft Rider to Manufacturer End User License Agreements  
(for U.S. Government End Users)**

- 1. Scope.** This Carahsoft Rider and the Manufacturer End User License Agreement (EULA) establish the terms and conditions enabling Carahsoft to provide Software and Services to U.S. Government agencies (the "Client" or "Licensee").
- 2. Applicability.** The terms and conditions in the attached Manufacturer EULA (<https://us1.aconex.com/TermsOfService?action=view&termsOfServiceId=1207959660>) are hereby incorporated by reference to the extent that they are consistent with Federal Law (e.g., the Anti-Deficiency Act (31 U.S.C. § 1341(a)(1)(B)), the Contracts Disputes Act of 1978 (41 U.S.C. § 601-613), the Prompt Payment Act, the Anti-Assignment statutes (31 U.S.C. § 3727 and 41 § U.S.C. 15), 28 U.S.C. § 516 (Conduct of Litigation Reserved to Department of Justice (DOJ), and 28 U.S.C. § 1498 (Patent and copyright cases)). To the extent the terms and conditions in the Manufacturer's EULA are inconsistent with the Federal Law (*See FAR 12.212(a)*), they shall be deemed deleted and unenforceable under any resultant orders under Carahsoft's contract #GS-35F-0119Y, including, but not limited to the following:

  - (a) Contracting Parties.** The Government customer (Licensee) is the "Ordering Activity", "defined as an entity authorized to order under GSA contracts as set forth in GSA ORDER 4800.2G ADM, as may be revised from time to time. The Licensee cannot be an individual because any implication of individual licensing triggers the requirements for legal review by Federal Employee unions. Conversely, because of competition rules, the contractor must be defined as a single entity even if the contractor is part of a corporate group. The Government cannot contract with the group, or in the alternative with a set of contracting parties.
  - (b) Changes to Work and Delays.** Subject to GSAR Clause 552.243-72, Modifications (Federal Supply Schedule) (July 200 0) (Deviation I 2010) (AUG 1987), and 52.212 -4 (f) Excusable delays. (JUN 2010) regarding which the GSAR and the FAR provisions shall take precedence.
  - (c) Contract Formation.** Subject to FAR Sections 1.601(a) and 43.102, the Government Order must be signed by a duly warranted contracting officer, in writing. The same requirement applies to contract modifications affecting the rights of the parties. All terms and conditions intended to bind the Government must be included within the contract signed by the Government.
  - (d) Audit.** During the term of this Agreement: (a) If Ordering Activity's security requirements included in the Order are met, Manufacturer or its designated agent may audit Ordering Activity's facilities and records to verify Ordering Activity's compliance with this Agreement. Any such audit will take place only during Ordering Activity's normal business hours contingent upon prior written notice and adherence to any security measures the Ordering Activity deems appropriate, including any requirements for personnel to be cleared prior to

accessing sensitive facilities. Carahsoft on behalf of the Manufacturer will give Ordering Activity written notice of any non-compliance, including the number of underreported Units of Software or Services ("Notice"); or (b) If Ordering Activity's security requirements are not met and upon Manufacturer's request, Ordering Activity will run a self-assessment with tools provided by and at the direction of Manufacturer ("Self-Assessment") to verify Ordering Activity's compliance with this Agreement.

- (e) **Termination.** Clauses in the Manufacturer EULA referencing termination or cancellation the Manufacturer's EULA are hereby deemed to be deleted. Termination shall be governed by the FAR 52.212-4 and the Contract Disputes Act, 41 U.S.C. §§ 601-613, subject to the following exceptions:

Carahsoft may request cancellation or termination of the License Agreement on behalf of the Manufacturer if such remedy is granted to it after conclusion of the Contracts Disputes Act dispute resolutions process referenced in Section Q below or if such remedy is otherwise ordered by a United States Federal Court..

- (f) **Consent to Government Law / Consent to Jurisdiction.** Subject to the Contracts Disputes Act of 1978 (41. U.S.C §§ 7101-7109) and Federal Tort Claims Act (28 U.S.C. §1346(b)). The validity, interpretation and enforcement of this Rider will be governed by and construed in accordance with the laws of the United States. In the event the Uniform Computer Information Transactions Act (UCITA) or any similar federal laws or regulations are enacted, to the extent allowed by law, it will not apply to this Agreement, and the governing law will remain as if such law or regulation had not been enacted. All clauses in the Manufacturer EULA referencing equitable remedies are deemed not applicable to the Government order and are therefore deemed to be deleted.
- (g) **Force Majeure.** Subject to FAR 52.212 -4 (f) Excusable delays. (JUN 2010). Unilateral Termination by the Contractor does not apply to a Government order and all clauses in the Manufacturer EULA referencing unilateral termination rights of the Manufacturer are hereby deemed to be deleted.
- (h) **Assignment.** All clauses regarding Assignment are subject to FAR Clause 52.232-23, Assignment of Claims (JAN 1986) and FAR 42.12 Novation and Change-of-Name Agreements, and all clauses governing Assignment in the Manufacturer EULA are hereby deemed to be deleted.
- (i) **Waiver of Jury Trial.** All clauses referencing waiver of Jury Trial are subject to FAR Clause 52.233-1, Disputes (JUL. 2002), and all clauses governing waiver of jury trial in the Manufacturer EULA are hereby deemed to be deleted.
- (j) **Customer Indemnities.** All Manufacturer EULA clauses referencing Customer Indemnities are hereby deemed to be deleted.
- (k) **Contractor Indemnities.** All Manufacturer EULA clauses that (1) violate DOJ's right (28 U.S.C. 516) to represent the Government in any case and/or (2) require that the Government give sole control over the litigation and/or settlement, are hereby deemed to be deleted.

- (l) **Renewals.** All Manufacturer EULA clauses that violate the Anti-Deficiency Act (31 U.S.C. 1341, 41 U.S.C. 11) ban on automatic renewal are hereby deemed to be deleted.
- (m) **Future Fees or Penalties.** All Manufacturer EULA clauses that violate the Anti-Deficiency Act (31 U.S.C. 1341, 41 U.S.C. 11), which prohibits the Government from paying any fees or penalties beyond the Contract amount, unless specifically authorized by existing statutes, such as the Prompt Payment Act, or Equal Access To Justice Act 31 U.S.C. 3901, 5 U.S.C. 504 are hereby deemed to be deleted.
- (n) **Taxes.** Taxes are subject to FAR 52.212-4(k), which provides that the contract price includes all federal, state, local taxes and duties.
- (o) **Third Party Terms.** Subject to the actual language agreed to in the Order by the Contracting Officer. Any third party manufacturer will be brought into the negotiation, or the components acquired separately under Federally-compatible agreements, if any. Contractor indemnities do not constitute effective migration.
- (p) **Installation and Use of the Software.** Installation and use of the software shall be in accordance with the Rider and Manufacturer EULA, unless an Ordering Activity determines that it requires different terms of use and Manufacturer agrees in writing to such terms in a valid task order placed pursuant to the Government contract.
- (q) **Dispute Resolution and Venue.** Any disputes relating to the Manufacturer EULA and to this Rider shall be resolved in accordance with the FAR, and the Contract Disputes Act, 41 U.S.C. §§ 7101-7109. The Ordering Activity expressly acknowledges that Carahsoft, on behalf of the Manufacturer, shall have standing to bring such claim under the Contract Disputes Act.
- (r) **Limitation of Liability: Subject to the following:**
- Carahsoft, Manufacturer and Ordering Activity shall not be liable for any indirect, incidental, special, or consequential damages, or any loss of profits, revenue, data, or data use. Further, Carahsoft, Manufacturer and Ordering Activity shall not be liable for punitive damages except to the extent this limitation is prohibited by applicable law. This clause shall not impair the U.S. Government's right to recover for fraud or crimes arising out of or related to this Government Contract under any federal fraud statute, including the False Claims Act, 31 U.S.C. §§ 3729-3733.
- (s) **Advertisements and Endorsements.** Unless specifically authorized by an Ordering Activity in writing, such use of the name or logo of any U.S. Government entity is prohibited.
- (t) **Public Access to Information.** Manufacturer agrees that the EULA and this Rider contain no confidential or proprietary information and acknowledges the EULA and this Rider will be available to the public.
- (u) **Confidentiality.** Any provisions that require the Licensee to keep certain information confidential are subject to the Freedom of Information Act, 5 U.S.C. §552, and any order by a United

# ACONEX TERMS OF SERVICE AGREEMENT (AMERICAS)

All users of Aconex's cloud-based, collaborative project management and document management software platform and associated services (as more particularly described below, collectively, the "Services") must review and accept this Terms of Service Agreement ("Agreement") prior to using such Services. As more particularly specified in this Agreement, users of the Services are divided into two categories, Paying Organizations and Non-Paying Organizations. A "Paying Organization" is an individual or entity that has executed an Aconex Services Order (defined below) and is responsible for paying fees to Aconex for use of the Services. A "Non-Paying Organization" is an individual or entity that has been invited by a Paying Organization to use the Services in connection with a collaborative project. Some provisions of this Agreement apply only to Paying Organizations, some provisions apply only to Non-Paying Organizations. As a result, this Agreement has been separated into two parts that contain those provisions applicable to Paying Organizations and those applicable to Non-Paying Organizations. If you are unsure whether you or your organization is a Paying or Non-Paying Organization, or you have other questions about this Agreement, please contact Aconex's Legal Department by either calling 1-888-5-ACONEX within North America or by sending an email addressed to [legal@aconex.com](mailto:legal@aconex.com) (worldwide), prior to using the Services. You and the organization you are representing (hereinafter collectively, "you" or "Client") may not use the Services without first accepting this Agreement. Your organization's acceptance will be deemed to occur on the earlier of the following events: (a) if your organization is a Paying Organization, upon its execution of the applicable Services Order, (b) your clicking the online "Accept" button below, or (c) your organization's use of the Services. You should print or otherwise save a copy of this Agreement for your records.

**Irrespective of whether an Aconex customer is a Paying Organization or a Non-Paying Organization, Aconex's policy is to provide equal rights and protections with respect to the data that is uploaded or stored by such customer in connection with their use of the Services.**

As more particularly described below, the following protections are provided by Aconex to Paying Organizations and Non-Paying Organizations alike:

- Ownership rights do not change when data is uploaded and stored on Aconex-controlled systems, and any such data will be treated confidentially by Aconex.
- Aconex will, in all cases, provide at least 14 days notice before terminating the Services, to allow the individual or organization to preserve continuity of access to the Services, such as to enable a Non-Paying Organization to become a Paying Organization, or by allowing an organization to purchase data archive services or a copy of their data from Aconex.
- Upon termination of the Services, Aconex will retain an organization's data for a minimum of 12 calendar months from the date of termination ("Retention Period"). During the Retention Period, the individual or organization may purchase data archive services or a copy of their data from Aconex.
- Aconex will use commercially reasonable efforts to limit Platform Downtime to less than sixty-six (66) minutes during either Business Hours or After Hours (each defined below).

**The following provisions operate differently depending on whether Client is a Paying Organization or a Non-Paying Organization. As more particularly defined below, Client is a Paying Organization in connection with a particular Project when it has executed an Aconex Services Order in connection with that Project, or has otherwise committed to paying fees to Aconex for the Services delivered in connection with that Project. Please note that a particular organization may be a Paying Organization on one project, and a Non-Paying Organization on another.**

## PROVISIONS APPLICABLE TO PAYING ORGANIZATIONS

### 1. DEFINITIONS

The capitalized terms set forth below shall have the following meanings for the purposes of this Agreement:

- 1.1. "Acceptable Use Policy"** means the Aconex Acceptable Use Policy applicable to the Services, which is available for

review and download on the Platform login page and the Aconex corporate web site.

- 1.2. **"Aconex"** means the Aconex-affiliated entity specified on the Services Order or if none, Aconex (North America) Inc., a company incorporated in the State of New York, and, unless expressly included in the Agreement, excludes any Aconex Affiliates.
- 1.3. **"Aconex Affiliate"** means (a) Aconex Limited (ABN 49 091 376 091), a company incorporated in Australia; (b) any entity controlling or controlled by Aconex Limited; and (c) any entity under common control with Aconex Limited, for so long as such common control continues to exist, where control means ownership either directly or indirectly of not less than 50% of the voting shares.
- 1.4. **"Aconex Reseller"** means an entity authorized by Aconex to market, sell, offer or deliver some or all of the Services.
- 1.5. **"Business Day"** means a day that is not a Saturday, Sunday or holiday observed by Aconex in the United States.
- 1.6. **"Client Data"** means data related to a Project that the Paying Organization uploads to or transmits via the Platform and includes first level metadata (such as the time, date, distribution parties relating to a specific document or item of correspondence on any Hosted Platform) but excludes secondary metadata (such as the structure of database tables within the Platform code and folder structures established on the Platform).
- 1.7. **"Confidential Information"** means any non-public information disclosed by either Party to the other Party in writing pursuant to this Agreement, which is designated as "confidential" or "proprietary" (or with a similar legend), or that is disclosed orally and confirmed in writing as confidential within a reasonable time. Even if not so marked, the Parties agree that Client Data, any non-public components of the Platform and Services, and the terms of this Agreement (including, without limitation, any Services Order) are Confidential Information.
- 1.8. **"Data Archive"** means the Optional Services Aconex offers relating to the continued preservation and access to Client Data following termination of a Project or termination of Services, as described in Sections 3.2.1 and 3.2.2.
- 1.9. **"Effective Date"** means the earlier of the date the Paying Organization accepts this Agreement or the date stipulated in the Services Order.
- 1.10. **"Fees"** means the amounts(s) payable by a Paying Organization to Aconex pursuant to this Agreement for all the Paying Organization's and all Non-Paying Organizations' access to and use of the Services with respect to a Project, as specified in the applicable Services Order and this Agreement. Fees may be payable on a one time basis (e.g., implementation fees for configuring and deploying the Services or a lump sum payable in advance use of the Services) or on a recurring basis (e.g., monthly or other periodic fees for use of the Services), or any other basis agreed upon in writing by Aconex and the Paying Organization.
- 1.11. **"Force Majeure Event"** means any forces of nature, disruptions to the internet infrastructure, public bandwidth shortages, industrial action, acts of terrorism, protests, riots, civil commotion, fire, explosion, flood, epidemics, lock-outs, strikes and action or inaction by a government agency (including any quasi-government agency) which causes a Party to be prevented or delayed in performing its obligations.
- 1.12. **"Intellectual Property Rights"** means patents, copyrights, trademarks, trade secrets, and all other proprietary rights recognized in any jurisdiction worldwide, and all applications and registrations therefore.
- 1.13. **"Materials"** means all manuals, data, documents, and information that are prepared, written, made accessible, provided or developed by Aconex or its licensors in connection with the Services, including help desk and technical support documentation.
- 1.14. **"Monthly Fee"** means the monthly Fee(s) for Services as specified in any Services Order. If (a) the Fees for any Services are partly or fully payable up front, or (b) the Fee(s) for any Services are partly or fully payable on a periodic basis other than monthly, then in both cases Monthly Fee means the amount calculated by dividing the total Fees by the number of months covered by the Services Order.
- 1.15. **"Non-Paying Organization"** means any organization that is invited and/or authorized by the Paying Organization to use the Services with respect to a Project by the Paying Organization, has accepted this Agreement and is not required under a Services Order to pay Aconex or an Aconex Reseller for access to and use of the Services.
- 1.16. **"Optional Services"** means the services specified in Section 3.2.
- 1.17. **"Party"** means either Aconex or the Paying Organization as the context dictates, and "Parties" means Aconex and the Paying Organization, as the context dictates.
- 1.18. **"Paying Organization"** means the entity specified as the contracting party (other than Aconex) in a Services Order, or if no Services Order was executed, the entity delivering a purchase order for Services, as described in Section 18.12.
- 1.19. **"Platform"** means the object code version of the computer software application(s) owned by or licensed to Aconex that is made available by Aconex or its agents to Paying and Non-Paying Organizations in connection with this Agreement, together with any associated Materials. The Platform also includes any upgrades, improvements, bug fixes, new versions and/or derivative works of such software or Materials.
- 1.20. **"Platform License"** means each license to access and use the Platform granted to the Paying Organization under this Agreement.



- 1.21. **"Price List"** means Aconex's standard price list for Services provided directly to its customers, as may be changed from time to time at Aconex's discretion and which is available from Aconex.
- 1.22. **"Privacy Policy"** means the Aconex Privacy Policy, which is applicable to data received by Aconex from Aconex customers and users of its web sites, and which is available for review and download on the Platform login page and the Aconex corporate web site.
- 1.23. **"Project"** means the collaborative project identified by the Paying Organization in the Services Order, subject to the scope and/or any other limitations specified in such Services Order
- 1.24. **"PST"** means Pacific Standard Time.
- 1.25. **"Services Order"** means an Aconex-approved order form with respect to a Project that is executed by Aconex or an Aconex Reseller and a Paying Organization that relates to the provision of the Platform and Services by Aconex or its agents to the Paying Organization and all Non-Paying Organizations under this Agreement. Each Services Order is incorporated into this Agreement by this reference. Notwithstanding the foregoing, the Services Order may also form a separate agreement between a Paying Organization and an Aconex Reseller, e.g., with respect to payment terms, etc. ("Extraneous Terms"). Extraneous Terms are not incorporated into this Agreement.
- 1.26. **"Services"** means the Platform and the associated services described in Section 3.

## 2. TERM

Unless otherwise specified in a Services Order, the term of Services applicable to a Project will be tied to the duration of the Project. The term of Services applicable to a Project commences upon the Paying Organization's execution of the Services Order, or equivalent commitment delivered in the manner specified in Section 18.12. Unless terminated earlier by either Party as permitted under this Agreement, the Service term applicable to a Project will expire upon the earlier of the completion or termination of the Project, or in accordance with the terms of the Services Order. Notwithstanding the foregoing, in the event that Client purchases online data archive Services described in Section 3.2.1, then the term of this Agreement shall be extended for the duration of Client's receipt of such Services.

## 3. SERVICES

- 3.1. **Standard Services and Delivery Schedule.** In consideration of the Paying Organization's timely payment of all applicable Fees and compliance with the terms and conditions of this Agreement, Aconex will, during the applicable service term, provide the Paying Organization and all Non-Paying Organizations with those of the following Services ("Standard Services") as are specified in the Services Order, pursuant to the terms and conditions of this Agreement. Optional Services may also be requested from Aconex, which if accepted by Aconex, will be subject to the payment of additional Fees and may be subject to a separate Services Order, at Aconex's option. Aconex will use commercially reasonable efforts to provide the Services according to any schedule agreed in the Services Order.
  - 3.1.1. **Platform License.** A non-exclusive, non-transferable, restricted Platform License for the term specified in Section 2, to access and use the functionality available within the modules of the Platform expressly included in the Services Order (subject to any restrictions specified in the Services Order) solely in support of the Project, within the scope specified in the Services Order, and in accordance with and subject to any specifications set forth in the Materials.
  - 3.1.2. **Hosting Services.** Making the Platform available for use via the public Internet, including unlimited data transmission by the Paying Organization and all Non-Paying Organizations to and from the Platform (subject to limitations set out in the Acceptable Use Policy), and unlimited storage of Client Data related to the Project during the applicable term of Services.
  - 3.1.3. **Implementation Services.** One or more group sessions with key stakeholders (designated by the Paying Organization, acting reasonably and taking into account Aconex's suggestions) who have primary responsibility for the success of the Project, or their designees, to define critical parameters for use of the Services, resulting in the preparation of a "Project Instruction" document which summarizes how the Paying Organization and all Non-Paying Organizations should use the Platform with respect to the Project, and includes guidelines for establishing appropriate Project processes such as document numbering conventions and version control rules.
  - 3.1.4. **Training Services.** The provision of one-to-many training modules delivered over the Internet or at a designated site, which site must be approved by Aconex in advance. In the event that Client requests that training be provided at a designated site (other than Aconex's offices) and Aconex agrees, the Paying Organization will reimburse Aconex for its reasonable travel and living expenses actually incurred in delivering such training.
  - 3.1.5. **Maintenance and Support Services.** Email and telephone help desk support provided to designated Paying Organization personnel, to assist the Paying Organization's end users to access and use the Platform on a 24/7 basis, provided in English and any other languages specified in the Services Order. Also included is access to a web-based support center (English only) and maintenance updates and improvements to the Platform.

### **3.2. Optional Services.**

- 3.2.1. Online Data Archive.** Following completion of a Project or termination of Services applicable to a Project, provided that such termination was not attributable to the Paying Organization's material breach, the Paying Organization may purchase a Platform License to access the Platform and use the functionality available on the Platform with respect to a Project in the manner specified in Section 3.1.1, except that the Paying Organization may not: (1) instruct Aconex to grant Non-Paying Organizations access to the Platform with respect to such data; (2) add new users; (3) share, transmit or send such data to other organizations; or (4) use the Platform to collaborate with users outside of the Paying Organization's organization, with respect to such Project.
- 3.2.2. Offline Data Archive.** Following completion of a Project or termination of Services applicable to a Project, provided that such termination was not attributable to the Paying Organization's material breach, the Paying Organization may purchase a copy of the Client Data from the Project specified on the Services Order, on a digital media and in a format that may be viewed using the software applications that created the files that make up the Client Data.
- 3.2.3. Fax line.** Installation and configuration of an inbound and outbound fax capability.
- 3.2.4. Local Copy Services.** A restricted license to use the Aconex local copy utility (Local Copy) for one nominated Paying Organization user. For the duration of the Project, Local Copy will incrementally transmit a copy of the Paying Organization's Client Data to an accessible network location designated by the Paying Organization.
- 3.2.5. Other Services.** Any products or services, other than the Services specified in this Section, that Aconex makes available to its customers for a fee.
- 3.3. Cancelling Services.** Provided that it has complied with Section 6 (Fees) at the date of cancellation, the Paying Organization may cancel the Services specified in a Services Order upon 90 days' prior written notice to Aconex, which notice must be delivered to Aconex within the first 90 days of the initiation of such Services.

### **3.4. The Paying Organization's Responsibilities**

- 3.4.1. Confidentiality of Username and Password.** The Paying Organization is responsible for maintaining the confidentiality of the access credentials (e.g., username and password) used by it and/or its end users to access the Services and agrees that it will not share access credentials among users or disclose those credentials to any third party.
- 3.4.2. Use of Data.** The Paying Organization acknowledges that by transmitting and receiving data to and from the Platform, the Paying Organization is making information available for the use of the other authorized users of the Platform that are participating in the Project ("Project Participants") and the retraction of such information may negatively affect those Project Participants. Aconex may, as a condition to complying with any request to retract or delete data from the Platform, require the Paying Organization to comply with Aconex's reasonable risk mitigation requirements.
- 3.4.3. Other Obligations.** The Paying Organization understands and acknowledges that Aconex's ability to provide the Services is dependent on the Paying Organization and each Non-Paying Organization undertaking any agreed or necessary obligations required to facilitate the delivery of the Services. The Paying Organization acknowledges that failure to perform any such obligations may result in a failure to receive Services, which shall not relieve the Paying Organization of any obligation to pay Fees.

## **4. CLIENT DATA**

- 4.1. Ownership.** The Paying Organization retains all of its right, title and interest in and to its Client Data, and ownership of such Client Data shall not be transferred to Aconex under this Agreement.
- 4.2. Right to Use.** The Paying Organization grants Aconex a nonexclusive license to use Client Data to deliver Services to authorized users of the Platform, solely in connection with the Project. The Paying Organization further grants Aconex a nonexclusive, worldwide, perpetual license to use Platform usage data (such as, by way of example and not by way of limitation, numbers of documents uploaded) in an aggregated form that does not identify individual persons or organizations, in order to compile statistics regarding use of the Services and/or to improve the Services.
- 4.3. Data Archives.** Upon termination of the Services, Aconex will retain the Paying Organization's data for a minimum of 12 calendar months from the date of termination ("Retention Period"). Provided that the termination of Services is not attributable to the Paying Organization's material breach, the Paying Organization may, during the Retention Period, purchase Data Archive services, subject to its payment of fees to Aconex at the rates specified in the Services Order (or if no rates are specified in the Services Order, the fees specified in the Price List). Aconex will not be liable for any damages of any kind in connection with its decision to not retain Client Data after the expiration of the Retention Period.
- 4.4. Warranty regarding Client Data and Use of the Services.** The Paying Organization warrants that (a) it has appropriate and sufficient rights in Client Data, and (b) neither Aconex's use, processing and/or storage of Client Data in accordance with this Agreement nor the Paying Organization's use of Client Data as contemplated hereunder will violate applicable laws or this Agreement. Aconex is not obligated to screen Client Data, although Aconex reserves the right to screen Client Data and to suspend access to Client Data without warning that Aconex reasonably considers may breach this Agreement or any applicable law. Aconex will notify the Paying Organization as soon as practicable if Aconex suspends access to any Client Data and will restore access to such Client Data as soon as, in Aconex's reasonable

opinion, doing so would not place Aconex at risk of loss or damage. Aconex is not liable for any damage or loss caused by Aconex's decision to suspend access to Client Data. The Paying Organization is entirely responsible for the content and delivery of Client Data, including without limitation, the accuracy, usefulness, timeliness and completeness of Client Data. The Paying Organization is responsible for ensuring Client Data is correctly addressed and on-time and does not represent a breach of any obligations to a third party or of law.

## 5. PLATFORM SERVICE CREDITS

The credits specified in the table below are, to the extent permitted by law, the Paying Organization's sole and exclusive remedy with respect to any unavailability of the Platform.

Business Hours		After Hours	
Between 9:00 am and 5:00 pm (PST) Monday to Saturday during a calendar month.		Between 5:00 pm and 9:00 am (PST) Monday to Saturday and 00:00 to 24:00 on Sundays during a calendar month.	
Downtime During Business Hours ("DBH") (minutes)	Credit as a % of the Relevant Monthly Fee	Downtime After Hours ("DAH") (minutes)	Credit as a % of the Relevant Monthly Fee
Less than 66	0%	Less than 66	0%
66 to 668	2%	66 to 668	0%
669 to 1337	5%	669 to 1337	0%
1338 to 4463	8%	1338 to 4463	2%
4464 or greater	12%	4464 or greater	5%

Downtime shall be calculated on a calendar month basis, in accordance with the following 2 formulae:

$$DBH = TDBH - E$$

$$DAH = TDAH - E$$

The following additional terms and conditions apply to this Section: Downtime: Aconex will test the Platform to assess uptime every 3 minutes. "Downtime" means the period beginning at the time the Platform does not give a valid response to 2 consecutive Aconex tests and continues until the Platform returns a valid response. TDBH: "TDBH" means total Downtime during Business Hours in a calendar month; TDAH: "TDAH" means total Downtime After Hours in a calendar month; E: "E" means excusable downtime which includes all of the following: (i) Downtime of an aggregate total of 30 minutes in any two-week period necessary to conduct regular software and hardware updates to the Platform, including bug fixes and patches; (ii) Downtime which is out of Aconex's control due to a Force Majeure Event and the first 30 minutes of any emergency, and; (iii) Downtime required as a result of a critical security breach. Any credit available to a Paying Organization under this Section will be calculated as a proportion of the Monthly Fee and be applied against the Fees payable for the month following the month in which the triggering Downtime occurred. The Paying Organization must claim any credit by sending notice of the same to Aconex within 10 Business Days of the end of the calendar month in which the Downtime occurred. Aconex is not required to provide a credit for Downtime claims that are not presented in writing within the time limit specified above. In the event that Fees are not payable by the Paying Organization, Aconex will provide an equivalent credit note.

## 6. FEES, PAYMENT TERMS AND INSPECTION

- 6.1. Fees.** The Paying Organization shall pay Fees to Aconex for use of the Services in accordance with the following terms of payment: (a) in advance, and in accordance with any payment schedule contained in the Services Order or as otherwise specified in Section 18.12; (b) by the means and to the bank account stipulated on the invoice; (c) within 30 calendar days of the issue date on Aconex's invoice. Except as expressly specified in a Services Order, all Fees shall be non-refundable. If the Paying Organization fails to pay any amount payable by it under this Agreement, in addition to any other rights, Aconex will be entitled to charge interest on the overdue amount, payable by the Paying Organization immediately on demand, from the due date up to the date of actual payment at the rate of 1% per month (or, if less, the maximum amount permitted by applicable law) and such interest shall accrue daily, be calculated weekly and compounded monthly.
- 6.2. Disputed Invoices.** If the Paying Organization in good faith disputes the whole or any portion of the amount claimed in an invoice submitted by Aconex, the Paying Organization will notify Aconex in writing on or before 5:00 PM (PST) on the 10th Business Day following delivery of the invoice, which notice will set forth the reasons for disputing the remainder of the invoice and will pay the portion of the amount stated in the invoice which is not in dispute. If the Paying Organization fails to notify Aconex by the foregoing deadline, the Paying Organization is deemed to have accepted the invoice. If it is resolved that some or all of the amount in dispute ought properly to have been paid at the time it was



first invoiced, then the Paying Organization will pay the amount finally resolved.

- 6.3. Change in Scope or Law.** Without prejudice to any other rights Aconex may have in the circumstances, if the Paying Organization is, in Aconex's reasonable discretion, using the Services outside of the scope identified in a Services Order, or outside the Scope of the Project, or if the scope of a Project materially increases, or there is a change in the law that materially affects Aconex's cost of delivering the Services, Aconex may charge the Paying Organization additional Fees for use of the Services, which additional Fees shall be proportional to the additional scope of use or increased cost, as determined in Aconex's sole reasonable judgment. If the Paying Organization objects to such increased Fees, then Aconex may at its discretion, either (a) require the Paying Organization to discontinue any excess or prohibited use of the Services, or (b) terminate all Services specified under this Agreement on not less than 30 days' written notice to the Paying Organization.
- 6.4. Taxes.** Aconex will bear and pay all applicable taxes of any country, including any political subdivision of any of them, if the tax is based on or measured by Aconex's gross receipts or net income, or payment of which is required to maintain a legal existence or a general right to transact business within the taxing jurisdiction, or based on Aconex's payroll or personal property used or consumed in the provision of the Services. Paying Organization agrees to pay all other taxes, including without limitation any value added tax and sales and use tax (including any gross receipts tax imposed similar to a sales and use tax, including withholding tax) imposed by any foreign, national, state or local taxing authority with respect to Aconex's delivery or Paying Organization's or Non-Paying Organizations' receipt of the Services and or the payment of Fees under this Agreement. If Aconex is required to collect any value added tax or sales and use tax on behalf of any taxing jurisdiction, Aconex will provide to the Paying Organization invoices which separately state and clearly indicate the amount of tax, and the Paying Organization will remit any such tax to Aconex. The parties will cooperate in good faith to minimize such tax to the extent legally permissible.
- 6.5. Currency.** Unless otherwise specified in the Services Order, all amounts specified to be paid under this Agreement shall be in US Dollars.

## 7. INSPECTION

On reasonable notice and not more than once annually, the Paying Organization will allow an independent third party selected by Aconex and reasonably acceptable to the Paying Organization to verify that it is using the Platform solely in connection with the Project, and is not otherwise using the Service in a manner that violates this Agreement (each, an "Inspection"). The Paying Organization shall reasonably cooperate with each Inspection and shall provide access to relevant documentation and records, for the purpose of confirming its compliance with the terms of this Agreement. Any information disclosed by the Paying Organization in connection with an Inspection shall be Confidential Information, except to the limited extent necessary for Aconex to enforce its rights under this Agreement.

## 8. ACCEPTABLE USE OF SERVICES

The Paying Organization and its end users shall use the Services solely in accordance with this Agreement, all applicable laws and the Acceptable Use Policy. Aconex may modify the Acceptable Use Policy at its sole discretion and such modifications shall be effective upon their publication on the Platform or Aconex's web site. If there is any conflict between the Acceptable Use Policy and this Agreement, then the Acceptable Use Policy shall take precedence.

## 9. CONFIDENTIALITY

- 9.1. Obligation.** Both Parties acknowledge that Confidential Information disclosed by either Party pursuant to this Agreement may constitute valuable trade secrets of the disclosing Party. Each Party agrees to use the other Party's Confidential Information solely in accordance with the provisions of this Agreement and not to disclose, or permit to be disclosed, either directly or indirectly, such Confidential Information to any third party, without the disclosing Party's prior written consent. Each Party shall use strict measures to protect the secrecy and avoid disclosure or unauthorized use of the other Party's Confidential Information. Each Party shall exercise the same degree of care to prevent disclosure of the other Party's Confidential Information as it takes to preserve and safeguard its own Confidential Information, but in any event, no less than a reasonable degree of care.
- 9.2. Exceptions.** Notwithstanding the foregoing, neither Party will be in breach of this provision in circumstances where the Party is legally compelled to disclose the other Party's Confidential Information or where the information is already in the public domain through no fault of the receiving Party, or is in the disclosing Party's possession without a duty of confidentiality at the date of disclosure, or where the disclosing Party discloses the terms of this Agreement to its professional advisors, financiers, prospective financiers or partners or agents, or where Aconex identifies the Paying Organization as a Platform customer.

## 10. DATA STORAGE AND PRIVACY

- 10.1. Use of Client PII.** In the course of receiving the Services under this Agreement, the Paying Organization may disclose to Aconex personally identifiable information about the Paying Organization's employees, directors, officers, customers or suppliers, and/or other users of the Services (collectively "Client PII"). Aconex may also otherwise be provided with access to Client PII in the course of delivering the Services. The Paying Organization is responsible for confirming that its disclosure and/or provision of Client PII to Aconex, and Aconex's possession, storage and/or use of such Client PII in the manner contemplated under this Agreement is permissible under all applicable data processing laws and regulations. Without prejudice to the foregoing, the Paying Organization acknowledges that Aconex may process Client PII for purposes connected with this Agreement, to conduct its business relationship with the Paying Organization and for the relevant and limited purposes specified in the Privacy Policy. Aconex will act only as a data processor and will not re-use or re-disclose Client PII for unrelated purposes. Aconex will use commercially reasonable efforts to protect Client PII from loss, destruction or unauthorized use or access, utilizing technical, physical and administrative security measures consistent with industry standards. The Paying Organization shall obtain the consent of each individual to whom such Client PII relates prior to disclosing such information to Aconex, and such consent shall include adequate authorization for Aconex and Aconex Affiliates to process, use and disclose such Client PII in the manner contemplated under the Agreement.
- 10.2. Transfer and Storage of Client Data.** Due to the global nature of its business, Aconex may, for the purposes contemplated under this Agreement, transfer or store Client Data (including, without limitation, Client PII) in and to any country in which Aconex operates, subject to its compliance with applicable laws and this Agreement. The Paying Organization agrees to such transfer in its own right and on behalf of those individuals and entities from whom it collected such Client Data and/or Client PII.
- 10.3. User Communications.** Aconex reserves the right to communicate with end users of the Services regarding matters relating to system usage, administration and support.

## 11. INTELLECTUAL PROPERTY RIGHTS

Aconex and its licensors own all right, title and interest in and to the Platform and Services, including all Intellectual Property Rights therein and thereto, and any Materials or software or other inventions that may be developed or discovered by Aconex in connection with the Services. Except for the Platform License, no transfer of any Intellectual Property Rights will occur in connection with this Agreement. Notwithstanding anything to the contrary in this Agreement, Aconex has and retains the exclusive right to own, use and disclose, in the course of its business, all feedback provided by the Paying Organization with respect to the Services and Platform.

## 12. SUSPENSION OF SERVICES

Without affecting any other rights and obligations available to Aconex under this Agreement or at law or equity (including a right of termination and a right to claim damages), Aconex may suspend the Platform License and delivery of any or all of the Services if the Paying Organization continues to fail to pay any overdue amounts owed to Aconex under this Agreement, following receipt of written notice from Aconex of such delinquency. In the event that Services are suspended under this Section, then, as a condition of reinstating such Services, Aconex may require the Paying Organization to pay a reconnection fee and/or require the payment of all future Fees in advance.

## 13. LIMITED WARRANTY AND DISCLAIMERS

- 13.1. Limited Warranty.** Aconex warrants to the Paying Organization that it will use reasonable professional skill and care, consistent with industry standards, in providing all Services. Aconex's sole liability and the Paying Organization's sole and exclusive remedy for any breach of the warranty specified in this Section will be for Aconex to re-perform such Services.
- 13.2. Disclaimers.** THE PAYING ORGANIZATION ASSUMES ALL RESPONSIBILITY FOR ITS SELECTION OF THE PLATFORM TO ACHIEVE ITS INTENDED RESULTS, FOR THE USE OF AND RESULTS OBTAINED FROM THE PLATFORM, AND FOR TAKING APPROPRIATE MEASURES TO PREVENT LOSS OF DATA. EXCEPT AS EXPRESSLY PROVIDED IN SECTION 13.1 ABOVE, TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, ACONEX DISCLAIMS ALL WARRANTIES, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE, INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTIES OF MERCHANTABILITY, NON-INFRINGEMENT, QUALITY AND FITNESS FOR A PARTICULAR PURPOSE. ACONEX DOES NOT WARRANT THAT THE SERVICES WILL BE ERROR-FREE OR THAT THE SERVICES WILL BE AVAILABLE WITHOUT INTERRUPTION. THE FOREGOING LIMITATIONS WILL APPLY EVEN IF THE ABOVE STATED REMEDY FAILS OF ITS

ESSENTIAL PURPOSE.

## 14. LIMITATION OF LIABILITY

TO THE MAXIMUM EXTENT PERMITTED BY LAW, ACONEX WILL NOT BE LIABLE FOR ANY SPECIAL, PUNITIVE, EXEMPLARY, INDIRECT, CONSEQUENTIAL LOSS, OR OTHER DAMAGES (INCLUDING LOSS OF PROFIT, INTEREST, REVENUE, BUSINESS, GOODWILL, SAVINGS OR ANTICIPATED PROFIT OR ANY LOSS OF OR DAMAGE TO ANY CLIENT DATA, OR LOSS OF OR INTERRUPTION TO CLIENT'S BUSINESS), IN EACH CASE ARISING OUT OF OR IN ANY WAY CONNECTED TO THE PROVISION OF THE PLATFORM OR THE SERVICES INCLUDING, WITHOUT LIMITATION, LOSS OR DAMAGE CAUSED BY A COMPUTER VIRUS OR OTHER MALWARE, AND IN EACH CASE REGARDLESS OF WHETHER ACONEX WAS ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. REGARDLESS OF WHETHER A CLAIM ARISES IN CONTRACT, TORT OR OTHER, UNDER NO CIRCUMSTANCES WILL ACONEX'S (INCLUDING ITS OFFICERS, EMPLOYEES, CONTRACTORS, AFFILIATES AND AGENTS): (A) LIABILITY IN ANY MONTH BE GREATER THAN 100% OF THE MONTHLY FEE; AND (B) ACONEX'S AGGREGATE LIABILITY IN CONNECTION WITH THIS AGREEMENT EXCEED THE TOTAL AMOUNT OF FEES PAID BY THE PAYING ORGANIZATION TO ACONEX UNDER THIS AGREEMENT THROUGH THE DATE THE CLAIM AROSE. THE FOREGOING LIMITATIONS WILL APPLY EVEN IF THE ABOVE STATED REMEDY FAILS OF ITS ESSENTIAL PURPOSE.

## 15. INDEMNITIES

### 15.1. Aconex Indemnity.

**15.1.1. Obligation.** Aconex shall defend or at its option settle any third party claim, action or proceeding brought against the Paying Organization alleging that the Platform as delivered to the Paying Organization and used as authorized in this Agreement, infringes any Intellectual Property Right of a third party and Aconex shall pay any final judgments awarded or settlements entered into to resolve such claim, action or proceeding; provided that the Paying Organization provides Aconex with: (i) prompt written notice of such claim; (ii) sole control over the defense and settlement of such claim; and (iii) all necessary information and assistance (at Aconex's reasonable expense) to defend and/or settle such claim. The Paying Organization may participate in the defense of a claim asserted hereunder after Aconex has assumed the defense or settlement, provided that the Paying Organization shall bear any legal fees and expenses or other costs it incurs in so participating. Aconex shall not be liable for any costs or expenses incurred by the Paying Organization when acting without Aconex's prior written authorization. Aconex may not settle or compromise any claim under this Section that requires the Paying Organization to admit liability or pay any money without the Paying Organization's prior written consent, which consent shall not be unreasonably withheld or delayed.

**15.1.2. Limit on Indemnity.** Notwithstanding the foregoing, Aconex will have no liability for infringement claims arising from: (i) combination of the Services with other software or products not provided by Aconex, if the infringement would not have occurred if the Services had not been so combined; (ii) any modification of the Services, in whole or in part, by anyone other than Aconex, if the infringement would not have occurred but for such modification; or (iii) use by the Paying Organization of any specified release of the Platform after Aconex notifies the Paying Organization that continued use may subject the Paying Organization to such claim of infringement, provided Aconex provides the Paying Organization with a replacement release.

**15.1.3. Replacement Services.** If any portion of the Services is held, or in Aconex's opinion is likely to be held, to infringe or misappropriate a third party's Intellectual Property Rights, or use of the Services is otherwise enjoined, then Aconex may at its sole option and expense, within a commercially reasonable period of time: (i) procure for the Paying Organization the right to continue using the Services; (ii) replace the Services with a non-infringing solution; or (iii) in the event that neither of the foregoing is reasonably practicable in Aconex's judgment, terminate the Platform License and/or this Agreement and refund any Fees pre-paid by the Paying Organization with respect to future delivery of the terminated portion of the Services.

**15.1.4. Entire Liability.** THIS SECTION STATES THE ENTIRE LIABILITY AND OBLIGATION OF ACONEX, AND THE SOLE AND EXCLUSIVE REMEDY OF THE PAYING ORGANIZATION, WITH RESPECT TO ANY ACTUAL OR ALLEGED INFRINGEMENT OF ANY THIRD PARTY'S INTELLECTUAL PROPERTY RIGHTS WITH RESPECT TO THE PAYING ORGANIZATION'S USE OF THE SERVICES.

**15.2. Paying Organization Indemnity.** The Paying Organization shall defend or at its option settle any third party claim, action or proceeding brought against Aconex, any Aconex Affiliate alleging that (a) the Paying Organization has breached any law or regulation in its use of the Services, Client Data, or Client PII, or (b) the Paying Organization has misused any Client Data or Client PII or infringed any third party's Intellectual Property Rights in its use of the Client Data or Client PII, and the Paying Organization shall pay any final judgments awarded or settlements entered into to resolve such claim, action or proceeding; provided that Aconex provides the Paying Organization with: (i) prompt written notice of such claim; (ii) sole control over the defense and settlement of such claim; and (iii) all necessary information and assistance (at the Paying Organization's reasonable expense) to defend and/or settle such claim. Aconex may participate in the defense of a claim asserted hereunder after the Paying Organization has assumed the defense or settlement, provided that Aconex shall bear any legal fees and expenses or other costs it incurs in so participating. The Paying Organization shall not be liable for any costs or expenses incurred by Aconex when acting without the Paying

Organization's prior written authorization. the Paying Organization may not settle or compromise any claim under this Section that requires Aconex to admit liability or pay any money without Aconex's prior written consent, which consent shall not be unreasonably withheld or delayed.

## **16. TERMINATION**

- 16.1. Termination for Breach.** Either Party may terminate this Agreement in the event that the other party commits a material breach of this Agreement and where such breach is capable of remedy, fails to remedy the breach within 30 days of receiving written notice from the other Party. Aconex may also immediately terminate this Agreement if the Paying Organization's access to the Services has been suspended under Section 12 (Suspension of Services) and the Paying Organization has not, in Aconex's sole judgment made a reasonable attempt to promptly resolve the basis for such suspension. Without prejudice to the foregoing, the parties agree a failure by the Paying Organization to pay Fees when due constitutes a material breach of this Agreement.
- 16.2. Termination for Insolvency.** Aconex may terminate this Agreement by notice in writing if: (a) the Paying Organization is unable to pay its debts as and when they become due or becomes, threatens or resolves to become or is in jeopardy of becoming insolvent or subject to an order, proceedings or resolution for liquidation or dissolution (unless for the purposes of amalgamation or reconstruction,) or entering into a compromise or arrangement with, or assignment for the benefit of any of its members or creditors; (b) the Paying Organization, being a partnership, dissolves, threatens or resolves to dissolve or is in jeopardy of dissolving; (c) the Paying Organization, being a natural person, dies; or (d) there is a change of control of the Paying Organization.
- 16.3. Effect of Termination.** On termination of this Agreement, the Paying Organization's Platform License shall automatically terminate and the Paying Organization shall immediately cease using the Platform. The Paying Organization shall also return any Materials and Aconex Confidential Information to Aconex or comply with Aconex's instructions for the destruction of such Materials and Confidential Information. At Aconex's request, the Paying Organization will provide written confirmation certifying that all Materials and Aconex Confidential Information in its possession have been returned or destroyed. The termination of this Agreement shall not relieve the Paying Organization of its obligation to pay any Fees or other amounts owed to Aconex under this Agreement prior to the date of such termination.
- 16.4. Survival.** Sections 3.4.2, 4, 6.1, 6.4, 7. 9, 10, 11, 13.2, 14, 15, 16.3, 16.4, 17, 18 and 19 of this Agreement shall survive termination, howsoever occurring.

## **17. GOVERNING LAW AND DISPUTE RESOLUTION**

- 17.1. Governing Law and Jurisdiction.** This Agreement is governed by the laws of the State of California, without regard to its conflict of law principles and the Parties submit to the exclusive jurisdiction of the state and federal courts located in the Northern District of California, and any court that may hear appeals from any of those courts, for any proceedings initiated or pursued in connection with this Agreement, and waive any right they may have to claim that those courts are an inconvenient forum.
- 17.2. Injunctive Relief.** Notwithstanding the foregoing, if either Party breaches, or threatens to breach the provisions of this Agreement concerning Confidential Information or Intellectual Property Rights, each Party agrees that the non breaching Party may have no adequate remedy at law and is therefore entitled to seek immediate injunctive and other equitable relief, without bond and without the necessity of showing actual monetary damages, in any court having jurisdiction.
- 17.3. Dispute Resolution.**
- 17.3.1. Negotiation.** If any dispute arises between the Parties in respect of this Agreement, or any related document, a Party must: (a) issue a written notice to the other Party notifying them of the existence of a dispute; and (b) use good faith efforts to resolve the dispute through negotiation.
- 17.3.2. Escalation.** In the event that negotiations pursuant to Section 17.3.1 do not resolve the dispute within 15 Business Days (or such longer period as may be agreed between the Parties), the dispute will be referred to the respective chief executive officers (or their nominees - external counsel excluded) of each Party for good faith negotiations.
- 17.3.3. Filing of Actions.** Neither Party may file an action to resolve a dispute prior to 20 Business Days (or such other period as may be agreed between the Parties) after an escalation pursuant to Section 17.3.2.
- 17.4. Legal Expenses.** If any proceeding is brought by either Party to enforce or interpret any provision of this Agreement, the substantially prevailing Party in such proceeding shall be entitled to recover, in addition to all other relief arising out of this Agreement, such Party's reasonable attorneys' and other experts' fees and expenses.

## 18. MISCELLANEOUS

- 18.1. Force Majeure.** With the exception of any payment obligations, neither Party will be liable for any delay or failure to perform its obligations pursuant to this Agreement to the extent such delay is due to a Force Majeure Event. With the exception of payment obligations, to the extent a delay or failure of a Party to perform its obligations is caused or anticipated due to a Force Majeure Event, the performance of that Party's obligations will be suspended and neither Party will be liable to the other Party for a failure to perform its obligations as a result of a Force Majeure Event. If a delay or failure by a Party to perform its obligations due to a Force Majeure Event exceeds 3 calendar months, either Party may immediately terminate the Agreement without cause upon written notice to the other Party.
- 18.2. No Reliance on Representations.** The Paying Organization has not relied on any representation, undertaking, statement or understanding which has not been stated expressly in this Agreement or upon any descriptions, illustrations or specifications contained in any document including marketing materials produced by Aconex.
- 18.3. Independent Contractors.** The Parties are independent contractors. Aconex is not a party to any transactions a Paying Organization enters into with a Non-Paying Organization using the Platform or Services. Under this Agreement, Aconex and its personnel will never be employees, agents or partners of the Paying Organization, and are not engaged in a joint venture with the Paying Organization. Aconex shall have no liability arising out of any transaction or dealings conducted between the Paying Organization and Non-Paying Organizations or any other third parties through use of the Services.
- 18.4. Assignment.** The Paying Organization may not assign this Agreement or delegate any of its obligations hereunder without Aconex's prior written consent. Any attempted assignment in violation of this provision will be null and void. Subject to the foregoing, this Agreement shall be binding upon and inure to the benefit of the Parties and their permitted successors and assigns.
- 18.5. Novation.** Provided there are no outstanding Fees, the Paying Organization may novate this Agreement (including payment of Fees) at any time to a third party, subject to Aconex's prior written approval (not to be unreasonably withheld).
- 18.6. Waiver.** Any right of either Party under this Agreement may only be waived in writing, signed by the Party giving the waiver, and no other conduct of a Party (including a failure to exercise, or delay in exercising, the right) shall operate as a waiver of the right or otherwise prevent the exercise of the right.
- 18.7. Modification.** The provisions of this Agreement will not be varied, except by express written instrument that makes explicit reference to this Agreement and is executed by authorized representatives of each of the Parties. Notwithstanding the foregoing, Aconex reserves the right to modify the Services and/or the terms and conditions of this Agreement at any time, but such modifications shall apply to Services Orders executed after the effective date of the change. Aconex will notify the Paying Organization of such modifications, either via email, the Platform, or in a manner deemed commercially reasonable by Aconex.
- 18.8. Severability.** If any provision or part provision of this Agreement is held invalid, unenforceable or illegal by any court or tribunal for any reason, the remainder of this Agreement will remain otherwise in full force apart from such provisions or part provisions which will be deemed deleted or modified to the minimum extent necessary to remove the invalidity, unenforceability or illegality.
- 18.9. Client Reference.** Aconex may not issue any press release regarding the Paying Organization's use of the Platform without the prior written consent of the Paying Organization (not to be unreasonably withheld, delayed or conditioned). However, Aconex may use the Paying Organization's name and logo in marketing materials and refer to the fact that the Paying Organization is a client of Aconex in its annual report, list of references or presentations to actual or potential clients without the Paying Organization's specific consent.
- 18.10. United States Export Controls.** The Services (including the Platform) use software and technology that may be subject to United States export control laws. The Paying Organization shall not, directly or indirectly, export or re-export, or knowingly permit the export or re-export of the Services or any technical information related to the Services to any country for which such export or re-export is restricted by any applicable U.S. regulation or statute, without the prior written consent, if required, of the U.S. government entity that has jurisdiction over such export or re-export. Aconex and its licensors make no representation that the Services are appropriate or available for use in locations outside of the United States. If the Paying Organization uses the Services from outside of the U.S., the Paying Organization is solely responsible for compliance with all applicable laws, including without limitation export and import regulations of other countries. the Paying Organization's failure to comply with this Section shall be a material breach incapable of remedy.
- 18.11. No Third Party Beneficiaries.** No provisions of this Agreement are intended or shall be construed to confer upon or give to any person or entity any rights, remedies or other benefits as a third party beneficiary. Without limiting the generality of the foregoing, Non-Paying Organizations may not enforce the rights granted to Paying Organizations under this Agreement and vice versa, under any circumstances.
- 18.12. Entire Agreement.** The documents comprising this Agreement contain the entire agreement between the Parties concerning its subject matter. If the Paying Organization does not execute a Services Order, but instead issues a purchase order to Aconex or an Aconex Reseller, that purchase order will constitute a binding commitment by the Paying Organization to purchase the Services specified in it, on the terms and conditions set forth in this Agreement.

Accordingly, Aconex's commencement or execution of work pursuant to the purchase order will establish a contract for the supply and purchase of the Services under this Agreement, and any additional and/or conflicting terms or conditions in the Paying Organization's purchase order shall be inapplicable.

## 19. NOTICES

- 19.1. Method of Communication.** Any notice or consent delivered by either Party under this Agreement shall only be effective if it is: (a) in writing, sent by or on behalf of and at the express instruction of the Party giving it; (b) addressed in accordance with Section 19.3 to the Party to whom it is to be given; and (c) either: (i) sent via overnight delivery service (e.g., FedEx or UPS), or (ii) sent by fax and the machine from which it is sent produces a report that states that it was sent in full and the recipient does not alert the sender to the fact that fax was not received in a legible form by the close of business the next Business Day; or (iii) in the case of notices from Aconex to the Paying Organization, sent via the Platform.
- 19.2. Deemed Delivery.** A notice, consent or other communication that complies with this Section is deemed given and received: (a) if it is delivered or sent by fax: (i) by 5:00 PM (local time in the place of receipt) on a Business Day - on that day; or (ii) after 5:00 PM (local time in the place of receipt) on a Business Day, or on a day that is not a Business Day - on the next Business Day; (b) if it is sent by mail: (i) within the United States - four Business Days after posting; or (ii) to or from a place outside of the United States - seven Business Days after posting; and (iii) if it is sent via the Platform - by 5:00 PM the next Business Day (local time in the place of receipt).
- 19.3. Addresses.** Any notices from Aconex to the Paying Organization under this Agreement shall be addressed to the Paying Organization representative identified in the Services Order and delivered to the address or fax number specified in the Services Order or, if such information is not specified, the Paying Organization's representative will be the organization administrator as recorded in the Paying Organization's Services account, and the Paying Organizations' contact details will be the contact details recorded in the Paying Organization's Services account. Any notices from the Paying Organization to Aconex under this Agreement shall be addressed as follows:

Aconex (North America), Inc.  
Attn: General Counsel  
1111 Bayhill Drive  
Suite 480  
San Bruno, CA 94066

## PROVISIONS APPLICABLE TO NON-PAYING ORGANIZATIONS

### 1. DEFINITIONS

The capitalized terms set forth below shall have the following meanings for the purposes of this Agreement:

- 1.1 "Acceptable Use Policy"** means the Aconex Acceptable Use Policy applicable to the Services, which is available for review and download on the Platform login page and the Aconex corporate web site.
- 1.2 "Aconex"** means Aconex (North America) Inc., a company incorporated in the State of New York, and, unless expressly included in the Agreement, excludes any Aconex Affiliates.
- 1.3 "Aconex Affiliate"** means (a) Aconex Limited (ABN 49 091 376 091), a company incorporated in Australia; (b) any entity controlling or controlled by Aconex Limited; and (c) any entity under common control with Aconex Limited, for so long as such common control continues to exist, where control means ownership either directly or indirectly of not less than 50% of the voting shares.
- 1.4 "Business Day"** means a day that is not a Saturday, Sunday or holiday observed by Aconex in the United States.
- 1.5 "Client Data"** means data related to a Project that the Non-Paying Organization uploads to or transmits via the Platform and includes first level metadata (such as the time, date, distribution parties relating to a specific document or item of correspondence on any Hosted Platform) but excludes secondary metadata (such as the structure of database tables within the Platform code and folder structures established on the Platform).
- 1.6 "Confidential Information"** means any non-public information disclosed by either Party to the other Party in writing pursuant to this Agreement, which is designated as "confidential" or "proprietary" (or with a similar legend), or that is disclosed orally and confirmed in writing as confidential within a reasonable time. Even if not so marked, the Parties agree that Client Data, any non-public components of the Platform and Services, and the terms of this Agreement (including, without limitation, Services Order) are Confidential Information.
- 1.7 "Data Archive"** means the Optional Services Aconex offers relating to the continued preservation and access to Client Data following termination of a Project or termination of Services.



- 1.8 "Effective Date"** means the date the Non-Paying Organization accepts this Agreement.
- 1.9 "Force Majeure Event"** means any forces of nature, disruptions to the internet infrastructure, public bandwidth shortages, industrial action, acts of terrorism, protests, riots, civil commotion, fire, explosion, flood, epidemics, lock-outs, strikes and action or inaction by a government agency (including any quasi-government agency) which causes a Party to be prevented or delayed in performing its obligations.
- 1.10 "Intellectual Property Rights"** means patents, copyrights, trademarks, trade secrets, and all other proprietary rights recognized in any jurisdiction worldwide, and all applications and registrations therefore.
- 1.11 "Materials"** means all manuals, data, documents, and information that are prepared, written, made accessible, provided or developed by Aconex or its licensors in connection with the Services, including help desk and technical support documentation.
- 1.12 "Monthly Fees"** means the monthly Fee(s) for Service(s) as specified in the Services Order. If (a) the Fee(s) for any Service(s) are partly or fully payable up front, or (b) the Fee(s) for any Service(s) are partly or fully payable on a periodic basis other than monthly, then in both cases Monthly Fee means the amount calculated by dividing the total Fees by the number of months covered by the Services Order.
- 1.13 "Non-Paying Organization"** means any organization that is invited and authorized to use the Services with respect to a Project by the Paying Organization, has accepted this Agreement and is not required under a Services Order to pay Aconex or an Aconex Reseller for access to and use of the Services.
- 1.14 "Optional Services"** means discretionary, paid Services (including Data Archives) which, if purchased, will be subject to a Services Order.
- 1.15 "Party"** means either Aconex or the Non-Paying Organization as the context dictates, and "Parties" means Aconex and the Non-Paying Organization, as the context dictates.
- 1.16 "Paying Organization"** means the entity specified as the contracting party (other than Aconex) in a Services Order, that is responsible for paying fees to Aconex for all Non-Paying Organizations' use of the Services, and that has the discretion with respect to all Non-Paying Organizations' right to access and use the Platform and/or Services under this Agreement.
- 1.17 "Platform"** means the object code version of the computer software application(s) owned by or licensed to Aconex that is made available by Aconex or its agents to the Non-Paying Organizations in connection with this Agreement, together with any associated Materials. The Platform also includes any upgrades, improvements, bug fixes, new versions and/or derivative works of such software or Materials.
- 1.18 "Platform License"** means each license to access and use the Platform granted to the Non-Paying Organization under this Agreement.
- 1.19 "Privacy Policy"** means the Aconex Privacy Policy, which is applicable to data received by Aconex from Aconex customers and users of its web sites, and which is available for review and download on the Platform login page and the Aconex corporate web site.
- 1.20 "Project"** means the collaborative project identified by the Paying Organization in the Paying Organization's Services Order, subject to any Project-scope limitations specified in such Services Order
- 1.21 "PST"** means Pacific Standard Time.
- 1.22 "Services Order"** means an agreement between Aconex or an Aconex Reseller and a Paying Organization with respect to a Project.
- 1.23 "Services"** means the Platform and the associated services described in Section 3.

## **2. TERM**

Unless terminated earlier by Aconex, the term of Services applicable to a Project will be tied to the duration of the Project, commencing once the Non-Paying Organization has been provided with access to the Platform and expiring on the earlier of the date the Project has been completed or terminated, 14 days after Aconex receives Paying Organization's request to remove the Non-Paying Organization's access rights to the Services or upon the Non-Paying Organization's request.

## **3. SERVICES**

- 3.1. Standard Services And Delivery Schedule.** Subject to the Non-Paying Organization's compliance with the terms and conditions of this Agreement, Aconex will, during the applicable service term, provide the Non-Paying Organization with

the Services specified in this Section 3.1, pursuant to the terms and conditions of this Agreement. Optional Services may also be requested from Aconex, which if accepted by Aconex, will be subject to the payment of additional fees and execution of a separate agreement.

- 3.1.1. Platform License.** A non-exclusive, non-transferable, restricted Platform License for the term specified in Section 2, to access and use the functionality within the modules of the Platform expressly included in the relevant Services Order (subject to any restrictions specified in the relevant Services Order) solely in support of the Project, within the scope specified in the relevant Services Order, and in accordance with and subject to any specifications set forth in the Materials.
- 3.1.2. Hosting Services.** Making the Platform available for use via the public Internet, including unlimited data transmission by the Non-Paying Organization to and from the Platform (subject to applicable limitations set out in the Acceptable Use Policy), and unlimited storage of Client Data related to the Project, during the applicable term of Services.
- 3.1.3. Maintenance and Support Services.** Email and telephone help desk support provided to designated Non-Paying Organization personnel, to assist the Non-Paying Organization's end users to access and use the Platform, on a 24/7 basis, provided in English and any other languages specified in the Services Order. Also included is access to a web-based support center (English only) and maintenance updates and improvements to the Platform.
- 3.1.4. Training Services.** The provision of one-to-many training modules delivered over the Internet or at a designated site, which site must be approved by Aconex in advance. In the event that Client requests that training be provided at a designated site (other than Aconex's offices) and Aconex agrees, the Non-Paying Organization will reimburse Aconex for its reasonable travel and living expenses actually incurred in delivering such training.

### **3.2. CANCELLING SERVICES**

The Non-Paying Organization may cancel the Services at any time by written notice to Aconex.

### **3.3. CLIENT RESPONSIBILITIES**

- 3.3.1. Confidentiality of Username and Password.** The Non-Paying Organization is responsible for maintaining the confidentiality of the access credentials (e.g., username and password) used by it and/or its end users to access the Services and agrees that it will not share access credentials among users or disclose those credentials to any third party.
- 3.3.2. Use of Data.** The Non-Paying Organization acknowledges that by transmitting and receiving data to and from the Platform, the Non-Paying Organization is making information available for the use of the other authorized users of the Platform that are participating in the Project ("Project Participants") and the retraction of such information may therefore negatively affect those Project Participants. Aconex may, as a condition to complying with any the Non-Paying Organization request to retract or delete data from the Platform, require the Non-Paying Organization to comply with Aconex's reasonable risk mitigation requirements.
- 3.3.3. Other Obligations.** The Non-Paying Organization understands and acknowledges that Aconex's ability to provide the Services is dependent on the Non-Paying Organization undertaking any agreed obligations (or such reasonable obligations as may be advised to the Non-Paying Organization by Aconex). The Non-Paying Organization acknowledges that failure to perform any such obligations may result in a failure to receive Services.

## **4. CLIENT DATA**

- 4.1. Ownership.** The Non-Paying Organization retains all of its right, title and interest in and to Client Data, and ownership of Client Data shall not be transferred to Aconex under this Agreement.
- 4.2. Right to Use.** The Non-Paying Organization grants Aconex a nonexclusive license to use Client Data to deliver Services to authorized users of the Platform, solely in connection with the Project. The Non-Paying Organization further grants Aconex a nonexclusive, worldwide, perpetual license to use Platform usage data (such as, by way of example and not by way of limitation, numbers of documents uploaded) in an aggregated form that does not identify individual persons or organizations, in order to compile statistics regarding use of the Services and/or to improve the Services.
- 4.3. Retention.** Provided that the termination of Services is not attributable to the Non-Paying Organization's material breach, the Non-Paying Organization may, during the Retention Period, purchase a Data Archive, subject to its payment of fees to Aconex at the rates specified in the Price List. Aconex will not be liable for any damages of any kind in connection with its decision to not retain Client Data after the expiration of the Retention Period.
- 4.4. Warranty regarding Client Data and Use of the Services.** The Non-Paying Organization warrants that (a) it has appropriate and sufficient rights in Client Data, and (b) neither Aconex's use, processing and/or storage of Client Data in accordance with this Agreement nor the Non-Paying Organization's use of Client Data as contemplated hereunder will violate applicable laws or this Agreement. Aconex is not obligated to screen Client Data, although Aconex reserves the right to screen Client Data and to suspend access to Client Data without warning that Aconex reasonably considers may breach this Agreement or any applicable law. Aconex will notify the Non-Paying Organization as soon as practicable if Aconex suspends access to any Client Data and will restore access to such Client Data as soon as, in Aconex's reasonable opinion, doing so would not place Aconex at risk of loss or damage. Aconex is not liable for any damage or loss caused by Aconex's decision to suspend access to Client Data. The Non-Paying Organization is entirely responsible

for the content and delivery of Client Data, including without limitation, the accuracy, usefulness, timeliness and completeness of Client Data. The Non-Paying Organization is responsible for ensuring Client Data is correctly addressed and on-time and does not represent a breach of any obligations to a third party or of law.

## 5. FEES AND INSPECTION

- 5.1. Fees.** The Non-Paying Organization has no obligation to pay any Fees in connection with the Services for as long as it remains a Non-Paying Organization. Where the Non-Paying Organization wishes to become a Paying Organization (for example in order to purchase an optional service), then the Non-Paying Organization will be required to enter into a separate agreement with Aconex for the relevant services.
- 5.2. Inspection.** On reasonable notice and not more than once annually, the Non-Paying Organization will allow an independent third party selected by Aconex and reasonably acceptable to the Non-Paying Organization to verify that it is using the Platform solely in connection with the Project, and is not otherwise using the Service in a manner that violates this Agreement (each, an "Inspection"). The Non-Paying Organization shall reasonably cooperate with each Inspection and shall provide access to relevant documentation and records, for the purpose of confirming its compliance with the terms of this Agreement. Any information disclosed by the Non-Paying Organization in connection with an Inspection shall be Confidential Information, except to the limited extent necessary for Aconex to enforce its rights under this Agreement.

## 6. ACCEPTABLE USE OF SERVICES

The Non-Paying Organization and its end users shall use the Services solely in accordance with this Agreement, all applicable laws and the Acceptable Use Policy. Aconex may modify the Acceptable Use Policy at its sole discretion and such modifications shall be effective upon their publication on the Platform or Aconex's web site. If there is any conflict between the Acceptable Use Policy and this Agreement, then the Acceptable Use Policy shall take precedence.

## 7. CONFIDENTIALITY

- 7.1. Obligation.** Both Parties acknowledge that Confidential Information disclosed by either Party pursuant to this Agreement may constitute valuable trade secrets of the disclosing Party. Each Party agrees to use the other Party's Confidential Information solely in accordance with the provisions of this Agreement and not to disclose, or permit to be disclosed, either directly or indirectly, such Confidential Information to any third party, without the disclosing Party's prior written consent. Each Party shall use strict measures to protect the secrecy and avoid disclosure or unauthorized use of the other Party's Confidential Information. Each Party shall exercise the same degree of care to prevent disclosure of the other Party's Confidential Information as it takes to preserve and safeguard its own Confidential Information, but in any event, no less than a reasonable degree of care.
- 7.2. Exceptions.** Notwithstanding the foregoing, neither Party will be in breach of this provision in circumstances where the Party is legally compelled to disclose the other Party's Confidential Information or where the information is already in the public domain through no fault of the receiving Party, or is in the disclosing Party's possession without a duty of confidentiality at the date of disclosure, or where the disclosing Party discloses the terms of this Agreement to its professional advisors, financiers, prospective financiers or partners or agents, or where Aconex identifies the Non-Paying Organization as a Platform customer.

## 8. DATA STORAGE AND PRIVACY

- 8.1. Use of Client PII.** In the course of receiving the Services under this Agreement, the Non-Paying Organization may disclose to Aconex personally identifiable information about the Non-Paying Organization's employees, directors, officers, customers or suppliers, and/or other users of the Services (collectively "Client PII"). Aconex may also otherwise be provided with access to Client PII in the course of delivering the Services. The Non-Paying Organization is responsible for confirming that its disclosure and/or provision of Client PII to Aconex, and Aconex's possession, storage and/or use of such Client PII in the manner contemplated under this Agreement is permissible under all applicable data processing laws and regulations. Without prejudice to the foregoing, the Non-Paying Organization acknowledges that Aconex may process Client PII for purposes connected with this Agreement, to conduct its business relationship with the Non-Paying Organization and for the relevant and limited purposes specified in the Privacy Policy. Aconex will act only as a data processor and will not re-use or re-disclose Client PII for unrelated purposes. Aconex will use commercially reasonable efforts to protect Client PII from loss, destruction or unauthorized use or access, utilizing technical, physical and administrative security measures consistent with industry standards. The Non-Paying Organization shall obtain the consent of each individual to whom such Client PII relates prior to disclosing such information to Aconex, and such

consent shall include adequate authorization for Aconex and Aconex Affiliates to process, use and disclose such Client PII in the manner contemplated under the Agreement.

- 8.2. Transfer and Storage of Client Data.** Due to the global nature of its business, Aconex may, for the purposes contemplated under this Agreement, transfer or store Client Data (including, without limitation, Client PII) in and to any country in which Aconex operates, subject to its compliance with applicable laws and this Agreement. The Non-Paying Organization agrees to such transfer in its own right and on behalf of those individuals and entities from whom it collected such Client Data and/or Client PII.
- 8.3. User Communications.** Aconex reserves the right to communicate with end users of the Services regarding matters relating to system usage, administration and support.

## **9. INTELLECTUAL PROPERTY RIGHTS**

Aconex and its licensors own all right, title and interest in and to the Platform and Services, including all Intellectual Property Rights therein and thereto, and any Materials or software or other inventions that may be developed or discovered by Aconex in connection with the Services. Except for the Platform License, no transfer of any Intellectual Property Rights will occur in connection with this Agreement. Notwithstanding anything to the contrary in this Agreement, Aconex has and retains the exclusive right to own, use and disclose, in the course of its business, all feedback provided by the Non-Paying Organization with respect to the Services and Platform.

## **10. SUSPENSION OF SERVICES**

The Non-Paying Organization's Platform License and/or right to receive the Services may, at Aconex's sole discretion be suspended, if Paying Organization fails to pay Aconex any fees applicable to the Services under a Services Order when due.

## **11. LIMITED WARRANTY AND DISCLAIMERS**

- 11.1. Limited Warranty.** Aconex warrants to the Non-Paying Organization that it will use reasonable professional skill and care, consistent with industry standards, in providing all Services. Aconex's sole liability and the Non-Paying Organization's sole and exclusive remedy for any breach of the warranty specified in this Section will be for Aconex to re-perform such Services.
- 11.2. Disclaimers.** THE NON-PAYING ORGANIZATION ASSUMES ALL RESPONSIBILITY FOR ITS SELECTION OF THE PLATFORM TO ACHIEVE ITS INTENDED RESULTS, FOR THE USE OF AND RESULTS OBTAINED FROM THE PLATFORM, AND FOR TAKING APPROPRIATE MEASURES TO PREVENT LOSS OF DATA. EXCEPT AS EXPRESSLY PROVIDED IN SECTION 11.1 ABOVE, TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, ACONEX DISCLAIMS ALL WARRANTIES, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE, INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTIES OF MERCHANTABILITY, NON-INFRINGEMENT, QUALITY AND FITNESS FOR A PARTICULAR PURPOSE. ACONEX DOES NOT WARRANT THAT THE SERVICES WILL BE ERROR-FREE OR THAT THE SERVICES WILL BE AVAILABLE WITHOUT INTERRUPTION. THE FOREGOING LIMITATIONS WILL APPLY EVEN IF THE ABOVE STATED REMEDY FAILS OF ITS ESSENTIAL PURPOSE.

## **12. LIMITATION OF LIABILITY**

TO THE MAXIMUM EXTENT PERMITTED BY LAW, ACONEX WILL NOT BE LIABLE FOR ANY SPECIAL, PUNITIVE, EXEMPLARY, INDIRECT, CONSEQUENTIAL LOSS, OR OTHER DAMAGES (INCLUDING LOSS OF PROFIT, INTEREST, REVENUE, BUSINESS, GOODWILL, SAVINGS OR ANTICIPATED PROFIT OR ANY LOSS OF OR DAMAGE TO ANY CLIENT DATA, OR LOSS OF OR INTERRUPTION TO THE NON-PAYING ORGANISATION'S BUSINESS), IN EACH CASE ARISING OUT OF OR IN ANY WAY CONNECTED TO THE PROVISION OF THE PLATFORM OR THE SERVICES INCLUDING, WITHOUT LIMITATION, LOSS OR DAMAGE CAUSED BY A COMPUTER VIRUS OR OTHER MALWARE OR ANY UNAVAILABILITY OF THE PLATFORM OR THE SERVICES, AND IN EACH CASE REGARDLESS OF WHETHER ACONEX WAS ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. REGARDLESS OF WHETHER A CLAIM ARISES IN CONTRACT, TORT OR OTHER, UNDER NO CIRCUMSTANCES WILL ACONEX'S (INCLUDING ITS OFFICERS, EMPLOYEES, CONTRACTORS, AFFILIATES AND AGENTS): (A) LIABILITY IN ANY MONTH BE GREATER THAN U.S. \$1,000; AND (B) ACONEX'S AGGREGATE LIABILITY IN CONNECTION WITH THIS AGREEMENT EXCEED U.S. \$5,000. THE FOREGOING LIMITATIONS WILL APPLY EVEN IF THE ABOVE STATED REMEDY FAILS OF ITS ESSENTIAL PURPOSE.

## 13. INDEMNITIES

### 13.1. Aconex Indemnity.

**13.1.1. Obligation.** Aconex shall defend or at its option settle any third party claim, action or proceeding brought against the Non-Paying Organization alleging that the Platform as delivered to the Non-Paying Organization and used as authorized in this Agreement, infringes any Intellectual Property Right of a third party and Aconex shall pay any final judgments awarded or settlements entered into to resolve such claim, action or proceeding; provided that the Non-Paying Organization provides Aconex with: (i) prompt written notice of such claim; (ii) sole control over the defense and settlement of such claim; and (iii) all necessary information and assistance (at Aconex's reasonable expense) to defend and/or settle such claim. The Non-Paying Organization may participate in the defense of a claim asserted hereunder after Aconex has assumed the defense or settlement, provided that the Non-Paying Organization shall bear any legal fees and expenses or other costs it incurs in so participating. Aconex shall not be liable for any costs or expenses incurred by the Non-Paying Organization when acting without Aconex's prior written authorization. Aconex may not settle or compromise any claim under this Section that requires the Non-Paying Organization to admit liability or pay any money without the Non-Paying Organization's prior written consent, which consent shall not be unreasonably withheld or delayed.

**13.1.2. Limit on Indemnity.** Notwithstanding the foregoing, Aconex will have no liability for infringement claims arising from: (i) combination of the Services with other software or products not provided by Aconex, if the infringement would not have occurred if the Services had not been so combined; (ii) any modification of the Services, in whole or in part, by anyone other than Aconex, if the infringement would not have occurred but for such modification; or (iii) use by the Non-Paying Organization of any specified release of the Platform after Aconex notifies the Non-Paying Organization that continued use may subject the Non-Paying Organization to such claim of infringement, provided Aconex provides the Non-Paying Organization with a replacement release.

**13.1.3. Replacement Services.** If any portion of the Services is held, or in Aconex's opinion is likely to be held, to infringe or misappropriate a third party's Intellectual Property Rights, or use of the Services is otherwise enjoined, then Aconex may at its sole option and expense, within a commercially reasonable period of time: (i) procure for the Non-Paying Organization the right to continue using the Services; (ii) replace the Services with a non-infringing solution; or (iii) terminate the Non-Paying Organization's Platform License and/or this Agreement.

**13.1.4. Entire Liability.** THIS SECTION STATES THE ENTIRE LIABILITY AND OBLIGATION OF ACONEX, AND THE SOLE AND EXCLUSIVE REMEDY OF THE NON-PAYING ORGANIZATION, WITH RESPECT TO ANY ACTUAL OR ALLEGED INFRINGEMENT OF ANY THIRD PARTY'S INTELLECTUAL PROPERTY RIGHTS WITH RESPECT TO THE NON-PAYING ORGANIZATION'S USE OF THE SERVICES.

**13.2. Non-Paying Organization Indemnity.** The Non-Paying Organization shall defend or at its option settle any third party claim, action or proceeding brought against Aconex, any Aconex Affiliate alleging that (a) the Non-Paying Organization has breached any law or regulation in its use of the Services, Client Data, or Client PII, or (b) the Non-Paying Organization has misused any Client Data or Client PII or infringed any third party's Intellectual Property Rights in its use of the Client Data or Client PII, and the Non-Paying Organization shall pay any final judgments awarded or settlements entered into to resolve such claim, action or proceeding; provided that Aconex provides the Non-Paying Organization with: (i) prompt written notice of such claim; (ii) sole control over the defense and settlement of such claim; and (iii) all necessary information and assistance (at the Non-Paying Organization's reasonable expense) to defend and/or settle such claim. Aconex may participate in the defense of a claim asserted hereunder after the Non-Paying Organization has assumed the defense or settlement, provided that Aconex shall bear any legal fees and expenses or other costs it incurs in so participating. The Non-Paying Organization shall not be liable for any costs or expenses incurred by Aconex when acting without the Non-Paying Organization's prior written authorization. The Non-Paying Organization may not settle or compromise any claim under this Section that requires Aconex to admit liability or pay any money without Aconex's prior written consent, which consent shall not be unreasonably withheld or delayed.

## 14. TERMINATION

**14.1. Termination for Breach.** Either Party may terminate this Agreement in the event that the other party commits a material breach of this Agreement and where such breach is capable of remedy, fails to remedy the breach within 30 days of receiving written notice from the other Party. Aconex may also terminate this Agreement on not less than 14 days' notice to the Non-Paying Organization if Paying Organization's right to receive the Services under this Agreement has been terminated.

**14.2. Termination for Insolvency.** Aconex may terminate this Agreement immediately by notice in writing if: (a) the Non-Paying Organization is unable to pay its debts as and when they become due or becomes, threatens or resolves to become or is in jeopardy of becoming insolvent or subject to an order, proceedings or resolution for liquidation or dissolution (unless for the purposes of amalgamation or reconstruction,) or entering into a compromise or arrangement with, or assignment for the benefit of any of its members or creditors; (b) the Non-Paying Organization, being a partnership, dissolves, threatens or resolves to dissolve or is in jeopardy of dissolving; (c) the Non-Paying Organization, being a natural person, dies; or (d) there is a change of control of the Non-Paying Organization.

- 14.3. Effect of Termination.** On termination of this Agreement, the Non-Paying Organization's Platform License shall automatically terminate and the Non-Paying Organization shall immediately cease using the Platform. The Non-Paying Organization shall also return any Materials and Aconex Confidential Information to Aconex or comply with Aconex's instructions for the destruction of such Materials and Confidential Information. At Aconex's request, the Non-Paying Organization will provide written confirmation certifying that all Materials and Aconex Confidential Information in its possession have been returned or destroyed.
- 14.4. Survival.** Sections 1, 3.3, 4, 5.2, 7, 8, 9, 11.2, 12, 13, 14.3, 14.4, 15 and 16 shall survive termination of this Agreement, howsoever occurring.

## **15. GOVERNING LAW AND DISPUTE RESOLUTION**

- 15.1. Governing Law and Jurisdiction.** This Agreement is governed by the laws of the State of California, without regard to its conflict of law principles, and the Parties submit to the exclusive jurisdiction of the state and federal courts located in the Northern District of California, and any court that may hear appeals from any of those courts, for any proceedings initiated or pursued in connection with this Agreement, and waive any right they may have to claim that those courts are an inconvenient forum.
- 15.2. Injunctive Relief.** Notwithstanding the foregoing, if either Party breaches, or threatens to breach the provisions of this Agreement concerning Confidential Information or Intellectual Property Rights, each Party agrees that the non breaching Party may have no adequate remedy at law and is therefore entitled to seek immediate injunctive and other equitable relief, without bond and without the necessity of showing actual monetary damages, in any court having jurisdiction.
- 15.3. Dispute Resolution.**
- 15.3.1. Negotiation.** If any dispute arises between the Parties in respect of this Agreement, or any related document, a Party must: (a) issue a written notice to the other Party notifying them of the existence of a dispute; and (b) use good faith efforts to resolve the dispute through negotiation.
- 15.3.2. Escalation.** In the event that negotiations pursuant to Section 15.2.1 do not resolve the dispute within 15 Business Days (or such longer period as may be agreed between the Parties), the dispute will be referred to the respective chief executive officers (or their nominees - external counsel excluded) of each Party for good faith negotiations.
- 15.3.3. Filing of Actions.** Neither Party may file an action to resolve a dispute prior to 20 Business Days (or such other period as may be agreed between the Parties) after an escalation pursuant to Section 15.2.2.
- 15.4. Legal Expenses.** If any proceeding is brought by either Party to enforce or interpret any provision of this Agreement, the substantially prevailing Party in such proceeding shall be entitled to recover, in addition to all other relief arising out of this Agreement, such Party's reasonable attorneys' and other experts' fees and expenses.

## **16. MISCELLANEOUS**

- 16.1. Force Majeure.** With the exception of any payment obligations, neither Party will be liable for any delay or failure to perform its obligations pursuant to this Agreement to the extent such delay is due to a Force Majeure Event. With the exception of payment obligations, to the extent a delay or failure of a Party to perform its obligations is caused or anticipated due to a Force Majeure Event, the performance of that Party's obligations will be suspended and neither Party will be liable to the other Party for a failure to perform its obligations as a result of a Force Majeure Event. If a delay or failure by a Party to perform its obligations due to a Force Majeure Event exceeds 3 calendar months, either Party may immediately terminate the Agreement without cause upon written notice to the other Party.
- 16.2. No Reliance on Representations.** The Non-Paying Organization has not relied on any representation, undertaking, statement or understanding which has not been stated expressly in this Agreement or upon any descriptions, illustrations or specifications contained in any document including marketing materials produced by Aconex.
- 16.3. Entire Agreement.** The documents comprising this Agreement contain the entire agreement between the Parties concerning its subject matter.
- 16.4. Independent Contractors.** The Parties are independent contractors. Aconex is not a party to any transactions the Non-Paying Organizations enter into with one another using the Platform or Services. Under this Agreement, Aconex and its personnel will never be employees, agents or partners of the Non-Paying Organization, and are not engaged in a joint venture with the Non-Paying Organization. Aconex shall have no liability arising out of any transaction or dealings conducted between the Non-Paying Organization and the Paying Organization and/or third parties through use of the Services.
- 16.5. Assignment.** The Non-Paying Organization may not assign this Agreement or delegate any of its obligations hereunder without Aconex's prior written consent. Any attempted assignment in violation of this provision will be null and void. Subject to the foregoing, this Agreement shall be binding upon and inure to the benefit of the Parties and their permitted successors and assigns.



- 16.6. Waiver.** Any right of either Party under this Agreement may only be waived in writing, signed by the Party giving the waiver, and no other conduct of a Party (including a failure to exercise, or delay in exercising, the right) shall operate as a waiver of the right or otherwise prevent the exercise of the right.
- 16.7. Modification.** The provisions of this Agreement will not be varied, except by express written instrument that makes explicit reference to this Agreement and is executed by authorized representatives of each of the Parties. Notwithstanding the foregoing, Aconex reserves the right to modify the Services and/or the terms and conditions of this Agreement at any time, but such modifications shall apply to Services Orders executed after the effective date of the change. Aconex will notify the Non-Paying Organization of such modifications, either via email, the Platform, or in a manner deemed commercially reasonable by Aconex.
- 16.8. Severability.** If any provision or part provision of this Agreement is held invalid, unenforceable or illegal by any court or tribunal for any reason, the remainder of this Agreement will remain otherwise in full force apart from such provisions or part provisions which will be deemed deleted or modified to the minimum extent necessary to remove the invalidity, unenforceability or illegality.
- 16.9. Client Reference.** Aconex may not issue any press release regarding the Non-Paying Organization's use of the Platform without the prior written consent of the Non-Paying Organization (not to be unreasonably withheld, delayed or conditioned). However, Aconex may use the Non-Paying Organization's name and logo in marketing materials and refer to the fact that the Non-Paying Organization is a client of Aconex in its annual report, list of references or presentations to actual or potential clients without the Non-Paying Organization's specific consent.
- 16.10. United States Export Controls.** The Services (including the Platform) use software and technology that may be subject to United States export control laws. The Non-Paying Organization shall not, directly or indirectly, export or re-export, or knowingly permit the export or re-export of the Services or any technical information related to the Services to any country for which such export or re-export is restricted by any applicable U.S. regulation or statute, without the prior written consent, if required, of the U.S. government entity that has jurisdiction over such export or re-export. Aconex and its licensors make no representation that the Services are appropriate or available for use in locations outside of the United States. If the Non-Paying Organization uses the Services from outside of the U.S., the Non-Paying Organization is solely responsible for compliance with all applicable laws, including without limitation export and import regulations of other countries. The Non-Paying Organization's failure to comply with this Section shall be a material breach incapable of remedy.
- 16.11. No Third Party Beneficiaries.** No provisions of this Agreement are intended or shall be construed to confer upon or give to any person or entity any rights, remedies or other benefits as a third party beneficiary. Without limiting the generality of the foregoing, Non-Paying Organizations may not enforce the rights granted to Paying Organizations under this Agreement and vice versa, under any circumstances.

## 17. NOTICES

- 17.1. Method of Communication.** Any notice or consent delivered by either Party under this Agreement shall only be effective if it is: (a) in writing, sent by or on behalf of and at the express instruction of the Party giving it; (b) addressed in accordance with Section 17.3 to the Party to whom it is to be given; and (c) either: (i) sent via overnight delivery service (e.g., FedEx or UPS), or (ii) sent by fax and the machine from which it is sent produces a report that states that it was sent in full and the recipient does not alert the sender to the fact that fax was not received in a legible form by the close of business the next Business Day; or (iii) in the case of notices from Aconex to the Non-Paying Organization, sent via the Platform.
- 17.2. Deemed Delivery.** A notice, consent or other communication that complies with this Section is deemed given and received: (a) if it is delivered or sent by fax: (i) by 5:00 PM (local time in the place of receipt) on a Business Day - on that day; or (ii) after 5:00 PM (local time in the place of receipt) on a Business Day, or on a day that is not a Business Day - on the next Business Day; (b) if it is sent by mail: (i) within the United States - four Business Days after posting; or (ii) to or from a place outside of the United States - seven Business Days after posting; and (iii) if it is sent via the Platform - by 5:00 PM the next Business Day (local time in the place of receipt).
- 17.3. Addresses.** Any notices from Aconex to the Non-Paying Organization under this Agreement shall be addressed to the Non-Paying Organization representative identified in the Non-Paying Organization's Services account, and the Non-Paying Organizations' contact details will be the contact details recorded in the Non-Paying Organization's Services account. Any notices from the Non-Paying Organization to Aconex under this Agreement shall be addressed as follows:

Aconex (North America), Inc.  
Attn: General Counsel  
1111 Bayhill Drive  
Suite 480  
San Bruno, CA 94066