

WHEREAS

- (a) ACONEX supplies a range of on-line business applications (the “Software”) and implementation and support services (together the “Services”) for the management of projects (“Projects”).
 - (b) Aconex licences its Software to clients who wish to access the Services for the storage, processing, retrieval and dissemination (“Use”) of information about Projects (“Information”) and provide access to the same to its team of professional advisers, designers, agents, suppliers, customers, contractors, sub-contractors and other participants (“Participants”).
 - (c) You are or will be a Participant in a Project(s) for one or more Clients, and wish to Use the Services.
 - (d) In this Agreement, ACONEX and END USER are each a “Party” and together the “Parties”
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1. Grant of Use

- 1.1 In consideration of (a) the Participant’s agreement to be bound by these terms; and (b) the grant by the Participant as set out in clause 1.3 below, ACONEX grants access to and Use of the Services by the Participant for the purpose of collaboration in each Project in which it participates (hereafter an “END USER”), limited for each such Project to the extent that:
 - (a) Client’s licence remains in force;
 - (b) Client pays properly due fees to ACONEX in respect of END USER’s access and Use;
 - (c) Client has confirmed to END USER that it is necessary for END USER to have such access.
- 1.2 In the event that Client’s licence with ACONEX is terminated for any reason, or if Client fails to pay fees in respect of END USER’s Use of the Services, or if Client instructs ACONEX to prevent END USER’s access to the Services in respect of any of its Projects, ACONEX will be entitled to suspend or terminate END USER’s access, but only to the extent of such termination, or failure to pay fees, or instruction to prevent access. If, as a result, END USER’s access to the Services is effectively entirely terminated, ACONEX will be entitled to terminate this Agreement and shall incur no liability to END USER for any such suspension or termination of access, or the termination of this Agreement.
- 1.3 In consideration of END USER’s access to and Use of the Services, END USER hereby grants ACONEX a non-exclusive licence to store Information that END USER publishes on the Software and that is owned by END USER or that END USER otherwise has the right to make available to Participants, for the term of this Agreement; and subject to Client’s wishes, to provide access to END USER’s Information in relation to the relevant Project(s), including access by Clients and future owners or tenants of assets, and to Participants.

2. Title and Copyright

- 2.1 ACONEX is either the sole and exclusive owner or an authorised licensee or authorised user

ACONEX END USER TERMS OF SERVICE AGREEMENT
FOR CONJECT PRODUCTS

of all the intellectual property and database rights (“IPRs”) in the Services (including any databases, images, "applets", photographs, animations, video, audio, music and text) and reserves all its rights. No ownership of the Services or of any third party right comprised in it is transferred to END USER, and END USER may not transfer, sub-license, rent, lease, network, or grant any right or interest in this Agreement to any other party.

- 2.2 If END USER learns of any claim that the Services infringe any rights of any third party and:
- (a) END USER informs ACONEX of the claim immediately, and prior to responding to the claimant lets ACONEX settle or litigate it using legal counsel of its own choosing and does not itself settle or litigate it; and
 - (b) the claim does not arise from END USER breach of this Agreement;

ACONEX will indemnify END USER against any damages or costs arising from the claim, and ACONEX will pay END USER reasonable expenses if END USER co-operates with ACONEX in its settlement or litigation concerning the claim. This will be END USER’s entire remedy in respect of any intellectual property right infringement, and is subject to END USER’s acknowledgement that if the Use of the Services is restricted or prohibited in the event of any such claim, ACONEX may, at its sole option, terminate Use to the extent of such prohibition or restriction, or if necessary terminate this Agreement, in either event incurring no liability to END USER.

3. Restrictions on Use

- 3.1 END USER must not:
- (a) modify, disassemble, reverse engineer, translate, decompile, create derivative works or otherwise alter the Services; or
 - (b) use the Software to publish, post, distribute or disseminate personal information on individuals prohibited under UK or EU Data Protection legislation, or otherwise in breach of the legal rights of others.
- 3.2 END USER must ensure that it has effective systems in place designed to prevent uploading, emailing or otherwise transmitting to the Software any data containing software viruses or any other computer code designed to interrupt, destroy or limit the functionality of any software or hardware or telecommunications equipment.
- 3.3 END USER must establish reasonable security precautions, accuracy checks and back up procedures in respect of its data and operational procedures (“Safeguards”) to guard against possible unauthorised access, inaccuracy, or loss of its data howsoever caused, in its Use of the Services.

4. Compliance with Laws and Agreement

- 4.1 If at any time END USER’s access to or Use of the Services is in breach of, or not in compliance with, any applicable national or local laws, regulations or ordinances; including any relevant Data Protection laws (“Applicable Laws”), END USER will be in breach of this Agreement, and ACONEX will be entitled, at its sole discretion, to terminate access to and Use of the Services, or this Agreement. ACONEX shall not incur any liability to END USER as a result of the breach, the non-compliance or the termination itself. If END USER breaches any

of the provisions of this Agreement ACONEX shall be entitled to deny access to the Services and to terminate this Agreement.

5. Indemnity

5.1 In consideration of the grant conferred at clause 1 above, END USER undertakes that if ACONEX suffers any loss, damage, fine or expense as a result of:

5.1.1 any unauthorised access to, or misuse of the Services

(a) by any of END USER's directors, employees, agents or subcontractors; or

(b) by any third party if that access or use or misuse was enabled or permitted by such a director, employee, agent or subcontractor; or

5.1.2 the nature of END USER Information or any use made of it; or

5.1.3 as a result of END USER breach of any provision of this Agreement;

END USER will fully indemnify ACONEX in respect of such loss, damage, fine or expense.

6. Confidentiality & Privacy

6.1 In consideration of access to and Use of the Services by END USER, END USER agrees to exercise due care in order to keep confidential any trade secrets END USER may learn, and all other confidential information concerning the Services, including the usernames and passwords issued to END USER.

6.2 Information may be confidential to Client, Project, Participants or to ACONEX. END USER agrees to keep all Information it receives in the course of using the Services in the strictest confidence, except for communicating the Information to Participants in the normal course of participating in a Project, or in the case of Information which is manifestly in the public domain or which cannot reasonably be regarded as being of a confidential nature.

6.3 END USER agrees to ensure that all relevant employees, agents and sub-contractors are aware of the confidentiality provisions in this clause 6 relating to the Services and to Information; and that they comply with them.

6.4 END USER acknowledges that the Software uses "cookies". Details of these and their use are available to you, prior to your use of the Software, on the Software login page.

7. Limited Warranty

If the Software is unavailable or functions defectively for any length of time, ACONEX warrants and undertakes to use reasonable commercial efforts to correct any fault in an appropriate and timely manner. Because of the complex nature of the communications environment and software and its use, ACONEX does not warrant that access to or operation of the Software will be uninterrupted or error-free. In view of the limited access to and Use of the Software permitted to you under this Agreement, ACONEX disclaims all other warranties, either express or implied, including but not limited to implied warranties of quality and fitness for a particular purpose.

8. Termination

8.1 END USER may terminate this Agreement by written notice to ACONEX at any time.

ACONEX END USER TERMS OF SERVICE AGREEMENT
FOR CONJECT PRODUCTS

8.2 On termination of this Agreement for any reason, END USER will immediately cease all access to and Use of the Services.

9. Liability

9.1 In view of END USER's limited access to and Use of the Services, END USER acknowledges that ACONEX must limit its liability, and END USER therefore agrees that ACONEX shall not be liable to END USER or to any third party for any losses, damages, claims, costs or expenses relating to END USER's inability to use the Services in any way, including but not limited to any delay, howsoever occasioned. In particular END USER further agrees that ACONEX shall not be liable to END USER or to any third party for any lost revenues or lost profits or any indirect, incidental or consequential damages, even if ACONEX has been advised of the possibility of such damages.

9.2 ACONEX's total liability for any direct damage to tangible property caused solely by defects in the Software or by the negligence of ACONEX's employees acting within the course of their employment and the scope of their authority shall be limited to one million pounds sterling (£1,000,000) in respect of any one incident or series of connected incidents.

9.3 Nothing in this clause 9 shall be construed as attempting to limit the liability of ACONEX in respect of direct physical injury or death caused by the negligence of ACONEX's employees acting within the course of their employment and the scope of their authority.

9.4 Except as expressly stated in this clause 9, any liability of ACONEX arising in connection with this Agreement shall not exceed the sum of five thousand pounds sterling (£5,000).

9.5 ACONEX shall not be liable for any damages arising from negligence or otherwise that results from END USER's failure to apply Safeguards (refer 3.3 above).

9.6 Neither ACONEX nor END USER shall be liable to the other for any delay or non-performance of its obligations under this Agreement arising from any cause beyond its reasonable control, including (without limitation) act of God, act of government or regulatory authority, war, fire, flood, explosion or civil commotion, industrial action or failure of the internet. If such delay or non-performance arising from such cause persists for more than 90 days, either Party may terminate this Agreement forthwith on written notice to the other Party without incurring any further liability on that account.

9.7 A person, company or other organisation who is not a Party to this Agreement has no right to enforce any of its terms.

10. Law, Jurisdiction and Scope of Agreement

10.1 The invalidity, illegality or unenforceability of any of the provisions of this Agreement shall not affect the validity, legality and enforceability of its remaining provisions.

10.2 No variation of these terms and conditions will be valid unless confirmed in writing by authorised signatories of both Parties on or after the date of this Agreement.

10.3 This Agreement shall be governed by and construed in accordance with English law, and the English Courts shall have exclusive jurisdiction over it.