

Appendix 1

**to the ____ and Aconex Terms of Service agreement
dated**

on

**the processing of personal data on behalf of a controller
in accordance with
Article 28 (3) of the EU General Data Protection Regulation (GDPR)**

between

- Client -

and

- Aconex -

Preamble

This Appendix details the parties' obligations around the processing of personal data on behalf of _____ [insert name of Organisation signing this document] as a data controller [hereinafter "Client"] and described in detail in the Aconex Terms of Service Agreement dated _____ (hereinafter "Agreement"). These terms shall apply to any and all activities associated with the Agreement, that involve processing of personal data of the Client's users (hereinafter "Client PII"), by Aconex on Client's behalf either by itself or its employees or third party sub-contractors (hereinafter "Processing").

1. Scope, duration and specification of Processing

The scope, duration and the detailed stipulations on the type and purpose of Processing shall be governed by the Agreement. In the event of a conflict between the terms of the Agreement and that of this Appendix, the terms of this Appendix shall prevail.

For the purpose of this Appendix the following terms will have the same meaning as assigned under the GDPR:

'personal data' means any information relating to an identified or identifiable natural person ('data subject'); an identifiable natural person is one who can be identified, directly or indirectly, in particular by reference to an identifier such as a name, an identification number, location data, an online identifier or to one or more factors specific to the physical, physiological, genetic, mental, economic, cultural or social identity of that natural person.

'controller' means the natural or legal person, public authority, agency or other body which, alone or jointly with others, determines the purposes and means of the processing of personal data; where the purposes and means of such processing are determined by Union or Member State law, the controller or the specific criteria for its nomination may be provided for by Union or Member State law;

'personal data breach' means a breach of security leading to the accidental or unlawful destruction, loss, alteration, unauthorised disclosure of, or access to, personal data transmitted, stored or otherwise processed under the Agreement that compromises the security, confidentiality or integrity of such personal data.

2. Scope of application and responsibilities

(1) Aconex shall process Client PII on behalf of Client for the purpose of rendering Services under the Agreement. Aconex. Within the scope of this Appendix, where the Client provides Client PII to Aconex, the Client is responsible for confirming that its disclosure and/or provision of Client PII to Aconex, and Aconex's storage and/or use of such Client PII in the manner contemplated under the Agreement and this Appendix is permissible under relevant statutory requirements on data protection, including, but not limited to, the lawfulness of disclosing Client PII to Aconex and the lawfulness of having Client PII processed on behalf of the Client. Client shall be the Data Controller in accordance with Article 4 no. 7 of the GDPR.

Aconex shall process Client PII only on behalf of the Client and only on documented reasonable instructions from the Client and in compliance with the Agreement. If the exercise of the right to issue reasonable instructions results in disproportionate efforts on part of Aconex which exceed the Services set forth in the Agreement or Aconex' duties under the relevant provision of the Client PII protection law, Aconex may comply with the instruction for a separate fee in relation to the efforts arising thereof. Client's individual instructions on Processing shall, initially, be as detailed in the Agreement.

3. Aconex's obligations

- (1) Except where expressly permitted by Article 28 (3)(a) of the GDPR, Aconex shall process Client PII only within the scope of the Agreement and the reasonable instructions issued by Client. Where Aconex believes that an instruction would be in breach of applicable law, Aconex shall notify Client of such belief without undue delay. Aconex shall be entitled to suspending performance on such instruction till such time that the Client modifies such instruction to ensure that performance under such instruction will cease to be a breach of applicable law.
- (2) Aconex shall, within Aconex's scope of responsibility, organise Aconex's internal organisation so it satisfies the specific requirements of data protection. Aconex shall implement technical and organisational measures to ensure the adequate protection of Client PII and shall implement technical and organisational measures and safeguards that ensure ongoing confidentiality, integrity, availability and resilience of processing systems and services.

With regard to compliance with the protective measures and safeguards agreed upon and their verified effectiveness, Aconex shall make available to the Client all information necessary to demonstrate compliance with its obligations, such as ISO 27001 certification and Cyber Essentials plus certification upon the written request of the Client

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Aconex reserves the right to modify the measures and safeguards implemented, provided, however, that the level of security shall not be less protective than initially agreed upon.

- (3) Aconex shall support Client, where possible for Aconex, in fulfilling data subjects' requests and claims, as detailed in chapter III of the GDPR and in fulfilling the obligations enumerated in Articles 33 to 36 of the GDPR. The procedure for compliance in this regard and the associated protocols will be separately documented by Aconex and shared with the Client and shall be implemented by the effective date of the legislation.
- (4) Aconex undertakes that all its employees involved in Processing of Client PII and other such persons as may be involved in Processing within Aconex's scope of responsibility shall be prohibited from processing Client PII outside the scope of the Agreement. Furthermore, Aconex undertakes that any person entitled to process Client PII on behalf of Controller has undertaken a commitment to confidentiality or is subject to an appropriate confidentiality obligation. All such obligations shall survive the termination or expiration of such Processing.
- (5) Aconex shall promptly notify Client, if Aconex becomes aware of breaches of the protection of personal data within Aconex's scope of responsibility.

Aconex shall implement the measures necessary for securing Client PII and for mitigating potential negative consequences for the data subject; Aconex shall coordinate such efforts with the Client without undue delay.

- (6) Aconex shall fulfil its obligations under Article 32 (1)(d) GDPR to implement a process for regularly testing, assessing and evaluating the effectiveness of technical and organisational measures for ensuring the security of the processing by way of the audits and assessments conducted by independent third-party auditors such as ISO 27001 and and Cyber Essentials plus audits
- (7) Aconex shall correct or erase Client PII if so instructed by Client and where covered by the scope of the instructions permissible. Where an erasure, consistent with data protection requirements, or a corresponding restriction of processing is impossible, Aconex shall, endeavour to pseudonymise Client PII in accordance with Art. 4 No. 5 of the GDPR. The procedure for compliance in this regard and the associated protocols will be separately documented by Aconex and shared with the Client and shall be implemented by the effective date of the legislation
- (8) Where a data subject asserts any claims against Client in accordance with Art. 82 GDPR, Aconex shall support Client in defending against such claims, where possible.

4. Client ´s obligations

- (1) Client shall notify Aconex, without undue delay, and comprehensively, of any defect or irregularity with regard to provisions on data protection detected by Client in the results of Aconex’s work.
- (2) Section 3 para. 11 above shall apply, mutatis mutandis, to claims asserted by data subjects against Aconex in accordance with Art. 82 GDPR.
- (3) Client shall notify to Aconex the point of contact for any issues related to data protection arising out of or in connection with the Agreement.

5. Enquiries by data subjects

Where a data subject asserts claims for rectification, erasure or access against Aconex, Aconex shall refer such data subject to Client promptly. Aconex shall support Client, where possible, based upon the procedure for compliance in this regard and the associated protocols that will be separately documented by Aconex and shared with the Client. Aconex shall not be liable in cases where Client fails to respond to the data subject’s request in total, correctly, or in a timely manner.

6. Options for documentation

- (1) Aconex shall document and prove to Client Aconex's compliance with the obligations agreed upon in this appendix by appropriate measures.
- (2) by making available to Client the following its then current ISO 27001 and Cyber Essentials plus certification reports
- (3) Where, in individual cases, audits and inspections by Client or an auditor appointed by Client are necessary to confirm compliance with the obligations under the Exhibit 1, such audits and inspections will be conducted during regular business hours, and without interfering with Aconex's operations, upon prior notice and pursuant to an agreed-upon scope, and observing an appropriate advance notice period of at least 28 days. Aconex may also determine that such audits and inspections are subject to prior notice, the observation of an appropriate notice period, and the execution of a confidentiality undertaking protecting the data of other customers and the confidentiality of the technical and organisational measures and safeguards implemented. The audit report or findings shall be confidential information under the Agreement and Client will provide Aconex with a copy thereof. Aconex shall be entitled to rejecting auditors which are competitors of Aconex.
- (4) Where a data protection supervisory authority or another supervisory authority with statutory competence for Client conducts an inspection, para. 3 above shall apply mutatis mutandis. The execution of a confidentiality undertaking shall not be required if such supervisory authority is subject to professional or statutory confidentiality obligations whose breach is sanctionable under the applicable criminal code.

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7. Data Transfers

- (1) Aconex may access and Process Client PII on a global basis as necessary to perform the Services, including for IT security purposes, maintenance and performance of the Services and related infrastructure, and technical support.
- (2) To the extent such global access involves a transfer of Client PII originating from the European Economic Area ("EEA") or Switzerland to Aconex affiliates or third party subprocessors located in countries outside the EEA or Switzerland that have not received a binding adequacy decision by the European Commission or by a competent national EEA data protection authority, such transfers are subject to (i) the terms of the EU Model Clauses incorporated into this Appendix 1 by reference; or (ii) other binding and appropriate transfer mechanisms that provide an adequate level of protection in compliance with applicable data protection law, such as approved Binding Corporate Rules for Processors. For the purposes of the EU Model Clauses, Client and Aconex agree that (i) Client will act as the data exporter on Client's own behalf and on behalf of any of Client's entities, (ii) Aconex will act on its own behalf and/or on behalf of the relevant Aconex affiliates as the data importers, (iii) any third party subprocessors will act as 'subcontractors' pursuant to Clause 11 of the EU Model Clauses.
- (3) Transfers of Client PII originating from other locations globally to Aconex affiliates or third party subprocessors are subject to (i) for Aconex affiliates, the terms of the EU Model Clauses for Proces-

sors; and (ii) for third party subprocessors, the terms of the relevant Aconex third party subprocessor agreement incorporating security and data privacy requirements consistent with the relevant requirements of this Appendix 1.

8. Subprocessors (further processors on behalf of Client)

- (1) Aconex shall use subprocessors as further processors on behalf of Client solely for the purposes of rendering services under the Agreement.
- (2) Aconex shall conclude, with such subprocessors, the contractual instruments necessary to ensure an appropriate level of data protection and information security.
- (3) Client hereby consents to Aconex's use of its subprocessors engaged solely for the purpose of rendering Services pursuant to the Agreement. If Client would like to receive a complete list of such subprocessors, it may submit a request for the same via privacy@aconex.com.
- (4) Within fourteen (14) calendar days of Aconex providing such list to Client, Client may object to the intended involvement of a third party subprocessor in the performance of the Services, providing objective justifiable grounds related to the ability of such third party subprocessor to adequately protect Client PII in accordance with this Annex 1 or applicable data protection law in writing via privacy@aconex.com, or other applicable primary support tool provided for the Services. In the event Client's objection is justified, Client and Aconex will work together in good faith to find a mutually acceptable resolution to address such objection, including but not limited to reviewing additional documentation supporting the third party subprocessors' compliance with this Appendix 1 or applicable data protection law, or delivering the Services without the involvement of such third party subprocessor. To the extent Client and Aconex do not reach a mutually acceptable resolution within a reasonable timeframe, Client shall have the right to terminate the relevant Services (i) upon serving prior notice in accordance with the terms of the Agreement; (ii) without liability to Client and Aconex and (iii) without relieving Client from Client's payment obligations under the Agreement up to the date of termination. If the termination in accordance with this Section 8(4) only pertains to a portion of Services under an order, Client will enter into an amendment or replacement order to reflect such partial termination.]
- (5) Where Aconex commissions subprocessors, Aconex shall be responsible for ensuring that Aconex's obligations on data protection resulting from the Agreement and this Appendix are valid and binding upon subprocessor and Aconex shall remain responsible to Client for the performance of any subprocessor engaged by Aconex.

9. Final provisions

- (1) Where the Client PII becomes subject to search and seizure, an attachment order, confiscation during bankruptcy or insolvency proceedings, or similar events or measures by third parties while in Aconex's control, Aconex shall notify Client of such action promptly. Aconex shall, without undue delay, notify to all pertinent parties in such action, that any Client PII affected thereby is in Client's sole property and area of responsibility, that Client PII is at Client's sole disposition, and that Client is the responsible body in the sense of the GDPR.

- (2) No modification of this Appendix and/or any of its components – including, but not limited to, Aconex’s representations and warranties, if any – shall be valid and binding unless made in writing or in a machine-readable format (“text form”), and furthermore only if such modification expressly states that such modification applies to the terms of this Appendix. The foregoing shall also apply to any waiver or modification of this mandatory written form.
- (3) If any provision or part provision of this Appendix 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.
- (4) This Appendix is subject to the laws of _____

Exhibit 1

On sec. 1 of the appendix:

The nature and purpose of the processing, the type of personal data and categories of data subjects.

Nature and purpose of data collection, processing or use:

Aconex provides software and services for construction project and property management which involves processing personal data provided by, and pursuant to the instructions and directions of, the data exporter in accordance with the terms of the Terms of Service Agreement]

Type of personal data (Data) that will be processed:

The categories of personal data are determined by the data exporter in its sole discretion and may include but not limited to: first and last name; employer; business role; professional title; contact information (e.g., email, phone, physical address); _____

Special personal data acc. Art. 9 Sec. 1 GDPR

(personal data revealing racial or ethnic origin, political opinions, religious or philosophical beliefs, or trade union membership, genetic data, biometric data for the purpose of uniquely identifying a natural person, data concerning health, data concerning a natural person's sex life or sexual orientation)

Please specify:

Not applicable

Categories of data subjects Data relates to:

The categories of data subjects whose personal data may be transferred in connection with the Services are determined and controlled by the data exporter in its sole discretion and may include but not limited to: Clients and prospects of the data exporter; employees or contractors of the data exporters' prospects and Clients, and; employees and contractors of the data exporter
