

# ORACLE ACONEX CLOUD SERVICES TERMS OF USE

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Your use of the Oracle Aconex Cloud Services is governed by (i) Your applicable Oracle agreement (as set out in Section 2 below) (the “Agreement”) including these Oracle Aconex Cloud Services Terms of Use (“Terms of Use”), and (ii) the order for the Oracle Aconex Cloud Services entered into by the Paying Organization and an Oracle entity (or if You are a Non-Paying Organization, the scope and restrictions mentioned in the aforementioned order).

Capitalized words used here and not defined in these Terms of Use shall have the meaning attributed to them under the applicable Agreement or Service Specifications. In the event of any inconsistency between any other terms of the Agreement and these Terms of Use, the Terms of Use shall prevail.

These Terms of Use do not apply to any non-Oracle Aconex Cloud Service offerings, such as professional services or other Cloud Services. These Terms of Use shall apply to both Paying Organizations and Non-Paying Organizations, as applicable, except where stated otherwise. For the avoidance of doubt, You may not rely on any right or obligation contained in these Terms of Use that relate to other Participants (as such term is defined in Section 3.3 below).

## 1. DEFINED TERMS

- 1.1. **“Non-Paying Organization”** means any entity that (i) is either (a) invited (in its own right and not as such invitee’s user) and authorized to use the Oracle Aconex Cloud Services with respect to a System Project by the Paying Organization or another entity using the Oracle Aconex Cloud Services; or (b) continues to have capability to access the Oracle Aconex Cloud Services without being a Paying Organization or participating in any active System Projects pursuant to Section 2.3 below, (ii) has accepted the appropriate Oracle terms and conditions pursuant to Section 2 below, and (iii) is not required under an order to pay Oracle for access to and use of the Oracle Aconex Cloud Services for the System Project. The Non-Paying Organization’s users shall not be considered the Paying Organization’s users or the users of the party that invited such Non-Paying Organization to access or use the Oracle Aconex Cloud Services.
- 1.2. **“Oracle Aconex Cloud Services”** or **“Services”** means a Cloud Service containing “Aconex” in its title and referenced in the relevant Oracle service description available at <http://www.oracle.com/us/corporate/contracts/cloud-services/index.html>.
- 1.3. **“Paying Organization”** means the entity specified as the contracting party (other than Oracle) in an order, that is responsible for paying fees to Oracle for its and all Non-Paying Organizations’ use of the Oracle Aconex Cloud Services, and that has discretion with respect to all Non-Paying Organizations’ right to access and use the Oracle Aconex Cloud Services under the Paying Organization’s Agreement and applicable order.
- 1.4. **“You”** and **“Your”** refers to, as applicable, (i) the Paying Organization that signed the order for the applicable Oracle Aconex Cloud Services, or (ii) Non-Paying Organization listed as the ‘legal entity’ upon registering for the Oracle Aconex Cloud Services.

## 2. APPLICABLE AGREEMENT

2.1. **Project Access.** For each System Project You are accessing through the Oracle Aconex Cloud Services, the following terms apply in relation to Your use of the Oracle Aconex Cloud Services for that System Project only:

(a) *Non-Paying Organization:* If You are invited to a System Project as a Non-Paying Organization, by accessing the Oracle Aconex Cloud Services You agree to be bound by Your Agreement being the country-specific version (based on Your physical location or if one is not available for Your physical location, then the United States' version) of the Oracle Cloud Services Agreement available at <http://www.oracle.com/us/corporate/contracts/cloud-services/index.html> that is current at the time of Your first access to that System Project (Your Agreement may also be referred to herein as "Project Agreement"). Your Project Agreement incorporates the then current version of these Terms of Use, which are available on <http://www.oracle.com/us/corporate/contracts/cloud-services/index.html>. For the avoidance of doubt, Your access and use of the Oracle Aconex Cloud Services related to each System Project, in Your capacity as a Non-Paying Organization, is governed by a standalone Project Agreement.

(b) *Paying Organization:* If You are accessing the Oracle Aconex Cloud Services as a Paying Organization, the terms of Your order and Your Agreement referenced in the aforementioned order will apply to Your use of the Oracle Aconex Cloud Services in Your capacity as Paying Organization for the System Project(s) under such order only. Unless otherwise stated in Your order, Your Agreement also incorporates the version of these Terms of Use current as of the date of Your order.

2.2. **Additional Services.** If You execute an order with Oracle for ancillary Oracle Aconex Cloud Services related to a System Project (such as an online archive or a project archive) as a Paying Organization ("Additional Services"), the terms of Your order and applicable Agreement referenced in the aforementioned order will apply to Your use of such Additional Services only. Unless otherwise stated in Your order, Your Agreement also incorporates the version of these Terms of Use current as of the date of Your Additional Service's order.

2.3. **Other Access.** You will be considered a Non-Paying Organization in the event You have capability to access or use the Oracle Aconex Cloud Services without participating in any active System Projects or are not receiving an online archive service under Section 2.2 above ("Non-Active NPO"). Your aforementioned access capabilities or usage will be governed by the latest version of the Project Agreement (incorporating the latest version of these Terms of Use, which may be updated at Oracle's discretion). For the avoidance of doubt, as soon as You cease to be a Non-Active NPO, the Project Agreement under this Section will be terminated. Without prejudice to any of Oracle other rights under the Project Agreement or otherwise, Oracle reserves the right to terminate the Non-Active NPO's Project Agreement and/or such party's access to the Oracle Aconex Cloud Services at any time and without notice.

### 3. USE OF SERVICES

3.1. In consideration of the Paying Organization's timely payment of all applicable fees and compliance with the terms and conditions of the Paying Organization's Agreement and the applicable order (together the "Paying Organization Terms") and the Non-Paying Organization's compliance with the terms of the Project Agreement and the scope and restrictions contained in the Paying Organization's order, Oracle will make the Oracle Aconex Cloud Services listed in the Paying Organization's order available to the Paying Organization and all Non-Paying Organizations (if applicable) pursuant to Your Agreement and applicable order. Except as otherwise stated in the Paying Organization Terms, You have the nonexclusive, worldwide, limited right to use the applicable Oracle Aconex Cloud Services

during the period defined in the Paying Organization's order (the "Services Period"), unless earlier terminated in accordance with Your Agreement or the Paying Organization Terms, solely in support of the Paying Organization's Project(s) and subject to the terms of Your Agreement, the scope and restrictions specified in the Paying Organization's order and applicable Service Specifications. You may allow Your Users to use the Oracle Aconex Cloud Services for this purpose, and You are responsible for their compliance with Your Agreement and the Paying Organization's order (or if You are a Non-Paying Organization, the scope and restrictions mentioned in the aforementioned order). The Paying Organization agrees to inform all Non-Paying Organizations of the scope and restrictions specified in (i) the Paying Organization's order; and (ii) the Service Specification applicable to the Oracle Aconex Cloud Services. The Paying Organization further agrees to inform all Non-Paying Organizations of their rights and obligations under the applicable Paying Organization's Data Processing Agreement.

- 3.2. You acknowledge that by uploading, transmitting and receiving data or other content to and from the Oracle Aconex Cloud Services, You are making data and other content available for the use by You and other Participants (as defined below) and the retraction or deletion of such data and other content may adversely affect those Participants. Any request by You to delete or modify Your Content should be provided via or by the Paying Organization to Oracle. The Paying Organization agrees to obtain prior consent from all applicable Non-Paying Organizations prior to providing Oracle with such request. Notwithstanding the foregoing, Oracle is not responsible for the result of any conflicting requests or obtaining or verifying any consents.
- 3.3. You acknowledge that You may access through, within, or in conjunction with Your use of, the Oracle Aconex Cloud Services, data or other content provided by entities (other than You) that are participating in the System Project (the "Participants"). For the purposes of the Oracle Aconex Cloud Services and the Agreement, such Participants' data shall be considered Your Content. You acknowledge and agree that (i) such data or other content is provided on an "as-is" and "as available" basis by Participants without any warranty of any kind from Oracle, (ii) Oracle is not responsible for, and shall have no obligation to control, monitor, or correct, such data or other content, and (iii) such data or content may impact Your use of the Oracle Aconex Cloud Services. To the extent not prohibited by law, Oracle disclaims all liabilities arising from or related to such data or other content or for any impact the availability, deletion or retraction of such data or content has on Your Content or Your use of the Services, including but not limited to where such deletion or retraction is undertaken by Oracle pursuant to a Participant's instructions. Notwithstanding Section 3.2 above, You agree to indemnify Oracle against any claim by a Participant related to Oracle deleting or retracting Your Content based on Your instructions and it is Your responsibility to obtain the other Participants' prior consent.
- 3.4. You acknowledge that upon the Paying Organization's written request to Oracle to remove a Non-Paying Organization from a System Project, Oracle will provide the Non-Paying Organization with at least 14 days' notice prior to terminating such access.
- 3.5. You are responsible for maintaining the confidentiality of the access credentials (e.g., username and password) used to access the Oracle Aconex Cloud Services, and agree that You will not share access credentials among users or disclose those credentials to any third party.
- 3.6. Notwithstanding the definition of a Non-Paying Organization above, if a 'Project Owning Organization' (as this term is defined below) for any System Project is not the Paying Organization, the following terms apply:
  - (a) The Paying Organization is responsible for the Project Owning Organization and its' users actions and their compliance with the terms of (i) the Paying Organization Terms (except in relation to the payment of fees), and (ii) the applicable Project Agreement between the Project Owning

Organization and Oracle. For the avoidance of doubt, the Project Owning Organization may not enforce any right against Oracle or an Oracle affiliate under the Paying Organization Terms. Nothing in this section shall preclude (i) the Project Owning Organization from enforcing any of its' rights under the applicable Project Agreement against Oracle; or (ii) Oracle or Oracle affiliates enforcing any right under the Paying Organization Terms (against the Paying Organization) or under the Project Agreement against the Paying Organization and/or the Project Owning Organization.

- (b) Should Oracle receive any instructions directly from the Project Owning Organization or any of its users, such instructions will be considered made by the Paying Organization. Oracle has no obligation to ensure the compatibility or accuracy of instructions received from the Paying Organization or Project Owning Organization, and Oracle is not responsible for the effect of any conflicting instructions. Any Confidential Information disclosed by Oracle to the Project Owning Organization shall not be a breach of the confidentiality provisions in the Paying Organization Terms.

For the purposes of this Section, a 'Project Owning Organization' means any Non-Paying Organization that has accepted Oracle's terms related to Non-Paying Organizations and is appointed to administer a System Project on the Oracle Aconex Cloud Services.

#### **4. CHANGE IN SCOPE**

- 4.1. Without prejudice to any other rights Oracle may have under Your Agreement, if the Paying Organization or any Non-Paying Organization is, in Oracle's reasonable opinion, using the Oracle Aconex Cloud Services outside of the scope identified in an order or Services Specification, or if the scope of a Project increases, Oracle may require the Paying Organization to execute an order with Oracle reflecting such changed use and charge the Paying Organization additional fees, which additional fees shall be proportional to the additional scope of use, as determined in Oracle's sole reasonable judgment. If the Paying Organization objects to such increased fees or does not execute an order with Oracle reflecting such usage, then Oracle may at its discretion (a) require the Paying Organization and applicable Non-Paying Organizations to discontinue any excess or prohibited use of the Oracle Aconex Cloud Services, and/or (b) terminate the applicable Oracle Aconex Cloud Services specified under the order on not less than 30 days' written notice to the Paying Organization. If Oracle terminates any orders or part thereof as specified in the preceding sentence, the Paying Organization must pay within 30 days all amounts (plus related taxes and expenses) that are due up to the end of the original Services Period.
- 4.2. A Non-Paying Organization has no obligation to pay any fees in connection with the Oracle Aconex Cloud Services for as long as it remains a Non-Paying Organization. Where You wish to acquire Additional Services related to a System Project, then You will be required to enter into a separate agreement with Oracle for the relevant services subject to the payment of additional fees and You will be considered a Paying Organization in relation to these Additional Services only.
- 4.3. Where You acquire Additional Services, such Additional Services will be for Your own use and other Participants will not have any rights to use or access such Additional Services, unless otherwise stated in the applicable order or Service Specifications.

#### **5. LIMITATION OF LIABILITY (APPLICABLE TO NON-PAYING ORGANIZATION ONLY AND REPLACING THE LIMITATION OF LIABILITY PROVISIONS IN THE AGREEMENT)**

- 5.1. IN NO EVENT WILL EITHER PARTY OR ITS AFFILIATES BE LIABLE FOR ANY INDIRECT, CONSEQUENTIAL, INCIDENTAL, SPECIAL, PUNITIVE, OR EXEMPLARY DAMAGES, OR ANY LOSS OF REVENUE, PROFITS, SALES, DATA, DATA USE, GOODWILL, OR REPUTATION.

- 5.2. THE PARTIES ACKNOWLEDGE THAT ORACLE IS NOT RECEIVING ANY FEES FROM THE NON-PAYING ORGANIZATION RELATED TO THE ORACLE ACONEX CLOUD SERVICES OR ANY RELATED SERVICES OR OFFERINGS AND AS SUCH IN NO EVENT SHALL THE AGGREGATE LIABILITY OF ORACLE AND OUR AFFILIATES ARISING OUT OF OR RELATED TO THE SERVICES, ANY RELATED SERVICES OR OFFERINGS OR YOUR AGREEMENT, WHETHER IN CONTRACT, TORT, OR OTHERWISE, EXCEED \$1,000.
- 5.3. NOTHING IN THIS SECTION 5 SHALL BE DEEMED TO DISCLAIM OR LIMIT LIABILITY THAT CANNOT BE DISCLAIMED OR LIMITED UNDER THE APPLICABLE GOVERNING LAW REFERENCED IN YOUR AGREEMENT.

**6. TERM AND TERMINATION (APPLICABLE TO NON-PAYING ORGANIZATION ONLY AND ARE IN ADDITION TO THE TERM AND TERMINATION PROVISIONS IN YOUR AGREEMENT)**

- 6.1. At any time during the Services Period, You shall have the right to terminate Your Agreement and cancel Your access to, and use of, the Oracle Aconex Cloud Services without cause by providing 14 days' written notice to Oracle.
- 6.2. Subject to Section 6.3 below, Oracle may terminate Your Agreement and cancel Your access to, and use of, the Services and/or System Project, on not less than 14 days' notice to You, if (i) the Paying Organization's right to receive the Services has been or will be terminated; or (ii) the Paying Organization requests that Oracle terminate Your access to a System Project under Section 3.4 above.
- 6.3. Oracle may suspend Your or Your Users' access to, or use of, the Services and/or a System Project if (i) the Paying Organization fails to pay Oracle any fees applicable to the Services under an order when due, and/or (ii) You provide incorrect information when registering on the Oracle Aconex Cloud Services. To the fullest extent permitted under the applicable law, we disclaim all liabilities arising from or related to such suspension.
- 6.4. In the event Your Agreement is terminated prior to the end of the Services Period or Your right to access and use the Services is cancelled, access by You and any of the Participants to 'Your Content', including content and data shared with You by other Participants through the Oracle Aconex Cloud Services, will be in accordance with the Oracle Hosting and Delivery Policies and the Oracle Global Business Unit Cloud Services Pillar Document available on <http://www.oracle.com/us/corporate/contracts/cloud-services/index.html>.
- 6.5. Without prejudice to any other remedies Oracle may have under Your Agreement or otherwise, in the event Oracle terminates Your Agreement or any order related to the Services due to Your breach, Oracle reserves the right to disable or suspend Your access to the Services and/or terminate all Your Agreement(s) where You are a Non-Paying Organization. Any breach by You under an Agreement where You are a Non-Paying Organization or a Paying Organization will be considered a breach by You under all Your Agreements in Your capacity as a Non-Paying Organization.

**7. ADDITIONAL PRIVACY PROVISIONS**

- 7.1. Subject to Section 7.2 below, at the end of the Services Period, Your Content will be retained in accordance with Oracle Hosting and Delivery Policies and the Oracle Global Business Unit Cloud Services Pillar Document available on <http://www.oracle.com/us/corporate/contracts/cloud-services/index.html>, and You acknowledge and agree that other Participants may continue to access Your Content after the termination or expiry of Your Agreement.

- 7.2. Your Content (including Personal Information, as such term is defined in the applicable Data Processing Agreement) that You include in the 'Global Directory' may be accessible by all users of the Oracle Aconex Cloud Services, both within and outside of the System Project, for as long as You are registered on the Oracle Aconex Cloud Service. Oracle will process Personal Information in the Global Directory in accordance with the applicable Data Processing Agreement and You acknowledge and agree that all organizations listed in the Global Directory (whether Paying Organizations or Non-Paying Organizations) are joint Controllers of any Personal Information contained therein. For the purposes of this section, the 'Global Directory' means the index of Oracle Aconex Cloud Services' registered users within the same data centre location.
- 7.3. Subject to Section 7.4 below, the Paying Organization's applicable Data Processing Agreement shall apply to the processing by Oracle of Your and all other Participants' Personal Information as part of the Oracle Aconex Cloud Services. For the avoidance of doubt and other than as referenced in Section 7.4 below, any Data Processing Agreement referenced in that Non-Paying Organization's Agreement shall not apply to Oracle's processing of the Non-Paying Organization's Personal Information. You and the other Participants are the Controllers of the Personal Information Processed by Oracle under the Agreement and the Paying Organization's order. You and all the Participants are responsible for compliance with all obligations applicable to Controllers under Applicable Data Protection Law, in particular for justification of any transmission of Personal Information to Oracle (including providing any required notices and obtaining any required consents and/or authorizations, or otherwise securing an appropriate legal basis under Applicable Data Protection Law), and for any decisions and actions concerning the Processing of such Personal Information. You and Oracle agree and acknowledge that:
- (a) Non-Paying Organizations shall exercise any rights under the Paying Organization's Data Processing Agreement (e.g., audit rights or deletion rights) only through the applicable Paying Organization that owns the applicable System Project, and all Non-Paying Organizations do not obtain any additional rights or claims separate and distinct from the Paying Organization's rights under the Paying Organization's Data Processing Agreement;
  - (b) Oracle retains the right to provide notices, under the applicable Paying Organization's Data Processing Agreement, to You and/or any of the other Participants, as applicable. In the event Oracle submits a notice to the Paying Organization, it is the Paying Organization's responsibility to pass on such notices to all Non-Paying Organizations participating in the applicable Project or System Project (including after the end of such Project), as appropriate.
  - (c) Each Non-Paying Organizations hereby consents and authorizes the Paying Organization, and the Paying Organization hereby accepts, that the Paying Organization is duly authorized by all the Non-Paying Organizations to execute or apply the Paying Organization's Data Processing Agreement on behalf of all Non-Paying Organizations associated with the Paying Organization's System Project. You acknowledge that Oracle will Process Personal Information under the applicable Paying Organization's Data Processing Agreement indistinctly of any such consents or authorizations and Oracle bears no responsibility or liability for the effect of any conflicting instructions received; and
  - (d) For the avoidance of doubt, the Paying Organization will not be liable for the Non-Paying Organizations' breach of their obligations under the Paying Organization's Data Processing Agreement. You are liable for Your breach of Your obligations under the Paying Organization's Data Processing Agreement and Oracle may bring a claim directly against You for any such breach.
- 7.4. If You are a Non-Active NPO that has never been invited or participated in a System Project, the Data Processing Agreement applicable to Your Project Agreement shall apply to Oracle's processing of Your Personal Information.

7.5. In the event of any inconsistency between the applicable Data Processing Agreement and this Section 7, Sections 3.2 and 3.3 of these Terms of Use, the terms of the aforementioned Sections shall prevail.

## 8. SPECIFIC NOTICE

In addition to the notice provisions in the applicable Agreement, Oracle may give notices specific to You or the Participants (including but not limited to suspension notices due to the Paying Organization's non-payment) by means of a notice on the Oracle Aconex Cloud Service.

## 9. OTHER

9.1. Notwithstanding anything to the contrary in the Agreement, during the Services Period, Oracle may update these Terms of Use to reflect changes in, among other things, laws, regulations, rules, technology, industry practices, patterns of system use, and availability of Third Party Content. Oracle updates to these Terms of Use will not materially reduce the level of performance, functionality, security or availability of the Services during the applicable Services Period. Oracle shall provide notice to You of any updates to the Terms of Use in accordance with the notice provisions in Your Agreement or on the Oracle Aconex Cloud Service (if applicable) and, unless stated otherwise in Your order for the Oracle Aconex Cloud Services or the notice for the change in the Terms of Use, such updated Terms of Use shall apply from the date of such notice.

9.2. **PLEASE READ THE APPLICABLE TERMS CAREFULLY. THE TERMS OF USE (INCLUDING TERMS RELATED TO LIABILITY HEREIN) SHALL PREVAIL OVER ANY CONFLICTING TERM IN YOUR AGREEMENT. BY CLICKING THE "I ACCEPT" OR SIMILAR BUTTON TO WHICH THESE TERMS OF USE ARE LINKED OR ATTACHED OR OTHERWISE WHEN ACCESSING THE SERVICES, YOU ARE AGREEING TO THESE TERMS AND CONDITIONS.**

9.3. The user accepting these Terms of Use represents that the user has the necessary authority to bind such company to the Terms of Use and all documents referenced herein (including Your Agreement). When registering on the Oracle Aconex Cloud Services, You warrant that (i) all information entered during the registration process is accurate and complete; and (ii) the user accepting these Terms of Use is authorized to bind the legal entity that the user represents. Without prejudice to Oracle's other rights, Oracle reserves the right to immediately terminate or suspend Your and all Your Users access to the Services in the event of a breach of the aforementioned warranty. If the user does not agree with the Terms of Use and all documents referenced herein in their entirety or does not have the requisite authority to bind the company on whose behalf the user is entering into these Terms of Use, the user must not accept the Terms of Use, and must immediately discontinue all use of the Services.