

Terms of Service Agreement (05.2017)

PREAMBLE

If your organization is paying BidContender for Services, then your organization is a Paying Client. If your organization is using the Services without charge, your organization is a Project Participant. Please read this Agreement carefully

BY REGISTERING ON THE BIDCONTENDER PLATFORM, YOU AGREE TO THE FOLLOWING TERMS AND CONDITIONS. IF YOU ARE ENTERING INTO THIS AGREEMENT ON BEHALF OF A COMPANY OR OTHER LEGAL ENTITY, YOU REPRESENT THAT YOU HAVE THE AUTHORITY TO BIND SUCH ENTITY TO THESE TERMS AND CONDITIONS, IN WHICH CASE THE TERMS "CLIENT," "YOU" OR "YOUR" SHALL REFER TO SUCH ENTITY. IF YOU DO NOT HAVE SUCH AUTHORITY, OR IF YOU DO NOT AGREE WITH THESE TERMS AND CONDITIONS, YOU MUST SELECT THE "I DECLINE" BUTTON BELOW AND MAY NOT USE THIS SERVICE. PLEASE VERIFY THAT YOU HAVE SUCH AUTHORITY BEFORE YOU COMPLETE YOUR REGISTRATION.

AGREEMENT

DEFINITIONS

1.1 AET means Australian Eastern Time.

1.2 Agreement means the Service Order and this BidContender Terms of Service

1.3 BidContender means Aconex Limited (ABN 49 091 376 091) (trading as BidContender), a company incorporated in Australia, and, unless expressly included in the Agreement, excludes any BidContender Affiliates.

1.4 BidContender Affiliate means (a) any entity controlling or controlled by Aconex Limited; and (b) 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.

1.5 Business Day means a day that is not a Saturday, Sunday or holiday observed by BidContender in Melbourne, Australia.

1.6 Client means a Paying Client or a Project Participant.

1.7 Client Data means data which the Client 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 Hosted Platform).

1.8 Confidential Information means any non-public information disclosed by either Party to the other Party in writing 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 and the terms of this Agreement are Confidential Information.

1.9 Effective Date means the date the Client accepts this Agreement by registering on the BidContender platform.

1.10 Fees means the charge(s) payable by the Client to BidContender pursuant to this Agreement, as specified in the Service Order.

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 Hosted Platform means the Platform as hosted by BidContender or for BidContender by an authorized sub-contractor of BidContender.

1.13 Implementation Fee means the Fee for Implementation Services.

1.14 Intellectual Property Rights means patents, copyrights, trade secrets, and other proprietary rights recognized in any jurisdiction worldwide, and all applications and registrations therefor.

1.15 Materials means all manuals, data, documents, and information which are prepared, written, made accessible, provided or developed by BidContender or its licensors in connection with the Services, including help and support documentation.

1.16 Project Participant means any user of the Services designated by the Paying Client where permitted by, and pursuant to, this Agreement, who is not required to pay BidContender for access to the Platform.

1.17 Party means either BidContender or the Client as the context dictates, and Parties means BidContender and the Client.

1.18 Paying Client means any user of the Services who has entered into an agreement to pay Fees for the Services.

1.19 Platform means machine readable object code owned by or licensed to BidContender, and Upgrades thereto released during the term of the Agreement, and which is accessed and used by the Client, and regardless of whether the Platform is hosted by BidContender, the Client or a third party.

1.20 Price List means the standard price list for the Services as it may be changed from time to time at BidContender's discretion and which is available from BidContender.

1.21 "Privacy Statement" means the Aconex Privacy Statement, 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 as may be updated by Aconex from time to time in any manner that complies with then-current applicable laws.

1.22 Service Order means the applicable order form for the provision of Services, relating to >the provision of goods and services by Aconex, and as further described at Section 16.2. Service Order also means a Project Confirmation Sheet, a Corporate Agreement, a Client Agreement, a Variation

Agreement (to the extent that the same amends the scope of the original agreement) and any similar document by which the Parties agree the particulars of the Client's use of the Platform.

1.23 Services means the services described in Section 2.1 of this Agreement.

1.24 Upgrades means any bug fixes, error corrections, modifications, updates, upgrades and new versions of the Platform that are provided by BidContender generally to its clients at no additional charge. Upgrades excludes new products that are charged for separately by BidContender.

2. SERVICES

2.1 Services and Schedule. In consideration for any applicable Fees and the terms and conditions of this Agreement, BidContender will provide such of the following Services, pursuant to the terms and conditions of this Agreement.

(a) Platform License. A non-exclusive, non-transferable, restricted license ("a Platform License"), for the term specified in Section 2.3, to access the Platform and use the functionality available on the Platform.

(b) Hosting Services. Making the Platform available over the public Internet, including unlimited data transmission by the Client to and from the Platform, and unlimited storage of Client Data on the Platform.

2.2 Restrictions. Unless expressly authorized under this Agreement or by BidContender in writing, the Client is not permitted to: (i) except to the extent that applicable laws prevent BidContender restraining the Client from doing so, reverse engineer, adapt, modify, create derivative works of, make additional copies of, separate, or develop the Platform, or facilitate or assist any such activity; (ii) integrate or link the Platform with other software; (iii) sell or otherwise earn consideration by providing access to the Platform; (iv) permit third party access to the Platform; (v) use the Platform to compete with BidContender, assist a competitor of BidContender or develop competing products or services. Client is responsible for compliance with this Agreement by its employees, contractors and agents and is liable for all their acts and omissions.

2.3 Term of License or Service. BidContender will provide each Service from the Effective Date for any period specified in an agreed Service Order.

2.4 Client Responsibilities.

(a) Confidentiality of Username and Password. The Client is responsible for the confidentiality of the username and password used by its personnel to access the Platform and agrees not to give its username or password to any third party.

(b) Accuracy of Data. The Client acknowledges that by transmitting data within the Platform, the Client is inviting any recipients to rely upon that information and that the retraction of such information may therefore affect the recipients. BidContender may, as a condition to complying with any Client request to retract or delete data from the Platform, require the Client to comply with BidContender's reasonable risk mitigation requirements.

(c) Other Obligations. The Client understands and acknowledges that BidContender's ability to provide the Services is dependent on the Client undertaking any agreed obligations (or such reasonable obligations as may be advised to the Client by BidContender). The Client acknowledges

that failure to perform any such obligations may result in a failure to receive Services and/or additional costs being payable for the Services.

3. CLIENT DATA

3.1 Ownership. Client retains all of its right, title and interest in and to Client Data, and ownership of Client Data is not transferred to BidContender under this Agreement.

3.2 Right to Use. Client grants BidContender a nonexclusive license, for the term of this Agreement, to use Client Data to accommodate Client's authorized use of the Platform and Services. Client further grants BidContender a nonexclusive, worldwide, perpetual license to use usage data (such as, by way of example and not by way of limitation, numbers of documents uploaded) in an aggregated form that is not identifiable to any organization in order to compile statistics on Platform use and improve the Platform.

3.3 Retention. At the end of this Agreement, the Client will have three months ("Retention Period") in which to purchase an archive of the Client Data at the Fee specified in the Price List, after which the Client Data may be deleted by BidContender without notice. BidContender will not be liable for any damages of any kind in connection with a decision not to retain Client Data after the Retention Period.

3.4 Warranty regarding Client Data and Use of the Services. The Client warrants that it has appropriate rights in Client Data and that the Client Data and the Client's use of the Client Data will not violate applicable laws or this Agreement. BidContender is not obligated to screen Client Data, although BidContender reserves the right to screen Client Data and to remove without warning Client Data that it reasonably considers may breach this Agreement. BidContender will notify the Client if BidContender removes Client Data and will repost or return Client Data provided that, in BidContender's reasonable opinion, doing so would not place BidContender at risk of loss or damage. To the extent permitted by law and subject to Section 11.3, BidContender is not liable for any damage or loss caused by BidContender's decision to remove Client Data. The Client is entirely responsible for the content and delivery of Client Data, including without limitation, the accuracy, usefulness, timeliness and completeness of Client Data. The Client 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.

4. FEES

4.1 Fees. Unless otherwise specified in this Agreement, the Client must pay Fees: (a) in advance; and (b) by the means specified in the Service Order. If the Client fails to pay any amount payable by it under this Agreement, in addition to any other rights, BidContender will be entitled to charge the Client interest on the overdue amount, payable by the Client immediately on demand, from the due date up to the date of actual payment at a rate equal to 2% above the prevailing base lending rate quoted by Commonwealth Bank of Australia (or, if less, the maximum amount permitted by applicable law) and such interest shall accrue daily, be calculated weekly and be compounded monthly. With the exception of any outstanding or overdue Fees, periodic Fees will cease to be payable when the Client advises BidContender that the Agreement has expired in accordance with its terms, or this Agreement is terminated whichever is sooner.

4.2 Taxes. All Fees specified hereunder do not include and are net of any foreign or domestic governmental taxes or charges of any kind that may be applicable to this Agreement, including without limitation excise, sales, use, property, license, value-added taxes, goods and services tax, franchise, income, withholding or similar taxes, customs or other import duties or other taxes, tariffs or duties, other than taxes which are imposed based on the net income of BidContender. Any such taxes which are otherwise imposed on payments to BidContender shall be the sole responsibility of Paying Client.

4.3 Currency. All amounts are quoted and to be paid in Australian Dollars.

5. ACCEPTABLE USE OF THE SERVICES

The Client must use the Services in accordance with this Agreement and in accordance with all applicable laws. The Client must not attempt to breach or circumvent Platform security. In addition, the Client must not use the Services in any fashion that would, or assist others to: mislead or deceive; post or transmit information that infringes or violates the rights of a third party, including the rights of privacy and publicity; cause or knowingly facilitate the spread of a virus, worm, Trojan horse, or another harmful object; post or transmit unsolicited messages, junk mail, spam or chain letters or material that might be considered offensive; collect or store personal data without permission; promote in any way illegal or unwelcome or unsociable activities; attempt to breach or circumvent Platform security; assist BidContender competitors; or undertake promotions or undertake commercial activity not connected with the business purposes the Services are intended to support. In order to provide the Services effectively and in accordance with applicable law and this Agreement, BidContender may monitor and record the Client's use of the Services and the Client authorizes BidContender to collect, store and use all such information provided BidContender complies with Section 6.

6. CONFIDENTIALITY

(a) Obligation. Both Parties acknowledge that the Confidential Information obtained by either Party pursuant to this Agreement may constitute valuable trade secrets of the disclosing Party. Each Party agrees to use Confidential Information solely in accordance with the provisions of this Agreement and not to disclose, or permit to be disclosed, either directly or indirectly, Confidential Information to any third party, without the other 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 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.

(b) 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 (not Client Data) to its professional advisors, financiers, prospective financiers or partners or agents, Related Parties or where BidContender discloses the fact the Client is a Client to potential clients.

7. PERSONAL INFORMATION AND CLIENT DATA

Use of Personal Information: In the course of receiving the Services under this Agreement, Client may disclose to Aconex Personal Information in connection with the Client's employees, directors, officers, customers or suppliers, and/or other users of the Services. Aconex may also otherwise be provided with access to Personal Information in the course of delivering the Services. Where the Client provides Personal Information to Aconex, the Client is responsible for confirming that its disclosure and/or provision of Personal Information to Aconex, and Aconex's storage and/or use of such Personal Information in the manner contemplated under this Agreement is permissible under relevant Privacy Legislation. Aconex collects Personal Information directly from the relevant individual(s) (such as under Section 11.2) and Aconex is solely responsible for ensuring that all acts (including collection, storage, use and disclosure) are in accordance with its Privacy Statement and otherwise permissible under the relevant Privacy Legislation.

Aconex will use commercially reasonable efforts to protect Personal Information from loss, destruction or unauthorized use or access, utilizing technical, physical and administrative security measures consistent with Good Industry Practice. For the purpose of this Section 10, Personal Information is not data that is in any way created or extracted from Client Data with respect to a Project or Client Data that the Client uploads or transmits via the Platform (other than Personal Information provided as part of any registration processes or procedures).

Additional purposes under Aconex's Privacy Statement: Aconex may collect Personal Information of the Client's employees, agents and contractors with whom Aconex has contact in business dealings and, subject to Aconex's compliance with Privacy Legislation, the Client acknowledges that Aconex may use that information in accordance with Aconex's Privacy Statement in addition to the purpose of performing Services under this Agreement.

In the course of delivering Services under this Agreement, Aconex may allow messaging and sharing of information in many ways, such as your profile, service areas, request for information, tenders and quotations, and contact details. Information and content that is shared or posted may be seen by other users of the Services. Where settings have been made available, Aconex will honor the choices made by users about who can see content or information (such as connecting with other contractors, access control settings, public vs private tenders).

8. USER COMMUNICATIONS

Aconex either through itself or through its third party partners [morefully described in clause - below] may communicate with end users of the Services regarding non-Project specific matters relating to system usage, modules and support provided by Aconex, which may include but may not be limited to providing information on products or services or administration, marketing communications, identifying product and services preferences to personalize experience for the Customer and for business purposes, such as data analysis, audits, fraud monitoring and prevention, developing new products, enhancing, improving or modifying our websites and services, identifying usage trends, determining the effectiveness of our promotional campaigns and operating and expanding our business activities.

Transfer and Storage of Personal Information: Due to the global nature of its business, Aconex may, for the purposes contemplated under this Agreement, transfer or store Personal Information to any country in which Aconex operates, subject to its compliance with applicable laws and this Agreement.

The Client agrees to such transfer in its own right and on behalf of those individuals and entities from whom it collected such Personal Information, where such transfer is for the purposes of performing the Services. Personal Information collected by Aconex will be stored through electronic systems located in various jurisdictions. While some of these databases may be operated by Aconex entity some may be operated by third parties on behalf of Aconex. Customer data may be transferred to databases outside the Client's country of domicile, potentially to jurisdictions to that may not require an equivalent level of data protection to the laws of the Client's jurisdiction.

Aconex may share Personal Information with third parties to perform business functions and services on its behalf including in connection with the use or operation of the Platform (such functions may include hosting servers, providing legal, accounting, marketing, product research or other support services); or as required or permitted by law.

These third parties may be located in various countries across the globe. Where Aconex does make information or data available to third parties to perform business functions and services on behalf of Aconex, all such parties will be obligated to maintain the security and confidentiality of the Personal Information and to process the data in accordance with Aconex's instructions.

Aconex either by itself or through third party service providers, will act only as a data processor and will not re-use or re-disclose Personal Information for unrelated purposes outside the provision of the Services.

Aconex will conclude appropriate data protection contracts with all such third parties, to ensure appropriate levels of data protection is accorded to the data at all times.

9. INTELLECTUAL PROPERTY RIGHTS

9.1 Platform and Services. The Client acknowledges and agrees that BidContender and its licensors own all right, title and interest in and to the Services and the Platform, including all Intellectual Property Rights therein and thereto, including any materials or software that may be developed by BidContender in the performance of the Services. No transfer of any Intellectual Property Rights occurs pursuant to this Agreement. This Agreement is not a sale and does not convey to Client any rights of ownership in or related to the Platform or the Services, or any Intellectual Property Rights therein.

9.2 Feedback. Notwithstanding anything to the contrary in this Agreement, BidContender has and retains the exclusive right to own, use and disclose, in the course of its business, all feedback provided by Client with respect to the Services and Platform.

10. SUSPENSION FOR BREACH

Without affecting any other rights and obligations in this Agreement or at law or equity (including a right of termination and a right to claim damages), BidContender may suspend the Platform License and delivery of any or all of the Services if the Client commits a breach of this Agreement and does not remedy that breach within seven days (and in the case of a breach of Section 4, BidContender may further require all Fees to be payable in advance).

11. LIMITED WARRANTY AND DISCLAIMERS

11.1 Limited Warranty. BidContender warrants to Client that BidContender will use reasonable professional skill and care in providing all Services. BidContender's sole liability and Client's sole remedy for any failure to so perform the Services will be for BidContender to re-perform such Services.

11.2 Disclaimers. CLIENT ASSUMES ALL RESPONSIBILITIES FOR SELECTION OF THE PLATFORM TO ACHIEVE CLIENT'S 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 AND SUBJECT TO THE TERMS OF SECTION 11.3, TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, BIDCONTENDER: (A) DISCLAIMS ALL WARRANTIES, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE; (B) SPECIFICALLY DISCLAIMS ANY IMPLIED WARRANTIES OF MERCHANTABILITY, NON-INFRINGEMENT, QUALITY AND FITNESS FOR A PARTICULAR PURPOSE; AND (C) DOES NOT WARRANT THAT THE PLATFORM WILL BE ERROR-FREE OR THAT THE PLATFORM WILL WORK WITHOUT INTERRUPTIONS. THE FOREGOING LIMITATIONS WILL APPLY EVEN IF THE ABOVE STATED REMEDY FAILS OF ITS ESSENTIAL PURPOSE.

11.3 Certain legislation, including the Trade Practices Act 1974 (Cth), may imply warranties or conditions or impose obligations on BidContender which cannot be excluded, restricted or modified or cannot be excluded, restricted or modified except to a limited extent. This Agreement must be read subject to these statutory provisions. If these statutory provisions apply, to the extent to which BidContender is entitled to do so, BidContender limits its liability in respect of any claim under those provisions to, in the case of services, the supplying of the services again.

12. LIMITATION OF LIABILITY

TO THE MAXIMUM EXTENT PERMITTED BY LAW AND SUBJECT TO SECTION 11.3, BIDCONTENDER WILL NOT BE LIABLE FOR ANY SPECIAL, PUNITIVE, EXEMPLARY, INDIRECT, CONSEQUENTIAL LOSS, OR DAMAGES, 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 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 BIDCONTENDER WAS ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

TO THE MAXIMUM EXTENT PERMITTED BY LAW AND SUBJECT TO SECTION 11.3, REGARDLESS OF WHETHER A CLAIM ARISES IN CONTRACT, TORT (INCLUDING IN NEGLIGENCE) OR OTHERWISE, UNDER NO CIRCUMSTANCES WILL BIDCONTENDER'S (INCLUDING ITS OFFICERS, EMPLOYEES, CONTRACTORS, AFFILIATES AND AGENTS): (A) LIABILITY IN ANY MONTH BE GREATER THAN 100% OF THE MONTHLY FEE FOR THAT MONTH (FOR PAYING CLIENTS) AND \$2,000 (FOR PROJECT PARTICIPANTS); AND (B) BIDCONTENDER'S AGGREGATE LIABILITY IN CONNECTION WITH THIS AGREEMENT EXCEED THE SUM OF 100% OF THE TOTAL FEES PAID TO THE DATE THE CLAIM AROSE (FOR PAYING CLIENTS) OR \$10,000 (FOR PROJECT PARTICIPANTS).

The Client and BidContender agree that the disclaimer, exclusions and limitations in this Agreement are fair and reasonable given the amount of Fees paid by the Paying Client and the number of Clients receiving the Services. The Fees charged for the Services are calculated on the basis of the validity of the indemnities, limitations and exclusions in this Agreement. Increased liability on the part of BidContender would result in higher Fees. YOU ACKNOWLEDGE THAT THE FEES REFLECT THIS ALLOCATION OF RISK AND THAT THE DISCLAIMER, EXCLUSIONS AND LIMITATIONS ARE ESSENTIAL ELEMENTS OF THIS AGREEMENT.

13. INDEMNITIES

13.1 BidContender Indemnity.

(a) **Obligation.** BidContender shall defend or at its option settle any third party claim, action or proceeding brought against Client alleging that the Platform as delivered to Client and used as authorized in this Agreement, infringes any Intellectual Property Right of a third party and BidContender shall pay any final judgments awarded or settlements entered into; provided that Client provides BidContender 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 BidContender's expense) to defend and/or settle such claim. Client may participate in the defense of a claim asserted hereunder after BidContender has assumed the defense or settlement, provided that Client shall bear any legal fees and expenses or other costs it incurs in so participating. BidContender shall not be liable for any costs or expenses incurred by Client by acting without BidContender's prior written authorization. BidContender may not settle or compromise any claim under this Section 16.1 that requires Client to admit liability or pay any money without Client's prior written consent, which consent shall not be unreasonably withheld or delayed.

(b) **Limit on Indemnity.** Notwithstanding the foregoing, but subject always to section 14.3, BidContender will have no liability for infringement claims arising from: (i) combination of the Platform with other software or products not provided by BidContender, if the infringement would not have occurred if the Platform had not been so combined; (ii) the modification of the Platform, in whole or in part, by anyone other than BidContender, if the infringement would not have occurred but for such modification; or (iii) use by Client of any specified release of the Platform after BidContender notifies Client that continued use may subject Client to such claim of infringement, provided BidContender provides Client with a replacement release.

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

(d) **Entire Liability.** TO THE EXTENT PERMITTED BY LAW, THIS SECTION 16 STATES THE ENTIRE LIABILITY AND OBLIGATION OF BIDCONTENDER, AND THE SOLE AND EXCLUSIVE REMEDY OF CLIENT, WITH RESPECT TO ANY ACTUAL OR ALLEGED INFRINGEMENT OF ANY INTELLECTUAL PROPERTY RIGHT BY THE SOFTWARE OR DOCUMENTATION.

13.2 Client Indemnity. The Client shall defend or at its option settle any third party claim, action or proceeding brought against BidContender, any BidContender Affiliate or any BidContender Related Entity alleging that (a) the Client has breached any law or regulation in the use of the Platform or the Client Data, or (b) the Client has misused any Client Data or infringed any third party Intellectual Property Rights in the use of the Client Data, and Client shall pay any final judgments awarded or settlements entered into; provided that BidContender provides Client 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 Client's expense) to defend and/or settle such claim. BidContender may participate in the defense of a claim asserted hereunder after the Client has assumed the defense or settlement, provided that BidContender shall bear any legal fees and expenses or other costs it incurs in so participating. Client shall not be liable for any costs or expenses incurred by BidContender by acting without Client's prior written authorization. Client may not settle or compromise any claim under this Section 13.2 that requires BidContender to admit liability or pay any money without BidContender's prior written consent, which consent shall not be unreasonably withheld or delayed.

14. TERMINATION

14.1 Termination for Convenience. Either Party may terminate this Agreement without penalty upon 30 days prior written notice to the other.

14.2 Termination for Breach. Either Party may terminate this Agreement in the event that (a) either 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 or (b) the Client's access has been suspended under Section 10 and has not taken the necessary action to restore access within a further 23 days. A failure to make payment by the due date of an amount greater than 10% of Fees (whether singly or in aggregate) constitutes a material breach.

14.3 Termination for Insolvency. BidContender may terminate this Agreement immediately by notice in writing if: (a) the Client 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, or an administrator is appointed to the Client, a resolution that an administrator be appointed to it is passed or proposed, or any other steps are taken to appoint an administrator to the Client or the Client is wound up or liquidated, voluntarily or otherwise other than for the purpose of amalgamation or reconstruction whilst solvent or any event occurs having a substantially similar effect to any of the preceding events; (b) the Client, being a partnership, dissolves, threatens or resolves to dissolve or is in jeopardy of dissolving; (c) the Client, being a natural person, dies; or (d) there is a change of control of Client.

14.4 Payment in the Event of Termination. In the event that (a) BidContender terminates this Agreement pursuant to this section 14 or (b) the Client indicates it is unwilling or unable to continue to perform its obligations, (each a "Termination Event"), without prejudice to BidContender's rights and remedies hereunder, the Client will be required to pay BidContender 65% of all Fees uninvoiced as at the date of the Termination Event. The parties agree that this payment is a genuine pre-estimate of BidContender's loss and damage arising as a consequence of the Termination Event.

14.5 Effect of Termination. The Client must cease to use the Platform and the Services upon termination. On termination of this Agreement, the Client immediately loses all rights to use or possess the Platform and must return any Materials to BidContender or comply with all directions of BidContender for the destruction or return of the Materials and, at BidContender's request, the Client must procure that an authorized representative of the Client, certifies that the Materials has been returned or destroyed. The Client must pay any and all amounts outstanding promptly following termination.

14.6 Survival. Sections 3, 4, 5, 7, 9, 11.2, 12, 13, 15, 16 and 17 shall survive termination.

15. GOVERNING LAW AND DISPUTE RESOLUTION

15.1 Governing Law And Jurisdiction. This Agreement is governed by the laws of the state of Victoria, Australia and the Client submits to the non-exclusive jurisdiction of that state and waives any right it might have to claim that those courts are an inconvenient forum.

15.2 Dispute Resolution.

(a) 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.

(b) Escalation. In the event that negotiations pursuant to Section 15.2(a) 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.

(c) 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 19.2(b).

15.3 Injunctive Relief. Notwithstanding the foregoing, if either Party breaches, or threatens to breach the provisions of this Agreement concerning confidentiality or Intellectual Property Rights, each Party agrees that the non-breaching Party will 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 money damages, in any court having jurisdiction.

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 on providing notice in writing to the other Party.

16.2 Entire Agreement.

(a) Document Contains Entire Agreement. The documents comprising this Agreement contain the entire agreement between the Parties concerning its subject matter. If the Client does not complete and submit a Service Order, but instead issues a non-BidContender purchase order, that purchase order will constitute an offer by the Client to purchase the Services specified in it on these conditions; accordingly, the execution and return of the acknowledgement copy of the purchase order from BidContender, or BidContender's commencement or execution of work pursuant to the purchase order, will establish a contract for the supply and purchase of the Services on these conditions (and exclude all other terms and conditions).

(b) Amendments to Service Order and Client's Standard Terms and Conditions Have No Effect. Any amendments to a Service Order or this Agreement not expressly accepted in writing by an authorized BidContender officer and the Client's standard terms and conditions (if any) attached to, enclosed with, or referred to in, any purchase order are expressly excluded from and shall not form part of the Agreement.

16.3 No Reliance on Representations. The Client warrants that it 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 catalogues or publicity material produced by BidContender.

16.4 Independent Contractor. BidContender is not a party to any transactions Clients enter into with one another using the Platform. Under this Agreement, BidContender and its personnel will never be the employee, agent or partner of a Client, and is not engaged in a joint venture with a Client. Clients agree to

waive to the maximum extent possible any and all rights they may have against BidContender arising out of any transaction or dealings they conduct with another Client or third party through the Platform.

16.5 Subcontracting And Assignment.

(a) Subcontracting. BidContender may sub-contract the delivery of Services under this Agreement; provided that BidContender shall remain liable to the Client for the provision of such Services.

(b) Assignment. Neither Party may assign this Agreement, whether by operation of law or otherwise, without the prior written consent of the other Party, which consent shall not be unreasonably withheld or delayed; except that BidContender may assign all or part of this Agreement to an BidContender Affiliate on notice to the Client. 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. A right 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) operates as a waiver of the right or otherwise prevents the exercise of the right; a waiver of a right on one or more occasions does not operate as a waiver of that right if it arises again; and the exercise of a right does not prevent any further exercise of that right or of any other right.

16.7 Modification. The provisions of this Agreement will not be varied, except by express written agreement and by making explicit reference to this Agreement.

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 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. BidContender may not issue any press release regarding the Client's use of the Platform without the prior written consent of the Client (not to be unreasonably withheld, delayed or conditioned). However, BidContender may use the Client's name and logo and refer to the fact that the Client is a client of BidContender in its annual report, list of references or presentations to actual or potential clients without the Client's consent.

16.10 United States Export Controls. The Service (including the Platform) uses software and technology that may be subject to United States export controls. Client agree that Client will not, directly or indirectly, export or re-export, or knowingly permit the export or re-export of, the Services (including the Platform) or any technical information about the Services (including the Platform) 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 government entity that has jurisdiction over such export or re-export. BidContender and its licensors make no representation that the Service (including the Platform) is appropriate or available for use in other locations. If Client uses the Service (including the Platform) from outside of the U.S., Client is solely responsible for compliance with all applicable laws, including without limitation export and import regulations of other countries. A failure to comply with this Section will be regarded as 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, Project Participants may not enforce the rights granted to Paying Clients and vice versa under any circumstances.

16.12 Language Of Agreement. This Agreement has been written in the English language and, in the event of any conflict between the English-language version and any translation of this Agreement, the English-language version will prevail.

17. NOTICES

17.1 Method of Communication. A notice, consent or other communication under this Agreement is only effective if it is: (a) in writing, sent by or on behalf of and at the express instruction of the person giving it; (b) addressed in accordance with Section 17.2 to the person to whom it is to be given; and (c) sent via email.

17.2 Addresses. The Client's representative and email address will be as specified at registration or otherwise in writing to BidContender. BidContender's representative for notice will be "Aconex Legal Counsel" and the email address is legal@aconex.com.