

1. Definitions and Interpretation

1.1. In this Agreement, unless the context otherwise requires:

Acceptable Use Policy means Convergence's Acceptable Use Policy, as amended from time to time and which is available upon request.

Agreement means the agreement formed in accordance with clause 2.2 consisting of the relevant Order Form, the Standard Terms and Conditions, the relevant Service Description(s), the relevant SLA(s) and any other document referred to therein;

Charges mean Convergence's charges from time to time as referred to in Clause 7.1 and the relevant Order Form;

Convergence means Convergence (Group Networks) Limited whose registered number is 3815417 and whose registered office is One Cranmore Drive, Shirley, Solihull, B90 4RZ;

Convergence System means the telecommunications system which Convergence run;

Convergence Website means www.convergencegroup.co.uk or such other address as is notified to You from time to time;

Customer or You / Your means the organisation with whom Convergence makes the Agreement as set out in the Order Form, or where appropriate, any person representing You if it appears to Convergence that such person acts with Your authority or permission;

Customer Apparatus means any apparatus, and any software embodied therein (including without limitation any cabling, wiring, personal computers, network interface cards and network interface adapters) not forming part of (but which may be connected to) the Equipment, belonging and used by You in conjunction with any Equipment in order to obtain or use the Service. The Customer Apparatus is neither owned nor the responsibility of Convergence;

Customer Services means Convergence's business customer services team, contact details of which are set out in the Order Form and on the Convergence website at www.convergencegroup.co.uk;

Equipment means any equipment that Convergence from time to time makes available to You (whether or not any Charges are made for such supply) in connection with the provision of the Service

Force Majeure Event means any cause preventing Convergence, its suppliers or its subcontractors from performing any or all of its obligations under this Agreement which arises from or is attributable to events beyond its reasonable control, including, without limitation, acts of God, acts of governmental or supra-national authority, outbreak of hostilities, national emergency, fault or failure of a communications network, an act of terrorism, riots, civil commotion, fire, explosion or flood;

Intellectual Property Rights means all patents, copyrights, design rights, trademarks, service marks, trade secrets, know-how, database rights and other rights in the nature of intellectual property rights (whether registered or unregistered) and all applications for the same, anywhere in the world;

Law means any law, statute or regulation, guideline or code of conduct (whether or not having the force of law) in any jurisdiction to which a Party is from time to time subject;

Minimum Period means the duration as stated in the Order Form as "Contract Term", which is applied from the Service Commencement Date;

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Minimum Written Notice means, unless otherwise agreed in writing between the parties, for the Buyer a period of 30 days unless a shorter period is specified in the Order Form;

NOC means the Convergence Network Operations Centre;

Normal Working Hours means 09:00 – 17:30 Monday to Friday excluding public holidays in the United Kingdom;

Order Form means Convergence's order form setting out, amongst other things: Customer details, the Services and the Charges, referring to these Standard Terms and Conditions and which is accepted by Convergence in accordance with clause 2.2;

Party means each of Convergence and You;

Password means a password, code, PIN number, account number, smart card or other security device issued to You by Convergence;

Service means the service(s) defined in the relevant Order Form;

Service Commencement Date means the date the relevant Service is available for use by You;

Service Description means the document setting out the description of the relevant Service(s) and SLA and referred to in the relevant Order Form(s);

SLA means the service level agreement(s) applicable to the relevant Service(s) referred to in the relevant Service Description;

Service Terms and Conditions means the Standard Terms and Conditions set out here on pages 1 to 18, as varied from time to time, that apply to the Service and which form part of the Agreement;

Site means the site at which any Equipment shall be located or to which the Service shall be provided;

Site Occupier means the occupier of a Site and of such other premises which Convergence needs to access to supply the Service, and shall include its successors and permitted assignees;

Site Wayleave means Convergence's standard form wayleave agreement from time to time to be executed by Convergence and the Site Occupier in respect of the relevant Site;

Software means any software supplied to You by Convergence in connection with or to enable You to use the Service;

Special Terms means Convergence's additional Terms and Conditions contained in, and relating to, a particular Order;

Stranded Costs means any pre-committed charges incurred by Convergence due to the service being cancelled, amended or materially delayed by cause of the Customer's failure to comply with the terms of this Agreement;

Survey means any survey or other investigations carried out by or on behalf of Convergence that Convergence in its absolute discretion deems necessary prior to the installation of Equipment, and/or the provision of the Service;

Technical Stage 1, Technical Stage 2 mean the forms requiring completion following the submission of an Order Form in order for Convergence to complete the provision of the Service;

Third Party Supplier(s) means any party other than Convergence and You that Convergence elects to use to provide part of the Service, including but not limited to parties supplying access circuits as described in the Service Description;

1.2. References in the Agreement:

- 1.2.1.** To a statutory provision will be interpreted as a reference to such provision as amended or re-enacted from time to time;
- 1.2.2.** To a “person” includes any company (as defined in Section 1 Companies Act 2006), firm, body corporate or corporation (as defined in Section 1173(1) Companies Act 2006) or person, partnership or organisation;
- 1.2.3.** To a Party includes its respective successors and permitted assignees and their respective employees and agents; and
- 1.2.4.** To any word in the singular include the plural and vice versa.

1.3. Headings are for convenience only and do not affect the interpretation of the Agreement.

1.4. Where in the Agreement You agree not to do any act or thing You also agree not to allow (including without limitation, taking all reasonable preventative measures) any other person to do that act or thing. Where in the Agreement You specifically acknowledge any provision or statement, You are deemed to agree to such provision or statement.

1.5. A reference to a third person or third party is a reference to a person who is not party to the Agreement.

1.6. The words ‘include’, ‘including’, ‘for example’ or ‘such as’ are not used as, and are not to be interpreted as, words of limitation, and, when introducing an example, do not limit the meaning of the words to which the example relates to that example or examples of a similar kind.

2. Ordering Services

- 2.1.** You are responsible for providing Convergence all information that is relevant for the provision of the Service, including information requested as part of the Order Form, Technical Stage 1 and Technical Stage 2. Convergence will have no responsibility for any delay to the commencement of the service and/or failure to provide the Service which is a result of any failure on your part to provide accurate and complete information within the required timeframe. Failure to provide accurate and complete information as requested may also result in Us not being able to install the Equipment (as stated in Clause 3.3) and charges being applied prior to the Service Commencement Date.
- 2.2.** The submission of the Order Form is an offer from You to enter into a contract with Convergence for the provision of Services specified on the Order. As instructed by the requirements of the Order Form, submission of the Order Form is acceptance from you of the Convergence Standard Terms and Conditions as laid out in this document. Subject to clause 2.3, on Convergence’s acceptance of the Order Form the Agreement will be formed for the provision of the Services and You will not be entitled to cancel or amend the Services (unless terminated in accordance with this Agreement)
- 2.3.** The Agreement is conditional on a satisfactory Survey and, where applicable, agreement of the Site Wayleave by the Site Owner. The Agreement may be cancelled by Convergence without liability if the results of any Survey are in Convergence’s reasonable opinion unsatisfactory or the Site Wayleave is not agreed.
- 2.4.** If a service is cancelled, amended or materially delayed by Your request or due to Your default during the provision of the service, or if You amend any requests already agreed with the supplier in regard to any aspect of the provision or cease of a service, then You shall reimburse Convergence for any stranded costs including any charges levied by Third Party Suppliers.

- 2.5. No terms and conditions contained in any document provided by You to Convergence (including without limitation on any purchase order) will apply and any such provisions are hereby excluded.

3. Equipment

Where under the Agreement Convergence is installing Equipment:

- 3.1. Upon completion of the conditions set out in clause 2.3, Convergence shall use its reasonable endeavours to install and connect the Equipment.
- 3.2. You must provide (at Your cost) appropriate space, power, ducting and environment to install and maintain the Equipment at the Site. You must ensure that any necessary preparation is effected before the Equipment is connected and in accordance with Convergence's instructions (if any), including the provision of a reliable electricity supply.
- 3.3. Convergence will have no responsibility for any delay to the commencement of the Service and / or failure to install the Equipment, if Convergence is delayed or unable to install the Equipment due to incorrect information given in the Order Form or Technical Stage 1; for the avoidance of doubt, this includes if any circuit is installed by a third party provider to a different location to that stated in Technical Stage 1. You are responsible for ensuring that any on-site contact is aware of the information given in Technical Stage 1, so that the third party provider installs the circuit to the location stated. Failure to install the Equipment in accordance with the location stated in the Order Form and Technical Stage 1 may result in a delay to the commencement of the Service and charges being applied.
- 3.4. Prior to installation of the Equipment You must take all necessary steps to back up and secure Your information and data. You must comply with all reasonable instructions notified to You relating to the preparation of Customer Apparatus and/or the Site. Convergence shall have no liability for any damage arising from Your failure to effectively carry out such preparations.
- 3.5. If You fail to take delivery or allow installation of the Equipment on any agreed delivery or installation date Convergence may arrange for its storage at Your risk and You shall be liable to Convergence for the reasonable additional costs incurred as a result of your failure to take delivery.
- 3.6. The Equipment shall remain the exclusive property of Convergence or its nominee. Convergence may modify, substitute, renew or add to the Equipment from time to time at its sole discretion provided that such modifications, substitutions, renewals or additions shall not materially adversely affect the Service. Subject to clause 3.5, risk in and liability for Equipment shall pass to You on delivery of the Equipment.
- 3.7. You are responsible for ensuring at all times the safe keeping and proper use of the Equipment at the Site. Except where such loss or damage is solely attributable to the negligent act or omission of Convergence, its employees, sub-contractors or agents You must indemnify Convergence for any loss or damage to the Equipment. In particular (but without prejudice to the generality of the foregoing and without limitation) You covenant:
- 3.7.1. Not to (and to ensure that no other person shall) sell, let, transfer, dispose of, mortgage, charge, modify, repair, service, tamper with, remove or interfere with the Equipment or suffer any distress, seizure or execution to be levied against any of the Equipment or otherwise do anything prejudicial to Convergence's rights in the Equipment;
- 3.7.2. To keep the Equipment at the Site and stationary at all times;
- 3.7.3. Not to add to, modify, or in any way interfere with the Equipment,

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- 3.7.4.** Notwithstanding the above, in the case of an emergency, to take whatever steps as are reasonably necessary to safeguard the Equipment and to notify Convergence as soon as possible of the circumstances of such emergency;
 - 3.7.5.** Not to cause the Equipment to be repaired, serviced or otherwise attended to except by an authorised representative of Convergence;
 - 3.7.6.** Not to do anything or knowingly to allow any circumstance, matter or thing, which is likely to damage the Equipment or detract from or impair its performance or operation;
 - 3.7.7.** Not to remove, tamper with or obliterate any words or labels on the Equipment or any part thereof; and
 - 3.7.8.** To permit Convergence or its agent to inspect, test and maintain the Equipment at all reasonable times and on reasonable notice.
 - 3.8.** Notwithstanding Clauses 3.6, 3.7, 6.7 and 6.8, You are responsible for returning to Convergence the Equipment immediately upon request in the same condition as it was initially provided excepting reasonable wear and tear. Convergence shall, until such removal is effected, be entitled to continue to charge You and You shall pay such Charges together with any additional costs and expenses caused to Convergence. Risk in and liability for Equipment shall pass back to Convergence on receipt of the returned Equipment;
 - 3.9.** Convergence shall have no liability whatsoever for any loss or damage incurred as a direct or indirect result of Your breach of Clause 3.7 and/or Clause 3.8.
 - 3.10.** You must immediately notify Convergence of any loss or damage to the Equipment.
 - 3.11.** Following the installation of the Equipment Convergence shall conduct tests to ensure that the Service is ready for use. All tests shall if You so request be carried out in the presence of Your duly authorised representative provided that such representative is available at such reasonable times as Convergence may specify.
 - 3.12.** Notwithstanding Clauses 3.7.1 and 3.7.2 You may by not less than 30 days' written notice request Convergence to re-locate the Equipment. Convergence shall use reasonable endeavours to comply with such request. You must pay Convergence's reasonable Charges for any such re-location.
 - 3.13.** Certain Equipment may be subject to the export control laws and regulations of the United States, Europe and/or UK national legislation. If the Equipment has been imported under licence with the condition that they are not re-exported without approval, You must keep to the licence conditions. You will comply with all applicable laws and regulations including the Export Administration Regulations ("EAR"), and sanctions regimes of the U.S. Department of Treasury, Office of Foreign Asset Controls.
 - 3.14.** Nothing in the Agreement shall act to transfer ownership of any Equipment to You. For the avoidance of doubt, transfer of ownership to You is not implied where charges are levied separately for Customer Premises Equipment (as described in the Order Form and relevant Service Description), unless expressly agreed upon in writing between the Parties.
 - 3.15.** You must effect and maintain suitable insurance in respect of relevant risks for the Equipment.
- 4. Customer Apparatus**
- 4.1.** At Your request Convergence may agree, subject to payment of its applicable Charges and satisfactory Survey to use for the provision of the Service Customer Apparatus, which may include cabling and/or wiring already installed at the Site. Where You make such request You

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warrant that You have full title or all other necessary rights to use (and permit Convergence and its authorised representatives to use) such Customer Apparatus, that it is in good working order, is correctly installed and that it meets all applicable Laws and standards and any specifications notified to You by Convergence.

- 4.2. Convergence shall have no liability for any loss or damage arising directly or indirectly from use of the Customer Apparatus, whether or not Convergence shall have recommended the use and/or performance of such Customer Apparatus.
- 4.3. You are entirely responsible for the security of access to Your computer systems and the integrity of information stored thereon.
- 4.4. Unless otherwise agreed in writing You are responsible for ensuring that Customer Apparatus is programmed, equipped, compatible and connected for use of the Service in accordance with Convergence's reasonable instructions (including any minimum specification requirements referred to in the Order and/or Service Description) and any other instructions or safety and security procedures applicable to the use of Customer Apparatus.
- 4.5. Convergence may require You to disconnect (in which case You must do so promptly) or may itself disconnect any Customer Apparatus if in Convergence's reasonable opinion: (i) it does not conform to applicable standards, approvals or any relevant Law for the time being in force; or (ii) it may cause injury to any person or material damage to property; or (iii) it may materially impair the quality of any service provided by Convergence.
- 4.6. Convergence has no liability whatsoever where any inability to use the Service is due to incompatibility between Customer Apparatus and the Equipment or Service, or for any breakdown or failure in Customer Apparatus.

5. Allocations and Use of Telephone Numbers

- 5.1. Any telephone numbers allocated do not belong to You. You accept that You do not acquire any rights whatsoever in such telephone numbers and You must make no attempt to apply for registration of the same as a trademark, service mark, or domain name whether on its own or in conjunction with some other words or trading style.
- 5.2. You are not entitled to sell or agree to transfer to a third party any telephone number allocated to You.
- 5.3. Convergence shall be entitled, for commercial, operational or technical reasons or in order to comply with the requirement of any competent authority to withdraw or change any telephone number or code or group of telephone numbers or codes allocated to You. Where a telephone number is already in operational use by You, Convergence shall use reasonable endeavours to give You reasonable prior notice. Convergence shall not be liable for any costs, inconvenience or other losses (including without limitation marketing and stationery costs) incurred by You as a result of any change or withdrawal as described in this Clause.
- 5.4. If at Your request a specific telephone number is allocated to You, You shall be responsible for all necessary investigations and inquiries as to the legitimacy or use of such numbers and Convergence shall have no liability whatsoever with respect to the number chosen and its use by You.
- 5.5. If You are allocated a number which falls within a range of numbers classified from time to time by OFCOM (or any other competent authority) as being for the provision of a particular type of service, then You must ensure that any service provided by You on that number conforms at all times with the type allocated to that number range.

6. Access to Site

Clauses 6.1 – 6.8 apply where Convergence requires access to the Site in order to provide the Service.

- 6.1.** You warrant that You are the current and lawful occupier of the Site and that You are the owner of the Site or a tenant of it.
- 6.2.** Any person in apparent authority at the Site who grants entry shall be deemed to have Your authority to grant such entry.
- 6.3.** You grant Convergence and its employees, agents or contractors the right:
 - 6.3.1.** Upon reasonable prior notice to You (except in an emergency when no notice shall be required) to execute any works on the Site necessary for the installation, repair or termination of the Service;
 - 6.3.2.** To keep and operate the Equipment on the Site;
 - 6.3.3.** To enter the Site to inspect any Equipment;
- 6.4.** Convergence shall cause as little damage as reasonably possible when exercising any of its rights under Clause 6.3.1 and shall make good (to Your reasonable satisfaction) any damage that Convergence, its employees, agents or contractors may cause to the Site.
- 6.5.** You shall provide a safe and suitable working environment for Convergence's employees, agents or contractors at the Site to enable Convergence to carry out its obligations under this Agreement.
- 6.6.** You shall provide in writing notice of any specific health and safety requirements the Convergence employee, agent or contractor may encounter. This includes but is not limited to any requirement to work at height and any asbestos risks present. You shall notify Convergence of such requirements prior to Our employees, agents or contractors attending site, and given reasonable time for Convergence to ensure necessary preparations are in place. Failure to do so may result in the Convergence employee, agent or contractor leaving site without completing the necessary work and You shall be liable to pay any additional direct or indirect costs that arise.
- 6.7.** For the duration of the Agreement You shall grant and maintain and/or procure the grant and maintenance of any rights and permissions necessary in order for Convergence to connect and maintain the Equipment at the Site and to provide the Service.
- 6.8.** Without prejudice to Convergence's other rights and remedies, notwithstanding Clause 3.8, Convergence reserves the right to recover and resell the Equipment provided that the Equipment is no longer required for Us to fulfil our Service or the Service has been terminated. For that purpose, You grant to Convergence or procure the grant of an irrevocable licence to enter the premises where the Equipment is located during Normal Working Hours following two (2) Working Days' notice. For avoidance of doubt this clause will survive termination of this Agreement.
- 6.9.** You shall reimburse Convergence for any charges levied on Convergence by the relevant Third Party Supplier as a result of that supplier not being given access to the Site as previously arranged and agreed with You. You shall be entitled to see reasonable documentary evidence attesting to such incurred charges for aborted site visits by such supplier.

7. Charges Payment and Interest

- 7.1.** Charges for the Service are as agreed on the Order Form and we will charge you fair and reasonable costs for your usage (and any reasonable administration costs) in excess of your Service usage limit (usage cap).

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- 7.2** We may alter the amount of or the payment terms relating to, or implement new Service Charges at any time during the term of the Agreement for the following reasons:
- 7.2.1** to take account of any increase in the costs incurred by Us in the implementation or delivery of the Service (including any increase in the costs or charges of any of Our third party suppliers or licensors);
 - 7.2.2** or to pass on any increase in data centre and/or power charges imposed by any of Our third party suppliers;
 - 7.2.3** or to pass on any increase in charges imposed by any of Our telecommunications suppliers.
- We shall notify You in writing of any such increase by providing not less than 30 days' prior written notice.
- 7.3** Without limiting Clause 7.2 above, We may increase the Service Charges once at any time in each contract year linked to the rate of increase in the Retail Price Index (or any index that replaces it) during the preceding 12 month period, or 3% whichever is the higher.
- 7.4.** All Charges are subject to the Survey. If following the Survey, Convergence incurs additional costs in providing the Service, Convergence shall be entitled on notification to You to increase the Charges by the amount of such costs. You agree to pay such increased Charges
- 7.5.** It is a condition of the Agreement that You pay the Charges in full without any set-off, deduction, withholding, restriction or condition whatsoever.
- 7.6.** Other than where Charges are based solely on usage, Your liability for Charges starts from the effective date of the Agreement (as referred to in Clause 9.1) whether or not the Service is used. You are liable for the Charges where the Service is used by third parties.
- 7.7.** Unless otherwise specified on the Order Form, Charges will apply from the Service Commencement Date.
- 7.8.** Where prior to entering into the Agreement or at any time during its term, You have indicated any anticipated usage/take up levels of the Service and such usage/take up levels are not met, Convergence may, without prejudice to any other rights under the Agreement, apply revised Charges. Such revised Charges shall not be subject to Clauses 18.1 or 18.2.
- 7.9.** Charges shall be invoiced by Convergence in accordance with the relevant Order Form and shall be payable by You to Convergence (or such person as Convergence or the person invoicing on behalf of Convergence shall specify) within 30 days of the date of such invoice.
- 7.10.** Any charges levied on Convergence by Third Party Suppliers relating to terminated services shall be passed on to You.
- 7.11.** If payment is not made when due, Convergence may without prejudice to its other rights, charge interest at 4% per annum above the Bank of England base rate on any amount You fail to pay from the date when payment was due until the date of actual payment. Interest will continue to accrue even if the Agreement is terminated. Convergence shall be entitled, without prejudice to any other rights it may have, to suspend the Service until such time as all payments due and payable to Convergence have been paid in full together with such sum as Convergence may charge You in respect of recommencing the Service.
- 7.12.** You must reimburse Convergence all costs and expenses (including legal costs) incurred in the collection of any overdue amounts. Costs and expenses will continue to accrue even if the Agreement is terminated.

- 7.13.** All sums due to Convergence under the Agreement are exclusive of Value Added Tax or any other applicable tax which shall be charged to You.

8. Commencement of Services

- 8.1.** Convergence will notify You when it is ready to hand-over the Services to You and will commence delivery of the Services from the Service Commencement Date. You shall have two (2) business days from the Service Commencement Date (the “Review Period”) in which to notify Convergence of any material non-conformity of the Services with the Agreement. In the event that You have not served a notice of material non-conformity within the Review Period, the Services shall be deemed to be accepted. If You serve a notice of material non-conformity in the Review Period then Convergence shall remedy the applicable defect in the Services as soon as reasonably possible and re-submit the applicable Service to You for further review. Convergence shall have the right, but not the obligation, to be present during the carrying out of any review of the Services.
- 8.2.** Convergence shall provide the Service materially in accordance with the Agreement, including the applicable Service Description and the applicable Service Level Agreement.
- 8.3.** You must promptly supply Convergence with all information and materials reasonably required by Convergence to supply the Service. Failure to do so may result in Charges in line with Clauses 2.1 and 2.4.
- 8.4.** Convergence shall use the reasonable skill and care of a competent telecommunications service provider in providing the Service. However You accept that it is technically impracticable to provide the Service entirely free of faults or uninterrupted and Convergence does not undertake to do so.

9. Duration and Termination

- 9.1.** The Agreement shall come into effect in accordance with Clause 2 and may be terminated with Minimum Written Notice. If the termination date is within the Minimum Period, Charges will apply in line with Clause 9.8.
- 9.2.** Termination of a Service will not affect any other Service which will continue to be subject to this Agreement.
- 9.3.** Notice of termination of this Agreement or any Service under this Agreement in accordance with this paragraph, shall be submitted to Us by You using the method in place at the time. The notice period shall not come into effect until we are in receipt of all the relevant details required to be able to terminate the service. We may vary the method of receipt of notice from time to time; You can contact cancellations@convergencegroup.co.uk for the current process.
- 9.4.** Subject to earlier termination under this clause, this Agreement shall continue in full force and be in effect until all Services had been terminated.
- 9.5.** Convergence may terminate the Agreement immediately on written notice if:
- 9.5.1.** Any Survey is not in Convergence’s discretion satisfactorily completed;
 - 9.5.2.** Any Site Wayleave is not entered into within a reasonable time as determined by Convergence;
 - 9.5.3.** Any licence, permission or other approval You or Convergence require from time to time to connect to Convergence’s System or provide the Service expires, is revoked or otherwise ceases to be valid and is not immediately replaced by a further licence, permission or approval conferring on You or Convergence the appropriate rights;

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- 9.5.4.** You are the subject of bankruptcy or insolvency proceedings in the United Kingdom or elsewhere, a receiver or administrator (or equivalent) is appointed over any of Your assets or You enter into any formal or informal composition or arrangement (or equivalent) with Your creditors or You or Convergence reasonably believes that such events are reasonably likely to occur. For the purposes of this Clause 9.5.4 “You” shall include Your direct and/or indirect parent company and “Your” shall be interpreted accordingly;
- 9.5.5.** You make a material mis-statement in the details You have supplied to Convergence to enable Convergence to provide the Service;
- 9.5.6.** You materially breach (including without limitation failure to pay any Charges promptly) the Agreement or any other agreement You have with Convergence;
- 9.5.7.** Convergence suspects on reasonable grounds that You may have committed or may be committing (i) a breach of any Law; and/or (ii) any fraud against Convergence or any third party;
- 9.5.8.** Any contract (or part thereof) between Convergence and a third party provider of telecommunications services is terminated where such termination affects the provision of the Service.
- 9.5.9** Ofcom or any regulatory body with equivalent authority, suspends the provision of the services either by Convergence or to You.
- 9.6.** On termination of the Agreement any licence granted to You by Convergence shall immediately cease, You must immediately stop using the Service and all amounts You owe Convergence for use of the Service shall be due and payable in full and You shall have no right to withhold or set off any such amounts.
- 9.7** Notwithstanding clauses 3.8 and 6.8, on termination of the Agreement, if any of Our equipment is not returned to us or made available for collection, then We shall, be entitled to charge You for the equipment and You shall pay such charges together and / or it will may be removed by Us and You shall pay any costs and expenses incurred by Us in retrieving the equipment.
- 9.8.** If You end this Agreement by giving the Minimum Written Notice so that the Service ends prior to the end of the Minimum Period, You will indemnify Us against any commitments, liabilities or expenditure which result in any unavoidable loss, provided that We take all reasonable steps to mitigate the loss. We will submit a fully itemised and costed list of the unavoidable loss with supporting evidence. We shall not be obliged to refund any Charges paid in advance.
- 9.9.** The right to terminate the Agreement shall not prejudice any other right or remedy of the Parties in respect of any rights, obligations, or liabilities accrued prior to termination (including, without limitation, termination under Clause 17).
- 9.10.** You may terminate the Agreement immediately on written notice if Convergence is the subject of bankruptcy or insolvency proceedings in the United Kingdom or elsewhere, a receiver or administrator (or equivalent) is appointed over any of Convergence’s assets or Convergence enters into any formal or informal composition or arrangement (or equivalent) with its creditors or You reasonably believe that such events are reasonably likely to occur.
- 9.11.** The following clauses will survive termination of the Agreement: 1, 6.8, 6.9, 7, 9, 12.1, 14, 19 to 21, and 23 to 25.
- 10. Use of the Service**
- 10.1.** You undertake not to re-sell the Service or Equipment or any part thereof to any person other than that specified at the point of order.

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- 10.2.** You undertake to use the Equipment and Service in accordance with such conditions and/or instructions as may be notified in writing to You by Convergence from time to time and in accordance with Law. Convergence may from time to time vary the technical and/or operational procedures for use of the Service.
- 10.3.** You must at all times use the Services in accordance with Convergence's Acceptable Use Policy and You agree that Convergence may monitor your compliance with this policy. You must not use or allow anyone to use the Service:
- 10.3.1.** To send or receive a communication which is offensive, abusive, indecent, obscene or menacing;
 - 10.3.2.** To cause annoyance, inconvenience or anxiety to anyone;
 - 10.3.3.** To violate or infringe the rights of any person;
 - 10.3.4.** To make excessive use of, or place unusual burdens on the Service, for example by sending or receiving large volumes of email, excessively large email attachments or streaming of content;
 - 10.3.5.** In breach of the Agreement; or
 - 10.3.6.** In breach of Law.
- 10.4.** Convergence may at its discretion suspend the Service and/or terminate the Agreement if You are in breach of Clause 10.3. You indemnify and hold harmless Convergence against all liabilities, claims, damages, losses and proceedings arising out of or in any way connected with any use of the Service in contravention of the Agreement or the Law.
- 10.5.** Convergence may allocate You a Password to enable You to use the Service. You must keep such Password safe and confidential and notify Convergence immediately if any third party becomes aware of it. You must not copy or attempt to copy any smart card or other security device. Convergence reserves the right to change the Password without notice and if it has reason to believe You are in breach of this Clause 10.5 to invalidate such Password and/or to terminate the Agreement.
- 10.6.** Convergence may (but shall not be obliged) to agree to a request by You to alter a Password. You may be required to pay a charge for such alteration.
- 10.7.** Convergence reserves the right (but shall not be obliged) to refuse to provide a Service where You do not maintain adequate security on any equipment on Your premises used to provide the service.
- 10.8.** If the Service requires You to open an account You must complete the registration process by providing Convergence or such person as it nominates with current, complete and accurate information as requested from time to time.
- 10.9.** You are responsible for the use of the Service (whether authorised or not and whether by You or any other person), including without limitation all Charges incurred and any breaches of this Agreement.
- 10.10.** You acknowledge that the Service is not designed to be used in circumstances in which errors or inaccuracies in the content, functionality, services, data or information provided by the Service or the failure of the Service, could lead to death, personal injury, or severe physical or environmental damage and You agree not to use the Service for any such purpose.
- 10.11.** You acknowledge and agree that Convergence has no knowledge of, and accepts no responsibility for, the content, quality, value or use of the content, traffic or goods or services provided by You to third parties in connection with the Service. You should therefore take all

reasonable steps to mitigate the risks inherent in the provision of the Service including, but not limited to, data loss.

11. Maintenance

- 11.1.** Convergence shall provide such preventative and corrective maintenance services during Normal Working Hours as it reasonably considers necessary for the proper functioning of the Service.
- 11.2.** If You detect any defect or impairment in the operation or performance of the Service You must notify Convergence NOC of the nature of such defect or impairment. Convergence will endeavour to respond as promptly as possible after such notification and endeavour to make the necessary corrections.
- 11.3.** Convergence will be entitled to charge and You will pay a service fee at Convergence's then current charging rates in the event that the need for any maintenance results from any one or more of the following:
 - 11.3.1.** Misuse or neglect of or accidental or wilful damage to the Equipment, and/or Service; or
 - 11.3.2.** Accidental or wilful disconnection of the Equipment, and/or Service; or
 - 11.3.3.** Your failure to comply with any of the provisions of the Agreement; or
 - 11.3.4.** Fault in, or other problem associated with, any telecommunications system not run by Convergence or in the Customer Apparatus; or
 - 11.3.5.** Faults of a minor or intermittent nature which do not significantly affect the provision of the Service.

12. Insurance

- 12.1.** You will maintain at all times during the provision of the Services public liability insurance and professional indemnity insurance to the levels and coverage as required by law and that a prudent organisation would be expected to maintain.

13. Intellectual Property Rights

- 13.1.** Intellectual Property Rights in the Service (including any Software) remain the property of Convergence or its licensors.
- 13.2.** You agree to comply with the terms of the Agreement and any licences required by the owner of any Intellectual Property Right in the Services and/or Software notified to You by Convergence or appearing on screen as an integral part of the Service. If You do not consent to any such licences, You may within 7 days of being notified of such a license terminate the Agreement. However Your continued use of the Service or failure to terminate the Agreement will be deemed to constitute acceptance of the said licences of Software and You shall not be entitled to terminate the Agreement under this Clause.
- 13.3.** Convergence hereby grants You a non-exclusive revocable licence to use the Software in executable object code form solely for the term and purposes of this Agreement.
- 13.4.** The licence granted to You under the Agreement is personal to You and may not be leased, sublicensed, transferred, assigned, lent or otherwise disposed of.
- 13.5.** Unless otherwise stated in the terms of any agreements/licences provided with the Software or except to the extent permitted by Law You must not copy the Software, except to make a single copy for backup or archival purposes. Any such copy shall be subject to the Agreement as if it were the original and shall contain all notices regarding proprietary rights contained

in the Software originally provided to You. This licence does not grant You any right to any enhancement, reversion or update to the Software. However Convergence or its licensors may at any time make available and subject to the provisions of Clause 10.1 require You to accept such enhancements, reversions or updates and may cease to distribute or license previous versions of the Software to You. You must comply with the terms of the Agreement (and any other licence agreements governing such Software) in relation to such enhanced, revised or updated Software as if it were the original Software. Convergence shall be entitled to charge You its then current standard charges for such Software and any enhancements, reversions and updates.

- 13.6. You must not attempt to reverse engineer, decipher, decompile or disassemble the Software except to the extent permissible by Law. You must not reduce the Software to human readable form or knowingly allow others to do so. You must not modify the Software or create derivative works of the Software. You must not transmit or distribute the Software electronically, via the Internet or in any other way.
- 13.7. Whilst Convergence and its suppliers have made reasonable efforts to minimise defects or errors in the Software and to check the Software for viruses, Convergence does not warrant that Your use of the Software will be uninterrupted or that the operation of the Software will be error free, virus free or secure, or that the Software and the functions of the Software will be merchantable and will meet Your requirements. In addition, the security mechanism implemented by the Software has inherent limitations and You shall have sole responsibility in determining that the Software sufficiently meets Your needs.

14. Limitations of Liability

- 14.1. Nothing in the Agreement will limit or exclude either Party's liability for fraudulent misrepresentation, death or personal injury resulting from its own negligence or for any liability which cannot be excluded or restricted by law.
- 14.2. Save in relation to any claims arising in connection with the indemnities pursuant to Clauses 3.7, 10.4, and 14.7 and subject to Clause 14.1 each Party's aggregate liability in any year of the Agreement (other than for payment of Charges) shall be limited to an amount not exceeding the Charges paid or payable in that year (provided that any claims arising after termination or expiry of the Agreement will be deemed to have arisen in the final year of the Agreement and be subject to the Charges paid or payable in such final year).
- 14.3. Notwithstanding the above neither Party shall have any liability in contract, tort or otherwise (including liability for negligence), for loss or damage, whether direct or indirect, of business, production, operation time, goodwill, reputation, contracts, revenue, profits (other than for payment of Charges), for any loss of anticipated savings, for wasted expenditure or for any indirect or consequential loss whatsoever arising out of or in connection with the performance or non-performance by the Party of its obligations under the Agreement.
- 14.4. Convergence shall not be liable for any loss of (or loss of use of) data resulting from Your use of the Service including without limitation any delays, non-delivery or missed deliveries directly or indirectly caused to You by such loss.
- 14.5. You will indemnify and keep indemnified Convergence against any and all claims, which are brought or are threatened against Convergence by any person arising out of Your breach of the Acceptable Use Policy.
- 14.6. Without undertaking any obligations to give any such advice and/or recommendations, Convergence shall not be liable for any loss or damage suffered by You as a result of placing

reliance on Convergence's advice and/or recommendations regarding the use of a third party's products or services.

- 14.7.** In the event that any service credits are payable by Convergence in respect of any failure to meet an SLA then payment of such service credits will be Your sole and exclusive remedy for such breach.
- 14.8.** Clauses 14.1 – 14.7 set out each Party's entire liability (including any liability for the acts and omissions of its employees, agents or contractors) to the other Party in (whether arising under contract (including without limitation, in relation to any deliberate repudiatory and fundamental breaches), statute, tort (including without limitation negligence), indemnity or otherwise) arising in connection with the performance, contemplated performance or non-performance of the Agreement. You acknowledge that the exclusions and limitations of Convergence's liability in the Agreement are reasonable.

15. Suspension and other Convergence Powers

- 15.1.** Convergence may:
- 15.1.1.** In an emergency suspend the Service to provide or safeguard a service to an emergency organisation or any other essential services;
 - 15.1.2.** Temporarily suspend the Service or any part thereof to vary the technical specification of the Service or for repair, or to make any modification, change, addition to, or replacement of, any part of the Network or the Services where this is required to conform with any applicable safety, statutory or legal requirements;
 - 15.1.3.** Give such instructions to You about the use of the Service it deems reasonably necessary;
 - 15.1.4.** Do whatever is required of it to comply with instructions issued by the Government, an emergency service or other competent authority; and
 - 15.1.5.** Suspend the Service in any circumstance in which it is entitled to terminate the Agreement.
- 15.2.** Except in an emergency when no such notice is required, Convergence shall give You as much notice as reasonably practicable if the Service is to be suspended but You shall have no claim against Convergence for any suspension of the Service pursuant to Clause 15.1. Any exercise by Convergence of its right to suspend the Agreement shall not exclude Convergence's right subsequently to terminate the Agreement.
- 15.3.** If the Service is suspended pursuant to Your default You must continue to pay Charges during such suspension and shall reimburse Convergence's costs and expenses reasonably incurred by the implementation of such suspension together with all outstanding amounts due under the Agreement. Where Convergence agrees (at its discretion) to recommence the Service You must pay Convergence's reasonable charges in relation to such re-commencement and, at Convergence's discretion, You shall pay a reasonable deposit against future payments.

16. Time not of the essence

- 16.1.** Any dates quoted by Convergence in connection with the provision of the Service or delivery and installation of the Equipment shall be treated as estimates only. Convergence accepts no liability for failure to meet such dates and time shall not be of the essence of the Agreement for this purpose.

17. Force Majeure

- 17.1. Neither Party shall be liable for any breach of its obligations under the Agreement (other than in relation to payment of sums due) where it is hindered or prevented from carrying out its obligations by reason of any Force Majeure Event.
- 17.2. Where such cause continues for more than three (3) calendar months either Party may without additional liability terminate the Agreement by giving not less than 30 working days' written notice to the other Party.

18. Variation

- 18.1. Unless otherwise set out in this Agreement and subject to Clauses 18.2, 18.4 and 18.5 any variation to the Agreement shall be agreed by the Parties in writing.
- 18.2. Notwithstanding Clause 18.1 Convergence reserves the right to amend or vary the Agreement, by giving You 30 days' written notice thereof (or such lesser period if specified by a regulatory body) in order to:
 - 18.2.1. Comply with any legal or regulatory obligation;
 - 18.2.2. Comply with any requirements imposed on Us by a third party telecommunications provider;
 - 18.2.3. Protect any of our owned Intellectual Property;
 - 18.2.4. Introduce new or improved Service Levels
 - 18.2.5. Maintain the integrity or security of the Network;Provided that the changes in 18.2.4 and 18.2.5 shall not unreasonably affect the Service.
- 18.3. If You request and Convergence agrees to a change of Service (including without limitation adding, deleting or exchanging a Service) or a change of Site, You must complete such formalities as Convergence shall require giving effect to such a change and You must pay to Convergence its then current charges for such change and to reflect such change Convergence may without notice revise the Charges.
- 18.4. Subject as stated in this Clause, Convergence may vary the Service from time to time, provided that the new service will have at least equivalent functionality and service levels to the original Service.
- 18.5. Convergence may otherwise modify or cancel the Service, or part of a service, for a number of reasons including end of life, in the event that Convergence's Third Party Suppliers' services are altered so as to affect the provision by Convergence of the Service or there is a technical or regulatory reason to do so.
- 18.6. Any variation to the Agreement pursuant to Clauses 18.4 of these Standard Terms and Conditions shall not be subject to the terms of Clause 18.2.

19. Data Protection

- 19.1 Both parties agree that they will at all times comply with their obligations under the current Data Protection Legislation ("UK GDPR" and Data Protection Act 2018), and all statutory instruments, orders, regulatory requirements, subordinate legislation made pursuant to it or codes of practice governing the processing, including the collection, use, storage and transmission of any personal data required to be processed under this agreement.
- 19.2 Both parties acknowledge that for the purpose of Data Protection Legislation that Convergence is the Processor of any data that You provide to us (as defined by Data Protection Legislation) or a sub-processor for You. Unless otherwise required by law, Convergence will process the personal data only on the written instructions of the Controller (or in the case

where We are a sub-processor, on instructions from You). The data will be processed for the purpose of providing the service. In relation to the above, You acknowledge that, in order for Convergence to provide the service, We will also be required to disclose information to the telecommunications companies who will supply any element of the service, who are also compliant with the current data protection legislation. You acknowledge that if we are not permitted to pass on this information then we may not be able to provide the service purchased.

19.3 In addition to paragraphs 19.1 and 19.2 above, both parties agree that:

19.3.1 all data shall be processed lawfully, fairly and in a transparent manner;

19.3.2 data will only be collected for the specified, explicit and legitimate purposes of providing the service (or otherwise as notified and agreed with You) and not further processed in a manner that is incompatible with those purposes;

19.3.3 the processing of data shall be adequate, relevant and limited to what is necessary in relation to the purposes for which they are processed;

19.3.4 the data is accurate and kept up to date;

19.3.5 all data which is kept in a form which permits identification of data subjects shall be retained for no longer than is necessary and for the purposes for which the personal data are processed;

19.3.6 no personal data will be transferred outside of the UK without appropriate safeguards being in place;

19.3.7 they will promptly notify the other party of any data breach;

19.3.8 it will provide the other party with any information which the other party may reasonably require to satisfy itself that the obligations under the Data Protection Legislation are being met; and

19.3.9 it will ensure that it does not knowingly or negligently do or omit to do anything which places the other party in breach of its obligations under the Data Protection Legislation.

19.4 Both parties shall take all appropriate technical and organisational security measures necessary to:

19.4.1 preserve the security and integrity of any personal data disclosed; and

19.4.2 to prevent any unauthorised or unlawful processing; and

19.4.3 to protect all personal data from all security risks including accidental loss, misuse, unauthorised access, theft, fraud, destruction and damage.

19.5 As the Processor, Convergence also agrees that:

19.5.1 all employees who are authorised to process the personal data are subject to a duty of confidentiality;

19.5.2 We will provide reasonable assistance to the Controller in providing access to the data subject and allowing the data subjects to exercise their rights under the Data Protection Legislation;

19.5.3 We will assist the Controller in meeting their requirements regarding the notification of any personal data breach, the security of processing, and the conduct of any data protection impact assessments that they require under the Data Protection Legislation;

19.5.4 We will delete or return all personal data to the Controller as requested at the end of the contract;

19.5.5 We agree to make available all information necessary to demonstrate our compliance with Data Protection Legislation, including allowing for and contributing to audits and inspections. We will inform the Controller immediately if we are asked to do something which infringes the current Data Protection Legislation.

19.5.6 We will co-operate as required with the ICO.

Nothing within this paragraph will relieve Convergence of our own direct responsibilities and liabilities under Data Protection Legislation.

20. Confidentiality

20.1. For the purposes of this agreement, 'Confidential Information' includes all information (whether written, oral or in other form) that would be regarded as confidential by a reasonable business person relating to the business, affairs, finances, customers, suppliers, plans, intentions, market opportunities, operations, processes, product information, know-how, designs, trade secrets or software of the Disclosing Party, their subsidiaries or group companies. This includes in particular (by way of example only and without limitation) secret formulae, details of suppliers and their terms of business, details of customers and their requirements, the prices charged to and terms of business with customers, marketing plans and sales forecasts, financial information, results and forecasts (save to the extent that these are included in published audited accounts), any proposals relating to the acquisition or disposal of a company or business or any part thereof or to any proposed expansion or contraction of activities, details of employees and officers and of the remuneration and other benefits paid to them, and any information which the Receiving Party is aware or should reasonably be aware is, or has been told is, confidential.

20.2. Each Party (in this Clause "Receiving Party") undertakes to the other Party ("Disclosing Party"):

20.2.1. To keep confidential the Disclosing Party's information of a confidential nature obtained from the Disclosing Party in discussions leading to the Agreement and subsequently received pursuant to this Agreement ("in this Clause "Confidential Information"); and

20.2.2. Not to disclose the Confidential Information in whole or in part to any other person without the Disclosing Party's written consent, except to the Receiving Party's employees, agents and sub-contractors involved in the supply or use of the Services (as the case may be) on a confidential and need-to-know basis; and

20.2.3. To use the Confidential Information solely in connection with the supply or use of the Services (as the case may be) and not for its own or the benefit of any third party.

20.3. You shall not disclose the existence of this Agreement to any third party without the prior written consent of Convergence.

20.4. The confidentiality obligations in Clauses 20.1 and 20.2 will not apply if the Receiving Party is required by court, government or other regulatory body to disclose the Confidential Information, but only to the extent required by law, provided that the Receiving Party gives the Disclosing Party written notice as soon as practicable of such requirement.

20.5. The confidentiality obligations in Clauses 20.1 and 20.2 will not extend to the Confidential Information which the Receiving Party can prove to the Disclosing Party's reasonable satisfaction:

20.5.1. Has ceased to be secret without default of the Receiving Party's part; or

20.5.2. Was already in the Receiving Party's possession prior to disclosure by the Disclosing Party; or

20.5.3. Has been received from a third party who did not acquire it in confidence.

21. Information Security

Both parties shall adhere to Convergence Group's Information Security policy which can be found on Our website at the at the following address: <https://www.convergencegroup.co.uk/accreditations>

22. Anti-Bribery

Neither party will engage in any activity, practice or conduct which would constitute an offence under sections 1, 2 or 6 of the Bribery Act 2010 if such activity, practice or conduct had been carried out in the UK and will have in place and comply with an anti-bribery and anti-corruption policy. If a party breaches this clause the other party will have the right to terminate this agreement immediately on written notice to the breaching party.

23. Modern Slavery and Human Trafficking

Both parties shall ensure that there is no modern slavery or human trafficking within their business and as far as reasonably possible within their supply chain. You agree to comply with our modern slavery and human trafficking statement as found on our website.

24. Entire Agreement

24.1. This Agreement contains the entire agreement between the Parties with respect to the subject matter of this Agreement (the "**Subject Matter**") and supersedes and replaces all other written and oral communications between the Parties relating to the Subject Matter. Except for the express provisions in this Agreement (and any express provisions contained in any documentation which is expressly incorporated), all other warranties, conditions, terms, representations, statements, undertakings and obligations whether express or implied by statute, common law, custom, usage or otherwise are hereby excluded to the maximum extent permitted by law. The Parties hereby confirm that they have not relied upon any representations, communications or other matters which have not been expressly stated in this Agreement, whether as an inducement to enter into this Agreement or otherwise. Notwithstanding any provision to the contrary, nothing in this Agreement limits or excludes either Party's liability for fraudulent misrepresentations.

25. Assignment

25.1. You must not assign or delegate or otherwise transfer or deal with all or any of Your rights or obligations under the Agreement without the prior written consent of Convergence.

25.2. Convergence may assign or otherwise delegate all or any of its rights or obligations under the Agreement to any person or entity.

26. Notices

Unless otherwise stated in the Agreement:

26.1. Notices sent by You to Convergence shall be sent by hand or post to the Head of Customer Services at the address below or as otherwise notified to You.

Head of Commercial
Convergence (Group Networks) Limited
One Cranmore, Cranmore Drive
Shirley, Solihull. B90 4RZ

26.2. Notices sent by Convergence to You may be sent:

26.2.1. By hand or by post to Your billing address specified on the Order Form or to Your registered office; or

26.2.2. By electronic mail to Your electronic mail address specified on the Order Form or as otherwise notified to Convergence in writing.

26.3. Notice given by hand shall be deemed given the same day. Notice given by post shall be deemed to have been given three (3) days after the date of posting. Any communication by electronic mail shall be deemed to have been made on the working day on which the notice is first stored in the other Party's electronic mail-box.

27. Miscellaneous

27.1. Each party warrants that it has full capacity and authority, and all necessary licenses, permits and consents to enter into and perform its obligations under this agreement.

27.2. No waiver by Convergence of any default by You under the Agreement shall operate or be construed as a waiver by Convergence of any future defaults, whether of a like or different character. No granting of time or other forbearance or indulgence by Convergence to You shall imply a waiver of Convergence's rights or shall in any way release, discharge or otherwise affect Your liability under the Agreement.

27.3. If any provision of the Agreement shall be prohibited or adjudged by a court of competent jurisdiction to be unlawful, void or unenforceable, such provision shall to the extent required be severed from the Agreement and rendered ineffective as far as possible without modifying the remaining provisions of the Agreement and shall not in any way affect any other circumstances or the validity or enforcement of the Agreement.

27.4. The provisions of the Agreement of a continuing nature shall survive termination of the Agreement for any reason whatsoever.

27.5. In the event of any inconsistencies between the contents of this Agreement, the applicable order of precedence shall be (i) the Order Form; (ii) the Standard Terms and Conditions; (iii) the relevant Service Description; (iv) the relevant SLA(s); and any other document referred to therein.

27.6. During this Agreement and for a period of twelve (12) months following the termination of the Agreement (for whatever reason) You shall not employ or engage directly or indirectly (without Convergence's prior written agreement) nor make or seek to make any offer of employment or engagement to any of Convergence's staff, including its sub-contractors, who have dealt with You in the course of the negotiation, conclusion and performance of the Agreement. In the case of a breach, then You will pay Convergence a fee equal to twelve (12) months of the employee's salary or sub-contractor's fees.

27.7. This Agreement shall not be enforceable by any person not a party to the Agreement under the Contracts (Rights of Third Parties) Act 1999.

28. Governing Law and Arbitration

28.1. The Agreement and any disputes arising in connection with this Agreement shall be governed by and construed in accordance with English law and the Parties agree to submit to the exclusive jurisdiction of the English Courts.