



TERMS AND CONDITIONS

1.1. Term of the Agreement: The initial term of this Agreement shall be for one (1) year from the Effective Date (the "Initial Term"). This Agreement shall be automatically renewed for successive one (1) year periods thereafter (each a "Renewal Term"), unless either Party provides written notice of intent not to renew at least thirty (30) days prior to the expiration date of the Initial Term or the then-current Renewal Term, if any. The Initial Term and Renewal Term are collectively referred to as the "Term." In the event the term of a Service Attachment extends beyond the Term of this Agreement, the terms and conditions set forth in this Agreement shall survive for the purposes of the respective Service Attachment.

1.2. Termination of Agreement for Material Breach: Without prejudice to any other rights or remedies which it may have, either Party shall be entitled to terminate this Agreement if a Material Breach by the other Party adversely affects the business operations of the terminating Party and (a) continues for more than thirty (30) days after the breaching Party is notified in writing specifically setting forth the failure of such Material Breach, or (b) in the event such Material Breach is not capable of being cured within thirty (30) days and the breaching Party fails (a) to proceed promptly and diligently to correct the breach, (b) to develop within thirty (30) days following written notice of such breach a complete plan for curing the breach, and (c) to cure the breach within sixty (60) days of notice thereof. In the event of Material Breach which relates to at least one but less than all Service Attachments attached to this Agreement, the right of termination shall apply only with respect to the Service Attachments to which the Material Breach relates, and the balance of this Agreement shall survive and remain in full force and effect.

1.3. Termination of a Service Attachment for Material Breach: Without prejudice to any other rights or remedies which it may have, either party shall be entitled to terminate a Service Attachment if a Material Breach by the other Party adversely affects the business operations of the terminating Party and (a) continues for more than thirty (30) days after the breaching Party is notified in writing specifically setting forth the failure of such Material Breach, or (b) in the event such Material Breach is not capable of being cured within thirty (30) days and the breaching Party fails (a) to proceed promptly and diligently to correct the breach, (b) to develop within thirty (30) days following written notice of such breach a complete plan for curing the breach, and (c) to cure the breach within sixty (60) days of notice thereof. Termination of a Service Attachment for Material Breach shall not discharge the Parties' obligations under any and all other Service Attachments under this Agreement, or the Parties' obligations under this Agreement unless such Material Breach relates directly to such other Service Attachment and/or the Agreement and the Party claiming breach delivers notice of termination of such Service Attachment in accordance with the terms herein, or notice of termination of the Agreement in accordance with the terms of Section 1.2 above, or the terms of the applicable Service Attachment. Termination of a Service Attachment by Converged for Material Breach by



Client shall not relieve Client of the obligation to compensate Converged for sunk costs and capital expenditures incurred as a result of Converged reasonable reliance upon Client's promise to complete the term of the Service Attachment.

1.4. Discontinued Services: Converged may also terminate a Service or Services set forth in a Service Attachment, in whole or in part, upon thirty (30) days written notice to Client if Converged decides to discontinue such Service or Services, in whole or in part. In the event that a Service Attachment conflicts with this section for a particular service, the Service Attachment shall have precedence for only that Service.

1.5. Notice of Unsatisfactory Performance to Converged: In the event the Client becomes dissatisfied with Converged Service(s) as specified in a Service Attachment, Client shall submit written "Notice of Unsatisfactory Performance" to Converged, including a detailed explanation of the problem(s) that is/are the cause of the dissatisfaction in quantitatively measurable, scientifically demonstrable or otherwise non-subjective language. Client shall further define within Client's Notice of Unsatisfactory Performance reasonable levels of performance which would be required to remedy the problem(s). Notice of Unsatisfactory Performance shall be delivered in good faith and only to redress legitimate business concerns which have or may have actual adverse consequences for Client. Within ten (10) days of Converged receipt of Client's Notice of Unsatisfactory Performance, Converged will contact Client to develop a plan of action to address Client's concerns. The plan of action will include specific action items for each of Client's concerns as well as performance standards for each action item. The plan of action will need to be signed by both Converged and Client. If, within thirty (30) days of the date of the plan of action, Converged fails to address and remedy all the action items in the plan of action, Client may terminate this Agreement or the affected Service Attachment upon thirty (30) days written notice to Converged. Converged may pursue redress through available legal or equitable remedies in the event Converged determines Client has submitted any Notice of Unsatisfactory Performance or if Client has unreasonably requested to terminate the agreement in bad faith.

1.6. Continuing Obligations: Notwithstanding anything to the contrary contained in this Section 1, any Service Attachment may be terminated in accordance with its terms, but any such termination shall not be interpreted to terminate this Agreement. In addition, the Client or Converged may terminate any Service Attachment pursuant to the terms and conditions of such Service Attachment, without any effect on any other Service Attachment or to this agreement.

1.7. Accrued Rights or Liabilities: Any termination of this Agreement or a Service Attachment (for whatever reason) shall not affect any accrued rights or liabilities of either Party nor shall it affect the coming into force or the continuance in force of any provision of this Agreement or a



Service Attachment that is expressly or by implication intended to come into or continue in force on or after such termination.

SECTION 2: LIMITATION OF WARRANTY AND REMEDY

2.1. In the event Converged has not performed its obligations to provide Services as required by the terms of this Agreement, Converged's sole obligation shall be to re-perform that portion of any Service which does not conform to the terms of this Agreement, at Converged's facility or Client's facilities, as required, and at Converged's expense if reasonably requested by the Client; provided that such failure to perform is not due to an act or omission of Client or an agent of client and Client notifies Converged within thirty (30) days of the performance resulting in the claim.

2.2. Liability: Notwithstanding any other term of this Agreement, in no event will Converged be liable to Client for any losses or damages, in contract, tort, or otherwise arising from the relationship of the Parties or the conduct of business under this Agreement, for an amount in the aggregate exceeding the total amount billed or billable to Client for Services provided by Converged during the preceding two (2) months under the services related to the liability. Notwithstanding any other term of this Agreement, in no event will Converged be liable to Client for special, indirect, incidental, exemplary, consequential (including but not limited to loss of profits) or punitive damages, including legal fees, arising from the relationship of the Parties or the conduct of business under this Agreement (even if the Client has been advised of or has foreseen the possibility of such damages).

2.3. Remedy: Client's exclusive remedy against Converged with respect to items other than those in the Service Standards set forth in a Service Attachment, to the extent such Service Standards exist under a Service Attachment, is limited to the repair, replacement or refund of any product or service provided by Converged. The decision as to the repair, replacement or issuance of a refund shall be determined at Converged's sole option and subject to applicable law. The amount subject to refund, if any, shall not exceed a refund of the price (plus sales tax) that Client paid for the specific product or Service in question and, in the case of any refund of recurring fees, shall under no circumstances exceed the fees paid by Client for the prior period. These limitations and exclusions regarding remedies shall apply even if any proposed or attempted remedy fails. **The Parties agree that the terms in this limitation of liability section represent a reasonable allocation of risk given the nature of the Service(s) to be provided hereunder.**

2.4. Warranty: Converged makes a single warranty regarding the services: it will exercise due professional care and competence in the performance of services. Converged makes a single warranty regarding the products: the products will be in good operating condition when sold. **Converged makes NO OTHER WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A**



PURPOSE OR USE, OR WARRANTIES OF ANY PRODUCTS OR SERVICES PROVIDED BY A THIRD-PARTY VENDOR.

2.5. Claims: No claim or action, regardless of its form, arising out of this Agreement may be brought by either Party more than 30 days after the cause of the claim or action arises.

2.6. The Parties agree that monetary damages will be difficult to ascertain in the event of any breach of Section 2, and that monetary damages alone would not be sufficient to compensate a Party for such breach. The Parties agree that in the event of violation of Section 2, without limiting any other rights and remedies, an injunction may be brought against any Party who has breached or threatened to breach this Section, without the requirement to post bond.

SECTION 3: CLIENT RESPONSIBILITIES

3.1. Supervision: Unless otherwise contracted, Client is responsible for the supervision of this Agreement.

3.2. Authorized Contact: Client will provide named Authorized Contact(s) for all Product and Services provided under the Agreement.

3.3. Accommodations: Client will provide reasonable accommodations to Converged to enable services to be provided as required by this Agreement.

SECTION 4: GENERAL PROVISIONS

4.1. Third-Party Beneficiaries: This Agreement is intended solely for the benefit of the Parties. In no event will any third party, including any of Client's customers, have any rights hereunder or right to enforce the terms hereof.

4.2. Independent Contractors: Neither Converged nor its subcontractors nor the employees or agents of any of them shall be deemed to be employees or agents of Client, it being understood that Converged is an independent contractor for all purposes and at all times.

4.3. Non-Solicitation of Converged Personnel: While this Agreement is in force and for a period of twelve (12) months from its termination for any reason, Client will not solicit for employment, or engagement of services as a contractor, any person employed or contracted by Converged in connection with Services provided to Client hereunder.

4.4. Non-Solicitation of Converged Customers: While this Agreement is in force and for a period of twelve (12) months from its termination for any reason, Client shall not solicit, interfere with, endeavor to entice away, enter into a contract with, any customer, or prospective customer, of Converged for the purposes of supplanting services formerly provided by or to be provided by Converged. For the purposes of this agreement, "Customer" is defined as any Customer of Converged to whom Client was introduced or made aware of by virtue of its business relationship with Converged. For the purposes of this agreement, "prospective customer" is defined as any business prospect Converged has actively pursued and to whom



Client was introduced during the course of relationship with Converged. In the event a business prospect should become a Customer, then the language regarding Customers shall govern.

4.5. Waiver: No provision of this Agreement shall be deemed waived, amended, or modified by either Party unless such waiver, amendment or modification is in writing and signed by the Party against whom it is sought to enforce the waiver, amendment or modification. A single waiver by a Party shall not act as, nor shall it be deemed to constitute, an ongoing waiver of the same provision.

SECTION 5: PAYMENT FOR SERVICES

5.1. Invoicing: Converged shall invoice Client monthly for Services and expenses. Standard payment terms are net good funds, due and payable within fifteen (15) days from the date of the invoice.

5.2. Late Payment Service Charge: If Client fails to pay any charges when due and payable, Converged may charge a late payment service charge of one and one-half percent (1.5%) per month, but not in excess of the lawful maximum, on the past due balance. Should Client reasonably dispute an invoiced item, it will notify Converged prior to the invoice due dates of the nature and basis of the dispute and will pay all other amounts in accordance with this Section 5.

5.3. Non-Payment: In the event that Client does not render full payment of charges within (10) days of the invoice due date, Converged may, after notifying Client, cease any and all Services until such account is brought current and, notwithstanding any other provisions herein, at Converged's election, may terminate this Agreement or suspend the clients account. In which case will require the account to be current on billing and subject to a \$99.00 reactivation fee.

5.4. Taxes: Client is responsible for and shall pay all taxes arising out of the transactions and relationships described in this Agreement, including but not limited to state or local sales, use, service, value- added or excise taxes, if any.

SECTION 6: EXCLUDED SERVICES

6.1 Project Work: This includes installation and configuration of new equipment, major systems/hardware upgrades, major network reconfiguration, etc.

6.2 Major Software Upgrades: OS upgrades, new management systems, database implementations, etc.

6.3 Disasters: Recovering and rebuilding after floods, fires, earthquakes, lightning strikes, pipe leaks, power surges/failures, hardware failure, ransomware and virus recovery.

6.4 Hardware Failures: Converged will not be held liable for any/all hardware failures. Converged will proactively attempt a full data recovery for all hardware failures and recovery is dependent on client's back-up procedure selected when services begin with Converged. Converged will not be held liable for data that is deemed unrecoverable due to client's decision to not follow Converged recommended back up policies. (See Converged Back-up definitions)



6.5 Legacy Hardware: Converged recommends all clients should limit the age of hardware and software. Examples include; no servers older than six years and/or running an OS more than two generations old should be considered a valid system and Converged suggests client upgrade to a current version of hardware/software. Converged cannot be held liable for unrecoverable data on legacy systems.