



## Standard Terms and Conditions

## STANDARD TERMS & CONDITIONS

Convergence Communications Ltd

These are Convergence General Terms and Conditions of business and should be read in conjunction with the Order Form agreed between Convergence and the Customer and the applicable Service Schedules for those Services required.

### 1 DEFINITIONS AND INTERPRETATION

1.1 In these terms and conditions ("Terms") the following words shall have the following meanings:

"Acceptable Use Policy" the acceptable and fair use policies of Convergence and any Third-Party Services Providers from time to time applicable

"Agreement" the agreement between Convergence and the Customer for the provision of Services and / or Products formed by these conditions, the terms of the Order Form and the Service Schedule

"Business Day" a day which is not a Saturday or Sunday or Public or Bank Holiday and is between the hours of 08:30 to 17:30 on each Business Day.

"Confidential Information" all information in respect of the business of a party including any ideas; business methods; finance; prices, business, financial, marketing, development or manpower plans; customer lists or details; computer systems and software; products or services, including know-how or other matters connected with the products or services manufactured, marketed, provided or obtained by a party, and information concerning a party's relationships with actual or potential clients, customers or suppliers and any other information which, if disclosed, will be liable to cause harm to that party

"Contract Year" the period of 12 months from the Effective Date and each successive period of 12 months during the continuance in force of the Agreement or, in respect of the final Contract Year under the Agreement, the period from the end of the penultimate Contract Year to the date of termination of the Agreement, if shorter

"Convergence Equipment" any hardware, software, cabling and/or other products or equipment provided by Convergence to the Customer in connection with the provision of the Services or otherwise used by Convergence to provide the Services

"Customer" the party purchasing the Services, as named in the Order;

"Customer Personnel" all employees and other personnel of the Customer and all agents, contractors and other users of the Services

"Early Termination Fee" means:

All Charges that are accrued up to and including the date of termination; plus

- a) An average per day value of the Call Charges accrued by the Customer in the three months prior to the date of termination chargeable each day from the date of termination until the date of expiry of the Minimum Term, Renewed Minimum Term or Subsequent Term (as the case may be); plus
- b) The total amounts of all Exchange Line Rental Charges remaining on the Minimum Term, Renewed Term or Subsequent Term (as the case may be) from the date of termination until the date of expiry of the Minimum Term, Renewed Minimum Term or Subsequent Term (as the case may be);

"Effective Date" the date of signature set out in the Order Form

"Fees" the charges due to Convergence as set out in the Order Form or Service Schedule, as may be amended from time to time pursuant to these conditions or the Service Schedule

"Initial Term" the initial term of the Agreement as set out in the Order Form

"Minimum Term" means twenty-four (24) months (or such other minimum period as is set out in the Order) from the Effective Date;

"Order Form" the order form signed by the Customer detailing the Services and/or Products to be supplied by The Supplier.

"Products" any hardware, software, cabling and/or other products or equipment sold or licensed by Convergence to the Customer as identified in the Order Form, as may be amended from time to time pursuant to paragraph 3.5 of these conditions

"Services" the service provided by Convergence as identified in the Order Form, as may be amended from time to time pursuant to paragraph 3.5 of these conditions or the Service Schedule

"Service Schedule" any service schedule applicable to the particular Services and Products, as identified in the Order Form

"Service Levels" any service levels applicable to the Services as set out in the Service Schedule.

"Subsequent Term" a minimum of twelve (12) months (or such other period set out in the Order);

"The Supplier" means Convergence Communications (Company Number: 5154038) whose Registered Office is at Unit 11/12 Hall Barn Road Business Park, Hall Barn Road, Isleham, Ely, Cambridgeshire, CB75RL.

"Third Party Services" any part of the Services which Convergence procures from a third party, and any third-party hosting services, telecommunications services and/or equipment which Convergence uses in order to provide the Services

"Third party Services Provider" the provider of any Third-Party Services

1.2 If there is a conflict between any of these conditions, the Order Form and the Service Schedule, the conflict will be resolved according to the following order of priority:

1.2.1 The Order Form,

1.2.2 These conditions, and

1.2.3 The Service Schedule/s.

1.3 The headings to these conditions and in the Order Form and Service Schedules are for convenience only and will not affect their construction or interpretation.

1.4 Any phrase in the Agreement introduced by the term "include", "including" "in particular" or any similar expression will be construed as illustrating and will not limit the sense of the words proceeding

### 2 FORMATION

2.1 These conditions, together with the other terms set out in the Agreement (Service Schedules), will apply to all contracts and agreements between the parties to the exclusion of all other terms and conditions and all previous oral or written representations, including any terms or conditions which the Customer purports to apply under any purchase order, confirmation of order or similar document, whether or not such document is referred to in the Order Form.

2.2 Each order or acceptance of a quotation for Services or Products will be deemed to be an offer by the Customer to purchase Services or Products upon these conditions. The Agreement is formed when the order is accepted by The Supplier by way of e-mail confirmation or any other written acknowledgement. No contract will come into existence until such written acknowledgement of the order is issued by The Supplier. All orders must be on The Supplier Standard Order form.

2.3 Any quotation provided by The Supplier is valid for a period of 7 days only from its date, provided The Supplier has not previously withdrawn it.

2.4 All orders are non-cancellable. Without prejudice to this, no Products may be returned by the Customer following delivery unless they fail to comply with their specification due to defects in material or workmanship, and then only in accordance with the provisions of paragraph 7.1.

2.5 The Supplier will be entitled to make changes to these conditions at any time and the Customer will be subject to any such amended conditions from the date that such changes are made. The most recent version of these conditions from time to time will be found at [www.Convergence.co.uk](http://www.Convergence.co.uk) and the Customer shall check periodically for changes. Posting changes to these conditions at [www.Convergence.co.uk](http://www.Convergence.co.uk) shall be deemed to be sufficient notice to the Customer of such changes although The Supplier will endeavor to inform the Customer directly of any change.

### 3 SUPPLIER RIGHTS AND OBLIGATIONS

3.1 The Services and the Products to be provided to the Customer are as described or referred to on the Order Form including any referenced quotation detail.

3.2 Time for performance or delivery is not of the essence and any timescales for performance or delivery given by The Supplier are estimates only. The Supplier will use its reasonable endeavours to provide the Services and deliver the Products in accordance with any timescale set out on the Order Form but will not be liable to the Customer where it fails to meet any timescale.

3.3 The Supplier will not be liable for any failure to provide the Services and/or deliver the Products resulting from any breach by the Customer of the Agreement.

3.4 The Supplier will not be obliged to provide any Services or Products not referred to on the Order Form.

3.5 The Supplier may at any time and from time to time improve, correct or otherwise modify all or any of the Services and / or Products (including substituting software and/or Products with software or equipment of similar specification) provided that such modification does not materially adversely affect provision of the Services to the Customer or the functionality of the Products. The Supplier will endeavour to give the Customer reasonable notice of any such modification, where this is reasonably practicable.

3.6 The Supplier shall use its reasonable endeavours to provide the Services in accordance with the Service Levels. However, the Customer acknowledges that, given the nature of the Services, The Supplier cannot guarantee

that the Services will be uninterrupted or error free.

3.7 Where service credits are provided for in the Service Schedule these shall be the sole and exclusive remedy of the Customer for the failure to meet the applicable Service Levels. The Supplier shall have no additional liability to the Customer in respect thereof.

3.8 Risk of damage to or loss of the Products will pass to the Customer on delivery.

3.9 Ownership of the Products will not pass to the Customer until The Supplier has received in full (in cash or cleared funds) all sums due to it in respect of:

3.9.1 The Products; and

3.9.2 All other sums which are or which become due to The Supplier from the Customer on any account.

3.10 Until ownership of the Products has passed to the Customer, the Customer must hold the Products on a fiduciary basis as The Supplier Bailee and maintain the Products in satisfactory condition insured on The Supplier behalf for their full price against all risks to the reasonable satisfaction of The Supplier.

3.11 The Customer's right to possession of the Products will terminate immediately if any of the circumstances set out in paragraph 9.4 occur.

3.12 The Supplier will be entitled to recover payment for the Products notwithstanding that title in any of the Products has not passed from The Supplier.

3.13 On termination of the Agreement, howsoever caused, The Supplier rights contained in paragraphs 3.9 to 3.12 will remain in effect.

#### 4 CUSTOMER OBLIGATIONS

4.1 The Customer will provide The Supplier with all information, instructions and assistance that The Supplier may reasonably require in order to carry out its obligations under the Agreement. The Customer shall co-operate fully and in good faith with The Supplier and any applicable Third-Party Services Provider. The Customer shall provide all reasonably necessary physical access to Customer premises and other sites at all reasonable times as required (including access for the purposes of installation, inspection, maintenance, replacement, upgrade, or removal of the Products, The Supplier Equipment and any other equipment associated with the Services), facilities at such premises and sites, assistance with testing and other assistance to The Supplier that The Supplier shall reasonably require to perform its obligations under the Agreement, and the Customer shall comply with any reasonable operating instructions issued by The Supplier from time to time.

4.2 If The Supplier is provided with any incorrect information or instructions in connection with the Services, then the Customer shall pay any reasonable additional and wasted costs and expenses incurred or suffered by The Supplier as a result in setting-up and/or providing any Services.

4.3 Where The Supplier or any Third-Party Services Provider are working on Customer premises, the Customer shall ensure a safe working environment in compliance with all applicable health and safety laws.

4.4 The Supplier reserves the right to refuse access to its premises and servers to anyone.

4.5 All Services are subject to the Acceptable Use Policy. The Customer shall, at all times in connection with its use of the Services, comply with the Acceptable Use Policy. The Supplier shall publicise the Acceptable Use Policy on its website (the current URL being [www.TheSupplier.co.uk](http://www.TheSupplier.co.uk)) and it shall be the responsibility of the Customer to ensure that it checks the same periodically and that it is aware of the current policies. The Customer shall ensure that the Acceptable Use Policy is communicated to Customer Personnel in a timely manner.

4.6 Without prejudice to paragraph 4.5, the Customer shall not use the Services, any Supplier Equipment or any Customer equipment which is located on The Supplier premises:

4.6.1 to provide, store, host, link to or connect to illegal content, content designed to offend or cause needless anxiety to others, any material which is abusive, indecent, defamatory, obscene, threatening, menacing or likely to cause harassment or which is in breach of any copyright, confidence, privacy or any other rights or scanning software;

4.6.2 To distribute illegal, copyright infringing, indecent or offensive material;

4.6.3 To send or procure the sending of any unsolicited e-mail; or

4.6.4 in an unlawful manner or for any illegal purpose.

4.7 Whether or not express reference is made to Customer Personnel in the relevant provision, the Customer will procure that all Customer Personnel comply with all the duties, obligations and restrictions imposed on the Customer by the Agreement, to the extent such duties, obligations and restrictions are applicable to the Customer Personnel. Any act or omission of any Customer Personnel which, if it had been committed or omitted by the Customer, would have been a breach of the Agreement by the Customer will be deemed to be a breach of the Agreement by the Customer who will be liable to The Supplier accordingly.

4.8 Where the Products include any software, the same is provided on a licensed basis in accordance with the licence terms and conditions applicable thereto, which the Customer agrees that it will comply with.

#### 5 SUSPENSION

5.1 Without prejudice to any other right or remedy that it may have in such circumstances, The Supplier reserves the right to suspend provision of any part of the Services where:

5.1.1 the Customer's use of any of the Services is found to be monopolizing the resources available (this policy is only implemented in extreme circumstances and is intended to prevent misuse of the Services); or

5.1.2 the Customer is in breach of the Acceptable Use Policy, paragraph 4.6 or otherwise in material breach of the Agreement and fails to rectify such breach within 7 days of a written request from The Supplier requiring the same to be rectified; or

5.1.3 Required for maintenance, repair or upgrade of any Supplier systems and/or the Services (The Supplier shall use reasonable endeavours to give as much advance notice to the Customer as is reasonably practicable in the circumstances); or

5.1.4 Dealing with any actual or suspected security breach, virus, or attack or any misuse by any person of any Supplier systems and/or the Services; or

5.1.5 Necessary because of an emergency; or

5.1.6 Required by any regulatory, governmental or other competent authority; or

5.1.7 the Services depend on any Third-Party Services and that Third-Party Service is suspended by the relevant Third-Party Services Provider; or

5.1.8 the Customer fails to pay any Fees in accordance with the provisions of the Agreement and fails to rectify such failure within seven (7) days of a written request from The Supplier requiring the same to be rectified.

5.2 The Supplier may from time to time close down the whole or part of the network for routine repair or maintenance work. The Supplier shall give as much notice as in the circumstances is reasonable and shall endeavour to carry out such works during the scheduled maintenance periods as published by The Supplier as appropriate.

5.3 The Supplier may from time to time without notice close down or restrict the whole or part of the Services where necessary for emergency repair, to prevent overload of the network, or to preserve the safety, security or integrity of the Services and traffic conveyed. The Supplier shall at its sole discretion decide when such action is necessary.

5.4 The Customer's internal network configuration and any equipment that it uses with the Services that is not a Product or Supplier Equipment remains the responsibility of the Customer. Any interruptions to the Services that occur as a result of an internal configuration or equipment issue may not be deemed as an interruption or suspension of the formal provision of the Services and The Supplier shall have no liability in this respect.

5.5 Where provision of any part of the Services is suspended by The Supplier pursuant to paragraph 5.1.1, 5.1.2 or 5.1.8, The Supplier shall be entitled to charge the Customer its standard reconnection fee from time to time applicable which the Customer shall pay to The Supplier prior to The Supplier recommencing provision of such part of the Services.

#### 6 PAYMENT

6.1 All Fees payable monthly or yearly as indicated in the Service Schedule and Order Form will be paid by the Customer in advance and will not be refundable in whole or part if the Agreement or relevant part is terminated by the Customer during the period to which the payment relates.

6.2 The Supplier reserves the right to require the payment of such Fees as it shall specify in the Order Form upfront prior to the commencement of the provision of the Services or any Products or before any order is progressed.

6.3 All other Fees (unless indicated otherwise in the Service Schedule or Order Form) shall be payable by the Customer following provision of the relevant Services or delivery of the Products, or, where provision of the relevant Services continues for more than one month, monthly in arrears.

6.4 Additional Fees will become payable if the Customer exceeds agreed or stipulated bandwidth or other use levels or restrictions set out in the Service Schedule or Order Form.

6.5 Any total sum for the Fees set out in an Order Form is (unless stated in the Order Form to be a fixed and firm amount) an estimate of the Fees only and not a fixed price quotation.

6.6 The Supplier shall be entitled to increase the Fees at any time, but no such increase may take effect earlier than the end of the Initial Term except where the costs incurred by The Supplier in the provision of the relevant Services or Products increase through factors that are outside of The Supplier control, including electricity and bandwidth charges and charges levied by Third Party Services Providers. The Supplier shall give the Customer thirty (30) days' notice of such increases.

6.7 Any sums payable by the Customer to The Supplier under the Agreement are exclusive of value added tax or any similar taxes, levies or duties, which will be added to such sums and be payable by the Customer at the appropriate rate.

6.8 The Customer agrees to pay Supplier invoices within 14 days of invoice due date (due dates to be agreed in advance by both parties and where this is not the case then a standard thirty (30) days terms from invoice date will apply). If invoices are not settled in full by then, the Customer will without prejudice to its other rights and remedies be liable to pay interest on any sum outstanding from the due date for payment on a daily basis until payment is made (whether before or after any judgment) in accordance with the provisions of the Late Payment of Commercial Debts (Interest) Act 1998.

6.9 The Supplier may make a search in relation to the Customer with a credit reference agency (and make other credit enquiries from time to time), keep a record of that search and enquiries, and share that information with third parties. The Supplier may also make enquiries about the principle directors/proprietors of the Customer with a credit reference agency.

6.10 All Fees shall be paid by such method as determined by The Supplier from time to time (which may include payment by direct debit, BACS, cheque or credit card) to such account as The Supplier may specify from time to time. Where the Customer authorises payment of any of the Fees by credit card then The Supplier may deduct other amounts becoming payable to it under the Agreement under that credit card without obtaining additional authorisation from the Customer. Credit card payments may incur charges for card fees.

6.11 All payment is in UK sterling.

6.12 All payments to be made by the Customer will be made in full without any set-off, restriction or condition and without any deduction or withholding for or on account of any counterclaim or any present or future taxes, levies, duties, charges, fees, deductions or withholdings of any nature, unless the Customer is required by law to make any such deduction or withholding.

6.13 The Supplier shall have a lien over and be entitled to retain any equipment and property of the Customer in The Supplier possession pending satisfaction in full of the Customer's payment obligations under the Agreement, including following any termination of the Agreement. This shall include the right to sell the same and set off the proceeds of sale against any sums owing.

## 7 LIABILITY

7.1 The Supplier will, free of charge, within a period of twelve (12) months from the date of delivery of the Products which are proved to the reasonable satisfaction of The Supplier to not comply with specification due to defects in material or workmanship, repair, or at its option replace, such Products. Provided that The Supplier complies with this obligation it shall have no further liability to the Customer in connection with such non-compliance. This obligation will not apply where:

7.1.1 The Products has been improperly altered in any way whatsoever, or has been subject to misuse or unauthorised repair;

7.1.2 The Products has been improperly installed or connected (other than by The Supplier);

7.1.3 Any maintenance requirements relating to the Products has not been complied with (other than where The Supplier is responsible for such maintenance under the Agreement); and

7.1.4 The Customer has failed to notify The Supplier of any defect or suspected defect within fourteen (14) days of the same coming to the knowledge of the Customer, and in any event no later than twelve (12) months from the date of delivery.

7.2 The Supplier warrants that the Services will be provided with reasonable care and skill.

7.3 The Supplier does not (and nothing in the Agreement shall be construed so as to) exclude its liability (if any) to the Customer:

7.3.1 for breach of The Supplier's obligations arising under section 12 Sale of Goods Act 1979 or section 2 Supply of Goods and Services Act 1982;

7.3.2 for personal injury or death resulting from The Supplier negligence;

7.3.3 under section 2 Consumer Protection Act 1987;

7.3.4 for any matter for which it would be illegal for The Supplier to exclude or to attempt to exclude its liability; or

7.3.5 for fraud.

7.4 Except as provided in paragraph 7.3, The Supplier will be under no liability to the Customer whatsoever (whether in contract, tort (including negligence), breach of statutory duty, restitution or otherwise) for any indirect or consequential loss or for any loss of profits, loss of business, loss of anticipated savings, depletion of goodwill and like loss howsoever caused arising out of or in connection with the Agreement.

7.5 Subject to paragraphs 7.3 and 7.4, The Supplier's aggregate liability in any Contract Year under the Agreement whatsoever (whether in contract, tort (including negligence), breach of statutory duty, restitution or otherwise) for any injury, death, damage or loss howsoever caused will be limited to [the Fees payable in that Contract Year].

7.6 Except as set out in paragraph 7.3, The Supplier hereby excludes to the fullest extent permissible in law, all conditions, warranties and stipulations,

express (other than those set out in the Agreement) or implied, statutory, customary or otherwise which, but for such exclusion, would or might subsist in favour of the Customer.

7.7 The Customer acknowledges that the above provisions of this paragraph 7 are reasonable and reflected in the Fees which would be higher without those provisions, and the Customer will accept such risk and/or insure accordingly.

## 8 FORCE MAJEURE

8.1 Neither party is under any liability to the other party in respect of anything which, apart from this provision, may constitute a breach of the Agreement arising by reason of force majeure which means, in relation to either party, circumstances beyond the reasonable control of that party including acts of God, acts of any governmental or supra-national authority, war or national emergency, riots, civil commotion, fire, network failure, systems fault, unauthorised use or access to the IT systems of The Supplier or the Customer, explosion, flood, epidemic, lock outs (whether or not by that party), strikes and other industrial disputes (in each case, whether or not relating to that party's workforce), restraints or delays affecting shipping or carriers, inability or delay in obtaining supplies of adequate or suitable materials and currency restrictions, to the extent outside of its reasonable control.

## 9 TERM AND TERMINATION

9.1 This Agreement shall commence on the Effective Date and will continue for the Minimum Term stated in the Order and then any Renewed Term or Subsequent Term thereafter as per the terms of the Agreement.

9.2 Unless stated otherwise in the relevant Service Schedule, at the end of the Minimum Term the Agreement will renew automatically for a Subsequent Term. A Customer may terminate the Agreement (without incurring any Early Termination Fee) by giving a minimum of ninety (90) days prior written notice to the Supplier such notice to expire on the expiry date of the Minimum Term (or thirty (30) days prior written notice if the organisation has stated they have less than 11 employees from the outset), the Renewed Term or Subsequent Term (as the case may be); or

9.3 terminate the Agreement before the Minimum Term, the Renewed Term or Subsequent Term (as the case may be) has expired but will have to pay the Early Termination Fee to the Supplier. If the Customer claims that less than 11 employees are employed, proof of this must be provided by the Customer's accountant.

9.3.1 Where a customer is terminating a Supplier service a cancellation form will be raised which will need to be signed by both parties. The notice period will not commence until this is completed.

9.4 The Supplier may by written notice served on the Customer terminate the Agreement immediately if the Customer:

9.4.1 either is in material breach of any of the terms of the Agreement and such breach is incapable of remedy or, where the breach is capable of remedy, fails to remedy such breach within fourteen (14) days after service of a written notice from The Supplier specifying the breach and requiring it to be remedied;

9.4.2 is unable to pay its debts within the meaning of section 123 Insolvency Act 1986, makes a proposal for a voluntary arrangement or convenes a meeting of its creditors to consider such a proposal, becomes subject to any voluntary arrangement, has a receiver, manager, or administrative receiver appointed over any of its assets, undertaking or income, passes a resolution for its winding-up, is subject to a petition presented to any court for its winding-up, has a provisional liquidator appointed, has a proposal made for a compromise or arrangement under Part 26 Companies Act 2006, has an administrator appointed in respect of it or is the subject of an application for administration filed at any court or a notice of appointment of an administrator filed at any court or a notice of intention to appoint an administrator filed at any court by any person or is the subject of a notice to strike off the register at Companies House;

9.4.3 Has any distraint, execution or other process levied or enforced on any of its property; or

9.4.4 Ceases to trade.

9.5 The termination of the Agreement howsoever arising is without prejudice to the rights, duties and liabilities of either party accrued prior to termination. The clauses in the Agreement which expressly or impliedly have effect after termination will continue to be enforceable notwithstanding termination.

9.6 Subject to the provisions of paragraph 6.13, on termination of this Agreement howsoever arising each party will return to the other any property of the other in its possession or control.

9.7 Without prejudice to any other of its rights and remedies:

9.7.1 The Supplier will be entitled to remove the Customer's data from its systems and any Supplier Equipment and/or put the Supplier Equipment to any use other than the Customer's following termination of the Agreement. The Supplier is not required to back up such data or return the same to the Customer prior to any such removal; and

9.7.2 In the event of any termination by The Supplier pursuant to paragraph 9.4, or by the Customer pursuant to any provision of these conditions, the Customer shall be liable to pay or reimburse The Supplier for any cancellation charges that may be due to any Third-Party Services Provider or otherwise due as a consequence of such termination.

## **10 DATA AND CONFIDENTIAL INFORMATION**

10.1 All information that we hold concerning you as individuals ("Personal Data") will be held and processed by us strictly in accordance with the provisions of the Data Protection Act 2018 and General Data Protection Regulations (GDPR). Such data will be used by us to provide you with the Services, for related purposes and for the purposes set out in this paragraph.

10.2 Customers who request an IP address assignment will have their contact details added to the RIPE database

10.3 Where The Supplier is processing any personal data relating to the Customer in connection with the provision of the Services, it is doing so on behalf of the Customer as a "data processor" under the Data Protection Act 2018 and GDPR, and the Customer is the "data controller". The Supplier will comply with its obligations under the Data Protection Act 2018 and GDPR as data processor.

10.4 In particular The Supplier will maintain and comply with reasonably appropriate technical and organisational measures against unauthorised or unlawful processing of that personal data and against accidental loss or destruction of, or damage to that personal data.

10.5 Each party will keep confidential:

10.5.1 the terms of the Agreement; and

10.5.2 any and all Confidential Information that it may acquire in relation to the other party.

10.6 Neither party will use the other party's Confidential Information for any purpose other than to perform its obligations under the Agreement. Each party will ensure that its officers and employees comply with the provisions of paragraphs 10.5 and 10.6.

10.7 The obligations on a party set out in paragraphs 10.5 and 10.6 will not apply to any Confidential Information which:

10.7.1 Either of the parties can demonstrate is in the public domain (other than as a result of a breach of paragraph 10.5 or 10.6); or

10.7.2 A party is required to disclose by order of a court of competent jurisdiction but then only to the extent of such required disclosure.

10.8 The provisions of paragraphs 10.5 and 10.6 will survive any termination of the Agreement for a period of five (5) years from termination.

## **11 MISCELLANEOUS**

11.1 Each right or remedy of The Supplier under any Agreement is without prejudice to any other right or remedy of The Supplier under the Agreement.

11.2 If any condition or part of the Agreement is found by any court, tribunal, administrative body or authority of competent jurisdiction to be illegal, invalid or unenforceable then that provision will, to the extent required, be severed from the Agreement and will be ineffective without, as far as is possible, modifying any other provision or part of the Agreement and this will not affect any other provisions of the Agreement which will remain in full force and effect.

11.3 No failure or delay by The Supplier to exercise any right, power or remedy will operate as a waiver of it nor will any partial exercise preclude any further exercise of the same, or of some other right, power or remedy.

11.4 The Supplier may assign, delegate, license, hold on trust or sub-contract all or any part of its rights or obligations under the Agreement.

11.5 The Contract is personal to the Customer who may not assign, delegate, license, hold on trust or sub-contract all or any of its rights or obligations under the Agreement without The Supplier prior written consent.

11.6 The parties to the Contract do not intend that any of its terms will be enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person not a party to it.

11.7 The Agreement contains all the terms which The Supplier and the Customer have agreed in relation to the Services and Products [and supersedes any prior written or oral agreements, representations or understandings between the parties relating thereto. The Customer acknowledges that it has not relied on any statement, promise or representation made or given by or on behalf of The Supplier which is not set out in the Agreement. Nothing in this paragraph 11.7 will exclude any liability which one party would otherwise have to the other party in respect of any statements made fraudulently.

## **12 APPLICABLE LAW AND JURISDICTION**

12.1 The construction, performance and validity of this Agreement is governed by the law of England and Wales and is subject to the exclusive jurisdiction of the courts of England and Wales.



Service Schedules:  
Ethernet, ISDN, Leased Lines  
and other Connectivity  
(Horizon on Separate Schedule)

**SERVICE SCHEDULE CONDITIONS**  
Convergence Communications Ltd

**1 DEFINITIONS AND INTERPRETATION**

1.1 In these terms and conditions ("Terms") the following words shall have the following meanings:

"Agreement" the agreement between Convergence and the Customer for the provision of Services and / or Products formed by these conditions, the terms of the Order Form and the Standard Terms and Conditions.

"Broadband Plan" the monthly tariff which the Customer selects at the time the Customer orders the Broadband Service;

"Broadband Service" the direct high speed "always on" network access to the internet provided in accordance with the particular type of Broadband Plan chosen by the Customer and supplied to the Customer's Site via the Network at the best available Transmission Speed that the Supplier is reasonably able to make available to the Customer according to the Broadband Plan the Customer has selected and which is provided in accordance with the terms of the Agreement;

"BT" British Telecommunications plc and its associated companies;

"Business Day" a day which is not a Saturday or Sunday or Public or Bank Holiday and is between the hours of 08:30 to 17:30 on each Business Day.

"Call Charges" The Supplier's charges for calls made on the System (including reverse charge calls) as set out in the Order or as otherwise notified to the Customer by the Supplier from time to time;

"Calls & Lines Services" the services for calls & lines that the Supplier provides to the Customer (as set out in the Order) by means of the System;

"Charges" all charges and fees payable by the Customer for the Services pursuant to this Agreement;

"Confidential Information" any information, whether communicated orally or in documentary or other form, relating to the business of the Supplier including, without limitation, information relating to services, customers, pricing, policies, methods, business plans, technical processes and financial affairs, in all cases whether expressly stated to be confidential or not;

"Connection Charge" the non-refundable charge (if any) payable by the Customer for installation and connection to the System as set out in the Order or as otherwise notified by the Supplier;

"Connection Point" includes a terminal block, a socket for a removable plug, a distribution frame, or any other device which the Supplier fixes at any of the Sites to connect the Customer's equipment to an Exchange Line;

"Contract Year" the period of 12 months from the Effective Date (date of signed Order) and each successive period of twelve (12) months during the continuance in force of the Agreement or, in respect of the final Contract Year under the Agreement, the period from the end of the penultimate Contract Year to the date of termination of the Agreement, if shorter

"CPS" Carrier pre-selection;

"Customer" the party purchasing the Services, as named in the Order;

"Customer's Website" any website provided and which the Customer uses in connection with the Website Services;

"Domain Name" such domain name as the Supplier may allocate to the Customer;

"Domain Name Price" the retail price from time to time for a Domain Name;

"Domain Period" the period of twenty-four (24) months from the date of allocation of a Domain Name;

"Early Termination Fee" means:

All Charges that are accrued up to and including the date of termination; plus

- c) An average per day value of the Call Charges accrued by the Customer in the three months prior to the date of termination chargeable each day from the date of termination until the date of expiry of the Minimum Term, Renewed Minimum Term or Subsequent Term (as the case may be); plus
- d) The total amounts of all Exchange Line Rental Charges still remaining on the Minimum Term, Renewed Term or Subsequent Term (as the case may be) from the date of termination until the date of expiry of the Minimum Term, Renewed Minimum Term or Subsequent Term (as the case may be);

"Effective Date" the date of signature set out in the Order Form

"Equipment" any communications or other equipment recommended and approved by the Supplier and/or third-party operator as an essential part of providing the Services. This may include (without limitation) modem and router cables. It does not include leads, batteries or other accessories or equipment the Customer might purchase from any supplier the Supplier recommends or any alternative supplier.

This other equipment is "Additional Equipment";

"Exchange Line" any apparatus forming part of the System used by the Supplier to connect the Site to a telephone exchange to provide the Services;

"Initial Term" the initial term of the Agreement as set out in the Order Form

"IPR" all intellectual property rights including, without limitation, copyright and related rights, patents, trademarks, design rights, know how, rights to inventions trade names, domain names, rights in get-up, rights in goodwill or to sue for passing off, rights in computer software, database rights, rights in confidential information (including without limitation trade secrets) and any other intellectual property rights, in each case whether registered or unregistered and including all applications for and renewals or extensions of such rights and all similar or equivalent rights or forms of protection in any part of the world;

"ISDN Services" the telephone services that the Supplier provides to the Customer (as specified in the Order) by means of the System;

"Minimum Term" means twenty-four (24) months (or such other minimum period as is set out in the Order) from the Effective Date;

"Network" the fixed line telecommunications network operated by a Network Operator;

"Network Operator" a network operator who operates a Network to which a line is connected in accordance with an agreement between the Network Operator and the Supplier;

"OFCOM" the Office of Communications or other replacement authority;

"Order Form" the order form signed by the Customer detailing the Services and/or Products to be supplied by the Supplier.

"Our Website" the website located at [www.theSuppliercomms.com](http://www.theSuppliercomms.com), is amended from time to time.

"Personal Data" any personal data, as defined in the Data Protection Act 2018 and General Data Protection Regulations (GDPR), relating to the Customer which is held the Supplier;

"Renewed Term" the renewed term agreed with the Supplier in writing in accordance with Clause 3.3;

"Rental" the monthly fee (including line rental, equipment rental, and other rental) payable by the Customer for the Services, as set out in the Order or as otherwise notified by the Supplier;

"Services" the ISDN Services and/or the Calls & Lines Services and/or the Broadband Service and/or the Website Service as the case may be that the Supplier has agreed to supply to the Customer (as set out in the Order);

"Site" the site(s) at which the Supplier shall provide the Services;

"Subsequent Term" a minimum of twelve (12) months (or such other period set out in the Order) or for businesses with less than 11 employees this will be a thirty (30) day rolling Agreement to be cancelled with a minimum thirty (30) day notice period;

"Supplier" means Convergence Communications (Company Number: 5154038) whose Registered Office is at Unit 11/12 Hall Barn Road Business Park, Hall Barn Road, Isleham, Ely, Cambridgeshire, CB75RL.

"Supplier's Equipment" includes any equipment owned by the Supplier or its licensors that the Supplier uses to provide the Services;

"System" the Network that the Supplier uses to provide the Services;

"Transmission Speed" either the rate in Kbps or Mbps that data is transferred between the Equipment and the Broadband Service. The Transmission Speed available to the Customer will be affected by the operational and technical characteristics of the Customer's telephone line, the Network and the Customer's chosen Equipment;

"Toll Fraud" the process of 'hacking' into the Customer's telephone system and making unlawful telephone calls.

"Website Services" the provision of website hosting services in accordance with the particular type of Website Plan chosen by the Customer;

"Website Plan" the monthly tariff which the Customer selects at the time the Customer contracts to receive Website Services;

1.2 Any reference in this Agreement to any provision of a statute shall be construed as a reference to that provision as amended, re-enacted or extended at the relevant time.

1.3 Headings in the Agreement shall not affect interpretation.

**2 THE AGREEMENT**

2.1 Each Order for the Services by the Customer to the Supplier shall be



deemed to be an offer by the Customer to purchase the Services and these Terms shall apply. No Order placed by the Customer shall be accepted by the Supplier until the Order is accepted by the Supplier or (if earlier) the Supplier provides the Services to the Customer.

2.2 If there is a conflict between any of these conditions, the Order Form and the Standard Terms, the conflict will be resolved according to the following order of priority:

- 2.2.1 The Order Form,
- 2.2.2 The Standard Terms, and
- 2.2.3 These conditions.

### 3 INITIAL TERM

3.1 This Agreement shall commence on the Effective Date and will continue for the Minimum Term stated in the Order and then any Renewed Term or Subsequent Term thereafter as per the terms of the Agreement.

3.2 The Customer has limited rights to terminate the Agreement during the Minimum Term, Renewed Term or Subsequent Term (as the case may be). These rights are set out in Clause 10.2.

3.3 No later than ninety (90) days before the end of the Minimum Term, Renewed Term or Subsequent Term (as the case may be) the Supplier will endeavor to contact the Customer to agree a Renewed Term. If upon the expiry of the Minimum Term, Renewed Term or Subsequent Term (as the case may be) the Customer has not;

3.3.1 agreed a Renewed Term; or

3.3.2 given notice to the Supplier in accordance with Clause 10.2. The Supplier will continue to supply the Services to the Customer for the Subsequent Term unless the Customer terminates the Agreement as set out in Clause 10.2. If a Renewed Term has been agreed the Supplier will continue to supply the Services to the Customer for the Renewed Term unless the Customer terminates the Agreement as set out in Clause 10.1.

3.4 If the Customer terminates the Agreement before the expiry of the Minimum Term, Renewed Term or Subsequent Term, the Customer shall pay the Early Termination Fee.

### 4 CONNECTION OF THE CUSTOMER'S EQUIPMENT Calls and lines services ONLY

4.1 The Calls & Lines Services are available only if the Customer has a valid contract for the use of an analogue Exchange Line (in the case of the wholesale access Service) or digital Exchange Line capable of supporting an existing ISDN30 service (in the case of wholesale ISDN30 Service) direct Exchange Line (for each Exchange Line being ordered) which terminates on a Connection Point. If such contract does not exist, the Customer must request the Supplier to have an Exchange Line, Connection Point and/or ISDN30 bearer installed, as appropriate.

4.2 The Customer acknowledges that certain services are incompatible with the Calls & Lines Services available from BT, and such incompatible services are excluded from the Services. The Customer also acknowledges that some technical limitations within the System may not become apparent until after the Services have been working for some time. In such circumstances, the Services may need to be withdrawn in which case the Customer shall be entitled to a pro rata rebate of any relevant Charges paid in advance by the Customer.

4.3 The Customer agrees to route all of their calls to the Supplier for the duration of the Agreement. Should the customer fail to comply with this Clause 4.3, the charges as stated in Clause 8.6 will be applicable.

#### Calls & lines service and ISDN Service

4.4 The Customer understands and accepts that:

4.4.1 the Supplier may rely upon BT's or other Network Operator's co-operation in providing the Services. The Supplier therefore gives no warranty, representation or undertaking as to the speed, quality or validity of the Services. No liability shall accrue to or be incurred by the Supplier arising from any failure of or delay suffered by the Customer; and

4.4.2 the provision of the Services requires that BT or other Network Operator undertakes programming at exchange level. Accordingly, it is agreed that any act, default or delay by BT or other Network Operator in carrying out such programming or otherwise relating to or affecting the Services shall not be the responsibility of the Supplier.

4.5 The Customer hereby agrees to the termination of its existing contract for equivalent services with the applicable communications service provider. The Customer shall provide the Supplier with any relevant account and calling line identification numbers that may be required by BT or other Network Operator. The Customer acknowledges that the Supplier cannot process the provisions of the Services until such information is provided by the Customer.

4.6 The Customer's equipment to be connected with the Services shall be connected by means of Connection Points and ancillary wiring both as installed and maintained by the Supplier. If the Customer wishes a Connection Point to be moved to another place within the Site, the Supplier may agree, subject to payment of the Supplier's applicable charges.

4.7 The Customer shall, at the Supplier's request, arrange for the Customer's equipment to be reprogrammed by its designated maintainer in accordance with instructions provided by the Supplier, to enable any indirect or other access. The Supplier will have no responsibility in respect of such reprogramming.

4.8 Following termination of the Agreement, if there is any programming on the Customer's equipment to route calls via the System the Customer shall be responsible for arranging for such programming to be removed and may be subject to payment of the Supplier's applicable charges. If the new supplier fails to successfully transfer the Services, then the Customer shall remain liable for the Charges after the date of termination until transfer is complete.

4.9 The Customer shall provide a suitable and safe working environment for the Supplier, BT or Network Operator and anyone acting on their behalf, at the Site.

### BROADBAND AND WEBSITE SERVICES

4.10 In order for the Supplier to enable the Customer to use the Broadband Service and/or Website Services the Customer agrees to comply with the following:

4.10.1 the Customer must have an existing BT or any other non-cable network telephone line;

4.10.2 the Customer must have a personal computer of minimum specification;

4.10.3 the Customer must have compatible cables and extension leads between any communications equipment and telephone socket;

4.10.4 the Supplier's provision of the Broadband Service is subject to testing to the Supplier's satisfaction of the Customer's telephone line to ensure that broadband is available in the Customer's area and can be activated. If any installation work is needed at the Customer's Site before the Supplier is able to provide the Broadband Service, the Customer must arrange this through an authorized third party or by the Supplier at the Customer's own cost; and

4.10.5 the Customer must cancel any other broadband access service.

4.11 In certain limited circumstances, the Supplier may not be able to set up the Broadband Service and/or Website Services for technical reasons beyond the Customer's or the Supplier's control. If this happens the Supplier will notify the Customer as soon as possible and the Agreement between the Supplier and the Customer for Broadband service and /or Website Services will end. In such circumstances, the Supplier will provide the Customer with a full refund for any Charges the Customer has already paid to the Supplier for Broadband Services and/or Website Services.

4.12 Upon activation of the Customer's Broadband Service the Customer accepts that the Customer may experience a temporary loss of the Customer's existing line.

4.13 The Customer will be allocated a username and password in order to access the Broadband Service. The Customer will be responsible for keeping this username and password confidential and agrees to take all necessary steps to ensure their confidentiality and that they are not disclosed to any unauthorised third parties. The Customer will inform the Supplier if the Customer becomes aware of or suspects any unauthorised use of the Customer's username and password and agrees to take all necessary steps (or such steps as may be requested by the Supplier) to prevent such use.

4.14 To ensure that the Broadband Service remains secure, the Customer must not change or attempt to change a username without the Supplier's written permission.

4.15 If the Customer moves and wants to access the Broadband Service at their new address the Customer will need to set up a new account for that location by contacting the Supplier. The Customer will have to provide the Supplier with proof of its new address. If the Customer does not, its existing account will not be terminated, and the Customer will be liable for any Charges that remain due relating to that account. The Customer will also have to pay an administration fee for setting up a new account when the Customer moves and if the Customer has purchased Equipment from the Supplier and such Equipment is lost or damaged when the Customer moves address the Customer will have to purchase new Equipment.

4.16 When the Customer has moved address, a telephone line test will need to be carried out. If it is not possible to connect the Customer, the Customer may terminate the Agreement provided:

4.16.1 it is no earlier than the date the Customer actually moves;

4.16.2 the Customer gives the Supplier ten (10) days' notice; and

4.16.3 the Customer sends to the Supplier proof of the Customer's change of address. Any Charges due in respect of the Customer's existing account to the date of cancellation will remain payable. If it is possible to connect the Customer at the Customer's new address, the Supplier will try to ensure that the Customer's connection is at the same Transmission Speed as that at the Customer's old address prior to the Customer's move. However, if it is not possible, the Supplier will connect the Customer at the Transmission Speed the Supplier determines is available and possible.



4.17 As part of the Broadband Service or Website Services the Customer may set up the Customer's Website(s). Domain Names are subject to availability and the Supplier cannot guarantee the availability of any specific domain name. The number of e-mail addresses and the amount of e-mail storage and website that the Supplier provides to the Customer depends on the Customer's Broadband Plan or Website Plan. The Customer agrees to ensure that the Customer saves the Customer's e-mails in the event that the Customer's e-mail storage is approaching its limit. Only one free Domain Name may be allocated to the Customer during the term of the Agreement at no additional cost; any additional Domain Names will be charged at the Domain Price.

4.18 Where the Supplier provides the Customer with one or more e-mail addresses and storage as part of providing the Broadband Service and/or Website Services the Customer acknowledge that such e-mail addresses are not the Customer's property and that the Supplier is entitled to alter them in its sole discretion. The Supplier will only change the Customer's e-mail addresses where reasonably necessary after providing the Customer with reasonable notice of such change. The number of e-mail addresses and the amount of e-mail storage that the Supplier provides to the Customer will depend on the Broadband Plan/Website Plan the Customer subscribes to.

4.19 The Customer acknowledges that the Customer has no right to sell (or to agree to transfer) or dispose of in any way, any e-mail addresses or Domain Name provided to the Customer by the Supplier.

4.20 If the Supplier receives a complaint about the Customer's Website the Supplier may suspend it immediately without notifying the Customer beforehand. The Supplier may ask the Customer to either agree with the person making the complaint that the material can remain or can be altered or ask the Customer to agree to remove it permanently. However, if the Supplier believes that the material on the Customer's Website is sufficiently harmful, unlawful or offensive, is illegal or the Supplier receives further complaints about the Customer's Website after the Supplier has already issued the Customer with a warning, the Supplier may end the Agreement without further notice to the Customer. In such circumstances the Supplier will be under no obligation to provide the Customer with any refund.

4.21 The Customer agrees that the Customer will enter into any licence or agreement reasonably required by the owner of any intellectual property rights in any software supplied to the Customer for the purpose of accessing the Broadband Service or the Website Services. The Customer also agrees that all intellectual property rights in the Broadband Service or the Website Services (including the Equipment and any related software) are and will remain vested in the Supplier, the Supplier's agents, the Equipment manufacturer or their licensors as applicable.

4.22 The Customer acknowledges that as part of the Customer's wish to receive and enjoy the full benefits of the Broadband Service or the Website Service some minor modifications may need to be made to the Customer's computer. It is the Customer's responsibility to ensure that such modifications do not invalidate the terms of any warranty that the Customer may have concerning the Customer's computer. The Supplier will not be liable for any claim that the Customer's warranty has been invalidated (if applicable) as a result of work carried out by the Customer, the Supplier, or the Supplier's agents in order to make the Customer's computer operate with the Broadband Service.

4.23 It is the Customer's responsibility to ensure the compatibility of the Broadband Service and Website Services with the Customer's personal computer; any hardware, software or any other equipment or services.

4.24 The Customer recognizes that the Broadband Service and Website Services may from time to time be adversely affected by failure of a server or other external causes and may fail or require maintenance without notice. The Customer further acknowledges that the Supplier will have no liability for failure of the Broadband Service and Website Services unless and to the extent caused by the Supplier's negligence or fraudulent misrepresentation.

4.25 The Customer acknowledges that the Supplier is not responsible for any broadband router that has not been provided by the Supplier, or the configuration of that device and that any fault diagnosis on the broadband circuit will only be carried out with the test router supplied by the Supplier for that purpose. The Customer also acknowledges that it is the Customer's responsibility to provide full assistance during that testing and that failure to provide such assistance that results in an inability for the Supplier to correctly troubleshoot the fault will be the sole responsibility of the Customer and the Supplier will not be liable for any claim resulting due to loss of, or a poor speed broadband service.

## 5 THE SUPPLIER'S GENERAL OBLIGATIONS

5.1 The provision of the Services is subject to all relevant licences, infrastructure (or interconnect arrangements) and consents being in place. The Customer shall obtain any consent or facility that is necessary or desirable for the Supplier to provide the Services at the Site.

5.2 The Supplier may:

5.2.1 change or withdraw some, or part, of the Services from time to time. This may be because of changing technologies, obsolescence, new or different product features, changing content providers or the need to remove, replace or modify content; and

5.2.2 determine how the Services are presented and delivered or are otherwise made available to the Customer. The Supplier can change the way they are presented, delivered or otherwise made available to the Customer at any time.

5.3 The Services will be provided within the Supplier's Network Operator's network area but it's always possible that the quality or coverage may be affected at times.

5.4 The Supplier shall exercise the reasonable care and skill of a competent telecommunications operator. The Customer acknowledges that:

5.4.1 the Supplier cannot guarantee that the Services will be available without interruption or will be free from error;

5.4.2 the Services have not been developed to meet their individual requirements and that it is therefore the Customer's responsibility to ensure that the facilities and functions of the Services meets their requirements;

5.4.3 the operability, quality and availability of the Services may sometimes be affected by factors outside the Supplier's, BT's or Network Operator's control such as physical obstructions, atmospheric conditions and other causes of radio interference, faults in other telecommunication networks or other events;

5.4.4 the existence of any minor errors in the Services shall not constitute a breach of the Agreement; and

5.4.5 the Supplier, BT or other Network Operator may at any time and without liability modify, expand, improve, maintain or repair the Services and this may require suspension of the operation or provision of the Services. The Supplier shall have no liability to the Customer in connection with any such adverse effect on the quality and availability of the Services.

5.5 The Supplier shall use reasonable endeavors to meet any agreed dates but shall not be liable for failure to meet them. Time shall not be of the essence of the Agreement.

5.6 The Customer shall report any fault to the Supplier's Customer Services Department, where it will be dealt with in accordance with the agreed fault repair service. The Supplier shall not be obliged to fix any fault if:

5.6.1 the defect arises because the Customer failed to follow any user manual or other documentation available from the manufacturer or the Supplier's oral or written instructions as to the use or maintenance of the Services or (if there are none) good trade practice;

5.6.2 the defect is caused by improper use of the Services or use outside its normal application;

If the Supplier agrees to fix a fault:

5.6.3 caused by the circumstances set out in this Clause 5.6; or

5.6.4 caused by the Customer; or

5.6.5 that otherwise falls outside the responsibility of the Supplier; or

5.6.6 where no fault is subsequently found

the Supplier may charge the Customer for such work at its applicable man-hour rate.

5.7 The Supplier shall not be liable for any fault whether under Clause 5.6 or otherwise unless he Customer gives written notice of the defect to the Supplier within (seven) 7 days of the time when the Customer discovers or ought to have discovered the defect.

## THE CUSTOMER'S OBLIGATIONS WHEN USING THE BROADBAND SERVICE AND THE WEBSITE SERVICE

### Broadband Service

5.8 To prevent spam from entering and affecting the operation of the Supplier's systems and the Broadband Service, the Supplier may take any reasonable measures or actions necessary to block access to or delivery of any e-mail which appears to be of an unsolicited nature and/or part of a bulk e-mail transmission. The Supplier may also use within its systems virus screening technology that may result in the deletion or alteration of e-mail and or e-mail attachments. However, the Supplier does not warrant that such technology will be effective against all virus attacks or unsolicited e-mails.

5.9 The Customer acknowledges that the Broadband Service is provided to other users and the Supplier owes a duty to them as a whole to preserve Network integrity and to avoid Network degradation. If, in the Supplier's reasonable opinion, the Supplier believes that the Customer's use of the Broadband Service has or may adversely affect such network integrity or may cause network degradation the Supplier may change the Customer's Transmission Speed or manage the Customer's use of our Broadband Service as the Supplier see fit in the circumstances. This includes, but is not limited to, any circumstances where the Customer is running an application or program that places excessive bandwidth demands on the Broadband Service for continued periods. The Supplier may also impose a limit on the Customer's usage capacity at any time at our sole discretion if the Customer's usage is affecting or may affect other users' enjoyment of the Broadband Service.

5.10 During the term of the Agreement the Customer may request a change to the Customer's Broadband Plan at any time provided that it is only once in every thirty (30) days. Changes to the Customer's Broadband Plan are subject to availability and payment of any applicable Charges for details please see our website. The Supplier will use reasonable endeavors to complete the change as soon as possible but cannot guarantee how quickly this will be done. The Customer will be responsible for all Charges on the existing Broadband Plan until the change is completed.

## Website Services

5.11 In the event that the Customer wishes to port an existing URL which the Customer wishes to use in connection with the Website Services, the Customer agrees and understands there may be downtime associated with this process and the Supplier is not responsible for any costs or consequence of delay arising in connection with any such downtime, provided always that the Supplier reserves the right to reject such porting request at its sole discretion.

5.12 The Supplier may reject or remove names that the Supplier believes may infringe someone else's trade mark or other intellectual property rights or which the Supplier considers is offensive, abusive, defamatory or obscene.

## 6 THE CUSTOMER'S OBLIGATIONS

6.1 The Customer may only use Services:

6.1.1 as laid out in the Agreement; and

6.1.2 for their own use. The Customer may not resell or commercially exploit any of the Services or content without the prior written consent of the Company.

6.2 The Customer shall not utilise and shall ensure that no other person uses the Services or the telephone number(s) allocated to the Customer:

6.2.1 for storing, reproducing, transmitting, communicating or receiving any material in breach of any law, regulation, code of practice or in breach of the Supplier's acceptable use policy; or

6.2.2 fraudulently or for any criminal or illegal purpose or in a manner that is contrary to any regulatory or legal requirement; or

6.2.3 to make offensive, obscene, indecent, menacing, abusive, nuisance or hoax calls; or

6.2.4 to cause annoyance, inconvenience or needless anxiety to any person; or

6.2.5 contrary to instructions that the Supplier may give to the Customer from time to time; or

6.2.6 to copy, store, modify, publish or distribute services or content (including ringtones), except where the Supplier gives the Customer prior permission in writing; or

6.2.7 to download, send or upload content of an excessive size, quantity or frequency. The Supplier will contact the Customer if the Customers use is excessive; or

6.2.8 in a manner which infringes the rights of any person, including intellectual property rights and rights of confidentiality.

6.3 The Supplier may publish an acceptable use policy which provides more detail about the rules for use of certain Services in order to ensure that use of Services is not excessive, or to combat fraud and where Services the Supplier may introduce require certain rules to ensure they can be enjoyed by the Customer. If the Supplier publishes a policy, the Supplier will let the Customer know – such a policy may be amended from time to time.

6.4 The Customer must always co-operate with and follow the Supplier's reasonable instructions to ensure the proper use and security of the Services. The Customer must only use Supplier's Equipment authorised by the Supplier for Connection to the Network and also comply with all relevant legislation relating to their use.

6.5 The Customer will provide the Supplier with all information that the Supplier needs to provide the Services and allow the Supplier to use that information for credit checking and debt collection (including disclosure to and use by third parties acting for the Supplier) and any other uses and disclosures permitted under the Data Protection Act 2018 and GDPR and will allow the Supplier to disclose such information to the extent that the Supplier is required to do so by Phone-paid Services Authority, OFCOM, the law or any relevant authority.

6.6 The Customer shall keep all of the Supplier's Equipment at the Site safe and shall pay for the replacement and/or repair of any of the Supplier's Equipment which is lost, damaged (otherwise than by fair wear and tear) or destroyed by an act or omission of the Customer, its employees, agents or subcontractors. The Customer shall not alter or move any of the Supplier's Equipment, nor do anything that is likely to damage or adversely affect its performance, nor remove or deface any words or signs on it, nor permit anyone else to do so.

6.7 It is the Customer's responsibility to make sure that the Supplier's Equipment is only used to access Services as permitted.

6.8 The Customer shall not sell, let, mortgage, charge, pledge, dispose of or do anything that would prejudice the Supplier's Equipment in any way. The Customer will allow the Supplier to inspect, test, modify, change, add to, replace or remove any Supplier's Equipment, either remotely or via a designated maintainer. At the end of the term of the Agreement, the Customer will allow the Supplier access at all reasonable times to collect any of the Supplier's Equipment in the Customer's possession.

6.9 The Customer shall at its own cost arrange for the required Site-specific conditions, as notified by the Supplier. This will include, without limitation,

mains electricity supply, Connection Points and computer terminals. The Customer shall prepare the Sites in accordance with the Supplier's reasonable instructions and reinstate them at the Customer's expense after the Supplier has completed any work necessary for the Supplier to be able to provide the Services.

6.10 The Customer shall ensure that any equipment (excluding Supplier's Equipment) that it uses in connection with the Services meets any legal or regulatory requirements and is approved for connection to the System. If not, the Customer must immediately disconnect it or allow the Supplier to do so at the Customer's expense.

6.11 The Customer shall indemnify and keep indemnified the Supplier against all or any claims and associated costs, damages or expenses made by any third party as a consequence of any breach by or other act or omission of the Customer under or in relation to this Agreement.

6.12 Where the Supplier is providing Calls & Lines Service:

6.12.1 the Customer shall comply with any requirements notified by the Supplier relating to number portability; and

6.12.2 where the Customer's existing account with BT includes BT equipment which is not required for the provision of the Services, the Customer shall contact BT in order to remove the BT equipment or move such equipment to another BT account.

## 7 TELEPHONE NUMBERS, CODES AND DIRECTORIES

7.1 The Supplier will allocate a telephone number to the Customer in respect of the Exchange Line and, unless the Customer requests otherwise, will arrange for a free standard entry to be made in a telephone directory published by BT or any other operator (as appropriate). If the Supplier agrees to arrange a special entry (for which a charge would be made), this will be subject to additional terms and conditions.

7.2 The Supplier may alter the name or number of a telephone exchange serving the Exchange Line, the telephone number, or any other name, code or number whatsoever that the Supplier allocates to the Customer in instances where such alterations are required as a result of necessary operational or technical changes to the Network or changes in legal or regulatory requirements.

7.3 Where the Supplier allocates telephone numbers to the Customer, the Customer will not (subject to any statutory or licence provisions relating to number portability) acquire any rights whatsoever in such telephone numbers. The Customer will not apply for registration of the telephone numbers as part of a trademark.

7.4 If the Supplier has an agreement with the Customer's existing telecommunications service provider, the Supplier can, at the Customer's request, provide the Customer with a telephone line using the Customer's existing number subject to the following:

7.4.1 there are no technical reasons preventing the use of the number;

7.4.2 the existing telecommunications service provider agrees to release the relevant telephone number(s);

7.4.3 the Customer agrees to cease service on the existing telecommunications service provider's telephone line using the telephone number and authorizes the Supplier to arrange such cessation to take place;

7.4.4 the Customer provides the Supplier with full details including (but not limited to) the account name, account number, service address and billing address;

7.4.5 the Customer paying the Supplier's charges (if any) for number portability; and

7.4.6 number portability is only available at the Site.

7.5 The Supplier does not accept any liability for claims relating to the Customer's ability to use or continue use of a particular telephone number.

7.6 If the Customer places an Order for new lines, the transfer of existing lines or calls and then cancels the arrangement before the installation or migration is due to take place, the customer may still be charged. The Supplier reserves the right to do so.

## 8 PAYMENTS

8.1 The Supplier shall be entitled to send an invoice to the Customer for:

8.1.1 the Connection Charge when the Services are made available to the Customer;

8.1.2 the Rental monthly in advance and:

8.1.3 the Call Charges after the end of the month in which the relevant calls were made.

8.1.4 all charges that relate to the Network Service Agreement can be taken by Direct Debit.

8.2 The Call Charges will be calculated using the details recorded or logged at the Supplier's telephone exchange and not details recorded by the Customer.

8.3 The Customer shall pay all Rental and Call Charges whether the Customer or someone else uses the Services. The Supplier shall not and shall not be

under any obligation (express or implied) to monitor the Customer's calls, call usage and/or patterns of usage.

8.4 Where the Supplier is providing Calls & Lines Services the Customer shall pay any cancellation charges, abortive visit charges, engineering visit or site survey charges, or maintenance service charges imposed on the Supplier by BT and relating to the Calls & Lines Service, save where such abortive visit or service maintenance charges arise through the Supplier's default.

8.5 For the Broadband Service we will invoice monthly in advance. If the Broadband Service is taken over mid-month it will be invoiced in advance on a pro rata basis.

8.6 Where the Charges have been based upon Calls & Lines Service being provided as part of the Services or independently of other services the Customer acknowledges that:

8.6.1 if the majority of Exchange Line rental ceases to be provided, the Supplier shall be entitled to amend its Call Charges to its then higher standard charges;

8.6.2 if the majority of Call Charges ceases to be provided, the Supplier shall be entitled to amend its Exchange Line Rental charges to its then higher standard charges;

8.6.3 if the majority of Exchange Line Rental and Call Charges cease to be provided the agreement shall terminate and the Early Termination Fee will apply unless the business returns within thirty (30) Business Days.

8.7 The Rental shall continue to be payable during any period of suspension or restriction requested by the Customer in addition to any Charges for such suspension or restriction.

8.8 The Customer shall (without set-off or deduction) pay in pounds sterling all invoices issued by the Supplier in accordance with section 6.8 of the Standard Terms and Conditions. If the Customer's credit rating decreases at any time, the Supplier shall be entitled to revise the credit terms to require payment upon invoice or in less than fourteen (14) days.

8.9 Any sums payable by the Customer to The Supplier under the Agreement are exclusive of value added tax or any similar taxes, levies or duties, which will be added to such sums and be payable by the Customer at the appropriate rate.

8.10 If the Customer fails to make payment in full by the due date, in addition to the Supplier's right to suspend the Services as set out in Clause 9.1, the Customer will without prejudice to its other rights and remedies be liable to pay interest on any sum outstanding from the due date for payment on a daily basis until payment is made (whether before or after any judgment) in accordance with the provisions of the Late Payment of Commercial Debts (Interest) Act 1998.

8.11 The Supplier may change the level of its Charges after giving the Customer thirty (30) days written notice of its intention to do so. This notice may be included in an invoice to the Customer. If the Supplier increases the Charges by more than the Retail Price Index during the Minimum Term, the Customer may terminate the Agreement in accordance with Clause 10.1 within ten (10) days of receipt of the notice of increase, without the obligation to pay the Early Termination Fee.

8.12 The Supplier may also change the level of its Charges during or after the Minimum Term as a consequence of:

8.12.1 any OFCOM direction, determination, order or similar decision; or

8.12.2 any notice issued by BT or other Network Operator correcting an error in the amount or application of a charge or payment under its interconnect agreement with the Supplier. In both cases, the Supplier shall only be entitled to change the level of its Charges where the foregoing impacts upon the basis upon which the Charges were calculated.

8.13 If the Supplier becomes liable to pay any additional fees, costs or charges to the Government, a regulatory authority or self-regulatory authority and such fees, costs or charges are directly attributable to the provision of Services to the Customer under the Agreement, the Supplier shall be entitled to pass through such fees, costs and charges to the Customer with immediate effect.

8.14 Where the Supplier agrees to do work outside a Business Day at the request of the Customer, the Supplier may charge the Customer in accordance with the Supplier's applicable man-hour rate.

## 9 SUSPENSION AND VARIATION OF THE SERVICES

9.1 The Supplier may, in its sole discretion suspend or vary the Services without compensation if:

9.1.1 the Supplier is obliged or requested to comply with an order or instruction of, or a recommendation or request to take such action received from the Government, OFCOM, Phone-paid Services Authority, an emergency services organisation or a competent administrative authority;

9.1.2 the Supplier reasonably believe the Customer has provided false or misleading details about the Customer;

9.1.3 the Supplier needs to modify, expand, improve, maintain or repair the Services or vary Network capacity;

9.1.4 the Supplier needs to vary the technical specification of the Services in

order to comply with any relevant law or regulation or direction from a competent authority;

9.1.5 the Supplier advises the Customer that the Customers excessive use of Services is causing problems for other users, and the Customer is continuing to use the Services excessively;

9.1.6 the Supplier receives a serious complaint against the Customer which the Supplier believes to be genuine;

9.1.7 the Supplier reasonably believes that the Customer has used the Services or a telephone number for illegal or improper purposes in contravention of the Supplier's acceptable use policy or requirements;

9.1.8 the Supplier reasonably suspects or believes that the Customer is in breach of Clause 8;

9.1.9 the Customer's credit rating decreases at any time, and the Customer fails to supply reasonable security in response to a request from the Supplier; or

9.1.10 the Supplier's contract with BT relating to the Calls & Lines Services is suspended, varied or terminated.

9.2 The Supplier shall have the right to deny access to the Network by any equipment:

9.2.1 which will or may adversely affect the operation of the Network or provision of the Services; or

9.2.2 if the Supplier suspects fraudulent, criminal or illegal activities are being carried out, or are likely to be carried out, via that equipment, whether or not such equipment has been approved or tested by the Supplier.

9.3 The Customer acknowledges that BT may make alterations to the Calls & Lines Services (including, without limitation, conversions, shifts, reconfigurations and renumbers) which may result in disruption.

9.4 The Customer shall reimburse the Supplier for all reasonable costs and expenses incurred as a result of the suspension and any recommencement or variation of the Services where suspension or variation is implemented as a result of any act or omission of the Customer.

## 10 TERMINATION

10.1 This Agreement shall commence on the Effective Date and will continue for the Minimum Term stated in the Order and then any Renewed Term or Subsequent Term thereafter as per the terms of the Agreement.

10.2 Unless stated otherwise in the relevant Service Schedule, at the end of the Minimum Term the Agreement will renew automatically for a Subsequent Term. A Customer may terminate the Agreement (without incurring any Early Termination Fee) by giving a minimum of ninety (90) days prior written notice to the Supplier such notice to expire on the expiry date of the Minimum Term (or thirty (30) days prior written notice if the organisation has stated they have less than 11 employees from the outset), the Renewed Term or Subsequent Term (as the case may be); or

10.3 terminate the Agreement before the Minimum Term, the Renewed Term or Subsequent Term (as the case may be) has expired but will have to pay the Early Termination Fee to the Supplier. If the Customer claims that less than 11 employees are employed, proof of this must be provided by the Customer's accountant.

10.3.1 Where a customer is terminating a Supplier service a cancellation form will be raised which will need to be signed by both parties. The notice period will not commence until this is completed.

10.4 The Supplier may by written notice served on the Customer terminate the Agreement immediately if the Customer:

10.4.1 either is in material breach of any of the terms of the Agreement and such breach is incapable of remedy or, where the breach is capable of remedy, fails to remedy such breach within fourteen (14) days after service of a written notice from The Supplier specifying the breach and requiring it to be remedied;

10.4.2 is unable to pay its debts within the meaning of section 123 Insolvency Act 1986, makes a proposal for a voluntary arrangement or convenes a meeting of its creditors to consider such a proposal, becomes subject to any voluntary arrangement, has a receiver, manager, or administrative receiver appointed over any of its assets, undertaking or income, passes a resolution for its winding-up, is subject to a petition presented to any court for its winding-up, has a provisional liquidator appointed, has a proposal made for a compromise or arrangement under Part 26 Companies Act 2006, has an administrator appointed in respect of it or is the subject of an application for administration filed at any court or a notice of appointment of an administrator filed at any court or a notice of intention to appoint an administrator filed at any court by any person or is the subject of a notice to strike off the register at Companies House;

10.4.3 Has any distraint, execution or other process levied or enforced on any of its property; or

10.4.4 Ceases to trade.

10.5 The termination of the Agreement howsoever arising is without prejudice to the rights, duties and liabilities of either party accrued prior to termination. The clauses in the Agreement which expressly or impliedly have effect

after termination will continue to be enforceable notwithstanding termination.

10.6 Subject to the provisions of paragraph 6.13 of the Standard Terms, on termination of this Agreement howsoever arising each party will return to the other any property of the other in its possession or control.

10.7 Without prejudice to any other of its rights and remedies:

10.7.1 The Supplier will be entitled to remove the Customer's data from its systems and any Supplier Equipment and/or put Supplier Equipment to any use other than the Customer's following termination of the Agreement. The Supplier is not required to back up such data or return the same to the Customer prior to any such removal; and

10.7.2 In the event of any termination by The Supplier pursuant to paragraph 10.4, or by the Customer pursuant to any provision of these conditions, the Customer shall be liable to pay or reimburse The Supplier for any cancellation charges that may be due to any Third-Party Services Provider or otherwise due as a consequence of such termination.

10.8 The rights to terminate this Agreement given by this Clause 10 shall be without prejudice to any other right or remedy of either Party in respect of the breach concerned (if any) or any other breach.

10.7 Following termination of the Calls & Lines Service, telephone service may be disconnected unless the Customer makes alternative arrangements with the Supplier or another communications service provider.

#### 11 LIMITATIONS AND EXCLUSIONS OF LIABILITY

11.1 This Clause 11 sets out the Supplier's entire liability (including any liability for acts or omissions of the Supplier's employees, agents or subcontractors) in respect of any breach of the Agreement and any representation, statement or tortious act or omission arising out of or in connection with the Agreement.

11.2 Except as set out in these and the Standard Terms, the Supplier provides no warranties, conditions or guarantees as to the description or quality of the Services, and all warranties, conditions or guarantees implied by or expressly incorporated as a result of custom and practice, statute, common law or otherwise are hereby expressly excluded so far as permitted by law.

11.3 Subject to Clause 11.5, The Supplier's aggregate liability in any Contract Year under the Agreement whatsoever (whether in contract, tort (including negligence), breach of statutory duty, restitution or otherwise) for any injury, death, damage or loss howsoever caused will be limited to [the Fees payable in that Contract Year].

11.4 Subject to Clause 11.5, the Supplier shall not be liable to the Customer whether in tort (including for negligence or breach of statutory duty), contract, misrepresentation or otherwise the Agreement, for:

11.4.1 loss of profits; or

11.4.2 loss of revenue;

11.4.3 loss of income or business;

11.4.4 depletion or loss of goodwill, reputation or similar losses;

11.4.5 loss of anticipated savings;

11.4.6 loss of use;

11.4.7 loss of contract;

11.4.8 any indirect or consequential or special loss or damage or pure economic loss, costs, damages, charges or expenses whatsoever and howsoever caused.

11.5 Nothing in these Terms shall exclude or limit the liability of the Supplier for:

11.5.1 death or personal injury resulting from the Company's negligence; or

11.5.2 for fraud or fraudulent misrepresentation; or

11.5.3 for any matter which it would be illegal for the Supplier to exclude or attempt to exclude its liability.

11.6 The provisions of this Clause 11 shall survive termination or expiry of the Agreement.

#### 12 CONFIDENTIALITY AND DATA PROTECTION

12.1 The Customer agrees to keep all Confidential Information confidential, to disclose it only to its employees that need to know it and to use it exclusively for the purposes contemplated by this Agreement. This Clause shall not apply to information that the Customer can prove:

12.1.1 is in the public domain otherwise than by the Customer's breach;

12.1.2 it already had in its possession prior to obtaining the information directly or indirectly from the Supplier; or

12.1.3 a third party subsequently disclosed to the Customer free of restrictions on disclosure and use. This Clause shall survive for five (5) years from

when the Customer acquired that Confidential Information from the Supplier.

12.2 The Customer agrees that the Supplier may provide its Personal Data to the Supplier's Network Operator to enable it to process the Customer's information and users Personal Data, which the Supplier collects or which the Customer submits to the Supplier during any sales or registration process, for a number of specific purposes, including to open and manage an account for Services, to deliver products and services ordered by the Customer, for security and emergency service support, for credit checking and fraud prevention, and for product analysis. The Customer further agrees that the Supplier may contact BT or previous communications services providers of the Customer to obtain information required to perform the Services.

#### 13 OWNERSHIP

13.1 All IPR relating to the subject matter of this Agreement shall vest in, and ownership of the Supplier's Equipment and the System (including any works performed by the Supplier to connect the Site to the System) shall remain with the Supplier or its licensors, as appropriate. The Customer acknowledges that it shall have no licence, right, title or interest in or to any IPR of the Supplier or its licensors or the Supplier's Equipment or the System.

13.2 Risk in any rental equipment shall pass to the Customer on delivery. Ownership of rental equipment remains at all times with the Supplier or other third-party owner. The Customer has no right, title or interest in the rental equipment except that it is provided to the Customer for the duration of and on the terms of the Agreement.

13.3 This Clause shall survive termination or expiry of the Agreement.

#### 14 CIRCUMSTANCES BEYOND REASONABLE CONTROL

14.1 Neither Party shall be liable for any delay in performing its obligations under this Agreement caused by circumstances beyond its reasonable control. These are circumstances such as, but not limited to, Acts of God, insurrection or civil disorder or military operations, national or local emergency, acts or omissions of government or other competent authority or regulatory authority, fire, flood, lightning or other weather of exceptional severity, subsidence, explosion or industrial disputes. This Clause does not apply to the Customer's obligation to pay the Charges.

14.2 If either Party is affected by circumstances beyond its reasonable control, it shall notify the other Party and shall use reasonable endeavors to overcome the effects. If those effects continue for more than three (3) months, the Parties shall enter into a discussion to agree, in good faith, the best way forward.

#### 15 NOTICES

15.1 Notices must be in writing. The address for service on the Supplier (subject to any change notified by the Supplier) is: Convergence Communications Ltd, 11-12 Hall Barn Road Business Park, Hall Barn Road, Isleham, Ely, Cambridgeshire, CB7 5RJ. The address for service on the Customer is as set out in the most recent invoice.

15.2 Notices may be delivered by hand, sent by first-class mail, fax or e-mail. Correctly addressed notices if delivered by hand, shall be deemed to have been delivered at the time of delivery, if sent by first-class mail shall be deemed to have been delivered 72 hours after posting, correctly directed faxes shall be deemed to have been received instantaneously on transmission and in proving the service of any notice by e-mail, it will be sufficient to prove that such e-mail was sent to the specified e-mail address of the addressee.

#### 16 GENERAL

16.1 Any failure by the Supplier to exercise or enforce its right under this Agreement shall not be a waiver of that right, nor prevent the Supplier from exercising or enforcing such right at a later time.

16.2 If any provisions of the Agreement (or part of a provision) are found by any court or administrative body of competent jurisdiction to be invalid, unenforceable or illegal, the other provisions shall remain in force.

16.3 It is acknowledged and agreed that the Agreement (including the documents and instruments referred to herein) ("the Documents") shall supersede all prior representations arrangements understandings and agreements between the parties relating to the subject matter hereof and shall constitute the entire complete and exclusive agreement and understanding between the parties hereto;

16.4 The parties irrevocably and unconditionally waive any right they may have to claim damages for any misrepresentation arrangement understanding or agreement not contained in the Documents or for any breach of any representation not contained in the Documents (unless such misrepresentation or representation was made fraudulently);

16.5 It is further acknowledged and agreed that no representations arrangements understandings or agreements (whether written or oral) made by or on behalf of any of the other parties have been relied upon other than those expressly set out or referred to in the Documents.

16.6 The Supplier shall be entitled to reasonably amend the Agreement at any time upon notice to the Customer if there is any amendment to the agreement between the Supplier and the network provider which directly or indirectly impacts upon the Agreement.

16.7 Nothing in this Agreement shall create, or be deemed to create, a partnership or the relationship of principal and agent or employer and employee between the parties.

16.8 This Agreement is not intended to be for the benefit of and shall not be exercisable by, any third party under the Contracts (Rights of Third Parties) Act 1999 or otherwise and neither Party can declare itself trustee of the rights under it for the benefit of any third party.

16.9 The Supplier may at any time assign, transfer, charge, sub-contract or deal in any other manner with all or any of its rights or obligations under the Agreement. The Customer may not transfer, assign, sub-licence or subcontract any rights, licences or obligations under the Agreement without the prior written consent of the Supplier which will not be unreasonably withheld or delayed.

16.10 The construction, performance and validity of this Agreement is governed by the law of England and Wales, and is subject to the exclusive jurisdiction of the courts of England and Wales

16.11 The Supplier shall not be liable for any unlawful activity that occurs on the Customer's account. This includes any fraudulent calls that are made from the Customer's telephone system. Steps will be taken, and advice given to further secure any equipment on the Customer's site, but The Supplier shall not be held accountable in the event of these steps failing.

**17 TOLL FRAUD MANAGEMENT (AUTOMATIC LINE FRAUD DETECTION)**

17.1 If the Customer has the 'Toll Fraud Management' assigned to their account, the Supplier can restrict the amount of unlawful calls that are made. Whilst the Supplier takes every measure to ensure the Customer's system is secure by providing a unique programming password and locking down possible routes of abuse at a programming level the Supplier cannot be held responsible for any loss of earnings. The "Toll Fraud" fee that appears on each Customer's invoice is a monitoring service that alerts the Supplier should there be any irregular activity on the Customer's Account. If the customer refuses this protection, the Supplier detection procedure is affected.



## Horizon Service Schedule Conditions

"Required Date" the date the Customer wishes the Service to commence.

"Services" the service provided by Convergence as identified in the Order Form, and as may be further detailed in the quotation form and / or the Customer Requirement Form detailing the sites, Installation Service, Equipment, and Service, the Related Configuration, Solution Design, and setup of these, and any project documentation for the Installation Service.

"Service Demarcation Point" the point(s) to which the Supplier will maintain the Service(s). The Service Demarcation Point will be based on the different components that make up the Service and how these are deployed. The Service Demarcation Point for the main Horizon service is typically identified as the connection between the access and the Horizon service, managed by the Session Boarder Controllers (SBCs) within the network. Where the Supplier has supplied the access with the Horizon Service, the point of demarcation will be the Customer side port on the pre-configured supplied router. Where the Supplier provides the access and the Installation Service and the Customer takes the Equipment Maintenance then the Demarcation Point will

## HORIZON SERVICE SCHEDULE CONDITIONS

Convergence Communications Ltd

### 1. DEFINITIONS AND INTERPRETATION

1.1 In these terms and conditions ("Terms") the following words shall have the following meanings:

"Acceptance and Acceptance Testing" Acceptance by the Customer that the Service has been completed successfully, in accordance with Clause 4.3.

"Agreement" the Agreement between Convergence and the Customer for the provision of Services and / or Products formed by these conditions, the conditions for Communications Services, the terms of the Order Form, the relevant tariff(s) for the Services the Supplier agrees to provide to the Customer, Customer Requirement Form and the Standard Terms and Conditions.

"Business Day" a day which is not a Saturday or Sunday or Public or Bank Holiday and is between the hours of 08:30 to 17:30 on each Business Day.

"Customer" the party purchasing the Services, as named in the Order;

"Early Termination Fee" means:

All Charges that are accrued up to and including the date of termination; plus

a) An average per day value of the Call Charges accrued by the Customer in the three months prior to the date of termination chargeable each day from the date of termination until the date of expiry of the Minimum Term, Renewed Minimum Term or Subsequent Term (as the case may be); plus

b) The total amounts of all Exchange Line Rental Charges still remaining on the Minimum Term, Renewed Term or Subsequent Term (as the case may be) from the date of termination until the date of expiry of the Minimum Term, Renewed Minimum Term or Subsequent Term (as the case may be);

"Effective Date" the date of signature set out in the Order Form

"Equipment" the preconfigured router, power over ethernet switches (POE), handsets or any other Equipment the Supplier may provide as part of the Service.

"Equipment Maintenance" an optional feature providing on-going maintenance of some Equipment provided as part of the Service and the Installation Service as further detailed in the Agreement..

"Fees" the charges due to Convergence as set out in the Order Form or Service Schedule, as may be amended from time to time pursuant to the conditions of this Agreement.

"Initial Term" the initial term of the Agreement as set out in the Order Form

"Installation Fee" the combined charge for the survey, equipment and the Installation Service, including excess construction charges, as specified on the Agreement or other amended documentation following site survey.

"Installation Service" the work (if any) carried out by the Supplier or Suppliers subcontractor at each site to enable the Customer to receive the Service, normally carried out between 08:30 and 1730 on a Business Day.

"Minimum Term" means twenty four (24) months (or such other minimum period as is set out in the Order) from the Effective Date;

"Network(s)" the Local Area Network, network equipment, computer systems, and local cable infrastructure, at the sites, to which the Service will be connected.

"Order Form" the order form signed by the Customer detailing the Services and/or Products to be supplied by The Supplier.

"Products" any hardware, software, cabling and/or other products or equipment sold or licensed by Convergence to the Customer as identified in the Order Form, as may be amended from time to time pursuant to paragraph 3.5 of the standard terms and conditions

"Renewed Term" the renewed term agreed with the Supplier in writing

be the Supplier provided handset. In all cases the Supplier will honour any manufacturer warranty on the Supplier provided handsets.

"Subsequent Term" a minimum of twelve (12) months (or such other period set out in the Order) or for businesses with less than 11 employees this will be a thirty (30) day rolling Agreement to be cancelled with a minimum thirty (30) day notice period;

"Supplier" or "We" means Convergence Communications (Company Number: 5154038) whose Registered Office is at Unit 11/12 Hall Barn Road Business Park, Hall Barn Road, Isleham, Ely, Cambridgeshire, CB7 5RL

### 2. THE AGREEMENT

2.1 Each Order for the Services by the Customer to the Supplier shall be deemed to be an offer by the Customer to purchase the Services and these Terms shall apply. No Order placed by the Customer shall be accepted by the Supplier until the Order is accepted by the Supplier or (if earlier) the Supplier provides the Services to the Customer.

2.2 If there is a conflict between any of these conditions, the Order Form and the Standard Terms, the conflict will be resolved according to the following order of priority:

2.2.1 The Order Form,

2.2.2 The Standard Terms, and

2.2.3 These conditions.

These terms and conditions form part of the conditions of sale, and shall be incorporated into the Agreement signed by the Customer. These terms are to be read in conjunction with the Conditions for Communication Services and those other terms as specified as forming part of the Agreement. No individual set of terms will individually constitute a full service contract for this Service.

### 3. THE SERVICE

3.1 The Supplier will supply the Customer with the services in accordance with the Suppliers Terms and Conditions and the accompanying signed Agreement and fully completed Customer Requirement Form, the combination of which will form a Service contract between the parties.

3.2 All details specified on the proposal document and the Agreement are based on information supplied by the Customer and/or collected during a site survey (remote or onsite), and may be subject to amendment in accordance with Clauses 3.4 to 3.6 below.

3.3 The Supplier and/or the Suppliers subcontractors may conduct surveys to clarify whether the Service, Equipment, Installation Fee or Service Fee require amending.

3.4 Where the Supplier determines that amendments are required, the Supplier will submit to the Customer a replacement proposal document and Agreement reflecting any such changes. If the replacement Agreement is agreed by the Customer in writing or by email, the replacement Agreement will immediately supersede the original Agreement (which will be immediately cancelled). If the Customer does not agree to the replacement Agreement, both the original Agreement and replacement Agreement will be cancelled by the Supplier fourteen (14) days after notification of such amendments.

3.5 Following the completion of the surveys and, if required, the agreeing of the replacement Agreement, the Supplier will confirm to the Customer when the Service will commence.

3.6 The Supplier will use reasonable endeavours to meet any agreed times or dates, but time is not of the essence in respect of those times or dates and the Customer acknowledges that all timeframes are estimates only and that service levels are target service levels only.

3.7 Throughout the provisioning process, the Supplier will need to communicate with named member(s) of the Customers staff to arrange access to the Customer premises. Any delays to these requests by the Customer will delay Service



Commencement Date and the Supplier will not be liable for any such delay.

3.8 To enable the Supplier to provide the Installation Service, the Customer will:

3.8.1 prepare the sites and Customer networks in accordance with the Suppliers instructions. The Customer is responsible, at their own cost, for the power supply and arranging alternative power supplies if any temporary supply fails. Installing engineers may refuse to install equipment if they perceive a hazard or risk,

3.8.2 provide the Supplier with full access to the Customer sites and networks and make available such office and technology facilities as may be necessary for the Supplier to provide the Service,

3.8.3 provide a suitable operating environment for the equipment in accordance with the manufacturer's operating instructions,

3.8.4 promptly furnish the Supplier with such information and documents as the Supplier may reasonably require for the proper performance of the Services,

3.8.5 obtain all third party consents, licences and rights reasonably required in order to allow the Supplier or their subcontractor to provide the Service and be responsible for complying with any applicable laws, statutes, regulations and codes of practice, in relation to the Services, and

3.8.6 put in place adequate security and virus checking procedures in relation to any computer facilities to which the Customer provides the Supplier with access.

3.9 All Equipment provided by the Supplier will remain the Suppliers property and thus the Supplier retains title to that equipment until paid for in full. Where Equipment is provided as part of a monthly Service Fee or is not paid for in full the Supplier reserves the right to request return of the Equipment at the Customers cost. The Customer agrees to return such equipment to the Supplier on termination of the contract for any reason.

3.10 The Supplier reserves the right not to provide the Service to any site and to withdraw provisional acceptance of an order for reasons including, but not limited to:

3.10.1 the distance between a site and the Suppliers point of presence or its underlying service provider,

3.10.2 if a site survey finds that a site is not suitable for the provision of the Service,

3.10.3 if the Customer does not agree to pay any excess construction charges or any other charges reasonably levied by the Supplier in addition to the charges initially proposed.

3.11 The Supplier or the Suppliers nominated subcontractor will install the Service and will perform a series of commissioning tests to ensure that the configured Service is functioning correctly. On successful conclusion of the tests the Service will be deemed to be ready for use and the Supplier shall be entitled to invoice the Customer for such Service from this date.

3.12 Provision of the Service may be subject to the completion of a satisfactory site survey(s) by the Supplier or Suppliers subcontractor. The Customer acknowledges that it will be necessary for the Supplier or Suppliers subcontractor to visit the installation site or sites to conduct such survey(s) and for the purposes of installation.

3.13 Where an appointment is made for the Supplier or Suppliers subcontractor to visit the Customer site, including for the purposes of a site survey or for installation and the visit cannot be successfully completed due to:

a) the inability of the Supplier or Suppliers subcontractor, through no fault of our / their own, to complete the work,

b) the inability of the Supplier or Suppliers subcontractor to gain access to the site or sites or any part thereof which is necessary for the work,

c) the appointment is broken by the Customer,

d) the Customers failure to prepare the site in accordance with 3.8.1 or any other preparatory instructions the Supplier may have given the Customer, or

e) any other reason where the Supplier or Suppliers subcontractor are not at fault,

the Supplier will charge the Customer with the Suppliers standard aborted visit charge which may be applicable at the time. Rescheduled appointments following an aborted visit will be subject to new lead-times and will be confirmed to the Customer at the time.

3.14 Unless otherwise agreed in writing between the parties the Customer must agree an appointment for installation at a site within fourteen (14) days of notification by the Supplier of Suppliers preferred installation date. In the event that the Customer do not agree such an appointment, the appointment will be deemed to have been fixed for Suppliers preferred installation date unless a revised Required Date is subsequently agreed.

3.15 If the Customer Horizon Service includes Ethernet or Assured access then, unless the Customer has ordered an installation of the router, it is the Customers responsibility to install the router at the site or sites where this is

required and neither the Supplier nor the Suppliers subcontractor shall bear any liability due to the Customers failure to install and any delays this may cause.

3.16 The Supplier will maintain the Customers Service to the Service Demarcation Point.

3.17 Where the Supplier agrees the Customer may use/supply its own router for any part of the Service then the Customer agrees that all responsibility and liability for such equipment remains with the Customer. Should the Supplier or the Suppliers subcontractor visit the Customers site due to a fault which is later found to be caused by equipment not provided by the Supplier then the Supplier will charge the Customer for such site visit and any additional costs incurred as a direct result. Use of the Customers own router(s) will affect the Demarcation Point of the Service.

3.18 The Supplier does not issue any IP address to be used with this Service. Access to and use of this address is controlled by the internet authorities and its use is subject to any rules which they may prescribe. The Supplier reserves the right to withdraw or change this address if for any reason the address ceases to be available.

3.19 The Supplier will provide the Customer with an internet portal account through which the Service can be controlled online. The Supplier shall use reasonable endeavours to maintain (but do not guarantee) access to such account 24 hours in every day on every day of the year and the Supplier shall not be liable for any losses caused by any restrictions in such access.

3.20 If the Customer requests and the Supplier agrees to upgrade the bandwidth of the underlying access then additional charges will apply and the Supplier will advise the Customer of these at the time.

3.21 The Service supports 999/112 public emergency call services and such calls will be routed to the national emergency call handling agents. However these services do not operate in the same way as PSTN fixed line 999/112 public emergency call services and connection to such services may not be possible in the event of a service outage caused by loss of connectivity to the internet for whatever reason. In such circumstances the Customer should use a separate line to make the emergency call. Furthermore it may on occasions not be possible for emergency services personnel to identify the Customers location and telephone number so this information should be stated promptly and clearly by the Customer when making such a call.

3.22 Where the Supplier agrees that the Customer may use their existing or other new access circuits (including but not limited to broadband, Ethernet, leased line etc) not provided by the Supplier then it is the Customers responsibility to ensure such access meets the necessary requirements and functionality as defined in the non-Supplier access Customer responsibilities document, a copy of which is available on request. The Customers failure to meet such requirements and functionality may result in quality and set up issues or may mean the Horizon Service will not work. Where the Supplier does not provide the access, the Customer agrees that all responsibility and liability for such access remains with the Customer. Should the Supplier or its subcontractor visit the Customers site due to a fault which is later found to be caused by access not provided by the Supplier then the Supplier will charge the Customer for such site visit and any additional costs incurred as a direct result. Use of the Customers own access will affect the Demarcation Point of the Service.

3.23 Where the Supplier agrees that the Customer may use a third party to install the Service then the Customer agrees to indemnify the Supplier from any direct or indirect claims or losses, financial or otherwise, that the Customer may incur as a result of such installation by a third party. Use of a third party installer will affect the Demarcation Point of the Service.

3.24 At the end of each Business Day, if requested by the Supplier, the Customer agrees to sign off for the work carried out that day by the Supplier or the Suppliers subcontractor. In the absence of an authorised representative then the Customer agrees that the Suppliers sign off shall have equivalent effect as the Customer had signed it off. Such sign off shall not constitute full Acceptance as defined in Clause 4.

3.25 Where the Supplier provides the Customer with any of the user based features (including but not limited to auto attendant, hunt group, call park, call pickup, call queue etc) and the Customer has not allocated these features to a user then the Supplier reserves the right to recover such unallocated features from the Customers account. The Customer can replace these features or add additional features at any time.

#### 4. ACCEPTANCE

4.1 The Supplier will notify the Customer when the Installation Service has been completed. The Customer will inspect and test the Service for the purpose of Acceptance ("Acceptance Testing"). During Acceptance Testing, the Customer may notify the Supplier by email, telephone or fax of any material non-conformity of the Service.

4.2 To the extent that such non-conformities will have, in the Suppliers opinion, a material detrimental effect on the Service, the Supplier will use their reasonable endeavours to remedy such non-conformities.

4.3 Acceptance shall be on an individual site by site basis and shall take place on the earlier of:

a) the Customers written confirmation to the Supplier or Suppliers subcontractor that the Acceptance Testing has been completed,

b) where the Customer has not notified the Supplier under Clause 4.2, five (5) Business Days from the date of the Suppliers notification to the Customer that the Installation Service has been completed, or

c) where the Customer has notified the Supplier under Clause 4.2 of material non-conformities, five (5) Business Days from the date on which the notified non-conformities were remedied, or immediately upon the Suppliers demonstration that the notified non-conformities will not, in the Suppliers opinion, have a detrimental effect on the Service.

4.4 Any additional time incurred by the Supplier remedying non-conformities notified by the Customer under Clause 4.2 above shall, at the Suppliers sole discretion, be reflected in corresponding extensions to the affected timescales in the project plan (if any). Any additional time incurred by the Supplier investigating any notified non-conformities which later are found not to exist, will be charged to the Customer as a professional Service on a time and materials basis in accordance with the Suppliers then current standard rates.

## 5. CUSTOMER OBLIGATIONS

5.1 The Customer will be responsible for procuring any third party consents that may be required by the Supplier (and/or the Suppliers subcontractors) to provide the Installation Service and/or the Service, including, for example, landlord consents, wayleave consents and access consents. The Customer will be responsible for the costs of procuring any such third party consents.

5.2 The Customer will be responsible for providing named contacts (and any replacement contact(s)) and ensuring that they have the appropriate level of authority to make decisions relating to the Installation Service and the Service.

5.3 Where any part of the Service is a professional Service to be provided at a site, the Customer will ensure that their staff and contractors have a safe place to work, and the Customer will notify the Supplier (and their contractors where applicable) of any health and safety rules which apply to that site. The Supplier will use their reasonable endeavours to ensure that the Suppliers staff and contractors comply with such rules when working on the Customers premises.

5.4 The Customer will:

5.4.1 perform all their obligations under the Contract,

5.4.2 follow the Suppliers reasonable instructions,

5.4.3 provide the Supplier with up-to-date information, cooperation, support, and access, at the Customers cost, to enable the Supplier to perform its obligations under the Contract,

5.4.4 provide the Supplier with office, information technology, and telecommunications facilities (including full remote access), at the Customers cost, to enable the Supplier to perform its obligations under the Contract,

5.4.5 supply on an ongoing basis, at the Customers cost, all space, power supply access points, cables, trunking, electricity, air conditioning and any other facility as may be defined following the site survey required to receive the Installation Service and the Service, and

5.4.6 keep full and up-to-date secure backup copies of the data on the Network in accordance with good industry practice, and

5.4.7 comply with and maintain compliance with all such laws and regulations that relate to the Customers provision of telecommunications and other products or services supplied by the Supplier.

5.5 The Customer will not allow any unauthorised user or any third party to access or use the Equipment and / or the Service, and shall take all reasonable security precautions to avoid such unauthorised access or use, and / or add to, modify, or interfere with in any way, the Equipment and / or the Service.

5.6 The Services permit the Customer to upload music files for the music on hold feature. The Customer agrees to obtain any necessary licences and consents as may be required and agree to indemnify the Supplier from any direct or indirect claims where the Customer fails to do so.

## 6. CUSTOMER USE OF THE SERVICE

6.1 The Customer will not use the Service in any way that would constitute or contribute to the commission of a crime, tort, fraud, or other unlawful activity (including activities deemed unlawful under a complainant's legal jurisdiction). The Customer will indemnify, and keep the Supplier fully indemnified, against all costs, claims, demands, expenses, and liabilities arising out of, or in connection with, any claim that the Service (or its use) infringes any Laws.

6.2 The Customer warrants that any material and / or communication received, transmitted, hosted, or otherwise processed using the Service will not be menacing, of a junk mail or spam like nature, illegal, obscene, threatening, defamatory, discriminatory, promote illegal or unlawful activity, or be otherwise actionable or in violation of any rules, regulations, or laws to which the Service is subject, and will not infringe the intellectual property rights of the Supplier or any third party. The Customer will indemnify and keep the Supplier fully indemnified against all costs, claims, demands, expenses and liabilities arising out of or in connection with any breach or reasonably suspected breach of this Clause 6.2.

6.3 The Customer agrees that:

6.3.1 all Equipment will be housed in accordance with the Suppliers or the Suppliers subcontractors' instructions,

6.3.2 Equipment shall be kept at the Customers premises and stationary at all times,

6.3.3 the Customer will not add, modify, relocate, reconfigure or in any way interfere with the Equipment,

6.3.4 the Customer will not cause the Equipment to be removed, repaired, serviced or otherwise attended to except by the Suppliers authorised representative,

6.3.5 the Customer will not remove, tamper with or obliterate any words or labels from the Equipment of any parts thereof,

6.3.6 the Customer will not use the Equipment except in accordance with such written instructions as may be notified by the Supplier or the Suppliers subcontractor from time to time,

6.3.7 the Customer will not use any Equipment not approved in writing by the Supplier,

6.3.8 the Customer is responsible for maintaining all in life changes by using the online portal. The Customer agrees to pay the Suppliers standard charges applicable at the time where the Customer requests the Supplier to make changes on the Customers behalf.

## 7. EQUIPMENT MAINTENANCE

7.1 If ordered, the Equipment Maintenance service level will be as detailed in the Agreement.

7.2 Equipment Maintenance covers Equipment provided as part of the Installation Service but for the avoidance of doubt it excludes, but is not limited to, the following: any Equipment not provided by the Supplier or its subcontractor, cabling or telephone handsets where provided.

7.3 Equipment Maintenance cover must be taken at the time of ordering the Service and cannot be added subsequently.

7.4 Equipment Maintenance cover is provided for the duration of the Minimum Term as specified in the Agreement and then any Renewed Term or Subsequent Term thereafter as per the terms of the Agreement. At the end of the Minimum Term, the contract will automatically renew for the Subsequent Term unless the Customer terminates the Agreement (without incurring any Early Termination Fee) by giving a minimum of ninety (90) days prior written notice to the Supplier such notice to expire on the expiry date of the Minimum Term (or thirty (30) days prior written notice if the organisation has stated they have less than 11 employees from the outset), the Renewed Term or Subsequent Term (as the case may be). Termination of the Equipment Maintenance cover does not constitute termination of the Service unless specifically requested by the Customer.

7.5 The Supplier shall not be liable for any failure to achieve the required service level to the extent that such failure results from:

7.5.1 Customers breach of any of their obligations under these terms,

7.5.2 a failure attributable solely to the use of public telecommunications links,

7.5.3 an event of force majeure or matter beyond the Suppliers reasonable control as defined in the Standard Terms and Conditions.

7.6 Without prejudice to any other right or remedy the Customer may have under this Agreement, if the Supplier fails to meet any of the service level commitments the Supplier will use reasonable endeavours to remedy such failures which will include the Supplier or its subcontractor:

7.6.1 investigating the cause of the failure or problem and discussing investigation results with the Customer,

7.6.2 finding a solution to such failures that is acceptable to the Customer,

7.6.3 advising the Customer of the status of all remedial efforts.

7.7 In the event that the failure to achieve the required service level is only partially the result of any matter falling within Clause 7.5 the actual performance of the Supplier or the Suppliers subcontractor in relation to the required service level shall be adjusted to such level as the parties agree would have been achieved but for the impact of such matters. In the event that the parties are unable to agree upon the appropriate adjustment the matter shall be referred to an expert for determination.

7.8 Equipment Maintenance is subject to a fair use policy. The Supplier may have to curb the usage of the Equipment Maintenance service should the Customer become a persistently high user of the Equipment Maintenance Service whereby it can be shown that the causes of the usage are configuration changes initiated by the Customer and not network faults or errors. The Supplier will engage with the Customer to ascertain the reason for persistent high usage and work on solutions that will allow the usage to return to a more reasonable level. In cases of sustained high usage due to configuration changes initiated by the Customer then the Supplier reserves the right to notify the Customer that the work will become chargeable and then charge the Customer the hourly rate as applicable at the time.

7.9 If Equipment Maintenance has not been ordered, then the replacement of the faulty Equipment is dependent upon the warranty offered by the relevant manufacturer. If an additional engineer visit is required, then this will be chargeable to the Customer and will be arranged within usual working hours. Except where a relevant Equipment Maintenance contract is entered into, the Supplier will provide assistance to the Customer in dealing with manufacturers but the Supplier will accept no liability in respect of any defect or breakdown of Equipment or any

losses, financial or otherwise, as a direct result of such defect or breakdown.

7.10 Save as expressly provided by this Clause 7 the Supplier does not give any warranty condition or undertaking as to the state of such Equipment other than that the configuration work will be performed correctly.

## **8. RISK AND WARRANTY**

8.1 On delivery of the Equipment to the Customer full risk of damage to, or loss of, such equipment shall pass to the Customer.

8.2 For a minimum period of thirty (30) days from delivery, if any Equipment materially fails to comply with the manufacturer's specifications (a "defect"), the Customer will immediately notify the Supplier of such defect, and the Supplier will investigate such defect. If the Supplier agrees that the Equipment has a defect, the Supplier will replace the Equipment.

8.3 Where the Supplier agrees the Customer may provide its own equipment at the outset or as a replacement, the Customer will, at their own cost, be responsible for repairing, maintaining, and replacing any equipment that no longer operates in accordance with its manufacturer's specifications. Where the Customer replaces the Equipment, the replacement shall be (i) equivalent to the original's functionality and performance, and (ii) approved by the Supplier in writing. The Customer will be responsible, at their own cost, for (i) reconfiguring any replacement of the Equipment to the same or equivalent configuration as the original (if agreed by the parties, such reconfiguration work may be provided by the Supplier as a professional service at the Suppliers then current standard rates), and (ii) installing such reconfigured replacement in place of the original.

8.4 Any impact on the Service caused by substandard performance or non-availability of the Equipment under Clauses 8.2 or 8.3 shall be excluded from the Suppliers service level obligations under the Agreement, and such exclusion shall continue for as long as any of the circumstances in Clauses 8.2 or 8.3 continue.

## **9. FEES AND PAYMENT**

9.1 All pricing will be indicative only and is not binding until confirmed by the Supplier. The pricing given is valid at the point of quote, but it can only be confirmed after the site survey. Additional charges, such as but not limited to excess construction charges, may be applied, following the site survey. All prices are quoted are exclusive of VAT. Prices are valid for 30 days only.

9.2 Following Acceptance, the Customer must pay the Service Fee monthly in advance, the Installation Fee upfront and any usage fees, if applicable, monthly in arrears. If specified on the Agreement, the Customer may pay the Installation Fee monthly in advance in lieu of the upfront fee.

9.3 Unless otherwise agreed by the Supplier in writing, any discount specified on the Agreement shall only apply during the Initial Term, and shall not apply to Subsequent Terms.

9.4 After the Initial Term, the Supplier shall be entitled to revise any fees under the Agreement to reflect the Suppliers then current standard rates by giving the Customer not less than thirty (30) days' written notice.

9.5 The Supplier shall be entitled to increase the Service Fee at any time with immediate effect where the Supplier can reasonably demonstrate that such an increase is due to an increased cost of providing the Service caused by a third party supplier, or legal or regulatory change. Any such increase in the Service Fee will not exceed the increased cost incurred by the Supplier in providing the Service.

9.6 The Supplier may require the Customer to pay a deposit and / or require the Customer to procure that its parent company or related company guarantees the payment of any fees under the Agreement. The Customer agrees to enter into (and / or procure the execution of) any Agreement or deed reasonably required for any such purpose.

9.7 All Charges due to the Supplier for traffic routed via any IP address to be used with this Service shall be paid in full by the Customer by the due date notwithstanding that they may have arisen from unauthorised, fraudulent or illegal use (except for fraud on the part of the Supplier or its employees acting in the course of their employment) and whether or not they derive from installation and access arrangements which have been authorised by the Supplier.

9.8 Should any of the Customers site configuration change following site survey and additional engineering time or equipment is required to fulfil the installation, to avoid the need for a re-scheduled appointment, the Customer agrees to any additional works that may be carried out by the Suppliers engineer up to a value of £500 without the Supplier seeking further confirmation from the Customer. Should the value exceed £500 then the Supplier will only carry out this additional work on the Customers written or email confirmation.

## **10. SERVICE SUSPENSION**

10.1 By giving reasonable notice to the Customer, or if this is not practicable, such notice as is reasonably practicable in the circumstances, the Supplier may suspend the Service (or any part of the Service) for reasons to include but not limited to:

10.1.1 for operational reasons in accordance with the service levels, or

10.1.2 if required because of a regulatory or legal change, or

10.1.3 if the Supplier is obliged to comply with the order, instruction, or request of a court, government, agency, emergency service organisation, or other competent administrative or regulatory authority, requiring suspension to the Service, or

10.1.4 if the Customers use of the Service may damage or disrupt the proper

functioning of the infrastructure and / or equipment used to provide services to the Suppliers other Customers, or

10.1.5 if the Supplier has reasonable grounds to believe that the Customer is in breach of their obligations, and the Customer either fails to remedy that breach or fail to demonstrate to the Suppliers reasonable satisfaction that no breach took place within two (2) Business Days of written notice of the suspected breach for a serious breach (serious breach to include, but not limited to, a breach likely to cause serious damage to the Supplier or the Suppliers brand, or that of the Suppliers contractors, or result in legal action by a third party) or within ten (10) Business Days of written notice of the suspected breach for other breach, or

10.1.6 if an undisputed invoice (or an undisputed part of an invoice) is not paid in full by the due date, provided that the Supplier has given the Customer at least five (5) Business Days' notice of such non-payment.

10.2 Suspension of the Service shall cause the Suppliers service level obligations to be excluded for the period of the suspension. Such suspension of the Service shall continue for as long as any of the circumstances in Clauses 10 continue

## **11. TERM AND TERMINATION**

11.1 This Agreement shall commence on the Effective Date and will continue for the Minimum Term stated in the Order and then any Renewed Term or Subsequent Term thereafter as per the terms of the Agreement.

11.2 Unless stated otherwise in the relevant Service Schedule, at the end of the Minimum Term the Agreement will renew automatically for a Subsequent Term. a Customer may terminate the Agreement (without incurring any Early Termination Fee) by giving a minimum of ninety (90) days prior written notice to the Supplier such notice to expire on the expiry date of the Minimum Term (or thirty (30) days prior written notice if the organisation has stated they have less than 11 employees from the outset), the Renewed Term or Subsequent Term (as the case may be); or

11.3 terminate the Agreement before the Minimum Term, the Renewed Term or Subsequent Term (as the case may be) has expired but will have to pay the Early Termination Fee to the Supplier. If the Customer claims that less than 11 employees are employed, proof of this must be provided by the Customer's accountant.

11.3.1 Where a customer is terminating a Supplier service a cancellation form will be raised which will need to be signed by both parties. The notice period will not commence until this is completed.

11.4 The Supplier may by written notice served on the Customer terminate the Agreement immediately if the Customer:

11.4.1 either is in material breach of any of the terms of the Agreement and such breach is incapable of remedy or, where the breach is capable of remedy, fails to remedy such breach within fourteen (14) days after service of a written notice from The Supplier specifying the breach and requiring it to be remedied;

11.4.2 is unable to pay its debts within the meaning of section 123 Insolvency Act 1986, makes a proposal for a voluntary arrangement or convenes a meeting of its creditors to consider such a proposal, becomes subject to any voluntary arrangement, has a receiver, manager, or administrative receiver appointed over any of its assets, undertaking or income, passes a resolution for its winding-up, is subject to a petition presented to any court for its winding-up, has a provisional liquidator appointed, has a proposal made for a compromise or arrangement under Part 26 Companies Act 2006, has an administrator appointed in respect of it or is the subject of an application for administration filed at any court or a notice of appointment of an administrator filed at any court or a notice of intention to appoint an administrator filed at any court by any person or is the subject of a notice to strike off the register at Companies House;

11.4.3 Has any distraint, execution or other process levied or enforced on any of its property; or

11.4.4 Ceases to trade.

11.5 The termination of the Agreement howsoever arising is without prejudice to the rights, duties and liabilities of either party accrued prior to termination. The clauses in the Agreement which expressly or impliedly have effect after termination will continue to be enforceable notwithstanding termination.

11.6 Subject to the provisions of paragraph 6.13 of the Standard Terms, on termination of this Agreement howsoever arising each party will return to the other any property of the other in its possession or control.

11.7 Without prejudice to any other of its rights and remedies:

11.7.1 The Supplier will be entitled to remove the Customer's data from its systems and any Supplier Equipment and/or put Supplier Equipment to any use other than the Customer's following termination of the Agreement. The Supplier is not required to back up such data or return the same to the Customer prior to any such removal; and

11.7.2 In the event of any termination by The Supplier, or by the Customer pursuant to any provision of these conditions, the Customer shall be liable to pay or reimburse The Supplier for any cancellation charges that may be due to any Third Party Services Provider or otherwise due as a consequence of such termination.

11.8 The rights to terminate this Agreement given by this Clause 10 shall be without prejudice to any other right or remedy of either Party in respect of the breach concerned (if any) or any other breach.

11.9 Following termination of the Calls & Lines Service, telephone service may be disconnected unless the Customer makes alternative arrangements with the Supplier or another communications service provider.

11.10 The Supplier shall have the right to terminate the Agreement immediately if required because of a regulatory or legal change or are required to do so by a direction of the regulatory body.

**12. LIABILITY**

12.1 The Supplier shall not be liable for any delay or failure in performing its obligations or failure to meet any dates under the Agreement caused by any circumstances beyond the Suppliers reasonable control (such circumstances including, without limitation, any regulatory or legal change).

12.2 All warranties, conditions, obligations, or implied terms which are implied into the Agreement by statute, custom, or law are hereby excluded to the maximum extent permissible in law.

12.3 The Supplier does not exclude or limit liability for death or personal injury caused by the Suppliers negligence, and/or

12.3.1 breach of the obligations arising from section 12 of the Sale of Goods Act 1979 (seller's implied undertaking as to title, etc.), and / or

12.3.2 breach of the obligations arising from section 2 of the Supply of Goods and Service Act 1982 (implied terms about title, etc. in certain contracts for the transfer of property in goods), and / or

12.3.3 fraudulent misrepresentation.

12.4 The Supplier shall not be liable to the Customer for any loss of profit, loss of revenue, loss of anticipated savings, loss of goodwill, loss of data and / or perceived damage to reputation.

12.5 The Supplier has no liability for any failure to meet the Required Date or for any failure to meet any service levels or to repair a fault within any given timeframe.

12.6 The overall Service may consist of elements not provided by the Supplier (such as but not limited to access circuits, routers, installation) which affects the Service Demarcation Point. The Customer agree that the Supplier shall not be responsible or liable for any element of the overall Service not provided by the Supplier nor for any affect the non Supplier elements may have on the Service.



## Horizon Communication Services

may be amended from time to time pursuant to paragraph 3.5 of the standard terms and conditions

"Renewed Term" the renewed term agreed with the Supplier in writing

"Required Date" the date the Customer wishes the Service to commence.

"Rental Equipment" means the equipment identified on the Service Schedules and Order Form or otherwise notified to you in writing that We will rent to you as part of our provision of the Services and which you will return to us after expiry or termination of the Agreement, subject to the provisions of this Agreement.

"Sale Equipment" means the equipment identified in the Agreement, Order Form or otherwise notified to you in writing that We will sell to you, subject to the provisions

## CONDITIONS FOR COMMUNICATIONS SERVICES Convergence Communications Ltd

### 1. DEFINITIONS AND INTERPRETATION

1.1 In these terms and conditions ("Terms") the following words shall have the following meanings:

"Acceptance and Acceptance Testing" Acceptance by the Customer that the Service has been completed successfully, in accordance with Clause 3.3.

"Agreement" the Agreement between Convergence and the Customer for the provision of Services and / or Products formed by these conditions, the conditions for Horizon Service Schedule, the terms of the Order Form, the relevant tariff(s) for the Services the Supplier agrees to provide to the Customer, Customer Requirement Form and the Standard Terms and Conditions.

"Business Day" a day which is not a Saturday or Sunday or Public or Bank Holiday and is between the hours of 08:30 to 17:30 on each Business Day.

"Customer" the party purchasing the Services, as named in the Order;

"Early Termination Fee" means:

All Charges that are accrued up to and including the date of termination; plus

- a) An average per day value of the Call Charges accrued by the Customer in the three months prior to the date of termination chargeable each day from the date of termination until the date of expiry of the Minimum Term, Renewed Minimum Term or Subsequent Term (as the case may be); plus
- b) The total amounts of all Exchange Line Rental Charges still remaining on the Minimum Term, Renewed Term or Subsequent Term (as the case may be) from the date of termination until the date of expiry of the Minimum Term, Renewed Minimum Term or Subsequent Term (as the case may be);

"Effective Date" the date of signature set out in the Order Form

"Equipment" the preconfigured router, power over ethernet switches (POE), handsets or any other Equipment the Supplier may provide as part of the Service.

"Equipment Maintenance" an optional feature providing on-going maintenance of some Equipment provided as part of the Service and the Installation Service as further detailed in the Agreement..

"Fees" the charges due to Convergence as set out in the Order Form or Service Schedule, as may be amended from time to time pursuant to these conditions or the Service Schedule

"Initial Term" the initial term of the Agreement as set out in the Order Form

"Installation Fee" the combined charge for the survey, equipment and the Installation Service, including excess construction charges, as specified on the Agreement or other amended documentation following site survey.

"Installation Service" the work (if any) carried out by the Supplier or our subcontractor at each site to enable the Customer to receive the Service, normally carried out between 08:30 and 1730 on a Business Day.

"Minimum Spend" means in relation to each Service the monthly minimum spend commitment as outlined in the Agreement, or the Order Form, or the Tariff or otherwise in any agreed tariff plan referred to in the Agreement or Order Form constituting the minimum amount you agree to pay to us each month for that Service regardless of your actual use of the Service.

"Minimum Term" means twenty four (24) months (or such other minimum period as is set out in the Order) from the Effective Date;

"Network(s)" the Local Area Network, network equipment, computer systems, and local cable infrastructure, at the sites, to which the Service will be connected.

"Order Form" the order form signed by the Customer detailing the Services and/or Products to be supplied by The Supplier.

"Products" any hardware, software, cabling and/or other products or equipment sold or licensed by Convergence to the Customer as identified in the Order Form, as

of this Agreement

"Services" the service provided by Convergence as identified in the Order Form, and as may be further detailed in the quotation form and / or the Customer Requirement Form detailing the sites, Installation Service, Equipment, and Service, the Related Configuration, Solution Design, and setup of these, and any project documentation for the Installation Service.

"Subsequent Term" a minimum of twelve (12) months (or such other period set out in the Order) or for businesses with less than 11 employees this will be a thirty (30) day rolling Agreement to be cancelled with a minimum thirty (30) day notice period;

"Supplier" "Us" or "We" means Convergence Communications (Company Number: 5154038) whose Registered Office is at Unit 11/12 Hall Barn Road Business Park, Hall Barn Road, Isleham, Ely, Cambridgeshire, CB7 5RL.

"Tariff" means our tariff referred to in the Agreement and Order Form and as amended from time to time under paragraph 21.2 below. For the avoidance of doubt, any tariff sheet provided by you is not a valid Tariff.

### 2. THE AGREEMENT

2.1 Each Order for the Services by the Customer to the Supplier shall be deemed to be an offer by the Customer to purchase the Services and these Terms shall apply. No Order placed by the Customer shall be accepted by the Supplier until the Order is accepted by the Supplier or (if earlier) the Supplier provides the Services to the Customer.

2.2 If there is a conflict between any of these conditions, the Order Form and the Standard Terms, the conflict will be resolved according to the following order of priority:

2.2.1 The Order Form,

2.2.2 The Standard Terms, and

2.2.3 These conditions.

These terms and conditions form part of the conditions of sale, and shall be incorporated into the Agreement signed by the Customer. These terms are to be read in conjunction with the Horizon Service Schedules and those other terms as specified as forming part of the Agreement. No individual set of terms will individually constitute a full service contract for this Service.

### 3. THE SERVICE

3.1 The Supplier will supply the Customer with the services in accordance with the Suppliers Terms and Conditions and the accompanying signed Agreement and fully completed Customer Requirement Form, the combination of which will form a Service contract between the parties.

3.2 The Services We supply to you are those Services which:

(a) you have ordered by telephone or in writing and are set out in the Agreement and Schedules attached to these Conditions confirming your order, or

(b) you have elected to receive as set out in the Service Agreement and Schedules, or

(c) have been ordered via our website on your behalf by a third party (details of such Services will be set out in a letter to you from us) and which you have subsequently confirmed that you wish to receive, or

(d) which you have subsequently ordered in writing, by fax, by email or by telephone, and in each case which We have agreed in writing or by email to supply to you. These may include (but are not limited to): the ability to make or receive a Call (telephone service); the provision of a Line or Lines for a rental charge (line rental service); the provision of Broadband internet access (Broadband service); the provision of Inbound telephony services (Inbound service); the provision of Mobile telephony services (Mobile service); the provision of IP telephony services (IPT service); the provision of Data services (Data service); any other Services which We may offer for sale from time to time. For the avoidance of doubt, you may not resell the Services although they may be utilised by an Associated Company of yours for which use you shall remain fully liable.

3.3 This Agreement shall commence on the Effective Date and will continue for the Minimum Term stated in the Order and then any Renewed Term or

Subsequent Term thereafter as per the terms of the Agreement. Where the Supplier determines that amendments are required, the Supplier will submit to the Customer a replacement proposal document and Agreement reflecting any such changes. If the replacement Agreement is agreed by the Customer in writing or by email, the replacement Agreement will immediately supersede the original Agreement (which will be immediately cancelled). If the Customer does not agree to the replacement Agreement, both the original Agreement and replacement Agreement will be cancelled by the Supplier fourteen (14) days after notification of such amendments.

3.3.1 All Services allow access to UK emergency services and caller location information (when based in the UK) unless specifically advised otherwise within this Agreement. Such access may be subject to the availability of a power supply to the line and alternative arrangements are your responsibility in the event of a power failure.

3.4 We will use reasonable endeavours to provide you with the Services by the date(s) We agree with you and to continue to provide the Services until this Agreement is terminated. However We will not be liable for any loss or damages should the Services not commence or restart on the agreed date. All timeframes are estimates only and that service levels are target service levels only.

3.5 In providing the Services We shall use the reasonable skill and care that may be expected from a competent communications service provider.

3.6 Broadband service:

(a) If We consider that your bandwidth usage profile is abnormal or out of the ordinary (including without limitation extremely high levels of bandwidth use in a given period), We have the right to take such action as We deem appropriate which may include, without limitation, restricting or suspending your use of the broadband service, or increasing the charges you pay for the broadband service in accordance with paragraph 21.2.

(b) We will make reasonable endeavours to inform you in advance if We impose any restrictions on your use of the broadband service.

(c) Your use of the broadband service is entirely at your own risk. We will not be liable for any loss or damage arising from any virus, Trojan horse, spam or other malicious content that you may receive while using the broadband service notwithstanding that there may be a firewall contained in equipment supplied in connection with the broadband service.

(d) To ensure the quality of our broadband service We have a traffic prioritisation process to prioritise business critical applications in the event of exceptional demand, and normally only during the Business Day hours. However, it is unlikely that this will impact the quality of your broadband service.

3.7 Outbound service:

(a) All calls are to be routed over our chosen network. Should any calls be routed over any other network with or without your knowledge, other than during a service failure or network outage that We have notified you of or for any other reason We may agree with you, then We reserve the right to bill you at our standard tariff at the time, details of which will be provided.

(b) Where you use a call forwarding feature on any of our Services, you agree and accept that such forwarded calls will be chargeable at the rate applicable on your tariff at the time.

3.8 Inbound service:

(a) We reserve the right to apply a monthly charge for each inbound number which does not carry any traffic for any period of 3 consecutive months. Where this charge has been applied and a number subsequently carries traffic in any month then this charge will not apply to the months where there is traffic.

(b) We reserve the right to apply a nominal monthly charge for each inbound number where the only Service you take from us is the Inbound Service.

(c) If an inbound number is withdrawn by Ofcom or PhoneyPayPlus or any of our suppliers for reasons beyond our control We reserve the right to recover the number(s) from you immediately. We will use our reasonable endeavours to supply you with another number which is acceptable to you.

(d) Where you take an international number as part of the Inbound Service, in addition to the above, the following shall apply:

(e) We cannot guarantee call quality and shall not be liable for service incompatibility. It is recommended that you perform full compatibility tests prior to publishing any international number(s) provided by us;

(f) We cannot guarantee support for calls from mobile numbers unless otherwise specified and in these cases there will be an additional charge;

(g) you accept that restrictions to the service may apply in certain countries; (iii) We are reliant on third parties for delivery of your billable call records so there may be a delay in us billing you for your international inbound calls, there will be no time limit on us billing you for these calls. In some cases calls will be logged in two parts and We may bill these parts in different months, but endeavour to do this within two concurrent months.

3.9 IPT Service: If you have an IPT Service and move location, it is your responsibility to update your address details either using the portal or by notifying us of any change in address where the relevant equipment will be housed so that the correct information can be supplied for Emergency Authority purposes. We are not liable for any consequences of your failure to do this.

3.10 All Services:

3.10.1 All Services may be subject to Acceptable Use Policies and Fair Use Policies which at the time of application will be the latest version on the terms and conditions section of our website.. Where any fair usage is exceeded, additional charges will apply.

3.10.2 You agree and acknowledge that your use of a Service must comply with all relevant legislation, regulations, guidelines and codes of practice and that Convergence Communications will not be liable where your use of this Service fails to comply. Should We reasonably suspect that your use of a Service is in breach of any applicable legislation, regulation, guidelines or codes of practice or any other reasonably suspected abuse or bad practice then We reserve the right to suspend or terminate such Service with immediate effect.

3.10.3 You agree that some Services variants may be subject to availability and where an ordered Service is not available for any reason We reserve the right to provide an alternative Service variant for which you may incur different charges. Where a Service variant is not available We will make best endeavours to advise you of this before progressing with your order.

3.10.4 Services with Call Recording: Where you take a service which includes call recording of inbound and/or outbound calls you confirm that it is your responsibility to obtain legal advice to ensure you are fully compliant before recording any calls. You further confirm that you will comply with all legal requirements when using any call recording product and agree that Convergence Communications shall have no liability for any costs or claims which may be incurred as a result of any failure by you to comply with any legal requirements whether or not you were aware of the requirement.

3.10.5 Services with Music On Hold: Where you take a service which permits you to upload music files for a music on hold feature, you agree to obtain any necessary licences and consents as may be required and agree to indemnify us from any direct or indirect claims where you fail to do so.

3.10.6 SIP trunk and Horizon Services where you utilise software licensed by Semafone Limited ("Semafone") you accept and shall strictly comply with Semafone's End User Licence Agreement a copy of which We will send to you. You will allow installs of new versions of Semafone's software and ensure your network and systems comply with the relevant specifications in Semafone's design documentation which We will provide to you from time to time.

#### 4. TELEPHONE NUMBERS

4.1 You accept that you do not own the number(s) provided to you and that this agreement is personal to you. Therefore, you have no right to sell or to agree to transfer the number(s) provided to you for use with the Services and you must not do so or try to do so.

4.2 You also accept that We have the right to reallocate to a third party any numbers that are provided to you for use with the Services but that you do not use for a period of six (6) months. However, if you continue to pay any recurring rental charges for those numbers, We shall not exercise this right.

4.3 You do have the right to request to migrate numbers to another provider subject to your remaining contractual obligations contained within this Agreement.

#### 5. TELEPHONE BOOKS AND DIRECTORY ENQUIRIES

5.1 We will put your name, address and the telephone number(s) for the Services (subject to Paragraph 4.3.) in the telephone book published by BT for your area and make your phone number available to BT's directory enquiries database, as soon as We can. However, We will not do so if you ask us not to.

5.2 If you want a special entry in the telephone book you must let us know. Where We agree to a special entry you will be liable to pay an extra charge and sign a separate agreement for that special entry.

5.3 In relation to the IPT Service, arrangements in relation to inclusion in BT's telephone book and directory enquiries database are available on request from us.

5.4 It is your responsibility to verify that all directory entries are correct and remain correct. Other than where the error is as a result of our negligence, We accept no liability for any errors nor are We liable for any costs, financial losses or disputes that may arise from any omission or inaccuracy in the entry.

#### 6. CHANGES AND INTERRUPTIONS TO THE SERVICES

6.1 We may have to do some things that could affect the Services. Some of these things are listed in paragraph 6.2. If We have to interrupt the Services We will restore them as quickly as We reasonably can.

6.2 Occasionally We may have to:

(a) change the code or phone number or the technical specification of the Services for operational reasons;

(b) interrupt the Services for operational reasons or because of an emergency;

(c) give you instructions that We believe are necessary for health or safety or to maintain the quality of the Services that We supply to you or to our other customers.



6.3 Should the change We make have a material adverse effect on you or the Services We provide then you have the right to terminate the Agreement under the terms of paragraph 21.3.

6.4 We cannot guarantee and do not warrant that the Services will be free of interruptions or will be fault-free and We will not be liable for any loss or damages should the Services be interrupted from time to time. You accept that there may also be degradations of the quality of the Service from time to time due to matters beyond our control (see paragraph 16 below), and that We will not be liable for any loss or damages should the quality of the Service We provide be affected by such matters.

## 7. EQUIPMENT

7.1 To the extent possible, We shall use reasonable endeavours to pass on to you the benefit of any manufacturers' warranties in relation to equipment supplied by us in connection with the Services.

## 8. SALE EQUIPMENT

8.1 The quantity, quality and description of and any specification for the Sale Equipment shall be those set out in the Agreement as may be amended from time to time.

8.2 We shall deliver the Sale Equipment to your address as specified in the Agreement, and time shall not be of the essence for delivery.

8.3 Risk in the Sale Equipment will pass to you on delivery of the Sale Equipment. Therefore, it is your responsibility to look after the Sale Equipment and you will have to pay if you wish to replace or repair the Sale Equipment if it is lost, stolen or damaged.

8.4 You will not own the Sale Equipment until you have paid us in full for the Sale Equipment and We reserve the right to require you to return to us, or for us to collect (at your cost), the Sale Equipment if you do not pay us in full for the Sale Equipment by the due date for payment (in accordance with paragraph 12 below). Subject to the foregoing, you will be entitled to continue to use the Sale Equipment after expiry or termination of this Agreement.

8.5 You will be responsible for installing the Sale Equipment. We will not be liable for any loss, costs, damages or faults caused by, or repairs required as a result of, installation or misuse of, or damage to, any Sale Equipment. You agree to indemnify us for all claims, losses, damages and expenses that are brought against us, incurred by us, or arising as a result of the same.

## 9. RENTAL EQUIPMENT

9.1 We will at all times own all Rental Equipment supplied to you. You will not let, sell, charge, assign, sub-license or allow a third party to use the Rental Equipment nor remove any labels, and shall not prejudice our rights in the Rental Equipment in any way. We may replace the Rental Equipment from time to time either with your prior consent or provided that the replacement Rental Equipment is of a specification that is at least equal to the Rental Equipment originally supplied and such change does not materially disrupt the provision of the Services.

9.2 Subject to the other terms of this paragraph 9, We (or our authorised representative) shall, during our usual working hours:

9.2.1 where necessary install the Rental Equipment at your premises at a time and date agreed with you; and

9.2.2 use our reasonable endeavours to repair any faults to the Rental Equipment in accordance with our standard procedures (which are available on request).

9.3 It is your responsibility to look after the Rental Equipment that is in your possession or custody and you agree to pay for the Rental Equipment to be replaced or repaired if it is lost, stolen or damaged.

9.4 You will notify us promptly of any faults which occur, any repairs which become necessary, and of any loss, theft or damage to the Rental Equipment.

9.5 You agree that you will only use the Rental Equipment in conjunction with the relevant Services and shall comply with our reasonable instructions in relation to its use.

9.6 You shall be responsible for maintaining adequate cover in place to insure the Rental Equipment while it remains in your possession and custody. You will also be responsible for obtaining and, where appropriate, paying for all necessary licenses, consents and approvals required for the installation and use of the Rental Equipment.

9.7 You will not (and you will ensure that no-one else will) repair, alter, modify or maintain, or make any additions or attachments to, or otherwise alter, the Rental Equipment without our prior written consent. We will not be liable for any costs or charges incurred, faults caused by, or repairs required as a result of, installation or programming of Rental Equipment that is carried out by any other person (other than our employees or agents). You agree to indemnify us for all losses, damages and expenses that are brought against or incurred by us, arising as a result of the same.

9.8 On expiry or termination of the Agreement, all Rental Equipment must be returned to us in reasonable condition, subject to reasonable wear and tear. If you fail to return or make available for collection the Rental Equipment in a reasonable condition or at all We may, at our option, invoice you for a sum equal to the original cost of the Rental Equipment less any depreciation together with any costs reasonably incurred by us.

9.9 In the event that you return Rental Equipment to us and it is not received by us, in the absence of reasonable evidence that the Rental Equipment has been delivered to us you accept that you shall remain liable for the Rental Equipment.

## 10. CALL MONITORING

10.1 We may occasionally monitor and record calls made to or by us relating to customer services and telemarketing calls made by us, for the purpose of training and improving customer care services, including complaint handling. We and/or our suppliers may also record 999 and 112 calls. The recording of any calls will be subject to the requirements set out in section 11.

## 11. DATA PROTECTION AND USE OF YOUR INFORMATION

11.1 All information that We hold concerning you as individuals ("Personal Data") will be held and processed by us strictly in accordance with the provisions of the Data Protection Act 2018 and General Data Protection Regulations (GDPR). Such data will be used by us to provide you with the Services, for related purposes and for the purposes set out in this paragraph.

11.2 We will not supply any Personal Data to any third party except where

(a) such transfer is a necessary part of the Services that We undertake, and such transfer should be explained at the offset to which you would already have given or gained consent,

(b) We are required to do so by operation of law.

11.3 We would like to use the information We have about you and your use of the Services (this includes information about your bill size, the numbers you call and the times you call) to inform you about the products, services, pricing packages and special offers which We provide and which We believe may be of particular interest to you based on the provided services only. By accepting these Conditions you consent to us sending you such information specific to these Services provided. However, if you do not wish to receive that information, please advise us, by writing to us at Convergence Communications Ltd, Unit 11/12 Hall Barn Road Business Park, Hall Barn Road, Isleham, Ely, Cambridgeshire, CB7 5RL or any other address We may give you for this purpose from time to time.

11.4 You have the right under the Data Protection Act 2018 and GDPR to obtain information, including a description of the data that We hold on you. Should you have any queries concerning this right, please contact us at the address set out in paragraph 11.3.

11.5 You must inform us immediately if any of the information you have provided to us about you in connection with this Agreement changes.

## 12. YOUR OBLIGATIONS

12.1 You must pay the charges for the Services according to the applicable Tariff(s). This applies whether you or someone else use the Services and whether the Services are used with your full knowledge and consent or otherwise. (This means by way of example but not by way of limitation that you are liable to pay for all calls made as a result of "rogue diallers", unbarred premium rate numbers and calls made by any third party gaining unauthorised access to your telephony systems). We may vary the charges set out in the Tariff as explained at paragraph 21.2.

12.2 The Agreement, Order Form and Tariff(s) set out whether installation costs are payable for the Services We have agreed to supply to you. However, We may be unable (due to third party constraints) to tell you when you place, or We confirm, your order for the Services how much these installation costs will be. If this is the case, We will give you an estimate of how much the installation costs will be prior to commencement of the installation work, but there may be supplementary excess construction charges. You agree to pay all installation costs actually incurred. In the event of an installation being cancelled before being completed you agree to pay all of the installation costs actually incurred to the point of cancellation which will be notified to you at the time.

12.3 You must pay the charges for any Sale Equipment that We supply to you. We will invoice you for the Sale Equipment in the next invoice that We send to you (in accordance with paragraph 12.4) following the date on which We dispatch the Sale Equipment to you. You shall also pay the rental charges for any Rental Equipment that We supply to you, and We shall invoice you for this on a monthly basis in accordance with paragraph 12.4.

12.4 We will send you your first invoice at the beginning of the month after the Services commence and thereafter on a monthly basis, but We shall be entitled to send you an invoice at a different time, which you shall pay in each case in accordance with paragraph 12.7. We will send all invoices and other correspondence to the address set out in the Agreement or otherwise the address you ask us to. We will show on the invoice which charges are payable in advance or in arrears, as referred to in paragraph 12.5. We will include all charges on the next invoice where possible, and in any event as soon as We can. Invoices shall be deemed to have been accepted by you if you do not present a written objection, identifying clearly the disputed invoice and the reasons why it is challenged, to us within six (6) months of the date of the invoice. If such objection is made We shall both make all reasonable efforts to resolve such dispute promptly. Provided you comply with these requirements in presenting your objection, if We fail to respond to that objection within thirty (30) days after its receipt by us, the objection will be deemed to have been accepted by us. We will accordingly amend the relevant invoice either with an appropriate credit to you or you shall be liable to pay the balance (if any) of the amended invoice within fourteen (14) days of its receipt by you.

12.5 You will incur charges from the time any part of a Service is used or received except in the case of Services subject to a periodic rental, in which case you will incur charges from the date the Service is made available for use. We will usually ask you to pay the rental in advance and your first invoice will include both one month's rental in advance and a charge for a part month's rental from the Contract

Commencement Date up to the beginning of the first complete month, where appropriate, and then monthly in advance thereafter. Call and other charges will be invoiced in arrears. We will calculate the charges for Calls using the details recorded by our network.

12.6 We may ask you for a payment in advance before payment would normally be due, which you shall pay in accordance with paragraph 12.7. This advance payment will not be more than our best estimate of your following month's invoice. Should your advance payment exceed your actual invoice then any surplus will be credited to your account to be offset against subsequent invoices, should there be no further invoices and your account is not in debit then We will refund to you any surplus after deducting any cancellation or termination charges. We may ask for a deposit at any time, as security for payment of your invoices if it is reasonable for us to do so, which you shall pay in accordance with paragraph 12.7. Our procedures for deposits will be explained to you at the relevant time.

12.7 Our standard terms of payment are payment within fourteen (14) days of date of invoice by direct debit and these are the credit terms which will apply to this Agreement unless We have agreed otherwise in writing. You must pay all charges and rental within the credit terms which We have agreed and any advance payments and deposits when We ask for them. We reserve the right to apply a nominal monthly charge for non direct debit payment methods. Where payment is arranged through a finance provider payment shall be in accordance with the terms of the finance agreement. Unless otherwise stated all charges exclude VAT which is chargeable at the applicable rate. If you pay us from a non UK bank account which means We incur costs for receiving international payments, then We shall pass these costs on to you.

12.8 You hereby acknowledge and agree that We have agreed to supply the Services to you at the agreed Tariff and charges on the basis that you have committed to the Minimum Term commitments.

(a) Our call rates for outbound calls to UK non geographic numbers are charged according to the banding used by BT. You hereby acknowledge and agree that there may be occasions where a call type moves from one band to another band or BT change their charging structure and subsequently the charges for some of these call types may change. We will apply this change from the 1st of the month following the change and you acknowledge that We may not always be able to give you notice of such changes.

(b) Where you take any bundled service you agree to pay for all chargeable items which are excluded from or exceed the allowance of the bundle.

(c) Unless otherwise agreed with you in writing all call costs in our Tariff are displayed in pence per minute. All billing is per second, call durations are measured up to the whole second and the call charges rounded up to a penny.

(d) Inbound bundles include calls which terminate to landlines only, unless specified otherwise in writing. Should you terminate your calls to a mobile, a non-geographic or an international number then standard call charges will apply and are available on request.

(e) You accept there may be charges for elements of a Service (such as additional features, upgrades, moves or ceases) that you may incur which may not be detailed in your Agreement but you accept responsibility for these charges should they occur.

12.9 You hereby consent to and shall procure that your owners, directors, officers and assigns consent to us carrying out searches with credit reference agencies relating to the credit worthiness of your Company and/or your owners, directors, officers and assigns and you undertake to supply or procure the supply of all information requested for a credit search with a credit reference agency, who will add to your records and/or those records of your directors, officers and assigns details of the searches and these will be seen by other organisations that make searches.

12.9.1 It is agreed that where We approach a finance provider to arrange finance for the purchase of Equipment then We are acting as an agent for the Customer and not for the finance provider.

12.9.2 In the event that We are unable to obtain finance on the terms originally proposed or on other terms acceptable to you then We shall return any deposit received from you without further liability to you. Where third party indemnities are required by the finance provider failure to provide such indemnities shall constitute a breach of these Conditions and shall entitle us to retain any deposit paid by you.

12.9.3 After delivery and installation (where applicable) is completed any failure by you to complete the finance agreement documentation and/or commence payment in accordance with the terms of the finance agreement shall render you liable to pay to us the full value of the order (plus VAT) within fourteen (14) days of presentation of an invoice.

12.10 We reserve the right to offset any inbound rebates which may be due to you against any amounts you may owe to us. We reserve the right not to pay any inbound rebates until such rebates total a cumulative minimum of £5 in any month.

12.11 Where We owe you any monies, you agree that We may offset this against any monies you may owe us before We make any payment to you.

12.12 Online Orders and Payments Where you place an order and make a payment online for that order and We accept your order, We will confirm your order and receipt of payment by email at which point your contract will be binding. You may also get a payment confirmation from the third party payment processing company. Where We do not accept your order We reserve the right to return a

payment to you. You should contact us immediately if you have any concerns regarding the order or payment. Where you fail to advise us of any issues regarding your online payment We are not liable for any consequences of any such payment but will make reasonable endeavours to rectify any of your concerns.

12.13 Trial Periods Where you take a product or service on a trial basis for a full, reduced or zero charge for a fixed period, unless otherwise advised to you in writing, you need to give us notice in writing if you wish to cancel the Service at the end of the trial. If you fail to give us notice then We will automatically invoice you for the product or service at the end of the trial for the remainder of the agreed contract term (or where there is no agreed term, for a minimum of twelve months). For the avoidance of doubt, unless otherwise agreed in writing you will be liable for all usage charges during the trial period. Should you wish to cancel after the trial then you agree to return, at your own cost, any equipment to us in full working order.

12.14 We reserve the right to make a nominal monthly charge for paper itemised billing. We also reserve the right to apply a £20 per month minimum charge if your monthly invoice would be less than £20.

12.15 We may apply a credit limit to your account and if you exceed this credit limit We reserve the right to suspend Services until you have paid a deposit.

12.16 If in our reasonable opinion your call profile is indicative of fraudulent activity We reserve the right to suspend Service immediately without notice.

### 13. YOUR OTHER RESPONSIBILITIES

13.1 You agree to comply with our reasonable instructions relating to the Services and any equipment We supply to you in connection with the Services.

13.2 If our engineers or sub-contractors have to enter your premises you agree to let them do so within normal working hours on a Business Day or otherwise if agreed with you in advance. We will meet your reasonable requirements regarding the safety of people on your premises and you must do the same for us.

(a) If We need someone else's permission to cross, or put our equipment in, or make an installation on their premises, you must get that permission for us and make any necessary arrangements. We will not be liable for any loss or damage where this permission is not obtained by you and you agree to pay any costs actually incurred.

(b) When our work is completed, you will be responsible for putting items back and for any necessary re-decorating.

13.3 Nobody must use the Services:

(a) to make abusive, defamatory, obscene, offensive, indecent, menacing, disruptive, nuisance or hoax Calls, emails or other communications or Calls, emails or other communications in breach of privacy or any other rights;

(b) to send, knowingly receive, upload, display, download, use or re-use material which is abusive, defamatory, obscene, offensive, indecent or menacing or in breach of copyright, privacy or any other rights;

(c) to send and receive data in such a way or in such amount so as to adversely affect the network (or any part of it) which underpins any Service or to adversely affect our other customers or customers of our suppliers;

(d) for the carrying out of fraud, an unlawful activity or a criminal offence or in a way which does not comply with the terms of any legislation;

(e) in a way that does not comply with any instructions given by us to you under paragraph 13;

(f) to obtain access, through whatever means, to restricted areas of the underlying network; or

(g) in a way which (in our reasonable opinion) brings our name into disrepute, or which places us in breach of our legal or regulatory obligations, and you must make sure that this does not happen. The action We can take if this happens is explained in paragraph 17. If a claim is made against us because the Services are misused in these ways, you must indemnify us in respect of any sums We are obliged to pay and/or costs We incur.

13.4 If you use the Services for business purposes, you must indemnify us against any claims that anyone (other than you) threatens or makes against us because the Services are faulty or cannot be used by them. Where you take any product or service for which you are billed by us but where you are directly contracted to a third party for that product or service, including but not limited to maintenance and insurance, you agree to indemnify us from any direct or indirect claims in relation to this product or service. You also agree not to make any deduction from any monies owed to us as a result of any dispute you may have with any such third party.

13.5 When We provide your Line rentals, We will route your Calls through our network. No other service provider may route these Calls or attempt to, and if they do We reserve the right to bar these calls. Where your lines are transferred to us on a like for like basis, you agree to pay for any additional services which may exist on your lines that you may not have made us aware of at the time of ordering regardless of when these services are billed to us by the underlying supplier (including but not limited to telephone book entries that may be billed to us annually by BT).

13.6 We will bill you for all Calls that are routed over our chosen network provider. Any Calls that are routed by other means for any reason beyond our control and for which you are invoiced by another provider will remain your responsibility. It is your responsibility to advise us if you receive invoices from other

providers for services you believe to be with us and you should advise us as soon as you receive these invoices. We shall not be liable for any loss or damages as a result of you being invoiced by other providers (including but not limited to any perceived loss of savings).

13.7 It is your responsibility to ensure that signing a contract with us does not breach any existing contractual obligations you may have with any other suppliers and you should give any other suppliers notice as may be required by them. We are not responsible or liable for any costs, financial losses or disputes that may arise from any such breach of contract or your failure to give the correct notice.

13.8 It is your responsibility to ensure you have adequate resilience in place to protect against any loss of data, service or connectivity; this includes a separate power supply for IPT phones. In accordance with paragraph 15.2, We will not be liable for any loss or damage (financial or otherwise) where you fail to do so.

13.9 IP Phones need an additional power supply to operate. In the event of a power failure it is your responsibility to ensure you have the means to make emergency calls. In accordance with paragraph 15.2, We will not be liable for any loss or damage (financial or otherwise) where you fail to do so.

13.10 It is your responsibility to keep private any user names, passwords or pin codes that We may provide you with to use any of our Services. You are liable for all charges associated with the use of such user names, passwords and pin codes to access our Services unless you advise us that the security of any of the user names, passwords or pin codes may have been compromised and We confirm back to you that We have disabled the access. Should you fail to notify us of any such compromise in security then you will remain liable for all charges incurred in accessing the Services. Where We disable any access following a compromise in security, We shall provide you with new user names, passwords or pin codes as appropriate which are subject to the terms of this paragraph.

13.11 It is your responsibility to inform us of any changes to any of your personal details including but not limited to contact names, telephone numbers, email addresses, site addresses or billing addresses. We shall not be liable for any consequence of us having any incorrect details unless due to our negligence.

#### 14. REPAIRING FAULTS

14.1 We will investigate any fault that is reported to us according to our standard procedures for the Service in question (which are available on request). We will use reasonable endeavours to repair any fault that is reported to us and which is directly caused by us or our employees or agents according to our standard procedures for the Service in question.

14.2 When We agree to work on a fault outside the normal Business Day hours, you will be liable to pay us an extra charge at the applicable rate set out in our tariffs in force at the time.

14.3 If you tell us there is a fault in a Service and We find either that there is not or that you, someone at your premises or a third party (including, without limitation, another network operator or communications supplier) has caused the fault or the interruption in service, We may charge you for any work We have done to try to find the fault or to repair it. We are not liable for any loss or damages arising from a fault or interruption in service caused by someone other than us, and We are not responsible for fixing any faults not caused by us.

14.4 During any fault investigations, We may require you to carry out tests and We will require you to feedback any results of these tests to allow us to follow our standard procedures and conclude our investigations.

14.5 Where Call routing utilises IP, you acknowledge that call quality and availability can be subject to factors outside of our control e.g. bandwidth contention or quality of service (QoS). We shall not be liable to you in respect to any quality or availability issues with such a Service.

14.6 Where a fault reported is deemed to be caused by a router provided by Us, We will replace this as long as the current router is within its warranty period. We will ship a new router to you as soon as possible, pre-configured with the username and password and any IP Addressing requested on the original order. At this point a charge for the new router will be raised and only credited back on receipt of the original faulty router. If the router is outside of the 12 month warranty period, the new router is chargeable and will show on the next invoice.

#### 15. LIMITATION OF LIABILITY

15.1 We accept liability for personal injury or death as a result of our negligence. We also accept liability for fraud or fraudulent misrepresentation. We do not limit that liability and paragraphs 15.2 and 15.3 do not apply to that liability.

15.2 We have no liability (howsoever caused including (without limitation) by negligence) for any loss of business, profits, revenue or savings you expected to make, wasted expense, financial loss, data being lost or damaged, lack of availability of IT and/or communications systems not provided by us, damage to reputation or for any liability for any loss that is not reasonably foreseeable or for any indirect or consequential loss.

15.3 Any liability We have of any sort (including any liability because of our negligence) is limited to £100,000 for any one event or any series of related events, and in any twelve (12) month period to £500,000 in total.

15.4 Except as expressly set out in this Agreement, all conditions, warranties, terms, undertakings and obligations implied by statute, common law, custom, trade usage or otherwise are hereby excluded to the maximum extent permitted by law.

15.5 Each part of this Agreement that excludes or limits our liability

operates separately. If any part is disallowed or is not effective, the other parts will continue to apply.

15.6 We are not responsible for any pricing, typographical, or other errors and reserve the right to reject any orders where such an error may have occurred.

15.7 The provisions of this paragraph 15 shall continue to apply notwithstanding termination of this Agreement.

#### 16. MATTERS BEYOND OUR REASONABLE CONTROL

16.1 If We cannot fulfil, or are delayed in fulfilling, or are interrupted in continuing to fulfil, our obligations under this Agreement because of something beyond our reasonable control such as, without limitation, lightning, flood, or exceptionally severe weather, fire or explosion, civil disorder, war, or military operations, national or local emergency, anything done by government or other competent authority, acts or omissions of other communications suppliers or network operators, or industrial disputes of any kind, (including those involving our employees or suppliers), We will not be liable for this.

#### 17. CHANGING AND TERMINATING THE AGREEMENT

17.1 We may suspend any or all of the Services or terminate the Agreement immediately at any time by notifying you in writing if:

(a) you commit a material breach of this Agreement or any other agreement you have with us and fail to remedy the breach within a reasonable time of being asked to do so;

(b) We believe that the Service(s) are being used in a way forbidden by paragraph 13.3. This applies even if you do not know that the Service(s) are being used in such a way;

(c) bankruptcy or insolvency proceedings are brought against you, or if you do not make any payment under a judgment of a court on time, or (if you are a business) you make an arrangement with your creditors, or a receiver or administrator is appointed over any of your assets, or you go into liquidation.

17.2 If you fail to pay any charges due to us by the due date We may (without losing or reducing any other right or remedy) suspend any Service (in whole or in part) or terminate the Agreement without notice if;

(a) you fail to make any payment requested within fourteen (14) days of the date of a letter, e-mail or other appropriate correspondence requesting such payment;

(b) two (2) consecutive direct debit requests are rejected; and/or

(c) you fail to pay any payment on the due date where there have been two (2) preceding failures which were remedied within the fourteen (14) day period.

17.3 We reserve the right to charge interest at the rate of 8 (eight) percent (8%) above the Bank of England base rate per annum on any charges not paid by the due date for payment until the date when they are received by us.

17.4 If We suspend any Services, We will not provide them again until you rectify the situation that caused us to suspend the Services or you have satisfied us that you will do so or that the Services will not be used in a way that is forbidden by paragraph 13.3.

17.5 If We suspend any Services because you breach this Agreement, the Agreement will still continue and you must still pay us any rental charges as and when they arise unless and until the Agreement is terminated.

17.6 If this Agreement or any of the Services are terminated in accordance with this paragraph 17 during the Minimum Term or any agreed term applicable to each of the Services, We will levy a cancellation charge in relation to each relevant Service calculated in accordance with the following:-

(a) Each Service for which a monthly rental charge is payable - number of months remaining of Minimum Term for that Service multiplied by the monthly rental; and/or

(b) Call Spend - number of months remaining on Minimum Term multiplied by the monthly Minimum Spend (or the average of your last three months call spend where there is no Minimum Spend) and/or

(c) Repayment of any subsidised charges or any other contribution We may have made towards any other costs, as described in paragraph 21.2.

(d) Repayment of any discount or other benefit you may have received which was based on a minimum contract term commitment, and/or

(e) Any applicable cease charges as may be detailed in the tariff.

17.7 Following a suspension of Services, We will only reactivate your Services after you have paid the re-activation charges as may be advised at the time.

#### 18. CANCELLING THE SERVICES BEFORE THEY ARE PROVIDED (DOMESTIC USERS ONLY)

18.1 If you are a domestic user, you may cancel the Services or an individual Service without giving any reason at any time up to fourteen (14) calendar days after either the date on which you accepted the Agreement which includes these conditions or, if earlier, the date on which We commenced our supply of the Services to you, provided that you notify us clearly in writing of such cancellation within such period and return any equipment that We may have sent to you, undamaged and in its original packaging by sending it special delivery to us at

Convergence Communications, Unit 11/12 Hall Barn Road Business Park, Hall Barn Road, Isleham, Ely, Cambridgeshire, CB7 5RL. You will be deemed to have accepted these Conditions at the time you sign our Agreement and Order Schedule. These Conditions are available for download from [www.convergencecomms.com/legals](http://www.convergencecomms.com/legals). Please note that if you have commenced using any Service or equipment after receiving these Conditions, you will also be deemed to have accepted these Conditions. If you cancel the Services or an individual Service, We will reimburse to you all payments received from you, including the costs of delivery of any equipment (except for the supplementary costs arising if you choose a type of delivery other than the least expensive type of standard delivery offered by us), and We will make the reimbursement using the same means of payment as you used for the initial transaction but in any event you will not incur any fees as a result of the reimbursement. No cancellation charge or other charge will be payable for the Services although if you do not return any equipment that We may have sent to you, We shall be entitled to charge you or withhold reimbursement for the costs We incur in collecting it from you. This does not affect your statutory rights. For the avoidance of doubt, this cancellation right does not apply to business users.

**19. TERMINATING THE AGREEMENT AFTER THE SERVICES ARE PROVIDED**  
19.1 Termination at end of Contract Term Expiry:

(a) Either party may terminate this Agreement in respect of a Service by giving the other party not less than ninety (90) days notice in writing to take effect at the end of either the first or any subsequent Minimum Term for the relevant Service. Where a Service has a notice period of greater than ninety (90) days then this amount of notice must be provided on that Service. Unless stated otherwise in the relevant Service Schedule, at the end of the Minimum Term the Agreement will renew automatically for a Subsequent Term.

(b) If We give you notice to terminate under paragraph 19.1(a), you must pay rental and any charges for Calls made up to the end of the relevant Minimum Term. If you give us notice to terminate under paragraph 19.1(a), you must pay rental and any charges for Calls made up to the end of the relevant Minimum Term.

(c) If you fail to give us notice you must pay rental until ninety (90) days, or longer where a service has a greater notice period, after you have ceased to use our Service.

(d) Some Services may incur cease charges as detailed in the Tariff and these will be chargeable on termination unless otherwise agreed in writing.

19.2 If you want to terminate this Agreement after the date on the Signed Agreement in respect of a Service prior to the end of any Minimum Term for the relevant Service (other than because We have materially altered the conditions of this Agreement under paragraph 20.3) you must give us at least ninety (90) days notice in writing and We will levy a cancellation charge calculated in accordance with the following:

(a) Each Service for which a monthly rental charge is payable - number of months remaining of Minimum Term for that Service multiplied by the monthly rental; and/or

(b) Call Spend - number of months remaining on Minimum Term multiplied by the monthly Minimum Spend (or the average of your last three months call spend where there is no Minimum Spend); and/or

(c) Pro-rata or full repayment of any subsidised installation or any other contribution to upfront or ongoing costs paid by us as described in paragraph 20.3 and in accordance with the terms of the subsidised installation, and/or

(d) The appropriate notice period charge for each Service, and/or

(e) Repayment of any discount or other benefit you may have received which was based on a minimum contract term commitment, and/or Conditions for Communications Services

(f) Any applicable cease charges as may be detailed in the Tariff.

19.2.1 Should you fail to pay the early termination cancellation charges with fourteen (14) days (or seven (7) days for non direct debit payment) of the date of invoice We reserve the right to suspend your Services.

19.3 If you have paid any rental in respect of a Service for a period after this Agreement has ended in respect of that Service, We will either repay it or off set towards any money you owe us.

19.4 You must pay all charges for the Services until the date on which We stop providing the Services to you and any applicable notice period.

19.5 We also have the right to terminate this Agreement or any of the Services immediately on notice to you in accordance with paragraph 17 and in these

circumstances the ninety (90) day notice period will not apply.

19.6 The provisions of this paragraph 19.6 shall be without prejudice to the other provisions of this Agreement.

(a) At the end of this Agreement, you shall be responsible for arranging for the Services to be provided by another supplier ("the New Supplier").

(b) In the event that We terminate this Agreement pursuant to the provisions of paragraphs 17.1 or 17.2, the provision of Services shall end with immediate effect upon the service of notice to you, in accordance with the provisions of those paragraphs.

(c) If We terminate this Agreement pursuant to paragraph 19.1(a) or if you terminate this Agreement for any reason whatsoever, on receipt of your notice of termination We will apply Standard rates, applicable at the time, to all Services on your account to take effect following expiry of your notice period.

(d) Once you have served your minimum notice requirement We may serve you a minimum of 48 hours notice to suspend your Services. Following suspension of your Services under this paragraph you may request that Services are reconnected and agree these will be subject to a reconnection charge and a new minimum contract period. We will notify you of this charge and contract period at the time.

(e) Should you serve your required notice and fail to move your Services to a new supplier then you accept and agree that you will remain liable for all charges at our Standard rates (available at [www.convergencecomms.com/legal](http://www.convergencecomms.com/legal)) until such time that the Services are transferred to a new supplier.

**20. MINIMUM TERM, MINIMUM SPEND AND CONTRACT RENEWAL**

20.1 The Minimum Term and Minimum Spend will be as specified on the Service Agreement, Order Schedules or Tariff(s) for each Service, or as otherwise agreed with you in writing. In the event that the Minimum Term is not on the Service Agreement or Order Schedules then the Minimum Term will be twenty four (24) months from your Contract Commencement Date as per these conditions. In the event that the Minimum Spend is not on the Service Agreement or Order Schedules then the Minimum Spend applicable will be the sum of any fixed rental charges plus the value of your call usage on your second bill from us. The Minimum Term for any new installation will be at least twenty four (24) months or greater as may be specified in the Service Agreement or Order Form.

20.2 If you fail to reach the annualised Minimum Spend commitment in respect of a Service over the initial Minimum Term and any renewal Minimum Term for such Service then We reserve the right to bill you the difference between the actual amount you spent and the amount you committed to spend pursuant to the Minimum Spend over the Minimum Term.

20.3 If this Agreement or any individual Services are terminated during the Minimum Term or any agreed term for the relevant Service(s) and you received free or subsidised installation or activation or any other contribution towards costs of any Services, Products, Equipment, Lines or third party termination charges as part of the Tariff or otherwise, then We reserve the right to impose a termination charge equal to the original cost divided by the number of the months in the relevant term, multiplied by the number of months remaining in the relevant term.

20.4 After the expiry of the initial and each subsequent Minimum Term, unless otherwise agreed with you in writing, your contract will automatically renew for a further period of 12 months. This automatic renewal reoccurs on each 12 month anniversary until the Agreement is terminated by either party by giving ninety (90) days written notice to expire no earlier than the end of the then current Minimum Term in accordance with paragraph 19, subject to paragraph 17. Such automatic contract renewal will be on the same terms and, unless otherwise agreed in writing, the same Minimum Spend will apply. Paragraph 20.4 shall not apply to you if your business meets criteria as defined by Ofcom which would classify you as a residential or small business Customer unless you have opted in to the automatic contract renewal at the point of placing your order by ticking the applicable box on the Service Agreement. For the avoidance of doubt, should you not tick this box and your company does not meet the Ofcom criteria which would classify your company as residential or small business then automatic contract renewal and paragraph 20.4 will apply.

**21. CHANGING THE AGREEMENT**

21.1 In general if you ask us to make any change to the Services or Rental Equipment We will ask you to confirm your request in writing. No action will be taken by us to carry out the change until We have received your written confirmation. If We agree to a change, this Agreement will be changed when We confirm the change to you in writing.

21.2 We may change the terms and conditions of the Agreement (or any document comprising part of the Agreement, including the Tariff for any Service) at any time on giving you no less than one (1) month's notice. We will notify you of any changes on your monthly invoice and will post any changes or new terms and conditions on [www.convergencecomms.co.uk/legal](http://www.convergencecomms.co.uk/legal). You agree that if you continue to use the Services following receipt of such notice you will be bound by the new/revised Conditions. We reserve the right to pass on any increase in our costs for the Services We provide to you at any time by no less than one (1) month's notice, the only exception being that detailed in 12.8(b).

21.3 If a change has a material adverse effect on you or the Services We provide then the termination charges detailed in paragraph 19.2 will not be payable by you if you wish to terminate the Agreement or any of the Services before the end of the Minimum Term applicable to each of the Services. Termination charges for any subsidised installation as described in paragraph 19.2(c), 19.2(e) and 19.2(f) will remain in effect and will be payable by you.

**22. TRANSFERRING THE AGREEMENT**

22.1 You cannot, and cannot try to, assign or transfer (in whole or in part) this Agreement or the benefit of or the rights under this Agreement to anyone else. We may assign or transfer (in whole or in part) this Agreement to any Associated Company.

**23. GENERAL CONDITIONS**

23.1 Any notice given under this Agreement must be delivered by hand or sent by email or prepaid post as follows:

(a) to us at the address or email address shown on the Service Agreement or on your last invoice, or at any other address or email address We give you;

(b) to you at the address you have asked us to send invoices to or to the email address you have given us.

23.1 Any notices that We may send to you from time to time concerning your account, shall be sent to the main contact We have registered on your account. It is your responsibility to inform us of any changes to your nominated contact. We shall not be liable for any consequence of sending such notices to the incorrect contact unless due to our negligence.

#### **24. ENTIRE AGREEMENT**

24.1 The Agreement (including these Conditions, the documents referred to in them, the Service Agreements, the Order Form details and any conditions relating to specific Services) constitutes the entire Agreement between you and us for the Services and supersedes any and all other written, recorded and oral communications between you and us in connection with the Services.

#### **25. SEVERANCE**

25.1 If any of these Conditions or any term or condition of this Agreement is deemed invalid, void, or for any reason unenforceable, that term or condition will be deemed severable and will not affect the validity and enforceability of any remaining term or condition.

#### **26. RELIANCE**

26.1 You acknowledge that you have not been induced to enter into this Agreement by, nor have you relied upon, any representation, promise, assurance, warranty or undertaking (whether written or oral) by or on behalf of us or any other person save for those set out in this Agreement, except in the case of fraud.

#### **27. NO WAIVER**

27.1 If you breach these Conditions and We take no action, We will still be entitled to use our rights and remedies in any other situation where you breach these Conditions.

#### **28. SURVIVAL**

28.1 Any Conditions which are expressed to survive expiry or termination shall survive expiry or termination of the Agreement however caused.

#### **29. THIRD PARTY RIGHTS**

29.1 A person who is not a party to this Agreement has no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Agreement.

#### **30. GOVERNING LAW AND JURISDICTION**

30.1 This Agreement shall be governed by and construed in accordance with the laws of England and the parties irrevocably submit to the exclusive jurisdiction of the English courts.

#### **31. APPLICABLE CONDITIONS**

31.1 This Agreement will continue in respect of each Service for the Minimum Term applicable to each Service and thereafter unless and until terminated in accordance with this Agreement.

#### **32. PUBLICITY**

32.1 If you are a business, We may use your business name and logo in our marketing material. If you do not agree you must notify us accordingly in writing.