

## Section A – Definitions

### 1. Definitions of the Service

- a. The Service will be provided by Convergence (Group Networks) Limited “Convergence Group/We/Us/Our” whose registered address is One Cranmore, Cranmore Drive, Shirley, Solihull B90 4RZ.
- b. We will provide the LAN and/or Wireless LAN (“WLAN”) Service (“**Service**”) as defined in these terms and conditions (which shall include the appendices), to meet or exceed the relevant Service Levels (“**SLA**”) for the Service.
- c. The headings in this Agreement do not affect its interpretation.
- d. References in the Agreement:
  - i. To a statutory provision will be interpreted as a reference to such provision as amended or re-enacted from time to time;
  - ii. To a “person” includes any company (as defined in Section 1 Companies Act 2006), firm, body corporate or corporation (as defined in Section 1173(1) Companies Act 2006) or person, partnership or organisation;
  - iii. To a Party includes its respective successors and permitted assignees and their respective employees and agents;
  - iv. To any word in the singular includes the plural and vice versa;
  - v. To the words ‘include’, ‘including’, ‘for example’ or ‘such as’ are not used as, and are not to be interpreted as, words of limitation, and, when introducing an example, do not limit the meaning of the words to which the example relates to that example or examples of a similar kind;
  - vi. To a third person or third party is a reference to a person who is not party to the Agreement; and
  - vii. To clauses, paragraphs and schedules are to clauses, paragraphs and schedules in this Agreement, except where the context otherwise requires.
- e. Each Agreement will incorporate the following documents by reference and in the event of any inconsistencies between the documents, the applicable order of precedence shall be:
  - i. these terms and conditions;
  - ii. the Customer Order Form(s) which include the related Service Charges, Equipment under cover of this Agreement and the chosen SLA; and
  - iii. any other document referred to within these terms and conditions.
- f. Unless otherwise agreed, the Agreement for the Service will remain in force in accordance with clause 16a. Invoicing for the term will be in annual periods unless agreed in advance and regardless of the frequency of the invoicing, each invoice will be for the Service to be provided during the invoice period. We will continue to invoice on the agreed invoicing frequency basis until terminated in accordance with this Agreement. For clarity, if the invoicing period dates are less than the term of the Agreement then this does not imply that each invoicing period is a contract in its own right.
- g. In this Agreement, unless the context otherwise requires:
  - Agreement** has the meaning set out in clause 1.e;
  - Confidential Information** has the meaning set out in clause 6a;
  - Contract Year** means each successive period of 12 months which forms part of the term of the Agreement commencing on the Support Commencement Date or any renewal date;
  - Convergence Group Equipment** means any hardware, cabling, peripherals, software or any other equipment that Convergence Group shall provide as part of the Service, whether owned by Convergence Group or a third party supplier, but specifically excludes any such equipment that We have sold to You;

**Convergence Group Website** means the website ([www.convergencegroup.co.uk](http://www.convergencegroup.co.uk)) or such other address as is notified to You from time to time;

**Customer or You / Your** means the legal entity which receives the Service from Us under the terms of this Agreement, or the legal entity which is listed in an Order Form as the legal entity through whom We are providing the Service to an End User;

**Device** any mobile or wireless device, handset, USB drive, data card, memory card or other equipment incorporating a SIM, or tablet (which may or may not incorporate a SIM), provided by Us or the Network Operator or Vendor for use in connection with the Service.

**End of Life** means where the Vendor of a product or service to Convergence Group, or Convergence Group, at its discretion, decides that a product or service is at the end of its useful life and the Vendor may cease all rework sustaining the product or service and removes all references to the product or service from their product portfolio;

**End of Sale** means where the Vendor of a product or service to Convergence Group ceases any further sale of the relevant product or service;

**Enhancement or Upgrade** means the addition to the Equipment of memory, co-processors, optional cards, Vendor's modifications and/or any other changes to the technical specifications or configuration of the Equipment;

**Equipment** means any hardware, cabling, peripherals, software, components or any other equipment, other than the Convergence Group Equipment, covered by this Agreement as agreed by the parties as shown on the agreed Order Form;

**Force Majeure Event** means any event, occurrence, circumstance, matter or cause affecting the performance of the obligations under this Agreement which arises from or is attributable to an act, event, omission, happening or non-happening beyond the reasonable control of the affected Party, including, without limitation, war or armed conflict, pandemics and other widespread outbreaks of infectious diseases, acts of governmental or regulatory bodies, supra-national authority, outbreak of hostilities, national emergency, fault or failure of a communications network, acts of terrorism, riots, civil commotion, fire, explosion, flood or any disaster, or an industrial dispute affecting a Third Party Supplier for which a substitute third party is not reasonably available;

**Initial Term** means in relation to a Service, the 12-month period beginning on the Support Commencement Date, or such other period as set out in an Order Form;

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

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

**MAC** means a move, addition or change that can be carried out remotely;

**Node** means network devices such as a Switch, Router, Wi-Fi Controller, Wi-Fi AP or Firewall;

**NOC** means Convergence Group's Network Operations Centre;

**Minimum Written Notice** means, unless otherwise agreed in writing between the parties, the period of 90 days prior to the to the expiry of the Initial Term or the relevant Renewal Term of the Agreement;

**Order Form** means Convergence Group's Order Form setting out, amongst other things: Customer details, the Service and the Charges, referring to these terms which form part of the Agreement;

**Park Time** means the period in which We deem We are unable to progress the restoration of a Service without further contact with You or the End User (as applicable) as set out in clause 21.d;

**Party (Parties)** means each of Convergence Group and You;

**Premises** means the location(s) owned and/or operated by You or the End User (as applicable) where the Service shall be performed;

**Reinstatement Charge** is the charge levied by the Vendor if there is a break in Vendor Support service or maintenance cover. The charge varies with each Vendor;

**Renewal Term** means the period of 12 months commencing on the expiry of the Initial Term and each successive period of 12 months thereafter (or such other period as is set out in the Order Form) in the event that Convergence Group has not received Minimum Written Notice;

**Service Charge** means the charge for the period specified by the Support Commencement Date and the Support End Date;

**Service Credit** means any sum payable by Convergence Group to You under the terms of this Agreement as defined in paragraph 21 (Service Level and Service Credits);

**Service Deliverables** means any materials, equipment, software, deliverables or other items of any type developed, created or supplied (whether alone or jointly) by Convergence Group or any Affiliate of Convergence Group in the course of the provision of the Service;

**Service Description** means the document detailing the Service capabilities, Support Service Options and deliverables, as amended from time to time;

**Service Specific Terms** means the Standard Terms and Conditions as varied from time to time, that apply to the Service ordered and any other incorporated documents which set out the description of the relevant Service(s) and SLA;

**SLA** means the Service Level allocated to the Service covered by this Agreement;

**Support Commencement Date** means the agreed date when Convergence Group first commences performance of its obligations under this Agreement or a date as agreed between the parties;

**Support End Date** means the date support ends for the particular item of Equipment;

**Support Service Option** has the meaning as set out in clause 18a. (Support Service Options Provided) for the tiers of Service available;

**Third Party Supplier** means any party other than Convergence Group and You that Convergence Group elects to use to provide part of the Service, including but not limited to Vendors or specialist support companies. Any third parties engaged will deliver the Service to the same level as any Convergence Group delivered Service and will hold all necessary accreditations and clearances for the Service provided;

**User(s)** means authorised individual(s) who are permitted to use the Service(s) and / or have access to the network supported under this Agreement;

**Variation(s)** means an agreed change to the Agreement in accordance with these terms;

**Vendor** means the manufacturers and suppliers of LAN or WLAN Equipment which Convergence Group use in the provision of these Support Services to You;

**Vendor Support Charges** means any costs associated with support provided by the Vendor;

**Vendor Support Service(s)** means programs regulated by the Vendors of the Equipment to provide additional services in support of the products, such as software updates.

**WLAN** means a Wireless Local-Area Network. A wireless local-area network (WLAN) is a group of co-located computers or other devices that form a network based on radio transmissions rather than wired connections. A Wi-Fi network is a type of WLAN.

## Section B – Commercial Terms

### 2. Payment and charges

- a. You must pay Our undisputed, validly invoiced charges so that We receive Your payment on or before the Support Commencement Date or Renewal Date, as appropriate. Until We have received Your payment, the Service will be provided at Convergence Group's discretion.
- b. If Your payment is late due to circumstances that You can control, without prejudice to Our other rights, We may charge interest each month on any undisputed overdue sums at a rate of 4% above the Bank of England base rate on any outstanding amount from the date when payment was due until the date of the actual payment. Interest will continue to accrue even if this Agreement is terminated. We shall be entitled, without prejudice to any other rights We may have, to suspend any Service provided under an agreement until such time as all undisputed payments due and payable to Convergence Group have been paid in full.
- c. All sums due to Us under the Agreement are exclusive of Value Added Tax or any other applicable tax which shall be charged to You.
- d. We may alter the value of existing Service Charges, implement new Service Charges, or amend the payment terms relating to Service Charges at any time during the term of the Agreement for the following reasons:
  - i. to take account of any increase in the costs incurred by Us in the implementation or delivery of the Service (including any increase in the costs or charges of any of Our Third-Party suppliers or licensors); or
  - ii. to pass on any increase in data centre and/or power charges imposed by any of Our Third-Party Suppliers; or
  - iii. to pass on any increase in charges imposed by any of Our telecommunications suppliers which has a direct impact on the Service We provide to You.
  - iv. in accordance with clause 3.b or 4.i below.We shall notify You in writing of any such increase by providing not less than 30 days' prior written notice.
- e. Without limiting clause 2.d above, unless the Agreement says otherwise, We may increase the Service Charges set out in this Agreement once at any time in each Contract Year linked to the rate of increase in the Retail Price Index (or any index that replaces it) during the preceding 12-month period, or 3% whichever is the higher. We shall notify You in writing of any such increase by providing not less than 30 days' prior written notice.
- f. We may end a Service Agreement if You do not pay an undisputed, validly invoiced Service Charge due to Us for that Service within the period of 90 days after the relevant due date. You would then have to pay the entire charge for that Service Agreement for the Initial Term.
- g. Upon termination or expiry of this Agreement You shall pay any outstanding Agreement charges, plus any charges for work We provide outside this Agreement (with the exception that the Agreement is terminated due to Our default). You must reimburse Us all costs and expenses (including legal costs) incurred in the collection of any overdue amounts.
- h. You will notify Us in writing of any disputed invoice within 14 days of the date of such invoice, including the full facts of the dispute. You must pay the undisputed portion of the invoice in accordance with the terms of this Agreement and in good faith co-operate with Us to resolve the dispute. Any sum agreed to have been correctly invoiced will be paid and any sum incorrectly invoiced will be resolved by appropriate credit to Your account (in each case within 30 days of resolution).
- i. Any dispute regarding payment of Service Charges under this Agreement shall not apply to any Third-Party licenses or Vendor Support Services required as part of the delivery of the Service. Where a charge or payment is in dispute, We will itemise the amounts due for any

on-going licensing or Vendor Service required for the Service and this amount shall be due and payable by You in full, with no right to withhold or set off any such amounts.

- j. Any charges levied on Us by Third Party Suppliers relating to terminated Services shall be passed on to You.
- k. Vendor Support Charges, as outlined in clause 22, unless explicitly agreed in writing in advance of the Service Commencement Date, are payable annually in advance and are not cancellable or transferable. Subject to the Vendor Support Service conditions available from the Vendor requiring Convergence Group to register the Equipment with the Vendor (or other party), We will not complete the registration of the Equipment until We have received payment in full. Such Vendor Support Charges track the Vendor's charges imposed on Convergence Group and they may increase or decrease during the term of the Agreement.

### 3. Locations

The Equipment covered by the Agreement will be kept at the Premises listed in the Order Form.

- a. The Equipment must be installed in an environment that is suitable, in good condition and in line with the Vendor's recommendations as outlined in clause 20.a.i.
- b. If there is an intention to move the Equipment and the move is not to be carried out by Us as part of the Service, then You agree to inform Us in writing as soon as reasonably possible by the method in place at the time, so We can update Our records. If the Equipment is moved We may immediately;
  - i. alter Our Service Charges to reflect any increased costs to Us. Any alteration to Our charges must be reasonable or allow You to end this Agreement solely in relation to the affected Equipment being moved.
  - ii. alter the SLA options available to You, if the Equipment is moved to an area where the SLA in place prior to the Equipment being moved is not offered. The alteration in the SLA may result in an increase to the cost. We reserve the right not to lower any costs due to Your moving of the Equipment.
- c. We will have no responsibility for moved Equipment if We have not been given reasonable notice or You do not make the necessary changes We recommend for the Equipment's new location. (Our recommendations will be in line with the Vendor's specifications or good working practice.)

### 4. Variations

- a. Convergence Group may make any changes to the terms of this Agreement (including to the Service Description but excluding executed Order Forms and letters of engagement) as it deems necessary from time to time to take into account operational, legal, technical or commercial matters (including the terms on which its Third-Party Suppliers provide Convergence Group with services). Convergence Group's rights under this clause 4.a shall not extend to changes to the Service Charges which shall be governed by the paragraph 2 (Payment and charges) of this Agreement.
- b. Where Convergence Group elects to make a change to the Service under clause 4.a above, We will ensure that any change(s) applied to the affected Services provide functionality and/or features equivalent to or exceeding the functionality and/or features for that Service(s) prior to the change(s).
- c. Changes made pursuant to clause 4.a above shall be notified to You by posting the changes to the Convergence Group Website and shall be deemed to be incorporated into this Agreement and be legally binding on the Parties with effect from the date such posting is made (or as otherwise advised). We will endeavour to give 30 days' notice of any such changes but any failure to give such notice shall not act to prevent such changes having full contractual effect.

- d. The Service may be varied within the term of the Agreement in the following ways:
  - i. You may move Support Service Option for the whole Service provided by Convergence Group to a different tier of Service;
  - ii. You may add extra Equipment or remove Equipment in accordance with the process in place at the time.
- e. Provided that the changes equal no more than 10% of the Nodes already under support, equipment may be incorporated into the existing Service Agreement to co-terminate with the main body of the Service Agreement or removed from cover, without requiring re-contracting of the Service.
- f. Reductions in the number of supported Nodes will be calculated from the date the equipment is removed from Service. Additions of new Nodes will be invoiced once the order is completed.
- g. It is Your responsibility to inform Us when adding new equipment to ensure that it is properly documented and accepted into Service. Failure to do so will result in the new equipment being out of cover until the required information is provided.
- h. Reductions or additions to the Equipment under cover may vary the level of discount that is applied to the charges at the time of change.
- i. If the Vendor makes any changes to Vendor Support Services, then the changes including any changes in Vendor Support Charges, will be applied on the same terms and minimum periods as those prescribed by the Vendor on Convergence Group.
- j. If the Support Service Option purchased, requires You to notify Us of any Enhancement or Upgrade installed by any party other than Us on any of the supported Equipment, then You shall inform Us as soon as reasonably possible, by the method in place at the time.

## 5. Risk and ownership

- a. Any Convergence Group Equipment We lend the Customer as part of the Service will remain Our property. You must take all reasonable steps to make sure that the loaned Convergence Group Equipment is kept safe and not removed from the premises We despatched it to without Our written permission. You will be charged for any Convergence Group Equipment that is stolen, damaged or lost. You must affect and maintain suitable insurance in respect of relevant risks for the Convergence Group Equipment.
- b. If We temporarily remove any part of Your Equipment that We are repairing or testing, it will remain Your property. We will take all reasonable steps to make sure that Your Equipment is safe and We will replace any Equipment that is stolen, damaged or lost while in Our care.

## 6. Confidentiality

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



remuneration and other benefits paid to them, and any information which the Receiving Party is aware or should reasonably be aware is, or has been told is, confidential.

- b. Each Party (in this clause “**Receiving Party**”) undertakes to the other Party (“**Disclosing Party**”):
  - i. To keep confidential the Disclosing Party’s Confidential Information obtained from the Disclosing Party in discussions leading to the Agreement and subsequently received pursuant to this Agreement; and
  - ii. Not to disclose the Confidential Information in whole or in part to any other person without the Disclosing Party’s written consent, except to the Receiving Party’s employees, agents and sub-contractors involved in the supply or use of the Service (as the case may be) on a confidential and need-to-know basis; and
  - iii. To use the Confidential Information solely in connection with the supply or use of the Service (as the case may be) and not for its own or the benefit of any third party.
- c. You shall not disclose the existence of this Agreement to any third party without the prior written consent of Convergence Group.
- d. The confidentiality obligations in clauses 6.a and 6.b above, will not apply if the Receiving Party is required by court, government or other regulatory body to disclose the Confidential Information, but only to the extent required by law, provided that the Receiving Party gives the Disclosing Party written notice as soon as practicable of such requirement.
- e. The confidentiality obligations in clauses 6.a and 6.b above, will not extend to the Confidential Information which the Receiving Party can prove to the Disclosing Party’s reasonable satisfaction:
  - i. Has ceased to be secret without default of the Receiving Party’s part; or
  - ii. Was already in the Receiving Party’s possession prior to disclosure by the Disclosing Party; or
  - iii. Has been received from a third party who did not acquire it in confidence.

## 7. Data Protection

- a. Both parties agree that they will at all times comply with their obligations under the current Data Protection Regulation (“UK GDPR” and Data Protection Act 2018 as amended), and all statutory instruments, orders, regulatory requirements, subordinate legislation made pursuant to it or codes of practice governing the processing, including the collection, use, storage and transmission of any Personal Data required to be processed under this Agreement (which together shall be referred to as the “Data Protection Regulation”).
- b. For the avoidance of doubt, “Data Subject”, “Processor”, “Controller”, “Personal Data”, “Personal Data Breach” and “Processing” shall bear the respective meanings given to them in Data Protection Regulation (and “Process” and “Processes” shall be construed accordingly). The term “Sub-Processor” shall refer to the third party who carries out Processing when the Processor sub-contracts all or some of the processing to another Processor.
- c. Both parties acknowledge that for the purpose of Data Protection Regulation that We are the Processor of any Personal Data that You provide to Us (as defined by Data Protection Legislation) or where You are the processor, We shall be a sub-processor. Unless otherwise required by law, We will process the Personal Data only on the written instructions of the Controller. The Personal Data will only be processed for the purpose of providing the Service. In relation to the above, You acknowledge that, in order for Us to provide the Service, We will also be required to disclose certain data to the Third-Party Suppliers who supply any element of the Service (all data transfers being carried out in accordance with the terms required by the current Data Protection Regulations). You acknowledge that if We are not permitted to pass on this information then We may not be able to provide the Service purchased.

- d. In addition to clauses 7.a to 7.c above, both Parties agree that:
- i. all Personal Data shall be processed lawfully, fairly and in a transparent manner;
  - ii. Personal Data will only be collected for the specified, explicit and legitimate purposes of providing the Service (or otherwise as notified and agreed with You) and not further processed in a manner that is incompatible with those purposes;
  - iii. the Processing of Personal Data shall be adequate, relevant and limited to what is necessary in relation to the purposes for which they are Processed;
  - iv. the Personal Data is accurate and kept up to date;
  - v. all Personal Data, which is kept in a form which permits identification of Data Subjects, shall be retained for no longer than is necessary and for the purposes for which the Personal Data is Processed;
  - vi. no Personal Data will be transferred outside of the UK without appropriate safeguards being in place;
  - vii. they will promptly notify the other Party of any Personal Data Breach;
  - viii. it will provide the other Party with any information which the other Party may reasonably require to satisfy itself that the obligations under the Data Protection Regulation are being met; and
  - ix. it will ensure that it does not knowingly or negligently do or omit to do anything which places the other Party in breach of its obligations under Data Protection Regulation.
- e. Both Parties shall take all appropriate technical and organisational security measures necessary to:
- i. preserve the security and integrity of any Personal Data disclosed; and
  - ii. to prevent any unauthorised or unlawful Processing; and
  - iii. to protect all Personal Data from all security risks including accidental loss, misuse, unauthorised access, theft, fraud, destruction and damage.
- f. As the Processor, We also agree that:
- i. all employees who are authorised to process the Personal Data are subject to a duty of confidentiality;
  - ii. We will provide reasonable assistance to the Controller in providing access to the Data Subject and allowing the Data Subjects to exercise their rights under the Data Protection Regulation;
  - iii. We will promptly (in any event within 2 calendar days) and fully notify the Controller of any Personal Data Breach and assist the Controller in meeting their requirements regarding the Personal Data Breach, the security of Processing, and the conduct of any data protection impact assessments that they require under the Data Protection Regulation;
  - iv. Other than Personal Data required for legislative or regulatory purposes (as detailed in Our privacy policy), We will delete or return all Personal Data to the Controller if requested to do so once the Agreement has ended;
  - v. We will promptly inform the Controller where, in Our reasonable opinion, We believe that any instruction received is likely to infringe the Data Protection Regulation or any other applicable law.
- g. Both Parties agree to make all information available as requested by the other to demonstrate their compliance with the Data Protection Regulation, including allowing for and contributing to audits and inspections. If either Party is asked to do something which infringes the Data Protection Regulation they will inform the Controller immediately.
- h. Neither Party will, by any act or omission, cause the other to breach any of the Data Protection Regulation.
- i. Both Parties will co-operate as required with the Information Commissioners Office (ICO) or other Supervisory Authority.



- j. We shall indemnify You against all liabilities arising out of or in connection with any breach by Convergence Group and/or any third parties of these provisions; and You shall indemnify Us against all liabilities arising out of or in connection with any breach by You.
- k. Nothing within this paragraph 7 will relieve either Party of their own direct responsibilities and liabilities under the Data Protection Regulation.

## 8. Force Majeure

- a. Neither Party shall be liable for any breach of its obligations under the Agreement (other than in relation to payment of sums due) to the extent that it is hindered or prevented from carrying out its obligations by reason of any Force Majeure Event.
- b. For the avoidance of doubt, the occurrence of a Force Majeure Event shall be without prejudice to Our obligations to maintain and where necessary, implement applicable business continuity or disaster recovery plans applicable to the affected Service, in order to mitigate the impact of a Force Majeure Event.
- c. Where such Force Majeure Event continues for more than three (3) calendar months, either Party may, without additional liability, terminate the Agreement by giving not less than 30 working days' written notice to the other Party.

## 9. Insurance

- a. Both parties will maintain at all times during the term of this Agreement public liability insurance and professional indemnity insurance to the levels and coverage as required by law and that a prudent organisation would be expected to maintain.

## 10. Intellectual Property Rights

- a. Except as expressly provided in this Agreement, all Intellectual Property Rights, title and interest to and in the Service Deliverables shall remain vested in Convergence Group, Convergence Group Affiliates, Third Party Suppliers and/or licensors as applicable and nothing in this Agreement shall be deemed to confer any assignment or licence of the Intellectual Property Rights of one Party to the other.
- b. Without prejudice to clause 10.a above, where in the course of the provision of the Service, Convergence Group provides any Service Deliverables which are owned or licensed by any Third Party Supplier (which shall include any of Our Affiliates) or in which any Intellectual Property Rights are vested in a Third Party Supplier, the Customer shall comply in full with all licence or other agreements applicable to the use of such third party Service Deliverables (as may be amended from time to time) and as notified to You.
- c. Convergence Group acknowledges and agrees that all property and other Intellectual Property Rights, wherever in the world enforceable, belonging to the Customer, including all rights, title and interest in and to all Customer owned documents, data and other materials or items relating thereto including all modifications and derivative works thereto, and any and all accrued rights of action therein shall immediately upon creation or performance vest in and shall be and remain the sole and exclusive property of the Customer.
- d. The Customer grants to Convergence Group a non-exclusive, world-wide, royalty-free, licence to use any Customer data, documents or other tangible materials provided to Us by the Customer or on the Customer's behalf under this Agreement for the duration of this Agreement for the purpose of exercising its rights and fulfilling its obligations under the Agreement.
- e. The Customer acknowledges and agrees that it will not, whether during the Term or at any time after termination of the Agreement, in any way question or dispute the legal and beneficial ownership by Convergence Group of the Intellectual Property Rights in the Service

or the Service Deliverables (or any part thereof). The Customer shall not do, or omit to do, anything which may jeopardise, limit or interfere in any manner with Convergence Group's rights (or the rights of its Affiliates, the Third Party Suppliers and/or licensors) in the Service Deliverables.

- f. In the event that new inventions, designs, processes or Intellectual Property Rights are created by Convergence Group (or its Affiliates) during its provision of the Service, the Customer acknowledges and agrees that the same shall be the sole property of Convergence Group absolutely.
- g. This paragraph 10 shall survive termination of the Agreement or any part of it.

## 11. Limit of liability

- a. Nothing in this Agreement shall exclude or limit either Party's liability in respect of:
  - i. death or personal injury caused by their own negligence, or the negligence of its directors, employees, agents or sub-contractors;
  - ii. fraud or any fraudulent misrepresentation;
  - iii. any breach of the paragraph 6 (Confidentiality) or paragraph 7 (Data Protection); or
  - iv. any other liability which cannot be excluded or restricted by applicable law.
- b. Save in relation to any claims arising in connection with the specific indemnities within this Agreement and subject to clause 11.a above, neither Party shall have any liability to the other Party, whether in contract, tort or otherwise (including liability for negligence), for loss or damage, whether direct or indirect, of business, income, production, operation time, goodwill, reputation, contracts, revenue, profits (other than for payment of Service Charges), for any loss of anticipated savings, for wasted expenditure or for any indirect or consequential loss whatsoever arising under or in connection with the Agreement.
- c. Subject to clause 11.a, We are not responsible for any delays, delivery failures or any other loss or damage resulting from the transfer of data over communications networks and facilities including the internet not under the control of Convergence Group or Our service providers. You acknowledge that the Service may be subject to limitations, delays and other problems inherent in the use of such communications facilities.
- d. Subject to clause 11.a, in the event that any Service Credits are payable by Us in respect of any failure to meet an SLA as set out in the Order Form, then payment of such Service Credits shall be Your sole and exclusive remedy for such breach. If there is no applicable Service Credit, We limit Our liability to an amount equal to the Service Charge for the affected Service on that Device for the period of the interruption or delay (as determined by Us).
- e. Subject to clauses 11.a, 11.b, 11.d, and 11.f each Party's liability in contract, tort or otherwise (including negligence) howsoever arising, out of or in connection with the Agreement (including any collateral contract) shall, in respect of any one incident or any connected incidents, not exceed the total Service Charge payable by You in the calendar year in which the incident (or first incident in the series of connected incidents) giving rise to the liability occurs or £5 million, whichever is the lower. Notwithstanding the previous provisions of this clause 11.e but subject to clauses 11.a, 11.b and 11.d, each Party's total aggregate liability in contract, tort or otherwise (including negligence) howsoever arising out of or in connection with the Agreement shall not exceed £5 million.
- f. Clause 11.e shall not apply in relation to Your liability under any specific indemnity given by the Customer in the Agreement.
- g. You hereby agree to indemnify, keep Us indemnified and hold Us harmless in relation to, or in connection with, any and all alleged or actual costs, claims, damages, losses, liabilities, proceedings and expenses (including legal fees) whether arising directly or indirectly,

brought or threatened against Us or a Third Party Supplier by any person, legal entity, or organisation in connection with:

- i. Our use of the data, documents or other tangible materials provided to Us by You or on Your behalf under this Agreement in accordance with the terms of the Agreement; or
  - ii. Your breach of the Intellectual Property Rights paragraph (paragraph 10); or
  - iii. If We have agreed to do anything under this Agreement on Your instructions, and as a result We are in breach of any rights of any third party (or a third party threatens Us with proceedings for breach of their rights)
- h. In relation to the indemnity under clause 11.g We shall:
- i. notify You in writing of any claim or potential claim brought by a third party falling within the scope of the indemnity (a “**Claim**”);
  - ii. make no admission of liability or settlement in respect of the Claim without Your prior written consent, such consent not to be unreasonably withheld or delayed;
  - iii. provide You with all information and assistance that You may reasonably require in relation to the Claim (at Your sole expense);
  - iv. allow You control over the litigation and settlement of the Claim provided that You keep Us fully and regularly informed as to the progress of the Claim and that You conduct such Claim with all due attention and skill. In the event that We are not satisfied with Your conduct of the Claim at any time, We may take over the conduct of the Claim and may settle or defend any such Claim as We think fit without requiring Your consent; and
  - v. not be required to mitigate Our losses, costs and expenses.
- i. You accept that We have no control over the information transmitted to or from the Service and that We do not ordinarily examine the use to which You put the Service or the nature of the information You are sending or receiving whilst using the Service. You agree that We are a mere conduit in accordance with the Electronic Commerce (EC Directive) Regulations (2002). We hereby exclude all liability of any kind arising from the transmission or reception of information of whatever nature through the Service to the fullest extent permissible by law.
- j. Without undertaking any obligations to give any such advice and/or recommendations, We shall not be liable for any costs, loss, damage or expense suffered by You as a result of:
- i. placing reliance on Our advice and/or recommendations regarding the use of a third party's products or services; or
  - ii. Failing to follow Our advice, if, as part of the Service We have advised You that a solution may not provide Your requirements or that it may be vulnerable to attack or fraud from a third party, if You choose not to follow Our recommendations.
- k. This paragraph 11 sets out each Party's entire liability (including any liability for the acts and omissions of its employees, agents or contractors) to the other Party arising in connection with the performance, contemplated performance or non-performance of the Agreement. You acknowledge that the exclusions and limitations of Our liability in the Agreement are reasonable.
- l. The obligations under this paragraph 11 shall survive termination of the Agreement whatever the reason for termination.

## 12. Anti-Bribery

- a. Neither Party will engage in any activity, practice or conduct which would constitute an offence under sections 1, 2 or 6 of the Bribery Act 2010 if such activity, practice or conduct had been carried out in the UK and will have in place and comply with, an anti-bribery and anti-corruption policy. If a Party breaches this paragraph 12 the other Party will have the right to terminate this Agreement immediately on written notice to the breaching Party.

### 13. Modern Slavery and Human Trafficking Compliance

- a. Both parties shall ensure that they are compliant with all applicable anti-slavery and human trafficking laws and regulations enacted from time to time, including (but not limited to) the Modern Slavery Act 2015 (as amended).
- b. You confirm that:
  - i. You have read and shall not perform an act or omission which is in contravention to, the letter or spirit of Our modern slavery and human trafficking statement which is available on the Convergence Group Website; and
  - ii. You have due diligence procedures in place which are carried out within Your business to address any suspected human rights abuse in Your business or as far as reasonably possible within Your supply chain.

### 14. Disaster Recovery and Business Continuity

- a. We will ensure that:
  - i. We have a documented Disaster Recovery and Business Continuity Plan, which is routinely tested.
  - ii. We are able to implement the provisions of such plan at any time in accordance with its terms.
- b. We will notify You of any business continuity incident / disruptive event (“**Event**”) that has impacted Your operations within a reasonable time after the Event, in line with Our procedures at the time.

### 15. Information Security

- a. We shall maintain adequate information security controls that are aligned with the controls in the ISO27001 framework or equivalent. Our Information Security policy can be found on the Convergence Group Website.

### 16. Ending this agreement

- a. Each Service covered by this Agreement will commence from the applicable Support Commencement Date and shall continue for the Initial Term. At the end of each Initial Term, each Service shall automatically renew for the Renewal Term and thereafter for consecutive Renewal Terms unless or until You or We end such Service pursuant to this Agreement by giving to the other Party the Minimum Written Notice of at least 90 (ninety) days’ notice prior to the expiry of the Initial Term or the relevant Renewal Term (as the case may be). If You do not provide the Minimum Written Notice to Convergence Group, a Renewal Term will commence on expiry of the Initial Term or previous Renewal Term.
- b. Either Party may end this Agreement immediately, by giving the other written notice, if:
  - i. an application is made for an administrator or receiver to manage all or part of the other Party’s assets;
  - ii. the other Party cannot pay its debts when they are due or is declared bankrupt;
  - iii. the other Party breaks any part of the Confidentiality (paragraph 6) or Intellectual Property (paragraph 10), which shall be without limitation, a material breach of the Agreement which is incapable of remedy for the purposes of this clause 16.b;
  - iv. the other Party breaks any significant part of this Agreement and, if the matter can be put right, does not do so within 30 working days of receiving a written request to do so. For avoidance of doubt, any failure by You to pay any validly invoiced sum due under the Agreement by the due date for payment shall, without limitation, be a material breach of the Agreement which is capable of remedy for the purposes of this clause 16.b; or
  - v. the other Party repeatedly breaches any of the terms of this Agreement in such a manner as to reasonably justify the opinion that its conduct is inconsistent with it having the intention or ability to give effect to the terms of this Agreement.

- c. If We increase Our Service Charges by an amount that is greater than any increase in the Retail Price Index (or any index that replaces it), You may cancel this Agreement by giving Us 30 days' written notice.
- d. Unless otherwise agreed in writing with Convergence Group, when this Agreement ends, You must promptly return all hardware, software, documents and manuals used in connection with this and any other item of Convergence Group Equipment which rightfully belongs to Us. All Equipment must be returned in the same condition as it was initially provided excepting reasonable wear and tear. Convergence Group shall, until such removal is effected, be entitled to continue to charge You and You shall pay such Charges together with any additional costs and expenses caused to Convergence Group. If You fail to return the Convergence Group Equipment, We may enter Your premises and take possession of them. Until they have been returned or repossessed, You shall be solely responsible for their safe keeping. Risk in and liability for Equipment shall pass back to Convergence Group on receipt of the returned Equipment.
- e. Upon termination We will have no obligation to deliver Vendor Support Services on any Equipment where the end date for Vendor Support Services is greater than the Support End Date.

## 17. General

- a. The conditions of this Agreement solely in relation to the subject matter of this Agreement will take precedence over any conditions that conflict with a condition in any other agreement between the parties.
- b. The invalidity or unenforceability of any particular provision of this Agreement shall not affect the other provisions hereof and this Agreement shall be construed in all respects as if such invalid or unenforceable provision had been omitted.
- c. Any reference to statute or a statutory provision is a reference to it as it is in force for the time being, taking account of any amendment, extension, or re-enactment and includes any subordinate legislation for the time being in force made under it.
- d. Neither Party's rights and responsibilities under this Agreement may be transferred unless agreed to in writing. Agreement must not be unreasonably withheld.
- e. No term of this Agreement is intended expressly or by implication or other inference to purport to confer a benefit or right of action upon any third party. The Contracts (Rights of Third Parties) Act 1999 is expressly excluded to the fullest extent permitted by law.
- f. If either party does not enforce any term or condition of this Agreement, that will not prevent either party from enforcing that term or condition in the future.
- g. We may, without prejudice to any other rights We may have, set off any liability from You to Us against any liability of Us to You.
- h. Any notice which needs to be given under this Agreement must be given in writing and delivered to the other party by hand, by recorded delivery, or by fax or email. Notices delivered by hand shall be deemed delivered the same day and any notice delivered by post shall be deemed given three (3) days after the date of posting. Any communication by electronic mail shall be deemed to have been made on the working day on which the notice is first stored in the other Party's electronic mailbox.
- i. This Agreement will be governed by English law and both Parties agree that any dispute will be settled in the English courts. Certain goods from the United States (including technical information) may have been imported under licence with the condition that they are not re-

exported without approval from US authorities. If this applies to Your Equipment We will let You know and You must keep to the licence conditions.

- j. Both Parties are independent contractors under this Agreement, and neither can act on behalf of the other.
- k. This Agreement may be executed in any number of counterparts, which shall together constitute one Agreement.
- l. Any variation to this document must be in writing and signed by an authorised representative from each Party.

## Section C – WIRED and WIRELESS LAN Support Service Conditions

### 18. Scope of the Agreement

#### a. Support Service Options provided

The LAN and WLAN Support Service Options which We provide under this Agreement are offered under three different service management tiers: Managed (Fully managed service); Monitored (Network monitoring service); or Maintained (Break/fix maintenance service). In accordance with clause 4.d You may move between the Support Service Options but the entire Service has to be in the same tier, You cannot mix and match.

#### b. Excluded Service and Features

Unless this Agreement specifically says otherwise, We do not provide the following Service features:

- i. Remediating any incident on Equipment not covered by this Agreement.
- ii. Any incident that is classed as an excluded service or feature not included in the Support Service Option purchased by You as outlined in clause 18.a.



- iii. Remedying any Incident that is solely and directly caused by Your failure to comply with Your obligations under this Agreement.
- iv. Remedying problems directly associated to changes not made by Us and where the Change Control procedure in place at the time has not been followed.
- i. Work needed because of the Equipment being damaged as a result of an accident, abuse or neglect (unless the damage is caused by Us).
- ii. Repairing faults created by the use of consumables, modifications or maintenance not authorised by Us or the Vendor.
- iii. Repair work needed because of parts being transported, relocated or incorrectly installed and commissioned (unless this was carried out by Us or under Our direction).
- iv. Repairing faults created by updates being installed incorrectly (unless We were responsible for this).
- v. Repairs to try and make the Equipment work in a way that exceeds the Vendor's specification, including without limitation failure to maintain a constant power supply, air conditioning or humidity control.
- vi. Repairing faults that We believe You knew about before entering into this Agreement but which You did not tell Us about.
- vii. Software updates to maintain the latest version of software, unless it is specifically included in the Support Service Option provided. Where software updates are included then the Service given is in line with the Vendor's prevailing conditions.
- viii. Unless as specified and agreed, re-installing applications, databases or user data on to servers or personal computers.

The list above is not complete and is for guidance only.

## 19. Our responsibilities

- a. We will provide the features of the chosen Support Service Option at Our own expense (subject to any limitation set out in this Agreement). This shall include as a feature of the Service, faults caused by fair wear and tear in order to restore the Equipment covered to its normal working condition. The Equipment covered, the period of cover, and the SLA are shown in the Order.
- b. The restoration will take the form of either:
  - repairing (and installing temporary Convergence Group Equipment while the defective Equipment is being repaired if necessary); or
  - replacing the defective Equipment with equivalent replacement equipment (as long as You have given Us written authority to do so); or
  - Repairing or re-conditioning the Equipment on the premises if We judge that this is appropriate.

If We install temporary Convergence Group Equipment while We repair faults covered by this Agreement, We will take that equipment away and re-install Yours free of charge.

Title will be exchanged with the owner of the faulty Equipment for any permanently replaced parts.

- c. We will hold appropriate spares to carry out Our responsibilities.
- d. If We believe that Our work will disturb unaffected parts of the network which it forms part of, We will make all reasonable efforts to tell You about this before We start work.
- e. We will make all reasonable efforts to promptly tell You about any significant issues relating to this Agreement.
- f. We will make every effort to carry out all of Our responsibilities under this Agreement.
- g. We will provide a NOC.

- h. While Our employees, agents or sub-contractors are on the premises We will make sure they follow any health and safety procedures which We have received a copy of.
- i. We will keep any confidential information, systems or processes You give Us safe, secure and confidential.
- j. We will carry out Our responsibilities in a way that keeps business disruption to a minimum.
- k. We will carry out Our responsibilities with due care and attention. We will be responsible for Our staff's failures.

## 20. Your responsibilities

- a. You must provide Us with the correct environment, information, co-operation, assistance and access to facilities as We reasonably require to enable Us to perform the Service. You shall be exclusively responsible and accountable for any charges, liabilities or losses incurred as a result of Your failure to meet the requirements within this paragraph 20 and the associated detailed conditions. The conditions required are:
  - i. Environmental
    - 1. A suitable and industry standard communications room(s) that houses the applicable Equipment;
    - 2. Suitable UPS systems, providing complete power protection for the hardware for which We provide the Service, free from surges and fluctuations, as recommended by the Vendors of the Equipment;
    - 3. Suitable communications cabling, cabling termination, ducting and effective cable management systems that enable easy installation and removal of the Equipment for which We provide the Service;
    - 4. Suitable air conditioning, and where appropriate humidity control in the communications rooms ensuring that all the Equipment contained is kept and maintained at the appropriate temperatures to ensure good working order in accordance with the Vendor specifications.
  - ii. Access Control
    - 1. Suitable physical access shall be controlled and where necessary restricted to ensure that the Equipment for which We provide the Service is appropriately protected against accidental or malicious physical damage, interference or disruption;
    - 2. Suitable controls and authorisations shall be implemented, controlled and enforced, and event logs maintained of access, (including third parties) to the communications rooms to mitigate accidental or deliberate disruption to the Service or the Equipment covered by the Service;
    - 3. Suitable controls, care and where necessary supervision is provided when third parties operate in the communications rooms, communication racks and environments where the Equipment is contained.
  - iii. Dependencies
    - 1. If not a feature of the Support Service Option chosen by You, then You must ensure that suitable third party and Vendor hardware and software is comprehensively tested to ensure of interoperability and compatibility with the Equipment for which We provide the Service. You shall remain responsible and accountable for any poor introduction and integration of new or modified third party and Vendor software and hardware that has a detrimental impact on the Service provided.
  - iv. Cyber Attack and Service Disruption
    - 1. You must ensure that any software and hardware provided by third parties is compliant with Cyber Essentials as a minimum standard;

2. You will be responsible and accountable for any outage, disruption or impact to Your equipment as a result of a cyber-attack on third party hardware or software, if Your affected equipment is not covered by Our Service or it is not a feature of the Support Service Option provided.
  3. You will be responsible and accountable for any outage, disruption or impact, affecting You or a third party, as a result of a cyber-attack on any of Your hardware or software, if the affected equipment is not covered by Our Service or it is not a feature of the Support Service Option provided.
- b. Any specific information We request as part of the Support Service Option onboarding must be provided to Us before We can accept an incident on the Equipment, which, for the avoidance of doubt, includes receiving any Vendor Support. These details should be received by Us at least 30 working days before any related fault call and are subject to the Vendor accepting registration of such Equipment. Registration will be subject to receiving payment in accordance with clause 2.a.

If You do not supply the information requested, We will take reasonable steps to carry out Our responsibilities, but We:

  - i. will not be liable for any failure, including if We fail to meet Our SLA.
  - ii. may charge You for the cost to repair or provide a replacement or any other reasonable cost incurred (in accordance with clause 20.c below).
- c. You must pay Us for any work which You ask for which is not covered by this Agreement. We will not commence any chargeable work without formal authorisation from You by way of email, letter or secure authorisation code. Such work includes (but is not limited to):
  - i. repair work in order to repair damage (other than damage caused by Us) created by accident, misuse or neglect;
  - ii. any incident We attend to Equipment that has been moved to a new location or was not installed by Us, and We reasonably determine that the problem was caused by the transportation or reinstallation of the Equipment;
  - iii. when You ask Us to visit the premises for an incident that proves to be unnecessary or to correct problems related to equipment not covered by this Agreement; and
  - iv. installation services or consultancy work which is not covered by this Agreement.Our costs for providing work not covered by this Agreement will be at Our standard agreed prices which apply when We do the work.
- d. You shall ensure that any fixtures and fittings at the premises which could reasonably be anticipated to be damaged in the provision of the Service are either moved or are adequately protected. You must notify Us of any reasonably foreseeable risks that are present at Your site which We may not be aware of prior to a site visit which may delay or prevent Our Engineers from performing works safely.
- e. You shall promptly implement recommendations from Us in respect of remedial actions; whether prior to or following an incident; and confirm that You own or will obtain valid licences of all Intellectual Property, commercial off the shelf products, or software developed under licence which are necessary to grant Us access to and use of the software for the purpose of fulfilling Our obligations under this Agreement.
  - i. In the event that Your failure to implement recommendations materially impacts Our ability to carry out the Support Service then this will be Your responsibility and You shall remain accountable.
- f. If We install temporary Convergence Group Equipment while We repair Yours, You must allow Us to re-install Your Equipment and remove the Convergence Group Equipment if We request to do so, within 20 working days of Us telling You that Your Equipment is ready to be re-installed. We will not be liable for any costs other than Our own arising from allowing Us to carry out this work. If the Convergence Group Equipment is not returned to Us within 20

working days, then You will be charged for and You will pay the full replacement cost of the temporary Convergence Group Equipment.

- g. If as part of the Support Service, We are not providing a back-up of the network, then You must ensure that back-up copies of all software on Equipment We are supporting (and any other equipment that may be reasonably associated with it) are made and can be made available to Us along with any manufacturer's license keys (subject to the manufacturer's licensing conditions) so that We can perform Our duties under the terms of this Agreement.
- h. Health, safety and any security procedures or policies must be given to Us or made available to Us for any premises We are to attend to fulfil Our obligations in this Agreement. We will not be responsible for any delays in meeting Our obligations due to Our compliance with such health, safety and security procedures or policies or delays in them being provided to Us.
- i. You acknowledge that some repair work may be disruptive and You will not unreasonably withhold permission to do such work during the period of cover provided by the Support Service Option. We will give You notice of any such repair work and We will not start the work until You give Us Your permission in writing. If You need Us to do the work outside of the specified cover period, You will have to pay a charge for that relevant work.
- j. You must keep any confidential information, systems or processes We provide safe and secure.
- k. If You do not return, and We do not receive, a signed copy of the Agreement, presentation to Us by You of an Order Form for the Service provided within this Agreement shall be deemed as acceptance by You of Our Terms and Conditions.

## **21. Service Level and Service Credits**

- a. The relevant SLA for the provision of a Service is dependent on the SLA level purchased. All SLA calculations are measured from the time of an incident being diagnosed. Subject to clause 21.c below, if, other than for reasons beyond Our control, We fail to meet the SLA, then We will pay to You Service Credits in respect of the failure, at the rate and in accordance with the method applicable at the time (as set out in Appendix 1 (SLA and Service Credit Calculation Explanation)).
- b. In the event that any Service Credits are payable by Convergence Group in respect of any failure to meet an SLA as set out in the Order Form, then payment of such Service Credits shall be Your sole and exclusive remedy for such breach.
- c. The following shall not be included in any calculation of Our performance against the SLA for the Service and shall not be eligible for Service Credits:
  - i. Any SLAs missed due to incorrect information being given to Us. For avoidance of doubt, this shall include any information where We have notified You that the information that You have given Us is incorrect, if You have not subsequently rectified the information.
  - ii. Any Incident, or delay in effecting resolution of any incident, that is solely and directly caused by Your failure to comply with Your obligations as set out in this Agreement;
  - iii. With the exception of any Third Party Supplier which We have contracted with to deliver the Service to You; any delay which is caused by any third party providing the Service failing to act on or to act in a timely fashion in respect of any Incident, (provided We have correctly followed the procedures set out in the third party contract in respect of such failure);
  - iv. Any delay to Us providing the Service due to any Force Majeure Event (as defined in paragraph 8), provided that We have acted in accordance the terms in this Agreement;

- v. Any Service provided, for which the Equipment is not supported under this Agreement;
  - vi. Any Incident that is caused by an excluded service or feature not included in the Support Service Option purchased by You as outlined in clause 18.a; and
  - vii. Any Park Time included as outlined in clause 21.d below.
- d. Park Time may include but is not limited to:
- i. An incident being passed back to the Customer for testing;
  - ii. A fault having been repaired and passed back to Customer for verification;
  - iii. Awaiting further diagnostic information to be sent to Us from the Customer;
  - iv. If We have been unable to contact the Customer in order to progress resolution;
  - v. Lack of on-site access or restricted access times to the premises;
  - vi. Waiting on the Vendor or third party support once an incident has been escalated to them.
- Park Time will be excluded from the total incident timeline when calculating SLA performance and any associated Service Credit.
- e. Notwithstanding any other provision of the Agreement, in the event that a Service is changed due to:
- i. either Party's decision to terminate a Service in accordance with the Agreement;
  - ii. Our suspension of a Service under clause 2.b;
  - iii. an event where We are required to amend a Service due to the act or omission of the Customer; or
  - iv. any regrade, replacement order, renewal or any material change to the commercial and/or operational nature of the Service whatsoever;
- Then We shall no longer have any liability to the Customer in respect of any Service Credits that may have accrued to the Customer in respect of the affected Service.

## 22. Vendor Support Services

- a. Unless otherwise specified, Vendor Support Services are a contractual obligation between Us and the Vendor. The Vendors have varying programs for Service delivery through accredited and approved partners. These programs are associated to the delivery of the Service covered by this Agreement which, dependent upon the Support Service Option purchased, may include access to software and software updates. Depending upon the contractual cover level on any given Equipment under this Agreement; where an incident requires escalation to Vendor Support Services or to another related 3rd party, Convergence Group shall act on behalf of the Customer (letters of authority may be required) in dealing with the Vendor to secure the necessary actions to restore service.

## 23. End of Life

- a. For the purpose of this Agreement, End of Life means that all forms of support from the Vendor for that particular product has ceased.
- b. If a product becomes End of Life during the term of the Agreement, then We will limit the support that We can offer You, by the prevailing terms of the Vendor.

## Appendix 1 – SLA and Service Credit Calculation Explanation

The SLA purchased sets the expectations between Convergence Group and the Customer and describes the operational hours and the fix, or response, guarantee We provide on the supported Equipment. The target SLA for incident management which includes hardware replacement, is dependent on the SLA level purchased.

All Service Credits are evaluated, and management is dependent on the SLA level purchased.

We reserve the right to amend the process or the calculation at any time.

For incidents relating to software We cannot guarantee fix times and so these are not included in the SLA calculations.

### When do the service levels start and end?

The SLA is measured from the time that the incident is diagnosed. The ticket can be opened through end-customer interaction or through automated monitoring and diagnostics. If there is any park time (in accordance with clause 21.d) then this pauses the SLA calculation for the extent of the Park Time in accordance with clause 21.c.vii.



Time to fix (TTF) is measured from the time the incident is diagnosed to the time suitable replacement equipment is installed on-site and Service restored.

Incident reports along with restoration SLA is provided to the Customer on a monthly basis.

The formula used to calculate mean time to restore (MTTR) service is as follows:

$$\text{Mean Time To Restore} = \frac{\text{Total Downtime}}{\text{Number of incidents}}$$

Where the “Number of incidents” are on a rolling month-by-month basis, such that underperformance in one calendar month does not necessarily impact performance in the following month, providing that performance has improved.

### Exceptional Incident

Any single incident which is more than 2x (two times) the agreed SLA shall automatically count as an SLA breach for that month; regardless of other incidents over-performing which may result in the average MTTR being within SLA for that month.

### Service Credits

Service Credits will be issued in accordance with clause 21.a based on a percentage of the monthly charge for the affected Equipment. The percentage paid will be equal to 25% of the monthly charge for each month where there is an SLA breach; not to exceed 100% in any billing cycle.

### Repeat SLA Breach

Any subsequent incident on the same physical device resulting in an additional breach of the Service Level Threshold, will result in an uplift to the applicable Service Credit by a factor of 1.5 (one and half) times, where that subsequent incident is within the same measurement period, subject to a maximum, in aggregate, in any calendar month, of 100% of the billing cycle charge for the affected equipment.

Our current escalation procedure, which We follow when dealing with complaints, is available upon request. We are constantly reviewing Our escalation procedure to make sure We perform efficiently.