

Master Terms and Conditions

ARTICLE 1. DEFINITIONS

“**Affiliate**” shall mean any entity incorporated within the United States which is controlled by or under common ownership with Customer or Converged. Affiliates of Customer, if any, may order Services under this Agreement. In such case, the Affiliate shall be deemed to be Customer for the applicable Service and shall assume all of the rights and obligations in this Agreement.

“**Exhibit**” shall mean each document that (i) specifies the details of a particular service and/or product offered by Converged pursuant to this Agreement; (ii) is incorporated into this Agreement by reference and (iii) is agreed to by the mutual written agreement of the Parties. One or more Exhibits will be included as part of this Agreement. When more than one Exhibit is part of this Agreement the terms of each Exhibit shall apply only for the Services or product provided thereunder. In no event will the terms of one Exhibit be applicable to or governed by the terms of any other Exhibit.

“**Licensed Materials**” shall mean any software, scripts, configurations or other materials provided to Customer by Converged as deliverables under this Agreement.

“**Services**” shall mean work performed by Converged and/or its Affiliates for Customer pursuant to one or more Exhibits that are applicable under this Agreement and may include, but is not limited to: (1) engineering services such as preparation of equipment specifications, preparation and updating office records, and preparation of a summary of material not specifically itemized in an order; (2) installation services such as installation, equipment removal, and cable mining; (3) system design and development; (4) staging of equipment on receipt from vendors, including inventory and initial checking; (5) configuration, including developing of scripts and other items necessary or useful for the installation and integration of Products and (6) other services such as monitoring, maintenance and repairs.

“**Statement of Work**” or “**SOW**” shall mean that document which is incorporated herein by reference and used for ordering Services. The SOW shall specify the Services, applicable fees, scope of work, and/or appropriate project timelines, as well as any terms and conditions, requirements, considerations, or objectives which differ from or add to the provisions of this Agreement.

“**Time and Material Service**” means any hardware or software maintenance, repair, installation or other related service provided by Converged to Customer and charged for based on the hours worked and the materials used for the Service.

ARTICLE 2. FEES, PAYMENT AND TAXES

2.1 Invoicing and Payment. Converged shall invoice Customer in accordance with the applicable Exhibit(s). All invoices are due net thirty (30) days from invoice date unless otherwise specified in an Exhibit. Converged reserves the right to modify the payment terms if, at any time, Customer’s credit status is not acceptable to Converged. Past due amounts are subject to a finance charge of one and one-half percent (1½%) per month. Converged may cease the performance of Services in the event any undisputed invoice remains past due after notice from Converged. Any such amounts outstanding for more than sixty (60) days after the date of invoice shall constitute a material breach by the Customer.

2.2 Taxes, Tariffs or Government Charges. Unless the Customer provides Converged with evidence of an exemption therefrom, prices, fees and other charges do not include duties, federal or state excise, sales, use or other similar taxes or charges. If incurred, such taxes or charges may be invoiced at any time. Customer agrees to indemnify and hold harmless Converged from any liability arising out of any such tax or charge if charged against Converged.

2.3 Service fees. The fees payable to Converged for Professional Services and associated expenses shall be as set forth in the applicable SOW. Actual and reasonable expenses incurred by Converged in connection with the Professional Services shall be charged to Customer. Such expenses

include, but are not limited to, travel, lodging, communications/postage, supplies, copying, printing and other administrative and out-of-pocket expenses. Unless otherwise specified on a SOW Professional Service fees and expenses will be invoiced monthly.

2.4 Purchase Orders. In the event that Customer issues a purchase order to Converged covering the Services or products under this Agreement, it is agreed that such purchase order is issued for purposes of Customer's internal use only, and none of purchase order terms and conditions shall add to or modify the terms and conditions of this Agreement.

ARTICLE 3. PROVISIONS APPLICABLE TO SERVICES

3.1 Acceptance of Professional Services. Upon Converged's completion and delivery to Customer of each deliverable(s) specified under a SOW for professional services, Customer shall have ten (10) business days to review and accept as complete or reject as incomplete each such deliverable in accordance with the acceptance criteria set forth in the applicable SOW ("Acceptance Criteria"). In the event Customer elects to reject any such deliverable, Customer shall notify Converged in writing, not more than ten (10) business days after receipt of the deliverable, itemizing each instance in which that deliverable fails to meet the applicable Acceptance Criteria ("Failure") in sufficient detail to permit Converged to replicate, diagnose and correct the Failure. Converged shall use commercially reasonable efforts to promptly diagnose and correct all identified Failures and to provide Customer with a modified deliverable for review and acceptance. Converged efforts to correct Failures caused solely by Converged shall be at no additional cost to Customer. Customer shall have ten (10) business days to verify that all identified Failures have been corrected and to accept or reject the modified deliverable. The failure of Customer to notify Converged of a Failure within the ten (10) business day acceptance period shall be deemed automatic and final acceptance of the deliverable. In the event that Converged is unable to duplicate the claimed Failure or the parties are unable to agree on whether there has in fact been a Failure, the parties shall negotiate in good faith to determine an appropriate solution and whether the claimed Failure is material. In the event the parties are unable to agree, Converged's liability shall not exceed the purchase price of the services in question. The Parties may agree to alternate acceptance period(s) in an applicable SOW and such alternate acceptance period(s) shall then prevail. Services provided by Converged on a time and materials basis shall be

considered accepted for payment purposes at the time of Converged performance of such Services.

3.2 Customer Support of Services Engagements. Customer shall designate a Project manager(s) who shall be principally responsible for providing direction and assistance to Converged in the provision of Services. The timely, complete and accurate provision of, and access to, Customer owned, licensed or leased equipment, software or telecommunications services, office accommodations, facilities, assistance, cooperation, information and data from its officers, agents, and employees, may be essential to the performance of any Services and Converged's ability to provide any Services may be dependent upon the same. Failure on the part of Customer to meet its obligations under this section may result in delay or increased cost. Any delay, increased cost or failure to perform resulting from Customer's failure to provide the aforementioned cooperation shall be Customer's responsibility. Customer shall notify Converged in writing if any change in Customer's system environment (software or hardware) will impair Converged's ability to perform the Services. In the event software licensed to Customer is used in the performance of Service hereunder, Customer shall ensure that Converged has the right to use such software on Customer's behalf. Converged shall use such software only in the performance of Services hereunder and shall have no further rights to such software.

3.3 All Time and Material Service prices are based on work being performed during normal business hours (Monday through Friday excluding holidays) unless otherwise agreed by Customer and Converged. Installation service prices are contingent on the assumption that Converged will be provided with a complete list of the installation sites at least two (2) weeks prior to the commencement of the service and that Converged will be allowed complete flexibility to build and control the schedule of site implementations. Cancellations of scheduled site visits by Customer will be provided to Converged in writing no less than five (5) business days prior to such scheduled site visit.

ARTICLE 4. WARRANTY, LIMITATION OF LIABILITY & INSURANCE

4.1 Warranty. Converged warrants that Services hereunder will be performed by qualified individuals in a professional and workmanlike manner conforming to generally accepted industry standards and practices, and in accordance with all applicable

law, regulations, codes and standards of government agencies or authorities having jurisdiction. To the extent that Converged provides off the shelf hardware or software to Customer, Customer shall look solely to the manufacturer of the hardware or software for correction of any problems that may arise with respect thereto, and for indemnification for any claims of infringement, and all transferable manufacturer and supplier warranty rights are hereby assigned without representation or warranty by Converged to Customer. Converged shall provide reasonable cooperation to Customer in asserting any applicable warranty and indemnification claims against such manufacturers. Configuration of hardware or software in accordance with manufacturer's instructions shall not be deemed to change the hardware or software's status as off the shelf.

4.2 Intellectual Property. Converged warrants that Customer shall have the right to use any Licensed Materials delivered to Customer under this Agreement. Use of Licensed Materials which are provided by third parties shall be subject to the license terms then in effect from such third party. In the event of any claim, action, proceeding or suit by a third party against Customer alleging an infringement of any United States patent, United States copyright, or United States trademark, or a violation in the United States of any trade secret or proprietary rights by reason of the use, in accordance with Converged's Specifications, of any Product or Licensed Materials furnished by Converged to Customer under this Agreement, Converged, at its expense, will defend Customer, subject to the conditions and exceptions stated in Section 4.1 and below. Converged will reimburse Customer for any cost, expense or attorneys' fees, incurred at Converged's written request or authorization, and will indemnify Customer against any liability assessed against Customer by final judgment on account of such infringement or violation arising out of such use.

If Customer's use shall be enjoined or in Converged's opinion is likely to be enjoined, Converged will, at its expense and at its option, either (1) replace the enjoined Product or Licensed Materials furnished pursuant to this Agreement with a suitable substitute free of any infringement; (2) modify it so that it will be free of the infringement; or (3) procure for Customer a license or other right to use it. If none of the foregoing options are practical, Converged will remove the enjoined Product or Licensed Materials and refund to Customer any amounts paid to

Converged therefor less a reasonable charge for any actual period of use by Customer.

Customer shall give Converged prompt written notice of all such claims, actions, proceedings or suits alleging infringement or violation and Converged shall have full and complete authority to assume the sole defense thereof, including appeals, and to settle same. Customer shall, upon Converged's request and at Converged's expense, furnish all information and assistance available to Customer and cooperate in every reasonable way to facilitate the defense and/or settlement of any such claim, action, proceeding or suit.

No undertaking of Converged under this Agreement shall extend to any alleged infringement or violation to the extent that it: (1) arises from adherence to design modifications, specifications, drawings, or written instructions which Converged is directed by Customer to follow, but only if such alleged infringement or violation does not reside in corresponding commercial Product or Licensed Materials of Converged's design or selection; or (2) arises from adherence to instructions to apply Customer's trademark, trade name or other company identification; or (3) resides in a Product or Licensed Materials which are not of Converged's origin and which are furnished by Customer to Converged for use under this Agreement; or (4) which originate with third party suppliers and are resold or licensed to Customer without modification by Converged (other than configuration); or (5) relates to uses of Product or Licensed Materials provided by Converged in combinations with other Product or Licensed Materials, furnished either by Converged or others, which combination was not installed, recommended or otherwise approved by Converged.

The liability of Converged and Customer with respect to any and all claims, actions, proceedings or suits by third parties alleging infringement of patents, trademarks or copyrights or violation of trade secrets or proprietary rights because of, or in connection with, any Products or Licensed Materials furnished pursuant to this Agreement shall be limited to the specific undertakings contained in this clause.

4.3 EXCEPT AS OTHERWISE EXPRESSLY SET FORTH IN THIS SECTION 4 OR AN APPLICABLE EXHIBIT, CONVERGED MAKES NO WARRANTY AS TO THE RESULTS THAT MAY OR MAY NOT BE OBTAINED BY CUSTOMER IN CONNECTION WITH THE SERVICES AND CONVERGED

DISCLAIMS ANY AND ALL WARRANTIES, WHETHER EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO THE IMPLIED WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NONINFRINGEMENT. CUSTOMER'S SOLE AND EXCLUSIVE REMEDY FOR BREACH OF WARRANTY SHALL BE CONVERGED'S OBLIGATION TO REPAIR, REPLACE, CREDIT, OR REFUND AS SET FORTH ABOVE IN THIS WARRANTY.

Converged makes no warranty with respect to defective conditions or non-conformities resulting from the following: Customer's modifications, misuse, neglect, accident, or abuse; improper wiring, repairing, splicing, alteration, installation, storage, or maintenance; use in a manner not in accordance with Converged or its vendor's Specifications or operating instructions or failure of Customer to apply modifications or corrections previously provided by Converged. In addition, Converged makes no warranty with respect to Products which have had their serial numbers or month and year of manufacture removed or altered. No warranty is made that Software will run uninterrupted or error free, and Converged makes no warranty with respect to defects related to Customer's data base errors or intrusions by third parties, malicious software or malware. Converged shall not be obligated to provide Software upgrades or new features except as provided in a separate maintenance agreement.

4.4 Limitation of Liability. Neither Party nor Converged's subcontractors or suppliers shall be liable to the other Party for any indirect, incidental, special or consequential damages arising in connection with this Agreement, including, without limitation, lost profits or loss or damage to data arising out of the use, partial use or inability to use the results of the Services, whether in an action in contract, tort, strict liability or negligence, even if advised of the possibility of such damages. Except as provided herein, in no event shall either Party's or Converged's subcontractors' or suppliers' liability to the other Party arising out of this Agreement, whether in contract, tort or otherwise, exceed the amount paid or owing to Converged by Customer for the Service provided under an applicable Exhibit and out of which such liability arises. This limitation is intended to limit Converged's liability and shall apply notwithstanding any failure of essential purpose of any limited warranty. The limitations of liability set

forth herein shall not limit either Party's liability to the other Party for direct damages resulting from death or bodily injury, damage to real property or tangible personal property, breach of confidentiality, or indemnification obligations specified in any applicable Exhibit.

4.5 Insurance. During the performance of Services Converged shall maintain the following minimum insurance coverage. Converged shall provide a certificate of insurance evidencing such coverage upon request.

(a) Worker's Compensation and employees' liability, per statutory requirements;

(b) Comprehensive General Liability insurance including contractual liability coverage with the following limits:

Bodily Injury: Each Person: \$1,000,000 USD; Each Accident: \$1,000,000 USD

Property Damage: Each Accident: \$1,000,000 USD; Aggregate: \$2,000,000 USD

ARTICLE 5. TERM AND TERMINATION

5.1 Term. This Agreement shall commence on its Effective Date and remain in effect until terminated in accordance with this Article 5.

5.2 Termination. Customer or Converged may terminate this agreement for convenience if there is no work then in process under any Exhibit. Customer may terminate this Agreement or an individual Exhibit if Converged is in material breach of the Exhibit terms or this Agreement and has not cured the breach within thirty (30) days following receipt of written notice specifying the breach. Converged may terminate any Exhibit or this Agreement if Customer is in material breach of its obligations under the applicable Exhibit or this Agreement and has not cured the breach within thirty (30) days following receipt of written notice specifying the breach. Consent by either Party to extend the cure period shall not be unreasonably withheld, so long as the breaching Party has commenced cure during the thirty (30) day notice period and pursues cure of the breach in good faith. Either Party may terminate this Agreement immediately by written notice to the other Party upon:

- a. the other Party becoming insolvent;
- b. the other Party's initiation of any proceeding under Federal bankruptcy or state insolvency law regarding its own bankruptcy, reorganization, or insolvency;
- c. the initiation of any proceeding under Federal bankruptcy or state insolvency laws against

the other Party which is not dismissed within thirty (30) days;

d. the appointment of a receiver or a similar officer for the other Party or for a substantial part of the other Party's property; or

e. the other Party making an assignment for the benefit of creditors or otherwise being reorganized for the benefit of creditors.

Termination of this Agreement shall not limit either Party from pursuing any other remedies available to it, including injunctive relief, nor shall termination relieve Customer of its obligation to pay all charges that have accrued prior to such termination. If Converged terminates the Agreement as specified above Customer shall be liable for and shall pay all costs, expenses and fees incurred by Converged as a result of such termination. Upon Customer's request, Converged shall return to Customer any identified data, records, or other materials provided by Customer to Converged.

ARTICLE 6. CONFIDENTIALITY

6.1 Nondisclosure. By virtue of this Agreement, either Party may have access to information that is confidential to the other ("Confidential Information"). Confidential Information shall include any Converged program licenses and all information that would reasonably be considered confidential, including but not limited to the disclosing party's employees, organization, customers, plans, activities, policies, or products and including any written reports, findings, conclusions, recommendations, or reporting data and analysis prepared by Converged and provided to Customer under this Agreement. It is the express intent of this Section that neither Party discloses to any third party any information it learns concerning the business of the other Party in the performance of Services hereunder. A Party's Confidential Information shall not include information that (a) is or becomes a part of the public domain through no act or omission of the other Party; or (b) was in the other Party's lawful possession prior to the disclosure and had not been obtained by the other Party either directly or indirectly from the disclosing Party; or (c) is lawfully disclosed to the other Party by a third party without restriction on disclosure or; (d) is independently developed by the other Party. A Party may disclose Confidential Information as required by law or governmental ruling provided, however, that before making such disclosure, the Party of whom disclosure is required shall use reasonable commercial efforts to give the other Party an adequate opportunity to interpose an objection and/or take action to assure confidential handling of such information. The Parties agree, both

during the term of this Agreement and for a period of four (4) years after termination of this Agreement, to hold each other's Confidential Information in confidence. The Parties agree not to make each other's Confidential Information available in any form to any third party or to use each other's Confidential Information for any purpose other than the implementation of this Agreement. Each Party agrees to use the same degree of care that it uses to protect its own confidential information of a similar nature and value, but in no event less than a reasonable standard of care, to ensure that Confidential Information is not disclosed or distributed by its employees or agents in violation of the provisions of this Agreement. Notwithstanding the above, if either party provides the other with product comments or suggestions ("Feedback"), the Recipient shall the right to use such Feedback at its discretion without payment, subject to any patent rights retained by the Disclosing party.

6.2 Residuals. "General Knowledge" means ideas, concepts, know-how or techniques related to the deliverables herein that are retained in the unaided memories of either Party's employees who have had access to information consistent with terms of this Agreement. An employee's memory is unaided if the employee has not intentionally memorized the information for the purpose of retaining and subsequently using or disclosing it. Nothing in this Agreement precludes either Party from using General Knowledge. General Knowledge does not include trade secrets. All General Knowledge is subject to all valid patents and copyrights. Nothing in this provision shall give either Party the right to disclose, publish or disseminate the source of General Knowledge or the financial, statistical or personal data or business plans of the other Party.

ARTICLE 7. OTHER PROVISIONS

7.1 Publicity. Provided that Converged maintains the confidentiality of all proprietary and Confidential Information, Converged may include Customer's name in its published client lists and may issue to the general public announcements and written statements concerning the existence of this Agreement and the general substance of projects to be performed and performed hereunder. Converged shall be entitled to develop and publish on its web-site a case study, detailing the Services provided hereunder, and Customer expressly consents thereto provided that Converged shall first obtain Customer's approval of the case study before publishing same, which approval shall not be unreasonably withheld or delayed.

7.2 Compliance with Customer's Policies. Converged agrees to comply with Customer's reasonable standard safety and security policies when on Customer's premises.

7.3 Relationship between Parties. Converged is an independent contractor; nothing in this Agreement shall be construed to create a partnership, joint venture, or agency relationship between the Parties. Nothing in this Agreement shall be interpreted or construed as creating or establishing the relationship of employer and employee between Customer and either Converged or any employee or agent of Converged. Each Party will be solely responsible for payment of all compensation owed to its employees, as well as federal and state income tax withholding, Social Security taxes, and unemployment insurance applicable to such personnel as employees of the applicable Party. The Parties hereby acknowledge and agree that Customer shall have no right to control the manner, means, or method by which Converged performs Services pursuant to this Agreement. Customer shall be entitled only to direct Converged with respect to the elements of Services to be performed by Converged, to inform Converged as to where and when such Services shall be performed, and to review and assess the performance of such Services by Converged for the limited purposes of assuring that such Services have been performed in accordance with this Agreement.

7.4 Non solicitation. Converged and Customer agree that during the term that any Service is provided under an Exhibit and for a period of six (6) months thereafter, neither shall solicit for employment or retention as an independent contractor any employee or former employee of the other who provided any Services pursuant to this Agreement. "Solicit" shall not be deemed to include advertising in newspapers, web sites or trade publications available to the public.

7.5 Nonexclusivity. This Agreement is nonexclusive, and Customer and Converged may contract with other entities to perform similar or related services.

7.6 Notice. All notices to be given by the Parties hereto shall be in writing unless otherwise stated and shall be properly given when personally delivered or when sent by registered or certified mail or by a delivery service providing proof of delivery. Notices to Customer will be addressed as specified on the signature page of this Agreement. Notices to Converged will be sent to Converged Technology

Group, Inc., 2990 Express Drive South, Islandia, NY 11749, Attention: CFO. The date of notice shall be deemed to be the date of receipt, except that when notice is mailed it shall be deemed to be the date of mailing so long as the Postal Service certifies actual delivery; a refusal of a registered or certified notice shall be deemed to constitute actual delivery hereunder. Notices sent by electronic mail shall be effective only if the receipt of such electronic mail notice is acknowledged.

7.7 Waiver. The waiver by either Party of any default or breach of this Agreement shall not constitute a waiver of any other or subsequent default or breach. Except for actions for nonpayment or breach of either Party's intellectual property rights, no action, regardless of form, arising out of this Agreement may be brought by either Party more than one (1) year after the Party discovered' or should have discovered, the basis for the cause of action.

7.8 Converged reserves and Customer agrees that Converged shall have a purchase money security interest in Products or Licensed Materials furnished under this Agreement until such time as Converged has been paid in full. Customer also agrees that this Agreement may be filed as a financing statement (or as other evidence of Converged's purchase money security interest) with any state or local jurisdiction. On request, Customer shall execute and deliver a financing statement or such other documents prepared by Converged so that Converged may perfect its security interest.

7.9 Force Majeure. Neither Party shall be in default or otherwise liable for any delay in or failure of its obligations or performance under this Agreement where such delay or failure arises by reason of any Act of God, or any government or any governmental body, acts of war or terrorism, the elements, strikes or labor disputes, malicious software or other similar or dissimilar cause beyond the control of such Party; provided, however, that such events shall in no case excuse the payment obligations of either Party under this Agreement.

7.10 Assignment. Neither this Agreement nor any rights or obligations hereunder shall be transferred or assigned by Converged or Customer without the prior consent of the other Party, which consent shall not be unreasonably withheld. Notwithstanding the above, either Party may, upon written notice to the other Party, assign this Agreement in whole, including all of its rights and obligations hereunder, to a wholly owned subsidiary or to a surviving entity in

connection with any merger, acquisition or consolidation.

7.11 Survival of Terms. Any terms of this Agreement, including but not limited to those relating to Fees, Payment and Taxes, Infringement, Warranty, Remedy and Limitation of Liability, which by their nature are intended to extend beyond this Agreement's expiration or termination will remain in effect until fulfilled and will apply to respective successors and assignees of the Parties. If any provision in this Agreement shall be held to be invalid or unenforceable, the remaining portions shall remain in effect. In the event such invalid or unenforceable provision is considered an essential element of this Agreement, the parties shall promptly negotiate a replacement.

7.12 Governing Law. This Agreement shall be interpreted and governed by the substantive laws of the State of New York. The United Nations Convention on Contracts for the International Sale of Goods shall not apply to this Agreement or any order issued under this Agreement.

7.13 Arbitration. In the event of any controversy or claim arising out of this Agreement the Party raising the dispute will promptly notify the other Party in writing of the nature of the dispute and the factual background. Within fifteen (15) calendar days following such notice, the Parties will attempt in good faith to reach a reasonable solution to the dispute, including escalation to the vice-president of each company responsible for the subject matter of the dispute. Any dispute remaining after such escalation shall be resolved only by arbitration before a single arbitrator knowledgeable in the technology industry in accordance with the commercial arbitration rules of the American Arbitration Association, and judgment upon the award rendered by the arbitrator may be entered in any court having jurisdiction thereof. The place of arbitration shall be in New York, NY. Each Party shall provide to the arbitrator, no later than fifteen (15) calendar days following the date of the arbitrator's appointment, a statement, including all supporting documents or other evidence on which such Party relies as to why it believes that the dispute should be resolved in its favor, and all such materials and any other materials provided to the arbitrator by either Party shall simultaneously be provided by such Party to the other Party. The arbitrator may permit discovery of documents or depositions only upon application of a party and provided that the arbitrator finds that the likely benefit of such discovery is greater than the burden entailed. Within twenty (20) calendar days

after the submission of such statements by all Parties and the conclusion of any permitted discovery, the arbitrator shall hold a hearing with respect to the dispute. At such hearing, the arbitrator may, in his or her sole discretion, allow the Parties to call and cross-examine witnesses, make any additional arguments or submit any additional materials to support the position taken in their respective statements. The arbitrator shall enter an award within fifteen (15) calendar days following the hearing provided for herein. Nothing shall preclude either Party from making an application to the arbitrator, for good cause, to expedite the proceedings, nor restrict the arbitrator from granting such an application. In addition to such other relief as the arbitrator may award, the arbitrator shall be vested with jurisdiction and shall award to the prevailing Party its reasonable attorney's fees and expenses (including an allotment for in-house counsel fees), and all other costs associated with the arbitration. The arbitrator shall not be authorized to award punitive damages. The award rendered by the arbitrator shall be final, and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction thereof.