CONVERGE TERMS AND CONDITIONS

These Terms and Conditions (these "**Terms**") apply to, and govern (i) any signed explicit order form for Products and/or Services directly with Converge or an Authorised Reseller (as such terms are defined below); and (ii) any unsigned implicit order arising out of any receipt of Converge Hardware and/or Services or use of Converge Software (as such terms are defined below) (each, an "**Order**"). These Terms are hereby incorporated by reference into, and made a part of, such Order and these Terms and such Order are collectively referred to as this "**Agreement**".

This Agreement constitutes a legally binding agreement between Octagon I/O Limited (trading as Converge) whose registered address is at 5 Deansway, Worcester, England WR1 2JG, UK Company No. 09329199 (or the other Converge entity specified in the Order, if applicable) ("**Converge**") and the customer specified in the signed Order (the "**Customer**"), subject to clause 1.5 below. An individual entering into this Agreement on behalf of the Customer, represents that he/she has the right, authority, power, and capacity to act on behalf of the Customer and to bind the Customer to this Agreement.

To the extent of any conflict or inconsistency between a provision in these Terms and a provision or definition in a signed Order, these Terms shall prevail, unless the Order specifically overrides with express reference to the conflicting provision. To the extent Converge and the Customer have agreed on bespoke terms and conditions in the form of a framework agreement or a distribution agreement covering a broader commercial relationship and the Order falls within scope of such agreement (the "**Bespoke Terms**") and such Bespoke Terms are set forth in a legally binding agreement, then in the event of any conflict between the Bespoke Terms and these Terms: (i) the Bespoke Terms shall prevail solely for the conflicting provision; and (ii) these Terms shall prevail for any issues not covered by the Bespoke Terms and/or in which there is no conflict. For the avoidance of doubt, if the Customer is an Authorised Reseller (as such term is defined below) and it has procured that the Bespoke Terms are binding on all Product Users, then this clause also shall extend to each such Product User.

1.   **GENERAL**
1.1   **Definitions.** The following capitalized terms shall have the following meanings as set forth below:

"**Affiliate**" means with respect to either Party, any person, organisation or entity controlling, controlled by or under common control with, such Party.

"**Application**" has the meaning set forth in clause 3.1(d) herein.

"**Authorised Reseller**" means any entity that has entered into a legally binding agreement with Converge or an Affiliate of Converge to act as Converge's authorised reseller and/ or distributor of Products in specific regions and territories.

"**Authorised Users**" means those employees of the Customer and/or End User, and/or other individual(s) as agreed in writing between the Customer and Converge, who are authorised by Customer and/or End User to access, use, and receive the Products and Services, in accordance with this Agreement.

"**Business Day**" means any day which is not a Saturday, Sunday or public holiday in London, United Kingdom, in the country in which the Customer is located, and/or in the country where the Sites are located.

"**Calibration Data**" means concrete maturity calibration data created for the purposes of specifying a relationship between maturity and strength for a specific concrete mix**.**

"**Connected Hardware**" means the Third Party Hardware, Customer Hardware, and/or Converge Hardware, in each case as used by any Product User to send Sensor Data and Converge Data to the Converge SaaS.

"**Construction Data**" means: (i) any and all data (other than Converge Data and Sensor Data) provided to Converge by any entity involved in any Site (including, without limitation, the principal contractor, the principal contractor's client, the structural engineer, or any supplier or subsidiary of the principal contractor to the Site), including, without limitation, BIM models, construction schedules, and Calibration Data; and (ii) any data relating to the End User, or any third party, which are necessary and relevant for Converge or its Affiliates to provide the Services under this Agreement.

"**Consumable Hardware**" means any Converge Hardware that is specified in the Order as being purchased by the Customer (other than Rental Hardware).

"Converge API" means the relevant Converge application programming interface (API) made available to the Customer by Converge pursuant to the Service Scope and as set forth in the Order.

"Converge Data" means the data and intelligence of any kind generated by Converge Software, including, without limitation, on the basis of: (i) Sensor Data and/or Construction Data; and/or (ii) the information and data collected or received by Converge and/or Customer while providing the services and Products pursuant to this Agreement.

"Converge Hardware" means: (i) any hardware designed or produced by Converge or its Affiliates; and/or (ii) any hardware supplied by Converge or its Affiliates to any Product User.

"Converge Materials" has the meaning set forth in clause 9.1 herein.

"Converge SaaS" means Converge's cloud platform that may be made available on a subscription basis and which operates in connection with either: (i) Converge Hardware; (ii) Licensed Programs; (iii) Sensor Data; or (iv) Construction Data.

"Converge SaaS-Enabled Consumable Hardware" means Consumable Hardware that: (i) can transmit data to the Converge SaaS on a stand-alone basis;, and (ii) is supplied with access to basic features of Converge SaaS.

"Converge Software" means any software designed, written, hosted or provided by Converge or its Affiliates, including, without limitation, as the case may be, a Licensed Program and/or the Converge SaaS.

"Documentation" means whatever Product-related user guides or manuals Converge provides or makes available. Unless the context clearly requires otherwise, references herein to "Products" shall be deemed to include the corresponding Documentation

"Effective Date" has the meaning set forth in clause 16.1 of this Agreement.

"End User" means each company or entity that has deployed Converge Hardware and/or used Converge Software. For the avoidance of doubt, the Customer always shall be considered as an End User.

"Enhancement" means any improvement, derivative work, customisation, modification, and/or enhancement.

"Feedback" means any ideas, suggestions, or other feedback of or about any Products, Services, Documentation, Sensor Data, and/or Converge Data provided by any Product User.

"Fees" means the fees and other charges payable by the Customer to Converge for the Products and/or Services, as set out in the Order, or as subsequently expressly agreed between the Parties in writing (including by email).

"Fixed Term Subscription" means a subscription for a fixed term for the Converge Software, as detailed in the Order.

"Intellectual Property" means any and all inventions, discoveries, improvements, works of authorship, technical information, data, databases, know-how, show-how, designs, ideas, drawings, business names, domain names, logos, utility models, topography and semiconductor mask works, specifications, formulas, methods, techniques, processes, software (including, without limitation, object code, source code, application programming interface (API), and non-literal aspects), algorithms, architecture, records, documentation, and other similar intellectual property or technology, in any form and embodied in any media, anywhere in the world.

"Intellectual Property Rights" means any and all rights, titles, and interests (under any jurisdiction or treaty, whether protectable or not, whether registered or unregistered, and whether vested, contingent, or future) in and to Intellectual Property, and includes, without limitation, patents, copyright and similar authorship rights, personal rights , trade secret and similar confidentiality rights, design rights, trademark, trade name, trade dress and similar branding rights, as well as: (i) all applications, registrations, renewals, extensions, continuations, continuations-in-part, divisions or reissues of the foregoing rights; and (ii) all goodwill associated with the foregoing rights.

"Law" means any law, statute, ordinance, rule, or regulation of any relevant jurisdiction.

"License" has the meaning set forth in clause 3.1 herein.

"Licensed Program" means as the case may be: (i) firmware embedded within Converge Hardware; (ii) a software product developed by Converge that operates in connection with Converge Hardware and/or Converge SaaS; and/or (iii) a Converge mobile application that operates in connection with Converge Hardware and/or Converge SaaS. References herein to a Licensed Program shall be deemed to include any accompanying Documentation.

"Loss Adjustment Fee" means the fee payable by the Customer for any damage caused to, or loss of, Converge Hardware, as detailed in the Order.

"Maintenance Events" means maintenance events carried out to the Converge Software as notified to the Customer from time to time that may require interruption to such Converge Software.

"Maturity Standard" means the American Society for Testing and Materials International C1074 standard specification entitled "Standard Practice for Estimating Concrete Strength by Maturity Method" and any updates thereto or any comparable standard (in terms of the same level of quality and subject matter) in the territory in which the Sites are located, as the case may be.

"Minimum Notice Period" means the minimum notice period for terminating the Agreement, as specified in the Order or these Terms.

"Minimum Term" means the minimum Agreement term, as specified in the Order or these Terms.

"Normal Business Hours" means 9.30 am to 5.30 pm London time, each Business Day in the United Kingdom or as otherwise detailed in the Order.

"Parties" means Converge and the Customer and each is a "**Party**."

"Personal Data" has the meaning set out in the General Data Protection Regulation (EU) 2016/679, as well as any laws that implement the foregoing, and any relevant regulations in the relevant country(ies) pursuant to the Products being deployed and the Services used under the Order.

"Products" means as the case may be, the Converge Hardware, Converge Software, and/or other products or services supplied by Converge to the Customer, as specified in the Order.

"Product User" means the Customer, an Authorised User, and/or an End User, as the case may be. For the avoidance of doubt: (i) an "Authorised User" is an individual person; (ii) an "End User" is the entity that employs or has hired an Authorised User; and (iii) the "Customer" is the entity named above, which places the Order for Products. For the avoidance of doubt, if an Affiliate of the Customer uses any Product, then it shall be considered as an End User.

"Product User Operating Environment" means the End User's information technology infrastructure pertinent to the supply and operation of the Products.

"Professional Services" means installation, setup, deployment, configuration, customisation, integration, training, or other professional services.

"Professional Services SOW" has the meaning set forth in clause 2.4 herein.

"Rental Hardware" means any Converge Hardware that is specified in the Order as being rented or loaned (as opposed to Consumable Hardware).

"Reports" means the analysis reports generated by the Converge SaaS in relation to a Site, and which is made accessible to an Authorised User.

"Rolling Subscription" means a rolling subscription term for the Converge Software, as detailed in the Order.

"Sensor Data" means the data collected: (i) from any sensor or any Hardware on any premises on which Products are used or deployed; and (ii) that is sent to, transmitted to, uploaded to, or captured by the Converge Software.

"Service Scope" has the meaning set forth in clause 1.4 herein.

"Services" means as the case may be, Professional Services and/or Support Services.

"Set Up Services" has the meaning set forth in clause 2.1 herein.

"Sites" means the construction sites on which Products have been, will be, and/or are intended to be deployed.

"Site Implementation Form" means the information form or document o be completed by each Product User prior to any deployment of Converge Hardware.

"Specification" means a technical and or functional specification for the Converge Hardware or Converge Software (as the case may be) that is made available on-line or otherwise provided by Converge to the Customer.

"Subscription Tiers" means the monthly subscription tier for the Converge SaaS, against which Fees shall be payable, if applicable and as specified in the Order.

"Support Services" means the support and maintenance services Converge provides in respect of the Products, as set forth in **Schedule 1** *(Support Services)* attached hereto.

"Third Party Hardware" means any hardware used by a Product User in relation to the Converge SaaS, other than Converge Hardware.

"Third Party Products" has the meaning set forth in clause 5 herein.

"Training Services" has the meaning set forth in clause 2.2 herein.

1.2 **Customer PO.** If Customer wishes or is required to issue a purchase order to give effect to the Order or in order for an invoice to be paid, then Customer must promptly provide such purchase order to Converge. Any terms or conditions (whether printed, hyperlinked, or otherwise) in a purchase order or related correspondence, which purport to modify or supersede these Terms and/or the Order, shall be void and of no effect.

1.3 **Hardware Terms.** If, as set out and as specified in the Order, Customer is purchasing, leasing or using Consumable Hardware and/or Rental Hardware , the terms of **Schedule 2** (*Converge Hardware*) attached shall also apply.

1.4 **Service Scope.** The permitted scope, volume and other parameters (such as regarding access, usage, consumption, Sites, Subscription Tiers, features, and duration) for the Products and Services shall be as set forth in the Order (the "**Service Scope**"). Regardless of the Service Scope, each Product User may access, use, and receive the Products and Services solely for its own internal business purposes and solely for delivery at the Site(s) by such Product User. Customer shall promptly notify Converge in writing as soon as Customer becomes aware of any access or use in excess of the Service Scope, or any other unauthorised access or use of any Products.

1.5 **No Written Order Scenario.** Notwithstanding anything to the contrary stated herein, in the event of an unsigned implicit Order, including, without limitation, any free samples given out by Converge, the following provisions shall apply:

(a) The definition of "Customer" shall mean the legal entity that uses Converge Hardware, Converge Software, and/or Services and all terms relating to the Customer set forth in these Terms shall apply to such entity;

(b) Converge shall have absolute discretion in determining the Service Scope, if any;

(c) The relevant Product User is only entitled to access or use those parts of the Converge Software that Converge makes available to such Product User, and the Product User may only do so for evaluation purposes; and

(d) Converge shall have no obligation or liability of any kind whatsoever to any such Product User, and cease to have any obligations towards such Product User under this Agreement.

1.6 **Authorised Users and Product Users.** Subject to (and without expanding or modifying) the Service Scope, Customer may permit the permitted number of Authorised Users specified in the Order to access, use, and receive the Products and Services, subject to the following conditions:

(a) Customer first shall inform Converge in writing of the identity of such Authorised Users, if not already specified in the Order;

(b) each Product User, in writing, shall acknowledge and agree to be legally bound by these Terms, (including without limitation to access, use, and receive the Products and Services solely on an internal business basis);

(c) if Customer is an Authorised Reseller, then Customer shall ensure that each Product User has accepted and is legally bound by these Terms;

(d) Customer shall remain primarily liable for the acts and omissions of each Product User as fully as if they were the acts and omissions of Customer itself, and references herein to "Customer" shall be construed accordingly;

(e) Customer's agreement with any Product User must not conflict or be inconsistent with any of the provisions of this Agreement (such as regarding ownership rights, confidentiality, data usage, licence rights, disclaimers, and liability limitations);

(f) Customer undertakes that: (i) the maximum number of Authorised Users that it authorises to access, use, and receive the Products and Services shall not exceed the number of Authorised Users permitted in the Order (if any) and for the relevant Subscription Tier (if any); and (ii) unless otherwise agreed in writing or in the Order, the Authorised Users shall all be employees of Customer;

(g) Customer may, from time to time, request an increase to the number of Authorised Users and Converge shall evaluate such request for each additional Authorised User and respond to the Customer with approval or rejection of the request (such approval not to be unreasonably withheld);

(h) Converge shall have no obligation or liability towards any End User (other than the Customer), Authorised User, or Customer Affiliate, and such entity or person shall not be deemed third party beneficiaries under this Agreement; and

(i) Customer shall only allow Authorised Users who have been issued with a username and password to access the Services, use all reasonable endeavours to prevent any unauthorised access to, or use of, the Converge Software and, in the event of any such unauthorised access or use, promptly notify Converge.

To the extent permissible by law, Converge shall not be liable for any loss that the Customer, an Authorised User or any third party may incur as a result of any misuse of any username or password or of any part of the Converge Software, whether with or without Customer's knowledge.

1.7 **Joint Ventures and Parent Companies.** If the Customer is a joint venture made up of two or more corporate entities, each and every corporate entity that is a party to such joint venture shall

be jointly and severally liable under this Agreement. If the Customer is a parent company in which one or more of its subsidiaries uses any Products or Services, each and every corporate entity of such parent company that uses such Products and Services shall be jointly and severally liable together with its parent company under this Agreement.

2. SERVICES

2.1 **Setup.** Converge shall provide initial setup and integration services for the applicable Site(s), as specified in the Order or in a Setup Statement of Work attached to the Order (the "**Setup Services**"). The Setup Services shall be subject to Customer's payment of the applicable Fees therefor (as specified in the Order).

2.2 **Training.** Converge shall provide training services for the applicable Site(s), as specified in the Order or in a Training Statement of Work attached to the Order (the "**Training Services**"). The Training Services shall be subject to Customer's payment of the applicable Fees therefor (as specified in the Order).

2.3 **Support Services.** Converge shall provide the Support Services for the applicable Site(s). The Support Services shall be subject to Customer's payment of the applicable Fees therefor (as specified in the Order).

2.4 **Other Professional Services.** In the event Customer wishes to receive Professional Services, Customer shall request same from Converge in writing and, subject to Converge's agreement in its sole discretion to provide the Professional Services, such Professional Services shall be set out in the Order or related Professional Services Statements of Work (that reference a corresponding price quotation to which it relates) to this Agreement negotiated and executed by both Parties (each, a "**Professional Services SOW**"). Professional Services shall be charged in accordance with the applicable Order or Professional Services SOW. Each Professional Services SOW is hereby deemed incorporated into, and made a part of, this Agreement by reference. To the extent of any conflict or inconsistency between the main body of this Agreement and a Professional Services SOW, this Agreement shall prevail, unless and to the extent that the Professional Services SOW expressly states otherwise and only to the conflicting provision.

2.5 **Special Provisions for Authorised Resellers.** Notwithstanding anything stated to the contrary herein and unless otherwise agreed by Converge:

(a) The Services set forth in clauses 2.1 through 2.3 apply only to direct sales to the Customer and not to indirect sales when the Customer is acting as an Authorised Reseller. For the avoidance of doubt, only the Services set forth in clause 2.4 shall apply to indirect sales through an Authorised Reseller and any Product User that purchased or received any Product through an Authorised Reseller shall not be entitled to any other Service, unless Converge and such Product User agree and subject to additional fees; and

(b) No Authorised Reseller is permitted to sell, distribute, resell, offer for sale, and/or make available, directly or indirectly, any Product to any person or entity outside of the agreed territory and/or agreed scope of any binding distribution agreement or resale agreement between such Authorised Reseller and Converge.

3. CONVERGE SOFTWARE LICENSE

3.1 For the applicable term set forth in clause 16 hereof and subject to the terms and conditions of this Agreement and in consideration for the Fee(s), Converge grants to each End User a limited, non-exclusive, non-assignable, non-sublicensable licence and right, during the term of this Agreement, to do the following (collectively, the "**License**"):

(a) in respect of a Licensed Program that is firmware, to run the firmware on the corresponding Converge Hardware specified in the Order;

(b) in respect of all other Licensed Programs, and for each Authorised User, to install and internally use the Licensed Program on a single mobile device and one other non-mobile device owned or controlled by the End User;

(c) permit each of its Authorised Users to access and use the Converge SaaS; and

(d) access Converge's APIs and documentation only as necessary to develop, test and support an integration of the End User's application (an "**Application**") with the Services.

3.2 The Licence is subject to the applicable Service Scope. For the avoidance of doubt, if no software subscription is in effect, but access to the Converge SaaS is still provided to Product Users pursuant to the provision of Converge SaaS-Enabled Consumable Hardware, such Product Users shall only be entitled to access and use the necessary Converge SaaS feature that enable the collection of Sensor Data from any hardware Product (and subject to the applicable Service Scope).

3.3 For the avoidance of doubt, the License shall terminate automatically for any employee, agent and/or independent contractor of the End User who ceases to be an Authorised User.

4.   USAGE RESTRICTIONS

4.1   As a condition to any rights or licences (including, without limitation, the License) granted to Customer under this Agreement, and except as expressly permitted otherwise by this Agreement, Customer shall not do, and shall procure that each End User and Authorised User does not do, any of the following with respect to any Converge Materials, in whole or in part: (a) copy, attempt to duplicate, or attempt to develop any competing product with any Converge Materials; (b) sell, resell, assign, transfer, lease, rent, sublicence, remarket, or otherwise distribute or make available Converge Materials to any third party (such as offering it as part of a time-sharing, outsourcing or service bureau environment); (c) publicly perform, display, or communicate Converge Materials; (d) modify, alter, adapt, arrange, or translate Converge Materials; (e) decompile, disassemble, decrypt, reverse engineer, extract, or otherwise attempt to discover the source code or non-literal aspects (such as the underlying structure, sequence, organisation, file formats, non-public APIs, ideas, or algorithms) of Converge Materials; (f) remove, alter, or conceal any copyright, trademark, patent, or other proprietary rights notices displayed or appearing on or in Converge Materials; (g) circumvent, disable or otherwise interfere with security-related or technical features or protocols of Converge Materials; (h) make a derivative work of Converge Materials, or use Converge Materials to develop or build any service or product that is the same as (or substantially similar to), or otherwise competitive with, Converge Materials; (i) store or transmit any robot, malware, Trojan horse, spyware, or similar malicious item (for example, by way of Construction Data) intended (or that has the potential) to damage or disrupt Converge Materials; (j) employ any hardware, software, device, or technique to pool connections, devices or users that directly access or use Converge Materials (sometimes referred to as 'virtualisation', 'multiplexing' or 'pooling') in order to circumvent any part of the Service Scope; (k) forge or manipulate identifiers in order to disguise the origin of any Calibration Data, Construction Data, or other data or content inputted to, or transmitted via, Converge Materials; (l) take any action that imposes or may impose (as determined in Converge's sole discretion) an unreasonable or disproportionately large load on the servers, network, bandwidth, or other cloud infrastructure that operate or support Converge Materials, or otherwise systematically abuse or disrupt the integrity of such servers, network, bandwidth, or infrastructure; (m) access or use Converge Materials in violation of any applicable Laws; (n) access Converge APIs in any manner that (i) compromises, breaks or circumvents any of Converge's technical processes or security measures associated with the Services, (ii) poses a security vulnerability to Product Users of the Services, or (iii) tests the vulnerability of Converge's systems or networks; and/or (o) attempt to use Converge APIs in a manner that exceeds rate limits, or constitutes excessive or abusive usage.

4.2   Converge reserves a right to audit the Customer's Application to ensure it does not violate Converge's terms and policies. The Customer shall cooperate with inquiries related to such an audit and provide Converge with evidence that the Customer Application(s) is in full compliance with Converge's terms and policies.

5.   THIRD PARTY PRODUCTS

Converge may supply the Customer with third party products, software or services ("**Third Party Products**") as part of the Services. Where Converge notifies Customer that licences for Third Party Products are required, the Customer shall be responsible for entering into and complying with, and ensuring that Affiliates, Product User, and End Users each comply with the terms of those licences, and Customer's and/or any such entity or person's use of those Third Party Products shall be governed solely by such agreement, and is at the Customer's sole risk. Unless otherwise provided for by written agreement between the Parties, Converge shall not be responsible in any way for any Third Party Products' performance, features or failures, including for their effect on the Converge Hardware and/or Converge Software.

6.   LIMITED WARRANTY

Converge's warranties for the Converge Hardware and Converge Software, each as specified in the Order, are set out in **Schedule 3** *(Product Warranties)* attached hereto.

7.   CUSTOMER'S OBLIGATIONS

The Customer shall, and shall ensure that each End User and Authorised User shall, to the extent applicable:

7.1   provide Converge with: (i) all necessary and commercially reasonable co-operation in relation to this Agreement; (ii) immediately following signature, the Site Implementation Form (if any); and (iii) all necessary access to such information, premises and assets as may be required by Converge, in order to provide the Products and Services;

7.2 comply with all applicable Laws with respect to its activities under this Agreement and provide safe environmental conditions at each Site where Converge provide Services;

7.3 ensure that any Authorised Users that did not receive the Training Services are properly and fully trained in the use and operation of the Products before using them;

7.4 obtain and maintain all necessary licences, consents, and permissions necessary for Converge, its Affiliates, sub-contractors and agents to perform their obligations under this Agreement, including without limitation the Services;

7.5 ensure that the Product User Operating Environment complies with the relevant specifications provided by Converge from time to time;

7.6 ensure that the Third Party Hardware and the Product User Operating Environment are each correctly operating and integrating with the Products;

7.7 use reasonable security precautions in connection with its use of the Products, and take all reasonable steps to mitigate the risks inherent in the provision of the Products and Services, including data loss and damage; and

7.8 procure and maintain its network connections and telecommunications links from its systems and/or hardware to the Products, and for all problems, conditions, delays, delivery failures and all other loss or damage arising from or relating to its hardware, network connections or telecommunications links or caused by the internet.

8. CHARGES AND PAYMENT

8.1 **Fees.** The Customer shall pay the Fees to Converge for the Products and Services, subject to the payment terms detailed in any Order.

8.2 **General Payment Terms.** Unless expressly stated otherwise in the Order: (a) all Fees are stated, and are to be paid in GBP; (b) Converge shall invoice in advance, and all Fees shall be payable within thirty (30) days of Converge's invoice date; (c) all payments and payment obligations under this Agreement are non-refundable (except as may be expressly provided otherwise herein or as otherwise mutually agreed by the Customer and Converge), non-cancellable, and without right of set-off; (d) if Converge has not received payment after the due date for any Fees due, Converge may, without liability to the Customer, on at least 7 Business Days' notice, disable Customer's access to any part of the Converge Materials; and (e) any amount not paid when due shall accrue interest on a daily basis until paid in full, at the lesser of the rate of one and a half percent (1.5%) per month and the highest amount permitted by applicable Law. Amounts payable under this Agreement are exclusive of all travel expenses, freight, applicable sales, use, consumption, VAT, GST, and other taxes, duties or governmental charges (except for taxes based upon Converge's net income), all of which shall be charged and added to Converge's invoice(s) at the appropriate rate. If Customer is required by Law to make any deduction or to withhold from any sum payable to Converge, then the sum payable by Converge, upon which the deduction or withholding is based, shall be increased to the extent necessary to ensure that, after all deduction and withholding, Converge receives and retains, free from liability for any deduction or withholding, a net amount equal to the amount Converge would have received and retained in the absence of the required deduction or withholding.

8.3 **Price Changes.** Unless agreed otherwise in the Order, Converge shall be entitled, from time to time, to increase the Fees upon not less than sixty (60) days' prior written notice to the Customer. Such updated Fees shall not apply to Products or Services if the Order is for a fixed price for a fixed term.

9. PROPRIETARY RIGHTS

9.1 **Converge Materials.** Converge (and/or its licensors, as applicable) is, and shall be, the sole and exclusive owner of all right, title, and interest (including without limitation all Intellectual Property Rights) in and to: (a) the Products; (b) the Services; (c) the Sensor Data; (d) the Converge Data; (e) the Reports; (f) any Documentation; (g) any Feedback; (h) any Enhancements of or to any of the foregoing, regardless of authorship or inventorship; and (i) the Converge API ((a) through (i) collectively, the "**Converge Materials**"). Any right or licence not expressly granted under this Agreement is hereby reserved by Converge and its licensors. To the extent any Intellectual Property Rights in or to any Converge Materials does not automatically vest in Converge, Customer hereby irrevocably assigns (and agrees to assign and procure the assignment by any Affiliate, End User, and/or Authorised User) to Converge (or its designee) such Intellectual Property Rights.

9.2 **Applications.** Subject to the data ownership provisions set forth herein, each End User shall retain its ownership rights in its own Application, subject to clause 3 hereof, and Converge shall own and shall continue to own all Converge API, Documentation, and Services, including, without limitation, all related Intellectual Property Rights therein.

10. DATA LICENCES

For the applicable term and subject to the terms and conditions of this Agreement and in consideration for the Fee(s):

10.1 **Sensor Data and Reports Licence.** Converge hereby grants to Customer, a non-exclusive, non-transferable, non-sublicensable licence to use Sensor Data and Reports specific to their corresponding Site(s), solely for delivering the Sites and for Customer's internal business purposes.

10.2 **Construction Data License.** Customer hereby grants, and shall procure that each of its Affiliates, End Users, and Authorised Users shall grant, to each of Converge and its Affiliates an irrevocable, royalty-free, worldwide, sublicensable, non-exclusive right and licence to access, use, and process all Construction Data, Calibration Data, and Personal Data for: (i) the purpose of performing this Agreement; and (ii) for Enhancements to Converge Hardware and Converge Software (collectively, the "**Construction Data Licence**"). The Construction Data Licence shall survive termination of this Agreement. Customer hereby warrants and represents that: (i) it has the right to grant, or has secured from each of its Affiliates, End Users, and/or Authorised Users the right to grant, the Construction Data Licence, on behalf of itself and any third parties; and (ii) the exercise of the Construction Data Licence shall not infringe, misappropriate, or violate any third party proprietary right, personal right (such as privacy right), or any Law.

10.3 **Construction Data Archiving.** In the event of any loss or damage to Construction Data, the Customer's sole and exclusive remedy, and Converge's sole and exclusive liability, shall be for Converge to use reasonable commercial endeavours to restore the lost or damaged Construction Data from the latest back-up of such Construction Data maintained by Converge. Converge shall not be responsible for any loss, destruction, alteration or disclosure of Construction Data caused by any third party (except those third parties sub-contracted by Converge to perform services related to Construction Data maintenance and back-up). Notwithstanding the foregoing, the Products are not intended to operate as a data storage or archiving product or service, and Customer agrees not to rely on the Products for the storage or archiving of any Construction Data whatsoever.

11. PERSONAL DATA

If Converge processes any Personal Data on the Customer's behalf when performing its obligations under this Agreement, the Parties record their intention that the Customer shall be the data controller and Converge shall be a Data Processor and in any such case: (a) the Customer acknowledges and agrees that the Personal Data may be transferred or stored outside the EEA or the country where the Customer and the Authorised Users are located in order to carry out the Services and Converge's other obligations under this Agreement; (b) the Customer shall ensure that they are entitled under applicable Law to transfer the relevant Personal Data to Converge so that Converge may lawfully use, process and transfer the Personal Data in accordance with this Agreement on the Customer's behalf; (c) the Customer shall ensure that the relevant third parties have been informed of, and have given their consent to, such use, processing, and transfer (including transfer outside of the EEA) as required by all applicable data protection legislation and Laws; (d) Converge shall process the Personal Data only in accordance with the terms of this Agreement and any lawful instructions reasonably given by the Customer from time to time; and (e) each Party shall take appropriate technical and organisational measures against unauthorised or unlawful processing of the Personal Data or its accidental loss, destruction or damage.

12. CONFIDENTIALITY

12.1 **General.** Each Party (the "**Recipient**") may have access to certain non-public or proprietary information and materials of the other Party (the "**Discloser**"), whether in tangible or intangible form ("**Confidential Information**"). For the avoidance of doubt, Confidential Information disclosed hereunder by, to, or between the Parties respective Affiliates (as well as to/with any Authorised Users and/or Product User, as applicable), shall also be governed by and subject to this Agreement. Confidential Information shall not include information and material that: (a) at the time of disclosure by Discloser to Recipient hereunder, is in the public domain; (b) after disclosure by Discloser to Recipient hereunder, becomes part of the public domain through no fault of the Recipient; (c) was rightfully in the Recipient's possession at the time of disclosure by the Discloser hereunder, and which is not subject to prior continuing obligations of confidentiality; (d) is rightfully disclosed to the Recipient by a third party having the lawful right to do so; or (e) independently developed by the Recipient without use of, or reliance upon, Confidential Information received from the Discloser. The Recipient shall not disclose the Discloser's Confidential Information to any third party, except to its employees, advisers, agents and investors, subject to substantially

similar written confidentiality undertakings). Recipient shall take commercially reasonable measures, at a level at least as protective as those taken to protect its own Confidential Information of like nature (but in no event less than a reasonable level), to protect the Discloser's Confidential Information within its possession or control, from disclosure to a third party. The Recipient shall use the Discloser's Confidential Information solely for the purpose of performing under this Agreement. In the event that Recipient is required to disclose Confidential Information of the Discloser pursuant to any Law or governmental or judicial order, the Recipient shall: (a) promptly notify Discloser in writing of such Law or order; (b) reasonably cooperate with Discloser in opposing such disclosure; and (c) only disclose to the extent required by such Law, regulation or order (as the case may be). Upon termination of this Agreement (or otherwise upon written request by the Discloser), and except to the extent any usage rights are expressly stated to survive termination, the Recipient shall, as reasonably directed, promptly return, destroy and/or permanently erase all Confidential Information within Recipient's possession or control, and certify compliance in writing. For the avoidance of doubt, details of the Products, Converge Data, Converge Materials, and the results of any performance or benchmarking tests of the Products, are Confidential Information of Converge.

12.2 **Commercial Terms.** Notwithstanding anything stated to the contrary in this Agreement, the Fees and payment terms under this Agreement are confidential to Converge and Customer shall not disclose such details to any third party (except its accountants and lawyers), without Converge's prior express written consent.

12.3 **Binding on Product Users.** The Customer shall, whether acting as a direct purchaser and/or as an Authorised Reseller, shall procure that each Product User is subject to and legally bound by all of the confidentiality provisions set forth in this clause 12.

12.4 Converge may use Customer's name and logo on Converge's website and in its promotional materials to state that Customer is a customer of Converge, as well as in order to publicise Converge's portfolio of work.

13. <u>INDEMNITY</u>

13.1 **By Customer.** Customer shall, at its own expense, defend Converge, its Affiliates, and their respective directors, officers, employees, suppliers, licensors, or agent (each, a "**Converge Indemnitee**") against any third party (including without limitation governmental) claim, action, or proceeding against a Converge Indemnitee arising out of or in connection with: (a) any misuse or unauthorised use of any Products or Services hereunder; (b) any bodily injury, death, or damage to real or personal property, attributable to any products, procedures, Calibration Data, Construction Data, (including without limitation any errors or inaccuracies in Calibration Data, any failure to provide accurate, up-to-date Calibration Data on an on-going basis, or any failure to adhere to the applicable Maturity Standard); (c) any Product User's negligence or wilful misconduct; and/or (d) any Product User's infringement, misappropriation, or violation of any third party proprietary right, personal right (such as privacy right), or any law (each, a "**Claim Against Converge**"). Customer shall indemnify and hold harmless the Converge Indemnitee for any amounts finally awarded or imposed (or otherwise agreed in settlement) under the Claim Against Converge, as well as reimburse Converge for any out-of-pocket legal expenses (including, without limitation, reasonable attorney's fees) that Converge reasonably incurred under the Claim Against Converge.

13.2 **By Converge.** Converge shall, at its expense, defend the Customer, its officers, directors and employees (each, a "**Customer Indemnitee**") against any third party claim, action, or proceeding against a Customer Indemnitee alleging that its authorised use of a Product hereunder infringes such third party's Intellectual Property Right (an "**Infringement Claim**"). Converge shall indemnify and hold harmless the Customer Indemnitee for any amounts finally awarded or imposed (or otherwise agreed in settlement) under the Infringement Claim, as well as reimburse Customer for any out-of-pocket legal expenses (including, without limitation, reasonable attorney's fees) that Customer reasonably incurred under the Infringement Claim. The foregoing represents Converge's sole and exclusive liability to the Customer or any Product User, and a Customer Indemnitee's sole and exclusive remedy, for any Infringement Claims. Converge shall have no liability to the extent the Infringement Claim is attributable to any modifications to a Product, the combination of a Product with any third party product or service, and/or Converge's adherence to any Product User's instructions or specifications.

13.3 **Procedure.** The indemnified party shall: (a) provide the indemnifying party with prompt written notice of the Claim Against Converge or Infringement Claim, as applicable (the "**Claim**"); (b) cede to the indemnifying party sole control of the defence and settlement of the Claim (except that any non-monetary obligation imposed on the indemnified party under a settlement shall require its prior written consent, not to be unreasonably withheld, conditioned or delayed); (c) provide the

indemnifying party with all information and assistance reasonably requested by it; and (d) not admit to any liability under (or otherwise compromise) the Claim. Any participation by the indemnified party in the defence of the Claim shall be at its own cost and expense.

13.4 **Efforts.** In the defence or settlement of any Infringement Claim, or if Converge otherwise believes that an Infringement Claim may be likely, Converge may, in its sole discretion, procure the right for the Customer to continue using the affected Product (or part thereof), replace or modify the affected Product (or part thereof) so that it becomes non-infringing or, if the foregoing are not reasonably available, terminate this Agreement on 10 Business Days' notice to the Customer without any additional liability or obligation to pay liquidated damages or other additional costs to the Customer.

14. <u>LIMITATION OF LIABILITY</u>

14.1 In no event shall Converge or its Affiliates be liable under, or otherwise in connection with, this Agreement for: (a) any consequential, indirect, special, incidental, or punitive damages; (b) any loss of profits, business, opportunity, revenue, contracts or anticipated savings, or wasted expenditure; (c) any loss of, or damage to, data, information systems, reputation, or goodwill; and/or (d) the cost of procuring any substitute goods or services.

14.2 The combined aggregate liability (of any type) of Converge and its Affiliates under, or otherwise in connection with, this Agreement shall not exceed the amounts actually paid by Customer to Converge during the twelve (12) month period immediately preceding the event giving rise to such liability.

14.3 The foregoing exclusions and limitation shall apply: (a) to the maximum extent permitted by applicable Law; (b) even if Converge has been advised, or should have been aware, of the possibility of losses, damages, or costs; (c) even if any remedy in this Agreement fails of its essential purpose; and (d) regardless of the theory or basis of liability, and whether in contract, tort (including, without limitation, for negligence or breach of statutory duty), misrepresentation, restitution, or otherwise. However, nothing in this Agreement excludes the liability of Converge: (i) for death or personal injury caused by Converge's gross negligence; (ii) for fraud or fraudulent misrepresentation by Converge; or (iii) any other liability which cannot be excluded under applicable Law.

14.4 Converge shall have valid insurance in place for its own legal liability to the Customer under this Agreement up to the limits set out in this clause 14 (Limitation of Liability). Each Party agrees to ensure that it shall be responsible for making its own arrangements for the insurance of any loss in excess of its accepted legal liability under this Agreement, as necessary.

15. <u>DISCLAIMERS</u>

15.1 **Provided Information.** In providing the Products and/or performing the Services, Converge shall use and rely on information, materials and data provided by any Product User to Converge. Converge shall have no liability for any damage, loss, cost or expense incurred or suffered as a result of errors or omissions in any such information, materials and data, caused by any action taken by Converge at any Product User's direction, or caused by any action taken by any Product User in reliance on such information, materials and data.

15.2 **Data Veracity.** Converge does not guarantee or warrant the veracity, completeness, timeliness, or accuracy of, and shall have no responsibility or liability for, any Sensor Data, Converge Data, Construction Data, Calibration Data, Enhancements, or Reports. Customer shall promptly notify Converge if the concrete mix is changed by it or by any Product User in a material way.

15.3 **Data Connectivity.** Converge shall not be responsible for any data connectivity. In order to access and make use of the Products, the Customer must ensure: (a) there is full connectivity and internet access through a cellular, fixed-line or Wi-Fi connected device (as applicable and as needed), including, without limitation, for Connected Hardware to accurately send Sensor Data to the Products; and (b) it and each Product User has appropriately configured any hardware in accordance with Converge's instructions to allow it to access the Products (including, without limitation, the guidelines, specifications, minimum requirements and recommendations provided to the Customer in respect to the use, configuration and installation of the Products.). Converge is in no way responsible for the operation or failure of operation or availability of or access to any mobile or internet services resulting in any Product User being unable to use the Products. For the avoidance of doubt, in the event that Converge Hardware specified in the Order is unable to connect to the Converge Software specified in the Order, unless caused directly by Converge, all Fees payable by the Customer shall remain payable.

15.4 **Vulnerability.** If any Product User's systems or services are compromised, it is the responsibility of Customer to address the vulnerability and demonstrate to Converge's sole satisfaction that it

or such Product User has appropriately addressed and/or fixed such vulnerability prior to Converge resuming access to the Converge Software.

15.5 **Loss of Converge Hardware.** If any Converge Hardware provided in the Order is lost or stolen, or damaged by any Product User, Converge does not guarantee that the Products will perform adequately or be fit for purpose.

15.6 **Civil Engineering Advisory.** Converge, its agents, employees, and/or subcontractors may sometimes provide technical guidance and advice relating to concrete technology (such as in regards to concrete mix design selection, thermal management of concrete, sensor placement in concrete), structural/civil engineering (such as advice on the temporary works design and construction sequencing on the Site) or other similar matters. The Product User hereby acknowledges that Converge is a technology provider and not an engineering consultancy or a structural engineer and as such, any advice provided shall be on an "as is" basis, and fitness for purpose of such advice is hereby disclaimed (whether such advice was provided informally, or through a Professional Services SOW).

15.7 **General disclaimer.** Converge Materials are provided on an "as is" and "as available" basis, with all faults, and all express, implied and statutory conditions and warranties (including, without limitation, any implied conditions or warranties of merchantability, satisfactory quality, fitness for a particular purpose, title, quiet possession, non-infringement, or quality of service, or that otherwise arise from a course of performance or usage of trade) are hereby disclaimed. Converge does not make any representation, warranty, guarantee, or condition: (i) regarding the effectiveness, usefulness, timeliness, reliability, accuracy, completeness, or quality of any Converge Materials; (ii) that the use of Converge Materials will meet any Product User's expectations or requirements, or will be uninterrupted, secure or error-free; and/or (iii) that any Converge Materials will comply with any Law or standard. Except as expressly and specifically provided in this Agreement Customer assumes sole responsibility and risk for results obtained from use of Converge Materials by itself and by Product Users, and for the conclusions drawn from such use and Converge shall have no liability for any damage caused by errors or omissions in any information, instructions, data or scripts provided to Converge or any actions taken by Converge at any Product User's direction.

16. **<u>TERM</u>**

16.1 This Agreement shall commence on any Product User's first use of a Product, or the date on which the Order is signed by both Parties, whichever is earlier (the "**Effective Date**").

16.2 If the Order is solely for subscription-based Products (Converge SaaS and/or Rental Hardware), then, unless terminated earlier in accordance with this Agreement or otherwise agreed in writing by the Parties:

(a) If the Order specifies Fixed Term Subscriptions only, then this Agreement shall continue until the end of the term of all Fixed Term Subscriptions specified in the Order. In the event that the Customer terminates this Agreement prior to the end of all such Fixed Term Subscription, all Fees due to the end date of each Fixed Term Subscription then payable, if any, shall become immediately due and payable.

(b) If the Order specifies Rolling Subscriptions only, then this Agreement shall continue until the latest of the Minimum Term of each Rolling Subscriptions specified in the Order, if any. Thereafter, Customer may notify Converge in writing at any time that it wishes to terminate this Agreement, in which case this Agreement shall terminate at the end of the latest of the Minimum Notice Period of each Rolling Subscription (such period to commence on the date of such written notice).

(c) If the Order specified both Fixed Term Subscriptions and Rolling Subscriptions, then this Agreement shall continue for the latest of (a) and (b) above.

16.3 If the Order is solely for Converge SaaS-Enabled Consumables, then unless terminated earlier in accordance with this Agreement or otherwise agreed in writing by the Parties, the term of this Agreement shall continue for 24 months after the Effective Date. For the avoidance of doubt, if the Order does not specify any Fixed Term Subscriptions or Rolling Subscriptions for Products, only basic features of the Converge SaaS necessary for the collection of data from the Consumable Hardware by the Converge SaaS shall be made available to the Customer and/or any Product User as part of the Licence (and these shall be subject to the Service Scope).

16.4 If the Order does not satisfy any of the conditions set forth under clause 16.2 and 16.3 above (for example, it includes both subscription-based Products and Converge SaaS-Enabled Consumables rather than only one or the other), then unless terminated earlier in accordance with this Agreement or otherwise agreed in writing by the Parties, the term of this Agreement shall continue until the latest of the clauses below (if applicable):

(a) The end of all Fixed Term Subscriptions contained in the Order;

(b)   The end of all Rolling Subscriptions contained in the Order, which shall be (pursuant to termination of such Rolling Subscription by the Customer in writing), the latest of: (i) the end of the latest Minimum Term of each Rolling Subscriptions specified in the Order, if any; or (ii) the end of the latest Minimum Notice Period for each Rolling Subscription (such period to commence on the date on which Converge has received written termination notice for each Rolling Subscription) ;

(c)   If Converge SaaS-Enabled Consumables are specified in the Order, 24 months after the Effective Date; or

(d)   If other consumable Converge Hardware (but not Converge SaaS-Enabled Consumables) are specified in the Order, and the Order does not include any Fixed Term Subscriptions or Rolling Subscriptions, then 12 months after the Effective Date.

17.   TERMINATION

17.1   Without affecting any other rights that it may be entitled to, either Party may give notice in writing to the other Party terminating this Agreement, effective immediately (or at a later date specified in the notice), if: (a) such other Party commits a material breach of any term of this Agreement and (if such breach is remediable) fails to remedy that breach within a period of thirty (30) days of being notified in writing to do so; (b) failure to so terminate would reasonably cause disrepute, reputational or moral harm to the terminating Party owing to its association with such other Party; or (c) such other Party has a receiver or administrative receiver appointed over it or over any part of its business or assets or passes a resolution for winding up (except for the purposes of a genuine scheme of solvent amalgamation or reconstruction) or a court of competent jurisdiction makes an order to that effect, or becomes subject to an administration order or enter into any voluntary arrangement with its creditors, or it ceases or threatens to cease to carry on business.

17.2   On termination of this Agreement for any reason: (a) except as set forth below, all rights and licences granted to the Customer under this Agreement shall immediately terminate, unless otherwise provided herein; (b) except as set forth below, the Customer shall, as reasonably directed, return and/or destroy, as well as make no further use of, any Converge Materials, and any equipment, hardware, property, and other items (and all copies of them) belonging to Converge and within Customer's possession or control; (c) the accrued rights, remedies, obligations, and liabilities of the Parties as at termination, or the continuation after termination of any provision expressly stated to survive or implicitly surviving termination, shall not be affected or prejudiced; (d) all Fees payable to the end of any applicable term as set forth in clause 16 for Products and/or Services then being provided / received shall become immediately due.

17.3   On termination of this Agreement (other than pursuant to clause 17.1 above if Converge is the terminating Party), and subject to the payment to Converge of all outstanding Fees which shall be immediately due and payable, Converge shall, upon written request by the Customer, provide the Customer with a then-current copy of the Construction Data held by Converge (and a copy of any other data as may be agreed between the Parties at the time, subject to the Customer entering into appropriate licence terms as required by Converge) in .csv format (or such other format as may be agreed by Converge at the time).

17.4   Customer, and all Authorised Users, shall lose access to Converge SaaS and Licensed Programs on termination of this Agreement; *provided, however,* that Converge shall allow Customer the opportunity to download and access applicable Sensor Data for a period of 15 Business Days following termination. Following such time, Customer may need to request to access to a downloaded version of such Sensor Data, which may be subject to payment. Converge may offer the opportunity for continued access to historical Sensor Data subject to payment of a fee.

17.5   In the event that the Customer terminates this Agreement prior to the end of any applicable term, all Fees due to the end date of such term, if any, shall become immediately due and payable in full.

17.6   Clause 9 (*Proprietary Rights*), as well as clauses 12 (*Confidentiality*) through clause 18 (*Miscellaneous*) shall survive termination of this Agreement, as shall any provision that ought by its nature, or that is expressed, to survive (such as any perpetual licences).

18.   MISCELLANEOUS

18.1   **Force Majeure.** Neither Party shall have liability to the other Party under this Agreement if it is prevented from or delayed in performing its obligations under this Agreement, or from carrying on its business, by acts, events, omissions or accidents beyond its reasonable control, including, without limitation, strikes, lock-outs or other industrial disputes (whether involving its workforce or any other party), failure of a utility service; transport; the Internet; power grid; or telecommunications network, act of God, pandemic, war, riot, civil commotion, malicious damage, compliance with any Law or governmental order, rule, regulation or direction, accident, fire, flood,

storm or default of such Party's suppliers or sub-contractors, or other events of a magnitude or type for which precautions are not generally taken in the industry, provided that the other Party is notified of such an event and its expected duration.

18.2 **Waiver and Remedies.** No failure or delay on the part of either Party in exercising any right or remedy hereunder shall operate as a waiver thereof, nor shall any single or partial exercise of any such right or remedy preclude any other or further exercise thereof, or the exercise of any other right or remedy. Any waiver granted hereunder must be in writing, duly signed by the waiving Party, and shall be valid only in the specific instance in which given. Except as may be expressly provided otherwise in this Agreement, no right or remedy conferred upon or reserved by either Party under this Agreement is intended to be, or shall be deemed, exclusive of any other right or remedy under this Agreement, at law, or in equity, but shall be cumulative of such other rights and remedies.

18.3 **Severance.** If any provision of this Agreement is held by a court of competent jurisdiction to be illegal, invalid or unenforceable, then: (a) the remaining provisions of this Agreement shall remain in full force and effect; and (b) such provision shall be ineffective solely as to such jurisdiction (and only to the extent and for the duration of such illegality, invalidity or unenforceability), and shall be substituted (in respect of such jurisdiction) with a valid, legal and enforceable provision that most closely approximates the original legal intent and economic impact of such provision.

18.4 **Entire Agreement; Amendments.**
18.4.1. Subject to subclause (b) below, this Agreement (and its Schedules and other documents expressly incorporated herein by reference) represents the entire agreement of the Parties with respect to the subject matter hereof, and supersedes and replaces all prior and contemporaneous oral or written understandings and agreements by the Parties with respect to such subject matter. In entering into this Agreement it does not rely on any undertaking, promise, assurance, statement, representation, warranty or understanding (whether in writing or not) of any person (whether party to this Agreement or not) relating to the subject matter of this Agreement, other than as expressly set out in this Agreement. This Agreement may only be amended by a written instrument duly signed by each Party. The section and subsection headings used in this Agreement are for convenience of reading only. This Agreement may be executed in counterparts each of which shall be considered an original, but all of which together shall constitute one and the same instrument. The language of this Agreement is solely English. All documents, notices, and other written communications relating to this Agreement shall be in English.
18.4.2. Notwithstanding subclause (a) above, to the extent Converge and the Customer have agreed on bespoke terms and conditions in the form of a framework agreement or a distribution agreement covering a broader commercial relationship and the Order falls within scope of such agreement (the "**Bespoke Terms**"), and such Bespoke Terms are set forth in a legally binding agreement between Converge and the Customer, then in the event of any conflict between the Bespoke Terms and these Terms: (i) the Bespoke Terms shall prevail solely for the conflicting provision; and (ii) these Terms shall prevail for any issues not covered by the Bespoke Terms and/or in which there is no conflict. For the avoidance of doubt, if the Customer is an Authorised Reseller and it has procured that the Bespoke Terms are binding on all Product Users, then this clause also shall extend to each such Product User.

18.5 **Assignment.** This Agreement may not be assigned, in whole or in part, by either Party without the prior express written consent of the other Party; except, however, that each Party may, upon written notice, assign this Agreement in whole to: (i) an Affiliate; or (ii) a successor in connection with a merger, consolidation, or acquisition of all or substantially all of the assigning Party's assets or business relating to this Agreement. Any prohibited assignment shall be null and void and shall entitle the other Party to terminate this Agreement for cause upon written notice. Subject to the provisions of this clause (Assignment), this Agreement shall bind and benefit each Party and its respective successors and assigns.

18.6 **Relationship.** The relationship of the Parties is solely that of independent contractors, and neither Party nor its employees are the servants, agents, or employees of the other. Nothing in this Agreement shall be construed or deemed to: (a) create a relationship of employer and employee, principal and agent, joint venture, partnership, association, or otherwise between the Parties; or (b) authorise either Party to act as agent for the other, and neither Party shall have the authority to act in the name or on behalf of or otherwise to bind the other in any way (including, but not limited to, the making of any representation or warranty, the assumption of any obligation or liability and the exercise of any right or power). Each Party shall be responsible, and the other

Party assumes no liability, for the acts, omissions, operations, facilities, expenses and salaries of such Party, its officers or employees.

18.7 **Third Party Rights.** Except as expressly provided for in this Agreement, a person or entity who is not a Party to this Agreement shall not have any rights under the Contracts (Rights of Third Parties) Act 1999 or any equivalent legislation in any other jurisdiction to enforce any of the provisions of this Agreement.

18.8 **Notices.** Any notice required to be given under this Agreement shall be in writing and shall be delivered by hand or sent by pre-paid first-class post or recorded delivery post to the other Party at its address set out in this Agreement, or such other address as may have been notified by that Party for such purposes, or sent by email to the other Party's agreed email address as set out in the Order. A notice delivered by hand shall be deemed to have been received when delivered (or if delivery is not in business hours, at 9 am on the first business day following delivery). A correctly addressed notice sent by pre-paid first-class post or recorded delivery post shall be deemed to have been received at the time at which it would have been delivered in the normal course of post. A notice under this agreement may be delivered by e-mail, the deemed delivery date and time being the time of transmission of the email.

18.9 **Governing Law and Jurisdiction.** This Agreement shall be governed by, and construed in accordance with, the laws of England and Wales. The United Nations Convention on Contracts for the International Sale of Goods is hereby disclaimed and shall not apply to this Agreement. Any claim, dispute or controversy between the Parties (whether contractual or non-contractual) under, or otherwise in connection with, this Agreement shall be subject to the exclusive jurisdiction of the courts located in London, England, and each Party hereby irrevocably submits to the personal jurisdiction of such courts and waives any jurisdictional, venue, or inconvenient forum objections to such courts. Notwithstanding the foregoing, each Party may seek equitable relief in any court that has competent jurisdiction.

SCHEDULE 1 – SUPPORT SERVICES

This document outlines the basis of Converge support services to Authorised Users.

1. CONVERGE SAAS HOSTING
1.1 Converge SaaS will be hosted by third party hosting services providers selected by Converge (each a "Hosting Provider"). Converge shall endeavour to provide at least a 99% uptime service availability level for the Converge SaaS, excluding any disruption to service availability levels caused by outages of any Hosting Providers (or other factors outside of Converge's control).

2. HELPDESK TECHNICAL SUPPORT SERVICES
2.1 Converge shall endeavour to provide the Customer with Helpdesk support services during Normal Business Hours.
2.2 Converge's technical support team shall accept e-mail and web form-based incident submittal to the contact details provided in the Order in Normal Business Hours. For the avoidance of doubt, all support provided by Converge shall be carried out remotely, and any physical attendance to Site(s) or other locations requested by any Product User, shall be at Converge's sole discretion, and be charged for at a rate agreed by both Parties in advance, or at the rates detailed in the Order. In the event Converge is required to travel to premises outside of London, UK, then Converge shall be entitled to invoice the Customer for reasonable travel costs incurred by Converge and as evidenced by written receipts.
2.3 Converge shall use reasonable endeavours to process support requests, issue support tickets if necessary, determine the source of the problem and respond to the Customer.
2.4 The Customer shall maintain a sufficiently staffed group of Authorised Users who have undergone Training Services, who shall be responsible for: (a) providing front-line support to other Authorised Users; and (b) contacting the Converge technical support team in order to report problems. On reporting a defect, the Customer shall supply a detailed description of such defect requiring support services and the circumstances in which it arose, and shall submit sufficient material and information to enable Converge staff to duplicate the problem.
No representation or warranty is given by Converge that all faults or defects in the Converge Hardware specified in the Order or the Services will be fixed within a specified period of time nor that any defect or fault which does not materially affect the Customer's operations using such Converge Hardware shall be corrected. Converge shall use commercially reasonable endeavours to resolve faults or defects, which materially affect the use of the Services, within a reasonable period of time.

3. MAINTENANCE
3.1 Maintenance includes all regularly scheduled error corrections, software updates and those upgrades limited to improvements to features described in the Documentation. Support for additional features developed by Converge, as requested by the Customer, may be purchased separately at Converge's then current rates.
3.2 Converge shall maintain and update the Software and the Services. During Maintenance Events, Converge may, at its discretion, upgrade versions, install error corrections and apply patches to the Software or Services. Converge shall use all reasonable endeavours to avoid unscheduled downtime for Services maintenance.
3.3 Converge shall use commercially reasonable endeavours to minimise any disruption to the Customer's use of the Services, but is 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 and any Connected Hardware. Customer acknowledges that the Converge Software, Converge Hardware, and the Services specified in the Order may be subject to limitations, delays and other problems inherent in the use of such communications facilities.

4. MAINTENANCE EVENTS
Maintenance Events shall not be performed during Normal Business Hours. Converge may interrupt the Converge SaaS to perform emergency maintenance outside of Normal Business Hours at Converge's sole discretion. In addition, Converge may interrupt the Converge SaaS outside Normal Business Hours for unscheduled maintenance, provided that it has given the Customer at least three (3) Business Days advance notice. Converge shall at all times endeavour to keep any service interruptions to a minimum.

5. **<u>EXCEPTIONS</u>**
    Converge shall have no obligation to provide Support Services in connection with any Warranty Exclusions as defined in **<u>Schedule 3</u>**. If Customer has directly purchased third party equipment for use with Converge Software, such third party equipment must meet Converge specifications in order to ensure proper performance of the Converge Software, and in order for Customer to receive Support Services for such Converge Software. For the avoidance of doubt, in no event do the Support Services cover such third party equipment itself. In addition, if it is found that an error that was reported to Converge under Support Services is not an error that materially degrades the use of the Converge Hardware or Converge Software (as applicable) specified in the Order, Converge shall have the right to charge Customer for the time spent in handling and diagnosing the matter, at its then-current standard hourly rates as notified to the Customer. If the Customer does not agree to such hourly rates, then Converge is under no obligation to take any action with respect to such error.

6. **<u>PREMIUM SUPPORT</u>**
    The Customer and Converge may agree in writing a premium service level agreement ("**PSLA**"), in which case the Parties shall: (i) agree in writing on scope and support costs for such PSLA; and (ii) attach such PSLA to this Agreement at which time it shall form an integral and binding part of Schedule 1 to this Agreement and all terms and conditions of this Agreement shall apply. In the event of any conflict between the PSLA and this Schedule 1, the PSLA shall prevail solely for the conflicting provision.

SCHEDULE 2 – CONVERGE HARDWARE

1. DELIVERY

1.1 Converge shall deliver the Converge Hardware to: (i) the Customer as detailed in the Order if the Customer is acting as an Authorised Reseller or as a group purchaser, and the Customer shall be responsible for delivery to any End User or Authorised User; and (ii) to the Site(s) if the Customer is purchasing the Products for such Site and such Site is specified in the Order.

1.2 Converge shall make commercially reasonable efforts to meet any delivery date(s) stated in the Order; *provided, however,* that Customer acknowledges that delivery is dependent on third parties outside Converge's control, and that product development exigencies at Converge may cause delivery delays. Furthermore, and unless expressly stated otherwise in the Order, delivery time is not of the essence.

1.3 Unless specified otherwise in the Order, and subject to payment by the Customer of any shipping fees set out in the Order, delivery of the Converge Hardware shall be prepaid, and shall be made Delivered At Place (DAP) (Incoterms 2020 Updated).

1.4 If any delivery of Converge Hardware specified in the Order is delayed at the request of, or because of the acts or omissions of, any Product User, and if Converge can demonstrate that the delay has resulted in an increase in cost to Converge of carrying out its obligations under this Agreement, Converge may at its sole discretion increase Fees by an amount not exceeding any such demonstrable cost.

1.5 Converge shall be given an extension of time for completion of its obligations under this Agreement and any applicable delivery dates in the event that: (a) a variation is made to the Services or Converge Hardware in the Order to be provided at the Customer's request; (b) a force majeure event occurs; or (c) a delay is caused in whole or part by an action or omission of the Customer or its employees, agents or third party contractors.

1.6 The Customer shall inspect the Converge Hardware delivered by Converge on delivery and notify Converge immediately in writing of any defect in the Converge Hardware, *provided, however*, that if such notification is not given the Converge Hardware shall be deemed accepted, complete and in every way in good order for the Customer and behalf of all Product Users.

2. CONSUMABLE HARDWARE

Title to Consumable Hardware shall only pass to Customer upon payment in full therefor by the Customer and, pending payment, Converge hereby reserves and maintains, and Customer hereby grants to Converge, a first priority purchase money security interest in the Converge Hardware, wherever located, including all replacements and proceeds related thereto or derived therefrom. For the avoidance of doubt, any firmware within Converge Hardware is only licensed (not sold) hereunder, and is licensed on a non-exclusive basis and solely for use in conjunction with, and as embedded in, the corresponding Converge Hardware. For the avoidance of doubt, this clause shall apply to purchases by the Customer for itself or its Affiliates, as well as to purchases made as an Authorised Reseller.

3. RENTAL HARDWARE

3.1 If Customer leases Rental Hardware, Customer shall be entitled, subject to Customer's payment of the applicable Fees, to use such Rental Hardware in accordance with the terms hereof for the lease period specified in the applicable Order (the "**Lease Period**").

3.2 The Rental Hardware specified in the Order is hired out to the Customer, and not sold. Title in the Rental Hardware shall remain vested in Converge. Notwithstanding that the Rental Hardware may have been affixed to any building (or other fixture), Converge shall continue to be the owner of the Rental Hardware and its successor in title.

3.3 On termination of this Agreement for any reason, or termination of the Lease Period if earlier, the Customer shall return (within 30 days of such termination at its expense and in good working order and condition – subject to reasonable wear and tear) all Rental Hardware and items of equipment held on loan or hire from Converge under this Agreement. Until they have been returned or repossessed, the Customer shall be solely responsible for the safekeeping, supervision, custody and insurance of such items, and any rental fee for any Rental Hardware shall continue to be payable by the Customer. In the event that any item of equipment or hardware (including the Rental Hardware) is not returned, is damaged, is lost, or cannot be repurposed, Converge may at its sole discretion charge Customer a Loss Adjustment Fee.

4.   CUSTOMER OBLIGATIONS
4.1   The Customer shall provide all cabling and other equipment needed for the installation of the Converge Hardware at any Site, including, without limitation, any equipment needed to connect and interface the Converge Hardware and any Third Party Hardware with the Product User's hardware.
4.2   The Customer is solely responsible for carrying out any installation tests for the Converge Hardware when on Site and the configuration and integration of the Converge Hardware, Converge Software and Services with the Product User Operating Environment and Product User's hardware.
4.3   The Customer agrees to: (a) at its own expense and at all times keep all Converge Hardware in good repair, condition and working order and make no alteration or remove any existing components of Converge Hardware; (b) use Connected Hardware in a skilful and proper manner and in accordance with any operating instructions and/or guidelines issued for them by Converge (including, but not limited to the Guidelines) and/or the manufacturer of the Connected Hardware and to ensure that the Connected Hardware is only used by properly skilled and trained personnel; and (c) be responsible for the integration of the Connected Hardware with the Products in accordance with instructions supplied by Converge to ensure that the Connected Hardware is fully operational and capable of accurately sending Sensor Data to the Converge Software.

5.   RISK
5.1   Risk of loss of, or damage to, Converge Hardware shall pass to the Customer upon delivery (or upon collection by the Customer or its agents, if earlier).
5.2   The Customer shall keep Converge Hardware insured against all risks on a comprehensive policy. The Customer shall keep Converge insured against all liability to other persons for death, personal injury, and damage to or loss of property arising directly or indirectly out of the use, possession or operation of Converge Hardware. For the avoidance of doubt, the Customer shall bear the risks set forth under this clause 5 irrespective of which Product User is in possession of such Converge Hardware.

SCHEDULE 3 – PRODUCT WARRANTIES

1. Converge warrants to the Customer that during the applicable Warranty Period (defined below) and subject to proper acceptance of these Terms by all relevant entities:

    (a) the Converge Hardware specified in the Order shall be free from material defects in materials and workmanship, subject to normal and intended use and service, and operate substantially in accordance with the Specification for such Converge Hardware, (the "**Hardware Warranty**"); and

    (b) the Converge Software specified in the Order (excluding the firmware embedded in Converge Hardware) shall operate substantially in accordance with the material functions and features set out in the Order for such Converge Software (the "**Software Warranty**").

    (c) The Hardware Warranty and Software Warranties (each, a "**Warranty**" and collectively, the "**Warranties**") are given to Customer only and not to any other individual or entity (including, without limitation, End Users, Authorised Users, and/or Customer Affiliate).

2. In the event of any Warranty breach within the Warranty Period (each, a "**Defective Item**"), and provided Customer has notified Converge via email (at support@converge.io) of the defect promptly after discovery thereof, Converge shall first determine whether the defect can be resolved via the Support Services, and Customer shall fully cooperate with Converge in such efforts. If Converge determines that the Support Services cannot resolve the defect, Converge shall (at its sole option) repair the Defective Item (or part thereof) or replace the Defective Item (or part thereof) with new or refurbished Products (or parts), as the case may be. The foregoing represents Customer's sole and exclusive remedy, and Converge's sole and exclusive liability, for any Warranty breach. In the event Converge repairs or replaces a Defective Item pursuant to this clause, the applicable Warranty shall remain in force for the longer of (a) the remainder of the original Warranty Period; or (b) thirty (30) days from the date of the delivery of the repaired or replacement Product or part (as the case may be).

3. Unless the Order specifies a different warranty period, the "**Warranty Period**" shall be as follows:

    (a) for Converge Hardware specified in the Order as a 'beta', 'POC', 'evaluation' (or similar) item, six (6) months commencing upon the date of delivery, and for all other Converge Hardware, twelve (12) months commencing from the date of delivery. Notwithstanding the foregoing, if applicable, in respect of Consumable Hardware, the Warranty Period shall automatically expire once the Consumable Hardware is covered in concrete (or is otherwise inextricable from a building or other fixture); and

    (b) for Converge SaaS specified in the Order, for the duration of the fully paid subscription for such Converge SaaS; and

    (c) for Licensed Programs specified in the Order (excluding the firmware embedded in Converge Hardware), the later of: (i) the term of any Fixed Term Subscription or Rolling Subscription detailed in the Order; or (ii) ninety (90) days from the date of first access or installation (as applicable), whichever occurs earlier.

    The following applies only to Converge Hardware specified *in the Order:* No returns shall be made without Customer first obtaining a *Return Material Authorisation (RMA)* ticket and number ("**RMA Ticket**") from Converge. When requesting an RMA Ticket, Customer shall provide the following information: (a) a detailed description of the nature of the defect, and the reason for the return; (b) model and serial number for each unit to be returned, and (c) applicable Converge invoice number and date. The RMA Ticket information (as well as other information and markings instructed by Converge) shall be marked on the parcel, which Customer shall package in its original packaging, unless permitted otherwise in writing by Converge, in which case Customer shall package it to reasonably accepted commercial standards for electronic equipment. If the RMA is complete and the Converge Hardware is deemed defective by Converge, then (i) Converge shall reimburse the Customer for any commercially reasonable shipping charges prepaid by Customer, if applicable (excluding VAT and import duties); (ii) title to any returned Defective Items shall pass to Converge upon receipt; and (iii) Converge shall pay commercially reasonable shipping charges for delivery of repaired or replaced Converge Hardware specified in the Order back to Customer at the original location specified, provided that if Converge reasonably deems, in its sole discretion, that the

returned Defective Item was not covered by the Hardware Warranty, Customer shall pay (or reimburse Converge for) all commercially reasonable return shipping charges.

4. The Warranties shall not apply (and Converge shall have no responsibility or liability for) Product problems or defects arising from any of the following (each, a "**Warranty Exclusion**"): (A) misuse, abuse, neglect, improper handling or installation, or use other than as specified in the applicable portion of the Specification or any accompanying user manual; (B) accident, natural disasters, or other factors beyond the reasonable control of Converge; (C) installation in/on a building (or other fixture) other than a building (or fixture) for which the Product was designed; and/or (D) repair, reconfiguration, alteration, or servicing of the Product by any person other than an authorised Converge representative. Any services provided by Converge in connection with the foregoing Warranty Exclusions shall be charged at Converge's then-current rates (as may be specified in the Order).