



## Converged Communication Solutions Ltd

### Terms and Conditions of Service

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#### Connectivity and Hosting Bandwidth Services (January 2015)

##### **Definitions**

**Agreement** means this Agreement, the terms and conditions of Service and any mutually agreed alteration(s).

**Converged** means Converged Communication Solutions Limited, Registered Company Number SC293456, registered office: Converged House, Unit 18, Spires Business Park, Mugiemoor Road, Aberdeen, AB21 9BG.

**Client** means Registered Company Number registered office: **Service(s)** means the provision of connectivity, bandwidth or hosting Services as defined within this Agreement.

**Charges** means the Charges as agreed within this Agreement or for additional related product(s) and/or Service(s) requested or incurred and mutually agreed in writing, during the Agreement period.

**Internet** means the global data network comprising Inter-connected networks using TCP/IP (Transmission Control Protocol/Internet Protocol).

**Circuit** means the method of connection between the Client's location(s) and The Converged network.

**Bandwidth** means the rate that data can be transferred, measured in Mbps, between the Internet and the Client via the Circuit or via direct connection to equipment hosted within Converged datacentre(s). This can only be guaranteed between Converged's network and the Client.

**Data Processor** means the person or persons that processes data on behalf of a Data Controller, other than a direct employee of the Data Controller. In this instance you the client are the Data Controller.

**Data Controller** means the entity that determines the purposes for which and the manner in which any personal data are, or are to be, processed.



**Data Protection Legislation** means the Data Protection Act 1988 including the implementation of the General Data Protection Regulation 2016/679/EC as is currently constituted.

### **Converged Service**

Connection to the Service may be via: A fixed circuit; a dial up (PSTN/ISDN) link; or a direct connection on the Converged network. Unless clearly stated elsewhere, These Terms & Conditions cover the provision of the Connection (Circuit & Bandwidth) and the associated billing and management for these Services from Converged.

### **Lead time for provision of Service**

Certain Services will require an element of sub-contracting, specifically but not exclusively the provision of LES/fibre/EFM/broadband/FTTC circuits. Part of this may require an element of Civil Engineering works. Any specified 'lead-time' for Service should therefore be treated as a 'reasonable endeavours' situation. Converged and relevant third parties will always attempt to deliver designated Services within the initially outlined dates but accepts no liability for failure to meet said dates. Details of any such delays will be conveyed promptly to the Client in writing.

### **Service Faults**

In the event of a Service fault, the Client must report the fault by appropriate means to the Converged Support Team on the appropriate numbers or email addresses provided. Once a fault notification is received, Converged will take any and all steps to correct the fault without delay. Converged's liability to Client in the event of any delay shall be subject to the terms provided in Converged's Service level Agreement.

### **Service Alterations**

Requests relating to the alteration of the Service must, unless otherwise agreed, be made or confirmed in writing by both parties (Email is acceptable). In certain situations, orders cannot be cancelled without incurring third Party Charges. In such circumstances, Converged will provide the Client, in writing, with the knowledge in advance of the trigger points for such Charges. In the event that such Charges are incurred, the Charges will be the liability of the client, subject to the condition that any unavoidable Charges to be imposed upon the Client are communicated to and accepted by the Client in writing prior to



implementation of the altered Services. In the event that Converged agrees to provide additional Services or change the Service (including without limitation upgrades or downgrades to the Service or moving the Service to other customer premises) a new and mutually agreed Agreement term shall apply in respect of each additional or changed Service. Converged's Charges shall remain fixed for the duration of the Agreement unless otherwise mutually agreed between the parties.

### **Confidentiality**

All communications between Converged and the Client should be treated as confidential unless specifically excluded in writing between the two parties. This includes technical specifications and details of financial matters.

### **Exclusions**

The foregoing provisions of confidentiality shall not apply to any information which: Is in the public domain (or subsequently comes into the public domain) as at the date of this Agreement through no fault of the Client nor Converged and not in breach of these terms and conditions; was already known to the Client or Converged on the date of disclosure provided that such prior knowledge can be substantiated and proved by documentation; properly and lawfully becomes available to the Client or Converged from sources independent of either Party.

### **Content & Misuse**

The Client will not use the Service for anything illegal. The Client will furthermore not use it to do anything that causes a nuisance to others, i.e. open relay, and/or bring the Converged network into disrepute in Converged's reasonable opinion. If the Client fails to uphold this then, subject to the Client being notified of such circumstances and the Client being given a reasonable opportunity to remedy, Converged reserve the right to immediately terminate the Client's Service.

### **Billing and Payment**

Converged will undertake all work as quickly and efficiently as possible. Converged will invoice the Charges to the Client on a monthly basis. Payment is due by Client 30 days after receipt of Converged's invoice. The Client shall pay the Charges to Converged in consideration of the Service, without any deduction, withholding or set-off whatsoever. Converged reserves the right to pass on to the Client any additional costs that Converged incurs as a result of actions taken by the Client, or changes to legislation or regulation during





the term. This includes, but is not limited to, legislation or regulation related to fibre tax, the Carbon Reduction Commitment, Climate Change Levy, or European Carbon Trading Scheme.

### **Termination of Service**

Subject to the further provisions of this clause dealing with minimum term contracts all Services may be terminated by either Party giving the other three months' notice of termination in writing. Where the delivery of the Services is specified to be for a minimum term, the Customer may give three months' notice to Converged in writing prior to the expiry of the minimum term to terminate the Service at the expiry of the minimum term. If no notice is given by the Customer, the Services will renew automatically on the same terms on a month-to-month basis until terminated by the Customer giving one month's notice in writing to terminate.

### **Suspension of Service**

It may be necessary from time to time to suspend the Service temporarily for the purposes of maintenance or improvement. Where such situations arise Converged will endeavour to provide the maximum amount of advanced notice as is practicable. It may also be necessary to suspend Service where clients have neglected to pay invoices timeously. Any maintenance or improvements shall be kept to a minimum and any suspension shall be subject to the terms of Converged Service level Agreement.

### **Restrictions**

The Client may not charge, rent, sell or otherwise encumber or dispose of the whole or any part of the Service.

### **Wayleave**

Client grants Converged, and any third party acting on their behalf, for example CityFibre Holdings or Openreach, or third parties acting with their permission, permission to enter onto the appropriate areas within the Customer Premises and to have free and safe access to the appropriate areas within those premises in order to provide, install, test, operate, inspect, maintain, repair, remove and ensure the security of their Services.

### **Beyond our reasonable control (force majeure)**

Neither Party (for the purpose of this clause, the "Affected Party") shall be liable for any failure to perform its obligations hereunder caused by act of God, insurrection or civil disorder, terrorism, war or military operations, national or local emergency, acts or omissions of government, highway authority, industrial disputes of any kind (not involving





employees of that Affected Party or of sub-contractors working for that Party pursuant to this Agreement), fire, lightning, explosion, subsidence, inclement weather, insolvency of a supplier, acts or omissions of persons or bodies for whom the Affected Party is not responsible (which shall include, but not be limited to, third party electronic communication suppliers to Converged) or any other cause whether similar or dissimilar outside the reasonable control of that Party provided that, in such circumstances the Affected Party can demonstrate that it has taken all reasonable steps to continue Service under this Agreement. Either Party can terminate the Agreement forthwith on written notice after 30 days disruption through Force Majeure.

#### **Service related hardware**

Where Converged have provided hardware, either directly or by a sub-contractor, eg ownership does not pass to the Client, it is the responsibility of the Client to make sure it is kept in a reasonable condition and housed in such a way as to not be detrimental to the equipment. If the hardware should fail through normal wear and tear or through the acts or omission of Converged, Converged commit to replace it as soon as is possible. Should any loss or damage to Converged provided hardware occur whilst in the possession of Client, Client's sole liability to Converged will be to replace the hardware lost or damaged or reimburse Converged the direct cost of such lost/damaged hardware.

#### **Liability**

The Client acknowledges that Converged has no control over the information transmitted via the Service and that Converged does not routinely examine the Client's use of the Service or the nature of the information they are sending or receiving, except for the purposes of network management. Converged hereby excludes all liability of any kind for the transmission or reception of information of whatever nature, save for any information that Converged provides.

Each Party shall be responsible for and shall save, indemnify, defend and hold harmless the other Party from and against all claims, losses, damages, costs (including legal costs) expenses and liabilities in respect personal injury including death or disease or loss of or damage to the property of any third Party to the extent that such injury, loss or damage is caused by the negligence, breach of duty (statutory or otherwise) of that Party.

Neither Party shall be liable to the other in any circumstances for any loss of revenue, loss of profit, loss of use, loss of contract or loss of goodwill or any indirect or consequential loss





including without prejudice to the loss or corruption of data transmitted over the System, in each case where direct or indirect and whether or not foreseeable at the date of execution of this Agreement.

Converged shall use its reasonable endeavors to, but cannot guarantee protection of the Service against unauthorized interruption or interception by third parties or that any of the Services shall be error free or uninterrupted.

The maximum aggregate liability of Client under this Agreement whether in breach of contract or tort including negligence shall not exceed the total fees paid to Converged by the Client, for the impacted Service element, during the 12 months period before the date when circumstances giving rise to the claim occurred.

### **Data Protection**

Both parties undertake to comply with the Data Protection Legislation in their capacity as Data Controllers.

Converged will in their capacity as a Data Processor for some services, such as Website Hosting and email filtering ensure their systems are secure and adhere to secure by design principles. For services that Converged is the Data Processor, you the client, are the Data Controller and have all legal duties that such implies.

For provision of some services, data such as Name, Address and email address will be passed to 3<sup>rd</sup> party's to setup such services as required, but will not be used for Marketing purposes.

Some services will have the processing of your data subcontracted to the relevant company. Microsoft Cloud services such as Office 365 and Azure will have their Processor Agreement in force between you the data controller, and them the data processor.

Datto provided offsite services will have Datto as the processor, and you will be the data controller.

The terms from Microsoft and Datto are available on our website and can be furnished in PDF format. If you would like a copy of these subcontracted terms please contact [privacy@converged.co.uk](mailto:privacy@converged.co.uk)





Personal Data we hold about you will not be sold to 3<sup>rd</sup> parties.

A copy of our Privacy Notice will be available that complies with the General Data Protection Regulations from the 25<sup>th</sup> of May 2018. It will be available either electronically or in writing.

### **Assignment**

Assignment or other transfer by either Party of all or part of this Agreement will only be valid with the prior written consent of the other Party. Such consent shall not be unreasonably withheld or delayed.

### **Law**

These terms and conditions are subject to Scottish law.

Converged and the Client intend that no provision of the Agreement shall, by virtue of the Contracts (Rights of Third Parties) Act 1999 confer any benefit on, nor be enforceable by any person who is not a Party to the Agreement.

### **Entire Agreement and Variations**

This Agreement (which for the avoidance of doubt shall include the Service Level Agreement and any subsequent Schedules or mutually agreed amendments in writing) constitutes the entire Agreement between the Parties relating to the subject matter of this Agreement and supersedes any previous Agreements and all prior representations made between the Parties, whether orally or in writing.

