

## Converged Group Standard Terms and Conditions

### 1. TERMS AND CONDITIONS OF SERVICE

#### 1.1. Exclusions

The included Maintenance Services in respect of the Solution to be rendered by or on behalf of CONVERGED in terms of this Agreement shall exclude the following:-

- 1.1.1. Maintenance and/or service required as a result of force majeure, fire, water, lightning, surges/dips/failures in the electricity supply, any other service provider faults or failures, accidents, neglect, misuse, abuse or use other than that for which the telephone instruments are designed.
- 1.1.2. The replacement and/or supplying of any cabling external to the Solution.
- 1.1.3. Any maintenance and/or service required by the CUSTOMER, remote or otherwise, outside of working hours, which are 08h00 to 17h00 Monday to Friday excluding public holidays.
- 1.1.4. Any repairs and/or service required by the CUSTOMER due to misuse and/or negligence and/or any repairs and/or service that arises from causes other than the ordinary use of the deployed solution.
- 1.1.5. Any additional training required by the CUSTOMER in order to use the deployed solution, over and above the initial training provided by CONVERGED to the CUSTOMER when supplying the solution to the CUSTOMER.
- 1.1.6. Any service and/or repairs necessitated by or arising out of maintenance and/or repairs performed by any other party without the authorization of CONVERGED and/or necessitated by and/or arising out of tampering with the solution by any person not authorized by CONVERGED.
- 1.1.7. Any service and/or repairs necessitated by and/or arising out of unsuitable environmental influences.
- 1.1.8. Any network connectivity required in respect of the solution.
- 1.1.9. On-site labour not included in "this agreement", will be billed hourly, at a rate of R 650.00 per hour (subject to annual CPI increases).
- 1.1.10. Call-Out fees not included in "this agreement", will be billed, at a rate of R 850.00 (subject to annual CPI increases).
- 1.1.11. After hours will be billed at time and a half and Sundays at double time;
- 1.1.12. The cost of spare hardware; eg. Telephone instruments not included in "this agreement" and materials required to maintain the hardware, including repair costs.
- 1.2. Any alterations, attachments, features, upgrades and/or specific changes made to the solution after the signing of this Agreement may result in an additional Maintenance Fee / Service level requirement requirement.
- 1.3. CONVERGED reserves the right to subcontract the Maintenance Services to any third party, provided that its obligations to the CUSTOMER shall not in any way be diminished thereby and the non-performance or partial non-performance of a subcontractor shall not in any manner detract from or lessen the obligations of CONVERGED in terms of this Agreement. CONVERGED will require prior written permission from the CUSTOMER in order to subcontract Maintenance Services.
- 1.4. CONVERGED shall remain responsible for any and all subcontracted Maintenance Services.

### 2. LIABILITY

- 2.1. Unless expressly specified otherwise in this Agreement, neither Party shall have any claim against the other for incidental, consequential, special and/or indirect damages howsoever arising including without limitation loss of profits, business, revenue, anticipated savings and / or data, whether arising as an action in contract, delict or otherwise and even if advised of the possibility of such damages.
- 2.2. CONVERGED accepts liability for private property loss or damage, death or personal injury caused by the negligent or deliberate misconduct of CONVERGED. Liability shall be limited to the total loss of the contract.

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- 2.3. CONVERGED will not be liable to the CUSTOMER for:
- 6.3.1 loss resulting from any defect or deficiency in the Solution or Services which CONVERGED have remedied in accordance with the terms of this Agreement;
  - 6.3.2 loss which could have been avoided by CUSTOMER had CUSTOMER followed CONVERGED's reasonable advice and instructions; and/or
  - 6.3.3 loss which arises as a consequence of CONVERGED using CUSTOMER provided or specified materials or instructions.
- 2.4. CONVERGED shall not be under any obligation to maintain the Software in the event of the CUSTOMER not complying with any of the obligations placed upon it in terms hereof. Furthermore CONVERGED shall not be under any obligation to provide maintenance in respect of the Software in the event that critical and/or mandatory Software is not adopted by the CUSTOMER.
- 2.5. A party hereto shall not be responsible and/or liable for any delay or non-performance of its obligations under this Agreement caused by or resulting from:
- 2.5.1. major accident, fire or flood;
  - 2.5.2. sabotage or any officially declared state of emergency;
  - 2.5.3. embargos, boycotts, strikes or lock-outs;
  - 2.5.4. restrictions imposed by any government or governmental authority; and/or
  - 2.5.5. without derogating from or limiting any of the foregoing, any other cause that arose as a result of a Force Majeure Event, as defined, or nature beyond the reasonable control of the Parties which prevents performance in terms of this Agreement.
- 2.6. The CUSTOMER acknowledges that CONVERGED is a service provider that operates and manages the network and the functioning, operation, regulation and coverage area of the network and certain related services provided to the CUSTOMER, in terms of this Agreement hereto.
- 2.7. The CUSTOMER shall have no claim of whatsoever nature and howsoever rising against CONVERGED or to withhold payment of any monies due in terms hereof should any of the networks temporarily or otherwise fail, malfunction, provide no or poor coverage or should any of the services or facilities provided by any network operator or CONVERGED be temporarily unavailable, unless caused as a result of the gross negligence or willful misconduct on the part of CONVERGED.
- 2.8. The CUSTOMER shall not be entitled to set-off or deduct any monies in respect of temporarily unavailable services and other services.
- 2.9. CONVERGED shall be entitled by mutual Agreement, to suspend, cancel, vary or terminate this Agreement or any part thereof, provided that the CUSTOMER is provided with thirty (30) day prior written notice, as provided in terms of this Agreement, without CONVERGED incurring any liability whatsoever in the event of non-availability of the service or if any Agreement giving CONVERGED the right to render the service, or any part thereof, or giving CONVERGED access to anything relating to the service, is suspended, cancelled, varied or terminated.

### 3. CHARGES AND PAYMENTS

The CUSTOMER shall pay to CONVERGED:

- 3.1 Upon commencement hereof, the initial installation and set-up charge and any other introductory or commencement charges as a deposit.
- 3.2 Monthly in advance, the monthly subscription charges; including Connectivity and Hosting Fees.
- 3.3 Monthly in arrears, or as and when billing is passed on by the network operator, the total usage charges and/or generated by the CUSTOMER in conjunction with each billing period and any other charges payable in respect of the services requested by the CUSTOMER or other charges levied by CONVERGED from time to time.
- 3.4 Value Added Tax at the applicable rate on all VAT charges and services. All charges, unless otherwise stated exclude Value Added Tax.
- 3.5 The CUSTOMER agrees; that with reasonable notice and client consent, CONVERGED shall be entitled from time to time to increase or vary the charges payable by the CUSTOMER to CONVERGED for the services. CONVERGED shall give the CUSTOMER reasonable prior notice of any such increase or variation.
- 3.6 CONVERGED's monthly statement of charges shall be prima facie proof of the amounts owed by the CUSTOMER to CONVERGED in terms hereof and of the other facts stated therein and should the

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- CUSTOMER dispute the number, duration or amount charged in respect of any services rendered by CONVERGED, then the CUSTOMER shall bear the onus of proving that CONVERGED statement is incorrect in such a respect.
- 3.7 CONVERGED decision to grant credit facilities to the CUSTOMER and the nature and extent thereof is at the sole discretion of Converged Telecoms Pty Ltd.
- 3.8 The CUSTOMER agrees that payment shall only have been made to Converged when the monies remitted by the CUSTOMER have been received into Converged bank account.
- 3.9 All payments must be affected as per signed credit application. CUSTOMER is liable for payment fourteen (14) days from date of invoice. Non-receipt of invoices by the CUSTOMER will not be considered as a valid basis for late or non-payment.
- 3.10 All arrear payments shall attract interest at the rate of 2% (two per centum) per annum above the prime lending rate of Standard Bank as it may be from time to time, calculated from due date to date of payment.
- 3.11 Should the CUSTOMER default on payment terms as per signed credit application. CONVERGED reserves the right to suspend deliveries and services as well as reserves the right to withdraw or decrease any credit facilities at any time without prior notice.
- 3.12 CUSTOMERS will automatically be handed over to Credit Guarantee in the event payment is not received within 45 (forty five) days of due date.
- 3.13 The CUSTOMER shall not be entitled to change the method of payment or cancel any value added services as detailed below hereof for the duration of this agreement and in addition to any payment method agreed to by the CUSTOMER without a written request.
- 3.14 The CUSTOMER agrees and acknowledges that a certificate given under the hand of a financial manager or controller of CONVERGED whose status and authority need not be proved shall be considered prima facie proof of the amount due and shall entitle CONVERGED to apply for judgement against the CUSTOMER and to obtain summary judgement or provisional sentence, as the case may be.

#### 4. THE CUSTOMER'S UNDERTAKINGS

The CUSTOMER agrees:-

- 4.1. To provide access at all times during normal working hours to any authorized representative of CONVERGED for any purpose relating to this Agreement.
- 4.2. To report all service requests through the designated CONVERGED Help Desk and/or other such designated point of contact of CONVERGED.
- 4.3. To provide details of a minimum of 2 (TWO) persons as principal "System Managers" for the solution if required, with CONVERGED to provide initial training to such System Managers in respect of their use of the solution and its functionality; provided that should the CUSTOMER require their "System Managers" to undergo further training on the Solution and/or should further training be required as a result of new System Managers being appointed, CONVERGED shall be entitled to charge for such further training separately. The CUSTOMER shall notify CONVERGED in writing of any changes in "System Managers".
- 4.4. To use all equipment strictly in accordance with the user manual/s relating thereto and the training (if any) provided by CONVERGED in respect thereof.
- 4.5. That in respect of any work carried out by and/or on behalf of CONVERGED in respect of the Solution in circumstances not covered by the Maintenance Fee, additional fees and work shall be agreed to in writing between both parties. Thereafter the CUSTOMER shall be liable to CONVERGED that the then applicable time and materials rate charged by CONVERGED in respect thereof.

#### 5. CONVERGED'S UNDERTAKINGS

CONVERGED agrees:-

- 5.1. By mutual Agreement between the Parties, CUSTOMER will be entitled to cede and/or assign its rights and/or obligations under this Agreement to any of its affiliated companies, provided it gives 30 (thirty) days written notice thereof to CONVERGED, provided that such assignment or cession shall not affect the rights of the CONVERGED in terms of this Agreement.

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- 5.2. CONVERGED shall keep any technical data and information received from the CUSTOMER strictly confidential and shall take reasonable measures lawfully available to prevent any person employed by it or its agents or subcontractors engaged by it or any other person within its control from disclosing or furnishing or using any confidential information to which it becomes privy.
- 5.3. COMPLIANCE WITH THE PROTECTION OF PERSONAL INFORMATION ACT 4 OF 2013
- 9.3.1 Converged (any reference to Converged includes its affiliates and subsidiaries, as defined in terms of the Companies Act, 2008) will comply at all times with the Protection of Personal Information Act, No 4 of 2013 ("POPI"). In addition, Converged will take all reasonable steps To ensure its agents and sub-contractors comply with POPI, in particular where the agents or subcontractors are processing Personal Information in terms of this Agreement.
- 9.3.2 Personal Information bears the meaning accorded to it in POPI.
- 9.3.3 Converged specifically acknowledges that POPI has been incorporated in Converged's business model, systems and operating procedures. In this regard, Converged undertakes to adhere to and apply the conditions contained in POPI at all times and specifically in respect of the services provided to CUSTOMER.
- 9.3.4 Where Personal Information of CUSTOMER, its employees or its clients is supplied or disclosed to Converged, then Converged will:
- 9.3.4.1 ensure that such Personal Information is only used for purposes authorised by CUSTOMER and in terms of this Agreement;
  - 9.3.4.2 notify CUSTOMER of any request it receives from 3<sup>rd</sup> (third) parties for access to or changes to the Personal Information
  - 9.3.4.3 other than as contemplated by this Agreement, not transfer the Personal Information in any manner to any 3<sup>rd</sup> (third) party not authorised in writing by CUSTOMER;
  - 9.3.4.4 only hold and process the Personal Information after having taken appropriate and All reasonable technical and organisational security measures to guard against unauthorised or unlawful processing of the Personal Information and will guard against accidental loss, unauthorised access, unauthorised processing and destruction of or damage to, that Personal Information;
  - 9.3.4.5 provide a level of security appropriate to the harm that might result from any unauthorised or unlawful processing or accidental loss, destruction or damage to the Personal Information and also to the nature of the Personal Information being protected and in the event of breach, notify CUSTOMER within 1 (one) Business Day of identifying the breach;
  - 9.3.4.6 ensure, if required, the necessary audit procedures are in place to deal with the requirements of POPI and this clause;
  - 9.3.4.7 ensure its staff undergo the necessary awareness and training programmes to Ensure Converged's obligations in terms of POPI and this clause are met; and
  - 9.3.4.8 implement any other measures and procedures to ensure that Converged's obligations in terms of this clause and POPI are met.
- 9.3.5 Converged will indemnify CUSTOMER against any and all direct losses, costs, demands, claims, liabilities and expenses (including legal expenses) incurred or suffered by CUSTOMER as a result of or in connection with any breach of these provisions by Converged.
- 9.3.6 Converged undertakes to advise CUSTOMER as soon as reasonably possible of the POPI Information Regulator investigating Converged or ruling against Converged pertaining to Converged's contravention or failure to act in terms of POPI.
- 9.3.7 Converged may not send Personal Information outside the borders of the Republic of South Africa without the prior written authorisation of CUSTOMER.
- 9.3.8 Converged undertakes on an annual basis to provide CUSTOMER with information in a format prescribed by CUSTOMER to satisfy CUSTOMER that Converged is complying with POPI.
- 9.3.9 On the reasonable request of CUSTOMER, Converged agrees to provide access to its premises for the purposes of an inspection in order to verify compliance with Converged's obligations in terms of POPI and this clause.

## 6. BREACH AND TERMINATION

6.1. In the event of any Party to this Agreement (the "Defaulting Party") failing to comply with its obligations in terms of this Agreement and remaining in such breach for a period of fifteen (15) days after written notice requiring it to remedy such a breach has been served on it by or on behalf of the other Party hereto (the "Aggrieved Party"), then and in that event (and without derogating from any other remedy which the Aggrieved Party may lawfully have), the Aggrieved Party shall be entitled to:

- 6.1.1. Cancel this Agreement forthwith; or
- 6.1.2. Institute action for the specific performance of the terms of this Agreement;

In both instances without prejudice to its right to claim damages in accordance with the terms of this Agreement.

6.2. Further to the above, either Party may terminate this Agreement upon written notice to the other party upon the occurrence of any of the following:

- 6.2.1. proceedings are started for the other party's winding-up, dissolution or reorganization (otherwise than while solvent and for the purpose of a bona fide reconstruction or amalgamation) or for the appointment of a receiver, trustee or similar officer of any or all of the other party's revenue or assets; or
- 6.2.2. the other Party ceases to carry on business or suffers any execution or distress over a material part of its assets; or
- 6.2.3. the other party becomes bankrupt or insolvent or files any application, petition or action for relief under any bankruptcy, insolvency or moratorium law; or
- 6.2.4. the other Party admits in writing its inability to pay its debts or is unable to pay its debts as they fall due; or
- 6.2.5. the other Party suffers any similar event of insolvency or bankruptcy under the terms of the jurisdiction of its domicile; or
- 6.2.6. an application is made for an administration (or similar) order to be made in respect of the other Party;
- 6.2.7. the other party suspends or threatens to suspend its operations.

## 7. GENERAL

- 7.1. No indulgence which either party may allow or at any time whatsoever grant to the other Party in regard to the carrying out of any of the terms and conditions of this Agreement shall constitute a waiver of or prejudice such Party's rights in terms of this Agreement.
- 7.2. This Agreement shall be subject to and interpreted in accordance with the provisions of the laws of the Republic of South Africa.
- 7.3. The Parties hereto consent to the jurisdiction of the Magistrates' Court in respect of legal proceedings arising out of this Agreement.
- 7.4. The defaulting Party shall be liable for all legal costs (including attorney and own client costs and collection commission) incurred by the aggrieved Party in enforcing any of its rights in terms of this Agreement.
- 7.5. This Agreement replaces all negotiations, arrangements (whether oral or in writing) as well as any other communications between the parties which preceded the conclusion of this Agreement.
- 7.6. No alternation or variation of this Agreement shall be of any force or effect unless it is recorded in writing and signed by both Parties by their respective authorized signatories.
- 7.7. This Agreement constitutes the entire Agreement between the Parties in respect of the subject matter hereof. The CUSTOMER confirms that, save as is recorded herein, no representations or warranties of any nature have been made by CONVERGED to it.

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- 7.8. Should CONVERGED instruct an attorney to collect any overdue amount, the CUSTOMER shall be liable to pay all legal costs, collection fees and other legal charges incurred by CONVERGED in the collection of such overdue amounts.
  - 7.9. A certificate signed by any Director and/or Manager of CONVERGED, whose designation and appointment need not be proved, shall be prima facie proof of the quantum of the CUSTOMER's indebtedness to CONVERGED, the rate of interest payable thereon and the date from which such interest is calculated, and shall be sufficient to enable CONVERGED to obtain Default and/or Summary Judgment against the CUSTOMER and any Court having jurisdiction in terms hereof.

**8. DOMICILIA & NOTICES**

- 8.1. The Parties hereto choose as their respective domicilium citandi et executandi addresses for all purposes arising out of and/or connected with this Agreement, their respective addresses specified hereunder:

**CONVERGED:** Converged House  
75 Witkoppen Road  
Northriding  
Randburg

**CUSTOMER:** \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

- 8.2. Any notice required or permitted to be given in terms of this Agreement shall be valid and effective only if given in writing.
- 8.3. Any Party hereto may by notice to the other Party change his domicilium citandi et executandi to another physical address in the Republic of South Africa, which change will become effective on the 7th (seventh) day after the receipt of the notice.
- 8.4. Any notice may be delivered by hand or email and if delivered by hand shall be deemed received on date of actual delivery and if delivered by email shall be deemed received when successfully dispatched.
- 8.5. Notwithstanding anything to the contrary herein contained, a written notice or communication actually received by a Party shall be adequate written notice or communication to it, notwithstanding that such notice was not sent to or delivered at the chosen domicilium citandi et executandi of the Party receiving such notice.

**9. MAINTENANCE SERVICE CONTRACT**

- 13.1 All Managed services supplied by "CONVERGED" come standard with a limited level of support at no extra cost to the "CUSTOMER";
- 13.2 Free support is limited to hardware or device failure, software corruption and all matters deemed to be related to the malfunctioning of the solution supplied;
- 13.3 All remote support is included at no additional charge;
- 13.4 Any support resulting out of negligence or misuse of the equipment supplied will be billed for at standard call-out and labour rates;
- 13.5 No moves & changes or design modifications of any nature are included in the free remote support, they will be billed for at standard call-out labour rates;
- 13.6 Chargeable services are as per clause 6.1.9 and 6.1.10;
- 13.7 Onsite PBX remote services are dependent on fully reliable VPN access.

10. **FAULT REPORTING PROCEDURE**

To report a fault (Proposed Company) will contact the Supplier's Customer Service Desk:

- ☎ By telephone on 010 591 4600
- ☎ By email to [support@convergedgroup.net](mailto:support@convergedgroup.net)
- ☎ Via the Ticketing web portal : <https://convergedgroup.halopsa.com/portal>

The Supplier will require the following information from ( Proposed Company):

- Company name.
- Company telephone number.
- The type of equipment or service interruption and a full description of the fault.
- An order number will be required if the equipment or the nature of the service is not covered by a Service Level Agreement.
- The name of your contact person to whom we should provide feedback or make any follow up calls.

Please note.

A qualified technician may call to attempt to rectify the problem over the telephone and/or via VPN access. It is possible that the fault will be repaired remotely; if this is not the case, a technician will be dispatched with the necessary background knowledge of the fault and the spare parts to rectify the problem.

In the event of a request not being attended to or the fault not being rectified **within the time parameters specified in this Agreement** your fault can be escalated to:  
[servicemanager@convergedgroup.net](mailto:servicemanager@convergedgroup.net)

If this does not bring about resolution within **another time parameter cycle**, your call can be escalated to:  
[management@convergedgroup.net](mailto:management@convergedgroup.net)

Meaning : Double the time specified on the agreement response times.

Eg. Severity **Level 1** : 30min / 1 hr / 4hr / 8hr

Service calls will not be accepted 24/7/365 unless agreed upon upfront and costed in.

An Engineer will be on site, if required, within the response time stated below.

Notwithstanding; Converged Telecoms undertaking regarding response times, should the telephony, remote or call-out work, including travel time, extend outside of normal working hours (08.00 – 17.00 Monday to Friday), the client will be charged at preferential SLA overflow rates. Time and a half outside of normal working hours, including Saturdays. Double Time for Sundays.

15. **STANDARD SEVERITY LEVELS**

Each Defect is assigned a Severity Level when the fault is reported, in accordance with the Severity levels set out in the table below.

The Severity level becomes the priority that the Defect is given and will determine the nature of the Supplier response (i.e. the type of Fix)

75 Witkoppen Road, Northriding, Johannesburg PO Box 7246, Weltevreden Park 1715

**Tel:** 010 591 4600 **Fax:** 086 505 3130

[info@convergedgroup.net](mailto:info@convergedgroup.net)

| Severity Level                            | Typical Impact  | Response Time  |
|---|---|--|
| 1 – Highest Priority                      | Lines / Connectivity Issues, No Incoming or Outgoing calls possible<br>PBX System down (a large percentage verses isolated users out)<br>Call Centre Failure; more than 25% business interruption<br>All Switchboard Operators down<br>Major Voice degradation on incoming or outgoing traffic flow; more than 25% of calls\<br>Total Data / Internet failure | 15 Minute Response: From ticket logged (Telephonic or Email)<br>30 Minute Remote Support (VPN / Telephonic)<br>2 Hour On-Site if Required<br><br>MTTR (Mean time to repair)<br>4 hours |
| 2 – High Priority                         | PBX System Down (isolated users out)<br>One of two or more Operators down<br>Less than 25% Call Centre failure<br>Minor Voice degradation; isolated calls<br>Slow Data experience<br>Partial Data interruption  | 30 Minute Response: From Ticket Logged<br>1 Hour Remote Support<br>4 Hour On-Site if Required<br><br>MTTR (Mean time to repair)<br>8 hours   |
| 3 – Normal Priority                       | PBX or Connectivity Faults that are isolated or intermittent<br>Alarm/s on the PBX System<br>Addition of New Users; moves & changes   | 1 Hour Response from Ticket Logged<br>8 Hour Remote Support<br>16 Hour On-Site if Required   |
| 4 – Routine Maintenance/<br>Site meetings | Defect causes minor inconvenience. Eg. Intermittent faults  | 1 Hours Response from Ticket Logged<br>16 Hour Remote Support<br>32 Hour On-Site if Required   |

NOTE : The Fault Severity / Response table is meant as a worst-case scenario; every effort will be made to improve on these parameters