



TERMS OF SERVICE

These **TERMS OF SERVICE** (“**Service Terms** or **Terms of Service**”), including the Sale Order(s), which by this reference are incorporated herein (“**Agreement**”) govern the Customer’s use of the Services (as herein defined) provided by Convergent Telecom, Inc., a New York corporation with its principal place of business located at 53 Assembly Drive, Unit 518, Mendon, New York 14506 (“**CT**”) and the individual or legal entity identified in the Sales Order (“**Customer**”).

ARTICLE I. DEFINITIONS

Section 1.01 “Device” means any CT-provided telephone, router, adapter, or any other device that is used in conjunction with the Service.

Section 1.02 “Enhanced 911 Service” or “E911 Service” means the ability to route an emergency call to the designated emergency operator entity authorized to receive such emergency call that service Customer’s registered or used-provided address and which delivers the Customer’s telephone number and registered address automatically to the designated emergency operator entity answering such emergency call.

Section 1.03 “Rented Device” means any Device leased to Customer by CT or any other third-party with or without a separate charge or fee in connection with the Services.

Section 1.04 “Sales Order” means the order form supplied to Customer from CT which describes the Services of CT that are utilized by Customer along with the charges, taxes, and fees associated with such Service.

Section 1.05 “Service” or “Services” means any business services and related products devices that CT provides to Customer that is described in the Sales Order, or any other quote, order form, or written communication.

ARTICLE II. EMERGENCY SERVICES AND 911 DIALING

Section 2.01 Acknowledgement by Customer. Customer acknowledges that it has read and reviewed the limitations of the Service as set forth in this Section 2 and CT’s 911 Notice and Disclaimer available at <https://convergent.net/911-notice/> and affirmatively acknowledges that Service’s 911 dialing is different than traditional 911 service through a wired phoneline or other E911 Service. CUSTOMER’S SERVICE WILL NOT BE ACTIVATED UNTIL CT RECEIVES AN AFFIRMATIVE ACKNOWLEDGEMENT THAT CUSTOMER HAS READ AND

UNDERSTOOD THIS SECTION 2 AND HAS RECEIVED A SIGNED 911 NOTICE AND DISCLAIMER.

Section 2.02 Non-Availability of Traditional 911 or E911 Access to Emergency Services.

Customer acknowledges and agrees that the Service may not support traditional 911 dialing or E911 Services in all locations where the Service is utilized.

Section 2.03 Situations Where 911 Dialing Is Not Available. Customer acknowledges and agrees that the Service's 911 dialing features are unavailable in the following circumstances:

- A. **Loss of Electrical Power or Disruption in Power Supply.** The Service, and 911 dialing feature will not function in the event of a disruptions or loss in electrical power. If Customer experiences a disruption or loss of electrical power, the Service, and 911 dialing, will not function until electrical power is restored. Following an electrical power loss or disruption, Customer may need to reset or reconfigure its equipment prior to utilizing the Service, and 911 dialing.
- B. **Internet Connection Failure or Suspension of Internet or Broadband Service.** If there is an interruption of Customer's broadband or high-speed internet access service, Customer will not have access to the Service, and 911 dialing during such interruptions. Additionally, since the Service is dependent on the broadband connection, the availability of an adequate power supply and correct equipment configuration, CT does not guarantee that the Service will be continuous or error-free.
- C. **Relocation of Equipment.** If Customer relocates its equipment, Customer acknowledges that it must updated its registered location. If Customer does not update its registered location, any 911 call made using the Service and 911 dialing may not be routed to the appropriate public safety answering point for Customer's current location.
- D. **Equipment Failure and Misconfiguration.** Customer acknowledges that the Service, including 911 dialing, will not function if the equipment at the Customer's location, or CT's equipment fails for any reason, or by any misconfiguration either by CT, the Customer, or any third-party vendor.
- E. **Reregistration Required if Customer Changes Number or Add or Port New Number.** Customer acknowledges and understands that if Customer changes its phone number or if it adds or ports new phone numbers to its account, unless and until: (i) Customer successfully registers the location for each newly added or newly ported phone number; and (ii) it receives confirmation from CT that such newly added or newly ported phone number is successfully registered the Service, including 911 dialing may not function.

- F. **Termination or Discontinuance of Convergent Service.** If the Service has been cancelled or terminated by CT or Customer, 911 dialing will not function. Customer acknowledges and understands that any Service outage as a result of billing issues or for any other reason describe in this Agreement will prevent ALL Service, including 911 dialing, from functioning.
- G. **Network Congestion.** Customer acknowledges and understands that any calls made using 911 dialing may be subject to network congestion and/or reduced routing speed which may result in a failed call.
- H. **Other Limitations.** If there is an outage or disruption in the Service for any other reason listed in this Agreement, it shall prevent 911 dialing from functioning.

Section 2.04 Registration of Physical Location. Customer acknowledges and agrees that it must provide CT with the physical location where Customer shall use the Service. If Customer moves the Device to another location, it must provide and register the new address and location with CT. Customer acknowledges and agrees that if it does not register any new location, any call made using the 911 dialing feature may be sent to an emergency center near Customer's old address. Upon subscribing to the Service, Customer shall provide CT the initial location of its Service. If the event Customer relocates the service, it may register a new location by following the instructions from the "911" registration link on Customer's CT web account dashboard features page. For purposes of the 911 dialing feature, Customer may only register one location at a time for each phone line you use with the Service.

Section 2.05 Confirmation of Activation. Customer acknowledges and understands that its 911 dialing will not be activated until Customer receives a confirmation email from CT stating that such feature has been activated.

Section 2.06 Alternative Arrangements. Customer must carefully evaluate the limitations of the Service, including 911 dialing and determine whether or not it shall solely rely on such for its emergency service needs. If Customer is not comfortable with the limitations set for in this Agreement and CT's 911 Notice and Disclosure it shall consider having alternative means of accessing traditional 911 services.

ARTICLE III. SERVICE TERMS

Section 3.01 Term; Termination of Service; Payment.

- A. **Initial Term.** The term for the Service shall be for a time period as listed in the Sales Order ("**Initial Term**"). The Initial Term shall begin on the date CT activates Customer's Service and shall continue for the time period listed in the Sales Order. Customer acknowledges that if it terminates its Service during the Initial Term, it shall be charged for the entirety of the Initial Term, plus a termination fee, and all other taxes and fees.

- B. **Automatic Renewal.** Upon expiration of the Initial Term, the Service shall automatically continue on a monthly basis until terminated in accordance with this Agreement (“**Renewal Term**”). Customer acknowledges that if it terminates its Service during a Renewal Term it shall be charged for the entirety of the Renewal Term plus a termination fee, and all other taxes and fees.
- C. **Termination of Service.** This Agreement and the Services may be terminated as follows:
- (i) **By Customer.** Customer may terminate this Agreement upon ten (10) days written notice to CT, via email at service@convergent.net, or by calling CT at 585-770-100. Customer acknowledges and understands that if it terminates this Agreement during the Initial Term or during any Renewal Term it shall be charged for the entirety of such Initial Term or Renewal Term.
 - (ii) **By CT.** CT reserves the right to terminate this agreement for any reason at any time, in its sole discretion, upon ten (10) days, written notice to Customer. Unless terminated for breach of this Agreement, if CT terminates this Agreement Customer shall only be charged a pro-rated amount from the beginning of the Initial Term or any Renewal term through the date of termination, plus any fees or taxes. Customer acknowledges and understands that if CT terminates this Agreement pursuant to Customer’s breach, Customer shall be immediately responsible for payment of all fees, taxes, and charges owed for the duration of the Initial Term or, if applicable, any Renewal Term.
 - (iii) **Termination Fee.** Customer acknowledges and understands that it may be charged a termination fee of Nine and 99/100 Dollars (\$9.99) per phone number or Device, and the full retail for each Device supplied by CT if the Service is terminated for any reason during the Initial Term or Renewal Term.
 - (iv) **Money Back Guaranty; Limitations and Conditions.** CT offers a Thirty (30) day money back guarantee beginning on the start date of the Initial Term. The money back guarantee shall only apply to the Initial Term and shall not apply to any Renewal Term. CT will refund the activation fee and monthly charge for first month of Service during the Initial Term provided that: (a) Customer has not exceeded 2500 minutes of usage; and (b) Customer terminates the Service in according with this Agreement.

Customer acknowledges and understands that federal excise taxes and any other applicable taxes or fees shall not be refunded. Customer shall remain responsible for any charges for usage fees including but not limited to local or international usage, calls to CT toll-free numbers, and directory assistance. CT shall reserve the right to terminate or revoke this money back guarantee at any time, without prior notice.

- (v) **Transfer of Number Upon Termination of Service.** Upon termination for any reason, CT shall release any telephone number(s) Customer ported to CT from its previous service provider if: (a) Customer's new service provider is able to accept and accommodate such number; (b) Customer's account has been properly terminated in accordance with this Agreement; (c) Customer is current and paid for all fees, charges, and taxes, associated with the Service; (d) Customer submits a request to transfer upon termination of its number.

D. Price and Payment for Services.

- (i) **Prices and Fees.** CT's charges and fees for the Service are supplied to Customer in the Sales Order. Customer agrees to pay all one-time and recurring fees and charges. Customer further agrees that any taxes, set-up fees, equipment fees, shipping and handling, and any other nonrecurring charges will be charged to the payment method on file.
- (ii) **Payment for Services.** Unless otherwise agreed to in writing, CT shall only accept payment by an automated clearing house ("**ACH Payment**") or check. Customer shall provide the bank account to CT which CT may charge by ACH Payment ("**Designated Account**"). Customer expressly authorizes CT to charge the Designated Account for payment of the Service. In the event of termination of this Agreement, such authorization shall remain valid for a period of Thirty (30) days, whereupon CT shall charge the Designated Account for any termination fees, and any other additional outstanding charges and fees.
- (iii) **Discontinuance for Non-Payment.** Customer acknowledges that CT may, in its sole discretion, terminate the Service at any time without notice in the event Customer fails to make payment, its credit card provider denies or discontinues providing credit to Customer for any reason, or Customer fails to provide CT with a new credit card expiration date before the existing one expires. If Customer payment method fails for any reason during any regular or monthly billing process, it will have Forty-Eight (48) hours to provide CT its payment method, including credit card information, if

applicable. If the payment method is not resolved within Seventy-Two (72) hours, CT may terminate the Service. In the event CT terminates the Service, Customer shall remain liable for all charges, taxes, fees, or otherwise provided for in the Sales Order and this Agreement. In the event CT refers an unpaid matter to collection agency or resorts to legal action to recover monies due, Customer agree to reimburse CT for all expenses incurred to recover such monies, including attorneys' fees.

Section 3.02 Use of Service and Device.

- A. **User Responsibility.** Customer acknowledges and understands that it is responsible for all use(s) related to its Service. Further, Customer acknowledges and understands that this means that it shall accept full liability and responsibility for its actions or the actions of anyone who uses the Service via Customer's account with or without its permission.
- B. **Customer Provided Equipment.** Customer acknowledges and agrees, that if Customer is to provide its own equipment for use with the Service, it shall be responsible for supplying, operating, and supporting such equipment with the Service, and ensuring that such equipment is compatible with the Service. Customer acknowledges and agrees that any equipment supplied by Customer shall be pre-approved by CT, in writing. Customer acknowledges and agrees that CT shall not be responsible for any interruption of the Service due to a malfunction, misuse, or incompatibility with any equipment that is provided by the Customer.
- C. **Lawful Purpose; Right to Terminate.** Customer acknowledges and agrees that it shall use the Service and/or Device for lawful, proper, and appropriate purposes only. CT reserves the right to terminate Customer's Service immediately if, in its sole discretion, CT determines that Customer has used the Service or Device for an unlawful purpose. In the event of such termination, Customer shall be responsible for the full month's charges of all taxes and fees from the date of termination through the end of the current term.
- D. **Prohibited Uses.** Customer acknowledges that the following shall be considered improper, illegal, or inappropriate use of the Service or Device in violation of Section 3.02(C):
- (i) Use of the Service or Device for: auto-dialing; continuous, repetitive or extensive call forwarding, telemarketing (including charitable or political solicitation or polling), fax or voicemail broadcasting or blasting.
 - (ii) Use of the Service or Device to: impersonate another person; send bulk unsolicited messages; use robots, data mining techniques, or other automated devices or programs to catalog, download, store, or otherwise reproduce or distribute information from the Service or use any automated means to manipulate the Service.

- (iii) Violate any law, rule, or regulation; violate any third party's intellectual property or personal rights; or exceed Customer's permitted access to the Service.
- (iv) Use of the Service to threaten, abuse, harass, defame, deceive, defraud, interfere or invade another's privacy or engage in any similar behavior.
- (v) Use the Service for transmitting or receiving any communication or material of any kind which would constitute a criminal offense, give rise to a civil liability, or otherwise violate any applicable local, state, national or international law or encourage conduct that would constitute a criminal offense, give rise to a civil liability, or otherwise violate any applicable local, state, national or international law.

E. **Transfer of Service.** Customer shall not transfer or resell the Device or Service to a third party without CT's prior written consent.

F. **Content.** Customer acknowledges and agrees that it shall be liable for any and all liability that may arise out of the content transmitted by it or to any person, whether authorized or unauthorized, using Customer's Service or Device (each such person, a "User"). Customer assures that any User's use of the Service and content comply at all times with all applicable laws, regulations and written and electronic instructions for use. CT reserves the right to terminate or suspend Customer's Services and remove Customer's or its Users' content from the Service, if CT determines, in its sole discretion, that such use or content of the Service does not conform with the requirements set forth in this Agreement or interferes with CT's ability to provide Services to Customer or others customers. CT's action or inaction under this Section shall not constitute any review or approval of Customer or its Users' use or content.

G. **Use of Service Outside United States.** Although CT encourages Customer to use the Service to place calls to foreign countries from within the United States, CT does not presently offer or support the Service in any countries other than the United States and Canada. Customer acknowledges and understands that if it uses the Service or the Device outside of the United States or Canada, Customer shall be solely responsible for any violations of local laws and regulations resulting from such use. CT reserves the right to terminate Customer's Service immediately if CT determines, in its sole discretion, that Customer has used the Service or the Device outside of the United States or Canada.

H. **Recording Conversations.** The Service provides for a function that allows Customer to record individual telephone conversations. The laws regarding the notice, notification, and consent requirements for recording conversations vary from state to state. In some states,

Customer is required to obtain consent from all parties to record a conversation. Customer is solely responsible for complying with all federal, state, and local laws in any relevant jurisdiction when using this feature. CT expressly disclaims all liability with respect to your recording of telephone conversations. Customer hereby agrees to fully, finally, and forever release, discharge, hold harmless, and fully indemnify CT from and against any damages or liabilities of any kind related to Customer's recording of any telephone conversation using the Service.

- I. **Copyright, Trademark.** Customer acknowledges and understands that the Service and Device and any firmware or software used to provide the Service or provided to Customer in conjunction with providing the Service, or embedded in the Device, and all Services, information, documents and materials on CT's websites is protected by trademark, copyright or other intellectual property laws and international treaty provisions. All of CT's websites, corporate names, service marks, trademarks, trade names, logos and domain names (collectively "**Marks**") are CT's exclusive property. Nothing in this Agreement grants Customer the right or license to use any of the Marks.
- J. **Unauthorized Usage of Device; Firmware or Software.** Customer acknowledges that it has only received a non-transferable, revocable license to use the Service and Device and such firmware or software in object code thereof, without any modification and in strict compliance with this Agreement. Further, Customer expressly agreement that any Device provided to it shall be used exclusively in connection with the Service. CT will not provide any passwords, codes or other information or assistance that would enable Customer to use the Device for any other purpose. CT reserves the right to prohibit the use of any interface device that CT has not provided to Customer. Customer hereby represents and warrants that it possesses all required rights, including software and/or firmware licenses, to use any interface device that CT have not provided to Customer. In addition, Customer shall indemnify and hold us harmless against any and all liability arising out of Customer's use of such interface device with the Service. Customer shall not reverse compile, disassemble or reverse engineer or otherwise attempt to derive the source code from the binary code of the firmware or software.
- K. **Tampering with Device or Service.** Customer shall not change the electronic serial number or equipment identifier of the Device or to perform a factory reset of the Device without CT's prior written consent. Customer acknowledges that CT reserves the right to terminate the Service if CT believes, in its sole discretion, that Customer has tampered with the Device. In the event of such termination, Customer shall remain responsible for all charges from the date of termination through the remainder of the Initial Term, or any Renewal including, without limitation, unbilled charges, plus a termination fee, if applicable, all of which will immediately become due and payable. Customer shall not attempt to hack or otherwise disrupt the Service or make any use of the Service that is inconsistent with its intended purpose. If Customer copies or alters, or has someone else

copy or alter the firmware or software of the Device in any way that facilitates a compromise of the Service, Customer shall be solely responsible for any charges that result.

L. **Theft of Service.** Customer shall not use the Service in any manner that is inconsistent with CT's policies and procedures. Customer shall notify CT immediately, in writing or by calling our customer support line, if the Device is stolen or if Customer becomes aware at any time that the Service is being stolen, fraudulently used, or otherwise being used in an unauthorized manner. Customer acknowledges when it calls or writes CT, it must provide its account number and a detailed description of the circumstances of the Device theft, fraudulent use, or unauthorized use of the Service. Customer acknowledges and understands that failure to notify CT in a timely manner may result in the termination of the Service and additional charges to Customer. Until such time as we receive notice of the theft, fraudulent use, or unauthorized use, Customer will be liable for all use of the Service using a Device stolen from Customer and any and all stolen, fraudulent or unauthorized use of the Service through the date notice is received by CT.

M. **Rented Devices.** Unless otherwise agreed upon, within Thirty (30) days after the expiration of the Initial Term or and Renewal Terms or termination of this Agreement, Customer shall promptly return all Rented Devices to CT. Customer will be responsible for (a) any damage to the Rented Devices as assessed by CT upon receipt, (b) the replacement cost of such Rented Devices, if it is lost, misplaced, not delivered or stolen during transit, and (c) shipping/handling costs. Further, Customer agrees to pay the full retail cost for the repair or replacement of any Rented Device or part that is lost, stolen, damaged, modified, sold, transferred, leased, encumbered or assigned together with any costs incurred by CT in obtaining or attempting to obtain possession of any Rented Devices.

Section 3.03 Service Distinctions. Customer acknowledges and understands that the Service is not a telecommunications service, and CT provides the Service on a best-efforts basis. There are important distinctions between a traditional telephone service and CT's Service. This treatment may limit or otherwise affect Customer's rights of redress before Federal and State telecommunications regulatory agencies or judicial forums.

- A. **Emergency Services and 911 Dialing.** Customer acknowledges and understands the CT's 911 Dialing is different than the traditional 911 service. C
- B. **CUSTOMER'S SERVICE WILL NOT BE ACTIVATED UNTIL CT RECEIVES AN AFFIRMATIVE ACKNOWLEDGEMENT THAT CUSTOMER HAS READ AND UNDERSTOOD SECTION 2 AND CT'S 911 NOTICE AND DISCLAIMER AVAILABLE AT <https://convergent.net/911-notice/>**
- C. **No 0+ Operator Assisted Calling; May Not Support x11 Calling.** Customer acknowledges that the Service does not support 0+ or operator assisted calling, including, without limitation, collect calls, third party billing calls or calling card

calls. CT's Service may not support 311, 511 and/or other x11 services in one or more service areas.

- D. **No Directory Listing.** Customer understands that the phone numbers it receives from CT will not be listed in any telephone directories. However, any phone numbers Customer transfer from its local phone company may be listed. As a result, a third-party with Customer's phone number may not be able to utilize a reverse director to lookup its address.
- E. **Incompatibility with Other Services.**
- (i) **Security Systems.** Customer acknowledges that the Service may not be compatible with security systems. Customer may be required to maintain a telephone connection through its local exchange carrier in order to use any alarm monitoring functions for any security system installed in your home or business. Additionally, Customer acknowledges and understands that it is responsible for contacting the alarm monitoring company to test the compatibility of any alarm monitoring or security system with the Service.
 - (ii) **Certain Broadband and Cable Modem Services.** Customer understands that the Service presently may not be compatible with some broadband services. Customer further acknowledges and understands that some providers of broadband service may provide modems that prevent the transmission of communications using the Service. CT does not warrant that the Services will be compatible with all broadband services and expressly disclaim any express or implied warranties regarding the compatibility of the Service with any particular broadband service.
- F. **Use Outside of the United States.** Although CT encourages Customer to use the Service to place calls to foreign countries from within the United States, we do not presently offer or support the Service in any countries other than the United States and Canada. Customer acknowledges that if it uses the Service or the Device outside of the United States or Canada, Customer shall be solely responsible for any violations of local laws and regulations resulting from such use. CT reserves the right to terminate Customer's Service immediately if CT determines, in its sole discretion, that Customer has used the Service or the Device outside of the United States or Canada.

ARTICLE IV. BILLING, PAYMENT, FEES, AND CHARGES

Section 4.01 Billing and Payment.

- A. **Billing.** When the Service is activated, Customer must provide CT with a valid email address. CT shall bill all charges, applicable taxes, fees and surcharges monthly in advance (except for usage-based charges, which will be billed monthly in arrears, and any other charges which we decide to bill in arrears), including but not limited to: (i) Activation fees; (ii) Monthly Service fees; (iii) International usage charges; (iv) Advanced feature charges; (v) Equipment purchases; (vi) Termination Fees; and (vii) Shipping and handling charges.

The amount of such fees and charges shall be published on CT's website and may change from time to time. Notification of monthly invoices will be sent to Customer's email address on file with CT. CT reserves the right to bill at more frequent intervals if the amount Customer's unpaid balance exceeds \$250.00. Any usage charges will be billed in increments that are rounded up to the nearest minute except as otherwise set forth in the rate schedules found on our website.

- B. **Billing Disputes.** Customer acknowledges and agrees that it must notify CT, in writing, within seven (7) days after receiving its credit card statement or from the time funds are debited from its bank account if Customer disputes any CT charges on that statement or that have been debited from your account, or such dispute will be deemed waived. Notification of all billing disputes shall be sent to the following address or email address:

Customer Care Billing Department
Convergent Telecom, Inc.
53 Assembly Drive, Unit 518
Mendon, New York 14506
Email: accounting@convergent.net

- C. **Payment.** Payment shall be made in accordance with this Agreement. Customer acknowledges and agrees that CT is authorized to collect from Customer's specified payment method. This authorization shall remain valid until Thirty (30) days after Customer's termination of the Service or as otherwise stated in this Agreement.
- D. **Collection.** Customer acknowledges and agrees that if Service is terminated, Customer shall remain fully liable to CT for all charges pursuant to this Agreement and any and all costs CT incurs to collect such amounts, including, without limitation, collection costs and attorney's fees.

Section 4.02 Fees and Charges.

- A. **Taxes.** Customer acknowledges and agrees that its is responsible for, and shall pay any applicable federal, state, municipal, local or other governmental sales, use, excise, value-added, personal property, public utility and other taxes, fees and

charges now in force or enacted in the future, that arise from or as a result of Customer's use or payment for the Service or Device. Such amounts are in addition to payment for the Service or Device and will be billed to Customer by CT. If Customer is exempt from payment of such taxes, Customer shall provide CT with an original government-issued certificate attesting to tax-exempt status. Tax exemption will only apply from and after the date CT receives such certificate.

- B. **Termination Fee.** Customer acknowledges and understands that it may be charged a termination fee of Nine and 99/100 Dollars (\$9.99) per phone number or Device, and the full retail for each Device supplied by CT if the Service is terminated for any reason during the Initial Term or Renewal Term.
- C. **Payphone Charges.** If Customer uses CT's "Toll Free" feature or any toll-free feature that CT offers in the future, CT shall be entitled to collect from Customer any charges imposed on CT, either directly or indirectly, in connection with toll free calls made to Customer's number. Customer acknowledges and agrees that CT may recover these amounts by means of a per-call charge, rounded up to the next cent, or in such other fashion as CT deems appropriate for the recovery of these costs, its CT's sole discretion.
- D. **Directory Calls (411).** Customer acknowledges and agrees that CT shall charge Customer One and 25/100 Dollars (\$1.25) for each call made to CT directory assistance.
- E. **Conference Bridge Calls.** Customer acknowledges and agrees that CT may charge Customer on a per minute basis, for each caller who calls into Customer's conference bridge ("**Conference Bridge**"). CT's Conference Bridge per minute usage fee shall be in an amount equal to the lower of (i) three and 9/10 cents (\$0.039) per minute, or (ii) the per minute Conference Bridge usage fee determined in the Sales Order. The per minute usage fee will be calculated based on all participants on the conference bridge, including on-network and off-network participants.

Article V. LIMITATION ON WARRANTIES LIMITATION OF LIABILITY; INDEMNIFICATION

Section 5.01 Disclaimer of Warranties on Service and Device. CT MAKES NO WARRANTIES, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO, ANY IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS OF FOR A PARTICULAR PURPOSE, TITLE OR NON-INFRINGEMENT OR ANY WARRANTY ARISING BY USAGE OF TRADE, COURSE OF DEALING OR COURSE OF PERFORMANCE OR ANY WARRANTY THAT THE SERVICE WILL MEET CUSTOMER'S REQUIREMENTS. WITHOUT LIMITING THE FOREGOING, CT DOES NOT WARRANT THAT THE SERVICE

OR DEVICE WILL BE WITHOUT FAILURE, DELAY, INTERRUPTION, ERROR, DEGRADATION OF VOICE QUALITY OR LOSS OF CONTENT, DATA OR INFORMATION. NEITHER CT NOR ITS OFFICERS, DIRECTORS, EMPLOYEES, AFFILIATES OR AGENTS, OR ANY OTHER SERVICE PROVIDER OR VENDOR WHO FURNISHES SERVICES OR DEVICES, OR PRODUCTS TO CUSTOMER IN CONNECTION WITH THE SERVICE, WILL BE LIABLE FOR UNAUTHORIZED ACCESS TO CT'S OR CUSTOMER'S TRANSMISSION FACILITIES OR EQUIPMENT OR FOR UNAUTHORIZED ACCESS TO, OR ALTERATION, THEFT OR DESTRUCTION OF, CUSTOMER'S DATA FILES, PROGRAMS, PROCEDURES OR INFORMATION THROUGH ACCIDENT, FRAUDULENT MEANS OR DEVICES OR ANY OTHER METHOD, REGARDLESS OF WHETHER SUCH DAMAGE OCCURS AS A RESULT OF CT'S OR ITS SERVICE PROVIDER'S OR VENDORS' NEGLIGENCE. STATEMENTS AND DESCRIPTIONS CONCERNING THE SERVICE OR DEVICE, IF ANY, BY CT OR CT'S AGENTS OR INSTALLERS ARE INFORMATIONAL AND ARE NOT GIVEN AS A WARRANTY OF ANY KIND.

Section 5.02 Limitation of Liability.

- A. CUSTOMER ACKNOWLEDGES AND AGREES THAT CT SHALL NOT BE LIABLE TO CUSTOMER, ITS REPRESENTATIVES OR AUTHORIZED ASSIGNS OR ANYONE ELSE FOR ANY INCIDENTAL, DIRECT, INDIRECT, SPECIAL, PUNITIVE, EXEMPLARY, OR CONSEQUENTIAL DAMAGES, OR FOR ANY DAMAGES FOR LOSS OF DATA, LOSS OF REVENUE OR PROFITS, RELATING TO OR ARISING OUT OF THE SERVICE, THE USE OF OR INABILITY TO USE THE SERVICE, THE ABSENCE, DELAY, FAILURE OR OUTAGE OF THE SERVICE, THE INABILITY TO DIAL 911 OR E911 TO ACCESS EMERGENCY SERVICE PERSONNEL, THE INABILITY TO DIAL SECURITY, LAW ENFORCEMENT OR FIRE PREVENTION/ PROTECTION SERVICES OR SYSTEMS, THE DEVICE, THE USE OF AND/OR INABILITY TO USE THE DEVICE, THE INSTALLATION OF THE DEVICE, AND/OR THIS AGREEMENT.

- B. CUSTOMER ACKNOWLEDGES AND AGREES THAT CT SHALL NOT BE LIABLE FOR ANY DELAY OR FAILURE TO PROVIDE THE SERVICE, INCLUDING 911 DIALING AT ANY TIME OR FROM TIME TO TIME, OR FOR ANY INTERRUPTION OR DEGRADATION OF QUALITY CAUSED BY ANY REASON INCLUDING BUT NOT LIMITED TO THE FOLLOWING: AN ACT OR OMISSION OF AN UNDERLYING CARRIER, SERVICE PROVIDER, VENDOR OR THIRD PARTY, EQUIPMENT, NETWORK OR FACILITY FAILURE, EQUIPMENT, NETWORK OR FACILITY UPGRADE, SERVICE, MAINTENANCE, MODIFICATION, SHORTAGE, OR RELOCATION, FORCE MAJEURE EVENTS SUCH AS BUT NOT LIMITED TO ACTS OF GOD, ADVERSE WEATHER, STRIKES, FIRE, WAR, RIOT, GOVERNMENT ACTIONS OR TERRORISM, SERVICE, DEVICE, EQUIPMENT, NETWORK OR FACILITY FAILURE CAUSED BY THE LOSS

OF POWER OR INTERNET SERVICE TO CT OR CUSTOMER, AND ANY CAUSE THAT IS BEYOND CT'S CONTROL.

- C. CUSTOMER ACKNOWLEDGES AND AGREES THAT CT SHALL NOT BE LIABLE FOR UNAUTHORIZED ACCESS TO CT'S OR CUSTOMER'S TRANSMISSION FACILITIES OR PREMISES, EQUIPMENT OR FOR UNAUTHORIZED ACCESS TO, OR ALTERATION, THEFT OR DESTRUCTION OF, CUSTOMER'S DATA FILES, PROGRAMS, PROCEDURES, OR INFORMATION THROUGH ACCIDENT, FRAUDULENT MEANS OR DEVICES OR ANY OTHER METHOD, REGARDLESS OF WHETHER SUCH DAMAGE OCCURS AS A RESULT OF CT'S NEGLIGENCE OR OTHER ACTS OR OMISSIONS. CT'S LIABILITY FOR ANY ACT OR OMISSION SHALL IN NO EVENT EXCEED THE SERVICE CHARGES WITH RESPECT TO THE AFFECTED TIME PERIOD. THE LIMITATIONS SET FORTH HEREIN APPLY TO ALL CLAIMS FOUNDED IN BREACH OF CONTRACT, BREACH OF WARRANTY, PRODUCT LIABILITY, TORT, AND ANY AND ALL OTHER THEORIES OF LIABILITY, AND APPLY WHETHER OR NOT CT WAS INFORMED OF THE LIKELIHOOD OF ANY PARTICULAR TYPE OF DAMAGE.
- D. FURTHER, CUSTOMER AGREES TO REIMBURS CT FOR ALL COSTS AND EXPENSES RELATED TO THE DEFENSE OF ANY SUCH CLAIMS, INCLUDING ATTORNEYS' FEES AND LITIGATION COSTS. THE PROVISIONS OF THIS SECTION SHALL BE APPLIED TO THE FULLEST EXTENT OF THE LAW, BUT IF ANY PORTION OF THIS SECTION IS DETERMINED TO BE UNLAWFUL, THEN THIS SECTION SHALL BE CONSTRUED TO LIMIT LIABILITY AGAINST CT TO THE FULLEST EXTENT POSSIBLE UNDER THE LAW.

Section 5.03 Indemnification and Survival. CUSTOMER ACKNOWLEDGES AND AGREES THAT IT IS LIABLE FOR ANY AND ALL USE OF THE SERVICE AND/OR DEVICE BY CUSTOMER AND BY ANY PERSON MAKING USE OF THE SERVICE OR DEVICE, AND CUSTOMER AGREES TO DEFEND, INDEMNIFY AND HOLD HARMLESS CT, ITS OFFICERS, DIRECTORS, EMPLOYEES, AFFILIATES, AND AGENTS AGAINST ANY AND ALL LIABILITY FOR ANY SUCH USE THAT FAILS TO COMPLY WITH THIS AGREEMENT. CUSTOMERS AGREES TO DEFEND, INDEMNIFY AND HOLD HARMLESS CT, ITS OFFICERS, DIRECTORS, EMPLOYEES, AFFILIATES, AND AGENTS FROM ANY AND ALL CLAIMS AND/OR LIABILITY FOR DAMAGES, PERSONAL INJURY, DEATH, FINES, PENALTIES, COSTS, EXPENSES, LOSSES, LOST PROFIT, LOST REVENUE, PROPERTY DAMAGE, ATTORNEYS' FEES, AND ANY AND ALL OTHER DAMAGES OF WHATEVER KIND AND NATURE RELATING TO OR ARISING OUT OF THE SERVICE, THE USE OF OR INABILITY TO USE THE SERVICE, THE ABSENCE, FAILURE OR OUTAGE OF THE SERVICE, THE INABILITY TO DIAL 911 OR E911 TO ACCESS EMERGENCY SERVICE PERSONNEL, THE INABILITY TO DIAL SECURITY, LAW ENFORCEMENT OR FIRE PREVENTION/ PROTECTION SERVICES OR SYSTEMS, THE DEVICE, THE USE OF AND/OR INABILITY TO USE THE DEVICE, THE

INSTALLATION OF THE DEVICE, AND/OR THIS AGREEMENT UNLESS THE CLAIMS OR CAUSES OF ACTION ARISE FROM OUR GROSS NEGLIGENCE, RECKLESSNESS, OR WILLFUL MISCONDUCT. THIS SECTION SHALL SURVIVE THE TERMINATION OR EXPIRATION THIS AGREEMENT.

ARTICLE VI. MISCELLANEOUS

Section 6.01 Entire Agreement. With respect to the subject matter contained herein, this Agreement shall constitute the entire agreement between the parties and shall supersede all prior and contemporaneous agreements, whether written or oral.

Section 6.02 Construction. Words used herein, regardless of the number and gender specifically used, shall be deemed and construed to include any other number, singular or plural, and any other gender, masculine, feminine or neuter, as the context requires. The section headings used in this Agreement are for convenience only and do not modify the intent of this Agreement.

Section 6.03 Wavier. No waiver of a breach of this Agreement shall be effective unless such waiver is evidenced in writing and duly executed by the parties hereto. Any failure to exercise or enforce any right or provision of this Agreement shall not be construed as a waiver of such right or provision. Any waiver by a party hereto shall not operate, nor be construed, as a waiver of any subsequent breach.

Section 6.04 Binding Effect. This Agreement shall be binding upon and inure to the benefit of the parties and their respective successors and assigns. Except as otherwise provided herein, this Agreement shall not create any rights of any nature in any person or entity not a party hereto.

Section 6.05 Assignment. No party shall assign or attempt to assign its rights or obligations hereunder without the prior written consent of all other parties to this Agreement.

Section 6.06 Severability. If any provision of this Agreement is found to be unenforceable or invalid, such provision shall be automatically reformed so as to be valid, operative and enforceable by law, while preserving the original intent of this Agreement. The invalidity of any part of this Agreement shall not render any other part of this Agreement unenforceable or invalid.

Section 6.07 Survival. The provisions of this Agreement relating to indemnification, limitations on liability, warranty limitations and disclaimers, billing and Customer's obligation to pay for the Service and any additional charges shall survive the termination of this Agreement.

Section 6.08 No Third-Party Beneficiaries. No provision of this Agreement provides any person or entity not a party to this Agreement with any remedy, claim, liability, reimbursement, or cause of action or creates any other third-party beneficiary rights.

Section 6.09 Governing Law. This Agreement shall be governed by, construed and enforced in accordance with the laws of the State of New York, without regard to principles of conflicts of law.

Section 6.10 Jurisdiction; Venue. To the extent initiated to enforce an arbitration award, or for any other reason consistent with Section 6.10, any litigation arising from or otherwise involving this Agreement shall be adjudicated in a court of jurisdiction in Monroe County, New York; the parties irrevocably consent to the personal jurisdiction and venue of such a court.

Section 6.11 Mandatory Arbitration. Any dispute or claim between the parties arising out of, or relating, to the Service shall be resolved by arbitration before a single arbitrator administered by the American Arbitration Association in accordance with its Commercial Arbitration Rules. The arbitration will take place in Monroe County, New York. The arbitrator's decision shall follow the plain meaning of the relevant documents and shall be final and binding. Without limiting the foregoing, the parties agree that no arbitrator has the authority to: (A) award relief in excess of what this Agreement provides; or (B) award punitive or exemplary damages. Judgment on the award rendered by the arbitrators may be entered in any court having jurisdiction thereof. REGARDLESS OF ANY STATUTE OR LAW TO THE CONTRARY, ANY CLAIM OR CAUSE OF ACTION ARISING OUT OF OR RELATED TO THE SERVICE MUST BE FILED WITHIN ONE (1) YEAR AFTER SUCH CLAIM OR CAUSE OF ACTION AROSE OR BE FOREVER BARRED. All claims shall be arbitrated individually. Customer shall not bring or join any class action of any kind in court or in arbitration or seek to consolidate or bring previously consolidated claims in arbitration. THIS ARBITRATION PROVISION CONSTITUTES A WAIVER OF ANY RIGHT TO A JURY TRIAL AND AN AGREEMENT TO BE SUBJECT TO JURISDICTION IN, AND CONDUCT ARBITRAL PROCEEDINGS IN, MONROE COUNTY NEW YORK.

Section 6.12 Privacy. CT's Service utilizes, in whole or in part, the public internet and third party networks to transmit voice and other communications. Customer acknowledges and understands that CT cannot guarantee that voice over IP communication is completely secure. Customer agrees that CT may access all features of your account and the Service to determine whether the Service is being used fraudulently and/or in violation of this Agreement, and for any other purposes. CUSTOMER AGREES THAT CT SHALL NOT BE LIABLE FOR ANY LACK OF PRIVACY. CT is committed to respecting Customer privacy relating to personally identifiable information. If Customer provides personally identifiable information, it will only be used in the context of its relationship with CT. CT will not sell, rent, or lease Customer's personally identifiable information to others. Upon the appropriate request of a government agency, law enforcement agency, court or as otherwise required by law, CT may disclose personally identifiable information. Please refer to CT's Privacy Policy for additional information at <https://convergent.net/privacy-policy/>.