

## Convercent Master Terms of Service

This software subscription agreement is made up of these Terms of Service (including Annexes and Appendices hereto, "**Terms**") together with any Order Forms (collectively, "**Agreement**") and is made between Customer ("**Customer**" or "**you**") and Convercent, Inc. ("**Convercent**") (each a "**Party**", together, the "**Parties**") and governs Customer's use of the Software and Services set out in the Order Form.

If you enter into these Terms on behalf of a company or other legal entity including any Affiliates, you represent that you have the authority to bind such entity and Affiliates. If you do not have such authority, or if you do not unconditionally agree to these Terms, Customer and its Affiliates have no right to use the Software or Services. Affiliates of either Party may also execute Order Forms subject to these Terms.

### 1. **DEFINITIONS.**

**"Affiliate"** means, with respect to a Party, any corporation or other business entity Controlled by, Controlling or under common Control with that Party, whereby Control means (i) the direct or indirect ownership of more than 50% (fifty percent) of the equity interest in such corporation or business entity, or (ii) the ability in fact to control the management decisions of such corporation or business entity.

**"API"** means any application programming interface made available by Convercent to Customer in connection with the Agreement.

**"Authorized Users"** means Customer and its Affiliates, and their respective employees, contractors, or consultants, with administrative access and authority in relation to the Software or Services.

**"Customer Content"** means any data, applications, files, information materials, and other content input into the Software or provided through use of the Services.

**"Documentation"** means any user guides, written release notes, implementation guides, and any other technical documentation related to the Software or Services which is made available to Customer by Convercent.

**"Intellectual Property Rights"** means all patents, rights to inventions, utility models, copyright and related rights, trademarks, service marks, trade, business and domain names, rights in trade dress, rights in goodwill or to sue for passing off, unfair competition rights, rights in designs, rights in computer software, database rights, topography rights, moral rights, rights in confidential information (including know-how and trade secrets) and any other intellectual property rights, in each case whether registered or unregistered and including all applications for and renewals or extensions of such rights, and all similar or equivalent rights or forms of protection in any part of the world.

**"Convercent Support Portal"** means converge.convercent.com (or any successor support websites provided by Convercent).

**"Convercent User Guide"** means the most current user specification for the Software or Services available in the Convercent Support Portal, or otherwise made available to Customer by Convercent during the Term.

**"Order Form"** means the: (i) signed order form between the Parties; or (ii) the applicable online registration form or click through agreement referencing these Terms.

**"Professional Services"** means any services performed by Convercent relating to the Software or other services as set out in an Order Form or SOW such as installation, activation, training, configuration, integration, assessment, and optimization.

**"Software"** means the software applications set out in the Order Form (and further described in the Convercent User Guide) provided by Convercent, including Upgrades thereto and any related content, APIs, software development kits, and software tools provided by Convercent.

**"Services"** means the Professional Services and other services set out in the Order Form (and further described in the Convercent User Guide).

**"SOW"** means any statement of work which is: (i) signed by both Parties and incorporates these Terms or; (ii) referenced on an Order Form that incorporates these Terms.

**"Support"** means the technical support services set out in the Order Form, as described in the Convercent support offering as amended from time to time by Convercent and posted online at converge.convercent.com (the "**Support Offering**").

### 2. **LICENSE GRANT AND RESTRICTIONS.**

2.1. Convercent grants to Customer and its Affiliates a non-sublicensable, non-transferable, non-exclusive right to access and use the Software and Documentation in accordance with the Agreement, and solely for Customer's and its Affiliates' internal business purposes. Customer will not be provided with and shall have no right to any software code and Convercent reserves the right to suspend access to the Software for scheduled maintenance (in accordance with the Support Offering) or emergency maintenance. Customer is responsible for Authorized Users' use of the Software and Documentation in accordance with the Agreement.

2.2. Customer shall not: (a) provide access to the Software, Services, or Documentation to any third party (except Authorized Users) or otherwise permit a third party (except Authorized Users) to use or benefit from the Software, Services, or Documentation, (b) copy, modify, or reverse engineer the Software, Services, or otherwise attempt to discover any source code or underlying technical information (except to the limited extent that applicable law prohibits such restrictions), (c) use or export the Software or Services: (i) in breach of any applicable laws, regulations, embargoes, restrictive measures or the Documentation; or (ii) to any country for which the United States or any other government, at the time of export requires an export license or other governmental approval, without first obtaining such license or approval, (d) access, store, or transmit any viruses, spam, or duplicative messages, or any material that is unlawful or harmful, (e) for data in or from the United States, input any Protected Health Information (as the term is defined in the Health Insurance Portability and Accountability Act of 1996 (as amended, superseded or replaced, "**HIPAA**") in the Software or Services, or (f) use the Software or Services: (i) to try to gain unauthorized access to any service, device, data, account or network, (ii) send or store any content that is unlawful, abusive, or obscene or (iii) in a manner which infringes Intellectual Property Rights. Convercent shall not be responsible for any Authorized Users' use of third-party software or systems that are accessed from the Software or Services.

2.3. Except to the extent caused by a breach of the Agreement by Convercent, Customer is responsible for (i) all activity occurring under Customer's and its Affiliates' user accounts; and (ii) Customer Content.

2.4. Customer shall maintain the copyright or other proprietary notices that appear on any materials relating to the Software, Services, and Documentation.

### **3. UPGRADES.**

Convercent may, in its sole discretion, issue new releases for the Software including, upgrades, features, fixes, or patches ("**Upgrades**") which will be included in the fees for the Software and will be automatically available.

### **4. FEES AND PAYMENT.**

Fees will be invoiced according to the Order Form. All payment obligations are non-cancelable and all amounts paid are non-refundable (unless expressly stated otherwise in the Agreement). All payments shall be made in the currency indicated in the Order Form in full and cleared funds without any set-off, counterclaim, deduction or withholding (except for any deduction or withholding required by law) within thirty (30) days after the applicable invoice date, unless otherwise specified in the Order Form ("**Payment Due Date**"). All sums payable under the Agreement are exclusive of value added tax (VAT) or any other local sales taxes, for which Customer shall be responsible. If payment has not occurred by the Payment Due Date, then without limiting any other right or remedy available to Convercent, Convercent reserves the right to charge a late fee ("**Late Fee**") of 1.5% of the invoice amount. Prior to charging Late Fees, Convercent will contact Customer regarding the delinquency and verify receipt of the applicable invoice. Customer agrees to provide Convercent with complete and accurate billing and contact information.

### **5. LIMITATION OF COMPLIANCE, NO LEGAL ADVICE.**

Each party is responsible for its own compliance with laws and regulations applicable to it. The Software, Services, materials, or information provided by Convercent are not intended, and should not be taken, as legal advice. Customer shall be responsible for ensuring that any information provided to Convercent in connection with the Services is accurate and complete.

### **6. LIMITED WARRANTY AND DISCLAIMERS.**

6.1. Convercent warrants that (i) the Software will substantially perform the functions set forth in the applicable portions of the Convercent User Guide (the "**Specification**"), (ii) Support shall conform to the applicable level in the Support Offering and that the Support Offering shall not materially degrade during the Term, (iii) it shall provide Services in a workmanlike and professional manner pursuant to the terms of the Agreement and any applicable Statement of Work, and (iv) Convercent shall use industry standard measures to prevent viruses from being released in the Software. If Customer notifies Convercent in writing of any failure in the Software, Support or Services to materially conform to the warranties outlined above, Convercent shall, at its option and expense: (a) repair, (b) replace or reperform, or (c) if unable to repair such nonconformance or replace or reperform, terminate the Agreement (or the applicable Order Form) and, upon cessation of use of the Software by Customer, issue a pro rata refund of the fees paid for any non-conforming portion of the Software, Support or Services. This remedy is conditioned upon Customer providing information necessary to assist Convercent in resolving the nonconformance, including a documented example of any nonconformance, or sufficient information to enable Convercent to re-create the nonconformance. This Section 6.1 is Customer's sole and exclusive remedy under the warranties.

6.2. TO THE MAXIMUM EXTENT PERMITTED BY LAW, CONVERCENT DISCLAIMS AND EXCLUDES ALL OTHER WARRANTIES, CONDITIONS, REPRESENTATIONS OR OTHER TERMS RELATING TO THE SOFTWARE, SUPPORT, OR SERVICES, EXPRESS OR IMPLIED, STATUTORY OR OTHERWISE, INCLUDING, BUT NOT LIMITED TO, ANY WARRANTIES OR OTHER TERMS OF SATISFACTORY QUALITY, MERCHANTABILITY AND FITNESS FOR A PURPOSE OR A PARTICULAR PURPOSE. CONVERCENT DOES NOT WARRANT OR REPRESENT THAT THE SOFTWARE, SUPPORT OR SERVICES WILL BE DELIVERED FREE OF ANY DELAYS, OMISSIONS, OR ERRORS .

6.3. Convercent is not responsible for any delays, delivery failures, or other loss or damage resulting from the transfer of data over communications networks and facilities which are not directly controlled by Convercent. Customer acknowledges that the Software and Services may be subject to problems inherent in the use of such communications facilities.

6.4. In the event of any loss or damage to Customer Content, Customer's sole and exclusive remedy shall be for Convercent to use reasonable commercial endeavors to restore the lost or damaged Customer Content from the latest back-up of such Customer Content maintained by Convercent in accordance with its archiving procedure.

### **7. INDEMNITY.**

7.1. By Convercent. Convercent, at its sole expense, agrees to defend Customer and its Affiliates (each, a "**Customer Indemnitee**") against any third-party claim that Customer Indemnitee's use of the Software, as made available by Convercent to Customer and used in accordance with the Agreement, directly infringes a third party's Intellectual Property Right (an "**Infringement Claim**"), and indemnify Customer Indemnitee from the resulting costs and damages finally awarded against Customer Indemnitee to such third party by a court of competent jurisdiction or agreed to in settlement.

7.2. By Customer. Customer, at its sole expense, agrees to defend Convercent and its Affiliates (each, a "**Convercent Indemnitee**") against any third-party claim that relates to or is based on (i) Customer Content or (ii) Customer's handling of or the content of incident reports successfully received by the Customer via the Software or Services, and indemnify Convercent Indemnitee from the resulting costs and damages finally awarded against Convercent or any of its Affiliates to such third party by a court of competent jurisdiction or agreed to in settlement.

7.3. Each Party's indemnification obligation above is subject in each instance to the indemnified Party: (a) promptly notifying the indemnifying Party in writing of such a claim; (b) giving the indemnifying Party sole control of the defense and all related settlement negotiations; (c) providing the indemnifying Party with the information, assistance, and authority to enable the indemnifying Party to perform its indemnification obligations under this Section 7; and (d) making no admission of liability and not compromising the ability of the indemnifying Party to defend the claim. Customer Indemnitee may not settle or compromise any Infringement Claim without the prior written consent of Convercent.

7.4. In any action based on an Infringement Claim, Convercent, at its option and expense, will either: (i) procure the right for Customer to continue using the Software in accordance with the Agreement; (ii) make modifications to the Software so that the infringing Software becomes non-infringing without incurring a material diminution in performance or function; (iii) replace the Software with a non-infringing, substantially

similar substitute; or (iv) terminate the right to use the Software and refund to Customer the unused remainder of any Software subscription fees prepaid by Customer and received by Convercent. Convercent shall have no liability or obligations for an Infringement Claim pursuant to this Section 7 to the extent that it results from: (A) modifications to the Software made by a party other than Convercent or a party under the direct control of Convercent; (B) the combination, operation or use of the Software with non-Convercent products; (C) use of the Software outside the scope of the Agreement; (D) Convercent's use of any Customer Content, designs, instructions, specifications, or the like, provided by Customer Indemnitee, if any; or (E) use of third party software or, technology not embedded by Convercent into the Software. This Section 7 sets out Customer Indemnitees' sole and exclusive remedies and Convercent's entire liability with respect to claims subject to indemnification under this Section, including claims for infringement or violation of third-party Intellectual Property Rights by the Software.

## **8. LIMITATION OF LIABILITY AND DAMAGES.**

**8.1.** EACH PARTY'S TOTAL AGGREGATE LIABILITY REGARDLESS OF THE FORM OF ACTION, WHETHER IN CONTRACT, TORT (INCLUDING BUT NOT LIMITED TO NEGLIGENCE), BREACH OF STATUTORY DUTY, STRICT LIABILITY OR OTHER THEORY, WITH RESPECT TO ALL SUBJECT MATTER RELATING TO THE AGREEMENT SHALL NOT EXCEED THE TOTAL OF THE AMOUNTS PAID AND PAYABLE TO CONVERCENT (WHETHER OR NOT INVOICED) UNDER THE AGREEMENT IN THE YEAR PRECEDING THE FIRST EVENT GIVING RISE TO A CLAIM. THE EXISTENCE OF MORE THAN ONE CLAIM SHALL NOT ENLARGE THIS LIMIT.

**8.2.** NEITHER PARTY WILL BE LIABLE FOR ANY: (A) SPECIAL, INDIRECT, INCIDENTAL OR CONSEQUENTIAL DAMAGES; (B) LOSS OF REVENUES; (C) LOSS OF PROFITS; (D) LOSS OR INACCURACY OF DATA; OR (E) COST OF PROCUREMENT OF SUBSTITUTE GOODS, SERVICES OR TECHNOLOGY, ARISING IN CONNECTION WITH THE AGREEMENT, IN EACH CASE, REGARDLESS OF THE FORM OF ACTION (AND WHETHER (B) THROUGH (E) ARE DIRECT, SPECIAL, INDIRECT, INCIDENTAL OR CONSEQUENTIAL), WHETHER IN CONTRACT, TORT (INCLUDING BUT NOT LIMITED TO NEGLIGENCE), BREACH OF STATUTORY DUTY, STRICT LIABILITY OR OTHER THEORY.

**8.3.** THE LIMITATIONS AND EXCLUSIONS CONTAINED IN SECTIONS 8.1 AND 8.2 SHALL NOT APPLY TO BREACHES OF LICENSE RESTRICTIONS SET OUT IN SECTION 2, INDEMNIFICATION OBLIGATIONS, CUSTOMER'S PAYMENT OBLIGATIONS, A BREACH OF SECTION 9 (CONFIDENTIALITY AND PROPRIETARY INFORMATION), AND WILLFUL MISCONDUCT. NOTHING IN THE AGREEMENT SHALL LIMIT OR EXCLUDE EITHER PARTY'S LIABILITY FOR ANY LIABILITY THAT CANNOT BE EXCLUDED OR LIMITED BY LAW.

## **9. CONFIDENTIALITY AND PROPRIETARY INFORMATION.**

A Party (the "**Receiving Party**") may receive Confidential Information of the other Party or its Affiliates (the "**Disclosing Party**") and the Receiving Party shall keep all such Confidential Information confidential and protect it by using the same level of care and discretion that the Receiving Party uses with respect to its own confidential information, which will be in no case less than reasonable care and discretion. The Receiving Party shall not disclose Confidential Information to any person other than such Party's Authorized Users, or Convercent's subprocessors, who have a need to know that Confidential Information provided that the Receiving Party remains responsible for the confidentiality of the information. The Parties shall not use Confidential Information for any purpose other than as necessary to exercise rights or fulfill obligations under the Agreement. Without limiting the foregoing, either Party may disclose Confidential Information to a government authority if that disclosure is: (a) required by law or (b) necessary to exercise its rights or perform its obligations under and in accordance with the Agreement. To the extent Customer performs any benchmarking or comparative study or analysis involving the Software or Services (or such is done on its behalf), Customer may only disclose the results to its Authorized Users. In the Agreement, "**Confidential Information**" means business information of a confidential or proprietary nature (including trade secrets and information of commercial value), including without limitation, pricing, software, source code and underlying technical or business information, which relates to the Disclosing Party that is disclosed or provided to Receiving Party by or on behalf of Disclosing Party pursuant to the Agreement; provided, however, that Confidential Information shall not include information that (i) is or becomes a part of the public domain through no act or omission of the Receiving Party; (ii) was in the Receiving Party's lawful possession prior to the disclosure and had not been obtained by the Receiving Party either directly or indirectly from the Disclosing Party; (iii) is lawfully disclosed to the Receiving Party by a third party without restriction on disclosure; (iv) is input into the Services or Software or (v) is independently developed by the Receiving Party. This Section shall apply during the Term of the Agreement, and for three (3) years after the Agreement's termination or expiry.

## **10. TERMINATION; SUSPENSION.**

**10.1.** Without affecting any other right or remedy available to it, either Party may terminate the Agreement with immediate effect by giving written notice to the other Party if the other Party breaches a material obligation under the Agreement that has not been cured (if curable) within thirty (30) business days of the effective date of such written notice requiring the remedy of such breach or if either Party (a) announces a cessation of its entire business or becomes insolvent; (b) elects to dissolve and wind-up its business; (c) makes a general assignment for the benefit of creditors; or (d) petitions for or appoints (or a third party causes to be appointed for itself) a receiver, custodian or trustee to take possession of all or substantially all of that Party's property. The Agreement will also terminate automatically upon the expiry of any applicable subscription period specified in the Order Form or such other subscription period as have been expressly agreed to by Convercent unless automatically renewed pursuant to Section 17.1.

**10.2.** Upon termination of the Agreement by any means, the rights granted under Section 2 and Section 12 will terminate, and (a) Customer shall promptly destroy any and all Convercent Confidential Information, and, upon Convercent's request, have an officer of Customer confirm the same in writing; (b) if requested by Customer, Convercent will, at Customer's cost, make available to Customer (via an SFTP site, for example) a copy of the Customer Content (stored in the Software at the time of termination) within sixty (60) days after such expiration or termination and Convercent may delete all Customer Content remaining in the Software after such time has passed; (c) Convercent shall promptly destroy any and all Customer Confidential Information and an officer of Convercent shall confirm the same to Customer in writing on Customer's request; otherwise, the terms of the Agreement will remain in effect with respect to such Confidential Information; and (d) Convercent will remove access to the Software.

**10.3.** Without limiting the foregoing, Convercent may upon fourteen (14) days' prior written notice (except in the event of an emergency under subsection (b)) suspend or limit Customer's access to or use of the Software or Services without liability if (a) Customer's account is past due, or

(b) Customer's use of the Software breaches Section 2 or impairs performance of the Software or Convercent systems or use of the Software by other Convercent customers; provided that Convercent will promptly end such suspension when Customer cures the foregoing (without prejudice to Convercent's other remedies in respect of the applicable breach).

10.4. Termination or expiry of the Agreement shall not affect any rights, remedies, obligations or liabilities of the Parties that have accrued up to the date of termination or expiry, including the right to claim damages in respect of any breach of the Agreement which existed at or before the date of termination or expiry.

#### **11. DATA PROTECTION.**

The Parties agree to comply with Annex 1 (Data Processing Addendum) with respect to the processing of any personal data under the Agreement.

#### **12. INTELLECTUAL PROPERTY.**

12.1. Convercent or its third-party licensors (as applicable) own all Intellectual Property Rights embodied in the Software, Documentation, Support and/or any Services provided by Convercent or its Affiliates under the Agreement including all derivatives thereof. Rights in the Software, Services, and Documentation are licensed (not sold) to Customer for the Term unless earlier terminated, and Customer shall have no Intellectual Property Rights in, or to, the Software, Services, or Documentation other than the right to use the Software, Services, and Documentation in accordance with the terms of the Agreement. Convercent does not convey any Intellectual Property Rights other than those expressly provided herein. Nothing contained in the Agreement shall prevent Convercent from independently developing its own content.

12.2. Convercent shall be the sole owner of any newly-developed Intellectual Property Rights related in any way to the Software, Documentation, Support or the Services including but not limited to (a) all source code; and (b) inventions, whether such are developed, revised, or modified in response to Customer's requests, feedback, or ideas, even if performed as Software-related services paid for by Customer. If Convercent creates custom templates for Customer in connection with Services performed under the Agreement, Customer may retain copies of such templates after any termination or expiry of the Agreement and Convercent shall grant Customer a non-exclusive, non-transferable, non-sublicensable, royalty-free perpetual license to use such templates for its internal business and compliance purposes only.

12.3. Customer Content (including Customer Content contained in any output from the Software ) provided by or on behalf of Customer shall remain the property of Customer. To the extent materials developed by Convercent in connection with the Agreement contain any Customer Content, Convercent shall not own the Customer Content therein, and Convercent shall have no right to exploit or use any part of Customer Content for itself or for its other customers. Customer hereby grants to Convercent and its authorized representatives and contractors a non-exclusive and non-transferable right and license to use, process, store, and transmit, and disclose Customer Content solely to provide the Services to Customer and fulfill other obligations described in the Agreement. Customer further authorizes Convercent to anonymize Customer Content and to aggregate Customer Content with similar data from other Convercent customers in a manner that does not identify Customer or include any Personal Data, to further develop and provide services for Convercent customers.

#### **13. THIRD PARTY MATERIALS.**

The Software and Services may contain hyperlinks to other websites and databases, the content of which have not been authored or vetted by Convercent. Convercent is not responsible for the availability of or the contents, products or other materials available on or through such external sites.

#### **14. SURVEYS.**

Convercent may conduct periodic surveys on a remote basis for the sole purposes of verifying Customer's use of the Software or Services in compliance with the Agreement. For Software or Services priced according to the number of Customer personnel ("**Personnel Count**"), Convercent may request (no more than once annually) an updated Personnel Count from Customer. For any increase in the Personnel Count greater than five percent (5%), Convercent reserves the right to adjust the pricing ratably for all subscription-fee based Services purchased by Customer.

#### **15. NOTICE.**

15.1. Except as otherwise provided herein, all notices under the Agreement shall be deemed properly given and effective (a) when personally delivered (to the person or department if one is designated in the Order Form); (b) when deposited in the United States certified mail, registered mail, postage prepaid or return receipt requested; or (c) when deposited with an internationally recognized overnight delivery service such as Federal Express with all fees and charges prepaid, and addressed in each such case as set out in the Order Form. When any notice under the Agreement is sent to Convercent, a copy shall be sent to legal@convercent.com.

15.2. Any Party may change its address to another single address with ten (10) days' prior written notice. Rejection or other refusal to accept or inability to deliver because of changed address of which no notice has been received shall constitute receipt.

#### **16. NONASSIGNABILITY.**

Except for an assignment by Convercent to a wholly owned Affiliate neither the rights nor the obligations arising under the Agreement are assignable or transferable by either Party without the other Party's prior written consent (which will not be unreasonably withheld) and any such attempted assignment or transfer shall be void and without effect.

#### **17. EFFECTIVE DATE; TERM; GOVERNING LAW AND JURISDICTION; SEVERABILITY.**

17.1. The Agreement shall become effective on the date of the last signature on the initial Order Form between the Parties which references the Agreement (the "**Effective Date**") and shall continue for a period of twelve (12) months ("**Initial Term**") or such other period indicated on the Order Form. Each Order Form shall automatically renew for an additional twelve (12) month term (each, a "**Renewal Term**," together with the Initial Term, the "**Term**") on Convercent's then-current pricing and terms and conditions unless either Party provides notice of its intent not to renew at least sixty (60) days in advance of the end of the Initial Term or current Renewal Term.

17.2. The Agreement and any dispute or claim (including non-contractual disputes or claims) arising under or in connection with the Agreement, its subject matter, or formation shall be governed by and construed in accordance with the governing laws of the state of Delaware, USA and will be instituted exclusively in the federal courts of the United States or the courts of the State of Delaware, in each case located in the

State of Delaware (except where such courts do not have jurisdiction). The Parties consent to the exclusive jurisdiction of each such court and waive any personal jurisdiction or venue defenses otherwise available. The United Nations Convention on Contracts for the International Sale of Goods is expressly and entirely excluded and will not apply to the Agreement. In any action to enforce the Agreement, the prevailing party will be entitled to reasonable costs and attorneys' fees actually incurred. No claim or action may be brought by either Party against the other Party arising in any way out of the Agreement after one (1) year from the date on which the cause of action arose (and regardless of the nature of the claim or form of action) provided, however, the foregoing limitation shall not apply to any claim or action related to the infringement of a Party's Intellectual Property Rights.

17.3. Each provision of the Agreement shall be considered severable such that if any provision or clause conflicts with any existing or future law or regulation, or is held to be illegal, unenforceable or invalid by a court, the other provisions of the Agreement shall be limited or modified to the minimum extent necessary to make it valid, legal and enforceable and so that the Agreement shall otherwise remain in effect.

17.4. The Agreement and all related documentation is and will be in the English language and all disputes arising under the Agreement shall be resolved in the English language.

## **18. ENTIRE AGREEMENT; MODIFICATIONS; WAIVERS; THIRD PARTY RIGHTS.**

18.1. The Agreement constitutes the entire agreement and understanding between the Parties with respect to the subject matter of the Agreement and the Software and Services, superseding all prior or contemporaneous proposals, communications and understandings, oral or written relating to that subject matter. Each Party agrees that it shall have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in the Agreement. Each Party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in the Agreement. To the extent there is any conflict or inconsistency between the Terms and any Order Form signed by both Parties, the Order Form shall prevail to the extent of any such conflict or inconsistency. Any additional or different terms or conditions proposed by Customer (whether by order, purchase order, counter-offer, acknowledgement, electronic data interchange, vendor enrollment, or otherwise) are hereby expressly objected to and will not be in any way binding upon Convercent.

18.2. Except as expressly provided in the Agreement, any modifications of the Agreement must be in writing and signed by authorized representatives of both Parties.

18.3. Any waiver of any provision of the Agreement must be in writing and will not be deemed a waiver of any other provision. Waiver by a Party of a breach of any provision of the Agreement by the other Party will not operate as a waiver of any other or subsequent breach by such breaching Party.

18.4. Subject to Section 18.5, the Agreement does not confer any right or benefit on any person who is not a Party to it and no one other than a Party to the Agreement, their successors and permitted assignees shall have any right to enforce any of the terms of the Agreement.

18.5. If applicable law prohibits a Party from being indemnified on behalf of an Affiliate, such Affiliate shall be entitled to be indemnified directly pursuant to (and subject to the terms of the Agreement). Notwithstanding the foregoing, the consent of an Affiliate shall not be required to amend or terminate the Agreement.

## **19. GENERAL.**

19.1. A delay by either Party in performing its obligations will not be a breach of the Agreement if caused by fire, flood or other event beyond the reasonable control of such Party ("**Force Majeure Events**"). The affected Party will notify the other Party of such Force Majeure Events and resume performance as soon as possible.

19.2. The Agreement may be executed in any number of counterparts, each of which is an original, but all the counterparts together constitute the same document. Delivery of an executed counterpart of a signature page to the Agreement by e-mail or other electronically delivered signatures of the Parties shall be as effective as delivery of a manually executed counterpart of the Agreement.

19.3. Nothing in the Agreement is intended to create a joint venture, partnership, agency or employment relationship between the Parties.

19.4. Sections 1, 2.1, 2.2, 2.2, 4, 6, 7, 8, 9, 10, 11, 12, 17, 18, and 18.5, will survive the termination or expiry of the Agreement.

## **20. NON-PRODUCTION ENVIRONMENTS.**

With respect to Customer's use of any user acceptance testing or trial environment in relation to the Software or Services, the following shall apply, notwithstanding anything to the contrary herein. These environments: (i) are not intended to contain production-level data and Convercent shall not be responsible for any data input into such environments; and (ii) may contain forward-looking code that is provided only for evaluation purposes and are not subject to the warranties herein. THESE ENVIRONMENTS ARE PROVIDED ON AN "AS IS" AND "AS AVAILABLE" BASIS.

## **21. GOVERNMENT USE.**

If Customer is part of an agency, department, or other entity of the United States government ("**Government**"), the use, duplication, reproduction, release, modification, disclosure or transfer of the Software or Services is restricted in accordance with the Federal Acquisition Regulations as applied to civilian agencies and the Defense Federal Acquisition Regulation Supplement as applied to military agencies. The Software or Services is a "commercial item," "commercial computer software" and "commercial computer software documentation." In accordance with such provisions, any use of the Software or Services by the Government shall be governed solely by the terms of the Agreement.

## Annex 1 Data Processing Addendum

### 1. DATA PROTECTION

1.0. *Definitions:* In this **Annex**, the following terms shall have the following meanings:

**"Applicable Data Protection Law"** shall mean any and all applicable data protection and privacy laws including, where applicable, EU Data Protection Law and the CCPA.

**"Controller"**, **"processor"**, **"data subject"**, **"personal data"**, **"processing"** (and **"process"**) and **"special categories of personal data"** shall have the meanings given in Applicable Data Protection Law;

**"Business"**, **"service provider"**, **"personal information"**, and **"consumer"** shall have the meanings given in Applicable Data Protection Law.

**"CCPA"** means the U.S. California Consumer Privacy Act of 2018, as amended or superseded from time to time, and any implementing regulations as promulgated by the California Attorney General.

**"EU Data Protection Law"** means: (i) the EU General Data Protection Regulation (Regulation 2016/679); (ii) the EU e-Privacy Directive (Directive 2002/58/EC); and (iii) any and all EU Member State laws made under or pursuant to any of the foregoing; in each case as amended or superseded from time to time.

1.1. *Relationship of the Parties:* Customer (the controller) appoints Convercent as a processor to process the personal data described in the Agreement (the **"Data"**) for the purposes described in the Agreement (or as otherwise agreed in writing by the parties) (the **"Permitted Purpose"**). Convercent shall not retain, use, or disclose the Data for any purpose other than for the Permitted Purpose, or as otherwise permitted by the Applicable Data Protection Law, including retaining, using, or disclosing the Data for a commercial purpose other than the Permitted Purpose. Convercent shall not buy or sell the Data.

1.2. *International Transfers & Data Localization Laws:* If any Data originates from the European Economic Area ("**EEA**") under the Agreement, Convercent shall not transfer the Data outside of the EEA unless it has taken such measures as are necessary to ensure the transfer is in compliance with Applicable Data Protection Law. Such measures may include (without limitation) transferring the Data to a recipient (a) in a country that the European Commission has decided provides adequate protection for personal data, (b) that has achieved binding corporate rules authorisation in accordance with Applicable Data Protection Law, (c) that has executed standard contractual clauses adopted or approved by the European Commission. Where Convercent processes Customer EEA personal data, the parties hereby incorporate the Standard Contractual Clauses approved by the European Commission. If the European Commission approves an alternative to the Standard Contractual Clauses, Convercent may rely on such alternative instead of the Standard Contractual Clauses. To the extent there is any conflict between the body of this Annex and the Standard Contractual Clauses, the Standard Contractual Clauses shall control. The Parties may also agree to implement any other valid transfer mechanism then in existence.

If any Data originates from any country (other than an EEA country) with laws imposing data transfer restrictions and Customer has informed Convercent of such data transfer restrictions, Customer and Convercent shall ensure an appropriate transfer mechanism is in place, as mutually agreed upon by both Parties, before transferring or accessing Customer Data outside of such country. For the avoidance of doubt, this transfer restriction does not pertain to Authorized Users who have access to the Software, Services and Customer Data, and Convercent shall not be held responsible for actions of Authorized Users. Authorized Users shall not be entitled to use the Software or Services in any country with data localization laws that would require Customer Data to be hosted in said country.

1.3. *Security:* Taking into account the state of the art, the costs of implementation and the nature, scope, context and purposes of processing as well as the risk of varying likelihood and severity for the rights and freedoms of natural persons, Convercent shall implement appropriate technical and organizational measures to ensure a level of security appropriate to the risk (as specified in Article 32 of the EU General Data Protection Regulation) to protect the Data (i) from accidental or unlawful destruction, and (ii) loss, alteration, unauthorized disclosure of, or access to the Data (a **"Security Breach"**). All penetration or other testing conducted by Customer shall be done in a designated testing environment and pursuant to mutual agreement of the parties. Convercent's Information Security Management System (ISMS) is ISO/IEC 27001:2013 certified and Convercent is HITRUST CSF certified or a substantial equivalent. At Customer's request, no more than once per year, Convercent will provide to Customer third-party assessments and compliance certifications it makes available to all customers, including an annual Service Organization Controls (SOC) 2 Type II report ("**SOC 2 Report**") as defined by the American Institute of Certified Public Accountants. Such SOC 2 Report will include an opinion by the independent auditor on the adequacy and integrity of Convercent's general controls for security.

1.4. *Subprocessing:* Customer consents to Convercent engaging subprocessors to process the Data for the Permitted Purpose. Customer hereby approves of the current list of subprocessors, which includes Convercent's Affiliates and the following subprocessors: Microsoft (Europe), Amazon Web Services (Europe), Google Cloud Platform (Europe), Five Star Call Centers (United States), and Acquia (United States or Europe). Convercent shall (i) inform Customer of any change in subprocessors before authorizing such new subprocessor to process Data in connection with the provision of the applicable Software and Services; (ii) impose data protection terms on any subprocessor it appoints that require it to protect the Data to the standard required by Applicable Data Protection Law; and (iii) remain liable for any breach of the Agreement that is caused by an act, error or omission of its subprocessor. Customer may object to Convercent's appointment of a new subprocessor by notifying Convercent promptly in writing within ten (10) business days after receipt of such information set forth in (i) above, provided such objection is based on reasonable grounds relating to data protection. In such event, Customer may suspend or terminate the Agreement (without prejudice to any fees incurred by Customer prior to suspension or termination).

1.5. *Cooperation and Data Subjects' Rights:* Taking into account the nature of the processing, processor assists the controller by appropriate technical and organisational measures, insofar as this is possible, Convercent shall provide reasonable and timely assistance to Customer (at Customer's expense) to enable Customer to respond to: (i) any request from a data subject to exercise any of its rights under Applicable Data

Protection Law (including its rights of access, correction, objection, erasure and data portability, as applicable); and (ii) any other correspondence, enquiry or complaint received from a data subject, regulator or other third party in connection with the processing of the Data. In the event that any such request, correspondence, enquiry or complaint is made directly to Convercent, Convercent shall promptly inform Customer providing full details of the same.

1.6. Data Protection Impact Assessment: Convercent shall provide Customer with reasonable cooperation (at Customer's expense) to enable Customer to conduct any data protection impact assessment that it is required to undertake under Applicable Data Protection Law.

1.7. Security Breaches: If it becomes aware of a Security Breach, Convercent shall inform Customer without undue delay and shall provide reasonable information and cooperation to Customer so that Customer can fulfil any data breach reporting obligations it may have under Applicable Data Protection Law. Convercent shall further take such reasonably necessary measures and actions to mitigate the effects of the Security Breach and shall keep Customer informed of all material developments in connection with the Security Breach.

1.8. Deletion or Return of Data: Following termination or expiry of the Agreement, Customer shall have thirty (30) days to export its Data from the Software and after such time has passed Convercent may destroy all Data in its possession or control. This requirement shall not apply to the extent that: (i) Convercent is required by applicable law to retain some or all of the Data; or (ii) Data is archived on Convercent's back-up and support systems, provided that Convercent shall continue to protect such Data in accordance with its obligations herein.

1.9. Audit: Convercent shall, upon reasonable notice (no less than forty-five (45) days) and payment of a reasonable fee, not more than once a year (unless there is a material Security Breach, in which case a second audit is permitted), allow its procedures and documentation to be inspected or audited by Customer (or its designee) during business hours, and without interrupting Convercent's business operations, in order to ascertain compliance with the obligations set forth in this Data Processing Addendum. For the avoidance of doubt, the scope of such audit shall be limited to documents and records allowing the verification of Convercent's compliance with the obligations set forth in this Data Processing Addendum and shall not include financial records of Convercent or any records concerning Convercent's other customers. Remote audits shall be utilized where possible, with on-site audits occurring only where a walkthrough of the premises is required.

## **Appendix 1: Convercent Information Security Controls**

Convercent technical and organizational measures for data protection have been organized and implemented according to ISO 27001 and include the following types of controls:

A.5: Information security policies

A.6: Organization of information security

A.7: Human resource security

A.8: Asset management

A.9: Access control

A.10: Cryptography

A.11: Physical and environmental security

A.12: Operations security

A.13: Communications security

A.14: System acquisition, development and maintenance

A.15: Supplier relationships

A.16: Information security incident management

A.17: Information security aspects of business continuity management

A.18: Compliance; with internal requirements, such as policies, and with external requirements, such as laws

Convercent maintains the following policies and procedures in support of its privacy and security program:

### **Information Security Policies**

To provide management direction and support for information security in accordance with business requirements, and relevant laws and regulations.

### **Organization of Information Security**

To establish a framework for initiating and controlling information security implementation and operations at Convercent.

### **Human Resource Security**

To ensure that all workforce members are well suited for, and understand, their roles and responsibilities. To ensure that all workforce members are aware of, and that they fulfill, their information security responsibilities and obligations. To ensure that the organization's interests are protected throughout the employment process, from pre-employment to termination.

### **Asset Management**

To identify Convercent's information assets, and to define and assign appropriate responsibilities for ensuring their protection. To ensure an appropriate level of protection for information assets in accordance with their sensitivity level and importance to the organization. To prevent the unauthorized disclosure, modification, removal or destruction of information stored on media.

### **Access Control**

Provides the framework for user, system and application access control and management, and user responsibilities. To limit access to information and information processing facilities. To ensure authorized user access and to prevent unauthorized access to systems and services. To make users accountable for safeguarding their authentication information. To prevent unauthorized access to systems and applications.

### **Cryptography**

To ensure proper and effective use of cryptography to protect the confidentiality, authenticity and integrity of information.

### **Physical and Environmental Security**

To prevent unauthorized physical access, damage and interference with Convercent's information and information processing facilities. To prevent loss, damage, theft or compromise of Convercent's assets, and interruption of its operations.

### **Operations Security**

To ensure that information and information processing facilities are operated securely, protected from malware and loss of data. To ensure that security events are recorded appropriately. To ensure that operational system integrity is maintained, and exploitation of technical vulnerabilities is avoided.



### **Communications Security**

To establish controls for the protection of information in networks and their associated facilities. To ensure the security of information being transferred within Convercent and with external parties.

### **System Acquisition, Development, and Maintenance**

To establish information security as a vital part of information systems throughout the entire information lifecycle, including designing information security into the development of such systems. To ensure that sufficient controls are established to protect data used in testing.

### **Supplier Relationships**

To ensure protection of Convercent assets that are accessible by suppliers. To maintain an agreed-upon level of information security and service delivery in accordance with supplier agreements.

### **Information Security Incident Management**

To ensure a consistent and effective approach to managing information security events, including incidents and weaknesses.

### **Information Security Aspects of Business Continuity Management**

To embed information security continuity in Convercent's business continuity management systems. To ensure availability of information processing facilities. Third party integrations are provided by third parties and not subject to Convercent's security program.

## Appendix 2: Details on the processing of Customer Data

### Categories of Data subjects:

Third parties or Customer may submit Personal Data to the Services, the extent of which is neither determined nor controlled by Convercent, and which may include, but is not limited to Personal Data relating to the following categories of data subjects:

- Clients, customers, business partners, and vendors of Customer (who are natural persons)
- Customer employees, officers, directors, contractors, agents, consultants, and contact persons of Customer's third-party suppliers, business partners, and vendors whose personal information is shared with Convercent for the purpose of providing and using the privacy management software
- Customer users authorized by Customer to use the relevant Services
- Any third party making a report through the Services regarding Customer
- Other [Customer may elect to include additional data subjects defined here]

### Categories of personal data processed:

Third parties or Customer may submit Personal Data to the Services, the extent of which is neither determined nor controlled by Convercent, and which may include, but is not limited to the following categories of Personal Data:

- The Personal Data processed is personal data provided by Customer and processed by Convercent in the course of providing the Software and Services.
- The personal data processed may concern the following categories of data:
  - Identification data
  - Personal characteristics
  - Physical details
  - Profession and employment
  - Other [To be defined by Customer] \_\_\_\_\_

### Special categories of data (if appropriate)

Except as otherwise provided herein, the personal data processed will not include sensitive personal data including information about racial or ethnic origin, political opinions, religious or philosophical beliefs, trade union membership, sex life, government issued identification numbers, credit card details, health or medical records and criminal records. To the extent Customer elects to upload special categories of data, Customer does so at its own risk.

Personal Data may concern the following special categories of data:

- 'Whistleblowing' reports could, theoretically, include reference to an individual's race or ethnic origin, political opinion, religious or philosophical belief, trade union membership, health, sex life, or sexual orientation.
- Allegations or concerns could, theoretically, also refer to criminal convictions or offences.

### Purpose of Processing operations

The personal data processed may be subject to the following basic processing activities: collect, record, organize, store, adapt, alter, retrieve, redact, consult, use, align or combine, block, erase or destruct, disclose by transmission, disseminate or otherwise make available Customer Data as described herein, as strictly necessary and required to provide the Software and Services and otherwise in accordance with Customer's instructions.

Specifically, processing operations include:

- Processing of name and e-mail addresses to provide login credentials, processing of name and e-mail address to provide support and help desk, storage of login credentials of users for authentication purposes.
- Hosting Customer environment which contains Customer Data.

### Duration of Processing

The personal data may be processed during the Term of the Agreement and any additional period which it is retained pursuant to Section 1.9 of Annex 1 (Data Processing Addendum) or as otherwise agreed upon in writing.

## Annex 2: SLA

### 1. SERVICE LEVELS.

1.1. Web Application. Convercent will maintain 99.8% uptime of the web-based Software and Services (the "**Web Application SLA**"). The calculation of uptime will exclude scheduled downtime and Force Majeure Events. Convercent will inform Customer at least forty-eight (48) hours in advance of any scheduled downtime.

1.2. Call Center. The call center will be available to receive telephonic reports in the event of an outage within the web application and 80% of calls to the call center will be answered in 20 seconds or less (the "**Call Center SLA**", which, together with the Web Application SLA, the "**SLAs**").

1.3. Remedy. Convercent's sole liability (and Customer's exclusive remedy) for Convercent's breach of either or both SLAs will be to issue a service credit ("**Service Credit**") for the applicable Services for the applicable month, in the amount specified in the table below, which Customer must request by emailing AP@convercent.com within thirty (30) days following the end of the month in which the service level failure occurred. In the event two SLA remedies apply, only the Service Credit for the higher amount will apply. Customer may review the Convercent Community for the performance of the SLAs.

<b>Actual Web Application Service Level for the month (% of uptime)</b>	<b>Actual Call Center Service Level for the month (% of calls answered in 20 seconds or less)</b>	<b>Service Credit to be issued (% of Customer service fees)</b>
99.0 - 99.79%	75.0 - 79.99%	5%
98.0 - 98.99%	70.0 - 74.99%	10%
95.0 - 97.99%	65.0 - 69.99%	25%
90.0 - 94.99%	60.0 - 64.99%	50%
less than 90%	Less than 60%	100%