

# Convergent Technologies LLC

## Terms and Conditions for Time and Materials or SMA/SaaS Only

### 1. Controlling Provisions

- (a) **Generally.** The terms and conditions of this document, including the provisions on the face of any quotation or invoice in which it is referenced or to which it is attached (the "Agreement") govern the parties' duties, obligations, and relationship with respect to the services provided under this Agreement, including services provided on a time and materials basis ("Services") Convergent Technologies LLC ("Supplier") for the buyer described on the face of this quotation ("Buyer"). Supplier is trained to install, service, and support the third-party products provided in this quotation ("Products"). ACCEPTANCE OF THIS QUOTATION IS CONDITIONAL UPON BUYER'S CONSENT TO THE TERMS AND CONDITIONS SET FORTH HEREIN, WHICH ARE IN LIEU OF AND REPLACE ANY AND ALL TERMS AND CONDITIONS SET FORTH ON BUYER'S SPECIFICATIONS, PURCHASE ORDER OR ANY OTHER DOCUMENT ISSUED BY BUYER. ANY ADDITIONAL, DIFFERENT OR CONFLICTING TERMS OR CONDITIONS OF ANY SUCH BUYER'S DOCUMENT ARE REJECTED, SHALL BE WHOLLY INAPPLICABLE TO ANY SALE MADE AS A RESULT OF THIS QUOTATION AND SHALL NOT BE BINDING IN ANY WAY ON SUPPLIER.
- (b) **Priority of Written Agreement Covering the Parties.** Notwithstanding the foregoing, this Agreement shall be superseded by a fully executed, binding written agreement between the parties that is active and in force on the date of Supplier's performance of the Services; in such cases the terms and conditions of such written agreement shall take precedence and this Agreement shall not apply.

### 2. Product Delivery.

- (a) Unless otherwise specified on the face of this Agreement, Supplier shall deliver Products F.O.B. the facility named by Buyer, freight prepaid and add. Product delivery dates given by Supplier will be honored by Supplier using commercially reasonable efforts. Supplier shall select the carrier and shall be responsible for all tracking information. Supplier shall be responsible for filing and coordination of claims associated with any shipment, provided that at the time of delivery Buyer notes any damages on the applicable bill of lading and promptly notifies Supplier. Delivery dates set forth on this document are approximate only and Supplier shall not be liable for, nor shall Supplier be in breach of its obligations to Buyer because of, any delivery made within a reasonable time before or after the stated delivery date. In addition, Supplier shall not be liable for any late delivery caused by the carrier or failure of Buyer to provide any necessary information in a timely manner.
- (b) Accepted orders may not be cancelled or modified by Buyer without Supplier's written consent.
- (c) Buyer must accept all Products that are not defective.

3. **Product Packaging.** Prices quoted include standard packaging and shipping only. Products will be packaged, marked and labeled using Supplier's or the manufacturer's standard packaging methods, and shall include the applicable purchase order number and the shipping address provided by Buyer.

4. **Product Cancellations or Returns.** Cancellations by Buyer prior to shipment or return of conforming Products to Supplier after shipment (at Buyer's sole cost) must be agreed to by Supplier in writing. Any return or cancellation will be subject to reasonable charges for costs incurred in the disassembly and restocking of standard materials, unless such charges are waived in writing by Supplier. Buyer may not return any special order/non-stock items.

5. **Specifications and Modifications.** At any time, and for any reason, a third-party product manufacturer and/or Supplier may modify the specifications of the Products to be covered by this Agreement provided the modifications do not materially affect the performance of the Products.

6. **Calculation of Services Fee.** Unless otherwise provided on the applicable quotation, the total fee for Services under this Agreement ("Services Fee") shall be calculated by multiplying the number of hours spent delivering the services by the applicable hourly rate (including travel time), then adding any per diem expenses.

### 7. Payment.

- (a) Buyer shall pay for Products delivered and Services performed under this Agreement. Unless otherwise specified in a quotation, proposal or statement of work, each undisputed invoice shall be due and payable within 30 days of receipt by Buyer and shall be paid via check or wire transfer. Supplier shall be entitled to charge, and Buyer shall pay, interest at the rate of 2% percent per month from date of performance on overdue, undisputed invoices, or the maximum legal rate, whichever is less. Supplier shall also be entitled to its cost of enforcement and/or collection proceedings, including, without limitation, reasonable attorney fees.
- (b) Buyer shall notify Supplier in writing of any dispute with any invoice and shall include a description of the dispute and any corroborating documentation. The parties shall seek to resolve any such disputes expeditiously and in good faith.
- (c) Title to the Products (excluding any software, firmware, or other intellectual property therein) purchased from Supplier by Buyer shall pass, free and clear of any security interests, liens, claims, charges or encumbrances, upon receipt of full payment from Buyer to Supplier.

8. **Acceptance.** Unless otherwise mutually agreed in writing by the parties, Products and Services shall be fully inspected by Buyer within 10 days after receipt ("Inspection Period"). Products and Services shall be deemed accepted if (i) Buyer accepts them in writing or (ii) Buyer fails to notify Supplier in writing of any nonconforming Products or Services during the Inspection Period, whichever is later.

9. **Software License.** Products may include third-party software or firmware and its media, hardware, and documentation related to software and hardware ("Third-Party Software"). Third-Party Software is accompanied and governed by a separate third-party end user licensing agreement license ("EULA"), a copy of which is available upon request. If Third-Party Software is provided on an annual subscription basis, including as a SaaS ("Subscription License"), the Subscription License shall be invoiced in annual installments for the duration of the Subscription License term provided in this Agreement. Subscription Licenses may not be terminated for convenience during the Subscription License term except as provided in an applicable Third-Party EULA.

10. **Restrictions.** Buyer agrees to use Products as directed in applicable documentation, as directed by Supplier personnel, and in accordance with applicable laws. Buyer shall not alter or modify Products or their constituent elements and it shall not: (a) reverse engineer, interrogate, or decode any of the Products; or (b) attempt to bypass or to defeat any protection methods which have been applied by Supplier or third-party manufacturers to prevent unauthorized uses of Products; or (c) decompile or otherwise attempt any other procedure to put any of the program components into human readable form.

## 11. Scope of Services.

- (a) If services are being provided on a time and materials basis, then this Agreement is a BEST ESTIMATE quotation. This means the quoted fee is subject to change and the Buyer shall only be billed for the time and materials required to complete the proposed scope of work contained on the quotation. If unexpected or hidden problems are uncovered and the final fee will exceed the estimate contained on the quotation, Supplier will notify Buyer as soon as practicable, but in any case, in time to obtain approval for a fee increase prior to completion of the Services.
- (b) **SMA Only:** If this Agreement includes a software/system maintenance agreement ("SMA") only, including an SMA provided as part of a Subscription License, then to the extent permitted under the applicable SMA, Supplier shall provide limited remote services ONLY (such as via email or telephone or by remotely accessing the system) ("Minimal Support") at no additional charge to Buyer during the term of the applicable SMA. Any onsite services provided by Supplier will be furnished on a time and materials basis at Supplier's then-applicable hourly rates. If Buyer makes system configuration changes or provides its own onsite resources to maintain the system, Buyer assumes all liability for such changes or maintenance and for verifying proper system operation upon completion.
- (c) If Buyer requests additional services outside the scope of this Agreement, then services will be furnished at Supplier's sole discretion at Supplier's then-applicable hourly rates. Travel time and expenses are billable in connection with such services.
- (d) Maintenance parts will be manufactured by the original equipment manufacturer or of equivalent specifications but may be new or reconditioned to perform as new. All parts will be furnished on an exchange basis, and the exchanged parts will become the property of Supplier. Supplier reserves the right to replace a failed component and/or Product with a similar or equivalent new component and/or Product due to discontinuance of the component or Product by the original manufacturer. Software support, upgrades, revisions, etc., will be original manufacturer approved and serialized as required. Changes to software may require changes to the then-existing third-party licensing agreement to which Buyer is subject. On-site or remote access service does not guarantee uninterrupted operation of Products.
- (e) **Installation and Control of Software and Hardware Updates and Upgrades.** If contracted to do so under this Agreement, Supplier will install software and hardware updates or upgrades as specified in the applicable SMA. Supplier will not be responsible for or have any liability arising from non-performance of the Products resulting from software/hardware modifications, repairs, maintenance, changes or upgrades completed by persons other than Supplier technicians without prior written authorization from Supplier. If Buyer makes system configuration changes or provides its own onsite resources to exchange, replace or adjust a failed system device Buyer assumes all liability for such services and for verifying proper system operation upon completion of such services. If persons other than Supplier repair, modify, or perform any maintenance on any Products covered by this Agreement and, as a result, any on-site service is required to restore the Products to good operating and Supplier-serviceable condition, such service will be provided at Supplier's then-applicable hourly rates.
- (f) Buyer shall perform routine testing of the Products as recommended by Supplier or contained in the documentation provided to Buyer unless Supplier has been contracted to do so under this Agreement.

12. **Limited Warranty.** The range, accuracy, function, and performance of the system may vary from the published specifications due to many factors, including, without limitation, operational conditions, site impairments from structural effects, metal objects in the vicinity, placement of the receiver and transmitter, interference from other electrical devices, atmospheric effects, installation, and maintenance. There may be other factors which also affect performance of the

system. Supplier does not guarantee that this system will function with 100% accuracy. Monthly testing and maintenance of the system, as described in the system documentation, is essential to verify the system is operating correctly and to ensure that the probability of detecting an alarm and locating the tag are maximized. Buyer's failure to undertake regular testing and maintenance will increase the risk of system failure.

Provided that Buyer maintains a valid SMA for applicable Products, Supplier warrants to Buyer that it will perform Services in a professional and workmanlike manner in accordance with the Product manufacturer's or Product licensor's specifications, guidelines, and applicable SMAs; and if the Products are operated with reasonable care and in accordance with Supplier's and the manufacturer's instructions, Supplier's Services shall be free from defects in workmanship for a period of 90 days from the date of performance. BUYER'S SOLE REMEDY UNDER THIS WARRANTY SHALL BE LIMITED TO SUPPLIER REPERFORMING THE SERVICES WITHIN A REASONABLE PERIOD.

13. **Exceptions to Warranties.** The warranties contained in this Agreement do not apply to failures due to Buyer's (i) end user operator errors; (ii) failure to perform recommended maintenance; (iii) use of a the Products for purposes other than for which they were designed or contrary to any instructions issued by Supplier; (iv) combination of the Products with other products without Supplier's written authorization; (v) misuse of or unauthorized modification to Products; (vi) failure to provide a suitable environment (such as faulty electrical connections; fluctuations or failures in air conditioning, water quality specifications, heating or cooling systems, or electrical power; dust, dirt, or liquids); or (vii) introduction of viruses into the Products. The above warranty also does not apply to (i) acts of third parties that are not authorized by Supplier; (ii) force majeure conditions; or (iii) other causes beyond Supplier's reasonable control.
14. **Warranty Disclaimer.** SUPPLIER HEREBY DISCLAIMS ALL WARRANTIES OF FITNESS FOR A PARTICULAR PURPOSE AND OF MERCHANTABILITY. SUPPLIER MAKES NO WARRANTIES, EXPRESS OR IMPLIED, EXCEPT FOR THOSE SPECIFICALLY SET FORTH ABOVE. NO SALESPERSON OR OTHER REPRESENTATIVE OF SUPPLIER, EXCEPT FOR AN AUTHORIZED OFFICER, HAS AUTHORITY TO ALTER, CHANGE, OR ADD TO, ON BEHALF OF SUPPLIER, THE WARRANTY AND/OR DISCLAIMERS SET FORTH IN THIS DOCUMENT. WARRANTY ON ALL PRODUCTS, INCLUDING THIRD-PARTY PRODUCTS, NOT MANUFACTURED BY SUPPLIER IS LIMITED TO WARRANTIES EXTENDED BY THE MANUFACTURER. SUPPLIER SHALL NOT BE LIABLE FOR DAMAGES ARISING FROM, OR ASSOCIATED WITH, DEFECTIVE COMPONENTS NOT MANUFACTURED BY SUPPLIER. WRITTEN COPIES OF THIRD-PARTY WARRANTIES ARE AVAILABLE FROM SUPPLIER UPON REQUEST.
15. **LIMITATION OF LIABILITY.** EXCEPT FOR OBLIGATIONS TO MAKE PAYMENTS, LIABILITY FOR INTENTIONAL BREACH OF CONFIDENTIALITY, LIABILITY FOR WILLFUL MISCONDUCT, OR ACTUAL FRAUD, IN NO EVENT WILL EITHER PARTY BE LIABLE TO THE OTHER PARTY FOR CONSEQUENTIAL, INDIRECT, SPECIAL, EXEMPLARY, OR PUNITIVE DAMAGES, SUCH AS LOST PROFITS OR REVENUES, WHETHER BASED ON AGREEMENT, TORT, OR ANY OTHER LEGAL THEORY, WHETHER OR NOT THE OTHER PARTY WAS ADVISED OF THE POSSIBILITY OF SUCH DAMAGES IN ADVANCE. SUPPLIER SHALL NOT BE LIABLE FOR ANY LOSS, DAMAGE, OR EXPENSE ARISING DIRECTLY OR INDIRECTLY IN CONNECTION WITH THIS AGREEMENT IN EXCESS OF THE ACTUAL PRICE PAID BY BUYER UNDER THIS AGREEMENT.
16. **Indemnification.** To the fullest extent permitted by law, each party agrees to indemnify the other party and its directors, officers, and employees, against any and all damages, losses, costs, and expenses (including reasonable attorneys' fees) ("Damages") incurred in connection with third-party claims ("Claim") to the extent they arise from or are caused by personal injury, including death, or damage to tangible property caused by the indemnifying party's negligence or

more culpable acts or omissions in connection with the indemnifying party's performance under this Agreement; provided, however, that neither party shall be required to indemnify the other party to the extent that such Damages are caused by (a) the negligence or more culpable conduct of the party seeking indemnification; (b) the breach of this Agreement by the party seeking indemnification; or (c) misuse of the Products in any unauthorized manner by the party seeking indemnification. Upon the assertion of a Claim that may give rise to a claim of indemnity, the indemnified party shall give the indemnifying party prompt written notice of such Claim. The party having the obligation to indemnify for any Claim under this Paragraph shall, at its sole cost and expense, be entitled to participate in, but not control, the defense of any such Claim. The Party entitled to indemnification for any Claim under this Paragraph shall not concede or settle any such Claim without the prior written consent of the Party having the obligation to indemnify, which consent shall not be unreasonably withheld, conditioned or delayed. THIS PARAGRAPH SETS FORTH THE ENTIRE LIABILITY OF THE INDEMNIFYING PARTY AND THE SOLE AND EXCLUSIVE REMEDY FOR THE INDEMNIFIED PARTY FOR ANY DAMAGES COVERED UNDER THIS PARAGRAPH.

17. **Confidentiality.** The parties each recognize that in the course of performance of this Agreement, a party ("Disclosing Party") may find it necessary to disclose to the other party ("Receiving Party") its Confidential Information. "Confidential Information" means information or data that would reasonably be considered to be confidential or proprietary, including non-public financial information, trade secrets, customer information, patient information, personally-identifiable employee information (such as social security numbers or dates of birth), vendor or supplier information, pricing, fees, and other business information. Confidential Information shall not include any information that (a) is in the public domain at the time of disclosure to the receiving Party; (b) or enters the public domain after disclosure to Receiving Party without breach of this Agreement; (c) is already in the possession of Receiving Party prior to the disclosure; (d) becomes available to Receiving Party in good faith on a non-confidential basis from a third party not bound by confidentiality; (d) is independently developed by Receiving Party without using Disclosing Party's Confidential Information; (e) is required to be disclosed by law or legal process, so long as Receiving Party, to the extent not contrary to law or any provision of any regulatory authority, timely notifies Disclosing Party, and, at the expense of Disclosing Party, uses reasonable efforts to cooperate with lawful efforts by Disclosing Party to limit disclosure. Receiving Party shall not disclose Confidential information to any third party without the express written consent of Disclosing Party, except to its employees, agents, officers, directors, subcontractors, auditors, or legal representatives who reasonably require the Confidential Information for purposes of assisting in the Receiving Party's performance of its obligations under this Agreement, and who agree to comply with the terms of this paragraph. All Confidential Information shall remain the sole property of Disclosing Party and Receiving Party shall have no rights to or in the Confidential Information. Receiving Party shall hold Confidential information in strict confidence and will exercise the same degree of care as it employs in the protection of its own Confidential Information, but in no event less than a reasonable degree of care. Receiving Party shall use Confidential Information solely for performing its obligations under this Agreement. Receiving Party shall return or destroy all Confidential Information of Disclosing Party, including copies of Confidential Information or other materials containing Confidential Information (including compilations, analyses, or other materials prepared in whole or in part based on Confidential Information) upon the written request of Disclosing Party or the termination of this Agreement.
18. **Governing Law.** This Agreement shall be governed by and construed under the laws of the State of Michigan, and the federal and state courts within the State of Michigan, not applying its conflict of law provisions. Any dispute under this Agreement shall be exclusively brought in the appropriate State of Michigan court located in the County of Kent, or in the United States District Court for the Western District of Michigan. The parties waive any objection based on inconvenient forum.
19. **Force Majeure.** Neither party shall be liable to the other party for any delay or failure to perform its obligations under this Agreement if such delay or failure arises from any cause beyond the reasonable control of

that party, including acts of God (including hurricanes, earthquakes, tornados, floods, or other natural disasters), fire, floods, explosion, civil or military authority, riots, civil disturbances, terrorism or threats of terrorism, or war, and without the fault or negligence of the delayed or non-performing party. The affected party will: (a) promptly provide notice to the other party, explaining the specifics of and the expected duration of the such delay and (b) use its reasonable efforts to remedy the interruption or delay if it is reasonably capable of being remedied.

20. **Assignment.** Buyer may not assign this Agreement without the prior written consent of Supplier.
21. **Waiver.** No term or provision of this Agreement shall be deemed waived and no breach excused unless such waiver or consent shall be in writing and signed by the party claimed to have waived or consented. The waiver of a breach or violation of any provision will not be a waiver of any subsequent breach of the same or any other provision. All waivers shall be strictly construed. No delay in enforcing any right or remedy as a result of a breach of this Agreement shall constitute a waiver thereof.
22. **Survival of Terms.** After expiration or termination of this Agreement, those provisions which specifically provide for survival beyond expiration or termination, and all provisions regarding payment, indemnification, warranties, limitations of liability, and confidentiality, shall survive indefinitely or until the expiration of the time period specified elsewhere in this Agreement with respect to the provision in question.
23. **Severability.** In the event any one or more provisions of this Agreement shall be declared by a court or other decision making authority of competent jurisdiction to be invalid, illegal or unenforceable in any respect, then the remainder of this Agreement will be enforced so as to effect the intention of the parties, and the validity and enforceability of all other terms and conditions will not be affected, invalidated, or impaired.
24. **Independent Contractors.** Supplier and Buyer are independent Contractors, and nothing in this Agreement creates any agency, joint venture, partnership, or other form of joint enterprise, employment, or fiduciary relationship between Supplier and Buyer. Each party shall have exclusive control over its own employees, agents, and subcontractors, its labor and employee relations, and its policies relating to wages, hours, working conditions, or other conditions.
25. **Taxes.** Unless Buyer provides Supplier with written proof of tax-exempt status, Buyer shall pay all taxes associated with the Products and Services covered by this Agreement, including without limitation, sales, use, inventory, value added, and like taxes or duties.