Cloud Services Agreement

Date: April 5, 2023

SELLER: ConvergeOne, Inc.
10900 Nesbitt Ave S
Bloomington, MN 55437
(800) 431-1333

CUSTOMER: Town of Apex
73 Hunter St.
Apex, NC 27502

This CLOUD SERVICES AGREEMENT ("Agreement") is made and entered into on the date indicated above ("Effective Date") by and between Seller and Customer (including any guarantor of Customer). Seller and Customer are each a "Party" to this Agreement and may collectively be referred to herein as the "Parties."

In consideration of the mutual undertakings herein contained, the Parties agree as follows:

1.   This Agreement shall apply to:

    1.1. "Datacenter Infrastructure," means the datacenter infrastructure as described on the Terms of Service ("TOS"), owned by Seller, access to which is to be supplied to Customer by Seller as a hosted cloud service for Customer's use; and

    1.2. "Telecom Services" means the telecom services ordered by Customer from Seller to reside on the Datacenter Infrastructure provided on the basis of the quantity and type of user and described in detail on a TOS. Additional users may be added or removed in accordance with the terms of the TOS; and

    1.3. "Maintenance Services" means the maintenance services required to maintain and service the Datacenter Infrastructure and, if applicable, as described in detail in an TOS; and

    1.4. Separately Licensed Third Party Software" refers to any third party software that Customer has previously licensed under separate terms between Customer and the third party software manufacturer, and not under the terms of this Agreement.

Seller's provision of access to the Datacenter Infrastructure, along with Seller's provision of the Telecom Services, Maintenance Services, and any other professional services ("Professional Services") that relate to the Datacenter Infrastructure as outlined in the pertinent TOS, shall collectively be referred to as the "Services" or "Cloud Services". Customer agrees that all rights, title and interest in and to all Intellectual Property in the Services and any materials provided in connection with the Services are owned exclusively by Seller. Except as expressly provided herein, any license granted to Customer under the Services does not convey any ownership or other rights, express or implied, in the Services, any materials provided in connection with the Services, or in any Intellectual Property.

In the event of a conflict between the terms and provisions of the applicable TOS and the terms and provisions of this Agreement, the terms and provisions of this Agreement will control. Seller will provide the Services to Customer at times upon which Customer and Seller agree. Customer has the right to evaluate the Datacenter Infrastructure prior to entering into the TOS to determine if they are complete and in compliance to service requirements and Seller agrees to provide access to Customer for this purpose. The Services will be deemed irrevocably accepted by Customer upon the delivery by Seller. By executing a TOS, Customer confirms that the Datacenter Infrastructure and Services all conform to the standards set forth in the TOS and authorizes Seller to pay the applicable suppliers for the Services.

2.   PURCHASE ORDERS. Customer may issue to Seller a purchase order to order the Services, but no terms or provisions of the purchase order shall apply. Rather, only the terms and provisions of this Agreement and the applicable TOS shall apply to the Services. If Customer submits a purchase order to order the Services hereunder, the purchase order must contain the following language: "THE TERMS AND PROVISIONS OF THE CLOUD SERVICES AGREEMENT DATED   [INSERT DATE] BY AND BETWEEN CONVERGEONE, INC. AND [INSERT CUSTOMER NAME] APPLY TO THIS PURCHASE ORDER."

3. FEES. The price to be charged for the Services ("Total Minimum Monthly Fees") shall be specified on the TOS. The Total Minimum Monthly Fees shall be paid to Seller or to Seller's assignee ("Seller's Assignee") in monthly installments ("Minimum Monthly Fees") as specified in the TOS. The first Minimum Monthly Fee will be due as specified in the TOS, and the remaining Minimum Monthly Fees being due on the same day of each subsequent month (each, a "Due Date") until the Total Minimum Monthly Fees have been paid in full, unless otherwise specified in the TOS. Customer shall pay to Seller or Seller's Assignee the Total Minimum Monthly Fees, together with any other itemized charges, taxes, and costs ("Amount Due"), in the manner described in the TOS. The currency to be used for payment of the Amount Due is the United States Dollar. If any Minimum Monthly Fees or other amount payable to Seller or Seller's Assignee is not paid within 10 days of its Due Date, Customer shall, to the extent permitted by law, pay on demand, as a late charge, an amount equal to the greater of $25.00 or 5% of the amount then due for each 30 days or portion thereof that said overdue payments are not made (but in no event to exceed the highest late charge permitted by applicable law).

4. INVOICING AND PAYMENT. Seller or Seller's Assignee will invoice Customer the Minimum Monthly Fees and any other amounts due under this Agreement, on a monthly basis in advance. Payment is due thirty (30) days after the invoice date unless the applicable TOS provides otherwise. Customer will pay all bank charges, taxes, duties, levies, and other costs and commissions associated with any wire transfer or other means of payment. Customer is not responsible for any income tax assessed on the net income of Seller or Seller's Assignee. Customer shall be responsible for the timely payment, reporting and/or discharge of all sales and use taxes, rental taxes, and personal property taxes and agrees to reimburse Seller or Seller's Assignee for all taxes assessed against the Services, and/or Minimum Monthly Fees during the term of this Agreement that are paid by Seller or Seller's Assignee on behalf of Customer

    4.1 Payment of the Minimum Monthly Fees and the Total Minimum Monthly Fees specified in the TOS is not conditioned on Customer's receipt of moneys or services from any other person. All orders for configured hardware and software are non-refundable. All software, regardless of whether such software is part of a configured order, is non-returnable. ALL OF THE TOTAL MINIMUM MONTHLY FEES ARE NON-CANCELABLE AND ARE THE ABSOLUTE AND UNCONDITIONAL OBLIGATIONS OF CUSTOMER UNTIL (I) THE END OF TOS INITIAL TERM, (II) THE END OF ANY RENEWAL TERM, OR (III) THE AGREEMENT IS TERMINATED AS PROVIDED IN SECTION 9 AND THE APPLICABLE TERMINATION FEE IS PAID. CUSTOMER IS NOT ENTITLED TO ABATE OR REDUCE ANY MINIMUM MONTHLY FEE OR APPLICABLE TERMINATION FEE (SET FORTH IN THE APPLICABLE TOS) OR SET-OFF ANY OTHER AMOUNTS AGAINST MINIMUM MONTHLY FEES OR THE APPLICABLE TERMINATION FEE FOR ANY REASON WHATSOEVER.

5. CUSTOMER RESPONSIBILITIES.

    5.1. General. Customer will cooperate with Seller as reasonably necessary for the performance of Seller's obligations under this Agreement, including things such as: (i) providing Seller with full, free, and safe access to Customer's facilities; (ii) providing telephone numbers, network addresses, and passwords necessary for remote access; and (iii) providing interface information and necessary third party consents and licenses, including but not limited to those associated with Separately Licensed Third Party Software. Customer acknowledges that provision of the Services by Seller is dependent upon Seller access to Customer's internet/VPN connection. The foregoing three (3) items will be provided by Customer at Customer's expense. If Seller provides an Update or other new release of software as part of the Telecom Services or Maintenance Services, Customer will implement it promptly. Customer agrees to fulfill its responsibilities listed in this Agreement and in the applicable TOS. Seller will be relieved of its responsibilities to provide the Services and will incur no liability to Customer, or any third party, to the extent Seller's responsibilities are adversely impacted by, or any liability arises as a result of, (a) Customer's failure to fulfill its responsibilities, in whole or in part, under this Agreement and/or the applicable TOS, (b) the Separately Licensed Third Party Software cannot be used by Seller to provide the Services and Seller is thereby required to replace the Separately Licensed Third Party Software in order to provide the Services to Customer, or (c) actions taken by the manufacturer of the Separately Licensed Third Party Software to prevent its use by Seller in the provision of Services.

    5.2. 911 Acknowledgement and Acceptable Use Policy. Customer acknowledges, agrees and will comply with the 911 Acknowledgement attached as Exhibit 1 and the Acceptable Use Policy attached as Exhibit 2.

5.3. Vendor Management. If as part of the Services Seller is to instruct or request products or services on Customer's behalf from third party vendors under Customer's supply contracts with the third party vendors, including those of Separately Licensed Third Party Software ("Vendor Management"), Customer will provide Seller with a letter of agency or similar document, in a form that is reasonably satisfactory to Seller, that authorizes Seller to perform the Vendor Management. Where the third party vendor's consent is required for Seller to be able to perform the Vendor Management in a timely manner, Customer will obtain the written consent of the third party vendor and will provide Seller with a copy of such written consent.

5.4. Third Party Hosting. For Telecom Services and Maintenance Services that include monitoring, if one (1) or more network address(es) to be monitored by Seller are associated with systems owned, managed, and/or hosted by a third party service provider ("Host"), Customer will (i) notify Seller of the Host prior to commencement of the Telecom Services and Maintenance Services; (ii) obtain Host's advance written consent for Seller to perform the Telecom Services and Maintenance Services on Host's computer systems on the form provided by Seller, and will provide Seller with a copy of such signed consent; and (iii) facilitate necessary communications between Seller and Host in connection with the Telecom Services and Maintenance Services.

5.5. Disclaimer of Data Storage Responsibilities. Customer acknowledges and agrees that: (i) Seller's role with respect to Customer communications and the content thereof shall be that of a passive conduit; and (ii) any storage of Customer communications and/or account data by Seller shall be performed merely as a convenience to Customer and as a compliment to and incidental to Seller's core data transmission function; provided, however, that Seller shall comply with all data protection to the extent that such laws by their terms impose obligations directly upon Seller as a passive conduit in connection with the Services. Seller shall have no obligation to store, retain, back-up, or ensure the availability of any stored Customer communications and/or account data. To the extent that Customer wishes to retain any account data or other information relating to the Services, Customer shall ensure that such information is downloaded, saved, and/or backed-up outside of the Services, as Customer deems necessary or appropriate for Customer purposes. Customer shall not rely on the Services as a repository for or means by which to retain, store, or back-up data, information, or materials. Seller may delete or purge any and all copies and versions of any stored Customer communications and/or account data or other data at any time, without notice, including without limitation after termination of this Agreement. Seller may, in its sole discretion and option and without notice, implement reasonable limits as to the size or duration of storage of Customer account data.

5.6. Customer Coordinator. Customer shall designate a coordinator at Customer's site ("Coordinator") with the knowledge and authority to make decisions with respect to all of Customer's operations in order for Seller to meet its obligations hereunder.

5.7. Testing Data. Customer shall make available such data as is necessary to adequately test the Services.

5.8. Services are provided to Customer for business use only. Customer may not use the Services for any personal, residential, non-business and/or non-professional purpose. Customer may not to resell or transfer the Services to any other person for any purpose or make any charge for the use of the Services, without express, prior written permission from Seller. If Seller determines in its sole discretion that Customer is using the Services for non-business and/or non-commercial purposes, Seller reserves the right to immediately terminate the Services, change the calling plan, or otherwise modify the Services.

5.9. Customer shall not: (a) copy or adapt the Services and/or associated software for any purpose, except as specifically permitted under this Agreement; (b) use the Services and/or associated software except in accordance with all applicable laws and regulations, and except as set forth in the standard specifications or documentation, if any, accompanying the Services and/or Software; (c) reverse engineer, translate, decompile, or disassemble the Services and/or associated software; (d) use the Services and/or associated software in any outsourcing arrangement, application service provider arrangement, time-sharing arrangement, or service bureau arrangement, including, without limitation, to provide services or process data for the benefit of, or on behalf of, any third party other than the Customer; or (e) cause or permit the disabling or circumvention of any security mechanism contained in or associated with the Services and/or associated software. For the avoidance of doubt, Customer acknowledges and agrees that Customer shall not use the Services for any fraudulent, illegal, or disruptive activities.

5.10. Customer acknowledges that Customer is responsible for all use(s) related to Customer's account. Customer assumes full responsibility for the actions of any individual that uses the Services via Customer's account,

regardless of whether such use was done with or without Customer permission. Customer acknowledges that the Internet is not a totally secure network, and that third parties may be able to intercept, access, use or corrupt the information and/or telephone calls Customer transmits over the Internet. In order to maintain the security of Services, Customer must safeguard User IDs and Passwords, as well as the media access control (MAC) address of any equipment used to access Seller Services. Customer further acknowledges that the MAC address is information used by Seller to authenticate Customer calls, and therefore may not be shared by Customer.

5.11. **Access to Personal Data.** Customer expressly acknowledges that with respect to Seller's performance of the Services called for under this Agreement, such Services do not involve or in any way require access to personally identifiable information ("PII") of Customer or its customers ("Customer PII"). If, in the future, Customer requests additional services that require Seller access to Customer PII, those additional services, and the security requirements associated with the access to Customer PII in order to perform those additional services, shall be subject to a separate written agreement between the Parties.

6. CONFIDENTIAL INFORMATION. "Confidential Information" means either Party's business and/or technical information, information concerning employees, and any other information or data, regardless of whether such information is in tangible, electronic, or other form, if it is marked or otherwise identified in writing as confidential or proprietary. Information communicated verbally will qualify as Confidential Information if it is designated as confidential or proprietary at the time of disclosure and summarized in writing within thirty (30) days after verbal disclosure. Confidential Information does not include materials or information that (i) is generally known by third parties as a result of no act or omission of the receiving Party; (ii) subsequent to its disclosure, it was lawfully received from a third party having the right to disseminate the information without restriction on disclosure; (iii) was already known by the receiving Party prior to receiving it from the other Party and it was not received from a third party in breach of that third party's obligations of confidentiality; (iv) was independently developed by the receiving Party without use of Confidential Information of the disclosing Party; or (v) is required to be disclosed by court order or other lawful government action, but only to the extent ordered, and provided that, if legally permitted, the receiving Party promptly provides to the disclosing Party written notice of the pending disclosure so that the disclosing Party may attempt to obtain a protective order. In the event of a potential disclosure pursuant to subsection (v) above, the receiving Party will provide reasonable assistance to the disclosing Party where the disclosing Party attempts to obtain a protective order. Each Party will protect the confidentiality of all Confidential Information received from the other Party with the same degree of care as it uses to protect its own Confidential Information, but in no event with less than a reasonable degree of care. Except as permitted in this Section or for the purpose of performing its obligations under the terms and provisions of this Agreement, the receiving Party will not use or disclose the disclosing Party's Confidential Information to anyone except receiving Party's affiliates and its and their respective directors, officers, employees, agents and advisors, including, without limitation, attorneys, accountants, consultants, and Seller's Assignee to whom disclosure is necessary, and who have agreed to be bound by the obligations of confidentiality comparable to those hereunder, neither Party will use or disclose the other Party's Confidential Information. Provided, however, Confidential Information may be disclosed to Seller's Assignee to the extent necessary for assignee to administer the billing and collection of the Services. The confidentiality obligations of each Party will survive the expiration or termination of this Agreement. Upon the expiration or termination of this Agreement, each Party will cease all use of the other Party's Confidential Information and will promptly return (or, at the other Party's request, destroy) all Confidential Information in tangible form and all copies of Confidential Information in that Party's possession or under its control. In addition, each Party will destroy all copies of the other Party's Confidential Information that it has on its computers, disks, and other digital storage devices. Upon request, a Party will certify in writing its compliance with the terms and provisions of this Section. Notwithstanding the forgoing, Seller's Assignee may retain copies of such Confidential Information as it deems necessary in order to comply with ordinary and customary retention requirements of financial institutions, sound banking practices and audit and examination requirements. Nothing contained in the prior sentence shall, however, require Seller's Assignee to alter its normal record retention policies or to expunge from its records internally generated files, references, notes, analyses or memoranda related to the existence of, or relating to, the Confidential Information, but Seller's Assignee shall continue to maintain as confidential all such documentation pursuant to the terms of this Agreement

7. FEEDBACK. If Customer provides Seller with any feedback, improvements or other suggestions regarding the Services ("Feedback"), Customer hereby agrees that Seller has the right to use and fully exploit such Feedback and related information in any manner it deems appropriate. Seller will treat any Feedback it receives from Customer as non-confidential and non-proprietary. Customer agrees that it will not submit to Seller any information or ideas that it considers to be confidential or proprietary.

8. DISPUTE RESOLUTION. If a dispute arises that cannot be resolved by the personnel directly involved, the dispute shall be referred jointly to the responsible area senior management for Seller and Customer. The senior management shall exercise good faith efforts to settle the dispute within thirty (30) days (or an extended period, if they so agree). In

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the event that the dispute is not resolved within such a period, the Parties reserve the right to seek other relief as the Party deems appropriate.

9. TERM AND TERMINATION. Unless otherwise specified in the applicable TOS, the Agreement will commence as of the Effective Date and continue for the number of months specified on the applicable TOS(s) ("Initial Term") and for any successive Renewal Term. In the event of termination, for any reason whatsoever, any applicable Termination Fees shall be specified in the applicable TOS ("Termination Fee"), provided that "Termination Fee" shall in all cases include any and all Minimum Monthly Fees, taxes, late charges and other amounts due and owing as of the applicable Termination Date. The Termination Fee shall be due and payable as and on the date set forth below ("Termination Date").

9.1. Termination for Convenience by Customer. Unless otherwise specified in the applicable TOS, Customer may terminate the Services under a TOS, in whole, but not part, upon providing to Seller and Seller's Assignee not less than ninety (90) days advance written notice; ("Termination for Convenience Notice"), provided however, that any such termination shall not relieve Customer of its obligation to pay the applicable Termination Fee set forth in the applicable TOS. The Termination Date shall be ninety (90) days from the date the Termination for Convenience Notice is delivered to Seller and Seller's Assignee and the Termination Fee has been paid in full. If a TOS is terminated for convenience, Customer and Seller shall work in good faith to develop a mutually agreed upon transition schedule and fee schedule for up to ninety (90) days following the Termination Date to support moving the Services in-house or to alternative service provider(s).

9.2. Termination for Cause. Either Party may terminate this Agreement by giving written notice of termination to the other Party upon the occurrence of any of the following (each an "Event of Termination"):
9.2.1. a Party's material breach of this Agreement which is not substantially cured within sixty (60) days after written notice is given to the breaching Party specifying the breach; or
9.2.2. a Party's failure to perform or observe any other representation, warranty, covenant, condition or agreement to be performed or observed , and such Party fails to cure any such breach within sixty (60) days after notice thereof; or
9.2.3. any representation or warranty made by a Party under this Agreement, or in any other instrument provided to the other by Party, that proves to be incorrect in any material respect when made; or
9.2.4. a Party makes an assignment for the benefit of creditors, whether voluntary or involuntary; or
9.2.5. a proceeding under any bankruptcy, reorganization, arrangement of debts, insolvency, liquidation or receivership law is filed by or against a Party or such Party takes any action to authorize any of the foregoing matters; or
9.2.6. a Party voluntarily or involuntarily dissolves or is dissolved; or
9.2.7. the appointment of a received or similar officer for a Party; or
9.2.8. an assignment by a Party to its creditors of all or substantially all of its assets; or
9.2.9. the filing of meritorious petition in bankruptcy by or against a Party under any bankruptcy or debtors' law for its relief or reorganization; or
9.2.10. in the case of Customer, upon written notice to Seller of a Chronic Failure (as such term is described in the TOS) in accordance with the applicable Service Level Agreement set forth in the TOS; or
9.2.11. Customer breaches the terms of any End User Licensing Agreement governing the access and use of software, including Separately Licensed Third Party Software, under any TOS.

9.3. Termination by Customer for Cause. Following the occurrence of an Event of Termination by Seller Customer may terminate the applicable TOS by providing not less than thirty (30) days prior written notice ("Customer Termination Notice") to Seller and Seller's Assignee and paying Seller or Seller's Assignee the Termination Fee, if any, set forth in the TOS. In the case of a Termination by Customer for Cause, the Termination Date shall be the later of thirty (30) days after the delivery of the Customer Termination Notice to Seller and Seller's Assignee or the day following the applicable cure period, if any.

9.4. Termination by Seller for Cause. Seller or Seller's Assignee may terminate this Agreement and/or each and any TOS upon written notice to Customer upon the occurrence of an Event of Termination and/or if Customer fails to pay any Minimum Monthly Fee or any other amount payable to Seller under this Agreement within thirty (30) days after its Due Date. If Seller or Seller's Assignee elects to terminate this Agreement and/or each and any TOS, Seller or Seller's Assignee shall provide to Customer notice of the respective Event of Termination or payment default and provide Customer with thirty (30) days from the date of such notice in which to cure such default, the end of such notice period being the Termination Date. If the Event of Termination and/or payment default is not cured within such cure period, Seller or Seller's Assignee may exercise one or more of the following remedies:

9.4.1. declare the applicable Termination Fee set forth in the TOS, plus any and all Minimum Monthly Fees, taxes, late charges and other amounts then due and owing, to be due and payable on the Termination Date as liquidated damages for loss of a bargain and not as a penalty;

9.4.2. proceed by court action to enforce performance by Customer of obligations under this Agreement and/or to recover all damages and expenses incurred by Seller or Seller's Assignee by reason of any Event of Default;

9.4.3. terminate any other agreement that Seller or Seller's Assignee may have with Customer;

9.4.4. subject to Section 9.5, terminate and/or suspend all Services in any or all TOSs;

9.4.5. terminate each End User Licensing Agreement governing the Customer's access and use of software, but not Separately Licensed Third Party Software, under any or all TOSs; and/or

9.4.6. exercise any other right or remedy available to Seller and Seller's Assignee at law or in equity.

These remedies are cumulative of every other right or remedy given hereunder or now or hereafter existing at law or in equity or by statute or otherwise, and may be enforced concurrently therewith or from time to time. Customer will reimburse Seller and/or Seller's Assignee for all costs of collection, including but not limited to reasonable attorney fees, incurred by Seller and/or Seller's Assignee in any action to enforce its rights under this Agreement

9.5. Effect of Termination. Termination of this Agreement or any TOS shall not limit the right of either Party to pursue other remedies available to it, including any lawsuit for damages and injunctive relief nor shall such termination relieve Customer of its obligation to pay an applicable Termination Fee to Seller or Seller's Assignee under any TOS regardless of whether the termination is for cause or for convenience. If the Agreement expires or terminates, Customer and Seller shall work in good faith to develop a mutually agreed upon transition schedule and fee schedule and Seller shall provide such contracted Services for up to ninety (90) days to support moving the Services in-house or to alternative service provider(s).

10. REPRESENTATIONS AND WARRANTIES.

Services. Seller represents and warrants to Customer that the Services will be performed in a professional and workmanlike manner by qualified personnel and in accordance with the terms and provisions of this Agreement and applicable TOS. If the Services have not been so performed and if within thirty (30) days after the performance of the applicable Service Customer provides to Seller written notice of such non-compliance, then Seller, at its option, will re-perform such Service, correct the deficiencies, or render a prorated rebate based on the original charge for the deficient Service.

The warranty remedies expressly provided in this Section will be Customer's sole and exclusive remedies for breach of warranty claims involving Services. EXCEPT AS REFERENCED AND LIMITED IN THIS AGREEMENT, SELLER NOR ITS LICENSORS, SELLER'S ASSIGNEE, OR SUPPLIERS MAKE ANY OTHER EXPRESS OR IMPLIED REPRESENTATIONS OR WARRANTIES WITH RESPECT TO THE DATACENTER INFRASTRUCTURE, THE SERVICES, OR ANY SEPARATELY LICENSED THIRD PARTY SOFTWARE. IN PARTICULAR, THERE IS NO WARRANTY THAT (i) ANY SERVICE WILL MEET ANY PARTICULAR REQUIREMENTS; (ii) ANY SERVICE WILL BE UNINTERRUPTED, TIMELY, SECURE, OR ERROR-FREE; (iii) ALL SECURITY THREATS AND VULNERABILITIES WILL BE DETECTED; OR (iv) THE SERVICES WILL RENDER ANY SEPARATELY LICENSED THIRD PARTY SOFTWARE OR DATACENTER INFRASTRUCTURE SAFE FROM SECURITY BREACHES. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, SELLER DISCLAIMS ALL OTHER EXPRESS, IMPLIED, AND STATUTORY WARRANTIES, INCLUDING, BUT NOT LIMITED TO, NON-INFRINGEMENT AND THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

11. LIMITATION OF LIABILITY. IN NO EVENT WILL EITHER PARTY OR ITS RESPECTIVE LICENSORS, OR SUPPLIERS OR SELLER'S ASSIGNEE, HAVE ANY LIABILITY FOR ANY INCIDENTAL, SPECIAL, STATUTORY, INDIRECT, OR CONSEQUENTIAL DAMAGES (INCLUDING, BUT NOT LIMITED TO, LOST PROFITS, LOST SAVINGS, OR LOST REVENUES OF ANY KIND; LOST, CORRUPTED, MISDIRECTED, OR MISAPPROPRIATED DATA; CHARGES FOR COMMON CARRIER TELECOMMUNICATIONS SERVICES; CHARGES FOR FACILITIES ACCESSED THROUGH OR CONNECTED TO THE DATACENTER INFRASTRUCTURE OR SEPARATELY LICENSED THIRD PARTY SOFTWARE THAT THE SERVICES ARE PERFORMED ON ("TOLL FRAUD"); NETWORK DOWNTIME; INTERRUPTION OF BUSINESS ARISING OUT OF OR IN CONNECTION WITH PERFORMANCE OR NON-PERFORMANCE OF ANY DATACENTER INFRASTRUCTURE OR SEPARATELY LICENSED THIRD PARTY SOFTWARE THAT THE SERVICES ARE PERFORMED ON OR USE BY CUSTOMER; OR COST OF COVER).

EXCEPT FOR THE APPLICABLE TERMINATION FEE AND THE INDEMNIFICATION OBLIGATIONS HEREUNDER EACH PARTY'S LIABILITY FOR ANY CLAIMS ARISING OUT OF OR IN CONNECTION WITH THE TERMS AND PROVISIONS OFTHIS AGREEMENT WILL NOT EXCEED (A) IN THE CASE OF THE CUSTOMER THE TOTAL

AMOUNT PAYABLE TO SELLER UNDER THE TERMS AND PROVISIONS OF THE TOS WITH RESPECT TO WHICH SUCH CLAIMS ARISE, AND (B) IN THE CASE OF SELLER THE TOTAL AMOUNT ACTUALLY PAID BY CUSTOMER TO SELLER OR SELLER'S ASSIGNEE UNDER THE TERMS AND PROVISIONS OF THE TOS WITH RESPECT TO WHICH SUCH CLAIMS ARISE. THE LIMITATIONS OF LIABILITY IN THIS SECTION WILL APPLY TO ANY DAMAGES, HOWEVER CAUSED, ON ANY THEORY OF LIABILITY (WHETHER IN CONTRACT, TORT, OR OTHERWISE), AND REGARDLESS OF WHETHER (1) EITHER PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES; OR (2) THE LIMITED REMEDIES AVAILABLE TO THE PARTIES FAIL OF THEIR ESSENTIAL PURPOSE. THE LIMITATIONS OF LIABILITY PROVISIONS IN THIS SECTION ALSO WILL APPLY TO ANY LIABILITY OF OWNERS, DIRECTORS, OFFICERS, EMPLOYEES, AGENTS, SUPPLIERS, AND AFFILIATES. THE LIMITATIONS OF LIABILITY PROVISIONS IN THIS SECTION, HOWEVER, WILL NOT APPLY IN CASES OF INTENTIONAL (WILLFUL) MISCONDUCT OR GROSS NEGLIGENCE, PERSONAL INJURY OR DEATH, OR DAMAGES TO PROPERTY.

12. NON-SOLICITATION OF EMPLOYMENT.

   12.1. Seller agrees that it will not solicit for employment, or employ directly or indirectly, Customer's personnel during the term of this Agreement or for a period of twelve (12) months thereafter; provided, however, that Seller may hire Customer's personnel if Customer's personnel initiate contact with Seller (e.g., a response to Seller's general recruiting initiatives). If Seller violates this provision, Seller will pay to Customer an amount equal to the amount of the total potential compensation for the first twelve (12) months for the Customer employee that has been hired. Seller shall pay such amount to Customer on the date that is thirty (30) days after the person accepts Seller's offer of employment.

   12.2. Customer agrees that it will not solicit for employment, or employ directly or indirectly, Seller's personnel during the term of this Agreement or for a period of twelve (12) months thereafter; provided, however, that Customer may hire Seller's personnel if Seller's personnel initiate contact with Customer (e.g., a response to Customer's general recruiting initiatives). If Customer violates this provision, Customer will pay to Seller an amount equal to the amount of total potential compensation for the first twelve (12) months for the Seller employee that has been hired. Customer shall pay such amount to Seller on the date that is thirty (30) days after the person accepts Customer's offer of employment.

13. NETWORK QUALITY ASSURANCE REVIEW.

   13.1. Network Quality Assurance Assessment. Seller intends to implement the VoIP solution set forth in the applicable TOS on a network that meets such VoiP solution's minimum requirements for quality voice ("Minimum Network Requirements"). Customer represents and warrants that Customer's network meets the Minimum Network Requirements. Seller can assist Customer in determining whether its current networking architecture and design meet the Minimum Network Requirements through a review of Customer's existing network topology and hardware infrastructure ("Network Quality Assurance Assessment"). If Customer elects to forego the Network Quality Assurance Assessment, Customer hereby expressly agrees that: (1) if Seller discovers that Customer's network does not meet the Minimum Network Requirements, Seller will delay the integration of such VoIP solution until Customer resolves the network-related issues, under which Seller will offer support to resolve the issues through T&M (time and materials) billing; (2) if performance problems are encountered during the implementation and are determined to be associated with network performance, network reliability or any network security issues, Customer is solely responsible for all costs associated with any subsequent network assessments and reconfigurations needed; and (3) if the VoiP solution provider determines that maintenance issues exist because Customer's network does not meet the Minimum Network Requirements, such provider will suspend the maintenance resolution process until Customer either resolves the network-related issues or accepts T&M billing for such provider to continue the maintenance resolution process.

   13.2. Waiver. If Customer elects to forego the Network Quality Assurance Assessment, Customer assumes any implementation and/or maintenance risks associated with such VoIP solution and waives any and all claims arising out of or in connection with such VoIP solution.

14. RENEWAL OF TERMS. The applicable TS shall expire at the end of the then-current Term, unless it is otherwise extended or renewed in writing and signed by the Parties..

15. SERVICES AND TIMING. Seller will use commercially reasonable efforts to provide the Services in accordance with the Service Level Objectives set forth in the applicable TOS. Seller's sole liability and Customer's exclusive remedy for

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any failure of the Services to conform to the Service Level Objectives is the Performance Credits set forth in the applicable TOS. Services not specifically itemized in a TOS are not required to be provided. CUSTOMER IS SOLELY RESPONSIBLE FOR SYSTEM BACK-UP PRIOR TO COMMENCEMENT OF SERVICES.

16. MISCELLANEOUS.

16.1. Merger. This Agreement constitutes the entire agreement between Seller and Customer with respect to the subject matter described herein, superseding all prior and contemporaneous correspondence and understandings between the Parties, whether written or verbal. No provision of this Agreement or any TOS shall be deemed waived, amended, or modified by either Party unless such waiver, amendment, or modification is in writing and signed by the Party against whom enforcement is sought.

16.2. Assignment.

16.2.1. Except as set forth in 16.2.2 below, this Agreement shall not be assignable by either Party without the prior written consent of the other Party, which consent shall not be unreasonably withheld; provided, however, that in any assignment of this Agreement, both the assignor and the assignee are jointly and severally liable under this Agreement for any outstanding obligations of the assignor that are due as of the date of the assignment.

16.2.2. Notwithstanding the foregoing, Seller shall have the unqualified right without notice to or the consent of Customer to assign its rights to receive payment of all or any portion of the Total Minimum Monthly Fees and the applicable Termination Fee due and payable under the terms of this Agreement and to enforce this Agreement with regard to the collection thereof of such amounts. Customer acknowledges and agrees that Seller's Assignee is not responsible for any of Seller's obligations hereunder and that in the event of a dispute Customer shall bring any claims against Seller only and Customer also agrees that the Minimum Monthly Fees and any applicable Termination Fees, and other amounts due hereunder are absolutely due to Seller's Assignee without defense, set-off, or counterclaim whatsoever. Customer shall not assert against any Seller's Assignee any claim or defense Customer may have against Seller

16.3. Notices. All notices issued under the terms and provisions of this Agreement shall be in writing and shall be delivered in person, sent by facsimile, sent by overnight courier, or sent by certified U.S. Mail, postage prepaid, to the address of the other Party as set forth in this Agreement or to such other address as a Party shall designate by like notice. In addition, copies of all notices to Seller shall be delivered to ConvergeOne, Inc., ATTN: General Counsel, 10900 Nesbitt Ave South, Bloomington, MN 55437. Notices to be sent to Seller's Assignee shall be as specified by the applicable Seller's Assignee.

16.4. Acknowledgment and Authority. By execution hereof, the signer hereby certifies that he/she has read this Agreement and these terms and each TOS, understands them, and agrees to all terms and provisions stated herein. In addition, Seller and Customer represent and warrant to each other that each respective Party has the full right, power, and authority to execute this Agreement.

16.5. Publicity. Neither Party shall use the name(s), trademark(s), or trade name(s), whether registered or not, of the other Party in publicity releases or advertising or in any other manner without the prior written consent of such other Party. Each Party agrees that it will not, without the prior written consent of the other Party, make any public statement regarding this Agreement, any of its provisions, or the fact that this Agreement exists.

16.6. Independent Contractors. The Parties acknowledge that Customer is a Party independent from Seller and that nothing in this Agreement will be construed or deemed to create a relationship of employer and employee, principal and agent, or any relationship other than that of independent entities contracting with each other solely for the purpose of carrying out the terms and provisions of this Agreement.

16.7. Waiver. If either Party fails to enforce any right or remedy available under this Agreement, that failure shall not be construed as a waiver of any right or remedy with respect to any other breach or failure by the other Party.

16.8. Software License; Intellectual Property Rights. The Parties acknowledge that Seller will license software from third parties to provide monitoring or administration of the Telecom Services, and that such licenses may require Customer, when accessing the software to use the Services, to agree to an End User Licensing

Agreement governing the access and use of the software. Customer shall receive a limited, personal, revocable, non-exclusive, non-sub-licensable, non-assignable, non-transferable, non-resellable license to use the software provided in conjunction with the Services during the Term in strict accordance with the terms of this Agreement and third party EULA, and solely for Customer's internal business use. In the event of any expiration or termination of this Agreement and/or applicable TOS, all license rights granted herein or the applicable TOS in connection with any software shall immediately terminate. All Intellectual Property rights in the Services and/or technology used in the provision of the Services are and shall remain the sole and exclusive property of Seller and its licensors. All rights not expressly granted herein are reserved and retained by Seller and its licensors, and no Intellectual Property rights or other rights or licenses are granted, transferred, or assigned to Customer or any other party by implication or otherwise. Customer acknowledges that misuse of the Services may violate third party Intellectual Property rights in the software provided in conjunction with the Services. CUSTOMER AND SELLER ACKNOWLEDGE AND AGREE THAT THE FOREGOING HAS NO APPLICATION WITH RESPECT TO SEPARATELY LICENSED THIRD PARTY SOFTWARE.

16.9. Credit Information. CUSTOMER AUTHORIZES SELLER OR ITS ASSIGNEE TO OBTAIN CREDIT BUREAU REPORTS, AND MAKE OTHER CREDIT INQUIRIES THAT SELLER OR ITS ASSIGNEE DETERMINE ARE NECESSARY. Customer agrees to provide copies of its balance sheet, income statement and other financial reports as Seller or Seller's Assignee may periodically reasonably request.

16.10. Severability. In the event that any term or provision of this Agreement is held to be illegal, unenforceable, or invalid, the remaining terms and provisions hereof shall remain in full force and effect.

16.11. Survival of Terms. Notwithstanding any termination or expiration of this Agreement, all rights and remedies available to the Parties and all terms and provisions of this Agreement that are not performed or cannot be performed during the term of this Agreement shall survive the termination or expiration of this Agreement.

16.12. Governing Law. The laws of the state of North Carolina (including, but not limited to, the Uniform Commercial Code as adopted) apply to all Services provided under the terms and provisions of this Agreement, without reference to such jurisdiction's conflicts of law principles.

16.13. E-Verify. Seller shall comply with the requirements of Article 2 of Chapter 64 of the North Carolina General Statutes (E-Verify). Seller shall require all of Seller's subcontractors to comply with the requirements of Article 2 of Chapter 64 of the North Carolina General Statutes (E-Verify).

16.14. Anti-Human Trafficking. Seller warrants and agrees that no labor supplied by Seller or Seller's subcontractors in the performance of this Agreement shall be obtained by means of deception, coercion, intimidation or force, or otherwise in violation of North Carolina law, specifically Article 10A, Subchapter 3 of Chapter 14 of the North Carolina General Statutes, Human Trafficking.

16.15. Pursuant to Section 3-2 of the Town of Apex Code of Ordinances, Seller hereby warrants and agrees that Seller will not discriminate against a protected class in employment, subcontracting practices, or the solicitation or hiring of vendors, suppliers, or commercial customers in connection with this Agreement. For the purposes of this Agreement "protected class" includes age, race, religious belief or non-belief, ethnicity, color, national origin, creed, sex, sexual orientation, gender identity, marital status, natural hair style, genetic information, pregnancy, familial status, disability, veteran or military status, or disabled veteran status.

16.16. Notwithstanding any other provisions of this Agreement, the parties agree that payments due hereunder from Customer are from appropriations and monies from the Town of Apex Town Council and any other governmental entities. In the event sufficient appropriations or monies are not made available to Customer to pay the terms of this Agreement for any fiscal year, this Agreement shall terminate immediately without further obligation of Customer; provided, however, Customer warrants that it will not execute a TOS until such time that all funds necessary for such TOS have been appropriated in full.

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed and do each hereby warrant and represent that their respective signatory whose signature appears below has been and is on the date of this Agreement duly authorized by all necessary and appropriate corporate action to execute this Agreement.

By signing below, Customer acknowledges that it has received, read, and understood Exhibit 1 of this Agreement concerning 911 services.

SELLER:	**ConvergeOne, Inc.**	CUSTOMER:	**Town of Apex**
BY:	Scott Byers	BY:	
SIGNATURE:	_(signature)_	SIGNATURE:	
TITLE:	Regional Vice President	TITLE:	
DATE:	04/11/2023	DATE:	

This instrument has been preaudited in the manner required by the Local Government Fiscal Control Act.

_____

EXHIBIT 1

911 ACKNOWLEDGMENT

This Exhibit applies where the Telecom Services available to Customer include access to emergency services and/or 911 providers (the "Emergency Services").

1.   Emergency Services permit most users of the Telecom Services to access either basic 911 or Enhanced 911 ("E911") service. A user's access may differ depending on the user's location or the device the user is using, and emergency calling services work differently than a user may have experienced using traditional wireline or wireless telephones.

     1.1   With appropriate licensing, users using IP Desk Phones can dial 911 directly from the Sellers C1CX softphone. E911 services are predicated upon customer installing, ConvergeOne provided, E911 application and, if applicable, customer updating dispatchable location on computer or mobile device.

     1.2   In areas where it is available, the Telecom Service allows Emergency SMS messages, also known as Text-to-911, only through the customers native mobile device operating system.

2.   The Emergency Services differ from the 911 services offered by a traditional telephone company or wireless company. Customer acknowledges and certifies that it understands that Seller does not support traditional 911 and that the Emergency Services offered under this Agreement are subject to limitations as described below.

     2.1.   Access to 911 or E911 may differ depending on the user's location or the device the user is using. It is strongly recommended that users have an alternative means for placing emergency calls available at all times.

     2.2.   Prior to initiating Telecom Services, Customer must provide a Registered Address for each physical device using the Telecom Services, in accordance with Seller's procedures. The Registered Address is the physical address of the device and is necessary to provide accurate address information in connection with the Emergency Services. Customer agrees to update the Registered Address, through Seller's provided portal, immediately after a device is moved. If the Registered Address is not updated as required, incorrect address information may be provided to the 911 provider responding to a 911 call or 911 calls may be routed to the wrong 911 provider or, potentially, not connected. In some instances, the Registered Address may not be received by the 911 provider, and consequently users should be prepared to provide the location from which the call originates. If the 911 provider does not have the user's phone number and location, the operator may not be able to call the user back or dispatch help to the user's location if the call is dropped or disconnected. If Customer has more than one line or extension, Customer is solely responsible for ensuring that an accurate and up-to-date Registered Address is maintained for each such line or extension and that Customer's users are aware of how the Registered Address can be changed.

     2.3   If the Telecom Services are being used on a device that is mobile [but not via the Mobile Application], including without limitation a tablet, smartphone or laptop computer, the user is responsible for updating the Registered Address in accordance with Section 2.2 of this Exhibit. Customer must install, Seller provided, E911 application on any mobile device utilizing Seller cloud services and which required the ability to call 911. Customer is solely responsible for updating the application installed on mobile devices with correct location information.

     2.4.   In the case of Emergency Services provided through the Mobile Application, the Mobile Application is dependent on location information entered by user via the provided E911 application. If wireless service (WiFI, 5G, 4G, or 3G) is unavailable, calls to 911 will not be completed, and in some circumstances the user's smartphone or wireless network may not pass location or calling number information to the 911 provider.

     2.5.   In some cases, 911 calls dialed via the Telecom Services cannot be directed to the local 911 provider, and are instead directed to a National Emergency Call Center (the "NECC"). This may occur if there is the Registered Address cannot be validated, if the Registered Address is an international location, or if the Registered Address is in an area that is not covered by the landline 911 network. 911 calls that are directed to the NECC may not transmit the originating telephone number or Registered Address. Trained

operators at the NECC will request the caller's name, location, and telephone number and attempt to reach emergency responders in the caller's local area.

2.6. Some features of the Emergency Services, including provision of Registered Addresses and the ability to return a call from a user who has dialed 911, may not be supported by individual 911 providers, or may not function in certain circumstances.

2.7. Emergency Services will not work if there is a power outage, if connectivity to Seller cloud solution is interrupted, if the Telecom Services are unavailable, or if there is a disruption to 911 service in the area where the call to 911 is made.

2.8. Emergency Services will not work if the Telecom Services have been disconnected.

3. Customer agrees to notify any employees, contractors, guests, or persons who may place calls using the Telecom Services or may be present at the physical location where the Telecom Services may be used, of the limitations of the Emergency Services. Customer agrees to affix a Seller-provided sticker warning that 911 services may be limited or unavailable in a readily visible place on each piece of equipment that might be used to access or use the Telecom Services.

4. Liability and Releases

4.1. The availability of certain features, such as transmission of a Registered Address or Customer telephone number, depends on whether local emergency response centers support those features, and are factors outside of Seller's control. Seller relies on third parties to assist in routing 911 calls to local emergency response centers and to the NECC. Seller does not have control over local emergency response centers, the NECC, emergency responders, or other third parties. Seller disclaims all responsibility for the conduct of local emergency response centers, the NECC and all other third parties involved in the provision of emergency response services. Accordingly, to the extent permitted by applicable law, Customer hereby releases and discharges Seller from and against any and all liability relating to or arising from any acts or omissions of such third parties or other third parties involved in the handling of or response to any emergency or 911 call.

4.2 After initial E911 portal installation and service turn up, customer bares sole responsibility for maintaining the customer E911 tenant database to reflect device dispatchable location. Additionally, customer is solely responsible for updating mobile device dispatchable location through the Seller provided E911 application. To the extent permitted by applicable Law, Customer releases, and will obtain from the users of the Telecom Services waivers releasing, Seller from any and all claims or liability that may arise related to Emergency Services.. Customer bears sole responsibility for providing any emergency services to its users and for any costs associated with providing these services and payment of any governmental fees or assessments related to 911, E911 or alternative 911 services.

EXHIBIT 2

Acceptable Use Policy

1. High Risk Use

CUSTOMER ACKNOWLEDGES THAT THE SERVICES ARE NOT DESIGNED, MANUFACTURED, INTENDED, OR RECOMMENDED FOR USE FOR ANY HIGH-RISK OR FAIL-SAFE PURPOSE OR ACTIVITY OR IN ANY ENVIRONMENT WHERE FAILURE, INTERRUPTION, MALFUNCTION, ERROR, OR UNAVAILABILITY COULD RESULT IN SUBSTANTIAL LIABILITY OR DAMAGES, PHYSICAL HARM OR PERSONAL INJURY, DEATH OR DISMEMBERMENT, OR PROPERTY OR ENVIRONMENTAL DAMAGE. CUSTOMER REPRESENTS AND WARRANTS THAT CUSTOMER AND ANY USERS OF THE SERVICES WILL NOT USE THE SERVICES FOR ANY SUCH PURPOSE OR ACTIVITY OR IN ANY SUCH ENVIRONMENT.

2. Customer Legal Compliance

Customer represents and warrants that all use and usage of the Services will at all times comply with all applicable law, including but not limited to the rules, policies and regulation of the Federal Communications Commission ("FCC"), and all laws relating to Do-Not-Call provisions; unsolicited marketing; telemarketing; faxing; telemarketing; email marketing; spamming or phishing; data security or privacy; international communications; account or debt collection; recording of calls or conversations; export control; export of technical or personal data; end user, end-use, and destination restrictions imposed by the United States or foreign governments; consumer protection; pornography; trade practices; false advertising; unfair competition; anti-discrimination; harassment; defamation; intellectual property; or securities.

3. Unsolicited Advertisements and TCPA Compliance

   3.1. Certain communication practices – including without limitation, the placing of unsolicited calls; the placing of commercial messages; the sending of unsolicited facsimile, internet facsimile, SMS, or other messages; and the use of certain automated telephone equipment to place certain calls – are regulated in the United States by the Federal Telephone Consumer Protection Act of 1991 (also known as the "TCPA") (available at http://www.fcc.gov/document/telephone-consumer-protection-act-1991), the Junk Fax Prevention Act of 2005, and similar state, municipal or local laws, regulations, codes, ordinances and rules.

   3.2. Customer agrees, represents, and warrants that:

      3.1.1. Customer is the creator of the content of, and are solely responsible for determining the destination(s) and recipient(s) of, all outbound communications made using the Services ("Customer Communication");

      3.1.2. All content, communications, files, information, data, and other content provided for transmission through the Services will be provided solely for lawful purposes, and in no event shall any Customer Communication or any content thereof be in violation of the TCPA, Junk Fax Prevention Act, the rules governing the Do Not Call Registry, and the Canadian Unsolicited Telecommunications Rules or any other law; and

      3.1.3. No unsolicited advertisements, commercial messages, solicitations, marketing or promotional materials, or commercial messages or content will be transmitted or distributed in the form of facsimiles or internet facsimiles through the Services.

   3.3. At Seller's sole option and without further notice, Seller may use technologies and procedures, including without limitation, filters, that may block or terminate such unsolicited advertisements without delivering them.

   3.4. Customer agrees to indemnify and hold harmless Seller, and any third-party provider(s) from any and all third party claims, losses, damages, fines, or penalties arising: (i) out of violation or alleged violation of the TCPA, the Junk Fax Prevention Act, the rules governing the Do Not Call Registry, and the Canadian Unsolicited Telecommunications Rules or any similar regulation or legislation by Customer or its users; or (ii) otherwise related to any voicemail, text, and/or fax spam, solicitations, or commercial messages that

Customer or its users may send and/or receive using the Services.

4.   Export Restrictions

Customer acknowledges and agree that the software and/or hardware used in conjunction with the Services may be subject to Canada, United States and other foreign laws and regulations governing the export, re-export, and/or transfer of software by physical or electronic means. Customer agrees, represents, covenants, and warrants that: (i) neither Customer nor any user (nor any entity or person that controls Customer or any user): (a) is located in an Embargoed Area or listed on any Export Control List or (b) will export or re-export any Seller software or hardware into any Embargoed Area or to any person, entity, or organization on any Export Control List, or to any person, entity, or organization subject to economic sanctions due to ownership or control by any such person, entity, or organization, without prior authorization by license, license exception, or license exemption; and (ii) the Services and Seller software and/or hardware will not be used or accessed from any Embargoed Area.

5.   Recording Conversations or Calls

5.1.   Certain features of the Services may allow Customer or users of the Services to record calls or other communications. The notification and consent requirements relating to the recording of calls, and/or other communications may vary from state to state, and country to country. Customer should consult with an attorney prior to recording any call as some states or countries may require callers or users to obtain the prior consent of all parties to a recorded call, or other communication before the caller or user may record the call, or other communication. Customer represents, covenants, and warrants that it will review all applicable law before using or allowing use of the Services to record any calls or other communications and will at all times comply with all applicable law. Customer agrees to inform all users of the Services that they are obligated to comply with all laws relating to their use of the call recording feature. Violations of the call recording laws may be subject to criminal or civil penalties.

5.2   Seller expressly disclaims all liability with respect to recording of telephone conversations by Customer or users. Customer agrees to indemnify and hold harmless Seller, and any third-party provider(s) from any and all third party claims, losses, damages, fines, or penalties arising out of violation or alleged violation of any call recording laws by Customer or any user. Seller expressly disclaims all liability and all warranties with respect to recording of conversations and/or calls.

6.   Prohibited Use of the Services.

Neither Customer nor any user of the Services may use or allow use of the Services in any of the following ways:

6.1.   In any manner or for any purpose that is fraudulent, malicious, deceptive, dishonest, abusive, obscene, threatening, harassing, tortious, improper, defamatory, libelous, slanderous, or in violation of any law;

6.2.   To intentionally send or transmit unsolicited or "junk" or "spam" advertisements, communications, or messages (commercial or otherwise) without consent, including without limitation through email, voicemail, SMS, facsimile, or internet facsimile;

6.3.   To harvest or otherwise collect information about others, including without limitation email addresses or personally-identifiable information, without their consent;

6.4.   To intentionally engage in blasting or broadcasting bulk communications, advertisements, or messages (e.g., sending hundreds of messages simultaneously), including without limitation through email, voicemail, SMS, facsimile, or internet facsimile;

6.5.   To perform auto-dialing or "predictive" dialing (i.e., non-manual dialing or using a software program or other means to continuously dial or place out-bound calls) in violation of applicable law;

6.6.   To provide multi-party conference calls or multiparty chat lines, for extensive call forwarding or to use call forwarding or conferencing features to act as a bridge to chat lines or other conferencing facilities or services;

6.7.   To provide monitoring or transcription services;

6.8. To transmit any communication that would violate Customer's obligations under Section 3 of this Exhibit 2;

6.9. To intentionally transmit or store any material that contains viruses, time bombs, Trojan horses, worms, malware, spyware, or any other programs or materials that may be harmful or dangerous;

6.10 To transmit misleading or inaccurate caller ID information with the intent to defraud, cause harm, or wrongfully obtain anything of value, including by creating a false Caller ID identity or forged email/SMS address or header or by otherwise attempting to mislead others as to the identity of the sender or the origin of any outbound Customer Communication;

6.11. To infringe, misappropriate, or otherwise violate the foreign or domestic intellectual property rights or proprietary rights of any party, including without limitation by transmitting or storing any material that might infringe, misappropriate, or otherwise violate any such right;

6.12. To violate the right of privacy, personality, or publicity of any party, including without limitation by transmitting or storing any material that might violate any such right;

6.13. To violate any law regarding the transmission of technical data or information or software through the Services;

6.14. In any manner that interferes with Seller's ability to provide high quality products or services to other customers; or

6.15. To store personal health information ("PHI"), as that term is used in the Health Insurance Portability and Accountability Act of 1996 ("HIPAA"); or if Customer qualifies as a "covered entity," "business associate," or "subcontractor" under HIPAA (or similar terms under similar legislation in other jurisdictions) or is otherwise subject to HIPAA, to transmit, receive, or store PHI.

A breach of obligations in this Section constitutes a material breach of this Agreement, as applicable, such that Seller may suspend service, terminate the Agreement immediately, or take any other action Seller deems necessary to enforce the terms of this Section;

7. Prohibited Acts.

Customer represents, warrants, covenants, and agrees that neither Customer nor any user shall do any of the following during the Term:

7.1. Transmit, upload, distribute in any way, or store any corrupted file or material that contains viruses, time bombs, Trojan horses, worms, malware, spyware, or any other programs or materials that may be harmful or dangerous or may damage the operation of the Services or another party's computers, devices, equipment, systems, or networks;

7.2. Take advantage of, bypass, exploit, or otherwise avoid Customer's obligations or the provisions, restrictions, and prohibitions set forth in this Exhibit 2(or attempt to do so);

7.3. Interfere with or disrupt networks or systems connected to the Services;

7.4. Sell, resell, distribute, lease, export, import, or otherwise grant or purport to grant rights to third parties with respect to the Services, and any software or hardware used in conjunction with the Services or any part thereof without Seller's prior written consent;

7.5. Display or use of any trademark, trade name, service mark or logo (together or individually, a "Mark") of Seller in any manner in violation of Seller's then-current policies on its trademark and logo usage or without Seller's express, prior written permission, to be granted or denied in Seller's sole discretion;

7.6. Display or use of any third party Mark without the prior, written consent of the third party that owns the third party Mark;

7.7.   Undertake, direct, attempt, cause, permit, or authorize the modification, creation of derivative works, translation, reverse engineering, decompiling, disassembling, or hacking of the Services or any software and hardware used in conjunction with the Services, or part thereof;

7.8.   Defeat, disable, or circumvent any protection mechanism related to the Services;

7.9.   Intercept, capture, sniff, monitor, modify, emulate, decrypt, or redirect any communication or data used by Seller for any purpose, including without limitation by causing the any product to connect to any computer server or other device not authorized by Seller or in any manner not authorized in advance in writing by Seller;

7.10.   Allow any service provider or other third party – with the sole exception of Seller's authorized maintenance providers acting with Seller's express, prior authorization – to use or execute any software commands that facilitate the maintenance or repair of any software or hardware used in conjunction with the Services;

7.11.   Gain access to or use (or attempt to gain access or use) any device, system, network, account, or plan in any unauthorized manner (including without limitation through password mining);

7.12.   Engage in or to allow trunking or forwarding of Customer's telephone or facsimile number to (an)other number(s) capable of handling multiple simultaneous calls, or to a private branch exchange (PBX) or a key system; or

7.13.   Violate or take any action to jeopardize, limit, or interfere with Seller's intellectual property rights, including without limitation their IP Rights in the software and hardware used in conjunction with the Services.

Breach of obligations in this Section constitutes a material breach of the Agreement, as applicable, such that Seller may suspend service, terminate the Agreement immediately, or take any other action Seller deems necessary to enforce the terms of this Section.