

CONVENE IT LIMITED - TERMS AND CONDITIONS V3

1. INTERPRETATION

1.1 Definitions. In these Conditions, the following definitions apply:

Authorised Users: those employees and independent contractors of the Customer who are permitted to access the Services;

Business Day: a day other than a Saturday, Sunday or public holiday in England when banks in London are open for business;

Conditions: these terms and conditions as amended from time to time in accordance with clause 22.7;

Configuration Services: the configuration and related work to be performed by Convene IT to configure the Equipment, the Network, the Disaster Recovery Service and/or the Software as set out in the Contract;

Contract: the contract in writing between Convene IT and the Customer for the supply of the Services and/or Equipment incorporating these Conditions;

Convene IT: Convene IT Limited registered in England and Wales with company number 06558902;

Commencement Date: the date upon which the provision of the Services will begin;

Customer: the person, company or firm which purchases the Services and/or Equipment from Convene IT, as identified in the Contract;

Customer Data: the software applications and data installed, inputted, stored, or processed on the Customer's IT systems;

Customer Software: any software applications owned by or licensed (otherwise than as part of the Software Services) to the Customer, to be supported by Convene IT as part of the Services and as described in the Contract;

Data Processing Schedule: the schedule to these Conditions setting out the details of any Personal Data to be Processed pursuant to the Contract;

Data Protection Legislation: all applicable data protection and privacy legislation in force from time to time in the UK including the Data Protection Act 2018 (**DPA 2018**), UK GDPR (as defined in section 3(10) of the DPA 2018) and the Privacy and Electronic Communications Regulations 2003, as amended or updated from time to time;

Deliverable: a defined level of functionality or other preset milestone forming part of the Configuration Services, as more particularly described in the Service Specification in the Contract;

Disaster Recovery Service: the back-up and disaster recovery services to be supplied by Convene IT to the Customer as set out in the Contract.

Equipment: any equipment (or any part of it) to be supplied by Convene IT to the Customer pursuant to the Contract and as set out in the Contract;

Force Majeure Event: has the meaning given to it in clause 20.1;

Intellectual Property Rights: patents, rights to inventions, copyright and related rights, trade marks, business names and domain names, rights in get-up, goodwill and the right to sue for passing off, rights in designs, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how), and all other intellectual property rights, in each case whether registered or unregistered;

IT Support Services: the technical support services to be supplied by Convene IT to the Customer as set out in the Contract;

Network: the customer's private network to be set up by Convene IT providing Equipment and the Telecommunication Services as set out in the Contract;

Normal Business Hours: 8.00am to 5.00pm local UK time on a Business Day;

Service Level Arrangements: any agreed obligations of Convene IT to support the Services and/or the Equipment as set out in the Service Specification;

Service Specification: the specification of the Services to be provided by Convene IT, as set out in the Contract;

Services: the services to be supplied by Convene IT as set out in the Contract which may include the IT Support Services, the Configuration Services, the Disaster Recovery Service, the Software Services and the Telecommunication Services, and any other services to be supplied by Convene IT to the Customer pursuant to the Contract;

Software Services: the Third-Party Software, if any, identified in the Contract to be sourced by Convene IT, subject to a Third-Party Software Licence and made available to the Customer;

Telecommunication Network Providers: fixed line owners and operators, including Spitfire Network Services, BT, BT Open Reach and Virgin Media, mobile network operators, mobile virtual network operators and any other third-party network provider, operator or support organisations used by Convene IT in providing the Services;

Telecommunication Services: the setting up and support of telecommunication and network services to be supplied by Convene IT to the Customer as set out in the Contract;

Third-Party Software: the software applications to be sourced by Convene IT and licensed to the Customer, as set out in the Contract;

Third-Party Software Licence: the end user licence terms relating to the Third-Party Software, together with any alterations thereto made by the licensor of the Third-Party Software;

TUPE Regulations: The Transfer of Undertakings (Protection of Employment) Regulations 2006;

Virus: any thing or device (including any software, code, file or programme) which may: prevent, impair or otherwise adversely affect the operation of any computer software, hardware or network, any telecommunications service, equipment or network or any other service or device; prevent, impair or otherwise adversely affect access to or the operation of any programme or data, including the reliability of any programme or data (whether by re-arranging, altering or erasing the programme or data in whole or part or otherwise); or adversely affect the user experience, including worms, trojan horses, viruses and other similar things or devices.

1.2 **Construction.** In these Conditions, the following rules apply:

- (a) a **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality);
- (b) a reference to a party includes its successors or permitted assigns;
- (c) a reference to a statute or statutory provision is a reference to such statute or statutory provision as amended or re-enacted; and
- (d) a reference to **writing** or **written** includes e-mails.

1.3 **Controller, Processor, Data Subject, Personal Data, Personal Data Breach,** processing and appropriate technical and organisational measures: shall have the meanings as defined in the Data Protection Legislation.

2. **BASIS OF CONTRACT**

2.1 These Conditions shall:

- (a) apply to and be incorporated in the Contract; and
- (b) prevail over any inconsistent terms or conditions contained in or referred to in the Customer's purchase order, confirmation of order, or correspondence, or implied by law, trade custom, practice or course of dealing.

2.2 The Contract constitutes the entire agreement between the parties. The Customer acknowledges that it has not relied on any statement, promise, representation, assurance or warranty made or given by or on behalf of Convene IT which is not set out in the Contract.

2.3 No addition to, variation of, exclusion or attempted exclusion of any term of the Contract shall be binding on Convene IT unless in writing and signed by a duly authorised representative of Convene IT.

3. **SUPPLY OF SERVICES**

3.1 Subject to these Conditions, Convene IT shall supply to the Customer those Services as set out in the Contract.

- 3.2 Convene IT shall use all reasonable endeavours to meet any agreed performance dates for delivery of the Services, but any such dates shall be estimates only and time shall not be of the essence for the performance of the Services. In any event, Convene IT shall not be liable for any delay caused by a Force Majeure event or by the Customer's acts or omissions.
- 3.3 Convene IT shall have the right to make any changes to the Services which are necessary to comply with any applicable law or safety requirement, or which do not materially affect the nature or quality of the Services.

4. CONFIGURATION SERVICES

- 4.1 Subject to these Conditions, Convene IT shall perform the Configuration Services in accordance with the Contract and the Service Specification in all material respects.
- 4.2 Within five days of Convene IT notifying the Customer that it has completed the Configuration Services in respect of a Deliverable, the Customer shall review that Deliverable to confirm that it functions in material conformance with the Contract and Service Specification. If the Deliverable fails in any material respect to conform with the Contract and any Service Specification, the Customer shall give Convene IT a detailed description of any such non-conformance ("**Error**"), in writing, within the five-day review period.
- 4.3 Convene IT shall use reasonable endeavours to correct any such Error within a reasonable time and, on completion, submit the corrected Deliverable to the Customer.
- 4.4 If the Customer does not provide any written comments in the five-day period described above, or if the Deliverable is found to conform with the Contract, the Deliverable shall be deemed accepted.
- 4.5 In the event that Convene IT is unable to correct an Error (without incurring significant further costs), then Convene IT may give notice in writing to the Customer that it is unable to complete the Configuration Services in respect of that particular Deliverable and give the reason why. If the reason is due to Customer Software, the Customer's internet connection or hardware or any instruction, act or omission of the Customer, then Convene IT shall be released from any further obligation under this agreement in respect of the relevant Deliverable. The Contract shall continue in respect of all other Deliverables, and all other Services and Equipment to be supplied pursuant to the Contract, and Convene IT shall be entitled to the charges relating thereto.

5. THIRD PARTY SOFTWARE

- 5.1 In consideration of the charges payable by the Customer under the Contract, Convene IT shall grant or procure the grant to the Customer of a non-exclusive non-transferrable licence to use the Third Party Software, on and subject to the terms and conditions of the relevant Third Party Software Licence.
- 5.2 Where required by Convene IT, the Customer will enter into a direct end user licence with the third party software provider (**Third Party Software Licence**).
- 5.3 The Customer agrees to comply with and to procure that all Authorised Users comply with at all times the terms and conditions of each Third Party Software Licence.
- 5.4 Provided the Customer pays to Convene IT when due all charges payable under the Contract in respect of the same, Convene IT will (for the duration of the Contract only) pay the fees due to the third party software provider in respect of any Third Party Software Licence. Convene IT reserves the right to increase its charges at any time to cover any increase in the cost of a Third Party Software Licence, where that increase is instigated by the licensor, or as a result of a change in the Customer's requirements.
- 5.5 The Customer shall be responsible for paying, and shall indemnify Convene IT against, any fees relating to the Customer's continued use of the Third Party Software after the termination or expiry of the Customer's Contract with Convene IT.
- 5.6 Convene IT shall update and patch the Third Party Software as it deems necessary. Unless agreed otherwise in the Contract, Convene IT shall only update the Customer Software at the request in writing of the Customer.

6. EQUIPMENT

- 6.1 Subject to these Conditions, Convene IT will supply and the Customer shall purchase from Convene IT such Equipment and on such terms as are described in the Contract.
- 6.2 The risk in any Equipment sold to the Customer by Convene IT shall pass to the Customer on delivery to the Customer's premises and the Customer shall be responsible for insuring the Equipment.
- 6.3 Title to any Equipment supplied by Convene IT shall not pass to the Customer until Convene IT receives payment in full (in cleared funds) for the Equipment, in which case title to the Equipment shall pass at the time of payment. Until title to the Equipment has passed to the Customer, the Customer maintain the Equipment in a satisfactory and secure condition and keep it insured against all risks for its full price on Convene IT's behalf from the date of delivery. If before title to the Equipment

passes, the Customer becomes subject to any of the events listed in clause 19.3(b) to clause 19.3(l), then, without limiting any other right or remedy Convene IT may have, Convene IT may at any time take possession of the Equipment (and the Customer will provide Convene IT and its agents with access to remove the same).

- 6.4 If specifically agreed in the Contract, Convene IT will install the Equipment. The Customer shall give Convene IT all necessary assistance and access to enable the installation of the Equipment to be carried out and shall provide such cooperation as Convene IT may reasonably require. In particular, the Customer shall provide Convene IT with all relevant user manuals, software and access code(s) and other documentation necessary for Convene IT to install the Equipment.

7. TELECOMMUNICATION SERVICES

- 7.1 Subject to these Conditions, Convene IT shall supply the Telecommunication Services to the Customer in accordance with the Contract and the Service Specification in all material respects.
- 7.2 Convene IT reserves the right to direct and establish technical procedures for the use of the Network and which it believes are necessary for reasons of safety, security or to preserve the integrity or quality of the Network. The Customer shall procure that all users of the Network comply with any such procedures and these Conditions insofar as they relate to the use of the Network. Convene IT shall have the right to disable access to any user who is not so complying.
- 7.3 The Customer authorises Convene IT to select and at any time change the Telecommunication Network Provider. The Customer hereby irrevocably authorises Convene IT to give all notices, directions and authorisations to a Telecommunications Network Provider that Convene IT deems reasonably necessary in respect of the Network.
- 7.4 The Customer acknowledges that the Network and the provision of the Telecommunication Services are reliant on the Telecommunications Network Provider, and that Convene IT shall not be responsible or liable for faults or disruption or additional costs incurred as a result of the acts, omissions or unavailability of the Telecommunication Network Provider or issues arising with the lines or cables to the distribution point in the Customer's premises. For the avoidance of doubt, this also extends to additional charges required for installation costs (known as Estimated Construction Costs). The Customer further acknowledges that the Telecommunication Network Provider may make alterations to its services which may result in disruption to or necessitate changes to the Network or the Telecommunication Services. In such circumstances Convene IT shall use its reasonable endeavours to give as much notice as possible to the Customer of any proposed disruption or changes. For the avoidance of doubt, any such disruption is

specifically excluded from any Service Level Arrangements agreed in the Service Specification.

- 7.5 The supply and support of a Telecommunication Network Provider's ethernet service, fixed lines and equipment shall be subject to the Telecommunication Network Provider's terms of supply, which may be subject to change. Convene IT shall use its reasonable endeavours to notify the Customer of such terms.
- 7.6 Unless specifically stated otherwise in the Contract, the Customer shall be responsible for any call or usage charges levied by the Telecommunication Network Provider, which will be invoiced separately from Convene IT's charges.
- 7.7 Convene IT shall not in any circumstances be responsible for any call-out or other charges the Customer incurs (or Convene IT incurs on behalf of the Customer) from a Telecommunication Network Provider.
- 7.8 Convene IT does not warrant or guarantee the performance of the internet or that the transmission of information over the internet will be secure or that internet connectivity will be available at all times or at a particular speed.
- 7.9 Unless specifically included in the Contract, Convene IT shall not be liable for any costs incurred by the Customer for modifications to the Customer's existing equipment or premises (including power sources and the installation or alteration of any distribution point by a Telecommunication Network Provider) which may be reasonably necessary to enable Convene IT to provide the Telecommunication Services. For the avoidance of doubt, this also extends to additional charges required for installation costs (known as Estimated Construction Costs).
- 7.10 Convene IT will not be held responsible for any costs/charges involved for calls and/or security measures should the Customer experience "hacking", unauthorised use or any security breaches of any telephone system and associated lines.
- 7.11 The Customer shall:
- (a) ensure at all times that its use of the Network is in accordance with all applicable laws, licences and regulations;
 - (b) be responsible for obtaining and maintaining the Customer's own facilities, being all such equipment and communication lines required by the Customer to access the network (other than the Equipment supplied by Convene IT pursuant to the Contract). Convene IT shall have no responsibility for or liability in respect of the Customer's own facilities or those of the Telecommunication Network Provider;
 - (c) maintain its connection to the Network. Convene IT cannot be responsible or liable to the Customer for failing to provide the Telecommunication

Services if such failure arises as a result of any interruption to, failure to connect to or disconnection from, the Network caused by the act or omissions of the Customer.

- 7.12 The Customer shall not use, nor allow any other(s) to use, the Network:
- (a) for any improper, immoral, illegal or unlawful purpose;
 - (b) to store, send, reproduce or receive a communication which is, or is intended to be, a hoax call to emergency services, or which is defamatory, offensive, abusive, indecent, obscene or menacing;
 - (c) to violate or infringe any rights of, or to cause annoyance, inconvenience or anxiety to, or to interfere with or damage, any other person;
 - (d) in such a way that may impair, interfere with, damage or affect the operation or quality of the Network or the Equipment;
 - (e) fraudulently or illegally;
 - (f) to transmit any Virus; or
 - (g) otherwise than in accordance with any applicable terms of use or acceptable usage policy (as notified from time to time).
- 7.13 Convene IT will support the Telecommunication Services in accordance with any Service Level Arrangements set out in the Service Specification.
- 7.14 Convene IT is not obliged to provide support for any fault or defect in the Network and/or the Equipment if and to the extent that such fault or defect has arisen as a result of an act or omission of the Customer or of a third party (including a Telecommunication Network Provider) or due to equipment not supplied by Convene IT or as a result of a Force Majeure Event.
- 7.15 If Convene IT reasonably determines that the fault or defect is not covered by the Contract, it shall promptly notify the Customer. If the Customer and Convene IT agree that Convene IT will provide support and assistance in such circumstances, Convene IT shall be entitled to charge for such additional services in accordance with clause 12.2 below.
- 7.16 Where Equipment is supplied by Convene IT as part of the Telecommunication Services, the Customer may not (nor may it permit others to), interfere with, disconnect, remove, or attempt to repair any Equipment except with the written consent of Convene IT.

8. IT SUPPORT SERVICES

- 8.1 Subject to these conditions, Convene IT shall perform the IT Support Services in accordance with the Contract and Service Specification in all material respects.

- 8.2 Convene IT will provide the IT Support Services in accordance with any Service Level Arrangements set out in the Service Specification.
- 8.3 The IT Support Services to be provided under the Contract do not cover any fault or defect that has arisen as a result of an act or omission of the Customer or of a third party (including a Telecommunication Network Provider) or due to the Customer Software or the Customer Data or equipment not supplied by Convene IT, or as a result of a Force Majeure Event.
- 8.4 If Convene IT reasonably determines that the fault or defect is not covered by the Contract, it shall promptly notify the Customer. If the Customer and Convene IT agree that Convene IT will provide support and assistance in such circumstances, Convene IT shall be entitled to charge for such additional services in accordance with clause 12.2 below.

9. DISASTER RECOVERY SERVICE

- 9.1 Subject to these conditions, Convene IT shall provide the Disaster Recovery Service in accordance with the Contract and Service Specification in all material respects.
- 9.2 If included in the Contract, Convene IT will design and implement a plan for the back-up and recovery of the Customer's Data (**Disaster Recovery Plan**). The Customer will provide Convene IT with such information, access and assistance as is reasonably required to enable Convene IT to design the Disaster Recovery Plan in line with the Service Specification. Once the Disaster Recovery Plan and any associated costs have been agreed in writing by the Customer, and subject to the Customer paying all such costs, Convene IT will implement and support the same in accordance with these Conditions.
- 9.3 The Disaster Recovery Services may incorporate the services of a third party provider (such as a data centre or data backup service provider) and their services shall be subject to their terms of supply. Convene IT shall use its reasonable endeavours to notify the Customer of such terms.
- 9.4 The Customer Data will be backed-up at such intervals and in such a manner as set out in the Service Specification or, where relevant, the Disaster Recovery Plan. The Customer may at any time request a change to its backup requirements which will need to be agreed in writing by Convene IT. This may constitute a change in the scope of the Services to be dealt with in accordance with clause 13.
- 9.5 All Customer Data is uploaded, stored, backed-up and processed at the Customer's own risk. In the event of any loss or damage to Customer Data, the Customer's sole and exclusive remedy shall be for Convene IT to use reasonable commercial endeavours to restore the lost or damaged Customer Data from the back-up of such

Customer Data. Convene IT shall not be responsible for any loss, destruction, alteration or disclosure of the Customer Data not caused directly by Convene IT.

10. CUSTOMER OBLIGATIONS

10.1 The Customer shall:

- (a) ensure that the description of the Services in the Contract and Service Specification meets its requirements;
- (b) co-operate with Convene IT in all matters relating to the Services;
- (c) provide Convene IT with such information as Convene IT may reasonably require to supply the Services, and ensure that such information is accurate in all material respects;
- (d) provide Convene IT, its employees, agents, consultants and subcontractors, with access to the Customer's premises, office accommodation and other facilities as reasonably required by Convene IT to install and maintain any required Equipment and to provide the Services in accordance with the Contract;
- (e) follow any technical procedures or reasonable instructions issued by Convene IT in relation to the Services or the Equipment;
- (f) be responsible for obtaining and maintaining the Customer's own facilities, (and which do not form part of the Services to be provided by Convene IT). Unless specifically agreed, Convene IT shall have no responsibility for or liability in respect of the Customer's own facilities. Convene IT cannot be responsible or liable to the Customer for failing to provide the Services if such failure is caused by the acts or omissions of the Customer;
- (g) maintain all necessary licences for the Customer Software;
- (h) appoint an Authorised Contact, who shall have the authority to contractually bind the Customer on all matters relating to this agreement. The Customer shall use reasonable endeavours to ensure continuity of the Authorised Contact;
- (i) comply with all applicable laws and regulations with respect to its activities under the Contract; and
- (j) notify Convene IT of any issues with the Services, raise support requests, and carry out all other Customer responsibilities set out in this agreement in a timely and efficient manner.

10.2 With respect to the provision of access to the Customer's premises:

- (a) Convene IT shall procure that its representatives observe any reasonable security and safety rules notified by the Customer; and
- (b) the Customer shall procure that Convene IT's representatives have a suitable and safe working environment while on their premises.

- 10.3 If Convene IT's performance of any of its obligations in the Contract is prevented or delayed by any act or omission by the Customer or failure by the Customer to perform any relevant obligation (**Customer Default**):
- (a) Convene IT shall without limiting its other rights or remedies have the right to suspend performance of the Contract until the Customer remedies the Customer Default, and to rely on the Customer Default to relieve it from the performance of any of its obligations to the extent the Customer Default prevents or delays Convene IT's performance of any of its obligations;
 - (b) Convene IT shall not be liable for any costs or losses sustained or incurred by the Customer arising directly or indirectly from the Customer Default; and
 - (c) the Customer shall reimburse Convene IT on written demand for any costs or losses sustained or incurred by Convene IT arising directly or indirectly from the Customer Default.

11. WARRANTY

- 11.1 Convene IT warrants to the Customer that the Services will be provided:
- (a) in accordance with the Contract and the Service Specification in all material respects; and
 - (b) using reasonable care and skill.
- 11.2 Convene IT warrants to the Customer that on delivery the Equipment will:
- (a) conform in all material respects with its description in the Contract and the Service Specification;
 - (b) be free from material defects in design, material and workmanship; and
 - (c) be of satisfactory quality (within the meaning of the Sale of Goods Act 1979).
- 11.3 Convene IT shall not be liable for a failure to comply with the warranties in clause 11.1 and 11.2 if:
- (a) the defect arises because the Customer failed to follow Convene IT's or the manufacturer's instructions;
 - (b) the defect arises as a result of an act or omission of the Customer;
 - (c) the Customer alters or repairs the Equipment without the written consent of Convene IT;
 - (d) the defect arises as a result of fair wear and tear, wilful damage, negligence, or abnormal working conditions; or

- (e) the Services or the Equipment differ from their description or specification in the Contract or the Service Specification as a result of changes made to ensure they comply with applicable statutory or regulatory standards.

11.4 If the Services do not conform with the foregoing warranty in clauses 11.1, Convene IT will, at its expense, use all reasonable commercial endeavours to correct any such non-conformance promptly. Such correction constitutes the Customer's sole and exclusive remedy for any breach of the warranty set out in clauses 11.1. Notwithstanding the foregoing, Convene IT does not warrant that the Telecommunication Services or its use of the Third Party Software will be uninterrupted or error-free.

11.5 In the event that Convene IT (acting reasonably) accepts that the Equipment does not comply with the warranty in clause 11.2 (or part of it) Convene IT shall, as its option, repair or replace the defective Equipment, in which case Convene IT shall have no further liability to the Customer in respect of the Equipment's failure to comply with the above warranty.

11.6 Where the Customer reports a problem with the Services or the Equipment and no problem is found or the fault is outside Convene IT's responsibility, Convene IT may charge the Customer for the call-out and/or for any work that it has undertaken or for which it has been charged by its agents or sub-contractors.

12. CHARGES AND PAYMENT

12.1 The charges for the Services and the Equipment shall be set out in the Contract. The charges may vary depending upon the Customer's requirements. Convene IT will invoice monthly in arrears for any additional requirements or increased use of the Services at the rates stated in the Contract.

12.2 Save as expressly provided for in the Contract, charges for additional services, software and equipment shall be calculated on a time and materials basis:

- (a) charges for services shall be calculated in accordance with Convene IT's standard fee rates, which are set out below:

	In Normal Business Hours	Pre Agreed - Out of Normal Business Hours
Engineering/Project Fees (determined by Convene IT, acting reasonably)	As per Convene IT quotation	POA

- (b) fee rates are calculated on the basis of a seven hour day during Normal Business Hours;
 - (c) Convene IT shall be entitled to charge the Customer for any expenses reasonably incurred by the individuals whom Convene IT engages in connection with the Services including, but not limited to, travelling expenses, hotel costs, subsistence and any associated expenses, and for the cost of services provided by third parties and required by Convene IT for the performance of the Services, and for the cost of any materials;
- 12.3 Convene IT reserves the right to increase the price of any Services or the Equipment, by giving notice to the Customer at any time, to reflect:
 - (a) an increase in the cost to Convene IT that is due to factors beyond its reasonable control (including the costs of fixed line rental or other costs including calls charges of the Telecommunication Network Provider);
 - (b) any request by the Customer to change the Services or the Equipment (including a change in the number of users, devices or licences in respect of which the Services are to be provided);
 - (c) any information provided by the Customer (whether relating to its requirements, its existing facilities, or otherwise) proving to be inaccurate, false or misleading, or
 - (d) any additional costs caused by any instructions, acts or omission of the Customer.
- 12.4 The pricing in the Contract for any services to be provided by a third party (including Third Party Software) is estimated based upon known factors and requirements at the time of the Contract and the actual cost may vary during the term of the Contract (whether due to a change in the Customer's requirements, change in functionality or price variations imposed by the third party provider). Convene IT shall give as much notice as possible of any such variations for which the Customer shall be responsible.
- 12.5 Convene IT shall invoice the Customer for the Services and Equipment as detailed in the Contract. Convene IT shall invoice the Customer for ongoing costs one month in advance and additional services and equipment shall be invoiced one month in arrears.
- 12.6 The Customer shall pay each invoice submitted by Convene IT:
 - (a) by direct debit;
 - (b) within 30 days of the date of the invoice; and
 - (c) in full and in cleared funds to a bank account nominated in writing by Convene IT, and
 - (d) time for payment shall be of the essence of the Contract.

- 12.7 All amounts payable by the Customer under the Contract are exclusive of amounts in respect of value added tax chargeable from time to time (**VAT**). VAT shall be invoiced at the applicable rate.
- 12.8 If the Customer fails to make any payment due to Convene IT under the Contract by the due date for payment, then the Customer shall pay interest on the overdue amount at the rate of 5% per annum above Barclays Bank plc's base rate from time to time. Such interest shall accrue on a daily basis from the due date until actual payment of the overdue amount, whether before or after judgment. The Customer shall pay the interest together with the overdue amount.
- 12.9 The Customer shall pay all amounts due under the Contract in full without any set-off, counterclaim, deduction or withholding except as required by law. Convene IT may, without limiting its other rights or remedies, set off any amount owing to it by the Customer against any amount payable by Convene IT to the Customer.

13. CHANGE CONTROL

- 13.1 If either party wishes to change the scope of the Services it shall submit details of the requested change to the other in writing.
- 13.2 If either party requests a change to the scope or execution of the Services, Convene IT shall, within a reasonable time, provide a written estimate to the Customer of:
- (a) any variations to its charges arising from the change; and
 - (b) any other impact of the change on the terms of this agreement.
- 13.3 If Convene IT requests a change to the scope of the Services, the Customer shall not unreasonably withhold or delay consent to it.
- 13.4 If the Customer wishes Convene IT to proceed with the change, Convene IT has no obligation to do so unless and until the parties have agreed in writing the necessary variations to its charges and any other relevant terms of the Contract to take account of the change.
- 13.5 Once a change has been agreed, the Contract and, where applicable, the Service Specification shall be amended and signed by the parties, at which point it shall be deemed to form part of the Contract.

14. INTELLECTUAL PROPERTY RIGHTS

The Customer warrants to Convene IT that it has all the necessary rights, licences and consents to permit the Customer Software to be made available and used by the Authorised Users in accordance with the terms of the Contract. It will on request

provide to Convene IT evidence of the existence of and compliance with any licence relating to the Customer Software.

15. CONFIDENTIALITY

15.1 A party (**receiving party**) shall keep in strict confidence all technical or commercial know-how, quotations, inventions, processes or initiatives which are of a confidential nature and have been disclosed to the receiving party by the other party (**disclosing party**), its employees, agents or subcontractors, and any other confidential information concerning the disclosing party's business, its products and services which the receiving party may obtain. The receiving party shall only disclose such confidential information to those of its employees, agents and subcontractors who need to know it for the purpose of discharging the receiving party's obligations under the Contract, and shall ensure that such employees, agents and subcontractors comply with the obligations set out in this clause as though they were a party to the Contract. The receiving party may also disclose such of the disclosing party's confidential information as is required to be disclosed by law, any governmental or regulatory authority or by a court of competent jurisdiction. This clause 15 shall survive termination of the Contract.

15.2 Convene IT acknowledges that the Customer Data is the Confidential Information of the Customer.

15.3 The Customer acknowledges that the Contract and any Service Specification issued by Convene IT is the Confidential Information of Convene IT.

16. TUPE

The Customer warrants to Convene IT that:

- (a) prior to entering into the Contract, it has provided in writing to Convene IT such information relating to any employee (of the Customer or a third party service provider) who would or may transfer to Convene IT on the commencement of the Contract as a result of the TUPE Regulations; and
- (b) to the extent that it (or a third party service provider) is a transferor, it (or the third party service provider) has properly discharged its obligations as a transferor under the TUPE Regulations.

17. INDEMNITY

The Customer shall defend, indemnify and hold Convene IT harmless against claims, actions, proceedings, losses, damages, expenses and costs (including without limitation court costs and reasonable legal fees) arising out of or in connection with:

- (a) the Customer's use of any Third Party Software or of the Services otherwise than in accordance with these Conditions; or

- (b) a breach of the warranties contained at clause 14 in respect of the Customer Software, at clause 16 in respect of the TUPE Regulations and at clause 21.1(a) in respect of any Personal Data.

18. LIMITATION OF LIABILITY: THE CUSTOMER'S ATTENTION IS PARTICULARLY DRAWN TO THIS CLAUSE

18.1 Nothing in these Conditions shall limit or exclude Convene IT's liability for:

- (a) death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors;
- (b) fraud or fraudulent misrepresentation;
- (c) breach of the terms implied by section 2 of the Supply of Goods and Services Act 1982 (title and quiet possession);
- (d) breach of the terms implied by section 12 of the Sale of Goods Act 1979 (title and quiet possession); or
- (e) defective products under the Consumer Protection Act 1987.

18.2 Subject to clause 22.1:

- (a) Convene IT shall under no circumstances whatever be liable to the Customer, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, for any loss of profit, loss or corruption of data or information, loss of goodwill, loss of revenue or any other indirect or consequential loss arising under or in connection with the Contract; and
- (b) Convene IT's maximum liability to the Customer in respect of all other losses arising under or in connection with the Contract, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, shall in no circumstances exceed the greater of: (i) the total fees payable to Convene IT under the Contract in the 12 months prior to the event giving rise to the liability, and (ii) £10,000 or such other amount as is specified in the Contract.

18.3 The terms implied by sections 13 to 15 of the Sale of Goods Act 1979 and the terms implied by sections 3 to 5 of the Supply of Goods and Services Act 1982 are, to the fullest extent permitted by law, excluded from the Contract.

18.4 If Convene IT fails to perform the Services or deliver the Equipment in accordance with the Contract, its liability shall be limited to the costs and expenses incurred by the Customer in obtaining replacement services or equipment of similar description and quality in the cheapest market available less the price payable under the Contract.

18.5 This clause 18 shall survive termination of the Contract.

19. TERM AND TERMINATION

19.1 The Contract shall be binding once signed (or the parties otherwise signify their agreement to its terms). The Services shall commence on the Commencement Date stated in the Contract (or as agreed in writing between the parties) and will come to an end:

- (a) in accordance with the other provisions of this clause 19 (and in particular clauses 19.2 and 19.4),
- (b) where an initial term is specified in the Contract, the Services shall continue for that initial term and thereafter, unless and until either party gives to the other no less than 30 days' notice in writing, such notice to expire on or after the end of the initial term, in which case the Services shall terminate on the expiry of that notice;
- (c) where a fixed term is specified in the Contract, the Services will continue for that fixed term and will automatically terminate at the end of that fixed term;
- (d) in accordance with anything else expressly stated in the Contract,

19.2 Termination for Convenience

Without affecting any other right or remedy available to it, either party may terminate this agreement at any time on giving not less than 60 days' written notice to the other party, except where broadband/internet contract is for a fixed term and except provided that where the Customer terminates the Contract pursuant to this clause, it shall pay for all Equipment and Services supplied up to the point of termination, and shall indemnify Convene IT against any third party costs incurred prior to and post termination by Convene IT on behalf of the Customer or in providing the Equipment and Services (including any costs relating to the period after termination which Convene IT is unable to cancel/recoup).

19.3 Without limiting its other rights or remedies, each party may terminate the Contract with immediate effect by giving written notice to the other party if:

- (a) the other party commits a material breach of its obligations under this Contract and (if such breach is remediable) fails to remedy that breach within 14 days after receipt of notice in writing to do so;
- (b) the other party suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or (being a company or limited liability partnership) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 or (being an individual) is deemed either unable to pay its debts or as having no reasonable prospect of so doing, in either case, within the meaning of section 268 of the Insolvency Act 1986 or (being a partnership) has any partner to whom any of the foregoing apply;
- (c) the other party commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or

enters into any compromise or arrangement with its creditors [other than (where a company) for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of that other party;

- (d) a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of the other party (being a company) other than for the sole purpose of a scheme for a solvent amalgamation of the other party with one or more other companies or the solvent reconstruction of that other party;
- (e) the other party (being an individual) is the subject of a bankruptcy petition or order;
- (f) a creditor or encumbrancer of the other party attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of its assets and such attachment or process is not discharged within 14 days;
- (g) an application is made to court, or an order is made, for the appointment of an administrator or if a notice of intention to appoint an administrator is given or if an administrator is appointed over the other party (being a company);
- (h) the holder of a qualifying charge over the assets of the other party (being a company) has become entitled to appoint or has appointed an administrative receiver;
- (i) a person becomes entitled to appoint a receiver over the assets of the other party or a receiver is appointed over the assets of the other party;
- (j) any event occurs, or proceeding is taken, with respect to the other party in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in clause 19.3(b) to clause 19.3(i) (inclusive);
- (k) the other party suspends, threatens to suspend, ceases or threatens to cease to carry on, all or substantially the whole of its business; or
- (l) the other party (being an individual) dies or, by reason of illness or incapacity (whether mental or physical), is incapable of managing his own affairs or becomes a patient under any mental health legislation.

19.4 Without limiting its other rights or remedies, Convene IT may terminate the Contract with immediate effect by giving written notice to the Customer if the Customer fails to pay any amount due under this Contract on the due date for payment.

19.4 Where the Services include fixed line/ethernet services provided by a Telecommunication Network Provider, the Telecommunication Services described in the Contract will be for a minimum term of 2 years from the date of installation or such other period as is specifically referred to in the Contract for such services and

will continue thereafter until either party gives not less than 30 days' notice in writing (or such other period of notice as is specified in the Contract), such notice to expire on or at any time after the end of that initial minimum term.

19.5 Without limiting its other rights or remedies, Convene IT may suspend the supply of Services and/or Equipment under the Contract if the Customer fails to pay any amount due under the Contract on the due date for payment, the Customer becomes subject to any of the events listed in clause 19.2(b) to clause 19.2(l), or Convene IT reasonably believes that the Customer is about to become subject to any of them.

19.6 On termination of the Contract for any reason:

- (a) the Customer shall immediately pay to Convene IT all of Convene IT's outstanding unpaid invoices and interest and, in respect of Services supplied but for which no invoice has yet been submitted, Convene IT shall submit an invoice, which shall be payable by the Customer immediately on receipt;
- (b) the accrued rights and remedies of the parties as at termination shall not be affected, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination or expiry; and
- (c) clauses which expressly or by implication have effect after termination shall continue in full force and effect.

20. FORCE MAJEURE

20.1 For the purposes of this Contract, **Force Majeure Event** means an event beyond the reasonable control of Convene IT including but not limited to lack of network capacity, default or failure of a third party including any Telecommunications Network Provider or their telecommunications systems, failure or shortage of power supplies, strikes, lock-outs or other industrial disputes (whether involving the workforce of Convene IT or any other party), act of God, war, riot, civil commotion, malicious damage, compliance with any law or governmental order, rule, regulation or direction, loss of authorisation, accident, breakdown of plant or machinery, fire, flood or storm.

20.2 Convene IT shall not be liable to the Customer as a result of any delay or failure to perform its obligations under this Contract as a result of a Force Majeure Event.

21. DATA PROTECTION

21.1 If Convene IT processes any Personal Data on the Customer's behalf when performing the Services, the parties record their intention that the Customer shall be the data Controller and Convene IT shall be a data Processor and in any such case:

- (a) the Customer warrants that the Customer has obtained all necessary consents and is entitled to transfer the relevant Personal Data to Convene IT so that Convene IT may lawfully process the Personal Data in accordance with and for the duration of the Contract; and
- (b) each party shall take appropriate technical and organisational measures against unauthorised or unlawful processing of the Personal Data or its accidental loss, destruction or damage.
- (c) each party will comply with all applicable requirements of the Data Protection Legislation;
- (d) Convene IT will only process such Personal Data as is required to give effect to the Contract and on the documented written instructions of the Customer (which for the avoidance of doubt shall include the Contract);
- (e) Convene IT will not appoint a third party to process the Personal Data without the prior consent in writing of the Customer and on the basis that Convene IT and the third party will enter into an agreement incorporating terms which are substantially similar to those set out in this clause 21.1;
- (f) Convene IT will not transfer any Personal Data outside of the European Economic Area unless the prior written consent of the Customer has been obtained and the following conditions are fulfilled:
 - (i) the Customer or Convene IT has provided appropriate safeguards in relation to the transfer;
 - (ii) the Data Subject has enforceable rights and effective legal remedies;
 - (iii) Convene IT complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred; and
 - (iv) Convene IT complies with reasonable instructions notified to it in advance by the Customer with respect to the processing of the Personal Data;
- (g) Convene IT will assist the Customer, at the Customer's cost, in responding to any Data Subject access request and assist the Customer in complying with its obligations under the Data Protection Legislation in respect of the Services;
- (h) Convene IT will notify the Customer without undue delay of or becoming aware of any breach of the Data Protection Legislation in relation to the Services;
- (i) Convene IT will delete or return any Personal Data to the Customer on the termination of the Contract;
- (j) Convene IT will ensure that all personnel who have access to or process Personal Data are obliged to keep Personal Data confidential; and
- (k) Convene IT shall maintain complete and accurate records and information to demonstrate its compliance with this clause 21.1 and immediately inform

the Customer if, in the opinion of Convene IT, an instruction from the Customer infringes the Data Protection Legislation.

- 21.2 The Data Processing Schedule sets out the scope, nature, purpose and duration of the processing of any Personal Data by Convene IT and the types and categories of Personal Data and Data Subjects.

22. GENERAL

22.1 Assignment and other dealings.

- (a) Convene IT may at any time assign, transfer, mortgage, charge, subcontract or deal in any other manner with all or any of its rights under the Contract and may subcontract or delegate in any manner any or all of its obligations under the Contract to any third party.
- (b) The Customer shall not, without the prior written consent of Convene IT, assign, transfer, charge, subcontract, declare a trust over or deal in any other manner with all or any of its rights or obligations under the Contract.

22.2 Notices.

- (a) Any notice or other communication given to a party under or in connection with this Contract shall be in writing, addressed to that party at its registered office (if it is a company) or its principal place of business (in any other case) or such other address as that party may have specified to the other party in writing in accordance with this clause, and shall be delivered personally or sent by prepaid first-class post or other next working day delivery service, or by commercial courier or e-mail.
- (b) A notice or other communication shall be deemed to have been received: if delivered personally, when left at the address referred to in clause 22.2(a); if sent by pre-paid first class post or other next working day delivery service, at 9.00 am on the second Business Day after posting; if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed; or, if sent by e-mail, one Business Day after transmission.
- (c) The provisions of this clause shall not apply to the service of any proceedings or other documents in any legal action

- 22.3 **Severance.** If any provision or part-provision of the Contract is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of the Contract.

- 22.4 **Waiver.** A waiver of any right under the Contract or law is only effective if it is in writing and shall not be deemed to be a waiver of any subsequent breach or default. No failure or delay by a party in exercising any right or remedy under the Contract or by law shall constitute a waiver of that or any other right or remedy, nor prevent or restrict its further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.
- 22.5 **No partnership or agency.** Nothing in the Contract is intended to, or shall be deemed to, establish any partnership or joint venture between any of the parties, nor constitute either party the agent of another party for any purpose. Neither party shall have authority to act as agent for, or to bind, the other party in any way.
- 22.6 **Third parties.** A person who is not a party to the Contract shall not have any rights to enforce its terms.
- 22.7 **Variation.** Except as set out in these Conditions, no variation of the Contract, including the introduction of any additional terms and conditions shall be effective unless it is agreed in writing and signed by Convene IT.
- 22.8 **Governing law.** This agreement and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the law of England and Wales.
- 22.9 **Jurisdiction** Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with this Contract or its subject matter or formation (including non-contractual disputes or claims).

Data Processing Schedule

This is the Data Processing Schedule referred to in Convene IT's Terms and Conditions and may need to be amended in the Contract, where applicable, to set out the details of any relevant processing of personal data.

1. Scope

Convene IT may be required to process personal data belonging to the employees and other IT users of the Customer in providing the Services.

2. Nature of processing

Storing and processing of contact and login details of those employees and IT users of the Customer using the Customer's IT facilities.

3. Purpose of processing

Providing the Services.

4. Duration of the processing

The duration of the Contract for the provision of the Services

5. Types of Personal Data

Names, email address, phone numbers, image, login details.

6. Categories of Data Subject

Employees and other users of the Customer's IT and telecommunication facilities.