



CONTRACT AWARD

Date of Award: July 1, 2018

Revision Date: September 4th, 2020

Contract Number: C062518-Cooperating School Districts of Greater Kansas City Area IT Contract

Banner ID: X10791301

Item: IT Products and Professional Services

Contractor: ConvergeOne
P.O. Box 1450
Minneapolis, MN 55485-1450

Period of Contract: July 1st, 2018 through June 30th, 2024
(with the option to renew annually after 2024)

Sales Contact: Danny Spurgeon
Telephone: 316-266-2751
Email: DSpurgeon@convergeone.com

Purchasing Contact: Robby Murray
Telephone: 316-978-5185
Email: robby.murray@wichita.edu

WSU IT Contact: Jason Holmes – Director Enterprise Infrastructure
Telephone: 316-978-3503
Email: jason.holmes@wichita.edu

PURPOSE OF CONTRACT:

The purpose of this contract is to provide products and services, including pre-sales support, installation, engineering, helpdesk/telephone/electronic support, maintenance, and professional services.

THE USE OF THIS CONTRACT IS AVAILABLE FOR SCHOOL DISTRICTS, UNIVERSITIES & ALL PUBLIC SECTOR. Wichita State University Master Service Agreement # C12661-PSMTMS included for reference.

Departments are encouraged to contact the IT Department for purchasing assistance with this commodity.

For additional contract related documentation contact the Purchasing Office directly.



Agreement #C12661

Master Sales Agreement

Date: 9/4/2020

SELLER: CONVERGEONE, INC.
10900 Nesbit Avenue S
Bloomington, MN 55437

CUSTOMER: WICHITA STATE UNIVERSITY
1845 Fairmount St
Wichita, KS, 67260-9700

This MASTER SALES AGREEMENT ("Agreement") is made and entered into as of the date indicated above ("Effective Date") by and between Seller and 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. Attachment A contains terms and provisions that are part of this Agreement and Attachment A is hereby herein incorporated by reference. The Wichita State University Contractual Provisions Attachment (DA-146a, rev. 02/2020) is attached hereto and incorporated as if fully set forth herein ("WSU Terms").
2. This Agreement shall apply to sales of the following to Customer:
 - a) All hardware, third party software, and/or Seller software (collectively, "Products");
 - b) All installation services, professional services, and/or third party provided support services that are generally associated with the Products and sold to customers by Seller ("Professional Services");
 - c) All Seller-provided vendor management services, software release management services, remote monitoring services and/or, troubleshooting services (collectively, "Managed Services"); and/or
 - d) All Seller-provided maintenance services ordered by Customer to maintain and service Supported Products (as hereinafter defined in Article IV of Attachment A) or Supported Systems (as hereinafter defined in Article IV of Attachment A) at Supported Sites (as hereinafter defined in Article IV of Attachment A) to ensure that they operate in conformance with their respective documentation and specifications ("Maintenance Services").

For purposes of this Agreement, Professional Services, Managed Services and Maintenance Services may be referred to collectively as "Services."

3. Seller will provide the Products and Services to Customer summarized in the sales order documentation (collectively, a "Solution Summary"), which: (a) is signed by authorized representatives of each Party (except as set forth in Section 5 below); (b) reflects the price to be charged for such Products and/or Services; and (c) incorporates the following supporting documents, as applicable:
 - i) A "Statement of Work" or "Scope of Work" ("SOW") which describes the Services to be performed;
 - ii) A "Master Agreement Rider" which provides the line item cost detail associated with the sale of Products and the provision of Professional Services and Managed Services;
 - iii) A "Maintenance Service Order Form" which provides the line item cost detail of the supported products, supported systems and supported sites in the provision of Maintenance Services; and/or
 - iv) Any Solution Quote or other formal quote to which you and Seller mutually agree.

The Solution Summary and all applicable supporting documents will be governed by the terms of this Agreement even in the absence of a reference to this Agreement (collectively, each an "Order"). Any Products and/or Services not specifically itemized in the applicable Order are not provided.

4. Any amendment, supplement, or modification of any term or provision of this Agreement or any Order must be in a writing that is signed by authorized representatives of both Parties to this Agreement.
5. In lieu of an authorized representative of each Party signing a Solution Summary, the Parties agree that Customer may issue to Seller a purchase order to order Products and/or Services from Seller. Such purchase order shall be deemed Customer's agreement to the terms and conditions of the corresponding Solution Summary. However, no pre-printed, additional, and/or alternate terms or provisions of the purchase order (other than the description of the Products and/or Services and the quantity thereof) shall apply. Rather, only the terms and provisions of this Agreement shall apply to the sale of Products and/or Services.
6. This Agreement shall remain in effect until terminated by either Party. Either Party may terminate this Agreement, provided that such Party provides to the other Party written notice of such termination at least thirty (30) days prior to the effective date of such termination. The notice of termination shall reflect the effective date of the termination; if it does not, then the effective date of the

termination shall be the date that is thirty (30) days after the non-terminating Party receives the written notice of the termination. Notwithstanding the foregoing, however, the termination of this Agreement shall not affect the obligations of either Party pursuant to the terms and provisions of any Solution Summary that has been executed by an authorized representative of each Party prior to the effective date of termination of this Agreement.

7. In the event of a conflict between the terms and conditions in this Agreement and any Order, the order of precedence shall be as follows: (i) WSU Terms, (ii) the applicable Order (with the most recent and specific document controlling if there are conflicts between the Solution Summary and any applicable supporting document(s) incorporated into the applicable Order), (iii) Attachment A to this Agreement, and (iv) the main body of this Agreement.
8. **PURCHASE PRICE:** Unless specifically stated and mutually agreed upon in a particular Solution Summary, the purchase price of the Products and/or Services set forth in each Solution Summary shall be paid as follows:
- a) **For Products and Professional Services (excluding third party support services):**
- i) **Down Payment:** Fifty percent (50%) of the Price (as defined in Article I, Section 1 of Attachment A) is due upon execution of the Solution Summary; and
- ii) **Balance:** The remaining balance of the Price is due thirty (30) days from the date such invoice is issued, and such invoices shall be issued as follows:
- (1) **For Products:** The remaining balance of the Price attributable to the cost of such Product(s) shall be invoiced upon shipment of the applicable Product(s). However, in the event Seller ships Products for a particular Order in multiple shipments, the remaining balance attributable to the Products contained in each such shipment shall be invoiced separately and due accordingly.
- (2) **For Professional Services (excluding third party support services):**
- (i) Professional Services provided on a **time and materials** basis will be invoiced monthly as Professional Services are performed by Seller (following depletion of the down payment); or
- (ii) Professional Services provided on a **fixed price** basis are due either:
- (A) If specified in the applicable Order, monthly as Professional Services are performed by Seller (following depletion of the down payment, if any); or
- (B) Otherwise, periodically based on mutually agreed upon milestones as set forth in the applicable Order (following depletion of the down payment, if applicable). Milestone invoices shall be issued upon the date the applicable milestone is accepted, or deemed accepted pursuant to this subsection, by Customer. Seller will provide Customer with a written acceptance acknowledgement form upon the substantial completion of the Professional Services associated with each milestone. Within ten (10) days of Customer's receipt of such form, Customer may either sign such form confirming Customer's acceptance of such milestone or provide Seller written notice disputing such milestone completion. If Customer provides written notice of a dispute, such milestone shall be deemed accepted by Customer immediately once such defects are remedied by Seller. If Customer fails to sign the applicable form or provide Seller written notice of a dispute, then the applicable milestone shall be deemed accepted by Customer upon the expiration of such ten (10) day period.
- b) **For Third Party Support Services:** One Hundred percent (100%) of the Price attributable to the cost of third party support services as specified in the Solution Summary will be invoiced and due prior to commencement of the third party support services.
- c) **For Managed Services:** Customer will be invoiced for Managed Services annually in advance and such invoices are due prior to the commencement of the applicable twelve (12)-month period.
- d) **For Maintenance Services:** Customer will be invoiced for Maintenance Services annually in advance and such invoices are due prior to the commencement of the applicable twelve (12)-month period.
9. **FINANCING OPTION:** If Customer elects to lease the pertinent Products and/or Services, Customer:
- a) Shall inform Seller of such election no later than the time that the applicable Solution Summary is executed to avoid being liable for sales tax on the Products and/or Services provided under the pertinent Solution Summary; and

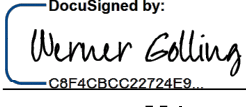
b) May assign a Solution Summary to a financing company for the sole purpose of financing the Price, provided that Customer agrees that any such assignment shall not delay or relieve Customer of its duty to perform any of its obligations under this Agreement (including, but not limited to, liability for amounts owed under this Agreement). Customer further agrees that it shall not take any action, or refuse to take any action, that delays Seller's receipt of payment from Customer's financing company.

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.

SELLER: CONVERGEONE, INC.

CUSTOMER: WICHITA STATE UNIVERSITY

Signature: 

Signature: 

Printed Name: Gerry Pearce

Printed Name: Werner Golling

Title: Regional Vice President

Title: VP Finance and Administration

Date: 09/15/2020

Date: 9/4/2020



ATTACHMENT A – TERMS AND CONDITIONS**ARTICLE I – GENERAL TERMS AND CONDITIONS OF THE AGREEMENT**

1. **PRICE; PAYMENT; TAXES.** Customer agrees to pay the price of each of the Products and/or Services described on an Order, together with freight, taxes, and any other itemized charges, fees, and costs (the "Price"). The currency to be used for payment of the Price is the United States Dollar. Except for material breach by Seller, termination of this Agreement shall not affect Customer's obligation to pay the Price. If Customer is exempt from tax, Customer shall provide to Seller a valid tax exemption certificate at the time that this Agreement is executed. Interest on any past due obligation shall accrue at the rate of one and one-half percent (1½%) per month or at the maximum rate allowed by law, whichever is lower. All prices are exclusive of applicable taxes or other charges imposed by law.

2. **REMEDIES UPON DEFAULT.** In the event that Customer fails to pay according to the terms and provisions of this Agreement, or fails to perform any of its obligations pursuant to the terms and provisions of this Agreement, then Seller, at its option, may do any or all of the following: (i) upon notice to Customer, terminate this Agreement and/or any Order related to this Agreement; (ii) regardless of whether this Agreement and/or any Order related to this Agreement is terminated, suspend further performance under this Agreement and/or any Order related to this Agreement; and (iii) retain, as an offset to Customer's liability for such default, all or a portion of the progress payments (if any) previously paid by Customer. To the extent allowed by law, Customer shall in any event remain fully liable for damages resulting from Customer's breach (including, but not limited to, all costs and expenses incurred by Seller on account of such breach, including costs of arbitration and reasonable attorneys' fees). The rights afforded Seller hereunder shall not be deemed to be exclusive but, instead, shall be in addition to any rights or remedies provided by law.

3. **INDEPENDENT CONTRACTOR.** Seller shall conduct its business as an independent contractor with respect to Customer. Seller will represent to third persons, to the public generally, and to all governmental bodies (including, but not limited to, federal, state, and local authorities) that the business conducted by Seller with respect to Customer is that of an independent contractor and that such is the sole relationship between the Parties. It is expressly understood that Seller is in no way considered the legal representative of Customer for any purpose whatsoever with respect to this Agreement. Customer shall deduct no income tax or other withholdings whatsoever from payments due to Seller.

4. **CUSTOMER COOPERATION.** Customer shall cooperate fully with Seller to facilitate performance of Seller's obligations hereunder, including the rendition of Services and/or the installation of Products. Customer shall dedicate such time, personnel, and resources as may be reasonably necessary to complete Seller's performance of Services. Cooperation shall include the following:

(a) Customer shall designate a coordinator at Customer's site 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;

(b) Customer shall make available such data as is necessary to adequately test the Products and/or Services;

(c) If Customer is purchasing an application software solution, Customer shall be responsible for the operation of each CPU, conducting a back-up, performing all program translation, contacting all third-party vendors to confirm that existing hardware and software will be compatible with the new software, and processing any necessary changes;

(d) Customer shall provide full, free, and safe access to Customer's facilities to allow Seller to meet its obligations hereunder;

(e) Customer shall provide the telephone numbers, network addresses, and passwords necessary for Seller to gain remote access to Customer's systems when necessary in connection with the performance of Services;

(f) Customer shall provide (i) interface information for Managed Products (as defined in Article III, Section 1 of this Attachment A) and Supported Products (as defined in Article IV, Section 1 of this Attachment A), and (ii) any third party consents and licenses needed by Seller to access such Managed Products and Supported Products; and

(g) If Seller provides an Update pursuant to Article IV, Section 2(f) of this Attachment A, or other new release of software as part of the Maintenance Services, Customer will promptly implement such Update or new release.

(h) 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 Seller's access to Personal Data as defined herein. If, in the future, Customer requests additional services that require Seller access to Personal Data, those additional services, and the security requirements associated with Seller's access to Personal Data in order to perform those additional services, shall be subject to a separate written agreement between the parties. "Personal Data" is personal data of any employee, customer, or other individual.

(i) In order to mitigate any potential delays in the provision of Products and/or Services under any Order, Customer shall promptly perform all of its obligations set forth in this Agreement and the applicable Order(s). However, in the event of any Customer delay(s) for reasons other than a Force Majeure Event, as defined elsewhere herein, which reasonably impact Seller's provision of Products and/or Services, Customer agrees that Seller may invoice Customer, and Customer agrees to pay Seller, for each applicable milestone or other periodic payment upon the originally anticipated completion date mutually agreed to by the parties in the applicable Order and/or as part of the project kick-off process.

5. **FORCE MAJEURE.** Neither party shall be liable to the other for any failure or delay caused by events beyond the party's reasonable control, including, without limitation, a failure to furnish necessary information, sabotage, failures or delays in transportation or communication, failures or substitutions of equipment, labor disputes, accidents, epidemics, pandemics (including, but not limited to COVID-19), shortages of labor, fuel, raw materials, or equipment, or technical failures. (in each case, a "Force Majeure Event"), provided the party that is prevented from carrying out its obligations hereunder (the "Affected Party"): (i) notifies the other party (the "Non-Affected Party") immediately of any Force Majeure Event, and (ii) uses its reasonable best efforts to mitigate and remedy the adverse effects of such a Force Majeure Event. In the event said Force Majeure Event persists for longer than thirty (30) days, the non-Affected Party shall have the option to terminate this Agreement, without penalty.

6. **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 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.

7. LIMITATION OF LIABILITY. THE ENTIRE LIABILITY OF SELLER (AND SELLER'S OWNERS, OFFICERS, DIRECTORS, EMPLOYEES, AGENTS, AND AFFILIATES) AND CUSTOMER'S EXCLUSIVE REMEDIES FOR ANY DAMAGES CAUSED BY ANY PRODUCT DEFECT OR FAILURE, OR ARISING FROM THE PERFORMANCE OR NON-PERFORMANCE OF ANY SERVICES, REGARDLESS OF THE FORM OF ACTION (WHETHER IN CONTRACT, TORT, OR OTHERWISE), SHALL BE (I) FOR FAILURE OF PRODUCTS DURING THE WARRANTY PERIOD, THE REMEDIES STATED IN ARTICLE II, SECTION 3 OF THIS ATTACHMENT A; (II) FOR DELAYS IN DELIVERY OR INSTALLATION (WHICHEVER IS APPLICABLE) OF MORE THAN SIXTY (60) DAYS BY CAUSES ATTRIBUTABLE SOLELY TO SELLER, UPON THIRTY (30) DAYS' WRITTEN NOTICE FROM CUSTOMER TO SELLER OF SUCH DELAY AND SELLER'S FAILURE TO CORRECT SUCH FAILURE WITHIN SUCH NOTICE PERIOD, CUSTOMER'S SOLE REMEDY SHALL BE TO TERMINATE THE APPLICABLE ORDER WITHOUT INCURRING CHARGES FOR SUCH TERMINATION AND, WITHIN THIRTY (30) DAYS AFTER THE EFFECTIVE DATE OF SUCH TERMINATION, RECEIVE A REFUND OF ALL MONIES PAID UNDER SUCH ORDER; OR (III) FOR SELLER'S FAILURE TO PERFORM ANY OTHER MATERIAL TERM OF THIS AGREEMENT, IF SELLER DOES NOT CORRECT SUCH FAILURE WITHIN THIRTY (30) DAYS AFTER RECEIPT OF WRITTEN NOTICE ADDRESSING SUCH FAILURE, CUSTOMER'S SOLE REMEDY SHALL BE TO TERMINATE THE APPLICABLE ORDER WITHOUT INCURRING CHARGES FOR SUCH TERMINATION AND, WITHIN THIRTY (30) DAYS AFTER THE EFFECTIVE DATE OF SUCH TERMINATION, RECEIVE A REFUND OF ALL MONIES PAID UNDER SUCH SOLUTION SUMMARY. SELLER SHALL IN NO CASE BE LIABLE FOR PUNITIVE, SPECIAL, INCIDENTAL, OR CONSEQUENTIAL DAMAGES (INCLUDING, BUT NOT LIMITED TO, LOST PROFITS, LOST SAVINGS, OR LOST REVENUES OF ANY KIND; LOST, CORRUPTED, MISDIRECTED, OR MISAPPROPRIATED DATA; NETWORK DOWNTIME; INTERRUPTION OF BUSINESS ARISING OUT OF OR IN CONNECTION WITH PERFORMANCE OR NON-PERFORMANCE OF THE PRODUCTS OR USE BY CUSTOMER; CHARGES FOR COMMON CARRIER TELECOMMUNICATIONS SERVICES; COST OF COVER; OR CHARGES FOR FACILITIES ACCESSED THROUGH OR CONNECTED TO THE PRODUCTS ("TOLL FRAUD")). THE PREVIOUS SENTENCE APPLIES REGARDLESS OF WHETHER SELLER HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

8. NON-SOLICITATION OF EMPLOYMENT.

Customer shall not solicit for employment, either directly or indirectly, employees or subcontractors of Seller during the term of any Order, or for a period of twelve (12) months thereafter; provided, however, that Customer may hire employees or subcontractors of Seller if such employees or subcontractors initiate contact with Customer (e.g., a response to general employment advertisements of Customer).

9. AFFILIATE RIGHTS.

(a) **ConvergeOne.** The Parties agree that any ConvergeOne Affiliate may sell Products and/or Services to Customer under the terms and provisions of this Agreement; provided, however, that only the ConvergeOne Affiliate that is the party to such sale is liable to Customer for the sale of such Products and/or Services. By signing a given Order for any such sale, the applicable ConvergeOne Affiliate and Customer agree that the terms and conditions of this Agreement will apply to such sale as if such ConvergeOne Affiliate were Seller under this Agreement, but only with respect to such sale. For purposes of this Agreement, "ConvergeOne Affiliate" means any corporation, partnership, or other entity that, directly or indirectly, controls (or is controlled by or is under common control with) Seller.

(b) **Customer.** Seller agrees that Seller approved Affiliates (as that term is defined below) may purchase Products and/or Services under the terms and conditions of this Agreement by signing an Order referencing this Agreement. The terms of this Agreement will be incorporated by reference in any such Order as if this Agreement were separately executed by such Affiliate (and solely by such Affiliate) and the term "Customer" used herein will be deemed as applying to such Affiliate for the purposes of the Order. The applicable rights, obligations and liabilities of Customer under each Order executed by Customer will be solely those of Customer, and none of the Affiliates will be responsible for any obligations or liabilities of Customer under such Order. The applicable rights, obligations and liabilities of an Affiliate executing an Order will be solely those of such Affiliate, and neither Customer nor any other Affiliate will be responsible for any obligations or liabilities of the Affiliate under the Order. Under no circumstances will Customer and any of the Affiliates be jointly or severally liable for the obligations of the others. "Affiliate(s)" means any entity that directly or indirectly controls, is controlled by, or is under common control or ownership with Customer, where "control" (including the terms "controlled by" and "under common control with") means the possession, directly or indirectly, of the power to direct, cause or influence the direction of the management policies of a person, whether through the ownership of voting securities, by contract, or otherwise.

10. MISCELLANEOUS.

(a) **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 between the Parties.

(b) **No Assignment.** 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, the assignor requires the assignee to assume this obligations under this Agreement in full. Notwithstanding the foregoing, (i) Seller may, without notice, assign the Agreement, in whole or in part, or any of its rights hereunder to an affiliate or entity which acquires all or substantially all of Seller's assets (with an "affiliate" for purposes of this section meaning (a) any corporation or other entity owning, either directly or indirectly, a majority of the outstanding stock of Seller ("Parent") or (b) any corporation or other entity in which a majority of the ownership interest is held either directly or indirectly by Parent or Seller); and (ii) Seller may assign all of its rights and delegate all of its obligations with respect to any order that relates to the performance of Professional Services and/or delivery of Products at any location that is outside of the United States of America to one or more third parties believed by Seller in good faith to be capable of providing such goods and services.

(c) **Notices.** Any notice required or permitted under this Agreement shall be in writing and delivered to the address of the other Party as set forth in this Agreement or to such other address as a Party shall designate and shall be: (i) delivered in person, (ii) sent by overnight courier service, properly addressed and prepaid, or (iii) sent by first class mail, properly addressed and with the correct postage.

(d) **Acknowledgment and Authority.** By execution hereof, the signers hereby certify that they have read this Agreement and these terms, understand them, and agree to all terms and provisions stated herein. In addition, Seller and Customer warrant to each other that each respective Party and its respective signatory have the full right, power, and authority to execute this Agreement.

(e) **Secrecy and Confidentiality.** Each Party (the "Receiving Party") covenants and agrees on behalf of itself, its officers, directors, employees, and agents as follows: (i) all information obtained from the other Party (the "Disclosing Party") (including, but not limited to, customer lists, customer-sensitive information, business practices and operations, pricing and financial information, product plans and designs, and configurations and layouts) is secret, proprietary, and confidential ("Confidential Information"); (ii) such Confidential Information shall be neither disclosed to any third party without the prior written approval of the Disclosing Party (except Seller may disclose Customer's Confidential Information to its subcontractors under this Agreement, but will ensure that such subcontractors are subject to the same confidentiality obligations set forth herein) nor used for any unauthorized purpose; and (iii) the Receiving Party shall use its best efforts to return such Confidential Information to the Disclosing Party upon termination of this Agreement. However, the Receiving Party shall have no obligation to preserve the confidentiality of any Confidential Information which (i) was known to the Receiving Party free of any obligation to keep it confidential; (ii) is or becomes publicly available by other than the authorized disclosure by the Receiving Party; (iii) is independently developed by or on behalf of the Receiving Party independent of any Confidential Information received from the Disclosing Party; (iv) is received by the Receiving Party from a third party whose disclosure does not violate any confidentiality obligation; or (v) is required by law to be disclosed by the Receiving Party, provided that, to the extent allowed by law and only if reasonable, the receiving party gives the Disclosing Party prompt written notice of such requirement prior to such disclosure and reasonable assistance, at the Disclosing Party's sole expense, in obtaining an order, if necessary, protecting the information from public disclosure. The Parties further acknowledge that the unauthorized use or disclosure of Confidential Information will create a risk of irreparable harm to the Disclosing Party, entitling the Disclosing Party to seek injunctive relief, without the necessity of posting a bond, against the receiving party to prevent such harm in addition to all other remedies at law, including monetary damages. Notwithstanding the foregoing, Customer, as an educational institution of the State of Kansas, is bound by the requirements of the Kansas Open Records Act, K.S.A. 45-215 et seq. Accordingly, the parties acknowledge that no provision of this Agreement or any SOW issued hereunder shall restrict Customer's ability and obligation to, in response to a lawful request, produce this Agreement, any SOW's, and any reports and/or records provided pursuant to this Agreement.

(f) **Intellectual Property Rights.** Provisions pertaining to title and risk of loss in connection with the purchase of applicable Products and/or Services are set forth Articles II-IV of this Attachment A below. Additionally, each Party reserves all rights, including, but not limited to, ownership, title, intellectual property rights and all other rights and interest in and to any intellectual property that it makes available to the other Party as is necessary for such other Party's performance under this Agreement. Furthermore, Seller will own any intellectual property that it develops, creates, or otherwise acquires, excluding Customer's intellectual property, while performing the Services, unless otherwise mutually agreed to and expressly set forth in the applicable Order. For Services that are purchased, developed, or created under this Agreement, upon receipt of Customer's payment for such Services, Seller hereby grants Customer a perpetual, non-exclusive, non-transferable, fully-paid license to use and reproduce the Services as originally configured and deployed for the limited purpose of conducting Customer's internal business. Seller reserves all other intellectual property rights not expressly granted herein.

(g) **No Resale.** In the event that the Products contain manufacturer's software, Customer shall not resell the software or provide access to the software either directly or indirectly to third parties unless authorized to do so in an Order.

(h) **Waiver.** If either Party fails to enforce any right or remedy available under the terms and provisions of this Agreement, such failure shall not be construed as a waiver of any right or remedy with respect to that breach or any other breach or failure by the other Party. Rather, any waiver of a Party's rights or remedies available under the terms and provisions of this Agreement must be in a writing that is signed by the Party against whom enforcement is sought.

(i) **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.

(j) **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.

(k) **Governing Law.** This Agreement shall be governed by and construed in accordance with the substantive laws of the State of Minnesota, without regard to its choice or conflicts of law principles.

(l) **Counterparts and Electronic Signature.** This Agreement may be executed in two (2) or more counterparts, each of which will be deemed an original, but all of which taken together shall constitute one (1) and the same Agreement. The counterparts of this Agreement may be executed and delivered by facsimile or other electronic signature by one (1) Party to the other Party. The receiving Party may rely on the receipt of such document so executed and delivered by facsimile or other electronic means as if the original had been received.

ARTICLE II – ADDITIONAL TERMS AND CONDITIONS SPECIFIC FOR PRODUCTS AND PROFESSIONAL SERVICES

1. **TITLE; RISK OF LOSS.** Title, ownership, and risk of loss of hardware sold pursuant to the terms and provisions of this Agreement shall pass to Customer upon delivery to Customer. Title and ownership of software delivered to Customer pursuant to the terms and provisions of this Agreement shall remain solely with its licensor. Risk of loss of software delivered to Customer pursuant to the terms and provisions of this Agreement shall pass to Customer upon delivery to Customer.

2. **SECURITY INTEREST. RESERVED.**

3. **WARRANTIES; DISCLAIMERS; SOFTWARE LICENSES.** Seller represents and warrants that, immediately prior to the sale of Products to Customer, Seller will be the lawful owner thereof, free and clear of any liens and encumbrances (other than those that may arise under the terms and provisions of this Agreement). In addition, Seller represents and warrants that Seller has the full right, power, and authority to sell, deliver, or provide the Products to Customer.

(a) **Product Warranties.** Products are warranted to Customer either directly by the original equipment manufacturer ("OEM") or by Seller.

1) **Direct OEM Warranty.** Customer receives the OEM's warranty in effect at the time of delivery with respect to hardware purchased and/or software licensed hereunder. Except for the warranties of title and rightful transfer, the OEM warranty is Customer's sole warranty with respect to such items. SELLER MAKES NO OTHER EXPRESS OR IMPLIED WARRANTIES WITH RESPECT TO OEM PRODUCTS.

2) **Indirect OEM Warranty.** If Customer does not receive the Product warranty directly from the OEM, then Seller warrants the Products to Customer to the same extent and term as the OEM warrants the Products to Seller. Upon request, Seller will provide such warranty information to Customer. Except for the warranties of title and rightful transfer, the OEM warranty is Customer's sole warranty with respect to such items. SELLER MAKES NO OTHER EXPRESS OR IMPLIED WARRANTIES WITH RESPECT TO OEM PRODUCTS.

3) **Seller Warranty for Refurbished Products.**

i) Products refurbished by Seller are warranted for a term of one (1) year from either (i) the date of delivery of the Products if such Products are installed by Customer; or (ii) the date of Products installation if such Products are installed by Seller.

ii) This warranty does not extend to Products or components thereof that have had their serial numbers, date of manufacturing, or OEM labels removed, defaced, or altered, nor does this warranty cover any of the following: counterfeit parts; repair for damages to Products or components thereof; or malfunctions caused by (i) misuse, neglect, power failures, power surges, lightning, fire, flood, or accident; (ii) use of products or facilities supplied by others; (iii) failure to follow installation, operation, or maintenance instructions; (iv) failure to permit remote access; or (v) force majeure conditions specified in Article I, Section 5 of this Attachment A.

(b) **Professional Services Warranty.** Professional Services are warranted for thirty (30) days from the date on which such Professional Services are completed. Professional Services will be performed in a good and workmanlike manner by qualified personnel.

(c) **Warranty Procedures and Disclaimers.** The terms and provisions of this Article II, Section 3(c) apply to all Products and Replacement Products provided hereunder.

1) If Products or Replacement Products do not conform to the Products warranty during the warranty period, Customer shall promptly notify Seller in writing of such non-conformance, which shall be stated in detail sufficient to describe both the problem and its symptoms. Seller or the OEM (as the case may be), at its option, will either (i) repair such Products so that Products conform to the Products warranty; or (ii) replace such Products with Products that conform to the Products warranty ("Replacement Products"). Replacement Products are warranted as outlined above for the remainder of the original applicable Products warranty period. The original Products that were replaced become the property of Seller. Seller will not charge Customer for the Replacement Products. Seller, however, may charge Customer for the time that is incurred to diagnose the problem and to repair or replace such Products, if the problem is not covered by the Products warranty.

2) THE EXPRESS WARRANTIES HEREIN CONTAINED ARE IN LIEU OF ANY AND ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING NON-INFRINGEMENT AND THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, ALL OF WHICH SELLER DISCLAIMS AND ARE EXCLUDED. SELLER DOES NOT WARRANT UNINTERRUPTED OR ERROR-FREE OPERATION OF THE PRODUCTS OR SERVICES PROVIDED HEREUNDER. SELLER DOES NOT WARRANT THAT THE PRODUCTS ARE IMMUNE FROM OR WILL PREVENT EITHER FRAUDULENT INTRUSION OR UNAUTHORIZED USE. SELLER WILL NOT BE RESPONSIBLE FOR UNAUTHORIZED USE (OR THE IMPACTS OF FOR SUCH USE) OF COMMON CARRIER SERVICES OR FACILITIES ACCESSED THROUGH OR CONNECTED TO THE PRODUCTS. UNLESS OTHERWISE AGREED IN THIS AGREEMENT, CUSTOMER IS SOLELY RESPONSIBLE FOR ENSURING THAT CUSTOMER'S NETWORKS AND SYSTEMS ARE ADEQUATELY SECURED AGAINST UNAUTHORIZED INTRUSION.

3) If the Products are to be used either on or to support Telephony over Transmission Control Protocol/Internet Protocol (TCP/IP) facilities, Seller requires that a network assessment be performed prior to installation to determine network performance, reliability, and security. In the event that Customer either refuses to authorize a pre-installation network assessment or fails to follow Seller's reasonable recommendations after Seller performs the network assessment, and if performance problems are encountered and determined to be associated with network performance, reliability, or security issues, Customer shall be solely responsible for all costs associated with a post-installation network assessment and network reconfiguration.

(d) **Software Licenses.** Customer agrees that it has read, understood, and will abide by the terms and provisions of the software license(s) applicable to the Products provided hereunder. Such software licenses may be found on the Internet at <http://convergeone.com/support/end-user-license-agreements-and-product-warranties/>. Seller Software licenses, as identified in the pertinent Solution Summary, may be found in the Statement of Work corresponding to such Solution Summary.

4. **PROFESSIONAL SERVICES AND TIMING.** Professional Services not specifically itemized are not provided. CUSTOMER IS SOLELY RESPONSIBLE FOR SYSTEM BACK-UP PRIOR TO COMMENCEMENT OF PROFESSIONAL SERVICES OR INSTALLATION OF PRODUCTS.

5. **TERMINATION RIGHTS FOR PRODUCTS AND PROFESSIONAL SERVICES.**

(a) **PRODUCT RETURNS:** All configured orders, including hardware and software, are non-returnable. All software, regardless of whether such software is part of a configured order, is non-returnable.

(b) **PROFESSIONAL SERVICES.**

1) Time and Material: For Professional Services provided on a time and material basis, Customer agrees to pay for time and material Professional Services rendered up to and through the effective date of cancellation.

2) Fixed Price: For Professional Services provided on a fixed price basis, unless otherwise set forth in the applicable Order, fixed price Professional Services may not be cancelled.

ARTICLE III – ADDITIONAL TERMS AND CONDITIONS SPECIFIC FOR MANAGED SERVICES

1. **DEFINED TERMS OF ARTICLE III.**

(a) "EULA" is an acronym used to refer to an End User License Agreement.

(b) "Managed Products" are all hardware and/or software identified on a Master Agreement Rider or Solution Quote for which the Managed Services are to be provided.

(c) "Managed Sites" are the locations specified on each applicable Master Agreement Rider or Solution Quote.

2. **PROVISION AND SCOPE OF MANAGED SERVICES.**

(a) **Order Form and Provision of Managed Services.** Seller will provide the Managed Services for Managed Products at Managed Sites, as described further in each pertinent Solution Summary that references the Agreement. The Price set forth on such Solution Summary for Managed Services is based on the number of active Managed Products. Seller, at its discretion, will perform a true-up on

a quarterly basis to reconcile future billing on any Managed Products that have been added (activated) or removed (deactivated) during the previous period.

(b) **Monitoring.** Seller may electronically monitor Managed Products for the following purposes: (i) to perform and analyze diagnostics from a remote location and to take corrective actions, if necessary; (ii) to determine system configuration and applicable charges; (iii) to verify compliance with applicable software license terms and restrictions; (iv) to assess Customer needs for additional products and/or Managed Services; and (v) as otherwise provided in each applicable Solution Summary.

(c) **General Limitations.** Seller will not provide Managed Services for Managed Products that have been misused, used in breach of the terms and provisions of their respective license, improperly installed or configured, or that have had their serial numbers altered, defaced, or deleted.

3. CUSTOMER RESPONSIBILITIES FOR MANAGED SERVICES.

(a) **Provision of Managed Products.** Customer will provide all Managed Products and Managed Sites. Customer continuously represents and warrants that (i) Customer is either the owner of, or is authorized to access and use, each Managed Product and each Managed Site; and (ii) Seller and its suppliers and subcontractors are authorized to do the same to the extent necessary to provide the Managed Services in a timely manner.

(b) **Moves of Managed Products.** When Customer seeks to move any Managed Products, Customer will notify Seller. Only Seller or its authorized agent may move Managed Products. Seller may charge additional amounts to recover any additional costs incurred by Seller in providing the Managed Services that result from the move of Managed Products by a party other than Seller or its authorized agent.

(c) **Identification Tags.** Customer will not remove any identification tags or other markings from any Managed Product.

4. **TITLE AND RISK OF LOSS OF MANAGED PRODUCTS.** Except for Products provided by Seller to Customer under the terms and provisions of this Agreement, title to the Managed Products will have passed to Customer pursuant to the terms and provisions of a separate agreement under which Customer originally obtained the Managed Products. Customer will bear the risk of loss, theft, destruction, or damage to the Managed Products (each, a "Loss"), and Customer will promptly provide written notice to Seller of any Loss that occurs.

5. **SOFTWARE LICENSE FOR MONITORING SOFTWARE INCLUDED IN MANAGED SERVICES.** Customer understands that Seller may license software from a third party to provide the Managed Services for which Customer may have access to certain functionality. Customer may use such software in accordance with the terms and conditions of any end user license agreement accompanying such software, whether the terms and conditions of the end user license be in "shrinkwrap," "clickwrap," or some other form.

6. TERM AND TERMINATION RIGHTS OF MANAGED SERVICES.

(a) **Managed Services Term.** Unless a different term is specified on the pertinent Solution Summary, or in the Statement of Work corresponding to such Solution Summary, Seller will provide the applicable Managed Services for a term ("Managed Services Term") of one (1) year.

(b) **Termination Rights of Managed Services.**

1) **For Convenience.** Unless otherwise specified on the pertinent Solution Summary, or in the applicable Statement of Work, Customer may terminate Managed Services, in whole or in part, upon providing Seller with thirty (30) days advance written notice; provided, however, that Customer shall be liable to Seller for the lesser amount due for the Managed Services for (i) twelve (12) months, or (ii) the remainder of the Managed Services Term.

2) **For Cause.** Either Party may terminate the pertinent Managed Services included in a Solution Summary without liability to the other Party by providing written notice to such other Party if such other Party (a) fails to cure any material breach of the terms and provisions of the Agreement or the applicable Managed Services included in such Solution Summary within a thirty (30)-day period after it has received from the non-breaching Party a written notice that details the breach and requests that the breach be cured; or (b) becomes insolvent or insolvency proceedings are instituted against such other Party.

7. MANAGED SERVICES WARRANTIES; DISCLAIMERS.

(a) **Managed Services Warranty.** Seller represents and warrants to Customer that the Managed Services will be performed in a professional and workmanlike manner by qualified personnel and in accordance with the terms and provisions of the Agreement and the pertinent Solution Summary. If the Managed Services have not been so performed and if within thirty (30) days after the performance of the Managed Services Customer provides to Seller written notice of such non-compliance, then Seller, at its option, will re-perform the Managed Services, correct the deficiencies, or render a prorated refund based on the original charge for the deficient Managed Services. The warranty remedies expressly provided in this Section will be Customer's sole and exclusive remedies for breach of warranty claims only.

(b) EXCEPT AS REFERENCED AND LIMITED IN THIS ARTICLE III, SECTION 7 OF ATTACHMENT A, NEITHER SELLER NOR ITS LICENSORS OR SUPPLIERS MAKE ANY OTHER EXPRESS OR IMPLIED REPRESENTATIONS OR WARRANTIES WITH RESPECT TO THE MANAGED SERVICES. IN PARTICULAR, THERE IS NO WARRANTY THAT ALL SECURITY THREATS AND VULNERABILITIES WILL BE DETECTED OR THAT THE MANAGED SERVICES WILL RENDER ANY PRODUCT 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.

ARTICLE IV – ADDITIONAL TERMS AND CONDITIONS SPECIFIC FOR MAINTENANCE SERVICES

1. DEFINED TERMS OF ARTICLE IV.

(a) "Added Products" are those additional Customer-acquired products of the same type and manufacturer(s) as the existing Supported Products.

(b) "End of Support" occurs when the manufacturer declares a Supported Product "end of life," "end of service," "end of support," "manufacture discontinue," or any similar designation.

(c) "Extended Support" is the limited set of Maintenance Services provided by Seller when certain Supported Products are subject to End of Support.

- (d) "Host" is a third party service provider.
- (e) "Maintained Products" means collectively, the Supported Products and the Supported Systems
- (f) "New Software" includes patches, Updates, or feature upgrades for Supported Products.
- (g) "Supported Products" are (1) all hardware and/or software identified on a Maintenance Services Order Form for which the Maintenance Services are to be provided; and (2) Added Products.
- (h) "Supported Sites" are the locations specified on a Maintenance Services Order Form or Statement of Work.
- (i) "Supported Systems" are the networks specified on a Maintenance Services Order Form, and/or a group of Supported Products.
- (j) "Replacement Hardware" is hardware that Seller provides as part of the Maintenance Services.
- (k) "Vendor Management" are certain functions Seller performs to instruct third party vendors, or request products or services on Customer's behalf from third party vendors, under Customer's supply contracts with such third party vendors.

2. PROVISION AND SCOPE OF MAINTENANCE SERVICES.

- (a) **Order Form and Provision of Maintenance Services.** Seller will provide the Maintenance Services for Supported Products or Supported Systems at Supported Sites, as described further in the Solution Summary. The Price set forth on the pertinent Solution Summary is based on the port and item counts provided to Seller. If the actual quantities of ports that are maintained at the inception of the Solution Summary vary by more than five percent (5%) from the port count provided to Seller, and/or there is a discovery of additional items, Seller reserves the right to adjust the Price on the applicable Solution Summary to reflect the actual quantities being maintained. Seller, at its discretion, will perform a true-up on a quarterly basis to reconcile future billing on any items that have been added (activated) or removed (deactivated) during the previous period.
- (b) **Title and Risk of Loss of Supported Products.** Except for Products sold by Seller to Customer under the terms and provision of this Agreement, title to the Supported Products will have passed to Customer pursuant to the terms and provisions of a separate agreement under which Customer originally obtained the Supported Products. Title to any Replacement Hardware (as defined in Article IV, Section 2(h) of this Attachment A) (if applicable) provided by Seller as part of the Maintenance Services will pass to Customer when installed. Customer bears the risk of loss, theft, destruction, or damage to the Supported Products (each, a "Loss"), and Customer will promptly provide Seller with written notice of any Loss that occurs.
- (c) **Monitoring.** Seller may electronically monitor Maintained Products for the following purposes: (i) to perform and analyze diagnostics from a remote location and to take corrective actions, if necessary; (ii) to determine system configuration and applicable charges; (iii) to verify compliance with applicable software license terms and restrictions; (iv) to assess Customer needs for additional products and/or Maintenance Services; and (v) as otherwise provided in the Statement of Work.
- (d) **Error Correction.** Some Maintenance Services options may include correction of Errors. An "Error" means a failure of a Supported Product to conform in all material respects to the manufacturer's specifications applicable when the Supported Product was originally purchased or originally licensed by Customer.
- (e) **Help Line Support.** Where the Maintenance Services include help line support, Seller will provide such help line support (e.g., service hours and target response intervals) in accordance with that which is indicated on the Solution Summary.
- (f) **Updates.** Where the Maintenance Services include the provision of Updates, Seller will make available to Customer such Updates as the manufacturer makes available to Seller. An "Update" is a change in software that typically provides maintenance correction only. An Update typically is designated as a change in the digit to the right of the second decimal point (e.g., n.y.[z]). Seller, at its option, will determine how to provide an Update (e.g., via a website, email, U.S. Mail, etc.). Updates may either be remotely installed by Seller (or its subcontractor) or delivered to Customer for installation by Customer.
- (g) **End of Support.** The Seller may discontinue or limit the scope of Maintenance Services on a Supported Product for which the manufacturer has declared End of Support. If Maintenance Services are discontinued for a Supported Product, the Supported Product will be removed from the Solution Summary and the Price adjusted accordingly. For certain Supported Products subject to End of Support, Seller may continue to offer Extended Support. Where Seller chooses to provide such Extended Support, the description of such Extended Support, and the fees associated therewith, will be available at the time notice is sent by Seller to Customer. These notices will communicate information such as Extended Support eligibility, Extended Support alerts related to parts shortages, and end of Maintenance Services (including Extended Support) eligibility.
- (h) **Replacement Hardware.** Replacement Hardware may be new, factory reconditioned, refurbished, re-manufactured, or functionally equivalent. Replacement Hardware, if not new, will be warranted the same as new hardware and will be equivalent to new in its performance. Replacement Hardware will only be furnished on an exchange basis. Immediately upon Customer's receipt of Replacement Hardware, or installation of the Replacement Hardware by Seller, as applicable, the hardware being replaced by Seller will become the property of Seller. Seller represents and warrants that all Replacement Hardware will be free of defects in design, materials, and workmanship. In addition, if Seller is not the manufacturer of such Replacement Hardware, Seller will make available to Customer all warranties provided by the manufacturer for such Replacement Hardware.
- (i) **Added Products.** If Customer acquires Added Products and locates such Added Products with existing Supported Products at a Supported Site, the Added Products will automatically be added to the Solution Summary at the then current fees charged by Seller as of the date on which the Added Products are first co-located with the Supported Products and for the remainder of the Maintenance Term (as hereinafter defined). Added Products purchased from a party other than Seller are subject to certification by Seller at its then current certification rates. If an Added Product fails certification, Seller may choose not to add such Added Product as a Supported Product.
- (j) **General Limitations.** Unless a Statement of Work provides otherwise, Seller will only provide Maintenance Services on software for (i) the unaltered current release of such software, and (ii) the prior release of such software. The following items are included in the Maintenance Services only if the Statement of Work specifically includes them: (i) support of user-defined applications; (ii) support of Supported Products that have been modified by a party other than Seller (except for installation of standard, self-installed Updates provided by the manufacturer); (iii) making corrections to user-defined reports; (iv) data recovery services; (v) services associated with relocation of Supported Products; (vi) correction of Errors arising from causes external to the Supported Products (such as power failures, power surges, or lightning strikes); (vii) Maintenance Services for Supported Products that have been misused, used in breach of the terms and provisions of their respective license, improperly installed or configured, or that have had their serial numbers altered, defaced, or deleted; and (viii) correction of Errors, the cause of which occurred prior to the commencement of Maintenance Services pursuant to the terms of the pertinent Solution Summary.

3. CUSTOMER RESPONSIBILITIES FOR MAINTAINED PRODUCTS.

(a) **Provision of Supported Products and Supported Systems.** Customer will provide all Supported Products, Supported Systems, and Supported Sites. Customer continuously represents and warrants that (i) Customer is either the owner of, or is authorized to access and use, each Supported Product, each Supported System, and each Supported Site; and (ii) Seller and its suppliers and subcontractors are authorized to do the same to the extent necessary to provide the Maintenance Services in a timely manner.

(b) **Moves of Supported Products.** When Customer seeks to move any Supported Product, Customer will notify Seller. Only Seller or its authorized agent may move Supported Products. Seller may charge additional amounts to recover any additional costs incurred in providing the Maintenance Services that result from the move of Supported Products by a party other than Seller or its authorized agent.

(c) **Identification of Maintained Products.** Customer will not remove any identification tags or other markings from any Maintained Product.

(d) **Vendor Management Authorization.** Where Seller is to perform Vendor Management functions, 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.

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

4. **SOFTWARE LICENSES OF MAINTAINED PRODUCTS.** Where the Maintenance Services include providing New Software, the New Software will be provided subject to the license grant and restrictions contained in the original agreement under which Customer licensed the original software for which the New Software is provided. Where there is no existing license for the original software, New Software will be provided subject to the current license terms and restrictions of the manufacturer for the New Software. New Software may include components provided by third party suppliers that are subject to their own end user license agreements. Customer may install and use these components in accordance with the terms and conditions of the end user license agreement accompanying such components, whether the terms and conditions of the end user license are in "shrinkwrap," "clickwrap," or some other form.

5. TERM AND TERMINATION RIGHTS OF MAINTENANCE SERVICES.

(a) **Maintenance Services Term.** Unless a different term is specified on the applicable Solution Summary, Seller will provide the applicable Maintenance Services for a term ("Maintenance Term") of one (1) year. Following the expiration of the Maintenance Term, Maintenance Services will automatically renew for successive one (1) year periods (each a "Maintenance Renewal Term") at the Price set forth in such Solution Summary for each respective Supported Product, unless, at least thirty (30) days prior to the expiration of the Maintenance Term or the applicable Maintenance Renewal Term, Customer or Seller provides the other with written notice of its intent not to renew.

(b) **Termination Rights of Maintenance Services.**

1) **For Convenience.** Unless otherwise specified on the pertinent Solution Summary, Customer may terminate Maintenance Services, in whole or in part, upon providing Seller with thirty (30) days advance written notice; provided, however, that Customer shall be liable to Seller for the lesser amount due for Maintenance Services for (i) twelve (12) months; or (ii) the remainder of the Maintenance Term or the applicable Maintenance Renewal Term.

2) **For Cause.** Either Party may terminate the applicable Maintenance Services included in a Solution Summary without liability to the other Party by providing written notice to such other Party if such other Party (a) fails to cure any material breach of the terms and provisions of the Agreement or such Maintenance Services included in the pertinent Solution Summary within a thirty (30)-day period after it has received from the non-breaching Party a written notice that details the breach and requests that the breach be cured; or (b) becomes insolvent, or insolvency proceedings are instituted against such other Party.

6. MAINTENANCE SERVICES WARRANTIES; DISCLAIMERS.

(a) **Maintenance Services Warranty.** Seller represents and warrants to Customer that the Maintenance Services will be performed in a professional and workmanlike manner by qualified personnel and in accordance with the terms and provisions of the Agreement and the pertinent Solution Summary. If the Maintenance Services have not been so performed, and if within thirty (30) days after the performance of the Maintenance Services Customer provides Seller with a written notice of such non-compliance, then Seller, at its option, will re-perform the Maintenance Services, correct the deficiencies, or render a prorated refund based on the original Price for the deficient Maintenance Services. The warranty remedies expressly provided in this Article IV, Section 6 of Attachment A will be Customer's sole and exclusive remedies for breach of warranty claims only.

(b) EXCEPT AS REFERENCED AND LIMITED IN THIS ARTICLE IV, SECTION 6 OF ATTACHMENT A, NEITHER SELLER NOR ITS LICENSORS OR SUPPLIERS MAKE ANY OTHER EXPRESS OR IMPLIED REPRESENTATIONS OR WARRANTIES WITH RESPECT TO THE MAINTENANCE SERVICES. IN PARTICULAR, THERE IS NO WARRANTY THAT ALL SECURITY THREATS AND VULNERABILITIES WILL BE DETECTED OR THAT THE MAINTENANCE SERVICES WILL RENDER A SUPPORTED PRODUCT OR SUPPORTED SYSTEM 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.

NOTIFICATION OF COOPERATING SCHOOL DISTRICTS OF GREATER KANSAS CITY IT CONTRACT

July 1, 2018

CONTRACT TITLE: Cooperating School Districts of Greater Kansas City IT Contract # C062518

CURRENT CONTRACT PERIOD: JULY 1, 2018 THROUGH JUNE 30, 2024

BUYER INFORMATION:

Name	Dr. Kenny Southwick
Phone	816-753-7275
Email address	ksouthwick@csdgkc.org

RENEWAL INFORMATION	Original Contract Period	Annually Renewable
	7/1/2018 through 6/30/2024	After 2024

ALL PURCHASES MADE UNDER THIS CONTRACT MUST BE FOR **PUBLIC SECTOR USE ONLY**.
PURCHASES FOR PERSONAL USE ARE PROHIBITED.

THE USE OF THIS CONTRACT IS FOR SCHOOL DISTRICTS, UNIVERSITIES & ALL PUBLIC SECTOR.

CONVERGEONE AND COOPERATING SCHOOL DISTRICTS OF GREATER KANSAS CITY WILL HAVE A YEARLY REVIEW OF THE PRODUCTS AND SERVICES. PRODUCTS AND/OR SERVICES CAN WE ADDED or REMOVED IF BOTH PARTIES AGREE.

Instructions for use of this contract, specifications, requirements, and pricing are attached.

CONTRACT NUMBER	VENDOR NUMBER	VENDOR INFORMATION	COOP PROCUREMENT
C062518	CONVERGEONE	<p>CONVERGEONE, INC. Corporate: 10900 Nesbitt Ave South Bloomington, MN 55437</p> <p>Overland Park 12980 Foster St, Suite 300 Overland Park, KS 66213</p> <p>Columbia 2415 Carter Lane Providence Point, Suite 1 Columbia, MO 65201</p> <p>Springfield 636 West Republic Road, Unit F100 Springfield, MO 65807</p>	YES

		St. Louis 1855 Bowles Ave, Suite 105 Fenton, MO 63026 Toll Free: 800-473-1110 Fax: 636-686-1010	
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CONVERGEONE CONTACT INFORMATION FOR CONTRACT C062512

Name	Title	Phone	Email
Gerry Pearce	Regional Vice President	651-393-6363	gpearce@convergeone.com
Lucas Smith	Sales Director	913-369-4145	Ljsmith@convergeone.com
Shala Pelloni	Public Sector Contracts Manager	518-309-6367	spelloni@convergeone.com

1. Mandatory Use of Contract:

It is optional to utilize this contract. To utilize this contract, the Letter of Notification needs to be signed by Customer.

2. General Information:

- 2.1 CONVERGEONE shall provide products and services, including pre-sales support, installation, engineering, helpdesk/telephone/electronic support, maintenance, and professional services for any educational entity of the Cooperating School Districts of Greater Kansas City (CSDGKC), or other public entity or educational organization, in accordance with the terms and conditions defined herein. "Customer" as used herein, refers to Cooperating School Districts of Greater Kansas City or any entity purchasing under this procurement contract.
- 2.2 The acquisition of professional services is intended to support the design, acquisition and implementation of the Customer's technology applications and in concert with the provision of products acquired under the contract.
- 2.3 Any service work that might require prevailing wage determinations from the Missouri Department of Labor Standards shall not be performed under this contract.
- 2.4 The Customer reserves the right to lease/purchase equipment under the contract.
- 2.5 CONVERGEONE shall provide new and unused equipment and accessories (equipment/accessories only certified as new shall not be acceptable) made of first class materials. Used, remanufactured, or refurbished equipment shall not be acceptable.
- 2.6 CONVERGEONE must provide all promotional and trade-in pricing to the Customer if applicable.

- 2.7 The shipping company or Manufacturer shall be responsible for replacing any item received in damaged condition at no cost to the Customer. This includes all shipping costs for returning non-functional items to CONVERGEONE for replacement. This must be done within a reasonable time, seven to fourteen days, from receiving the product.
- 2.8 When the Customer places an order for products, installation, training, and maintenance with CONVERGEONE they shall pay the price that is indicated in the contract.
- 2.9 The Customer may make advance deposits/payment for hardware maintenance and software maintenance (upgrades/new releases/technical support-type agreements) only.

3. Single Point of Contact:

- 3.1 CONVERGEONE must function as the single point of contact for the Customer, regardless of any subcontract arrangements for all products and services. This shall include assuming responsibility and liabilities for all problems relating to all hardware, software and services provided.

4. Pre-Sales Support:

- 4.1 CONVERGEONE' account management team shall provide pre-sales design to the Customer to allow the Customer to process an order, including, but not limited to, current and new product information, and product pricing. Once CONVERGEONE has provided enough pre-sales design and engineering support for the Customer to place an order, CONVERGEONE may charge for any additional on-site design and engineering support, if approved by the Customer. The contract must provide pre-sales design and engineering support on-site, by telephone, and by email.
- 4.2 Telephone and email pre-sales design and engineering support: CONVERGEONE will provide all telephone and email responses to pre-sales design and support requests within a reasonable amount of time after requested by the Customer.
- 4.3 On-site pre-sales design and engineering support: It shall be at the Customer's sole discretion to determine whether on-site pre-sales design and support is necessary. If the Customer determines on-site pre-sales design and engineering support is necessary, CONVERGEONE must notify the Customer before any billable on-site presales support is performed. CONVERGEONE must utilize the firm, fixed professional service rates identified herein for all billable pre-sales support provided.

5. Installation:

- 5.1 CONVERGEONE may provide installation services for new systems upon request by the Customer. If the equipment is user-installable, CONVERGEONE may provide installation assistance (e.g. telephone support), if requested.

6. Training:

- 6.1 CONVERGEONE does not provide formal training.

7. Warranty:

7.1 CONVERGEONE must provide the available warranties from Manufacturers. Warranties shall commence upon delivery and acceptance at the Customer facility.

8. Delivery:

8.1 Customer is responsible for shipping unless the Regional CONVERGEONE President authorizes FOB included for a project, a purchase or a specific Customer.

8.2 Expedited Shipping: Expedited freight charges are a result of the Customer requesting expedited shipping (e.g. overnight, 2nd day service, etc.). Any such requests shall be in writing from the Customer and will be billed to the Customer.

8.3 Delivery Timeframes: CONVERGEONE must deliver all products within thirty (30) calendar days after the contractor's receipt of a properly authorized purchase order unless the timeframe specified on the vendor website or as quoted to the Customer by the account management team at the time of order indicates otherwise.

8.4 CONVERGEONE must notify the Educational Entity of a later delivery date should the actual delivery days exceed that which was previously specified. The Customer must authorize the late delivery, cancel the order, or modify the order to reflect an acceptable product substitution. Any such authorizations shall be in writing.

a. Damaged Product: The shipping company, Manufacturer or Distributor shall be responsible for replacing any item received in damaged condition at no cost to the Customer. This includes all shipping costs for returning non-functional items to CONVERGEONE for replacement.

9. Account Management:

9.1 CONVERGEONE must provide current product and pricing information to Customer through an account management team. CONVERGEONE shall assign an account management team to the Customer to ensure adequate oversight and ample support in assisting the Customer's needs.

9.2 Account Management Team: The account management team must consist of knowledgeable sales specialists who are reasonably available in all locations of the Customer where the Customer maintains a presence.

9.3 Product/Pricing Assistance: The account management team must be able to assist Customer in obtaining product information, availability, pricing, and answering general questions about product compatibility, usability, etc.

9.4 Team Accessibility: The account management team must be accessible by both telephone and email between the hours of 8 a.m. and 5 p.m. Central Time, Monday through Friday, excluding holidays.

10. Pricing:

10.1 Product and Maintenance Pricing: CONVERGEONE shall invoice the Customer for all products provided under the contract based upon a firm, fixed discount off of the contract. Each quotation must include, at a minimum, the following information:

- Date the quote is generated;

- Appropriate Customer information (i.e. Customer number/identifier, address, etc.);
- Product description;
- Requested product quantity;
- Product unit price; and
- Quotation total price.

10.2 Professional Services Pricing: CONVERGEONE shall invoice the Customer for all services provided under the contract in accordance with the pricing in the contract.

10.3 Spot pricing is allowed under this contract. Spot pricing must meet or exceed discounts listed in this contract.

11. Order Processing:

11.1 Order Information: Except as otherwise noted in herein, the Customer shall generate a purchase order based on product quotes obtained from the account management team or through product/pricing information obtained via the contractor's website. The Customer shall specify, at a minimum, the following information:

- Contract number;
- Order number;
- Customer number/identifier (if applicable);
- Customer contact (Educational Entity's name, contact person [two (2) individuals if possible] and phone numbers);
- Contract line item number;
- Quantity;
- Unit price; and
- Any pertinent information relating to the product(s) and/or services requested (including brand/model, options, and any required services).

11.2 Submittal of Order: CONVERGEONE must accept orders in via mail, e-mail or fax.

11.3 Acknowledgement of Receipt of Order: CONVERGEONE must provide written acknowledgement (email or fax) to the Customer within twenty-four (24) hours of the receipt of authorized purchase order.

11.4 Order Substitutions: CONVERGEONE shall not substitute any item(s)/component(s) ordered by a Customer until the contractor: 1) notifies the Educational Entity in writing (email is acceptable if the designated contact has an email address, and 2) receives written approval from the Customer to proceed with the substitution.

11.5 Substitution Authorization: The Customer reserves the right to accept any proposed substitution offered by CONVERGEONE on the order; however, the Customer shall be final authority as to the acceptability of substitutions and reserves the right to accept or reject any substitution.

11.6 Substitution Approval Form: CONVERGEONE must provide a form for CUSTOMER's to use to indicate their approval of a product substitution prior to the contractor's shipment of the substituted goods. This approval may be executed via email, fax, or hardcopy mail/delivery.

12. Product and Maintenance Invoicing and Payment:

12.1 Generation of Invoice: CONVERGEONE shall generate an invoice to the ordering Educational Entity which shall be itemized in accordance with the items listed on the purchase order. Terms are Net 30.

13. Lease/Financing Program Requirements:

13.1 The Customer reserves the right to enter into lease/purchase financing agreement(s) as a result of the subsequent contract(s). In the event a using Educational Entity requests financing of their purchase under the contract a mutually agreeable lease schedule shall be entered into between the Customer and the lessor. The Customer shall initiate a contract amendment for every lease exercised under the contract that shall include the specific terms and rates of the lease. CONVERGEONE at a minimum must have the ability to work with Cisco Capital and its financing partners to the benefit of the Customer. The Customer acknowledges that a contract assignment may be necessary as part of any lease exercised under the subsequent contract.

13.2 Should you have any questions about Leasing, please contact CONVERGEONE.

13.3 A purchase order must be submitted to CONVERGEONE by the leasing company and should identify in detail, the items being purchased and leased by the Customer.

REQUIRED PRICING

Hardware and Software —discount percentage off Manufacturer's List Price. Shipping and handling are to be included in the pricing.

<u>Product</u>	<u>Discount %</u>
Cisco Hardware	41.5% Discount
Cisco Maintenance	30% for Education/ 20% for Government
Dell EMC Hardware	2% above Standard Gold Partner transfer price
Dell EMC Software	2% above Standard Gold Partner transfer price
Microsoft Products	5% above cost
VMWare	2% above Standard Partner transfer price
Dell Hardware	2% above Standard Gold Partner transfer price
HPE Hardware	NASPO Kansas/Missouri ValuePoint Pricing
Meraki Hardware	41.5% Discount
Nimble Storage	NASPO Kansas/Missouri ValuePoint Pricing
Veeam Products	18% Discount, Platinum Partner

Unitrends	Recovery Series 7xx-9xx 13%, Recovery Series 6xx: 13%, Unitrends Backup & Boomerang: 13%, 0365 Backup: 8% Cloud: 3%, Other: 8%.
Nintex	8% Discount, Nintex Premier Partner
Axis	18% Discount, Gold Partner
Salient	30% Discount, Certified Salient Reseller
Cohesity	23% Discount, Authorized Cohesity Reseller
Polycom	2% above Standard Platinum Partner transfer price
Vertiv/Liebert	2% above Standard Gold Partner transfer price
APC	2% above Standard Partner transfer price
Rubrik	63% Discount on Product, 55% Discount on Maintenance
Nutanix	8% above Standard Partner transfer price
Singlewire	15% Discount
Avaya	2% above Standard Diamond Partner transfer price
Cradlepoint	2% above Standard Partner transfer price
F5	8% Discount, Gold Level Partner
Citrix	2% above Standard Platinum Partner transfer price
A10	20% Discount, Bronze Partner
Palo Alto	8% Discount on Hardware and Subscriptions, 3% Discount for support, Gold Partner
Checkpoint	Hardware 19%, Service & Support 2%
Trend Micro	2% above Standard Partner transfer price
Audiocodes	25% Discount

Hourly Service Rate — hourly dollar amount of the service listed.

<u>Service</u>	<u>Dollar Amount</u>
Project Management	\$140.00

System's Engineer	\$145.00
Senior System's Engineer	\$175.00
Programmer	\$225.00
System's Consultant	\$225.00
Security Consultant	\$225.00

Center/Cloud Solutions Products and Services:

Product/Service Dollar Amount

Datacenter/Cloud and Managed Services \$2,500 Minimum per Month

ConvergeOne provides custom Managed Services, Data Center, public and private Cloud designs. ConvergeOne partners with Amazon Web Services and Microsoft Azure to provide public and hybrid cloud offerings. ConvergeOne also provides Private Cloud offerings based on a variety of solutions to best meet the customer's needs. All of these offerings can be managed by the customer or managed by ConvergeOne. Initial design and scoping services are provided no cost to the customer.

Security Services


Product/Service Dollar Amount

Security Consultant \$225 / Hour

ConvergeOne offers penetration testing and vulnerability assessments, security architecture review, regulatory compliance audits, policy and procedures and mapping with industry standard best practices. Initial design and scoping services are provided at no cost.

Security consultant services are provided at \$225 per hour.

ConvergeOne

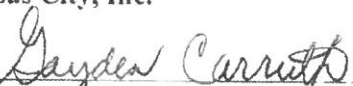
By: 
(Authorized Signature)

Lucas Smith
Printed Name

Title: VP of Sales

Date: 8/17/18

Cooperating School Districts of Greater Kansas City, Inc.

By: 
(Authorized Signature)

Gayden Carruth
Printed Name

Title: Executive Director

Date: 8/17/18

Letter of Notification to Utilize Cooperating School Districts of Greater Kansas City IT Contract

Re: Cooperating School Districts of Greater Kansas City Contract

Date: July 1, 2018

This letter serves as notification that we the Customer intend to utilize the Cooperating School Districts of Greater Kansas City IT contract. We recognize that this was a publicly bid and awarded contract. There is a Cooperative Purchasing Agreement allowing all School Districts, Universities, Colleges and other Public Sector entities to take advantage of this contract pricing.

This letter is intended to notify:

- Manufacturer's on the Cooperating School Districts of Greater Kansas City IT Contract to work with CONVERGEONE on the Customer's behalf.
- CONVERGEONE to set aside the Administrative fee for the Cooperating School Districts of Greater Kansas City Consortium.
- Cooperating School Districts of Greater Kansas City of the Customer's expectation to utilize the Public purchasing contract.

In order to receive the pricing on the contract, the Customer, when purchasing off the Cooperating School Districts of Greater Kansas City IT Contract, will put the Cooperating School Districts of Greater Kansas City contract number C062518 on our Purchase Order. If the contract number (C062518) does not appear on the purchase order, CONVERGEONE will assume the responsibility to add the contract number (C062518) when processing the order for items purchased using this contract.

Respectfully,

_____ Customer's Name
_____ Customer Representative's Printed Name
_____ Customer's Signature
_____ Date