

Sales Agreement

Date: February 23, 2022

SELLER: CONVERGEONE, INC.
10900 Nesbitt Avenue South
Bloomington, MN 55437

CUSTOMER: Davis Joint Unified School District
526 B Street,
Davis, CA 95616-3811

This SALES AGREEMENT ("Agreement") is made and entered into as of the date indicated above ("Effective Date") by and between Seller and Customer and continues for one (1) year thereafter and may be renewed for one (1) year terms by mutual agreement of the Parties. 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.
2. This Agreement shall apply to sales of the following to Customer:
 - a) All hardware, third party software, and/or Seller software (collectively, "Products"); and/or
 - 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").
3. Seller will provide the Products and/or Professional Services to Customer as more fully described on a sales order ("Solution Summary"). Each Solution Summary shall be accompanied by an itemized list of all Products to be provided, together with the price to be charged therefor ("Solution Quote"). If Seller is to provide Professional Services to Customer, a Statement of Work ("Statement of Work" or "Scope of Work" or "SOW") shall accompany this Agreement. The Solution Summary shall reflect the price to be charged for such Professional Services.
4. Any amendment, supplement, or modification of any term or provision of this Agreement must be in a writing that is signed by authorized representatives of both Parties to this Agreement.
5. **PURCHASE PRICE:** The purchase price of the Products and/or Professional Services set forth in the Solution Summary, plus applicable tax and freight, shall be due thirty (30) days from the date of the invoice.
6. **FINANCING OPTION:** If Customer elects to lease the pertinent Products and/or Professional Services, Customer
 - a) Shall inform Seller of such election no later than the time that this Agreement is executed to avoid being liable for sales tax on the Products and/or Professional Services provided under the Solution Summary; and
 - b) May assign this Agreement 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.
7. **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. All authorized returns may be assessed a twenty percent (20%) restocking charge; provided, however, that Product returns based on warranty claims will not be assessed such restocking charge.

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: Davis Joint Unified School District

Signature: _____

Signature: _____

Printed Name: _____

Printed Name: _____

Title: _____

Title: _____

Date: _____

Date: _____

ARTICLE I – GENERAL TERMS AND CONDITIONS OF THE AGREEMENT

1. **PRICE; PAYMENT; TAXES.** Customer agrees to pay the price of each Product and/or Professional Service described on a Solution Summary, 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 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. Customer agrees to indemnify and hold harmless Seller (i) from any and all liens, actions, or claims made by or on behalf of any tax authority in connections with any payment made to Seller, and (ii) for all costs incurred by Seller in connection with the foregoing (including, but not limited to, reasonable attorneys' fees). 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; (ii) regardless of whether this Agreement is terminated, suspend further performance under 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. 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 Professional Services and/or the installation of a Product. Customer shall dedicate such time, personnel, and resources as may be reasonably necessary to complete Seller's performance of Professional 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 Product(s) and/or Professional Service;
 - (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; and
 - (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 Professional Services.
5. **FORCE MAJEURE.** Seller shall not be liable for any loss, failure, or delay in furnishing a Product and/or providing Professional Services, resulting from any of the following: fires; explosions; floods; storms; acts of God; governmental acts, orders, or regulations; hostilities; acts of terrorism; civil disturbances; strikes; labor difficulties; machinery breakdowns; transportation contingencies; difficulty in obtaining parts, supplies, or shipping facilities; delays of carriers; or any other cause beyond the control of Seller.
6. **ARBITRATION.** Seller and Customer agree to submit any and all disputes (of whatever kind or nature, whether in law or in equity) arising out of the terms and provisions of this Agreement (including, but not limited to, determining the validity, specific enforcement, breach, or interpretation of this Agreement) to binding arbitration only, such arbitration to be conducted pursuant to the then-current Commercial Arbitration Rules of the American Arbitration Association and to be held before a single arbitrator at a location mutually agreeable to the Parties. The Parties shall be entitled to limited discovery under the Federal Rules of Civil Procedure. Notwithstanding the foregoing, in the event that third parties are necessary to achieve a just adjudication of the issues, either Party may commence a civil action in a court of competent jurisdiction having jurisdiction over all parties involved. The prevailing Party shall be entitled to recover from the non-prevailing Party its costs and reasonable attorneys' fees incurred in connection with any action or proceeding that arises from the terms and provisions of this Agreement. The Parties further agree that any monetary award may be reduced to judgment and docketed in any court of competent jurisdiction without objection and execution had thereon. This provision shall survive the termination of this Agreement. No arbitration or action, regardless of form, arising out of the terms and provisions of this Agreement may be brought or commenced by either Party more than one (1) year after the dispute, claim, or cause of action arose.
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 PROFESSIONAL SERVICE, 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 THIRTY (30) DAYS BY CAUSES ATTRIBUTABLE SOLELY TO SELLER, CUSTOMER'S SOLE REMEDY SHALL BE TO TERMINATE THIS AGREEMENT WITHOUT INCURRING CHARGES FOR SUCH TERMINATION AND, WITHIN THIRTY (30) DAYS AFTER SUCH TERMINATION, RECEIVE A REFUND OF ALL MONIES PAID UNDER THIS AGREEMENT; 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 THIS AGREEMENT WITHOUT INCURRING CHARGES FOR SUCH TERMINATION AND, WITHIN THIRTY (30) DAYS AFTER SUCH TERMINATION, RECEIVE A REFUND OF ALL MONIES PAID UNDER THIS AGREEMENT. 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.

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

(b) Customer shall not solicit for employment, either directly or indirectly, employees or subcontractors of Seller during the term of this Agreement, 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). If Customer violates this provision, Customer will pay to Seller an amount equal to the amount of total potential compensation for the first twelve (12) months for the employee or subcontractor of Seller that has been hired. Customer shall pay such amount to Seller on the date that is thirty (30) days after the person accepts an offer of employment from Customer.

9. 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, both the assignor and the assignee are jointly and severally liable under this Agreement for any outstanding obligations of the assignor that are due as of the date of the assignment.

(c) **Notices.** All notices shall be in writing and shall be delivered in person or sent by facsimile or U.S. Mail, postage prepaid, to the address of the other Party as set forth in this Agreement or to such other address as a Party shall designate.

(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 at each respective Party and its respective signatory have the full right, power, and authority to execute this Agreement.

(e) **Secrecy and Confidentiality.** Each Party covenants and agrees on behalf of itself, its officers, directors, employees, and agents as follows: (i) all information obtained from a 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; (ii) such information shall be neither disclosed to others nor used for any unauthorized purpose; and (iii) each Party shall use its best efforts to return such information to the other Party upon termination of this Agreement. This provision does not apply to such information that (a) was in the possession of a Party before disclosure to such Party by the other Party; (b) becomes a matter of public record through no fault of a Party; or (c) is released by or at the direction of the Party that originally disclosed such information to the other Party.

(f) **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.

(g) **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.

(h) **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.

(i) **Governing Law.** The laws of the jurisdiction where the Products and/or Professional Services are to be provided (including, but not limited to, the Uniform Commercial Code as adopted in that jurisdiction) apply to all Products and/or Professional Services provided under the terms and provisions of this Agreement, without reference to such jurisdiction's conflicts of law principles.

(j) **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.

(k) **Change-in-Control.** In the event that Seller is acquired, sold, or dissolved (a "Change-In-Control"), Customer may cancel this Agreement, provided however, that Customer must: (i) pay all outstanding invoices and pay for all Product(s) delivered and not invoiced; (ii) pay for all Products ordered which orders cannot be cancelled at the time of notice of cancellation without cost or other liability; and (iii) pay for all Professional Services rendered up to and including the date of notice of cancellation.

(l) **Cancellation for Convenience.** Customer shall have the right to cancel this Agreement for convenience, with no penalty, at any time prior to an order being placed by the Customer with Seller.

(m) **E-Rate Program.** In addition to all other terms and conditions of this Agreement, if Customer is an educational institution, library or other entity that qualifies as an applicant seeking reimbursement under the Federal Universal Service Fund Schools and Libraries Program (commonly referred to as the "E-Rate Program"), the E-Rate Program requirements of the Universal Service Administrative Company (USAC) will apply, which includes but are not limited to the following:

- i. The Parties recognize that the E-Rate funding year commences on July 1 and continues through June 30 of each year (a "Funding Year").
- ii. Products purchased by Customer pursuant to this Agreement may not be shipped prior to April 1 and may not be invoiced prior to July 1 of the current Funding Year.
- iii. Add on manufacturer warranty services (e.g., maintenance services) that run outside of the current Funding Year must either be applied to the next Funding Year or be 100% billable to the Customer.
- iv. Receipt Acknowledgement Letters must be received and service substitutions must be completed before order processing can commence for shipments.
- v. If requesting Service Provider Invoicing on a Form 474, order processing may commence only after a Form 486 has been approved by USAC.
- vi. If purchasing multi-year contracts for manufacturer warranties, software subscriptions, etc., a Form 471 must be filed by Customer for each Funding Year occurring during the multi-year contract term.

- vii. Manufacturer warranty services need to be listed as basic maintenance or an appeal will need to be filed to correct invoicing on approved Forms 471.
- viii. If a Form 486 has not been timely filed by Customer within 120 days following receipt of USAC's Funding Commitment Decision Letter, ConvergeOne reserves the right to invoice Customer in full for the Products and Services purchased under this Agreement.
- ix. If during USAC auditing process, USAC determines eligibility percentage has decreased, ConvergeOne reserves the right to invoice Customer for the difference between the originally approved percentage and the decreased percentage per USAC terms and conditions.

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.** Seller reserves a purchase money security interest in and to the Products (together with the cost of any Professional Services related thereto) sold hereunder as security for performance of Customer's obligations. Seller may file the Agreement (together with any attachments thereto) to perfect such interest.

3. **WARRANTIES; DISCLAIMERS; SOFTWARE LICENSES.** Seller represents and warrants that, immediately prior to the sale of a Product 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 Product 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 Product delivery if the Product is installed by Customer; or (ii) the date of Product installation if the Product is installed by Seller.

ii) This warranty does not extend to Products or Product components 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 Product components; 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 a Product or a Replacement Product does not conform to the Product 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 the Product so that the Product conforms to the Product warranty; or (ii) replace the Product with a Product that conforms to the Product warranty ("Replacement Product"). Replacement Products are warranted as outlined above for the remainder of the original applicable Product warranty period. Replaced Products become the property of Seller. Seller will not charge Customer for the Replacement Product. Seller, however, may charge Customer for the time that is incurred to diagnose the problem and to repair or replace the Product, if the problem is not covered by the Product 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 CHARGES FOR SUCH USE) OF COMMON CARRIER TELECOMMUNICATIONS SERVICES OR FACILITIES ACCESSED THROUGH OR CONNECTED TO THE PRODUCTS (TOLL FRAUD). 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) pertinent 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 the pertinent 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 A PRODUCT.