

END USER LICENCE AGREEMENT

This End User Licence Agreement constitutes a binding agreement between (i) the entity wishing to use Converge Software ("**you**") and (ii) the Affiliate of Converge I/O Limited with whom you (or, if applicable, the relevant Authorised Reseller) have a signed agreement to which this End User Licence Agreement relates, or (where there is no such signed agreement) Converge I/O Limited itself ("**Converge**"). Converge and the Customer (as defined below) are each a "**Party**" and together the "**Parties**".

The terms of this End User Licence Agreement are hereby incorporated by reference into, and made a part of, the Customer Order (as defined below) with the terms of this End User Licence Agreement and the Customer Order collectively referred to as this "**Agreement**".

By clicking 'I accept', 'I agree' (or similar button), or by otherwise accessing or using the Converge Software you acknowledge that you have read, understood and agree to be bound by the terms of this Agreement (the date of such occurrence being the "**Effective Date**").

If you are entering into this Agreement on behalf of the Customer, you represent that you have the right, authority and capacity to act on behalf of the Customer and to bind the Customer to this Agreement.

1. GENERAL

1.1 Definitions.

The following capitalized terms shall have the following meanings set out below:

"Affiliate"	with respect to either Party, any person, organisation or entity controlling, controlled by or under common control with such Party;
"Application"	has the meaning provided in clause 2.1(c);
"Authorised Reseller"	any entity appointed by Converge to act as an authorised reseller, sub-licensor, and/or distributor of Products in specific regions and territories, or in respect of specific projects;
"Authorised Users"	those employees of the Customer and/or End User who are authorised by Customer and/or End User to access, use, and receive the Products and Services, in accordance with this Agreement and subject to the Service Scope;
"Business Day"	any day which is not a Saturday, Sunday or public holiday in London, United Kingdom, in the country in which the Customer is located, and/or in the country where the Sites are located;
"Calibration Data"	concrete maturity calibration data created for the purposes of specifying a relationship between maturity and strength for a specific concrete mix;

“Connected Hardware”	the Third Party Hardware and/or Converge Hardware, in each case as used by any Product User to send Sensor Data and Converge Data to the Converge SaaS;
“Construction Data”	<p>(i) any and all data (other than Converge Data and Sensor Data) provided to Converge by any entity involved in any Site (including, without limitation, the principal contractor, the principal contractor’s client, the structural engineer, or any supplier or subsidiary of the principal contractor to the Site), including, without limitation, BIM models, construction schedules, and Calibration Data; and</p> <p>(ii) any data relating to the End User, other Product User or any third party, which is necessary and/or relevant for Converge or its Affiliates to provide the Services under this Agreement;</p>
“Consumable Hardware”	any Converge Hardware that is specified in the Customer Order as being purchased by the Customer (other than Rental Hardware);
“Converge API”	a Converge application programming interface (API) made available to the Customer by Converge (if any);
“Converge Data”	the data and intelligence of any kind generated by Converge Software, including, without limitation, on the basis of: (i) Sensor Data and/or Construction Data; and/or (ii) the information and data collected or received by Converge and/or Customer pursuant to this Agreement;
“Converge Hardware”	any hardware designed, produced or licensed by Converge or its Affiliates and/or any hardware supplied by Converge or its Affiliates to any Product User;
“Converge Materials”	has the meaning provided in clause 8.1;
“Converge SaaS”	Converge’s cloud platform that may be made available on a subscription basis and which operates in connection with either: (i) Converge Hardware; (ii) Licensed Programs; (iii) Sensor Data; or (iv) Construction Data;
“Converge SaaS-Enabled Consumable Hardware”	Consumable Hardware that: (i) can transmit data to the Converge SaaS on a stand-alone basis; and (ii) is supplied with access to basic features of Converge SaaS;
“Converge Software”	any software designed, written, hosted or provided by Converge or its Affiliates, including, without limitation, as the case may be, a Licensed Program and/or the Converge SaaS;

"Customer"	means:
	(i) the customer entity specified in the Customer Order; or
	(ii) the legal entity that uses Converge Hardware, Converge Software, and/or Services.
"Customer Order"	means:
	(i) the order form (and any accompanying terms and conditions) entered into between the Customer and Converge and/or the Authorised Reseller, for the provision of Products and/or Services; or
	(ii) any unsigned implicit order arising out of any receipt of Converge Hardware and/or Services or use of Converge Software.
"Documentation"	whatever Product related user guides or manuals Converge provides or makes available. Unless the context clearly requires otherwise, references in this Agreement to "Products" shall be deemed to include the corresponding Documentation;
"End User"	each company or entity that has deployed Converge Hardware and/or used Converge Software. For the avoidance of doubt, the Customer always shall be considered as an End User;
"Enhancement"	any improvement, derivative work, customisation, modification, and/or enhancement;
"Feedback"	any ideas, suggestions, or other feedback of or about any Products, Services, Documentation, Sensor Data, and/or Converge Data provided by any Product User;
"Fees"	the fees and other charges payable by the Customer to Converge or an Authorised Reseller for the Products and/or Services, as set out in the Customer Order, or as subsequently expressly agreed by the Customer in writing (including by email);
"Fixed Subscription"	Term a subscription for a fixed term for the Converge Software, as detailed in the Customer Order;
"Intellectual Property"	any and all inventions, discoveries, improvements, works of authorship, technical information, data, databases, know-how, show-how, designs, ideas, drawings, business names, domain names, logos, utility models, topography and semiconductor mask works, specifications, formulas, methods, techniques, processes, software (including,

without limitation, object code, source code, application programming interface (API), and non-literal aspects), algorithms, architecture, records, documentation, and other similar intellectual property or technology, in any form and embodied in any media, anywhere in the world;

“Intellectual Property Rights”	<p>any and all rights, titles, and interests (under any jurisdiction or treaty, whether protectable or not, whether registered or unregistered, and whether vested, contingent, or future) in and to Intellectual Property, and includes, without limitation, patents, copyright and similar authorship rights, personal rights, trade secret and similar confidentiality rights, design rights, trademark, trade name, trade dress and similar branding rights, as well as:</p> <p>(i) all applications, registrations, renewals, extensions, continuations, continuations-in-part, divisions or reissues of the foregoing rights; and</p> <p>(ii) all goodwill associated with the foregoing rights</p>
“Law”	any law, statute, ordinance, rule, or regulation of any relevant jurisdiction;
“Licence”	has the meaning provided in clause 2.1;
“Licensed Program”	as the case may be: (i) firmware embedded within Converge Hardware; (ii) a software product developed by Converge that operates in connection with Converge Hardware and/or Converge SaaS; and/or (iii) a Converge mobile application that operates in connection with Converge Hardware and/or Converge SaaS. References in this Agreement to a Licensed Program shall be deemed to include any accompanying Documentation;
“Loss Adjustment Fee”	the fee payable by the Customer for any damage caused to, or loss of, Converge Hardware;
“Maturity Standard”	the American Society for Testing and Materials International C1074 standard specification entitled “Standard Practice for Estimating Concrete Strength by Maturity Method” and any updates thereto or any comparable standard (in terms of the same level of quality and subject matter) in the territory in which the Sites are located, as the case may be;
“Personal Data”	has the meaning set out in the General Data Protection Regulation (EU) 2016/679, as well as any Laws that implement the foregoing, and any relevant regulations in the

	relevant country(ies) pursuant to the Products being deployed and the Services used under the Customer Order;
“Product User”	<p>the Customer, an Authorised User, and/or an End User, as the case may be. For the avoidance of doubt:</p> <p>an “Authorised User” is an individual person;</p> <p>(iii) an “End User” is the entity that employs or has hired an Authorised User; and</p> <p>(iv) the “Customer” is the entity that places the Customer Order for Products. For the avoidance of doubt, if an Affiliate of the Customer uses any Product, then it shall be considered as an End User.</p>
“Product User Operating Environment”	the End User’s information technology infrastructure pertinent to the supply and operation of the Products;
“Products”	as the case may be, the Converge Hardware, Converge Software, and/or other products or services supplied by Converge to the Customer, as specified in the Customer Order;
“Rental Hardware”	any Converge Hardware that is specified in the Customer Order as being rented or loaned (as opposed to Consumable Hardware);
“Reports”	the analysis reports generated by the Converge SaaS in relation to a Site, and which is made accessible to an Authorised User;
“Sensor Data”	<p>means the data collected:</p> <p>(i) from any sensor or any Converge Hardware on any premises on which Products are used or deployed; and</p> <p>(ii) that is sent to, transmitted to, uploaded to, or captured by the Converge Software;</p>
“Service Scope”	has the meaning provided in clause 1.3;
“Services”	means the services set out in the relevant Customer Order;
“Sites”	the construction sites on which Products have been, will be, and/or are intended to be deployed;
“Subscription Tiers”	the monthly subscription tier for the Converge SaaS, against which Fees shall be payable, (if applicable) as specified in or implied by the Customer Order;

“Third Party Hardware”	any hardware used by a Product User in relation to the Converge SaaS, other than Converge Hardware;
“Third Party Products”	has the meaning provided in clause 4;
“Training Services”	the training services delivered to be by Converge or an Authorised Reseller as specified in the Customer Order.

- 1.2 **Hardware Terms.** If, as set out and as specified in the Customer Order, Customer is purchasing, leasing or using Consumable Hardware and/or Rental Hardware, the terms of Schedule 1 (Converge Hardware) attached shall also apply.
- 1.3 **Service Scope.** The permitted scope, volume and other parameters (such as regarding access, usage, consumption, Sites, Subscription Tiers, features, and duration) for the Products and Services shall be as set forth in the Customer Order (the **“Service Scope”**). Regardless of the Service Scope, each Product User may access, use, and receive the Products and Services solely for its own internal business purposes and solely for delivery at the Site(s) by such Product User. Customer shall promptly notify Converge in writing as soon as Customer becomes aware of any access or use in excess of the Service Scope, or any other unauthorised access or use of any Products. If the Customer Order is an unsigned implicit order, Converge shall have absolute discretion in determining the Service Scope (if any) and the relevant Product User is only entitled to access or use those parts of the Products that Converge makes available to such Product User.
- 1.4 **Authorised Users and Product Users.** Subject to (and without expanding or modifying) the Service Scope, Customer may permit the permitted number of Authorised Users specified in the Customer Order to access, use, and receive the Products and Services, subject to the following conditions:
- (a) Customer first shall inform Converge in writing of the identity of such Authorised Users, if not already specified in the Customer Order;
 - (b) each Product User, in writing, shall acknowledge and agree to be legally bound by these Terms, (including without limitation to access, use, and receive the Products and Services solely on an internal business basis);
 - (c) if Customer is an Authorised Reseller, then Customer shall ensure that each Product User has accepted and is legally bound by these Terms;
 - (d) Customer shall remain primarily liable for the acts and omissions of each Product User as fully as if they were the acts and omissions of Customer itself, and references herein to **“Customer”** shall be construed accordingly;
 - (e) Customer’s agreement with any Product User must not conflict or be inconsistent with any of the provisions of this Agreement (such as regarding ownership rights, confidentiality, data usage, licence rights, disclaimers, and liability limitations);
 - (f) Customer undertakes that:
 - (i) the maximum number of Authorised Users that it authorises to access, use, and receive the Products and Services shall not exceed the number of

Authorised Users permitted in the Customer Order (if any) and for the relevant Subscription Tier (if any); and

- (ii) unless otherwise agreed in writing or in the Customer Order, the Authorised Users shall all be employees of Customer;
- (g) Customer may, from time to time, request an increase to the number of Authorised Users and Converge shall evaluate such request for each additional Authorised User and respond to the Customer with approval or rejection of the request (such approval not to be unreasonably withheld);
- (h) Converge shall have no obligation or liability towards any End User (other than the Customer), Authorised User, or Customer Affiliate, and any such entity or person shall not be deemed a third party beneficiary under this Agreement; and
- (i) Customer shall only allow Authorised Users who have been issued with a username and password to access the Products, use all reasonable endeavours to prevent any unauthorised access to, or use of, the Converge Software and, in the event of any such unauthorised access or use, promptly notify Converge.

To the extent permissible by Law, Converge shall not be liable for any loss that the Customer, any other Product User or any third party may incur as a result of any misuse of any username or password or of any part of the Converge Software, whether with or without Customer's knowledge.

2. CONVERGE SOFTWARE LICENCE

2.1 Subject to the terms and conditions of this Agreement and in consideration for the Fees, Converge grants to each End User a limited, non-exclusive, non-assignable, non-sublicensable licence and right, during the term of this Agreement, to do the following (collectively, the **"Licence"**):

- (a) in respect of a Licensed Program that is firmware, to run the firmware on the corresponding Converge Hardware specified in the Customer Order;
- (b) in respect of all other Licensed Programs, and for each Authorised User, to install and internally use the Licensed Program on a single mobile device and one other non-mobile device owned or controlled by the End User;
- (c) permit each of its Authorised Users to access and use the Converge SaaS; and
- (d) access Converge APIs and Documentation only as necessary to develop, test and support an integration of the End User's application (an "Application") with the Services.

2.2 The Licence is subject to the applicable Service Scope. For the avoidance of doubt, if no software subscription is in effect, but access to the Converge SaaS is still provided to Product Users pursuant to the provision of Converge SaaS-Enabled Consumable Hardware, such Product Users shall only be entitled to access and use the necessary Converge SaaS feature that enable the collection of Sensor Data from any hardware Product (and subject to the applicable Service Scope).

- 2.3 For the avoidance of doubt, the Licence shall terminate automatically for any employee, agent and/or independent contractor of the End User who ceases to be an Authorised User.

3. **USAGE RESTRICTIONS**

- 3.1 As a condition to any rights or licences (including, without limitation, the Licence) granted to Customer under this Agreement, and except as expressly permitted otherwise by this Agreement, Customer shall not do, and shall procure that each End User and Authorised User does not do, any of the following with respect to any Converge Materials, in whole or in part: (a) copy, attempt to duplicate, or attempt to develop any competing product with any Converge Materials; (b) sell, resell, assign, transfer, lease, rent, sublicense, remarket, or otherwise distribute or make available Converge Materials to any third party (such as offering it as part of a time-sharing, outsourcing or service bureau environment); (c) publicly perform, display, or communicate Converge Materials; (d) modify, alter, adapt, arrange, or translate Converge Materials; (e) decompile, disassemble, decrypt, reverse engineer, extract, or otherwise attempt to discover the source code or non-literal aspects (such as the underlying structure, sequence, organisation, file formats, non-public APIs, ideas, or algorithms) of Converge Materials; (f) remove, alter, or conceal any copyright, trademark, patent, or other proprietary rights notices displayed or appearing on or in Converge Materials; (g) circumvent, disable or otherwise interfere with security-related or technical features or protocols of Converge Materials; (h) make a derivative work of Converge Materials, or use Converge Materials to develop or build any service or product that is the same as (or substantially similar to), or otherwise competitive with, Converge Materials; (i) store or transmit any robot, malware, trojan horse, spyware, or similar malicious item (for example, by way of Construction Data) intended (or that has the potential) to damage or disrupt Converge Materials; (j) employ any hardware, software, device, or technique to pool connections, devices or users that directly access or use Converge Materials (sometimes referred to as 'virtualisation', 'multiplexing' or 'pooling') in order to circumvent any part of the Service Scope; (k) forge or manipulate identifiers in order to disguise the origin of any Calibration Data, Construction Data, or other data or content inputted to, or transmitted via, Converge Materials; (l) take any action that imposes or may impose (as determined in Converge's sole discretion) an unreasonable or disproportionately large load on the servers, network, bandwidth, or other cloud infrastructure that operate or support Converge Materials, or otherwise systematically abuse or disrupt the integrity of such servers, network, bandwidth, or infrastructure; (m) access or use Converge Materials in violation of any applicable Laws; (n) access Converge APIs in any manner that: (i) compromises, breaks or circumvents any of Converge's technical processes or security measures associated with the Services, (ii) poses a security vulnerability to Product Users of the Services, or (iii) tests the vulnerability of Converge's systems or networks; and/or (n) attempt to use Converge APIs in a manner that exceeds rate limits, or constitutes excessive or abusive usage.
- 3.2 Converge reserves a right to audit the Customer's Application to ensure it does not violate Converge's terms and policies. The Customer shall cooperate with inquiries related to such an audit and provide Converge with evidence that any Application is in full compliance with Converge's terms and policies.

4. THIRD PARTY PRODUCTS.

Converge may supply the Customer with third party products, software or services ("Third Party Products") as part of the Services. Where Converge or an Authorised Reseller notifies Customer that licences for Third Party Products are required, the Customer shall be responsible for entering into and complying with, and ensuring that Affiliates, Product User, and End Users each comply with the terms of those licences, and Customer's and/or any such entity or person's use of those Third Party Products shall be governed solely by the relevant applicable terms, at the Customer's sole risk. Unless otherwise provided for by written agreement between the Parties, Converge shall not be responsible in any way for any Third Party Products' performance, features or failures, including for their effect on the Converge Hardware and/or Converge Software.

5. LIMITED WARRANTY.

The warranties for the Converge Hardware and Converge Software are specified in the Customer Order. Customer agrees that where the Customer Order is placed with an Authorised Reseller, all claims relating to Converge Hardware and Converge Software will be claims against the Authorised Reseller and not Converge. In the event of an unsigned implicit Customer Order, including, without limitation, any free samples given out by Converge, the relevant Product User is only entitled to access or use those parts of the Products that Converge makes available to such Product User, any Converge Hardware and/or Converge Software is provided on an "as is" basis without warranty to the fullest extent permitted by Law, and the Product User may only do so for evaluation purposes and Converge shall have no obligation or liability of any kind whatsoever to any such Product User, and cease to have any obligations towards such Product User under this Agreement.

6. CUSTOMER'S OBLIGATIONS

The Customer shall, and shall ensure that each End User and Authorised User shall, to the extent applicable:

- 6.1 provide Converge with: (i) all necessary and commercially reasonable co-operation in relation to this Agreement; and (ii) all necessary access to such information, premises and assets as may be required by Converge, in order to provide the Products and Services;
- 6.2 comply with all applicable Laws with respect to its activities under this Agreement and provide safe environmental conditions at each Site;
- 6.3 ensure that any Authorised Users that did not receive the Training Services are properly and fully trained in the use and operation of the Products before using them;
- 6.4 obtain and maintain all necessary licences, consents, and permissions necessary for Converge, its Affiliates, sub-contractors and agents to perform their obligations under this Agreement, including without limitation the Services;
- 6.5 ensure that the Product User Operating Environment complies with the relevant specifications provided by Converge from time to time;

- 6.6 ensure that the Third Party Hardware and the Product User Operating Environment are each correctly operating and integrating with the Products;
- 6.7 use reasonable security precautions in connection with its use of the Products, and take all reasonable steps to mitigate the risks inherent in the provision of the Products and Services, including data loss and damage; and
- 6.8 procure and maintain its network connections and telecommunications links from its systems and/or hardware to the Products, and for all problems, conditions, delays, delivery failures and all other loss or damage arising from or relating to its hardware, network connections or telecommunications links or caused by the internet.

7. **FEES.**

The Customer shall pay the Fees to Converge (or the relevant Authorised Reseller) for the Products and Services, subject to the payment terms detailed in any Customer Order. A failure to comply with this clause 7 and the payment terms of the Customer Order shall constitute a breach of this Agreement and shall entitle Converge, without prejudice to Converge's other rights and remedies, to suspend the Licence and the provision and delivery of the Products and services until all overdue Fees are duly paid.

8. **PROPRIETARY RIGHTS**

- 8.1 **Converge Materials.** Converge (and/or its licensors, as applicable) is, and shall be, the sole and exclusive owner of all right, title, and interest (including without limitation all Intellectual Property Rights) in and to: (a) the Products; (b) the Services; (c) the Sensor Data; (d) the Converge Data; (e) the Reports; (f) any Documentation; (g) any Feedback; (h) any Enhancements of or to any of the foregoing, regardless of authorship or inventorship; and (i) the Converge API ((a) through (i) collectively, the "**Converge Materials**"). Any right or licence not expressly granted under this Agreement is hereby reserved by Converge and its licensors. To the extent any Intellectual Property Rights in or to any Converge Materials does not automatically vest in Converge, Customer hereby irrevocably assigns (and agrees to assign and procure the assignment by any Affiliate, End User, and/or Authorised User) to Converge (or its designee) such Intellectual Property Rights.
- 8.2 **Applications.** Subject to the data ownership provisions set out in this Agreement, each End User shall retain its ownership rights in its own Application, subject to clause 2, and Converge shall own and shall continue to own all Converge API, Documentation, Products, and Services, including, without limitation, all related Intellectual Property Rights.

9. **DATA LICENCES**

For the applicable term and subject to the terms and conditions of this Agreement and in consideration for the Fee(s):

- 9.1 **Sensor Data and Reports Licence.** Converge hereby grants to Customer, a non-exclusive, non-transferable, non-sublicensable licence to use Sensor Data and Reports specific to their corresponding Site(s), solely for delivering the Sites and for Customer's internal business purposes.

- 9.2 **Construction Data License.** Customer hereby grants, and shall procure that each of its Affiliates, End Users, and Authorised Users shall grant, to each of Converge and its Affiliates an irrevocable, royalty-free, worldwide, sublicensable, non-exclusive right and licence to access, use, and process all Construction Data, Calibration Data, and Personal Data for:
- (i) the purpose of performing this Agreement; and
 - (ii) for Enhancements to Converge Hardware, Converge Software and/or to provide Converge Hardware and Converge Software to Product Users (collectively, the “Construction Data Licence”). The Construction Data Licence shall survive termination of this Agreement. Customer hereby warrants and represents that:
 - (a) it has the right to grant, or has secured from each of its Affiliates, End Users, and/or Authorised Users the right to grant, the Construction Data Licence, on behalf of itself and any third parties; and
 - (b) the exercise of the Construction Data Licence shall not infringe, misappropriate, or violate any third party proprietary right, personal right (such as privacy right), or any Law.
- 9.3 **Construction Data Archiving.** In the event of any loss or damage to Construction Data, the Customer’s sole and exclusive remedy, and Converge’s sole and exclusive liability, shall be for Converge to use reasonable commercial endeavours to restore the lost or damaged Construction Data from the latest back-up of such Construction Data maintained by Converge. Converge shall not be responsible for any loss, destruction, alteration or disclosure of Construction Data caused by any third party (except those third parties sub-contracted by Converge to perform services related to Construction Data maintenance and back-up). Notwithstanding the foregoing, the Products are not intended to operate as a data storage or archiving product or service, and Customer agrees not to rely on the Products for the storage or archiving of any Construction Data whatsoever.
- 9.4 The following applies solely to the extent the Customer obtained the Converge Software mobile application (“**App**”) through the Apple AppStore, GooglePlay or any other approved site operated by a third party (an “**App Provider**”) and the App Provider requires such a statement: The Customer acknowledges and agrees that the App Provider has no obligation to furnish any maintenance or support services with respect to the App. Any claims, losses, liabilities, damages, costs or expenses attributable to any failure by the App to conform to any warranty will be the sole responsibility of Converge (or its licensors, if applicable) and any complaints or claims the Customer may have in relation to the App must be directed to Converge (or the licensor, if applicable). The App Provider is not responsible for addressing any claims the Customer has or any claims of any third party relating to the App or the Customer’s possession and use of the App. The App Provider, and its subsidiaries, are third-party beneficiaries of this Agreement, and upon the Customer’s acceptance of this Agreement, the App Provider will have the right to enforce this Agreement as related to the Customer’s use of the App against the Customer as a third-party beneficiary of this Agreement.

10. **PERSONAL DATA.**

If Converge processes any Personal Data on the Customer's behalf when performing its obligations under this Agreement, the Parties record their intention that the Customer shall be the data controller and Converge shall be a data processor and in any such case:

- (a) the Customer acknowledges and agrees that the Personal Data may be transferred or stored outside the EEA or the country where the Customer and the Authorised Users are located in order to carry out the Services and Converge's other obligations under this Agreement;
- (b) the Customer shall ensure that it is entitled under applicable Law to transfer the relevant Personal Data to Converge so that Converge may lawfully use, process and transfer the Personal Data in accordance with this Agreement on the Customer's behalf;
- (c) the Customer shall ensure that the relevant third parties have been informed of, and have given their consent to, such use, processing, and transfer (including transfer outside of the EEA) as required by all applicable data protection legislation and Laws;
- (d) Converge shall process the Personal Data only in accordance with the terms of this Agreement and any lawful instructions reasonably given by the Customer from time to time; and
- (e) each Party shall take appropriate technical and organisational measures against unauthorised or unlawful processing of the Personal Data or its accidental loss, destruction or damage.

11. **CONFIDENTIALITY**

- 11.1 General. Each Party (the "**Recipient**") may have access to certain non-public or proprietary information and materials of the other Party (the "**Discloser**"), whether in tangible or intangible form ("**Confidential Information**"). For the avoidance of doubt, Confidential Information disclosed hereunder by, to, or between the Parties' respective Affiliates (as well as to/with any Authorised Users and/or Product User, as applicable), shall also be governed by and subject to this Agreement. Confidential Information shall not include information and material that: (a) at the time of disclosure by Discloser to Recipient hereunder, is in the public domain; (b) after disclosure by Discloser to Recipient hereunder, becomes part of the public domain through no fault of the Recipient; (c) was rightfully in the Recipient's possession at the time of disclosure by the Discloser hereunder, and which is not subject to prior continuing obligations of confidentiality; (d) is rightfully disclosed to the Recipient by a third party having the lawful right to do so; or (e) independently developed by the Recipient without use of, or reliance upon, Confidential Information received from the Discloser. The Recipient shall not disclose the Discloser's Confidential Information to any third party, except to its employees, advisers, agents and investors, subject to substantially similar written confidentiality undertakings. Recipient shall take commercially reasonable measures, at a level at least as protective as those taken to protect its own Confidential Information of like nature (but in no event less than a reasonable level), to protect the Discloser's Confidential Information within its possession or control, from disclosure to a third party. The Recipient shall use the Discloser's Confidential Information solely for the purpose of performing under this Agreement. In the event that Recipient is

required to disclose Confidential Information of the Discloser pursuant to any Law or governmental or judicial order, the Recipient shall: (a) promptly notify Discloser in writing of such Law or order; (b) reasonably cooperate with Discloser in opposing such disclosure; and (c) only disclose to the extent required by such Law, regulation or order (as the case may be). Upon termination of this Agreement (or otherwise upon written request by the Discloser), and except to the extent any usage rights are expressly stated to survive termination, the Recipient shall, as reasonably directed, promptly return, destroy and/or permanently erase all Confidential Information within Recipient's possession or control, and certify compliance in writing. For the avoidance of doubt, details of the Products, Converge Data, Converge Materials, and the results of any performance or benchmarking tests of the Products, are Confidential Information of Converge.

12. INDEMNITY

12.1 By Customer.

Customer shall, at its own expense, defend Converge, its Affiliates, and their respective directors, officers, employees, suppliers, licensors, or agents (each, a "Converge Indemnitee") against any third party (including without limitation governmental) claim, action, or proceeding against a Converge Indemnitee arising out of or in connection with:

- (a) any misuse or unauthorised use of any Products or Services;
- (b) any bodily injury, death, or damage to real or personal property, attributable to any products, procedures, Calibration Data, Construction Data, (including without limitation any errors or inaccuracies in Calibration Data, any failure to provide accurate, up-to-date Calibration Data on an on-going basis, or any failure to adhere to the applicable Maturity Standard);
- (c) any Product User's negligence or wilful misconduct; and/or
- (d) any Product User's infringement, misappropriation, or violation of any third party proprietary right, personal right (such as privacy right), or any Law (each, a "Claim Against Converge"). Customer shall indemnify, keep indemnified and hold harmless the Converge Indemnitee for any amounts finally awarded or imposed (or otherwise agreed in settlement) under any Claim Against Converge, as well as reimburse Converge for any out-of-pocket legal expenses (including, without limitation, reasonable attorney's fees) that Converge reasonably incurred under a Claim Against Converge.

13. LIMITATION OF LIABILITY

13.1 In no event shall Converge or its Affiliates be liable under, or otherwise in connection with, this Agreement for: (a) any consequential, indirect, special, incidental, or punitive damages; (b) any loss of profits, business, opportunity, revenue, contracts or anticipated savings, or wasted expenditure; (c) any loss of, or damage to, data, information systems, reputation, or goodwill; and/or (d) the cost of procuring any substitute goods or services.

13.2 Subject to clause 13.1 and 13.3, the combined aggregate liability of Converge and its Affiliates under, or otherwise in connection with, this Agreement whether in contract, tort (including,

without limitation, for negligence or breach of statutory duty), misrepresentation, restitution, or otherwise shall not exceed the amounts actually paid by Customer to Converge during the twelve (12) month period immediately preceding the event giving rise to such liability.

- 13.3 The foregoing exclusions and limitation shall apply: (a) to the maximum extent permitted by applicable Law; (b) even if Converge has been advised, or should have been aware, of the possibility of losses, damages, or costs; (c) even if any remedy in this Agreement fails of its essential purpose; and (d) regardless of the theory or basis of liability, and whether in contract, tort (including, without limitation, for negligence or breach of statutory duty), misrepresentation, restitution, or otherwise. However, nothing in this Agreement excludes the liability of Converge: (i) for death or personal injury caused by Converge's gross negligence; (ii) for fraud or fraudulent misrepresentation by Converge; or (iii) any other liability which cannot be excluded under applicable Law.

14. **DISCLAIMERS**

- 14.1 **Provided Information.** In providing the Products and/or performing the Services, Converge shall use and rely on information, materials and data provided by any Product User to Converge. Converge shall have no liability for any damage, loss, cost or expense incurred or suffered as a result of errors or omissions in any such information, materials and data, caused by any action taken by Converge at any Product User's direction, or caused by any action taken by any Product User in reliance on such information, materials and data.
- 14.2 **Data Veracity.** Converge does not guarantee or warrant the veracity, completeness, timeliness, or accuracy of, and shall have no responsibility or liability for, any Sensor Data, Converge Data, Construction Data, Calibration Data, Enhancements, or Reports. Customer shall promptly notify Converge if the concrete mix is changed by it or by any Product User in a material way.
- 14.3 **Data Connectivity.** Converge shall not be responsible for any data connectivity. In order to access and make use of the Products, the Customer must ensure:
- (a) there is full connectivity and internet access through a cellular, fixed-line or Wi-Fi connected device (as applicable and as needed), including, without limitation, for Connected Hardware to accurately send Sensor Data to the Products; and
 - (b) it and each Product User has appropriately configured any hardware in accordance with Converge's instructions to allow it to access the Products (including, without limitation, the guidelines, specifications, minimum requirements and recommendations provided to the Customer in respect to the use, configuration and installation of the Products.). Converge is in no way responsible for the operation or failure of operation or availability of or access to any mobile or internet services resulting in any Product User being unable to use the Products. For the avoidance of doubt, in the event that Converge Hardware specified in the Customer Order is unable to connect to the Converge Software specified in the Customer Order, unless caused directly by Converge, all Fees payable by the Customer shall remain payable.
- 14.4 **Vulnerability.** If any Product User's systems or services are compromised, it is the responsibility of Customer to address the vulnerability and demonstrate to Converge's sole

satisfaction that it or such Product User has appropriately addressed and/or fixed such vulnerability prior to Converge resuming access to the Converge Software.

- 14.5 **Loss of Converge Hardware.** If any Converge Hardware provided in the Customer Order is lost or stolen, or damaged by any Product User, Converge does not guarantee that the Products will perform adequately or be fit for purpose.
- 14.6 **Civil Engineering Advisory.** Converge, its Affiliates and agents, employees, and/or subcontractors may sometimes provide technical guidance and advice relating to concrete technology (such as in regards to concrete mix design selection, thermal management of concrete, sensor placement in concrete), structural/civil engineering (such as advice on the temporary works design and construction sequencing on the Site) or other similar matters. The Product User hereby acknowledges that Converge is a technology provider and not an engineering consultancy or a structural engineer and as such, any advice provided shall be on an “as is” basis, and fitness for purpose of such advice is hereby disclaimed (whether such advice was provided informally).
- 14.7 **General disclaimer.** Converge Materials are provided on an “as is” and “as available” basis, with all faults, and all express, implied and statutory conditions and warranties (including, without limitation, any implied conditions or warranties of merchantability, satisfactory quality, fitness for a particular purpose, title, quiet possession, non-infringement, or quality of service, or that otherwise arise from a course of performance or usage of trade) are hereby disclaimed to the fullest extent permitted by Law. Converge does not make any representation, warranty, guarantee, or condition: (i) regarding the effectiveness, usefulness, timeliness, reliability, accuracy, completeness, or quality of any Converge Materials; (ii) that the use of Converge Materials will meet any Product User’s expectations or requirements, or will be uninterrupted, secure or error-free; and/or (iii) that any Converge Materials will comply with any Law or standard. Except as expressly and specifically provided in this Agreement Customer assumes sole responsibility and risk for results obtained from use of Converge Materials by itself and by Product Users, and for the conclusions drawn from such use and Converge shall have no liability for any damage caused by errors or omissions in any information, instructions, data or scripts provided to Converge or any actions taken by Converge at any Product User’s direction.
15. **TERM**
- 15.1 This Agreement shall commence on the Effective Date and the term shall be the term set out in the Customer Order. If no duration is set out in the Customer Order, this Agreement will terminate automatically at 23.59 on the day immediately prior to the first anniversary of the Effective Date. The Customer acknowledges and agrees that continuing use of Converge Hardware may require an additional subscription to Converge Software at then current pricing.
16. **TERMINATION**
- 16.1 Without affecting any other rights that it may be entitled to, either Party may give notice in writing to the other Party terminating this Agreement, effective immediately (or at a later date specified in the notice), if:

- (a) such other Party commits a material breach of any term of this Agreement and (if such breach is remediable) fails to remedy that breach within a period of thirty (30) days of being notified in writing to do so;
- (b) failure to so terminate would reasonably cause disrepute, reputational or moral harm to the terminating Party owing to its association with such other Party; or
- (c) such other Party has a receiver or administrative receiver appointed over it or over any part of its business or assets or passes a resolution for winding up (except for the purposes of a genuine scheme of solvent amalgamation or reconstruction) or a court of competent jurisdiction makes an order to that effect, or becomes subject to an administration order or enter into any voluntary arrangement with its creditors, or it ceases or threatens to cease to carry on business.

16.2 On termination of this Agreement for any reason:

- (a) except as set forth below, all rights and licences granted to the Customer under this Agreement shall immediately terminate, unless otherwise provided herein;
- (b) except as set forth below, the Customer shall, as reasonably directed, return and/or destroy, as well as make no further use of, any Converge Materials, and any equipment, hardware, property, and other items (and all copies of them) belonging to Converge and within Customer's possession or control;
- (c) the accrued rights, remedies, obligations, and liabilities of the Parties as at termination, or the continuation after termination of any provision expressly stated to survive or implicitly surviving termination, shall not be affected or prejudiced; and
- (d) all Fees payable to the end of any applicable term as provided for in clause 15 for Products and/or Services then being provided / received shall become immediately due.

16.3 On termination of this Agreement (other than pursuant to clause 16.1 above if Converge is the terminating Party), and subject to the payment to Converge of all outstanding Fees which shall be immediately due and payable, Converge shall, upon written request by the Customer, provide the Customer with a then-current copy of the Construction Data held by Converge (and a copy of any other data as may be agreed between the Parties at the time, subject to the Customer entering into appropriate licence terms as required by Converge) in .csv format (or such other format as may be agreed by Converge at the time).

16.4 Customer, and all Authorised Users, shall lose access to Converge SaaS and Licensed Programs on termination of this Agreement; provided, however, that Converge shall allow Customer the opportunity to download and access applicable Sensor Data for a period of fifteen (15) Business Days following termination. Following such time, Customer may need to request to access to a downloaded version of such Sensor Data, which may be subject to payment. Converge may offer the opportunity for continued access to historical Sensor Data subject to payment of a fee.

16.5 Clause 8 (Proprietary Rights), clause 9 (Data Licences), as well as clauses 11 (Confidentiality) through clause 17 (Miscellaneous) (inclusive) shall survive termination of this Agreement, as

shall any provision that ought by its nature, or that is expressed, to survive (such as any perpetual licences).

17. MISCELLANEOUS

- 17.1 **Force Majeure.** Neither Party shall have liability to the other Party under this Agreement if it is prevented from or delayed in performing its obligations under this Agreement, or from carrying on its business, by acts, events, omissions or accidents beyond its reasonable control, including, without limitation, strikes, lock-outs or other industrial disputes (whether involving its workforce or any other party), failure of a utility service; transport; the Internet; power grid; or telecommunications network, act of God, pandemic, war, riot, civil commotion, malicious damage, compliance with any Law or governmental order, rule, regulation or direction, accident, fire, flood, storm or default of such Party's suppliers or sub-contractors, or other events of a magnitude or type for which precautions are not generally taken in the industry, provided that the other Party is notified of such an event and its expected duration.
- 17.2 **Waiver and Remedies.** No failure or delay on the part of either Party in exercising any right or remedy hereunder shall operate as a waiver thereof, nor shall any single or partial exercise of any such right or remedy preclude any other or further exercise thereof, or the exercise of any other right or remedy. Any waiver granted hereunder must be in writing, duly signed by the waiving Party, and shall be valid only in the specific instance in which given. Except as may be expressly provided otherwise in this Agreement, no right or remedy conferred upon or reserved by either Party under this Agreement is intended to be, or shall be deemed, exclusive of any other right or remedy under this Agreement, at Law, or in equity, but shall be cumulative of such other rights and remedies.
- 17.3 **Severance.** If any provision of this Agreement is held by a court of competent jurisdiction to be illegal, invalid or unenforceable, then: (a) the remaining provisions of this Agreement shall remain in full force and effect; and (b) such provision shall be ineffective solely as to such jurisdiction (and only to the extent and for the duration of such illegality, invalidity or unenforceability), and shall be substituted (in respect of such jurisdiction) with a valid, legal and enforceable provision that most closely approximates the original legal intent and economic impact of such provision.
- 17.4 **Entire Agreement; Amendments.** This Agreement (and its Schedules and other documents expressly incorporated herein by reference) represents the entire agreement of the Parties with respect to the subject matter hereof, and supersedes and replaces all prior and contemporaneous oral or written understandings and agreements by the Parties with respect to such subject matter. In entering into this Agreement it does not rely on any undertaking, promise, assurance, statement, representation, warranty or understanding (whether in writing or not) of any person (whether party to this Agreement or not) relating to the subject matter of this Agreement, other than as expressly set out in this Agreement. This Agreement may only be amended by a written instrument duly signed by each Party. The section and subsection headings used in this Agreement are for convenience of reading only. This Agreement may be executed in counterparts each of which shall be considered an original, but all of which together shall constitute one and the same instrument. The language of this Agreement is solely English. All documents, notices, and other written communications relating to this Agreement shall be in English.

- 17.5 **Assignment.** Converge may assign or transfer this Agreement without the Customer's consent, and without notice or obligation to the Customer. This Agreement is personal to the Customer, and the Customer shall not assign (or in any other way transfer) this Agreement (or any of its obligations or rights hereunder) without Converge's express prior written consent. Any prohibited assignment shall be null and void.
- 17.6 **Relationship.** The relationship of the Parties is solely that of independent contractors, and neither Party nor its employees are the servants, agents, or employees of the other. Nothing in this Agreement shall be construed or deemed to: (a) create a relationship of employer and employee, principal and agent, joint venture, partnership, association, or otherwise between the Parties; or (b) authorise either Party to act as agent for the other, and neither Party shall have the authority to act in the name or on behalf of or otherwise to bind the other in any way (including, but not limited to, the making of any representation or warranty, the assumption of any obligation or liability and the exercise of any right or power). Each Party shall be responsible, and the other Party assumes no liability, for the acts, omissions, operations, facilities, expenses and salaries of such Party, its officers or employees.
- 17.7 **Third Party Rights.** Except as expressly provided for in this Agreement, a person or entity who is not a Party to this Agreement shall not have any rights under the Contracts (Rights of Third Parties) Act 1999 or any equivalent legislation in any other jurisdiction to enforce any of the provisions of this Agreement.
- 17.8 **Notices.** Any notice required to be given under this Agreement shall be in writing and shall be delivered by hand or sent by pre-paid first-class post or recorded delivery post to the other Party at its address set out in this Agreement, or such other address as may have been notified by that Party for such purposes, or sent by email to the other Party's agreed email address as set out in the Customer Order. A notice delivered by hand shall be deemed to have been received when delivered (or if delivery is not in business hours, at 9 am on the first Business Day following delivery). A correctly addressed notice sent by pre-paid first-class post or recorded delivery post shall be deemed to have been received at the time at which it would have been delivered in the normal course of post. A notice under this Agreement may be delivered by e-mail, the deemed delivery date and time being the time of transmission of the email.
- 17.9 **Governing Law and Jurisdiction.** This Agreement shall be governed by, and construed in accordance with, the laws of England and Wales. The United Nations Convention on Contracts for the International Sale of Goods is hereby disclaimed and shall not apply to this Agreement. Any claim, dispute or controversy between the Parties (whether contractual or non-contractual) under, or otherwise in connection with, this Agreement shall be subject to the exclusive jurisdiction of the courts located in London, England, and each Party hereby irrevocably submits to the personal jurisdiction of such courts and waives any jurisdictional, venue, or inconvenient forum objections to such courts.