



NEW ACCOUNT APPLICATION TERMS AND CONDITIONS

These **TERMS AND CONDITIONS** (collectively, the "**Agreement**") govern the New Account Application (the "**Account Application**") and are between **The Switch Enterprises, LLC ("THE SWITCH")** (formerly known as Beers Enterprises, LLC), a Delaware limited liability company with offices at 683 Main Street, Suite A-2, Osterville, MA 02655 and **Customer** as referenced on the Account Application. A Customer means (i) any person or entity using services provided by THE SWITCH, or (ii) the Customer specified in any Service Schedule (defined below). THE SWITCH and Customer may each be referred to as a "**Party**" and together as the "**Parties**." A Party's "**Affiliate**" means an entity, directly or indirectly, controlling or under direct or indirect common control with that Party, either now or in the future.

1. SCOPE

THE SWITCH shall provide Customer with equipment ("**Equipment**") and services ("**Service(s)**") (a) as set forth on service schedules ("**Service Schedule(s)**"), or (b) as requested by Customer (including requests by phone or email). Any Services requested by Customer or provided to the Customer shall be governed by this Agreement and Customer expressly agrees and acknowledges to the same.

2. RESPONSIBILITIES, ASSUMPTIONS AND DEPENDENCIES

2.1 Customer shall obtain and maintain during the Term of the Agreement any applicable licenses, authorizations, permits and rights to the signals and programs (video, audio, control or otherwise) and any content therein being accessed, transmitted, broadcast or produced (collectively, "**Content**") through the Services, and shall use the Services in compliance with applicable federal, state and/or local statutes, laws, regulations, rules or directives (including without limitation, all applicable rules, regulations, directives, or decisions of the Federal Communication Commission or any other government agency that may have jurisdiction over the Content).

2.2 Customer shall adhere to all operating procedures and regulations contained and set forth in THE SWITCH's Web- based Control System and User Operations Manual, which are incorporated herein by reference and as may be updated by THE SWITCH from time to time.

2.3 In no event shall Customer have the right to sell, lease, license, give, or otherwise dispose of its right to use or access the Services without the consent of THE SWITCH and shall bear all liability for any third party's use or access to the Services arising out of Customer's actions or omissions.

2.4 Any Equipment provided by The Switch shall remain the exclusive property of THE SWITCH and Customer shall be responsible for any loss or damage to such property and equipment. Customer will not permit to exist or create any liens or encumbrances in on THE SWITCH's Equipment. All THE SWITCH property and equipment shall be returned to THE SWITCH upon termination of this Agreement.

2.5 Customer shall allow THE SWITCH to perform maintenance operations, repairs and testing of components and equipment as deemed necessary by THE SWITCH.

2.6 Customer is solely responsible for confirming accuracy of any booking information made via phone or email.

2.7 THE SWITCH may, at its option, subcontract or provision the Services in whole or in part.

2.8 Any third-party software or Equipment required to provide the Services shall be governed by their applicable terms and conditions.

2.9 In the event that Services utilize or include any of the following components, the below designated additional terms and conditions located at www.theswitch.tv/legal shall apply:

- (i) The Master Facilities License Agreement shall apply to the utilization of space at any of THE SWITCH's facilities;
- (ii) The Supplemental Circuit Terms and Conditions shall apply to any Service requiring a circuit; and
- (iii) The Phenix Real Time Solutions, Inc. ("Phenix") Terms and Conditions shall apply to any software application supplied by Phenix.

2.10 Customer shall be the Customer of record for all Services provided hereunder and, together with any ordering Affiliate, shall be jointly and severally liable for all obligations set forth in this Agreement.

2.11 Customer Premises. Customer will allow The Switch access to and use of the Customer premises to the extent required by The Switch for the installation, connection, inspection and scheduled or emergency maintenance or removal of the facilities relating to the Services. The Switch shall have a right to inspect any Customer premises to ensure that Customer and/or any end user is complying with all applicable laws, rules and regulations regarding the Services and use of the facilities. Any such inspection or non-inspection, however, shall not relieve Customer of any of its duties under this Agreement nor shall it cause The Switch to waive any of its rights hereunder or impose any duty, obligation or liability onto The Switch. Customer represents to The Switch that Customer has obtained or will obtain on a timely basis all permissions and consents from third parties necessary to allow The Switch access as set forth herein. Customer will be responsible for providing and maintaining at its own expense power, heating, ventilation and air conditioning as necessary to maintain the proper environment for the facilities on the Customer premises. Customer will provide, and will ensure The Switch is provided, a safe place to work and comply with all laws and regulations regarding the working conditions on the Customer premises. In the event that Customer fails to meet its obligations regarding the Customer premises hereunder and, as a result, The Switch is unable to install or continue the delivery of Services, then notwithstanding the absence of Services, Customer will pay all fees for the Service(s) for such Services during such period of time. Customer will provide the correct Customer premises contact details and address(es) for installation and provision of the Service in the applicable Service Schedule. The Switch will not be liable for any delays in the installation or provision of Service resulting from Customer's error, discrepancy, change or relocation relating to the Customer premises. To the extent Customer changes the supplied Customer premises contact details, addresses or specifications, Customer will communicate such changes in the format prescribed by The Switch with The Switch's prior written consent (not to be unreasonably withheld).

2.12 Services Provided by The Switch's Affiliates. If a Service Schedule provides for the provision of Services in a jurisdiction other than a jurisdiction within which The Switch is authorized to provide services, such Services may be provided to Customer and/or to Customer's end user by an Affiliate of The Switch and The Switch may coordinate or manage that Affiliate's Services in that jurisdiction. In certain jurisdictions where an Affiliate of The Switch is providing the Services, then the relevant The Switch Affiliate has the right to require a letter of undertaking or similar document ("LOU") from Customer and/or Customer's end user in a format prescribed by The Switch Affiliate. The Switch and The Switch Affiliate shall have no obligation to provide any Services until it receives the LOU. If a Service Schedule requires the delivery of Services in a jurisdiction where, in order for such Service Schedule to be enforceable, additional terms must be added, the Parties shall incorporate such additional terms in the Service Schedule (preserving to the fullest practicable extent this Agreement).

2.13 The Parties acknowledge and agree that any regulated telecom services provided in a country for which no affiliate of The Switch holds applicable regulatory authority will be provided by The Switch's third-party service provider(s), duly licensed to provide the services in such country. Customer shall be designated as the customer of record for the service provided by the respective The Switch's third-party service provider. The Service charges include the fee charged by The Switch's third-party service providers and the management fee charged by The Switch to provide the sourcing and managing service for Customer. The scope of Services includes service ordering arrangement, service provisioning management, billing and trouble reporting referral.

2.14 Misuse of the Services. Customer is prohibited from marketing and/or re-branding the Services purchased by it as its own product and services or to resell the Services to third parties, unless it has received prior written authorization from The Switch and it has the regulatory authority to do so in each applicable jurisdiction. Customer shall not use the Services nor allow the Services to be used to transmit, distribute or store contents or messages (including e-mail messages) which are illegal, potentially harmful (including but not limited to viruses, worms, password-cracking programs or Trojan horses); or fraudulent or misleading (including but not limited to false, deceptive, or misleading statements, claims, or representations), as determined by Supplier in Supplier's sole reasonable discretion, or to transmit or distribute unsolicited e-mail messages where such e-mail messages could reasonably be expected to provoke complaints (SPAM). Supplier may, at Supplier's option, suspend or terminate the Services in the event that Customer or end users do not comply with this Section 2.14. Customer acknowledges and agrees that Supplier does not monitor and will have no liability or responsibility for the content of any communications transmitted via the Services.

2.15 Internet Access and Content. The Switch provides only access to the Internet. The Switch does not operate or control the information, services, opinions or other content of the Internet (collectively, "**Internet Content**"), and The Switch makes no warranties or representations regarding Internet Content. Customer agrees that it shall make no claim whatsoever against The Switch relating to Internet Content or respecting any information, product, service, or software ordered through the Internet. The Switch reserves the right to take such measures as may be reasonably necessary, in The Switch's sole discretion, to ensure security and continuity of service on The Switch network, including but not limited to identification and blocking or filtering of Internet traffic sources which The Switch deems to pose a security or operational risk or a risk of violation of its Acceptable Use Policy located at www.theswitch.com/legal and/or Section 2.14. Customer acknowledges and agrees that The Switch does not own or control third party networks, and The Switch is not responsible or liable for any filtering or access restrictions imposed by such third-party networks or for the performance (or non-performance) of such third-party networks or within interconnection points between The Switch network and such third-party networks.

3. PRICE AND PAYMENT TERMS

3.1 Terms of Payment. Customer shall pay THE SWITCH any non-recurring and monthly recurring charges (a) set forth in an applicable Service Schedule signed by the Parties; or (b) if there is no Service Schedule, identified on THE SWITCH's rate card. For any Services requiring installation, billing for each Service shall commence upon installation. Customer shall be responsible for payment of any closed shop fees assessed at any location in which Customer requires Service, and any other incremental charges provided Customer is made aware of said charges in advance. Customer shall make payment of such fees to THE SWITCH within twenty-one (21) days from the date of invoice unless otherwise specified on the Service Schedule. Payment of invoices must be made in full without deduction or setoff. Invoices may be sent via email to the email address provided by Customer. Failure to timely make any payment when due shall be a material breach of this Agreement.

3.2 Billing Period. THE SWITCH shall bill Customer for all monthly recurring fees after commencement of the Service on a monthly basis in advance, prorated for any partial calendar month of service. Customer must provide written notice to THE SWITCH of any disputed charges within sixty (60) days from the date of the affected invoice or Customer waives its right to dispute. THE SWITCH shall invoice non-recurring fees at any time after Customer's execution of the relevant order.

3.3 Tax Liability. All fees and charges for Services are exclusive of taxes. Unless Customer is entitled to a tax or fee exemption and provides acceptable, advance documentation to THE SWITCH of said exemption, Customer shall pay all current and future taxes, fees and assessments due, imposed, assessed or levied against any of the goods or Services contemplated in this Agreement, by any federal, state, local, provincial, and foreign government or taxing authority including, without limitation, all sales, use, transfer, gross receipts, duties, Universal Service Fund assessments or any similar assessments, value added, excise, regulatory surcharges, recovery fees, or any similar transactional charges relating to the sale, use or provision of the Services. If Customer is or was required by law to make any deduction or withholding from any payment due hereunder to The Switch, then, notwithstanding anything to the contrary contained herein, the gross amount payable by Customer to The Switch will be increased so that, after any such deduction or withholding for taxes, the net amount received by The Switch will not be less than The Switch would have received had no such deduction or withholding been required. If any taxing or Governmental Authority asserts that Customer should have made a deduction or withholding for or on account of any taxes with respect to all or a portion of any payments made hereunder, or that The Switch should have collected certain taxes from Customer which The Switch did not collect, Customer hereby agrees to indemnify The Switch for such taxes and hold The Switch harmless on an after-tax basis from and against any taxes, interest or penalties levied or asserted in connection therewith. A Government Authority means any governmental or quasi-governmental body, whether foreign or domestic, including any department, agency, commission, bureau or other administrative or regulatory bodies, courts, public utilities and communications authorities (e.g., the U.S. Federal Communications Commission, USAC or Telecom Regulation Authority of India).

3.4 Late Fees. In the event Customer fails to remit any payment when due, THE SWITCH may charge Customer an additional fee equal to 1.5% of the then outstanding and unpaid fees for each month that such charges remain outstanding. Imposition of late fees does not waive any other rights or remedies THE SWITCH may have under this Agreement.

3.5 Suspension of Service. In the event Customer fails to remit any payment when due, THE SWITCH may suspend any Service governed by this Agreement, without prejudice to all other rights and remedies of THE SWITCH, until such time as all outstanding invoices have been paid in full. Customer shall be liable for all costs of collection (including any and all legal costs).

3.6 Credit Limit. The Switch reserves the right to perform credit checks and modify the billing and payment terms and/or establish a credit limit/credit terms for Services provided under this Agreement by written notice if The Switch determines that there is a material financial risk or based on the payment history of the Customer.

4. TERM AND TERMINATION

4.1 Term. This Agreement shall commence on the earlier of (a) the effective date of the Service Schedule, if any, or (b) on the date THE SWITCH makes a Service available to the Customer. The **"Service Term"** for any applicable Service shall commence upon implementation of the Service and shall continue through the length of the term specified in the Service Schedule ("Initial Term") and any extensions thereunder (each, a **"Service Term"**), unless earlier terminated in accordance with this Agreement. At the end of the Initial Term, the Service Term shall automatically renew for successive one (1) year periods at The Switch's then-current extension rates unless terminated by either Party in accordance with section 4.2 herein.

4.2 Termination. If either Party hereto defaults in the performance of any of its obligations hereunder and fails to cure its breach within fifteen (15) business days of notice, the other Party may terminate this Agreement or any Service hereunder upon written notice to the defaulting Party. If Customer becomes insolvent or ceases to conduct its business, assigns the business for the benefit of creditors, files a petition in bankruptcy, if a receiver, trustee in bankruptcy or similar officer is appointed to take charge of all or a part of Customer's property, THE SWITCH may, at its sole discretion, terminate this Agreement upon giving fifteen (15) days written notice. Except if otherwise specified in a Service Schedule, either Party may terminate an individual Service at the end of its Initial Term or Service Term (whichever is applicable), by providing no less than ninety (90) days advance written notice to the other Party subject to Customer's payment to The Switch of any outstanding Service Fees, including connection and/or disconnection charges, for the Service(s) so terminated. The Switch shall have the right to immediately terminate or suspend this Agreement or any order form (as applicable), and discontinue or suspend the delivery of the affected Services (without liability) in the event that Customer or its user(s) have violated any law, rule, regulation or policy related to the Services or its use, or have engaged in conduct that has caused or may cause damage to The Switch's facilities, network or third parties, or where The Switch receives a direction from any governmental authority to suspend or terminate the provision of Services to Customer. For suspension or termination under this section, The Switch shall provide written notice (where practicable) thereof to Customer.

4.3 Recovery of THE SWITCH Equipment. Upon termination of this Agreement for any reason, Customer shall return THE SWITCH's Equipment immediately but, in no event later than thirty (30) days of the termination date, or Customer will pay the cost of replacing the Equipment.

4.4 Termination Charges. If Customer terminates a Service before expiration of the applicable Service Term or cancels a Service after ordering it, for any other reason other than THE SWITCH's breach, or if THE SWITCH suspends or terminates a Service due to any breach by Customer, then Customer shall pay an early suspension/termination charge equal to: (a) for each Service so suspended or terminated, all previously invoiced but unpaid non-recurring fees for the terminated Service; (b) for each Service Schedule so suspended or terminated, all monthly recurring fees for the terminated Service as set forth in the applicable Service Schedule, multiplied by the number of months remaining in the applicable Service Term at the time of termination; and (c) for early termination of booked ICOD Services with minimum usage commitments, or for one-time only events, the full value of the booked Services. Customer acknowledges that such early termination charge constitutes liquidated damages and not a penalty, is a fair and reasonable sum, and shall not be challenged by Customer in any legal action.

4.5 Effect of Termination. Termination by either Party does not waive any other rights or remedies THE SWITCH may have under this Agreement. Termination shall not affect the rights and obligations of the Parties regarding any other Service.

5. REPRESENTATIONS AND WARRANTIES

5.1 THE SWITCH warrants and represents that the Services will be provided with promptness and diligence and will be executed in a workmanlike manner, in accordance with the practices and standards used in similar professional well- managed operations.

5.2 Customer warrants and represents that Customer is free to enter into this Agreement, is not subject to any obligation or disability and has not made and will not make any grant or assignment which will prevent or interfere with the full performance of its obligations, or which will conflict with or impair the complete enjoyment of the rights and privileges granted to THE SWITCH.

6. LIMITATION OF LIABILITY

6.1 Except as otherwise set forth in this agreement, THE SWITCH makes no warranties, representations or other agreements, express or implied with respect to the Services, including, without limitation, any implied warranties of merchantability or fitness for a particular purpose. In no event will THE SWITCH's liability for Service interruptions (in the aggregate) ("**Service Outage**") in any given month exceed 100% of the Service fee incurred during the month in which the Service Outage occurs. THE SWITCH's entire liability for any claim, loss expense, or damage under this Agreement or any Service Schedule shall in no event exceed the sum actually paid by Customer to THE SWITCH for the Service giving rise to the claim in the twelve (12) months preceding the claim. NOTWITHSTANDING ANY OTHER PROVISION HEREOF, NEITHER PARTY SHALL BE LIABLE FOR (A) ANY INDIRECT, INCIDENTAL, SPECIAL, CONSEQUENTIAL, EXEMPLARY OR PUNITIVE DAMAGES OR (B) ANY DAMAGES FOR LOST PROFITS, LOST REVENUES, LOSS OF GOODWILL, LOSS OF ANTICIPATED SAVINGS, LOSS OF CUSTOMERS, LOSS OF DATA, INTERFERENCE WITH BUSINESS OR COST OF PURCHASING REPLACEMENT SERVICES, ARISING OUT OF THE PERFORMANCE OR FAILURE TO PERFORM UNDER THIS AGREEMENT, WHETHER OR NOT CAUSED BY THE ACTS OR OMISSIONS OR NEGLIGENCE (INCLUDING GROSS NEGLIGENCE OR WILLFUL MISCONDUCT) OF ITS EMPLOYEES OR AGENTS, AND REGARDLESS OF WHETHER SUCH

PARTY HAS BEEN INFORMED OF THE POSSIBILITY OR LIKELIHOOD OF SUCH DAMAGES. NOTHING IN THIS AGREEMENT SHALL BE CONSTRUED AS LIMITING THE LIABILITY OF EITHER PARTY FOR (A) PERSONAL INJURY OR DEATH RESULTING FROM THE NEGLIGENCE OF A PARTY OR ITS EMPLOYEES, (B) FRAUD OR FRAUDULENT MISREPRESENTATION, OR (C) WILLFUL MISCONDUCT.

6.2 Service Credits. Service Credits and the termination rights (if any) granted in a Service Schedule, constitute Customer's sole and exclusive remedy in respect of all Service-related matters for which Service Credits are offered as a remedy in the relevant Service Schedule.

7. CONFIDENTIALITY

Except as required by law, both Parties shall exercise reasonable efforts to protect any proprietary information and shall keep confidential any proprietary information obtained under this Agreement and will not divulge it to any entity or person (other than their employees who need to know the information and subject to their employer making them fully aware of and causing them to comply with the provisions of this section) without the consent of the other Party. Confidentiality shall not apply to information (i) which was in the public domain at the time of disclosure other than in breach of this Agreement; or (ii) in the possession of the receiving Party prior to its disclosure to them under the terms of this Agreement; or (iii) obtained from a third party who is free to divulge it; or (iv) which is independently developed by the receiving Party or its employees or where such Party can show there has been no breach of confidentiality under this Agreement; or (v) the disclosure of information is required by a court of law or other competent authority.

8. GOVERNING LAW

This Agreement shall be construed under the laws of the State of New York without regard to choice of law provisions thereof. Any action relating to this Agreement shall be instituted and prosecuted in the courts of New York City, New York. Customer specifically consents to the personal jurisdiction of such courts.

8.1 Regulatory and Legal Changes. In the event of any change in applicable law, regulation, decision, rule or order that materially increases The Switch's costs or adversely affects The Switch's delivery of the Services, The Switch and Customer agree to negotiate regarding the rates to be charged to Customer to reflect such increase in cost or the revisions to this Agreement necessary to equitably adjust for such adverse effect. In the event that the Parties are unable to reach agreement within thirty (30) days after The Switch's delivery of written notice requesting negotiation, then (i) The Switch may pass such increased costs through to Customer upon thirty (30) days' notice and/or revise this Agreement as appropriate to equitably adjust for such adverse effect, and (ii) Customer may terminate the affected Service Schedule without termination liability by delivering written notice of termination no later than thirty (30) days after the effective date of the rate increase or after a materially adverse change to the Agreement pursuant to clause (i).

9. ASSIGNMENT

Customer may not assign this Agreement or any Service Schedule, in whole or in part, without the prior written consent of THE SWITCH. THE SWITCH may assign this Agreement (or any of its rights and obligations under this Agreement or any Service Schedule) (a) to any Affiliate; or (b) in connection with any merger, consolidation, reorganization, sale of all or substantially all of its assets, or any similar transaction.

10. NOTICES

All notices, requests, demands and other communications between the Parties must be in writing. All notices to Customer and any non-legal notices to THE SWITCH regarding this Agreement or any Service may be sent by email at the address provided by the applicable Party. An email is deemed received on the day it is sent provided said submission occurs during regular business hours. An email sent after regular business hours shall be deemed to have been received on the next business day. All legal notices directed to THE SWITCH regarding this Agreement must be sent by certified mail or a recognized overnight courier and shall be sent to the addresses provided below.

The Switch Enterprises, LLC
683 Main Street, Suite A-2, Osterville, MA 02655
Attn: Associate General Counsel

A second copy of all notices of a legal nature shall be sent to:
Attn: Associate General Counsel
E-mail: legal@theswitch.tv

11. FORCE MAJURE

Any delay in or failure of performance by THE SWITCH under this Agreement or any Service Schedule is not a breach of this Agreement or Service Schedule to the extent that such delay or failure is caused by events beyond THE SWITCH's reasonable control, including, but not limited to, acts of God, fire, flood, hurricane, or other natural catastrophe; interruption in water, electricity, heating or air conditioning; pandemics; quarantines; embargoes; malicious acts of third parties; labor disputes; terrorist actions; laws, orders, policies, regulations, directions or actions of governmental authorities having jurisdiction over the subject matter hereof or any civil or military authority; national emergency; insurrection; riot or war; inability to obtain access to any premises or facility required to provide Services; or inability to obtain circuits or equipment, material or other supplies, or other similar occurrence beyond the control and without the fault or negligence of THE SWITCH (each, a "Force Majeure Event").

12. PRIVACY AND INTELLECTUAL PROPERTY

12.1 Use of Customer's information shall be governed by THE SWITCH'S Privacy Policy located at www.theswitch.tv/legal. For Customers located in the European Union and European Economic Area only, use of Customer's information shall be governed by THE SWITCH's GDPR Privacy Notice located at www.theswitch.tv/legal.

12.2 Intellectual Property. Customer is and shall remain exclusively entitled to all right and interest in and to all Customer technology, and The Switch is and shall remain exclusively entitled to all right and interest in and to all The Switch technology. Customer shall not, directly or indirectly, reverse engineer, de-compile, disassemble or otherwise attempt to derive source code

or other trade secrets from The Switch technology.

12.3 License. Ownership of any and all intellectual property rights in any equipment that may also be furnished by The Switch, its Affiliate(s) or licensor(s) or its designated third party vendor(s) (as applicable) for use at Customer's premises as part of any Services ("The Switch-Provided CPE"), software, operating manuals and associated documentation, made available as part of any Service or otherwise generated by or for The Switch in connection with this Agreement, shall remain the property of The Switch or its licensors. The Switch will grant the Customer a personal, non-transferable and non-exclusive license to use and to permit its end-users to use, in object code form, all software and associated written and electronic documentation and data furnished by The Switch pursuant to this Agreement ("Software"), solely as necessary for receipt of the Service and solely in accordance with this Agreement and the applicable written and electronic documentation. The term of any license granted by The Switch pursuant to this Section 12.3 is co-terminus with the term for the Service with which the Software is associated. If the Customer purchases The Switch-Provided CPE, once title and risk-of-loss pass to Customer, Customer will be granted a perpetual, royalty free license to use the Software in connection with The Switch-Provided CPE for so long as Customer continues to own or otherwise use The Switch-Provided CPE in accordance with the terms hereof.

12.4 Intellectual Property Infringement Claims. In the event of a third party claim of intellectual property infringement, The Switch may, at its sole option, (i) obtain for Customer the right to continue using the Services, (ii) modify the Services so that the Services are non-infringing, (iii) replace the Services with a functionally equivalent, non-infringing service, or (iv) if the alternatives in Section 12.4(i)-(iii) are not available, The Switch may so notify Customer and terminate such infringing Services without penalty to either Party. Notwithstanding anything in this Agreement to the contrary, this Section 12.4 is Customer's sole and exclusive remedy for any intellectual property infringement claims.

12.5 Trademarks. Neither Party shall have the right to use the other Party's or its Affiliates' trademarks, logos, trade dress, service marks, trade names or service names in any manner, or to refer to the other Party by name or identifiable description in any marketing, promotional or advertising materials or activities, without the written consent of the other Party. Notwithstanding the foregoing, The Switch may provide to any of its other customers or potential customers who are bound by a nondisclosure agreement access to a list of The Switch's customers and a generic description of the services purchased by such customers, which list may use Customer's trade name (but not trademark) and the Services purchased by Customer (provided that financial terms relating to the purchase shall not be disclosed).

12.6 Publicity. Neither Party shall issue any public statement or any press release relating to the relationship between The Switch and Customer except as required by law or agreed in writing between the Parties.

13. GENERAL PROVISIONS

13.1 Authorization Signature. Any Service Schedules bound by this Agreement are not valid or binding unless and until signed by a duly authorized representative of both Parties. No amendment, modification, extension, release, discharge or waiver of any Service Schedule shall be valid or binding unless in writing signed by a duly authorized officer of both Parties. No oral agreement shall be binding on either Party unless and until reduced to writing and signed by a duly authorized officer of each Party. Notwithstanding the foregoing, this Agreement may be amended from time to time at THE SWITCH's sole discretion.

13.2 Severability. The invalidity or unenforceability of any particular provision of this Agreement does not affect the other provisions hereof, and this Agreement will be construed in all respects as if such invalid or unenforceable provision has been omitted.

13.3 Waiver. No delay or omission by either Party to exercise any right or power it has under this Agreement shall impair or be construed as a waiver of such right or power. A waiver by either Party of any covenant or breach shall not be construed to be a waiver of any succeeding breach or of any other covenant. All waivers must be in writing and signed by the Party waiving its rights.

13.4 Relationship of the Parties. THE SWITCH agrees to perform the Services solely as an independent contractor. No employer and employee relationship exists between THE SWITCH and Customer, either under common law or any statute. The relationship between THE SWITCH and Customer shall not create any actual or apparent agency, partnership or joint venture, franchise or other association between the Parties.

13.5 Survival Clause. All obligations and duties, which by their nature extend beyond the expiration or termination of this Agreement shall survive and remain in effect beyond any expiration or termination.

13.6 Complete Agreement. This Agreement, including all Service Schedules signed by the Parties, and The Switch Web-based Control System, User Operations Manual, constitutes the entire agreement between the Parties and supersedes any prior understandings or written or oral agreements between the Parties respecting subject matter of this Agreement. Any Service Schedules executed pursuant to this Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which taken together will constitute one and the same instrument. To the extent that a Service Schedule is signed and delivered by means of a facsimile or electronic mail, it shall be considered to have the same binding legal effect as if it were the original signed version delivered in person. No Party shall raise the use of facsimile or electronic mail to deliver a signature or the fact that any signature or agreement or instrument was transmitted or communicated through the use of facsimile or electronic mail as a defense to the formation or enforceability of the agreement and Customer forever waives any such defense.

13.7 Conflict of Terms. In the event of a conflict between the terms and conditions contained in this Agreement, any Service Schedule, or other agreement, purchase order or quotation, the terms and conditions in this Agreement shall control unless specific reference is made in a writing signed by both Parties to the conflicting provision in this Agreement with an express statement that the provision in this Agreement shall not apply. In no event shall a Customer issued purchase order alter or vary the terms of this Agreement or any applicable Service Schedule.

13.8 Headings. The section headings contained in this Agreement are for reference purposes only and shall not affect the meaning or interpretation of this Agreement.