

MASTER SERVICE AGREEMENT

This **MASTER SERVICE AGREEMENT** ("**Agreement**") is between **The Switch Enterprises, LLC** ("**THE SWITCH**"), a Delaware limited liability company located at 683 Main Street, Suite A-2, Osterville, MA 02655 and **Customer** and its Affiliates. 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. Unless agreed to in writing by both Parties, in the event of a conflict between the terms and conditions contained in this Agreement and the terms set forth in any Service Schedule, purchase order, or quotation, the terms in this Agreement shall prevail..

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 or transmitted 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 signals or programs being transmitted through the Services);

2.2 Customer shall adhere to all operating procedures and regulations contained and set forth in THE SWITCH's Web-based Control System, User Operations Manual provided by THE SWITCH, 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 In the event that Services include local fiber circuits, the Supplemental Circuit Terms and Conditions located at www.theswitch.tv/legal shall apply to the Services.

2.8 2.8 THE SWITCH may, at its option, subcontract

or delegate the provision of the Services in whole or in part.

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.

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 on the first day of a month, prorated for any partial calendar month of service. THE SWITCH shall bill all non-recurring and installation fees as incurred. Customer must provide written notice to THE SWITCH of any disputed charges within six (6) months of the date of the affected invoice or Customer waives its right to dispute.

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.

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.

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.

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 Schedule shall commence upon full implementation of all Services therein and shall continue through the length of the term specified in the Service Schedule and any extensions thereunder (each, a “**Service Term**”), unless earlier terminated in accordance with this Agreement.

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 either Party 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 either Party’s property, the other Party may, at its sole discretion, terminate this Agreement upon giving fifteen (15) days written notice.

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 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 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; INDEMNIFICATION

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.

5.3 THE SWITCH agrees to defend, indemnify and hold harmless Customer and its Affiliates, successors, transferees, assignees and licensees, and the respective agents, officers, directors and employees of each, from and against any and all damages, costs (including, without limitation, reasonable attorneys’ fees and legal expenses),

expenses, liabilities, claims and causes of action in any way arising by reason of or relating to: (i) any claim for any compensation by any third party related to the breach by THE SWITCH of any warranty or representation in this Agreement; (ii) any claim by any third party that the Services or THE SWITCH’s business methods or the use thereof constitute an infringement upon any copyright, patent, trademark, trade secret or other intellectual property right. In no event shall THE SWITCH have any liability to Customer for direct damages whether at law or in equity, for any breach or alleged breach by THE SWITCH of any provision of this Agreement.

5.4 Customer agrees to defend, indemnify and hold harmless THE SWITCH and its Affiliates, successors, transferees, assignees and licensees, and the respective agents, officers, directors and employees of each, from and against any and all damages, costs (including, without limitation, reasonable attorneys’ fees and costs in the defense and disposition of such matters), expenses, liabilities, claims and causes of action in any way arising by reason of or relating to any breach of this Agreement.

5.5 The indemnified Party shall promptly notify the indemnifying Party, in writing, of any claim or litigation to which the indemnities set forth herein applies, provided that the failure of the indemnified Party to do so shall not relieve the indemnifying Party of its obligations under this section except to the extent that the indemnifying Party is actually prejudiced by such failure. The indemnified Party shall have the right (but not the obligation) to participate in such defense or settlement with its own counsel and at its own cost. The indemnified Party shall provide reasonable assistance to the indemnifying Party in the resolution of such proceedings.

6. LIMITATION OF LIABILITY

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. 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 NO EVENT SHALL THE SWITCH BE LIABLE TO CUSTOMER OR ANY THIRD PARTY FOR ANY CONSEQUENTIAL, INCIDENTAL, INDIRECT, PUNITIVE OR SPECIAL DAMAGES (INCLUDING LOSS OF REVENUE, INCOME, PROFITS, DATA, BUSINESS OR GOOD WILL, COST OF REPLACEMENT SERVICES, DIMINUTION OF VALUE) IN CONNECTION WITH THIS AGREEMENT OR THE SERVICES, WHETHER OR NOT LIABILITY IS BASED ON BREACH OF CONTRACT, TORT, STRICT LIABILITY, BREACH OF WARRANTY, FAILURE OF ESSENTIAL PURPOSE OR OTHERWISE, EVEN IF IT IS ADVISED OF THE LIKELIHOOD OF SUCH DAMAGES.

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.

9. ASSIGNMENT

Neither Party may assign this Agreement or any Service Schedule, in whole or in part, without the prior written consent of the other Party, which consent shall not be unreasonably withheld or delayed, except that either Party may assign this Agreement or any of its rights in whole or in part to an Affiliate or to a party acquiring all or substantially all of the shares in the capital or assets of the assigning Party after provision of notice to the non-assigning Party.

10. NOTICES

All notices, requests, demands and other communications between the Parties must be in writing. All notices regarding this Agreement directed to Customer shall be sent to the address provided by the Customer, and may be sent by email. An email to the Customer is deemed to have been received on the day it is sent provided said submission occurs during regular business hours. An email sent to Customer after regular business hours shall be deemed to have been received on the next business day.

All notices directed to THE SWITCH regarding this Agreement shall be sent to the addresses provided below.

The Switch Enterprises, LLC

683 Main Street, Suite A-2
Osterville, MA 02655
Attn: President and CEO
Fax: 508-420-3779

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

11. FORCE MAJEURE

Neither Party shall have any claim or right against the other for any failure of or delay in performance by the other Party under this Agreement to the extent such failure or delay is caused by or the result of causes beyond the reasonable control of such other Party, including, but not limited to, acts of God, fire, flood, hurricane, or other natural catastrophe; interruption in water, electricity, heating or air conditioning; quarantines; embargoes; malicious acts of third parties; labor disputes affecting either Party or its subcontractors and for which the Party claiming force majeure is not responsible; 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 affected Party.

12. GENERAL PROVISIONS

12.1 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.

12.2 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.

12.3 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.

12.4 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.

12.5 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.

12.6 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.

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