



## **MASTER SERVICE AGREEMENT**

This **MASTER SERVICE AGREEMENT** ("**Agreement**") is between **Beers Enterprises, LLC d/b/a The Switch**, a Delaware limited liability company with offices at 683 Main Street, Suite A-2, Osterville, MA 02655 or its applicable subsidiary as specified in any Service Schedule (defined below) ("**THE SWITCH**"), 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. 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**

From time to time during the Term, THE SWITCH shall provide Customer services (the "**Service(s)**") (a) as set forth and described on service schedules issued pursuant to this Agreement (the "**Service Schedule(s)**"), or (b) any services provided by THE SWITCH, including but not limited to, any equipment or services provided through THE SWITCH centers or THE SWITCH's network known as Inter-City On Demand Service ("**ICOD**") booked by Customer from time to time. The Services will provide Customer with connectivity between Customer, its Affiliates, THE SWITCH and third 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, as amended, shall prevail unless specific reference is made to the Section of this Agreement that contains the conflicting provision and an express statement is made within a separate writing signed by both Parties that the intent is to supersede the provision.

### **2. RESPONSIBILITIES, ASSUMPTIONS AND DEPENDENCIES**

**2.1** THE SWITCH shall be responsible for maintaining all of its own equipment in connection with the provision of the Services to Customer.

**2.2** THE SWITCH shall provide Customer with reasonable technical support as may be requested by Customer from time to time from THE SWITCH Network Operations Center (the "**NOC**") which will be manned twenty-four hours per day, seven days per week.

**2.3** THE SWITCH does not assume any responsibility or make any guaranty or representations with respect to the availability of any specific signal or program (video, audio, control or otherwise) through the Services.

**2.4** Customer shall obtain and maintain or cause to be obtained and maintained, during the Term of the Agreement any applicable licenses, authorizations, permits and rights to the signals and programs (video, audio, control or otherwise) being accessed or transmitted through the Services.

**2.5** 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.

**2.6** Customer shall use THE SWITCH's Services solely for the purpose of distributing and receiving signals or programs to those entities that are connected to THE SWITCH. 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.

**2.7** Customer 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); and in compliance with all technical requirements of the common carriers that provide the connecting circuits.

**2.8** Customer acknowledges that THE SWITCH may provide certain property and equipment in connection with the Services. Said property and equipment shall remain the exclusive property of THE SWITCH and Customer shall take reasonable care of said equipment (which care shall be not less than that which it uses in respect of its own property of a similar nature) and protect it from fire, theft, vandalism or other casualty loss. Customer shall be responsible for loss or damage to such property and equipment, including loss or damage due to the actions of its employees and/or agents. Customer will not permit to exist or create any liens or encumbrances in on THE SWITCH's property and equipment relating to the Services. All THE SWITCH property

and equipment shall be returned to THE SWITCH upon termination of this Agreement.

**2.9** Customer shall provide a secure Internet protocol connection for any control system panel provided by THE SWITCH at Customer's sole expense.

**2.10** Customer understands that for continued operation of the Services in accordance with the terms of this Agreement, it shall be necessary to perform maintenance operations, repairs and testing of components and equipment from time to time, as described in Paragraph 5. Customer agrees to cooperate with and assist THE SWITCH in the performance of such functions so as to best ensure that such functions are properly accomplished and so as to minimize any interference with the provision of the Services to Customer.

**2.11** Customer agrees that THE SWITCH shall have no responsibility or liability whatsoever with respect to any Customer signal or program outside the points of entry where any such signal or program enters into or departs from THE SWITCH Network. As used herein, points of entry and/or departure shall refer to those points where a Customer signal or program enters into or departs from THE SWITCH equipment furnished hereunder, regardless of location.

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

**2.13** Full implementation of Service is subject to availability of facilities and completion of installation and testing of any required fiber circuits by Customer and THE SWITCH's fiber carrier (the "**Carrier**"). Customer acknowledges that THE SWITCH is obtaining certain facilities from the Carrier and that implementation by Customer's requested start date will be subject to Customer's provision of adequate lead time. THE SWITCH will seek the earliest possible implementation. Customer further acknowledges that THE SWITCH will only provide Service from the Carrier demarcation point within the building at the Service address provided by Customer and Customer is responsible for any fiber or coax extension to the desired Service location within the building.

**2.14** Certain components of the Services provided hereunder are subject to the Carrier's special fiber service arrangement agreement (the "**Carrier Service Agreement**") entered into between THE SWITCH and Carrier. THE SWITCH and Customer recognize and acknowledge that THE SWITCH is obtaining local metro fiber optic service from the Carrier and will be subject to the Carrier Service Agreement. Accordingly, to the extent that the Carrier Service Agreement directly or indirectly concerns any fiber optic usage, the terms of this Agreement shall be subordinate to the terms of the Carrier Service Agreement and the rights or interest of Customer shall be no greater than the rights or interest of THE SWITCH under the Carrier Service Agreement. In the event that THE SWITCH rights or interest under the Carrier Service Agreement shall be greater than the rights or interests of Customer hereunder, Customer is not entitled to any rights or interest greater than is provided in this Agreement. In the event of any conflict between the terms and provisions of this paragraph and the terms and provisions of any other paragraph of this Agreement, then the terms and provisions of this paragraph shall control.

**2.15** In the event that the duties and obligations of the Carrier and THE SWITCH change in such a manner as to materially and adversely affect the Service to be provided to Customer under this Agreement and provided that Customer's accounts with THE SWITCH remain current, Customer shall have the right to terminate the affected Service by providing written notice to THE SWITCH in accordance with the notice provision herein.

### **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. Any Services not set forth in a Service Schedule shall be invoiced to Customer at THE SWITCH's then current ICOD rate. For any Services requiring installation, billing for each Service shall commence upon installation. Additional charges may apply for any Service requiring construction, repeaters, or expedites. In the event that closed shop fees are assessed at any location in which Customer requires Service, said closed shop and associated administrative fees will be invoiced to and paid by Customer. 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. Service commencing or ending on a date other than the first day of the month will be prorated during the initial month of Service based upon a 30-day month. 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 after the date of the affected invoice to preserve Customer's right to dispute.

**3.3 Tax Liability.** All fees and charges listed for Services are exclusive of any taxes that may be imposed on or applicable to the Services being provided by THE SWITCH pursuant to this Agreement. 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 being provided by THE SWITCH. If Customer is entitled to an exemption from any applicable taxes for the Service, Customer may submit to THE SWITCH a valid tax exemption certificate (in a form reasonably acceptable to THE SWITCH) and income tax withholding certificate or other documentation acceptable to the taxing authorities within fifteen (15) days of the first invoicing date

**3.4 Late Fees.** In the event Customer fails to remit payment within the time period above, THE SWITCH may charge Customer an additional fee equal to 1.5% of the then outstanding and unpaid fees for each month, or portion thereof that such charges remain outstanding.

**3.5 Suspension of Service.** In the event of any non-payment of an invoice by its due date, THE SWITCH may suspend any Service governed by this Agreement until such time as all outstanding invoices have been paid in full. Reinstatement of suspended Services will be subject to a reinstatement fee payable by Customer. Suspension of Service shall be without prejudice to all other rights and remedies of THE SWITCH, including without limitation those provided in Section 4 herein and Customer shall be liable for all costs of collection, including, without limitation, reasonable attorneys' fees, court costs, and collection agency fees. In the event that THE SWITCH is required to submit more than one (1) default notice for non-payment, THE SWITCH may, at its option, require a deposit, without prior demand or notice, and set-off any future outstanding balances against said deposit.

#### **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, the other Party may terminate this Agreement or any Service hereunder upon written notice to the defaulting Party, if the defaulting party fails to cure its breach within fifteen (15) business days of delivery of such notice, per Section 14. In addition, if Customer becomes insolvent or ceases to conduct its business, if an assignment is made of Customer's business for the benefit of creditors, if a petition in bankruptcy is filed by or against Customer, if a receiver, trustee in bankruptcy or similar officer is appointed to take charge of all or a part of Customer's property or if Customer is adjudicated as bankrupt, THE SWITCH may, at its sole discretion, terminate this Agreement upon giving fifteen (15) days written notice to Customer.

**4.3 Recovery of THE SWITCH Equipment.** On termination of this Agreement for any reason, Customer shall provide access to any premises at which THE SWITCH property and equipment is located to enable THE SWITCH to remove such property and equipment. In the event that Customer fails to provide access and THE SWITCH's property and equipment cannot be removed within thirty (30) days of the termination date Customer shall pay the cost of replacing the equipment.

**4.4 Termination Charges.** If Customer terminates a Service, in whole or part, 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. PLANNED INTERRUPTIONS**

During the Term, occasional interruptions of Service to Customer may be required for repairs or maintenance, testing or improvement of the systems operated by THE SWITCH. THE SWITCH shall, wherever possible give Customer at least twenty-four (24) hours' notice of any such interruption and shall use reasonable efforts to minimize any disruption of the Service. Maintenance that may place the Services in jeopardy or require system down time will normally be performed during a maintenance window, which shall be as mutually agreed to

between THE SWITCH and Customer or other reasonable time determined in good faith by THE SWITCH. Any interruptions pursuant to this Paragraph shall be excluded for the purposes of determining Service Credits, as noted in Section 6.

## 6. SERVICE CREDITS

**6.1** A "**Service Outage**" means an actual interruption of the Service when such Service is reasonably determined by both Parties to be considered unusable for its intended commercial purpose. The duration of the Service Outage will be the period from when Customer reports the outage to the NOC and the outage is verified in the NOC's operational logs as relevant until THE SWITCH informs Customer and Customer confirms that the outage is cleared.

**6.2** THE SWITCH or Customer may log Service Outages with detailed information designed to enable THE SWITCH to reproduce and investigate the Service Outage. THE SWITCH shall remedy all Service Outages as expeditiously as practicable.

**6.3** In the event THE SWITCH is unable to furnish the Service ordered pursuant to the Service Schedule, for any reason whatsoever, whether due to acts or omissions, war, national emergency, labor disputes, force majeure or any other similar or dissimilar reason, THE SWITCH's liability to Customer shall in all events and under all circumstances be limited to Service credits on a prorated basis.

**6.4** Unless otherwise set forth in a Service Schedule, Customer shall be entitled to Service credits as set forth in this Section 6.4. Service credits are applicable to Service Outages greater than thirty (30) minutes. THE SWITCH agrees to undertake immediate action to correct any Service Outage after receiving notice from Customer that a Service Outage exists. For Services with a monthly recurring fee, the credit owed to Customer for a Service Outage in excess of thirty (30) minutes shall be computed at 1/1440 of the Service fees applicable to that portion of the Service which is subject to the Service Outage for each one-half (1/2) hour or major fraction thereof that a Service Outage continues beyond thirty (30) minutes. In no event shall the credit for a particular Service exceed the service fees for the Service, and in no event shall the credit to the Customer be in excess of the credit given THE SWITCH by the underlying network capacity provider.

**6.5** THE SWITCH shall have no liability to pay service credits or any other compensation in respect of any Service Outage due to the following: (i) Customer's fault or negligence, (ii) the failure of power or equipment provided by Customer, (iii) the local fiber circuit, (iv) planned interruptions as specifically provided for in Paragraph 5, (v) during any period in which THE SWITCH is not given access to Service premises when required, which is necessary to restore the Service, where such premises are within the control of Customer, (vi) Customer's failure to adhere to the operating procedures and regulations contained in The Switch Web-based Control System, User Operations Manual, (vii) Customer's breach of the terms of this Agreement

## 7. REPRESENTATIONS AND WARRANTIES

### THE SWITCH warrants and represents the following:

**7.1** THE SWITCH 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 Customer.

**7.2** 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.

### CUSTOMER warrants and represents the following:

**7.3** 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.

**7.4** Customer shall not violate any law or regulation and the performance by Customer and its obligations hereunder do not and shall not violate any rights of any kind or nature of any third party.

**7.5** Customer has the right or will acquire the right to distribute and access the signal or program in the manner contemplated by this Agreement and the signals or programs transmitted shall not contain any matter that constitutes an infringement upon any copyright, patent, trademark, trade secret or other intellectual property right or violates the right of privacy, any common law rights or any other rights of any person or entity.

## 8. INDEMNIFICATION

**8.1 Indemnification by THE SWITCH.** 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.

**8.2 Indemnification by CUSTOMER.** 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: (i) any claim related to the breach by Customer of any warranty or representation, or any other provision in this Agreement (ii) any physical damage to THE SWITCH's property; (iii) any infringement of copyrighted content within Customer's signals, programs, or content that pass through THE SWITCH's Service; (iv) any claim that the content within Customer's signals, programs, or content that pass through THE SWITCH's Service constitute an infringement upon any copyright, patent, trademark, trade secret or other intellectual property right; (v) any claim by alleging defamation, invasion of privacy, infringement of rights of publicity or violation of any other rights of any person or entity arising from or related to Customer's signals, programs, or content that pass through THE SWITCH's Service, including without limitation, claims related to 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 Service; (vi) any other action arising out of the acts or omissions of Customer.

**8.3 Procedure for Indemnification.** 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.

## **9. LIMITATION OF LIABILITY AND WARRANTY**

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 shall use commercially reasonable efforts to provide and maintain the Services to Customer as specified herein. 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 which gives rise to the claim.

## **10. NO CONSEQUENTIAL DAMAGES**

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.

## **11. CONFIDENTIALITY**

Except as required to do otherwise 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.

## 12. 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.

## 13. 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.

## 14. 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.

Notices directed to THE SWITCH must be sent by overnight carrier, facsimile, email provided THE SWITCH provides confirmation of receipt of notice by Customer, hand delivery, or by first class postage prepaid registered or certified mail. Notice shall be deemed received upon: (i) receipt when delivered personally; (ii) written verification of receipt from overnight carrier; (iii) verification of receipt of registered or certified mail; or (iv) verification of receipt via facsimile and email. Contact information shall be updated as necessary to ensure that each Party has current information regarding all such contacts.

All notices directed to THE SWITCH regarding this Agreement with the exception of Service related inquiries shall be sent to the addresses provided below. All Service related inquiries shall be directed to The Switch NOC at the following telephone number: (212) 227-9131.

### **Beers 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:

### **Beers Enterprises, LLC**

683 Main Street, Suite A-2  
Osterville, MA 02655  
Attn: Areeg Eluri, General Counsel  
Fax: 508-420-3779  
E-mail: [legal@theswitch.tv](mailto:legal@theswitch.tv)

## 15. SUBCONTRACTING

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

## 16. 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.

## **17. GENERAL PROVISIONS**

**17.1 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.

**17.2 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.

**17.3 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.

**17.4 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.

**17.5 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.

**17.6 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.

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