

**1. INTERPRETATION**

- 1.1. The clause headings contained herein have been inserted for convenience only and are not to be taken into consideration in the interpretation of these terms and conditions.
- 1.2. Words and expressions defined in any clause will, for the purposes of the contract, bear the meaning assigned to the words and expressions in that sub-clause.
- 1.3. Any reference to the singular includes the plural and vice versa.
- 1.4. Any reference to one particular gender includes the other gender.
- 1.5. Any reference to the natural persons includes a legal person and vice versa.

**2. DEFINITIONS**

- 2.1. "ADDENDUM/ADDENDA" shall mean any documentation annexed to the SUBSCRIPTION FORM and these terms and conditions that expand on the SERVICE, including, without limitation, pricing, listing and specification of SWITCH EQUIPMENT and service level agreements together with any policy documents hosted on SWITCH'S website;..
- 2.2. "CLIENT" shall mean the person or entity as set out in the SUBSCRIPTION FORM;
- 2.3. "EFFECTIVE DATE" shall mean, notwithstanding the Signature Date, the date from which SWITCH commences providing SERVICE to CLIENT.
- 2.4. "INITIAL TERM" shall mean the initial term as set out in the SUBSCRIPTION FORM and shall commence on the EFFECTIVE DATE. Where no term is specified in the SUBSCRIPTION FORM the INITIAL TERM shall be deemed to be 30 days.
- 2.5. "SERVICE" shall mean the telecommunication service or services and/or telecommunication-related service or services as set out in the SUBSCRIPTION FORM rendered by SWITCH to the CLIENT together with any additional service(s) requested by the CLIENT from time to time..
- 2.6. "SIGNATURE DATE" shall mean the date of signature of the last signing party hereto.
- 2.7. "SUBSCRIPTION FORM" shall mean the document annexed to these terms and conditions, which specifies the particulars of CLIENT and the SERVICE.
- 2.8. "SWITCH" shall mean Switch Telecom (Pty) Ltd, a company duly incorporated in accordance with the laws of the Republic of South Africa, with registration number 2005/037954/07.
- 2.9. "SWITCH EQUIPMENT" shall mean any equipment and/or software, which is supplied by or on behalf of SWITCH, irrespective of ownership of the equipment, to the CLIENT or placed at or on the CLIENT'S premises for the purposes of providing the SERVICE.
- 2.10. "THIS AGREEMENT" shall mean these terms and conditions, together with the SUBSCRIPTION FORM and ADDENDA.

**3. APPOINTMENT**

- 3.1. CLIENT hereby appoints SWITCH, who accepts such appointment, to provide the SERVICE with effect from the EFFECTIVE DATE, on the terms and conditions set out herein.
- 3.2. CLIENT hereby consents and authorises SWITCH or any third party nominated by SWITCH to perform a credit check on CLIENT as SWITCH, in its sole discretion, deems necessary.
- 3.3. CLIENT acknowledges and agrees that provision of the SERVICE shall be subject to appropriate credit approval and technical feasibility both of which shall be at the sole discretion of SWITCH.

**4. TERM**

- 4.1. Notwithstanding the SIGNATURE DATE hereof, SWITCH shall provide the SERVICE to CLIENT for the INITIAL TERM commencing on the EFFECTIVE DATE.
- 4.2. Either party may terminate the provision of SERVICE by SWITCH to CLIENT with effect from the end of the INITIAL TERM by way of no less than 1 (one) calendar months prior written notice to the other party.
- 4.3. Should notice to terminate at the end of the INITIAL TERM not be given in terms of clause 4.2 above, THIS AGREEMENT and provision of the SERVICE by SWITCH to CLIENT shall be automatically renewed for further periods of 1 (one) month each, on an indefinite basis, until terminated in terms of clause 4.4 below.
- 4.4. Either party may terminate the provision of SERVICE by SWITCH to CLIENT after the INITIAL TERM by way of not less than 1 (one) calendar months prior written notice of termination to the other party.
- 4.5. If CLIENT terminates the SERVICE and/or breaches THIS AGREEMENT prior to the end of the INITIAL PERIOD or any subsequent 1 (one) month renewal period thereafter, CLIENT shall pay to SWITCH all charges for SERVICE provided up to and including the actual date of such termination and/or breach (whether such charges are then due and payable or not) together with a cancellation charge equal to the balance of the applicable charges (in effect at the time of cancellation) for such cancelled SERVICE that otherwise would have become due for the unexpired portion of the term.

**5. FEES AND CHARGES**

- 5.1. CLIENT shall pay to SWITCH the fees and charges in respect of the SERVICE:
  - 5.1.1. upon the EFFECTIVE DATE, the installation fees as set out in THE SUBSCRIPTION FORM (if applicable); and
  - 5.1.2. monthly, in advance, the fixed service fees as set out in THIS AGREEMENT; and
  - 5.1.3. the call charges and/or variable usage fees as set out in abridged form in THIS AGREEMENT and as more fully detailed in SWITCH'S prevailing rate sheet which SWITCH shall make available to CLIENT on CLIENT'S request (and which shall be available on SWITCH'S web-site)
    - 5.1.3.1. Where service is provided on a post-paid basis, monthly in arrears; and
    - 5.1.3.2. Where service is provided on a pre-paid basis, in advance; and
  - 5.1.4. any other amounts set out in THIS AGREEMENT as and when same becomes due; and
  - 5.1.5. Value Added Tax (VAT) at the applicable rate on all amounts.
- 5.2. SWITCH shall at the beginning of each month prepare a tax invoice addressed to CLIENT reflecting the amounts owing by CLIENT to SWITCH in respect of the SERVICE.
- 5.3. CLIENT acknowledges that all fees and charges due to SWITCH will be payable in local currency, free from deduction or set-off of any amount of whatsoever nature or for whatsoever reason. CLIENT shall not be entitled to defer or withhold any payment due to SWITCH by reason of any alleged claim for losses or damages howsoever arising or non-performance by SWITCH.
- 5.4. CLIENT agrees that SWITCH shall be entitled from time to time to increase or vary the charges payable by CLIENT to SWITCH in respect of SERVICE. SWITCH shall furnish CLIENT with 7 (seven) days' prior written notice of any such increase or variation to the call charge rate or variable usage fees. In respect of an intended increase to the fixed service fee, SWITCH shall furnish CLIENT with 30 (thirty) days prior written notice of any such increase. Should the CLIENT object in writing to the proposed fee increase before its effective date and, failing agreement between the parties, the CLIENT shall be entitled to terminate this agreement in terms of clause 4.2.
- 5.5. SWITCH'S monthly tax invoice shall serve as prima facie proof of the amounts owed by CLIENT to SWITCH in terms hereof and of any other facts stated therein and should CLIENT dispute the number, duration or amount charged in respect of any call made or services rendered by SWITCH, then CLIENT shall bear the onus of proving that SWITCH'S tax invoice is incorrect in such respect.
- 5.6. In the event of any dispute arising as to the amount or calculation of any fee or charge, which is due and payable by CLIENT, the said dispute shall then be determined in accordance with and in terms of clause 16 below.

**6. PAYMENT**

- 6.1. All fees and charges payable by CLIENT to SWITCH in terms of the SERVICE shall be effected:
  - 6.1.1. by way of a debit order drawn against a South African bank account or a MasterCard or VISA credit card in the case that CLIENT grants authorisation for such debit order on the SUBSCRIPTION FORM ; or
  - 6.1.2. Where authorised by SWITCH, by way of electronic funds transfer directly into SWITCH'S bank account. The onus of proof of payment shall at all times vest on CLIENT. Notwithstanding confirmation of payment by CLIENT, CLIENT agrees that payment shall only be deemed to have been made to SWITCH when the monies remitted by the CLIENT have cleared into SWITCH'S bank account.

- 6.2. Payment shall be due within 14 (fourteen) days of SWITCH'S tax invoice date or where payment is effected by debit order, on SWITCH'S debit order date. Non-receipt of invoices by CLIENT for any reason whatsoever shall not be regarded as a valid reason for late or non-payment.
- 6.3. Should any debit order be returned unpaid or stopped for any reason or should SWITCH exercise its right to suspend the provision of SERVICE due to late or non-payment of any monies due in terms hereof by CLIENT then CLIENT shall pay an administrative charge equivalent to the greater of R50.00 or 5% of the debit order amount for each such non-payment, suspension or any other breach of THIS AGREEMENT which amount shall be payable upon demand by SWITCH.
- 6.4. In the event of CLIENT requesting to pay for the SERVICES by EFT or any debit order being unpaid or credit card transaction failing or resulting in a chargeback or CLIENT failing to inform SWITCH timely of its new credit card or bank account particulars, then SWITCH reserves the right, in its sole and absolute discretion, to revoke all credit facilities previously granted to CLIENT and to convert any SERVICE from post-paid to pre-paid service
- 6.5. Any amount falling due for payment by CLIENT to SWITCH in terms of or pursuant to THIS AGREEMENT which is not paid on due date shall bear interest calculated from the invoice date until date of payment at a rate of 1.5% (one comma five percent) per month, monthly in arrears. Notwithstanding this, SWITCH reserves the right to suspend the SERVICE to CLIENT immediately if CLIENT is in default of any payment which is due but not paid. Such suspension shall be without prejudice to any of the rights of SWITCH that have accrued prior to the date of suspension.
- 6.6. CLIENT agrees and acknowledges that a certificate given under the hand of a manager or director of SWITCH whose status and authority need not be proved shall be considered prima facie proof of the amount due and payable to SWITCH for any legal proceedings of whatsoever nature.

**7. OBLIGATIONS OF CLIENT**

- 7.1. CLIENT shall provide SWITCH with whatever information, assistance or co-operation is required in order for SWITCH to render the SERVICES in terms of THIS AGREEMENT.
- 7.2. CLIENT shall supply SWITCH and its designated employees with access to CLIENT'S premises at all reasonable times and outside of ordinary working hours where this is reasonably necessary for the duration of this agreement where required in order to provide the SERVICE.
- 7.3. CLIENT shall designate in writing an authorised representative to whom SWITCH will report and from whom it may obtain instructions.
- 7.4. The CLIENT undertakes, insofar as may be relevant, that it shall not knowingly use the SERVICE for the creation, storage or dissemination any illegal content nor shall it send or promote the sending of any spam.
- 7.5. The CLIENT commits itself to lawful conduct in the use of the SERVICES, including copyright and intellectual property rights, insofar as may be necessary.
- 7.6. CLIENT undertakes to notify SWITCH of any change in the primary address from which the services are utilised.

**8. OBLIGATIONS OF SWITCH**

- 8.1. SWITCH shall provide the SERVICE on the terms and conditions stipulated herein and shall comply with all reasonable requests of CLIENT (via the client representative) from time to time.
- 8.2. SWITCH shall not issue any press release, make or publish any public statement or other communication in each case relating to, connected with or arising out of this agreement or the rendering of the SERVICE, nor use the SERVICE provided to advertise any of its services or products, without the prior written consent of CLIENT.

**9. DELIVERABLES BY THIRD PARTIES**

- 9.1. CLIENT acknowledges that various third party service providers are directly and/or indirectly involved in the provision of the SERVICE.
- 9.2. CLIENT indemnifies and holds SWITCH harmless against all and any loss, claim, injury or damage which it may sustain as a result of the failure of such third party as a consequence of which SWITCH'S performance is compromised in any way, or for any circumstances beyond its reasonable control.

**10. EQUIPMENT AND MAINTENANCE**

- 10.1. SWITCH will install and maintain SWITCH EQUIPMENT at CLIENT'S premises.
- 10.2. CLIENT shall provide SWITCH and/or its appointed agent or sub contractors with such access as is reasonably required and any technical/personnel assistance reasonably necessary for the installation, maintenance and de-installation of the SWITCH EQUIPMENT including, without limitation, electricity supply and suitable accommodation and environmental conditions for the housing of the SWITCH EQUIPMENT.
- 10.3. SWITCH and/or its appointed agent or sub contractors will endeavour to notify CLIENT in advance where SWITCH requires CLIENT to make such access available.
- 10.4. CLIENT will only use SWITCH EQUIPMENT in accordance with any instructions SWITCH provides to CLIENT from time to time. In particular, CLIENT shall not tamper with or attempt to change any aspect of the functioning of SWITCH EQUIPMENT in any manner whatsoever.
- 10.5. SWITCH shall not be liable for any damage or loss howsoever caused, resulting from a fault of any kind within SWITCH EQUIPMENT and/or any equipment belonging to CLIENT.
- 10.6. All risk of loss or damage, howsoever arising, resulting from the SWITCH EQUIPMENT on CLIENT'S and/or SWITCH'S premises will remain vested with CLIENT for an amount no less than the full replacement value of the SWITCH EQUIPMENT.
- 10.7. SWITCH EQUIPMENT is and shall remain the property of SWITCH and/or its suppliers unless specifically purchased from SWITCH by the CLIENT and paid for in full.
- 10.8. CLIENT will be liable to SWITCH for any loss or damage to SWITCH EQUIPMENT except in so far as any such loss or damage is attributable to the grossly negligent or wilful act or omission of SWITCH, its agents or subcontractors.
- 10.9. Upon termination of this agreement for whatever reason CLIENT shall return to SWITCH or its nominated contractor the SWITCH EQUIPMENT. In the event that CLIENT refuses to release the SWITCH EQUIPMENT to SWITCH within 7 (seven) days of said termination, CLIENT shall become liable for an amount equal to the full replacement value of the SWITCH EQUIPMENT.

**11. IMPROPER USE**

- 11.1. CLIENT may use the SERVICE for lawful purposes only. CLIENT warrants that it is aware of and has taken note of all applicable legislation and/or regulations pertaining to the SERVICE and shall do all things necessary to fully comply therewith.
- 11.2. CLIENT will not (nor will CLIENT authorize or permit any other person) to use SERVICE:
  - 11.2.1. to send or receive any material which is in violation of any law, regulation, regulatory authority or which is defamatory, offensive, abusive, indecent, obscene or menacing, or in breach of confidential, privacy, trade secrets, or in breach of any third party intellectual property rights, or in breach of any other rights;
  - 11.2.2. to cause any annoyance or inconvenience;
  - 11.2.3. in breach of any instructions SWITCH have provided to CLIENT in respect of the use of SERVICE; and/or
  - 11.2.4. other than in conformance with the rules of any regulatory authority;
- 11.3. Any breach of this clause by CLIENT shall be deemed to be a material breach of this agreement.
- 11.4. SWITCH shall be entitled to suspend the SERVICE if, during the CLIENT'S use of the SERVICE, SWITCH'S network or technical infrastructure is or potentially may be jeopardised, harmed and/or impeded in any manner. However, should SWITCH be able to notify and/or assist CLIENT prior to the said suspension, SWITCH undertakes to do so.
- 11.5. CLIENT hereby indemnifies SWITCH and holds SWITCH harmless against any claim by any third party arising directly or indirectly out of the use by CLIENT of the SERVICE, including without limitation of any claim due to the use of the SERVICE for unlawful purposes.

- 11.6. SWITCH shall not monitor or intercept the content of CLIENT'S communications unless required to do so by law. Notwithstanding this, CLIENT agrees that SWITCH may store call detail records as required for billing purposes.
- 12. WARRANTIES**
- 12.1. Save as expressly set out in this agreement, SWITCH does not make any representations nor gives any warranties or guarantees of any nature whatsoever in respect of the SWITCH EQUIPMENT or the SERVICE and all warranties which are implied or residual at common law are hereby expressly excluded.
- 12.2. Without limitation to the generality of clause 12.1, SWITCH does not warrant or guarantee that the information transmitted by or available to CLIENT by way of the SERVICE or the SWITCH EQUIPMENT:
- 12.2.1. will be preserved or sustained in their entirety;
- 12.2.2. will be suitable for any purposes;
- 12.2.3. will be free of inaccuracies, defects, bugs or viruses of any kind; and
- 12.2.4. SWITCH assumes no liability, responsibility or obligations in regard to any of the exclusions set forth in this clause 12.1, and 12.2 above.
- 12.3. CLIENT is advised that the SERVICE should not be relied on for access to emergency services associated with the numbers 112, 10111 or 10117. If the SERVICE is utilised to attempt an emergency call to any one of these numbers, CLIENT is also advised that he may experience delays in getting through to the emergency call centre or he may be re routed to a call centre far from the location of the call. CLIENT acknowledges that in such circumstances the emergency call centre will not be able to determine the physical location of the call and that CLIENT should inform the dispatcher of his actual location for identification purposes.
- 13. LIMITATION OF LIABILITY**
- 13.1. Except for any deliberate act or gross negligence on the part of SWITCH, its servants or agents, and except as otherwise expressly provided herein to the contrary, SWITCH shall not be liable to CLIENT or any third party for any loss or damage (including consequential or incidental loss or damage which shall include but shall not be limited to loss to property or of profit, business, goodwill, revenue or anticipated savings) of whatsoever nature or for any costs, claims or demands of any nature whether asserted against SWITCH or against CLIENT by any party arising directly or indirectly out of the SWITCH EQUIPMENT or the SERVICE, their use, access, withdrawal or suspension or out of any information or materials provided or not provided, as the case may be, by or from their use.
- 13.2. Subject to clause 13.1 above, the entire liability of SWITCH, and CLIENT'S exclusive remedy for damages from any cause related to or arising out of this agreement, regardless of the form of action, whether in contract or in delict, will not exceed the average aggregate of the fees and charges paid by CLIENT to SWITCH under this agreement over the continuous period of the 6 (six) months directly prior to such claim being instituted.
- 13.3. Due to the need to conduct maintenance, repair and/or improvement work from time to time on the technical infrastructure by means of which the SERVICE is provided, the provision of the SERVICE may be suspended by SWITCH from time to time, with the giving of at least 48 hours' notice, where possible, and all liability on the part of SWITCH for any loss or damage (whether directly or indirectly or consequential) thereby incurred or for any costs, claims, or demands of any nature arising there from, is specifically excluded and the provision of clause 13.1 above shall apply mutatis mutandis to such exclusion.
- 13.4. This clause shall survive termination for any reason whatsoever of the agreement.
- 14. CONFIDENTIALITY AND PROPRIETARY PROTECTION**
- 14.1. The parties hereto shall to the extent necessary exchange such proprietary or confidential information as is reasonably necessary for each to perform its obligations and exercise its rights under this agreement.
- 14.2. All information relating or pursuant to this agreement provided by either party to the other, whether oral or written, and whether or not identified as confidential or proprietary, is hereby deemed to be confidential and proprietary information. As such, each party hereto shall share such proprietary information in the strictest of confidence and shall not use such information for any purpose other than as contemplated in this agreement.
- 14.3. Clause 14 will survive the termination of this agreement.
- 15. BREACH**
- 15.1. Unless otherwise inconsistent with any other provision of this agreement, in the event of either party committing a breach of any of the provisions of this agreement, then the party which is not so in breach (hereinafter referred to as "the aggrieved party") shall be entitled to give the defaulting party written notice to remedy the breach. If the defaulting party fails to comply with that notice within 7 (seven) days of receipt thereof the aggrieved party shall be entitled to cancel this agreement or to claim specific performance, in either event without prejudice to the aggrieved party's rights to claim damages. The aforesaid is without prejudice to such other rights as the aggrieved party may have at law.
- 15.2. Either party shall be entitled, but not obligated, to terminate this Agreement upon 7 (seven) days prior written notice in one or more of the following circumstances:
- 15.2.1. In the event of a party committing an act of insolvency;
- 15.2.2. In the event of a party to the contract taking any steps to reach a compromise with or to make an offer of compromise to any of its creditors;
- 15.2.3. In the event of a party effecting a transfer of its estate to any third party;
- 15.2.4. In the event of a party allowing a judgement against it to remain unresolved for more than 30 (thirty) days without taking immediate steps to have it rescinded and successfully prosecuting the application for rescission to its final end;
- 15.2.5. In the event of a party being placed in liquidation or under judicial management (whether provisionally or finally);
- 15.2.6. With respects to 15.2.4 and 15.2.5, not appeal the judgement that was granted against it.
- 15.3. If SWITCH terminates this agreement as provided for in clause 15.1 hereof, or if CLIENT repudiates the agreement at any time after signature of this agreement; SWITCH shall be entitled to:
- 15.3.1. Claim all outstanding monies as on the date of repudiation and/or termination of this agreement, whether or not such monies are then due, owing and payable;
- 15.3.2. Treat all outstanding amounts as immediately due and payable which would have become due and payable over the balance of the period which has not expired in terms of the agreement;
- 15.3.3. Immediately suspend and/or terminate the SERVICE provided to the CLIENT in terms of this agreement, CLIENT consenting to such termination under these circumstances and that the termination of the SERVICE not amounting to an act of spoliation;
- 15.3.4. Claim any and/or all damages that SWITCH might incur as a direct and/or indirect result of CLIENT'S repudiation and/or breach of this agreement;
- 15.3.5. Claim the costs of any legal proceedings instituted against CLIENT in any court of law on a scale as between attorney and own client, irrespective as to whether summons has been issued or not; and/or
- 15.3.6. To retain as a genuine pre estimate of its damages all amounts already paid by CLIENT in terms of this agreement;
- 16. ARBITRATION**
- 16.1. Should any dispute or difference arise between the parties relating to or arising out of THIS AGREEMENT, including the implementation, execution, interpretation, rectification, termination or cancellation of this agreement then the dispute or difference will be referred for arbitration to the Arbitration Foundation of South Africa ("AFSA") in terms of AFSA'S arbitration rules for the time being in force.
- 16.2. This clause 16 shall constitute each party's irrevocable consent to the arbitration proceedings, and no party shall be entitled to withdraw from such arbitration proceedings or to claim that it is not bound by this clause.
- 16.3. Each of the parties hereby irrevocably agrees that the decision of the arbitrator in the arbitration proceedings:
- 16.3.1. shall be final and binding on each of them; and
- 16.3.2. will be carried into effect; and
- 16.3.3. Be made an order of any Court to whose jurisdiction the parties are subject.
- 16.4. Notwithstanding the foregoing, nothing in this clause shall be construed as precluding any party from applying to Court for a temporary interdict or other relief of an urgent nature, pending the decision of the award of the arbitrator in terms of this clause 16.
- 16.5. Notwithstanding CLIENT'S rights in terms of this clause 16, all amounts invoiced by SWITCH to CLIENT shall be due and payable in full pending the outcome of arbitration proceedings and CLIENT shall not be entitled to withhold any payment pending the outcome of the arbitration.
- 16.6. This clause 16 is severable from the rest of this agreement and shall, notwithstanding the termination of this agreement, remain in full force and effect.
- 17. JURISDICTION**
- 17.1. Notwithstanding the provisions of clause 16 above, SWITCH shall be entitled in its sole and absolute discretion to institute any action against the CLIENT in any court having jurisdiction and the CLIENT hereby consents to the jurisdiction of the Magistrate's Court having jurisdiction in respect of all legal proceedings connected with this agreement, notwithstanding that the amount of the matter in dispute exceeds the court's jurisdiction.
- 17.2. Notwithstanding the foregoing, SWITCH is entitled to institute proceedings against the CLIENT in the division of the High Court having jurisdiction in the matter.
- 18. DOMICILIUM AND NOTICES**
- 18.1. The parties choose domicilium citandi et executandi ("domicilium") for all purposes relating to this agreement, including the giving of any notice, the payment of any sum, the serving of any process, as follows:
- 18.1.1. SWITCH: Building 16, The Woodlands Office Park, Woodlands Drive, Woodmead.
- 18.1.2. CLIENT: the physical address set out on the SUBSCRIPTION FORM.
- 18.2. The parties shall be entitled from time to time, by giving written notice to the other, to vary its:
- 18.2.1. physical domicilium to any other physical address;
- 18.2.2. to vary its postal domicilium to any other postal address; and
- 18.2.3. to vary its facsimile domicilium to any other facsimile number.
- 18.3. Any notice given or payment made by either party to the other ("addressee") which is:
- 18.3.1. delivered by hand between the hours of 09h00 and 17h00 on any business day to the addressee's physical domicilium for the time being shall be deemed to have been received by the addressee at the time of delivery;
- 18.3.2. posted by prepaid registered post to the addressee's postal domicilium for the time being shall be deemed (unless the contrary is proved by the addressee) to have been received by the addressee on the fourteenth day after the date of posting.
- 18.3.3. Any notice given by either party to the other which is successfully transmitted by facsimile to the addressee's facsimile domicilium for the time being shall be deemed (unless the contrary is proved by the addressee) to have been received by the addressee on the business day immediately succeeding the date of successful transmission thereof.
- 18.4. This clause 18 shall not operate so as to invalidate the giving or receipt of any written notice that is actually received by the addressee other than by a method referred to in this clause 18.
- 18.5. Any notice in terms of or in connection with this agreement shall be valid and effective only in writing and if received or deemed to be received by the addressee.
- 19. MISCELLANEOUS MATTERS**
- 19.1. The parties agree that the terms and conditions of THIS AGREEMENT are the result of negotiations between them and that this agreement shall not be construed in favour of or against any party by reason of the extent to which any party or its professional advisors participated in the preparation of this agreement.
- 19.2. No agreement amending, adding to, deleting, varying or cancelling this agreement, including this clause shall be effective unless reduced to writing and signed by or on behalf of all the parties.
- 19.3. No waiver by a party of any of its rights under this agreement, including this clause shall be effective unless reduced to writing and signed by or on behalf of such party.
- 19.4. No indulgences granted by a party in favour of the other party shall constitute a waiver or abandonment of any of the party's rights under this agreement; accordingly, that party shall not be precluded, as a consequence of having granted such indulgence, from exercising any of the rights against any other party which may have arisen in the past or which may arise in the future.
- 19.5. The agreement shall be binding on the parties hereto and their respective successors and assigns. Neither party shall be entitled to assign or otherwise transfer the benefit or burden of all or any part of the agreement without the prior written consent of the other party except that SWITCH may assign its rights and obligations under the agreement without the approval of CLIENT to an entity which acquires part, all and/ or substantially all of the assets of SWITCH provided that in no event shall such assignment relieve SWITCH of its obligations under the agreement.
- 19.6. The relationship between the parties hereto shall not be that of partners. Nothing herein contained shall be deemed to constitute a partnership between them, merge their assets, or their fiscal or other liabilities or undertakings. The common enterprise between the parties shall be limited to the express provisions of THIS AGREEMENT. Nothing herein contained shall allow a Party to act as an agent of any other party.
- 19.7. Any costs, including attorney and own client costs and collection commission, incurred by a party arising out of the breach by any other party of any of the provisions of this agreement shall be borne by the party in breach.
- 19.8. SWITCH and CLIENT undertake to perform any obligations required by statutory regulations, as demanded from time to time, and to assist the other party upon reasonable request to do so.
- 20. FORCE MAJEURE**
- 20.1. If either party is prevented or restricted directly or indirectly from carrying out all or any of its obligations under this agreement resulting from any cause beyond the reasonable control of that party, including without limitation, acts of God, civil commotion, riots, insurrection, lock-outs, acts of government, fire, theft, explosion, the elements, epidemics, governmental embargoes or like causes, the party so affected shall be relieved of its obligations hereunder during the period of such obstruction, but only to the extent of the obstruction, and shall not be liable for any delay or failure in the performance of any obligations hereunder or loss or damage of any nature whatsoever, whether general, special or consequential, which the other party may suffer as a result, provided that written notice shall within 48 (forty eight) hours of the first occurrence of the obstruction be given of to the other party, unless the obstruction renders such notice impossible.
- 20.2. The parties hereby agree that should this obstruction last more than 30 (thirty) days, the party who has not invoked force majeure may terminate THIS AGREEMENT on notice to the other party.
- 21. ENTIRE AGREEMENT**
- 21.1. THIS AGREEMENT constitutes the entire agreement between SWITCH and CLIENT relating to the subject matter hereof, notwithstanding anything in CLIENT'S enquiry, specification, acceptance, order or other documentation to the contrary. If there shall be any provision of any ADDENDUM which conflicts with any provision of these terms and conditions, unless agreed to the contrary, the latter shall prevail.