

General

These Business Terms shall apply to all legal relationships between the Client and Zwitch outside The Netherlands, except when the applicability of these Business Terms is excluded or restricted by law, regulations or written agreement or when amendments to these Business Terms have been confirmed explicitly and in writing mutually. Any general terms and conditions proposed by the Client are rejected explicitly unless these general terms and conditions have been confirmed explicitly and in writing mutually. The different chapters of these Business Terms shall apply to an Engagement Letter whenever agreed or whenever Zwitch may reasonably assume that the Services proposed or provided under a Contract may be categorized under the relevant chapter. Whenever the contents or interpretation of the Engagement Letter and these Business Terms conflict, the Engagement Letter shall take precedence.

For contracts with Clients within The Netherlands the Dutch version of the general terms and conditions are applicable. For ICT related contracts the ICT~office terms and conditions are applicable. The 'ICT~Office Voorwaarden' are filed at the Chamber of Commerce in The Netherlands at No: 30174840.

Definitions

"Zwitch"

means the legal entitie Zwitch BV, Chamber of Commerce No: 08162779 in The Netherlands, and which shall have been engaged by the Client for the Services under a Contract.

"Business Terms"

means the terms set out in this document.

"Claim"

means any claim or proceeding of any nature (whether in contract, tort, breach of statutory duty or otherwise and including, but not limited to, a claim for negligence).

"Client"

means the legal entity which confers the engagement to Zwitch.

"Client Communications"

means any information, documents, or other communications provided by Zwitch Entities under a Contract whether in writing or otherwise, including, without limitation, any reports (including, without limitation, the final written report, if any, on the Services performed under the Contract) or memoranda issued by any Zwitch Entity, including, without limitation, documents, communications, advice, if any, and any drafts thereof, any draft or final reports or memoranda, whether in writing or otherwise.

"Confidential Information"

means any information, trade secrets or other proprietary information relating to a party (the "disclosing party") which is either designated by the disclosing party as confidential or is by its nature confidential.

"Contract"

means the Engagement Letter and the Business Terms.

"Deliverables"

means any deliverables identified in the Engagement Letter to be provided to the client in respect of the Services.

"Zwitch Assets"

means works of authorship, materials, information, technologies, calculation methods and tools and other intellectual or industrial property which Zwitch owns, has acquired or otherwise has rights in or which Zwitch, in connection with the performance of Services, may employ, provide, modify, create, acquire, or otherwise obtain rights in.

"Engagement Letter"

means the engagement letter entered into between Client and Zwitch and any appendices other than these Business Terms.

"Losses"

means any losses, claims, liabilities, damages, costs or expenses in any way relating to or arising out of the Contract or the Services.

“Other Recipients”

means any and each person or organisation as identified in the Engagement Letter (other than the Client) or later agreed in writing between Zwitch and the Client as a recipient of Deliverables or Client Communications.

“Professional Advisor”

means all professional advisors of the Client rendering professional advice to the Client for whom the contents of any Client Communications produced by Zwitch may be relevant in the course of rendering their advice to the Client. The term “Professional Advisor” does not include, among others, lenders or other financial institutions participating in or considering participating in any financing relating to a transaction to which the Engagement Letter may refer.

“Services”

means the services, Deliverables and work product described in the Engagement Letter.

“Subcontractor”

means a third party (other than Zwitch BV) to whom Zwitch subcontracts any of the Services.

1. Applicability and Entire Agreement

- a) These Business Terms shall be applicable to all legal relationships between the Client and Zwitch, unless the applicability of these Business Terms is excluded or restricted by law, regulations or written agreement and notwithstanding amendments to these Business Terms, which must be confirmed explicitly and in writing mutually.
- b) The Contract constitutes the whole agreement between the Client and Zwitch in relation to the Services. Nothing discussed prior to execution of the Engagement Letter induced, nor forms part of, the Contract unless as specifically set out in the Contract. The Contract supersedes any previous agreement, proposal, understanding or communication, written or oral, relating to its subject matter. No variation to a Contract shall be effective unless it is documented in writing, provided, however, that the scope of Services set forth in the Engagement Letter may be changed by agreement of the parties in writing, including by e-mail. If Zwitch has already started work (e.g. by gathering information, project planning or giving initial advice) then the Client agrees that the Contract is effective as of the start of such work.
- c) The Contract shall be concluded at the moment that the Engagement Letter, signed by the Client and Zwitch, has been received by Zwitch and – if applicable – shall be effective retroactively as from the date Zwitch has started its performance.
- d) The parties shall be at liberty to prove that the agreement has been concluded in another manner.
- e) The Contract is between the Client and Zwitch only and is accepted under the exclusion of the provisions contained in sections 7:404, 7:407 subsection 2 and 7:409 of the Netherlands Civil Code. Zwitch may subcontract any Services under the Contract, with the consent of the Client, to any Subcontractor.
- f) The Client’s relationship is solely with Zwitch as the entity contracting to provide the Services. Each party is an independent contractor and neither party is, nor shall be considered to be, the other’s agent, distributor, partner, fiduciary, joint venturer, co-owner. Only pursuant to a mutually signed written power of attorney, Zwitch may act as a representative of the Client.
- g) Zwitch remains responsible to the Client for all of the Services under the Contract, including Services performed by any Subcontractor. To the fullest extent possible under applicable law, no Subcontractor will have any liability to the Client and the Client will not bring any Claim in any way in respect of or in connection with the Contract against any Subcontractor. Subcontractors are intended third-party beneficiaries of the Contract. No person who is not a party to the Contract shall be entitled to enforce any of its terms. The Contract can be varied without any third party’s consent.
- h) If the Client and the beneficiary of our services are separate legal entities – including, without limitation, natural persons – and either is an Zwitch of the other, the Client warrants and represents that the (other) party or parties having an interest in the Services accept the terms and conditions of the Contract fully, failing which the Client shall indemnify and hold Zwitch harmless from and against all Losses connected with the breach of such warranty or representation.

2 Parties’ responsibilities

2.a Responsibilities of the Client

- i. The Client is responsible for determining that the scope of the Services is appropriate for its needs.
- ii. The Client shall cooperate with Zwitch in the performance of the Services, including, without limitation, providing reasonable facilities and timely access to data, information, personnel and, if

applicable, the premises of the Client. The Client shall be responsible for the performance of its personnel and agents, for the timeliness, accuracy, lawfulness and completeness of all data and information (including all financial information and statements) provided to Zwitch by or on behalf of the Client and for the implementation of any advice provided as part of the Services. Unless agreed otherwise explicitly in writing, Zwitch may use the information and data furnished by the Client or others and rely on its accuracy, completeness and lawfulness without audit or verification. Zwitch's performance shall be dependent upon the timely performance of the Client's responsibilities under the Contract and timely decisions and approvals of the Client in connection with the Services. Zwitch shall be entitled to rely on all decisions and approvals of the Client. The Client shall be obliged to inform Zwitch forthwith of facts and circumstances that may of importance in connection with the performance of the Services.

- iii. Except as otherwise provided in the Engagement Letter, the Client shall be solely responsible for, among other things:
 - a. making all management decisions and performing all management functions;
 - b. designating one or more individuals who possess suitable skill, knowledge, and/or experience, preferably within senior management to oversee the Services;
 - c. evaluating the adequacy and results of the Services;
 - d. accepting responsibility for the results of the Services; and
 - e. establishing and maintaining internal controls, including, without limitation, monitoring ongoing activities.
- iv. In the event that personal data are provided by the Client or a third party to Zwitch for the purpose of performing Services by Zwitch, the Client will be responsible for compliance with applicable legislation and regulations in the area of protection of privacy and personal data.
- v. Unless the Engagement Letter specifies other arrangements, the Client agrees that any Deliverables will be deemed accepted by the Client (and the Services, or the relevant part of them complete) within 30 days of their delivery, upon their delivery in their final form or when the Client first makes use of them in its business, whichever comes first.

2.b Responsibilities of Zwitch

- i. This is a services engagement. Zwitch warrants that it shall perform the Services in good faith and with due professional care. Zwitch disclaims all other warranties, either express or implied.
- ii. Zwitch will use reasonable efforts to supply the Services in accordance with any timetable referred to in the Engagement Letter or otherwise specified by the parties in writing. However, unless both parties specifically agree otherwise in writing, all dates given by Zwitch or specified by the Client for the Services are intended for planning and estimating purposes only and are not contractually binding.
- iii. Except as specifically agreed to in writing, Zwitch shall not provide advice regarding the financial accounting treatment of any transaction arising from the Services and will not assume any responsibility for any financial reporting with respect to the Services.
- iv. Although Zwitch may need to review sections of draft agreements or (notarial) deeds prepared by the Client's legal advisers, Zwitch is not qualified to provide such legal advice. Accordingly – except when otherwise agreed in writing – Zwitch shall have no corresponding responsibility to address any legal matters or questions of law.
- v. In providing the Services, Zwitch may discuss ideas with the Client orally or show the Client drafts of Deliverables and/or work products. To the extent that the content of such drafts or oral advice is finalized and confirmed to the Client in writing, such writing shall supersede any previous drafts or oral advice. Zwitch shall not be responsible if the Client or others choose to rely on, act or refrain from acting on the basis of such drafts or oral advice.
- vi. Zwitch shall not be required or deemed to have knowledge of any information known to other professionals of Zwitch not involved in performing the Services under the relevant Contract.
- vii. Zwitch has no responsibility to monitor events occurring after the date of the Services nor to update any Deliverable unless the parties have agreed otherwise in writing explicitly.
- viii. If any legislation, regulatory framework or code of conduct applies to the professional(s) who are performing work under the Contract, the applicable rules shall constitute a part of the engagement. The Client acknowledges and shall fully respect Zwitch's obligations arising therefrom.

3. Compensation and Payment of Invoices

- a) Zwitch shall be entitled to compensation as agreed upon in the Engagement Letter and, unless explicitly agreed otherwise in writing, this compensation shall not depend on the outcome of the Services.
- b) Overhead charges, hours of travel, travelling and hotel expenses, and other Contract related costs incurred by Zwitch may be charged separately to the Client, unless agreed otherwise in writing explicitly.

- c) If, after the conclusion of the Contract but before the activities have been completed in full, wages and/or prices become subject to changes, Zwitch shall be entitled to adjust the agreed fee accordingly, unless agreed otherwise in writing explicitly. In such event, Clients who are consumers may choose to terminate the Contract as of such date.
- d) Zwitch's invoices are due and payable by the Client upon presentation. For invoices upon which payment is not received within thirty (30) days of the invoice date, Zwitch reserves the right to charge statutory interest compounded to the extent allowable by law. Without limiting its other rights or remedies, Zwitch shall have the right to suspend or terminate the Services entirely or in part if payment is not received within thirty (30) days of the invoice date. The Client shall be responsible for all taxes, such as VAT, sales and use tax, gross receipts tax, withholding tax, and any similar tax, imposed on or in connection with the Services, other than Zwitch's income and property taxes.
- e) Any estimate of the fees involved in the Services will be based upon Zwitch's assessment of the work involved, taking account of any assumptions set out in the Engagement Letter. Unless Zwitch has agreed otherwise in the Engagement Letter, Zwitch's fees may be adjusted, for example, if the Services prove more complex or time consuming than expected.
- f) In the case of a jointly conferred engagement, the Clients shall be jointly and severally liable for payment of the invoice amount.
- g) Zwitch shall be entitled to require that the Client provides (supplementary) security in a form to be determined by Zwitch. If the Client fails to provide the required security, Zwitch shall be entitled, without prejudice to its other rights, to suspend further performance of the Contract with immediate effect, and everything the Client owes to Zwitch for whatever reason shall be forthwith due and payable.

4. Term and Termination

- a) Unless terminated sooner in accordance with its terms, the Contract shall terminate once the Services have been performed.
- b) Unless agreed otherwise in the Engagement Letter including, without limitation, the stipulation of a certain period or a project, the Contract may be terminated by either Zwitch or the Client at any time, with or without cause, by giving written notice to the other party, provided that, in the event of a termination for cause, the breaching party shall have the right to cure the breach within the notice period if and to the extent such cure is reasonably feasible. Furthermore, either Zwitch or the Client may terminate the Contract immediately by giving written notice in the event the other (i) has filed a request for a moratorium or its own bankruptcy, (ii) has been declared bankrupt, (iii) does not cure a breach of contract within the notice period if and to the extent such cure is reasonably feasible or (iv), when its assets are subject to attachment of material substance.
- c) Zwitch may terminate the Contract with immediate effect upon written notice to the Client if Zwitch determines that (i) a governmental, regulatory, or professional entity, or an entity having the force of law, has introduced a new, or modified an existing, law, rule, regulation, interpretation, or decision, the result of which would render Zwitch's performance of any part of the Contract illegal or otherwise unlawful or in conflict with independence or professional rules, or (ii) circumstances change (including, without limitation, changes in ownership of the Client or any of its Zwitchs) such that Zwitch's performance of any part of the Contract would be illegal or otherwise unlawful or in conflict with independence or professional rules.
- d) Upon termination of the Contract, the Client will compensate Zwitch under the terms of the Engagement Letter for the Services performed and expenses incurred through the effective date of termination.

5. Property and Intellectual Property Rights

- a) Except as provided below or when a separate license agreement shall apply, upon full and final payment to Zwitch hereunder, the Deliverables will become the property of the Client in their tangible form and the Client may use them subject to the other provisions of the Contract for the purpose for which the Deliverables or work product were supplied.
- b) To the extent that any Zwitch Assets is contained in any of the Deliverables (other than any Zwitch Assets that is subject to a separate license agreement between Zwitch and the Client), Zwitch hereby grants the Client, upon full and final payment to Zwitch hereunder, a perpetual, royalty-free, fully paid-up, worldwide, nonexclusive license to use such Zwitch Assets in connection with the Deliverables subject to the other provisions of the Contract for the purpose for which the Deliverables or work product were supplied.
- c) To the extent that Zwitch utilizes any of its property (including, without limitation, the Zwitch Assets or any hardware or software of Zwitch) in connection with the performance of Services hereunder, such property shall remain the property of Zwitch and, except for the license explicitly granted in the preceding paragraph, the Client shall acquire no right or interest in such property. Notwithstanding anything herein to the contrary, the parties acknowledge and agree that (i) Zwitch shall own all right,

title, and interest, including, without limitation, all rights under all copyright, patent and other intellectual property laws, in and to the Zwitch Assets and (ii) Zwitch may employ, modify, disclose, and otherwise exploit the Zwitch Assets (including, without limitation, providing services or creating programming or materials for other clients).

- d) Zwitch does not agree to any terms that may be construed as precluding or limiting in any way its right to (i) provide consulting or other services of any kind or nature whatsoever to any person or entity as Zwitch in its sole discretion deems appropriate or (ii) develop for itself, or for others, materials that are competitive with or similar to those produced as a result of the Services, irrespective of their similarity to the Deliverables, subject to the confidentiality obligations set forth in Clause 9 of these Business Terms.

6. Limitation of Liability

- a) Nothing in the Contract shall exclude or restrict (or prevent a Claim being brought in respect of);
- (i) any liability finally judicially determined to arise primarily from the willful misconduct or comparable instance of gross negligence of Zwitch; or
 - (ii) any other liabilities which cannot lawfully be limited or excluded, save to the extent permitted by law.
- b) The Client agrees that neither Zwitch nor any Subcontractor involved in the performance of Services under the Contract shall be liable to the Client for any Losses for an aggregate amount in excess of three times the fees paid by the Client to Zwitch under the relevant Contract with a maximum of one year's fees under the relevant Contract.
- c) In no event shall any Subcontractor be liable for any loss of use, contracts, data, goodwill, revenues or profits (whether or not deemed to constitute direct Losses) or any consequential, special, indirect, incidental, punitive or exemplary loss, damage, or expense relating to the Contract or the Services.
- d) In circumstances where all or any portion of the provisions of this paragraph 6 are finally judicially determined to be unenforceable, the aggregate liability of Zwitch and any Subcontractor for any Loss shall not exceed an amount which is proportional to their relative responsibility for the Losses to which the Claim relates taking into account the contributory negligence (if any) of the claimant and the responsibility and/or liability of any third party.
- e) Zwitch will not be liable for Losses arising as a result of the provision of false, misleading or incomplete information or documentation, noncompliance with applicable legislation or regulations in the area of protection of privacy and personal data within the Client's sphere of responsibility or the withholding or concealment or misrepresentation of information or documentation by any person other than a Subcontractor.

7. Force Majeure

Neither party shall be liable for any delays or nonperformance directly or indirectly resulting from circumstances or causes beyond its reasonable control.

8. Limitation on Actions

No action, regardless of form, relating to the Contract or the Services, may be brought by the Client more than two years after the cause of action has accrued under applicable law.

9. Confidentiality

- a) To the extent that, in connection with the Contract, either Zwitch or the Client (the "receiving party") comes into possession of Confidential Information, it shall not disclose such Confidential Information to any third party without the disclosing party's consent except to the Client's or Zwitch's legal advisors solely for the purpose of obtaining legal advice, or as may be required by law, regulation, judicial or administrative process, or to the extent that such Confidential Information
- i. shall have otherwise become publicly available (including, without limitation, any information filed with any governmental agency and available to the public) other than as the result of a disclosure by the receiving party in breach hereof,
 - ii. becomes available to the receiving party on a non-confidential basis from a source other than the disclosing party which the receiving party believes is not prohibited from disclosing such information to it by obligation to the disclosing party,
 - iii. is known by the receiving party prior to its receipt from the disclosing party without any obligation of confidentiality with respect thereto or
 - iv. is developed by the receiving party independently of any disclosures made by the disclosing party to the receiving party of such information. In satisfying its obligations under this Paragraph 9(a), each party shall maintain the other's Confidential Information in confidence using at least

- the same degree of care as it employs in maintaining in confidence its own Confidential Information, but in no event less than a reasonable degree of care.
- b) The Client consents to Zwitch disclosing Confidential Information (i) to any Subcontractors and (ii) to its auditors, external legal counsel and insurers in connection with (potential) litigation or (iii) in accordance with applicable professional standards.
 - c) In the performance of the Services, any Subcontractor may communicate or discuss the affairs of the Client with the other advisers of the Client and may do so free from any obligation of confidentiality.
 - d) The Client acknowledges that Zwitch, in connection with performing the Services, may develop or acquire general knowledge, experience, know-how, skills and ideas that are retained in the memory of its personnel. Notwithstanding anything to the contrary herein, the Client acknowledges and agrees that Zwitch may use such general knowledge, experience, know-how, skills and ideas.
 - e) Nothing contained in the Contract will prevent or restrict Zwitch, from providing services to other clients (including services which are the same or similar to the Services) even if those other clients' interests are in competition with the Client provided that Zwitch is able to protect its obligation to maintain confidentiality, which includes separation of teams and files as appropriate in the circumstances. To the extent that Zwitch possesses information obtained under an obligation of confidentiality to another client or other third party, Zwitch is not obliged to disclose such information to the Client, or use it for the benefit of the Client, however relevant it may be to the Services. When any party becomes aware of the threat of a conflict of interest, it shall inform the other party forthwith in writing and both parties shall consult with each other for a reasonable solution.
 - f) The Client agrees to reimburse any costs that any Subcontractor may incur in complying with any legal, professional or regulatory disclosure requirement relating to any of the Services imposed in any proceedings or regulatory process not involving any substantive claim or proceeding against any Subcontractor, provided the Client is notified promptly and, where reasonably or legally possible, prior to disclosure.
 - g) Disclosure and use by Client. Notwithstanding Clause 9(a) above, the Client shall not disclose to any third party the advice, opinions, reports or other Services of Zwitch provided hereunder without the express written consent of Zwitch, except in the event and to the extent where the application of laws, regulations, rules and professional obligations prohibit the Client to allow limitations on disclosure. Client shall use the advice, opinions, reports or other Services of Zwitch solely for the purposes specified in the Engagement Letter and, in particular, shall not, without the prior written consent of Zwitch, use or refer to any advice, opinion, report or other Services of Zwitch in connection with business decisions of any third party or for advertisement purposes.
 - h) Unless agreed otherwise in writing explicitly, all Services are only intended for the benefit of the Client. The mere receipt of any advice, opinions, reports or other Services by any other persons is not intended to create any duty of care, professional relationship or any present or future liability between those persons and Zwitch. As a consequence, if copies of any advice, opinions, reports or other Services (or any information derived therefrom) are provided to others under the above exclusions, it is on the basis that Zwitch owes no duty of care or liability to them, or any other persons who subsequently receive the same.

10. Distribution of Deliverables or Client Communications

- a) This Clause of the Business Terms shall apply to all Services proposed or provided by Zwitch under a Contract, whenever the Deliverables agreed upon shall consist of a written or oral statement by Zwitch which is intended to be brought to the attention of Other Recipients.
- b) Deliverables and Client Communications in whatever form produced by Zwitch under the Contract may without the prior written consent of Zwitch not be distributed to any Other Recipient. The consent of Zwitch to distributing reports and other documents produced by it, to any specific third party, including any Other Recipient will always be subject to receipt of a letter in a form acceptable to Zwitch signed by the Other Recipient indicating the conditions under which the report and documents are released to the recipient.
- c) The Client may, however, disclose in whole any Deliverables or Client Communications to Zwitchs or Professional Advisors provided that when doing so the Client shall inform such Zwitch or Professional Advisor explicitly that:
 - i. it may use the Deliverable or Client Communication solely to assist Client in connection with Client's evaluation of any transaction the Engagement Letter refers to, provided that Client shall ensure that such Zwitchs and/or Professional Advisor do not further circulate, quote, disclose, or distribute any of the Deliverables or Client Communications, or refer to Zwitch Entities in connection with any transaction, Deliverables or the Client Communications
 - ii. disclosure by them except internally within the Zwitch and/or Professional Advisor is not permitted without the prior written consent of Zwitch; and

- iii. to the fullest extent permitted by the laws of the Netherlands Zwitch shall accept no duty of care, responsibility or liability to them in connection with the Services.
- d) Zwitch shall establish at its own discretion the suitability of Deliverables or Client Communications or other documents for release to Client or Other Recipients. In the event Zwitch is of the opinion that certain Deliverables or Client Communications are not suitable for release, Zwitch will endeavour – at the Client’s written request – to produce edited Deliverables or Client Communications suitable for release at the earliest practical date.
- e) The Client is entitled to request that certain parts of the Deliverables or Client Communications shall be withheld from parties to whom the report or documents are released pursuant to the Contract, conditional to the Client informing such parties of the fact that the released Deliverables or Client Communications have been edited or are incomplete.

11. Training services

- a) Any engagement in relation to training or instructing Client’s personnel shall be conducted as a reasonable efforts engagement and shall be subject to the Client providing timely and correct information about the trainees’ qualifications, education and experience.
- b) Any communication by Zwitch in relation to a training or instruction programme must be regarded as academic and for educational purposes only and may not be interpreted or relied upon as professional advice in relation to the trainee’s behaviour under specific circumstances.
- c) Zwitch shall be entitled to combine, postpone or relocate any study programme, course or training session with one or more other study programmes, courses or training sessions for reasons of efficiency, subject to the confidentiality obligations set forth in Clause 9 of these Business Terms.

12. Assignment

No party may assign or otherwise transfer a Contract without the prior express written consent of the other, except that Zwitch may assign any of its rights or obligations hereunder to any successor to its business. Neither party will directly or indirectly assign or transfer to a third party any Claim against the other party arising out of the Contract.

13. Indemnification

The Client shall indemnify and hold harmless Zwitch for all Losses incurred in connection with any third party Claim, except to the extent finally judicially determined to have resulted primarily from the willful misconduct or comparable instance of gross negligence of Zwitch.

14. Applicable Law and Venue

- a) The Contract, including all matters relating to it, shall be governed by, and construed in accordance with, the laws of The Netherlands (without giving effect to the choice of law principles thereof). The Vienna Sales Convention of 1980 shall not apply.
- b) The parties agree to attempt in good faith to resolve any dispute or claim arising out of or in connection with the Contract promptly through negotiations between senior management.
- c) Any action or proceeding arising out of or relating to the Contract or the Services shall be brought before and maintained exclusively in the District Court of Utrecht, The Netherlands subject to appeal and appeal in cassation under the Netherlands Act on Civil Procedural Law. The parties hereby explicitly and irrevocably (i) submit to the exclusive jurisdiction of such court for the purposes of any such action or proceeding and (ii) waive, to the fullest extent permitted by law, any defense of inconvenient forum to the venue and maintenance of such action in any such courts.

15. Non-solicitation

During the term of the Contract and for a period of twelve (12) months thereafter, each of Zwitch and Client agrees that it shall not, without the other’s content, directly or indirectly employ, solicit, engage or retain the services of each other’s personnel who (in their capacity as such) had direct and substantive contact in the course of the performance of Services with of such personnel of the other. In the event that either Zwitch or Client breaches this provision, the breaching party shall be liable to the aggrieved party for an amount equal to a hundred percent (100%) of the annual base compensation of the relevant personnel in his/her new position. Although such payment shall be the aggrieved party’s exclusive means of monetary recovery from the breaching party for breach of this provision, the aggrieved party shall be entitled to seek injunctive or other equitable relief to terminate ongoing or repetitive violations. This provision shall not restrict the right of either Zwitch or Client to solicit or recruit generally in the media.

16. Use of Names, Trademarks, etc.

Zwitch and the Client agree that neither shall use the other's name, trademarks, service marks, logos, trade names and/or branding without prior written consent, except that Zwitch may use the name of the Client and the performance of the Services in marketing and publicity materials, as an indication of its experience, and for internal purposes.

17. Use of Electronic Communications

- a) Except as instructed otherwise in writing, each party may assume that the other approves of properly addressed e-mail (including e-mail exchanged via Internet media) and voicemail communication of both sensitive and non-sensitive documents and other communications concerning the Contract, as well as other means of communication used or accepted by the other.
- b) It is recognized that the Internet is inherently insecure and that data can become corrupted, communications are not always delivered promptly (or at all) and that other methods of communication may be appropriate. Electronic communications are also prone to contamination by viruses. Each party will be responsible for protecting its own systems and interests and, to the fullest extent permitted by law, will not be responsible to the other on any basis (whether in contract, statute, tort (such as negligence) or otherwise) for any loss, damage or omission in any way arising from the use of the Internet or from access by Zwitch to networks, applications, electronic data or other systems of the Client.

18. Miscellaneous

- a) Survival. Any provisions of the Contract which either explicitly or by their nature extend beyond the expiration or termination of the Contract shall survive such expiration or termination, including, without limitation, clauses/paragraphs 1(b), 1(d) (Applicability and Entire Agreement), 3 (Compensation and Payment of Invoices), 5 (Property and Intellectual Property Rights), 6 (Limitation of Liability), 8 (Limitation on Actions), 9 (Confidentiality), 10 (Distribution of Deliverables or Client Communications), 12 (Assignment), 13 (Indemnification), 14 (Applicable Law and Venue), 15 (Non-Solicitation), 16 (Use of Names, Trademarks, etc.) and 18 (Miscellaneous).
- b) Conversion. If any provision or part of the Contract is found by a court of competent jurisdiction or other competent authority to be unenforceable, such provision or part shall not affect the remainder of the Contract, but such unenforceable provision or part shall be deemed modified to the extent necessary to render it enforceable, preserving to the fullest extent permissible the intent of the parties set forth herein. The provisions of paragraphs 1 (Contract and Parties), 6 (Limitation on Damages), 7 (Force Majeure), 8 (Limitation on Actions), 12 (Indemnification), 13 (Governing Law and Submission to Jurisdiction) and 14 (Entire Agreement) hereof shall apply to the fullest extent of the law, whether in contract, statute, tort (such as negligence), or otherwise, notwithstanding the failure of the essential purpose of any remedy.
- c) Interpretation. The headings in the Contract are for convenience only and shall not affect the interpretation of the Contract.

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