

These General Conditions shall, unless expressly otherwise agreed upon in writing by Evoswitch, apply to the Orders, Offers, the Agreement, the Data Processor Agreement (if entered into by Evoswitch as data processor) and any other agreements and/or legal relationships between Evoswitch and Customer resulting therefrom or in connection therewith. Evoswitch expressly rejects the applicability of Customer's terms and conditions, unless Evoswitch has expressly accepted the applicability of Customer's terms and conditions in writing.

1. DEFINITIONS AND INTERPRETATION

In these General Conditions, the Datacenter Services Master Agreement (if concluded), the Services Specification, the Policies, and the Order Form(s), the following words and expressions have the following meanings:

Additional Services means the services, other than the Colocation Service, to be provided by Evoswitch to Customer pursuant to the Agreement, such as Support services, Electricity Supply, Climate Control and the provision of in-house cabling.

Affiliate means with respect to a Party a legal entity, which is directly or indirectly:

- a) a Subsidiary of that Party;
- b) the Parent of that Party; or
- c) a Subsidiary of a Parent which is also the Parent of that Party.

Agreement means the agreement between Parties for the provision by Evoswitch of Services, consisting of the Datacenter Services Master Agreement (if concluded), the General Conditions, the Policies, the Order Form(s), and the Services Specification.

Assumed Electricity Usage means Evoswitch's estimation of Customer's monthly use of electricity, measured in kWh. The Assumed Electricity Usage is calculated on the assumption that for each 1 kVA of the Electrical Capacity Limit, Customer will, on a monthly basis, draw 520 kWh of electricity.

Breach means any inaccuracy in or breach of, or any failure to comply with or perform, any representation and warranty, covenant, obligation or other provision of the Agreement.

Business Day means Mondays to Fridays, with the exception of official federal holidays in The United States.

Business Hours means the period between 08.30 hours and 17.30 hours on a Business Day.

Colocation Service means a right to install and retain the Equipment in the Housing Space with effect from the Delivery Date for the duration of the Initial Term. The provision of electrical power, climate control, fire protection, lighting (as specified in the Services Specification), as well as access control and security (as specified in the Policies) at the Datacenter is part of the Colocation Service.

Confidential Information means all information not publicly known used in or otherwise relating to the Agreement, the business or affairs of a Party or an Affiliate of such Party and disclosed (whether in writing, verbally or by any other means and whether directly or indirectly) by the Disclosing Party to the Receiving Party whether before or after the Delivery Date.

Control means the ability, whether directly or indirectly, alone or together with group entities, whether through the exercise or non-exercise of any voting power whether in general meeting or in any meeting of managing directors or supervisory directors (if any) or managers or whether by agreement or otherwise, to direct the business affairs of a company or other undertaking or to cause the direction of the management, policies and decisions of a company or other undertaking.

Customer means legal entity acting as a business undertaking (i.e. not a consumer) that gives an assignment to Evoswitch with respect to the provision of (datacenter) services by Evoswitch.

Datacenter means the facility out of which or within which Evoswitch provides the Services.

Disclosing Party means the Party that discloses Confidential Information to the Receiving Party, as referred to in Clause 20.

Dispute means any claim, controversy, or dispute concerning questions of fact or Law arising out of or relating to these General Conditions or the Agreement or to the performance of either Party hereunder, or to the threatened, alleged or actual Breach thereof by either Party.

EDST means Eastern (Daylight Savings) Time, which is being observed in the Western Hemisphere (major cities that adhere to such time include Boston, Miami, New York City, Philadelphia and Washington, D.C.).

Effective Date means the date on which the Agreement becomes effective and the Term commences, as specified in the Order Form.

Electrical Capacity Limit means the limit that has been set for Customer's use of electricity, as specified in the Order Form, measured in kVA.

Electricity Consumption means the consumption by Customer of electricity, which supply will be metered in kilowatt hours (kWh) by Evoswitch.

Electricity Supply means the supply of electricity, which supplies will be metered by Evoswitch and charged by Evoswitch to Customer at a cost plus basis.

Emergency any situation which poses an immediate risk to: (i) a person or persons; (ii) the Datacenter; (iii) the provision of (part) of the Services; (iv) the provision of services by Evoswitch to other customers; and/or (v) equipment located at the Datacenter, including the Equipment.

Equipment means the equipment installed from time to time by Customer at a Datacenter.

Evoswitch means Evoswitch USA Inc., a Virginia corporation, with its principal place of business located at 9301 Innovation Drive, Suite 100, Manassas, Virginia 20110.

Event of Force Majeure means any event outside the reasonable control of a Party affecting its ability to perform any of its obligations (other than payment) under the Agreement including, without limitation: acts of God, acts of terrorists, acts of war, outbreak of hostilities, sabotage, civil disorder, riots, acts or demands of any (local) government or government agency, strikes, airplane or helicopter crashes, fires (provided that Customer cannot invoke Clause 19 for any fire caused by its Equipment), earth quakes, floods, any interruption in the supply of electrical power to Evoswitch beyond Evoswitch's back-up capacity electrical power, any interruption in Evoswitch's back-up capacity for electrical power, outbreak of disease (such as bird flu).

Housing Space means the racks, footprints, cages, cabinets, suites and/or other areas, designated as such by Evoswitch within the Evoswitch Datacenter or in such other places which Evoswitch may from time to time designate and specified in the Services Specification or the Order Form.

Intellectual Property Rights means any patent, copyright, trademark, trade name, service mark, moral right, database right, knowhow and any and all other intellectual property right whether registered or not or capable of registration and whether subsisting in any part of the world together with any and all goodwill relating thereto.

Initial Term means the initial term for which an Order is entered into, as specified in the Order Form. The Initial Term for an Order begins as of the RFS Date for the related Order Form.

Law means all applicable law, statute, subordinate legislation, treaty, regulation, directive, decision, by-law, ordinance, circular, rules, regulations, guidelines, code, order, notice, demand, decree,



injunction, resolution, permit, judgement or recommendation of any government, quasi-government, statutory, administrative or regulatory body, court, agency or association.

Maintenance means maintenance, repairs, modifications or upgrades performed by Evoswitch from time to time on the Datacenter itself or on equipment or software owned or operated by Evoswitch at the Datacenter.

Maintenance Window means the timeframe in which Evoswitch schedules the performance of Maintenance. Unless specifically agreed otherwise in writing by the Parties, the Maintenance Window is every day, between the hours of 06:00 am until 4:00 pm (16:00) EST.

Order means Customer's order for purchase of Services, made in accordance with Clause 3 hereof.

Order Form means the document in which among other is itemized: (i) which Services are purchased or licensed by Customer from Evoswitch, (ii) the agreed Service Levels, (iii) the Initial Term and (iv) the agreed Service Charges.

Parent used in relation to a Party shall mean a legal entity of which such Party is a Subsidiary within said meaning.

Parties means Evoswitch and Customer, each a "Party".

Policies means the policies for the use of the Datacenter and the use of the Services.

Power Commit means the limit that has been set for Customer's use of electrical power, as specified in the Order Form, measured in kilowatt (kW).

Qualified Staff means persons appointed by Customer, who will have access to the Housing Space, which persons are to be identified on a white list, to be provided by Customer to Evoswitch.

Quote means any offer, quote, proposal and/or tender-bid made by Evoswitch.

Receiving Party means the Party that receives – or is granted access to – Confidential Information by the Disclosing Party, as referred to in Clause 20.

Renewal Term means any extension of the Order following the end of the Initial Term or any other Renewal Term pursuant to Clause 16.2.

RFI Date means the ready for installation date, i.e. the date set forth in the Order Form on which the relevant Housing Space shall be made available by Evoswitch to Customer to install the Equipment.

RFS Date means the ready for service date, i.e. the date set forth in the Order Form as of which Customer is entitled to operationally use the Services for the first time, as specified in the Order Form.

Services means the Colocation Service and the Additional Services to be provided by Evoswitch to Customer.

Service Charges means the charges, fees, costs and expenses payable under the Agreement by Customer to Evoswitch for the provision of Services.

Service Credits means a credit, calculated in accordance with Clause 23 of the Services Specification, issued by Evoswitch to the Customer in respect to a Service Disruption.

Service Disruption means an interruption, suspension or degradation in the provision of one or more Services by Evoswitch to Customer.

Service Levels means the performance parameters with respect to the Services as described in the Services Specification.

Services Specification means the document in which Evoswitch has specified the Services offered by Evoswitch, as well as the available Service Levels.

Term means the Initial Term and all Renewal Term(s).

Test means a trial or test performed on (part of) the Datacenter (e.g. on the electrical system or the climate control system) in order to verify and ensure the proper performance thereof.

2. DOCUMENT STRUCTURE

- 2.1 The Agreement will consist of the following documents, whereby in case of conflict or inconsistency between these documents, the document first listed shall prevail over the document listed later:
 - (i) the Order Form(s);
 - (ii) the Datacenter Services Master Agreement (if concluded);
 - (iii) the Services Specifications;
 - (iv) General Conditions; and
 - (v) the Policies.
- 2.2 The applicability of purchase terms or other terms and conditions of Customer or third parties is hereby expressly excluded.
- 2.3 If Evoswitch has accepted the applicability of Customer's general terms and conditions and there is a discrepancy, conflict, or a dispute by and between any of the provisions of these general conditions and one or more of the provisions of Customer's general conditions, the provisions of Evoswitch's General Conditions shall govern and prevail.
- 2.4 Evoswitch is entitled to issue new versions and thereby amend any of the applicable documents set forth in Clause 2.1. Such amendment also applies to existing Agreement for Services, unless Evoswitch states otherwise formally in writing. The amendments come into effect fourteen (14) days after the announcement or on a later date stated in the announcement. The announcement may be made on Evoswitch's website and/or through the Customer Portal. If Customer does not wish to accept an amendment that relates to an existing Agreement, the Customer has the right to terminate that Agreement with effect from the date on which the amendment comes into force solely by means of a written formal Notification for termination that must have been received by Evoswitch within fourteen (14) days after Evoswitch's announcement of a new version of any of the document, unless (a) the amendment is solely for the benefit of the Customer; (b) the amendments are required by law; or (c) the amendment does not materially and adversely affect Customer's use of the Services.

3. ORDER PROCEDURE

- 3.1 From time to time, the Parties may execute one or more Order Forms for Evoswitch to provide Services. The Order shall come into existence upon execution of the Order Form and shall be binding on the Parties as of such moment. The Order shall, as of said date of execution, automatically be incorporated into the Agreement and shall be subject to these General Conditions, the Services Specification, and the Policies.
- 3.2 All Quotes are free of commitment and subject to Parties executing an Order Form, even when a period for acceptance is mentioned in the Quote. In case no period for acceptance is mentioned, Quotes cease to apply after thirty (30) days from the date of the relevant Quote. Upon acceptance of a Quote by Customer, Parties shall document the Order in an Order Form.
- 3.3 Customer may issue purchase orders to Evoswitch for Services for administrative purposes. The conclusion of an Order shall in no event be conditional upon receipt by Evoswitch of such purchase order, nor shall any Order come into existence upon issuing a purchase order if no Order Form is signed by Parties. None of the general conditions referenced or included by Customer in any purchase order shall apply to or modify the Agreement.

CUSTOMER: _____

EVOSWITCH: _____



4. INSTALLATION OF EQUIPMENT

- 4.1 Customer shall ensure that the installation of cabinets and/or the Equipment in the Housing Space commences on the RFI Date.
- 4.2 Customer shall not place its logo or any signs on or in the Evoswitch Datacenter or the Housing Space without the prior written consent of Evoswitch, which Evoswitch may withhold at its sole discretion.
- 4.3 Customer shall ensure that the Equipment is installed in the Housing Space in accordance with the Evoswitch Policies as well as any directions given by Evoswitch to Customer. Customer shall adhere to the floor plan and the (electrical) connection scheme as defined by Evoswitch.
- 4.4 Without any prejudice to Customer's right to install a cabinet in the event that Evoswitch provides Cabinet Space to Customer, Customer shall not make any alterations to the Housing Space or other parts of the Evoswitch Datacenter, including without limitation the installation of walls, partitions, drop ceilings, lighting, HVAC, plumbing, or any electrical distribution or electricity supplies.
- 4.5 Without limiting the generality of Clause 4.4, Customer shall, when installing a cabinet and/or the Equipment, not modify, move, replace, or remove any equipment, fixture, or other property of Evoswitch or any other customer.
- 4.6 Prior to the installation of any Equipment that requires support from Evoswitch engineers, Customer shall provide Evoswitch with an installation schedule containing, as a minimum, a detailed description of the following items:
 - a) a schedule covering the period from delivery of the Equipment to the Evoswitch Datacenter up to final installation and/or circuit interconnections;
 - b) details of the delivery of the Equipment;
 - c) a list of Authorized Individuals;
 - d) Customer points of contact for the delivery and installation of the Equipment;
 - e) an updated list of the Equipment to be installed, including its dimensions and specifications (including, without limitation, make, type, dimensions, electricity required, and heat dissipation); and
 - f) details of the physical installation, such as relative placement of the Equipment in the Housing Space.

5. DELAY IN INSTALLATION

- 5.1 In the event that Customer fails to commence with the installation of the Equipment on the RFI Date or before the fifth calendar day following the RFI Date, Evoswitch shall work with Customer in good faith to establish a new RFI Date.
- 5.2 The Evoswitch Datacenter has limited storage space. If Customer is not ready to install the Equipment, in whole or in part in the Housing Space, Customer must:
 - (i) store the Equipment in a storage area at the Evoswitch Datacenter (subject to availability of storage space at the Evoswitch Datacenter), or
 - (ii) (in case of sufficient storage area at the Evoswitch Datacenter) arrange for storage space at another location at Customer's own cost and expense. Evoswitch shall charge Customer a reasonable Service Charge for the storage of the Equipment in a storage area at the Evoswitch Datacenter under sub (i) above. Storage of Equipment or other materials in the Housing Space is not allowed, unless Customer has obtained the prior written approval of Evoswitch.
- 5.3 The establishment of a new RFI Date, as referred under Clause 5.1, shall be without prejudice to Customer's obligation to pay

the Service Charge to Evoswitch with effect from the RFS Date, i.e. the initial RFI Date.

- 5.4 Evoswitch may, at its sole discretion, unilaterally delay the RFI Date, by giving written notice to Customer, provided that:
 - (i) Evoswitch takes into account a notice period of at least five (5) days;
 - (ii) Customer shall be entitled to a credit equal to ten percent (10%) of the non-recurring Service Charges, referred to in Clause 9.1, with respect to the affected Housing Space if Evoswitch unilaterally delays the RFI Date by more than thirty (30) days after the initial RFI Date; and
 - (iii) Customer shall be entitled to terminate the Agreement in accordance with Clause 17.5.

6. ACCESS AND SECURITY

- 6.1 Subject to the other provisions in the Agreement and any other access and security rules in effect at the Evoswitch Datacenter, Customer will have access to the Housing Space 24 hours per day and 365/366 days per year, provided that:
 - (i) Customer is not in Breach of the Agreement;
 - (ii) Such access will only be granted to Qualified Staff; and
 - (iii) Evoswitch reserves its right to refuse to admit to the Evoswitch Datacenter or remove from the Evoswitch Datacenter any employees or sub-contractors of Customer, whose admission or presence is not authorized or whose presence would in Evoswitch's discretion be detrimental to the commercial interests of Evoswitch.
- 6.2 Evoswitch shall arrange for security, access control and camera monitoring at the Evoswitch Datacenter during twenty-four (24) hours per day, seven (7) days per week and 365/366 days per year.
- 6.3 Customer shall not be entitled to make a copy of or to review the footage of the cameras, referred to above in Clause 6.2.
- 6.4 Evoswitch shall be entitled to release the footage of the cameras, referred to above in Clause 6.2, to Customer and third parties, including any law enforcement authority, to the extent permitted under applicable Law at such time.

7. COMPLIANCE WITH LAWS

- 7.1 Customer warrants that it has obtained, and that during the Term of this Agreement it shall continue to maintain, at its own expense, any and all licenses, permits, consents and all other approvals necessary to use the Equipment, to use any software installed on the Equipment, to use the Services and to resell the Additional Services.
- 7.2 Each Party shall comply with all relevant Laws in providing or using (as appropriate) the Services. Customer particularly represents and warrants that it shall not handle, install, store, treat, discharge, release, or dispose of, any hazardous or toxic substances under the specific circumstances presented in the Housing Space, or defined as such under any applicable Law.

8. FINANCIAL SECURITY

- 8.1 The provision of Services by Evoswitch to Customer is subject to approval by Evoswitch of Customer's credit. In view hereof, Customer shall upon first request of Evoswitch provide credit information for approval by Evoswitch.
- 8.2 Evoswitch may prior to the RFI Date or at any time thereafter, require Customer to provide (at Evoswitch's discretion) a deposit, a bank guarantee or a parent guarantee, equivalent to up to three (3) month's Service Charges (actual or projected) or



other security satisfactory to Evoswitch. Customer shall make the deposit, the bank guarantee or the parent guarantee available on the date set forth in the Order Form, or in the absence of such date, within five (5) business after Evoswitch's request.

- 8.3 Any deposit or bank guarantee or parent guarantee shall be held by Evoswitch as security for the payment of Service Charges and any other amounts due under the Agreement. On the termination or expiration of the Agreement, Evoswitch may apply such deposit or bank guarantee to any amounts owed by Customer to Evoswitch. Any remaining credit balance of a deposit shall be refunded to Customer. Deposits will not carry any interest.
- 8.4 Any deposit paid by Customer pursuant to this Clause 8, will not carry any interest and will be held by Evoswitch in accordance with the applicable Law governing such deposit.

9. SERVICE CHARGES AND PAYMENT

- 9.1 Evoswitch will invoice: (i) setup charges, Service activation charges and any other non-recurring Service Charges, upon the RFS Date; and (ii) all recurring Service Charges as of the RFS Date, and monthly in advance thereafter, with the exception of Services Charges for use of Services above the agreed levels of Service which will be invoiced monthly in arrears.
- 9.2 Unless specified otherwise, all Service Charges are in US Dollars and are specified exclusive of any VAT which may be or become applicable.
- 9.3 All invoices are payable by Customer to Evoswitch within thirty (30) days of the date of the invoice.
- 9.4 In case of a good faith Dispute between Customer and Evoswitch over Services Charges that have been billed to Customer, based on a detailed written statement by Customer within fourteen (14) days of receipt of such invoice (otherwise, any invoice shall be deemed accepted by Customer), Customer may not withhold amounts equal to the disputed amount; however; any amounts that Evoswitch determines to have been in error and/or not in compliance with the Agreement shall be adjusted in the next available invoice following the good faith determination by Evoswitch. For purposes of clarification, no amount due under the Agreement is subject to reduction, set-off, or adjustment of any nature by Customer.
- 9.5 Evoswitch is entitled to increase any of the Service Charges, except the Service Charge with respect to Electricity Consumption, one (1) time per calendar year, with: (i) five percent (5%); or – if higher – (ii) the CPI for the previous year. The increase will apply with effect from the first (1st) of January, unless stipulated otherwise by Evoswitch in its notification to Customer. In the event that the increase of the Service Charges takes effect within twelve (12) months of the RFS Date, the increase will be pro-rated on the basis of the number of months that have passed since the RFS Date.
- 9.6 Evoswitch is – on a quarterly basis – entitled to increase the Service Charge with respect to Electricity Consumption, in case of an increase in Evoswitch's costs with respect to the acquisition by Evoswitch of electrical energy and/or a change of the efficiency of the Datacenter and/or extra investments by or on behalf of Evoswitch in renewable energy sources or more efficient equipment for the Datacenter. The method of calculation of the Service Charge with respect to Electricity Consumption is specified in Clause 6 of the Services Specification.
- 9.7 Notwithstanding anything to the contrary, Evoswitch may charge a 5% administration fee and a 5% risk fee on the Service Charge for Electricity Consumption.

- 9.8 Customer will pay to Evoswitch all taxes (including sales, use and excise taxes) that are measured directly by the payments made by Customer to Evoswitch under this Agreement and are required to be collected by Evoswitch; provided, however, that in no event shall Customer be obligated to pay any of Evoswitch's franchise taxes, taxes based on Evoswitch's net income, business and license taxes, property taxes for which Customer is exempted by law, or any penalties associated with Evoswitch's failure to properly remit taxes. Customer and Evoswitch will cooperate to segregate on the invoices the Service Charges payable under this Agreement into the following separate categories, to the extent applicable to such Service Charges: (a) those for taxable Services or products, (b) those for non-taxable Services or products, and (c) those for which a sales, use, or similar tax has already been paid by Evoswitch. If Customer should pay any tax to Evoswitch and it is later held that the tax was not due, Evoswitch will promptly refund the amount of the tax to Customer.
- 9.9 In case Customer has a complaint with respect to an invoice, Customer shall communicate such complaint in writing to Evoswitch within the payment term in the absence whereof invoices are deemed to be approved of by Customer.
- 9.10 Customer shall not be entitled to any set-off, suspension or deduction of payment of an invoice.
- 9.11 If Customer does not pay an invoice within the payment term, Customer shall be in default by operation of law and Evoswitch will, without a warning or notice of default being required, charge Customer interest on such sum on a daily basis from the due date until the date of payment on the basis of the statutory commercial interest rate plus two percent (2%).
- 9.12 In the event the Initial Term is longer than three (3) years, Evoswitch shall - without prejudice to Clause 9.4, 9.5 and 9.6 be entitled to demand an upward adjustment of any of the Service Charges, except the Service Charge with respect to Electricity Consumption, in order to match market-level prices, provided that:
 - a) such upward adjustment may occur for the first time with effect from the third anniversary of the RFS Date and subsequently upon each lapse of a three (3) year period from the last adjustment to the market;
 - b) market-level prices shall – at Evoswitch's discretion – be determined on the basis of: (a) information provided by a company specialized in benchmarking (datacenter) prices; and/or (b) price quotations from two or more of Evoswitch's competitors, which offer services comparable to and competitive with the Services, in the country where the Datacenter is located;
 - c) Evoswitch shall notify Customer thereof taking account a notice period equal to three (3) months prior to the date on which the upward adjusted Service Charge(s) must take effect;
 - d) Customer shall be entitled to contest the upward adjustment of the Service Charge(s) in writing, within one (1) month of receipt of notice. Customer shall in such case substantiate its objections with: (a) information provided by a company, specialized in benchmarking (Datacenter) prices; and (b) a price quotation from at least two of Evoswitch's main competitors, with a market share and service level comparable to that of Evoswitch, in the country where the Equipment has been installed in an Evoswitch Datacenter;
 - e) If Customer has timely contested Evoswitch's upward adjustment of the Service Charge(s) and Parties have not reached agreement on the upward adjustment of (a) Service Charge(s) within one (1) month of receipt of notice by

CUSTOMER: _____

EVOSWITCH: _____



Customer, the Parties shall jointly instruct an independent company specialized in benchmarking (Datacenter) prices, within six (6) weeks of receipt of notice by Customer. The Parties will request this independent benchmarking company to determine the average market-level prices for the Services and herewith agree that the independent benchmarking company's judgement, with respect to the average market-level prices for the Services, shall be binding upon both Parties. If the Parties fail to agree on which company should be appointed within six (6) weeks of receipt of notice by Customer, EvoSwitch shall be entitled to request the president of federal courts of Prince William County, Virginia, USA, to appoint such independent benchmarking company. The expenses of the independent benchmarking company will be born equally by both partners. Should the independent benchmarking company determine that the upward adjustment of the Service Charge(s) is in accordance with market-level prices, EvoSwitch will be entitled to implement the upward adjusted Service Charge(s) with retroactive effect.

9.13 For the avoidance of doubt: nothing in this Clause will lead to a downwards adjustment of the Service Charges.

10. SUSPENSION OF SERVICES

10.1 EvoSwitch shall be entitled to immediately suspend the provision of any of the Services and/or to suspend Customer's right to access the Equipment on giving notice to Customer in the event that:

- a) Customer does not pay an invoice within the payment term and fails to pay such invoice, plus due interest, within a period of seven (7) days after the date of notice with respect thereto;
- b) Customer is in breach of this Agreement;
- c) Customer does not make a deposit, bank guarantee or parent guarantee available in accordance with Clause 8;
- d) Customer's draw of electrical power exceeds the Power Commit and Customer fails to reduce its draw of electrical power to a level on or below the Power Commit within three (3) days after having received notice thereon; and/or Customer is in breach of any its other obligations under the Agreement and Customer fails to remedy such breach within fourteen (14) days after having received written notice thereon;

10.2 Customer shall remain liable for payment of all Service Charges during a suspension of Services.

10.3 Any exercise of such right of suspension shall not prejudice EvoSwitch's right to subsequently terminate the Agreement or any other legal remedy available to EvoSwitch.

10.4 Following suspension of the provision of the Additional Services and/or access to the Equipment, in accordance with Clause 10.1, EvoSwitch may claim, and Customer shall pay upon demand, a deactivation charge in the amount of five hundred US Dollars (US\$500,-), in relation to the (administrative) activities performed in order to suspend, or, if applicable, to recommence the Additional Services and/or Customer's access to the Equipment.

10.5 Customer acknowledges and agrees that any suspension in the provision of the Additional Services and/or access to the Equipment, in accordance with Clause 10.1, shall not constitute a Service Disruption.

11. MAINTENANCE AND TESTING

11.1 EvoSwitch reserves the right to suspend the Additional Services and may suspend Customer's right to access to the Equipment in order to perform Maintenance.

11.2 EvoSwitch will from time to time have to perform Maintenance in order to ensure a proper performance of the Datacenter and the Services. Such Maintenance may affect the provision of the Services to Customer. EvoSwitch reserves the right to suspend the Services and may suspend Customer's right to access to the Equipment during Maintenance.

11.3 EvoSwitch shall provide a ten (10) days prior notice to Customer of the intended Maintenance if EvoSwitch expects scheduled Maintenance to materially affect the provision of the Services and/or Customer's access to the Equipment.

11.4 Customer acknowledges that EvoSwitch may from time to time have to perform non-scheduled Maintenance, in order to resolve or prevent an Emergency. EvoSwitch shall be entitled to perform such Emergency Maintenance at any time, without taking into account a notice period.

11.5 Without prejudice to Clause 11.3, EvoSwitch shall, in the event of any Emergency Maintenance, notify Customer of such Emergency and the need to perform Emergency Maintenance without undue delay.

11.6 Customer agrees that any interruption or suspension or degradation in the provision of the Additional Services and/or access to the Equipment due to Maintenance shall not constitute a Service Disruption.

11.7 EvoSwitch may from time to time perform Tests. Such Tests may be performed at any time, without taking into account a notice period. Such Tests may affect the provision of the Services to Customer (e.g. during a Test, of the standby generators, the short break power outlet may momentarily be down and a reset of the cooling system may occur). EvoSwitch reserves the right to suspend the Services and may suspend Customer's right to access to the Equipment during Tests.

12. RELOCATION

12.1 EvoSwitch reserves the right to relocate the Housing Space within the Datacenter or to a different Datacenter, as well as the right to suspend the Services in connection with such relocation.

12.2 EvoSwitch shall give prior written notice to Customer of the intended relocation, taking into account a notice period of at least: (i) fourteen (14) days in the event of relocation of the Housing Space within the Datacenter; or (ii) three (3) months in the event of relocation to a different Datacenter.

12.3 Customer shall be required to relocate the Equipment to the new/alternative Housing Space designated by EvoSwitch, and within the time-slot indicated in EvoSwitch's notification.

12.4 In the event that EvoSwitch relocates the Housing Space to a different Datacenter, Customer shall be entitled terminate the Agreement without liability, with effect from the end of the notice period referred to in Clause 12.2, if Customer has sufficiently substantiated its objections to the relocation with evidence that such relocation would (a) lead to a breach of contract under an agreement between Customer and Customer's client(s); and/or (b) adversely affect Customer's use of the Service(s), to such extent that Customer cannot reasonably be required to continue the Service(s).

12.5 In case the relocation of the Equipment is performed by Customer, as referred to in Clause 12.3, EvoSwitch shall provide compensation to Customer for any reasonable costs, to be determined by EvoSwitch, incurred by Customer as a result of the relocation, excluding the costs of any new interconnections



that Customer may require or the procurement, delivery, and/or installation of any duplicate Equipment required to accomplish the relocation.

- 12.6 Without any prejudice to Clause 12.3, Evoswitch may, at its sole discretion, decide to relocate the Equipment for and on behalf of, and at the expense of, Customer.
- 12.7 In case Evoswitch elects to do so, Evoswitch shall: (i) notify Customer thereof simultaneously with its notification of the intended relocation of the Housing Space and/or Datacenter; and (ii) to the extent practicable, coordinate the relocation of the Equipment with Customer.

13. INDEMNIFICATION AND SERVICE DISRUPTION

- 13.1 Without limiting any other legal remedy available to Evoswitch, Customer shall indemnify, defend and hold harmless Evoswitch against all actions, losses, costs, damages, awards, expenses, fees (including legal fees incurred and/or awarded against Evoswitch) proceedings, claims or demands (“**Third Party Claims**”) brought or threatened against Evoswitch by a third party (i) related to content, and/or (ii) arising out of the use by Customer of the Services, the use and/or the occupancy of the Housing Space, or the telco rooms, including without limitation, the installation, operation, placement, maintenance and removal of Equipment in the Housing Space or the telco rooms, or the business conducted therein (including claims relating to interruptions, suspensions, failures, defects, delays, impairments or inadequacies in any of the aforementioned services and utilities); and/or (iii) any breach by Customer of a warranty or any other provision of the Agreement; (iv) any breach of the Evoswitch Policies; (v) any other wilful or negligent act or omission of Customer; (vi) any allegation that any technology or content used by Customer or its customers, or any practice or omission of Customer or its customers infringes or violates any statutory, regulatory or common law prohibition or obligation or any rights of any third party; (vii) Customer’s or its customer’s failure to comply with any applicable requirements under this Agreement; or (viii) any accident, injury or damage whatsoever caused to any person, or to the property of any person, occurring within the Housing Space or otherwise caused by Customer, its officers, directors, employees, agents, or contractors during the term of this Agreement or any time prior to the Effective Date.
- 13.2 In respect of the indemnification under Clause 13.1 above, Customer shall at its sole expense provide, Evoswitch with full authority, information and assistance as is reasonably necessary for the defense, compromise or settlement of any Third-Party Claims, and at the request of Evoswitch, take those steps that are reasonably required to put Evoswitch in the same financial position it would have been in if such Breach had not occurred.
- 13.3 Immediately, upon becoming aware of any Service Disruption, Customer shall notify Evoswitch in writing, by e-mail, and by telephone of the Service Disruption and shall provide Evoswitch with the appropriate information regarding:
 - (a) the nature of the Service Disruption;
 - (b) the affected Services;
 - (c) the name of Customer’s company;
 - (d) the name, number and e-mail of Customer’s emergency contact;
 - (e) the physical address for the Equipment, i.e. location of Housing Space and relevant Evoswitch Datacenter; and, if applicable,
 - (f) instructions to Evoswitch’s support staff.

- 13.4 Following notification by Customer in accordance with Clause 13.3, Evoswitch shall:
 - (a) notify Customer of the estimated timescale for restoration of the affected Services on Evoswitch’s website and via e-mail;
 - (b) use its best efforts in order to end the Service Disruption and to restore the affected Services; and
 - (c) as necessary, provide Customer with information updates on its progress to end the Service Disruption.
- 13.5 Instead of restoring a Service, Evoswitch may elect to substitute such affected Service by a reasonably equivalent Service.

14. LIMITATION OF LIABILITY

- 14.1 IN NO EVENT SHALL EVOSWITCH BE LIABLE TO CUSTOMER OR ANY THIRD PARTY FOR ANY SPECIAL, INDIRECT, INCIDENTAL, CONSEQUENTIAL OR PUNITIVE DAMAGES OF ANY KIND OR ANY NATURE WHATSOEVER, WHETHER ARISING UNDER CONTRACT, WARRANTY, OR TORT (INCLUDING NEGLIGENCE OR STRICT NEGLIGENCE) OR ANY OTHER THEORY OF LIABILITY, EVEN IF THE POSSIBILITY OF SUCH DAMAGES WERE DISCLOSED TO CUSTOMER OR COULD HAVE BEEN REASONABLY FORESEEN BY EVOSWITCH, KNOWN OR OTHERWISE.
- 14.2 For the avoidance of any doubt, nothing in the Agreement shall exclude or limit the liability or responsibility of Customer to: (i) pay the Service Charges; or (ii) repair (or if repair is not practicable, replace) any tangible physical property damaged by Customer or its representatives or employees.
- 14.3 Evoswitch shall in no event be liable for: (i) any harm or personal injury to Customer or Customer’s employees, clients, representatives or agents, except when such harm or personal injury is the direct and sole result of any gross negligence or wilful misconduct on the part of Evoswitch; (ii) any transaction, which Customer may enter into with a third party using the Services; (iii) the contents of any communications transmitted via the Equipment and/or Services or for any information or content on the Internet; (iv) damage to or loss of any of Customer’s data (bases) or loss of technology; (v) damage to, or theft of, or loss of Equipment; (vi) damage that is the direct or indirect result of the actions of Customer contrary to (one of) its obligations under the Agreement; (vii) damage that is the direct or indirect result of an inaccuracy of the information provided by or on behalf of Customer; (viii) damage that is the direct or indirect result of the suspension of the Services by Evoswitch, under Clause 10, 11 and/or 12; or (viii) damage in case Evoswitch has not been made liable for such damage in writing within thirty (30) days after Customer has come to know of the damaging event, or should reasonably have known of it; (x) any damage, in case and insofar as such damage is covered by any insurance effected by or for the benefit of Customer.
- 14.4 Any Service Credits shall constitute Customer’s single and exclusive legal remedy against Evoswitch, and shall constitute Evoswitch’s sole liability, in relation to, or in connection with, a Service Disruption or a failure by Evoswitch to meet the service level metrics set forth in the Service Levels, and such failure shall not be deemed to be a breach by Evoswitch under the Agreement.
- 14.5 Evoswitch’s liability is at all times limited to the amount that is in the relevant case paid out by the liability insurance of Evoswitch and shall in no case exceed the amount of Service Charges paid by Customer to Evoswitch for the respective Services for the twelve (12) month period prior to the event or events giving rise to such liability.



- 14.6 Nothing in the Agreement shall operate to exclude or limit a Party's liability resulting from (i) fraud; (ii) intent; or (iii) gross negligence.
- 14.7 Notwithstanding anything to the contrary set forth in this Clause 14, the legal remedies outlined in Clause 5, shall constitute Customer's single and exclusive legal remedy available against Evoswitch in relation to, or in connection with, any delay of the RFI Date by Evoswitch. Evoswitch shall have no other liability to Customer if the Housing Space is not available for installation of the Equipment on or before the initial or delayed RFI Date; or, if the installation is to be performed by Evoswitch, the installation is not completed by the initial or delayed RFI Date.
- 14.8 The Service Credits set forth in the Service Specification and the termination right in Clause 17 constitute Customer's sole and exclusive legal remedy available against Evoswitch in relation to, or in connection with, a Service Disruption and any failure to meet the agreed Service Levels. All other claims, in particular damage claims or termination rights in relation to such Service Disruptions or other failures to meet the agreed Service Levels are expressly excluded.
- 14.9 All Customer's claims for compensation end in any case twelve (12) months after the damaging event has taken place, unless Customer has commenced legal action in accordance with Clause 25.

15. INSURANCE

- 15.1 Customer shall at its expense and for each Evoswitch Datacenter during the term of this Agreement, maintain the following insurance policies with a reputable insurance company:
 - (a) Commercial general liability insurance with minimum limits of US\$1,000,000.00 per occurrence and US\$2,000,000.00 general aggregate for bodily injury, personal injury and property damage;
 - (b) Workers' compensation insurance with statutory limits and employer's liability insurance with a US\$1,000,000.00 per accident limit for bodily injury or disease; and
 - (c) Umbrella or Excess Liability liability insurance with a minimum liability limit of US\$2,000,000.
- 15.2 Customer shall obtain and maintain a liability insurance for public liability, material damage, death, bodily injury and business interruption, with a reputable insurance company up to an amount per event of – at least – three (3) times Customer's total annual Service Charges, with a minimum of one million US Dollars (US\$ 1,000,000).
- 15.3 The Equipment shall at all times be at Customer's risk, unless damage to or destruction of the Equipment is caused by gross negligence or willful misconduct on the part of Evoswitch. Therefore, during the continuance of the Agreement, it shall be Customer's responsibility to insure at its own expense, and keep insured the Equipment against loss, theft, damage or destruction howsoever arising.
- 15.4 Customer shall immediately upon Evoswitch's request provide Evoswitch with insurance documentation, evidencing Customer's insurance coverage and compliance with Clauses 15.1, 15.2 and 15.3.

16. TERM AND RENEWAL

- 16.1 Each Order is entered into for the duration of the Initial Term.
- 16.2 At the expiration of the Initial Term, the Order shall automatically renew for successive Renewal Terms equal to the duration of the Initial Term, unless either Party notifies the

other in writing that it does not agree to renewal of the Order, taking into account a notice period of at least ninety (90) days.

17. TERMINATION

- 17.1 A Party can only terminate the Agreement and/or an Order in accordance with the termination rights explicitly granted to such Party in the Agreement.
- 17.2 A Party is entitled to terminate the Agreement by giving immediate written notice to the other Party, if:
 - (i) the other Party has ceased to exist or has been dissolved;
 - (ii) the other Party has been declared bankrupt, or it has been granted suspension of payments or entered into voluntary liquidation;
 - (iii) the other Party's business has been discontinued;
 - (iv) the other party is in breach of any of the other terms of the Agreement and fails to remedy such breach within a period of thirty (30) days after having received notice with respect to the breach.
- 17.3 Evoswitch is entitled to terminate the Agreement with immediate effect, by giving written notice to Customer, in the event Customer does not pay an invoice within the payment term and fails to pay such invoice, plus the interest referred to in Clause 9.10 within a period of fourteen (14) days after having received notice thereof.
- 17.4 Evoswitch is entitled to terminate the Agreement with immediate effect, without taking into account any notice period, in the event of a change of ownership or Control of Customer if, in Evoswitch's discretion: (i) the party that acquires ownership or Control of Customer is of lesser socio- economic standing than the party which owned Customer or had Control of Customer before; and/or (ii) Customer's credit standing is likely to be adversely affected by such change of ownership or Control.
- 17.5 Evoswitch is entitled to terminate the Agreement without any liability vis-à-vis Customer, by giving written notice to Customer, taking into account a notice period of at least thirty (30) days, in the event that:
 - (i) Evoswitch has received notification from its lessor or landlord with respect to termination or expiration of Evoswitch's lease of the property where the Datacenter is located; and
 - (ii) Evoswitch will, for any reason, not be able to arrange for an alternative and suitable location for the Datacenter within a period of thirty (30) days after having received notification from its lessor or landlord, such to be determined at Evoswitch's sole discretion.
- 17.6 Customer is entitled to terminate an Order with immediate effect, by giving written notice to Evoswitch, if (i) Evoswitch unilaterally delays the RFS Date or RFI Date, and such delay lasts for thirty (30) days after Evoswitch having received notification of Customer's intention to terminate; (ii) Evoswitch fails to remedy a Service Disruption, and is unable to provide Customer with a substitute Service in accordance with Clause 13, within thirty (30) days after having received notification by Customer.

18. EFFECTS OF TERMINATION/ EXPIRATION

- 18.1 Termination or expiration of the Agreement shall be without prejudice to any rights or remedies available to, or obligations or liabilities accrued to the Parties as at the date of termination or expiration. For purposes of clarification, no termination or expiration of the Agreement shall relieve Customer from its duties to pay any Service Charges due hereunder.
- 18.2 Upon expiration or termination of the Agreement:
 - (i) Evoswitch shall cease to provide all Services;



- (ii) all sums due to Evoswitch up to the date of termination shall immediately become due in full; and
 - (iii) subject to Clause 18.4, Customer shall remove the Equipment from the Datacenter no later than the date of effective expiration or termination and shall return the Housing Space to Evoswitch in the same condition it was in prior to Customer's use thereof.
- 18.3 If Customer does not timely remove the Colocated Equipment in accordance with Clause 18.2,
- (i) Evoswitch may - at Customer's expense - remove and store the Equipment or return such Equipment to Customer, or dispose of such Equipment without liability for any related damages, or
 - (ii) if Evoswitch does not elect to do so, Customer shall be liable to pay to Evoswitch a penalty equal to one month Service Charges for the terminated Services for each month, or partial month, that Customer has failed to remove the Equipment.
- 18.4 Evoswitch will have the right to retain any Equipment until it has received payment in full of all sums due and/or payable by Customer to Evoswitch. If Evoswitch has not received such sums due and/or payable within a reasonable time frame to be determined by Evoswitch, Evoswitch reserves the right to sell any Equipment, necessary to recoup all sums due and/or payable, at such price as it is able to obtain in the open market.
- 18.5 If Evoswitch terminates the Agreement pursuant to Clauses 17.1 or 17.2, Customer shall:
- (i) reimburse Evoswitch for any third party cancellation/termination charges associated with the Services so terminated; and
 - (ii) without prejudice to any other rights or remedies that Evoswitch may have – pay to Evoswitch one hundred percent (100%) of the Service Charges, actual or projected, for each month remaining in the then current Initial Term or Renewal Terms (as applicable) within five (5) Business Days after the termination date.
- 18.6 The following Clauses shall survive termination or expiration of the Agreement and continue in full force and effect, in addition to those Clauses the survival of which is necessary for the interpretation or enforcement of this Agreement: Indemnification (Clause 13), Limitation of Liability (Clause 14), Effects of Termination / Expiration (Clause 18), Confidentiality (Clause 20), Notices (Clause 22), Governing Law and Jurisdiction (Clause 25).

19. FORCE MAJEURE

- 19.1 A Party shall not be deemed in breach of any of its obligations under the Agreement if, and to the extent that, performance of such obligation is prevented or delayed by an Event of Force Majeure.
- 19.2 Upon the occurrence of an Event of Force Majeure, the time for performance shall be extended for the period of delay or inability to perform due to such occurrence, but if an Event of Force Majeure continues for a continuous period of more than ninety (90) days, the other Party shall be entitled to terminate the Agreement.
- 19.3 During an Event of Force Majeure, Customer shall remain liable for payment of all Service Charges due under the Agreement.

20. CONFIDENTIALITY

- 20.1 During the Term, and during a period of three (3) years after termination or expiration of the Agreement for any reason whatsoever, a Receiving Party shall:
 - (i) keep all Confidential Information strictly confidential,

- (ii) not disclose any Confidential Information to any other person without the prior written consent of the Disclosing Party, and
 - (iii) only use and reproduce the Confidential Information for the performance of its obligations under the Agreement.
- 20.2 The obligations contained in Clause 20.1, shall not apply to any Confidential Information which:
- (i) at the date of the Agreement is, or at any time after the date of the Agreement becomes, public knowledge other than through breach of the Agreement by the Receiving Party;
 - (ii) can be shown by the Receiving Party to the reasonable satisfaction of the Disclosing Party to have been known to the Receiving Party prior to it being disclosed by the Disclosing Party to the Receiving Party; or
 - (iii) is required to be disclosed or used by law.
- 20.3 The Receiving Party agrees that any and all notes, diagrams, descriptions, memoranda and other writings or electronic information obtained from the Disclosing Party and any copies, notes or excerpts thereof containing Confidential Information shall remain the sole and exclusive property of the Disclosing Party and that said documents shall, upon request of the Disclosing Party be promptly returned to the Disclosing Party or destroyed.

21. TRANSFER OF RIGHTS AND OBLIGATIONS

- 21.1 Customer may not assign or transfer, or purport to assign or transfer, any rights or obligations under the Agreement without the prior written consent of Evoswitch.
- 21.2 Evoswitch may assign any of its rights or obligations under the Agreement to an Affiliate (or its or their successors, through merger or acquisition of substantially all of their or its assets) or any other (third) party, without Customer's prior written consent.
- 21.3 Evoswitch may sub-contract any or all of its obligations under the Agreement to a third party, provided that Evoswitch shall remain liable to Customer for the performance of those obligations.
- 21.4 Nothing in the Agreement shall exclude or limit Evoswitch's rights to grant or create a right of pledge or other security right - for the benefit of a bank or other financial institution or other third party – on or over any or all (cash) receivables that Customer owes or comes to owe to Evoswitch.
- 21.5 Nothing in the Agreement shall result in the transfer of either Party's Intellectual Property Rights (of whatever nature) to the other Party.
- 21.6 Without limiting the generality of Clause 21, disclosure of Confidential Information as referred to in Clause 20, will not in any way result in the transfer of the Disclosing Party's Intellectual Property Rights (of whatever nature) to the Receiving Party or a Recipient, whether or not the disclosure of such Confidential Information was authorized, or not.

22. NOTICES

- 22.1 Unless specified otherwise herein, any notice or other communication under or in connection with the Agreement shall be in writing and shall be sent by registered mail or by pre-paid recorded courier delivery, to the Party due to receive the notice at its address set out below or such other address as any Party may specify by notice in writing to the other:

If to Evoswitch Evoswitch USA Inc.
 Attn.: Chief Executive Officer
 9301 Innovation Drive / Suite 100
 Manassas, Virginia 20110



The United States of America

If to Customer As included in the Order Form

- 22.2 In the absence of evidence of earlier receipt, any such notice, demand or other communication shall be deemed to have been received;
 - (i) if delivered by hand, at the time of delivery;
 - (ii) if posted, on the expiration of three (3) Business Days after the notice has been provided to the courier company;
 - (iii) if sent by facsimile, on the date confirmation of successful transmission is received.
 - (iv) if sent by e-mail, the moment the e-mail has been received on or by a mail server or mail exchanger used or operated by the legally authorized representative of the receiving Party.

23. MISCELLANEOUS

- 23.1 Evoswitch shall be entitled to assign any of its rights or obligations under the Agreement to an Affiliate or to a third party acquiring all or substantially all of the assets of Evoswitch, upon giving written notice to Customer.
- 23.2 Both Customer and Evoswitch agree not to solicit or hire any personnel of each other until at least six (6) months after the termination of the Agreement.
- 23.3 Neither Party shall be authorized to make press or public announcements relating to this Agreement or an Order, without the prior written approval of the other Party, such approval not to be unreasonably withheld or delayed. However, Evoswitch shall - without Customer's approval - be entitled to inform third parties that Evoswitch provides Services to Customer (e.g. as a Customer case, during sales activities and on Evoswitch's website).
- 23.4 Customer will refrain from publicly making any remarks regarding the operation of the Datacenter or any Service Disruptions. In the event that Customer violates this obligations, Customer shall, without a notice of default being required, forfeit an immediately due and payable penalty of US\$25,000 (twenty-five thousand US Dollars) for each such violation, without prejudice to any other rights Evoswitch may have, such as the right to terminate this Agreement and/or the right to claim performance and/or compensation of damages suffered.

24. SEVERABILITY

- 24.1 Should any or several of the provisions of the Agreement be invalid or null or void, this shall not affect the remaining provisions thereof. In such event, the relevant provision shall be replaced by a valid provision that reflects – to the extent possible – the purpose and the intended effect of the original provision.

25. GOVERNING LAW AND JURISDICTION

- 25.1 The Agreement and all matters arising there from or connected therewith are governed by, and enforced solely in accordance with, the laws of the Commonwealth of Virginia, exclusive of any provisions of the United Nations Convention on the International Sale of Goods and without regard to this country's or any other jurisdiction's choice of law provisions.
- 25.2 The state or federal courts of Prince William County, Virginia, USA, shall have exclusive jurisdiction to hear and determine any suit, action or proceedings, and to settle any disputes, which may arise out of or in connection with the Agreement. The parties expressly submit and consent to such jurisdiction and venue and specifically waive any and all rights it may have to

contest the jurisdiction and/or venue of the above mentioned forums and to demand any other forum. FURTHERMORE, THE PARTIES HERETO ACKNOWLEDGE THAT THE RIGHT TO TRIAL BY JURY IS A CONSTITUTIONAL RIGHT, BUT THAT THIS RIGHT MAY BE WAIVED. THE PARTIES EACH HEREBY KNOWINGLY, VOLUNTARILY AND WITHOUT COERCION, WAIVE ALL RIGHT TO A TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM BROUGHT BY EITHER PARTY AGAINST THE OTHER ON ANY MATTER ARISING OUT OF THIS AGREEMENT OR OUT OF ANY AGREEMENT, INSTRUMENT OR DOCUMENT DELIVERED, OR WHICH MAY IN THE FUTURE BE DELIVERED, IN CONNECTION HEREWITH AND AGREE THAT ANY SUCH ACTION, PROCEEDING OR COUNTERCLAIM SHALL BE TRIED BEFORE A COURT AND NOT BEFORE A JURY. BOTH PARTIES REPRESENT THAT THEY HAVE BEEN REPRESENTED IN THE EXECUTION OF THIS AGREEMENT AND THE MAKING OF THIS WAIVER BY INDEPENDENT LEGAL COUNSEL, SELECTED OF THEIR OWN FREE WILL, AND THAT THEY HAVE HAD THE OPPORTUNITY TO DISCUSS THIS WAIVER WITH COUNSEL.

- 25.3 Nothing herein shall prevent Evoswitch from pursuing action in any other jurisdiction as may be appropriate for the purpose of seeking urgent and/or interim and/or interlocutory injunctive or other relief against Customer.

