

# General Terms & Conditions

The Additional Terms for Maintenance and Support Services and/or the Additional Terms for On-Site Managed Services and/or Additional Terms for Professional Services set out from clause 25 shall apply if AVI-SPL provides such services or if AVI-SPL determines in its absolute discretion that such terms apply, whether within the Scope Proposal or otherwise.

## 1 Interpretation

### 1.1 Definitions.

In these Conditions, the following definitions apply:

- 1.1.1 **"AVI-SPL"** means the AVI-SPL UK&I Entity that produced and proffered the Scope Proposal for which the Customer has issued an Order.
- 1.1.2 **"AVI-SPL Materials"** has the meaning set out in clause 24.1.11.
- 1.1.3 **"AVI-SPL Partner"** means a value-added reseller or distributor authorised to resell AVI-SPL Products and Services.
- 1.1.4 **"AVI-SPL UK&I Entity"** means either:
  - 1.1.4.1 AVI-SPL Limited a company incorporated and registered in England & Wales (CRN: 08281689) and whose registered office is at Unit 12, Armstrong Mall, Southwood Business Park, Farnborough, Hampshire, United Kingdom GU14 0NR; or
  - 1.1.4.2 AVI-SPL Ireland Limited, a company incorporated and registered in Ireland (CRN: 487792) and whose registered office is at Unit 30, Tallaght Business Centre, Whitestown Road, Tallaght, Dublin 24, Republic of Ireland, D24 EAA9

as applicable.
- 1.1.5 **"AVI-SPL Web Site"** means the AVI-SPL website currently located at <http://www.avispl.co.uk>.
- 1.1.6 **"Business Day"** means a day (other than a Saturday, Sunday or public holiday) when banks in London are open for business.
- 1.1.7 **"Commencement Date"** has the meaning given to it in clause 2.3.
- 1.1.8 **"Conditions"** means the terms and conditions set out in this document as amended from time to time in accordance with clause 24.8.
- 1.1.9 **"Contract"** means the contract formed pursuant to clause 2.3 between AVI-SPL and the Customer for the sale and purchase of the Equipment and/or provision of the Services in accordance with these Conditions, the Scope Proposal and the applicable Order entered into by the Parties, with these Conditions to take precedence in the event of any conflict or discrepancy between them, followed by the Scope Proposal.
- 1.1.10 **"Controller", "Data Subject", "International Organisation", "Personal Data", "Personal Data Breach", "Processor"** and processing shall have the respective meanings given to them in applicable Data Protection Laws from time to time (and related expressions, including process, processed and processes shall be construed accordingly).
- 1.1.11 **"Customer"** means the entity with which AVI-SPL enters into the Contract or its successors or assigns.

- 1.1.12 **"Customer Room"** means a room, division or other distinct space within or outside the Customer's premises or Delivery Location designated within the Scope Proposal which is capable of utilising the functionality of the Equipment allocated for it without requiring the Installation of all other Equipment included in such Scope Proposal.
- 1.1.13 **"Data Protection Laws"** means the GDPR, Data Protection Act 2018 (as promulgated in the country in which AVI-SPL is registered), any laws which implement or supplement any such laws and any laws that replace, extend, re-enact, consolidate or amend any of the foregoing.
- 1.1.14 **"Equipment"** means the audio-visual system (or any part of it) and / or any other materials required for the Installation and functionality of the audio visual system as set out in the Order.
- 1.1.15 **"Force Majeure Event"** has the meaning given in clause 19.1.
- 1.1.16 **"GDPR"** means the General Data Protection Regulation, Regulation (EU) 2016/679, as it forms part of domestic law in the country in which AVI-SPL is registered.
- 1.1.17 **"Installation"** means field assembly, interconnection, equipment calibration and checkout of the Equipment performed by AVI-SPL's trained technical employees and **"Installed"** shall be construed accordingly.
- 1.1.18 **"Installation Site"** means the area the Customer has requested the Equipment be Installed as may be set out in any applicable Scope Proposal or notified to AVI-SPL by the Customer (provided that AVI-SPL has given prior written acceptance to such location).
- 1.1.19 **"Instructions"** means the accompanying manual provided with the Equipment.
- 1.1.20 **"Intellectual Property Rights"** means all patents, rights to inventions, utility models, copyright and related rights, trade marks, service marks, trade, business and domain names, rights in trade dress or get-up, rights in goodwill or to sue for passing off, unfair competition rights, rights in designs, rights in computer software, database right, topography rights, moral rights, rights in confidential information (including know-how and trade secrets) and any other intellectual property rights, in each case whether registered or unregistered and including all applications for and renewals or extensions of such rights, and all similar or equivalent rights or forms of protection in any part of the world.
- 1.1.21 **"Order"** means the Customer's purchase order for the Equipment and/or Services set out in the Scope Proposal to which such order purports to relate.
- 1.1.22 **"Price"** means the total price, exclusive of VAT, to be paid by the Customer to AVI-SPL for the Scope Proposal in accordance with the provisions of the Contract.
- 1.1.23 **"Protected Data"** means Personal Data received from or on behalf of the Customer in connection with the performance of AVI-SPL's obligations under this Contract.
- 1.1.24 **"Scope Proposal"** means the project details including materials, designs, installation plan and labour costs, including any related plans and drawings set out in the relevant proposal of AVI-SPL for which the Customer issued a purchase order.
- 1.1.25 **"Services"** or **"Maintenance and Support Services"** means the AVI-SPL branded maintenance and/or support services supplied by AVI-SPL to the Customer as set out in the Scope Proposal.
- 1.1.26 **"Sign-off"** has the meaning given to it in clause 9.2.

- 1.1.27 **"Storage Costs"** means any costs and expenses (including reasonable professional fees) incurred by it as a result of the use, modification, storage or possession of the relevant Equipment.
  - 1.1.28 **"Sub-Processor"** means any Processor engaged by AVI-SPL (or by any other Sub-Processor) for carrying out any processing activities in respect of the Protected Data on behalf of the Customer.
  - 1.1.29 **"TUPE Regulations"** means in relation to Equipment and/or Services provided in:
    - 1.1.29.1 England, Scotland and/or Wales, the Transfer of Undertakings (Protection of Employment) Regulations 2006;
    - 1.1.29.2 Northern Ireland (as constituted within the United Kingdom), the Transfer of Undertakings (Protection of Employment) Regulations 2006 together with the Service Provision Change (Protection of Employment) Regulations (Northern Ireland) 2006; and
    - 1.1.29.3 the Republic of Ireland, the European Communities (Protection of Employment Employees on Transfer of Undertakings) Regulations 2003 as amended by the Employees (Provision of Information and Consultation) Act 2006,

as amended from time to time and currently in force.
  - 1.1.30 **"VAT"** has the meaning given to it in clause 7.6.
- 1.2 In these Conditions, the following rules apply:
- 1.2.1 A **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).
  - 1.2.2 A reference to a party includes its personal representatives, successors or permitted assigns.
  - 1.2.3 A reference to a statute or statutory provision is a reference to such statute or provision as amended or re-enacted. A reference to a statute or statutory provision includes any subordinate legislation made under that statute or statutory provision, as amended or re-enacted.
  - 1.2.4 Any phrase introduced by the terms **including, include, in particular** or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding those terms.
  - 1.2.5 A reference to **writing** or **written** includes e-mails.
- 2 Basis of contract**
- 2.1 These Conditions apply to the Contract to the exclusion of any other terms that the Customer seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.
  - 2.2 The Order constitutes an offer by the Customer to purchase the Equipment and to have it Installed in accordance with these Conditions. The Customer is responsible for ensuring that the terms of the Order and any applicable Scope Proposal are complete and accurate.
  - 2.3 The Order shall only be deemed to be accepted when AVI-SPL issues a written acceptance of the Order, at which point the Contract shall come into existence and shall be legally binding (the **"Commencement Date"**).

- 2.4 The Contract constitutes the entire agreement between the parties. The Customer acknowledges that it has not relied on any statement, promise, representation, assurance or warranty made or given by or on behalf of AVI-SPL which is not set out in the Contract.
- 2.5 Any samples, drawings, descriptive matter, or advertising produced by AVI-SPL and any descriptions or illustrations contained in AVI-SPL's catalogues or brochures are produced for the sole purpose of giving an approximate idea of the Equipment described in them. They shall not form part of the Contract or have any contractual force.
- 2.6 A Scope Proposal given by AVI-SPL shall not constitute an offer. A Scope Proposal and any pricing in connection with it shall only be valid for a period of thirty (30) calendar days from its date of issue. AVI-SPL may update its pricing should a Scope Proposal not be signed and a Purchase Order issued within this period.
- 2.7 No variation of this Contract shall be effective unless it is in writing and signed by the Customer and a company director of AVI-SPL.

### 3 Equipment

- 3.1 The Equipment is described in the Scope Proposal.
- 3.2 AVI-SPL reserves the right to amend the Scope Proposal if required by any applicable statutory or regulatory requirements and shall do so in writing.

### 4 Delivery

- 4.1 AVI-SPL shall deliver the Equipment to the location set out in the Order or such other location as the parties may agree ("**Delivery Location**") at any time after AVI-SPL notifies the Customer that the Equipment is ready.
- 4.2 Delivery of the Equipment shall be completed on the Equipment's arrival at the Delivery Location.
- 4.3 Any dates quoted for delivery are approximate only, and the time of delivery is not of the essence. AVI-SPL shall not be liable for any delay in delivery of the Equipment howsoever caused except as arising directly from the failure of AVI-SPL to transport such Equipment to the Delivery Location once received by its suppliers, provided that such failure is not caused by a Force Majeure Event or the Customer's failure to provide AVI-SPL with adequate delivery instructions or any other instructions that are relevant to the supply of the Equipment.
- 4.4 The Customer shall indemnify AVI-SPL for any and all additional costs as a result of any delay to delivery caused by the Customer.
- 4.5 If AVI-SPL is liable for delay in accordance with clause 4.3, its liability shall be limited to the costs and expenses incurred by the Customer in obtaining replacement Equipment of similar description and quality in the cheapest market available, less the price of the Equipment, up to ten percent (10%) of the price set out in the relevant Order.
- 4.6 If the Customer fails to accept delivery of the Equipment within three Business Days of AVI-SPL notifying the Customer that the Equipment are ready, then, except where such failure or delay is caused by a Force Majeure Event or AVI-SPL's failure to comply with its obligations under the Contract:
  - 4.6.1 delivery of the Equipment shall be deemed to have been completed at 9.00 am on the third Business Day after the day on which AVI-SPL notified the Customer that the Equipment was ready;
  - 4.6.2 AVI-SPL shall store the Equipment until delivery takes place, and charge the Customer for all related costs and expenses (including insurance); and

- 4.6.3 AVI-SPL shall immediately invoice the Customer 70% of the price of the Equipment as set out in the Order.
- 4.7 Upon delivery to the Delivery Location, the Customer must immediately check the Equipment in question for any defects or damage. Any visible defects must be reported to AVI-SPL in writing within 3 (three) Business Days after the delivery of the Equipment, with reference to the invoice number or, in the absence thereof, the number of the dispatch note or order confirmation. If this period has expired without written notice (complaint) regarding a defect in the Equipment, the Equipment shall be deemed to have been accepted by the Customer. In any case, the Equipment is deemed to be accepted if the Customer has taken the Equipment into use, has delivered it to third parties, or has commissioned it, unless a complaint has been lodged within the stipulated period of 3 (three) Business Days.
- 4.8 If the Customer fails to accept delivery after AVI-SPL notifies the Customer that the Equipment is ready for delivery, the AVI-SPL shall store and insure the Equipment pending delivery, and the Customer shall indemnify AVI-SPL for all costs and expenses incurred by AVI-SPL in doing so.
- 4.9 If twenty (20) Business Days following the notification by AVI-SPL that the Equipment is ready for delivery elapses and the Customer has not accepted delivery, AVI-SPL may resell or otherwise dispose of part or all of the Equipment and, after deducting storage and selling costs, account to the Customer for any excess of the resale price over the price for such Equipment set out in the Order, or invoice the Customer for any shortfall of the resale price below the price of such Equipment set out in the Order, as the case may be.
- 4.10 Subject to 7.3, AVI-SPL may at its sole discretion deliver the Equipment by instalments, which may at its sole discretion be invoiced and paid for separately one hundred percent (100%) immediately upon notification by AVI-SPL that the Equipment has been delivered to the registered address of AVI-SPL (or the Delivery Location if earlier). Each instalment shall constitute a separate Contract. Any delay in delivery or defect in an instalment shall not entitle the Customer to cancel any other instalment.

## 5 Quality

- 5.1 In the event the Equipment is:
- 5.1.1 altered;
  - 5.1.2 repaired by someone other than a representative of AVI-SPL; or
  - 5.1.3 operated in a manner inconsistent with established safety operating procedures as outlined in any applicable Instructions;
- which results, in AVI-SPL's opinion, in a reduction in the value of the Equipment; the warranties contained within this clause 5 and AVI-SPL's obligations under these Conditions will terminate immediately.
- 5.2 The warranty with regard to the Equipment delivered by AVI-SPL is limited to the warranty granted by the manufacturer of the Equipment or the supplier of the software (delivered in connection with the Equipment), both in terms of its substance and its duration. Therefore, only the warranty conditions and warranty period of such manufacturer/supplier apply to the delivered Equipment, or software delivered in conjunction with said Equipment, replacing any deviating provisions in this Contract. The Customer accepts the intended warranty conditions of the manufacturer/supplier. AVI-SPL shall use its reasonable endeavours to supply such warranty conditions along with the Equipment or within a reasonably practicable period after

its delivery or, in the case of software, constitute part of the licence terms. It follows from the foregoing that AVI-SPL only has a warranty obligation if and insofar as it (or the Customer directly) can claim a warranty obligation from the manufacturer or supplier. The processing of the defective Equipment will be carried out according to the procedure of the manufacturer or supplier and the instructions given by AVI-SPL.

- 5.3 Without prejudice to the provisions in the warranty conditions of the manufacturer, supplier or AVI-SPL, the warranty (whether pursuant to clauses 5.2 or 5.6) will at least lapse if:
  - 5.3.1 without the prior written permission of AVI-SPL, supplier or the manufacturer, repairs, modifications or extensions have been made to the Equipment or Software by the Customer or by others;
  - 5.3.2 changes, repairs or extensions have been made to the Equipment or Software that AVI-SPL has indicated would lead to the lapse of the warranty;
  - 5.3.3 in AVI-SPL's opinion the Equipment has been used or maintained carelessly, incorrectly or inexpertly;
  - 5.3.4 changes have been made to the warranty certificate or any seal of the Equipment has been broken;
  - 5.3.5 type numbers, serial numbers and/or warranty stickers are damaged, altered or removed;
  - 5.3.6 any defects have arisen by not connecting or using the Equipment or Software as prescribed and/or not connecting or installing (approved) other products to the Equipment or Software; or
  - 5.3.7 defects have arisen due to deviating environmental conditions, insofar as such conditions have been stipulated or by other external causes such as fire or water damage.
- 5.4 The Warranty Period as defined in clause 5.6 or period of warranty provided pursuant to clause 5.2 shall not be extended or renewed by carrying out the work performed, or replacement products supplied within the context of the warranty.
- 5.5 AVI-SPL is under no obligation to repair defects that have been reported after the expiry of the warranty period set by the manufacturer or supplier, unless Parties have agreed in the Contract upon the delivery of Maintenance and Support Services, which includes such a duty to repair. Work and costs of repair that are delivered or made outside the scope of the warranty will be charged by AVI-SPL in accordance with its usual rates.
- 5.6 Only in the event of the warranty conditions of the manufacturer or the supplier of the Equipment being supplied for whatever reason being deemed to not be applicable or are declared inapplicable, AVI-SPL shall warrant (subject to clauses 5.2 and 31), that on delivery, and for a period of ninety (90) calendar days following the date of Installation ("**Warranty Period**"), the Equipment shall:
  - 5.6.1 conform with its description and any applicable Scope Proposal; and
  - 5.6.2 be free from material defects in Installation.
- 5.7 Subject to clause 5.8, if:
  - 5.7.1 the Customer gives notice in writing to AVI-SPL during the Warranty Period within a reasonable time of discovery that some or all of the Equipment does not comply with the warranty set out in clause 5.8; and

- 5.7.2 AVI-SPL is given a reasonable opportunity to examine such Equipment; and
- 5.7.3 the Customer (if asked to do so by AVI-SPL) returns such Equipment to AVI-SPL's place of business at AVI-SPL's cost,  
AVI-SPL shall, at its option, repair or replace the defective Equipment, or refund the price of the defective Equipment in full.
- 5.8 AVI-SPL shall not be liable for the Equipment's failure to comply with the warranty set out in clauses 5.2 or 5.6 in any of the following events:
  - 5.8.1 the Customer makes any further use of such Equipment after giving notice in accordance with clause 5.6;
  - 5.8.2 the defect arises because the Customer failed to follow AVI-SPL's oral or written instructions as to the storage, commissioning, installation, use and maintenance of the Equipment or (if there are none) good trade practice regarding the same;
  - 5.8.3 the defect arises as a result of AVI-SPL following any drawing or design supplied by the Customer;
  - 5.8.4 the Customer alters or repairs such Equipment without the written consent of AVI-SPL;
  - 5.8.5 the defect arises as a result of fair wear and tear, wilful damage, negligence, or abnormal storage or working conditions; or
  - 5.8.6 the Equipment differs from its description or any applicable Scope Proposal as a result of changes made to ensure they comply with applicable statutory or regulatory requirements.
- 5.9 Except as provided in these Conditions, AVI-SPL shall have no liability to the Customer in respect of the Equipment's failure to comply with the warranty set out in clauses 5.2 or 5.6.
- 5.10 The terms implied by sections 13 to 15 of the Sale of Goods Act 1979 are, to the fullest extent permitted by law, excluded from the Contract.
- 5.11 Subject to the M&S Terms where applicable, these Conditions shall apply to any repaired or replacement Equipment supplied by AVI-SPL.

**6 Title and risk**

- 6.1 Subject to clause 6.3, the risk in the Equipment shall pass to the Customer on completion of delivery in accordance with clause 4.2.
- 6.2 Subject to clause 7.11, title to the Equipment shall not pass to the Customer until AVI-SPL has received payment in full (in cash or cleared funds) for:
  - 6.2.1 the Equipment; and
  - 6.2.2 any other equipment or services that AVI-SPL has supplied to the Customer.
- 6.3 Where:
  - 6.3.1 title to the Equipment has not passed to the Customer due to failure to pay for such Equipment in full in accordance with clause 6.2, the Customer shall:
    - 6.3.1.1 hold the Equipment on a fiduciary basis as AVI-SPL's bailee;
    - 6.3.1.2 store the Equipment separately from all other equipment held by the Customer and mark it clearly as belonging to AVI-SPL so that they remain readily identifiable as AVI-SPL's property;
    - 6.3.1.3 not remove, deface or obscure any identifying mark or packaging on or relating to the Equipment;

- 6.3.1.4 maintain the Equipment in satisfactory condition and keep it insured against all risks for their full price from the date of delivery;
- 6.3.1.5 notify AVI-SPL immediately if it becomes subject to any of the events listed in clause 13.3; and
- 6.3.1.6 give AVI-SPL such information relating to the Equipment as AVI-SPL may require from time to time,

but the Customer may resell or use the Equipment in the ordinary course of its business.

6.3.2 title to the Equipment has passed to the Customer in accordance with clause 7.11 but the Customer has deferred delivery and/or partial Installation, AVI-SPL shall:

- 6.3.2.1 hold the Equipment on a fiduciary basis as the Customer's bailee;
- 6.3.2.2 store the Equipment separately from all other equipment held by AVI-SPL and mark it clearly as belonging to the Customer so that they remain readily identifiable as the Customer's property;
- 6.3.2.3 not remove, deface or obscure any identifying mark or packaging on or relating to the Equipment; and
- 6.3.2.4 maintain the Equipment in satisfactory condition and keep it insured against all risks for their full price from the date of delivery.

6.4 If the Customer fails to make any payment due in accordance with these Conditions, including payment of any Storage Costs, AVI-SPL may at any time:

- 6.4.1 where the Customer holds title, notify the Customer that the title passed to AVI-SPL; and
- 6.4.2 where AVI-SPL holds title, require the Customer to deliver up the Equipment and, if the Customer fails to do so promptly, enter any premises of the Customer or of any third party where the Equipment is stored in order to recover it,

and once AVI-SPL holds the Equipment and title in its possession AVI-SPL may resell or use such Equipment in the ordinary course of its business.

6.5 If, before title to the Equipment passes to the Customer, the Customer becomes subject to any of the events listed in clause 13.3, or AVI-SPL reasonably believes that any such event is about to happen and notifies the Customer accordingly, then, provided that the Equipment has not been resold, or irrevocably incorporated into another product, and without limiting any other right or remedy AVI-SPL may have, AVI-SPL may at any time require the Customer to deliver up the Equipment and, if the Customer fails to do so promptly, enter any premises of the Customer or of any third party where the Equipment is stored in order to recover it.

## 7 Price and payment

- 7.1 The price of the Equipment and any related Installation shall be the quoted price set out in the Scope Proposal, or, if no price is quoted, the price set out in AVI-SPL's price list in force as at the date of delivery.
- 7.2 Subject to Clause 4.10, the Customer shall pay, subject to AVI-SPL issuing an invoice, for any Equipment and its Installation in three instalments as follows:



- 7.2.1 50% of the Price immediately upon the Commencement Date;
  - 7.2.2 subject to Clause 7.11, 40% of the Price immediately upon notification by AVI-SPL that the Equipment has been delivered to the registered address of AVI-SPL (or the Delivery Location if earlier); and
  - 7.2.3 10% of the Price within 30 days of Sign Off.
  - 7.3 Where only Equipment is being supplied (e.g. without Installation) or where the Price is equal to or less than £10,000, the Customer shall pay 100% of the Price upon the Commencement Date.
  - 7.4 AVI-SPL may, by giving notice to the Customer at any time up to five (5) Business Days before delivery, increase the price of the Equipment to reflect any increase in the cost of the Equipment that is due to:
    - 7.4.1 any factor beyond AVI-SPL's control (including but not limited to foreign exchange fluctuations, increases in taxes and duties, and increases in labour, materials and other manufacturing costs);
    - 7.4.2 any request by the Customer to change the delivery date(s), quantities or types of Equipment ordered, or the Scope Proposal; or
    - 7.4.3 any delay caused by any instructions of the Customer or failure of the Customer to give AVI-SPL adequate or accurate information or instructions.
  - 7.5 The price of the Equipment is exclusive of the costs and charges of packaging, insurance and transport of the Equipment. These costs and charges will be itemised in the Scope Proposal.
  - 7.6 The price of the Equipment is exclusive of amounts in respect of any sales tax or value added tax ("**VAT**"). The Customer shall, on receipt of a valid sales tax or VAT invoice from AVI-SPL, pay to AVI-SPL such additional amounts in respect of sales tax or VAT as are chargeable on the supply of the Equipment.
  - 7.7 The Customer shall pay each invoice submitted by AVI-SPL in accordance with clause 7.2:
    - 7.7.1 within thirty (30) calendar days of the date of a valid invoice from AVI-SPL; and
    - 7.7.2 in full and in cleared funds to a bank account nominated in writing by AVI-SPL and detailed on acceptance of the Scope Proposal.
- without any set-off or suspension on any account whatsoever, except where it has been decided by arbitration award or judgement of a Court, that the Customer has a counter-claim capable of being set off or a ground for suspension. Time for payment is of the essence.
- 7.8 If the Customer fails to make any payment due to AVI-SPL under the Contract by the due date for payment, then the Customer shall pay interest on the overdue amount at the rate of 4% per annum above Bank of England's base rate from time to time. Such interest shall accrue on a daily basis from the due date until actual payment of the overdue amount, whether before or after judgment. The Customer shall pay the interest together with the overdue amount.
  - 7.9 The Customer shall pay all amounts due under the Contract in full without any set-off, counterclaim, deduction or withholding (except for any deduction or withholding required by law). AVI-SPL may at any time, without limiting any other rights or remedies it may have, set off any amount owing to it by the Customer against any amount payable by AVI-SPL to the Customer.
  - 7.10 Subject to Clause 30.1, the Customer is not entitled to receive updates or upgrades with respect to the Equipment unless it is specifically agreed between the Parties within the Scope Proposal.

- 7.11 If any Equipment forming part of a Scope Proposal delivered to the registered address of AVI-SPL is determined by AVI-SPL in its absolute discretion to be capable of providing the requisite functionality set out therein to one (1) or more Customer Rooms, such Equipment shall be eligible for:
- 7.11.1 partial Installation; and
  - 7.11.2 partial payment and the passing of title,
- at AVI-SPL's election. Upon election AVI-SPL shall provide the Customer with notice that: (i) such Equipment is eligible for partial Installation; and that (ii) upon the aforesaid notice payment for such Equipment pursuant to clause 7.2.2 is due and title for such Equipment has passed to the Customer (a "**Partial Installation Notice**"). Upon receipt of a Partial Installation Notice, the Customer may defer such partial Installation, in which case AVI-SPL shall retain risk, subject to payment on an indemnified basis by the Customer of any Storage Costs, until the Customer permits delivery and Installation of such Equipment at the relevant Delivery Location, in accordance with clause 6.4.
- 7.12 Unless otherwise stated in AVI-SPL's Scope Proposal, Orders and any other transaction documents must be raised, invoiced and paid out of the Customer's entity incorporated or established in the jurisdiction in which AVI-SPL is performing the Services, with payment made to AVI-SPL or its nominated affiliate (at its sole discretion). Subject to AVI-SPL's prior written consent, Orders or other transaction documents may be raised, invoiced or paid out of a different jurisdiction, subject to an administrative fee of five percent (5%) plus any associated non-reclaimable tax.

## 8 Installation

- 8.1 AVI-SPL shall, at its own expense, be entitled to employ sub-contractors and / or agents to assist in or carry out, in whole or part, the Installation.
- 8.2 The Customer shall:
- 8.2.1 prepare, at its own expense, the Installation Site in accordance with AVI-SPL's instructions, including any requirements specified in any applicable Scope Proposal;
  - 8.2.2 provide AVI-SPL with reasonable access to the Installation Site, at times and dates agreed from time to time between the Customer and AVI-SPL, for the purpose of AVI-SPL determining Installation Site readiness for Installation;
  - 8.2.3 designate and authorise a representative to serve as a contact person for all Installation Site preparation;
  - 8.2.4 indemnify AVI-SPL against any loss, damage or claim arising out of the condition of the Installation Site.
- 8.3 Unless otherwise stated, the Customer shall provide AVI-SPL with source code for any non-AVI-SPL programmed remote control system required by the Customer.
- 8.4 If the Customer is unable, for whatever reason, to provide AVI-SPL with any required source code in accordance with clause 8.3, AVI-SPL may at its absolute discretion elect to terminate the Contract or commission an IT engineer/programmer to create new source code and other work in connection therewith, and AVI-SPL shall be entitled to invoice the costs of such services or other work in accordance with its standard rates. This shall not affect the other fees payable by the Customer in respect of the Contract.

- 8.5 Under no circumstances will AVI-SPL be responsible or liable for structural modifications, mechanical system modifications or high voltage electrical work (for the avoidance of doubt, high voltage electrical work includes electrical work with voltage over 240 volts).
- 8.6 In the event that the installation by AVI-SPL is prevented due to strikes, lock-outs or other industrial disputes:
- 8.6.1 the Customer shall, at its own expense, arrange to complete installation; and
  - 8.6.2 AVI-SPL shall be released from the warranties in clause 5 relating to Installation.

## 9 Inspection and Testing of the Equipment

- 9.1 AVI-SPL shall test and inspect the Equipment on Installation to ensure that it complies, in AVI-SPL's sole determination, with the requirements of the Order. AVI-SPL's determination is final.
- 9.2 Once satisfied the Equipment is compliant in accordance with clause 9.1, AVI-SPL will inform the Customer ("**Sign Off**").

## 10 Cancellation

- 10.1 In the event the Customer wishes to cancel the Contract, written confirmation must be received by AVI-SPL no more than thirty (30) calendar days following the later of the date of issue of the Order or the date on which AVI-SPL's Scope Proposal was signed.
- 10.2 In the event that the customer should wish to cancel the Contract, AVI-SPL will use its reasonable endeavours to return any Equipment already ordered to its suppliers.
- 10.3 The Customer will be responsible for the full value of any Equipment that cannot be returned by AVI-SPL to its suppliers and in addition will indemnify AVI-SPL for all re-stocking charges levied by AVI-SPL or its suppliers.

## 11 Cooperation of the Customer

- 11.1 The Customer shall always furnish AVI-SPL in a timely manner with all data, information, hardware, facilities, materials and cooperation that are useful and necessary to execute the Contract properly and provide full cooperation. Labour cancellation fees may apply if these conditions are not met at the agreed date and time. If the Customer utilises its own employees in cooperating in the execution of the Contract, these employees shall possess the necessary know-how, experience, training and abilities. The Customer guarantees that the provided information will be correct and complete.
- 11.2 The Customer represents and warrants to AVI-SPL that the hardware, including servers, software, telecommunication facilities (including internet) connections, or other facilities used in connection with the Services and/or Equipment provided by AVI-SPL meet all required technical specifications to enable the correct functioning of the Equipment and/or Services. Customer shall bear the risk of selecting, using and applying in its organisation the hardware, software, (internet) connections and other facilities necessary for the proper use of the Equipment and Services and shall also be responsible for the monitoring and security procedures and proper system management, unless otherwise agreed upon in writing. AVI-SPL is not liable for any damage or expenses due to transmission errors, malfunctions or the non-availability of these facilities, unless the Customer proves that such damage or expenses resulted from intentional acts or omissions or gross negligence on the part of AVI-SPL.

- 11.3 If the Customer does not provide AVI-SPL with the data, equipment, software or other cooperation necessary to execute the Contract, or does not provide this in a timely manner or in accordance with the agreements made, or if the Customer otherwise does not fulfil its obligations, AVI-SPL shall be entitled to suspend execution of the Contract in whole or in part, and it shall be entitled to charge the ensuing expenses in accordance with its usual rates, all of this without prejudice to AVI-SPL's right to exercise any other legal right.
- 11.4 The Customer shall ensure that all software and data files are adequately replicated, and a copy is supplied to AVI-SPL on first request. The software and data files will be stored by the Customer in compliance to ISO 27001 or equivalent certification and will remain the property of the Customer. In the event the Customer is unable to provide a copy of software and data files, and AVI-SPL is required to create the files to carry out the tasks defined within the Contract, this may incur an additional charge.
- 11.5 If and insofar as employees of AVI-SPL perform work on the premises of the Customer, the Customer shall provide appropriate working conditions, access to all necessary facilities including but not limited to computer and telecommunication facilities and qualified personnel as may be reasonably requested by AVI-SPL. All facilities shall comply with all applicable statutory and other requirements and provisions concerning working conditions. The Customer shall indemnify AVI-SPL against claims by third parties, including AVI-SPL's employees, who, in executing the Contract, suffer injury which is the result of acts or omissions by the Customer or of unsafe situations in its organisation.
- 11.6 All work in relation to the delivery and Installation of the Equipment or provision of the Services needs to be carried out in a continuous period, in a safe and secure environment that is clean, dust-free and ready for installation on the first day of the communicated schedule. AVI-SPL may require assistance from the Customer with a number of tasks required as part of the Installation process. The following shall be completed by the Customer in advance of the first day programmed for any Installation:
- 11.6.1 power, power cable sockets, power and data cabling, ELV cabling containment;
  - 11.6.2 network connections, sockets and switches;
  - 11.6.3 floor boxes and/or grommet holes as required;
  - 11.6.4 details of the client supplied IP connectivity and related addresses are to be supplied to AVI-SPL at least one week prior to installation; and
  - 11.6.5 the disposal of any packaging or other waste is to be the responsibility of the Customer.
- 11.7 The Customer acknowledges and agrees to:
- 11.7.1 provide secure storage for Equipment stored on-site with the Customer whether inside or out of the Installation Site(s), such storage area(s) to be solely used by AVI-SPL during the staging and Installation phase, and if this is not provided, or Installation is delayed due to any breach, act or omission by the Customer, the Customer shall indemnify AVI-SPL for any and all associated Storage Costs;
  - 11.7.2 remove and dispose of existing equipment and clear from the Installation Site(s);
  - 11.7.3 provide timely approval of any issued 'Scope of Work'.
  - 11.7.4 provide timely approval of design drawings.

- 11.7.5 verify that the weight load of the proposed mounting location can take the weight of the new equipment, and any display wall shall be properly backed to withstand the weight of the display with a safety factor of at least 5:1;
- 11.7.6 further to Clause 11.5, provide unobstructed access to equipment and the control room installation site until the Installation is 100% complete.
- 11.7.7 provide a full account of the locations of existing utilities and cable trays in a format satisfactory to AVI-SPL;
- 11.7.8 provide any room furniture that forms part of the Installation;
- 11.7.9 provide floor protection during Installation if AVI-SPL determines in its sole discretion that it is required;
- 11.7.10 further to Clause 11.6, provide all required conduits for low voltage cable paths to AV equipment;
- 11.7.11 further to Clause 11.6, provide AC power at the equipment locations, including hardwired power connections;
- 11.7.12 further to Clause 11.6, provide all ceiling work required to install new cables or equipment including plasterboard cut-out;
- 11.7.13 further to Clauses 11.3 and 11.4, provide all software or hardware licenses not specifically provided in the Scope Proposal or associated bill of materials;
- 11.7.14 further to Clauses 11.3 and 11.4, provide all software or hardware configuration for owner furnished equipment.
- 11.7.15 further to Clause 11.6, provide all cable/satellite/over-the-air TV connections and all associated hardware.
- 11.7.16 further to Clause 11.6, provide all electrical power, conduit systems, HVAC systems, IT requirements (wired or wireless services), communication circuits, and or other services required by the systems and equipment should be fully installed, energized, and configured for use prior to AVI-SPL work taken place;
- 11.7.17 further to Clauses 11.5 and 11.6, provide a climate controlled, secure control room for all control system;
- 11.7.18 further to Clause 11.6, the rooms and directly adjacent areas into which the equipment will be installed must be dust-free with floor, ceiling, and wall finishes to be completely installed in the rooms affected by the equipment;
- 11.7.19 AVI-SPL undertaking the Scope Proposal and related Installation in accordance with the Contract in all material respects solely during the Business Hours (unless agreed otherwise in the Contract or in writing on an ad hoc basis);
- 11.7.20 provide proper heat dissipation venting for the Equipment appropriate to the Installation and, where convection cooling is not possible, a powered venting system shall be provided by the Customer with thermostatically controlled quiet fans;
- 11.7.21 further to Clauses 11.3 and 11.4, provide and coordinate timely IT support and documentation (such as providing IP addresses or account credentials) within a reasonable period prior to Installation;
- 11.7.22 further to Clauses 11.3 and 11.4, provide the configuration of OFE networks, applications, servers, and services to provide interoperation with installed systems within a reasonable period prior to Installation.
- 11.7.23 a 'Scope of Work' if required being issued by AVI-SPL only upon the Customer signing the Scope Proposal incorporating these Conditions and receipt of a Purchase Order accurately reflecting the same; and

11.7.24 further to Clause 19.1, the Equipment and final delivery date only being provided by AVI-SPL upon the Customer's written approval of the 'Scope of Work', and also being subject to any supply-chain constraints or delay.

11.8 If any of the provisions of this clause 11 are not met by the Customer and therefore the delivery of Services and/or Equipment and/or Installation is delayed and extra time and/or extra work needs to be invested by AVI-SPL, AVI-SPL has the right to charge and the Customer acknowledges it is obliged to pay all fees due to this extra time and/or extra work.

## 12 Customer Default

12.1 If AVI-SPL's performance of any of its obligations under the Contract is prevented or delayed by any act or omission by the Customer or failure by the Customer to perform any relevant obligation ("**Customer Default**"):

12.1.1 AVI-SPL shall without limiting its other rights or remedies have the right to suspend performance of the Services until the Customer remedies the Customer Default, and to rely on the Customer Default to relieve it from the performance of any of its obligations to the extent the Customer Default prevents or delays AVI-SPL's performance of any of its obligations;

12.1.2 AVI-SPL shall not be liable for any costs or losses sustained or incurred by the Customer arising directly or indirectly from AVI-SPL's failure or delay to perform any of its obligations under the Contract; and

12.1.3 the Customer shall indemnify AVI-SPL for any costs or losses sustained or incurred by AVI-SPL arising directly or indirectly from the Customer Default as a debt.

## 13 Termination

13.1 The Contract cannot be terminated except as set out in this clause 13.

13.2 If the Customer becomes subject to any of the events listed in clause 13.3, or AVI-SPL reasonably believes that the Customer is about to become subject to any of them and notifies the Customer accordingly, then, without limiting any other right or remedy available to AVI-SPL, AVI-SPL may cancel or suspend all further deliveries under the Contract or under any other contract between the Customer and AVI-SPL without incurring any liability to the Customer, and all outstanding sums in respect of Equipment delivered to the Customer shall become immediately due.

13.3 For the purposes of clause 13.2, the relevant events are:

13.3.1 the Customer suspends, or threatens to suspend, payment of its debts, or is unable to pay its debts as they fall due or admits inability to pay its debts, or (being a company or limited liability partnership) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986, or (being an individual) is deemed either unable to pay its debts or as having no reasonable prospect of so doing, in either case, within the meaning of section 268 of the Insolvency Act 1986, or (being a partnership) has any partner to whom any of the foregoing apply;

13.3.2 the Customer commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors other than (where the Customer is a company) where these events take place for the sole purpose of a scheme for a

- solvent amalgamation of the Customer with one or more other companies or the solvent reconstruction of the Customer;
- 13.3.3 (being a company) a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of the Customer, other than for the sole purpose of a scheme for a solvent amalgamation of the Customer with one or more other companies or the solvent reconstruction of the Customer;
  - 13.3.4 (being an individual) the Customer is the subject of a bankruptcy petition or order;
  - 13.3.5 a creditor or encumbrancer of the Customer attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of its assets and such attachment or process is not discharged within 14 days;
  - 13.3.6 (being a company) an application is made to court, or an order is made, for the appointment of a receiver, manager or administrator or if a notice of intention to appoint a receiver, manager or administrator is given or if a receiver, manager or administrator is appointed over the Customer;
  - 13.3.7 (being a company) the holder of a qualifying charge or floating charge over the Customer's assets has become entitled to appoint or has appointed a receiver, manager or administrative receiver;
  - 13.3.8 a person becomes entitled to appoint a receiver over the Customer's assets or a receiver is appointed over the Customer's assets;
  - 13.3.9 any event occurs, or proceeding is taken, with respect to the Customer in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in clause 13.3.1 to clause 13.3.8 (inclusive);
  - 13.3.10 the Customer suspends, threatens to suspend, ceases or threatens to cease to carry on all or a substantial part of its business;
  - 13.3.11 the Customer's financial position deteriorates to such an extent that in AVI-SPL's opinion the Customer's capability to adequately fulfil its obligations under the Contract has been placed in jeopardy; and
  - 13.3.12 (being an individual) the Customer dies or, by reason of illness or incapacity (whether mental or physical), is incapable of managing his or her own affairs or becomes a patient under any mental health legislation.
- 13.4 Termination of the Contract, however arising, shall not affect any of the parties' rights and remedies that have accrued as at termination. Clauses which expressly or by implication survive termination of the Contract shall continue in full force and effect.
  - 13.5 Without limiting its other rights or remedies, AVI-SPL may terminate the Contract with immediate effect by giving written notice to the Customer if any person other than an AVI-SPL employee, agent or sub-contractor alters the Equipment without AVI-SPL's prior written consent, or in any way renders the Equipment unsafe.
  - 13.6 Without limiting its other rights or remedies, AVI-SPL may terminate the Contract with immediate effect by giving written notice to the Customer if the Customer fails to pay any amount due under this Contract on the due date for payment and fails to pay all outstanding amounts within 14 days after being notified in writing to do so.
  - 13.7 Without limiting its other rights or remedies, AVI-SPL may suspend provision of the Services under the Contract or any other contract between the Customer and AVI-SPL if the Customer becomes subject to any of the events listed in clause 13.3, AVI-SPL may terminate pursuant to clause 13.6, or AVI-SPL reasonably believes that the Customer is about to become subject to

any of them, or if the Customer fails to pay any amount due under this Contract on the due date for payment.

## 14 Consequences of termination

### 14.1 On termination of the Contract for any reason:

14.1.1 the Customer shall immediately pay to AVI-SPL all of AVI-SPL's outstanding unpaid invoices and interest and, in respect of Equipment and/or Services supplied and/or Installation undertaken but for which no invoice has been submitted, AVI-SPL shall submit an invoice, which shall be payable by the Customer immediately on receipt;

14.1.2 the Customer shall return all the AVI-SPL Materials which have not been fully paid for. If the Customer fails to do so, then AVI-SPL may enter the Customer's premises and take possession of them. Until they have been returned, the Customer shall be solely responsible for their safe keeping and will not use them for any purpose not connected with this Contract;

14.1.3 the accrued rights, remedies, obligations and liabilities of the parties as at expiry or termination shall be unaffected, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination or expiry; and

14.1.4 clauses which expressly or by implication survive termination shall continue in full force and effect.

14.2 The Customer shall not have the power to omit from the Contract any element of the Scope Proposal, including but not limited to any Equipment to be provided or Services or Installation to be undertaken. Any such omission shall be agreed in accordance with clause 24.8 (Variations) at AVI-SPL's absolute discretion and the Customer shall bear any related costs associated with such omission including but not limited to those listed in clause 14.1 above and in relation to OMS Services, in addition, any applicable redundancy costs or similar that may be incurred by AVI-SPL.

## 15 Intellectual Property Rights

15.1 Subject to clause 38, all Intellectual Property Rights regarding the Services and Equipment (including but not limited to the software, documentation, facilities or other materials that is used therefore) are owned and retained by AVI-SPL or its suppliers ("**Supplier Background IPR**"). AVI-SPL shall retain ownership of any suggestions, ideas, recommendations, feedback or other information provided by Customer or any other party related to the Services and Equipment. Neither delivery of the Services or the Installation of the Equipment nor the Contract will imply any transfer or assignment of Intellectual Property Rights.

15.2 Subject to clause 38, the Customer shall receive a limited, revocable, non-exclusive and non-transferable licence for the use of the Supplier Background IPR regarding the Services and Equipment for the term of the Contract. Customer commits itself to adhere strictly to any conditions laid down in the Contract or imposed in any other way.

15.3 In the event that the Services or Equipment contains any software that needs to be used by Customer for the proper performance of the Services or Equipment under the Contract, AVI-SPL and its licensors (as applicable) shall retain ownership of Supplier Background IPR related to the software and, AVI-SPL grants to Customer a non-exclusive, non-transferable, revocable



licence to use such software. Such licence is solely granted for the use in connection with the Services or the Equipment and under the condition that the Customer fully complies with these Conditions and the stipulations in the Contract. In addition, Customer is not entitled to:

- 15.3.1 assign, sublicense, lease or otherwise make the software available to third parties;
  - 15.3.2 decode, decompile, modify, adapt, create derivative works based on the software or apply techniques of reverse engineering or any other techniques aimed to access the source code of the software, except where the rights to do so are mandatory by law and AVI-SPL has refused to satisfy any conditions to such rights;
  - 15.3.3 incorporate or let others incorporate the software, in part or in whole, into another program, or otherwise exploit the software other than for its internal business purposes;
  - 15.3.4 make a copy of the software, without the prior written consent of AVI-SPL, which consent will not be withheld in case of a back-up copy, unless AVI-SPL decides to provide such back-up copy itself;
  - 15.3.5 attempt to circumvent or interfere with any security features of the software;
  - 15.3.6 delete or alter any trademark, trade name, logo, copyright notice, notice of reservation of rights, or limitation or exclusion of liability included in any part of the software and/or in the documentation associated with it.
- 15.4 AVI-SPL shall be allowed to take technical measures to protect the software or with a view to agreed restrictions in the duration of the right to use the software. Customer shall not be allowed to remove or evade such a technical measure.
  - 15.5 Customer is not entitled to receive upgrades and updates of the software, unless explicitly otherwise agreed upon in the Contract.
  - 15.6 Any Intellectual Property Rights specifically developed or created for the Customer, not being Supplier Background IPR, shall vest and will be transferred to the Customer by AVI-SPL. The Customer acknowledges that, in respect of any third party Intellectual Property Rights, the Customer's use of any such Intellectual Property Rights is conditional on AVI-SPL obtaining a written licence, at the Customer's expense, from the relevant licensor on such terms as will entitle AVI-SPL to licence such rights to the Customer.
  - 15.7 The Customer shall not assign any of AVI-SPL's and/or a third party Intellectual Property Rights unless expressly agreed in writing by AVI-SPL or, where applicable, the relevant third party.
  - 15.8 All AVI-SPL Materials are the exclusive property of AVI-SPL.

**16 Insurance**

- 16.1 AVI-SPL shall remain at all material times with an insurance company of good repute and shall hold and comply with the following valid insurance policies in respect of any one event or series of connect events to the value required by law:
  - 16.1.1 employer's liability insurance; and
  - 16.1.2 motor vehicle liability insurance.

- 17 Limitation of liability: THE CUSTOMER'S ATTENTION IS PARTICULARLY DRAWN TO THIS CLAUSE**
- 17.1 The extent of AVI-SPL's liability under or in connection with the Contract (regardless of whether such liability arises in statute, tort, contract or in any other way and whether or not caused by negligence or misrepresentation) shall be as set out in this clause 17.
- 17.2 Subject to clause 17.5, AVI-SPL's total aggregate liability (including any liability for the acts or omissions of its employees, agents, consultants and subcontractors) to the Customer shall not exceed one hundred percent (100%) of the price set out in the Order (except in the case of M&S Services only, which shall not exceed 100% of the Charges for the Services provided in the relevant Initial Services Period or Renewal Services Period), including but not limited to:
- 17.2.1 any breach of the Contract and/or these Conditions;
  - 17.2.2 any use made by the Customer of the Equipment;
  - 17.2.3 any representation, statement or tortuous act or omission (including negligence) arising under or in connection with the Contract and / or these Conditions; or
  - 17.2.4 (without prejudice to Clause 4) any loss, damage or expense arising out of or in connection with any delay in delivery.
- 17.3 Subject to clause 17.5, AVI-SPL shall not be liable for consequential, indirect or special losses.
- 17.4 Subject to clause 17.5, none of the Parties shall be liable for any of the following (whether direct or indirect):
- 17.4.1 loss of profit;
  - 17.4.2 loss of revenue;
  - 17.4.3 loss or corruption of data;
  - 17.4.4 loss or corruption of software or systems;
  - 17.4.5 loss or damage to equipment;
  - 17.4.6 loss of use;
  - 17.4.7 loss of production;
  - 17.4.8 loss of contract;
  - 17.4.9 loss of commercial opportunity;
  - 17.4.10 loss of savings, discount or rebate (whether actual or anticipated);
  - 17.4.11 harm to reputation or loss of goodwill; and/or
  - 17.4.12 wasted expenditure.
- 17.5 Notwithstanding any other provision of the Contract, the liability of the Parties shall not be limited in any way in respect of the following:
- 17.5.1 death or personal injury caused by negligence;
  - 17.5.2 fraud or fraudulent misrepresentation;
  - 17.5.3 any losses caused by wilful misconduct;
  - 17.5.4 for any breach of s12 Sale of Goods Act 1979; or
  - 17.5.5 any other losses which cannot be excluded or limited by any applicable laws;
- 17.6 This clause 17 and clause 4.5 set out the entire financial liability of AVI-SPL (including any liability for the acts or omissions of its employees, agents, consultants and subcontractors) to the Customer in respect of:

- 17.6.1 any breach of the Contract and / or these Conditions;
  - 17.6.2 any use made by the Customer of the Equipment;
  - 17.6.3 any representation, statement or tortuous act or omission (including negligence) arising under or in connection with the Contract and / or these Conditions; or
  - 17.6.4 any loss, damage or expense arising out of or in connection with any delay in delivery.
- 17.7 Where third party software or components have the benefit of a guarantee or warranty from the original manufacturer then the warranty given by AVI-SPL at clause 5.2 shall be limited to the terms of the original manufacturer's warranty or guarantee.
- 17.8 All warranties, conditions and other terms implied by statute or common law (save for the conditions implied by section 12 of the Sale of Goods Act 1979) are, to the fullest extent permitted by law, excluded from this Contract. For the avoidance of doubt this shall include, but not be limited to, the terms implied by virtue of Supply of Goods and Services Act 1982 and Sale of Goods Act 1979.
- 17.9 This clause 17 shall survive termination of the Contract.
- 18 Security**
- 18.1 AVI-SPL is entitled to require security from the Customer in the form of a bank guarantee, deposit or some other form of security if in AVI-SPL's absolute opinion doubt exists about the Customer's ability to fulfil its payment obligation.
- 18.2 At such time as the need for security no longer exists, AVI-SPL shall notify the Customer that the security or bank guarantee or other form of security may be discontinued or, as the case may be, shall refund the deposit. No interest shall be payable over the deposit.
- 19 Adjustments**
- 19.1 Subject to clause 8.6, neither party shall be liable for any failure or delay in performing its obligations under the Contract to the extent that such failure or delay is caused by a Force Majeure Event. A "**Force Majeure Event**" means any event beyond a party's reasonable control, including but not limited to strikes, lock-outs or other industrial disputes (whether involving its own workforce or a third party's), supply-chain constraints or delays, failure of energy sources or transport network, acts of God, war, terrorism, riot, civil commotion, interference by civil or military authorities, national or international calamity, armed conflict, malicious damage, breakdown of plant or machinery, nuclear, chemical or biological contamination, sonic boom, explosions, collapse of building structures, fires, floods, storms, earthquakes, loss at sea, epidemics or similar events, natural disasters or extreme adverse weather conditions, or the default or delay of any subcontractors, distributors or suppliers.
- 19.2 Notwithstanding clause 19.1, the Parties acknowledge that pandemics, including the worldwide outbreak of the COVID-19 coronavirus (2019-nCoV/SARS-CoV-2), may affect the execution of the Contract. The Parties agree that AVI-SPL shall be entitled to reasonable adjustments of the time schedule, milestones and delivery dates as well as to reimbursement of costs to the extent the delay and the costs are directly or indirectly related to the outbreak of pandemics, including the coronavirus (2019-nCoV/SARS-CoV-2). In addition, the Parties shall agree on an appropriate adjustment of all other contractual obligations, such as prices.

- 19.3 If, by reason of any change to, or introduction of, any statute, regulation, bye-law or similar instrument or code of practice, the cost or time to AVI-SPL performing its obligations under the Contract increases, AVI-SPL's reasonable estimate of the amount of such increase shall be added to the Price.

## 20 Confidentiality

- 20.1 Each party shall keep in strict confidence all technical or commercial know-how, specifications, inventions, processes or initiatives which are of a confidential nature and have been disclosed to such party, its employees, agents or subcontractors ("**receiving party**") by the other party ("**disclosing party**"), and any other confidential information concerning the disclosing party's business, its products and services which the receiving party may obtain. The receiving party shall only disclose such confidential information to those of its employees, agents and subcontractors who need to know it for the purpose of discharging the receiving party's obligations under the Contract, and shall ensure that such employees, agents and subcontractors comply with the obligations set out in this clause as though they were a party to the Contract. The receiving party may also disclose such of the disclosing party's confidential information as is required to be disclosed by law, any governmental or regulatory authority or by a court of competent jurisdiction. This clause 20 shall survive termination of the Contract.

## 21 Audit

- 21.1 During the term of the Contract and for a period of two (2) years after its termination, AVI-SPL may, at any time upon reasonable advance notice, conduct an audit at the Customer's premises to ascertain whether the Customer's use of the Services or Equipment is in compliance with the provisions of the Contract. AVI-SPL shall ensure that the audit will be conducted during normal business hours without causing unreasonable disruption of the Customer's business operations. The Customer shall assist AVI-SPL in the conduct of such audit and shall grant AVI-SPL access to its premises and computer equipment in relation to the Equipment and/or Services delivered. In the event that such audit reveals any use of the Services or Equipment by the Customer other than in full compliance with the Contract, the Customer shall reimburse AVI-SPL for all reasonable costs and expenses related to such audit in addition to any other liabilities the Customer may incur as a result of such non-compliance.

## 22 Compliance with Export Control Regulations

- 22.1 If the Customer transfers goods (hardware and/ or software and/ or technology as well as corresponding documentation, regardless of the mode of provision) delivered by AVI-SPL or works and services (including all kinds of technical support) performed by AVI-SPL to a third party worldwide, the Customer shall comply with all applicable national and international (re-) export control regulations. In any event the Customer shall comply with the (re-) export control regulations of the United Kingdom, of the European Union and of the United States of America.
- 22.2 Prior to any transfer of goods, works and services provided by AVI-SPL to a third party the Customer shall in particular check and guarantee by appropriate measures that:
- 22.2.1 there will be no infringement of an embargo imposed by the European Union, by the United States of America and/ or by the United Nations by such transfer, by brokering of contracts concerning those goods, works and services or by provision of other economic resources in connection with those goods, works and services, also

considering the limitations of domestic business and prohibitions of by-passing those embargos;

- 22.2.2 such goods, works and services are not intended for use in connection with armaments, nuclear technology or weapons, if and to the extent such use is subject to prohibition or authorization, unless required authorization is provided;
  - 22.2.3 the regulations of all applicable Sanctioned Party Lists of the European Union and the United States of America concerning the trading with entities, persons and organizations listed therein are considered.
- 22.3 If required to conduct export control checks, the Customer, upon request by AVI-SPL, shall promptly provide AVI-SPL with all information pertaining to particular end customer, destination and intended use of goods, works and services provided by AVI-SPL, as well as any export control restrictions existing.
- 22.4 The Customer shall indemnify and hold harmless AVI-SPL from and against any claim, proceeding, action, fine, loss, cost and damages arising out of or relating to any noncompliance with export control regulations by the Customer, and the Customer shall compensate AVI-SPL for all losses and expenses resulting thereof.
- 22.5 Each party shall comply with all applicable anti-bribery, anti-corruption and anti-slavery legislation including the Bribery Act 2010 and the Modern Slavery Act 2015 in the United Kingdom and the Criminal Justice (Corruption Offences) Act 2018 and the Criminal Law (Human Trafficking) Act 2008 in the Republic of Ireland, each as amended from time to time.

## 23 Data Protection

- 23.1 The parties agree that they are each a Controller, and that the Services do not include the processing of Protected Data under instruction pursuant to this Contract. The Customer shall at all times comply with all Data Protection Laws in connection with the processing of Protected Data. The Customer shall ensure all instructions given by it to AVI-SPL in respect of Protected Data (including the terms of this Contract) shall at all times be in accordance with all Data Protection Laws. Nothing in this Contract relieves the Customer of any responsibilities or liabilities under any Data Protection Laws.
- 23.2 Each party shall process Protected Data in compliance with the obligations placed on it under Data Protection Laws and the terms of this Contract.
- 23.3 The Customer shall indemnify and keep indemnified AVI-SPL against all losses, claims, damages, liabilities, fines, sanctions, interest, penalties, costs, charges, expenses, compensation paid to Data Subjects, demands and legal and other professional costs (calculated on a full indemnity basis and in each case whether or not arising from any investigation by, or imposed by, a supervisory authority) arising out of or in connection with any breach by the Customer of its obligations under this clause 23.
- 23.4 The parties agree:
- 23.4.1 the parties shall only process the Protected Data provided by the other in accordance with this Contract (including with regard to any transfer to which clause 23.9 relates), except to the extent:
    - 23.4.1.1 that alternative processing instructions are agreed between the parties in writing; or

- 23.4.1.2 otherwise required by applicable law (and shall inform the other party of that legal requirement before processing, unless applicable law prevents it doing so on important grounds of public interest); and
  - 23.4.2 without prejudice to clause 23.1, if AVI-SPL believes that any instruction received by it from the Customer is likely to infringe the Data Protection Laws it shall be entitled to cease to provide the relevant Services until the parties have agreed appropriate amended instructions which are not infringing. The Price payable to AVI-SPL shall not be discounted or set-off as a result of any delay or non-performance of any obligation in accordance with this clause 23.4.2.
- 23.5 The parties shall each implement and maintain appropriate technical and organisational measures to protect the Protected Data against accidental, unauthorised or unlawful destruction, loss, alteration, disclosure or access.
- 23.6 Each party shall:
  - 23.6.1 not permit any processing of Protected Data by any Sub-Processor without the prior specific written authorisation of the Customer;
  - 23.6.2 prior to any Sub-Processor carrying out any processing activities in respect of the Protected Data, ensure such Sub-Processor is appointed under a binding written contract containing materially the same obligations as under this clause 23 (including those relating to sufficient guarantees to implement appropriate technical and organisational measures) and ensure such Sub-Processor complies with all such obligations;
  - 23.6.3 remain fully liable to the other party under this Contract for all the acts and omissions of each Sub-Processor as if they were its own; and
  - 23.6.4 ensure that all natural persons or any Sub-Processor it authorises to process Protected Data are subject to a binding written contractual obligation to keep the Protected Data confidential.
- 23.7 Each party shall (at the other party's cost and expense):
  - 23.7.1 assist the requesting party in ensuring compliance with their obligations pursuant to Articles 32 to 36 of the GDPR taking into account the nature of the processing and the information available to the party to whom the request is made; and
  - 23.7.2 taking into account the nature of the processing, assist the requesting party (by appropriate technical and organisational measures), insofar as this is possible, for the fulfilment of the requesting party's obligations to respond to requests for exercising the Data Subjects' rights under Chapter III of the GDPR in respect of any Protected Data.
- 23.8 Each party shall at the other party's cost and expense refer to the other party all requests it receives for exercising any Data Subjects' rights under Chapter III of the GDPR which relate to any Protected Data. It shall be the other party's responsibility to reply to all such requests as required by applicable law.
- 23.9 Neither party shall process and/or transfer, or otherwise directly or indirectly disclose, any Protected Data in or to any country or territory outside AVI-SPL's country of incorporation

(being the United Kingdom or the Republic of Ireland as applicable) or to any International Organisation without the prior written authorisation of the Customer except where required by applicable law (in which case the provisions of clause 23.4.2 shall apply).

- 23.10 Each party shall, in accordance with Data Protection Laws, make available to the other on request such information that is in its possession or control as is necessary to demonstrate the other party's compliance with the obligations placed on it under this clause 23 and to demonstrate compliance with the obligations on each party imposed by Article 28 of the GDPR, and allow for and contribute to audits, including inspections, by the Customer (or another auditor mandated by the Customer) for this purpose (subject to a maximum of one audit request in any 12 month period under this clause 23.10). To the extent consistent with the forgoing, AVI-SPL shall, however, be entitled to withhold information where it is commercially sensitive or confidential to it or its other customers.
- 23.11 On the end of the provision of the Services relating to the processing of Protected Data (the "**Processing End Date**"), at the Customer's cost and expense and the Customer's option, AVI-SPL shall either return all of the Protected Data to the Customer or securely dispose of the Protected Data (and thereafter promptly delete all existing copies of it) except to the extent that any applicable law requires AVI-SPL to store such Protected Data. To the extent the Customer has not notified AVI-SPL within a reasonable period of the Processing End Date that it requires the return of any Protected Data AVI-SPL is irrevocably authorised to securely dispose of the Protected Data at the Customer's cost and expense.

## 24 General

### 24.1 Assignment and other dealings.

- 24.1.1 AVI-SPL may at any time assign, transfer, mortgage, charge, subcontract or deal in any other manner with all or any of its rights or obligations under the Contract.
- 24.1.2 The Customer may not assign, transfer, mortgage, charge, subcontract, declare a trust over or deal in any other manner with any or all of its rights or obligations under the Contract without the prior written consent of AVI-SPL.

### 24.2 Notices.

- 24.2.1 Any notice or other communication given to a party under or in connection with the Contract shall be in writing, addressed to that party at its registered office (if it is a company) or its principal place of business (in any other case) or such other address as that party may have specified to the other party in writing in accordance with this clause, and shall be delivered personally, sent by pre-paid first class post or other next working day delivery service, commercial courier or sent by e-mail.
- 24.2.2 A notice or other communication shall be deemed to have been received: if delivered personally, when left at the address referred to in clause 24.2.1; if sent by pre-paid first class post or other next working day delivery service, at 9.00 am on the second Business Day after posting; if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed; or, if sent by or e-mail, one Business Day after transmission.
- 24.2.3 The provisions of this clause shall not apply to the service of any proceedings or other documents in any legal action.

### 24.3 Entire agreement.

- 24.3.1 This Contract and the Scope Proposal constitutes the entire agreement between the parties and supersedes and extinguishes all previous drafts, agreements, arrangements and understandings between them, whether written or oral, relating to its subject matter.
- 24.3.2 Each party agrees that it shall have no remedies in respect of any representation or warranty (whether made innocently or negligently) that is not set out in this agreement. No party shall have any claim for innocent or negligent misrepresentation based upon any statement in this agreement.
- 24.4 **No partnership or agency.** Nothing in the Contract is intended to, or shall be deemed to, establish any partnership or joint venture between the parties, nor constitute either party the agent of the other for any purpose. Neither party shall have authority to act as agent for, or to bind, the other party in any way.
- 24.5 **Severance.**
- 24.5.1 If any provision or part-provision of the Contract is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of the Contract.
- 24.5.2 If any provision or part-provision of this Contract is invalid, illegal or unenforceable, the parties shall negotiate in good faith to amend such provision so that, as amended, it is legal, valid and enforceable, and, to the greatest extent possible, achieves the intended commercial result of the original provision.
- 24.6 **Waiver.** A waiver of any right or remedy under the Contract or law is only effective if given in writing and shall not be deemed a waiver of any subsequent breach or default. No failure or delay by a party to exercise any right or remedy provided under the Contract or by law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.
- 24.7 **Third party rights.** A person who is not a party to the Contract shall not have any rights to enforce its terms.
- 24.8 **Variation.** Except as set out in these Conditions, no variation of the Contract, including the introduction of any additional terms and conditions, shall be effective unless it is in writing and signed by AVI-SPL.
- 24.9 **Governing law.** The Contract, and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims), shall be governed by, and construed in accordance with the laws of the country in which AVI-SPL is registered at the Commencement Date.
- 24.10 **Jurisdiction.** Each party irrevocably agrees that the courts of the country in which AVI-SPL is registered at the Commencement Date shall have exclusive jurisdiction to settle any dispute or



claim arising out of or in connection with this Contract or its subject matter or formation (including non-contractual disputes or claims).

## Additional Terms for Maintenance and Support Services

The provisions set forth in these Additional Terms for Maintenance and Support Services (“M&S Terms”) shall apply if AVI-SPL provides its Maintenance and Support Services (or if AVI-SPL determines in its absolute discretion that such M&S Terms apply, whether within the Scope Proposal or otherwise).

### 25 Interpretation

#### 25.1 Definitions.

In these M&S Terms, the following definitions apply:

- 25.1.1 **“Additional Services”** means services not included within the Scope Proposal.
- 25.1.2 **“AVI-SPL Software”** means any proprietary software of AVI-SPL, whether or not supplied to the Customer pursuant to the Contract.
- 25.1.3 **“Business Hours”** means AVI-SPL ordinary business hours Mon-Fri 08.30-17.30 GMT.
- 25.1.4 **“Charges”** means the charges payable by the Customer for the supply of the Services in accordance with clause 29.
- 25.1.5 **“Cloud Services”** means the cloud-based software to be provided pursuant to the relevant Scope Proposal, whether hosted by AVI-SPL or a third party and including but not limited to the Symphony platform.
- 25.1.6 **“Equipment Service Information”** means, in respect of each piece of the Services Equipment, the following information:
  - a) the Services the Customer is purchasing;
  - b) the model and serial number of the Services Equipment;
  - c) the appropriate pricing as detailed in the scope of works
  - d) the premises where the Services will be provided, together with a contact name, email address and telephone number at the location; and
  - e) the Service Period as detailed in the scope of works.
- 25.1.7 **“Initial Service Period”** has the meaning set out in clause 35.2.
- 25.1.8 **“Licence Fee”** means the fees payable by the Customer in consideration of the licence for the Licensed Products and/or third party Cloud Services provided pursuant to this Contract.

- 25.1.9 **"Licensed Products"** means any software program which is: (i) not AVI-SPL Software but which is supplied to the Customer by AVI-SPL, or arranged by AVI-SPL acting as agent of the relevant third party; (ii) not Cloud Services.
- 25.1.10 **"Licence Restrictions"** means any restrictions to the use of the Third Party Licence granted pursuant to clause 38.1.
- 25.1.11 **"Licence Term"** means the duration of the Third Party Licence granted pursuant to clause 38.1.
- 25.1.12 **"Licensor"** means the entity which retains ownership of the Intellectual Property Rights relating to a Licensed Product and/or third-party Cloud Service.
- 25.1.13 **"Manufacturer"** means an entity that produces Services Equipment and/or Software.
- 25.1.14 **"Renewal Service Period"** has the meaning set out in clause 35.3.
- 25.1.15 **"Service Period"** means the Initial Service Period and any Renewal Service Period.
- 25.1.16 **"Services Equipment"** means the equipment (or any part of it) to which the Services apply as set out in the Scope Proposal.
- 25.1.17 **"Software"** means any software equipment and any software included within the Services Equipment.
- 25.1.18 **"Software Options"** means optional functionality or features of Software that may be selected at the time of purchase or at a later time, and for which AVI-SPL or the Manufacturer charges separately.
- 25.1.19 **"Territory"** means the country or territory in which the Customer is registered as a legal entity or establishment thereof.
- 25.1.20 **"Third Party Licence"** has the meaning given to it in clause 38.1.
- 25.1.21 **"Update"** means Software for which AVI-SPL or the Manufacturer has provided fixes or minor revisions to correct errors or defects in the existing operation of the Software in accordance with the published Services Equipment specifications, and which is limited to those updates that AVI-SPL or Manufacturer generally provides to its support Services Customers at no charge. Updates do not include Upgrades or Software Options.
- 25.1.22 **"Upgrade"** means new releases of the Software which contain enhancements improving the functionality or capabilities of the Software, which AVI-SPL or the Manufacturer makes generally available to its Customers. Upgrades do not include Software Options.

## 26 Supply of Services

- 26.1 AVI-SPL shall supply the Services for the Initial Services Period, solely with respect to the Services Equipment. The Services will consist of the entitlements and service levels defined in the Scope Proposal.

- 26.2 AVI-SPL shall supply the Services to the Customer in accordance with the Contract in all material respects and during the Business Hours (unless agreed otherwise in the Contract or in writing on an ad hoc basis).
- 26.3 AVI-SPL shall use its reasonable endeavours to meet any performance dates specified in the Order, but any such dates shall be estimates only and time shall not be of the essence for performance of the Services.
- 26.4 AVI-SPL will use its reasonable endeavours to provide the Services in a professional and workmanlike manner. AVI-SPL shall provide the Services on the basis of a reasonable endeavours obligation, unless and in so far it has explicitly undertaken in the Contract to achieve a specific result and the result in question is sufficiently determined.
- 26.5 AVI-SPL may sub-contract any part of its obligations with respect to the Services to a third party, for example a local partner or a supplier, without the prior written consent of the Customer.
- 26.6 Services shall only be provided to the contact persons of Customer named in the Contract. Maintenance and Support Services are dependent on the ability of the contact person to communicate and be available. Therefore, AVI-SPL may set forth certain requirements on the part of the contact person to ensure fulfilment of AVI-SPL's obligations.
- 26.7 The Customer will provide all cooperation required by AVI-SPL for the purpose of the Services, including the temporary suspension of use of the Licensed Products, Cloud Services or the Equipment by the Customer if AVI-SPL deems this to be necessary. If the Customer fails to provide the requested cooperation, AVI-SPL may suspend or limit the Services. If the Services are provided on the basis of information to be provided by the Customer, this information shall be prepared in accordance with the conditions to be imposed by AVI-SPL and provided at the risk and expense of the Customer. The Customer shall at all times guarantee that all materials, information, software, procedures and instructions that it makes available to AVI-SPL for the purpose of providing the Services is accurate and complete and that all data carriers issued to AVI-SPL meet AVI-SPL's specifications.
- 26.8 If the Services are provided on premises of the Customer, and AVI-SPL cannot execute its Services due to but not limited to: unavailability of the room, unavailability of documents, personnel, AVI-SPL may charge the Customer an amount at least equal to AVI-SPL's standard maintenance call out charge, notwithstanding AVI-SPL's further rights to compensation for the full damage it has suffered.
- 26.9 The Customer shall keep and operate the Equipment in accordance with the manufacturers' recommendations, and shall inform AVI-SPL in writing of its intentions to remove any of the Equipment from the location itemised within the Contract. For the avoidance of doubt, changes to the charge in respect of such Equipment moves or the deletion of such Equipment from the Contract will be as agreed between AVI-SPL and the Customer.
- 26.10 AVI-SPL's obligations with respect to the provision of the Services are conditional upon Customer being able to provide a full and detailed description of a defect and any other information or documentation which facilitates AVI-SPL in reproducing the occurred defect and solving this defect. The Customer will first use its reasonable effort to analyse the cause of the error. AVI-SPL's obligations are conditional upon the defect being reproducible.
- 26.11 In the Contract a defect will mean a substantial failure of an item of Equipment or a system. In case of a defect, the Customer shall provide AVI-SPL a detailed notice of the defect. After receiving the notice AVI-SPL shall, to the best of its ability, do its utmost to fix the defect or in

case of Software, to make improvements in later, new versions of the Software. Depending on the urgency, the results shall be provided to the Customer in the manner and within the time period set out in the Contract. In case of defects with respect to Software, AVI-SPL shall be entitled to install temporary solutions, program bypasses or problem-avoiding restrictions in the Software.

- 26.12 Subject to clause 30.1, in the event that the Services apply to Software as well, AVI-SPL will support only the version of the Software that was originally the subject of this Contract. For clarity, AVI-SPL will only be liable to support a version of the Software that existed at the Commencement Date.
- 26.13 AVI-SPL does not warrant that the Equipment, Software, Licensed Products, or Cloud Services shall operate without interruption, errors or other defects or that all defects can be corrected.
- 26.14 If the Services apply to software or hardware that were not provided by AVI-SPL, Customer shall make all relevant (technical) documentation and the software source code available to AVI-SPL, and grant AVI-SPL the right to use same, if AVI-SPL deems this to be useful or necessary for carrying out the support service. The Customer guarantees that it is entitled to make this data and/or documentation available for the purposes of support by AVI-SPL. The Customer shall grant AVI-SPL the right to use and adapt the software, including the source code and technical (development) documentation, within the context of performing the agreed support service. The Customer shall indemnify AVI-SPL against any claims by third parties in relation to the provision of this data and/or documentation and AVI-SPL's use thereof within the context of the support service.
- 26.15 Only if and insofar expressly agreed upon in writing, AVI-SPL will be obliged to convert any data.

**27 TUPE**

The parties acknowledge and agree that the TUPE Regulations may apply to the service provision being supplied under this Contract. Where the TUPE Regulations apply, the OMS Terms shall apply to this Contract *mutatis mutandis* as if references to Dedicated Employees were to the affected individuals.

**28 Customer's obligations**

- 28.1 The Customer shall:
  - 28.1.1 ensure that the terms of the Order and any information provided in the Scope Proposal are complete and accurate;
  - 28.1.2 co-operate with AVI-SPL in all matters relating to the Services;
  - 28.1.3 keep all Services Equipment under any applicable programme of Services at either the current Software version from time to time or previous major Software version release available in the market;
  - 28.1.4 unless otherwise expressly stated in the Scope Proposal, be responsible for replacing, at its own expense, any and all consumable items used in connection with the Services Equipment, including without limitation, bulbs and batteries;
  - 28.1.5 be solely responsible for backing up its data. AVI-SPL cannot accept any liability for loss, damage or costs incurred as a result of any data that is lost during the course of the Services;

- 28.1.6 obtain and maintain, at its own costs and sole responsibility, current and reputable anti-virus software and regularly update and run such software. Repair or restoration of any Services Equipment damaged or infected by viruses is not covered under the Contract;
- 28.1.7 provide AVI-SPL, its employees, agents, consultants and subcontractors, with access to the Customer's premises, office accommodation and other facilities as reasonably required by AVI-SPL;
- 28.1.8 provide AVI-SPL with such information and materials as AVI-SPL may reasonably require in order to supply the Services, and ensure that such information is accurate in all material respects;
- 28.1.9 prepare the Customer's premises for the supply of the Services and in particular ensure the premises comply with all health and safety laws and regulations;
- 28.1.10 obtain and maintain all necessary licences, permissions and consents which may be required before the date on which the Services are to start;
- 28.1.11 keep and maintain all materials, apparatus, documents and other property of AVI-SPL ("**AVI-SPL Materials**") at the Customer's premises in safe custody at its own risk, maintain AVI-SPL Materials in good condition until returned to AVI-SPL, and not dispose of or use AVI-SPL Materials other than in accordance with AVI-SPL's written instructions or authorisation;
- 28.1.12 be responsible for any additional obligations or responsibilities identified in an applicable Scope Proposal; and
- 28.1.13 provide AVI-SPL with the Services Equipment Service Information.

## 29 Charges and payment

- 29.1 The Charges for the Services shall be invoiced on a yearly basis, in advance, unless otherwise set out in the Scope Proposal.
- 29.2 Where Additional Services are requested by the Customer, these shall be chargeable on a time and materials basis and such Charges shall be calculated in accordance with AVI-SPL's pricing in force from time to time.
- 29.3 AVI-SPL's pricing rates for OMS Services are calculated on the basis of Business Hours during Business Days, and are as set out in the Scope Proposal for all other Services.
- 29.4 AVI-SPL shall be entitled to charge a premium rate for work undertaken outside of the hours detailed within the Scope Proposal and for OMS Services (or where such hours are not set out therein) work undertaken outside of Business Hours on a pro-rata basis for each part day or for any time worked by individuals whom it engages on such Services.
- 29.5 AVI-SPL shall be entitled to charge for costs of materials and disbursements incurred in performing the Services. The Price shall only include travelling expenses, hotel costs, subsistence and any associated expenses incurred by AVI-SPL, or by the individuals whom AVI-SPL engages in connection with the Services ("**Travel Expenses**") if so specified in the Scope Proposal (including by 'per diem' amount if expressed as such), solely to those locations designated by the Scope Proposal for inclusive Travel Expenses. In addition, the Price shall

include the cost of services provided by third parties and required by AVI-SPL for the performance of the Services, and for the cost of any materials, if specified in the Scope Proposal. AVI-SPL shall be entitled to charge for any Travel Expenses which are incurred during the performance of any Services but which are not included in the Price.

- 29.6 In the event the Customer requests Software Options or Additional Services, the Customer will be invoiced separately on the payment terms applicable to those Software Options or Additional Services.
- 29.7 All amounts payable by the Customer under the Contract are exclusive of amounts in respect of any value added tax chargeable for the time being ("**VAT**"). Where any taxable supply for VAT purposes is made under the Contract by AVI-SPL to the Customer, the Customer shall pay to AVI-SPL such additional amounts in respect of VAT as are chargeable on the supply of the Services at the same time as payment is due for the supply of the Services.
- 29.8 If the Customer fails to make any payment due to AVI-SPL under the Contract by the due date for payment, then the Customer shall pay interest on the overdue amount at the rate of 4% per cent per annum above Bank of England's base rate from time to time. Such interest shall accrue on a daily basis from the due date until actual payment of the overdue amount, whether before or after judgment. The Customer shall pay the interest together with the overdue amount.
- 29.9 The Customer shall pay all amounts due under the Contract in full without any set-off, counterclaim, deduction or withholding (except for any deduction or withholding required by law). AVI-SPL may at any time, without limiting its other rights or remedies, set off any amount owing to it by the Customer against any amount payable by AVI-SPL to the Customer.

### **30 Software Options, Updates and Upgrades**

- 30.1 AVI-SPL will provide Software Options, Updates and/or Upgrades only if expressly included in the Scope Proposal in accordance with AVI-SPL's standard prices in force from time to time.
- 30.2 Updates are provided on a fix on fail basis. To receive an Update the Customer must report a specific Services Equipment failure (identifying the Services Equipment serial number), which the Update corrects. AVI-SPL will configure the Update according to the Software record of the registered Services Equipment. AVI-SPL cannot accept any liability for any Update that fails to fix a Services Equipment failure.

### **31 Warranty**

- 31.1 Notwithstanding clause 5, AVI-SPL warrants that, for a period of 90 calendar days only, beginning on the date that AVI-SPL performs the Services (but excluding managed service solutions) ("**Initial Warranty Period**"), the Services shall be performed with reasonable care and skill consistent with industry standards. In the event that AVI-SPL complies with its obligations under this clause 31.1 it shall have no further liability to the Customer in respect of any claim in relation to the performance of the Services.
- 31.2 Notwithstanding clause 31.1, AVI-SPL's liability with respect to Services Equipment, including repairing or replacing the same, shall be that set out for Equipment in clause 5.2, *mutatis mutandis* as if it applied to Service Equipment. AVI-SPL's liability under clause 31.2 shall be limited to repairing or replacing any Services Equipment that breaches the warranty.
- 31.3 Other than in relation to clauses 31.1 and 31.2, AVI-SPL makes no other warranty in relation to the Services.

**32 Remote Access**

- 32.1 If the Services are carried out long-distance or online, the Customer shall for its part ensure that AVI-SPL has unrestricted access to all necessary software, services and systems and that the proper infrastructure and telecommunication facilities are in place, in a timely manner. The Customer will comply with all instructions and requirements of AVI-SPL in this respect. AVI-SPL shall be entitled to suspend or limit the Services if the remote access including the Customer's infrastructure and telecommunication facilities do not meet the requirements or instructions requested by AVI-SPL.

**33 Replacement Parts**

- 33.1 Replacement parts provided pursuant to any applicable Scope Proposal will be new parts or equivalent in performance to new parts when used with the Services Equipment and are warranted for a period of ninety (90) days from shipment or the remainder of the Initial Warranty Period, whichever is longer.
- 33.2 Any parts removed from the Services Equipment for replacement during the course of the Service Period will become the property of AVI-SPL or the manufacturer.
- 33.3 Unless otherwise stated expressly in the Scope Proposal, if workshop repairs form part of the Contract, and any Services Equipment or part of Services Equipment costs more than 60% of the replacement value to repair, the item will not be repaired under this Contract and the Customer will be given the option to pay the repair charges or to purchase replacement Services Equipment or part of the Services Equipment.

**34 Services exclusions**

- 34.1 The Services provided will not cover any of the following:
- 34.1.1 electrical work external to the Services Equipment, Licensed Products or Cloud Services;
  - 34.1.2 repair or replacement of damage to or defects in the Services Equipment, Licensed Products or Cloud Services other than those carried out by or on behalf of AVI-SPL;
  - 34.1.3 furnishing supplies or accessories, or painting or refinishing the Services Equipment, Licensed Products or Cloud Services;
  - 34.1.4 relocation of the Services Equipment or the addition or removal of items of Services Equipment or parts, attachments, features, from or to other devices not furnished by AVI-SPL, including but not limited to communications devices, video devices, audio devices, networks or links;
  - 34.1.5 preventing, advising on or repairing damage caused by computer viruses or conflicts involving software that is not installed or introduced by AVI-SPL;
  - 34.1.6 usage errors or improper use of the Services Equipment, Licensed Products or Cloud Services;
  - 34.1.7 use of the Services Equipment, Licensed Products or Cloud Services contrary to the applicable Conditions or contrary to the instruction inserted in the documentation provided by AVI-SPL;



- 34.1.8 changes to or errors, defects or shortcomings in the Services Equipment, Licensed Products or Cloud Services that are not included within the Scope Proposal for the Services to be carried out by AVI-SPL;
- 34.1.9 failure by the Customer to have the Services carried out on the Services Equipment, Licensed Products or Cloud Services in a timely manner;
- 34.1.10 the use of an older version of software that is no longer maintained by AVI-SPL;
- 34.1.11 any problem with the functioning or the use of external systems of software, or the hardware configuration, including without limitation the operating system of the software platform and/or hardware upgrades;
- 34.1.12 any problem related to the unsuitability or incompatibility of the hardware and systems used by the Customer;
- 34.1.13 the operation or use of the Cloud Services or Licensed Products in a way that is not compatible with the latest release of the documentation provided by AVI-SPL to the Customer;
- 34.1.14 support related to a third party's software or hardware not supplied by AVI-SPL (unless otherwise expressly agreed upon in the Contract);
- 34.1.15 other causes that are not attributable to AVI-SPL,

furthermore, the Services shall not include the recovery of scrambled or lost data.

- 34.2 If AVI-SPL carries out Services in connection with the provisions of clause 34.1, AVI-SPL shall be entitled to invoice the costs of these services or other work in accordance with its standard rates. This shall not affect the other fees payable by the Customer in respect of the Services.

### 35 **Renewal of Services**

- 35.1 AVI-SPL will provide the Customer or the Customer's AVI-SPL Partner (where applicable) with sixty (60) days prior written notice of expiration of the Service Period for any applicable Services that are renewable ("**Renewable Services**").
- 35.2 The initial period of this Contract (the "**Initial Service Period**"), shall commence on Commencement Date, or such other date as agreed in writing between the Parties in advance, and shall continue twelve (12) months therefrom, or such other period of time as specified on the applicable Order and accepted in writing by AVI-SPL.
- 35.3 This Contract shall automatically renew for successive twelve (12) month terms and, with the exception of moderate price increases as described herein, under the same terms and conditions as the Initial Service Period ("**Renewal Service Period**") unless either party gives the other written notice of termination no less than thirty (30) days prior to expiration of the then-current Initial or Renewal Service Period.
- 35.4 Prior to the commencement of any successive renewal period, AVI-SPL reserves the right to increase the price of the applicable Service Program for the duration of the successive renewal term in an amount not to exceed ten (10%) percent of the Order price for the then-current Initial or Renewal Service Period. In the event the price increase exceeds ten (10%) percent,

AVI-SPL shall issue a new quote to Customer for approval prior to the commencement of the successive renewal period.

- 35.5 AVI-SPL may terminate or modify any available programme of Services at any time in its sole discretion, provided that any such modifications will not affect any Services already ordered by the Customer and accepted by AVI-SPL prior to such modifications except as agreed in writing by the Customer and AVI-SPL.

### **36 Recertification**

- 36.1 In the event the Customer requires additional Services for Services Equipment not currently covered under any purchased Services, AVI-SPL and/or the manufacturer may require that the relevant Services Equipment:

- 36.1.1 pass an inspection; and/or
- 36.1.2 be recertified; and/or
- 36.1.3 be brought up to date with the latest Software;

at the expense of the Customer based on AVI-SPL's pricing in force from time to time.

### **37 Provision of Cloud Services and Licensed Products**

- 37.1 AVI-SPL shall use reasonable efforts, or shall procure that its third party Cloud Services supplier and/or Licensor will use reasonable efforts, to provide the Cloud Services and/or Licensed Products in a professional and workmanlike manner and with minimum disruptions. However, AVI-SPL cannot guarantee that the Cloud Services or Licensed Products will always function without disruptions, delay or other imperfections. Since the Cloud Services will be transmitted through Internet and a public (telecommunication) network, power outages, Internet or other disruption may occur, and users may experience some disruptions in the Cloud Services.
- 37.2 Any licence granted to Customer in connecting with any third party hosted Cloud Services or Licensed Products is limited to the licence granted by the third party providing the Cloud Services.
- 37.3 AVI-SPL may change the technical features of the Cloud Services, and a Licensor may so change the Licensed Products, in order to keep pace with the latest demands and technological developments, at its own discretion.
- 37.4 AVI-SPL will use its reasonable effort to ensure the security and confidentiality of all communications on the Cloud Services, is in accordance with the specifications agreed upon and taking into account the exceptions laid down by law (if relevant).
- 37.5 Only if expressly agreed upon in advance in writing, AVI-SPL will install the Licensed Products, Cloud Services and/or the Equipment or have it installed. Any requirement by AVI-SPL to install the Licensed Products, Cloud Services and/or the Equipment does not include the requirement to install software or to convert any data. If AVI-SPL has undertaken to perform installation, the Customer shall provide a suitable installation site with all necessary facilities, such as cable work and telecommunications facilities, before delivery and installation of the Cloud Service, Smart Services and Equipment and follow all instructions of AVI-SPL necessary for the installation. To enable AVI-SPL to perform the necessary work, the Customer shall give AVI-SPL access to the

installation site during AVI-SPL's normal working days and hours from 8.00 a.m. to 6.00 p.m. in the relevant region.

### 38 Restrictions on Cloud Services and Licensed Products

- 38.1 Notwithstanding clause 15 (Intellectual Property Rights), upon payment of the Licence Fee and subject to clause 37.2, AVI-SPL grants the Customer a non-exclusive, revocable, non-transferable term-limited licence to install and use only the Licensed Products and/or Cloud Services in the Territory for the Licence Term under the condition that the Customer fully complies with these Conditions and the stipulations in the Contract.
- 38.2 The use of Licensed Products and any third-party Cloud Services shall be subject to any additional terms and conditions notified to the Customer and/or the entering into of any additional licence agreements that AVI-SPL might require the Customer to enter into with the Licensor. Failure by the Customer to enter into any such Licensor Agreement shall relieve AVI-SPL of any obligation under the Contract with respect to the provision and performance of any Licensed Product or third-party Cloud Service.
- 38.3 AVI-SPL reserves the right to direct payment of any Licence Fee directly to the Licensor, and the Customer shall maintain accurate and complete records of its installation and usage of the Licensed Products and/or Cloud Services including the number of copies (including backup copies), number of users and the installation sites and equipment on which it is installed. The Customer shall allow and procure for AVI-SPL and any Licensor access to its premises to inspect the equipment on which the Licensed Products and/or Cloud Services are installed or on which AVI-SPL reasonably believes the Licensed Products and/or Cloud Services may be installed, and to audit (and take copies of) the relevant records of the Customer, to the extent necessary to verify that the installation and use of the Licensed Products and/or Cloud Services are in accordance with the Contract.
- 38.4 Sub-clauses 15.3, 15.4, 15.5 and 15.7 shall apply to the provision to the Customer of the Licensed Products and Cloud Services *mutatis mutandis*, and shall comply with all Licence Restrictions. The Customer acknowledges that it shall be required, without prejudice to any other rights or remedies to which AVI-SPL may be entitled, to pay AVI-SPL at AVI-SPL's then-current rates for any additional usage of the Licensed Products and/or third-party Cloud Services.
- 38.5 The Customer is entitled to use the Licensed Products or Cloud Services for internal purposes only and therefore, it may not resell, transfer or rent the Licensed Products or Cloud Services, nor incorporate or let others incorporate the Licensed Products or Cloud Services into another service or otherwise exploit these other than for its internal business purposes.
- 38.6 The Customer may use the Cloud Services and Licensed Products solely for lawful purposes and in accordance with the 'fair use policy' of AVI-SPL as given in this clause 38.2. In this respect the Customer may not:
- 38.6.1 use or distribute components designed to compromise system security and more specifically may not use any type of spider, virus, worm, trojan-horse, time bomb or any other codes or instructions that are designed to distort, damage or disassemble the Licensed Products or Cloud Services, or to deliberately or recklessly disrupt Licensed Products or Cloud Services;
  - 38.6.2 intercept or monitor, damage or modify any communication which is not intended for Customer;

- 38.6.3 impair, interfere with, damage or cause harm or distress to any other customer using the Licensed Products or Cloud Services;
- 38.6.4 gain unauthorised access or fraudulently use the Licensed Products or Cloud Services;
- 38.7 The Customer shall not have the right to make any changes to the Licensed Products or Cloud Services (including changes to accompanying software or facilities provided in connection with the Licensed Products or Cloud Services) or to relocate facilities provided in connection with the Licensed Products or Cloud Services or damage them.
- 38.8 AVI-SPL reserves the right, without prejudice to any other provisions of the Contract, to issue reasonable instructions concerning the use of any Equipment or Services sold to the Customer which utilises Licensed Products or Cloud Services, including the Licensed Products and Cloud Services themselves (including the software and facilities provided in connection with the Licensed Products or Cloud Services) as may be necessary in the interests of the safety, quality or security or for any other valid reason that AVI-SPL reasonably deems appropriate.
- 38.9 The Customer may not include, play or stream music and/or videoclips or any other work that is protected by copyright during a live-stream or hybrid-event hosted via Licensed Products or Cloud Services, unless the Customer has obtained all the necessary rights or licenses under local law and regulations.

### **39 Force Majeure**

- 39.1 In the event of delay caused by a Force Majeure Event, any specified dates or times which AVI-SPL is scheduled to perform the Services or part of the Services by shall be extended automatically for a period of time equal in duration to the period that Force Majeure Event disrupts the Services.
- 39.2 If the Force Majeure Event prevents AVI-SPL from providing any of the Services for more than 5 weeks, AVI-SPL shall, without limiting its other rights or remedies, have the right to terminate the Contract in its absolute discretion immediately by giving written notice to the Customer.

### **40 Non-solicitation**

- 40.1 The Customer acknowledges that AVI-SPL has trained personnel who perform the Services and AVI-SPL has made an investment in such personnel. The Customer undertakes and covenants with AVI-SPL that at no time during AVI-SPL's provision of Services or for one year thereafter, will the Customer directly or indirectly employ, engage or induce, or seek to induce any AVI-SPL personnel to leave the service of AVI-SPL without AVI-SPL's express prior written consent. The Customer acknowledges that this restriction is reasonable in light of AVI-SPL's legitimate interest in the investment it has made in its personnel.
- 40.2 This restriction shall not apply to a general solicitation for employment not directly targeted at AVI-SPL's employees.
- 40.3 In the event of a breach of clause 40.1 the party in breach shall pay to the other party by way of liquidated damages an amount equivalent to two hundred percent (200%) of the annual gross remuneration to which such personnel were entitled to be paid by AVI-SPL at the date of breach. The Customer acknowledges that these liquidated damages are reasonable and proportionate to protect AVI-SPL's legitimate interest in Customer's compliance with this clause 40.

- 40.4 The provisions in clause 40.3 shall be without prejudice to a party's ability to seek damages or claim injunctive relief.

## Additional Terms for On-Site Managed Services

The provisions set forth in these Additional Terms for On-Site Managed Services (“OMS Terms”) shall apply if AVI-SPL provides its On-Site Managed Services (“OMS Services”) or if AVI-SPL determines in its absolute discretion that such OMS Terms apply, whether within the Scope Proposal or otherwise.

### 41 OMS Services

- 41.1 The Customer and AVI-SPL will cooperate to transfer the managed on site employees working at the Customer’s location and/or employees dedicated to perform work for the Customer (“**Dedicated Employees**”) at the Commencement Date to AVI-SPL and at termination date of the Contract to the Customer or to any other third party nominated by the Customer, in accordance with the provisions of the TUPE Regulations and other relevant legislation, as amended from time to time.
- 41.2 The Customer warrants that i) the information provided to AVI-SPL with regards to the list of Dedicated Employees that were previously performing the services and continue to do so under the Contract and ii) the information relating to each Dedicated Employee, is in all material aspects true and accurate, and the Customer shall indemnify AVI-SPL against all costs, liabilities and expenses, including, but not limited to all legal fees, which AVI-SPL may incur in relation to any breach of this clause.
- 41.3 The Customer will indemnify AVI-SPL against any employment claim brought against AVI-SPL by or on behalf of any Dedicated Employee transferring to AVI-SPL which arises as a result of any act or omission by the Customer or previous supplier of the services relating to the employment of such transferring Dedicated Employee before the date of such Dedicated Employee’s transfer to AVI-SPL.
- 41.4 AVI-SPL shall indemnify the Customer against any employment claim brought against the Customer by or on behalf of any transferring Dedicated Employee which arises as a result of any act or omission by AVI-SPL in the employment of such Dedicated Employee during the provision Services.
- 41.5 Dedicated Employees that work in jurisdictions where the TUPE Regulations are not in force will provide the OMS Services, and the parties shall comply with their obligations, in accordance with this clause 41 insofar as such services and obligations comply with local laws and regulations.
- 41.6 Unless otherwise set out in the Scope Proposal, all agreements for OMS Services shall commence on the agreed commencement date and shall continue, unless terminated earlier in accordance with the termination provisions of the Contract for a period of 12 months (the “**Initial Term**”) and will thereafter be automatically renewed for periods of three (3) months (“**Renewal Term**”). An agreement for OMS Services can be terminated by either party by providing sixty (60) calendar days written notice before the end of the Initial Term or each Renewal Term. AVI-SPL may in its absolute discretion increase the applicable Charges to reflect its then current standard rates for any Renewal Term.
- 41.7 M&S Terms shall always apply *mutatis mutandis* to OMS Services where OMS Terms apply.

## Additional Terms for Professional Services

The provisions set forth in these Additional Terms for Professional Services (“Prof Terms”) shall apply if AVI-SPL provides its Professional Services or if AVI-SPL determines in its absolute discretion that such Prof Terms apply, whether within the Scope Proposal or otherwise.

### 42 Professional Services

- 42.1 For the purposes of this clause 42 “**Group Company**” shall mean any holding company of the Company and any subsidiary of the Company or of any such holding company for the time being, each as defined by section 1159 of the Companies Act 2006 in the United Kingdom.
- 42.2 AVI-SPL will use its reasonable efforts to provide the Professional Services as defined in the Scope Proposal with due care, in a professional and workmanlike manner and in accordance with the applicable Scope Proposal. AVI-SPL shall provide all Professional Services on the basis of a reasonable endeavours obligation, unless and in so far it has expressly undertaken in the Scope Proposal to achieve a specific result and the result in question is sufficiently determined.
- 42.3 Professional Services delayed or cancelled by the Customer prior to commencement will result in the Customer being liable for all charges, unless agreed otherwise in writing.
- 42.4 If it has been set out in the Scope Proposal or otherwise agreed in writing by the parties that the Professional Services will be provided in stages, AVI-SPL is entitled to delay the start of the Professional Services associated with a stage until such time as the Customer has approved the results of the previous stage in writing.
- 42.5 AVI-SPL shall be obliged to follow timely and reasonable instructions issued by the Customer during the performance of the Professional Services unless the Customer issues instructions that change or extend the content or scope of the agreed Professional Services. If such instructions are followed, however, Customer shall pay for that work or services in question in accordance with AVI-SPL’s standard rates. The Customer accepts that such additional work or services may affect the agreed or expected time of completion of the Professional Services and the mutual responsibilities of the Customer and AVI-SPL.
- 42.6 AVI-SPL is at all times entitled to replace its employees with one or more other employees or subcontractors with the same qualifications.
- 42.7 AVI-SPL may use another person, firm, company or organisation to perform any administrative, clerical or secretarial functions that are incidental to the provision of the Professional Services.
- 42.8 The Customer will provide all materials, information and other cooperation required by AVI-SPL for the purpose of providing the Professional Services. The Customer shall prepare and provide all information and material in accordance with the conditions and instructions imposed by AVI-SPL. These information and materials are provided at the risk and expense of Customer. The Customer guarantees that all materials, information, and instructions that it makes available to AVI-SPL for the purpose of providing the Professional Services is accurate and complete and that all information provided to AVI-SPL meet AVI-SPL’s specifications.
- 42.9 During the Professional Services the Customer will afford AVI-SPL such access to its premises and those of any Group Company and to information, records and other materials of the

Customer and any Group Company as the AVI-SPL may require to enable AVI-SPL to provide the Professional Services.

- 42.10 The Customer and any Group Company will:
- 42.10.1 make available such working space and facilities at its premises as AVI-SPL considers necessary for AVI-SPL to provide the Services; and
  - 42.10.2 agree with AVI-SPL to schedule work to the best convenience of both parties.
- 42.11 The Customer will supply free of charge such materials, instruments or equipment as AVI-SPL and the Customer and any Group Company agree are necessary for AVI-SPL to provide the Professional Services.
- 42.12 The Customer will agree with AVI-SPL on or before the Commencement Date the identity of the person(s) or the department within the Customer and/or any Group Company who will act as the sole contact point and channel of communication for the provision by AVI-SPL of the Professional Services. The Customer will inform AVI-SPL of and agree immediately with AVI-SPL any change in the identity of such person(s) or department.
- 42.13 AVI-SPL shall carry out the work during AVI-SPL's standard Business Hours.
- 42.14 Except where agreed otherwise in writing, the use by Customer of advice issued by AVI-SPL shall in all cases be at Customer's risk and expense.
- 42.15 No warranty or guarantee is made by AVI-SPL in relation to the Professional Services except insofar as one is given in clause 42.2.
- 42.16 M&S Terms shall always apply *mutatis mutandis* to Professional Services where Prof Terms apply.