

RESOLUTION NO. 17 - 2471

A RESOLUTION OF THE TOWN COMMISSION OF THE TOWN OF SURFSIDE, FLORIDA APPROVING THE GENERAL TERMS AND CONDITIONS, CUSTOMER CARE SERVICE AGREEMENT, SOFTWARE LICENSE AGREEMENT AND ADDENDUM (COLLECTIVELY, AGREEMENT) WITH AUDIO VISUAL INNOVATIONS, INC./SIGNAL PERFECTION, LTD. FOR THE HIGH DEFINITION NETWORK MANAGED BROADCAST SYSTEM; PROVIDING FOR AUTHORIZATION AND IMPLEMENTATION OF THE AGREEMENT; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the Town of Surfside (the "Town") desires to upgrade its existing broadcast Nexus HD system and provide for a high definition network managed broadcast system with Audio Visual Innovations, Inc./Signal Perfection, Ltd. ("AVI-SPL"); and

WHEREAS, AVI-SPL has agreed to provide the deliverables and services for the system upgrade, and the parties desire to enter into the agreements attached hereto as: (i) General Terms and Conditions attached hereto as Exhibit "A"; (ii) Customer Care Service Agreement attached hereto as Exhibit "B"; (iii) Software License Agreement attached hereto as Exhibit "C"; and (iv) Addendum to Agreement attached hereto as Exhibit "D" (collectively, the "Agreement"); and

WHEREAS, the Town desires to enter into the Agreement, substantially in the form attached hereto as Exhibits "A", "B", "C" and "D" and finds that the Agreement is in the best interest and welfare of the Town.

NOW THEREFORE, BE IT RESOLVED BY THE TOWN COMMISSION OF THE TOWN OF SURFSIDE, FLORIDA AS FOLLOWS:

Section 1. Recitals. That the above and foregoing recitals are true and correct and are hereby incorporated by reference.

Section 2. Approval and Authorization. The Agreement, substantially in the form attached hereto as Exhibits "A", "B", "C" and "D", is approved, subject to such changes as may be acceptable to the Town Manager and the Town Attorney as to form and legality. The Town Commission authorizes the Town Manager to execute the Agreement on behalf of the Town.

Section 3. Implementation. The Town Manager is authorized to take any and all action necessary to implement the purposes of this Resolution and the Agreement.

Section 4. Effective Date. This Resolution will become effective upon adoption.


PASSED AND ADOPTED this 13th day of December, 2017.

Motion by Commissioner Paul.

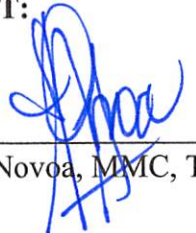
Second by Commissioner Gielchinsky.

FINAL VOTE ON ADOPTION

Commissioner Daniel Gielchinsky	<u>yes</u>
Commissioner Michael Karukin	<u>yes</u>
Commissioner Tina Paul	<u>yes</u>
Vice Mayor Barry Cohen	<u>yes</u>
Mayor Daniel Dietch	<u>yes</u>



Daniel Dietch, Mayor

ATTEST:


Sandra Novoa, MMC, Town Clerk

**APPROVED AS TO FORM AND
LEGAL SUFFICIENCY FOR THE TOWN OF SURFSIDE ONLY:**



Weiss Serota Helfman Cole & Bierman, P.L.
Town Attorney

Audio Visual Innovations, Inc., a wholly owned subsidiary of



General Terms and Conditions

1. Applicability of Terms

These General Terms and Conditions, including any addenda attached hereto, together with the Customer Care Service Agreement ("Service Agreement") and Software License Agreement ("Software License") attached hereto and incorporated herein by this reference (collectively, the "Terms and Conditions") are the only terms which govern the sale of the equipment and any related software ("Products") and services ("Services") contained in the accompanying audiovisual solutions proposal (the "Proposal") by Audio Visual Innovations, Inc./Signal Perfection, Ltd. ("Company") to Buyer.

The Terms and Conditions and the Proposal (collectively, the "Agreement") comprise the entire agreement between the parties, and supersede all prior or contemporaneous understandings, agreements, negotiations, representations and warranties, and communications, both written and oral. In the event of a conflict between these General Terms and Conditions and the Service Agreement, the Service Agreement shall prevail. In the event of a conflict between these General Terms and Conditions and an addendum attached hereto, the addendum shall prevail. In the event of a conflict between these General Terms and Conditions and any of the other documents constituting the Agreement, these General Terms and Conditions shall prevail unless expressly provided otherwise herein. Notwithstanding anything herein to the contrary, if a master services agreement signed by both parties is in effect covering the sale of the Products and Services covered hereby, the terms and conditions of said agreement shall prevail to the extent they are inconsistent with these Terms and Conditions.

2. Acceptance of Terms

This Agreement shall not be binding upon the Company until signed by the Buyer and accepted in writing by a duly authorized representative of the Company. Any modification, addition to, or waiver of any of this Agreement shall not be effective unless in writing and signed by an authorized representative of the Company, and any different or conflicting terms appearing in Buyer's purchase order or other documents are expressly rejected by Company. Buyer's receipt of the Products/Services shall constitute assent to this Agreement. No relaxation, forbearance or indulgence by the Company in enforcing any of the terms and conditions of this Agreement or the granting of any time to any other party shall prejudice or restrict the rights and powers of the Company hereunder, nor shall waiver of any breach hereof operate as a waiver of any subsequent or continuing breach hereof.

3. Delivery

The Company will use its best efforts to deliver the Products in accordance with the Buyer requested delivery date subject to receipt of all necessary information from Buyer. Shipping dates are approximate only, and the Company shall not be liable for delays or for failure to manufacture due to causes beyond its reasonable control or due to compliance with any government regulations.

Any delay shall extend delivery dates to the extent caused thereby. Buyer shall reimburse the Company its additional expenses resulting from any Buyer-caused delay. When delivery of the Products is delayed at the request of the Buyer and the Products have already been shipped to the Company, the Company will place the Products in storage and the Company will immediately invoice the Buyer 70% of the price, which will be promptly paid. The Buyer shall have no right to cancel or rescind this Agreement by reason of an excusable delay as defined herein, and shall accept

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such delayed performance by the Company. The Buyer's receipt of the Products shall constitute a waiver of any claims for delay.

4. Payment Terms

Unless otherwise specified herein, the total contract price shall be paid as follows: 50% down payment at time of order, 40% upon delivery at Company; 10% upon completion or first beneficial use, payable net 30 from receipt of invoice. Unless otherwise specified, Products are sold F.O.B. origin-Buyer to pay all shipping charges. If this Proposal covers Products or Services for more than one system, room, suite, or location, for purposes of payment in accordance with payment terms stated on the face hereof each room, suite, or location shall be treated as if the subject of a separate sale and payment made accordingly. Company shall not be liable for failures of or delays in manufacture, delivery or installation resulting from any cause or causes beyond its reasonable control.

5. Buyer In Arrears Or Default

In the event Buyer is in arrears with any payment whatsoever due from it to the Company at any time whatever, whether in respect of the purchase price or any other amount due from the Buyer to the Company under the terms of this Agreement, the amount in arrears shall bear interest at three (3) percent above the prime rate prevailing at the principal New York branch of Chase Manhattan Bank as from the date each amount falls due, pending actual payment thereof in full, without prejudice to any relief and remedy available to the Company. In the event of Buyer's default, the Company may, without notice, peaceably enter any premises in which the Products are located and remove, hold and sell them in accordance with applicable law, to satisfy in whole or in part Buyer's obligations.

6. Title, Risk of Loss

Title to the Products shall pass to Buyer upon delivery, subject to the Software License (if applicable) ~~and a purchase money security interest retained by the Company in the Products sold and the proceeds thereof until payment of all amounts then due to the Company.~~ The Company shall be entitled to remove the Products from the Buyer's premises if all payments are not made when due. ~~Buyer agrees to cooperate with Company in the execution and filing of financing statements under the Uniform Commercial Code or other documents as the Company requests to protect its security interest.~~ Risk of loss or damage to the Products or any part thereof shall pass to the Buyer upon delivery.

7. Installation & Site Preparation

Installation (field assembly, interconnection, equipment calibration and checkout) is to be performed by the Company's trained technical employees. The Company shall be entitled to employ sub-contractors and/or agents to assist in or carry out, in whole or in part, the installation. In the event installation by Company employees is prevented by trade unions, the Buyer shall arrange with the trade unions at its own expense to complete installation. The Company is thereafter liable only for engineering supervision of installation.

The Company shall coordinate and cooperate with other trades to facilitate satisfactory work progress. If the Company's work in progress is impeded by other trades and/or contractors (excluding the Company's own subcontractors) or by scheduling delays due to the Buyer, time delays in the final installation as well as additional charges including labor, travel and reasonable expenses may result.



The Buyer shall be responsible for preparing, at its own expense, the installation site in accordance with the Company's instructions, including the requirements specified in the Proposal. In no event shall the Company be responsible for any high voltage electrical work, ceiling modifications, structural modifications, or mechanical systems modifications. Unless otherwise specified, Buyer shall provide the Company with source code for any non-Company programmed remote control system required to be modified under the terms of this Agreement.

8. Installation & Site Preparation (Continued)

The Buyer shall provide the Company with reasonable access to the installation site before delivery, for purposes of determining site readiness for installation, and shall designate an Individual on Buyer's staff to serve as a contact person for all site preparation and installation issues. Buyer shall provide the Company with free access to the installation site for the purpose of preparation for installation. ~~The Buyer shall indemnify the Company against any loss, damage or claim arising out of the condition of the storage and installation premises.~~

Buyer shall obtain at its expense and keep effective all permissions, licenses, and permits whenever required in connection with the installation and/or use of the Products and the premises where the Products shall be situated.

9a. Warranty

In the event the Products are in any way misused or altered or repaired by someone other than a representative of the Company, which within the sole judgment of the Company results in an adverse effect, including effects upon performance or reliability of the Products, the warranty and the Company's obligations hereunder shall terminate without notice to Buyer.

9b. Warranty Service

Unless Buyer has purchased a Service Program (as defined in the Customer Care Service Agreement) providing for a longer period of warranty coverage, each installation/system carries a standard ninety-day warranty covering defects in the installation portion of the sale. Components and materials carry the manufacturer's warranty as described below, which may be greater than the ninety-day period listed above. The Company will attempt to reply to warranty service requests received from Buyer prior to 1:00 p.m. within forty-eight hours. In the event service is provided outside of normal working hours, Buyer will be charged for any overtime hours in accordance with the Company's then- standard policy on overtime rates. Normal working hours are 9 a.m. to 5 p.m., Monday through Friday, excluding legal holidays.

10. Limitations Of Warranty – Products Of Others

Unless otherwise specified, no warranty whatsoever is provided by the Company hereunder as to Products manufactured by anyone other than the Company, including but not limited to, cables, lamps, batteries, glassware, and evacuated device (including valve, cathode ray tubes, and other special electron tubes).

Buyer Acceptance of General Terms and Conditions

The Company's sole obligation with respect to any material or part identified in the Proposal, literature, or specifications furnished to the Buyer as manufactured or supplied by others, shall be to pass on to the Buyer the applicable manufacturer's warranties, if any.

11. Buyer Responsibilities

Buyer or any user of the Products shall (i) notify the Company as soon as any unusual operating peculiarity appears, and (ii) operate the Products in a safe and competent manner in strict compliance with established safety operating procedures and applicable laws and government regulations. In the event the Buyer or any user of the Products fails to comply with any of the above-stated conditions, the Company's warranties and its obligations hereunder shall terminate without notice to Buyer.

12. Limitation Of Liability

The foregoing warranties are exclusive and in lieu of all other warranties, whether written or oral, implied or statutory. No implied warranty of merchantability or fitness for a particular purpose shall apply; in no event will the Company be liable for any damages, other than the allocable charges paid by the Buyer for the Products, whether direct, indirect, special, incidental or consequential, arising from any warranty claims.

13. Taxes

Any and all taxes levied or based on the prices in this Agreement, or the Products/Services being sold hereunder, exclusive of any taxes based on net income, shall be added to the selling prices set forth in the Proposal; otherwise, the Buyer shall provide the Company with a tax exempt certificate acceptable to the taxing authorities.

14. Choice Of Law And Severability

This Agreement shall be interpreted in accordance with and governed in all respects by the laws of the State of Florida without giving effect to its conflict of law rules. Venue shall be Hillsborough County, Florida. Should any provision of this Agreement be found invalid or unenforceable by a court of competent jurisdiction or by operation of any applicable law, it shall not affect the validity of any other provision contained herein. In the event of litigation relating to the subject matter of this Agreement, the non-prevailing party shall reimburse the prevailing party for all reasonable attorney fees and costs resulting therefrom.

15. Restocking Fees

In the event Buyer wishes to return any Products based on reasons outside of the Company's control, Buyer agrees to pay any and all restocking fees.

16. General

The Proposal shall be firm for the period shown on the face hereof, subject to withdrawal or change by the Company upon notice at any time prior to acceptance of an order.

Please see addendum attached hereto and made a part hereof

Signed Name

Client

Printed Name

Date

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AVI-SPL, Inc.

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Customer Care Service Agreement

1. Applicability of this Service Agreement.

This Service Agreement together with the General Terms and Conditions and, if applicable, the Software License set forth the terms and conditions pursuant to which Audio Visual Innovations, Inc./Signal Perfection, Ltd. ("AVI-SPL") will provide Services and related Products to its end user customers ("Customer", "You" or "Your") based upon such Service Programs which Customer has purchased from AVI-SPL.

This Service Agreement applies to the Services being provided under a Service Program.

By submitting a purchase order for Services provided under a Service Program to AVI-SPL, Customer agrees to be bound by this Service Agreement. Unless otherwise agreed in writing by AVI-SPL, no other terms and conditions endorsed upon, delivered with or contained in an end user's purchase order, or in any other similar document, will amend, or vary the provisions of this Service Agreement.

2. Definitions.

In this Service Agreement, the following terms shall have the following meanings. All capitalized terms not otherwise defined herein shall have the meaning ascribed to them in the General Terms and Conditions.

- 2.1. "Products" means equipment and software generally made available in the marketplace.
- 2.2. "Manufacturer" means an entity that produces equipment and/or Software.
- 2.3. "Services" means the AVI-SPL branded services provided under a relevant Service Program.
- 2.4. "Service Program" means those pre-packaged service programs as described in Section 3 of this Service Agreement.
- 2.5. "Software" means programs or applications developed, installed or released by the manufacturer or third party integrator to control the function of a device, feature or function.
- 2.6. "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 Manufacturer charges separately.
- 2.7. "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 Product 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.
- 2.8. "Upgrade" means new releases of the Software which contains enhancements improving the functionality or capabilities of the Software, which AVI-SPL or Manufacturer may make available to its support Services customers. Upgrades do not include Software Options.

3. Covered Services.

- Customer Care Preferred - provides remote technical phone support services, facilitation of manufacturer repair or replacement programs, and access to manufacturer published software updates and upgrades for covered assets. Also includes access to an online portal for incident reporting and annual business reviews. Remote technical phone support services are available 7x24.
- Customer Care Preferred Onsite - provides remote technical phone support services, facilitation of manufacturer repair or replacement programs with onsite Field Technician dispatch, and access to manufacturer published software updates and upgrades for covered assets. Also includes access to an online portal for incident reporting and annual business reviews. Remote technical phone support services are available 7x24. Onsite Field Technician dispatch are available Monday through Friday from 8 AM to 5 PM local standard time excluding AVI-SPL published holidays.

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- Customer Care Exclusive Onsite – provides advanced support services for all covered assets including 7x24 remote technical phone support services, assigned Customer Service Manager, direct access to Tier II phone support services, proactive version control, configuration change management support, equipment re-location support, advanced account reporting, trend analysis, quarterly account reviews and up to two (2) hours of remote device administrator training for covered assets. Requires all covered assets be covered at as part of the Customer Care Exclusive program. Underlying Maintenance support may vary in Service Level by location. Onsite Field Technician dispatch are available Monday through Friday from 8 AM to 5 PM local standard time excluding AVI-SPL published holidays.
- First Call Consolidation Services – provides consolidated remote technical phone support services, third-party incident management and ticketing services for covered assets. Third party contract information and / or Letter of Agency are required to enable AVI-SPL to act on Customer's behalf.
- Preventative Maintenance - provides scheduled onsite Field Technicians to perform operational health testing of covered assets, routine maintenance tasks such as cleaning, alignment adjustments, log reviews, and remediation of identified problems. Consumables such as filters, bulbs and batteries will be replaced and chargeable at additional fee. Preventative Maintenance visits are scheduled Monday through Friday from 8 AM to 5 PM local standard time excluding AVI-SPL published holidays according to the following schedule based on the number of Preventative Maintenance visits elected:
 - Quantity 4 – Quarterly visits – scheduled in 3 month intervals
 - Quantity 2 – Bi-Annual visits – scheduled in 6 month intervals
 - Quantity 1 – Annual visit – scheduled anytime within the contract term

Unscheduled Preventative Maintenance visits expire 30 days into the next scheduled interval within the contract term. Unscheduled annual visits expire at contract expiration.

4. Services; Orders.

In order to receive Services under a Service Program pursuant to this Service Agreement, you must submit a purchase order or valid credit card to AVI-SPL for a validly quoted Service Program. Purchase orders must refer to AVI-SPL quote identification number. A valid AVI-SPL quote will contain the following information for each covered asset listed on the purchase order: (i) the Service Program you are purchasing; (ii) the model (and serial number for renewals of Service Programs only) of the applicable Products; (iii) the appropriate pricing information; (iv) the site location(s) of covered assets and (v) the Service Period (if applicable). Following order acceptance customer agrees to provide a contact name, contact email address, and telephone number at the location (if applicable).

AVI-SPL will determine the pricing and payment terms associated with any Service Program which you purchase. All orders are subject to acceptance by AVI-SPL, and no obligation, including a purchase order, shall be binding on AVI-SPL unless and until such order is accepted by AVI-SPL, or, if earlier, Services are provided to Customer. Please note that only those Products listed on a valid quotation applicable to your purchase order will be covered by Service Programs under this Service Agreement. Any optional services for a Service Program available to Customers for an additional fee will be invoiced separately with payment terms as specified within such Service Program.

5. Service Period.

The initial period of any Service Program purchased hereunder (the "Initial Service Period"), shall commence on the date AVI-SPL accepts an Order, or such other date as specified on the applicable Order and accepted by AVI-SPL, and shall continue twelve (12) months therefrom, or such other period of time as specified on the applicable Order and accepted by AVI-SPL.

This Service Agreement shall automatically renew for successive periods of equal length 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.

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 five (5%) percent of the Order price for the then-current Initial or Renewal Service Period. In the event the price increase exceeds five (5%) percent, AVI-SPL shall issue a new quote to Customer for approval prior to the commencement of the successive renewal period.

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6. Service Activation.

For new equipment purchase: Service coverage will begin 30 days from the date of shipment from the manufacturer's warehouse or upon installation, whichever is sooner unless otherwise specified.

For existing equipment coverage: Service coverage will begin immediately upon receipt of an authorized purchase order or payment in full, if required by AVI-SPL. If equipment was not under an AVI-SPL or manufacturer's support contract for an extended period of time, AVI-SPL and / or the manufacturer may require a recertification fee and / or inspection of the equipment prior to AVI-SPL being able to support or being able to receive manufacturer support and replacement parts / software for the equipment. The recertification costs and any repairs required by AVI-SPL to certify a room and / or to meet the manufacturer specifications is the responsibility of the customer and are not covered under the agreement unless specifically noted in the Service Program.

7. Services Availability.

Remote Technical Phone Support Services will be provided on a 7x24x365 basis.

Onsite Field Technician Dispatch Services: Unless otherwise provided in any Service Program, Services will be provided Monday through Friday from 8 AM to 5 PM local standard time excluding AVI-SPL published holidays.

8. Software Updates, Upgrades and Options.

For Software covered under a Service Program, you will receive Updates and / or Upgrades as specified in the applicable Service Program description. For the latest Updates and Upgrades available for your Software, if any, please contact the AVI-SPL Help Desk. Updates are provided on a fix or fail basis. That is, to obtain an available Update the customer must call AVI-SPL to report a specific customer product failure (identified by Product serial number) exhibiting a problem, which the Update corrects. AVI-SPL will configure the Update according to the Software record of the registered Product.

9. Replacement Parts.

Replacement parts provided pursuant to a Service Program will be either new parts or parts equivalent in performance to new parts when used with the Product, and are warranted for ninety (90) days from shipment or the remainder of the initial warranty period, whichever is longer. Parts removed from Products for replacement will become the property of AVI-SPL or the Manufacturer, and if replaced by the Customer must be received back to the local AVI-SPL service facility (as the same is listed on the pre-addressed return package provided by AVI-SPL) within five (5) business days of receipt of the replacement part, or you will be invoiced the full list price for the replaced part.

9.1. Warranty Parts Repair / Replacement: Some equipment may be repairable or replaced at no charge under the manufacturer's Warranty policy. Labor for onsite installation of parts covered under manufacturer warranty may be subject to AVI-SPL Time and Material labor fees. The Help Desk will assist the customer to arrange return of the defective equipment to the manufacturer for service/replacement.

9.2. Advanced Parts Replacement: Specific to videoconferencing equipment available with advanced parts replacement from the manufacturer; some equipment may be eligible for an Advanced Replacement program. In these instances, upon determination of a part requiring replacement by the Help Desk technician, a replacement part will be delivered to the customer location. Return of the defective product is required by the Customer under the conditions defined under the Terms and Conditions of Service.

10. Service Level Agreement.

AVI-SPL will provide an Average Speed of Answer (ASA) of 60 seconds for support calls placed to its help desk Monday through Friday, 8 AM to 5 PM local standard time excluding AVI-SPL published holidays.

AVI-SPL will respond to new service requests made via email or web portal within four (4) hours with case assignment notification Monday through Friday, 8 AM to 5 PM local standard time excluding AVI-SPL published holidays.

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When applicable, AVI-SPL will provide a two business day onsite response pursuant to the Help Desk's determination that a dispatch is required for incident remediation. This service level may be impacted by room availability and the requirement for replacement parts. All onsite activity will be scheduled Monday through Friday, 8 AM to 5 PM local standard time excluding AVI-SPL published holidays.

When a case is opened, the Help Desk will classify the case in accordance with the following incident priority classifications:

- P1: Critical – System outage equipment or room system fully non-functional
- P2: Major – System impaired but operational quality or features diminished
- P3: Minor – System operational with acceptable quality features are diminished
- P4: Informational – End User "How To" inquiry, request for configuration modification

11. Service Program Exclusions.

Unless otherwise specified, Service Programs do not cover any of the following: (i) electrical work and / or in-house cabling external to the Product; (ii) repair or replacement of Product resulting from causes external to the Product, including disaster, fire, flood, earthquake, tornado accident, neglect, misuse, vandalism, water, corrosion, power surges, unconditioned or fluctuating power, lightning, customer-provided network, or failure of the installation site to conform to manufacturer specifications; or resulting from use of the Product for other than intended purposes; or resulting from use of the Product with items not provided or approved by AVI-SPL; or resulting from the performance of maintenance or the attempted repair of an item of a Product by persons other than AVI-SPL employees or persons authorized by AVI-SPL; (iii) repair or replacement of Product excluded by or no longer covered by the Product manufacturer's repair and replacement program; (iv) furnishing supplies or accessories including consumables such as projection lamps, bulbs, filters, fuses, batteries and the labor to replace these items, or painting or refinishing the Product; (v) Services in connection with the relocation of the Product, or the addition or removal of items of equipment or parts, attachments, features, from or to other devices not furnished by AVI-SPL including facilitation of customer spare or loaner equipment, including communications devices, video devices, audio devices, networks or links; (vi) damage to displays caused by screen burnout or image "burn-in"; (vii) Replacement and / or general support for manufacturer-specified end of life products after AVI-SPL has informed Customer of such change in status and pro-rated remaining portion of relative cost for such pertinent products; (viii) Services in connection with computer viruses or conflicts involving software that is not installed or introduced by AVI-SPL including coverage for "OFE" (Owner Furnished Equipment) unless specifically listed as covered equipment or devices not installed by AVI-SPL and not specifically covered under this Service Agreement.

12. Charges and Payment Terms

Payment terms are NET 30 Days from the date of invoice. All fees and payments referenced in this Service Agreement are in US Dollars. The Services as outlined will be invoiced in full upon execution of the Service Agreement.

13. Termination

Either party may at its option terminate any applicable Service Program in whole or in part for cause: (i) if the other party breaches any material term or condition hereunder or under any applicable Service Program, and fails to remedy such failure within thirty (30) calendar days after receipt of written notice of such default; (ii) in the event that any proceedings are commenced against the other party or such party seeks protection under bankruptcy, insolvency, or other debtor's relief law or (iii) the other party becomes insolvent or dissolves. Furthermore, AVI-SPL may terminate any applicable Service Program in whole or in part for cause if any person other than a AVI-SPL employee, or designated service representative, alters a Product without AVI-SPL's prior written consent, or in any way renders a Product unsafe (adjustments to a Product made at the direction of AVI-SPL or the Manufacturer or as otherwise intended as set forth in the applicable Product documentation do not constitute alterations for the purposes of this Section). In the event of cancellation due to non-payment, the customer agrees to be liable for the full cost of any manufacturer sub-coverage purchased on the customer's behalf by AVI-SPL and for services and parts provided to the customer on a Time and Material basis per AVI-SPL's then-current Time and Material rate schedule.

AVI-SPL reserves the right to terminate or modify available Service Programs at any time in its sole discretion; provided, that any such modifications will not affect any Service Programs already ordered by you and accepted by AVI-SPL prior to such modifications except as mutually agreed by both parties.

14. Customer Obligations.

- 14.1. You shall have the continuing obligation to keep all Products under a Maintenance Service Program at either the then-current Software version or previous major Software version release.

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- 14.2. Software updates and upgrades are the responsibility of the customer. Assistance may be requested from the Help Desk to gain access to the software or if issues are encountered. Software updates do not mandate an onsite service call.
- 14.3. Customer is required to assist the AVI-SPL Help Desk technician with the remote diagnosis of the reported problem to help determine the cause of the problem. Parts replacement and onsite service may not become available until the Help Desk is provided the appropriate information or support to diagnose the problem.
- 14.4. Remote access to the equipment for the purposes of diagnostics prior to technician dispatch is required. If remote access is not provided, delays may be experienced in the diagnosis and repair of the equipment.
- 14.5. If applicable, you will provide AVI-SPL personnel with access to the Products and adequate working space (including heat, light, ventilation, electric current and outlets) at no charge to AVI-SPL. All Customer environments must be free from all risks to health and safety (except to the extent notified to AVI-SPL in writing and specifically accepted in writing by AVI-SPL).
- 14.6. If applicable, you will maintain, at your expense, the installation site and provide the necessary utility services for use of the Product in accordance with the Manufacturer's applicable published specifications.
- 14.7. You will be responsible for replacing, at your own expense, any and all consumable items used in connection with the Products, including without limitation, bulbs and batteries.
- 14.8. Customer will be responsible for payment of Repairs and Services provided by AVI-SPL that are not covered under the selected coverage under the agreement and after mutual agreement delivered by AVI-SPL on a Time and Material Basis in accordance with the AVI-SPL standard published labor rates and material charges.
- 14.9. Equipment Operation and Alteration: The customer may not alter, repair or modify the covered equipment except as expressly directed by AVI-SPL service personnel. The customer must operate the equipment as detailed in the user operations manual provided by the manufacturer with the covered equipment. The customer may not add equipment, components, wiring or other parts to the covered equipment without written notification to and acceptance by AVI-SPL.
- 14.10. AVI-SPL strongly recommends that you install and use a current, reputable anti-virus program in connection with any PC-based, open-architecture Product, and that you regularly update and run such anti-virus program, especially in connection with the emergence of any new viruses and/or 'worms'. Repair or restoration of any Product damaged or 'infected' by viruses is not covered under this Service Agreement or the Service Programs.
- 14.11. You are solely responsible for backing up your data. AVI-SPL will not under any circumstances have a duty to back up your data or to restore data that is lost in the course of AVI-SPL's provision of Services, or otherwise. ~~AVI-SPL will not be liable for the loss of your data, whatever the reason for the loss, including without limitation as a result of AVI-SPL's negligence. The preceding limitation applies to any cause of action, whether based in contract, tort, or any other theory.~~

15. Intellectual Property.

Each party shall retain all right, title and interest in and to, and possession of their respective preexisting intellectual property. Furthermore, AVI-SPL shall retain all right, title and interest in and to, and possession of, any know-how, technical information, specifications, documents, ideas, concepts, methods, processes, techniques and inventions developed or created by or on behalf of AVI-SPL relating to Services performed under or in relation to a Service Program. Any intellectual property, know-how, information or documents supplied at any time by one party to the other shall be treated as confidential and covered by the confidentiality undertaking in Section 18 below.

16. Indemnity.

Each party shall indemnify, defend and hold the other harmless from all claims, suits, losses, expenses, judgments and liabilities (including reasonable attorney's fees) for personal injury or death to the extent caused by the negligence of the indemnifying party or its employees. The indemnitee shall give the indemnifying party prompt notice of and authority to defend or settle, any such claim and shall give, at the Indemnifying party's request and expense, reasonable information and assistance thereto.

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17. WARRANTY / LIMITATION OF LIABILITY.

AVI-SPL WARRANTS FOR NINETY (90) DAYS FROM THE PERFORMANCE OF ANY SERVICES BY AVI-SPL PURSUANT TO THIS AGREEMENT, EXCLUDING MANAGED SERVICES, THAT SUCH SERVICES SHALL BE PERFORMED IN A WORKMANLIKE MANNER CONSISTENT WITH GENERALLY ACCEPTED INDUSTRY STANDARDS. AVI-SPL MAKES NO OTHER WARRANTY, EITHER EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, ANY WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE OR OF MERCHANTABILITY. AVI-SPL MAKES NO WARRANTY THAT OPERATION OF THE PRODUCT SERVICED WILL BE UNINTERRUPTED OR ERROR FREE. IN NO EVENT WILL AVI-SPL BE LIABLE FOR ANY DELAY IN FURNISHING SERVICES. CUSTOMER MUST REPORT IN WRITING ANY BREACH OF THIS WARRANTY TO AVI-SPL DURING THE ABOVE WARRANTY PERIOD, AND CUSTOMER'S EXCLUSIVE REMEDY AND AVI-SPL'S ENTIRE LIABILITY FOR ANY BREACH OF SUCH WARRANTY SHALL BE TO REPERFORM THE SERVICES, OR IF AVI-SPL IS UNABLE TO RE-PERFORM THE SERVICES AS WARRANTED, CUSTOMER SHALL BE ENTITLED TO RECOVER THE PRORATED FEES PAID TO AVI-SPL FOR THE NONCONFORMING SERVICES. EXCEPT FOR BREACHES OF CONFIDENTIALITY, OR INTELLECTUAL PROPERTY, IN NO EVENT WILL EITHER PARTY BE LIABLE FOR INCIDENTAL, CONSEQUENTIAL, SPECIAL OR INDIRECT DAMAGES, LOST BUSINESS PROFITS, OR LOSS, DAMAGE OR DESTRUCTION OF DATA, REGARDLESS OF THE FORM OF ACTION, WHETHER IN CONTRACT, TORT (INCLUDING NEGLIGENCE), BREACH OF WARRANTY OR OTHERWISE, EVEN IF SUCH PARTY HAS BEEN ADVISED AS TO THE POSSIBILITY OF SAME. SUBJECT TO THE PRECEDING SENTENCE, EXCEPT FOR BREACHES OF CONFIDENTIALITY OR INDEMNITY OBLIGATIONS, AVI-SPL'S MAXIMUM LIABILITY FOR ALL OTHER DAMAGES WILL BE LIMITED TO (I) ONE (1) YEAR'S SERVICE CHARGES (IN THE CASE OF SERVICE PROGRAMS WITH AN APPLICABLE SERVICE PERIOD) OR (II) AGGREGATE SERVICE FEES PAYABLE TO AVI-SPL PURSUANT TO THE APPLICABLE SERVICE PROGRAM (IN THE CASE OF SERVICE PROGRAMS WITH NO APPLICABLE SERVICE PERIOD). THIS LIMITATION OF LIABILITY IS CUMULATIVE AND NOT PER INCIDENT. SOME STATES OR JURISDICTIONS DO NOT ALLOW THE EXCLUSION OR LIMITATION OF INCIDENTAL OR CONSEQUENTIAL DAMAGES AND IN SUCH EVENT, THE FOREGOING EXCLUSIONS AND LIMITATIONS SHALL ONLY APPLY TO THE EXTENT PERMITTED BY APPLICABLE LAW. NOTWITHSTANDING THE FOREGOING, NOTHING IN THIS SERVICE AGREEMENT SHALL BE DEEMED TO LIMIT OR EXCLUDE EITHER PARTY'S LIABILITY FOR (I) FRAUD OR FRAUDULENT MISREPRESENTATION OR (II) DEATH OR PERSONAL INJURY TO THE EXTENT THAT IT RESULTS FROM SUCH PARTY'S NEGLIGENCE AND SOLELY TO THE EXTENT REQUIRED BY APPLICABLE LAW.

18. Confidentiality.

* **Confidential Information.** Each party (the "Disclosing Party") may from time to time during the Term disclose to the other party (the Recipient") certain information regarding the Disclosing Party's business, including its products, inventions, operations, methodologies, systems, processes, product development plans or intentions, know-how, designs, trade secrets, market opportunities, business or financial affairs, and technical, marketing, financial, employees, planning, and other confidential or proprietary information ("Confidential Information"). AVI-SPL's Confidential Information includes (without limitation) the function and performance of the Products, the terms of this Agreement, and any other information relating to the Products or the sale thereof. Confidential Information includes information disclosed orally, visually, or through any tangible medium.

Protection of Confidential Information. Recipient will not use any Confidential Information of the Disclosing Party for any purpose not expressly permitted by this Service Agreement or to carry out the Services, and will disclose the Confidential Information of the Disclosing Party only to the employees or contractors of Recipient who have a need to know such Confidential Information for purposes of carrying out the Services and who are under a duty of confidentiality no less restrictive than Recipient's duty hereunder. Recipient will protect the Disclosing Party's Confidential Information from unauthorized use, access, or disclosure in the same manner as Recipient protects its own confidential or proprietary information of a similar nature and with no less than reasonable care.

Residuals. The Recipient shall be free to use for any purpose the residuals resulting from access to or work with the Confidential Information of the Disclosing Party, provided that the Recipient shall not disclose the Confidential Information except as expressly permitted hereunder. The term "residuals" means information in intangible form, which is retained in memory by persons who have had access to the Confidential Information, including ideas, concepts, know-how or techniques contained therein. The Recipient shall not have any obligation to limit or restrict the assignment of such persons or to pay royalties for any work resulting from the use of residuals. However, this section shall not be deemed to grant to the Recipient a license under the Disclosing Party's copyrights or patents.

Exceptions. Recipient's obligations under Section 16 with respect to any Confidential Information of the Disclosing Party will terminate if and when Recipient can document that such information: (a) was already lawfully known to Recipient at the time of disclosure by the Disclosing Party; (b) was disclosed to Recipient by a third party who had the right to make such disclosure without any confidentiality restrictions; (c) is, or through no fault of Recipient has become, generally available to the public; or (d) was independently developed by Recipient without access to, or use of, the Disclosing Party's Confidential Information. In addition, Recipient will be allowed to disclose Confidential Information of the Disclosing Party to the extent that such disclosure is (i) approved in advance, in writing by the Disclosing Party, (ii) necessary for Recipient to enforce its rights under this Service Agreement in connection with a legal proceeding; or (iii) required by law or by the order of a court of similar judicial or administrative body, provided that Recipient notifies the Disclosing Party of such required disclosure promptly and in writing and cooperates with the Disclosing Party, at the Disclosing Party's request and expense, in any lawful action to contest or limit the scope of such required disclosure.

* All provisions subject to Florida's Public Records Laws (Chapter 119 Florida Statutes)

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19. Force Majeure.

Except for the obligation to make timely payments, neither party will be liable to the other for delays or failures to perform occasioned by causes beyond its reasonable control. Such acts or events shall include but not be limited to, acts of God, civil or military authority, civil disturbance, riot, fire, strikes, lockouts or slowdowns, factory or labor conditions, inability to obtain necessary labor, materials or manufacturing facilities, delayed issuance of export control licenses. In the event of such delays or failures to perform, any dates or times by which AVI-SPL is otherwise scheduled to perform shall be extended automatically for a period of time equal in duration to the additional time required because of the delay or failure to perform. Each of the parties shall promptly inform the other of any event of force majeure, its expected duration and cessation, respectively.

20. General.

Except as otherwise set forth in this Service Agreement, this Service Agreement may only be modified by a written agreement duly signed by authorized representatives of both parties, and variance from or addition to the provisions of this Service Agreement in any order or other written notification will be of no effect.

Any notices required or permitted to be given hereunder shall be in writing and effective when received by a party at the address as the receiving party has last notified to the other party by prior written notice. In the case of AVI-SPL such address, unless otherwise notified in writing, shall be as follows:

AVI-SPL, Inc.
Attn: Executive Vice President
6301 Benjamin Road, Suite 101
Tampa, Florida 33634

If any provision of this Service Agreement shall be held to be invalid, illegal, or unenforceable, the remaining terms of this Service Agreement shall in no way be affected or impaired. The waiver by either party of a breach of any provision of this Service Agreement shall not be construed as a waiver of any subsequent breach.

You may not assign any or all of your rights or obligations under this Service Agreement including by purchase, merger or operation of law, without the prior written consent of AVI-SPL, which consent shall not be unreasonably withheld. Any attempted assignment or transfer in violation of this provision shall be null and void. AVI-SPL may assign its rights and obligations under this Service Agreement without prior written consent or notice.

AVI-SPL's affiliates may participate in AVI-SPL's performance under this Service Agreement and a Service Program, and AVI-SPL may also sub-contract its obligations under this Service Agreement and a Service Program provided that AVI-SPL remains liable for the performance of its affiliates and/or sub-contractors in respect thereof.

Same as expressly provided, no term or provision of this Service Agreement or a Service Program shall be enforceable by a third party (being any person other than the parties and their permitted successors and assignees).

The Customer acknowledges that AVI-SPL has trained personnel who perform Services and has made an investment in such personnel. Therefore, at no time during the term of a Service Program or for one (1) year thereafter, will the Customer directly or indirectly either offer employment to or hire any AVI-SPL employees who perform Services on behalf of AVI-SPL without AVI-SPL's express prior written consent. ~~In the event that the Customer is in breach of this provision, AVI-SPL shall have the right to invoice the Customer, and the Customer agrees to pay, a sum equal to 12 months' salary in respect of the hired individual.~~

In performing the Services, AVI-SPL shall be deemed to be an independent contractor and its personnel and representatives shall not act as nor be Customer's agents or employees. AVI-SPL shall have complete charge and responsibility for personnel employed or engaged by AVI-SPL.

Upon any expiration or termination of these this Service Agreement, Sections 15 (Intellectual Property), 16 (Indemnity) and 17 (Warranty/Limitation of Liability) shall survive.

This Service Agreement may have been translated into various languages for the convenience of AVI-SPL's Customers. While the translation is correct to the best of AVI-SPL's knowledge, AVI-SPL is not responsible or liable in the event of an inaccuracy. English is the controlling language of this Service Agreement, and any translation has been prepared for you as a courtesy only. In the event of a conflict between the English-language version of this Service Agreement and a version that has been translated into another language, the English-language version of this Service Agreement shall control.

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This Service Agreement shall be governed by the laws of the State of Florida and any disputes will be subject to the exclusive jurisdiction of the federal courts of the United States of America or the courts of the State of Florida, in each case located in the city of Tampa and the county of Hillsborough. The non-prevailing party in any dispute will pay all reasonable court costs and attorneys fees finally awarded. The U.N. Convention on Contracts for the International Sale of Goods does not apply. AVI-SPL shall have the option to bring a suit before the courts of your domicile, when the claim is for payments due from you.

UNLESS OTHERWISE EXPRESSLY AGREED IN A SIGNED WRITING BY THE PARTIES IN ACCORDANCE HERewith, THIS SERVICE AGREEMENT IS THE COMPLETE AND EXCLUSIVE STATEMENT OF THE AGREEMENT BETWEEN THE PARTIES, SUPERSEDING ALL PROPOSALS OR PRIOR TERMS AND CONDITIONS, AGREEMENTS OR COMMUNICATIONS, ORAL OR WRITTEN, BETWEEN THE PARTIES RELATING TO THE SUBJECT MATTER HEREOF.

Please see addendum attached hereto and made a part hereof

Customer Acceptance of Customer Care Service Agreement

Signed Name

Customer

Printed Name

Date

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Audio Visual Innovations, Inc., a wholly owned subsidiary of



Software License Agreement

This Software License is made by Audio Visual Innovations, Inc./Signal Perfection, Ltd. ("Company") to Buyer as an essential element of the services to be rendered by the Company as defined in the Proposal and any system specification and any associated documents made available to Buyer by Company. Buyer and Company agree that this Software License is deemed to be part of the Agreement. This Software License applies to control system integration and programming and does not apply to any other services. Any capitalized terms not otherwise defined herein shall have the meaning ascribed to them under the General Terms and Conditions.

SECTION 1 LICENSE GRANT AND OWNERSHIP

1.1 The Company hereby grants to Buyer a worldwide, perpetual, non-exclusive, non-transferable license to all software for Buyer's use in connection with the establishment, use, maintenance and modification of the system implemented by the Company. The term "Software" for the purposes of this Software License shall refer to all source code, executable object code, and the patches, scripts, modifications, enhancements, designs, concepts or other materials that constitute the software programs necessary for the proper function and operation of the system as delivered by the Company and accepted by the Buyer.

1.2 Except as expressly set forth in this paragraph, the Company shall at all times own all intellectual property rights to the software. Any and all licenses, product warranties or service contracts provided by third parties in connection with any software, hardware or other software or services provided in the system shall be delivered to Buyer for the sole benefit of Buyer.

1.3 Buyer may supply to the Company or allow the Company to use certain proprietary information, including service marks, logos, graphics, software, documents and business information and plans that have been authored or pre-owned by Buyer. All such intellectual property shall remain the exclusive property of Buyer and shall not be used by the Company for any purposes other than those associated with delivery of the system.

SECTION 2 COPIES, MODIFICATION, AND USE

2.1 Buyer may make copies of the software for archival purposes and as required for modifications to the system. All copies and distribution of the software shall remain within the direct control of Buyer and its representatives.

2.2 Buyer may make modifications to the source code version of the software, if and only if the results of all such modifications are applied solely to the system. In no way does this Software License confer any right in Buyer to license, sublicense, sell, or otherwise authorize the use of the software, whether in executable form, source code or otherwise, by any third parties, except in connection with the use of the system as part of Buyer's business.

2.3 All express or implied warranties relating to the Software shall be deemed null and void in case of any modification to the software made by any party other than the Company.

SECTION 3 WARRANTIES AND REPRESENTATIONS

The Company represents and warrants to Buyer that:

Audio Visual Innovations Inc. and Signal Perfection Ltd are wholly owned subsidiaries of AVI-SPL, Inc. This Entire Document and all information (including drawings, specifications and designs) presented by any subsidiary are the property of AVI-SPL Inc. Proprietary information provided to potential customers, clients or agents is for the sole purpose of demonstrating solutions delivery capabilities and shall be held in confidence. These Materials may not be copied, distributed or disclosed in any way without the sole written permission of an authorized representative of AVI-SPL. © Copyright AVI-SPL. All Rights Reserved

3.1 it has all necessary rights and authority to execute and deliver this Software License and perform its obligations hereunder and to grant the rights granted under this Software License to Buyer;

3.2 the Products and Services provided by Company subject to this Software License, including the Software and all intellectual property provided hereunder, are original to the Company or its subcontractors or partners; and

3.3 the software, as delivered as part of the system, will not infringe or otherwise violate the rights of any third party, or violate any applicable law, rule or regulation.

3.4 The Company further represents and warrants that, throughout the System Warranty Period, the executable object code of Software and the system will perform substantially in accordance with the system specifications and Agreement. If the Software fails to perform as specified and accepted all remedies are pursuant to the policies set forth in the system specifications and in the Agreement.

SECTION 4 INDEMNIFICATION

4.1 The Company hereby indemnifies and shall defend and hold harmless Buyer, its parent companies and its and their subsidiaries, affiliates, officers, directors, employees, agents and subcontractors from and against all liability, damages, loss, cost or expense, including but not limited to reasonable attorneys' fees and expenses, arising out of or in connection with any breach or alleged breach of the Agreement or any third party claims that the software or system here provided by the Company infringes or otherwise violates any rights of any such third party.

~~4.2 Buyer hereby indemnifies and shall defend and hold harmless the Company, its and their subsidiaries, affiliates, officers, directors, employees, agents and subcontractors from and against all liability, damages, loss, cost or expense, including but not limited to reasonable attorneys' fees and expenses, arising out of or in connection with any third party claims that Buyer's use of the software in contravention of the grant of rights infringes or otherwise violates any rights of any such third party.~~

4.3 Upon the assertion of any claim or the commencement of any suit or proceeding against an indemnitee by any third party that may give rise to liability of an indemnitor hereunder, the indemnitee shall promptly notify the indemnitor of the existence of such a claim and shall give the indemnitor reasonable opportunity to defend and to settle the claim at its own expense and with counsel of its own selection. The indemnitee shall cooperate with the indemnitor, shall at all times have the full right to participate in such a defense at its own expense and shall not be obligated,



against its consent, to participate in any settlement which it reasonably believes would have an adverse effect on its business.

SECTION 5 TRANSFER AND TERMINATION

This license will automatically terminate upon the disassembly of the system cited above, unless the system is reassembled in its original

configuration in another location. The Company may terminate this license upon notice for failure to comply with any of the terms set forth in this Software License. Upon termination, Customer is obligated to immediately destroy the Software, including all copies and modifications.

Please see addendum attached hereto and made a part hereof

Buyer Acceptance of Software License Agreement

Signed Name

Buyer

Printed Name

Date

ADDENDUM TO GENERAL TERMS AND CONDITIONS, CUSTOMER CARE SERVICE AGREEMENT AND SOFTWARE LICENSE AGREEMENT BY AND BETWEEN THE TOWN OF SURFSIDE, FLORIDA AND AUDIO VISUAL INNOVATIONS, INC./SIGNAL PERFECTION, LTD.

THIS ADDENDUM TO GENERAL TERMS AND CONDITIONS, CUSTOMER CARE SERVICE AGREEMENT AND SOFTWARE LICENSE AGREEMENT ("Addendum") is made and entered into as of this ___ day of December, 2017, by and between TOWN OF SURFSIDE, FLORIDA, a Florida municipal corporation (referred to as "Town", "Buyer", and/or "Customer") and AUDIO VISUAL INNOVATIONS, INC./SIGNAL PERFECTION, LTD. (referred to as "Company" and/or "AVI-SPL").).

WITNESSETH:

WHEREAS, the Town and Company wish to enter into those certain (i) General Terms and Conditions Agreement, (ii) Customer Care Agreement, and (iii) Software License Agreement, for the purpose of upgrading the existing High Definition Network Managed System, and entering into corresponding service and software license agreements (hereinafter, collectively, the "Agreement"); and

WHEREAS, the Town and Company desire to amend certain provisions of the Agreement as hereinafter provided.

NOW, THEREFORE, for and in consideration of the mutual promises herein contained, and other good and valuable consideration, the receipt, adequacy and sufficiency of which are hereby acknowledged, Town and Company desiring to be legally bound, do hereby agree and covenant as follows:

1. **Addendum Controls.** In the event of any conflict between this Addendum and the Agreement, the terms of this Addendum shall prevail and govern.
2. **Defined Terms.** All initial capitalized terms used in this Addendum shall have the same meaning as set forth in the Agreement unless otherwise provided.
3. **Recitals.** The recitals set forth above are incorporated herein and made a part of this Addendum.
4. **Payments.** Company shall deliver an invoice to the Town not more often than once per month detailing deliverables or services delivered or completed and the amount due to Company under the Agreement. Invoices or fees shall be paid in arrears each month, pursuant to Company's invoice, which shall be based upon the fees or rates set forth in the Investment Summary dated October 16, 2017. The Town shall pay the Company in accordance with the Florida Prompt Payment Act after approval and acceptance of the deliverables or services by the Town Manager and/or his designee.

5. **Insurance.**

- 5.1 Company shall secure and maintain throughout the duration of this Agreement insurance of such types and in such amounts not less than those specified below as satisfactory to Town, naming the Town as an Additional Insured, underwritten by a firm rated A-X or better by A.M. Best and qualified to do business in the State of Florida. The insurance coverage shall be primary insurance with respect to the Town, its officials, employees, agents and volunteers naming the Town as additional insured. Any insurance maintained by the Town shall be in excess of the Company's insurance and shall not contribute to the Company's insurance. The insurance coverages shall include at a minimum the amounts set forth in this Section 5 and may be increased by the Town as it deems necessary or prudent.
- 5.2 Commercial General Liability coverage with limits of liability of not less than a \$1,000,000 per Occurrence combined single limit for Bodily Injury and Property Damage. This Liability Insurance shall also include Completed Operations and Product Liability coverages and eliminate the exclusion with respect to property under the care, custody and control of Company. The General Aggregate Liability limit and the Products/Completed Operations Liability Aggregate limit shall be in the amount of \$2,000,000 each.
- 5.3 Workers Compensation and Employer's Liability insurance, to apply for all employees for statutory limits as required by applicable State and Federal laws. The policy(ies) must include Employer's Liability with minimum limits of \$1,000,000.00 each accident. No employee, subcontractor or agent of the Company shall be allowed to provide Services pursuant to the Agreement who is not covered by Worker's Compensation insurance.
- 5.4 Business Automobile Liability with minimum limits of \$1,000,000 per Occurrence, combined single limit for Bodily Injury and Property Damage. Coverage must be afforded on a form no more restrictive than the latest edition of the Business Automobile Liability policy, without restrictive endorsements, as filed by the Insurance Service Office, and must include Owned, Hired, and Non-Owned Vehicles.
- 5.5 Professional Liability Insurance in an amount of not less than Two Million Dollars (\$2,000,000.00) per occurrence, single limit.
- 5.6 Cyber Liability Insurance in the amount of Two Million Dollars \$2,000,000.00.
- 5.7 **Certificate of Insurance.** Certificates of Insurance shall be provided to the Town, reflecting the Town as an Additional Insured (except with

respect to Professional Liability Insurance), no later than ten (10) days after award of this Agreement and prior to the execution of the Agreement by Town and prior to commencing any Services. Each certificate shall include no less than (30) thirty-day advance written notice to Town prior to cancellation, termination, or material alteration of said policies or insurance. The Company shall be responsible for assuring that the insurance certificates required by this Section remain in full force and effect for the duration of the Agreement, including any extensions or renewals that may be granted by the Town. The Certificates of Insurance shall not only name the types of policy(ies) provided, but also shall refer specifically to the Agreement and shall state that such insurance is as required by the Agreement. The Town reserves the right to inspect and return a certified copy of such policies, upon written request by the Town. If a policy is due to expire prior to the completion of the Services, renewal Certificates of Insurance shall be furnished thirty (30) calendar days prior to the date of their policy expiration. Each policy certificate shall be endorsed with a provision that not less than thirty (30) calendar days' written notice shall be provided to the Town before any policy or coverage is cancelled or restricted. Acceptance of the Certificate(s) is subject to approval of the Town.

5.8 **Additional Insured.** Except with respect to Professional Liability Insurance, the Town is to be specifically included as an Additional Insured for the liability of the Town resulting from Services performed by or on behalf of the Company in performance of the Agreement. The Company's insurance, including that applicable to the Town as an Additional Insured, shall apply on a primary basis and any other insurance maintained by the Town shall be in excess of and shall not contribute to the Company's insurance. The Company's insurance shall contain a severability of interest provision providing that, except with respect to the total limits of liability, the insurance shall apply to each Insured or Additional Insured (for applicable policies) in the same manner as if separate policies had been issued to each.

5.9 **Deductibles.** All deductibles or self-insured retentions must be declared to and be reasonably approved by the Town. The Company shall be responsible for the payment of any deductible or self-insured retentions in the event of any claim.

5.10 The provisions of this section shall survive termination of the Agreement.

6. **Indemnification.** Company shall protect, defend, indemnify, save and hold harmless the Town, all departments, agencies, boards and commissions, its officers, agents, servants and employees, including volunteers, from and against any and all claims, demands, expense and liability arising out of injury or death to any person or the damage, loss of destruction of any property which may occur or in any way grow out of any negligent act or

omission of the Company, its agents, servants, and employees, or any and all costs, expense and/or attorney fees incurred by the Town as a result of any claim, demands, and/or causes of action. Nothing in this indemnification or the Agreement is intended to act as a waiver of the Town's sovereign immunity rights, including those provided under section 768.28, Florida Statutes. This indemnification shall survive the expiration or termination of the Agreement.

7. **Notices/Authorized Representatives.**

7.1 Any notices required by the Agreement shall be in writing and shall be deemed to have been properly given if transmitted by hand-delivery, by registered or certified mail with postage prepaid return receipt requested, or by a private postal service, addressed to the parties (or their successors) at the following addresses:

For the Town: Town of Surfside
Town Manager
9293 Harding Avenue
Surfside, Florida 33154

With a copy to: Town Attorney
Town of Surfside
9293 Harding Avenue
Surfside, Florida 33154

For The Company: AVI-SPL, Inc.
Attention: Executive Vice President
6301 Benjamin Road, Suite 101
Tampa, Florida 33634

8. **Governing Law.**

The Agreement shall be construed in accordance with and governed by the laws of the State of Florida. Venue for any litigation arising out of this Agreement shall be proper exclusively in Miami-Dade County, Florida.

9. **Ownership and Access to Records; Public Records.** Notwithstanding anything to the contrary in the Agreement, the Agreement and all deliverables and services provided by the Company are subject to Florida's Public Records Law (Chapter 119, Florida Statutes, including but not limited to the following:

9.1 Company acknowledges that all inventions, innovations, improvements, developments, methods, studies, designs, analyses, plans, drawings, reports and all similar or related information (whether patentable or not) which relate to Services to the Town which are conceived, developed or made by Company during the term of the Agreement ("Work Product") belong to the Town. Company shall promptly disclose such Work Product

to the Town and perform all actions reasonably requested by the Town (whether during or after the term of the Agreement) to establish and confirm such ownership (including, without limitation, assignments, powers of attorney and other instruments).

- 9.2 All records, books, documents, maps, data, deliverables, papers and financial information (the "Records") that result from the Company providing the Services to the Town under the Agreement shall be the property of the Town.
- 9.3 Company agrees to keep and maintain public records in Company's possession or control in connection with Company's performance under the Agreement. Company additionally agrees to comply specifically with the provisions of Section 119.0701, Florida Statutes. Company shall ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed, except as authorized by law, for the duration of the Agreement, and following completion of the Agreement until the records are transferred to the Town.
- 9.4 Upon request from the Town custodian of public records, Company shall provide the Town with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided by Chapter 119, Florida Statutes, or as otherwise provided by law.
- 9.5 Unless otherwise provided by law, any and all records, including but not limited to reports, surveys, and other data and documents provided or created in connection with this Agreement are and shall remain the property of the Town.
- 9.6 Upon completion of this Agreement or in the event of termination by either party, any and all public records relating to the Agreement in the possession of the Company shall be delivered by the Company to the Town Manager, at no cost to the Town, within seven (7) days. All such records stored electronically by Company shall be delivered to the Town in a format that is compatible with the Town's information technology systems. Once the public records have been delivered upon completion or termination of this Agreement, the Company shall destroy any and all duplicate public records that are exempt or confidential and exempt from public records disclosure requirements.
- 9.7 Any compensation due to Company shall be withheld until all records are received as provided herein.
- 9.8 Company's failure or refusal to comply with the provisions of this section shall result in the immediate termination of the Agreement by the Town.

Section 119.0701(2)(a), Florida Statutes

IF THE COMPANY HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE COMPANY'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS AGREEMENT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS.

Custodian of Records: **SANDRA NOVOA, MMC,
TOWN CLERK**

Mailing address: **9293 Harding Avenue
Surfside, Florida 33154**

Telephone number: **305-887-9541**

Email: **snovoa@townofsurfsidefl.gov**

10. **Compliance with Laws.**

Company shall comply with all applicable laws, ordinances, rules, regulations, and lawful orders of public authorities in carrying out deliverables or services under the Agreement, and in particular shall obtain all required permits from all jurisdictional agencies to perform the services under the Agreement.

11. **Most Favored Nation.**

Company agrees that if, after the Effective Date of the Agreement, it enters into an agreement for the same or substantially similar scope of services with another local government in Florida which contains a term or condition, including fees, charges or costs, that are more favorable than the terms in the Agreement, the Town may provide Company with written notice explaining how the new agreement is for the same or substantially similar services and how the new agreement contains terms or conditions that are more favorable than the terms in the Agreement, and requesting to negotiate an amendment to the Agreement (a "New Agreement Notice"). The parties shall act in good faith to negotiate an amendment to the Agreement that addresses, in a manner that is fair and equitable to both parties, the matters raised by the Town in the New Agreement Notice. If the parties fail to reach agreement upon an amendment within ninety (90) days of the New Agreement Notice, then the Town shall have the right to terminate this Agreement without penalty or early termination fee. .

12. **Ratification.** Except as expressly amended herein, all of the terms and provisions of the Agreement remain unmodified and in full force and effect. In the event of any conflict between the terms of the Agreement and the terms of this Addendum, the terms of this Addendum shall govern as necessary to resolve any such conflict.

13. **Controlling Agreement; No Construction against Drafter.** The Agreement, as modified by this Addendum, is the sole expression of the agreement between the Town and Company as to the subject matter thereof.

14. **Counterparts, Facsimiles.** This Addendum may be executed in counterparts and any counterpart evidencing signature by one party may be delivered by telecopy, facsimile or electronic mail. Each executed counterpart of this Addendum will constitute an original document and all executed counterparts, together, will constitute the same Agreement.

**[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK;
SIGNATURE PAGE TO FOLLOW]**

IN WITNESS WHEREOF, the parties hereto have caused this Addendum on the dates set forth below their respective signatures.

TOWN:

TOWN OF SURFSIDE, FLORIDA, a Florida municipal corporation

By: _____

Name: _____

Title: _____

Date: _____

ATTEST:

Town Clerk

APPROVED AS TO LEGAL FORM AND SUFFICIENCY:

Town Attorney

COMPANY:

**AUDIO VISUAL INNOVATIONS,
INC./SIGNAL PERFECTION, LTD.**

By: _____

Name: _____

Title: _____

Date: _____