SERVICES TERMS AND CONDITIONS

1. SERVICES.
1.1 Harman shall provide to Customer, and Customer shall purchase from Harman, the Services. “Service Description” shall mean all of the following:
   a. Scope of Work agreed upon by the Customer.
   b. Any project proposal submitted by Harman (the “Proposal”).
   c. A Button-by-Button (BxB) description. A BxB can be a spreadsheet or snapshots of TP pages, with either or all of the following:
      a. A brief description on how that page is achieved (i.e. shown when the VTC button is pressed on Main page)
      b. Any additionally functionality needed when that page is achieved (i.e. power on displays, selecting HDMI input, route input 2 to outputs 3 and 4, etc.)
      c. The functionality of buttons on that page (i.e. Keypad numbers: build phone number to dial out; Dial button: direct the codec to dial the new number; Hang up button: end current call, etc.)

1.2 Either party may request in writing that Harman make changes to the Services (“Service Change”). The party requesting a Service Change will deliver a proposed change order to the other party specifying the proposed Service Change (“Change Order”). The parties must mutually agree upon and execute Change Orders to authorize the making of Service Changes. Change Orders executed by both parties are deemed to be incorporated into this Agreement.

1.3 The parties acknowledge that the Services, schedules, fees and related items in this Agreement depend upon the accuracy of information and resources provided by Customer to Harman. Customer will: (i) provide Harman, in a timely fashion, with all information reasonably required by Harman; (ii) provide Harman with all cooperation reasonably requested to facilitate Harman’ delivery of the Services; and (iii) provide Harman, at no charge, with the equipment, resources, consents, licenses, sublicenses, rights to all hardware, software and related equipment (whether or not owned by Customer) that are reasonably necessary to permit Harman to provide the Services as contemplated herein and are not otherwise identified in applicable Service Descriptions as the responsibility of Harman. In the event Customer fails to comply with the foregoing or Harman determines that Customer has supplied inaccurate information, Harman may, at its sole discretion: (a) increase the quoted price and/or estimate project duration; (b) require Customer to pay for additional services required on a Time & Material basis at standard rates; (c) reschedule the performance of the Services at a mutually convenient time; or (d) discontinue the services with no further liability to any party.

1.4 In consideration for the payment of Fees, as specified in Section 2 below, Harman will deliver materials, work product or technology specified to be delivered to Customer in connection with the Services (each, a “Deliverable”), Customer shall review and evaluate such Deliverables to determine if it complies in all material respects with the criteria set forth in this Agreement. If Customer reasonably determines that any of the Deliverables fail to conform with such criteria, Customer shall notify Harman of the alleged failure and provide a detailed description thereof. Harman will, if necessary, prepare the modifications to cause the Deliverables to so conform. Support modules downloaded from Harman.com, AMX.com, BSSaudio.com, or other Harman website shall not be considered Deliverables. Subject to Customer’s warranty rights under Section 4, each Deliverable shall be automatically deemed accepted unless rejected in writing as specified herein within 14 days of receipt by or provision of access to Customer.

1.5 Services designated as “Design Services by Harman” are intended to illustrate design intent and general signal flow. Not every component required for a complete AV system will be represented in the delivered drawings. Harman will only revise or edit unaltered drawings originally created by Harman. Customer is solely responsible for reviewing all designs and drawings to verify suitability for their intended use. In the event of a conflict between drawings, EQ lists and system descriptions, the section with the greater quantity or quality shall be provided and installed. Customer is responsible to provide and install patch cables, connectors, hardware, converters, power supplies, labels, terminals, mounting accessories etc. necessary for complete and working system meeting design intent of specifications. The Customer is responsible for interfacing the systems with each required sub-system and is recommended to continually employ interfacing methods approved by the original equipment manufacturer and industry best practices.

2. FEES.
2.1 Customer shall pay Harman the fees and expenses set forth in the Service Description applicable to the Services performed (“Fees”). Harman shall deliver invoices to Customer at the address set forth in the Order Form. Customer shall pay Harman all Fees for Services within 30 days after the date of the invoice. After 30 days, all Fees shall accrue interest at a rate of 1.5% per month or (if lower) the maximum rate permitted by law from the date due until paid. Customer will be responsible for sales, use, excise, value-added, services, consumption and other similar taxes that are assessed on the Services or the Fees.

2.2 If service fees are specifically stated by Harman as Time and Materials (“T&M”), then the Customer will be billed for the actual hours worked, which may be greater or less than the hours estimated by Harman. If the service fees are not designated as T&M, the service fees will be considered fixed. All services, whether T&M or fixed, will be billed at HARMAN's standard rate(s), exclusive of any project travel and living expenses associated with services as quoted - which will be billed separately and as incurred.

2.3 On site commissioning services rates are based on standard HARMAN eight hour work days, which are Monday through Friday, 8:00am-5:00pm. Services rates and totals will be billed at applicable rates as scheduled by the Customer. Project schedules
that require delivery of on-site Services outside of this standard work week will be assessed the following additional charges for a defined eight hour work schedule: (a) Monday through Friday 5:00pm to 8:00am, 1.5x the quoted rate; (b) Saturday and/or Sunday, 2x the quoted rate; and (c) Holiday, 3x the quoted rate.

3. LICENSE.
3.1 Customer’s use of Deliverables identified, as Programming or Documentation Deliverables in the Service Description shall be governed by the applicable existing license agreement between Harman and Customer governing Customer’s use of the software or accompanying documentation.
3.2 For those Deliverables not otherwise governed by such a license Harman grants to Customer a royalty-free, worldwide, non-sublicensable, non-transferable, non-exclusive, limited license to use such Deliverables, for internal purposes only and solely in conjunction with the operation of the products which are the subject of the Deliverables, during the period in which Customer owns such products.
3.3 Customer’s right to use the Deliverables is contingent upon payment of the applicable Fees. Except as set forth herein, Harman retains all rights, title and interest in and to the software, data, documentation and other Deliverables provided to Customer. Nothing in this Agreement will preclude Harman from marketing, developing or using for itself or others, services or products that are the same as or similar to those provided to Customer by Harman pursuant to this Agreement, or using the knowledge and expertise gained by performing the Services hereunder. Except for licenses governed by Section 3.1, the licenses granted in this Section 3 are subject to the terms in Section 5, “Term and Termination.”

4. WARRANTIES.
4.1 Harman warrants that (i) it will perform all Services in a professional and workmanlike manner, (ii) the personnel assigned by Harman will possess the skill and experience necessary to perform the Services, and (iii) the Deliverables (excluding any third party components of the Deliverables) shall conform in all material respects to the applicable Service Description for 30 days after delivery. Each party represents and warrants that it has the right to execute and perform its obligations under this Agreement.
4.2 As Customer’s sole and exclusive remedy, and Harman’s entire liability therefore, Harman shall promptly re-perform any Services and correct any Deliverables that do not comply with these warranties. If Harman is unable to re-perform such Services, Customer shall be entitled to recover the fees paid for the Services not conforming to such terms as its sole and exclusive remedy. Following the warranty period set forth in Section 4.1, Customer may purchase off-site support through the Harman support call center.
4.3 EXCEPT AS OTHERWISE SET FORTH IN THIS AGREEMENT, NEITHER PARTY GIVES ANY WARRANTY WITH RESPECT TO THE SERVICES OR DELIVERABLES AND BOTH PARTIES EXPRESSLY DISCLAIM AND EXCLUDE ALL WARRANTIES, TERMS AND CONDITIONS NOT EXPRESSLY SET OUT IN THIS AGREEMENT WHETHER IMPLIED BY OPERATION OF LAW, BY CUSTOM, STATUTE OR OTHERWISE (INCLUDING WITHOUT LIMITATION ANY WARRANTY, TERM OR CONDITION OF NON-INFRINGEMENT, MERCHANTABILITY, SATISFACTORY QUALITY OR FITNESS FOR PARTICULAR PURPOSE) IN EACH CASE TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW.

5. TERM AND TERMINATION.
5.1 The term of this Agreement shall begin on the Effective Date and shall terminate upon the earlier of: (i) termination under this Section 5 or (ii) 12 months after the Services are completed under the last Service Description (“Term”). Either party may terminate this Agreement for the breach by the other party of a material term of this Agreement (including a breach of the payment obligations under this Agreement) unless the breaching party has, within 30 days after notice, either: (a) cured such breach, or (b) made substantial progress to cure such breach (if such breach is curable) and implemented a plan that results in a cure of the breach within 60 days.
5.2 If either party becomes insolvent, fails to pay, or admits in writing its inability to pay debts as they become due; or if either party applies for, consents to, or acquiesces in the appointment of a trustee, receiver or other custodian for such party or for a substantial part of such party's property and is not discharged within sixty (60) days; or if any bankruptcy, reorganization, debt arrangement or other proceeding under any bankruptcy law, or any dissolution or liquidation proceeding is commenced by, consented to, or acquiesced in by such party and has not been dismissed within sixty (60) days; or, if either party ceases to conduct its business in the normal course, this Agreement may be terminated by the other party immediately upon delivery of written notice to the affected party.
5.3 Upon request and upon termination of this Agreement, the parties shall return any and all Confidential Information of the other party.

6. INDEMNIFICATION. Customer agrees to indemnify and defend Harman from and against any liabilities, costs and expenses (including reasonable attorneys’ fees) finally awarded arising from any claim or allegation by a third party that any technology or material provided by Customer to Harman infringes any patent, copyright or trademark of a third party.

7. CONFIDENTIAL INFORMATION.
7.1 It is expected that the parties will disclose to each other certain information that is either marked confidential or by its nature and context should reasonably be deemed confidential (“Confidential Information”). All Confidential Information of one party (“Disclosing Party”) that is disclosed to the other party (“Recipient”) shall remain the sole property of the Disclosing Party, which shall own all rights, title, interest and intellectual property rights therein.
7.2 Except as expressly allowed in this Agreement, both parties agree not to duplicate in any manner the other’s Confidential Information or to disclose it to any third party or to any of their employees not having a need to know same to implement this Agreement. The Recipient shall ensure that any such third party or employee is bound by written confidentiality provisions at least as restrictive as those contained in this Agreement. Each Recipient agrees to keep the Disclosing Party’s Confidential Information in a
safe and secure place and protect it from unauthorized use or disclosure. Recipient shall use the Disclosing Party’s Confidential Information solely for the implementation of this Agreement and for no other purpose, whether for Recipient’s own benefit or the benefit of any third party.

7.3 Confidential Information shall not include, and the foregoing restrictions shall not apply to, information which Recipient can prove: (i) is or becomes a part of the public domain; (ii) was in Recipient’s lawful possession prior to the disclosure and had not been subject to limitations on disclosure or use; (iii) is entirely and independently developed by Recipient without any knowledge or reference to the Confidential Information; (iv) is lawfully disclosed hereafter to Recipient, without restriction, by a third party who did not acquire the information from the Disclosing Party; or (v) is disclosed to the minimum required by a court of competent jurisdiction after Recipient has obtained a protective order.

8. LIMITATION OF LIABILITY.

8.1 IN NO EVENT SHALL EITHER PARTY BE LIABLE FOR ANY INCIDENTAL, INDIRECT, SPECIAL OR CONSEQUENTIAL DAMAGES FOR ANY CLAIM ARISING UNDER THIS AGREEMENT, REGARDLESS OF THE CAUSE OF ACTION AND EVEN IF A PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

8.2 EACH OF THE PARTIES SHALL BE LIABLE TO THE OTHER FOR ANY DIRECT DAMAGES ARISING OUT OF OR RELATING TO ITS PERFORMANCE OR FAILURE TO PERFORM UNDER THIS AGREEMENT; PROVIDED, HOWEVER, THAT THE LIABILITY OF A PARTY TO THE OTHER PARTY, WHETHER BASED ON AN ACTION OR CLAIM IN CONTRACT, EQUITY, NEGLIGENCE, TORT OR OTHERWISE, FOR ANY EVENT, ACT OR OMISSION SHALL NOT EXCEED AN AMOUNT EQUAL TO THE FEES FOR SERVICES PAID TO HARMAN UNDER THIS AGREEMENT DURING THE SIX-MONTH PERIOD IMMEDIATELY PRECEDING THE MOST RECENT EVENT GIVING RISE TO LIABILITY (OR IF SUCH EVENT OCCURS IN THE FIRST SIX MONTHS OF THE AGREEMENT TERM, THE AMOUNT ESTIMATED TO BE PAID IN THE FIRST SIX MONTHS OF THE TERM).

8.3 THESE LIMITATIONS OF LIABILITY SET FORTH IN THIS SECTION 8 SHALL NOT APPLY TO CUSTOMER’S BREACH OF ITS PAYMENT OBLIGATIONS OR EITHER PARTY’S CONFIDENTIALITY OBLIGATIONS.

9. GENERAL.

9.1 Customer shall not assign this Agreement or any part of it without the prior written consent of Harman.

9.2 Harman may subcontract portions of the Services but will remain responsible for all obligations under this Agreement performed by Harman’s subcontractors to the same extent as if such obligations were performed by Harman’s employees.

9.3 Each party will be excused from performance under this Agreement (other than obligations to make payments) for any period and to the extent that it is prevented from performing any obligations pursuant to this Agreement, in whole or in part, as a result of an event or circumstance beyond the reasonable control of such party.

9.4 This Agreement, including all Service Descriptions, contains the entire agreement of the parties regarding the subject matter.

9.5 The provisions of this Agreement may not be amended, except by an agreement in writing signed by authorized representatives of both parties.

9.6 The waiver of any breach of any provision of this Agreement or any Service Description shall only be effective if in writing.

9.7 The parties hereto agree that any rule of construction to the effect that ambiguities are to be resolved against the drafting party shall not be applied in the interpretation of this Agreement.

9.8 This Agreement shall, for all purposes, be solely governed and construed by the laws of the State of Texas without reference to conflicts of law principles. Any and all disputes relating to this Agreement shall be brought solely and exclusively in the Dallas, Texas, metropolitan area.

9.9 All notices under this Agreement must be in writing and shall be deemed given if personally delivered, sent by certified or overnight mail service to the address on the Order Form.

9.10 All provisions which by their terms contemplate continuing effectiveness shall survive any termination or expiration of this Agreement.

9.11 If any provision of this Agreement is invalid or unenforceable, the other provisions shall remain in full force and effect and shall be construed in order to effectuate the purposes and intent of this Agreement.

9.12 No person or entity shall be deemed a third-party beneficiary under or by reason of this Agreement.

9.13 In providing Services to Customer, Harman is acting only as an independent contractor. The activities under this Agreement shall not create the relationship of employer and employee, a partnership, joint venture, agency or any other type of joint relationship between Harman and Customer.