

General Terms and Conditions for Software, Maintenance and Support Services

1. Scope and Definitions

1.1 Scope

These General Terms and Conditions ("Software Terms") are special terms and conditions that shall apply to all deliveries of software by AVL List GmbH ("AVL") as well as to any maintenance and support services performed by AVL. The term "delivery" also includes the downloading of software by customer. Unless stipulated otherwise in these Software Terms, AVL's General Terms and Conditions for deliveries of goods, works or services ("AVL's General Terms") shall apply. In the event of a conflict between these Software Terms and AVL's General Terms relating to these transaction(s), these Software Terms will control with respect to the transaction(s).

1.2 Definitions

In addition to any definitions contained within these Software Terms the following definitions apply:

"AVL SELF SERVICE PORTAL" means a part of AVL's website www.AVL.com containing maintenance and support information for SOFTWARE.

"CAREline" means a special telephone support for LICENSEES who concluded an AVL CARE AGREEMENT.

"DESIGNATED HARDWARE" means HARDWARE specified in the LICENSE AGREEMENT by type, number and place of installation or usage.

"DOCUMENTATION" means user manuals delivered to the LICENSEE.

"ENHANCEMENT RELEASE" means a new version of the SOFTWARE which contains a significant additional functionality. New functionalities may be made available to LICENSEE as new SOFTWARE options (to be licensed and charged separately to LICENSEE) or included in existing SOFTWARE options (no extra charge to the LICENSEE if such options are already part of the LICENSE). ENHANCEMENT RELEASES are typically made available to LICENSEE once or twice a year.

"HARDWARE" means any plants, devices, computer or network components.

"HOTLINE" means telephone support on functionality and use of the SOFTWARE. The HOTLINE support is performed by specifically trained AVL support engineers at AVL's local affiliates who support the LICENSEE in identifying, verifying or solving issues that have arisen.

"LICENSE" means a LICENSE pursuant to these Software Terms and AVL's LICENSE AGREEMENT.

"LICENSE AGREEMENT" means the license agreement that specifies the SOFTWARE licensed to LICENSEE by AVL. The LICENSE AGREEMENT may be concluded either by placing an order based on AVL's OFFER and these Software Terms, or by signing a detailed license agreement.

"LICENSEE" means the customer entity identified in the LICENSE AGREEMENT.

"MAINTENANCE RELEASE" means an improved and/or corrected version of the SOFTWARE involving, for instance, a higher execution speed, minor improvement of features, accuracy or user friendliness and correction of errors. AVL may provide separate MAINTENANCE RELEASES for each ENHANCEMENT RELEASE.

"OFFER" means AVL's offer for SOFTWARE and/or services being offered to the LICENSEE.

"PATCH" means a modified version or component of the SOFTWARE which is provided only to specific LICENSEES and which is not generally available.

"PERSONAL AGENT" means a specifically trained engineer who coordinates all issues within the AVL organization and acts as single contact for the LICENSEE.

"PRODUCT EXPERT SUPPORT" means provision of comprehensive knowledge and expertise about the use of SOFTWARE via REMOTE ASSISTANCE.

"REMOTE ASSISTANCE" means solving issues relating to the SOFTWARE by remote system access for the purpose of diagnosis and detection of errors and for the provision of PRODUCT EXPERT SUPPORT.

"SOFTWARE" means any AVL SOFTWARE as specified in the LICENSE AGREEMENT. For purposes of these Software Terms, SOFTWARE includes the accompanying DOCUMENTATION.

"SOFTWARE GENERATION" means a new generation of the SOFTWARE which is based on a fundamentally changed SOFTWARE, HARDWARE and/or system platform/technology.

"SOFTWARE SERVICE AGREEMENT" means an agreement between AVL and the LICENSEE on providing maintenance and/or support services. SOFTWARE SERVICE AGREEMENTS can be:

- (i) **SOFTWARE MAINTENANCE AGREEMENT:** An annually renewable standard agreement on providing maintenance and HOTLINE support for SOFTWARE excluding customer specific SOFTWARE.
- (ii) **SOFTWARE MAINTENANCE & SUPPORT AGREEMENT:** An annually renewable standard agreement on providing maintenance and HOTLINE support for SOFTWARE excluding customer specific SOFTWARE, including PRODUCT EXPERT SUPPORT.
- (iii) **AVL CARE AGREEMENT:** A customer tailored agreement on providing maintenance, CAREline support and PRODUCT EXPERT SUPPORT over a certain period. AVL CARE AGREEMENTS can cover standard SOFTWARE and customer specific SOFTWARE. They can also supplement a standard SOFTWARE SERVICE AGREEMENT.

"SOFTWARE SUBSCRIPTION AGREEMENT" means a time limited LICENSE AGREEMENT including SOFTWARE maintenance and support services.

"THIRD PARTY SOFTWARE" means software which is supplied or developed by companies other than AVL or its affiliates.

2. Subject of Contract

2.1 SOFTWARE

LICENSEE is authorized to use the SOFTWARE only after the LICENSE AGREEMENT has been signed or concluded based on AVL's OFFER and these Software Terms. The LICENSEE will obtain a special LICENSE key from AVL. The extent of the LICENSE is defined in the LICENSE AGREEMENT and sections 2.2 and 2.3 of these Software Terms.

If, for technical reasons, the SOFTWARE delivered to LICENSEE contains software that is not covered by the LICENSE granted to LICENSEE, such software may only be utilized after LICENSEE obtains a separate written LICENSE. The delivered SOFTWARE may include technical measures or safeguards to prevent unauthorized access to such unlicensed software.

The SOFTWARE may communicate with servers of AVL's service provider for the purpose of ensuring that the SOFTWARE is used with a valid LICENSE key. This process collects only IT host information which can be provided to the LICENSEE upon its request. AVL will not provide any of the information collected during the license tracking process to any third party, except (i) to AVL's service provider in charge of the license tracking, (ii) as may be required by law or by the order of a competent court or (iii) to enforce compliance with these Software Terms.

2.2 SOFTWARE Used on Hardware Delivered by AVL

If the SOFTWARE is used for the purpose of operating HARDWARE delivered by AVL, the LICENSEE is granted a non-transferable and non-exclusive right to utilize the SOFTWARE, only:

- (i) on the DESIGNATED HARDWARE;
- (ii) at the place of installation and
- (iii) in accordance with the provisions of these Software Terms and the LICENSE AGREEMENT.

AVL reserves all rights not expressly granted to LICENSEE. In particular, LICENSEE may not, without prior written consent by AVL:

- a) copy or modify the SOFTWARE (see exceptions in section 3),
- b) distribute, sell, lease, sublicense or otherwise transfer the SOFTWARE to third parties,
- c) use the SOFTWARE on HARDWARE other than the DESIGNATED HARDWARE,
- d) or use the SOFTWARE in the operation of a service bureau or similar arrangement for the sale or leasing of computer or information services.

2.3 Standalone SOFTWARE

SOFTWARE which is supplied to LICENSEE not in connection with specific HARDWARE of AVL ("Standalone SOFTWARE"), shall be utilized by LICENSEE only on the DESIGNATED HARDWARE. In all other respects, section 2.2 of these Software Terms shall apply to Standalone SOFTWARE.

2.4 Change of DESIGNATED HARDWARE

LICENSEE may change the DESIGNATED HARDWARE. In such case LICENSEE must give AVL prior written notice of any change in the DESIGNATED HARDWARE and must obtain AVL's written approval. Any change in the

DESIGNATED HARDWARE may delay the time required to install the SOFTWARE.

2.5 Additional Services

Additional services by AVL shall be charged to LICENSEE on separate accounts. Additional services include, without limitation, the following:

- (i) Copying, translating or generating of the SOFTWARE, as well as services as described in section 5.3;
- (ii) supply of data media by AVL, unless the data media are part of the HARDWARE delivered by AVL;
- (iii) analyzing and correcting deficiencies caused by improper handling, operating mistakes, or other circumstances not caused by AVL;
- (iv) introduction and training, unless included in the LICENSE AGREEMENT; and
- (v) improvements, (i.e. updated versions of the SOFTWARE) offered to LICENSEE, which facilitate operations, shorten hardware occupancy times or improve specifications and applications of the SOFTWARE as described under section 10.

3. Modifications, Updates, Copies

3.1 If necessary for the operation on the DESIGNATED HARDWARE, the LICENSEE may modify the SOFTWARE in machine readable form or merge it into other software. When adapted in such manner, the SOFTWARE shall remain subject to these Software Terms and AVL's General Terms.

3.2 A LICENSE granted by AVL entitles LICENSEE to utilize only the licensed SOFTWARE version unless otherwise agreed in the LICENSE AGREEMENT or in a SOFTWARE SERVICE AGREEMENT concluded between AVL and the LICENSEE as described under section 10.

3.3 LICENSEE may copy the SOFTWARE only to the extent as such copies are necessary for the agreed usage of the SOFTWARE. LICENSEE is entitled to make backup copies of the SOFTWARE to the extent necessary to secure use of the SOFTWARE.

4. Protection of Industrial and Intellectual Property Rights and Trade Secrets

4.1 All patent rights, copyrights or trademark rights of the SOFTWARE as well as proprietary know-how will remain the sole property of AVL.

4.2 LICENSEE, its agents, employees and assigns are responsible for protecting and ensuring the continued proprietary nature of the SOFTWARE delivered by AVL, in particular with respect to intellectual property rights, industrial property rights, copyrights and the right of copyright notice. LICENSEE shall provide all SOFTWARE copies, complete or partial, as well as all modified or transferred SOFTWARE versions with AVL's copyright notice, as well as with all other notice of industrial property rights in the same way as they are affixed on the original, licensed SOFTWARE version.

- 4.3** LICENSEE, its agents, employees and assigns are obligated to ensure the continued confidential nature of the SOFTWARE and of the techniques and methods involved in the SOFTWARE's development and use. These obligations continue to apply if the SOFTWARE is modified or merged into other software.
- 4.4** LICENSEE is not entitled to reproduce source code by any method, in whole or in part, from the binary SOFTWARE, or to gain knowledge of the structure and conception of the SOFTWARE or HARDWARE implemented. Such prohibition shall extend to all of LICENSEE's employees, agents and assigns and continues even if the SOFTWARE is modified or merged into other software.
- 4.5** LICENSEE shall maintain detailed records regarding the licensed SOFTWARE including the respective SOFTWARE version, serial number of the DESIGNATED HARDWARE, the location of the licensed SOFTWARE, as well as the number of copies made. LICENSEE shall make such records immediately available to AVL upon AVL's request.
- 4.6** LICENSEE agrees not to challenge, directly or indirectly, the right, title, and interest of AVL in and to the SOFTWARE or DOCUMENTATION. LICENSEE agrees not to directly or indirectly, register, apply for registration, or attempt to acquire any legal protection for any of the SOFTWARE, DOCUMENTATION, or any proprietary rights therein.
- 4.7** LICENSEE agrees to notify AVL immediately and in writing of all circumstances surrounding the unauthorized possession or use of the SOFTWARE or DOCUMENTATION by any person or entity. Except when otherwise required by law or regulation, LICENSEE agrees to cooperate fully with AVL in any litigation relating to or arising from such unauthorized possession or use.
- 4.8** The obligation to observe secrecy and to protect and ensure proprietary and confidential information as proprietary as described in this section 4 continues after termination of the LICENSE.
- 4.9** AVL and its sub-suppliers may store LICENSEE's data disclosed to AVL if this is necessary for warranty or maintenance and support services without LICENSEE's consent or prior notice. In all other cases AVL may forward LICENSEE's data to its sub-suppliers only after LICENSEE's written consent.
- 5. Delivery, Assumption of Risk, Acceptance of Software**
- 5.1** AVL will deliver to or make available for downloading by LICENSEE the SOFTWARE version which is valid at the time of delivery after the LICENSEE has provided all needed information.
- 5.2** Unless stipulated otherwise, the SOFTWARE and the data media shall be dispatched and delivered or made available for downloading at LICENSEE's cost and risk.
- 5.3** If LICENSEE destroys or damages or accidentally deletes the SOFTWARE, AVL shall provide replacement for the damaged or deleted SOFTWARE if available at LICENSEE's expenses.
- 5.4** LICENSEE is responsible for the correct installation of the SOFTWARE unless LICENSEE has ordered a SOFTWARE installation by AVL.
- 5.5** The SOFTWARE is considered accepted by LICENSEE upon the earlier to occur of the following:
- (i) LICENSEE confirms that the SOFTWARE corresponds with the contractual specifications; or
 - (ii) LICENSEE fails to notify in writing of gross deficiencies within a trial period of two weeks; or
 - (iii) LICENSEE uses the SOFTWARE after the trial period has expired; or
 - (iv) the SOFTWARE cannot be installed and made ready for operation within 3 months for reasons beyond AVL's control.
- 5.6** In all other instances, the date of acceptance by LICENSEE shall be deemed to be the date of delivery or downloading of the SOFTWARE by LICENSEE.
- 5.7** Before acceptance of the SOFTWARE by the LICENSEE, LICENSEE has the right to use the SOFTWARE for installation and test runs only.
- 6. Warranty**
- 6.1** For SOFTWARE not excluded from warranty, AVL warrants that such SOFTWARE will perform substantially as specified in the LICENSE AGREEMENT provided that the SOFTWARE is installed properly and used in accordance with the conditions specified in the LICENSE AGREEMENT. Unless stipulated otherwise, the warranty period is three months from the date of acceptance as specified under sections 5.5. and 5.6.
- 6.2** The warranty includes error diagnosis and error correction during the warranty-period. In the event of a warranty claim for the correction of errors, (i.e. deviations from the respective specifications which impair the functioning of the SOFTWARE), corrective measures shall take place first through AVL's instructions for troubleshooting by phone, email or HOTLINE support and then via data connection with LICENSEE (modem). If such error continues, AVL will, to the extent reasonably possible, deliver new, improved SOFTWARE, i.e. PATCHES or MAINTENANCE RELEASES. If this is not possible or the error persists, AVL may attempt troubleshooting (modification of SOFTWARE) at LICENSEE's place of business.
- 6.3** To institute a claim for the correction of a SOFTWARE error, LICENSEE must demonstrate to AVL's satisfaction that:
- (i) the error impairs the functioning of the SOFTWARE;
 - (ii) the error is reproducible;
 - (iii) LICENSEE has installed PATCHES, MAINTENANCE and/or ENHANCEMENT

RELEASES if offered free of charge to the LICENSEE during the warranty period;

- (iv) LICENSEE provides all information and material necessary for error correction; and
- (v) AVL has access to the HARDWARE and SOFTWARE during normal working hours, i.e. access on site or via data connection with LICENSEE.

LICENSEE agrees to support AVL in error correction by providing an expert at LICENSEE's expense, who is qualified to install and operate the SOFTWARE and to assist in the error correction.

6.4 AVL makes no warranties with respect to SOFTWARE

- (i) which has been modified, in whole or in part, by LICENSEE or by third parties without AVL's prior written consent, even if the error occurs in a part not modified.
- (ii) which is installed on other than the DESIGNATED HARDWARE, or
- (iii) which is installed on DESIGNATED HARDWARE with an operating system modified after installation of the original SOFTWARE version.

If during error analysis AVL concludes that the error is not subject to warranty or that the error was not caused by the delivered SOFTWARE, LICENSEE shall reimburse AVL for all resulting costs and expenses.

6.5 AVL makes no warranties, that

- (i) the functionality of SOFTWARE will meet all requirements of LICENSEE,
- (ii) the SOFTWARE will run with other software used by LICENSEE,
- (iii) the SOFTWARE will run without interruptions or errors; or
- (iv) all SOFTWARE errors can be corrected.

6.6 In order to streamline the SOFTWARE installation process, various THIRD PARTY SOFTWARE may also be installed in course of the installation of the SOFTWARE. Such THIRD PARTY SOFTWARE is subject to the maintenance and support conditions of its vendor and is provided by AVL on an "as-is", pass-through basis, without any warranty, liability or other representation.

AVL does not perform any services for such THIRD PARTY SOFTWARE and LICENSEE agrees and acknowledges that LICENSEE may be required to purchase any services or new versions of the THIRD PARTY SOFTWARE directly from its vendor.

6.7 Should AVL determine that during the warranty period, the SOFTWARE does not meet the LICENSE AGREEMENT's respective specifications and that as a direct result LICENSEE is not able to use the SOFTWARE after sustained efforts to cure the error, each party has the right to rescind the LICENSE AGREEMENT in writing with immediate effect. In the event of such rescission, LICENSEE shall cease using the SOFTWARE in any manner and shall return all LICENSE keys to AVL and delete all copies of the SOFTWARE, including modified

and merged copies, and shall certify its action in writing to AVL. AVL will refund the LICENSE fee paid by the LICENSEE less any depreciation and any other outstanding amounts owed from LICENSEE to AVL.

6.8 The presence of deficiencies in an individual SOFTWARE does not entitle LICENSEE to rescind the LICENSE AGREEMENT with respect to any other SOFTWARE.

6.9 AVL expressly disclaims and makes no other warranties or representations, whether express or implied concerning the SOFTWARE. The warranty excludes any other claim and the liability for any damages arising out of the use of the SOFTWARE.

7. Limitation of Liability

7.1 LICENSEE has exclusive control over the use of the SOFTWARE, and therefore shall assume sole responsibility for the usefulness and safety of its utilization or the results of utilization. AVL excludes any liability for negligence in contract or contractual performance. LICENSEE's sole and exclusive remedy against AVL shall be limited to the warranty, maintenance and modification claims expressly detailed in section 6 of these Software Terms.

7.2 AVL does not assume any liability for general faultlessness of the SOFTWARE or for a specific capacity or performance of the SOFTWARE, unless this has been explicitly guaranteed for a specified field of application.

7.3 AVL does not assume any liability for the loss or corruption of data or destruction of the SOFTWARE if the LICENSEE does not follow the rules of proper data protection (e.g. documented daily, weekly and monthly data backups). Subject to sections 7.4 and 7.5 AVL's liability for the loss or corruption of data is limited to a) the amount of typical recovery costs which would have been incurred if daily back-ups had been performed or b) half of the yearly LICENSE fee, whichever is less.

7.4 Apart from the specific limitations in sections 7.1, 7.2 and 7.3 AVL'S LIABILITY IS GENERALLY LIMITED TO CASES OF GROSS NEGLIGENCE OR INTENT. ANY LIABILITY FOR INDIRECT AND/OR CONSEQUENTIAL DAMAGES, INCLUDING BUT NOT LIMITED TO LOSS OF PROPERTY OR PROFIT AND COST OF PRODUCT RECALL, IS SPECIFICALLY DISCLAIMED. UNLESS CLAIMS ARE MADE IN WRITING WITHIN 6 (SIX) MONTHS FROM THE DATE OF OCCURRENCE OF THE DAMAGE, BUT NOT LATER THAN TWO YEARS FROM THE DATE OF DELIVERY, THEY ARE FORFEITED. THE MAXIMUM AMOUNT OF COMPENSATION OF DAMAGES IS AN AMOUNT EQUAL TO THE LICENCE FEE OF 1 (ONE) YEAR.

7.5 For all other respects, liability is limited as specified by the liability provisions in AVL's General Terms. LICENSEE expressly agrees to indemnify and hold AVL harmless from all claims enforced by third parties, which go beyond the liability limits specified by these Software Terms and AVL's General Terms.

8. Third Parties' Rights

- 8.1** AVL shall reasonably assist the LICENSEE with appropriate information and expertise in defending all claims by third parties alleging that the use of the SOFTWARE as provided violates industrial or intellectual property rights or copyrights held by third parties. LICENSEE shall immediately notify AVL of an alleged violation of such rights and of any law suits to that effect.
- 8.2** Should a court of competent jurisdiction find such claim by a third party to be valid and enforceable, AVL may at its own discretion either modify, exchange or replace the SOFTWARE or acquire a software license from a third party.
- 8.3** If AVL chooses not to undertake a section 8.2 remedy, LICENSEE shall cease using the SOFTWARE in any manner and shall return all LICENSE keys to AVL and delete all copies of the SOFTWARE, including modified and merged copies, and shall certify its action in writing to AVL. Upon receipt of the LICENSE keys and other materials and documents, AVL will refund the LICENSE fees paid by LICENSEE less any depreciation charges, a reasonable fee for utilization prior to such date and any other outstanding amounts owed from LICENSEE to AVL. AVL expressly excludes and will not reimburse or pay any and all other claims submitted by LICENSEE with respect to the violation of industrial or intellectual property rights or copyrights held by third parties.

9. License Fee

- 9.1** LICENSEE shall pay to AVL the LICENSE fee as defined in the LICENSE AGREEMENT.
- 9.2** LICENSEE shall not be entitled to withhold or reduce any payments due because of alleged claims against AVL.
- 9.3** The LICENSE fee (or "remuneration") is excluding any taxes, customs duties, withholding taxes or other dues levied in the LICENSEE's country. All taxes, customs duties, withholding taxes and other dues levied on the remuneration in accordance with the tax laws in effect (or enacted in future) in LICENSEE's country to be borne by the LICENSEE. It is therefore explicitly stated that any VAT/GST or similar indirect taxes, withholding taxes or any other taxes on electronically provided services (whether already in force or enacted in future) in LICENSEE's country to be borne by the LICENSEE, not AVL/Licensor. AVL/Licensor therefore not accepts any deduction of any kind of taxes on the remuneration in whatever form by LICENSEE in LICENSEE's country. In the event any such taxes are directly imposed by the tax authorities on AVL/Licensor in the LICENSEE's country, AVL/Licensor will either be held harmless by the LICENSEE or AVL/Licensor can increase the contract price with regard to the directly imposed taxes. If the application of reverse charge mechanism, tax agent procedure or any similar regime requires a contractual agreement between AVL/Licensor and LICENSEE (not automatically applicable by law), it is explicitly agreed that such afore mentioned mechanism/procedure/regime shall be applied.

- 9.4** The Payment terms are 30 days net from date of invoice.

10. Maintenance and Support

- 10.1** AVL's SOFTWARE maintenance services comprise the provision of PATCHES, MAINTENANCE RELEASES and ENHANCEMENT RELEASES.

AVL's SOFTWARE support services comprise four types of Helpdesk Support:

- (i) Hotline
- (ii) Remote Assistance
- (iii) PRODUCT EXPERT SUPPORT
- (iv) CAREline

AVL may adapt the scope of the maintenance and support services to reflect the continuing development of the SOFTWARE and technical advances.

10.2 Duration of maintenance and support services

10.2.1 SOFTWARE SUBSCRIPTION AGREEMENTS

Maintenance and support services for SOFTWARE licensed under a SOFTWARE SUBSCRIPTION AGREEMENT are performed for the duration of the SOFTWARE SUBSCRIPTION AGREEMENT (e.g. an annual LICENSE AGREEMENT covers SOFTWARE maintenance and support for one year).

10.2.2 Perpetual LICENSES

Maintenance and support services for SOFTWARE licensed under a perpetual LICENSE (i.e. LICENSE for an unlimited period) are performed for the duration of the SOFTWARE SERVICE AGREEMENT to be concluded between LICENSEE and AVL.

10.3 SOFTWARE SERVICE AGREEMENTS

The maintenance and support services under SOFTWARE SERVICE AGREEMENTS for test bed projects commence on the date

- (i) defined in the respective SOFTWARE SERVICE AGREEMENT, or
- (ii) with start of the operational use of the SOFTWARE.

In all other cases, the maintenance and support services under SOFTWARE SERVICE AGREEMENTS commence on the date

- (i) defined in the respective SOFTWARE SERVICE AGREEMENT, or
- (ii) when the LICENSE key is delivered.

SOFTWARE SERVICE AGREEMENTS are valid for an initial period of 12 months or more, beginning on the date defined above. Thereafter they will be automatically renewed for additional periods of 12 months unless the LICENSEE or AVL gives written notice of non-renewal to the other party at least three (3) months prior to the expiration date, in which case the SOFTWARE SERVICE AGREEMENT will terminate on the expiration date.

10.4 Reinstatement Fee

If a SOFTWARE SERVICE AGREEMENT was terminated and LICENSEE wishes to enter into a

SOFTWARE SERVICE AGREEMENT again, the SOFTWARE must be updated to the latest version.

For such reinstatement of a SOFTWARE SERVICE AGREEMENT AVL charges a reinstatement fee in the amount of the non-contracted period.

10.5 Maintenance and Support after End-of-Life

AVL provides maintenance and support services for SOFTWARE during the Life Cycle of a SOFTWARE GENERATION.

For SOFTWARE beyond its Life Cycle AVL will provide maintenance and support services for a maximum period of three years.

AVL will inform the LICENSEE about the End-of-Life of the SOFTWARE GENERATION at least one year in advance of the End-of-Life date.

11. Term of the LICENSE AGREEMENT, Termination

11.1 The LICENSE AGREEMENT shall be valid for the period as defined in the LICENSE AGREEMENT.

11.2 Apart from sections 6.7 and 8.3 of these Software Terms the LICENSE AGREEMENT may be terminated before the end of its term by either party in the event of a material breach or default by the other party by serving on the other party written notice effective not less than 60 (sixty) days after service of the notice specifying the particulars of the breach or default. If within the 60 (sixty) days following receipt of such notice

- (i) the breach or default is remedied or

- (ii) the other party has commenced efforts to cure the default and continues diligently those efforts to cure, the LICENSE AGREEMENT shall continue in full force and effect; otherwise, it shall terminate in accordance with the notice.

11.3 AVL may terminate the LICENSE AGREEMENT, effective immediately upon notice at any time if

- (i) LICENSEE is subject to an insolvency proceeding or if such proceeding is not instituted because of insufficient assets; or
- (ii) LICENSEE resolves to or is subject to an order requiring it to, wind up or liquidate; or
- (iii) a third party acquires ownership of, or gains a controlling interest in, the LICENSEE; or
- (iv) a breach or default by LICENSEE of any provision of sections 2.4 or 4 of these Software Terms occurs.

11.4 Upon termination of the LICENSE AGREEMENT the LICENSEE shall cease using the SOFTWARE in any manner and shall return all LICENSE keys to AVL and delete all copies of the SOFTWARE, including modified and merged copies, and shall certify its action to AVL in writing within 30 days.

11.5 In the event of termination, the rights, obligations and duties described in section 4 shall survive.