

## **ASSET VISION LOGISTICS, LLC STANDARD TERMS AND CONDITIONS**

These Asset Vision Logistics, LLC (“AVL”) Standard Terms and Conditions apply to Customer’s access to and use of the AVL Software and Related Services. Capitalized terms used but not defined herein will have the meanings set forth in the AVL Master Services Agreement. These Standard Terms and Conditions, together with the AVL Master Services Agreement, constitute the “Agreement” between the parties.

### **1. DEFINITIONS.**

When used with initial capital letters, the following terms shall have the meaning specified below.

1.1 “Access” means any occurrence in which Customer or any of its Users logs onto, otherwise accesses, or uses the AVL Software or any of the Services.

1.2 “Affiliate” means a majority-owned subsidiary of a party, or a majority-owned subsidiary of such subsidiary, or a majority owner of a party.

1.3 “Confidential Information” means information belonging to and/or in the possession or control of a party which is of a confidential, proprietary or trade secret nature that is provided or disclosed to the other party under the Agreement with the presumption that all information shared under this agreement is “Confidential.” “Confidential Information” will be deemed to exclude any particular information that, as evidenced by written documentation: (i) is already known to the receiving party without restrictions at the time of its disclosure by the disclosing party; (ii) after its disclosure by the disclosing party, is made known to the receiving party without restrictions by a third party having the right to do so; (iii) is or becomes publicly known without violation of the Agreement; (iv) is independently developed by the receiving party without reference to the disclosing party’s Confidential Information; or (v) is aggregated non-identifiable data or information.

1.4 “Copy” means any copy or other reproduction, in whole or in part, of the specified item or information, whether made by mechanical or any other means.

1.5 “Customer Data” means any and all data input into the AVL Software by Customer, its Users, or AVL on Customer’s behalf, for the purpose of using any of the Services or facilitating Customer’s use of any of the Services.

1.6 “Documentation” means the descriptions, materials, and other documentation that AVL makes available to the Customer about the AVL Software.

1.7 “Improvement” means any enhancement, improvement, change, error correction, bug fix, patch, workaround, or other modification of the AVL Software in whole or in part.

1.8 “Intellectual Property” mean patents, patent rights, patent applications, and continuing (continuation, divisional, or continuation-in-part) applications, re-issues, extensions, renewals, and re-examinations thereof and patents issued thereon; registered and unregistered trademarks and service marks, trademark and service mark rights, trade names, and domain names; registered and unregistered copyrights; trade secrets and inventions, whether patentable or unpatentable; any and all other intellectual, industrial, or proprietary rights as now exist or hereafter come into existence; and pending applications for and registrations of any of the foregoing; whether arising under the laws of the United States or laws of any other state, country, or jurisdiction in the world. All references to a party’s Intellectual Property means all Intellectual Property owned worldwide by such party or under which such party has the right to grant licenses to the other party of the scope granted herein without the payment of additional consideration to any Person.

1.9 “Internal Purposes” means use by Users to perform services for Customer that does not directly produce revenue for Customer. As an illustration only, “Internal Purposes” excludes the license, sale, rental, time share, lease, or lending of Access to the AVL Software, or use of the Services as an application service provider, service bureau, or any similar operation.

1.10 “Person” means any individual, corporation, partnership, trust, Limited Liability Company, association, organization, governmental authority, or other legal entity of any kind.

1.11 “User” means any individual employed or retained by or otherwise acting on behalf of Customer who receives Access to the AVL Software or other Services through Customer in compliance with the provisions of the Agreement and has an enforceable obligation to protect all AVL Confidential Information and Intellectual Property as required by the Agreement.

1.12 “Virus” means anything or device (including without limitation any software, code, file or program) which may: prevent, impair or otherwise adversely affect the operation of any computer software, hardware or network, any telecommunications service, equipment or network or any other service or device; prevent, impair or otherwise adversely affect access to or the operation of any program or data, including the reliability of any program or data (whether by re-arranging, altering, or erasing the program or data in whole or part or otherwise); or adversely affect the user experience, including worms, Trojan horses, viruses and other similar things or devices.

## **2. AGREEMENT TO PROVIDE SERVICES.**

Subject to all of the terms and conditions of the Agreement, including without limitation Customer’s timely payment of all Fees, AVL agrees to provide the following Services to Customer:

### **2.1 Software Access and Data Services.**

(a) *Access Services.* AVL agrees to allow Customer and its Users to Access the AVL Software on the AVL Software for Customer’s Internal Purposes (“Access Services”). Customer’s right to receive the Access Services is non-exclusive and non-transferrable.

(b) *AVL Software Improvements.* During the Term of the Agreement, AVL in its sole discretion will make Improvements to the AVL Software for corrections to reported problems, required regulatory changes, and minor functionality enhancements. Improvements will be made as often as deemed necessary by AVL in its sole discretion. AVL will have no obligation to provide Access to any Improvements, or to any customized versions of the AVL Software, that AVL creates pursuant to a development or customization agreement with any Person other than Customer, unless AVL, in its sole discretion, makes the Improvements Available to all customers.

(c) *Data Storage Services.* During the Term of the Agreement, AVL agrees to provide the Data Storage Services described in the Master Services Agreement

2.2 *Infrastructure and Security Services.* AVL agrees to procure and maintain all of the hardware and software that it deems necessary to maintain a Software-as-a-Service (SaaS) environment for the AVL Software and provide the Access Services and Data Services to Customer (collectively, the “AVL Software”). AVL and/or its lessor(s) will retain ownership of the AVL Software. AVL will maintain the AVL Software at its own data center or one or more third-party centers. AVL agrees to employ industry standard electronic and physical security measures for the AVL Software or, if it uses a third-party data center, to select a third-party center that employs such security measures. Customer’s exclusive remedy for any breach of AVL’s obligation with respect to security measures, except for any willful breach thereof, shall be for AVL to cause such industry standard electronic and physical security measures to be implemented.

## 2.3 AVL Support Services.

(a) *Support Services.* AVL will provide such online and email support to Customer with respect to the AVL Software and the AVL Software as AVL in its sole discretion determines ("Basic Support Services"). In addition, AVL may in its sole discretion offer support to Customer using local support teams, at AVL's standard daily rates and at the time(s) and location(s) agreed by the parties ("Local Support Services"). AVL provides all Basic Support Services and Local Support Services subject to all of the terms and conditions of the Agreement.

(b) *Exclusions.* The following items are excluded from Basic Support Services: (i) any Development Services that are not expressly added to the Agreement in a writing signed by authorized representatives of both parties; (ii) any database problems or corrections necessary due to any Development Services; (iii) misuse of the AVL Software and user error; (iv) assistance with hardware problems diagnosis and/or interface solutions; (v) all costs, losses, and damages, including but not limited to travel expenses and costs, mailing or freight charges, defects or data loss, caused by software programs, systems, hardware, or firmware that was not provided by AVL; (vi) personal computer (PC) and network-related support, where not directly related to the AVL Software interface; and (vii) any other circumstances beyond AVL's reasonable control, including but not limited to acts of any governmental body, war, sabotage, embargo, fire, flood, extended unavailability of public utility service or unavailability of or delay in telecommunications, third-party Internet service providers, third-party software, hardware failures, the failure or degradation of third-party connectivity services, or downtime or Access degradation caused by Customer's network or the Internet. In addition, the Access Services are subject to the constraints of Customer's computer hardware, operating system software, and software environment(s). AVL does not have direct control over these third party products and cannot guarantee compatibility with or the reliability of such products. AVL will make commercially reasonable efforts to test and verify compatibility with third party products and to work with third party vendors to attempt to find solutions to any problems that occur or to find suitable alternatives or work-around solutions. Licensing fees and all other fees and costs relating to Customer's acquisition and use of third party products are the responsibility of Customer. Without limiting the generality of the foregoing, Customer's failure to follow the AVL's technical requirements for customer systems, as AVL may change them from time to time in its sole discretion (the "Technical Requirements"), or other recommended specifications for Customer's system or Internet service is not covered.

## 2.4 Requirements, Limitations, and Restrictions.

(a) *Customer obligations.* In addition to its other obligations, Customer shall:

(i) provide AVL with: (A) all necessary and reasonable cooperation in relation to the Agreement; and (B) all necessary access to such information and Customer systems as may be required by AVL; including but not limited to Customer Data, security access information, and configuration services; in order for AVL to provide the Services;

(ii) comply with all applicable laws and regulations with respect to its activities under the Agreement;

(iii) carry out all other Customer responsibilities set out in the Agreement in a timely and efficient manner, it being agreed that, in the event of any delays in Customer's provision of such assistance as agreed by the parties, AVL shall have the right to adjust any agreed timetable or delivery schedule as reasonably necessary to account for any such delays;

(iv) ensure that all Users use the Services and Documentation in accordance with the terms and conditions of the Agreement, it being agreed that Customer shall be responsible for any User's breach of the Agreement;

(v) obtain and shall maintain all necessary licenses, consents, and permissions necessary for AVL, its contractors, and agents to perform their obligations under the Agreement, including without limitation the Services; and

(vi) be solely responsible for (A) procuring and maintaining all of the hardware and software necessary and appropriate for Customer to maintain its own network environment and all necessary and appropriate Internet connectivity bandwidth to Access the AVL Software and to connect multiple Customer locations to each other as necessary, including without limitation network connections and telecommunications links from its systems to AVL's data centers; (B) ensuring that its systems comply with the Technical Requirements; and (C) remedying all problems, conditions, delays, delivery failures, and all other loss(es) and damage(s) arising from or relating to Customer's network connections or telecommunications links or caused by the Internet.

(b) *Customer Data.* Customer shall own all rights, title and interest in and to all Customer Data and shall have sole responsibility for its legality, reliability, integrity, accuracy and quality. AVL acknowledges that the Customer Data is the Confidential Information of Customer.

(c) *Prohibited Activities.*

(i) Customer shall not access, store, distribute or transmit any Viruses, or any material during the course of its use of the Services that (A) is unlawful, harmful, threatening, defamatory, obscene, harassing, or racially or ethnically offensive; (B) infringes, misappropriates, or otherwise violates any Intellectual Property; (C) facilitates illegal activity; (D) depicts sexually explicit images; (E) promotes violence; (F) is discriminatory based on race, gender, color, religious belief, sexual orientation, disability, or any other illegal activity; or (G) causes damage or injury to any person or property; and AVL reserves the right, without liability to Customer, to disable Access to any material that breaches this subsection.

(ii) Customer shall not: (A) except as may be allowed by any applicable law which is incapable of exclusion by agreement between the parties: (i) and except to the extent expressly permitted under the Agreement, attempt to copy, modify, duplicate, create derivative works from, frame, mirror, republish, download, display, transmit, or distribute all or any portion of the AVL Software or Documentation (as applicable) in any form or media or by any means; or (ii) attempt to reverse compile, disassemble, reverse engineer or otherwise reduce to human-perceivable form all or any part of the AVL Software; (B) access all or any part of the Services and Documentation in order to build a product or service which competes with the Services or Documentation; (C) use the Services or Documentation to provide services to third parties; or (D) subject to Section 9.2, license, sell, rent, lease, transfer, assign, distribute, display, disclose, otherwise commercially exploit, or otherwise make the Services or Documentation Available to any third party except Users, or (E) attempt to obtain, or assist third parties in obtaining, access to the Services or Documentation, other than as provided under this Section 2.

(d) *Prevention of unauthorized Access.* Customer shall use all reasonable endeavors to prevent any unauthorized access to, or use of, the Services and Documentation and, in the event of any such unauthorized access or use, promptly notify AVL.

(e) *Access not ownership.* The Services provided pursuant to the Agreement do not constitute a sale of, or transfer of any ownership interest in, the AVL Software, any of the AVL Software or Documentation, or any Copy of them

(f) *All other rights reserved.* Except as expressly set forth in this Section 2 or elsewhere in the Agreement, AVL grants to Customer no rights or licenses in or to the AVL Software, AVL Software, or Documentation, by implication, estoppels, or otherwise. AVL hereby reserves any and all rights not expressly granted in the Agreement. Except as expressly set forth in the Agreement, nothing in the Agreement shall be construed to restrict or otherwise limit AVL from exercising its Intellectual Property Rights in the AVL Software, Documentation, or any other Intellectual Property associated with the Services.

(g) *Service terms, not warranty; remedies.* The terms and conditions of this Section 2 define a service arrangement and not a product warranty. All Services, products, and materials provided to Customer pursuant to the Agreement are subject exclusively to the warranty provisions of the Agreement, and the terms and conditions of this Section 2 do not change or supersede any warranties, warranty or liability limitations, or warranty disclaimers contained in the Agreement. The service level commitments and remedies set forth in this Section 2 constitute Customer's sole and exclusive remedies for any and all claims relating to the Services.

### **3. NONDISCLOSURE**

3.1 Confidential Information will remain the property of the disclosing party, and the receiving party will not be deemed by virtue of the Agreement or any access to the disclosing party's Confidential Information to have acquired any right or interest in or to any such Confidential Information. The receiving party agrees: (a) to hold the disclosing party's Confidential Information in strict confidence; (b) to limit disclosure of the disclosing party's Confidential Information to personnel having a need to know the information for the purposes of the Agreement; (c) not to disclose any such Confidential Information to any third party; (d) to use the disclosing party's Confidential Information solely and exclusively in accordance with the terms of the Agreement in order to carry out its obligations and exercise its rights under the Agreement; (e) to afford the disclosing party's Confidential Information at least the same level of protection against unauthorized disclosure or use as the receiving party normally uses to protect its own information of a similar character, but in no event less than reasonable care; (f) to notify the disclosing party promptly of any unauthorized use or disclosure of the disclosing party's Confidential Information and cooperate with and assist the disclosing party in every reasonable way to stop or minimize such unauthorized use or disclosure; and (g) if the receiving party is, or believes that it will be, compelled by a court or other authority to disclose Confidential Information of the disclosing party, it shall give the disclosing party prompt notice so that the disclosing party may take steps to oppose such disclosure.

3.2 Each party agrees that if a court of competent jurisdiction determines that the receiving party has breached, or attempted or threatened to breach, its confidentiality obligations to the disclosing party or the disclosing party's proprietary rights, the disclosing party will be entitled to obtain appropriate injunctive relief and other measures restraining further, attempted or threatened breaches of such obligations. Such relief or measures will be in addition to, and not in lieu of, any other rights and remedies Available to a party.

### **4. INTELLECTUAL PROPERTY OWNERSHIP**

a. All right, title, and interest (including copyrights and other Intellectual Property rights) in and to the AVL Software and the Services, including any and all Improvements thereto (whether or not patentable or copyrightable and whether or not the result of suggestions, requests, or other Feedback provided by Customer or any of its Users), conceived, created, made, or otherwise developed in connection with the performance of AVL's obligations hereunder, including the provision of the Services, shall be the sole and exclusive property AVL. Customer or Customer's Users may voluntarily provide to AVL suggested modifications, error reports, comments, or other Feedback relating to the Services or AVL Software ("Feedback") to AVL. AVL is not required to hold Feedback in confidence, and Feedback may be used by AVL for any purpose without obligation of any kind to Customer or Customer's Users. Incorporation of Feedback by AVL into the AVL Software or the Services does not affect AVL's exclusive ownership of them.

b. Any and all AVL trademarks, such as Asset Vision Logistics, shall be used only in connection with Customer's use of the Services and only in accordance with accepted trademark practice, including proper identification of AVL as the owner of the trademark. Customer's use of any AVL trademark does not give Customer any rights of ownership in that trademark. All goodwill generated by Customer's use of any AVL trademark shall belong solely to AVL. To ensure proper use of AVL trademark, Customer agrees to obtain AVL's approval of each proposed use of any AVL trademark, at least ten (10) business days before such use begins. If AVL does not provide written notice of its disapproval of the proposed use within ten (10) business days after receiving such notice, the use shall be deemed disapproved by AVL. Any trademark, trade name, copyright, or other proprietary notices, legends, symbols or labels appearing on or in the AVL

Software or the Services provided to Customer and its Users shall not be removed or altered and shall be accurately reproduced by Customer on any and all copies of AVL Software and the Services that are permitted under this Agreement. If AVL agrees to private label any of the Services for Customer, Customer agrees to allow AVL, at a minimum, to place the conspicuous legend "Powered by Asset Vision Logistics" or a similar legend on the Services.

## **5. LIMITED WARRANTIES AND REMEDIES**

5.1 **Limited Warranty.** Subject to Sections 5.2 and 5.3 and the other terms and conditions of the Agreement, AVL warrants that the functionality of the AVL Software and the AVL Software will substantially conform to the descriptions of the AVL Software published by AVL, which published descriptions AVL may update or change from time to time in its sole discretion. With respect to any Support Services, Development Services, or other Services provided under the Agreement, AVL warrants that its employees will use the level of skill and care that typically would be exercised by consultants in the computer and informational technical service industry providing similar services. The foregoing shall constitute AVL's "Limited Warranty." Except as set forth above, AVL makes no representations or warranties with respect to the AVL Software, any related components, the Access Services, or any other Services. Without limiting the generality of the foregoing, AVL does not represent or warrant that: (i) the AVL Software or the Services will meet all of Customer's requirements or needs, (ii) use of the AVL Software, and the Services will be uninterrupted or error-free, or (iii) that all errors in the AVL Software or the Services will be corrected.

5.2 **Exclusive Remedies.** If Customer reports any nonconformity with the Limited Warranty in writing to AVL within ninety (90) days from the date that AVL (a) provides Access Services to Customer for the first time or after any updated version of the AVL Software is made part of the Access Services or (b) performs any other Services, AVL shall, at its sole discretion and expense, either use reasonable efforts to remedy the nonconformity or where applicable refund the price of the nonconforming AVL Service(s). In the event AVL provides such a refund, all of AVL's obligations with respect to the future provisions of such AVL Service(s) (including without limitation Access Services) will terminate. THE REMEDIES SET FORTH IN THIS SECTION 5.2 CONSTITUTE CUSTOMER'S SOLE AND EXCLUSIVE REMEDIES WITH RESPECT TO ANY CLAIM FOR BREACH OF AVL'S LIMITED WARRANTY, EVEN IF ANY REMEDY FAILS OF ITS ESSENTIAL PURPOSE AND EVEN IF AVL IS AWARE OF THE TYPE AND AMOUNT OF DAMAGES THAT CUSTOMER MAY INCUR AS A RESULT OF ANY BREACH OF THE LIMITED WARRANTY.

5.3 **EXCEPT AS EXPRESSLY SET FORTH IN SECTION 5.1, ALL SERVICES PROVIDED BY AVL PURSUANT TO THE AGREEMENT ARE PROVIDED "AS IS," WITH ALL FAULTS AND WITHOUT WARRANTY OF ANY KIND. ALL WARRANTIES AND CONDITIONS, WHETHER EXPRESS, IMPLIED, OR STATUTORY, INCLUDING BUT NOT LIMITED TO IMPLIED WARRANTIES, IF ANY, OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE (EVEN IF AVL HAS BEEN INFORMED OF SUCH PURPOSE), ARE HEREBY EXCLUDED. WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, AVL MAKES NO REPRESENTATION OR WARRANTY THAT THE AVL SOFTWARE, DOCUMENTATION AND RELATED MATERIALS ARE ERROR-FREE OR COMPATIBLE WITH ALL EQUIPMENT AND SOFTWARE CONFIGURATIONS. NO COURSE OF DEALING, COURSE OF PERFORMANCE, OR USAGE OF TRADE, NOR ANY ADVICE, STATEMENT OR INFORMATION GIVEN BY AVL, ITS AFFILIATES, ITS CONTRACTORS, EMPLOYEES, OR OTHER REPRESENTATIVES SHALL CREATE OR CHANGE ANY WARRANTY SET FORTH IN THE AGREEMENT.**

## **6. LIMITATION OF LIABILITY**

6.1 **IN NO EVENT WILL AVL OR ANY PERSON OR ENTITY INVOLVED IN THE CREATION, MANUFACTURE, OR DISTRIBUTION OF ANY AVL SERVICES OR OTHER MATERIALS PROVIDED UNDER THE AGREEMENT BE LIABLE FOR: (I) ANY DAMAGES CAUSED BY THE FAILURE OF CUSTOMER OR ITS AFFILIATES OR SUPPLIERS TO PROPERLY AND TIMELY PERFORM THEIR RESPONSIBILITIES; (II) ANY CLAIMS OR DEMANDS OF THIRD PARTIES; OR (III) ANY INDIRECT, INCIDENTAL, SPECIAL, EXEMPLARY, PUNITIVE OR CONSEQUENTIAL DAMAGES, INCLUDING THE LOSS OF PROFITS, REVENUE, BUSINESS, DATA, SAVINGS OR USE OR COST OF PROCUREMENT**

OF SUBSTITUTE GOODS INCURRED BY CUSTOMER OR ANY THIRD PARTY, WHETHER IN AN ACTION IN CONTRACT, TORT OR ANY OTHER LEGAL THEORY OR BASED ON A WARRANTY, EVEN IF AVL OR SUCH OTHER PERSON OR ENTITY INVOLVED IN THE CREATION, MANUFACTURE, OR DISTRIBUTION OF ANY AVL SERVICES OR OTHER MATERIALS HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

6.2 If Customer becomes entitled to claim indemnity or damages from AVL (including without limitation, for breach of contract, breach of warranty, negligence, other tortious conduct, or any other theory of liability whatsoever), AVL's maximum liability (in the aggregate for all claims, including without limitation claims for indemnity, and regardless of the theories of liability) shall not exceed the total amount of Monthly Service Fees that Customer has paid to AVL over the twelve (12) month period prior to the date that such claim(s) arose. AVL shall in no way be obligated to pay any other costs, including without limitation any legal fees incurred in connection with such claim(s).

6.3 The limitations of liability set forth in this Section 6 will survive and apply notwithstanding the failure of any limited or exclusive remedy for breach of warranty or otherwise set forth in the Agreement. The parties agree that the foregoing limitations will not be deemed to limit any liability to an extent that would not be permitted under applicable law.

6.4 NOTWITHSTANDING ANYTHING IN THE AGREEMENT, AVL SHALL NOT BE HELD RESPONSIBLE FOR DAMAGES DUE TO ANY DELAY, INTERRUPTION IN THE AVL SERVICES, OR FAILURE TO PERFORM ARISING OUT OF CAUSES BEYOND AVL'S REASONABLE CONTROL WHICH PREVENTS OR MAKES REASONABLY DIFFICULT AVL'S PERFORMANCE, PROVIDED PROMPT NOTICE OF SUCH CAUSES, EVENTS OR CIRCUMSTANCES IS GIVEN TO CUSTOMER. SUCH EVENTS MAY INCLUDE, BUT ARE NOT LIMITED TO, FIRE, STORM, FLOOD, EARTHQUAKE, EXPLOSION, ACCIDENT, THEFT, TERRORISM, ACTS OF PUBLIC ENEMIES, WAR, INSURRECTION, SABOTAGE, ILLNESS, LABOR DISPUTES OR SHORTAGES, PRODUCT SHORTAGES, FAILURE OR DELAYS IN TRANSPORTATION, INABILITY TO SECURE MATERIALS, PARTS OR EQUIPMENT, EMBARGO, EXTENDED UNAVAILABILITY OF PUBLIC UTILITY SERVICE OR UNAVAILABILITY OF OR DELAY IN TELECOMMUNICATIONS, THIRD-PARTY INTERNET SERVICE PROVIDERS, THIRD-PARTY SOFTWARE, HARDWARE FAILURES, THE FAILURE OR DEGRADATION OF THIRD-PARTY CONNECTIVITY SERVICES, OR DOWNTIME OR ACCESS DEGRADATION CAUSED BY CUSTOMER'S NETWORK OR THE INTERNET, ACTS OF GOD, OR ACTS OF ANY GOVERNMENTAL AUTHORITY OR ANY AGENCY THEREOF.

6.5 NOTWITHSTANDING ANYTHING CONTAINED IN THIS AGREEMENT, INCLUDING SECTION 7.1, IT SHALL BE THE SOLE RESPONSIBILITY OF CUSTOMER AND ITS EMPLOYEES AND CONTRACTORS TO ENSURE THAT THEY USE SAFE DRIVING PRACTICES. WITHOUT LIMITING THE GENERALITY OF THE FOREGOING STATEMENT, AVL SHALL HAVE NO RESPONSIBILITY FOR ANY PERSONAL INJURY, DEATH, OR PROPERTY DAMAGE THAT ARE CAUSED BY ANY USER'S USE OF THE SERVICES WHILE DRIVING. ANY RISK OF PERSONAL INJURY, DEATH, OR PROPERTY DAMAGE TO CUSTOMER, ITS USERS, AND ANY THIRD PARTIES, ARISING FROM USE OF THE SERVICES WHILE THE USER IS IN A VEHICLE IN MOTION, OR ANY OTHER UNSAFE DRIVING PRACTICES, SHALL BE BORNE SOLELY BY CUSTOMER AND ITS EMPLOYEES AND CONTRACTORS, AND AVL SHALL HAVE NO RESPONSIBILITY OR LIABILITY FOR THEM. FURTHERMORE, CUSTOMER AGREES AT ITS OWN EXPENSE TO DEFEND, INDEMNIFY, AND HOLD HARMLESS AVL ITS OFFICERS, EMPLOYEES, AGENTS, AND CONTRACTORS, FROM ANY AND ALL CLAIMS AND ACTIONS BY USERS OR THIRD PARTIES FOR PERSONAL INJURY, DEATH, OR PROPERTY DAMAGE ARISING OUT OF OR RELATING TO THE CUSTOMER'S AND ITS USERS' USE OF THE SERVICES WHILE IN MOTION OR ANY OTHER UNSAFE DRIVING PRACTICES.

## **7. INDEMNIFICATION**

7.1 If, as a result of AVL's gross negligence, Customer or Customer's employees or contractors suffer personal injury or damage to tangible property, AVL will reimburse Customer for that portion of any claims Customer actually pays for which AVL is legally liable, not to exceed (in the aggregate for all claims)

the amount of Monthly Service Fees paid to AVL under the Agreement. If, as a result of Customer's negligence, AVL or AVL's employees suffer personal injury or damage to tangible property, Customer will reimburse AVL for that portion of any claims AVL actually pays for which Customer is legally liable.

7.2 Without limiting such liability as AVL may have to Customer for non-performance of the Agreement, Customer acknowledges and agrees that AVL, by entering into and performing its obligations under the Agreement, will not be liable for any business or operational risks associated with Customer's business. Therefore, except for claims allowed by Section 7.1, Customer will, at its own expense, defend, indemnify, and hold harmless AVL, its officers, employees, agents, and contractors, from any and all claims and actions by third parties arising out of or relating to (a) the conduct of Customer's business, including without limitation, the use by Customer of the AVL Software, the Services, or the Documentation to be provided by AVL under the Agreement; and (b) any breach of the Agreement by Customer; and Customer will pay all settlements, costs, damages, and reasonable legal fees and expenses finally awarded or incurred, provided that AVL promptly notifies Customer of the proceeding, provides Customer a copy of all information received by AVL with respect to the proceeding, cooperates with Customer in defending or settling the proceeding, and allows Customer to control the defense and settlement of the proceeding, including selection of attorneys. AVL may, at its option, observe the proceeding and confer with Customer and legal counsel at its own expense.

7.3 Subject the terms and conditions of the Agreement, including without limitation the limitations of liability contained in Section 7, AVL will, at its own expense: (a) settle or defend Customer in all claims or actions by third parties alleging that the Services or Documentation infringe, misappropriate, or otherwise violate such third parties' Intellectual Property rights; (b) pay all settlements, costs, damages, and reasonable legal fees and expenses finally awarded or incurred; and (c) if any Services or Documentation is finally adjudged to so infringe, violate, or misappropriate, or in AVL's opinion is likely to be so adjudged, AVL will, at its sole option and expense, either: (i) procure for Customer the right to continue using the Services or Documentation at issue in the proceeding, (ii) modify or replace such Services or Documentation to make it non-infringing, non-misappropriating, and non-violating, or (iii) refund the Monthly Service Fees paid by Customer with respect to such Services or Documentation for the period at issue in the proceeding, in which case all of Customer's rights and licenses with respect to such Services and Document shall immediately terminate. AVL's foregoing obligations shall only apply, however, if Customer promptly notifies AVL of the proceeding, provides AVL a copy of all information received by Customer with respect to the proceeding, cooperates with AVL in defending or settling the proceeding, and allows AVL to control the defense and settlement of the proceeding, including the selection of attorneys. Customer may, at its option, observe the proceeding and confer with AVL and legal counsel at its own expense.

7.4 Notwithstanding the provisions of Section 7.3 above, in no event shall AVL, its employees, agents, or subcontractors have any liability or indemnity obligation to Customer to the extent that the alleged infringement, misappropriation, or violation is based on: (a) any modification of the Services or Documentation by anyone other than AVL; (b) Customer's use of the Services or Documentation in a manner contrary to the instructions given to Customer by AVL; or (c) Customer's use of the Services or Documentation after notice, from AVL or any appropriate authority, of the alleged or actual infringement, misappropriation, or violation.

## **8. TERMINATION**

8.1 If either party commits a material breach of the Agreement, then the non-breaching party may provide notice to the breaching party describing the alleged breach in reasonable detail. If the breaching party does not, within thirty (30) calendar days after receiving such notice, either (a) cure the material breach, or (b) if the breach is not one that can reasonably be cured within thirty (30) calendar days, develop a mutually agreed plan to cure the failure and diligently proceed according to the plan until the material failure has been cured, then the non-breaching party may terminate the Agreement for cause by notice to the breaching party.

8.2 Either party may terminate the Agreement immediately upon written notice if (a) all or a substantial portion of the assets of the other party are transferred to an assignee for the benefit of creditors,



or to a receiver or a trustee in bankruptcy, (b) a proceeding is commenced by or against the other party for relief under bankruptcy or similar laws and such proceeding is not dismissed within sixty (60) days, or (c) the other party is adjudged bankrupt.

8.3 If Customer breaches the restrictions imposed under Section 2 or its nondisclosure obligations under Section 3, AVL will have the right, without affecting any other rights and remedies AVL may have, to terminate the Agreement immediately upon notice to Customer. Termination of the Agreement will be in addition to, and not in lieu of, any other remedies, relief, damages and indemnification under the Agreement Available to the terminating party under the Agreement immediately before the Agreement is terminated.

8.4 On expiration or termination of the Agreement for any reason, (a) all rights granted under the Agreement cease, and Customer agrees to immediately cease all use of the Access Services, Support Services, other Services, and Documentation; and, (b) within thirty (30) days, Customer must, at AVL's option, either deliver to AVL or destroy the original and all copies and partial copies (in any form or media) of the Documentation, all AVL Confidential Information, and any other materials provided by AVL under the Agreement, and certify in writing to AVL that Customer has fully performed its obligations under this Section 8.4. AVL has and reserves all rights and remedies that it has by operation of law or otherwise to enjoin the unlawful or unauthorized use of the AVL Software, Services, Documentation, and related materials. Any and all rights of payment and other claims that arose prior to expiration or termination of the Agreement shall survive.

8.5 Sections 3, 6, and 7 of the Master Services Agreement, Sections 1, 3, 4, 5, 6, 7, 8, 9, and 10 (excluding Section 10.1) of these Standard Terms and Conditions, all of Customer's payment obligations, and any and all claims that arose prior to the expiration or termination of the Agreement, shall survive the expiration or termination of the Agreement.

## **9. LAW AND DISPUTES**

9.1 The Agreement shall be governed by and construed under the laws of the State of Minnesota, without giving effect to Minnesota's choice of law rules or principles. The parties agree that Bonneville County, in the State of Minnesota, shall be the sole proper forum for any action brought under the Agreement, and that the applicable federal and state courts located therein shall be the sole courts having jurisdiction over any such matter. Each of the parties hereto hereby consents to the personal jurisdiction of each such court and agrees not to raise any defense of forum non convenes or any other defense or objection to the provisions hereof. THE PARTIES HERETO HEREBY AGREE THAT NEITHER WILL REQUEST A JURY FOR ANY DISPUTE ARISING UNDER OR OTHERWISE RELATING TO THE AGREEMENT AND EXPRESSLY WAIVE ANY AND ALL SUCH RIGHTS TO A JURY TRIAL THAT MAY EXIST UNDER STATE, FEDERAL, OR OTHER LAW

9.2 Customer shall not transfer or make Available, either directly or indirectly, the Documentation, the Access Services, or any information or technical data received from AVL and designated as export restricted, or the direct product of any such data, to any destination or entity or to any Person subject to export restrictions under U.S. law, unless prior written authorization is obtained from AVL and from the appropriate U.S. government agency.

9.3 No proceeding, regardless of form, arising out of or related to the Agreement may be brought by either party more than two (2) years after the accrual of the cause of action, except that (a) proceedings related to violation of a party's proprietary rights or any duty to protect Confidential Information may be brought at any time within applicable statutes of limitations, and (b) proceedings for non-payment may be brought up to two (2) years after the date the last payment was due.

## 10. GENERAL

10.1 Customer may not assign, license, or otherwise transfer or delegate any right or obligation in the Agreement without AVL's prior consent, except that Customer may assign the Agreement to an Affiliate or to a successor entity in the event of a merger, consolidation or sale of such party's business or all or substantially all of such party's stock or assets, provided the assignee agrees in writing to assume all of the assignor's obligations and liabilities under the Agreement, and provided further that the substitution of the rights of the assignee for the rights of the assignor does not materially increase the scope of Customer's use of the AVL Services or materially increase the burden or risk imposed on AVL by the Agreement. Any purported assignment in violation of the preceding sentence will be voidable at AVL's sole and exclusive election. The Agreement will be binding upon the parties' respective successors and permitted assigns.

10.2 Any notice, consent or other communication required or permitted to be made or given by either party pursuant to the Agreement will be in writing, in English, and will be deemed to have been duly received: (a) five (5) business days after the date of mailing if sent by registered or certified mail, postage prepaid, with return receipt requested; (b) when transmitted if sent by facsimile or e-mail, provided a confirmation of transmission is produced by the sending machine and a copy of such facsimile or e-mail is promptly sent by another means specified in this Section 10.2; or (c) when delivered if delivered personally or sent by commercial courier service, with verification of receipt. All notices will be sent to the other party at its address as set forth in the Maser Services Agreement, or at such other address as such party may specify for itself in a notice given in accordance herewith.

10.3 AVL and Customer are entering the Agreement as independent contractors, and the Agreement will not be construed to create a partnership, joint venture, franchise or employment relationship between them, and no relationship of exclusivity is created hereby. Neither party will represent itself to be an employee or agent of the other, or enter into any agreement on the other's behalf or in the other's name.

10.4 The Agreement will be deemed to have been negotiated and prepared at the joint request, direction, and construction of the parties, at arms' length, with each party receiving the advice and participation of counsel of their respective choosing, and will be interpreted in accordance with its terms without favor to either party.

10.5 No third party is an intended beneficiary of the Agreement, and no third party shall have any right to enforce any provision of the Agreement.

10.6 The provisions of the Agreement will be deemed severable, and the unenforceability of any one or more provisions will not affect the enforceability of any other provisions. In addition, if any provision of the Agreement, for any reason, is declared to be null, void or otherwise unenforceable by a court of competent jurisdiction, the parties will substitute an enforceable provision that, to the maximum extent possible in accordance with applicable law, preserves the original intention and economic position of the parties.

10.7 AVL shall have a nonexclusive, fully paid up, nontransferable, limited license to use Customer's name and Customer's logo in AVL's advertising, marketing, public relations, and other AVL corporate documents only to identify Customer as a customer of AVL. On request, Customer shall promptly provide AVL with an electronic file of its logo for that purpose.

10.8 During the term of the Agreement and for twelve (12) months after its expiration or termination, neither party will knowingly hire or directly or indirectly solicit for employment by itself (or any of its Affiliates) any employee of the other party (or any of its Affiliates) who was involved in the performance of the party's obligations under the Agreement, unless the hiring party obtains the consent of the other party. The actual damages attributable to a breach of the provisions of this Section 10.8 would be difficult to determine and prove. Accordingly, the parties agree that if either party breaches this Section 10.8, the breaching party will promptly pay the non-breaching party liquidated damages in an amount equal to three times the employee's annual salary, including bonuses and incentive compensation, prior to the breach, such sum being a reasonable measure and estimate of the damages reasonably anticipated by the parties.

10.9 No failure or delay by either party in exercising any right, power or remedy will operate as a waiver of such right, power or remedy, and no waiver will be effective unless it is in writing and signed by the party to be charged thereby. If either party waives any right, power or remedy, such waiver will not waive any successive or other right, power or remedy the party may have under the Agreement.