

## Terms and Conditions for delivery and utilization of products and services provided by Advanced Virtualization Technologies, Eindhoven, The Netherlands

### 1. General

Advanced Virtualization Technologies, Eindhoven, The Netherlands (AVT from here on) creates and delivers solutions to run legacy hardware-based software on modern IT-platforms without making changes to the original software. Our solutions and related services or products are delivered by registered and trained expertise partners or directly by AVT to the end-user when the circumstances dictate so.

- AVT sales and deliveries to end-users via registered partners are subject to the terms and conditions between that partner and their end-user. The AVT-partner contract defines the conditions between AVT and the partner.
- For AVT sales and deliveries to organizations without a partner contract the terms and conditions as stated in this document apply.

### 2. AVT Products and Services

Hardware Virtualization Software, available under the End User License terms as specified in clause 5

Software Support Services for purchased virtualization products as defined in clause 7 of this document.

Related installation and migration services. These services are not included in the license fee and will be separately quoted and charged.

vtLicense server, which is a custom hardware/software combination to provide AVT license services across the customer network.

#### **AVT deliverables do not include:**

Host platform(s) to run the AVT virtualization on (e.g., computer hardware, X86-type Virtual Machine products, Cloud installations or services. These are to be provided by the customer and are therefore excluded from AVT's services and responsibility.

### 3. Quotations

Quotations from the AVT are without obligation for the addressee and expire no later than 30 days after the date of the quotation, unless otherwise specified in the quotation.

AVT Quotations are non-binding.

Delivery times stated in quotations from AVT and other periods stated for services to be performed are global and only informative; exceeding these does not entitle the potential buyer to compensation or dissolution.

Prices quoted are, unless stated otherwise, based on execution during normal working hours and exclusive installation costs, VAT and other government taxes or charges.

### 4. Payment Terms

Net 30 days after date of invoice

Timely payment of the annual software maintenance fee is a prerequisite for the use of AVT products and software support services.

It is important to note that there is no grace period or extension beyond the specified maintenance period. This means that payment in advance within the specified time frame is required to provide uninterrupted access to the software support services.

### **Consequences of termination or expiry**

After the expiry of payment term after the invoice date, the buyer is legally in default; and buyer owes interest of 4% per month on the amount due from the moment of being in default, unless the statutory interest is higher, in which case the statutory interest applies.

In the event of termination or expiry of the product or maintenance and support contract, the customer will no longer have access to the services, the assistance of AVT or new versions or patches of the software.

In this case, the customer accepts and acknowledges that it will bear all risks and consequences that may arise from the operation of a version that is no longer maintained or supported by AVT and of its choice to no longer subscribe to the support services and the customer will hold AVT harmless against any claim as a result.

## **5. AVT End User Software License and Limited Warranty**

This is an agreement between the end user (LICENSEE) and AVT (LICENSOR). By using this Software Product, LICENSEE agrees to be bound by the terms of this agreement.

IF YOU DO NOT AGREE TO THE TERMS OF THIS AGREEMENT, DO NOT USE THIS SOFTWARE PRODUCT AND PROMPTLY REMOVE IT FROM YOUR COMPUTER.

### **Grant Of License.**

Subject to the terms of this agreement, LICENSOR hereby grants to LICENSEE a personal, non-exclusive, non-transferable license (without the right to sublicense) to use the AVT licensed software (hereafter "SOFTWARE").

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This License terminates automatically without notice from LICENSOR upon the expiration of its term or if you fail to comply with any provision of this License. Upon termination of the license, you shall remove the SOFTWARE from your computer.

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- a) substitute for the SOFTWARE substantially functionally similar programs and documentation.
- b) terminate the agreement and refund the license fees and maintenance fees paid by LICENSEE as reduced to reflect the use of the SOFTWARE from the applicable license purchase date.

The foregoing indemnification obligation of LICENSOR shall not apply: (1) if the SOFTWARE is modified by any party other than LICENSOR without LICENSOR prior written consent, but solely to the extent the alleged infringement is caused by such modification; (2) the SOFTWARE is combined with other non-LICENSOR products or process not contemplated by the Documentation, but solely to the extent the alleged infringement is caused by such combination; (3) to any use of the SOFTWARE that is not authorized by the Documentation.

If a claim under this section is received by LICENSEE, LICENSEE will provide LICENSOR: (i) prompt notice of such claim (but in any event notice in sufficient time for LICENSOR to respond without prejudice); (ii) the exclusive right to control and direct the investigation, defense, and settlement of such claim; and (iii) all reasonably necessary cooperation, at LICENSOR expense.

### **Proprietary rights.**

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LICENSEE shall not remove, deface, or otherwise obscure any copyright, patent, trademark, service mark, or other proprietary legend ("Proprietary Legends") on either the SOFTWARE or Documentation. Furthermore, LICENSEE shall include such Proprietary Legends in any reproductions of either the SOFTWARE or Documentation that LICENSEE is permitted to make.

## **6. Maintenance Fees**

AVT reserves the right to annually change the terms and conditions as well as the prices of the products and their maintenance fees. In such cases, AVT shall inform the customer by sending a written notice 60 days before the expiration day of valid agreement.

In the event, where the customer has allowed the maintenance of one or several licenses to lapse or if the customer did not elect maintenance at the time of product purchase, the customer shall pay a license activation fee. The total is the number of lapsed years times the valid annual maintenance fee of each product. Or otherwise agreed between AVT and Customer

The customer is responsible to pay for all local taxes, including but not limited to value added, sales, use, occupation, excise, property taxes and import duties.

AVT shall inform the customer of any changes in established maintenance fees by sending a writing notice 60 days before the expiration date of the Agreement.

## **7. Software support services**

Support services consist of assessing and addressing questions or problem reports from customer and help solve these when they are caused by the AVT product itself, including the delivery of fixes or new versions of AVT to the End-User.

Support services include providing information and assistance on technical issues related to the installation, administration, product features and functions of AVT products, as well as assistance in determining why the AVT product may not be performing as expected.

Activation of AVT software support is initiated by customer by issuing a problem report (accompanied by a support file) in an email to AVT. The reported problem will be acknowledged within 1 working day. A solution, work-around or a plan to a solution will be provided within 5 working days.

These support services will be provided only for AVT installations that have a valid, registered and paid AVT support agreement for that license-id.

AVT provides error correction services on the current version of the AVT software only.

## **8. Limitation of Liability.**

In no event shall AVT be liable for any special, indirect, incidental, consequential, punitive or exemplary damages arising out of or in connection with this agreement or any acts or omissions associated therewith or relating to the use of any products furnished whether such claim is based on breach of warranty, contract, tort or other legal theory and regardless of the causes of such loss or damages or whether any other remedy provided herein fails. AVT's total liability shall not exceed one hundred twenty-five thousand Euros (€ 125.000,00).

## **9. Export Controls.**

None of the AVT licenses or underlying information or technology may be downloaded, resold, or otherwise exported or re-exported in violation of the laws and regulations of the European Union or the United States of America.

## **10. Governing Law.**

This Agreement shall be governed by and shall be construed and enforced in accordance with the laws of The Netherlands, without reference to the conflicts of law rules of any jurisdiction. The United Nations Convention on Contracts for the International Sale of Goods shall not apply to this Agreement.