

## **Altova MobileTogether Server Software License Agreement**

**THIS IS A LEGAL DOCUMENT -- RETAIN FOR YOUR RECORDS**

### **ALTOVA MOBILETOGETHER SERVER SOFTWARE LICENSE AGREEMENT**

Licensor:

Altova GmbH  
Rudolfsplatz 13a/9  
A-1010 Wien  
Austria

#### **Important - Read Carefully. Notice to User:**

**This Altova MobileTogether Server Software License Agreement (“Agreement”) is a legal document between you and Altova GmbH (“Altova”). It is important that you read this document before using the Altova-provided server software (“Software”) and any accompanying documentation, including, without limitation printed materials, ‘online’ files, or electronic documentation (“Documentation”). By clicking the “I accept” and “Next” buttons below, or by downloading, installing, or otherwise using the Software, you agree to be bound by the terms of this Agreement as well as the Altova Privacy Policy (“Privacy Policy”) including, without limitation, the warranty disclaimers, limitation of liability, data use and termination provisions below, whether or not you decide to purchase the Software. You agree that this Agreement is enforceable like any written agreement negotiated and signed by you. If you do not agree, you are not licensed to use the Software, and you must destroy any downloaded copies of the Software in your possession or control. You may print a copy of this Agreement as part of the installation process at the time of acceptance. Alternatively, a copy of this Agreement may be found at <https://www.altova.com/legal> and a copy of the Privacy Policy may be found at <https://www.altova.com/privacy>.**

#### **1. SOFTWARE LICENSE**

##### **A. License Grant.**

Upon your acceptance of this Agreement Altova grants you a non-exclusive, non-transferable (except as provided below), limited license, without the right to grant sublicenses, to install and use a copy of the Software as set forth in this Agreement.

The term of this license grant is dependent upon the number of years you purchase. The term of the license is delineated in your purchasing documents.

##### **B. Licensing by Number of Cores on Server**

You have the rights below for each server you properly license.

1. You must obtain a separate license for each Server. “Server” means a physical or virtual machine capable of running server software. For purposes of this definition, each virtual machine, hardware partition, or blade is considered to be a separate Server. You may not transfer the license from one server to another more than three (3) times per year. Each license may not be used on more than one (1) server at the same time.

2. You may license by Physical Cores on a Physical Server or by Virtual Cores available inside a virtual machine. “Physical Core” means a core in a Physical Processor. “Physical Processor” means a

processor in a physical hardware system. A “Virtual Core” means a Physical Core made available to a virtual machine by the virtualization software.

3. The number of core licenses required depends how the Software is deployed on a Server:

a. If you are running the Software inside an operating system on a Physical Server, then the number of core licenses you deploy to that Server must be equal to or greater than the number of Physical Cores.

b. If you are running the Software inside a virtual machine, then the number of core licenses you deploy must be equal to or greater than the number of Virtual Cores shown available in that virtual machine.

4. You may use any number of Running Instances of the Software on a Server to which you have deployed a license. “Running Instance” means an instance of the Software that is loaded into memory for execution.

5. While you may connect an unlimited number of Devices to the Server, performance and functionality may be limited by the hardware and software configuration, the devices connected thereto, the amount of data transmitted between the devices and the server, as well as other factors in your environment. “Device” means any computing device/instrument that is supported by the Software, e.g. a smartphone or tablet.

### **C. Backup and Archival Copies**

You may make one (1) backup and one (1) archival copy of the Software, provided your backup and archival copies are not installed or used on any computer and further provided that all such copies shall bear the original and unmodified copyright, patent and other intellectual property markings that appear on or in the Software. You may not transfer the rights to a backup or archival copy unless you transfer all rights in the Software as provided under Section 3.

**D. Key Codes, Upgrades and Updates.** Prior to your purchase and as part of the registration for the thirty (30) day evaluation period, as applicable, you will receive an evaluation key code. You will receive a purchase key code when you elect to purchase the Software from either Altova GmbH or an authorized reseller. The purchase key code will enable you to activate the Software beyond the initial evaluation period. You may not re-license, reproduce or distribute any key code except with the express written permission of Altova. If the Software that you have licensed is an upgrade or an update, then the latest update or upgrade that you download and install replaces all or part of the Software previously licensed. The update or upgrade and the associated license keys does not constitute the granting of a second license to the Software in that you may not use the upgrade or updated copy in addition to the copy of the Software that it is replacing and whose license has terminated.

**E. Title.** Title to the Software is not transferred to you. Ownership of all copies of the Software and of copies made by you is vested in Altova, subject to the rights of use granted to you in this Agreement.

**F. Reverse Engineering.** Except and to the limited extent as may be otherwise specifically provided by applicable law in the European Union, you may not reverse engineer, decompile, disassemble or otherwise attempt to discover the source code, underlying ideas, underlying user interface techniques or algorithms of the Software by any means whatsoever, directly or indirectly, or disclose any of the foregoing, except to the extent you may be expressly permitted to decompile under

applicable law in the European Union, if it is essential to do so in order to achieve operability of the Software with another software program, and you have first requested Altova to provide the information necessary to achieve such operability and Altova has not made such information available. Altova has the right to impose reasonable conditions and to request a reasonable fee before providing such information. Any information supplied by Altova or obtained by you, as permitted hereunder, may only be used by you for the purpose described herein and may not be disclosed to any third party or used to create any software which is substantially similar to the expression of the Software. Requests for information from users in the European Union with respect to the above should be directed to the Altova Customer Support Department.

#### **G. Other Restrictions.**

You may not rent, lease, lend, redistribute, sublicense, or transfer all or a portion of the Software, except to the limited extent set forth in Section 3 or as otherwise expressly provided. You may not permit any use of or access to the Software by any third party in connection with a commercial service offering, such as for a cloud-based or web-based SaaS offering.

You may not copy the Software except as expressly set forth above, and any copies that you are permitted to make pursuant to this Agreement must contain the same copyright, patent and other intellectual property markings that appear on or in the Software. You may not modify, adapt or translate the Software. You may not, directly or indirectly, encumber or suffer to exist any lien or security interest on the Software; knowingly take any action that would cause the Software to be placed in the public domain; or use the Software in any computer environment not specified in this Agreement.

You will comply with applicable law and Altova's instructions regarding the use of the Software. You agree to notify your employees and agents who may have access to the Software of the restrictions contained in this Agreement and to ensure their compliance with these restrictions.

**H. NO GUARANTEE. THE SOFTWARE IS NEITHER GUARANTEED NOR WARRANTED TO BE ERROR-FREE NOR SHALL ANY LIABILITY BE ASSUMED BY ALTOVA IN THIS RESPECT. NOTWITHSTANDING ANY SUPPORT FOR ANY TECHNICAL STANDARD, THE SOFTWARE IS NOT INTENDED FOR USE IN OR IN CONNECTION WITH, WITHOUT LIMITATION, THE OPERATION OF NUCLEAR FACILITIES, AIRCRAFT NAVIGATION, COMMUNICATION SYSTEMS, AIR TRAFFIC CONTROL EQUIPMENT, MEDICAL DEVICES OR LIFE SUPPORT SYSTEMS, MEDICAL OR HEALTH CARE APPLICATIONS, OR OTHER APPLICATIONS WHERE THE FAILURE OF THE SOFTWARE OR ERRORS IN DATA PROCESSING COULD LEAD TO DEATH, PERSONAL INJURY OR SEVERE PHYSICAL OR ENVIRONMENTAL DAMAGE. YOU AGREE THAT YOU ARE SOLELY RESPONSIBLE FOR THE ACCURACY AND ADEQUACY OF THE SOFTWARE AND ANY DATA GENERATED OR PROCESSED BY THE SOFTWARE FOR YOUR INTENDED USE AND YOU WILL DEFEND, INDEMNIFY AND HOLD ALTOVA, ITS OFFICERS AND EMPLOYEES HARMLESS FROM ANY THIRD PARTY CLAIMS, DEMANDS, OR SUITS THAT ARE BASED UPON THE ACCURACY AND ADEQUACY OF THE SOFTWARE IN YOUR USE OR ANY DATA GENERATED BY THE SOFTWARE IN YOUR USE.**

#### **2. INTELLECTUAL PROPERTY RIGHTS**

You acknowledge that the Software and any copies that you are authorized by Altova to make are the intellectual property of and are owned by Altova and its suppliers. The structure, organization and code of the Software are the valuable trade secrets and confidential information of Altova and its suppliers. The Software is protected by copyright, including without limitation by United States Copyright Law, international treaty provisions and applicable laws in the country in which it is being

used. You acknowledge that Altova retains the ownership of all patents, copyrights, trade secrets, trademarks and other intellectual property rights pertaining to the Software, and that Altova's ownership rights extend to any images, photographs, animations, videos, audio, music, text and "applets" incorporated into the Software and all accompanying printed materials. You will take no actions which adversely affect Altova's intellectual property rights in the Software. Trademarks shall be used in accordance with accepted trademark practice, including identification of trademark owners' names. Trademarks may only be used to identify printed output produced by the Software, and such use of any trademark does not give you any right of ownership in that trademark. Except as expressly stated above, this Agreement does not grant you any intellectual property rights in the Software. Notifications of claimed copyright infringement should be sent to Altova's copyright agent as further provided on the Altova Web Site.

### **3. LIMITED TRANSFER RIGHTS**

Notwithstanding the foregoing, you may transfer all your rights to use the Software to another person or legal entity provided that: (a) you also transfer this Agreement, the Software and all other software or hardware bundled or pre-installed with the Software, including all copies, updates and prior versions, and all copies of font software converted into other formats, to such person or entity; (b) you retain no copies, including backups and copies stored on a computer; (c) the receiving party secures a personalized key code from Altova; and (d) the receiving party accepts the terms and conditions of this Agreement and any other terms and conditions upon which you legally purchased a license to the Software. Notwithstanding the foregoing, you may not transfer education, pre-release, or not-for-resale copies of the Software.

### **4. PRE-RELEASE AND EVALUATION PRODUCT ADDITIONAL TERMS**

If the product you have received with this license is pre-commercial release or beta Software ("Pre-release Software"), then this Section applies. In addition, this section applies to all evaluation and/or demonstration copies of Altova software ("Evaluation Software") and continues in effect until you purchase a license. To the extent that any provision in this section is in conflict with any other term or condition in this Agreement, this section shall supersede such other term(s) and condition(s) with respect to the Pre-release and/or Evaluation Software, but only to the extent necessary to resolve the conflict. You acknowledge that the Pre-release Software is a pre-release version, does not represent final product from Altova, and may contain bugs, errors and other problems that could cause system or other failures and data loss. CONSEQUENTLY, THE PRE-RELEASE AND/OR EVALUATION SOFTWARE IS PROVIDED TO YOU "AS-IS" WITH NO WARRANTIES FOR USE OR PERFORMANCE, AND ALTOVA DISCLAIMS ANY WARRANTY OR LIABILITY OBLIGATIONS TO YOU OF ANY KIND, WHETHER EXPRESS OR IMPLIED. WHERE LEGALLY LIABILITY CANNOT BE EXCLUDED FOR PRE-RELEASE AND/OR EVALUATION SOFTWARE, BUT IT MAY BE LIMITED, ALTOVA'S LIABILITY AND THAT OF ITS SUPPLIERS SHALL BE LIMITED TO THE SUM OF FIFTY DOLLARS (USD \$50) IN TOTAL. If the Evaluation Software has a time-out feature, then the software will cease operation after the conclusion of the designated evaluation period. Upon such expiration date, your license will expire unless otherwise extended. Your license to use any output created with the Evaluation Software that contains generated program code (including Unrestricted Source Code) such as Java, C++, C, VB.NET or XSLT and associated project files and build scripts as well as generated XML, XML Schemas, documentation, UML diagrams, and database structures terminates automatically upon the expiration of the designated evaluation period but the license to use such output is revived upon your purchase of a license for the Software that you evaluated and used to create such output. Access to any files created with the Evaluation Software is entirely at your risk. You acknowledge that Altova has not promised or guaranteed to you that Pre-release Software will be announced or

made available to anyone in the future, that Altova has no express or implied obligation to you to announce or introduce the Pre-release Software, and that Altova may not introduce a product similar to or compatible with the Pre-release Software. Accordingly, you acknowledge that any research or development that you perform regarding the Pre-release Software or any product associated with the Pre-release Software is done entirely at your own risk. During the term of this Agreement, if requested by Altova, you will provide feedback to Altova regarding testing and use of the Pre-release Software, including error or bug reports. If you have been provided the Pre-release Software pursuant to a separate written agreement, your use of the Software is governed by such agreement. You may not sublicense, lease, loan, rent, distribute or otherwise transfer the Pre-release Software. Upon receipt of a later unreleased version of the Pre-release Software or release by Altova of a publicly released commercial version of the Software, whether as a stand-alone product or as part of a larger product, you agree to return or destroy all earlier Pre-release Software received from Altova and to abide by the terms of the license agreement for any such later versions of the Pre-release Software.

## **5. LIMITED WARRANTY AND LIMITATION OF LIABILITY**

**A. Limited Warranty and Customer Remedies.** Altova warrants to the person or entity that first purchases a license for use of the Software pursuant to the terms of this Agreement that (i) the Software will perform substantially in accordance with any accompanying Documentation for a period of ninety (90) days from the date of receipt, and (ii) any support services provided by Altova shall be substantially as described in Section 6 of this agreement. Some states and jurisdictions do not allow limitations on duration of an implied warranty, so the above limitation may not apply to you. To the extent allowed by applicable law, implied warranties on the Software, if any, are limited to ninety (90) days. Altova's and its suppliers' entire liability and your exclusive remedy shall be, at Altova's option, either (i) return of the price paid, if any, or (ii) repair or replacement of the Software that does not meet Altova's Limited Warranty and which is returned to Altova with a copy of your receipt. This Limited Warranty is void if failure of the Software has resulted from accident, abuse, misapplication, abnormal use, Trojan horse, virus, or any other malicious external code. Any replacement Software will be warranted for the remainder of the original warranty period or thirty (30) days, whichever is longer. This limited warranty does not apply to Evaluation and/or Pre-release Software.

**B. No Other Warranties and Disclaimer.** THE FOREGOING LIMITED WARRANTY AND REMEDIES STATE THE SOLE AND EXCLUSIVE REMEDIES FOR ALTOVA OR ITS SUPPLIER'S BREACH OF WARRANTY. ALTOVA AND ITS SUPPLIERS DO NOT AND CANNOT WARRANT THE PERFORMANCE OR RESULTS YOU MAY OBTAIN BY USING THE SOFTWARE. EXCEPT FOR THE FOREGOING LIMITED WARRANTY, AND FOR ANY WARRANTY, CONDITION, REPRESENTATION OR TERM TO THE EXTENT WHICH THE SAME CANNOT OR MAY NOT BE EXCLUDED OR LIMITED BY LAW APPLICABLE TO YOU IN YOUR JURISDICTION, ALTOVA AND ITS SUPPLIERS MAKE NO WARRANTIES, CONDITIONS, REPRESENTATIONS OR TERMS, EXPRESS OR IMPLIED, WHETHER BY STATUTE, COMMON LAW, CUSTOM, USAGE OR OTHERWISE AS TO ANY OTHER MATTERS. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, ALTOVA AND ITS SUPPLIERS DISCLAIM ALL OTHER WARRANTIES AND CONDITIONS, EITHER EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, SATISFACTORY QUALITY, INFORMATIONAL CONTENT OR ACCURACY, QUIET ENJOYMENT, TITLE AND NON-INFRINGEMENT, WITH REGARD TO THE SOFTWARE, AND THE PROVISION OF OR FAILURE TO PROVIDE SUPPORT SERVICES. THIS LIMITED WARRANTY GIVES YOU SPECIFIC LEGAL RIGHTS. YOU MAY HAVE OTHERS, WHICH VARY FROM STATE/JURISDICTION TO STATE/JURISDICTION.

**C. Limitation of Liability.** TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW EVEN IF A REMEDY FAILS ITS ESSENTIAL PURPOSE, IN NO EVENT SHALL ALTOVA OR ITS SUPPLIERS BE LIABLE FOR ANY SPECIAL, INCIDENTAL, DIRECT, INDIRECT OR CONSEQUENTIAL DAMAGES WHATSOEVER (INCLUDING, WITHOUT LIMITATION, DAMAGES FOR LOSS OF BUSINESS PROFITS, BUSINESS INTERRUPTION, LOSS OF BUSINESS INFORMATION, OR ANY OTHER PECUNIARY LOSS) ARISING OUT OF THE USE OF OR INABILITY TO USE THE SOFTWARE OR THE PROVISION OF OR FAILURE TO PROVIDE SUPPORT SERVICES, EVEN IF ALTOVA HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. IN ANY CASE, ALTOVA'S ENTIRE LIABILITY UNDER ANY PROVISION OF THIS AGREEMENT SHALL BE LIMITED TO THE AMOUNT ACTUALLY PAID BY YOU FOR THE SOFTWARE PRODUCT. Because some states and jurisdictions do not allow the exclusion or limitation of liability, the above limitation may not apply to you. In such states and jurisdictions, Altova's liability shall be limited to the greatest extent permitted by law and the limitations or exclusions of warranties and liability contained herein do not prejudice applicable statutory consumer rights of person acquiring goods otherwise than in the course of business. The disclaimer and limited liability above are fundamental to this Agreement between Altova and you.

**D. Infringement Claims.** Altova will indemnify and hold you harmless and will defend or settle any claim, suit or proceeding brought against you by a third party that is based upon a claim that the content contained in the Software infringes a copyright or violates an intellectual or proprietary right protected by United States or European Union law ("Claim"), but only to the extent the Claim arises directly out of the use of the Software and subject to the limitations set forth in Section 5 of this Agreement except as otherwise expressly provided. You must notify Altova in writing of any Claim within ten (10) business days after you first receive notice of the Claim, and you shall provide to Altova at no cost such assistance and cooperation as Altova may reasonably request from time to time in connection with the defense of the Claim. Altova shall have sole control over any Claim (including, without limitation, the selection of counsel and the right to settle on your behalf on any terms Altova deems desirable in the sole exercise of its discretion). You may, at your sole cost, retain separate counsel and participate in the defense or settlement negotiations. Altova shall pay actual damages, costs, and attorney fees awarded against you (or payable by you pursuant to a settlement agreement) in connection with a Claim to the extent such direct damages and costs are not reimbursed to you by insurance or a third party, to an aggregate maximum equal to the purchase price of the Software. If the Software or its use becomes the subject of a Claim or its use is enjoined, or if in the opinion of Altova's legal counsel the Software is likely to become the subject of a Claim, Altova shall attempt to resolve the Claim by using commercially reasonable efforts to modify the Software or obtain a license to continue using the Software. If in the opinion of Altova's legal counsel the Claim, the injunction or potential Claim cannot be resolved through reasonable modification or licensing, Altova, at its own election, may terminate this Agreement without penalty, and will refund to you on a pro rata basis any fees paid in advance by you to Altova. THE FOREGOING CONSTITUTES ALTOVA'S SOLE AND EXCLUSIVE LIABILITY FOR INTELLECTUAL PROPERTY INFRINGEMENT. This indemnity does not apply to situations where the alleged infringement, whether patent or otherwise, is the result of a combination of the Altova software and additional elements supplied by you.

## **6. SUPPORT AND MAINTENANCE**

Altova offers "Support & Maintenance Package(s)" ("SMP") for the Software that you have licensed, which is included with the annual license. The Support Period shall coincide with the license term.

For an annual software license, you are eligible to receive the version of the Software edition that you have licensed and all maintenance releases and updates for that edition that are released during

your Support Period. Maintenance releases, updates and upgrades may or may not include additional features.

Altova will provide Priority Technical Support to you for the duration of the Support Period. Priority Technical Support is provided via a Web-based support form only and Altova will make commercially reasonable efforts to respond via e-mail to all requests within forty-eight (48) hours during Altova's business hours and to make reasonable efforts to provide work-arounds to errors reported in the Software.

During the Support Period you may also report any Software problem or error to Altova. If Altova determines that a reported reproducible material error in the Software exists and significantly impairs the usability and utility of the Software, Altova agrees to use reasonable commercial efforts to correct or provide a usable work-around solution in an upcoming maintenance release or update, which is made available at certain times at Altova's sole discretion.

If Altova, in its discretion, requests written verification of an error or malfunction discovered by you or requests supporting example files that exhibit the Software problem, you shall promptly provide such verification or files, by email, telecopy, or overnight mail, setting forth in reasonable detail the respects in which the Software fails to perform. You shall use reasonable efforts to cooperate in diagnosis or study of errors. Altova may include error corrections in maintenance releases, updates, or new major releases of the Software. Altova is not obligated to fix errors that are immaterial. Immaterial errors are those that do not significantly impact use of the Software as determined by Altova in its sole discretion. Technical support only covers issues or questions resulting directly out of the operation of the Software and Altova will not provide you with generic consultation, assistance, or advice under any circumstances.

Updating Software may require the updating of software not covered by this Agreement before installation. Updates of the operating system and application software not specifically covered by this Agreement are your responsibility and will not be provided by Altova under this Agreement. Altova's obligations under this Section 6 are contingent upon your proper use of the Software and your compliance with the terms and conditions of this Agreement at all times. Altova shall be under no obligation to provide the above technical support if, in Altova's opinion, the Software has failed due to the following conditions: (i) damage caused by the relocation of the Software to another location or CPU; (ii) alterations, modifications or attempts to change the Software without Altova's written approval; (iii) causes external to the Software, such as natural disasters, the failure or fluctuation of electrical power, or computer equipment failure; (iv) your failure to maintain the Software at Altova's specified release level; or (v) use of the Software with other software without Altova's prior written approval. It will be your sole responsibility to: (i) comply with all Altova-specified operating and troubleshooting procedures and then notify Altova immediately of Software malfunction and provide Altova with complete information thereof; (ii) provide for the security of your confidential information; (iii) establish and maintain backup systems and procedures necessary to reconstruct lost or altered files, data or programs.

## **7. SOFTWARE ACTIVATION, UPDATES AND LICENSE METERING**

**A. License Metering.** The Software includes a separate License Server that is designed to monitor license compliance in your network. The License Server communicates with all Altova server products installed on your server machines on your network. You permit Altova to use your network for license compliance monitoring and metering and to generate compliance reports that are

communicated to Altova from time to time. The License Server must be used and the Software will not function if it cannot communicate with the License Server.

**B. License Compliance Reporting.** You are required to utilize the provided License Server, including any updates thereto that Altova may provide to you from time to time, to ensure compliance with this Agreement.

**C. Software Activation.** The Software may use your internal network and Internet connection for the purpose of transmitting license-related data at the time of installation, registration, use, or update to an Altova Master License Server and validating the authenticity of the license-related data in order to protect Altova against unlicensed or illegal use of the Software and to improve customer service. Activation is based on the exchange of license related data between your computer and the Altova Master License Server. You agree that Altova may use these measures and you agree to follow any applicable requirements. You further agree that use of license key codes that are not or were not generated by Altova and lawfully obtained from Altova, or an authorized reseller as part of an effort to activate or use the Software violates Altova's intellectual property rights as well as the terms of this Agreement. You agree that efforts to circumvent or disable Altova's copyright protection mechanisms, the License Server, or the Altova Master License Server violate Altova's intellectual property rights as well as the terms of this Agreement. Altova expressly reserves the rights to seek all available legal and equitable remedies to prevent such actions and to recover lost profits, damages and costs.

**D. LiveUpdate.** Altova provides a new LiveUpdate notification service to you, which is free of charge. Altova may use your internal network and Internet connection for the purpose of transmitting license-related data to an Altova-operated LiveUpdate server to validate your license at appropriate intervals and determine if there is any update available for you.

**E. Use of Data.** The terms and conditions of the Privacy Policy are set out in full at <https://www.altova.com/privacy> and are incorporated by reference into this Agreement. By your acceptance of the terms of this Agreement and/or use of the Software, you authorize the collection, use and disclosure of information collected by Altova for the purposes provided for in this Agreement and/or the Privacy Policy. Altova has the right in its sole discretion to amend this provision of the Agreement and/or Privacy Policy at any time. You are encouraged to review the terms of the Privacy Policy as posted on the Altova Web site from time to time.

**F. Audit Rights.** You agree that Altova may audit your use of the Software for compliance with the terms of this Agreement at any time, upon reasonable notice. In the event that such audit reveals any use of the Software by you other than in full compliance with the terms of this Agreement, you shall reimburse Altova for all reasonable expenses related to such audit in addition to any other liabilities you may incur as a result of such non-compliance.

**G. Notice to European Users.** Please note that the information as described in paragraph 7(D) above may be transferred outside of the European Economic Area, for purposes of processing, analysis, and review, by Altova, Inc., a company located in Beverly, Massachusetts, U.S.A., or its subsidiaries or Altova's subsidiaries or divisions, or authorized partners, located worldwide. You are advised that the United States uses a sectoral model of privacy protection that relies on a mix of legislation, governmental regulation, and self-regulation. You are further advised that the Council of the European Union has found that this model does not provide "adequate" privacy protections as contemplated by Article 25 of the European Union's Data Directive. (Directive 95/46/EC, 1995 O.J. (L 281) 31). Article 26 of the European Union's Data Directive allows for transfer of personal data from



the European Union to a third country if the individual has unambiguously given his consent to the transfer of personal information, regardless of the third country's level of protection. By agreeing to this Agreement, you consent to the transfer of all such information to the United States and the processing of that information as described in this Agreement and the Privacy Policy.

## **8. TERM AND TERMINATION**

Absent renewal, the Software will automatically terminate at the end of the term. This Agreement may be terminated (a) by your giving Altova written notice of termination; (b) by Altova, at its option, giving you written notice of termination if you commit a breach of this Agreement and fail to cure such breach within ten (10) days after notice from Altova; or (c) at the request of an authorized Altova reseller in the event that you fail to make your license payment or other monies due and payable. In addition, the Agreement governing your use of a previous version of the Software that you have upgraded or updated is terminated upon your acceptance of the terms and conditions of the Agreement accompanying such upgrade or update. Upon any termination of the Agreement, you must cease all use of the Software that this Agreement governs, destroy all copies then in your possession or control and take such other actions as Altova may reasonably request to ensure that no copies of the Software remain in your possession or control. The terms and conditions set forth in Sections 1(G), 1(H), 1(I), 1(J), 2, 5(B), 5(C), 5(D), 7(D), 7(E), 9, 10 and 11 survive termination as applicable.

## **9. RESTRICTED RIGHTS NOTICE AND EXPORT RESTRICTIONS**

The Software was developed entirely at private expense and is commercial computer software provided with **RESTRICTED RIGHTS**. Use, duplication or disclosure by the U.S. Government or a U.S. Government contractor or subcontractor is subject to the restrictions set forth in this Agreement and as provided in FAR 12.211 and 12.212 (48 C.F.R. §12.211 and 12.212) or DFARS 227. 7202 (48 C.F.R. §227-7202) as applicable. Consistent with the above as applicable, Commercial Computer Software and Commercial Computer Documentation licensed to U.S. government end users only as commercial items and only with those rights as are granted to all other end users under the terms and conditions set forth in this Agreement. Manufacturer is Altova GmbH, Rudolfsplatz, 13a/9, A-1010 Vienna, Austria/EU.

You may not use or otherwise export or re-export the Software or Documentation except as authorized by United States law and the laws of the jurisdiction in which the Software was obtained. In particular, but without limitation, the Software or Documentation may not be exported or re-exported (i) into (or to a national or resident of) any U.S. embargoed country or (ii) to anyone on the U.S. Treasury Department's list of Specially Designated Nationals or the U.S. Department of Commerce's Table of Denial Orders. By using the Software, you represent and warrant that you are not located in, under control of, or a national or resident of any such country or on any such list.

## **10. U.S. GOVERNMENT ENTITIES**

Notwithstanding the foregoing, if you are an agency, instrumentality or department of the federal government of the United States, then this Agreement shall be governed in accordance with the laws of the United States of America, and in the absence of applicable federal law, the laws of the Commonwealth of Massachusetts will apply. Further, and notwithstanding anything to the contrary in this Agreement (including but not limited to Section 5 (Indemnification)), all claims, demands, complaints and disputes will be subject to the Contract Disputes Act (41 U.S.C. §§7101 et seq.), the Tucker Act (28 U.S.C. §1346(a) and §1491), or the Federal Tort Claims Act (28 U.S.C. §§1346(b), 2401-2402, 2671-2672, 2674-2680), FAR 1.601(a) and 43.102 (Contract Modifications); FAR

12.302(b), as applicable, or other applicable governing authority. For the avoidance of doubt, if you are an agency, instrumentality, or department of the federal, state or local government of the U.S. or a U.S. public and accredited educational institution, then your indemnification obligations are only applicable to the extent they would not cause you to violate any applicable law (e.g., the Anti-Deficiency Act), and you have any legally required authorization or authorizing statute.

#### **11. THIRD PARTY SOFTWARE**

The Software may contain third party software which requires notices and/or additional terms and conditions. Such required third party software notices and/or additional terms and conditions are located at our Website at <https://www.altova.com/legal/3rdparty> and are made a part of and incorporated by reference into this Agreement. By accepting this Agreement, you are also accepting the additional terms and conditions, if any, set forth therein.

#### **12. TRANSLATIONS**

Where Altova has provided you with a foreign translation of the English language version, you agree that the translation is provided for your convenience only and that the English language version will control. If there is any contradiction between the English language version and a translation, then the English language version shall take precedence.

#### **13. JURISDICTION, CHOICE OF LAW, AND VENUE**

If you are located in the European Union and are using the Software in the European Union, then this Agreement will be governed by and construed in accordance with the laws of the Republic of Austria (excluding its conflict of laws principles and the U.N. Convention on Contracts for the International Sale of Goods) and you expressly agree that exclusive jurisdiction for any claim or dispute with Altova or relating in any way to your use of the Software resides in the Handelsgericht, Wien (Commercial Court, Vienna) and you further agree and expressly consent to the exercise of personal jurisdiction in the Handelsgericht, Wien (Commercial Court, Vienna) in connection with any such dispute or claim.

In all other circumstances this Agreement will be governed by and construed in accordance with the laws of the Commonwealth of Massachusetts, USA (excluding its conflict of laws principles and the U.N. Convention on Contracts for the International Sale of Goods) and you expressly agree that exclusive jurisdiction for any claim or dispute with Altova or relating in any way to your use of the Software resides in the federal or state courts of the Commonwealth of Massachusetts and you further agree and expressly consent to the exercise of personal jurisdiction in the federal or state courts of the Commonwealth of Massachusetts in connection with any such dispute or claim.

#### **14. GENERAL PROVISIONS**

This Agreement contains the entire agreement and understanding of the parties with respect to the subject matter hereof, and supersedes all prior written and oral understandings of the parties with respect to the subject matter hereof. Any notice or other communication given under this Agreement shall be in writing and shall have been properly given by either of us to the other if sent by certified or registered mail, return receipt requested, or by overnight courier to the address shown on Altova's Web site for Altova and the address shown in Altova's records for you, or such other address as the parties may designate by notice given in the manner set forth above. This Agreement will bind and inure to the benefit of the parties and our respective heirs, personal and legal representatives, affiliates, successors and permitted assigns. The failure of either of us at any time to require performance of any provision hereof shall in no manner affect such party's right at a

later time to enforce the same or any other term of this Agreement. This Agreement may be amended only by a document in writing signed by both of us. In the event of a breach or threatened breach of this Agreement by either party, the other shall have all applicable equitable as well as legal remedies. Each party is duly authorized and empowered to enter into and perform this Agreement. If, for any reason, any provision of this Agreement is held invalid or otherwise unenforceable, such invalidity or unenforceability shall not affect the remainder of this Agreement, and this Agreement shall continue in full force and effect to the fullest extent allowed by law. The parties knowingly and expressly consent to the foregoing terms and conditions.

Last updated: 2018.09.28