

Altova MobileTogether Server Software License Agreement

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ALTOVA MOBILETOGETHER SERVER SOFTWARE LICENSE AGREEMENT

Licensors:

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

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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. Licenses, 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 license. You will receive a permanent license when you elect to purchase the Software from either Altova GmbH or an authorized reseller. The permanent license will enable you to activate the Software beyond the initial evaluation period. You may not re-license, reproduce or distribute any license 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 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.

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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

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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.

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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.

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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.

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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. Personal Data Stays in EU. All personal data, as that term is defined by Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 and related revisions and updates, that may be transmitted to Altova under Section 7 herein, is stored, processed, analyzed, and/or managed in the EU and no such data is transmitted outside of the EU.

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.

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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.

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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.

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