

ALTOVA PRODUCT CONSULTING AGREEMENT

(USA & Canada only)



Customer

Customer Name/Title

E-mail

Telephone

Invoice Address:

Company Name

Address 1

Address 2

Country

City/State/Zip

State

Brief Description of Problem/Task

Customer may limit the number of service hours to be performed for Customer and Altova shall not charge for hours above the specified limit without express written authorization from Customer. While Altova strives to complete all projects within the service hour limitation set by Customer, Altova makes no guarantees or assurances that a solution for the project is possible or will be completed within said hourly limitation. If Altova determines that it is unable to implement a solution, Altova will contact customer as soon as possible and only charge for the time needed to reach that conclusion.

Hourly Rate / Limit / Credit Card Info

Altova consultants bill at a rate of **160 USD** per hour.

Customer may limit the number of hours to be performed:

Max. _____ hours

Signature

VISA MasterCard American Express

Name/Title

Credit Card Number

Date

_____/_____
Expiry Month/Year

ALTOVA PRODUCT CONSULTING AGREEMENT

This **ALTOVA PRODUCT CONSULTING AGREEMENT** (the "Agreement"), effective as of the date last signed below, is entered into by and between Altova GmbH ("Altova"), having a principal place of business at Rudolfplatz 13a/9, A-1010, Wien, Austria, and **Customer**, as specified on page 1 (hereafter "Customer").

For good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereby agree as follows:

1. Extent of Services. Customer retains Altova to perform and Altova agrees to use its commercially reasonable efforts to perform the services on an hourly basis on behalf of Customer. Such services are collectively referred to as "Services." Customer shall describe the project to Altova and Altova shall work with Customer to form a solution. Altova does not guarantee any result to any project or even that a solution is possible. If Altova determines that it is unable to implement a solution, Altova will contact Customer as soon as possible and only charge for the time needed to reach that conclusion. No communication between Customer and Altova may modify or amend the terms set forth herein except via written agreement explicitly approved by an officer of Altova and an authorized representative of Customer.

2. Term. The term of this Agreement shall commence as of the Effective Date of this Agreement and shall continue until Altova completes the Services and receives payment from Customer of all fees and costs owed by Customer hereunder, unless sooner terminated as set forth in Section 13 of this Agreement.

3. Compensation.

(a) Altova consultants bill at the rate as specified on page 1. Customer may limit the number of service hours to be performed for Customer and Altova shall not charge for hours above the specified limit without express written authorization from Customer. While Altova strives to complete all projects within the service hour limitation set by Customer, Altova makes no guarantees or assurances that the project can or will be completed within said hourly limitation. Altova will consider time communicating with Customer as billable time. All services will be performed at Altova's premises and Altova consultants will not be permitted to travel to Customer's location to perform said services.

(b) Altova shall invoice Customer upon completion of the Project. Payment shall be made in euros within thirty (30) days after the date of each invoice (the "Invoice Due Date"). Customer agrees to pay a late charge of two percent (2%) per month (or part of a month), or the maximum rate permitted by applicable law, whichever is less, for all amounts not paid by the Invoice Due Date. In addition, to all other remedies, Altova shall be entitled to withhold Services during the period of time that the payment remains outstanding.

(c) Customer will pay or reimburse all federal, state and local taxes, withholdings, duties, fees and other governmental charges of any kind (exclusive of taxes on Altova's gross revenues or net income), arising on or measured by amounts payable to Altova under this Agreement, or furnish Altova with evidence acceptable to the taxing authority to sustain an exemption therefrom, and such amounts shall not be considered a part of, a deduction from or an offset against the fees charged to Customer hereunder. If Customer is required to pay any withholding tax, charge or levy in respect of any payments due to Altova hereunder, Customer agrees to gross up payments actually made such that Altova shall receive sums due

hereunder in full and free of any deduction for any such withholding tax, charge or levy.

4. Ownership and Proprietary Rights. The parties acknowledge and agree that no ownership rights, license rights or warranties are granted or provided by Altova to Customer under this Agreement with respect to any software, code, documentation, reports or other intellectual property created or provided by Altova in performing the Services (collectively, "Software") and Altova or its Licensor will own all right, title and interest in and to any Software. Altova or its Licensor will own all right, title and interest (including the copyright and any other intellectual property rights) in and to any other materials distributed in connection with the Services ("Materials") and Customer will own the tangible materials. Customer shall use the Materials and Software for Customer's internal purposes only, solely in conjunction with the Services.

5. Confidential Information. Any information that the receiving party knows or has reason to know (either because such information is marked or otherwise identified by the disclosing party orally or in writing as confidential or proprietary, has commercial value, or because it is not generally known in the relevant trade or industry), including but not limited to any Software and Materials (which are confidential information of Altova) and the terms of this Agreement, is confidential information of the other party and shall remain the sole property of the disclosing party. Each party agrees that it shall not disclose such information (except on a need-to-know basis to employees, agents and representatives who are legally obligated to protect the confidentiality of such information) and it shall not use, modify, copy, or reproduce such confidential information other than to fulfill its obligations under this Agreement. The receiving party shall, upon the termination of this Agreement, return to the disclosing party all tangible manifestations of confidential information received by the receiving party pursuant to this Agreement (and all copies and reproductions thereof) or, at the disclosing party's request, destroy such information and certify as to such destruction. The prohibitions contained in this Section shall not apply to information (a) already lawfully known to or independently developed by the receiving party, (b) disclosed in published materials, (c) generally known to the public, (d) lawfully obtained from any third party or (e) tangible materials provided to the Customer. Neither party shall disclose to third parties, other than its agents and representatives on a need-to-know basis, the terms of this Agreement, including any exhibits or schedules hereto, without the prior written consent of the other party, except either party shall be entitled to disclose (i) such terms to the extent required by law; and (ii) the existence of this Agreement. Altova and its personnel may freely use and disclose, including in the performance of services for others, their general skills, knowledge, experience, and know-how, including, without limitation, general processes, concepts, methods, techniques and other residual information learned in the performance of the Services, subject only to Altova's obligations set forth above in this Section regarding Customer's confidential information and ownership rights.

6. Warranties; Disclaimers. ALTOVA WILL PERFORM THE SERVICES IN A PROFESSIONAL AND WORKMANLIKE MANNER USING TRAINED PERSONNEL. EXCEPT AS PROVIDED IN THIS SECTION 6, THE SERVICES AND ANY SOFTWARE OR MATERIALS PROVIDED BY ALTOVA TO CUSTOMER SHALL BE PROVIDED "AS IS" WITHOUT ANY WARRANTIES OR REPRESENTATIONS WHATSOEVER, EITHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE. ALTOVA SPECIFICALLY DISCLAIMS, AND CUSTOMER HEREBY EXPRESSLY WAIVES, ALL IMPLIED WARRANTIES, INCLUDING THOSE OF

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MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT. ALTOVA SHALL NOT BE LIABLE FOR ANY SERVICES OR PRODUCTS PROVIDED BY ANY THIRD PARTY VENDORS, DEVELOPERS OR CONSULTANTS IDENTIFIED OR REFERRED TO CUSTOMER BY ALTOVA DURING PERFORMANCE OF THE SERVICES, OR OTHERWISE, EXCEPT ALTOVA WILL BE LIABLE FOR SERVICES THAT ARE PROVIDED BY A SUBCONTRACTOR TO ALTOVA. ALTOVA IS NOT LIABLE FOR ANY CLAIMS MADE BY DEVELOPERS, VENDORS OR CONSULTANTS WITH RESPECT TO THEIR PRODUCTS USE WITH OR SUPPORT FOR XML AND RELATED SPECIFICATIONS, STANDARDS, AND RECOMMENDATIONS. ALTOVA DOES NOT WARRANT THAT THE SERVICES AND ANY SOFTWARE OR MATERIALS PROVIDED BY ALTOVA TO CUSTOMER HEREUNDER WILL MEET THE REQUIREMENTS OF CUSTOMER AND ALTOVA ASSUMES NO RESPONSIBILITY FOR THE QUALITY, UTILITY, ACCURACY OR SECURITY OF THE SERVICES, SOFTWARE OR MATERIALS OR USEFULNESS OF THE SAME FOR ANY PURPOSE. ALTOVA DOES NOT GUARANTEE NETWORK SECURITY OR PREVENT SECURITY INCIDENTS. ALTOVA ACCEPTS NO RESPONSIBILITY OR LIABILITY FOR THE SECURITY OF CUSTOMER'S ELECTRONIC ENVIRONMENT, WHETHER OR NOT ALTOVA HAS INSTALLED OR PROVIDES ANY SECURITY EQUIPMENT, SOFTWARE, OR SERVICE.

7. Exclusive Remedy. If the Services are not performed substantially as warranted, then, upon Customer's written request and subject to Altova's consent which shall not be unreasonably withheld, Altova shall use commercially reasonable efforts to promptly re-perform, or cause to be re-performed, such Services, at no charge to the Customer. Such re-performance shall be Customer's exclusive remedy and Altova's sole liability for any such non-performance. If Altova is unable to remedy such defect within sixty (60) days (unless a longer period is mutually agreed to by the parties), then Customer's exclusive remedy and Altova's entire liability in contract, tort, or otherwise shall be as set forth in Section 8 below. Customer must report any deficiencies in the Services to Altova in writing within 60 days of the later of (i) performance of the Services; or (ii) discovery of the breach of such warranty, but in no event longer than 90 days from the delivery date of such deliverable in order to receive warranty remedies.

8. Limitation of Liability. Except for each party's liability arising out of its payment and the willful misconduct of such party, and to the fullest extent permissible by law, the entire liability of each party for any claims arising under this Agreement, whether in contract, warranty, tort, strict liability, or otherwise, shall be limited to the amount Altova has received from customer in connection with this Agreement. Neither party shall be liable in connection with this Agreement for any special, indirect, incidental or consequential damages of any kind or nature whatsoever, including without limitation, business interruption, lost profits or loss of records or data, regardless of the form of action or legal or equitable theory and whether or not such damages are foreseeable or a party has been advised of the possibility of such damages.

The provisions of this Section 8 allocate the risks under this Agreement between Altova and Customer. Altova's pricing reflects this allocation of risk and the limitation of liability specified herein. Altova and Customer expressly agree that the liability limitations contained in this Section shall remain in effect even if an exclusive remedy in this Agreement is determined to fail of its essential purpose.

9. Relationship. The relationship of Altova and Customer established by this Agreement is that of independent contractors,

and nothing contained in this Agreement shall be construed to (i) give either party the power to direct and control the day-to-day activities of the other; (ii) deem the parties to be acting as agents, partners, joint venturers, co-owners or otherwise as participants in a joint undertaking; or (iii) allow either party to create or assume any obligation on behalf of the other party for any purpose whatsoever. Moreover, under no circumstances shall any employees of one party be deemed to be the employee of the other party for any purpose. Each party shall pay all wages, salaries, and other amounts due its respective employees relative to this agreements and shall be responsible for all obligations respecting them relating to income tax withholdings, unemployment insurance premiums, worker's compensation, healthcare and pension plan contributions and other similar responsibilities.

10. Cooperation. Altova shall not be responsible for any deficiency in provision of the Services resulting from Customer's failure to provide full cooperation and Customer shall be liable for all additional fees and other expenses incurred by Altova relating thereto. If the relevant requirements, project plans, schedule, specifications, scope, design, software, hardware, or system environment or architecture are changed or otherwise affected by Customer or any other person or entity other than Altova, Altova shall not be responsible for any deficiency in provision of the Services if resulting from such change and Customer shall be liable for all additional fees and other expenses incurred by Altova relating thereto.

11. Excused Performance. Neither Altova nor Customer shall be deemed to be in default of this Agreement or be liable for any delay or failure in performance, except for payments of money, resulting directly or indirectly from any cause reasonably beyond its control, including but not limited to, an act of God, civil or military authority, civil disturbance, war, terrorism, strike, fire, storm, earthquake, accident, acts of vandals, or hackers, provided that the other party may terminate this Agreement if the non-performing party fails to perform its obligations hereunder for a period of time exceeding thirty (30) days following such occurrence. The time within which Altova is required to perform in accordance with the terms and conditions of this Agreement shall be extended for any delays caused in whole or in part by Customer, and Customer shall compensate Altova for any additional Altova resources and/or time required as a result of any such delay.

12. Non-solicitation. During the term of this Agreement and for a period of twelve (12) months thereafter, Customer shall not, directly or indirectly, solicit for employment, whether as an employee or independent contractor, any employee of Altova that was involved in providing the Services, or cause or induce any such person to terminate his or her employment with Altova. In the event that Customer breaches this provision, the parties hereby agree that Customer will pay Altova, as liquidated damages, an amount equal to twice the then current annual compensation, including but not limited to salary, bonus, and other perks of the employee.

13. Termination.

(a) Termination for Convenience. Either party may terminate this Agreement at any time by providing the other party with thirty (30) days' written notice.

(b) Effect of Termination. Customer shall pay Altova all accrued and unpaid fees outstanding as of the effective date of termination.

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(c) **Effect of Termination; Survival.** Termination of this Agreement shall not limit either party from pursuing any other remedies available to it, including injunctive relief, nor shall termination relieve Customer of its obligation to pay all charges payable by Customer hereunder. The terms of Sections 3, 4, 5, 6, 7, 8, 9, 12 and 14 shall survive termination of this Agreement.

14. Miscellaneous.

(a) **Publicity.** The parties may not make any public statement, press release, or other announcement relating to the terms of or existence of this Agreement without the prior written consent of the other party, except as required by law. Notwithstanding the preceding sentence, Altova may identify Customer as a customer on any Altova customer list published, in print or electronically.

(b) **Notices.** Any notice required or permitted hereunder shall be in writing and delivered (i) by personal delivery when delivered personally; (ii) by established overnight courier upon written verification of receipt; (iii) by facsimile transmission when receipt is confirmed electronically or in writing; or (iv) by certified or registered mail, return receipt requested, upon verification of receipt. For Altova, addresses to Altova GmbH, Thomas Kefer, Rudolfsplatz 13a/9 A-1010, Wien, Austria EU; and if to Customer, to any address provided to Altova pursuant to this Agreement.

(c) **Waiver and Severability; Modification.** The waiver of one breach or default under this Agreement will not constitute the waiver of any subsequent breach or default nor shall any delay or omission on the part of a party to avail itself of any right or remedy that it has hereunder impair such right or remedy or operate as a waiver of any right or remedy. Any waiver by Altova of any breach or default under this Agreement or modification of this Agreement must be made in writing referring to this Agreement, specifically stating its intention to affect a waiver or modification, and executed by an authorized corporate officer of Altova. Any provision of this Agreement held to be illegal or unenforceable will be deemed amended to the minimum extent necessary to make it legal or enforceable, or if it cannot be so amended without materially altering the intention of the parties, it will be stricken and the remainder of this Agreement will continue in full force and effect.

(d) **Governing Law; Dispute Resolution.** This Agreement shall 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.

(e) **No Other Agreement.** This Agreement sets forth the entire understanding of the parties with respect to the Services and supersedes any prior negotiations, understandings or agreements with respect to the subject matter hereto. Except as expressly set forth herein, neither party has made any statement, representation, warranty or agreement in connection herewith which has been relied upon by the other party or which acted as an inducement for the other party to enter into this Agreement or which shall be deemed binding.

(f) **Altova Software.** This Agreement does not govern the use of Software or Altova software that is publicly available for sale. Use of all such software is governed by the terms of an Altova Software License Agreement. Altova's ownership rights, Customer's license rights and obligations and any disclaimers of warranties made by Altova with respect to any Software provided by Altova to Customer under this Agreement shall be governed by the applicable terms and conditions related to Software as set forth in an Altova Software License Agreement

(g) **Applicable Laws; Export Administration.** Each party agrees to comply with all applicable laws and regulations. Each party agrees to comply with all relevant export laws and regulations to assure that neither any Software deliverable, if any, nor any direct product thereof is (a) exported, directly or indirectly, in violation of the export laws, or (b) used for any purposes prohibited by the export laws, including without limitation, nuclear, chemical or biological weapons proliferation.

(h) **Insurance.** Customer will maintain in effect during the term of this Agreement general liability insurance in an amount and covering such risks as are reasonable and customary for businesses engaged in a similar business.

In witness hereof, the parties have executed this Agreement effective as of the Effective Date of this Agreement.

CUSTOMER

Signature: _____

Name: _____

Title: _____

Date: _____

ALTOVA GMBH

Signature: _____

Name: _____

Title: _____

Date: _____

Please fax the signed form to +1 (978) 816-1607