

# General Terms and Conditions for Software License Agreements of Paterva

(Effective 23 July 2018)

These General Terms and Conditions apply to all licenses (hereinafter referred to as “**Software Licenses**“) which are issued by Paterva (Pty) Ltd. (incorporated in South Africa under registration number 2008/005705/07), (hereinafter referred to as “**Licensor**“) to its customers (hereinafter referred to as “**Licensee**“) (Licensor and Licensee also referred to as “**Party**“ and collectively the “**Parties**“), and which refer to the client components “Maltego XL”, “Maltego Classic”, “Maltego CE”, “Casefile” (“**Client Components**“) or the server components “private CTAS”, “iTDS”, “Comms Server”, “MDS” (“**Server Components**“) (Client Components and Server Components as well as other computer programs provided by the Licensor hereinafter also referred to as “**Software**“). Software subject to these General Terms and Conditions is the intellectual property of the Licensor and/or Maltego Technologies GmbH, registered in the district court Munich, Germany under no. HRB 236523 (“**Maltego**“). To the extent that Software is owned by Maltego, the Licensor has sufficient rights to license same to the Licensee.

## 1. Contractual Object

- 1.1. These General Terms and Conditions govern the Software Licenses issued to the Licensee by the Licensor by way of a **Software License Agreement**. Sec. 3 specifies the scope of each Software License subscribed regarding the specific Software being licensed as well as the content, location, time and extent of the user rights.
- 1.2. The number of subscribed Software Licenses and the software components to which these Licenses refer are specified in the Electronic Delivery Document (sec. 2.2.) issued by the Licensor to the Licensee.
- 1.3. The Licensee is obliged to pay the fee according to sec. 6. The fee constitutes consideration for the rights to use the Software.

## 2. Conclusion of Contract

- 2.1. Software License Agreements are concluded in one of the following ways:
  - (a) If the Licensee orders Software from the Licensor online via a website, the Licensee makes a binding offer by completing and submitting the online order form and confirming to accept these General Terms and Conditions and the data protection statement by ticking the relevant box. The contract shall become effective, if the Licensor sends via e-mail an explicit declaration of acceptance to the Licensee in addition to an automatic order confirmation.
  - (b) If the Licensee has requested a quotation from the Licensor or has sent a purchase request to the Licensor, the Licensor will send together with its binding offer a contract form via e-mail to the Licensee. The contract shall become effective including these General Terms and Conditions, if the Licensee returns

the completed contract form (via post or e-mail) to the Licensor or otherwise accepts the binding offer of the Licensor (e.g. via its own order form).

- (c) If a Software License Agreements and/or these General Terms and Conditions have not been effectively agreed upon according to sec. 2.1. (a) or (b), then at the latest a Software License Agreements including these General Terms and Conditions is deemed concluded with the user upon them installing, copying, or otherwise using the Software. This applies explicitly if the user has bought the Software from a Reseller ("**Reseller Version**", sec. 9) or if he is rightfully using a training, trial or other free version of the Software ("**Free Version**").
- 2.2. Upon or with the conclusion of the contract the Licensor sends an electronic delivery document (pdf) via e-mail to the Licensee ("**Electronic Delivery Document**") which contains a list of the licenses subscribed, the necessary access information for downloading and installing the software and links for downloading the documentation. In case of a Reseller Version the Electronic Delivery Document is only sent to the End User of the Software.
- 2.3. If the Licensee subscribes to more than one Software License form the Licensor, each subscription constitutes a separate Software License Agreement. Software upgrades or subscriptions to additional Software Licenses constitute separate Software License Agreements to the effect that Software Licenses held by the Licensee may expire on different dates. Upgrades and additional subscriptions are subject to these General Terms and Conditions, even if the Licensee has not explicitly consented to them at the time of the upgrade or the additional subscription.

### **3. Scope and Grant of Software Licenses**

- 3.1. Software Licenses subscribed under these General Terms and Conditions grant a non-exclusive, non-transferrable and non-sublicensable right to temporarily use the software component. At the time of installation of the software component the Licensee has to choose between one of the following two modes of usage:
  - (a) Either the Software may be used as a personalized license, which is valid only for one specific user (but may be used by the same user on several computers or mobile devices). If the Licensee wishes a Software License for more than one user, e.g. several employees, it needs to subscribe individual Software Licenses for each of these users.
  - (b) Or the Software may be used as a device-specific license, which is valid only for one specific computer or mobile device that may be used by several individuals. However, device-specific Licences may not be used concurrently by more than one individual on the same computer.

The Licensee is not entitled to use the Software in the two modes of usage at the same time. Thus, as soon as one of the alternatives has been selected on installation of the Software, the other alternative mode of usage may not be used.

Despite any other term of these General Terms and Conditions, the Maltego CE Client Component may be used for non-commercial purposes only and may not be used for commercial gain or monetary compensation.

- 3.2. It is the Licensee's exclusive responsibility to ensure that using the Software conforms with applicable laws, in particular of countries in which the Software is used. The Software may not be used in the generation of unsolicited email (spam) or for unethical purposes. The Licensee warrants that: (i) it is not a citizen, national, permanent resident of, or incorporated or organized to do business in, and is not under the control of the government of any country to which the United States or European Union embargoes goods; (ii) it is not included on any list of sanctioned or ineligible parties maintained by the United States or European Union; (iii) Licensee will not sell, export, re-export, transfer, use, or enable the use of the Software, its related technology and services, or any other items that may be provided by Licensor, directly or indirectly: (a) to or for end-use in or by the countries listed in (i) above or any citizens, nationals or permanent residents of such countries; (b) to or for end-use by any person or entity determined by any United States or European Union agency to be ineligible to receive exports, including but not limited to persons and entities designated on the lists described in (ii) above; and (c) to or for end-uses prohibited by United States or European Union export or sanctions laws and regulations. The Licensee shall indemnify the Licensor against all liability, claims, damages, cost and expenses suffered as a result of the Licensee's use of the Software not complying with applicable law or the Licensee's breach of the warranties and provisions in this clause 3.2.
- 3.3. Software Licenses entail the right to download, install and run the Software. The Licensee may create backup copies, restricted to absolutely necessary numbers, should it be necessary to do so due to reasons of data security or the retention of a quick reactivation of the computer system after a total failure of the scheduled backup of the total data storage. The relevant data carriers are to be designated as such. The backup copies may only be used for archive purposes.
- 3.4. Notwithstanding sec. 3.1. and sec. 3.3. the Licensee has no right to reproduce or copy the Software or the Documentation. The Licensee shall not translate, adapt, develop, vary, modify, disassemble, decompile or reverse engineer the Software or allow any third party to do so. The Licensee shall not circumvent any licensing, control, security or encryption features or reverse engineer any communication protocols. The Licensee is not permitted to sell, lend, rent, or sublicense the Software or to reproduce or to make the Software or the Documentation available to third parties.
- 3.5. Copyright markings, serial numbers as well as other characteristics serving purposes of identification of the Software, may not be eliminated or changed. The same applies to suppressing the display of such features on the screen.
- 3.6. The Licensee shall be obliged to take suitable measures to prevent unauthorised access to the Software and the Documentation by third parties. The Licensee shall keep the original data that was supplied to it and the backup copies in a safe place secured against unauthorised access by third parties. Compliance with these General Terms and Conditions and with the provisions of copyright law must be emphasised to the Licensee's employees and the Licensee shall be liable to the Licensor for the actions of the Licensee's employees.

#### **4. Download, Update, Upgrade, Support**

- 4.1. The Software will be delivered by download; no hardware is included. If the Licensee is provided with access data for the download (such as logins, passwords, etc.), it will keep all access data strictly confidential and will refrain from passing it on to third parties. The Licensee will take reasonable measures to protect access data against unauthorized use by third parties. The Licensee will immediately notify the Licensor in writing if any access data is accessed by any unauthorized party.
- 4.2. At any time, the Licensee has the right to upgrade or downgrade Software Licenses to other software editions offered by the Licensor. Up- or downgrades neither lead to a prolongation of existing Software License Agreements nor trigger the beginning of a new Contract Year (as defined in sec. 11.1.).
- (a) If the Licensee downgrades the Software to a cheaper product, no payment will be refunded for the current Contract Year (sec. 11.1). If the Software License Agreement is prolonged beyond the current Contract Year, each of the following Contract Years will be charged with the Renewal Annual Rate (sec. 6.1.) of the cheaper Software.
- (b) If the Licensee upgrades the Software to a more expensive product, the Licensee has to pay the **Upgrade Rate** on top of the Initial Annual Rate. The applicable Upgrade Rate is the price difference between the Initial Annual Rate (sec. 6.1.) of the more expensive product and the Initial Annual Rate of the cheaper product. The Upgrade Rate covers the Software use for the remaining time of the current Contract Year (sec. 11.1.). If the Software License Agreement is prolonged beyond the current Contract Year, each of the following Contract Years will be charged with the Renewal Annual Rate (sec. 6.1.) of the more expensive Software.
- 4.3. The Licensor provides support by the following means:
- (a) The Licensor or its contractors provides a basic e-mail support. The Licensor ensures that support requests by e-mails will be answered in due time. The e-mail address for support requests is published on the website of the Licensor.
- (b) The Licensor may release updates of the specific edition of a Software and specify same for the Licensee's use during the duration of the Software License Agreement, but the Licensor shall have no obligation to create or release any updates. Any obligation the Licensor may have to support the previous version of the Software may be ended upon availability of the Update.

#### **5. Transforms and Transform Servers**

- 5.1. Depending on the Software edition the Licensee has subscribed to, the user has the right to start, run and use software operations ("**Transforms**"). The Licensor or third parties offer various types of Transforms that may be selected within the user interface of the Client Component.
- 5.2. Depending on the Software edition the Licensee has subscribed to, the Client Component connects via internet to external servers, on which Transforms are performed ("**Public Transform Servers**"). Public Transform Servers may be operated by the Licensor, Maltego or any third party. When the Licensee exchanges data with

Public Transform Servers of third parties, it is the Licensee's exclusive responsibility to conform with all laws (including, but not limited to data protection laws) applicable.

- 5.3. Transforms on the Public Transform Servers are provided either for free or as paid services. The number and selection of Transforms provided depend on the Software edition the Licensee has subscribed to. The Licensor has the right to modify the number and selection of Transforms or to limit the volume of specific free Transforms to the effect that using them beyond a certain extent costs extra.
- 5.4. The Licensor's Transforms available are listed in the Licensor's Transform Guide which is published on the Licensor's website and may be updated from time to time.
- 5.5. Depending on the Software edition the Licensee has subscribed to, the Software connects via network to internal servers of the Licensor or Maltego, on which Transforms are performed ("**Internal Transform Servers**"). Internal Transform Servers may use open source software that is provided by a third party. The Licensee must comply with the license terms of the respective open source software. The Licensor is not responsible for the content, functionality and results of open source software.
- 5.6. The Licensor is not responsible or liable for the content, functionality and results of Transforms, Internal Transform Servers or Public Transform Servers. Transform Servers may connect to external servers and databases operated by third parties. The Licensor takes no responsibility as to the data protection standard or any other security aspect of these external sources of information and the Licensee uses them at its own risk. The availability of the content or services is at the sole discretion of the third party and may be subject to usage agreements and other restrictions. The Transform Servers availability and quality of service is at the sole discretion of the respective third party provider.

## **6. Payment; Invoicing; Delay**

- 6.1. For Software License Agreements subject to these General Terms and Conditions the Licensee is obliged to pay to the Licensor an annual fee for each Contract Year as defined in sec. 11.1. The annual fee for the first Contract Year ("**Initial Annual Rate**") is specified in the order confirmation. The annual fee for the following Contract Years ("**Renewal Annual Rate**") is subject to an increase and will be specified either in the order confirmation or in the Licensor's price list from time to time, which the Licensor may publish on its website or make available by other means.
- 6.2. Every annual fee is to be paid in full by the latest 30 days after the beginning of each Contract Year (sec. 11.1.) upon receipt of the respective invoice. If the Software License Agreement is concluded online via a website, the annual fee is due for payment before the beginning of the respective Contract Year.
- 6.3. Value added tax (VAT), sales tax or equivalent taxes at the applicable rate will always be added to the prices and fees, as far as such taxes are imposed by law. Any additional charges, import duties or taxes applicable in the country of the Licensee on installation, usage or delivery of the Software are to be borne by the Licensee. Should the Licensee by whatever means bring the Software into or use the Software in another domestic jurisdiction and should this trigger additional VAT, taxes, charges, import duties or other taxes, they are to be borne by the Licensee; the Licensee shall indemnify the Licensor against all claims, liability, costs and expenses in this regard.

- 6.4. If payment dates are delayed, default interest shall be due and payable by the Licensee. The default interest amounts to two percentage points above the prime interest rate charged by the Licensor's primary bankers from time to time. Should payments owed by the Licensee to the Licensor be delayed by more than 2 weeks, the Licensor may deactivate the license keys provided to the Licensee and interrupt the Licensee's access to the Public Transform Servers ("kill switch"). The Licensee agrees to such deactivation and shall have no claims against the Licensor in this regard.
- 6.5. The Licensee may set off claims or exercise a right of retention against monetary claims of the Licensor resulting from this agreement only if and to the extent its claims are undisputed or finally adjudicated.
- 6.6. In case the Licensee is using a Free Version of the Software then he is bound by these General Terms and Conditions according to sec. 2.1. (c), but does not need to pay a fee for the Software License. By derogation of sec. 11.2., each Party has the right to ordinarily terminate the Software License Agreement for a Free Version by providing the other Party with a termination notice in writing (e-mail suffices) or in the user interface of the Software with a notice period of two weeks. In all other cases, the Licensee is obliged to pay to the Licensor an annual fee pursuant to the Licensor's current price list, unless otherwise agreed.

## **7. Alteration of the GTC and Prices Increases**

- 7.1. After the conclusion of a Software License Agreement the Licensor has the right to alter the General Terms and Conditions and/or raise the Renewal Annual Rates applicable to the said Software License Agreement in the following procedure:
  - (a) The Licensor sends a written (e-mail suffices) declaration ("**Declaration**") to the Licensee informing the latter about the new General Terms and Conditions and/or the new Renewal Annual Rates and the point of time at which the changes shall become effective. Prices may only be raised with effect of the beginning of future Contract Years (sec. 11.1.).
  - (b) The Declaration must reach the Licensee at the latest eight weeks before the changes shall take effect. A Declaration that is sent to the latest e-mail address, that was specified by the Licensee (e.g. in the order process), shall be deemed received by the Licensee. The Licensor may also use other means to deliver the Declaration to the Licensee (e.g. a pop-up window in the Software).
  - (c) Within six weeks from receipt of the Declaration, the Licensee has the right to terminate the Agreement with effect from the date upon which the changes shall take effect.
  - (d) If the Licensee does not terminate within the period stipulated in paragraph (c) above, the Licensee will be deemed to have accepted the new General Terms and Conditions and the new Renewal Annual Rates as per the Declaration.
  - (e) In the Declaration the Licensee will be informed about the consequences of its reaction to the Declaration and its right to terminate the Software License Agreement.
- 7.2. The Parties may agree on separate provisions relating to price increases, provided that such provisions are agreed to in writing.

## **8. Product Conformity**

- 8.1. The functionalities of the Software are described in the Documentation that is valid at the time of the conclusion of the Software License Agreement. The Documentation may be revised by the Licensor from time to time. The Documentation may include end user manuals, operation instructions, installation guides, release notes and on-line help files. Malfunctions that limit the usability of the Software only marginally and deviations in the user interface do not constitute non-conformities.
- 8.2. The Documentation as well as the product specifications, illustrations, drawings, particulars, performance data and other data and information provided on the Licensor's website or otherwise made available only contains a product description and shall not be deemed to constitute a guarantee or any other kind of warranty of specific characteristics unless explicitly referred to as such.
- 8.3. Defects of the software that constitute a non-conformity must be notified in writing with a comprehensible description of the error symptoms, as far as possible evidenced by written recordings and software log files, hard copies or other documents demonstrating the defects. The notification of the defect should enable the reproduction of the error. This shall not affect the statutory obligation of the Licensee to inspect and notify defects.
- 8.4. The Licensee must inspect the software for obvious defects without delay and any defect discovered must immediately be reported to the Licensor in writing. The same applies if any such defect is subsequently discovered. Providing software to the Licensee by download from a server via internet shall be deemed a delivery within the meaning of this clause.
- 8.5. The Licensor is not obliged to do any installation and configuration services. The Licensor does not give any warranty that the hardware and software environment of the Licensee's computer system fulfils the requirements of the software provided by the Licensor. The respective Documentation enumerates the system requirements necessary for running the software.

## **9. Reseller Version**

- 9.1. Licensees that buy the Software not for their own use, but to resell the Software to third parties ("**Reseller**"), have the right to purchase on behalf of its customer ("**End User**"). Such licenses may only be used by the respective End User.
- 9.2. The End User is bound by these General Terms and Conditions according to sec. 2.1. (c) as well as the Reseller. The End User and the Reseller therefore must comply with all provisions of these General Terms and Conditions as Licensee with the following alterations:
  - (a) Only the End User may exercise the rights as Licensee.
  - (b) Unless the Reseller pays the fee according to sec. 6. to the Licensor, such fee is payable by the End User.
- 9.3. The Reseller shall take the necessary measures in order that the End User may be bound by these General Terms and Conditions, in particular point out to the End User that the resale of the Software is subject to these General Terms and Conditions.

## **10. Limitation of Liability**

- 10.1. To the fullest extent permitted by law, the Licensor will have no liability for any loss, damage (whether direct or indirect), cost, expense, injury, claim or penalty of whatsoever nature including, but not limited to, indirect and consequential loss or damage and loss of profits, however arising out of or in connection with a Software License Agreement, the Software or use of the Software. The aforesaid shall not apply to the extent that the loss, damage, cost, expense, injury, claim or penalty arose as a result of the Licensor's gross negligence.
- 10.2. The Licensor shall not be liable for and the Licensee hereby indemnifies Licensor against any and all liability, loss, damage, penalty, cost or claim of any nature whatsoever suffered by the Licensee or any third party in relation to any act or omission of the Licensee in relation to the Software and/or the use thereof.
- 10.3. The Licensee is obliged to take sufficient data backup measures at least on a daily basis in order to limit the risk of data losses.
- 10.4. Should a court hold sec. 10.1 invalid, the liability of the Licensor for a malfunction of software is limited to the amount the Licensor received or is entitled to receive as fee out of the respective Software License Agreement for the current contract year.

## **11. Duration of Software License Agreements**

- 11.1. Unless explicitly agreed otherwise Software License Agreements extend to a fixed period of 12 months ("**Contract Year**"), which starts on the receipt of the Electronic Delivery Document (sec. 2.2.) by the Licensee. Every Software License Agreement will be renewed and extended by a further Contract Year (12 months), if the respective Software License Agreement is not terminated by either Party in writing (e-mail suffices) or in the user interface of the Software four weeks before the expiry of the previous Contract Year. Such automatic extension may occur several times until the Software License is terminated in due time.
- 11.2. Apart from termination in accordance with sec. 11.1. and 11.3., the Parties waive their right to ordinarily terminate Software License Agreement.
- 11.3. The Licensor may terminate Software License Agreements for cause,
  - (a) if the Licensee is in delay with payments owed to the Licensor by more than 4 weeks, or
  - (b) if the Licensee uses the Software in violation of the limitations stipulated in sec. 3. or misuses it for unlawful purposes or actions,  
or
  - (c) if the Licensee commits a material breach of this Agreement and, if such breach is capable of remedy, fails to remedy the breach within 10 days of receiving notice from the Licensor.
- 11.4. With any lawful termination of a Software License Agreement the Licensee's right to use software automatically expires. In this case, the Licensee must immediately and completely discontinue the use of the Software, delete all copies of the Software installed on its systems and delete the backup copies that may have been created unless the Licensee is obliged by law to retain the copies. The Licensor may deactivate the license keys provided to the Licensee and interrupt the Licensee's access to the



Public Transform Servers (“kill switch”) and the Licensee shall have no claims against the Licensor in this regard.

- 11.5. Without prejudice to the preceding sections, the Licensor always has the right to discontinue one or several of its Software Products. If it does so, the Software License Agreements for discontinued Software end automatically with the elapse of the current Contract Year. A notice of termination is not necessary.

## **12. Confidentiality**

- 12.1. The Parties are obliged to treat strictly confidential all information, business secrets and data disclosed or handed over and/or otherwise made accessible during the cooperation and the execution of the Software License Agreement (“Confidential Information”). Such Confidential Information shall not be shared in whole or partially with third parties. Measures that serve the purpose of this Agreement shall be permitted.
- 12.2. The following information shall be considered Confidential Information:
- (a) the licence keys,
  - (b) information regarding the Licensor’s pricing policy, product roadmaps or strategic marketing plans,
  - (c) non-public materials relating to the Software.
- 12.3. The confidentiality obligation shall not apply to information which
- (a) was already known to a Party prior to the conclusion of a contract,
  - (b) is public, unless such fact has become public due to a culpable breach of a confidentiality obligation under this Agreement, or
  - (c) has been explicitly designated as not confidential.
- 12.4. The Licensor shall be entitled to share confidential information only with those employees, affiliates, group entities, independent advisors or service providers who are concerned with the completion, implementation or fulfilment of a Software License Agreement, to enable usage of the Software or to provide support and related services. Each Party shall ensure that such persons are obliged to keep the confidential information received confidential, unless such persons are bound by a professional confidentiality obligation, e.g. as an attorney, tax advisor or auditor.
- 12.5. After termination of a Software License Agreement, each Party shall delete all data received, notes and copies thereof, if any, in due course, unless the receiving party is obliged by law to retain the confidential information.
- 12.6. These confidentiality obligations remain in force for 12 months after termination of a Software License Agreement.

## **13. Miscellaneous**

- 13.1. Only with the prior written consent of the Licensor the Licensee may assign claims and rights against the Licensor to third parties. The Licensee agrees that the Licensor may, without the Licensee’s consent, cede or assign its rights and obligations to a third party, but the Licensor shall provide the Licensee with notice of such cession and assignment.

- 13.2. No verbal side agreements exist. Amendments or additions to contractual agreements between the Parties must be made in writing (e-mail suffices) and must – on the side of the Licensor – be performed by a duly authorized person explicitly stating that the amendment or addition changes the contractual agreement between the Parties. This also applies if this form requirement shall be suspended.
- 13.3. Should one or more provisions of this General Terms and Conditions or other written Agreements be or become invalid or unenforceable, this shall not affect the validity and enforceability of the remaining provisions. In place of the invalid or unenforceable provision, such legally valid and enforceable provision shall apply which reflects as closely as commercially possible the spirit and purpose of the invalid or unenforceable provision.
- 13.4. The Parties hereto hereby irrevocably and unconditionally consent to the non-exclusive jurisdiction of the High Court of South Africa, Gauteng Division, Pretoria, in regard to all matters arising from Software License Agreements.
- 13.5. The place of performance for all services arising from contracts between the Parties is the seat of the Licensor.
- 13.6. The contractual relation between the parties shall be subject to the law of the Republic of South Africa.