

# TIBCO Software Inc. End User License Agreement

**READ THIS END USER LICENSE AGREEMENT CAREFULLY. BY DOWNLOADING OR INSTALLING THE SOFTWARE, YOU AGREE TO BE BOUND BY THIS AGREEMENT. IF YOU DO NOT AGREE TO THESE TERMS, DO NOT DOWNLOAD OR INSTALL THE SOFTWARE AND RETURN IT TO THE VENDOR FROM WHICH IT WAS PURCHASED.**

*Upon your acceptance as indicated above, the following shall govern your use of the Software except to the extent all or any portion of the Software (a) is subject to a separate written agreement, or (b) is provided by a third party under the terms set forth in an Addenda at the end of this Agreement, in which case the terms of such addenda shall control over inconsistent terms with regard to such portion(s).*

**License Grant.** The Software is the property of TIBCO or its licensors and is protected by copyright and other laws. While TIBCO continues to own the Software, TIBCO hereby grants to Customer a limited, non-transferable, non-exclusive, license to use the Number of Units set forth in the Ordering Document solely for Customer's internal business use.

**License Term.** The term of each license for the Software shall be either perpetual or on a term limited basis as set forth in the Ordering Document. If licensed on a term limited basis, the term shall be for a period of three years commencing on the Purchase Date, and on expiration, Customer must cease using and return or destroy all copies of the Software.

**Restrictions.** Customer agrees not to (a) make more copies than the Number of Units (except for a reasonable number of copies for archival and disaster recovery purposes) or use any unlicensed versions of the Software; (b) provide access to the Software to anyone other than employees, contractors, or consultants under written contract with Customer agreeing to be bound by terms at least as protective of TIBCO as those in this End User License Agreement ("Authorized Users"); (c) sublicense, transfer, assign, distribute to any third party, pledge, lease, rent, or commercially share the Software or any of Customer's rights under this Agreement (for the purposes of the foregoing a change in control of Customer is deemed to be an assignment); (d) use the Software for purposes of providing a service bureau, including, without limitation, providing third-party hosting, or third-party application integration or application service provider-type services, or any similar services; (e) use the Software in connection with ultrahazardous activities, or any activity for which failure of the Software might result in death or serious bodily injury to Customer or a third party; or (f) directly or indirectly, in whole or in part, modify, translate, reverse engineer, decrypt, decompile, disassemble, make error corrections to, create derivative works based on, or otherwise attempt to discover the source code or underlying ideas or algorithms of the Software. Customer may engage in such conduct as is necessary to ensure the interoperability of the Software as required by law, provided that prior to commencing any decompilation or reverse engineering of any Software, Customer agrees to it shall observe strict obligations of confidentiality and provide TIBCO reasonable advance written notice and the opportunity to assist with and/or conduct such activity on Customer's behalf and at Customer's expense; and (g) notwithstanding the method of delivery of the Software, the scope of the licenses granted under this Agreement are limited to the Software as set forth in an Ordering Document.

**Beta and Evaluation Licenses.** Notwithstanding the foregoing, if the Software is being provided for demonstration, beta testing, or evaluation purposes, then Customer agrees (a) to use the Software solely for such purposes, (b) that the Software will not be used or

deployed in a production or development environment, and (c) that such use shall automatically terminate upon the earlier of thirty days from the date Customer receives the right to install the Software, or Customer's receipt of notice of termination from TIBCO.

**Maintenance.** Maintenance, if ordered, including first year and all subsequent years, is provided under the policies set forth in the Maintenance Program Guide in effect at the time Maintenance services are provided. The policies set forth in the Maintenance Program Guide, incorporated in this Agreement, are subject to change at TIBCO's discretion; however the level of Maintenance service provided by TIBCO will not be materially reduced during the period for which Maintenance fees have been paid by Customer. The current version of the Maintenance Program Guide can be accessed at <http://www.tibco.com/services/support/default.jsp>. To receive Maintenance, all Software must be properly licensed and annual Maintenance fees paid. TIBCO is not obligated to continue providing Maintenance if annual Maintenance fees have not been paid.

**Services.** Customer may request additional services ("Services") either in an Ordering Document, or by a separate mutually executed work order, statement of work or other work-request document incorporating the term of this End User License Agreement (each, a "Work Order"). Unless otherwise expressly agreed to in a Work Order, all Services and any work product therefrom shall be (a) performed on a time and materials basis, plus meals, lodging, travel, and other expenses reasonably incurred in connection therewith, (b) deemed accepted upon delivery, and (c) exclusively owned by TIBCO (except for Confidential Information of Customer), including all right, title and intellectual property or other right or interest therein. Each Work Order is intended to constitute an independent and distinct agreement of the parties, notwithstanding that each shall be construed to incorporate all applicable provisions of this End User License Agreement.

**Limited Warranty.** If Customer obtained the Software directly from TIBCO, then TIBCO warrants that for a period of thirty (30) days from the Purchase Date: (i) the media on which the Software is furnished will be free of defects in materials and workmanship under normal use; and (ii) the Software will substantially conform to its Documentation. This limited warranty extends only to the original Customer hereunder. Customer's sole and exclusive remedy and the entire liability of TIBCO and its licensors under this limited warranty will be, at TIBCO's option, repair, replacement, or refund of the Software and applicable Maintenance fees, in which event this End User License Agreement shall terminate upon refund thereof.

This warranty does not apply to any Software which (a) is licensed for beta, evaluation, testing or demonstration purposes for which TIBCO does not receive a license fee, (b) has been altered or modified, except by TIBCO, (c) has not been installed, operated, repaired, or maintained in accordance with instructions supplied by TIBCO, (d) has been subjected to abnormal physical or electrical stress, misuse, negligence, or accident, or (e) is used in violation of any other term of this End User License Agreement. Customer agrees to pay TIBCO for any Maintenance or Services provided by TIBCO related to a breach of the foregoing on a time, materials, travel, lodging and other reasonable expenses basis. If Customer obtained the Software from a TIBCO reseller or distributor, the terms of any warranty shall be as provided by such reseller or distributor, and TIBCO provides Customer no warranty with respect to such Software.

EXCEPT AS SPECIFIED IN THIS LIMITED WARRANTY, THE SOFTWARE, MAINTENANCE AND SERVICES ARE PROVIDED "AS IS", ALL EXPRESS OR IMPLIED CONDITIONS,

REPRESENTATIONS, AND WARRANTIES INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTY OR CONDITION OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT, SATISFACTORY QUALITY OR ARISING FROM A COURSE OF DEALING, USAGE, OR TRADE PRACTICE, ARE HEREBY EXCLUDED TO THE EXTENT ALLOWED BY APPLICABLE LAW. CERTAIN THIRD PARTY SOFTWARE MAY BE PROVIDED TO CUSTOMER ALONG WITH CERTAIN TIBCO SOFTWARE AS AN ACCOMMODATION TO CUSTOMER. THIS THIRD PARTY SOFTWARE IS PROVIDED "AS IS". CUSTOMER MAY CHOOSE NOT TO USE THIRD PARTY SOFTWARE PROVIDED AS AN ACCOMMODATION BY TIBCO. NO WARRANTY IS MADE REGARDING THE RESULTS OF ANY SOFTWARE, MAINTENANCE OR SERVICES OR THAT THE SOFTWARE WILL OPERATE WITHOUT ERRORS, PROBLEMS OR INTERRUPTIONS, OR THAT ERRORS OR BUGS IN THE SOFTWARE WILL BE CORRECTED, OR THAT THE SOFTWARE'S FUNCTIONALITY, MAINTENANCE OR SERVICES WILL MEET CUSTOMER'S REQUIREMENTS. NO TIBCO DEALER, DISTRIBUTOR, AGENT OR EMPLOYEE IS AUTHORIZED TO MAKE ANY MODIFICATIONS, EXTENSIONS OR ADDITIONS TO THIS WARRANTY.

**Indemnity.** If Customer obtained the Software from TIBCO directly, then TIBCO agrees at its own expense to defend or, at its option, to settle, any claim or action brought against Customer to the extent it is based on a claim that the unmodified Software infringes any patent issued by the United States, Canada, Australia, Japan, or any member of the European Union, or any copyright, or any trade secret of a third party; and TIBCO will indemnify and hold Customer harmless from and against any damages, costs and fees reasonably incurred (including reasonable attorneys' fees) that are attributable to such claim or action and which are assessed against Customer in a final judgment; provided that TIBCO is promptly notified in writing of such claim, TIBCO has the exclusive right to control such defense and/or settlement, and Customer shall provide reasonable assistance (at TIBCO's expense) in the defense thereof. In no event shall Customer settle any claim, action or proceeding without TIBCO's prior written approval. In the event of any such claim, litigation or threat thereof, TIBCO, at its sole option and expense, shall (a) procure for Customer the right to continue to use the Software or (b) replace or modify the Software with functionally equivalent software. If such settlement or modification is not commercially reasonable (in the reasonable opinion of TIBCO), TIBCO may cancel this End User License Agreement upon sixty days prior written notice to Customer, and refund to Customer the unamortized portion of the license fees paid to TIBCO by Customer based on a five-year straight-line depreciation. This Section states the entire liability of TIBCO with respect to the infringement of any intellectual property rights, and Customer hereby expressly waives any other liabilities or obligations of TIBCO with respect thereto. The foregoing indemnity shall not apply to the extent any infringement could have been avoided by use of the then-current release.

**Limitation of Liability.** EXCEPT AS PROVIDED UNDER INDEMNITY OR RESULTING FROM A BREACH OF CONFIDENTIALITY (THE "EXCLUDED MATTERS"), IN NO EVENT WILL EITHER PARTY OR TIBCO'S LICENSORS BE LIABLE FOR ANY LOST DATA, LOST REVENUE, LOST PROFITS, DAMAGE TO REPUTATION, BUSINESS INTERRUPTION, OR ANY OTHER INDIRECT, INCIDENTAL, CONSEQUENTIAL, SPECIAL, PUNITIVE, EXEMPLARY OR ANY SIMILAR TYPE DAMAGES ARISING OUT OF THIS AGREEMENT, THE USE OR THE INABILITY TO USE THE SOFTWARE, OR THE PROVISION OF ANY MAINTENANCE OR SERVICES, EVEN IF A PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. EXCEPT FOR THE EXCLUDED MATTERS, IN NO EVENT SHALL A PARTY BE LIABLE TO THE OTHER, WHETHER IN CONTRACT, TORT (INCLUDING ACTIVE OR

PASSIVE NEGLIGENCE), BREACH OF WARRANTY, CLAIMS BY THIRD PARTIES OR OTHERWISE, EXCEED THE PRICE PAID BY CUSTOMER UNDER THE APPLICABLE ORDERING DOCUMENT.

THE FOREGOING LIMITATIONS SHALL APPLY EVEN IF THE ABOVE-STATED REMEDY OR LIMITED WARRANTY FAILS OF ITS ESSENTIAL PURPOSE. BECAUSE SOME STATES OR JURISDICTIONS DO NOT ALLOW LIMITATION OR EXCLUSION OF CONSEQUENTIAL OR INCIDENTAL DAMAGES, THE ABOVE LIMITATION MAY NOT APPLY TO CUSTOMER.

**Confidentiality.** "Confidential Information" means the terms of this End User License Agreement; all information marked by the disclosing party as proprietary or confidential; any provided software, related documentation or related performance test results derived by Customer; and any methods, concepts or processes utilized in provided software or related documentation. Confidential Information shall remain the sole property of the disclosing party and shall not be disclosed to any non-Authorized User of either TIBCO or Customer without the prior written consent of the disclosing party. If Confidential Information is communicated orally, such communication shall be confirmed as "Confidential" in writing within thirty days of such disclosure. The parties agree to protect the Confidential Information of the other in the same manner it protects the confidentiality of similar information and data of its own (and at all times exercising at least a reasonable degree of care). Except with respect to the Software, items will not be deemed Confidential Information if (i) available to the public other than by a breach of an agreement with TIBCO, (ii) rightfully received from a third party not in breach of any obligation of confidentiality, (iii) independently developed by one party without use of the Confidential Information of the other; (iv) known to the recipient at the time of disclosure (other than under a separate confidentiality obligation); or (v) produced in compliance with applicable law or court order, provided the other party is given reasonable notice of the same. Both parties agree to indemnify the other for any damages the other may sustain resulting from their unauthorized use and/or disclosure of the other's Confidential Information. Such damages shall include reasonable expenses incurred in seeking both legal and equitable remedies. To the extent required by law, at Customer's request, TIBCO shall provide Customer with the interface information needed to achieve interoperability between the Software and another independently created program, on payment of TIBCO's applicable fee. Customer agrees to observe obligations of confidentiality with respect to such information.

To the extent TIBCO is exposed to individual personal data owned or otherwise held by Customer during the provision of Services, which is subject to various data protection laws and/or regulations ("Protected Data"), TIBCO agrees to treat such Protected Data in accordance with the Customer Privacy and Security Statement set forth at [http://www.tibco.com/customer\\_privacy\\_security\\_statement.jsp](http://www.tibco.com/customer_privacy_security_statement.jsp) (the "Statement"). The policies and procedures set forth in the Statement as well as those set forth in the Data Protection Policy Statement at [http://www.tibco.com/resources/data\\_protection\\_statement.pdf](http://www.tibco.com/resources/data_protection_statement.pdf) are in place to meet TIBCO's obligations for the protection, integrity and confidentiality of any Protected Data which exceed TIBCO's standard obligations to safeguard Confidential Information.

**Export.** Software, including technical data, is subject to U.S. export control laws, including the U.S. Export Administration Act and its associated regulations, and may be subject to export or import regulations in other countries. Customer agrees to comply strictly with all such regulations and agrees to obtain all necessary licenses to export, re-export, or import Software.

**Government Use.** If the Software, Maintenance or Services are being or have been acquired with U.S. Federal Government funds, or

Customer is an agency, department, or other entity of the United States Government ("Government"), the use, duplication, reproduction, release, modification, disclosure or transfer of the Software, Maintenance or Services, or any related documentation of any kind, including technical data, or manuals, is restricted in accordance with Federal Acquisition Regulation 12.212 for civilian agencies and Defense Federal Acquisition Regulation Supplement 227.7202 for military agencies. The Software, Maintenance and Services are COMMERCIAL ITEMS AS DEFINED BY THE FEDERAL ACQUISITION REGULATION. Use of the Software, Maintenance and Services by the Government is further restricted according to the terms of this Agreement and any amendment hereto.

**Orders.** An Ordering Document means any purchase order, similar document or agreement requesting Software, Maintenance or Services, which shall be deemed accepted only by issuance of a TIBCO invoice and solely for purposes of administrative convenience. None of the terms of the Ordering Document (other than the Software product name, Number of Units, level of Maintenance, description of Services, and fees due in connection therewith) shall apply for any reason or purpose whatsoever, regardless of any statement on any Ordering Document to the contrary, unless countersigned by an officer of TIBCO. This Agreement constitutes the entire agreement between the parties with respect to the use of the Software, Maintenance and Services, and supersedes all proposals, oral or written, and all other representations, statements, negotiations and undertakings relating to the subject matter hereof. All orders of Software, Maintenance or Services by Customer to TIBCO shall be deemed to occur with or without reference to, under the terms of this End User License Agreement, unless expressly superseded by a signed written agreement between the parties. Neither the license to use the Software granted in this Agreement nor the obligation to pay the license fees set forth above are dependent upon the performance by any party of any Services or the supply of any other software program or product. Software shall be delivered electronically, and delivery deemed complete when the Software is made available for download by Customer.

**Termination.** Maintenance or Services may be terminated: (a) by either party upon a default of the other, such default remaining uncured for fifteen days from written notice from the non-defaulting party; (b) upon the filing for bankruptcy or insolvency of the other party; (c) by either party upon prior written notice at least sixty (60) days prior to the end of any annual Maintenance term; or (d) by Customer (for Services), upon ten days prior written notice or 30 days prior written notice by TIBCO. Termination of Maintenance or Services shall not terminate this End User License Agreement. Customer may terminate this End User License Agreement in its entirety at any time by destroying all copies of the Software. Upon termination or expiration of this End User License Agreement in its entirety, for any reason, Customer must cease using and return or destroy all copies of the Software. Customer's obligation to pay accrued charges and any fees due as of the date of termination, as well as the sections entitled "Confidentiality", "Limited Warranty" and "Limitation of Liability" shall survive any such termination.

**Authority.** You hereby represent and warrant that you have full power and authority to accept the terms of this End User License Agreement on behalf of Customer, and that Customer agrees to be bound by this End User License Agreement.

**Definitions.** In connection with this End User License Agreement Software product definitions are as set forth at <http://tibco.com/software/productdefinitions.jsp> which are hereby incorporated into the End User License Agreement and the following capitalized terms shall have the following meaning: "Customer" means the original purchaser or licensee of the Software and any permitted

successors and assigns; "**Documentation**" means text material that accompanies the Software on delivery, which describes how to make use of that software. "**Enterprise**" means an unlimited Number of Units of the Software set forth in an Ordering Document as Enterprise, to be deployed by Customer during a period of one year (or such other period of time set forth in the Ordering Document) from the Purchase Date (the "**Enterprise Term**"), at which time, the Number of Units then deployed in Production and Non-Production use by Customer becomes fixed and Customer may not thereafter deploy additional Units. During the Enterprise Term, Customer's right to deploy an unlimited Number of Units does not extend to any entity which acquires, is acquired by, merged into, or otherwise combined with Customer. Customer hereby agrees to provide TIBCO, within sixty (60) days after the end of the Enterprise Term, with written notice of the Number of Units deployed at the end of the Enterprise Term by Unit and License Type. In the event Customer elects to renew Maintenance (subject to the section entitled "Termination"), then during the Enterprise Term and for the first annual renewal thereafter, TIBCO agrees the annual Maintenance fee for the Software licensed on an Enterprise basis shall not increase by more than the percentage rate change in the United States Department of Labor - Consumer Price Index for All Urban Consumers (CPI-U) for the twelve month period immediately preceding the anniversary date of Maintenance. "**Purchase Date**" means the date the Ordering Document is accepted by TIBCO. "**Project**" means an unlimited Number of Units of the Software set forth in an Ordering Document as Project, to be deployed by Customer solely in connection with the description and scope of the Customer project set forth in the Ordering Document, during a period of one year (or such other time period set forth in the Ordering Document) from the Purchase Date (the "**Project Term**"), at which time, the Number of Units then deployed in Production and Non-Production use by Customer becomes fixed and Customer may not thereafter deploy additional Units. During the Project Term, Customer's right to deploy an unlimited Number of Units does not extend beyond the scope of the Project as set forth herein or to any entity which acquires, is acquired by, merged into, or otherwise combined with Customer. Customer hereby agrees to provide TIBCO, within sixty (60) days after the end of the Project Term, with written notice of the Number of Units deployed at the end of the Project Term by Unit and License Type. In the event Customer elects to renew Maintenance (subject to the section entitled "Termination"), then during the Project Term and for the first annual renewal thereafter, TIBCO agrees the annual Maintenance fee for the Software licensed on a Project basis shall not increase by more than the percentage rate change in the United States Department of Labor - Consumer Price Index for All Urban Consumers (CPI-U) for the twelve month period immediately preceding the anniversary date of Maintenance. "**Severity**" means the impact levels of an error, defect or malfunction, which under Maintenance are determined by TIBCO as follows: "**Severity 1**" is an emergency production situation where the Software is totally inoperable or fails catastrophically and there is no workaround; "**Severity 2**" is a detrimental situation (and there is no workaround) where (a) performance degrades substantially under reasonable loads causing a severe impact on use, (b) the Software is usable but materially incomplete; or (c) one or more mainline functions or commands is inoperable; "**Severity 3**" is where the Software is usable, but does not provide a function in the most convenient manner; and "**Severity 4**" is a minor problem or documentation error. "**Software**" means the most current, generally available object code version on all Platforms then currently available. Software does not include multiple Platforms if the software product licensed on a Platform specific basis as designated in the Software product name or as otherwise listed in an Ordering Document, including its Documentation and any subsequent Updates provided under Maintenance. For the purposes of the product definitions where "TIBCO Software" or "Licensor Software" is used it shall have the same meaning as "Software". "**TIBCO**" means TIBCO Software Inc.

and any entities, regardless of corporate status, controlled by, controlling, or under common control with TIBCO Software Inc. "Updates" means Software bug fixes, enhancements, and updates, if and when made generally available by TIBCO. Updates provided under Maintenance, warranty or which are provided for any other reason by TIBCO, or TIBCO's authorized resellers or distributors (if applicable), are subject to the license rights, limitations and restrictions of the End User License Agreement.

**Special Product Provision. Embedded/Bundled Products.** Some Software embeds or bundles other Software. Use of such embedded or bundled Software is solely to enable the functionality of the Software licensed under this Agreement, and may not be used or accessed by any other Software, or for any other purpose. **Bundle.** A collection of Software listed in TIBCO's then current price book to be sold together under a collective name such as "XXX Bundle" which consists of X, Y and Z. The Software which comprises a Bundle must be used in accordance with any specific license restrictions imposed in this Agreement and solely in conjunction with the components of the Bundle; provided that a Bundle component may be accessed by or communicate with other Software separately licensed by Customer. In no event may the Software which comprises a Bundle be used on a standalone basis. A Bundle is sold at a discount to the cost of licensing the individual components due to the restrictions imposed on the use of the Bundle by this section and any specific license restrictions imposed by this Agreement. If the terms of this Agreement with regard to a Bundle are breached, and such breach is not cured within ten (10) days of TIBCO notifying Customer in writing of the breach, TIBCO shall be entitled to invoice Customer for the list price of the individual components of the Bundle based upon the manner in which Customer has deployed and is making use of the components. **Open Source Software.** If Customer uses open source software or any other third party software not supplied by TIBCO in conjunction with the Software, Customer must ensure that its use does not: (i) create, or purport to create, obligations of use with respect to the Software; or (ii) grant, or purport to grant, to any third party any rights to or immunities under TIBCO's intellectual property or proprietary rights in the Software. Customer also may not combine Software with programs licensed under the GNU General Public License ("GPL") in any manner that could cause, or could be interpreted or asserted to cause, the Software or any modifications thereto to become subject to the terms of the GPL. **Third Party Software.** Third Party Software means third-party software identified by its company and/or product name, the provision of which by TIBCO is made solely as an accommodation and in lieu of Customer purchasing a license to Third Party Software directly from the third party vendor.

**General.** All payments of fees due shall be made in U.S. dollars, net 30 from Purchase Date, or, for any other amounts coming due hereafter, net 30 from TIBCO's invoice. Fees do not include sales, use, withholding, value-added or similar taxes, and Customer agrees to pay all sales, use, value-added, goods and services, consumption, withholding, excise and any other similar taxes or government charges, exclusive of TIBCO's income tax. Customer agree to pay all reasonable costs incurred (including reasonable attorneys' fees) in collecting past due amounts. Except as set forth in the sections entitled "Limited Warranty" and "Indemnity" all fees paid under or in connection with this End User License Agreement are non-refundable and no right of set-off exists. A service charge of one and one-half percent per month will be applied to all invoices that are not paid on time. No delay in the performance of any obligation by either party, excepting all obligations to make payment, shall constitute a breach of this End User License Agreement to the extent caused by force majeure. Customer hereby grants TIBCO and its independent auditors the right to audit Customer's compliance with this End User License Agreement. If any portion of this End User License Agreement is

found to be void or unenforceable, the remaining provisions shall remain in full force and effect.

**Governing Law.** This End User License Agreement shall be governed by and construed in accordance with the laws of the State of California, United States of America, as if performed wholly within the state and without giving effect to the principles of conflict of law. The United Nations Convention on Contracts for the International Sale of Goods is excluded from application hereto.

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