

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 Licensor or its licensors and is protected by copyright and other laws. While Licensor continues to own or have license rights to the Software, Licensor 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, unless otherwise set forth in an Ordering Document, 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) use any Software not listed in an Ordering Document, even if such unlicensed software is made available to Customer as part of Licensor's general delivery mechanism; (c) provide access to the Software to anyone other than employees, contractors, or consultants agree in writing to be bound by terms at least as protective of Licensor as those in this End User License Agreement ("Authorized Users"); (d) 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); (e) 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; (f) 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 (g) 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 Licensor reasonable advance written notice and the opportunity to assist with and/or conduct such activity on Customer's behalf and at Customer's expense. The Software, Documentation and Materials are proprietary to Licensor and its licensors and protected by applicable U.S. and international patent, copyright, trademark and trade secret laws. Licensor and its licensors shall retain ownership in the Software, Documentation and Materials, all derivatives thereof (in

whole or part), and any intellectual property or other rights embodied therein. All proprietary notices incorporated in or affixed to any Software, Documentation or Materials shall be duplicated by Customer on all copies of the Software, Documentation, or Material, as applicable, and shall not be altered, removed or obliterated.

Extraordinary Corporate Event. To the extent Licensee or its successors or assigns enters into an Extraordinary Corporate Event after the Order Form Effective Date, this Agreement shall not apply to those additional users, divisions or entities, which were added to Licensee's organization as a result of the Extraordinary Corporate Event until those additional users, divisions or entities are added to this Agreement by way of a written amendment signed by duly authorized officers of Licensor and Licensee.

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 Licensor.

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 Licensor's discretion; however the level of Maintenance service provided by Licensor 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. Licensor 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 Licensor (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 Licensor, then Licensor 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 Licensor and its licensors under this limited warranty will be, at Licensor'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 Licensor does not receive a license fee, (b) has been altered or modified, except by Licensor, (c) has not been installed, operated, repaired, or maintained in accordance with instructions supplied by Licensor, (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 Licensor for any Maintenance or Services provided by Licensor 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 Licensor reseller or distributor, the terms of any warranty shall be as provided by such reseller or distributor, and Licensor 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 LICENSOR SOFTWARE AS AN ACCOMMODATION TO CUSTOMER. THIS THIRD PARTY SOFTWARE IS PROVIDED "AS IS", IS SUBJECT TO THE TERMS OF THE THIRD PARTY LICENSE, AND MAY ONLY BE USED WITH THE SOFTWARE. CUSTOMER MAY CHOOSE NOT TO USE THIRD PARTY SOFTWARE PROVIDED AS AN ACCOMMODATION BY LICENSOR. 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 LICENSOR DEALER, DISTRIBUTOR, AGENT OR EMPLOYEE IS AUTHORIZED TO MAKE ANY MODIFICATIONS, EXTENSIONS OR ADDITIONS TO THIS WARRANTY.

Indemnity. If Customer obtained the Software from Licensor directly, then Licensor 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 Licensor 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 Licensor is promptly notified in writing of such claim, Licensor has the exclusive right to control such defense and/or settlement, and Customer shall provide reasonable assistance (at Licensor's expense) in the defense thereof. In no event shall Customer settle any claim, action or proceeding without Licensor's prior written approval. In the event of any such claim, litigation or threat thereof, Licensor, 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 Licensor), Licensor 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 Licensor by Customer based on a five-year straight-line depreciation. This Section states the entire liability of Licensor with

respect to the infringement of any intellectual property rights, and Customer hereby expressly waives any other liabilities or obligations of Licensor 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 MISAPPROPRIATION OF THE OTHER PARTY'S INTELLECTUAL PROPERTY, INCLUDING, WITHOUT LIMITATION, TRADE SECRETS; DAMAGES FOR BODILY INJURY, DEATH, DAMAGE TO REAL OR TANGIBLE PERSONAL PROPERTY OR INTENTIONAL OR GROSS NEGLIGENCE (THE "EXCLUDED MATTERS"), IN NO EVENT WILL EITHER PARTY OR LICENSOR'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 GREATER OF 50,000 USD OR THE PRICE PAID BY CUSTOMER UNDER THE APPLICABLE ORDERING DOCUMENT. IN NO EVENT WILL LICENSOR'S LICENSORS BE LIABLE FOR ANY DAMAGES, WHETHER DIRECT, INDIRECT, INCIDENTAL, SPECIAL, PUNITIVE, OR CONSEQUENTIAL; OR ANY LOSS OF PROFITS, REVENUE, DATA OR DATA USE, ARISING FROM THE USE OF THE SOFTWARE.

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 any information disclosed by either party, whether or not marked, including, without limitation, the terms of this Agreement, the Software, Materials, individual contact information provided by either party or related performance test results derived by Licensee, including but not limited to benchmark test results, and Licensee's Protected Data and Output. Each party agrees to protect Confidential Information in the same manner as it protects its own (but using no less than a reasonable degree of protection) Confidential Information and shall only disclose Confidential Information to those with a need to know that information, who have agreed in writing to be bound by terms at least as protective as those contained in this Agreement. Information will not be deemed Confidential Information if (a) available to the public other than by a breach of a confidentiality obligation, (b) rightfully received from a third party not in breach of a confidentiality obligation, (c) independently developed by one party without use of the Confidential Information of the other; (d) known to the recipient at the time of disclosure (other than under a separate confidentiality obligation); or (e) produced in compliance with applicable law or court order, provided the other party is given reasonable advance notice of the obligation to produce Confidential Information. Each party agrees to indemnify the other for any damages (including reasonable expenses) the other may sustain resulting from the unauthorized use and/or disclosure of the other's Confidential Information and that money damages would not be a sufficient remedy for a breach of confidentiality. The parties shall be entitled to seek injunctive or other equitable relief without the

necessity of posting a bond even if otherwise normally required. Such injunctive or equitable relief shall not be the exclusive remedy for any breach of confidentiality, but shall be in addition to all other rights and remedies available at law or in equity.

To the extent Licensor 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"), Licensor 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 (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 are in place to meet Licensor's obligations for the protection, integrity and confidentiality of any Protected Data which exceed Licensor's standard obligations to safeguard Confidential Information.

Confidential Information shall remain the sole property of the disclosing party, and each party acknowledges and agrees that it does not acquire any rights therein. Use by a recipient of Confidential Information for the purposes contemplated under this Agreement, including, but not limited to, any configuration or use by Licensee of the Licensor Software or Materials, shall not affect or diminish the disclosing party's rights, title and interest in and to Confidential Information.

Licensor may use any individual contact information provided to it by Licensee and its' employees, contractors or consultants for support, product information and other business to business communications in connection with this Agreement. Licensee shall direct individuals who elect to "opt-out" of such notifications to <http://tibco.market2lead.com/go/tibco/unsubscribe?userid=179027619&>.

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 or a web store or web site order requesting Software, Maintenance or Services, which shall be deemed accepted only by issuance of a Licensor invoice and solely for purposes of administrative convenience or in the case of a web store or web site order upon your download of the Software. Except for additional terms you have agreed to in connection with a Licensor web store or web site purchase, 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 Licensor. This Agreement, and any terms which are incorporated by written reference (including written reference to information contained in a URL, Documentation or reference policy) 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 Licensor 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 made available to 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 of 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 Licensor. 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 and license parameters are as set forth at <http://www.tibco.com/software/parametersdefinitions.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 and does not include any affiliates or subsidiaries; "Purchase Date" means the date the Ordering Document is accepted by Licensor. For the purposes of the product definitions where "Licensor Software" or "TIBCO Software" is used it shall have the same meaning as "Software". If proprietary source code is included as part of the standard delivery of the Software and is not subject to open source license terms, use of such source code is controlled by the terms of this Agreement. "Licensor" 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 Licensor. Updates provided under Maintenance, warranty or which are provided for any other reason by Licensor, or Licensor'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. Software products TIBCO BusinessEvents®, TIBCO Collaborative Information Manager™, TIBCO ActiveMatrix® Service Performance Manager, TIBCO® ActiveFulfillment, (and each of the foregoing, when included in any Bundle or Embedded/ Bundled Products) are subject to a restricted license and contain third party proprietary code that Licensee can only use in conjunction with the Software and may be subject to additional terms, as notified by Licensor.

Open Source Software. If Customer uses open source software or any other third party software not supplied by Licensor 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 Licensor'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.

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 Licensor'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 Licensor'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 Licensor and its independent auditors the right to audit Customer's compliance with this End User License Agreement and report any results to Licensor's licensors. Customer agrees to provide reasonable assistance to ensure a complete and accurate audit by Licensor and its independent auditors. 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 and the Uniform Computer Information Transactions Act are excluded from application hereto.

rev. July 29, 2010