

# TIBCO Software Inc. End User License Agreement

PLEASE READ CAREFULLY: IF YOU HAVE ANOTHER VALID, SIGNED AGREEMENT WITH TIBCO WHICH APPLIES TO THE SPECIFIC SOFTWARE, EQUIPMENT, CLOUD OR HOSTED SERVICES YOU WILL BE DOWNLOADING, ACCESSING OR OTHERWISE RECEIVING, (INDIVIDUALLY AND COLLECTIVELY REFERRED TO AS THE "PRODUCTS"), THAT OTHER AGREEMENT APPLIES TO THE PRODUCTS. OTHERWISE, BY USING, DOWNLOADING, INSTALLING, COPYING, OR ACCESSING PRODUCTS, OR BY CLICKING ON "I ACCEPT" ON OR ADJACENT TO THE SCREEN WHERE THIS AGREEMENT MAY BE DISPLAYED, YOU HEREBY AGREE TO BE BOUND BY AND ACCEPT THE TERMS OF THIS AGREEMENT ("ACCEPTANCE"). THIS AGREEMENT SHALL ALSO APPLY TO ANY MAINTENANCE OR CONSULTING SERVICES ("SERVICES") YOU ACQUIRE FROM TIBCO RELATING TO THE PRODUCT.

IF YOU DO NOT AGREE TO THESE TERMS 1) DO NOT DOWNLOAD OR INSTALL THE SOFTWARE, AND OR 2) DO NOT ACCESS OR REGISTER TO ACCESS ANY CLOUD OR HOSTED SERVICES. IF YOU DO NOT AGREE TO THESE TERMS, AND DELIVERY OF THE PRODUCTS IS AFFECTED, DO NOT USE, DOWNLOAD, INSTALL, COPY, OR ACCESS THE PRODUCTS. PROMPTLY RETURN THE PRODUCT WITH PROOF OF PURCHASE TO THE PARTY FROM WHOM YOU ACQUIRED IT AND OBTAIN A REFUND OF THE AMOUNT YOU PAID, IF ANY. IF YOU DOWNLOADED ANY SOFTWARE, CONTACT THE PARTY FROM WHOM YOU ACQUIRED IT.

IF YOU ARE ACCEPTING THIS AGREEMENT ON BEHALF OF ANOTHER PERSON OR PERSONS, COMPANY OR OTHER LEGAL ENTITY, YOU REPRESENT AND WARRANT THAT YOU HAVE FULL AUTHORITY TO BIND EACH PERSON, COMPANY, OR LEGAL ENTITY TO THIS AGREEMENT. THIS AGREEMENT IS ENTERED INTO BY AND BETWEEN TIBCO SOFTWARE INC. AND ANY ENTITIES, REGARDLESS OF CORPORATE STATUS, CONTROLLED BY, CONTROLLING, OR UNDER COMMON CONTROL WITH TIBCO SOFTWARE INC. (COLLECTIVELY, "TIBCO", "WE", "US" OR "OUR") AND YOU, YOUR CO-WORKERS, YOUR EMPLOYEES, AGENTS AND CONTRACTORS AND ANY OTHER PERSON OR PERSONS, COMPANY OR OTHER LEGAL ENTITY ON WHOSE BEHALF YOU ARE ACCEPTING THIS AGREEMENT (COLLECTIVELY, "CUSTOMER", "YOU" OR "YOUR").

FURTHER, YOU WARRANT AND AGREE THAT YOU ARE NOT (A) A CITIZEN, NATIONAL OR RESIDENT OF, AND ARE NOT UNDER THE CONTROL OF, THE GOVERNMENT OF: CUBA, IRAN, NORTH KOREA, SUDAN, SYRIA, OR ANY OTHER COUNTRY TO WHICH THE UNITED STATES HAS PROHIBITED EXPORT, OR (B) LISTED ON THE UNITED STATES TREASURY DEPARTMENT'S LISTS OF SPECIALLY DESIGNATED NATIONALS, SPECIALLY DESIGNATED TERRORISTS, OR SPECIALLY DESIGNATED NARCOTIC TRAFFICKERS, OR LISTED ON THE UNITED STATES COMMERCE DEPARTMENT'S TABLE OF DENIAL ORDERS. YOU FURTHER WARRANT AND AGREE THAT YOU WILL NOT (X) DOWNLOAD OR OTHERWISE EXPORT OR RE-EXPORT THE PRODUCTS OR MATERIALS, DIRECTLY OR INDIRECTLY, TO PERSONS ON THE ABOVEMENTIONED LISTS, (Y) USE THE PRODUCTS OR MATERIALS FOR, AND WILL NOT ALLOW THE PRODUCTS OR MATERIALS TO BE USED FOR, ANY PURPOSES PROHIBITED BY UNITED STATES OR OTHER APPLICABLE LAW, INCLUDING, WITHOUT LIMITATION, FOR THE DEVELOPMENT, DESIGN, MANUFACTURE OR PRODUCTION OF NUCLEAR, CHEMICAL OR BIOLOGICAL WEAPONS OF MASS DESTRUCTION, AND (Z) DOWNLOAD OR OTHERWISE EXPORT OR RE-EXPORT THE PRODUCTS OR MATERIALS, DIRECTLY OR INDIRECTLY, TO THE

ABOVE MENTIONED COUNTRIES OR TO CITIZENS, NATIONALS OR RESIDENTS OF THOSE COUNTRIES.

1. Upon your Acceptance, the following shall govern your use of the Products and Services, except to the extent all or any portion are (a) subject to a separate written, duly executed agreement, or (b) also subject to the terms of an Addendum at the end of this Agreement, in which case the terms of such Addendum shall control over inconsistent terms in this Agreement.

2. Definitions. Capitalized terms used in this Agreement and not otherwise defined, are defined below or at <http://www.tibco.com/software/parametersdefinitions.jsp> and <http://www.tibco.com/software/processor.jsp>. "Order Form" means any purchase order or similar document, written agreement, or a web store or web site order or registration requesting Products or Services. "Purchase Date" means the date the Order Form is accepted by us and in the case of a web store or web site transaction, the date of your download or access a Product. If proprietary source code is included as part of the standard delivery of a Product and is not subject to open source license terms, use of such source code is controlled by the terms of this Agreement. "Updates" means Product bug fixes, enhancements, and updates, if and when made generally available by us as part of Maintenance.

3. Alpha, Beta and Evaluation Licenses. If the Products are provided or accessed for demonstration, alpha or beta testing, or evaluation purposes, then you agree (a) to use the Products solely for such purposes, (b) that the Products will not be used or deployed in a production or development environment, and (c) that such use shall automatically terminate upon the earlier of (i) thirty days from the date you receive the right to install or access the Product, (ii) your receipt of notice of termination from us, or (iii) you no longer have access to the Cloud or the Hosted Services.

4. License Grant. The Products are the property of TIBCO or its licensors and are protected by copyright and other laws. While TIBCO continues to own or have license rights to the Products, we hereby grant you a limited, non-transferable, non-exclusive license to use the Number of Units set forth in the Order Form solely for your internal business use.

5. License Term. The term of each license for a Product shall be either perpetual or limited as designated on an Order Form. If a Product is licensed on a limited term basis, then, unless otherwise set forth in an Order Form, the term shall commence on the Purchase Date and have the following duration:

Alpha, Beta and Evaluation - thirty (30) days.

Hosted Services - one (1) year

Cloud - one (1) year

Software purchases on a term limited basis - three (3) years

If you originally registered to download or access a Product for Alpha, Beta or Evaluation purposes, upon re-registration you may be permitted one (1) additional term. On expiration of a limited term, you must cease using and return or destroy all copies of the Products and related Confidential Information.

6. Delivery. Products are delivered electronically, and delivery deemed complete when duly made available to you.

## 7. Equipment Lease or Purchase.

A. Lease. The term of each Equipment Lease shall be limited as set forth in an Order Form. However, the first forty-five (45) days from the initial term Purchase Date shall be considered the first month of the term and charged as such. As long as you are not then in breach of any term of this Agreement, you will have the right to renew an Equipment Lease annually, for a one (1) year term, subject to payment of the annual lease renewal fee. We will send you a renewal invoice at least sixty (60) days prior to the term anniversary date. In the event we do not receive payment for the lease renewal thirty (30) days prior to the term anniversary date, the existing lease term will terminate at the end of the lease, in accordance with terms of this Agreement.

B. Purchase. When we accept your order to Purchase the Equipment, we agree to sell you the Equipment described in the Order Form. We transfer all title to the hardware component of the Equipment when we or our agent ships the Equipment. Notwithstanding the foregoing, we reserve, and you consent to our reservation of, a purchase money security interest in the Equipment until we receive the fees set forth in the Order Form. For a feature, conversion, or upgrade involving the removal of parts in connection with the Equipment, which parts become our property, we reserve, and you consent to our reservation of a security interest in the Equipment until we receive payment of all the amounts due and the removed parts. You authorize us to file appropriate documents to permit the perfection of our purchase money security interest.

C. Equipment Insurance. If you are leasing Equipment, You shall procure and continuously maintain and pay for (i) all risk insurance against loss of and damage to the Equipment for not less than the full replacement value of each Unit, naming us as loss payee, and (ii) public liability and property damage insurance insuring against third party personal and property damage in respect of the use and operation of the Equipment in an amount not less than 1,000,000 USD per occurrence, (iii) Each insurance policy shall name us as an additional named insured and a loss payee and provide that there shall be no recourse against us for payment of premiums or other amounts. The insurance shall be in such form and with such company or companies as shall be reasonably acceptable to us. You shall provide to us a certificate evidencing such insurance. You hereby appoint us as your attorney-in-fact to make claim for, receive payment of, and execute and endorse all documents, checks, or drafts received in payment for any loss or damage to the Equipment under any such insurance policy.

D. Equipment Delivery. Title is deemed to transfer upon delivery by (i) our agent to our designated freight carrier, FCA Ontario, Canada (Incoterms 2000), or (ii) by us to our designated freight carrier, FCA TIBCO's premises (Incoterms 2000). All freight, insurance and other shipping expenses shall be paid to the freight carrier by us. You will be invoiced for shipping and handling charges listed on the Order Form. Delivery is subject to the availability of Equipment.

8. Hosted Services. We shall use commercially reasonable efforts to make the Hosted Services you have purchased available 24 hours a day, 7 days a week, except for: (a) planned downtime under our direct control (of which we shall give at least 8 hours notice via the Hosted Services and which we shall schedule to the extent practicable during the weekend hours from 6:00 p.m. Pacific time Friday to 3:00 a.m. Pacific time Monday), (b) to the extent we are notified by third party service providers of planned downtime (of which we shall provide such notice to you via the Hosted services as soon as we can reasonably do so), or (c) any unavailability caused by circumstances beyond our reasonable control, including, without limitation, acts of God, acts of government, flood, fire, earthquakes, civil unrest, acts of terror, strikes or other labor problems, internet service or third party hosting provider

failures or delays ("Force Majeure"). Hosted Services are provided in accordance with applicable laws and government regulations.

9. Cloud. Provisioning of the Cloud will be confirmed electronically and delivery deemed complete when such confirmation is made available to you. Provisioning of the Cloud requires an account be established for you in TIBCOCommunity. You agree to and accept the Terms of Use for TIBCOCommunity ([http://www.tibcommunity.com/themes/tibcotucon/resources/html/terms\\_of\\_use.html](http://www.tibcommunity.com/themes/tibcotucon/resources/html/terms_of_use.html)) if you use the credentials to access the TIBCOCommunity site. Certain Software products provided for installation by you and are provided solely to enable the functionality of the Cloud, and may not be used for any other purpose. You are solely responsible for procuring your own account with the applicable TIBCO approved third party service provider ("Provider") for the Cloud and for the technical operation of the content of your account.

## 10. Hosted Services and Cloud Restrictions.

A. In connection with your use of Hosted Services or a Cloud, in addition to the Restrictions below, you shall (i) be responsible for your users' compliance with this Agreement (ii) be solely responsible for the accuracy, quality, integrity and lawfulness of and of the means by which you acquire and disclose your data, (iii) not store or transmit infringing, libelous, or otherwise unlawful or tortious material or malicious code, nor store or transmit material in violation of third-party privacy rights, (iv) not sell, resell, rent or lease the Hosted Services or Cloud (v) use commercially reasonable efforts to prevent unauthorized access to or use of the Hosted Services or Cloud, and notify us promptly of any such unauthorized access or use, (vi) not interfere with or disrupt the integrity or performance of any Provider services or third-party data contained there, (vii) not attempt to gain unauthorized access to the Hosted Services, Cloud or their related systems or networks, and (viii) use the Hosted Services or Cloud only in accordance with any applicable Documentation and all applicable laws and government regulations. Hosted Services or the Cloud may be subject to other limitations, such as, for example, limits on disk storage space, on the number of calls or number of users, third party terms of use, etc., specified in the applicable Documentation, web store or web site. You are responsible for handling and processing notices sent to you by any third party claiming that our content in connection with the Hosted Services, Cloud or any Provider services violates such party's rights including, without limitation, notices pursuant to the Digital Millennium Copyright Act.

B. You represent and warrant that you will not use Hosted Services or the Cloud to promote any illegal activities or post any materials in violation of any law. In addition, in using and accessing Hosted Services or the Cloud, you shall not use any third party software in connection with a Provider's or TIBCO service in any manner that requires, pursuant to the license applicable to such software, that any Provider or TIBCO property or services be: (i) disclosed or distributed in source code form; (ii) made available free of charge to recipients; or (c) modifiable without restriction by recipients. You represent and warrant that no software or content provided by you or your users in connection with your use of Hosted Services or the Cloud will contain any malicious or hidden mechanism or code for the purpose of damage or corrupting the Hosted Services, Cloud or the Provider service.

C. You are solely responsible for adequate security, protection and back up of your data/content. We are not responsible for Provider services; any unauthorized access; or the deletion, destruction, damage, loss or failure to store any of your content or other data that you submit or use in Hosted Services or the Cloud.

11. Restrictions. You agree 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 Order Form, even if such unlicensed software is made available to you as part of the general delivery mechanism for the Products; (c) provide access to the Products to anyone other than employees, contractors, or consultants who agree in writing to be bound by terms at least as protective of TIBCO as those in this Agreement; (d) sublicense, transfer, assign, distribute to any third party, pledge, lease, rent, or commercially share the Products or any of your rights under this Agreement (for the purposes of the foregoing a change in control of your company is deemed to be an assignment); (e) use the Products 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 Products in connection with ultrahazardous activities, or any activity for which failure of the Products might result in death or serious bodily injury to you 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 Products. You 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, you agree to observe strict obligations of confidentiality and provide us reasonable advance written notice and the opportunity to assist with and/or conduct such activity on your behalf and at your expense.

Any additional license parameters applicable to Products are set forth at <http://www.tibco.com/software/parametersdefinitions.jsp>.

12. Proprietary Notices. The Products, Documentation and Materials are proprietary to TIBCO and its licensors and protected by applicable U.S. and international patent, copyright, trademark and trade secret laws. TIBCO and its licensors shall retain ownership in the Products, 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 Products, Documentation or Materials shall be duplicated by you on all copies of the Products, Documentation, or Material, as applicable, and shall not be altered, removed or obliterated. Lease Equipment is, and shall at all times be and remain Our sole and exclusive property; you have no right, title or interest therein or thereto except as expressly set forth in this Agreement. You shall keep the Lease Equipment free and clear of all levies, liens and encumbrances and shall immediately notify us in writing of any circumstances with respect to the location of the Equipment which will adversely affect it or our security interests therein. You shall not install, attach, mount or otherwise house the Lease Equipment in a manner that would render it a fixture under applicable law within the jurisdiction in which the Lease Equipment is located.

13. Extraordinary Corporate Event. To the extent you or your successors or assigns enter into an Extraordinary Corporate Event after the Purchase Date, this Agreement shall not apply to those additional users, divisions or entities, which were added to your 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 you and us.

#### 14. Maintenance.

A. If you acquired Maintenance from a TIBCO authorized third party, section B. below does not apply. THE TERMS OF ANY

MAINTENANCE SERVICES OR RELATED WARRANTY SHALL BE AS AGREED BY AND BETWEEN YOU AND THE TIBCO AUTHORIZED THIRD PARTY. WE PROVIDE NO WARRANTY TO YOU WITH RESPECT TO MAINTENANCE SERVICES PROVIDED BY ANY THIRD PARTY.

B. Maintenance, if ordered (or if included in Lease, Cloud or Hosted Services), 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 into this Agreement, are subject to change at our discretion; however the level of Maintenance service provided by us will not be materially reduced if we change the policies during any twelve (12) month period for which Maintenance fees have been paid by you. The current version of the Maintenance Program Guide can be accessed at <http://www.tibco.com/services/support/default.jsp>.

C. Updates provided by us or by our authorized resellers or distributors (if applicable), are subject to the license rights, limitations and restrictions of this Agreement. To receive Maintenance, all Products must be properly licensed and annual Maintenance fees paid. We are not obligated to continue providing Maintenance if annual Maintenance fees have not been paid.

#### 15. Consulting Services.

A. You may procure installation, configuration, training or other consulting or support services ("Consulting Services") either in an Order Form, a purchase order (as set forth in the purchasing guidelines located at [http://www.tibco.com/multimedia/purchase-order-guidelines\\_tcm8-5446.pdf](http://www.tibco.com/multimedia/purchase-order-guidelines_tcm8-5446.pdf)) or a work order executed by both parties ("Work Order"). We will use commercially reasonable efforts to perform such Consulting Services. Unless otherwise expressly agreed in a Work Order, all Consulting Services shall be: (i) performed on a time and materials basis ("T&M"), with meals, lodging, travel and other reasonably necessary out-of-pocket expenses ("Expenses") invoiced in addition to T&M fees, (ii) deemed accepted upon delivery, and (iii) incorporate the Work Order Terms defined at <http://www.tibco.com/resources/company/customer-relations/work-order-terms.pdf>.

B. We hereby grant you a nonexclusive license to use the Materials (and a reasonable number of copies thereof) solely for your internal operations in conjunction with your use of the Products. Materials obtained during your attendance at or from your purchase of virtual training courses, unless otherwise agreed in an Order Form, are limited to the one copy received by each attendee and may not be duplicated.

C. In the event you are purchasing a license to specific training course content as set forth in an Order Form, the content of each such training course shall constitute a Product for the purpose of this Agreement. Subject to your payment of fees due, you are granted a limited, non-transferable, non-exclusive, license to use, modify, translate, create derivative works, reproduce and distribute the Product solely for your internal business use, provided that the copyright notice and other legends of ownership are reproduced on each complete or partial copy of such Product. We retain all right, title and interest in the Product, excluding your Confidential Information. All complete or partial copies of the Product in any form shall be subject to the same terms as the original copy. The term of each license and level of annual Maintenance for the Product shall be as set forth in the Order Form.

#### 16. Limited Warranty.

A. If you obtained Software directly from us, we warrant for a period of thirty (30) days from the Purchase Date that (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 to you personally and is not transferable. Your sole and exclusive remedy and the entire liability of TIBCO and its licensors under this limited warranty will be, at our option, to repair or replace (with respect to the affected Software product), or refund the Software license fee. In the event of a refund, this Agreement shall terminate with respect to the affected Software product.

B. THIS WARRANTY DOES NOT APPLY TO ANY SOFTWARE WHICH (I) IS LICENSED FOR ALPHA, BETA, EVALUATION, TESTING OR DEMONSTRATION PURPOSES FOR WHICH WE DID NOT RECEIVE A LICENSE FEE; (II) HAS BEEN ALTERED OR MODIFIED, (UNLESS BY US); (III) HAS NOT BEEN INSTALLED, OPERATED, REPAIRED, OR MAINTAINED IN ACCORDANCE WITH INSTRUCTIONS SUPPLIED BY US; (IV) HAS BEEN SUBJECTED TO ABNORMAL PHYSICAL OR ELECTRICAL STRESS, MISUSE, NEGLIGENCE, OR ACCIDENT; OR (V) IS USED IN VIOLATION OF ANY OTHER TERM OF THIS AGREEMENT. YOU AGREE TO PAY US FOR ANY MAINTENANCE OR CONSULTING SERVICES PROVIDED BY US RELATED TO A BREACH OF THE FOREGOING ON A T&M AND EXPENSE BASIS. IF YOU HAVE OBTAINED THE SOFTWARE FROM A RESELLER OR DISTRIBUTOR, THE TERMS OF ANY WARRANTY SHALL BE AS PROVIDED BY SUCH RESELLER OR DISTRIBUTOR; WE PROVIDE NO WARRANTY TO YOU WITH RESPECT TO SUCH SOFTWARE.

C. EXCEPT AS SPECIFIED IN THIS LIMITED WARRANTY, THE PRODUCTS 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 PRODUCTS 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 PRODUCTS. YOU MAY CHOOSE NOT TO USE THIRD PARTY SOFTWARE PROVIDED AS AN ACCOMMODATION. NO WARRANTY IS MADE REGARDING THE RESULTS OF ANY PRODUCTS OR SERVICES; THAT THE PRODUCTS WILL OPERATE WITHOUT ERRORS, PROBLEMS OR INTERRUPTIONS; THAT ERRORS OR BUGS WILL BE CORRECTED, OR THAT THE PRODUCT FUNCTIONALITY OR SERVICES WILL MEET YOUR REQUIREMENTS. NO TIBCO DEALER, DISTRIBUTOR, AGENT OR EMPLOYEE IS AUTHORIZED TO MAKE ANY MODIFICATIONS, EXPANSIONS OR ADDITIONS TO THIS WARRANTY ON TIBCO'S BEHALF.

17. Indemnity. If you obtained the Software from us directly, then we agree at our own expense to defend or, at our option, to settle, any claim or action brought against you 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. We will indemnify and hold you 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 you in a final judgment; provided that we are promptly notified in writing of such claim, we have the exclusive right

to control such defense and/or settlement, and you provide reasonable assistance (at our expense) in the defense thereof. In no event shall you settle any claim, action or proceeding without our prior written approval. In the event of any such claim, litigation or threat thereof, we, at our sole option and expense, shall (a) procure for you the right to continue to use the Software, (b) replace or modify the Software with functionally equivalent software. If such license or modification is not commercially reasonable (in our reasonable opinion), we may cancel this Agreement with respect to the affected Software product upon sixty days prior written notice to you and refund to you the unamortized portion of the associated license fees paid by you to us based on a five-year straight-line depreciation. This Section states our entire liability with respect to the infringement of any intellectual property rights, and you hereby expressly waive any other liabilities or obligations we have with respect thereto. The foregoing indemnity shall not apply to the extent any claim is based on or attributable to (x) modifications made by you to the Software, or portions thereof, (y) such claim would have been avoided by use of the then-current release version of the Software, or (z) your continued allegedly infringing activity after being provided with modifications that would have avoided the alleged infringement.

#### 18. Limitation of Liability.

A. EXCEPT AS PROVIDED UNDER THE INDEMNITY ABOVE; OR IN CONNECTION WITH THE 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 TIBCO'S LICENSORS BE LIABLE FOR ANY LOSS OR UNAVAILABILITY OF OR DAMAGE TO DATA, LOST REVENUE, LOST PROFITS, FAILURE TO REALIZE EXPECTED SAVINGS, DAMAGE TO REPUTATION, BUSINESS INTERRUPTION, DOWNTIME COSTS, OR ANY OTHER INDIRECT, INCIDENTAL, CONSEQUENTIAL, SPECIAL, PUNITIVE, EXEMPLARY OR SIMILAR TYPE OF DAMAGES ARISING OUT OF THIS AGREEMENT, THE USE OR THE INABILITY TO USE THE PRODUCTS, OR THE PROVISION OF ANY MAINTENANCE, CONSULTING SERVICES, EVEN IF A PARTY HAS BEEN ADVISED OR WAS AWARE OR SHOULD HAVE BEEN AWARE OF THE POSSIBILITY OF SUCH COSTS, EXPENSES OR DAMAGES.

B. EXCEPT FOR THE EXCLUDED MATTERS, IN NO EVENT SHALL A PARTY'S LIABILITY 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 YOU UNDER THE APPLICABLE ORDER FORM.

C. 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. TO THE EXTENT ALLOWED BY LOCAL LAW, THESE LIMITATIONS WILL APPLY REGARDLESS OF THE BASIS OF LIABILITY, INCLUDING NEGLIGENCE, MISREPRESENTATION, BREACH OF ANY KIND, OR ANY OTHER CLAIMS IN CONTRACT, TORT OR OTHERWISE.

#### 19. Confidentiality.

A. "Confidential Information" means any information disclosed by either party, whether or not marked, including, without limitation, the terms of this Agreement; the Products; Materials; individual contact

information provided by either party; Product or related performance test results derived by you, including but not limited to benchmark test results; and your Protected Data and Output. Each party agrees to protect Confidential Information in the same manner as it protects its own Confidential Information (but using no less than a reasonable degree of protection) and shall only disclose Confidential Information to those with a need to know that information and 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 (i) available to the public other than by a breach of a confidentiality obligation, (ii) rightfully received from a third party not in breach of a confidentiality obligation, (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 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.

B. To the extent we are exposed to individual personal data owned or otherwise held by you during the provision of Hosted Services, Cloud, or Services, which is subject to various data protection laws and/or regulations ("Protected Data"), we agree 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 our obligations for the protection, integrity and confidentiality of any Protected Data which exceed our standard obligations to safeguard Confidential Information.

C. 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 you of Products or Materials shall not affect or diminish the disclosing party's rights, title and interest in and to Confidential Information.

D. We may use any individual contact information provided by you or your users for support, product information and other business to business communications in connection with this Agreement. In the event you or your users wish to "opt-out" you should do so on the web store or web site page where you originally submitted provided your information or at <http://forms2.tibco.com/unsubscribe/u/5042/768537d8eeb3af5338448782d1fa356e>.

E. You acknowledge and agree that any feedback, suggestions, comments, improvements, modifications and other information (including any ideas, concepts, "know-how" or techniques contained therein) that you provide to us about our Products or their performance (collectively, "Feedback") shall not be deemed as your Confidential Information and may be used, disclosed, disseminated and/or published by us for any purpose, including developing, manufacturing and marketing products incorporating Feedback, without obligation of

any kind to you, and you waive any rights whatsoever in or to all Feedback.

20. Export. Products, Documentation, Materials and related technical data, are subject to U.S. export control laws, including without limitation the U.S. Export Administration Act and its associated regulations and may be subject to export or import regulations of other countries. You agree that you will not nor permit your users to export or re-export the Licensor Software, Documentation and Materials in any form in violation of any applicable export or import laws of any jurisdiction.

21. Government Use. If the Products or Services are being or have been acquired with U.S. Federal Government funds, or you are 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 Products and Services are COMMERCIAL ITEMS AS DEFINED BY THE FEDERAL ACQUISITION REGULATION. Use by the Government is further restricted according to the terms of this Agreement and any amendment hereto.

22. Entire Agreement. 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 Products 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 Products or Services by you to us shall be deemed to occur, with or without reference, under the terms of this Agreement, unless expressly superseded by a signed written agreement between the parties. Except for additional terms you have agreed to in connection with our web stores or web sites, none of the terms of the Order Form (other than the product names, Number of Units, level of Maintenance, description of Consulting Services, and fees due in connection therewith) shall apply for any reason or purpose whatsoever, regardless of any statement on any Order Form to the contrary. Neither the license to use granted in this Agreement nor the obligation to pay license fees are dependent upon the performance by any party of any Consulting Services or the supply of any other software program or product.

23. Termination.

A. This Agreement and all Order Forms shall automatically terminate if: (i) either party files for bankruptcy, or otherwise goes into receivership, becomes insolvent or makes an assignment for the benefit of creditors; or (ii) a writ of attachment or execution is levied on the Equipment (where we are lessor) and is not released or satisfied within ten (10) days thereafter, or (iii) where we are lessor or in a Purchase where payment in full to us has not been made, if a receiver is appointed in any proceeding or action to which you are a party with authority to take possession or control of the Equipment. In all cases, the Equipment shall be promptly returned to us and not be treated as your asset.

B. Maintenance or Consulting Services may be terminated: (i) by either party upon a default of the other, such default remaining uncured for fifteen days from written notice from the non-defaulting party; (ii) upon the filing for bankruptcy or insolvency of the other party, (iii) by either party upon prior written notice at least sixty (60) days prior to the end of any annual Maintenance term; or (iv) by you for



Consulting Services, upon ten (10) days prior written notice or (e) by us for Consulting Services upon thirty (30) days prior written notice. Termination of Maintenance or Consulting Services shall not terminate this Agreement.

C. A Cloud will terminate if or when your or our agreement for services with a Provider is terminated or otherwise expires for any reason. In the event of a termination of your Provider services, by Provider, in connection with a Cloud, without cause (where you are not in breach), to the extent you have pre-paid us fees for the Cloud, you may submit written notice requesting a refund, such notice to include evidence of Provider's termination without cause (e.g. a copy of Provider's notice of termination). Following receipt of such written notice, we will refund the pre-paid unearned pro-rata portion, from the date we received your notice, for the remaining Cloud term, or in the case of multiple Cloud purchases, each remaining term. In the event of a termination, for any reason, of TIBCO Provider service accounts upon which we rely to provide Hosted Services or the Cloud, to the extent you have pre-paid us fees for Hosted Services or Cloud to us, we will refund, as of the date of notice of termination from Provider to us, for the unearned pro-rata portion of the prepaid fees.

D. You may terminate this Agreement in its entirety at any time, in regard to Software, by destroying all copies of the Software. We may terminate this Agreement at any time, in regard to Software provided to you for evaluation or alpha/beta purposes. In the case of an evaluation of Equipment, where we exercise our right to terminate the Lease for a reason other than your breach of the Agreement, and you have pre-paid fees for the month in which our termination occurs, we will refund the unearned monthly pro-rated fee to you within thirty (30) days following our receipt of the returned Equipment.

E. If a license, Cloud, Hosted Services or Lease under this Agreement terminates or expires, or upon termination of this Agreement in its entirety for any reason, you shall (i) cease using the Products, Documentation, and related Confidential Information, and (ii) return or notify us in writing within thirty (30) days after termination that you have destroyed any Software (excluding Equipment), Documentation, related Confidential Information, and all copies thereof, whether or not modified or merged into other materials. Equipment shall be returned in good repair, condition and working order (ordinary wear and tear resulting from proper use thereof excepted), by delivering the Equipment to our designated carrier. You are responsible for all costs associated with de-installation of equipment and returning the Equipment in accordance with the Equipment Return Guidelines available at [http://www.tibco.com/resources/equipment\\_return\\_guidelines.pdf](http://www.tibco.com/resources/equipment_return_guidelines.pdf).

F. Termination of this Agreement, any license, Cloud, Hosted Services or Lease, or any Order Form shall not limit either party from pursuing other remedies available to it, including injunctive relief, nor shall such termination relieve you of your obligation to pay all fees that have accrued or are otherwise owed by you under this Agreement. Except as set forth in sections entitled "Termination", "Limited Warranty" or "Indemnity", all fees paid under or in connection with this Agreement are non-refundable and no right of set off exists. The parties' rights and obligations under this section and sections entitled "Limited Warranty", "Indemnity", "Limitation of Liability", "Proprietary Notices", "Confidentiality", "General", "Governing Law" and your warranties in connection with Hosted Services and the Cloud, shall survive the expiration or earlier termination of this Agreement.

24. Open Source Software. If you use any third party software not supplied by us, including any open source software, in conjunction with any Product, you must ensure that such use does not require any of the following, pursuant to the terms of such software: (i) disclosure or distribution of any Product in source code form; or (ii) licensing of

any Product for the purpose of making derivative works; or (iii) redistribution of any Product at no charge. For the avoidance of doubt, you may not combine Product with any software licensed under any version of or derivative of the GNU General Public License ("GPL") in any manner that could cause, or could be interpreted or asserted to cause, the Product or any modifications to the Product to become subject to the terms of the GPL.

25. Special Product Provisions. 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 you can only use in conjunction with the Software and may be subject to additional terms as provided by us.

26. 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 our invoice. Fees do not include sales, use, withholding, value-added or similar taxes, and you agree to pay all sales, use, value-added, goods and services, consumption, withholding, excise and any other similar taxes or government charges, exclusive of our income tax. You 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", "Indemnity" and "Termination" all fees paid under or in connection with this 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 Agreement to the extent caused by Force Majeure. You hereby grant us and our independent auditors the right to audit your compliance with this Agreement and report any results to our licensors. You agree to provide reasonable assistance to ensure a complete and accurate audit by us and our independent auditors. If any portion of this Agreement is found to be void or unenforceable, the remaining provisions shall remain in full force and effect. All notices related to this Agreement shall be in writing. Notices will be effective if dispatched by facsimile; or electronic mail; by hand; reliable overnight delivery service or first-class, pre-paid mail if sent to the contract address for the intended recipient set forth in the Order Form. A copy of any notice of default, breach or termination shall also being sent to that party's General Counsel.

27. Governing Law. This 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. December 2010A