END USER LICENSE AGREEMENT ("AGREEMENT")

PLEASE READ CAREFULLY: IF YOU HAVE ANOTHER VALID, SIGNED AGREEMENT WITH TIBCO WHICH APPLIES TO THE SPECIFIC SOFTWARE, EQUIPMENT, CLOUD SERVICES OR HOSTED SERVICES, YOU WILL BE DOWNLOADING, ACCESSING OR OTHERWISE RECEIVING (INDIVIDUALLY AND COLLECTIVELY REFERRED TO AS THE "PRODUCTS"), THAT OTHER AGREEMENT SHALL CONTROL YOUR USE OF SUCH PRODUCTS AND, IF APPLICABLE, RELATED SERVICES (AS DEFINED BELOW). 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, DO NOT: 1) DOWNLOAD OR INSTALL THE SOFTWARE, OR 2) ACCESS OR REGISTER TO ACCESS ANY CLOUD SERVICES 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 (1) DOWNLOAD OR OTHERWISE EXPORT OR RE-EXPORT THE PRODUCTS OR MATERIALS, DIRECTLY OR INDIRECTLY, TO PERSONS ON THE ABOVE-MENTIONED LISTS, (2) 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 (3) 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. Governance. 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 but not defined herein shall have the meanings set forth 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 website 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 of 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, Developer Evaluation and Evaluation Licenses. If the Products are provided or accessed for demonstration or evaluation purposes or for alpha or beta testing, then you agree, subject to the license grant in Section 4 below and to the terms and conditions of this Agreement, (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 (30) 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 Services or the Hosted Services. If the Products are provided or accessed for Developer Evaluation, then you agree (a) to use the Products solely for development evaluation purposes, (b) that such use shall not be in a Production environment and (c) that such use shall automatically terminate upon the earlier of (i) ninety (90) 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 Services or 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, subject to the terms and conditions of this Agreement, 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
- Developer Evaluation – ninety (90) days
- Hosted Services – one (1) year
- Cloud Services – thirty (30) days, one (1) year minimum
- Software purchases on a term limited basis – three (3) years

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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 immediately 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. Not less than sixty (60) days prior to expiration of the term, and provided that you are not then in breach of any term of this Agreement, TIBCO will send you a renewal invoice setting forth the payment terms for an additional Equipment Lease term of one (1) year. In order to renew such Equipment Lease, you must provide TIBCO with full payment of such lease renewal fee no later than thirty (30) days prior to expiration of the term. Except as otherwise agreed upon in writing by the parties, your failure to provide the Lease Renewal payment in a timely manner will result in termination of the Equipment Lease term, in accordance with the terms of this Agreement.

B. Purchase. When we accept your order to purchase the Equipment, we agree, subject to the terms and conditions of this Agreement, to sell you the Equipment described in the Order Form. We transfer all title and risk to the hardware component of the Equipment when we or our agent ships the Equipment. Furthermore, we reserve, and you consent to our reservation of, a purchase money security interest in the Equipment until we receive all 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, or for the replacement of Equipment or components thereof pursuant to the Equipment Maintenance Program Guide, we reserve, and you consent to our reservation of, a security interest in the Equipment until we receive payment of all fees due and the removed parts. You hereby authorize us to file appropriate documents to permit the perfection of our purchase money security interest and you will provide reasonable assistance to perfect such interests.

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 One Million Dollars ($1,000,000 USD) per occurrence. Each insurance policy shall name us as an additional named insured and as a loss payee, and shall 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. Promptly, but in no event later than thirty (30) days from the Purchase Date, 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. Failure to provide such certificate of insurance in a timely manner will be considered a breach of this Agreement.

D. Equipment Delivery. For delivery of the TIBCO Messaging Appliance™, title is deemed to transfer upon delivery by our agent to our designated freight carrier, FCA Ontario, Canada (Incoterms 2000). For delivery of all other Equipment, title is deemed to transfer upon delivery 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 on your behalf. You will be invoiced for shipping and handling charges paid by us to the freight carrier. 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 Standard Time Friday to 3:00 a.m. Pacific Standard Time Monday), (b)third party service provider 's downtime 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 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 Services. Specific offerings for TIBCO's Cloud Services can be found at - http://www.tibco.com/multimedia/cloud-services-program-guide_tcm8-18725.pdf

10. Hosted Services and Cloud Services Restrictions.

A. In connection with your use of Hosted Services or Cloud Services, you shall, in addition to the restrictions in 11.D and11.E below (i) be responsible for your users' compliance with this Agreement, (ii) be solely responsible for the accuracy, quality, integrity and lawfulness of and 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 Services, (v) use commercially reasonable efforts to prevent the unauthorized access to or use of the Hosted Services or Cloud Services, 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 Services or their related systems or networks, and (vii) use the Hosted Services, or Cloud Services only in accordance with any applicable Documentation and all applicable laws and government regulations. Hosted Services or Cloud Services 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 website. In the event that you receive any notice claiming that our content, in connection with the Hosted Services or Cloud Services or any Provider services violates a third party's rights including, without limitation, notices pursuant to the Digital Millennium Copyright Act, you will promptly forward such notice to us, with a courtesy copy to TIBCO's General Counsel.

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B. You represent and warrant that you will not use Hosted Services or Cloud Services to promote any illegal activities or post any materials in violation of any law. In addition, in using and accessing Hosted Services, or Cloud Services, 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: (1) disclosed or distributed in source code form; (2) made available free of charge to recipients; or (3) 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 Cloud Services will contain any malicious or hidden mechanism or code for the purpose of damage or corrupting the Hosted Services, Cloud Services or the Provider service.

C. You are solely responsible for adequate security, protection and backup of your data and content. We are not responsible for Provider services, unauthorized access to your data or content, 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 Cloud Services.

11. Restrictions.

A. You shall not (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 or conduct such activity on your behalf and at your expense.

B. 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 our respective duly authorized officers.

14. Maintenance.

A. If you acquired Maintenance from a TIBCO authorized third party, Section 14(B) 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 Services 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 and the Equipment Maintenance Program Guide, which are hereby 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 and the Equipment Maintenance Program Guide can be accessed at http://www.tibco.com/multimedia/equipment-maintenance-program-guide_tcm8-16160.pdf.

C. Any Updates provided by us or by our authorized resellers or distributors (if applicable) are subject to the terms and conditions of this Agreement. To receive Maintenance, all Products must be properly licensed and Maintenance fees paid. We are under no obligation to provide Maintenance in the event that Maintenance fees have not been properly and timely paid in full.

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) 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

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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) subject to the Work Order Terms defined at http://www.tibco.com/resources/company/customer-relations/work-order-terms.pdf and incorporated hereto.

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 (1) copy received by each attendee and may not be duplicated.

C. In the event that 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 and non-exclusive license to use, modify, translate, create derivative works from, reproduce and distribute the Product solely for your internal business use: provided, however, that the copyright notices and any 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 solely with respect to the affected Software product, and you shall immediately cease all use of and return or destroy all copies of such Software.

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 SOLELY 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, NONINFRINGEMENT, SATISFACTORY QUALITY OR ARISING FROM A COURSE OF DEALING, USAGE, OR TRADE PRACTICE, ARE HEREBY EXCLUDED TO THE EXTENT ALLOWED BY APPLICABLE LAW. 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, EXTENSIONS 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 you promptly notify us 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, or (b) replace or modify the Software with functionally equivalent software. If such license or modification is not commercially reasonable (in our sole 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 that (x) any claim is based on or attributable to 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,

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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 FIFTY THOUSAND DOLLARS ($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 YOU. 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 (as defined in Section B below) 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. The parties further agree 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 Services, 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 (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 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 from receiving such communications, you or your users should do so on the web store or website page where you originally submitted provided your information or at http://forms2.tibco.com/unsubscribe/u/5042/768537d8eeb3af5338448782d1fa356e. Please note that communications may still be transmitted after the opt-out request has been submitted but before it has been processed.

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.

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B. Maintenance or Consulting Services may be terminated: (i) by either party upon a default of the other, such default remaining uncured for fifteen (15) 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. In the event of a termination, for any reason, of TIBCO Provider service accounts upon which we rely to provide Hosted Services to the extent you have pre-paid us fees for Hosted Services 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.

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zlib.h -- interface of the 'zlib' general purpose compression library
version 1.1.3, July 9th, 1998

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The data format used by the zlib library is described by RFCs (Request for
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zlib.h -- interface of the 'zlib' general purpose compression library
version 1.1.3, July 9th, 1998

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The data format used by the zlib library is described by RFCs (Request for
Comments) 1950 to 1952 in the files ftp://ds.internic.net/rfc/rfc1950.txt
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Simple Logging Facade for Java (SLF4J) 1.1.0

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Sun Java Runtime Environment (JRE) 1.6

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JArgs command line option parsing suite for Java 1.0

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Saxon-B 9.0

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Apache HTTP Client 4.1.2

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*jaxen 1.1.6

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*JSR-311 - JAX-RS - The Java API for RESTful Web Services (Jersey) - 1.1.1

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END OF Section A. SUMMARY

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B.16 - X Window System 6.8
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*OpenSSL 0.9.8y

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*SOAP with Attachments API for Java (SAAJ) 1.3

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