

TIBCO Software Inc. End User License Agreement

For TIBCO Enterprise Message Service(TM)

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>. "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 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) 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. 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>. Updates provided under Maintenance or for any other reason by us, or 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) 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, 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 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 (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" you should do so on the web store or web site page where you originally submitted provided your information or at <http://tibco.market2lead.com/go/tibco/unsubscribe?userId=179027619&>.

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.

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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.

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rev. December 10, 2010

Addenda:

Third-Party Software Notices

OpenLDAP 2.1.30
OpenLDAP 2.4.22

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 distribution. Justin Frankel justin@nullsoft.com"

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IBM AIX Developer Kit and Runtime, Java Technology Edition 1.6.0

International License Agreement for Non-Warranted Programs

Part 1 - General Terms

BY DOWNLOADING, INSTALLING, COPYING, ACCESSING, OR
 USING THE PROGRAM YOU AGREE TO THE TERMS OF THIS
 AGREEMENT. IF YOU ARE ACCEPTING THESE TERMS ON
 BEHALF OF ANOTHER PERSON OR A COMPANY OR OTHER
 LEGAL ENTITY, YOU REPRESENT AND WARRANT THAT YOU
 HAVE FULL AUTHORITY TO BIND THAT PERSON, COMPANY, OR
 LEGAL ENTITY TO THESE TERMS. IF YOU DO NOT AGREE TO
 THESE TERMS,

- DO NOT DOWNLOAD, INSTALL, COPY, ACCESS, OR USE THE
 PROGRAM; AND

- PROMPTLY RETURN THE PROGRAM AND PROOF OF
 ENTITLEMENT TO THE PARTY FROM WHOM YOU ACQUIRED IT
 TO OBTAIN A REFUND OF THE AMOUNT YOU PAID. IF YOU
 DOWNLOADED THE PROGRAM, CONTACT THE PARTY FROM
 WHOM YOU ACQUIRED IT.

"IBM" is International Business Machines Corporation or one of its
 subsidiaries.

"License Information" ("LI") is a document that provides information
 specific to a Program. The Program's LI is available at
<http://www.ibm.com/software/sla/>. The LI may also be found in a file in
 the Program's directory, by the use of a system command, or as a
 booklet which accompanies the Program.

"Program" is the following, including the original and all whole or
 partial copies: 1) machine-readable instructions and data, 2)
 components, 3) audio-visual content (such as images, text,
 recordings, or pictures), 4) related licensed materials, and 5) license
 use documents or keys, and documentation.

A "Proof of Entitlement" ("PoE") is evidence of Your authorization to
 use a Program at a specified level. That level may be measured, for
 example, by the number of processors or users. The PoE is also
 evidence of Your eligibility for future upgrade prices, if any, and
 potential special or promotional opportunities. If IBM does not provide
 You with a PoE, then IBM may accept the original paid sales receipt or

other sales record from the party (either IBM or its reseller) from whom You acquired the Program, provided that it specifies the name of the Program and the usage level acquired.

"You" and "Your" refer either to an individual person or to a single legal entity.

This Agreement includes Part 1 - General Terms, Part 2 - Country-unique Terms (if any), License Information, and Proof of Entitlement and is the complete agreement between You and IBM regarding the use of the Program. It replaces any prior oral or written communications between You and IBM concerning Your use of the Program. The terms of Part 2 and License Information may replace or modify those of Part 1. To the extent there is a conflict between the terms of this Agreement and those of the IBM International Passport Advantage Agreement, the terms of the latter agreement prevail.

1. Entitlement

License

The Program is owned by IBM or an IBM supplier, and is copyrighted and licensed, not sold.

IBM grants You a nonexclusive license to use the Program when You lawfully acquire it.

You may 1) use the Program up to the level of use specified in the PoE and 2) make and install copies, including a backup copy, to support such use. The terms of this license apply to each copy You make. You will reproduce all copyright notices and all other legends of ownership on each copy, or partial copy, of the Program.

If You acquire the Program as a program upgrade, after You install the upgrade You may not use the Program from which You upgraded or transfer it to another party.

You will ensure that anyone who uses the Program (accessed either locally or remotely) does so only for Your authorized use and complies with the terms of this Agreement.

You may not 1) use, copy, modify, or distribute the Program except as provided in this Agreement; 2) reverse assemble, reverse compile, or otherwise translate the Program except as specifically permitted by law without the possibility of contractual waiver; or 3) sublicense, rent, or lease the Program.

IBM may terminate Your license if You fail to comply with the terms of this Agreement. If IBM does so, You must destroy all copies of the Program and its PoE.

Money-back Guarantee

If for any reason You are dissatisfied with the Program and You are the original licensee, You may obtain a refund of the amount You paid for it, if within 30 days of Your invoice date You return the Program and its PoE to the party from whom You obtained it. If You downloaded the Program, You may contact the party from whom You acquired it for instructions on how to obtain the refund.

Program Transfer

You may transfer a Program and all of Your license rights and obligations to another party only if that party agrees to the terms of this Agreement. When You transfer the Program, You must also transfer a copy of this Agreement, including the Program's PoE. After the transfer, You may not use the Program.

2. Charges

The amount payable for a Program license is a one-time charge.

One-time charges are based on the level of use acquired which is specified in the PoE. IBM does not give credits or refunds for charges already due or paid, except as specified elsewhere in this Agreement.

If You wish to increase the level of use, notify IBM or the party from whom You acquired it and pay any applicable charges.

If any authority imposes a duty, tax, levy or fee, excluding those based on IBM's net income, upon the Program, then You agree to pay the amount specified or supply exemption documentation. You are responsible for any personal property taxes for the Program from the date that You acquire it.

3. No Warranty

SUBJECT TO ANY STATUTORY WARRANTIES WHICH CAN NOT BE EXCLUDED, IBM MAKES NO WARRANTIES OR CONDITIONS EITHER EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OR CONDITIONS OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND NON-INFRINGEMENT, REGARDING THE PROGRAM OR TECHNICAL SUPPORT, IF ANY.

The exclusion also applies to any of IBM's Program developers and suppliers.

Manufacturers, suppliers, or publishers of non-IBM Programs may provide their own warranties.

IBM does not provide technical support, unless IBM specifies otherwise.

4. Limitation of Liability

Circumstances may arise where, because of a default on IBM's part or other liability, You are entitled to recover damages from IBM. In each such instance, regardless of the basis on which You may be entitled to claim damages from IBM, (including fundamental breach, negligence, misrepresentation, or other contract or tort claim), IBM is liable for no more than 1) damages for bodily injury (including death) and damage to real property and tangible personal property and 2) the amount of any other actual direct damages up to the charges for the Program that is the subject of the claim.

This limitation of liability also applies to IBM's Program developers and suppliers. It is the maximum for which they and IBM are collectively responsible.

UNDER NO CIRCUMSTANCES IS IBM, ITS PROGRAM DEVELOPERS OR SUPPLIERS LIABLE FOR ANY OF THE FOLLOWING, EVEN IF INFORMED OF THEIR POSSIBILITY:

1. LOSS OF, OR DAMAGE TO, DATA;

2. SPECIAL, INCIDENTAL, OR INDIRECT DAMAGES, OR FOR ANY ECONOMIC CONSEQUENTIAL DAMAGES; OR

3. LOST PROFITS, BUSINESS, REVENUE, GOODWILL, OR ANTICIPATED SAVINGS.

SOME JURISDICTIONS DO NOT ALLOW THE EXCLUSION OR LIMITATION OF INCIDENTAL OR CONSEQUENTIAL DAMAGES, SO

THE ABOVE LIMITATION OR EXCLUSION MAY NOT APPLY TO YOU.

5. General

1. Nothing in this Agreement affects any statutory rights of consumers that cannot be waived or limited by contract.

2. In the event that any provision of this Agreement is held to be invalid or unenforceable, the remaining provisions of this Agreement remain in full force and effect.

3. You agree to comply with all applicable export and import laws and regulations.

4. You agree to allow IBM to store and use Your contact information, including names, phone numbers, and e-mail addresses, anywhere they do business. Such information will be processed and used in connection with our business relationship, and may be provided to contractors, Business Partners, and assignees of IBM for uses consistent with their collective business activities, including communicating with You (for example, for processing orders, for promotions, and for market research).

5. Neither You nor IBM will bring a legal action under this Agreement more than two years after the cause of action arose unless otherwise provided by local law without the possibility of contractual waiver or limitation.

6. Neither You nor IBM is responsible for failure to fulfill any obligations due to causes beyond its control.

7. This Agreement will not create any right or cause of action for any third party, nor will IBM be responsible for any third party claims against You except, as permitted by the Limitation of Liability section above, for bodily injury (including death) or damage to real or tangible personal property for which IBM is legally liable.

6. Governing Law, Jurisdiction, and Arbitration

Governing Law

Both You and IBM consent to the application of the laws of the country in which You acquired the Program license to govern, interpret, and enforce all of Your and IBM's rights, duties, and obligations arising from, or relating in any manner to, the subject matter of this Agreement, without regard to conflict of law principles.

The United Nations Convention on Contracts for the International Sale of Goods does not apply.

Jurisdiction

All of our rights, duties, and obligations are subject to the courts of the country in which You acquired the Program license.

Part 2 - Country-unique Terms

AMERICAS

ARGENTINA: Governing Law, Jurisdiction, and Arbitration (Section 6): The following exception is added to this section:

Any litigation arising from this Agreement will be settled exclusively by the Ordinary Commercial Court of the city of Buenos Aires.

BRAZIL: Governing Law, Jurisdiction, and Arbitration (Section 6): The following exception is added to this section:

Any litigation arising from this Agreement will be settled exclusively by the court of Rio de Janeiro, RJ.

CANADA: General (Section 5): The following replaces item 7:

7. This Agreement will not create any right or cause of action for any third party, nor will IBM be responsible for any third party claims against You except as permitted by the Limitation of Liability section above for bodily injury (including death) or physical harm to real or tangible personal property caused by IBM's negligence for which IBM is legally liable."

Governing Law, Jurisdiction, and Arbitration (Section 6): The phrase "the laws of the country in which You acquired the Program license" in the Governing Law subsection is replaced by the following:

the laws in the Province of Ontario"

PERU: Limitation of Liability (Section 4): The following is added at the end of this section:

In accordance with Article 1328 of the Peruvian Civil Code, the limitations and exclusions specified in this section will not apply to damages caused by IBM's willful misconduct ("dolo") or gross negligence ("culpa inexcusable").

UNITED STATES OF AMERICA: General (Section 5): The following is added to this section:

U.S. Government Users Restricted Rights - Use, duplication or disclosure restricted by the GSA ADP Schedule Contract with the IBM Corporation.

Governing Law, Jurisdiction, and Arbitration (Section 6): The phrase "the laws of the country in which You acquired the Program license" in the Governing Law subsection is replaced by the following:

the laws of the State of New York, United States of America

ASIA PACIFIC

AUSTRALIA: No Warranty (Section 3): The following is added:

Although IBM specifies that there are no warranties, You may have certain rights under the Trade Practices Act 1974 or other legislation and are only limited to the extent permitted by the applicable legislation.

Limitation of Liability (Section 4): The following is added:

Where IBM is in breach of a condition or warranty implied by the Trade Practices Act 1974, IBM's liability is limited to the repair or replacement of the goods, or the supply of equivalent goods. Where that condition or warranty relates to right to sell, quiet possession or clear title, or the goods are of a kind ordinarily acquired for personal, domestic or household use or consumption, then none of the limitations in this paragraph apply.

Governing Law, Jurisdiction, and Arbitration (Section 6): The phrase "the laws of the country in which You acquired the Program license" in the Governing Law subsection is replaced by the following:

the laws of the State or Territory in which You acquired the Program license

CAMBODIA, LAOS, and VIETNAM: Governing Law, Jurisdiction, and Arbitration (Section 6): The phrase "the laws of the country in which You acquired the Program license" in the Governing Law subsection is replaced by the following:

the laws of the State of New York, United States of America

The following is added to this section:

Arbitration

Disputes arising out of or in connection with this Agreement shall be finally settled by arbitration which shall be held in Singapore in accordance with the Arbitration Rules of Singapore International Arbitration Center ("SIAC Rules") then in effect. The arbitration award shall be final and binding for the parties without appeal and shall be in writing and set forth the findings of fact and the conclusions of law.

The number of arbitrators shall be three, with each side to the dispute being entitled to appoint one arbitrator. The two arbitrators appointed by the parties shall appoint a third arbitrator who shall act as chairman of the proceedings. Vacancies in the post of chairman shall be filled by the president of the SIAC. Other vacancies shall be filled by the respective nominating party. Proceedings shall continue from the stage they were at when the vacancy occurred.

If one of the parties refuses or otherwise fails to appoint an arbitrator within 30 days of the date the other party appoints its, the first appointed arbitrator shall be the sole arbitrator, provided that the arbitrator was validly and properly appointed.

All proceedings shall be conducted, including all documents presented in such proceedings, in the English language. The English language version of this Agreement prevails over any other language version.

HONG KONG S.A.R. and MACAU S.A.R. of China: Governing Law, Jurisdiction, and Arbitration (Section 6): The phrase "the laws of the country in which You acquired the Program license" in the Governing Law subsection is replaced by the following:

the laws of Hong Kong Special Administrative Region of China

INDIA: Limitation of Liability (Section 4): The following replaces the terms of items 1 and 2 of the first paragraph:

1) liability for bodily injury (including death) or damage to real property and tangible personal property will be limited to that caused by IBM's negligence; and 2) as to any other actual damage arising in any situation involving nonperformance by IBM pursuant to, or in any way related to the subject of this Agreement, IBM's liability will be limited to the charge paid by You for the individual Program that is the subject of the claim.

General (Section 5): The following replaces the terms of item 5:

If no suit or other legal action is brought, within three years after the cause of action arose, in respect of any claim that either party may have against the other, the rights of the concerned party in respect of such claim will be forfeited and the other party will stand released from its obligations in respect of such claim.

Governing Law, Jurisdiction, and Arbitration (Section 6): The following is added to this section:

Arbitration

Disputes arising out of or in connection with this Agreement shall be finally settled by arbitration which shall be held in Bangalore, India in accordance with the laws of India then in effect. The arbitration award shall be final and binding for the parties without appeal and shall be in writing and set forth the findings of fact and the conclusions of law.

The number of arbitrators shall be three, with each side to the dispute being entitled to appoint one arbitrator. The two arbitrators appointed by the parties shall appoint a third arbitrator who shall act as chairman of the proceedings. Vacancies in the post of chairman shall be filled by the president of the Bar Council of India. Other vacancies shall be filled by the respective nominating party. Proceedings shall continue from the stage they were at when the vacancy occurred.

If one of the parties refuses or otherwise fails to appoint an arbitrator within 30 days of the date the other party appoints its, the first appointed arbitrator shall be the sole arbitrator, provided that the arbitrator was validly and properly appointed.

All proceedings shall be conducted, including all documents presented in such proceedings, in the English language. The English language version of this Agreement prevails over any other language version.

JAPAN: General (Section 5): The following is inserted after item 5:

Any doubts concerning this Agreement will be initially resolved between us in good faith and in accordance with the principle of mutual trust.

MALAYSIA: Limitation of Liability (Section 4): The word "SPECIAL" in item 2 of the third paragraph is deleted:

NEW ZEALAND: No Warranty (Section 3): The following is added:

Although IBM specifies that there are no warranties, You may have certain rights under the Consumer Guarantees Act 1993 or other legislation which cannot be excluded or limited. The Consumer Guarantees Act 1993 will not apply in respect of any goods which IBM provides, if You require the goods for the purposes of a business as defined in that Act.

Limitation of Liability (Section 4): The following is added:

Where Programs are not acquired for the purposes of a business as defined in the Consumer Guarantees Act 1993, the limitations in this Section are subject to the limitations in that Act.

PEOPLE'S REPUBLIC OF CHINA: Charges (Section 2): The following is added:

All banking charges incurred in the People's Republic of China will be borne by You and those incurred outside the People's Republic of China will be borne by IBM.

Governing Law, Jurisdiction, and Arbitration (Section 6): The phrase "the laws of the country in which You acquired the Program license" in the Governing Law subsection is replaced by the following:

the laws of the State of New York, United States of America (except when local law requires otherwise)

PHILIPPINES: Limitation of Liability (Section 4): The following replaces the terms of item 2 of the third paragraph:

2. special (including nominal and exemplary damages), moral, incidental, or indirect damages or for any economic consequential damages; or

Governing Law, Jurisdiction, and Arbitration (Section 6): The following is added to this section:

Arbitration

Disputes arising out of or in connection with this Agreement shall be finally settled by arbitration which shall be held in Metro Manila, Philippines in accordance with the laws of the Philippines then in effect. The arbitration award shall be final and binding for the parties without appeal and shall be in writing and set forth the findings of fact and the conclusions of law.

The number of arbitrators shall be three, with each side to the dispute being entitled to appoint one arbitrator. The two arbitrators appointed by the parties shall appoint a third arbitrator who shall act as chairman of the proceedings. Vacancies in the post of chairman shall be filled by the president of the Philippine Dispute Resolution Center, Inc. Other vacancies shall be filled by the respective nominating party. Proceedings shall continue from the stage they were at when the vacancy occurred.

If one of the parties refuses or otherwise fails to appoint an arbitrator within 30 days of the date the other party appoints its, the first appointed arbitrator shall be the sole arbitrator, provided that the arbitrator was validly and properly appointed.

All proceedings shall be conducted, including all documents presented in such proceedings, in the English language. The English language version of this Agreement prevails over any other language version.

SINGAPORE: Limitation of Liability (Section 4): The words "SPECIAL" and "ECONOMIC" are deleted from item 2 of the third paragraph.

General (Section 5): The following replaces the terms of item 7:

Subject to the rights provided to IBM's suppliers and Program developers as provided in Section 4 above (Limitation of Liability), a person who is not a party to this Agreement shall have no right under the Contracts (Right of Third Parties) Act to enforce any of its terms.

EUROPE, MIDDLE EAST, AFRICA (EMEA)

No Warranty (Section 3): In the European Union, the following is added at the beginning of this section:

In the European Union, consumers have legal rights under applicable national legislation governing the sale of consumer goods. Such rights are not affected by the provisions of this Section 3.

Limitation of Liability (Section 4): In Austria, Denmark, Finland, Greece, Italy, Netherlands, Norway, Portugal, Spain, Sweden and Switzerland, the following replaces the terms of this section in its entirety:

Except as otherwise provided by mandatory law:

1. IBM's liability for any damages and losses that may arise as a consequence of the fulfillment of its obligations under or in connection with this agreement or due to any other cause related to this agreement is limited to the compensation of only those damages and losses proved and actually arising as an immediate and direct consequence of the non-fulfillment of such obligations (if IBM is at fault) or of such cause, for a maximum amount equal to the charges You paid for the Program.

The above limitation shall not apply to damages for bodily injuries (including death) and damages to real property and tangible personal property for which IBM is legally liable.

2. UNDER NO CIRCUMSTANCES IS IBM, OR ANY OF ITS PROGRAM DEVELOPERS, LIABLE FOR ANY OF THE FOLLOWING, EVEN IF INFORMED OF THEIR POSSIBILITY: 1) LOSS OF, OR DAMAGE TO, DATA; 2) INCIDENTAL OR INDIRECT DAMAGES, OR FOR ANY ECONOMIC CONSEQUENTIAL DAMAGES; 3) LOST PROFITS, EVEN IF THEY ARISE AS AN IMMEDIATE CONSEQUENCE OF THE EVENT THAT GENERATED THE DAMAGES; OR 4) LOSS OF BUSINESS, REVENUE, GOODWILL, OR ANTICIPATED SAVINGS.

3. The limitation and exclusion of liability herein agreed applies not only to the activities performed by IBM but also to the activities performed by its suppliers and Program developers, and represents the maximum amount for which IBM as well as its suppliers and Program developers, are collectively responsible.

Limitation of Liability (Section 4): In France and Belgium, the following replaces the terms of this section in its entirety:

Except as otherwise provided by mandatory law:

1. IBM's liability for any damages and losses that may arise as a consequence of the fulfillment of its obligations under or in connection with this agreement is limited to the compensation of only those damages and losses proved and actually arising as an immediate and direct consequence of the non-fulfillment of such obligations (if IBM is at fault), for a maximum amount equal to the charges You paid for the Program that has caused the damages.

The above limitation shall not apply to damages for bodily injuries (including death) and damages to real property and tangible personal property for which IBM is legally liable.

2. UNDER NO CIRCUMSTANCES IS IBM, OR ANY OF ITS PROGRAM DEVELOPERS, LIABLE FOR ANY OF THE FOLLOWING, EVEN IF INFORMED OF THEIR POSSIBILITY: 1) LOSS OF, OR DAMAGE TO, DATA; 2) INCIDENTAL OR INDIRECT DAMAGES, OR FOR ANY ECONOMIC CONSEQUENTIAL DAMAGES; 3) LOST PROFITS, EVEN IF THEY ARISE AS AN IMMEDIATE CONSEQUENCE OF THE EVENT THAT GENERATED THE DAMAGES; OR 4) LOSS OF BUSINESS, REVENUE, GOODWILL, OR ANTICIPATED SAVINGS.

3. The limitation and exclusion of liability herein agreed applies not only to the activities performed by IBM but also to the activities performed by its suppliers and Program developers, and represents the maximum amount for which IBM as well as its suppliers and Program developers, are collectively responsible.

Governing Law, Jurisdiction, and Arbitration (Section 6)

Governing Law

The phrase "the laws of the country in which You acquired the Program license" is replaced by:

1) "the laws of Austria" in Albania, Armenia, Azerbaijan, Belarus, Bosnia-Herzegovina, Bulgaria, Croatia, Georgia, Hungary, Kazakhstan, Kyrgyzstan, FYR Macedonia, Moldavia, Poland, Romania, Russia, Slovakia, Slovenia, Tajikistan, Turkmenistan, Ukraine, Uzbekistan, and FR Yugoslavia;

2) "the laws of France" in Algeria, Benin, Burkina Faso, Cameroon, Cape Verde, Central African Republic, Chad, Comoros, Congo Republic, Djibouti, Democratic Republic of Congo, Equatorial Guinea, French Guiana, French Polynesia, Gabon, Gambia, Guinea, Guinea-Bissau, Ivory Coast, Lebanon, Madagascar, Mali, Mauritania, Mauritius, Mayotte, Morocco, New Caledonia, Niger, Reunion, Senegal, Seychelles, Togo, Tunisia, Vanuatu, and Wallis & Futuna;

3) "the laws of Finland" in Estonia, Latvia, and Lithuania;

4) "the laws of England" in Angola, Bahrain, Botswana, Burundi, Egypt, Eritrea, Ethiopia, Ghana, Jordan, Kenya, Kuwait, Liberia, Malawi, Malta, Mozambique, Nigeria, Oman, Pakistan, Qatar, Rwanda, Sao Tome, Saudi Arabia, Sierra Leone, Somalia, Tanzania, Uganda, United Arab Emirates, the United Kingdom, West Bank/Gaza, Yemen, Zambia, and Zimbabwe; and

5) "the laws of South Africa" in South Africa, Namibia, Lesotho and Swaziland.

Jurisdiction

The following exceptions are added to this section:

1) In Austria the choice of jurisdiction for all disputes arising out of this Agreement and relating thereto, including its existence, will be the competent court of law in Vienna, Austria (Inner-City);

2) in Angola, Bahrain, Botswana, Burundi, Egypt, Eritrea, Ethiopia, Ghana, Jordan, Kenya, Kuwait, Liberia, Malawi, Malta, Mozambique, Nigeria, Oman, Pakistan, Qatar, Rwanda, Sao Tome, Saudi Arabia, Sierra Leone, Somalia, Tanzania, Uganda, United Arab Emirates, West Bank/Gaza, Yemen, Zambia, and Zimbabwe all disputes arising out of this Agreement or related to its execution, including summary proceedings, will be submitted to the exclusive jurisdiction of the English courts;

3) in Belgium and Luxembourg, for all disputes arising out of this Agreement or related to its interpretation or its execution, only the law and the courts of the capital of the country in which Your registered office and/or commercial office is located are competent;

4) in France, Algeria, Benin, Burkina Faso, Cameroon, Cape Verde, Central African Republic, Chad, Comoros, Congo Republic, Djibouti, Democratic Republic of Congo, Equatorial Guinea, French Guiana, French Polynesia, Gabon, Gambia, Guinea, Guinea-Bissau, Ivory Coast, Lebanon, Madagascar, Mali, Mauritania, Mauritius, Mayotte, Morocco, New Caledonia, Niger, Reunion, Senegal, Seychelles, Togo, Tunisia, Vanuatu, and Wallis & Futuna all disputes arising out of this Agreement or related to its violation or execution, including summary proceedings, will be settled exclusively by the Commercial Court of Paris;

5) in Russia, all disputes arising out of or in relation to the interpretation, the violation, the termination, the nullity of the execution of this Agreement shall be settled by Arbitration Court of Moscow;

6) in South Africa, Namibia, Lesotho and Swaziland, both of us agree to submit all disputes relating to this Agreement to the jurisdiction of the High Court in Johannesburg;

7) in Turkey all disputes arising out of or in connection with this Agreement shall be resolved by the Istanbul Central (Sultanahmet) Courts and Execution Directorates of Istanbul, the Republic of Turkey;

8) in each of the following specified countries, any legal claim arising out of this Agreement will be brought before, and settled exclusively

by, the competent court of a) Athens for Greece, b) Tel Aviv-Jaffa for Israel, c) Milan for Italy, d) Lisbon for Portugal, and e) Madrid for Spain; and

9) in the United Kingdom, both of us agree to submit all disputes relating to this Agreement to the jurisdiction of the English courts.

Arbitration

In Albania, Armenia, Azerbaijan, Belarus, Bosnia-Herzegovina, Bulgaria, Croatia, Georgia, Hungary, Kazakhstan, Kyrgyzstan, FYR Macedonia, Moldavia, Poland, Romania, Russia, Slovakia, Slovenia, Tajikistan, Turkmenistan, Ukraine, Uzbekistan, and FR Yugoslavia all disputes arising out of this Agreement or related to its violation, termination or nullity will be finally settled under the Rules of Arbitration and Conciliation of the International Arbitral Center of the Federal Economic Chamber in Vienna (Vienna Rules) by three arbitrators appointed in accordance with these rules.

The arbitration will be held in Vienna, Austria, and the official language of the proceedings will be English. The decision of the arbitrators will be final and binding upon both parties. Therefore, pursuant to paragraph 598 (2) of the Austrian Code of Civil Procedure, the parties expressly waive the application of paragraph 595 (1) figure 7 of the Code. IBM may, however, institute proceedings in a competent court in the country of installation.

In Estonia, Latvia and Lithuania all disputes arising in connection with this Agreement will be finally settled in arbitration that will be held in Helsinki, Finland in accordance with the arbitration laws of Finland then in effect. Each party will appoint one arbitrator. The arbitrators will then jointly appoint the chairman. If arbitrators cannot agree on the chairman, then the Central Chamber of Commerce in Helsinki will appoint the chairman.

AUSTRIA: No Warranty (Section 3): The terms of this section are completely replaced by the following:

The following limited warranty applies if You have paid a charge to obtain the Program:

The warranty period is twelve months from the date of delivery. The limitation period for consumers in action for breach of warranty is the statutory period as a minimum.

The warranty for an IBM Program covers the functionality of the Program for its normal use and the Program's conformity to its specifications.

IBM warrants that when the Program is used in the specified operating environment it will conform to its specifications. IBM does not warrant uninterrupted or error-free operation of the Program or that IBM will correct all Program defects. You are responsible for the results obtained from the use of the Program.

The warranty applies only to the unmodified portion of the Program.

If the Program does not function as warranted during the warranty period and the problem cannot be resolved with information available. You may return the Program to the party from whom You acquired it and receive a refund in the amount You paid. If You downloaded the Program, You may contact the party from whom You acquired it to obtain the refund.

This is our sole obligation to You, except as otherwise required by applicable statutory law.

General (Section 5): The following is added to item 4:

For purposes of this clause, contact information will also include information about You as a legal entity, for example revenue data and other transactional information.

GERMANY: No Warranty (Section 3): The same changes apply as those in No Warranty (Section 3) under Austria above.

Limitation of Liability (Section 4): The following paragraph is added to this Section:

The limitations and exclusions specified in this Section will not apply to damages caused by IBM intentionally or by gross negligence.

General (Section 5): The following replaces the terms of item 5:

Any claims resulting from this Agreement are subject to a statute of limitation of three years, except as stated in Section 3 (No Warranty) of this Agreement.

HUNGARY: Limitation of Liability (Section 4): The following is added at the end of this section:

The limitation and exclusion specified herein shall not apply to liability for a breach of contract damaging life, physical well-being, or health that has been caused intentionally, by gross negligence, or by a criminal act.

The parties accept the limitations of liability as valid provisions and state that the Section 314.(2) of the Hungarian Civil Code applies as the acquisition price as well as other advantages arising out of the present Agreement balance this limitation of liability.

IRELAND: No Warranty (Section 3): The following is added to this section:

Except as expressly provided in these terms and conditions, or section 12 of the Sale of Goods Act 1893 (as amended by the Sale of Goods and Supply of Services Act 1980 ("the 1980 Act")), all conditions and warranties (express or implied, statutory or otherwise) are hereby excluded including, without limitation, any warranties implied by the Sale of Goods Act 1893 as amended by the 1980 Act (including, for the avoidance of doubt, section 39 of the 1980 Act).

Limitation of Liability (Section 4): The following replaces the terms of this section in its entirety:

For the purposes of this section, a "Default" means any act, statement, omission, or negligence on the part of IBM in connection with, or in relation to, the subject matter of an Agreement in respect of which IBM is legally liable to You whether in contract or tort. A number of Defaults which together result in, or contribute to, substantially the same loss or damage will be treated as one Default occurring on the date of occurrence of the last such Default.

Circumstances may arise where, because of a Default, You are entitled to recover damages from IBM. This section sets out the extent of IBM's liability and Your sole remedy.

1. IBM will accept unlimited liability for (a) death or personal injury caused by the negligence of IBM, and (b) subject always to the Items for Which IBM is Not Liable below, for physical damage to Your tangible property resulting from the negligence of IBM.

2. Except as provided in item 1 above, IBM's entire liability for actual damages for any one Default will not in any event exceed the greater

of 1) EUR 125,000, or 2) 125 percent of the amount You paid for the Program directly relating to the Default. These limits also apply to any of IBM's suppliers and Program developers. They state the maximum for which IBM and such suppliers and Program developers are collectively responsible.

Items for Which IBM is Not Liable

Save with respect to any liability referred to in item 1 above, under no circumstances is IBM or any of its suppliers or Program developers liable for any of the following, even if IBM or they were informed of the possibility of such losses:

1. loss of, or damage to, data;
2. special, indirect, or consequential loss; or
3. loss of profits, business, revenue, goodwill, or anticipated savings.

ITALY: General (Section 5): The following is added to this section:

IBM and Customer (hereinafter, individually, "Party") shall comply with all the obligations of the applicable provisions of law and/or regulation on personal data protection. Each of the Parties will indemnify and keep the other Party harmless from any damage, claim, cost or expense incurred by the latter, directly and or indirectly, as a consequence of an infringement of the other Party of the mentioned provisions of law and/or regulations.

SLOVAKIA: Limitation of Liability (Section 4): The following is added to the end of the last paragraph:

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Streaming API for XML (JSR-173) Specification

Reference Implementation

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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>

(zlib format), rfc1951.txt (deflate format) and rfc1952.txt (gzip format)

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