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

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

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

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

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

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

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

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

To the extent TIBCO is exposed to individual personal data owned or otherwise held by Customer during the provision of Services, which is subject to various data protection laws and/or regulations ("Protected Data"), TIBCO agrees to treat such Protected Data in accordance with the Customer Privacy and Security Statement set forth at http://www.tibco.com/customer_privacy_security_statement.jsp (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 TIBCO's obligations for the protection, integrity and confidentiality of any Protected Data which exceed TIBCO's standard obligations to safeguard Confidential Information.

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

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

Definitions. In connection with this End User License Agreement Software product definitions are as set forth at <http://www.tibco.com/software/productdefinitions.jsp> which are hereby

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

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majeure. Customer hereby grants TIBCO and its independent auditors the right to audit Customer's compliance with this End User License Agreement. If any portion of this End User License Agreement is found to be void or unenforceable, the remaining provisions shall remain in full force and effect.

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

rev. March 12, 2010

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