



## END USER LICENSE AGREEMENT

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You may place orders under these Terms by submitting separate Order Form(s). Capitalized terms used in these Terms and not otherwise defined, are defined at <https://terms.tibco.com/posts/845635-definitions>.

1. **License Grant, Rights and Restrictions.** Licensor provides Licensor Software on a Perpetual basis, embedded and delivered as part of Equipment, as Software Services and on a Subscription basis. The terms and conditions for each of the foregoing (including for evaluation purposes) are located at <https://terms.tibco.com>. The availability of Licensor Software in one or more of the foregoing license models is at Licensor's sole discretion.
2. **Maintenance.** Licensor will deliver Maintenance as set forth in an Order Form.
3. **Consulting Services.** Customer may procure Consulting Services under an Order Form. Unless otherwise expressly agreed in an Order Form, all Consulting Services will be: (a) performed on a time and materials basis ("T&M"), with meals, lodging, travel and other reasonably necessary out-of-pocket expenses, such as hardware and software acquired by Licensor to support the project ("Expenses"), invoiced in addition to T&M fees, (b) deemed accepted upon delivery, and (c) owned by and remain the confidential information of Licensor, excluding Customer's Confidential Information.
4. **Fees.** The effectiveness of these Terms or any Order Form is subject to the payment of all applicable fees. Unless otherwise agreed, Customer shall pay any fees and related charges set forth in an Order Form or which otherwise come due, net thirty (30) days from Licensor's invoice. A service charge of one and one-half percent per month (or such lower amount as permitted by applicable law) will be applied to all fees and charges that are not paid on time. Customer agrees to pay all sales, use, value-added, goods and services, consumption, withholding, excise and any other similar taxes or government charges, exclusive of Licensor's income taxes. Except as set forth in the "Termination" or "Remedies" section, all fees and charges paid under or in connection with these Terms are non-refundable and no right of set off exists. Licensor does not permit aggregation of products, services, purchase or license models or cumulative fees paid across separate Product Lines to trigger preferred pricing or discounts.
5. **Proprietary Notices.** Licensor Software, Materials, and Documentation are proprietary to Licensor and its licensors and protected by applicable U.S. and international patent, copyright, trademark and trade secret laws. Licensor and its licensors shall retain ownership in the Licensor Software, Materials and Documentation, all derivatives thereof, and any intellectual property or other rights embodied therein. All proprietary notices incorporated in or affixed to any Licensor Software, Materials and Documentation, must be duplicated by Customer on all copies of the Licensor Software, Materials and Documentation, as applicable, and must not be altered, removed or obliterated. Except as stated herein, Customer receives no other rights to use any of Licensor's trade names, trademarks, service marks, logos, domain names, and other distinctive brand features.
6. **Confidentiality.** "Confidential Information" means any information disclosed by either party, whether or not marked, including, without limitation, the provisions of these Terms and any Order Form, the Licensor Software, Materials, individual contact information provided by either party or related performance test results derived by Customer, including but not limited to benchmark test results, Protected Data and Output. Each party agrees to protect Confidential Information in the same manner as it protects its own (but using no less than a reasonable degree of protection) and may 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 these Terms. It is understood that the confidentiality provisions contained herein do not apply to any information that can be demonstrated by written evidence is: (a) available to the public other than by a breach of a confidentiality obligation, (b) rightfully received from a third party not in breach of a confidentiality obligation, (c) independently developed by one party without use of the Confidential Information of the other; (d) known to the recipient at the time of disclosure (other than under a separate confidentiality obligation); or (e) produced in compliance with applicable law or court order, provided the other party is given reasonable advance notice of the obligation to produce Confidential Information. Each party agrees to indemnify the other for any damages (including reasonable expenses) the other may sustain resulting from the unauthorized use and/or disclosure of the other's Confidential Information and that money damages would not be a sufficient remedy for a breach of confidentiality. The parties are 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 is in addition to all other rights and remedies available at law or in equity. Notwithstanding anything to the contrary, Licensor's source code shall be kept confidential in perpetuity. Affiliates of either party are included in the definition of "Licensor" and "Customer", respectively, for purposes of this Section entitled "Confidentiality". Confidential Information remains 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 these Terms, including, but not limited to, any configuration or use by Customer of the Licensor Software or Materials, does not affect or diminish the disclosing party's rights, title and interest in and to Confidential Information.
7. **Data Protection and Security Plan.** To the extent Licensor is exposed to an individual's Protected Data, Licensor agrees to maintain a data protection and security plan.
8. **Warranties.** Licensor hereby warrants that (a) for ninety (90) days following initial delivery to Customer of the Licensor Software set forth in an Order Form, the Licensor Software as delivered, under normal use on the Platform for which it is intended, will perform all material functions described in its Documentation; (b) to the best of Licensor's knowledge, the Licensor Software and Software Services, when delivered or made available by Licensor, does not contain any virus, computer code, routines or devices (other than as set forth in the Documentation) designed to disable, damage, impair, or erase the Licensor Software, Software Services or other software or data; (c) Licensor has the right to grant the licenses and other rights set forth herein; (d) it shall use reasonable commercial efforts consistent with generally accepted industry standards to maintain its Software Services in a manner which minimizes errors and interruptions; and (e) Consulting Services will be provided in accordance with generally accepted industry standards.



9. Indemnity. Licensor hereby agrees at its own expense to defend or, at its option, settle, any claim or action brought against Customer to the extent it is based on a claim that the initially delivered Licensor Software or Materials, used in accordance with an Order Form, infringes any patent, copyright, or any trade secret of a third party. Furthermore, Licensor will indemnify and hold Customer harmless from and against any damages, costs and fees reasonably incurred (including reasonable attorneys' fees) that are attributable to such claim or action and which are assessed against Customer in a final judgment ("Indemnity"). Licensor's obligations to defend, settle or indemnify Customer are subject to Customer promptly notifying Licensor in writing of such claim; Licensor having the exclusive right to control such defense and/or settlement; and Customer providing reasonable assistance (at Licensor's expense) in the defense thereof. In no event shall Customer settle any claim, action or proceeding without Licensor's prior written approval.

10. INDEMNITY AND WARRANTY EXCLUSIONS. LICENSOR SHALL NOT BE LIABLE TO THE EXTENT ANY CLAIM REGARDING CUSTOMER'S USE OF THE LICENSOR SOFTWARE, SOFTWARE SERVICES AND MATERIALS IS BASED UPON OR ATTRIBUTABLE TO: (A) MODIFICATIONS MADE BY CUSTOMER TO THE LICENSOR SOFTWARE, SOFTWARE SERVICES AND MATERIALS OR PORTIONS THEREOF; (B) SUCH CLAIM WOULD HAVE BEEN AVOIDED BY USE OF THE THEN CURRENT RELEASE OF THE LICENSOR SOFTWARE, OR SOFTWARE SERVICES MADE AVAILABLE TO CUSTOMER; (C) CUSTOMER'S CONTINUED ALLEGEDLY INFRINGING ACTIVITY AFTER BEING PROVIDED WITH MODIFICATIONS THAT WOULD HAVE AVOIDED THE ALLEGED INFRINGEMENT; OR (D) CUSTOMER'S OUTPUT.

11. REMEDIES. IN THE EVENT OF A BREACH OF THE SECTION ENTITLED "WARRANTIES" OR AN INDEMNIFICATION OBLIGATION THAT ARISES UNDER THE SECTION ENTITLED "INDEMNITY", LICENSOR'S LIABILITY AND CUSTOMER'S SOLE AND EXCLUSIVE REMEDY (IN ADDITION TO THE "INDEMNITY") SHALL BE FOR LICENSOR AT ITS OWN EXPENSE, TO EITHER (A) REPAIR, REPLACE OR MODIFY THE AFFECTED LICENSOR SOFTWARE OR SOFTWARE SERVICES OR RE-PERFORM THE AFFECTED CONSULTING SERVICES OR (B) ALTERNATIVELY, IN THE CASE OF THE INDEMNITY, PROCURE FOR CUSTOMER THE RIGHT TO CONTINUE TO USE THE AFFECTED LICENSOR SOFTWARE, SOFTWARE SERVICES, OR MATERIALS. IF THE FOREGOING REMEDIES ARE NOT COMMERCIALY FEASIBLE (IN THE REASONABLE OPINION OF LICENSOR), LICENSOR MAY (I) CANCEL THE APPLICABLE ORDER FORM AND, AS APPLICABLE, FOR THE LICENSOR SOFTWARE OR SOFTWARE SERVICES, REFUND THE LICENSE FEES AND ANY UNEARNED MAINTENANCE FEES PAID TO LICENSOR BY CUSTOMER FOR THE AFFECTED LICENSOR SOFTWARE OR SOFTWARE SERVICES, OR (II) FOR CONSULTING SERVICES REFUND ALL AMOUNTS PAID TO LICENSOR BY CUSTOMER FOR THE AFFECTED CONSULTING SERVICES.

12. DISCLAIMERS. EXCEPT AS STATED IN THESE TERMS, THE LICENSOR SOFTWARE, MAINTENANCE, SOFTWARE SERVICES AND CONSULTING SERVICES ARE PROVIDED "AS IS", AND ALL OTHER EXPRESS OR IMPLIED CONDITIONS, REPRESENTATIONS AND WARRANTIES, INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTY OF MERCHANTABILITY/SATISFACTORY QUALITY, FITNESS FOR A PARTICULAR PURPOSE (EVEN IF INFORMED OF SUCH PURPOSE), INFRINGEMENT, OR ARISING FROM A COURSE OF DEALING, USAGE, OR TRADE PRACTICE, ARE HEREBY DISCLAIMED TO THE EXTENT ALLOWED BY APPLICABLE LAW. NO WARRANTY IS MADE THAT THE LICENSOR SOFTWARE OR SOFTWARE SERVICES FUNCTIONALITY, MAINTENANCE, OR CONSULTING SERVICES WILL MEET CUSTOMER'S REQUIREMENTS, OR THAT THE OPERATION OF ANY OF THE FOREGOING WILL BE UNINTERRUPTED, SECURE, TIMELY OR ERROR-FREE.

13. LIMITATION OF LIABILITY. EXCEPT FOR INFRINGEMENT OR MISAPPROPRIATION OF THE OTHER PARTY'S INTELLECTUAL PROPERTY RIGHTS INCLUDING, WITHOUT LIMITATION, TRADE SECRETS, DAMAGE FOR BODILY INJURY, DEATH, DAMAGE TO REAL OR TANGIBLE PERSONAL PROPERTY OR INTENTIONAL MISCONDUCT OR GROSS NEGLIGENCE OR ANY OTHER LIABILITY THAT MAY NOT BE EXCLUDED UNDER APPLICABLE LAW (THE "EXCLUDED MATTERS") IN NO EVENT WILL EITHER PARTY HERETO 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 INDIRECT, INCIDENTAL, CONSEQUENTIAL, SPECIAL, PUNITIVE, EXEMPLARY OR ANY SIMILAR TYPE OF DAMAGES ARISING OUT OF OR IN ANY WAY RELATED TO THESE TERMS, THE USE OR THE INABILITY TO USE THE LICENSOR SOFTWARE, SOFTWARE SERVICES, MAINTENANCE OR CONSULTING SERVICES, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. EXCEPT FOR THE EXCLUDED MATTERS, IN NO EVENT SHALL EITHER PARTY'S TOTAL LIABILITY TO THE OTHER FOR ALL CLAIMS ARISING OUT OF OR AS A RESULT OF THESE TERMS EXCEED THE GREATER OF 1,000,000 USD OR THE FEES PAID BY CUSTOMER TO LICENSOR UNDER THE APPLICABLE ORDER FORM.

14. Export. Licensor Software, Software Services, 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. Customer hereby agrees that it will not export or re-export the Licensor Software, Software Services, Documentation, and Materials in any form in violation of any applicable export or import laws of any jurisdiction.

15. Government Use. If the Licensor Software, Software Services, Documentation, Materials and any other Licensor services are being or have been acquired with U.S. Federal Government funds, or Customer is an agency, department, or other entity of the United States Government ("Government"), the use, duplication, reproduction, release, modification, disclosure or transfer of the Licensor Software, Software Services, or any related documentation of any kind, including technical data, manuals or Materials, 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 Licensor Software, Materials and any Licensor services are COMMERCIAL ITEMS AS DEFINED BY THE FEDERAL ACQUISITION REGULATION. Use of the Licensor Software and Materials by the Government is further restricted according to these Terms and any amendment hereto.

16. Termination. Either party may terminate: (a) these Terms and/or any or all applicable Order Forms upon thirty (30) days prior written notice if the other party breaches a material provision of these Terms or an Order Form and fails to cure such breach within the thirty (30) day notice period; (b) Maintenance, upon prior written notice at least sixty (60) days prior to the end of any annual Maintenance period; (c) an Order Form for Consulting Services, upon fifteen (15) days prior written notice by Customer or thirty (30) days prior written notice by Licensor. These Terms and all Order Forms shall automatically terminate if either party files for bankruptcy, goes into receivership, becomes insolvent or makes an assignment for the benefit of creditors. Upon termination or expiration Customer must cease using, de-install and permanently delete all of the Licensor Software; whether or not modified or merged into other materials. Termination of these Terms, any Licensor Software license, any Software Services, Subscription or any Order Form shall not limit either party from pursuing other remedies available to it, including injunctive relief, nor shall such termination relieve Customer of its obligation to pay all fees that have accrued or are otherwise owed by Customer under these Terms.

17. General Provisions.

- (a) Additional license requirements and other license notices, if any, shall be contained in the Documentation that is delivered with the applicable Licensor Software. Unless expressly authorized by such terms, Customer agrees not to use or access any third-party software as a stand-alone product or in any other manner other than in connection with the Licensor Software.
- (b) All notices related to these Terms shall be in writing. Notices will be effective if dispatched by facsimile; or electronic mail; by hand; reliable overnight delivery service or first-class, pre-paid mail if sent to the contract address for the intended recipient set forth in an Order Form. A copy of any notice of default, breach or termination shall also be sent to that party's General Counsel.
- (c) The losing party shall pay all reasonable costs, including, without limitation attorneys' fees, incurred by the prevailing party in any action brought to enforce the prevailing party's rights under these Terms.
- (d) The Terms shall not be interpreted to create an agency or consignment relationship, and neither party is a partner, employee, agent or joint venture partner of, or with, the other. During the term of any Order Form and for a period of one (1) year following expiration or termination of an Order Form, neither party shall actively solicit for employment any employee, contractor, or consultant, or other representative of the other party who performed services in connection with the applicable Order Form, without the prior written consent of the other party.
- (e) Customer hereby grants Licensor and its independent auditors, at Licensor's expense, the right to audit Customer's compliance with these Terms upon reasonable notice and at reasonable times and to report any results to Licensor's licensors. Customer agrees to provide assistance to ensure a complete and accurate audit by Licensor and its independent auditors. Customer's failure to comply with the provisions of this section will constitute a material breach of these Terms.
- (f) No waiver by either party of any breach of any provision of these Terms shall be construed as a waiver of that or any other provision on any other occasion.
- (g) Dates or times by which one party is required to perform under these Terms shall be postponed automatically for so long as that party is prevented from performing by any act of or failure to act by, the other party. No delay or default in performance of any obligation by either party (except payment obligations), shall constitute a breach of these Terms to the extent caused by force majeure or any other cause which is beyond its reasonable control, including, but not limited to, fires, strikes, accidents, or acts of God.
- (h) Except for an assignment, in whole or part, by Licensor to a wholly owned subsidiary, neither party may assign these Terms and/or any of its rights and/or obligations without the prior written consent of the other party (which shall not be unreasonably withheld). Any such attempted assignment shall be void. For the purposes of the foregoing, a change in control of Customer is deemed to cause or attempt to cause an assignment of these Terms and shall require Licensor's prior written consent.
- (i) To the extent Customer or its successors or assigns enters into an Extraordinary Corporate Event after an Order Form Effective Date, these Terms, as amended, shall not apply to those additional users, divisions or entities, which were added to or divested from Customer's organization as a result of the Extraordinary Corporate Event until those additional users, divisions or entities are added to these Terms by way of a written amendment signed by duly authorized officers of the Licensor and Customer.
- (j) The parties' rights and obligations under this section and sections entitled "Fees", "Warranties", "Indemnity", "Remedies", "Disclaimers", "Exclusions", "Limitation of Liability", "Proprietary Notices", "Confidentiality", "General" shall survive the expiration or termination of these Terms.
- (k) If Customer is entering into these Terms from a European Union member country, Norway, Switzerland, Japan, India or Australia, then these Terms are governed by the laws of England and subject to the exclusive jurisdiction of the courts of England and Wales. Otherwise, these Terms are governed by the laws of the State of California and subject to the exclusive jurisdiction of Federal Court for the Northern District Court of California, without giving effect to its conflict of laws principles. The United Nations Convention on Contracts for the International Sale of Goods and the Uniform Computer Information Transactions Act do not apply to these Terms.
- (l) These Terms, which hereby incorporate by reference any terms or information contained in a URL or referenced policy, together with any Order Form, constitute the complete and exclusive statement of the parties' agreement and supersedes all prior and contemporaneous proposals, representations, statements, negotiations and undertakings relating to the same. If any sentence, clause or other provision of these Terms is held to be invalid, illegal or unenforceable under applicable law, including, but not limited to, any limitation of liability, the validity, legality and enforceability of the remaining clauses and provisions shall in no way be affected or impaired thereby. The affected provision shall be interpreted in such a manner as to render it enforceable while attempting to closely approximate the intent and the economic effect of the affected provision.

**Addenda:**



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