

End-User License Agreement - Trifacta Wrangler Enterprise

PLEASE READ THIS AGREEMENT ("AGREEMENT") CAREFULLY BEFORE USING THE TRIFACTA SOFTWARE (THE "TRIFACTA SOFTWARE") OFFERED BY TRIFACTA INC. ("TRIFACTA"). BY USING THE TRIFACTA SOFTWARE IN ANY MANNER AND BY CLICKING "I ACCEPT", YOU AND YOUR COMPANY OR ORGANIZATION (COLLECTIVELY, "CUSTOMER") AGREE THAT YOU HAVE READ AND AGREE ON BEHALF OF YOURSELF TO BE BOUND BY AND A PARTY TO THE TERMS AND CONDITIONS OF THIS AGREEMENT TO THE EXCLUSION OF ALL OTHER TERMS. IF YOU ENTER INTO THIS AGREEMENT ON BEHALF OF A COMPANY OR OTHER LEGAL ENTITY, YOU REPRESENT THAT YOU HAVE THE AUTHORITY TO BIND SUCH ENTITY AND ITS AFFILIATES TO THESE TERMS AND CONDITIONS. IF YOU DO NOT HAVE SUCH AUTHORITY, OR IF YOU DO NOT UNCONDITIONALLY AGREE TO ALL THE TERMS AND CONDITIONS OF THE AGREEMENT, YOU HAVE NO RIGHT TO USE THE TRIFACTA SOFTWARE. USE OF THE TRIFACTA SOFTWARE IS EXPRESSLY CONDITIONED UPON YOUR ASSENT TO ALL THE TERMS AND CONDITIONS OF THIS AGREEMENT, TO THE EXCLUSION OF ALL OTHER TERMS.

NOTWITHSTANDING ANYTHING ELSE STATED HEREIN, IF CUSTOMER AND TRIFACTA HAVE EXECUTED A WRITTEN AGREEMENT FOR THE ACCESS TO OR USE OF THE TRIFACTA SOFTWARE AND RELATED PRODUCTS AND SERVICES (AS APPLICABLE) ("SIGNED AGREEMENT"), THEN THE TERMS OF THE SIGNED AGREEMENT SHALL GOVERN AND CONTROL AND THIS AGREEMENT SHALL HAVE NO EFFECT.

- Subject to the terms and conditions of this Agreement, during the Term as defined in Section 11, Trifacta grants to Customer a non-exclusive, non-transferable, non-sublicensable license to use the Trifacta Software solely for Customer's internal business purposes, solely in accordance with the written and/or electronic end user or technical documentation pertaining to the Trifacta Software and only for the Scope for which Customer has paid to Trifacta the applicable Fees as set forth below.
- Customer shall not, and shall not authorize any third party to: (i) sublicense, use or duplicate the Trifacta Software, or any portion thereof, except as expressly authorized in this Agreement; (ii) use the Trifacta Software by, or for the benefit of any third party; (iii) modify, translate, or prepare derivative works based upon the Trifacta Software; (iv) reverse-compile or decompile, disassemble or otherwise reverse engineer the Trifacta Software, except to the extent expressly required to be permitted by applicable law; (v) rent, lease, loan, sell, transfer, or distribute the Trifacta Software, or any copy or portion thereof, to any other person or entity; and/or (vi) alter, remove, or obscure any copyright, trademark, or other proprietary notices or confidentiality legend on or in the Trifacta Software. Except for the license expressly granted by Trifacta to Customer under this Agreement, and Trifacta reserves all right, title and interests in and to the Trifacta Software and any derivative works derived therefrom, and all intellectual property rights therein.
- In consideration of each license to the Trifacta Software granted hereunder, Customer shall pay to Trifacta the Fees in the amounts agreed to in writing by the parties or, if there is no agreement, at Trifacta's then-current rates. If, at any time during the Term, the Scope of Customer's use of the Trifacta Software exceeds the scope for which Customer has paid fees, Customer shall notify Trifacta and pay the incremental fees therefor. All fees paid under this Agreement shall be payable in U.S. dollars and are due within thirty (30) days of Trifacta's invoice. Excluding taxes based on Trifacta's income, Customer is liable for all taxes, duties and customs fees associated with the Fees, whether or not Trifacta invoices Customer for such taxes, duties or customs fees. Past due accounts shall be charged interest on a monthly basis, calculated at one and one-half percent (1.5%) per month of the unpaid balance or the maximum rate allowable by law. During each calendar year of the Term and for one (1) year after the Term, Trifacta shall have the right upon forty-five (45) days prior written notice, to examine (or, at Trifacta's discretion, have an independent auditor examine), during Customer's regular business hours, Customer's relevant records and use of the Trifacta Software for the purpose of verifying Customer's compliance with its obligations under this Agreement.
- Subject to Customer's payment of the applicable Support Fees which, unless otherwise agreed to in writing by Trifacta, shall be at Trifacta's then-current rate, Trifacta shall provide Support for the Trifacta Software as set forth in Trifacta's then-current Support and Maintenance Services Terms and Conditions. Unless otherwise agreed to by Trifacta in writing, the first Support Term shall commence on the date Customer obtains the Trifacta Software and continue for an initial term of one (1) year (the initial "Support Term") and will automatically renew for additional one (1) year terms (each an additional "Support Term") unless either party provides the other party ninety (90) days advanced written notice of its intention not to renew prior to the expiration of the then-current Support Term

- All suggestions or feedback provided by Customer or its employees, contractors or other agents to Trifacta with respect to the Trifacta Software shall be Trifacta's property and deemed Confidential Information of Trifacta, and Customer hereby assigns the same to Trifacta.
- "Confidential Information" means any non-public data, information and other materials regarding the products, services or business of Trifacta provided to Customer where such information is marked or otherwise communicated as being "proprietary" or "confidential" or the like, or where such information should, by its nature, be reasonably considered to be confidential and/or proprietary. Without limiting the foregoing, the Trifacta Software, any performance data, benchmark results, and technical information relating thereto, any documentation, Trifacta's pricing information and the terms and conditions of this Agreement (but not its existence) shall be deemed the Confidential Information of Trifacta. Notwithstanding the foregoing, Confidential Information shall not include information which: (i) is already known to Customer prior to disclosure by Trifacta; (ii) becomes publicly available without fault of Customer; (iii) is rightfully obtained by Customer from a third party without restriction as to disclosure, or is approved for release by written authorization of Trifacta; or (iv) is required to be disclosed by law or governmental regulation, provided that Customer provides reasonable notice to Trifacta of such required disclosure and reasonably cooperates with Trifacta in limiting such disclosure. Customer agrees to keep the Confidential Information of Trifacta in confidence and not to use such Confidential Information except in performing hereunder. Except as expressly authorized herein, Customer agrees to: (i) treat all Confidential Information of Trifacta in the same manner as it treats its own similar proprietary information, but in no case will the degree of care be less than reasonable care; and (ii) disclose Trifacta's Confidential Information only to those employees and contractors of Customer who have a need to know such information for the purposes of this Agreement, provided that any such employee and contractor shall be subject to a binding written agreement with respect to such Confidential Information at least as restrictive as the terms of this Agreement, and Customer shall indemnify and hold Trifacta harmless for any non-compliance of such employee or third party with the terms of this Agreement.
- Trifacta warrants to Customer that, for a period of sixty (60) days from the Effective Date (the "Warranty Period"), the Trifacta Software will perform in all material respects in accordance with its documentation. Trifacta's entire liability and Customer's sole and exclusive remedy for any breach of the preceding warranty will be for Trifacta, at its option, within forty-five (45) days from the date of Trifacta's receipt of written notification in reasonable detail of such defect from Customer: (i) to correct such defect, or (ii) to replace the non-complying Trifacta Software with complying Trifacta Software, or (iii) if, in Trifacta's judgment, (i) and (ii) above are not reasonably available, to refund the License Fees paid for such non-conforming Trifacta Software and to terminate this Agreement. The warranties do not cover non-conformances due to: (a) any modification, reconfiguration or maintenance of the Trifacta Software performed by any party other than Trifacta, (b) any use of the Trifacta Software on a system that does not meet Trifacta's minimum standards for such Trifacta Software, (c) any software other than the Trifacta Software, or (d) any hardware. Notwithstanding the foregoing, Trifacta shall be responsible under this Section only if Customer provides Trifacta with a written warranty claim detailing the non-conformance in Trifacta Software within the Warranty Period.
- TO THE MAXIMUM EXTENT PERMITTED BY LAW, EXCEPT AS EXPRESSLY WARRANTED HEREIN, THE TRIFACTA SOFTWARE AND ANY SERVICES PROVIDED BY TRIFACTA HEREUNDER ARE PROVIDED WITHOUT WARRANTIES OF ANY KIND, EITHER EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO WARRANTIES OF TITLE OR IMPLIED WARRANTIES OF MERCHANTABILITY, NON-INFRINGEMENT OR FITNESS FOR A PARTICULAR PURPOSE. TRIFACTA DOES NOT GUARANTEE THAT THE TRIFACTA SOFTWARE, DOCUMENTATION OR SERVICES WILL MEET CUSTOMER'S REQUIREMENTS. FURTHER, TRIFACTA AND ITS SUPPLIERS DO NOT WARRANT THE RESULTS OF USE OF THE TRIFACTA SOFTWARE OR TRIFACTA SERVICES ARE BUG/ERROR FREE OR THAT ITS USE WILL BE UNINTERRUPTED. IN ADDITION, DUE TO CONTINUAL DEVELOPMENT OF NEW TECHNIQUES FOR INTRUDING UPON/ATTACKING NETWORKS, HARDWARE AND SOFTWARE, TRIFACTA DOES NOT WARRANT THAT THE TRIFACTA SOFTWARE OR TRIFACTA SERVICES OR ANY EQUIPMENT, SYSTEM, OR NETWORK ON WHICH THE TRIFACTA SOFTWARE OR TRIFACTA SERVICES ARE USED WILL BE FREE OF VULNERABILITY TO INTRUSION OR ATTACK. TRIFACTA DOES NOT WARRANT THAT ANY SERVICES CONNECTING TO THE TRIFACTA SOFTWARE OR TRIFACTA SERVICES PROVIDED BY THIRD PARTIES OR ANY DATA PROVIDED BY SUCH THIRD PARTIES WILL BE FREE FROM ERRORS OR INTERRUPTIONS OF SERVICE.
- NEITHER TRIFACTA NOR ITS SUPPLIERS SHALL BE RESPONSIBLE OR LIABLE WITH RESPECT TO ANY SUBJECT MATTER OF THIS AGREEMENT UNDER ANY CONTRACT, NEGLIGENCE, STRICT LIABILITY OR OTHER THEORY FOR CONSEQUENTIAL, EXEMPLARY, PUNITIVE, INCIDENTAL, INDIRECT OR SPECIAL DAMAGES OR COSTS, INCLUDING LOST PROFITS OR COSTS OF

PROCUREMENT OF SUBSTITUTE GOODS, WHETHER OR NOT SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES OR COSTS; AND (B) IN NO EVENT WILL THE AGGREGATE LIABILITY OF TRIFACTA, OR ANY THIRD PARTY LICENSORS UNDER THIS AGREEMENT (UNDER ANY THEORY OF LIABILITY) EXCEED THE FEES RECEIVED BY TRIFACTA FROM CUSTOMER IN THE TWELVE (12) MONTH PERIOD PRIOR TO THE CLAIM, WHETHER ANY REMEDY SET FORTH HEREIN FAILS OF ITS ESSENTIAL PURPOSE OR OTHERWISE.

- Neither the rights nor the obligations arising under this Agreement are assignable or transferable by Customer, and any such attempted assignment or transfer shall be void and without effect.
- This Agreement shall be governed by and construed in accordance with the laws of the United States and the State of California, excluding rules governing conflict of law and choice of law. The federal and state courts within San Francisco, California shall have exclusive jurisdiction to adjudicate any dispute arising out of this Agreement. Each party hereto expressly consents to the personal jurisdiction of, and venue in, such courts and service of process being affected upon it by registered mail and sent to the address set forth at the beginning of this Agreement. The parties agree that the UN Convention on Contracts for the International Sale of Goods (Vienna, 1980) and the Uniform Computer Information Transaction Act or similar federal or state laws or regulations shall not apply to this Agreement nor to any dispute or transaction arising out of this Agreement. The party prevailing in any dispute under this Agreement shall be entitled to its costs and legal fees.
- This Agreement constitutes the entire agreement between the parties pertaining to the subject matter hereof, and supersedes any previous communications, representations or agreements whether oral or written regarding such subject matter. Except as expressly provided herein, any modifications of this Agreement must be in writing and signed by both parties. In the event that any of the provisions of this Agreement shall be held by a court or other tribunal of competent jurisdiction to be unenforceable, such provisions shall be limited or eliminated to the minimum extent necessary so that this Agreement shall otherwise remain in full force and effect and enforceable.
- This Agreement shall be effective as of the date Customer receives the Trifacta Software (the "Effective Date") and may be terminated by Trifacta upon thirty (30) days written notice if Customer materially breaches any provision of this Agreement and such breach remains uncured within such thirty (30) day period; or (ii) effective immediately, if Customer ceases to do business, or otherwise terminates its business operations; or (iii) effective immediately, if Customer becomes insolvent or seeks protection under any bankruptcy, receivership, trust deed, creditors arrangement, composition or comparable proceeding, or if any such proceeding is filed against it (and not dismissed within ninety (90) days); or (iv) effective immediately, upon any breach by Customer of Section 2 or Section 5 of this Agreement. Upon any expiration or termination of this Agreement: (i) all licenses and rights granted by Trifacta to Customer hereunder shall terminate; and (ii) Customer will cease all use of the Trifacta Software; and (iii) and Customer shall immediately return to Trifacta the Trifacta Software, all duplicates, and any Trifacta Confidential Information; and (iv) Customer shall pay to Trifacta within thirty (30) days of the date of termination any fees accrued prior to the date of termination. Sections 2, 3, 4, 5, 7, 8, 9, 10, 11, 12, and 13 shall survive any termination or expiration of this Agreement.
- Customer shall comply with all export laws and restrictions and regulations of the Department of Commerce, the United States Department of Treasury Office of Foreign Assets Control ("OFAC"), or other United States or foreign agency or authority, and not to export, or allow the export or re-export of the Trifacta Software in violation of any such restrictions, laws or regulations. By downloading or using the Trifacta Software, Customer agrees to the foregoing and Customer represents and warrants that Customer is not located in, under the control of, or a national or resident of any restricted country or on any such list.
- Customer consents to Trifacta's use of Customer name and logo and general description of Customer's relationship with Trifacta in press releases and other marketing materials and appearances. Customer further permits Trifacta to use it as a reference account for marketing purposes and agrees to support Trifacta by participating in reference phone call(s) and other marketing events with press, analysts, and Trifacta's existing or potential investors or customers upon reasonable request by Trifacta. Customer shall agree to use commercially reasonable efforts to provide positive quotes for such press and marketing materials upon reasonable request of Trifacta. .
- EACH PARTY RECOGNIZES AND AGREES THAT THE WARRANTY DISCLAIMERS AND LIABILITY AND REMEDY LIMITATIONS IN THIS AGREEMENT ARE MATERIAL, BARGAINED FOR BASES OF THIS AGREEMENT AND THAT THEY HAVE BEEN TAKEN INTO ACCOUNT AND REFLECTED IN DETERMINING THE CONSIDERATION TO BE GIVEN BY EACH PARTY UNDER THIS AGREEMENT AND IN THE DECISION BY EACH PARTY TO ENTER INTO THIS AGREEMENT.

