

TIBCO Software Donation License Agreement

This **TIBCO Software Donation License Agreement** ("Agreement") is entered into by and between **TIBCO Software Inc.** ("TIBCO") and the undersigned entity ("Non-Profit Institution") as of the Effective Date. Each party hereby agrees to be bound by the terms and conditions of this Agreement, including without limitation, all attached exhibits, which are incorporated into this Agreement by this reference. All capitalized terms used in this Agreement are defined in this Agreement and its exhibits or at <https://terms.tibco.com/posts/845635-definitions>.

1. Non-Profit Institution General Representations. Non-Profit Institution hereby represents, warrants, covenants and agrees: (i) that it is an accredited educational or non-profit institution as defined under applicable law; (ii) that all Authorized Users accessing the TIBCO software products specified in Exhibit A (along with any Updates) and the related documentation (collectively, the "Software"), shall first agree to be bound (in writing) by the terms and conditions of the Agreement prior to accessing the Software; (iii) to provide TIBCO copies (both paper and machine-readable versions) of all reports, theses, papers or other documents resulting from projects, labs and classes related to the Software, and hereby grants TIBCO the royalty-free right to re-publish and distribute the same; (iv) to provide TIBCO a quarterly report on utilization of the Software, including course assignments and whether its use is mandatory for the students; (v) not to publish or otherwise disclose Software performance data, comparison of any Software with any competitive product(s) or any benchmark or other test results without the express prior written permission of TIBCO (which may be withheld in TIBCO's sole and absolute discretion); (vi) not to issue any press release or advertisement that relates to TIBCO or the Software without prior written approval from TIBCO; and (vii) not to assign this Agreement and/or any of its rights and/or obligations hereunder without the prior written consent of TIBCO (which may be withheld in TIBCO's sole and absolute discretion), and any attempted assignment shall be void.

2. License. TIBCO will make available to the Non-Profit Institution the benefits set forth below and in Exhibit A. In connection with the foregoing, TIBCO hereby grants the Non-Profit Institution a non-exclusive, non-transferable, limited, object code license to use the number of copies of the Software on Non-Profit Institution's internal computer systems, solely for the purposes set forth in Exhibit A. No right to use, copy, duplicate or display the Software is granted, except as expressly provided herein.

3. License Restrictions. The Non-Profit Institution shall not: (i) use the Software for general business operations or for providing third party training, (ii) transfer, sell, assign or otherwise convey the Software to another party, (iii) cause or permit translation, reverse engineering, decompilation or disassembly of the Software, (iv) make modifications or additions to the Software, including modifications to any API's, (v) except as may be expressly set forth in Exhibit A, use the Software for development purposes, or (vi) distribute all or any portion of the Software or any work product resulting from Non-Profit Institution's development rights, if any, granted herein.

4. Training. Non-Profit Institution may be entitled to TIBCO training services, if provided for in Exhibit A. Expenses if any relating to training and materials, freight, travel or other costs in connection with the provision of such training services shall be payable by Non-Profit Institution net thirty days from TIBCO's invoice.

5. Maintenance. To the extent set forth in Exhibit A and subject to payment of any applicable fees, Non-Profit Institution is entitled to Maintenance during the term of this Agreement. Three (3) individuals designated by Non-Profit Institution below ("Authorized Contacts") may contact TIBCO's Technical Assistance Center via email of an error, defect, or malfunction in the Software ("Support Requests"). TIBCO will use commercially reasonable efforts to resolve Support Requests according to problem severity ("Maintenance"). Maintenance includes the right to use Updates as replacements for existing copies, subject to this Agreement's limitations and restrictions. "Updates" means Software bug fixes, enhancements, and updates, if and when made generally available by TIBCO. TIBCO may provide Maintenance for a prior release for at least six months after a new release, after which TIBCO may discontinue Maintenance for that prior version. Support Requests may be made via e-mail at: support@tibco.com or via the internet at: http://www.tibco.com/services/services_support/index.html, and must include the following: (a) a detailed problem description; (b) a method for repeatedly reproducing the problem; and (c) reasonably continuous access to an Authorized Contact. TIBCO reserves the right to make fixes only to the most current version. Maintenance does not include support for any non-TIBCO software, custom configurations or product modifications. Non-Profit Institution may change Authorized Contacts upon 48 hours prior written notice to TIBCO.

6. Data Protection and Backup. (a) If Non-Profit Institution exposes TIBCO to an individual's Protected Data, Licensor will process and store such information pursuant to TIBCO's Security Policies, Practices and Processes found at <https://terms.tibco.com/#security-guidelines>. If the European Union's General Data Protection Regulation (EU/2016/679) (GDPR) applies to Protected Data that TIBCO processes on behalf of Non-Profit Institution as a data processor, then the TIBCO's Data Processing terms at <https://terms.tibco.com/#data-processing-terms> apply to such Protected Data. (b) Except when TIBCO stores Non-Profit Institution's data in connection with the delivery of a Cloud Service, Non-Profit Institution is responsible for backing-up its data and under no circumstances is TIBCO responsible for the protection, loss, destruction, or maintenance of Non-Profit Institution's data.

7. Term and Renewal. The initial term of this Agreement shall commence on the Effective Date and shall continue for one year ("Initial Term"). This Agreement will renew for successive one year periods upon mutual agreement of the parties unless terminated earlier either (a) upon five days prior written notice, in the event such breach is not cured within such five days, or (b) with or without cause by either party upon giving thirty days written notice to the other party. Any renewal of this Agreement shall be subject to TIBCO's standard terms, conditions and fees in effect at such time

8. Title/Intellectual Property. Title to and ownership of the Software shall remain with TIBCO and its licensors. All product identification, copyright notices or other proprietary notices incorporated in or affixed to the Software shall be duplicated by Non-Profit Institution on all copies of the Software, and shall not be altered, removed or obliterated. Except for the limited licenses granted in Sections 2 and 9, Non-Profit Institution does not acquire any intellectual property rights under this Agreement.

9. Trademark and Logo Usage; Copyright; Ethical Behavior. (a) Non-Profit Institution may not use any TIBCO trademark or logo without the express prior written permission of TIBCO. In the event such permission is granted, all use will be subject to the terms and conditions of TIBCO's Trademark Usage Guidelines (currently published at <https://www.tibco.com/trademarks>) and will be solely for the purposes related to the performance of this Agreement. If any publication is to be created with the use of, or referencing, TIBCO and/or the Software, Non-Profit Institution must obtain the prior written approval of TIBCO and the publication shall include a citation as follows: "**TIBCO Software Inc. (2019). [Name of Applicable TIBCO Software Product, version X] <http://tibco.com>.**" If the citation is included and, provided that TIBCO provides the required written approval, the publication can also include screen prints from the Software.

(b) In no event shall any TIBCO logo be used with any disparaging, unlawful or derogatory material or in a manner that may diminish or otherwise damage TIBCO's goodwill in that trademark. Non-Profit Institution shall not register any trademark which is substantially similar to any TIBCO name, logo or trademark, and shall not challenge, directly or indirectly, the same. TIBCO may use the Non-Profit Institution's logo on TIBCO's website(s) and on sales presentation materials. Either party shall immediately terminate any trademark or logo use upon notice by the other party. Non-Profit Institution shall employ reasonable professional standards in the performance of its right and obligations under this Agreement and agrees that it shall not, by itself or with others, participate in any illegal, deceptive, misleading or unethical practices including, but not limited to, any use of the Software other than as permitted for educational purposes as authorized in this Agreement; any disparagement of the Software or TIBCO; or other any other practices which may be detrimental to the Software or TIBCO.

(c) NON-PROFIT INSTITUTION, FOR ITSELF AND ON BEHALF OF ITS EMPLOYEES, STUDENTS AND AGENTS, REPRESENTS AND WARRANTS THAT IT SHALL COMPLY WITH THE U.S. FOREIGN CORRUPT PRACTICES ACT OF 1977 (AS AMENDED), AND ANY SIMILAR LAWS IN THE COUNTRIES WHERE NON-PROFIT INSTITUTION IS PERFORMING UNDER THIS AGREEMENT, AND ALL APPLICABLE LOCAL ANTI-BRIBERY LAWS AND SHALL NOT PARTICIPATE IN, OR PROVIDE INFORMATION THAT COULD BE CONSTRUED TO FURTHER, ANY ECONOMIC OR OTHER TYPE OF BOYCOTT NOT SANCTIONED BY THE UNITED STATES GOVERNMENT AND APPLICABLE LOCAL LAWS.

10. Patent and Trade Secret License to TIBCO. Subject to the terms and conditions hereof, Non-Profit Institution hereby grants to TIBCO a non-exclusive worldwide right and license to the Resulting IP Rights, including but not limited to the right and license to (i) make, have made, import, use, offer for sale, and sell products and services covered under the Resulting IP Rights, and (ii) make improvements to the Resulting IP Rights and make, have made, import, use, offer for sale, and sell products and services covered by any claim under such improvements to the Resulting IP Rights. Such right and license to the IP Rights is sub-licensable and transferrable. For purposes of this Agreement, "Resulting IP Rights" means any trade secret and any issued patent resulting from, applicable to, or otherwise involving the use of the Software or any TIBCO Confidential Information by Non-Profit Institution, including such use by its employees, students and agents, and any Authorized User.

11. Confidentiality. "Confidential Information" means the terms of this Agreement, all information marked by the disclosing party as "proprietary" or "confidential", and the Software and any methods, concepts or processes utilized therein [Update]. Confidential Information shall remain the sole property of the disclosing party and shall not be disclosed to any third-party 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). Confidential Information will be used only as necessary for the performance of this Agreement, and will be treated in accordance with the terms hereof until five (5) years after the date of disclosure. Confidential Information may only be disclosed to employees and contractors who need to know such information for their work in connection with this Agreement and who have previously agreed to be bound by terms and conditions substantially similar to those of this Section. 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 [and an opportunity to seek injunction relief or a protective order].

12. Disclaimer of Warranty. THE SOFTWARE, MAINTENANCE, AND SERVICES ARE PROVIDED "AS IS" AND ALL OTHER EXPRESS OR IMPLIED CONDITIONS, REPRESENTATIONS, AND WARRANTIES INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTY OF MERCHANTABILITY, NON-INFRINGEMENT, FITNESS FOR A PARTICULAR PURPOSE (EVEN IF INFORMED OF SUCH PURPOSE), OR ARISING FROM A COURSE OF DEALING, USAGE, OR TRADE PRACTICE, ARE HEREBY EXCLUDED TO THE EXTENT ALLOWED BY APPLICABLE LAW. NO WARRANTY IS MADE THAT THE SOFTWARE FUNCTIONALITY, MAINTENANCE, OR SERVICES WILL MEET NON-PROFIT INSTITUTION'S REQUIREMENTS, OR THAT THE OPERATION OF THE SOFTWARE WILL BE UNINTERRUPTED OR ERROR-FREE.

13. Limitation of Liability. EXCEPT FOR ANY BREACH OF THE CONFIDENTIALITY OBLIGATIONS OR INFRINGEMENT OF INTELLECTUAL PROPERTY RIGHTS (THE "EXCLUDED MATTERS"), IN NO EVENT SHALL EITHER PARTY OR ITS LICENSORS OR SUPPLIERS HAVE ANY LIABILITY TO THE OTHER FOR ANY LOST PROFITS, LOST REVENUE, LOSS OF DATA, DAMAGE TO REPUTATION, BUSINESS INTERRUPTION, OR COSTS OF PROCUREMENT OF SUBSTITUTE GOODS OR SERVICES, OR FOR ANY INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL, PUNITIVE, EXEMPLARY OR ANY SIMILAR TYPE OF DAMAGES, ARISING OUT OF OR IN ANY WAY RELATED TO THIS AGREEMENT, HOWEVER CAUSED, AND UNDER ANY THEORY OF LIABILITY, WHETHER OR NOT THE PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. EXCEPT FOR THE EXCLUDED MATTERS, IN NO EVENT WILL EITHER PARTY'S TOTAL CUMULATIVE LIABILITY FOR DAMAGES ARISING OUT OF OR RELATED TO THIS AGREEMENT EXCEED US\$250,000.

14. Termination. Upon termination or expiration of this Agreement, Non-Profit Institution's rights under this Agreement shall cease and Non-Profit Institution shall immediately destroy (and certify such destruction in writing) or collect and deliver to TIBCO all copies (including extracts, summaries, and adaptations) of the Software and Confidential Information (as defined below) of TIBCO.

15. Relationship of Parties. Non-Profit Institution and TIBCO are independent contractors acting for their own account, and are not authorized to make any commitment or representation on the other's behalf. Nothing contained herein is intended to constitute or create a joint venture or partnership relationship between Non-Profit Institution and TIBCO. Each party shall be responsible for its own costs and expenses associated with its performance under this Agreement.

16. Export. Software, Cloud Service, Documentation, Materials, and related technical data are subject to U.S. export control laws, including the U.S. Export Administration Act and its associated regulations and may be subject to export or import regulations of other countries. Non-Profit Institution shall not use, export, re-export, or provide access to the Software, Cloud Service Documentation, or Materials in any form in violation of any applicable export or import laws of any jurisdiction. Furthermore, Non-Profit Institution hereby assures TIBCO that it shall comply with all such laws and regulations and agrees to obtain all necessary licenses to export, re-export, or import the Software.

17. Government Use. If the Software, Documentation, Materials and any other Licensor services are being or have been acquired with U.S. Federal Government funds, or Non-Profit Institution is affiliated with an agency, department, or other entity of the United States Government ("Government"), the use, duplication, reproduction, release, modification, disclosure, or transfer of the Software 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 Software, Materials, and any Licensor services are COMMERCIAL ITEMS AS DEFINED BY THE FEDERAL ACQUISITION REGULATION. Use of the Software and Materials by the Government is further restricted according to this Agreement and any amendment hereto.

18. Miscellaneous. This Agreement may not be modified or amended except in a writing signed by a duly authorized representative of each party or by electronic acceptance by Non-Profit Institution of terms and conditions proposed by TIBCO and stated to apply to the relationship created by this Agreement. No waiver by either party of any breach of any provision of this Agreement shall be construed as a waiver of that or any other provision on any other occasion. If any provision of this Agreement shall be held to be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions shall in no way be affected or impaired thereby, and the parties shall substitute for the affected portion an enforceable provision which closest approximates the intent and the economic effect thereof. All notices related to this Agreement shall be in writing and delivered by reliable overnight delivery service or first-class, pre-paid mail, return receipt requested, to the address specified below, with notices of default, breach or termination also being sent to that party's General Counsel. Non-Profit Institution agrees to pay all reasonable costs (including reasonable attorneys' fees) incurred in collecting past due amounts (if any) under this Agreement. Non-Profit Institution hereby grants TIBCO and its independent auditors the right to audit Non-Profit Institution's compliance with this Agreement upon reasonable notice and at reasonable times. This Agreement and all related actions thereto shall be governed by California law without application of the principles of conflicts of law. The United Nations Convention on Contracts for the International Sale of Goods is excluded from application hereto. Each of the parties irrevocably consents to the exclusive jurisdiction of the federal and state courts located in Santa Clara County, California, as applicable, for any matter arising out of or relating to this Agreement, except that in actions seeking to enforce any order or any judgment of such federal or state courts located in California, such jurisdiction shall be nonexclusive. The non-prevailing party shall pay all reasonable costs, including attorney's fees, incurred by the prevailing party in any action brought to enforce the prevailing party's rights under this Agreement. This Agreement (including the Exhibits hereto), constitutes the complete agreement between the parties regarding Non-Profit Institution's use of the Software and supersedes all prior agreements, correspondence and understandings, whether oral or written, including, without limitation, any information about intended use or otherwise which is stated on any form or application submitted by the Non-Profit Institution to TIBCO. Sections 1, 6, 8, 10, 11, 12, 13, 14, 16, 17 and 18 shall survive any termination. No delay or default in performance of any obligation by either party (except any payment obligations), shall constitute a breach of this Agreement to the extent caused by Force Majeure or forces beyond its reasonable control, including but not limited to fires, strikes, accidents, terrorism, governmental action or regulatory changes, acts of God and subcontractor defaults. This Agreement may be executed in counterparts.

NON-PROFIT INSTITUTION'S AUTHORIZED TECHNICAL CONTACTS:

Name: _____ Phone: _____ Pager: _____ E-Mail: _____

Name: _____ Phone: _____ Pager: _____ E-Mail: _____

Name: _____ Phone: _____ Pager: _____ E-Mail: _____

NON-PROFIT INSTITUTION'S BUSINESS CONTACT:

Name: _____ Phone: _____ Pager: _____ E-Mail: _____

The "Effective Date" of this Agreement is _____.

<p>Non-Profit Institution: _____ {FILL IN FULL LEGAL NAME}</p>	<p>TIBCO Software Inc.:</p>
<p>Authorized Signature: _____</p>	<p>Authorized Signature: _____</p>
<p>Name: _____</p>	<p>Name: _____</p>
<p>Title: _____</p>	<p>Title: _____</p>
<p>Entity Name: _____ Address: _____ _____</p>	<p>TIBCO Software Inc. 3307 Hillview Avenue Palo Alto, CA 94304</p>

EXHIBIT A

NON-PROFIT INSTITUTION BENEFITS

SOFTWARE AND DOCUMENTATION	NUMBER OF USERS	PURPOSE
<p>TIBCO products enabled for access by Non-Profit Institution via Non-Profit Institution ID and password are available at the TIBCO download site: http://download.tibco.com</p> <p>TIBCO Spotfire Professional Client* is available for download at: https://www.tibco.com/better-world-donation-program. *Download is limited to the TIBCO Spotfire Professional Client ONLY and does not include any additional add-on products.</p>	<p>Up to 50 students, faculty or staff of Non-Profit Institution ("Authorized Users"), <i>as specified in the "Specific Use for Software" section below.</i></p>	<p>For TIBCO products except for Spotfire Professional Client: Educational, instructional, demonstration and research use ONLY and solely for the Specific Use specified below.</p> <p>TIBCO Spotfire Professional Client is limited for educational and teaching purposes ONLY and solely for the Specific Use specified below. Use of TIBCO Spotfire Professional Client for Non-Profit Institution's research purposes is STRICTLY PROHIBITED.</p> <p>Production use, or any use in the operation or administration of the Non-Profit Institution, or use by any user on behalf of any entity and not solely for educational use is prohibited. Non-Profit Institution is prohibited from using the Software for the benefit of, or on behalf of, any third party.</p>

SPECIFIC USE FOR SOFTWARE:

- Classroom.** **Course Name:** _____ **Number of Users:** _____
 Professor Name: _____

- Laboratory.** **Laboratory Name:** _____ **Number of Users:** _____
 Professor Name: _____

- Thesis.** **Thesis Name:** _____ **Number of Users:** _____
 Author Name: _____ **Advisor Name:** _____

TRAINING
<p>Non-Profit Institution will be entitled to a total of 5 days of standard TIBCO training classes for each of 3 designated Authorized Users, subject to availability. These classes must be taken within one year from the Effective Date or prior to termination whichever occurs first.</p> <p>Each designated Authorized User may attend training at a TIBCO Learning Center or attend virtually.</p> <p>For additional training beyond the training listed above, Non-Profit Institution will be entitled to 50% discount off of TIBCO standard training class list price with a limit of 3 seats per Non-Profit Institution per class.</p> <p>Spaces on training courses may be limited and once the designated Authorized Users have registered for a course, they will be put on a waiting list and may not receive confirmation of availability up to 48 hours prior to the class.</p>

TECHNICAL SUPPORT (Select ONE)	
<input type="checkbox"/> Updates Only	During the term of this Agreement, Non-Profit Institution is entitled to software Updates via TIBCO's online fulfillment service only. Updates are replacements for existing copies, subject to the Agreement's limitations and restrictions. "Updates" means Software bug fixes, enhancements, and updates, if and when made generally available by TIBCO. Maintenance does not include support, consultation or other assistance. At its sole discretion, TIBCO may discontinue maintenance at any time for any product licensed under this Agreement.
<input type="checkbox"/> Limited Support	In addition to Updates, as set forth above, the Named Authorized Contacts of Non-Profit Institution may submit up to 12 support requests via TIBCO's Web-based support facility, in accordance with the terms of the chart below.
Number of Named Authorized Contacts	Up to 3

LIMITED SUPPORT	
Service Hours	9am-5pm, Monday – Friday, PST.
Target Response Times	5 Days
Number of Support Requests Included	15

MARKETING AND SALES	
Joint Press Release	As mutually agreed in advance of press release
TIBCO Referenced on Non-Profit Institution Website	Yes (content to be mutually agreed)
Non-Profit Institution Referenced on TIBCO Website	Yes (content to be mutually agreed)
TIBCO Logo Usage	Yes