Partner Terms

Partner may place orders under these Partner Terms by submitting separate Order Forms or Partner Registration Form(s), as applicable.

The parties agree that the terms and conditions set out under https://terms.tibco.com/#master-terms (the “Master Terms”) shall be incorporated into and form an integral part of the Agreement. The term “Customer” in the Master Terms shall be read as “Partner” for the purposes of the Agreement.

Capitalized terms used in the Agreement and not otherwise defined in the Agreement, are, as of the Order Form or Partner Registration Form Effective Date, defined at https://terms.tibco.com/#definitions. In the event of any conflict between the terms of the Agreement and of an Order Form or Partner Registration Form, the terms of the Order Form or Partner Registration Form shall prevail.

1. Partner Terms Definitions

1.1 “End User” or “End Users” are third parties who acquire the right to use the Software.

1.2 “End User License Agreement” or “License Agreement” means a written agreement with an End User that sets forth terms and conditions for their internal use of the Software.

1.3 “Marks” means trademarks, service marks, trade names, logos and other similar proprietary rights, whether registered or unregistered, and all applications and registrations therefore.

1.4 “Territory” means the geographic and/or vertical markets set forth in an Order Form or Partner Registration Form in which Partner may exercise the rights granted to Partner under the Agreement, and unless otherwise set forth in an Order Form or Partner Registration Form, excludes United States Government End Users and prime contractors acquiring the Software on behalf of United States Government End Users.

1.5 “Website” means https://www.tibco.com/resources/datasheet/tibco-partner-program-guide which links to the applicable partner program and requirements.

2. Partner Program

2.1 Licensor appoints Partner, and Partner accepts a non-exclusive appointment, as a Licensor Partner in the category and at the level in the Territory set forth in an Order Form or Partner Registration Form, with all of the rights granted to a Partner under the Agreement.

   a) For Distributor Partners, Reseller Partners and VAR Partners, the parties agree that the additional terms set out at http://terms.tibco.com/#reseller-var shall apply.

   b) For Developer Partners and Solution/Technology Partners, the parties agree that the additional terms set out at http://terms.tibco.com/#developer-technology shall apply.

2.2 Partner hereby agrees that it shall abide by the terms of the applicable program requirements in effect and as published on the Website for the term of the Agreement. Partner agrees to achieve and maintain compliance with the minimum standards set forth on the Website and agrees to participate in periodic reviews by Licensor to ensure compliance. In the event the Agreement is renewed for a subsequent term, the then current program requirements in effect on the Website shall apply.
3. License

3.1 Demonstration/Testing/Training: Licensor hereby grants to Partner a non-transferable, non-exclusive, limited, annual term license, within the Territory, to use the Software solely for: (i) demonstration of the Software to prospective customers (other than any competitors of Licensor), (ii) internal testing purposes to determine the suitability of the Software for Partner’s prospective customers, and (iii) training purposes for Partner’s personnel, in accordance with the terms and conditions of the Agreement. No right to use, copy, duplicate, or display the Software is granted, except as expressly provided herein.

4. Scope

4.1 Partner shall not (directly or indirectly, in whole or in part), nor contractually permit any End User to: (a) lease, rent, loan or commercially share (including time-share or electronically transmitting over a network to a third party) or otherwise use the Software for purposes of providing a service bureau; (b) use any Software which is not listed in an Order Form or Partner Registration Form even if such unlicensed software is made available to Partner as part of Licensor’s general delivery mechanisms; (c) use Production versions of third party products embedded in Software, if any, for any use other than the intended use of the Software; (d) combine the Licensor products with programs licensed under any version of the GNU General Public License or GNU Affero General Public License (collectively, “GPL”) in any manner that could cause, or be interpreted to cause, the Software or any modification thereto to become subject to the GPL or create any obligations or rights as set forth in Section 8.6; (e) transfer or assign possession or allow use of any copy of Software to another party other than as specifically permitted under the Agreement; (f) use or access any embedded or bundled component of Software on a stand-alone basis where such embedded or bundled component is provided to Partner for the sole purpose of enabling the functionality of such Software; (g) release the results of benchmark testing using the Software; and (h) modify, translate, reverse engineer, decrypt, decompile, disassemble, create derivative works based on, or otherwise attempt to discover the Software source code or underlying ideas, techniques or algorithms, including the review of data structures or similar materials produced by the Software. Partner 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, Partner agrees it shall observe strict obligations of confidentiality and provide Licensor reasonable advance written notice and the opportunity to assist with and/or conduct such activity on Partner’s behalf and at Partner’s expense. If proprietary source code is included as part of the standard delivery of the Software and is not subject to open source license terms, use of such source code shall be governed by the terms of the Agreement.

5. Marks

5.1 Licensor Marks: Licensor grants to Partner a non-transferable, non-exclusive, worldwide, limited annual term license to use and display Licensor’s Marks, solely for purposes related to the performance of this Agreement. Partner may use authorized copies of the TIBCO Partner Logo during the term of this Agreement. Partner may not use the corporate TIBCO logo, except for on Partner’s dedicated partner marketing website that must clearly identify that Partner is acting as a TIBCO Partner and that shall not mislead customers to think that Partner is an exclusive or preferred TIBCO Partner. Partner is not permitted to use the corporate TIBCO logo outside of the aforementioned context. Partner shall at all times use the Licensor Marks in accordance with the terms and conditions of Licensor’s Trademark Usage Guidelines published at http://www.tibco.com/multimedia/trademark-guidelines_tcm8-5248.pdf which is subject to change at Licensor’s discretion. Partner shall not modify, stylize, translate or combine any Licensor Mark with other trademarks, service marks, domain names, logos or source indicators without the prior written approval of a duly authorized officer of Licensor, which may be withheld in its sole discretion. If Licensor shall at any time determine that any advertising or promotional materials used by Partner fail to meet the specifications and quality standards of Licensor, and that such failure may impair or diminish the goodwill associated with the Licensor Marks, Licensor may give written notice thereof to Partner, whereupon Partner shall promptly correct such failure or cease to use such materials. Partner shall not register any Licensor Marks, domain names, or social media account names that incorporate or include, in whole or in part, any
Licensor Marks (or any trademarks confusingly similar to any Licensor Marks) in any jurisdiction, whether with a governmental agency, domain registrar or social media provider, and shall not challenge, directly or indirectly, the same. All use of Licensor Marks by Partner shall inure to the benefit of Licensor.

5.2 Partner Marks: Licensor may, in its discretion, refer to Partner in advertising and promotional materials in connection with the sales and promotion of Licensor products and services. Permitted uses of the name or logo of Partner and/or the name or logo of Partner’s products include: (i) lists of Licensor Partners, (ii) general marketing materials listing all Licensor partners, (iii) framing and displaying at Licensor offices, (iv) reproducing in a professionally prepared graphic for display at sales and promotional events, and (v) display as a link to Partner's website on Licensor’s public website. Partner hereby consents to Licensor's display of Partner's logo on Licensor's website portals and/or Licensor internal presentations, and as otherwise set forth in this section. Partner shall provide Licensor with digital files and artwork of Partners logo for purposes set forth in this section. All use of Partner Marks by Licensor shall inure to the benefit of Partner.

5.3 Each party agrees that in no event shall a Mark be used in any disparaging, unlawful, or derogatory material or in a manner that may diminish or otherwise damage the goodwill or jeopardize or render less valuable a party’s Marks or any associated goodwill. Each party will comply with the branding criteria and the quality control standards and trademark and trade name usage guidelines that are provided by a party in writing from time to time and in the case of Licensor’s Marks as published on its public website. Nothing contained in the Agreement shall be deemed to grant either party any right of ownership, goodwill, title or interest in the other party’s Marks.

6. Partner Warranties and Indemnity

6.1 Partner represents and warrants that it shall employ reasonable professional standards in performance of its right and obligations under the Agreement and the Order Form or Partner Registration Form, and shall avoid deceptive, misleading or unethical practices that may be detrimental to Licensor or the Software. PARTNER FOR ITSELF AND ON BEHALF OF ITS EMPLOYEES AND AGENTS REPRESENTS AND WARRANTS THAT IT SHALL COMPLY WITH THE U.S. FOREIGN CORRUPT PRACTICES ACT OF 1977 (AS AMENDED), THE TIBCO PARTNER CODE OF BUSINESS CONDUCT AND ETHICS POLICY LOCATED AT http://static.tibco.com/resources/tibco-partner-code-business-conduct-ethics.pdf, AND ANY SIMILAR LAWS IN THE COUNTRIES WHERE PARTNER IS PERFORMING UNDER AN ORDER FORM OR PARTNER REGISTRATION FORM, 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.

6.2 Partner represents and warrants it has the corporate power and authority to enter into the Agreement.

6.3 Partner shall defend and indemnify Licensor against all cost and damages (including reasonable attorney’s fees) with respect to any suit, matter, claim, allegation or proceeding relating to: (a) any action brought against Licensor by End Users of Partner or other persons relating in any way to Partner’s activity hereunder, (b) the Software which has been altered, modified or otherwise changed by Partner, (c) any representations or warranties made by Partner to a third-party regarding the Software, other than as provided in the Documentation or approved by Licensor in advance in writing, or (d) any violation by Partner of the United States Foreign Corrupt Practices Act or any similar laws in countries where Partner performs under the Agreement, provided that Licensor: (i) promptly notifies Partner in writing of such claim, and (ii) gives Partner full control, authority, information and assistance (at Partner's expense) for the defense of same and for all negotiations for any settlement or compromise.

7. Term and Termination

7.1 The Agreement shall commence on the Effective Date as set forth in the initial Order Form or Partner Registration Form with the earliest date and shall remain in effect for a period of one (1) year, unless such license or the Agreement is terminated as provided in the Master Terms. Subject to Partner having met all its obligations under the Agreement and the Website in the preceding year (such determination shall be at Licensor’s sole
discretion), the parties may agree to renew the Agreement for additional one (1) year periods, subject to payment by Partner of the applicable annual fees.

7.2 Licensor has the right, exercisable on sixty (60) days written notice to Partner or such shorter period to which Partner may agree (such agreement not to be unreasonably withheld), to discontinue any Software or Licensor’s support thereof; provided however, that Licensor shall continue to make such Software and support available to Partner during the notice period.

7.3 Upon expiration or termination of the Agreement or a license granted under the Agreement, Partner shall (i) cease using the applicable Software, Licensor Mark and related Confidential Information of Licensor, and (ii) return or deliver to Licensor a written certification signed by a corporate officer of Partner within thirty (30) days after termination that Partner has destroyed, the Software, Documentation, related Confidential Information of Licensor, and all copies thereof, whether or not modified or merged into other materials.

7.4 Termination of the Agreement shall not terminate an End User license grant. Termination shall not relieve the parties from their prior and continuing obligations under an Order Form or Partner Registration Form or the Agreement, including without limitation all payment obligations relating to any End User License Agreement entered by Partner prior to such termination. Provided that termination was not a result of a material breach of the Order Form or Partner Registration Form or the Agreement by Partner, to the extent necessary to facilitate Partner’s remaining Maintenance obligations for any End User unearned annual Maintenance period, which has been prepaid to Licensor prior to termination, the terms of the Order Form or Partner Registration Form or the Agreement shall survive.

8. General

8.1 Partner shall not make any representations or warranties regarding the Software other than as provided in the Documentation.

8.2 Partner shall appoint an employee who will be a single contact and shall be responsible for managing the relationship contemplated herein. This contact shall coordinate communication with Licensor and promote the success of Partner in the marketplace.

8.3 Partner shall have no authority, express or implied, to assume or create any obligation on behalf of Licensor and shall have no authority to represent Licensor in any other capacity than as expressly herein provided. The Agreement 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. The rights and obligations of Partner under the Agreement are personal to Partner. Unless specifically agreed to in writing by Licensor, Partner shall not be entitled to use any agents or third parties for any obligations hereunder.

8.4 Partner shall maintain complete and accurate files and books and records of account with respect to all of its activities hereunder and all transactions relating to the Software. Such records will be maintained for a period of at least two years after termination or expiration of the Agreement.

8.5 If a Licensor audit as permitted under the Agreement reveals that there is a discrepancy of greater than five percent (5%) of any amount due to Licensor, then Partner shall be responsible for the cost of the audit, plus interest to be accrued as of its original due date on the amount of the discrepancy.

8.6 If Partner uses open source software or any other third party software not supplied by Licensor in conjunction with the Software, Partner must ensure that its use does not: (a) create, or purport to create, obligations of use with respect to the Software; or (b) grant, or purport to grant, to any third party any rights to or immunities under Licensor’s intellectual property or proprietary rights in the Software.

8.7 If the European Union’s General Data Protection Regulation (EU/2016/679) (GDPR) applies to Protected Data of third parties that Partner submits to Licensor in accordance with a sales opportunity registration program, then the Licensor’s Controller to Controller Data Processing Exhibit located at https://terms.tibco.com/#controller-to-
controller-addendum apply.