Additional terms for Distributor Partners, Reseller Partners and VAR Partners

1. Supplemental Definitions
   1.1 “Lead Form” means an opportunity registration form that is published by Licensor from time to time and available to Partner on request.
   1.2 “Qualified Lead” means a sales opportunity that satisfies all of the following: (a) Information regarding the lead is submitted by Partner to Licensor via the applicable Lead Form; (b) the lead is not a current Licensor customer; (c) Licensor has not engaged in “Significant Sales Activity” with the lead within 180 days prior to the date Partner submits the Lead Form to Licensor. (“Significant Sales Activity” means substantial sales efforts that include: product demonstrations, meetings with executive level personnel, proof of concept presentations, or project scope meetings and other activities of similar consequence, and specifically not simple phone contacts or responses to a request for proposal); (d) the lead is given solely and exclusively to Licensor (and specifically not to any other competitor or similar software vendor); and (e) Partner arranges and attends a formal meeting to introduce Licensor to decision-making personnel at the lead within 30 days of Licensor accepting the Lead Form.

2. License
   2.1 Licensor hereby grants Partner a non-transferable, non-exclusive limited license to market, sub-license, distribute, install and support the Software to End Users within the Territory for the term of the Agreement. The licensing model for the Software is set out in the Order Form and the terms and conditions for the different licensing models are located at https://terms.tibco.com.
   2.2 In no event may a Partner resell, distribute, or sublicense Software in the following countries: Algeria, Angola, Bahrain, Benin, Botswana, Burkina Faso, Burundi, Cameroon, Cape Verde, Central African Republic, Chad, Comoros, Congo (Brazzaville), Congo (Democratic Republic), Côte d’Ivoire, Denmark, Djibouti, Egypt, Equatorial Guinea, Eritrea, Estonia, Finland, Gabon, The Gambia, Ghana, Guinea, Guinea-Bissau, Iceland, India, Iraq, Israel, Japan, Jordan, Kenya, Kuwait, Latvia, Lebanon, Lesotho, Liberia, Lithuania, Madagascar, Malawi, Mali, Mauritania, Mauritius, Morocco, Mozambique, Namibia, Niger, Nigeria, Norway, Oman, Pakistan, Qatar, Réunion, Rwanda, Sao Tome and Principe, Saudi Arabia, Senegal, Seychelles, Sierra Leone, Somalia, South Africa, Swaziland, Sweden, Tanzania, Togo, Tunisia, Uganda, United Arab Emirates, Zambia, Zimbabwe.

3. End User Licensing
   3.1 Subject to the payment by Partner of all fees due, Partner may solicit and accept orders solely from End Users for the right to use Software by End Users solely for their own internal operations and for processing of their own data. Partner represents and warrants that prior to distribution of the Software the End User will enter into an End User License Agreement at least as protective of Licensor as the terms of this Order Form and the Agreement. Alternatively, if delivery by TIBCO is made directly to the End User, then the following End User licensing terms shall apply https://terms.tibco.com/#end-user-license-agreement.

4. Sell Through
   4.1 Partner shall promptly submit to Licensor a Purchase Order for the Software licensed
upon execution of an End User License Agreement. Each such Purchase Order shall (a) be issued on Partner’s letterhead, (b) contain the following statement: “License, maintenance and/or services set forth herein are purchased solely under the terms and conditions of the [enter applicable agreement by title and effective date]. No other terms shall apply.”, (c) list by line item each item of Software, the quantity being ordered, and the first year Maintenance fee, (d) include, at a minimum the End User’s company name and city/country location, and (e) a stated renewal Maintenance fee or rate (if different than the first year Maintenance fee).

4.2 Additionally, Partner shall provide with each Purchase Order, evidence that Partner has sublicensed the Software, Maintenance, and/or services to an End User (“Sell-Through”). Evidence of Sell-Through may be an End User purchase order listing the Software, or may be a copy of the signature page of the executed End User License Agreement between Partner and End User along with an excerpt of language containing the grant of license to the Software. Any Confidential Information of Partner contained in an End User purchase order (such as pricing of the Software) may be redacted by Partner. Upon Licensor’s request, Partner shall submit a copy of all executed End User License Agreements, which if not in English, will be submitted with an English translation.

5. Fees

5.1 The fees payable for each Unit of Software shall be the list price for the Software set forth in Licensor’s then current list prices (the "Price List") that is in effect on the date Licensor receives Partner's purchase order. License fees shall be less the applicable license discount. Annual Maintenance fees are based on the net license fee paid by Partner to Licensor and calculated based on the Maintenance percentage set forth in the Order Form or, if different, the then current percentage rate in the Price List for the applicable Maintenance level for the first year Maintenance fee. Licensor reserves the right to change its Price List at any time. If prior to a Price List change Partner had provided a written quote with a firm price to an End User, then subject to Partner providing a copy of such quote and the quote resulting in the execution of an order by the End User within 60 days following the date of the quote, the Price List in effect on the date of the quote will apply.

5.2 Partner may request special pricing from Licensor on a case-by-case basis, which Licensor may, at its sole discretion, accept or reject. In the event that Licensor does not agree to such special pricing then Partner has the option to: (a) decline to bid to its prospective End User or (b) bid and pay Licensor on any order received at the then current price.

5.3 Nothing in the Order Form or the Agreement shall restrict or in any way establish the prices at which Partner sublicenses the Software or sells services, or Partner sells or licenses its own products, services and support to its End Users.

6. Maintenance

6.1 Maintenance for the Software, if ordered, is provided under the terms at https://terms.tibco.com/posts/845633- maintenance.

6.2 Partner acknowledges and agrees it has the sole responsibility to support and provide Maintenance to End Users. Partner shall provide End Users with prominent notice and instruction to direct all support or Maintenance calls and correspondence to Partner. Licensor will not handle any request for support or Maintenance from End Users.

6.3 Licensor will provide Partner with Maintenance for Software subject to Partner (a) confirming the eligibility of the applicable End User under Maintenance, and (b) Partner providing Licensor with documentation evidencing Partner’s diagnosis of the problem reported by the End User, a detailed problem description, and evidence of repeated replication of the problem in Partner’s own environment where the cause of the problem
has been identified by Partner as the Software.

7. Lead Programs

7.1 Partner may participate in lead programs set forth in an Order Form. Partner may refer Qualified Leads to Licensor by submitting a Lead Form to Licensor. Only Qualified Leads that are transmitted by Partner on a Lead Form and received by Licensor before the expiration or termination of the Agreement, and which subsequently result in the execution of a license agreement for a Licensor product within six (6) months of the date the Lead Form was executed and accepted by Licensor, will be eligible for an MDF credit or referral fee.

7.2 Following Licensor’s receipt of a Lead Form, Licensor will accept or reject the Qualified Lead within ten (10) business days. A failure to respond shall constitute a rejection of the Lead Form. If accepted, Licensor shall indicate or confirm the opportunity type designated in the Lead Form in its acceptance.

7.3 Upon execution of an End User License Agreement between Licensor and the applicable End User, acceptance of the Licensor products by the End User, and receipt of payment by Licensor from the End User and in the case of referral fees, when Licensor recognizes such payment for accounting purposes as revenue, Partner shall earn the MDF credit or referral fee as agreed and as set forth in the Lead Form.

7.4 Marketing Development Fund “MDF”: The MDF credit mutually agreed upon in the Lead Form shall be used solely to offset future joint marketing initiatives or training services that Partner would otherwise owe to Licensor. The MDF credit may not be used to pay for any license or services (except for training services) fees or Partner Program fees. To utilize MDF credits, Partner shall request in writing to the applicable Licensor Vice President of Global Channels and Alliances or Sales Channel Executive that credits be applied. The amount, timing, and applicability of credits to fees shall be determined by Licensor in its sole discretion and Licensor reserves the right to limit the amount of MDF credits Partner may utilize in a three-month period. MDF credits have no cash value and in no event shall any MDF credits be converted into cash payments to Partner. The applicability of MDF credits is as set forth in the then current program requirements available on the Website.

7.5 Referral Fee: A referral fee shall be equal to the percentage mutually agreed upon and as set forth in the Lead Form. Any percentage upon which a referral fee is based shall be calculated from the net recognizable license revenue from license fees received by Licensor from the End User for the Software or, in the case of Software Services or Hosted Services, the initial annual contract value of the Subscription or license fee paid by the Customer. Notwithstanding the foregoing, and unless otherwise agreed by the parties in a properly executed Lead Form, in no event shall the referral fee for any Qualified Lead exceed $100,000.00. All referral fees are net of unrecoverable sales, trade discounts, rebates, commissions or royalties to third parties, sales or value added taxes, goods and services, consumption, withholding, excise and any other similar taxes, import duties and similar governmental charges, and shipping charges (including customs duties), but excluding any taxes imposed on Licensor’s income. There will be no referral fees paid on Maintenance, Consulting, or other services provided by Licensor. Referral fees will be paid in US dollars. In the event that either party must team with a third-party on a Qualified Lead in order to complete the transaction, the referral fee paid by Licensor to each Partner may be reduced proportionately. Any reductions made will be on a pro-rated amount based on the percentages originally agreed to for each referring party.