Data Processing Terms

Preamble

These Data Processing terms apply to all activities relating to commissioned data Processing in the context of which employees of Licensor, or third parties retained by Licensor may have access to Personal Data of Customer during the term of the Agreement.

1. Definitions

For the purposes of these terms, the following terms shall have the meanings set out below.

a) “Agreement” shall have the same meaning as defined in the applicable software license and services agreement, work order, order form or any other agreement between the Parties or EULA;

b) “Data Controller” shall mean the legal entity which determines the purposes and means of the Processing of Personal Data;

c) “Data Processor”, in relation to Personal Data, shall mean the legal entity who Processes the Personal Data on behalf of the Data Controller;

d) “Data Protection Laws and Regulations” means all laws and regulations, including laws and regulations of the European Union, the European Economic Area and their member states, applicable to the Processing of Personal Data under the Agreement, including the GDPR.

e) “GDPR” shall mean the General Data Protection Regulation of the European Union effective on May 25, 2018.

f) “Personal Data” shall mean any information relating to (i) an identified or identifiable natural person (“Data Subject”) and, (ii) an identified or identifiable legal entity (where protected under applicable Data Protection Laws and Regulations) of which the Customer and/or its Affiliate(s) is the Data Controller and in relation to which the Licensor is providing Cloud Service under the Agreement; an identifiable person is one who can be identified, directly or indirectly, in particular by reference to an identification number or to one or more factors specific to his physical, physiological, mental, economic, cultural or social identity;

g) “Processes”, “Processed” and “Processing” shall mean any operation or set of operations which is performed upon Personal Data, whether or not by automatic means, such as collection, recording, organization, storage, adaptation or alteration, retrieval, consultation, use, disclosure by transmission, dissemination or otherwise making available, alignment or combination, blocking, erasure or destruction.

h) “Customer” and “Licensor”, jointly referred to as the “Parties”, shall have the same meaning as defined in the Software Licenses and Services Agreement or other agreement between the parties or EULA;

i) “Member State” shall mean a state which is a member of the European Economic Area, that is, a member of the European Union or of the European Free Trade Area;

j) “Standard Contractual Clauses” means the agreement executed by and between Customer and Licensor and attached hereto as Attachment 1 pursuant to the European Commission’s decision of 5 February 2010 on Standard Contractual Clauses for the transfer of personal data to processors established in third countries which do not ensure an adequate level of data protection.

k) “Supervisor” shall mean an independent public authority established by the Member States pursuant to the GDPR.

l) “Sub-processor” means any Data Processor engaged by Licensor or its Affiliates.

2. Data Controller and Data Processor

(1) Where Licensor is Processing Personal Data on behalf of Customer, Licensor shall be a Data Processor.
Customer and Licensor acknowledge that Customer and/or its Affiliate(s) qualify as Data Controllers with regard to the Processing of Personal Data.

In relation to the Processing of Personal Data, Licensor will only act upon the instructions of Customer.

The provisions herein apply equally if other bodies are commissioned or employed to carry out the inspection or maintenance of automated procedures or data Processing systems, during which the possibility exists of accessing Personal Data.

3. Obligations of Licensor

In relation to the Processing of Personal Data, Licensor will only act on behalf of and upon the instructions of Customer and shall treat Personal Data as Confidential Information. Customer instructs Licensor to Process Personal Data for the following purposes: (i) Processing in accordance with the Agreement and applicable Order Form(s); (ii) Processing initiated by Authorized Users in their use of the Cloud Service; and (iii) Processing to comply with other reasonable instructions provided by Customer (e.g., via email) where such instructions are consistent with the terms of the Agreement.

Licensor shall implement reasonable general and technical/organisational measures to protect Personal Data against accidental or unlawful destruction or accidental loss, alteration, unauthorized disclosure or access, in particular where the Processing involves the transmission of Personal Data over a network, and against all other unlawful forms of Processing. Such technical/organisational measures shall include but not be limited to, the TIBCO Security Guidelines located at https://terms.tibco.com/posts/868169-tibco-security-guidelines. The TIBCO Security Guidelines shall be subject to technical progress and continued development. In this regard, Licensor is permitted to implement adequate alternative measures that meet or exceed the security level set out in the TIBCO Security Guidelines.

Licensor shall ensure that all its employees and contractors (a) are informed of the confidential nature of the Personal Data, (b) have undertaken training on their responsibilities, and (c) have executed confidentiality obligations survive the termination of the personnel engagement.

Licensor shall take commercially reasonable steps to ensure the reliability of any Licensor personnel engaged in the Processing of Personal Data.

Licensor shall ensure that Licensor's access to Personal Data is limited to those personnel who require such access to perform the Agreement.

A data protection officer has been appointed and may be reached at privacy@tibco.com.

Licensor will notify Customer without undue delay in the event of severe disruptions to operations or if it becomes aware of any unauthorised or unlawful Processing, loss of, damage to or destruction of the Personal Data. Licensor will take reasonable measures to identify the cause of such event and secure the Personal Data and to mitigate any adverse consequences for the Data Subjects.

All Personal Data stored and Processed by Licensor on behalf of Customer are and shall remain exclusively the property of Customer.

4. Obligations of Customer

With respect to the Processing of Personal Data, Customer alone shall be responsible for ensuring compliance with all applicable Data Protection Laws and Regulations. For the sake of clarity, Customer’s instructions for the Processing of Personal Data shall comply with Data Protection Laws and Regulations. Customer shall have sole responsibility for the accuracy, quality, and legality of Personal Data and the means by which Customer acquired Personal Data

Customer shall respond in a reasonable time to enquiries from Supervisor on the Processing of the relevant Personal Data;

Customer shall fully inform Licensor without undue delay if and when it identifies any mistakes or irregularities with respect to data protection and/or the Processing of Personal Data.

Customer shall decide 30 days prior to the end of the Agreement whether the Personal Data is to be surrendered to Customer or deleted. Should Licensor not receive any instructions, the Personal Data will be deleted.

5. Inquiries from Data Subjects or Supervisor to Customer or Licensor
(1) Correction, Blocking and Deletion. To the extent Customer, in its use of the Cloud Service, does not have the ability to correct, amend, block or delete Personal Data, as required by Data Protection Laws and Regulations, Licensor shall comply with any commercially reasonable request by Customer to facilitate such actions to the extent Licensor is legally permitted to do so. To the extent legally permitted, Customer shall be responsible for any costs arising from Licensor’s provision of such assistance.

(2) Data Subject Requests. Licensor shall, to the extent legally permitted and required under the applicable Data Protection Laws and Regulations, promptly notify Customer if it receives a request from a Data Subject to exercise the Data Subject’s right of access, right to rectification, erasure (“right to be forgotten”), restriction of Processing, data portability, object to the Processing, or its right not to be subject to an automated individual decision making (together the “Data Subject Rights”). Licensor shall not respond to any such Data Subject Right request without Customer’s prior written consent except to confirm that the request relates to Customer. Licensor shall provide Customer with commercially reasonable cooperation and assistance in relation to handling of a Data Subject Right request, to the extent legally permitted and required under the applicable Data Protection Laws and Regulations and to the extent Customer does not have access to such Personal Data through its use of the Cloud Service. If legally permitted, Customer shall be responsible for any costs arising from Licensor’s provision of such assistance.

6. Right to exercise control

In compliance with an obligation under the applicable Data Protection Laws and Regulations to exercise control, Customer can request the reports and certifications produced by Licensor’s or its subcontractors’ third-party auditors which attest to the design and operating effectiveness of the technical and organisational measures described in article 3(2).

7. Subcontractors

(1) Customer acknowledges and agrees that Licensor may use subcontractors to fulfil its contractual obligations in relation to the Cloud Service or provide certain services on its behalf.

(2) Licensor shall be liable for the acts and omissions of its subcontractors to the same extent Licensor would be liable if performing the services of each subcontractor directly under the terms of these Data Processing terms, except as otherwise set forth in the Agreement.

8. Termination of the Agreement

(1) The termination of the Agreement at any time, in any circumstances and for whatever reason does not exempt Licensor and Customer from the obligations and/or conditions as regards the Processing of Personal Data.

(2) Subject to article 4(4), Licensor shall, insofar as it is practicable, delete or render anonymous all copies of Customer’s Personal Data held and processed by Licensor.

(3) If Customer’s Personal Data, for reasons of practicality, cannot be so deleted or rendered anonymous, Licensor shall take appropriate action to ensure that such Personal Data will not be further processed, disclosed, or in any way used, other than their later deletion should that become possible.

9. Additional Terms for Personal Data of EU residence

(1) Application of Standard Contractual Clauses. The Standard Contractual Clauses in Attachment 1 and the additional terms in this Section 9 will apply to the Processing of Personal Data by Licensor in the course of providing the Cloud Service:

(a) The Standard Contractual Clauses apply only to Personal Data of EU residence that is transferred from the European Economic Area (EEA) and/or Switzerland to outside the EEA and Switzerland, either directly or via onward transfer, to any country or recipient: (i) not recognized by the European Commission as providing an adequate level of protection for personal data (as described in the EU Data Protection Directive), and (ii) not covered by a suitable framework recognized by the relevant authorities or courts as providing an adequate level of protection for personal data, including but not limited to the EU-US Privacy Shield framework or Binding Corporate Rules for Processors.

(b) The Standard Contractual Clauses apply to (i) the legal entity that has executed the Standard Contractual Clauses as a Data Exporter and, (ii) all Affiliates (as defined in the Agreement) of Customer established within the European Economic Area (EEA) and Switzerland that have purchased Cloud Service on the basis of an Order Form. For the purpose of the Standard Contractual Clauses and this Section 9, the aforementioned entities shall be deemed “Data Exporters.”
(2) **Objective and Duration.** The objective of Processing of Personal Data by Licensor is the performance of the Cloud Service pursuant to the Agreement.

(3) **Instructions.** These Data Protection terms and the Agreement are Data Exporter’s complete and final instructions to Data Importer for the Processing of Personal Data. Any additional or alternate instructions must be agreed upon separately. For the purposes of Clause 5(a) of the Standard Contractual Clauses, the following is deemed an instruction by the Data Exporter to process Personal Data: (a) processing in accordance with the Agreement and applicable Order Form(s); and (b) processing initiated by users in their use of the Cloud Service.

(4) **Sub-processors.** Pursuant to Clause 5(h) of the Standard Contractual Clauses, the Data Exporter acknowledges and expressly agrees that: (a) Licensor’s Affiliates may be retained as Sub-processors; and (b) Licensor and Licensor’s Affiliates respectively may engage third-party Sub-processors in connection with the provision of the Cloud Service.

(a) List of Current Sub-processors and Notification of New Sub-processors. Data Importer shall make available to Data Exporter a current list of Sub-processors for the respective Cloud Service with the identities of those Sub-processors on a Licensor website (“Sub-processor List”). At least 30 days before Licensor authorizes and permits any new Sub-processor to access Personal Data, Licensor will update the applicable website.

(b) In the event Data Exporter objects to a new Sub-processor(s) and that objection is not unreasonable Data Importer will use reasonable efforts to make available to Data Exporter a change in the affected Cloud Service or recommend a commercially reasonable change to Data Exporter’s configuration or use of the affected Cloud Service to avoid processing of Personal Data by the objected-to new Sub processor without unreasonably burdening Data Exporter. If Data Importer is unable to make available such change within a reasonable period of time, which shall not exceed sixty (60) days, Data Importer may terminate the applicable Order Form(s) in respect only to those Cloud Service which cannot be provided by Data Importer without the use of the objected-to new Sub-processor, by providing written notice to Data Importer. Data Exporter shall receive a refund of any prepaid fees for the period following the effective date of termination in respect of such terminated Cloud Service.

(c) The parties agree that the copies of the Sub-processor agreements that must be sent by the Data Importer to the Data Exporter pursuant to Clause 5(j) of the Standard Contractual Clauses may have all commercial information, or clauses unrelated to the Standard Contractual Clauses or their equivalent, removed by the Data Exporter beforehand; and, that such copies will be provided by Data Importer only upon reasonable request by Data Exporter.

(5) **Audits and Certifications.** The parties agree that the audits described in Clause 5(f), Clause 11 and Clause 12(2) of the Standard Contractual Clauses shall be carried out in accordance with the following specifications:

Upon Data Exporter’s request, and subject to the confidentiality obligations set forth in the Agreement, Data Importer shall make available to Data Exporter (or Data Exporter’s independent, third-party auditor that is not a competitor of Licensor) information regarding the Licensor Group’s compliance with the obligations set forth in these Data Processing terms in the form of the third-party certifications and audits set forth in the TIBCO Security Guideline to the extent Licensor makes them generally available to its customers. Data Exporter may contact Data Importer in accordance with the “Notices” Section of the Agreement to request an on-site audit of the procedures relevant to the protection of Personal Data. Data Exporter shall reimburse Data Importer for any time expended for any such on-site audit at Licensor’s then-current professional services rates, which shall be made available to Data Exporter upon request. Before the commencement of any such on-site audit, Data Exporter and Data Importer shall mutually agree upon the scope, timing, and duration of the audit in addition to the reimbursement rate for which Data Exporter shall be responsible. All reimbursement rates shall be reasonable, taking into account the resources expended by Data Importer. Data Exporter shall promptly notify Data Importer with information regarding any non-compliance discovered during the course of an audit.

(6) **Certification of Deletion.** The parties agree that the certification of deletion of Personal Data that is described in Clause 12(1) shall be provided by the Data Importer to the Data Exporter only upon Data Exporter’s request.

(7) **Conflict.** In the event of any conflict or inconsistency between these Data Protection terms and the Standard Contractual Clauses in Attachment 1, the Standard Contractual Clauses shall prevail.

10. **Privacy Impact Assessment.** Upon Customer’s request, Licensor will provide Customer with reasonable assistance with Customer’s obligations under the GDPR to conduct a privacy impact assessment to the extent Customer does not have access to the relevant information and to the extent Licensor has access to that information.
11. Variation of these Terms

Licensor and Customer undertake not to vary or modify the terms of these terms, other than by written instrument signed by both Parties.

Customer may deliver an executed copy of this Order Form to Licensor by facsimile or similar instantaneous electronic transmission device and such delivery shall be considered valid and effective for all purposes.

Customer:

Signature:

Print Name:

Title:

Date:

Licensor:

Signature
Attachment 1

Standard Contractual Clauses (processors)

For the purposes of Article 26(2) of Directive 95/46/EC for the transfer of personal data to processors established in third countries which do not ensure an adequate level of data protection.

The Customer as the data exporter and Licensor as the data importer, each a “party”; together “the parties”.

HAVE AGREED on the following Contractual Clauses (the Clauses) in order to adduce adequate safeguards with respect to the protection of privacy and fundamental rights and freedoms of individuals for the transfer by the data exporter to the data importer of the personal data specified in Appendix 1.

Clause 1

Definitions

For the purposes of the Clauses:

(a) ‘personal data’, ‘special categories of data’, ‘process/processing’, ‘controller’, ‘processor’, ‘data subject’ and ‘supervisory authority’ shall have the same meaning as in Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data;

(b) ‘the data exporter’ means the controller who transfers the personal data;

(c) ‘the data importer’ means the processor who agrees to receive from the data exporter personal data intended for processing on his behalf after the transfer in accordance with his instructions and the terms of the Clauses and who is not subject to a third country’s system ensuring adequate protection within the meaning of Article 25(1) of Directive 95/46/EC;

(d) ‘the subprocessor’ means any processor engaged by the data importer or by any other subprocessor of the data importer who agrees to receive from the data importer or from any other subprocessor of the data importer personal data exclusively intended for processing activities to be carried out on behalf of the data exporter after the transfer in accordance with his instructions, the terms of the Clauses and the terms of the written subcontract;

(e) ‘the applicable data protection law’ means the legislation protecting the fundamental rights and freedoms of individuals and, in particular, their right to privacy with respect to the processing of personal data applicable to a data controller in the Member State in which the data exporter is established;

(f) ‘technical and organisational security measures’ means those measures aimed at protecting personal data against accidental or unlawful destruction or accidental loss, alteration, unauthorised disclosure or access, in particular where the processing involves the transmission of data over a network, and against all other unlawful forms of processing.

Clause 2

Details of the transfer

The details of the transfer and in particular the special categories of personal data where applicable are specified in Appendix 1 which forms an integral part of the Clauses.

Clause 3

Third-party beneficiary clause

1. The data subject can enforce against the data exporter this Clause, Clause 4(b) to (i), Clause 5(a) to (e), and (g) to (j), Clause 6(1) and (2), Clause 7, Clause 8(2), and Clauses 9 to 12 as third-party beneficiary.

2. The data subject can enforce against the data importer this Clause, Clause 5(a) to (e) and (g), Clause 6, Clause 7, Clause 8(2), and Clauses 9 to 12, in cases where the data exporter has factually disappeared or has ceased to exist in law unless any successor entity has assumed the entire legal obligations of the data exporter by contract or by operation of law, as a result of which it takes on the rights and obligations of the data exporter, in which case the data subject can enforce them against such entity.
3. The data subject can enforce against the subprocessor this Clause, Clause 5(a) to (e) and (g), Clause 6, Clause 7, Clause 8(2), and Clauses 9 to 12, in cases where both the data exporter and the data importer have factually disappeared or ceased to exist in law or have become insolvent, unless any successor entity has assumed the entire legal obligations of the data exporter by contract or by operation of law as a result of which it takes on the rights and obligations of the data exporter, in which case the data subject can enforce them against such entity. Such third-party liability of the subprocessor shall be limited to its own processing operations under the Clauses.

4. The parties do not object to a data subject being represented by an association or other body if the data subject so expressly wishes and if permitted by national law.

Clause 4

Obligations of the data exporter

The data exporter agrees and warrants:

(a) that the processing, including the transfer itself, of the personal data has been and will continue to be carried out in accordance with the relevant provisions of the applicable data protection law (and, where applicable, has been notified to the relevant authorities of the Member State where the data exporter is established) and does not violate the relevant provisions of that State;

(b) that it has instructed and throughout the duration of the personal data processing services will instruct the data importer to process the personal data transferred only on the data exporter's behalf and in accordance with the applicable data protection law and the Clauses;

(c) that the data importer will provide sufficient guarantees in respect of the technical and organisational security measures specified in Appendix 2 to this contract;

(d) that after assessment of the requirements of the applicable data protection law, the security measures are appropriate to protect personal data against accidental or unlawful destruction or accidental loss, alteration, unauthorised disclosure or access, in particular where the processing involves the transmission of data over a network, and against all other unlawful forms of processing, and that these measures ensure a level of security appropriate to the risks presented by the processing and the nature of the data to be protected having regard to the state of the art and the cost of their implementation;

(e) that it will ensure compliance with the security measures;

(f) that, if the transfer involves special categories of data, the data subject has been informed or will be informed before, or as soon as possible after, the transfer that its data could be transmitted to a third country not providing adequate protection within the meaning of Directive 95/46/EC;

(g) to forward any notification received from the data importer or any subprocessor pursuant to Clause 5(b) and Clause 8(3) to the data protection supervisory authority if the data exporter decides to continue the transfer or to lift the suspension;

(h) to make available to the data subjects upon request a copy of the Clauses, with the exception of Appendix 2, and a summary description of the security measures, as well as a copy of any contract for subprocessing services which has to be made in accordance with the Clauses, unless the Clauses or the contract contain commercial information, in which case it may remove such commercial information;

(i) that, in the event of subprocessing, the processing activity is carried out in accordance with Clause 11 by a subprocessor providing at least the same level of protection for the personal data and the rights of data subject as the data importer under the Clauses; and

(j) that it will ensure compliance with Clause 4(a) to (i).

Clause 5

Obligations of the data importer

The data importer agrees and warrants:

(a) to process the personal data only on behalf of the data exporter and in compliance with its instructions and the Clauses; if it cannot provide such compliance for whatever reasons, it agrees to inform promptly the data exporter of its inability to comply, in which case the data exporter is entitled to suspend the transfer of data and/or terminate the contract;

(b) that it has no reason to believe that the legislation applicable to it prevents it from fulfilling the instructions received from the data exporter and its obligations under the contract and that in the event of a change in this legislation which is likely to have a substantial adverse effect on the warranties and obligations provided by the Clauses, it will promptly notify the change to the data exporter as soon as it is aware, in which case the data exporter is entitled to suspend the transfer of data and/or terminate the contract;
(c) that it has implemented the technical and organisational security measures specified in Appendix 2 before processing the personal data transferred;

(d) that it will promptly notify the data exporter about:
   (i) any legally binding request for disclosure of the personal data by a law enforcement authority unless otherwise prohibited, such as a prohibition under criminal law to preserve the confidentiality of a law enforcement investigation,
   (ii) any accidental or unauthorised access, and
   (iii) any request received directly from the data subjects without responding to that request, unless it has been otherwise authorised to do so;

(e) to deal promptly and properly with all inquiries from the data exporter relating to its processing of the personal data subject to the transfer and to abide by the advice of the supervisory authority with regard to the processing of the data transferred;

(f) at the request of the data exporter to submit its data processing facilities for audit of the processing activities covered by the Clauses which shall be carried out by the data exporter or an inspection body composed of independent members and in possession of the required professional qualifications bound by a duty of confidentiality, selected by the data exporter, where applicable, in agreement with the supervisory authority;

(g) to make available to the data subject upon request a copy of the Clauses, or any existing contract for subprocessor, unless the Clauses or contract contain commercial information, in which case it may remove such commercial information, with the exception of Appendix 2 which shall be replaced by a summary description of the security measures in those cases where the data subject is unable to obtain a copy from the data exporter;

(h) that, in the event of subprocessing, it has previously informed the data exporter and obtained its prior written consent;

(i) that the processing services by the subprocessor will be carried out in accordance with Clause 11;

(j) to send promptly a copy of any subprocessor agreement it concludes under the Clauses to the data exporter.

Clause 6

Liability

1. The parties agree that any data subject, who has suffered damage as a result of any breach of the obligations referred to in Clause 3 or in Clause 11 by any party or subprocessor is entitled to receive compensation from the data exporter for the damage suffered.

2. If a data subject is not able to bring a claim for compensation in accordance with paragraph 1 against the data importer, arising out of a breach by the data importer or his subprocessor of any of their obligations referred to in Clause 3 or in Clause 11, because the data exporter has factually disappeared or ceased to exist in law or has become insolvent, the data importer agrees that the data subject may issue a claim against the data importer as if it were the data exporter, unless any successor entity has assumed the entire legal obligations of the data exporter by contract or by operation of law, in which case the data subject can enforce its rights against such entity.

   The data importer may not rely on a breach by a subprocessor of its obligations in order to avoid its own liabilities.

3. If a data subject is not able to bring a claim against the data exporter or the data importer referred to in paragraphs 1 and 2, arising out of a breach by the subprocessor of any of their obligations referred to in Clause 3 or in Clause 11 because both the data exporter and the data importer have factually disappeared or ceased to exist in law or have become insolvent, the subprocessor agrees that the data subject may issue a claim against the data importer with regard to its own processing operations under the Clauses as if it were the data exporter or the data importer, unless any successor entity has assumed the entire legal obligations of the data exporter or data importer by contract or by operation of law, in which case the data subject can enforce its rights against such entity. The liability of the subprocessor shall be limited to its own processing operations under the Clauses.
Clause 7

Mediation and jurisdiction

1. The data importer agrees that if the data subject invokes against it third-party beneficiary rights and/or claims compensation for damages under the Clauses, the data importer will accept the decision of the data subject:
   (a) to refer the dispute to mediation, by an independent person or, where applicable, by the supervisory authority;
   (b) to refer the dispute to the courts in the Member State in which the data exporter is established.

2. The parties agree that the choice made by the data subject will not prejudice its substantive or procedural rights to seek remedies in accordance with other provisions of national or international law.

Clause 8

Cooperation with supervisory authorities

1. The data exporter agrees to deposit a copy of this contract with the supervisory authority if it so requests or if such deposit is required under the applicable data protection law.

2. The parties agree that the supervisory authority has the right to conduct an audit of the data importer, and of any subprocessor, which has the same scope and is subject to the same conditions as would apply to an audit of the data exporter under the applicable data protection law.

3. The data importer shall promptly inform the data exporter about the existence of legislation applicable to it or any subprocessor preventing the conduct of an audit of the data importer, or any subprocessor, pursuant to paragraph 2. In such a case the data exporter shall be entitled to take the measures foreseen in Clause 5 (b).

Clause 9

Governing Law

The Clauses shall be governed by the law of the Member State in which the data exporter is established.

Clause 10

Variation of the contract

The parties undertake not to vary or modify the Clauses. This does not preclude the parties from adding clauses on business related issues where required as long as they do not contradict the Clause.

Clause 11

Subprocessing

1. The data importer shall not subcontract any of its processing operations performed on behalf of the data exporter under the Clauses without the prior written consent of the data exporter. Where the data importer subcontracts its obligations under the Clauses, with the consent of the data exporter, it shall do so only by way of a written agreement with the subprocessor which imposes the same obligations on the subprocessor as are imposed on the data importer under the Clauses. Where the subprocessor fails to fulfil its data protection obligations under such written agreement the data importer shall remain fully liable to the data exporter for the performance of the subprocessor's obligations under such agreement.

2. The prior written contract between the data importer and the subprocessor shall also provide for a third-party beneficiary clause as laid down in Clause 3 for cases where the data subject is not able to bring the claim for compensation referred to in paragraph 1 of Clause 6 against the data exporter or the data importer because they have factually disappeared or have ceased to exist in law or have become insolvent and no successor entity has assumed the entire legal obligations of the data exporter or data importer by contract or by operation of law. Such third-party liability of the subprocessor shall be limited to its own processing operations under the Clauses.

3. The provisions relating to data protection aspects for subprocessing of the contract referred to in paragraph 1 shall be governed by the law of the Member State in which the data exporter is established.
4. The data exporter shall keep a list of subprocess agreements concluded under the Clauses and notified by the data importer pursuant to Clause 5 (j), which shall be updated at least once a year. The list shall be available to the data exporter's data protection supervisory authority.

Clause 12

Obligation after the termination of personal data processing services

1. The parties agree that on the termination of the provision of data processing services, the data importer and the subprocessor shall, at the choice of the data exporter, return all the personal data transferred and the copies thereof to the data exporter or shall destroy all the personal data and certify to the data exporter that it has done so, unless legislation imposed upon the data importer prevents it from returning or destroying all or part of the personal data transferred. In that case, the data importer warrants that it will guarantee the confidentiality of the personal data transferred and will not actively process the personal data transferred anymore.

2. The data importer and the subprocessor warrant that upon request of the data exporter and/or of the supervisory authority, it will submit its data processing facilities for an audit of the measures referred to in paragraph 1.
This Appendix forms part of the Clauses and must be completed and signed by the parties. The Member States may complete or specify, according to their national procedures, any additional necessary information to be contained in this Appendix.

**Data exporter**
The data exporter is (please specify briefly your activities relevant to the transfer):

The data exporter is the entity identified as "Customer" in the Agreement.

**Data importer**
The data importer is (please specify briefly activities relevant to the transfer):

A global supplier of cloud services for integration, analytics and event-processing software. The Cloud Service manage information, decisions, processes and applications for customers.

**Data subjects**
The personal data transferred concern the following categories of data subjects (please specify):

The data subjects may include data exporter's customers, employees, suppliers and end users

**Categories of data**
The personal data transferred concern the following categories of data (please specify):

Any data uploaded by data exporter to the Software Service

**Special categories of data (if appropriate)**
The personal data transferred concern the following special categories of data (please specify):

none

**Processing operations**
The personal data transferred will be subject to the following basic processing activities (please specify):

The subject matter of the processing is set out in the Agreement.
APPENDIX 2 TO THE STANDARD CONTRACTUAL CLAUSES

This Appendix forms part of the Clauses and must be completed and signed by the parties. Description of the technical and organisational security measures implemented by the data importer in accordance with Clauses 4(d) and 5(c) (or document/legislation attached):

Data Importer will maintain administrative, physical, and technical safeguards for protection of the security, confidentiality and integrity of Personal Data uploaded to the Cloud Service, as described in the TIBCO Security Guideline applicable to the specific Cloud Service purchased by data exporter, and accessible via https://terms.tibco.com/posts/868169-tibco-security-guidelines or otherwise made reasonably available by data importer. Data Importer will not materially decrease the overall security of the Cloud Service during a subscription term.