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.

1.1. “Affiliates” means any entity that now or in the future directly or indirectly controls, is controlled by, or is under common control or ownership for as long as such control exists, where “control” (including the terms “controlled by” and “under common control with”) means the possession, directly or indirectly, of the power to direct, influence or cause the direction of the management policies of an entity, whether through the ownership of voting securities, by contract, or otherwise.

1.2. “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;


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

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

1.6. “Data Protection Laws and Regulations” means, as applicable to the Parties all laws, rules, regulations, directives and governmental requirements currently in effect and as they become effective relating in any way to the privacy, confidentiality, security or protection of Personal Data, including without limitation, the GDPR, the UK Data Protection Act 2018, the UK GDPR, the Swiss Federal Act on Data Protection, as amended, replaced or superseded, and any such laws, rules, regulations, directives and governmental requirements in the United States (including the California Consumer Privacy Act of 2018 ("CCPA"), Cal. Civ. Code §§ 1798.00, et seq., its implementing regulations, and similar laws passed in other states as they become effective).

1.7. “Data Subject” means an identified or identifiable natural person to which the Personal Data pertains.

1.8. “GDPR” shall mean Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of Personal Data and on the free movement of such data and repealing of Directive 95/46/EC.

1.9. “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;

1.10. “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.
1.11. “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;

1.12. “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;

1.13. “Services” means any goods and/or services that Contractor provides to TIBCO under the Agreement.

1.14. “Supervisory Authority” means (i) an independent public authority which is established by an EU member state pursuant to Article 51 of the EU GDPR; or (ii) a government regulator or enforcement authority which has regulatory or enforcement authority with respect to the privacy, confidentiality, security or protection of Personal Data.

1.15. “Sub-processor” means any Data Processor engaged by Licensor or its Affiliates to process Personal Data.

2. Nature of Data Processing

2.1. Role of the Parties. 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.

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

2.3. Details of the Processing. The subject-matter of Processing of Personal Data by Licensor is the performance of the Services pursuant to the Agreement. The duration of the Processing, the nature and purpose of the Processing, the types of Personal Data and categories of Data Subjects Processed under the DPA and the Agreement are set forth in Annex I to this DPA.

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

2.5. 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.

3. Compliance with Data Protection Laws

3.1. Licensor shall comply with its obligations under Data Protection Laws, and the Agreement, when Processing Personal Data.

3.2. 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. Customer shall have sole responsibility for the accuracy, quality, and legality of Personal Data and the means by which Customer acquired Personal Data.

4. Security and Incident Response

4.1. Security Measures. 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.
4.2. **Access to Personal Data and Confidentiality.** Licensor shall ensure that all its employees and contractors engaged in Processing of Personal Data (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 that has been appointed and may be reached at privacy@tibco.com.

4.3. 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.

4.4. **Personal Data Incident Management and Notification.** Licensor shall notify Customer without undue delay in the event of severe disruptions to operations or if it becomes aware of the accidental or unlawful destruction, loss, alteration, unauthorized disclosure of, or access to Personal Data transmitted, stored or otherwise Processed by Licensor or its Subprocessors of which Licensor becomes aware (Personal Data Incident). 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 to the extent the remediation is within Licensor’s reasonable control. The obligations herein shall not apply to incidents that are caused by Customer its users.

5. **Inquiries from Data Subjects or Supervisory Authority to Customer or Licensor**

5.1. Customer shall respond in a reasonable time to inquiries from Supervisory Authority on the Processing of the relevant Personal Data.

5.2. **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, 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.

5.3. **Data Subject Requests.** Licensor shall, to the extent legally permitted and required under the applicable Data Protection Laws, 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.

5.4. **Privacy Impact Assessment.** Upon Customer’s request, Licensor will provide Customer with reasonable assistance with Customer’s obligations under the Data Protection Laws 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.

6. **Audits and Provision of Information to Demonstrate Compliance**

6.1. 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 organizational measures described in Article 4.1.

6.2. Upon Customer’s request, and subject to the confidentiality obligations set forth in the Agreement, Licensor shall make available to Customer (or Customer’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.

6.3. **On-Site Audits.** Customer may contact Licensor 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. Customer shall reimburse Licensor for
any time expended for any such on-site audit at Licensor’s then-current professional services rates, which shall be made available to Customer upon request. Before the commencement of any such on-site audit, Customer and Licensor shall mutually agree upon the scope, timing, and duration of the audit in addition to the reimbursement rate for which Customer shall be responsible. All reimbursement rates shall be reasonable, taking into account the resources expended by Licensor. Customer shall promptly notify Licensor with information regarding any non-compliance discovered during the course of an audit.

7. **Subcontractors**

7.1. 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.

7.2. List of Current Sub-processors and Notification of New Sub-processors. Licensor shall make available to Customer 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.

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

7.4. 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. **Data Retention, Return and Deletion**

8.1. *Retention.* Licensor will not retain Personal Data any longer than is reasonably necessary to accomplish the intended purposes for which the Personal Data was Processed pursuant to the Agreement.

8.2. *Return and Deletion.* 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. The Parties agree that the certification of deletion of Personal Data shall be provided by the Licensor to the Customer only upon Customer’s request.

9. **Termination of the Agreement**

9.1. 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.

9.2. Subject to Article 6.2, Licensor shall, insofar as it is practicable, delete or render anonymous all copies of Customer’s Personal Data held and processed by Licensor.

9.3. 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.

10. **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.
ANNEX I

LIST OF PARTIES AND DESCRIPTION OF THE PROCESSING

A. LIST OF PARTIES

Controller:

Name: The Controller is the entity identified as "Customer" in the Agreement.
Address: As set forth in the Agreement and applicable Order into which these Clauses are incorporated.
Contact person’s name, position and contact details: As set forth in the Agreement and applicable Order into which these Clauses are incorporated.
Signature and date: As per the signature and date of the Agreement entered into between the Licensor and the Customer.

Processor:

Name: TIBCO Software Inc (and its affiliates)
Address: 330 3 Hillview Avenue, Palo Alto, CA 94304, United States.
Contact person’s name, position and contact details: Nicole Janson – Ebeling, Data Protection Officer, privacy@tibco.com
Signature and date: As per the signature and date of the Agreement entered into between the Licensor and the Customer.

B. DESCRIPTION OF PROCESSING

1. Categories of data subjects whose personal data is processed
   The data subjects may include Customer’s customers, employees, suppliers and end users

2. Categories of personal data processed
   Any data uploaded by Customer to the Software Service.

3. Sensitive data processed (if applicable) and applied restrictions or safeguards that fully take into consideration the nature of the data and the risks involved, such as for instance strict purpose limitation, access restrictions (including access only for staff having followed specialised training), keeping a record of access to the data, restrictions for onward transfers or additional security measures.
   None.

4. Nature of the processing
   The subject matter of the processing is set out in the Agreement.

5. Purpose(s) for which the personal data is processed on behalf of the Customer
   To provide Services to the Data Controller as provided in the Agreement or as instructed by the Customer.

6. Duration of the processing
   Licensor will retain Personal Data as stipulated in the Agreement and agreed by the Parties.

7. For processing by subprocessors, also specify subject matter, nature and duration of the processing
   As stipulated in the Agreement and Data Processing Terms, and agreed by the Parties, Subprocessors and Licensor's affiliates may process Personal Data in order to support and/or improve the Licensor Service. Information regarding Licensor's current subprocessors can be found on the Subprocessor Page, available here: http://terms.tibco.com/#subprocessor-list
ANNEX II

TECHNICAL AND ORGANISATIONAL MEASURES INCLUDING TECHNICAL AND ORGANISATIONAL MEASURES TO ENSURE THE SECURITY OF THE DATA

Description of the technical and organisational security measures implemented by the Licensor:

Licensor 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. Licensor will not materially decrease the overall security of the Cloud Service during a subscription term.

Licensor will implement the following technical and organisational measures to ensure an appropriate level of security, taking into account the nature, scope, context and purpose of the processing, and the risks for the rights and freedoms of natural persons:

- Measures of pseudonymisation and encryption of personal data
- Measures for ensuring ongoing confidentiality, integrity, availability and resilience of processing systems and services
- Measures for ensuring the ability to restore the availability and access to personal data in a timely manner in the event of a physical or technical incident
- Processes for regularly testing, assessing and evaluating the effectiveness of technical and organisational measures in order to ensure the security of the processing
- Measures for user identification and authorisation
- Measures for the protection of data during transmission
- Measures for the protection of data during storage
- Measures for ensuring physical security of locations at which personal data are processed
- Measures for certification/assurance of processes and products
- Measures for ensuring data minimisation
- Measures for ensuring limited data retention
- Measures for allowing data portability and ensuring erasure.
ANNEX III

LIST OF SUB-PROCESSORS

The Customer has authorised the use of the following sub-processors:
Sub-processors can be found on the Licensor’s website here: http://terms.tibco.com/#subprocessor-list