



## OEM Terms

Partner may place orders under these OEM Terms by submitting separate Order Form(s).

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

In the event of any conflict between the terms of the Agreement and of an Order Form, the terms of the Order Form shall prevail.

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### 1. Definitions

- 1.1 "Bundle Combination" or "Bundled Combination" means the Software (as set forth in an Order Form) which is combined with the Partner Product(s), such that together they comprise a single unique Partner Solution that is being provided by Partner to an End User.
- 1.2 "Develop" or "Development" means to internally use the Software solely for Non-Production purposes, to create the Partner Solution and support End Users of the Partner Solution.
- 1.3 "Embed" or "Embedded" means the Application Programming Interfaces (the "API's") and the library files for the Software (as set forth in an Order Form) set securely and deeply into the Partner Product, such that it will be a component of a larger set of surrounding code or functions that in combination together comprise a unique Partner Solution that is being provided by Partner to an End User.
- 1.4 "End Users" are, as indicated on an ordering document, Partner's third-party customers who acquire the right to use the Partner Solution for their internal use and not for transfer or any further licensing or sublicensing, and/or are Partner's third-party customers who license the right to use the Hosted Solution.
- 1.5 "End User License Agreement" or "End User License" means Partner's written agreement with End Users that sets forth the terms of sub-license (as set forth in Section 2.3 below) and use of or access to, among other things, the Partner Solution.
- 1.6 "Hosted Solution" shall mean the Partner Cloud Services, or Partner ASP Services as indicated on an Order Form.
- 1.7 "Marks" means trademarks, service marks, trade names, logos and other similar proprietary rights, whether registered or unregistered, and all applications and registrations therefore.
- 1.8 "Partner ASP Services" shall mean Partner hosting the Partner Solution solely for the purpose of providing services via the internet to their End Users. Physical copies of the Partner Solution shall not be directly provided to End Users utilizing the Partner ASP Services, rather End Users shall have access to the Partner Solution solely through receipt of the Partner ASP Services. Partner may not use the Partner Solution for purposes of providing ASP Services on behalf of a third party.
- 1.9 "Partner Cloud Services" can mean one or more of the following which Partner provides with the Partner Solution to its' End Users as part of their internet based computing service offered by Partner or Partner's approved third party, delivery of a (a) computer infrastructure, (b) computing platform and solution stack (software systems or components), or (c) software deployment model whereby Partner licenses an application to customers for use as a service on demand.
- 1.10 "Partner Product(s)" means Partner's pre-existing software and/or hardware product(s), and/or intellectual property to be developed by or for Partner that are either included as a Bundled Combination with or Embedded within the Software.
- 1.11 "Partner Solution" means the unique product offering created through the Bundled Combination or the Embedding of the Software with or within the Partner Product (as described/defined in an Order Form).



- 1.12** "Sub-Distributor" shall mean resellers, and other distribution channel partners appointed by Partner through an agreement to promote and sublicense the Partner Solution, subject to and in accordance with the terms and conditions of this Agreement.
- 1.13** "Territory" means the geographic territory and/or vertical markets set forth in an Order Form in which Partner may exercise the rights granted to Partner under this Agreement.
- 1.14** "Use Type" shall mean the purpose specified on the Order Form, which will limit how Partner may distribute the Software.

## **2. License**

- 2.1** Company hereby grants Partner a non-exclusive, license for the term of the Agreement within the Territory to (a) Develop, unless usage is otherwise limited in the applicable Order Form; (b) Embed or create a Bundled Combination whereby the unmodified Software set forth in an Order Form is included with or within the Partner Product; (c) reproduce, market, and distribute the Partner Solution, by sublicensing to End Users for their own internal use, or providing a Hosted Solution to their End Users within the Territory; (d) use and modify the Documentation for the Software solely to create the Documentation for the Partner Solution; (e) if identified on the Order Form as a Non-Production license, use the Partner Solution for demonstration purposes so long as (i) the software resides on a Non-Production system owned and under the sole control of the Partner, and (ii) in no event used for any Production or Development purposes of Partner or any other third party; and (f) grant evaluation licenses of the Partner Solution to End Users, for a total term not to exceed one-eighty (180) days, inclusive of the initial and any permitted renewal terms, so long as Partner signs an evaluation agreement with such End User in accordance with the requirements of Section 2.3, which must also include the following additional restrictions: (i) the evaluation software may only be used for evaluation purposes; (ii) in no event may the evaluation software be used on a Production or Development system, or be used for Production or Development purposes of the End User or any other third party; and (iii) the Software is provided "AS IS" without Maintenance or any warranties. The foregoing license grant as provided under this section shall not be construed as a general internal use license.
- 2.2** Partner may permit sublicensing (as limited herein) of the Partner Solution, including the right to provide evaluation licenses as set forth under Section 2.1(f), through its authorized Sub-Distributors. Partner represents and warrants that each Sub-Distributor will enter into a written agreement with Partner that contains terms and conditions that are no less restrictive than, and at least as protective of Company, in all regards, as the terms and conditions of the Agreement, and will specifically include all flow down third party restrictions as contained in the Agreement. Partner will assist Company to obtain legal standing in the event that Company needs to assert any claims against a Sub-Distributor to protect Company's intellectual property rights. Partner will be jointly and severally liable for breaches by its Sub-Distributors.
- 2.3** The End User License Agreement shall contain terms and conditions at least as protective of Company as the terms and conditions of the Agreement. At Company's request, Partner shall submit 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 and license restrictions to the Software. Partner shall enforce the terms of all End User License Agreements with End Users, and shall ensure their compliance with all terms thereof. When requested by Company, Partner shall enforce End User compliance in accordance with Company's written instructions. Partner shall immediately notify Company upon becoming aware of any breach by any of its End Users or any other person, of any End User License Agreement.
- 2.4** Software shall be delivered electronically and delivery deemed complete when made available to Partner.
- 2.5** Except as expressly permitted under the Agreement, all usage of the Software shall be limited to the legal entity, and its wholly owned affiliate(s) that executed this Agreement or the End User License Agreement, as applicable. Company's licensors shall not be obligated to perform any obligations or shall incur any liability under the Agreement. Third party technology that may be appropriate or necessary for use with some Software is specified in the Software Documentation or as otherwise notified by Company, and such third party technology is licensed to Partner only for use with the Software under the terms of the third party license agreement specified in the applicable package documentation or as otherwise notified by Company and not under the terms of the Agreement.

## **3. Scope**

- 3.1** 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 even if such unlicensed software is made available to Partner as part of Company'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 Software 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 11.5; (e) transfer or assign possession or allow use of any copy of Software to another party other than as specifically permitted under this 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 reverse engineering conduct as is necessary to ensure the interoperability of the Software as required by law, provided that prior to commencing any reverse engineering of any Software, Partner agrees it shall observe strict obligations of confidentiality and provide Company 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 this Agreement. Except as expressly permitted under this Agreement, all usage of the Software shall be limited to the legal entity, and its wholly owned affiliate(s) that executed this Agreement or the End User License Agreement, as applicable. Company's licensors shall not be obligated to perform any obligations or shall incur any liability under this Agreement. Third party technology that may be appropriate or necessary for use with some Software is specified in the Software Documentation or as otherwise notified by Company, and such third party technology is licensed to Partner only for use with the Software under the terms of the third party license agreement specified in the applicable package documentation or as otherwise notified by Company and not under the terms of this Agreement.

- 3.2 Partner's use of the Partner Solution for providing a Hosted Solution shall be: (a) restricted to those uses directly related to the provisioning of the Hosted Solution, and not for general internal use, and (b) the Partner Solution shall only be hosted on Partner's processors or third party processors under Partner's control or at Partner's direction.
- 3.3 Partner is prohibited from distributing, marketing, providing a Hosted Solution, promoting or licensing the Software on a standalone basis, for any general enterprise application integration, or in any format other than as a Bundled Combination with or Embedded within the Partner Product as set forth in an applicable Order Form.
- 3.4 Partner shall have no authority, express or implied, to assume or create any obligation on behalf of Company and shall have no authority to represent Company in any other capacity than as expressly herein provided.
- 3.5 For a Partner Solution which Embeds the Software, Partner shall ensure the Software is not exposed and Embed all Software in such a manner that the End User cannot directly link to or use the Software standalone, other than to connect the Partner Product to the applicable Software products. Partner represents that the Partner Product shall have substantial value added functionality (i.e., not a thin client or wrapper) to the Software, such that the primary purchasing decision of End Users is to obtain the functionality of the Partner Solution and not the Software.
- 3.6 For a Partner Solution which includes a Bundled Combination of the Software, the Software must be licensed together with the Partner Product under a collective name such as "xx Bundle".

#### **4. Maintenance**

- 4.1 Maintenance for the Software, if ordered, is provided under the terms at <https://terms.tibco.com/#maintenance>.
- 4.2 Partner acknowledges and agrees it has the sole responsibility to support and provide Maintenance to End Users with respect to the Partner Solution and the Partner Products. Partner shall provide End Users with prominent notice and instruction to direct all support or Maintenance calls and correspondence to Partner. Company will not handle any request for support or Maintenance from End Users.
- 4.3 Company 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 Company 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.

## 5. Fees

**5.1** Minimum Runtime Royalty Guarantee License Fees. The Runtime Royalty License Fees will be offset against the Minimum Runtime Royalty Guarantee License Fees paid. Any royalties due in excess of the Minimum Runtime Royalty Guarantee Fees paid shall be due in accordance with the Agreement. Company shall retain any Minimum Runtime Royalty Guarantee Fees not offset by the Runtime Royalty Fees within the term of the Agreement.

## 5.2 Royalty Reports.

a) Within 30 days after the end of each calendar quarter, Partner will: (a) remit all quarterly license and maintenance royalty fees due, and (b) provide a written electronic version of a royalty report (to: [royalty-accounting@tibco.com](mailto:royalty-accounting@tibco.com)), in the format and file type reasonably required by Company, for the preceding calendar quarter.

b) The royalty report will be provided regardless of whether any fees are due or have accrued in that quarter. The royalty report shall include at a minimum: (a) the quantity of and calculation of fees due for all Partner Products either shipped or provisioned to an End User, (b) the calculation of fees for Maintenance which has come due during the quarter, (c) where Runtime Use is Bundle, include the End User name, address of installation (if applicable), term of contract, primary contact name, description and the quantity of each Partner Product sold/licensed/provisioned to an End User, and any other information reasonably requested by Company. If purchase order numbers are required to process payment to Company, Partner shall provide the purchase order concurrent with the royalty report. Any delays in payment resulting from missing purchase order numbers will be subject to late payment fees.

c) Nothing in the Agreement shall restrict or in any way establish the prices at which Partner licenses the Partner Solution, the Partner Product or offers Maintenance or other services to its End Users.

## 6. Records

**6.1** 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.

## 7. Consulting Services

**7.1** Partner may procure installation, configuration, training or other consulting or support services subject to a mutually executed work order subject to the following terms and conditions located at <https://terms.tibco.com/#consulting-services>.

## 8. Partner warranties and Indemnity

**8.1** Partner shall employ reasonable professional standards in performance of its right and obligations under the Agreement and the Order Form, and shall avoid deceptive, misleading or unethical practices that may be detrimental to Company or the Software. **PARTNER FOR ITSELF AND ON BEHALF OF ITS EMPLOYEES, AGENTS, AND SUB-DISTRIBUTORS 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 THIS ORDER 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.**

**8.2** Partner represents and warrants it has the corporate power and authority to enter into this Agreement.

**8.3** Partner shall defend, and indemnify, at its expense, any suit, matter, claim, allegation or proceeding brought against Company by any third-party relating in any way to the Partner Product, the Partner Solution, modifications or alterations to the Software, any representations or warranties made by Partner regarding the products or services of Company, or any of Partner's activity hereunder, and shall pay any costs and damages finally awarded against Company, including attorney's fees in any such action, except to the extent that it is based on a claim of infringement



by the Software as set forth above. Company will promptly notify Partner in writing of such claim, and Partner shall have sole control of such defense and all negotiations for any settlement or compromise. Company will provide reasonable assistance in the same at Partner's request and expense.

## **9. Branding and Use of Trade Names**

- 9.1** Partner shall utilize the phrase "Powered by TIBCO®", as well as the applicable Company logo's, in the Partner Solution and all sales and marketing collateral for the Partner Solution.
- 9.2** Partner may use the Marks of Company in accordance with the terms and conditions of Company's Trademark Usage Guidelines published at [http://www.tibco.com/multimedia/trademark-guidelines\\_tcm8-5248.pdf](http://www.tibco.com/multimedia/trademark-guidelines_tcm8-5248.pdf), which is subject to change at Company's discretion, and solely for purposes related to the performance of this Agreement. Notwithstanding the foregoing, Company reserves the right to require prior written approval for each advertisement, brochure, marketing collateral, or other item which contains any Company Marks. Partner shall not modify, stylize, translate or combine any Company Mark with other trademarks, service marks, domain names, logos or source indicators without the prior written approval of a duly authorized officer of Company, which may be withheld in its sole discretion. All use of Company Marks by Partner shall inure to the benefit of Company.
- 9.3** In no event shall Partner use a Mark in any disparaging, unlawful, or derogatory material or in a manner that may diminish or otherwise damage or jeopardize or render less valuable a Company Mark or any associated goodwill. Partner shall promptly terminate any Company Mark use upon notice by Company. Nothing contained in this Agreement shall be deemed to grant Partner any right of ownership, goodwill, title, or interest in the Company Marks. Partner shall not register any Company Marks (or any trademarks confusingly similar to any Company Marks) and shall not challenge, directly or indirectly, the same. Partner shall not use or otherwise conduct business with the word TIBCO, DataSynapse, Foresight, Spotfire, Loyalty Labs, Netrics, OpenSpirit or Proginet in its name. Partner shall, upon request by Company, provide any necessary assistance for copyright and/or trademark protection for the Company Marks or any Company products. Any expenses associated with such a request shall be paid by Company.

## **10. Term and Termination**

- 10.1** Unless otherwise set forth in an Order Form, the term of the Agreement shall be two (2) year(s) from the Effective Date as set forth in the Order Form with the earliest date, unless terminated in accordance with the provisions set out in the Terms.
- 10.2** Upon termination of this Agreement or an Order Form, Partner's license rights hereunder shall cease including, for the avoidance of doubt, all licensing rights with prospective or existing customers. Provided that the termination was not a result of a material breach by Partner, Partner may continue to use Software only in Non-Production environment (subject to the terms of this Agreement, which shall survive termination for this purpose) for a period of two (2) years from the termination date. Thereafter, or following termination as a result of an uncured material breach by Partner, Partner shall (a) cease using the applicable Software, Documentation, Company Marks and related Confidential Information of Company, and (b) return or deliver to Company 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 Company, and all copies thereof, whether or not modified or merged into other materials.

## **11. General**

- 11.1** Partner shall not make any representations or warranties regarding the Software other than as provided in the Documentation.
- 11.2** 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. Partner shall have no authority, express or implied, to assume or create any obligation on behalf of Company and shall have no authority to represent Company in any other capacity than as expressly herein provided.
- 11.3** 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.



- 11.4** If a Company audit as permitted under the Agreement reveals that there is a discrepancy of greater than five percent (5%) of any amount due to Company, 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.
- 11.5** If Partner uses open source software or any other third party software not supplied by Company 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 Company's intellectual property or proprietary rights in the Software.