



TIBCO GATHERSMART™ SOFTWARE LICENSE AGREEMENT

This TIBCO GatherSmart™ Software License Agreement (“Agreement”) governs Customer’s use of the TIBCO GatherSmart Cloud Service. Capitalized terms used in the Agreement and not otherwise defined herein are defined at <https://terms.tibco.com/posts/845635-definitions>. Any other Software licensed with TIBCO GatherSmart is subject to the Master Terms stated at <https://terms.tibco.com/#master-terms>.

1. License and Authorized Use:

- a) Pursuant to these terms, Licensor grants Customer access to use the Cloud Service listed in the applicable Order Form on a Subscription basis solely for Customer’s internal business purposes.
- b) Unless otherwise permitted under this Agreement and the Documentation, Customer shall not:
 - i. make more copies of the Software than the specified Number of Units stated in an Order Form (except for a reasonable number of copies for archival purposes) or use any unlicensed versions of the Software;
 - ii. use any Software that is not listed in an Order Form even if such unlicensed software is made available to Customer as part of Licensor’s general delivery mechanisms;
 - iii. provide access to the Software to anyone other than Authorized Users;
 - iv. sublicense, distribute or pledge the Software or any of the rights herein;
 - v. lease, rent or commercially share (including time-share) or use the Software for purposes of providing processing services, including, providing third-party hosting, application integration, application service provider-type services, or service bureau;
 - vi. use or access any embedded or bundled component of Software on a stand-alone basis where such embedded or bundled component is provided to Customer for the sole purpose of enabling the functionality of such Software;
 - vii. use Third Party Software except in conjunction with the Licensor Software and subject to the same use rights that it has to the Licensor Software.
 - viii. use any third party software, including any open source software, in conjunction with any Software, unless Customer ensures that such use does not cause the Software to become subject to any third party license applicable to such third party software or require the public disclosure or distribution of any Software or the licensing of any Software for Materials or the purpose of making derivative works; and
 - ix. 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, provided, however, that Customer may engage in such conduct as is necessary to ensure the interoperability of the Software as required by law. Prior to commencing any de-compilation or reverse engineering, Customer will observe strict obligations of confidentiality and provide Licensor with reasonable advance written notice and the opportunity to assist with or conduct such activity on Customer’s behalf and at Customer’s expense.
- c) Licensor shall deliver the Software electronically and delivery is deemed complete when such Software is made available to Customer.
- d) Customer is responsible for its Authorized Users use of the Cloud Service. Customer shall not (a) allow any third party to access or use the Cloud Service, (b) store or transmit infringing, libelous, indecent, harmful or otherwise unlawful or tortious material or malicious code, or store or transmit material in violation of third-party rights (including but not limited to any privacy laws and data protection laws), (c) breach or attempt to breach Licensor’s or its third party providers’ systems or security related to the provision of the Cloud Service, (d) interfere with or compromise the privacy, security or use of the Cloud Service, (e) cause the Cloud Service to become subject to any third party license applicable to such third party software that requires that any Licensor property or Cloud Service be (i) disclosed or distributed in source code form; (ii) made available free of charge to recipients; or (iii) modifiable without restriction by recipients. Customer must promptly notify Licensor if there is a compromise to the security of the Cloud Service.
- e) Licensor regularly updates the Cloud Service and reserves the right to discontinue, add and/or substitute functionally equivalent features in the event of product unavailability, end-of-life, or changes to software requirements, including updating any downloadable components, if applicable. Licensor will implement reasonable and appropriate measures designed to secure Customer data and Output against accidental or unlawful loss, access or disclosure, provided, however, that such measures are not intended to replace Customer’s obligation to maintain regular data backups or redundant data archives. Licensor has no obligation to retain Customer data or Output after three months of the expiration or termination of the Cloud Service.
- f) If Licensor reasonably determines that Customer or any user violates these Cloud Service terms or Customer’s ongoing use presents a security risk that may interfere with the proper continued provision of the Cloud Service or the operation of Licensor’s network or systems, then Licensor may (a) remove any content posted or transmitted through the Cloud Service, (b) limit the number of transmissions Customer may send or receive through the Cloud Service and the bandwidth Customer may use in connection with the Cloud Service, and/or (c) suspend or terminate Customer’s or any user’s access to the Cloud Service. Licensor will provide Customer with advance notice if the Cloud Service is limited or suspended pursuant to this policy or the Agreement and use reasonable efforts to re-

establish the affected Software Services promptly after Licensor determines, in its reasonable discretion, that the situation giving rise the suspension is cured by Customer.

- g) Customer represents and warrants that:
 - i. Customer shall not use the Cloud Service for “employment purposes” as defined under the Fair Credit Reporting Act, including, but not limited to, purposes such as evaluating a consumer for employment, promotion, reassignment or retention as an employee. 15 U.S.C. § 1681a(h);
 - ii. Customer must comply with all applicable laws in connection with Customer’s use of the Cloud Service, including, but not limited to, laws that regulate an employer’s relationship with its employees (e.g., the Americans with Disabilities Act, the California Consumer Privacy Act, the California Confidentiality of Medical Information Act, and any other applicable privacy laws);
 - iii. Customer provided (and will continue to provide) adequate notices and obtained (and will continue to obtain) any necessary permissions and consents from users of the Cloud Service to make the data and other information made available to Licensor by or for Customer through the use of the Cloud Service under this Agreement (“Customer Data”) available to Licensor for use and disclosure pursuant to section c (below);
 - iv. Customer agrees and acknowledges that (i) the Cloud Service is not intended to provide a medical diagnosis or medical advice, (ii) will not be relied upon for a medical diagnosis, medical advice, or any other medical purposes, and (iii) that it is Customer’s obligation, not Licensor’s, to consult all applicable laws, regulations, and guidelines prior to configuration and use of the Cloud Service to ensure that such configuration and use by Customer is in compliance with all applicable laws, regulations, and guidelines.
 - v. Customer shall defend and indemnify Licensor against all damages and costs (including reasonable attorneys’ fees) with respect to any suit, matter, claim, allegation, or proceeding relating to: (a) any action brought against Licensor by any users of Customer’s instance of the Cloud Service or other persons relating in any way to Customer’s activity hereunder, (b) the Cloud Service which has been altered, modified, or otherwise changed by Customer, (c) any representations or warranties made by Customer to a third-party regarding the Cloud Service, or (d) any violation of law by Customer, all provided that Licensor: (i) promptly notifies Customer in writing of such claim, and (ii) gives Customer full control, authority, information and assistance (at Customer’s expense) for the defense of same and for all negotiations for any settlement or compromise.
 - vi. Customer instructs Licensor to use and disclose Customer Data as necessary to (a) provide SMS and/or email messages through the Cloud Service, including detecting, preventing, and investigating security incidents, fraud, spam, or unlawful use of the Cloud Service, and (b) respond to any technical problems concerning SMS and/or email messages or your queries regarding SMS and/or email messages and ensure the proper working of SMS and/or email messages in the Cloud Service. Customer agrees and acknowledges that use of email and SMS services, which may be made available part of the Cloud Service, are an insecure medium that is generally not encrypted in transit and security of information transmitted through the internet can never be guaranteed and, accordingly, Licensor is not responsible for any interception or interruption of any communications through the internet or for changes to or loss of Customer Data in connection with SMS and/or email messages through the Cloud Service.

2. Financial Terms.

- a) Customer shall pay Licensor any fees or payments net 30 days from Licensor’s invoice. Licensor may charge Customer an additional 1.5% per month (or such lower amount as required by applicable law) for all fees that are not paid on time.
- b) Licensor may increase annual recurring fees upon providing written notice at least 60 days before the end of the then current Term stated in the Order Form.
- c) Fees stated in an Order Form are exclusive of all applicable sales, use, value-added, goods and services, consumption, withholding, excise and any other similar taxes or government charges (“Taxes”). Customer shall (i) pay Licensor such applicable Taxes (excluding Licensor’s income taxes) listed on the relevant invoice or (ii) withhold all applicable taxes according to the local rules, both of which may be in addition to the total fees due and listed on an Order Form..
- d) Except as expressly stated in the “Indemnity” or “Warranties” section, all fees paid by Customer are non-refundable and no right of set off exists.
- e) Licensor does not permit aggregation of products, services, purchase or license models or cumulative fees paid across separate Product Lines to trigger preferred pricing or discounts.

3. Ownership.

- a) Licensor and its licensors own all Software, Materials, and Documentation and all derivatives thereof (collectively “Protected Materials”), which are protected by applicable U.S. and international patent, copyright, trademark and trade secret laws. Customer must duplicate unaltered copies of all proprietary notices incorporated in or affixed to any Protected Materials. Except as stated in the Agreement, Customer receives no other rights to use any of Licensor’s Marks.
- b) Customer retains copyright and any other rights Customer already holds in the Output, and Customer is responsible for protecting and enforcing those rights, as appropriate, and Licensor has no obligation to do so on Customer’s

behalf. Customer is solely responsible for (and Licensor has no responsibility to Customer or to any third party for) the accuracy, quality, integrity, legality, reliability, and intellectual property ownership or right to any Output that Customer, Authorized Users, or Customer's end users, uses, creates, transmits, submits, or displays while using the Cloud Service and for the consequences of Customer's actions, including any loss or damage which Licensor may suffer, by doing so on behalf of Customer. Licensor may use any Output solely as required to support Customer's use of the Cloud Service.

4. Confidentiality.

- a) Neither party shall disclose Confidential Information to any third party without the disclosing party's prior consent. Confidential Information may only be disclosed to individuals that need to know such information, and on the condition that the individual is subject to a written agreement to protect information with terms as protective as this Agreement. For the purposes of this section, the definition of Licensor and Customer includes Affiliates of either party. Licensor may use data collected during the Term in an aggregated, anonymized form, provided that such data is aggregated from more than one customer and does not identify Customer, Customer employees, or Customers' customers.
- b) The duty to protect Confidential Information does not apply to information that is shown to be:
 - i. available to the public other than by a breach of a confidentiality obligation;
 - ii. rightfully received from a third party not in breach of a confidentiality obligation;
 - iii. independently developed by one party without use of the Confidential Information of the other;
 - iv. known to the recipient at the time of disclosure (other than under a separate confidentiality obligation);
 - v. produced in compliance with applicable law or court order, provided the other party is given reasonable advance notice of the obligation to produce Confidential Information (to the extent legally permitted) and reasonable assistance, at the disclosing party's cost, if the disclosing party wishes to contest the disclosure.
- c) Each party shall indemnify the other for any damages (including reasonable expenses) the other may sustain resulting from a breach of this Section. Money damages may not be a sufficient remedy for a breach of confidentiality. If either party breaches the confidentiality obligations, the non-breaching party may seek injunctive or other equitable relief without the necessity of posting a bond even if otherwise normally required. Such injunctive or equitable relief is in addition to all other rights and remedies available at law or in equity.
- d) Confidential Information remains the sole property of the disclosing party; except for rights explicitly granted in the Agreement, the receiving party does not acquire any rights to such Confidential Information.

5. Data Protection and Back-up.

- a) If Customer exposes Licensor to an individual's Protected Data, Licensor will process and store such information pursuant to Licensor's Security Policies, Practices and Processes found at <https://terms.tibco.com/#security-guidelines>. If the European Union's General Data Protection Regulation (EU/2016/679) (GDPR) applies to Protected Data that Licensor processes on behalf of Customer as a data processor, then the Licensor's Data Processing terms at <https://terms.tibco.com/#data-processing-terms> apply to such Protected Data.
- b) Except when Licensor stores Customer data in connection with the delivery of a Cloud Service, Customer is responsible for backing-up its data and under no circumstances is Licensor responsible for the protection, loss, destruction, or maintenance of Customer's data.
- c) Customer must process personal data in compliance with all applicable laws, including any law requiring a third party's consent to process personal data.
- d) Supplemental Privacy Policy Terms for TIBCO GatherSmart™: End user's answers to questions posed in TIBCO GatherSmart™ are processed by TIBCO Software Inc. and/or TIBCO Affiliates on servers running on Amazon Web Services. Answers are stored in the browser cache on users devices, but are not stored on the Amazon Web Services servers. Only name and/or user identification information, along with the determination of permission to enter certain premises are stored by Licensor on servers running on Amazon Web Services.

6. LICENSOR, ITS LICENSORS, WEBHOST, DATACENTER AND SUPPLIERS EXPRESSLY DISCLAIM, TO THE MAXIMUM EXTENT PERMITTED BY LAW, ALL WARRANTIES, EXPRESS OR IMPLIED, ORAL OR WRITTEN, INCLUDING (i) ANY WARRANTY THAT ANY SOFTWARE, MATERIALS OR SERVICES ARE ERROR-FREE, ACCURATE OR RELIABLE OR WILL OPERATE WITHOUT INTERRUPTION OR THAT ALL ERRORS WILL BE CORRECTED OR WILL COMPLY WITH ANY LAW, RULE OR REGULATION (ii) ANY AND ALL IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE AND NON-INFRINGEMENT AND (iii) ANY AND ALL IMPLIED WARRANTIES ARISING FROM STATUTE, COURSE OF DEALING, COURSE OF PERFORMANCE OR USAGE OF TRADE. LICENSOR CANNOT AND DOES NOT GUARANTEE THE PRIVACY, SECURITY OR AUTHENTICITY OF ANY INFORMATION SO TRANSMITTED OVER OR STORED IN ANY SYSTEM CONNECTED TO THE INTERNET.

7. Limitation of Liability.

- a) IN NO EVENT WILL LICENSOR BE LIABLE TO CUSTOMER FOR ANY DIRECT, INDIRECT, SPECIAL, CONSEQUENTIAL, OR SIMILAR DAMAGES, INCLUDING ANY LOST PROFITS OR LOST DATA ARISING OUT

OF THE USE OR INABILITY TO USE THE SOFTWARE EVEN IF LICENSOR HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

- b) Licensor is not liable for any damages incurred by Customer or any third party resulting from misuse of the Cloud Service. Customer shall defend, indemnify and hold Licensor, its licensors, and its and their respective parents, subsidiaries, affiliates, officers, directors, employees, and agents harmless from and against any and all losses arising out of or in connection with a third party claim concerning (a) the Output or the combination of the Output with other applications, content or processes, including any claim involving alleged infringement or misappropriation of third-party rights by the Output or by the use, development, design, production, advertising or marketing of the Output; (b) any and all losses, including without limitation, data loss or damage to hardware, software and other property arising from Customer's acts and omissions in using the Cloud Service, including (i) negligent acts or omissions or willful misconduct by Customer or its Authorized Users or Customer's end users or (ii) use of equipment by Customer not provided or previously approved by Licensor; (c) Customer's or its users use of the Cloud Service in violation of the terms of this Agreement or applicable law; or (d) a dispute between Customer and any of its users. This Section survives termination of the Agreement or any Order Form for the Cloud Service. The limitation of liability stated in the Master Terms does not apply.

8. Export. Software, Cloud Service, Documentation, Materials, and related technical data are subject to U.S. export control laws, including the U.S. Export Administration Act and its associated regulations and may be subject to export or import regulations of other countries. Customer shall not use, export, re-export, or provide access to the Software, Cloud Service Documentation, or Materials in any form in violation of any applicable export or import laws of any jurisdiction.

9. Government Use. If the Software, Documentation, Materials and any other Licensor services are being or have been acquired with U.S. Federal Government funds, or Customer is an agency, department, or other entity of the United States Government ("Government"), the use, duplication, reproduction, release, modification, disclosure, or transfer of the Software or any related documentation of any kind, including technical data, manuals or Materials, is restricted in accordance with Federal Acquisition Regulation 12.212 for civilian agencies and Defense Federal Acquisition Regulation Supplement 227.7202 for military agencies. The Software, Materials, and any Licensor services are COMMERCIAL ITEMS AS DEFINED BY THE FEDERAL ACQUISITION REGULATION. Use of the Software and Materials by the Government is further restricted according to the Agreement and any amendment hereto.

10. Term and Termination.

- a) Except as otherwise stated below, this Agreement will remain in effect until terminated.
- b) The Term for any Software starts on the Effective Date stated in an Order Form and continues as indicated on the Order Form.
- c) Following the end of the initial Term for any Subscription, Term License, or Cloud Service, the Term will automatically renew continuously for the same length as the initial Term unless either party gives written notice at least 60 days prior to the end of the initial or any renewal Term of its intention to terminate.
- d) Either party may terminate:
 - i. this Agreement and/or any applicable Order Forms upon 30 days prior written notice if the other party breaches a material provision of this Agreement and fails to cure such breach within the 30 day notice period;
 - ii. Maintenance, Term License, or Subscription, upon written notice delivered at least 60 days prior to the end of any applicable Maintenance period or Term; or
 - iii. an Order Form for Consulting Services, upon 15 days prior written notice by Customer or 30 days prior written notice by Licensor.
- e) The Agreement automatically terminates if either party files for bankruptcy, goes into receivership, becomes insolvent, or makes an assignment for the benefit of creditors.
- f) Upon termination of this Agreement or an Order Form, Customer must cease using, de-install and permanently delete all of the applicable Software, whether modified or merged into other materials.
- g) Termination of this Agreement or any Order Form does not (i) relieve Customer of its obligation to pay all fees that have accrued or are otherwise owed by Customer under this Agreement or (ii) limit either party from pursuing other remedies available to it, including injunctive relief.
- h) The parties' rights and obligations under this section and sections entitled "Financial Terms", "Ownership", "Confidentiality", "Warranties", "Indemnity", "Remedies", "Limitation of Liability", "General Provisions" and those surviving provisions of the Exhibits survive the termination of this Agreement and/or an Order Form.

11. General Provisions.

- a) All notices must be in writing and will be effective if (i) delivered by facsimile, electronic mail, by hand, reliable overnight delivery service, or first-class, pre-paid mail and (ii) sent to the address for the intended recipient stated in an Order Form. Notices should be sent to the other party's general counsel or legal department, unless another recipient is expressly identified.
- b) The non-prevailing party shall pay all reasonable costs, including attorney's fees, incurred by the prevailing party in any action brought to enforce the prevailing party's rights under this Agreement.

- c) This Agreement does not create an agency or consignment relationship, and neither party is a partner, employee, agent or joint venture partner of, or with, the other.
- d) During the term of any Order Form and for a period of one year following termination of an Order Form, neither party shall actively solicit for employment any employee, contractor, consultant, or other representative of the other party who performed services in connection with the applicable Order Form, without the prior written consent of the other party.
- e) A waiver by a party of any breach of any provision of this Agreement will not be construed as a waiver of continuing or succeeding breach.
- f) Performance under the Agreement will be postponed automatically if a party is prevented from performing by any act of or failure to act by the other party. No delay or default in performance of any obligation by either party (except payment obligations) will constitute a breach of the Agreement if caused by force majeure or any other cause which is beyond its reasonable control, including, fires, strikes, accidents, government action or regulator changes, or acts of God.
- g) Except for an assignment, in whole or part, by Licensor to an Affiliate, neither party may assign this Agreement, in whole or in part, and/or any of its rights and/or obligations without the prior written consent of the other party, which will not be unreasonably withheld. Any such attempted assignment is void. For the purposes of the foregoing, a change in control of Customer is deemed to cause or attempt to cause an assignment of the Agreement, in whole or part, and requires Licensor's prior written consent.
- h) If Customer or its successors or assigns enters into an Extraordinary Corporate Event after an Order Form Effective Date, those users, divisions, or entities that were added to or divested from Customer's organization as a result of the Extraordinary Corporate Event are not authorized to use the Software or Materials until those users, divisions, or entities are added to this Agreement by way of a written amendment signed by duly authorized officers of the Licensor and Customer, or in the case of a divestiture, the divested entity.
- i) This Agreement is for the benefit of the parties and their successors and permitted assigns, and does not confer any rights or benefits on any third party, including any employee of a party, any client of a party, or any employee of a client of a party. Notwithstanding the above, the parties acknowledge that all rights and benefits afforded to Licensor under this Agreement apply equally to the owner of any Third Party Software, and such third party is an intended third party beneficiary of this Agreement.
- j) If Customer is entering into the Agreement from a European Union member country, Norway, Switzerland, Japan, India or Australia, then the Agreement is governed by the laws of Ireland and subject to the exclusive jurisdiction of the courts of Ireland. Otherwise, the Agreement is governed by the laws of the State of California and subject to the exclusive jurisdiction of Federal Court for the Northern District Court of California, without giving effect to its conflict of laws principles. The United Nations Convention on Contracts for the International Sale of Goods and the Uniform Computer Information Transactions Act do not apply to this Agreement.
- k) If any sentence, clause, or other provision of this Agreement is held to be invalid, illegal, or unenforceable under applicable law, including, but not limited to, any limitation of liability, the validity, legality and enforceability of the remaining clauses and provisions are not affected or impaired. The parties shall interpret the affected provision in a manner that renders it enforceable while attempting to closely approximate the intent and the economic effect of the affected provision.
- l) The Agreement constitutes the parties' entire agreement relating to its subject matter. It supersedes all prior or contemporaneous oral or written communications, agreements, or understandings between the parties relating to its subject matter. No modification to the Agreement will be binding unless in writing and signed by each party, except in the case of an Order Form where Licensor's acceptance shall be deemed to have occurred on Licensor's initial delivery of products or services under the Order Form. All pre-printed or standard terms of any Customer purchase order or other business processing document shall have no effect.