



TIBCO CLOUD ALPHA/BETA AGREEMENT

THIS TIBCO CLOUD ALPHA/BETA AGREEMENT (the "Agreement") is between TIBCO Software Inc. ("TIBCO") and you or, if applicable, the company that you represent ("Licensee"), effective as of the date you accept this Agreement or otherwise begin using, downloading, installing, copying, or accessing the TIBCO Service (as defined below) or any part thereof (the "Effective Date").

WHEREAS, Licensee desires to access alpha or beta evaluation versions of TIBCO hosted and/or cloud solution, any service offerings or features available thereon, and any software made available for download therefrom (collectively, the "TIBCO Service") for Licensee's non-production internal evaluation purposes (the "Purpose"); and

WHEREAS, TIBCO desires to grant such evaluation access to the TIBCO Service solely in accordance with the terms and conditions of this Agreement;

NOW, THEREFORE, the parties agree as follows:

- 1. Term of Agreement.** The term of this Agreement shall commence on the Effective Date and shall end upon completion of the evaluation (the "Term"), but in no event shall evaluation rights exceed the Termination Date. For purposes hereof, the "Termination Date" means the date when TIBCO elects to no longer make the TIBCO Service available to Licensee or provides notice to Licensee that the Term has ended, irrespective of whether the TIBCO Service remains available to Licensee. Notwithstanding the foregoing, the Agreement and your access to the TIBCO Service are terminable by TIBCO at any time.
- 2. Alpha or Beta License for Evaluation.** Subject to the terms and conditions of this Agreement, Licensee shall have a limited, non-exclusive, non-transferable, royalty-free, object-code license to use the TIBCO Service solely for the Purpose, provided that in no event shall the TIBCO Service be used directly or indirectly for any production purposes. TIBCO retains all right, title, and interest in and to the TIBCO Service and any associated documentation, subject only to the limited license granted hereby. Any modifications, additions, or new works created by TIBCO (alone or in collaboration with Licensee) or derived from the TIBCO Service or associated documentation will (together with all applicable intellectual property rights) be owned by TIBCO, but will be included as part of the TIBCO Service for purposes of the alpha or beta evaluation license granted to Licensee hereunder. Licensee shall not make any copies of the TIBCO Service or associated documentation. The downloadable software made available as part of the TIBCO Service must be used in accordance with any specific license restrictions imposed in this Agreement and solely in conjunction with the components of the TIBCO Service. Licensee shall ensure that any copies of downloadable software made available as part of the TIBCO Service will contain the same proprietary notices which appear on and in such software as provided to Licensee. Licensee shall not translate, reverse engineer, decompile, or disassemble the TIBCO Service or any part thereof, or make any derivative works, modifications or additions to the TIBCO Service, without the prior written consent of TIBCO. Your use of the TIBCO Service is also subject to the TIBCO [Terms of Use](#), which are hereby incorporated by reference. In the event of any conflict between the Terms of Use and this Agreement, the terms of this Agreement shall prevail.
- 3. Mutual Confidentiality Obligations.** It is mutually acknowledged that the parties may provide Confidential Information (as defined in Section 3.b. below) to one another in the course of working under this Agreement. Accordingly, TIBCO and Licensee agree to the following confidentiality obligations:
 - a.** Both parties shall at all times exercise a reasonable standard of care with respect to the Confidential Information of the other party, which shall be no less than the standard of care such party exercises in protecting its own confidential property. Neither party will permit or authorize access to or disclosure of the other party's Confidential Information to any person or entity other than the following: (i) Employees who have a "need to know" such information consistent with the rights and obligations of the recipient with respect thereto; (ii) Accountants for financial reporting and auditing purposes; and (iii) Courts of competent jurisdiction and governmental regulatory authorities to the extent required for compliance with applicable laws, and subject to such protective measures as may be available to preserve the confidentiality of such information following disclosure. Each party shall promptly notify the other in writing of the existence of any unauthorized knowledge, possession, or use of the other party's Confidential Information.
 - b.** For purposes of this Agreement, "Confidential Information" shall mean any competitively sensitive or secret business, marketing or technical information which is disclosed by either party to the other and, if disclosed in physical media, is marked or designated as such, or if disclosed orally is summarized in writing within thirty (30) days after such disclosure and any other information which due to the nature of such information or circumstances surrounding disclosure, the recipient knows or should know of its confidential nature. Such Confidential Information expressly includes the TIBCO Service and any benchmark or other testing results of the TIBCO Service. Confidential Information shall not include, however, information that (i) is generally known to the public or readily ascertainable from public sources; (ii) is independently developed by the recipient without reliance on Confidential Information of the other party; or (iii) is obtained from an independent third party that created or acquired such information without reliance on Confidential Information of the other party, and free of any obligation to the other party.
- 4. Warranty Disclaimer.** LICENSEE ACKNOWLEDGES THAT THE TIBCO SERVICE IS NOT A PUBLICLY RELEASED PRODUCT, AND THAT AS SUCH THE TIBCO SERVICE IS NOT A FULLY FUNCTIONING PRODUCT, IS SUBJECT TO



CHANGE AND MAY HAVE LIMITATIONS, UNEXPECTED RESULTS, BUGS AND OTHER ERRORS. TIBCO MAKES NO REPRESENTATION OR WARRANTY, EXPRESS OR IMPLIED, THAT THE TIBCO SERVICE WILL EVER BE A TIBCO PRODUCT. FOR PURPOSES OF THIS AGREEMENT, THE TIBCO SERVICE IS LICENSED "AS IS" AND TIBCO MAKES NO WARRANTY, EXPRESS, IMPLIED, OR STATUTORY, INCLUDING BUT NOT LIMITED TO ALL WARRANTIES OF MERCHANTABILITY, NON-INFRINGEMENT OR FITNESS FOR A PARTICULAR PURPOSE.

- 5. Limitation of Liability.** REGARDLESS OF WHETHER ANY REMEDY SET FORTH HEREIN FAILS OF ITS ESSENTIAL PURPOSE, IN NO EVENT WILL TIBCO BE LIABLE TO LICENSEE FOR ANY SPECIAL, CONSEQUENTIAL, INDIRECT OR SIMILAR DAMAGES, INCLUDING ANY LOST PROFITS OR LOST DATA ARISING OUT OF THE USE OR INABILITY TO USE THE TIBCO SERVICE EVEN IF TIBCO HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.
- 6. Termination.** Upon the expiration or termination of this Agreement the license granted pursuant to Section 2 above shall immediately terminate and Licensee (i) shall immediately cease use of the TIBCO Service, and (ii) shall destroy (and certify such destruction in writing) or collect and deliver to TIBCO, at TIBCO's election, all copies (including extracts, summaries, and adaptations) of any downloadable software made available as part of the TIBCO Service, all associated documentation, and all other materials or media that contain or are based on Confidential Information of TIBCO. In addition, Licensee expressly acknowledges that TIBCO may place a time bomb or other similar device(s) in any downloadable software made available as part of the TIBCO Service to enforce termination.
- 7. Feedback.** Licensee agrees that all feedback concerning the TIBCO Service shall be the sole and exclusive property of TIBCO and may be used by TIBCO in any way without restriction or obligation to Licensee. TIBCO shall be free to use for any purpose any ideas, concepts, know-how, or techniques resulting for TIBCO's access to or work with any information exchanged pursuant to this provision.
- 8. Export.** The TIBCO Service, associated documentation and related technical data, are subject to U.S. export control laws, including without limitation the U.S. Export Administration Act and its associated regulations, and may be subject to export or import regulations in other countries. Licensee hereby assures TIBCO that it shall comply with all such regulations and agrees to obtain all necessary licenses to export, re-export, or import TIBCO Service. Licensee (as "we") makes the following certification, as required by section 740.9(c)(5) of the U.S. Export Administration Regulations: We certify that this alpha or beta test service will only be used for alpha or beta testing purposes, and will not be rented, leased, sold, sublicensed, assigned, or otherwise transferred. Further, we certify that we will not transfer or export any product, process, or service that is the direct product of the alpha or beta test service.
- 9. General Provisions.**
 - a.** TIBCO SHALL HAVE NO LIABILITY FOR ANY EVALUATION OR INSTALLATION SERVICES, OR ANY USE OF THE TIBCO SERVICE OR ITS OUTPUT IN CONNECTION WITH THIS AGREEMENT. Licensee's sole recourse with respect to this Agreement shall be to cease use of the TIBCO Service. TIBCO will not provide any support or maintenance program for the TIBCO Service. In the event TIBCO invites support requests from users as part of the TIBCO Service, you acknowledge that TIBCO's response to such requests is solely at its discretion and that TIBCO is not under any obligation to respond to such requests or to fix any errors or bugs in the TIBCO Service.
 - b.** The terms of this Agreement shall be governed by and construed under the laws of the State of California. If any provision of this Agreement is found by any court of competent jurisdiction to be invalid or unenforceable, the invalidity of such provision shall not affect the other provisions of this Agreement, and all provisions not affected by such invalidity shall remain in full force and effect to the fullest extent possible consistent with the intent of the parties.
 - c.** This relationship of TIBCO and Licensee established by this Agreement is that of independent contractors, and not principal/agent, employer/employee, partners, or joint venturers.
 - d.** This Agreement represents the entire understanding and agreement of the parties and supersedes all prior communications, agreements, and understandings relating to the subject matter hereof. All additions or modifications to this Agreement must be made in writing and must be signed by both parties. Notwithstanding the foregoing, TIBCO may update this Agreement from time to time and your continued use, download, installation, copying or accessing of the TIBCO Services or any part thereof thereafter constitutes your acceptance of such updated Agreement.
 - e.** Sections 3, 4, 5, 6, 7, 8 & 9 shall survive termination of this Agreement for any reason.