

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, Switzerland, the United Kingdom and the United States and its states, applicable to the Processing of Personal Data under the Agreement, including the GDPR.
- e) **“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.
- 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 EU SCCs attached hereto as Attachment 1 and UK SCCs attached hereto as Attachment 2.
- k) **“Supervisor”** shall mean an independent public authority established by the Member States pursuant to the GDPR or, for the United Kingdom, the Information Commissioner’s Office (“ICO”).
- l) **“Sub-processor”** means any Data Processor engaged by Licensor or its Affiliates.
- m) **“EU SCCs”** means the contractual clauses annexed to the European Commission’s Implementing Decision 2021/914 of 4 June 2021 on standard contractual clauses for the transfer of personal data to third countries pursuant to Regulation (EU) 2016/679 of the European Parliament and of the Council.
- n) **“UK SCCs”** means the model clauses for the transfer of Personal Data to processors set out in the European Commission’s Decision 2010/87/EU of 5 February 2010.

2. Data Controller and Data Processor

- (1) Where Licensor is Processing Personal Data on behalf of Customer, Licensor shall be a Data Processor.
- (2) Customer and Licensor acknowledge that Customer and/or its Affiliate(s) qualify as Data Controllers with regard to the Processing of Personal Data.
- (3) In relation to the Processing of Personal Data, Licensor will only act upon the instructions of Customer.
- (4) 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

- (1) 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) 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.

- (3) 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.

- (4) 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.
- (5) 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

- (1) 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.
- (2) Customer shall respond in a reasonable time to enquiries from Supervisor on the Processing of the relevant Personal Data;
- (3) 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.
- (4) 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

(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 organisational measures described in article 3(2).

(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. 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

(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) **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.

(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.

(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. 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 the European Union and the United Kingdom residence

(1) Application of Standard Contractual Clauses. The Standard Contractual Clauses in Attachment 1 and Attachment 2 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 Union (EU), the European Economic Area (EEA) and/or their member states, Switzerland and the United Kingdom (UK) to outside the EU, the EEA, Switzerland and the UK, either directly or via onward transfer, to any country or recipient: (i) not recognized by the European Commission and/or the Secretaries of State (UK) as providing an adequate level of protection for personal data, 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. The Licensor enters into the Standard Contractual Clauses as "Data Importer".
- (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 EU, the EEA, the UK 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".
- (c) Modules. The Parties agree that where optional modules may be applied within the EU SCCs, that only those labelled "MODULE TWO: Transfer controller to processor" shall be applied.
- (d) For transfers of Personal Data from the EU, EEA and Switzerland, the EU SCCs as set forth in Attachment 1 will apply. For transfers of Personal Data from the UK, UK SCCs as set forth in Attachment 2 will apply.

(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 Processing 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 8.1 of the EU SCCs and Clause 5(a) of the UK SCCs, 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 9 of the EU SCCs and Clause 5(h) of the UK SCCs, 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 as described in Section 7 of these Data Processing terms.

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 9(c) of the EU SCCs and Clause 5(j) of the UK SCCs may have all commercial information, or clauses unrelated to the Standard Contractual Clauses or their equivalent, removed by the Data Importer 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 8.9 and Clause 13 (b) of the EU SCCs and Clause 5(f), Clause 11 and Clause 12(2) of the UK SCCs shall be carried out in accordance with the specifications described in Section 6 of these Data Processing terms.

(6) Certification of Deletion. The Parties agree that the certification of deletion of Personal Data that is described in Clause 8.5 and 16(d) of the EU SCCs and Clause 12(1) of the UK SCCs shall be provided by the Data Importer to the Data Exporter only upon Data Exporter's request.

(7) Conflict. The terms of these Data Processing terms described in this Section 9 are intended to clarify and not to modify the Standard Contractual Clauses. In the event of any conflict or inconsistency between these Data Processing terms and the Standard Contractual Clauses in Attachment 1 and/or Attachment 2, the Standard Contractual Clauses shall prevail.

(8) Data Exports from the United Kingdom under the UK SCCs.

In case of any transfer of Personal Data under the UK SCCs from the United Kingdom, to the extent such transfers are subject to Data Protection Laws and Regulations applicable in the United Kingdom (UK Data Protection Laws),

(i) general and specific references in the UK SCCs to Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 shall hereby be deemed to have the same meaning as the equivalent reference in the UK Data Protection Laws; (ii) References in the UK SCCs to “the law of the Member State in which the data exporter is established” shall hereby be deemed to mean “the law of the United Kingdom”; and (iii) any other obligation in the UK SCC determined by the Member State in which the data exporter is established shall hereby be deemed to refer to an obligation under UK Data Protection Laws.

For the purpose of the UK SCCs entered into pursuant to these Data Processing terms: (a) the UK SCCs shall be deemed to have been updated in accordance with the recommendations of the Information Commissioner’s Office so that they are suitable for transfers from the UK; and (e) Clauses 14 and 15 of the EU SCCs shall be deemed incorporated into these Data Processing terms so as to also apply to the transfer of Personal Data with any changes deemed made to reflect the applicability of the UK Data Protection Laws to that data as opposed to the GDPR.

In relation to any transfer of Personal Data protected by the UK Data Protection Laws, in the event that the competent United Kingdom authority issues alternative standard contractual clauses for transfers of Personal Data from a controller to a processor (a) Licensor may on giving notice in accordance with the Agreement amend these Data Processing terms to replace the UK SCCs referred to in these Data Processing terms with such alternative standard contractual clauses and any such amendments or supplemental provisions to the alternative SCCs deemed necessary by Licensor for the purpose of these Data Processing terms (“New UK SCCs”), and (b) from the date of such notice, any reference in the Data Processing terms to UK SCCs shall be deemed to refer to such New UK SCCs.

10. Privacy Impact Assessment. Upon Customer’s request, Licensor will provide Customer with reasonable assistance with Customer’s obligations under the GDPR and the UK 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.

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

EU STANDARD CONTRACTUAL CLAUSES

Controller to Processor

SECTION I

Clause 1

Purpose and scope

- (a) The purpose of these standard contractual clauses is to ensure compliance with the requirements of 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 (General Data Protection Regulation) for the transfer of data to a third country.
- (b) The Parties:
 - (i) the natural or legal person(s), public authority/ies, agency/ies or other body/ies (hereinafter 'entity/ies') transferring the personal data, as listed in Annex I.A (hereinafter each 'data exporter'), and
 - (ii) the entity/ies in a third country receiving the personal data from the data exporter, directly or indirectly via another entity also Party to these Clauses, as listed in Annex I.A (hereinafter each 'data importer')have agreed to these standard contractual clauses (hereinafter: 'Clauses').
- (c) These Clauses apply with respect to the transfer of personal data as specified in Annex I.B.
- (d) The Appendix to these Clauses containing the Annexes referred to therein forms an integral part of these Clauses.

Clause 2

Effect and invariability of the Clauses

- (a) These Clauses set out appropriate safeguards, including enforceable data subject rights and effective legal remedies, pursuant to Article 46(1) and Article 46(2)(c) of Regulation (EU) 2016/679 and, with respect to data transfers from controllers to processors and/or processors to processors, standard contractual clauses pursuant to Article 28(7) of Regulation (EU) 2016/679, provided they are not modified, except to select the appropriate Module(s) or to add or update information in the Appendix. This does not prevent the Parties from including the standard contractual clauses laid down in these Clauses in a wider contract and/or to add other clauses or additional safeguards, provided that they do not contradict, directly or indirectly, these Clauses or prejudice the fundamental rights or freedoms of data subjects.
- (b) These Clauses are without prejudice to obligations to which the data exporter is subject by virtue of Regulation (EU) 2016/679.

Clause 3

Third-party beneficiaries

- (a) Data subjects may invoke and enforce these Clauses, as third-party beneficiaries, against the data exporter and/or data importer, with the following exceptions:
 - (i) Clause 1, Clause 2, Clause 3, Clause 6, Clause 7;
 - (ii) Clause 8.1(b), 8.9(a), (c), (d) and (e);
 - (iii) Clause 9(a), (c), (d) and (e);
 - (iv) Clause 12(a), (d) and (f);
 - (v) Clause 13;
 - (vi) Clause 15.1(c), (d) and (e);
 - (vii) Clause 16(e);
 - (viii) Clause 18(a) and (b).
- (b) Paragraph (a) is without prejudice to rights of data subjects under Regulation (EU) 2016/679.

Clause 4

Interpretation

- (a) Where these Clauses use terms that are defined in Regulation (EU) 2016/679, those terms shall have the same meaning as in that Regulation.
- (b) These Clauses shall be read and interpreted in the light of the provisions of Regulation (EU) 2016/679.
- (c) These Clauses shall not be interpreted in a way that conflicts with rights and obligations provided for in Regulation (EU)

Clause 5
Hierarchy

In the event of a contradiction between these Clauses and the provisions of related agreements between the Parties, existing at the time these Clauses are agreed or entered into thereafter, these Clauses shall prevail.

Clause 6
Description of the transfer(s)

The details of the transfer(s), and in particular the categories of personal data that are transferred and the purpose(s) for which they are transferred, are specified in Annex I.B.

Clause 7 – Optional
Docking clause
[Optional Clause Not Used]

SECTION II – OBLIGATIONS OF THE PARTIES

Clause 8
Data protection safeguards

The data exporter warrants that it has used reasonable efforts to determine that the data importer is able, through the implementation of appropriate technical and organisational measures, to satisfy its obligations under these Clauses.

8.1 Instructions

- (a) The data importer shall process the personal data only on documented instructions from the data exporter. The data exporter may give such instructions throughout the duration of the contract.
- (b) The data importer shall immediately inform the data exporter if it is unable to follow those instructions.

8.2 Purpose limitation

The data importer shall process the personal data only for the specific purpose(s) of the transfer, as set out in Annex I.B, unless on further instructions from the data exporter.

8.3 Transparency

On request, the data exporter shall make a copy of these Clauses, including the Appendix as completed by the Parties, available to the data subject free of charge. To the extent necessary to protect business secrets or other confidential information, including the measures described in Annex II and personal data, the data exporter may redact part of the text of the Appendix to these Clauses prior to sharing a copy, but shall provide a meaningful summary where the data subject would otherwise not be able to understand the its content or exercise his/her rights. On request, the Parties shall provide the data subject with the reasons for the redactions, to the extent possible without revealing the redacted information. This Clause is without prejudice to the obligations of the data exporter under Articles 13 and 14 of Regulation (EU) 2016/679.

8.4 Accuracy

If the data importer becomes aware that the personal data it has received is inaccurate, or has become outdated, it shall inform the data exporter without undue delay. In this case, the data importer shall cooperate with the data exporter to erase or rectify the data.

8.5 Duration of processing and erasure or return of data

Processing by the data importer shall only take place for the duration specified in Annex I.B. After the end of the provision of the processing

services, the data importer shall, at the choice of the data exporter, delete all personal data processed on behalf of the data exporter and certify to the data exporter that it has done so, or return to the data exporter all personal data processed on its behalf and delete existing copies. Until the data is deleted or returned, the data importer shall continue to ensure compliance with these Clauses. In case of local laws applicable to the data importer that prohibit return or deletion of the personal data, the data importer warrants that it will continue to ensure compliance with these Clauses and will only process it to the extent and for as long as required under that local law. This is without prejudice to Clause 14, in particular the requirement for the data importer under Clause 14(e) to notify the data exporter throughout the duration of the contract if it has reason to believe that it is or has become subject to laws or practices not in line with the requirements under Clause 14(a).

8.6 Security of processing

- (a) The data importer and, during transmission, also the data exporter shall implement appropriate technical and organisational measures to ensure the security of the data, including protection against a breach of security leading to accidental or unlawful destruction, loss, alteration, unauthorised disclosure or access to that data (hereinafter ‘personal data breach’). In assessing the appropriate level of security, the Parties shall take due account of the state of the art, the costs of implementation, the nature, scope, context and purpose(s) of processing and the risks involved in the processing for the data subjects. The Parties shall in particular consider having recourse to encryption or pseudonymisation, including during transmission, where the purpose of processing can be fulfilled in that manner. In case of pseudonymisation, the additional information for attributing the personal data to a specific data subject shall, where possible, remain under the exclusive control of the data exporter. In complying with its obligations under this paragraph, the data importer shall at least implement the technical and organisational measures specified in Annex II. The data importer shall carry out regular checks to ensure that these measures continue to provide an appropriate level of security.
- (b) The data importer shall grant access to the personal data to members of its personnel only to the extent strictly necessary for the implementation, management and monitoring of the contract. It shall ensure that persons authorised to process the personal data have committed themselves to confidentiality or are under an appropriate statutory obligation of confidentiality.
- (c) In the event of a personal data breach concerning personal data processed by the data importer under these Clauses, the data importer shall take appropriate measures to address the breach, including measures to mitigate its adverse effects. The data importer shall also notify the data exporter without undue delay after having become aware of the breach. Such notification shall contain the details of a contact point where more information can be obtained, a description of the nature of the breach (including, where possible, categories and approximate number of data subjects and personal data records concerned), its likely consequences and the measures taken or proposed to address the breach including, where appropriate, measures to mitigate its possible adverse effects. Where, and in so far as, it is not possible to provide all information at the same time, the initial notification shall contain the information then available and further information shall, as it becomes available, subsequently be provided without undue delay.
- (d) The data importer shall cooperate with and assist the data exporter to enable the data exporter to comply with its obligations under Regulation (EU) 2016/679, in particular to notify the competent supervisory authority and the affected data subjects, taking into account the nature of processing and the information available to the data importer.

8.7 Sensitive data

Where the transfer involves personal data revealing racial or ethnic origin, political opinions, religious or philosophical beliefs, or trade union membership, genetic data, or biometric data for the purpose of uniquely identifying a natural person, data concerning health or a person’s sex life or sexual orientation, or data relating to criminal convictions and offences (hereinafter ‘sensitive data’), the data importer shall apply the specific restrictions and/or additional safeguards described in Annex I.B.

8.8 Onward transfers

The data importer shall only disclose the personal data to a third party on documented instructions from the data exporter. In addition, the data may only be disclosed to a third party located outside the European Union (in the same country as the data importer or in another third country, hereinafter ‘onward transfer’) if the third party is or agrees to be bound by these Clauses, under the appropriate Module, or if:

- (i) the onward transfer is to a country benefitting from an adequacy decision pursuant to Article 45 of Regulation (EU) 2016/679 that covers the onward transfer;
- (ii) the third party otherwise ensures appropriate safeguards pursuant to Articles 46 or 47 Regulation of (EU) 2016/679 with respect to

the processing in question;

- (iii) the onward transfer is necessary for the establishment, exercise or defence of legal claims in the context of specific administrative, regulatory or judicial proceedings; or
- (iv) the onward transfer is necessary in order to protect the vital interests of the data subject or of another natural person.

Any onward transfer is subject to compliance by the data importer with all the other safeguards under these Clauses, in particular purpose limitation.

8.9 Documentation and compliance

- (a) The data importer shall promptly and adequately deal with enquiries from the data exporter that relate to the processing under these Clauses.
- (b) The Parties shall be able to demonstrate compliance with these Clauses. In particular, the data importer shall keep appropriate documentation on the processing activities carried out on behalf of the data exporter.
- (c) The data importer shall make available to the data exporter all information necessary to demonstrate compliance with the obligations set out in these Clauses and at the data exporter's request, allow for and contribute to audits of the processing activities covered by these Clauses, at reasonable intervals or if there are indications of non-compliance. In deciding on a review or audit, the data exporter may take into account relevant certifications held by the data importer.
- (d) The data exporter may choose to conduct the audit by itself or mandate an independent auditor. Audits may include inspections at the premises or physical facilities of the data importer and shall, where appropriate, be carried out with reasonable notice.
- (e) The Parties shall make the information referred to in paragraphs (b) and (c), including the results of any audits, available to the competent supervisory authority on request.

Clause 9

Use of sub-processors

- (a) The data importer has the data exporter's general authorisation for the engagement of sub-processor(s) from an agreed list. The data importer shall specifically inform the data exporter in writing of any intended changes to that list through the addition or replacement of sub-processors at least 30 days in advance, thereby giving the data exporter sufficient time to be able to object to such changes prior to the engagement of the sub-processor(s). The data importer shall provide the data exporter with the information necessary to enable the data exporter to exercise its right to object.
- (b) Where the data importer engages a sub-processor to carry out specific processing activities (on behalf of the data exporter), it shall do so by way of a written contract that provides for, in substance, the same data protection obligations as those binding the data importer under these Clauses, including in terms of third-party beneficiary rights for data subjects. The Parties agree that, by complying with this Clause, the data importer fulfils its obligations under Clause 8.8. The data importer shall ensure that the sub-processor complies with the obligations to which the data importer is subject pursuant to these Clauses.
- (c) The data importer shall provide, at the data exporter's request, a copy of such a sub-processor agreement and any subsequent amendments to the data exporter. To the extent necessary to protect business secrets or other confidential information, including personal data, the data importer may redact the text of the agreement prior to sharing a copy.
- (d) The data importer shall remain fully responsible to the data exporter for the performance of the sub-processor's obligations under its contract with the data importer. The data importer shall notify the data exporter of any failure by the sub-processor to fulfil its obligations under that contract.
- (e) The data importer shall agree a third-party beneficiary clause with the sub-processor whereby – in the event the data importer has factually disappeared, ceased to exist in law or has become insolvent – the data exporter shall have the right to terminate the sub-processor contract and to instruct the sub-processor to erase or return the personal data.

Clause 10

Data subject rights

- (a) The data importer shall promptly notify the data exporter of any request it has received from a data subject. It shall not respond to that request itself unless it has been authorised to do so by the data exporter.
- (b) The data importer shall assist the data exporter in fulfilling its obligations to respond to data subjects' requests for the exercise of their rights under Regulation (EU) 2016/679. In this regard, the Parties shall set out in Annex II the appropriate technical and organisational measures, taking into account the nature of the processing, by which the assistance shall be provided, as well as the scope and the extent of the assistance required.
- (c) In fulfilling its obligations under paragraphs (a) and (b), the data importer shall comply with the instructions from the data exporter.

Clause 11

Redress

- (a) The data importer shall inform data subjects in a transparent and easily accessible format, through individual notice or on its website, of a contact point authorised to handle complaints. It shall deal promptly with any complaints it receives from a data subject.
- (b) In case of a dispute between a data subject and one of the Parties as regards compliance with these Clauses, that Party shall use its best efforts to resolve the issue amicably in a timely fashion. The Parties shall keep each other informed about such disputes and, where appropriate, cooperate in resolving them.
- (c) Where the data subject invokes a third-party beneficiary right pursuant to Clause 3, the data importer shall accept the decision of the data subject to:
 - (i) lodge a complaint with the supervisory authority in the Member State of his/her habitual residence or place of work, or the competent supervisory authority pursuant to Clause 13;
 - (ii) refer the dispute to the competent courts within the meaning of Clause 18.
- (d) The Parties accept that the data subject may be represented by a not-for-profit body, organisation or association under the conditions set out in Article 80(1) of Regulation (EU) 2016/679.
- (e) The data importer shall abide by a decision that is binding under the applicable EU or Member State law.
- (f) The data importer agrees that the choice made by the data subject will not prejudice his/her substantive and procedural rights to seek remedies in accordance with applicable laws.

Clause 12

Liability

- (a) Each Party shall be liable to the other Party/ies for any damages it causes the other Party/ies by any breach of these Clauses.
- (b) The data importer shall be liable to the data subject, and the data subject shall be entitled to receive compensation, for any material or non-material damages the data importer or its sub-processor causes the data subject by breaching the third-party beneficiary rights under these Clauses.
- (c) Notwithstanding paragraph (b), the data exporter shall be liable to the data subject, and the data subject shall be entitled to receive compensation, for any material or non-material damages the data exporter or the data importer (or its sub-processor) causes the data subject by breaching the third-party beneficiary rights under these Clauses. This is without prejudice to the liability of the data exporter and, where the data exporter is a processor acting on behalf of a controller, to the liability of the controller under Regulation (EU) 2016/679 or Regulation (EU) 2018/1725, as applicable.
- (d) The Parties agree that if the data exporter is held liable under paragraph (c) for damages caused by the data importer (or its sub-processor), it shall be entitled to claim back from the data importer that part of the compensation corresponding to the data importer's responsibility for the damage.

- (e) Where more than one Party is responsible for any damage caused to the data subject as a result of a breach of these Clauses, all responsible Parties shall be jointly and severally liable and the data subject is entitled to bring an action in court against any of these Parties.
- (f) The Parties agree that if one Party is held liable under paragraph (e), it shall be entitled to claim back from the other Party/ies that part of the compensation corresponding to its/their responsibility for the damage.
- (g) The data importer may not invoke the conduct of a sub-processor to avoid its own liability.

Clause 13
Supervision

- (a) Where the data exporter is established in an EU Member State: The supervisory authority with responsibility for ensuring compliance by the data exporter with Regulation (EU) 2016/679 as regards the data transfer, as indicated in Annex I.C, shall act as competent supervisory authority.

Where the data exporter is not established in an EU Member State, but falls within the territorial scope of application of Regulation (EU) 2016/679 in accordance with its Article 3(2) and has appointed a representative pursuant to Article 27(1) of Regulation (EU) 2016/679: The supervisory authority of the Member State in which the representative within the meaning of Article 27(1) of Regulation (EU) 2016/679 is established, as indicated in Annex I.C, shall act as competent supervisory authority.

Where the data exporter is not established in an EU Member State, but falls within the territorial scope of application of Regulation (EU) 2016/679 in accordance with its Article 3(2) without however having to appoint a representative pursuant to Article 27(2) of Regulation (EU) 2016/679: The supervisory authority of one of the Member States in which the data subjects whose personal data is transferred under these Clauses in relation to the offering of goods or services to them, or whose behaviour is monitored, are located, as indicated in Annex I.C, shall act as competent supervisory authority.

- (b) The data importer agrees to submit itself to the jurisdiction of and cooperate with the competent supervisory authority in any procedures aimed at ensuring compliance with these Clauses. In particular, the data importer agrees to respond to enquiries, submit to audits and comply with the measures adopted by the supervisory authority, including remedial and compensatory measures. It shall provide the supervisory authority with written confirmation that the necessary actions have been taken.

SECTION III – LOCAL LAWS AND OBLIGATIONS IN CASE OF ACCESS BY PUBLIC AUTHORITIES

Clause 14

Local laws and practices affecting compliance with the Clauses

- (a) The Parties warrant that they have no reason to believe that the laws and practices in the third country of destination applicable to the processing of the personal data by the data importer, including any requirements to disclose personal data or measures authorising access by public authorities, prevent the data importer from fulfilling its obligations under these Clauses. This is based on the understanding that laws and practices that respect the essence of the fundamental rights and freedoms and do not exceed what is necessary and proportionate in a democratic society to safeguard one of the objectives listed in Article 23(1) of Regulation (EU) 2016/679, are not in contradiction with these Clauses.
- (b) The Parties declare that in providing the warranty in paragraph (a), they have taken due account in particular of the following elements:
 - (i) the specific circumstances of the transfer, including the length of the processing chain, the number of actors involved and the transmission channels used; intended onward transfers; the type of recipient; the purpose of processing; the categories and format of the transferred personal data; the economic sector in which the transfer occurs; the storage location of the data transferred;
 - (ii) the laws and practices of the third country of destination– including those requiring the disclosure of data to public authorities or authorising access by such authorities – relevant in light of the specific circumstances of the transfer, and the applicable limitations and safeguards;

- (iii) any relevant contractual, technical or organisational safeguards put in place to supplement the safeguards under these Clauses, including measures applied during transmission and to the processing of the personal data in the country of destination.
- (c) The data importer warrants that, in carrying out the assessment under paragraph (b), it has made its best efforts to provide the data exporter with relevant information and agrees that it will continue to cooperate with the data exporter in ensuring compliance with these Clauses.
- (d) The Parties agree to document the assessment under paragraph (b) and make it available to the competent supervisory authority on request.
- (e) The data importer agrees to notify the data exporter promptly if, after having agreed to these Clauses and for the duration of the contract, it has reason to believe that it is or has become subject to laws or practices not in line with the requirements under paragraph (a), including following a change in the laws of the third country or a measure (such as a disclosure request) indicating an application of such laws in practice that is not in line with the requirements in paragraph (a).
- (f) Following a notification pursuant to paragraph (e), or if the data exporter otherwise has reason to believe that the data importer can no longer fulfil its obligations under these Clauses, the data exporter shall promptly identify appropriate measures (e.g. technical or organisational measures to ensure security and confidentiality) to be adopted by the data exporter and/or data importer to address the situation. The data exporter shall suspend the data transfer if it considers that no appropriate safeguards for such transfer can be ensured, or if instructed by the competent supervisory authority to do so. In this case, the data exporter shall be entitled to terminate the contract, insofar as it concerns the processing of personal data under these Clauses. If the contract involves more than two Parties, the data exporter may exercise this right to termination only with respect to the relevant Party, unless the Parties have agreed otherwise. Where the contract is terminated pursuant to this Clause, Clause 16(d) and (e) shall apply.

Clause 15

Obligations of the data importer in case of access by public authorities

15.1 Notification

- (a) The data importer agrees to notify the data exporter and, where possible, the data subject promptly (if necessary with the help of the data exporter) if it:
 - (i) receives a legally binding request from a public authority, including judicial authorities, under the laws of the country of destination for the disclosure of personal data transferred pursuant to these Clauses; such notification shall include information about the personal data requested, the requesting authority, the legal basis for the request and the response provided; or
 - (ii) becomes aware of any direct access by public authorities to personal data transferred pursuant to these Clauses in accordance with the laws of the country of destination; such notification shall include all information available to the importer.
- (b) If the data importer is prohibited from notifying the data exporter and/or the data subject under the laws of the country of destination, the data importer agrees to use its best efforts to obtain a waiver of the prohibition, with a view to communicating as much information as possible, as soon as possible. The data importer agrees to document its best efforts in order to be able to demonstrate them on request of the data exporter.
- (c) Where permissible under the laws of the country of destination, the data importer agrees to provide the data exporter, at regular intervals for the duration of the contract, with as much relevant information as possible on the requests received (in particular, number of requests, type of data requested, requesting authority/ies, whether requests have been challenged and the outcome of such challenges, etc.).
- (d) The data importer agrees to preserve the information pursuant to paragraphs (a) to (c) for the duration of the contract and make it available to the competent supervisory authority on request.
- (e) Paragraphs (a) to (c) are without prejudice to the obligation of the data importer pursuant to Clause 14(e) and Clause 16 to inform the data exporter promptly where it is unable to comply with these Clauses.

15.2 Review of legality and data minimisation

- (a) The data importer agrees to review the legality of the request for disclosure, in particular whether it remains within the powers granted to the requesting public authority, and to challenge the request if, after careful assessment, it concludes that there are reasonable grounds to consider that the request is unlawful under the laws of the country of destination, applicable obligations

under international law and principles of international comity. The data importer shall, under the same conditions, pursue possibilities of appeal. When challenging a request, the data importer shall seek interim measures with a view to suspending the effects of the request until the competent judicial authority has decided on its merits. It shall not disclose the personal data requested until required to do so under the applicable procedural rules. These requirements are without prejudice to the obligations of the data importer under Clause 14(e).

- (b) The data importer agrees to document its legal assessment and any challenge to the request for disclosure and, to the extent permissible under the laws of the country of destination, make the documentation available to the data exporter. It shall also make it available to the competent supervisory authority on request.
- (c) The data importer agrees to provide the minimum amount of information permissible when responding to a request for disclosure, based on a reasonable interpretation of the request.

SECTION IV – FINAL PROVISIONS

Clause 16

Non-compliance with the Clauses and termination

- (a) The data importer shall promptly inform the data exporter if it is unable to comply with these Clauses, for whatever reason.
- (b) In the event that the data importer is in breach of these Clauses or unable to comply with these Clauses, the data exporter shall suspend the transfer of personal data to the data importer until compliance is again ensured or the contract is terminated. This is without prejudice to Clause 14(f).
- (c) The data exporter shall be entitled to terminate the contract, insofar as it concerns the processing of personal data under these Clauses, where:
 - (i) the data exporter has suspended the transfer of personal data to the data importer pursuant to paragraph (b) and compliance with these Clauses is not restored within a reasonable time and in any event within one month of suspension;
 - (ii) the data importer is in substantial or persistent breach of these Clauses; or
 - (iii) the data importer fails to comply with a binding decision of a competent court or supervisory authority regarding its obligations under these Clauses.

In these cases, it shall inform the competent supervisory authority of such non-compliance. Where the contract involves more than two Parties, the data exporter may exercise this right to termination only with respect to the relevant Party, unless the Parties have agreed otherwise.

- (d) Personal data that has been transferred prior to the termination of the contract pursuant to paragraph (c) shall at the choice of the data exporter immediately be returned to the data exporter or deleted in its entirety. The same shall apply to any copies of the data. The data importer shall certify the deletion of the data to the data exporter. Until the data is deleted or returned, the data importer shall continue to ensure compliance with these Clauses. In case of local laws applicable to the data importer that prohibit the return or deletion of the transferred personal data, the data importer warrants that it will continue to ensure compliance with these Clauses and will only process the data to the extent and for as long as required under that local law.
- (e) Either Party may revoke its agreement to be bound by these Clauses where (i) the European Commission adopts a decision pursuant to Article 45(3) of Regulation (EU) 2016/679 that covers the transfer of personal data to which these Clauses apply; or (ii) Regulation (EU) 2016/679 becomes part of the legal framework of the country to which the personal data is transferred. This is without prejudice to other obligations applying to the processing in question under Regulation (EU) 2016/679.

Clause 17

Governing law

These Clauses shall be governed by the law of one of the EU Member States, provided such law allows for third-party beneficiary rights. The Parties agree that this shall be the law of the Republic of Ireland.

Clause 18

Choice of forum and jurisdiction

- (a) Any dispute arising from these Clauses shall be resolved by the courts of an EU Member State.

- (b) The Parties agree that those shall be the courts of the Republic of Ireland.
- (c) A data subject may also bring legal proceedings against the data exporter and/or data importer before the courts of the Member State in which he/she has his/her habitual residence.
- (d) The Parties agree to submit themselves to the jurisdiction of such courts.

ANNEX I

A. LIST OF PARTIES

Data exporter(s): *[Identity and contact details of the data exporter(s) and, where applicable, of its/their data protection officer and/or representative in the European Union]*

Name: The data exporter 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.

Activities relevant to the data transferred under these Clauses:

The Data Exporter is transferring personal data for purposes of receiving the TIBCO Cloud Services and any other additional services subscribed to, or licensed by, the Data Exporter.

Signature and date: As per the signature and date of the Agreement entered into between the Importer and Exporter.

Role (controller/processor): Controller

Data importer(s):

Name: TIBCO Software Inc (and its affiliates)

Address: 3303 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

Activities relevant to the data transferred under these Clauses:

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

Signature and date: As per the signature and date of the Agreement entered into between the Importer and Exporter.

Role (controller/processor): Processor

B. DESCRIPTION OF TRANSFER

Categories of data subjects whose personal data is transferred

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

Categories of personal data transferred

Any data uploaded by data exporter to the Software Service.

Sensitive data transferred (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.

The frequency of the transfer (e.g. whether the data is transferred on a one-off or continuous basis).

The Processing is performed on a continuous basis for the period of providing the Services to the Data Controller.

Nature of the processing

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

Purpose(s) of the data transfer and further processing

To provide Services to the Data Controller as provided in the Agreement or as instructed by the Data Controller.

The period for which the personal data will be retained, or, if that is not possible, the criteria used to determine that period

Data Importer will retain Personal Data as stipulated in the Agreement and agreed by the Parties.

For transfers to (sub-) processors, 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 data exporter's affiliates may process Personal Data in order to support and/or improve the Licensor Service. Information regarding Data Importer's current subprocessors can be found on the Subprocessor Page, available here: <http://terms.tibco.com/#subprocessor-list>

C. COMPETENT SUPERVISORY AUTHORITY

Identify the competent supervisory authority/ies in accordance with Clause 13

In accordance with Clause 13, the competent supervisory authority is located in the jurisdiction of the Data Exporter that entered into the Agreement.

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 data importer:

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.

The Data Importer 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

EXPLANATORY NOTE:

This Annex must be completed for Module Two and Three, in case of the specific authorisation of sub-processors (Clause 9(a), Option 1).

The controller 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>

Attachment 2

This UK Standard Contractual Clauses (UK SCCs) will apply for transfer of personal data from the UK.

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 subprocessing, 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 exporter, 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 subprocessor 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 subprocessing 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.

APPENDIX 1 TO THE STANDARD CONTRACTUAL CLAUSES

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.