



Crown
Commercial
Service

G-Cloud 9 Call-Off Contract

This Call-Off Contract for the G-Cloud 9 Framework Agreement (RM1557ix) includes:

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Part A - Order Form

Digital Marketplace service ID number:	796270350175113
Call-Off Contract reference:	CPD04/118/023
Call-Off Contract title:	DCLG JasperSoft Enterprise 1 year Subscription
Call-Off Contract description:	DCLG JasperSoft Enterprise 1 year Subscription
Start date:	07/09/2017
Expiry date:	06/09/2018
Call-Off Contract value:	£50,400.00 excluding VAT
Charging method:	By invoice
Purchase order number:	TBA

This Order Form is issued under the G-Cloud 9 Framework Agreement (RM1557ix).

Buyers can use this order form to specify their G-Cloud service requirements when placing an Order.

The Order Form cannot be used to alter existing terms or add any extra terms that materially change the Deliverables offered by the Supplier and defined in the Application.

There are terms in the Call-Off Contract that may be defined in the Order Form. These are identified in the contract with square brackets.

From: the Buyer	Department for Communities & Local Government (DCLG) Buyer's main address: 1 st Floor, Fry Building, 2 Marsham Street, London SW1P 4DF.
To: the Supplier	TIBCO Software (Ireland) Limited 00353 1443 4700 Supplier's address: The Grainstore, Roe Lane, The Digital Hub Dublin 8 Dublin D08 KC81 Ireland Company number: 397689
Together: the 'Parties'	

Principle contact details

For the Buyer:	REDACTED
For the Supplier:	REDACTED

Call-Off Contract Term

Start date:	This Call-Off Contract Starts on 07/09/2017 and is valid for 12 months.
Ending (termination):	The notice period needed for Ending the Call-Off Contract is at least 30 Working Days from the date of written notice for disputed sums in accordance with Clause 18.6 of the Call-Off Contract or at least 30 days from the date of written notice for Ending without cause in accordance with Clause 18.1 of the Call-Off Contract.. For the sake of clarity in the event of termination under or the sake of clarity, in the event of termination under Clause 18.1 of the Call-Off Contract or 5.1 or 5.7 or 5.10 of the Framework Agreement none of the Charges paid by the Buyer to the Supplier applicable to the time period from the start of the Call-Off Contract Term set out above up until the effective date of termination are refundable.
Extension period:	This Call-Off Contract can be extended by the Buyer for a further period of 12 months, by giving the Supplier written notice before its expiry.

Buyer contractual details

This Order is for the G-Cloud Services outlined below. It is acknowledged by the Parties that the volume of the G-Cloud Services used by the Buyer may vary during this Call-Off Contract.

G-Cloud lot:	This Call-Off Contract is for the provision of Services under: Lot 2 - Cloud software																
G-Cloud services required:	<p>This Order Form is entered into by and between the Supplier and the Buyer (this latter also referred to as 'Customer' in the Supplier Terms) effective as of the start date mentioned above pursuant to the attached Call-Off Contract Terms and Conditions (or "Call-Off Contract") (bearing TIBCO Contract No. USLSA_33564) which themselves incorporate the terms of the Framework Agreement entered into between THE MINISTER FOR THE CABINET OFFICE acting through Crown Commercial Service, part of the Crown, of 9th Floor, The Capital, Old Hall Street, Liverpool, L3 9PP (the "Authority") and the Supplier as defined in this Order Form below signed by Supplier on 23 May 2017 bearing contract number USLSA_33588 (the "Framework Agreement") and pursuant to the attached Appendix 1 (Supplier Terms) applicable to the Supplier subscription ("G-Cloud Service" or "Licenser Software") (the "Supplier Terms" or "Supplier Terms and Conditions"). Appendix 1 (Supplier Terms) is formed of attached Annexes A , B, C and D. Capitalised terms used in this Order Form and not otherwise defined in the Agreement are defined in Annex A. Appendix 1 is incorporated by reference and forms an integral part of the Order Form.</p> <p>This Order Form together with the Call-Off Contract and the Supplier Terms shall form the agreement between the Parties effective as of the start date set out above (the "Agreement")</p> <p>The Services to be provided by the Supplier under the above Lot are listed in Framework Section 2 and outlined below:</p> <table border="1"> <thead> <tr> <th>Software (License Type)</th><th>Maintenance/ Service Level</th><th>Unit</th><th>Number of Units</th><th>Subscription Term (or Call-Off Contract Term)</th><th>Line Item Fee or Charge</th></tr> </thead> <tbody> <tr> <td>TIBCO Jaspersoft® - Enterprise Edition (Production/Non-Production)</td><td>Premium</td><td>Each</td><td>1</td><td>1 year starting 7 September 2017 and ending 6 September 2018</td><td>£ 33,600</td></tr> </tbody> </table>					Software (License Type)	Maintenance/ Service Level	Unit	Number of Units	Subscription Term (or Call-Off Contract Term)	Line Item Fee or Charge	TIBCO Jaspersoft® - Enterprise Edition (Production/Non-Production)	Premium	Each	1	1 year starting 7 September 2017 and ending 6 September 2018	£ 33,600
Software (License Type)	Maintenance/ Service Level	Unit	Number of Units	Subscription Term (or Call-Off Contract Term)	Line Item Fee or Charge												
TIBCO Jaspersoft® - Enterprise Edition (Production/Non-Production)	Premium	Each	1	1 year starting 7 September 2017 and ending 6 September 2018	£ 33,600												

	TIBCO JasperReports® Server - Enterprise Edition (Production/Non-Production)	Premium	Core	4	1 year starting 7 September 2017 and ending 6 September 2018	Included in Subscription Fee
	TIBCO Jaspersoft® - Audit Logging (Production/Non-Production)	Premium	Core	4	1 year starting 7 September 2017 and ending 6 September 2018	Included in Subscription Fee
	TIBCO Jaspersoft® - Visualize.js (Production/Non-Production)	Premium	Core	4	1 year starting 7 September 2017 and ending 6 September 2018	Included in Subscription Fee
	TIBCO Jaspersoft® - Multi-Tenant (Production/Non-Production)	Premium	Core	4	1 year starting 7 September 2017 and ending 6 September 2018	Included in Subscription Fee
	TIBCO Jaspersoft® - Enterprise Edition (DevTest)	Premium	Instance	4	1 year starting 7 September 2017 and ending 6 September 2018	£ 16,800
	Total					£ 50,400 (excluding VAT)
Additional services:	NA					
Location:	The G Cloud Service specified above will be installed and used on premise at DCLG, 1 st Floor, Fry Building, 2 Marsham Street, London SW1P 4DF and must be used in accordance with the license grant described in the Supplier Terms.					
Quality standards:	NA					
Technical standards:	NA					
Service level agreement:	NA					
Onboarding:	NA					
Offboarding:	NA					
Collaboration agreement:	NA					
Limit on Parties' liability:	The annual total liability under this Call-Off Contract for all other defaults will not exceed the greater of £100,000.00 or 125% of the Charges payable by the Buyer to the Supplier during the Call-Off Contract Term (whichever is the greater).					
Insurance:	The insurance(s) required will be: <ul style="list-style-type: none"> a minimum insurance period of 6 years following the expiration or Ending of this Call-Off Contract 					

	<ul style="list-style-type: none"> - a general liability insurance; - a workers' compensation liability insurance. <p>as described in its certificate of insurance showing the insurance policies held and maintained by its parent company TIBCO Software Inc. for itself and its group companies (including but not limited to the Licensor).</p>
Force majeure:	A Party may End this Call-Off Contract if the Other Party is affected by a Force Majeure Event that lasts for more than 30 consecutive calendar days.
Audit:	NA
Buyer's responsibilities:	See Supplier Terms and Conditions
Buyer's equipment:	NA

Supplier's information

Subcontractors or partners:	The following is a list of the Supplier's Subcontractors or Partners : NA
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Call-Off Contract charges and payment

The Call-Off Contract charges and payment details are in the table below. See Schedule 2 for a full breakdown.

Payment method:	The payment method for this Call-Off Contract is by invoice.
Payment profile:	The payment profile for this Call-Off Contract is annually.
Invoice details:	The Supplier will issue electronic invoices annually. The Buyer will pay the Supplier within 30 calendar days of the date of a valid invoice, submitted electronically in accordance with the payment profile set out above and the provisions of this Call-Off Contract.
Who and where to send invoices to:	Invoices will be emailed to CLGInvoices@communities.gsi.gov.uk or posted to FSSD DCLG CP2P Team, 4th Floor, High Trees, Hillfield Road, Hemel Hempstead, Herts HP2 4XN.
Invoice information required – for example purchase order, project reference:	All invoices must include the DCLG Purchase order number and a detailed description of the goods/services.
Invoice frequency:	Invoice will be sent to the Buyer annually.
Call-Off Contract value:	The total value of this Call-Off Contract is £50,400.00 excluding VAT.
Call-Off Contract charges:	The breakdown of the Charges is as per supplier quote dated 04/08/2017.

Additional buyer terms

Performance of the service and deliverables:	NA
Guarantee:	NA
Warranties, representations:	NA
Supplemental requirements in addition to the Call-Off terms:	NA
Alternative clauses:	None required.
Buyer specific amendments to/refinements of the Call-Off Contract terms:	NA
Public Services Network (PSN):	NA

1. Formation of contract

- 1.1 By signing and returning this Order Form (Part A), the Supplier agrees to enter into a Call-Off Contract with the Buyer.
- 1.2 The Parties agree that they have read the Order Form (Part A) and the Call-Off Contract terms and by signing below agree to be bound by this Call-Off Contract.
- 1.3 This Call-Off Contract will be formed when the Buyer acknowledges receipt of the signed copy of the Order Form from the Supplier.
- 1.4 In cases of any ambiguity or conflict the terms and conditions of the Call-Off Contract and Order Form will supersede those of the Supplier Terms and Conditions.

2. Background to the agreement

- (A) The Supplier is a provider of G-Cloud Services and agreed to provide the Services under the terms of Framework Agreement number RM1557ix.
- (B) The Buyer provided an Order Form for Services to the Supplier.

Signed:	Supplier: TIBCO Software (Ireland) Limited	Buyer: Crown Commercial Services acting on behalf of the Department for Communities and Local Government (DCLG)
Name:	REDACTED	REDACTED
Title:	Vice President, General Counsel EMEA	Senior Procurement Advisor
Signature:	<u>X</u>	<u>X</u>
Date:		September 2017

Schedule 1 - Services

Software (License Type)	Maintenance/ Service Level	Unit	Number of Units	Subscription Term (or Call-Off Contract Term)	Line Item Fee or Charge
TIBCO Jaspersoft® - Enterprise Edition (Production/Non-Production)	Premium	Each	1	1 year starting 7 September 2017 and ending 6 September 2018	£ 33,600
TIBCO JasperReports® Server - Enterprise Edition (Production/Non-Production)	Premium	Core	4	1 year starting 7 September 2017 and ending 6 September 2018	Included in Subscription Fee
TIBCO Jaspersoft® - Audit Logging (Production/Non-Production)	Premium	Core	4	1 year starting 7 September 2017 and ending 6 September 2018	Included in Subscription Fee
TIBCO Jaspersoft® - Visualize.js (Production/Non-Production)	Premium	Core	4	1 year starting 7 September 2017 and ending 6 September 2018	Included in Subscription Fee
TIBCO Jaspersoft® - Multi-Tenant (Production/Non-Production)	Premium	Core	4	1 year starting 7 September 2017 and ending 6 September 2018	Included in Subscription Fee
TIBCO Jaspersoft® - Enterprise Edition (DevTest)	Premium	Instance	4	1 year starting 7 September 2017 and ending 6 September 2018	£ 16,800
Total					£ 50,400 (excluding VAT)

Schedule 2 - Call-Off Contract charges

For each individual Service, the applicable Call-Off Contract Charges (in accordance with the Supplier's Digital Marketplace pricing document) can't be amended during the term of the Call-Off Contract. The detailed Charges breakdown for the provision of Services during the Term will include:

Software	Maintenance/	Unit	Number of	Subscription Term (or Call-Off Contract	Line Item Fee or
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(License Type)	Service Level		Units	Term)	Charge
TIBCO Jaspersoft® - Enterprise Edition (Production/Non-Production)	Premium	Each	1	1 year starting 7 September 2017 and ending 6 September 2018	£ 33,600
TIBCO JasperReports® Server - Enterprise Edition (Production/Non-Production)	Premium	Core	4	1 year starting 7 September 2017 and ending 6 September 2018	Included in Subscription Fee
TIBCO Jaspersoft® - Audit Logging (Production/Non-Production)	Premium	Core	4	1 year starting 7 September 2017 and ending 6 September 2018	Included in Subscription Fee
TIBCO Jaspersoft® - Visualize.js (Production/Non-Production)	Premium	Core	4	1 year starting 7 September 2017 and ending 6 September 2018	Included in Subscription Fee
TIBCO Jaspersoft® - Multi-Tenant (Production/Non-Production)	Premium	Core	4	1 year starting 7 September 2017 and ending 6 September 2018	Included in Subscription Fee
TIBCO Jaspersoft® - Enterprise Edition (DevTest)	Premium	Instance	4	1 year starting 7 September 2017 and ending 6 September 2018	£ 16,800
Total					£ 50,400 (excluding VAT)

Appendix 1

Supplier Terms

Formed of Annexes A, B, C and D below.

Annex A

Definitions

“Authorized User” means Customer’s employees, contractors, or consultants who have agreed in writing to be bound by terms at least as protective of Licensor as those in this Agreement.

“Contact” means a Customer contact person who interfaces with TIBCO’s support personnel.

“Core” means, for TIBCO® Jaspersoft only, an individual processor within a CPU.

"CPU" means a chip that contains a collection of one or more cores on which the program is running. Regardless of the number of cores, each chip counts as one (1) CPU. This definition pertains solely to the TIBCO LogLogic Product Line and does not affect, nor is it affected by, the Processor Unit Type or Processor counting policy.

“Customer Application” means the ISV Customer or SaaS Customer software or hardware set forth in an Order Form.

“Dedicated” means a named Customer contact person who interfaces with TIBCO’s support personnel.

“Delivery Date” means (i) for Equipment and Software that is loaded on the Equipment, delivery is when the Equipment is initially delivered to a common carrier of TIBCO’s choice; (ii) for physical delivery of Software without Equipment, delivery is the date on which the Software, as contained in a physical media format, is initially delivered to a common carrier of TIBCO’s choice, unless stated otherwise; (iii) for Software electronic delivery, the date on which the Software and license keys, if applicable, are initially made available to Customer electronically.

"Developer" means a Named User authorized to use the Software to develop or configure projects, applications, or other software on a computer or on one or more Virtual Machines accessible only by the Developer.

“Error” means a material failure of the Licensor Software to conform to its functional specifications described in the Documentation that is reported by Customer to and replicable by Licensor.

"Extraordinary Corporate Event" means a corporate transaction which results in Customer divesting business operations and related assets to another or new entity, or acquiring, being acquired by, merged, or otherwise combined with another entity or into another entity's legal or corporate structure (including an acquisition of all or substantially all of the assets of another entity) which, prior to the corporate transaction, was not part of the Customer or its legal or corporate structure.

"Fixed Partitioning" means a mechanism for allocating processing resources on a multi-Physical Processor machine, such that the Software is limited to running on a fixed isolated subset of the Physical Processor(s), e.g. physical partitioning and fixed (hard) processor affinity.

"GB RAM" means total number of Gigabyte's of Random Access Memory (RAM) on one or more servers where the Software is installed or otherwise accessed by Customer. For the foregoing, server(s) means a physical or virtual computer with measurable amounts of RAM.

"Hot Standby" means an operational environment into which the licensed Software has been installed, but will not process data or requests. Data from the primary system is mirrored in near real time and both primary and secondary systems have identical data.

"Instance" means the smallest functionally-complete copy of Software. For the avoidance of doubt, the various components of one single Instance may be deployed on a single Server or separately spanning multiple Servers. For TIBCO Rendezvous®, "Instance" means a TIBCO Rendezvous® daemon or a TIBCO Rendezvous® client where each daemon or client is an operating system process with a unique process id. A TIBCO Rendezvous® client is a process linking TIBCO Rendezvous® client libraries. For TIBCO Enterprise Message Service™, "Instance" means a TIBCO Enterprise Message Service™ server or a TIBCO Enterprise Message Service™ client where each server or client is an operating system process with a unique process id. A TIBCO Enterprise Message Service™ client is a process linking TIBCO Enterprise Message Service™ client libraries. For TIBCO Web Messaging, "Instance" means a TIBCO Web Messaging gateway, where each gateway is an operating system process with a unique process id. For TIBCO FTL®, "Instance" means a process linking TIBCO FTL® client libraries, where each process is an operating system process with a unique process id.

“ISV Customer” means a Customer who is an independent software vendor and is designated as an ISV Customer in an Order Form.

"License Type" means the environment(s) in which the Software may be used (including without limitation, Production and/or Non-Production, Cloud Services or Hosted Services).

"Licensor Software" means the object code version (or, in the case of certain Software Services a machine and or disk image) of the Licensor's product on all supported Platforms then currently available, including Documentation and any subsequent Updates provided under Maintenance. Licensor Software excludes Third Party Software.

"Maintenance" means the provision of Updates and technical support services to resolve defects according to problem severity pursuant to current support and severity levels set forth in the Service Level Guide. If not otherwise set forth in an Order Form the support level that applies to the Software shall mean the lowest level available from Licensor for the applicable Software.

"Materials" means any tangible or intangible information, design, specification, instruction or data (and any modifications, adaptations, derivative works or enhancements) provided by Licensor during the performance of Consulting Services which incorporates, reinforces or is used to apply Licensor's configuration or implementation methodologies, processes and know-how to Customer's use of the Software, excluding Output.

"Module" means Software that is licensed to add functionality or capabilities in conjunction with an underlying Software product and may only be used in conjunction with the relevant underlying Software product. So long as Customer holds a valid license in the underlying Software product, Customer may use a reasonable number of copies of the Module to support the same business as the underlying Software product, but subject to any applicable site, Project or other business limitations or restrictions applicable to the underlying Software product. Customer's right to utilize Modules shall terminate automatically upon termination of the license in the underlying Software product.

"MSU" means Millions of Service Units per hour, based on the then current MSU rating established by IBM for IBM and IBM compatible hardware which is used for software pricing (not necessarily a direct indication of relative processor capacity) as set forth in IBM's generally available Large System Performance Reference.

"Multi-tenant" means an environment using the same Software and interfaces to configure resources and isolate Customer-specific traffic and data.

"Named Contact" means a named Customer contact person who interfaces with Licensor's support personnel.

"Non-Production" means a non-operational environment into which the Software may be installed, which is not processing live data, which is not running any operations of the Customer and which has not been deployed to permit any users to access live data. Non-Production environments include development, hot standby, high-availability, and test environments.

"Number of Units" means for each Order Form the entitlement to the Software and for multiple Order Forms, collectively, the cumulative entitlement to each of the Software and/or Software Services as designated and/or defined in applicable Order Forms, and including, if applicable, the current number of deployed Units as reported by Customer upon expiration of a Project or Enterprise Term.

"Orders" mean the total number of unique transactions submitted, stored in and counted by the applicable Software product during a period. Unless otherwise agreed, this period shall equal one (1) year from the Effective Date. The number of Orders shall reset to zero on each anniversary of the Effective Date. In no event shall the total number of Orders during a one (1) year period exceed the Number of Units set forth in the Order Form, unless Customer purchases additional Units.

"Output" means Confidential Information of Customer that has been input in the Materials or which is accessed and used as part of, or through Customer's use of the Software Services, including, but not limited to, data files, images, hyperlinks and written text that Customer or Customer's users, create, transmit, submit or display for Customer's use of the Software or Software Services.

"Physical Processor" means the smallest physical electronic circuit which is capable of reading and executing computer programs and providing results as output e.g. a CPU (socket), core, or thread.

"Platform" means for each discrete Software product, the operating system, hardware and/or environments (whether Cloud, Hosted, virtual or physical), upon which each product is supported, as set forth in its Documentation, or as specifically identified in the Software product name.

"Postal Directory" means a copy of the applicable product installed on a single Server.

"Processor" means a licensing Unit type for the Software, based on the count of Virtual and/or Physical Processors as described in the TIBCO Processor Licensing Policy located at <https://terms.tibco.com/posts/862139-tibco-processor-licensing-policy>.

"Product Lines" means sets of products and services determined by Licensor from time to time that are (a) attributed to a particular Licensor product family, or (b) made available under separate purchase or license models, in the case of either (a) or (b), as set forth in a Licensor product family's then current list price.

"Production" means an operational environment into which the licensed Software has been installed, which is processing live data and which has been deployed so that the intended users of the environment are able to access the live data.

"Read-only User" means an identifiable individual, not necessarily named at the time of license grant and regardless of whether the individual is actively using the Software at any given time, designated by Customer to access the Software for the sole purpose of searching for and viewing data.

"Record" means a unique data item stored in and counted by the applicable Software product. The total number of Records shall in no event exceed the Number of Units set forth in the Order Form, unless Customer purchases additional Units.

"SaaS Customer" means a Customer who provides software as a service to third parties and who is designated as a SaaS Customer in an Order Form.

"Service Levels Guide" means the document describing the support and severity levels located at <https://terms.tibco.com/posts/848144-service-levels-guide>.

"Site Copy" means the number of copies of the Software licensed for use at the physical location of the Customer entity signing an Order Form or as otherwise specifically designated as the site location in an Order Form.

"Software" means collectively Licensor Software and Third Party Software.

"Specialty Processor" means a special purpose processor installed and enabled on IBM System z hardware, designed to run allowed workloads at the full rated capacity of the Server.

"Subscription" means the on premise license to use the Software set forth in an Order Form and identified as Subscription, together with the right to receive Maintenance and which includes the right to use Updates during the Subscription Term.

"Supplemental Terms" means additional product or service-specific terms and conditions that are set forth in one or more supplemental terms incorporated by reference in the Agreement or the applicable Order Form or the additional license requirements and notices, if any, contained in the Documentation.

"Term" means the duration of the Subscription, Maintenance, as applicable, as set forth in the Order Form, including renewal terms if any.

"Test" means a shared environment into which Customers can test functionality or develop before deploying to Production.

"Third Party Software" means third-party software, including Documentation and Updates (if Maintenance is made available by Licensor for Third Party Software) identified by its company and/or product name, the provision of which by Licensor is made solely as an accommodation to and in lieu of Customer purchasing a license for Third Party Software directly from the third party vendor.

"Unit" means a license restriction describing the manner in which a copy (or multiple copies) of the Software may be deployed (including, without limitation, Processor, Pack, Named User, Connected Processor, and Processor Source Locked) and is the mechanism used to determine the Number of Units licensed under this Agreement, an Order Form or a purchase order.

"Updates" means Software bug fixes, enhancements, and upgrades, if and when made generally available by Licensor under Maintenance. Updates may include new or additional Platforms that are deemed (at Licensor's sole discretion) to have no more than a minimum difference in price, features and functionality from previously available Platforms.

"User Record" means a Shopper's record that is populated with data received by Licensor from the Customer, Customer's authorized vendors, Affiliates, or other designees in the Subscription service.

"Virtualized Environment" means an operating system environment where multiple Virtual Machines can run on a single physical machine or cluster, sharing the physical machine resources. In a Virtualized Environment, a Virtual Processor can run on only one Physical Processor at a time.

"Virtual Machine" means a software implementation of a machine that executes programs like a physical machine. An essential characteristic of a Virtual Machine is that the software running inside of the Virtual Machine is limited to the resources and abstractions provided by the Virtual Machine. The processing capacity of a Virtual Machine is measured in Virtual Processors.

"Virtual Processor" means a simulation of a Physical Processor that is serially time-multiplexed across one or more Physical Processors.

"Warm Standby" means an operational environment into which the licensed Software has been installed, where the Software components on the secondary system are but idle, not doing any work such as mirroring, maintaining a heartbeat, etc.

Annex B

Master Terms

Except as expressly set forth in the "Remedies" section, all fees and charges paid under or in connection with the Agreement are non-refundable and no right of set off exists.

Ownership. Software, Materials, and Documentation (collectively "Protected Materials") are proprietary to Licensor and its licensors and protected by applicable U.S. and international patent, copyright, trademark and trade secret laws. Licensor and its licensors shall retain ownership in the Protected Materials and all derivatives thereof, and any intellectual property or other rights embodied therein. All proprietary notices incorporated in or affixed to any Protected Materials must be duplicated by Customer on all copies of the Protected Materials, as applicable, and must not be altered, removed or obliterated. Except as stated herein, Customer receives no other rights to use any of Licensor's trade names, trademarks, service marks, logos, domain names, and other distinctive brand features.

Back up. Additional Customer Obligations. (a) Customer is responsible for performing and securing a full system, data back-up on a regular basis (the frequency of which shall be at the Customer's sole discretion) and retaining an electronic copy of Customer's data derived from the back-up, which is stored in a secure place at an alternate location. Licensor assumes no responsibility and accepts no liability for the protection, loss, destruction or maintenance of Customer's data even though Licensor may from time to time recommend daily system back-up and verification procedures. (b) Customer shall provide Licensor with good faith cooperation and access to such information, facilities, personnel and equipment as may be reasonably required by Licensor in order to perform its obligations under this Agreement, including but not limited to, providing security access, information, and software interfaces to Customer's applications. Customer acknowledges and agrees that Licensor's performance is dependent upon the timely and effective satisfaction of Customer's responsibilities hereunder and timely decisions and approvals of Customer. Licensor shall be entitled to rely on all decisions and approvals of Customer.

Indemnity. Licensor hereby agrees at its own expense to defend or, at its option, settle, any claim or action brought against Customer to the extent it is based on a claim that the Licensor Software, or Materials, all as updated by Licensor and used in accordance with the Agreement, infringes any patent, copyright, or any trade secret of a third party. Furthermore, Licensor will indemnify and hold Customer harmless from and against damages, costs and fees reasonably incurred (including reasonable attorneys' fees) that are attributable exclusively to such claim or action and which are assessed against Customer in a final judgment ("Indemnity"). Licensor's obligations to defend, settle or indemnify Customer are subject to Customer promptly notifying Licensor in writing of such claim; Licensor having the exclusive right to control such defense and/or settlement; and Customer providing reasonable assistance (at Licensor's expense) in the defense thereof. In no event shall Customer settle any claim, action or proceeding without Licensor's prior written approval.

INDEMNITY EXCLUSIONS. LICENSOR SHALL NOT BE LIABLE TO THE EXTENT ANY CLAIM REGARDING CUSTOMER'S USE OF THE LICENSOR SOFTWARE, SOFTWARE SERVICES AND MATERIALS IS BASED UPON OR ATTRIBUTABLE TO: (A) MODIFICATIONS MADE BY CUSTOMER TO THE LICENSOR SOFTWARE, SOFTWARE SERVICES AND MATERIALS OR PORTIONS THEREOF; (B) SUCH CLAIM WOULD HAVE BEEN AVOIDED BY USE OF THE THEN CURRENT RELEASE OF THE LICENSOR SOFTWARE, OR SOFTWARE SERVICES MADE AVAILABLE TO CUSTOMER; (C) CUSTOMER'S CONTINUED ALLEGEDLY INFRINGING ACTIVITY AFTER BEING PROVIDED WITH MODIFICATIONS THAT WOULD HAVE AVOIDED THE ALLEGED INFRINGEMENT; OR (D) CUSTOMER'S OUTPUT.

REMEDIES. IN THE EVENT OF A BREACH OF AN INDEMNIFICATION OBLIGATION THAT ARISES UNDER THE SECTION ENTITLED "INDEMNITY", LICENSOR'S LIABILITY AND CUSTOMER'S SOLE AND EXCLUSIVE REMEDY (IN ADDITION TO THE "INDEMNITY") SHALL BE FOR LICENSOR AT ITS OWN EXPENSE, TO EITHER (A) REPAIR, REPLACE OR MODIFY THE AFFECTED LICENSOR SOFTWARE OR SOFTWARE SERVICES OR RE-PERFORM THE AFFECTED CONSULTING SERVICES OR (B) ALTERNATIVELY, PROCURE FOR CUSTOMER THE RIGHT TO CONTINUE TO USE THE AFFECTED LICENSOR SOFTWARE, SOFTWARE SERVICES, OR MATERIALS. IF THE FOREGOING REMEDIES ARE NOT COMMERCIALY FEASIBLE (IN THE REASONABLE OPINION OF LICENSOR), LICENSOR MAY (I) CANCEL THE APPLICABLE ORDER FORM AND, AS APPLICABLE, FOR THE AFFECTED LICENSOR SOFTWARE OR SOFTWARE SERVICES, REFUND THE LICENSE FEES AND ANY UNEARNED MAINTENANCE FEES PAID TO LICENSOR BY CUSTOMER FOR THE AFFECTED LICENSOR SOFTWARE OR SOFTWARE SERVICES, OR (II) FOR CONSULTING SERVICES REFUND ALL AMOUNTS PAID TO LICENSOR BY CUSTOMER FOR THE AFFECTED CONSULTING SERVICES.

Warranties and Disclaimers. THE WARRANTIES, IF ANY, SET FORTH IN THE SUPPLEMENTAL TERMS ARE IN LIEU OF, AND LICENSOR, ITS LICENSORS, AND SUPPLIERS EXPRESSLY DISCLAIM TO THE MAXIMUM EXTENT PERMITTED BY LAW, ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, ORAL OR WRITTEN, INCLUDING, WITHOUT LIMITATION, (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. ALL ALPHA, BETA, DEVELOPER EVALUATION, FREE TRIAL AND EVALUATION LICENSES ARE PROVIDED ON AN AS IS AND AS AVAILABLE BASIS, WITHOUT WARRANTIES OF ANY KIND, MAINTENANCE OR INDEMNITY OBLIGATION ON THE PART OF LICENSOR.

Export. Software, Software Services, Documentation, Materials 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 of other countries. Customer hereby agrees that it will not export or re-export or provide access to the Software, Software Services, Documentation, and Materials in any form in violation of any applicable export or import laws of any jurisdiction.

Government Use. If the Software, Software Services, 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, Software Services, 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.

Supplier Audit. During the term of any Order Form and for a period of one (1) year following expiration or termination of an Order Form, Customer hereby grants Licensor and its independent auditors, at Licensor's expense, the right to audit Customer's compliance with this Agreement upon ten (10) days' notice and at reasonable times and to report any results to Licensor's licensors. Customer shall at no cost to Licensor (i) provide any assistance reasonably requested by Licensor or its designee in conducting any such audit, including installing and operating audit software, (ii) make requested personnel, records, and information available to Licensor or its designee, and (iii) in all cases, provide such assistance, personnel, records, systems access and information in an expeditious manner to facilitate the timely completion of such compliance verification. Customer's failure to comply with the provisions of this section will constitute a material breach of this Agreement. If the audit reveals any noncompliance, Customer shall reimburse Licensor for the reasonable costs and expenses of the audit (including but not limited to reasonable attorneys' fees), and Customer shall promptly cure any such noncompliance; provided, however, that the obligations under this section do not constitute a waiver of Licensor's termination rights and do not affect Licensor's right to payment for Software, Software Services or Materials related to usage in excess of the Number of Units.

Annex C

Supplemental Terms – Subscription

1. Subscription

- (a) License Grant. Subject to timely payment of the license fees and compliance with the terms of the Agreement, Licensor hereby grants to Customer for the Term a limited, non-transferable, non-sublicensable, non-exclusive and license to install, run and use the Software set forth in an Order Form solely for Customer's internal business purposes on a Subscription basis. Use of the Software is expressly limited to the business model configuration, if any, and to the maximum Number of Units and the use rights and limitations as set forth in the Order Form. Additional Units and associated Maintenance must be purchased under an additional Order Form at the pricing and under the licensing model in effect at the time the additional licenses and services are added, in the event actual use exceeds the licensed quantities.
- (b) Delivery. Software shall be delivered electronically and delivery deemed complete when made available to Customer.
- (c) Subscription Term. The Term commences on the Order Form Effective Date and continues for the duration indicated on the Order Form.
- (d) License Grant Restrictions. The Subscription does not permit Customer to: (i) make more copies of the Software than the specified Number of Units set forth 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 otherwise use the Software for purposes of providing processing services, including, without limitation, providing third-party hosting, application integration, application service provider-type services, service bureau or for any similar services; (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; and (vii) 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. Customer may engage in such conduct as is necessary to ensure the interoperability of the Software as required by law, provided that 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. Customer shall use Third Party Software solely in conjunction with the Licensor Software and Customer shall have no broader use rights with respect to the Third Party Software than it has to the Licensor Software. Software does not include multiple Platforms if the Software product is licensed on a Platform specific basis as designated in the Software product name or listed in an Order Form or purchase order.
- (e) If Customer uses any third party software, including any open source software, in conjunction with any Software, Customer must ensure 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.
- (f) Limited Warranties and Remedies. Licensor warrants that, for 90 (ninety) days following the Delivery Date ("Software Warranty Period"), the Licensor Software, as updated and used in accordance with the Documentation will operate in all material respects in conformity with the functional specifications described in the Documentation. Licensor is not responsible for any claimed breach of any warranty set forth in this section caused by: (i) modifications made to the Licensor Software by anyone other than Licensor; (ii) the combination, operation or use of the Licensor Software with any items that are not part of the certified operating environment; (iii) Customer's failure to use any new or corrected versions of the Licensor Software made available by Licensor; (iv) Licensor's adherence to Customer's specifications or instructions; (v) Customer deviating from the Licensor Software operating procedures described in the Documentation or
(vi) Errors caused by customizations. Correction for defects or issues traceable to the above warranty exclusions shall be billed at Licensor's standard time and material charges. If the Licensor Software does not perform as warranted during the Software Warranty Period, Licensor shall use commercially reasonable efforts to correct Errors. As Customer's exclusive remedy for any claim under this warranty, Customer shall promptly notify Licensor in writing of its claim within the Software Warranty Period. Provided that such claim is determined by Licensor to be Licensor's responsibility, Licensor shall, within 30 (thirty) days of its receipt of Customer's written notice, (i) correct such Error; (ii) provide Customer with a plan reasonably acceptable to Customer for correcting the Error, or (iii) if neither (i) nor (ii) can be accomplished with reasonable commercial efforts from Licensor, then Licensor may terminate the Subscription for the affected Licensor Software and Customer will be entitled to a refund of the pre-paid unearned license fees paid for the Subscription of the affected Licensor Software. The preceding warranty cure shall constitute Licensor's entire liability and Customer's exclusive remedy for cure of the warranty set forth herein.

2. Alpha, Beta, Developer Evaluation, Free Trial and Evaluation License

- (a) If the Software is provided or accessed for Demonstration or Evaluation purposes or for Alpha or Beta testing, then Customer agrees, in addition to all other applicable terms and conditions, (i) to use the Software solely for such purposes,

(ii) that the Software will not be used or deployed in or on a Production or development environment, (iii) that such use shall automatically terminate upon the earlier of (1) thirty (30) days from the date Customer receive the right to install or access the Software, (2) Customer's receipt of notice of termination from Licensor, or (3) Customer no longer has access to the Software, and (iv) that the Software is provided "AS IS" without Maintenance or any warranties or indemnities.

- (b) If the Software is provided or accessed for Developer evaluation, then Customer agrees (i) to use the Software solely for development evaluation purposes, (ii) that such use shall not be in a Production environment; (iii) that such use shall automatically terminate upon the earlier of (1) ninety (90) days from the date Customer receives the right to install or access the Software, (2) Customer's receipt of notice of termination from Customer, or (3) Customer no longer has access to Software Services and (iv) that the Software is provided "AS IS" without Maintenance or any warranties or indemnities.
- (c) If Customer is using a free trial version of Software, Licensor may stop providing the Software to Customer or Customer's end users at Licensor's sole discretion, without any prior notice.

3. TIBCO additional terms below specifically apply to Jaspersoft:

3.1. In the event the Order Form designates Customer as an SaaS Customer,

- (a) the following additional terms shall apply:

- (i) During the Term, and for the purpose of supporting SaaS Customer's implementation of its Customer Application, Licensor grants to Customer a non-exclusive and non-transferable license to: (a) reproduce or modify copies of the source or binary code of Software; (b) integrate the Software into the hosted Customer Application (the "Service"); (c) market the Software only as integrated into and combined with the Service to add substantial value to the Service; (d) use the Software in connection with Customer's development, marketing and support of the Software in combination with the Service; and (e) allow end users to access and use the Software, solely as part of the Service.
- (ii) The foregoing license is subject to the following limitations: (a) each reproduced copy or modified version of Software integrated with the Service must be reproduced, incorporated, or modified in such a way that the Software is not made available to any third party on a stand-alone basis independent of the Service in which it is incorporated; (b) the Software shall reside on Customer's own servers and is subject to the limitations on the Number of Units specified in the Order Form; (c) Customer shall require each end user to accept terms of use of the Service that are no less protective of the Software than the Agreement, and shall not permit end users to violate any restriction set forth in the Agreement; and (d) Customer may not allow access and use of the Software by any end user which Licensor reasonably considers to be a competitor.
- (iii) Notwithstanding the foregoing, with respect to the TIBCO Jaspersoft Business Intelligence Suite Professional Software product, SaaS Customer may not incorporate any source code into the Customer Application or distribute or sublicense such source code.
- (iv) Although Customer shall own any modifications it makes to the Software in connection with the Customer Application, Customer shall not use such modifications in a manner that is competitive, directly or indirectly, with Licensor. Customer may, with proper attribution and reproduction of any Licensor copyright or other proprietary notices, include the Documentation as part of the documentation for the Customer Application. The Documentation may not be re-sold, or distributed on a stand-alone basis.
Maintenance shall not be provided to end users of Customer. Licensor will only provide third-level support directly to Customer for the Software. Customer shall be responsible for providing first- and second-level support (e.g., accepting and responding to all contacts and requests made by its end users). Licensor is not obligated to support any Customer Application.

3.2 In the event that Customer wishes to re-brand or "white label" the Software, Customer shall use the phrase "Powered by TIBCO" on any distributed reports or report portal and shall not remove or delete any of Licensor's copyright or other proprietary notices.

3.3 Customer shall employ reasonable professional standards in performance of its right and obligations under the Agreement and this Order Form, and shall avoid deceptive, misleading or unethical practices that may be detrimental to Licensor or the Software. CUSTOMER FOR ITSELF AND ON BEHALF OF ITS EMPLOYEES AND AGENTS REPRESENTS AND WARRANTS THAT IT SHALL COMPLY WITH THE U.S. FOREIGN CORRUPT PRACTICES ACT OF 1977 (AS AMENDED), THE TIBCO BUSINESS CODE OF CONDUCT AND ETHICS, AND ANY SIMILAR LAWS IN THE COUNTRIES WHERE CUSTOMER IS PERFORMING UNDER THIS ORDER FORM, AND ALL APPLICABLE LOCAL ANTI-BRIBERY LAWS AND SHALL NOT PARTICIPATE IN, OR PROVIDE INFORMATION THAT COULD BE CONSTRUED TO FURTHER, ANY ECONOMIC OR OTHER TYPE OF BOYCOTT NOT SANCTIONED BY THE UNITED STATES GOVERNMENT AND APPLICABLE LOCAL LAWS.

Annex D

Supplemental Terms – Maintenance

- (a) Licensor will use commercially reasonable efforts to resolve defects according to problem severity determined by Licensor in accordance with the applicable Maintenance service levels set forth in the Order Form and as more fully described in the Service Levels Guide a current version of which can be found at <https://terms.tibco.com/posts/848144-service-levels-guide>.
- (b) During the Maintenance Term, Customer may notify Licensor's support center or customer portal of an error, defect, or malfunction in the Licensor Software. Maintenance includes the right to use Updates as replacements for existing copies, whether provided under Maintenance, Warranty or which are provided for any other reason by Licensor, or Licensor's respective authorized resellers or distributors.
- (c) Subject to the quantity of Licensor Software licensed and payment of any applicable Maintenance fees, Customer's right to use Updates extends to any supported Platform then currently available for each discrete Licensor Software product under Maintenance. Updates may include new or additional Platforms that are deemed (at TIBCO's sole discretion) to have no more than a minimum difference in price, features and functionality from previously available Platforms.
- (d) Licensor shall provide Maintenance for a release version of the Licensor Software products for at least twelve months after a new release version is generally available. Licensor reserves the right to end-of life a particular Software. Licensor shall provide up to twelve months advance written notice prior to retirement of any Licensor Software product.
- (e) In order to receive Maintenance, including Updates, Customer shall provide: (i) a detailed problem description; (ii) a method for repeatedly reproducing the problem; and (iii) reasonably continuous access to a Customer's contact.
- (f) Maintenance does not include support for any non-Licensor Software, custom configuration, product modification, new products and functionality for which Licensor is charging an additional license fee, services at a Customer site, or any work product provided under Consulting Services.
- (g) Licensor reserves the right to make fixes only to the most current version of the relevant Licensor Software, and may elect, at its discretion, to make fixes generally available for minor release versions or the latest service pack for a supported version.
- (h) In the event that a request for Maintenance reveals that the cause of the problem is not an error, defect or malfunction in the unmodified Licensor Software, Customer shall pay Licensor for its work on a time and materials basis, plus meals, lodging, travel and other reasonably necessary out-of-pocket expenses.
- (i) Maintenance for a Subscription Term may be included in the Subscription fees, Maintenance terminates on expiration of the Subscription Term.
- (j) Customer must purchase the same service level of Maintenance for all quantities of Licensor Software products that it has licensed from Licensor or any third party. Each license grant is incremental to all prior license grants and consequently each grant is subject to additional Maintenance, if purchased. For the avoidance of doubt, Maintenance fees are based on cumulative license fees paid.
- (k) Reinstatement of Maintenance is subject to payment of Maintenance fees for any period during which Maintenance had lapsed and for the twelve month period commencing with the date Maintenance is reinstated.
- (l) Cumulative annual Maintenance fees after the initial Maintenance term shall increase by five (5)%.