Pepperdata Subscription License and Service Agreement (through AWS Marketplace)

Last Revised: February 9, 2021

Pepperdata, Inc. ("**Pepperdata**") is willing to provide access to its software ("**Software**") and accompanying documentation ("**Documentation**") (the Software and Documentation are together referred to as the "**Product**") to you (the individual and business entity you represent ("**you**") only if you accept all the terms and conditions of this Pepperdata Subscription License and Service Agreement ("**Agreement**"). Such access will be provided through the software marketplace (the "**AWS Marketplace**") operated by Amazon Web Services, Inc. ("**AWS**"). You understand and agree that Pepperdata may modify this Agreement from time to time, as further provided in this Agreement. Please check Pepperdata's listing on the AWS Marketplace for the latest version of this Agreement.

BY DOWNLOADING, ACCESSING OR USING ANY PORTION OF THE PRODUCT, YOU AGREE TO AND ARE BOUND BY THIS AGREEMENT. If you do not agree to the terms of this Agreement, you are not authorized to use the Product. This Agreement incorporates by reference the order form that you are required to complete when registering for and purchasing your license subscription to the Product on the AWS Marketplace, including then-current pricing for the Product set forth or referenced on such form (together, the **"Order Schedule"**).

1.   Hosted Service; Restrictions.

1.   **Software Access**. The Software will be made available to you through the AWS Marketplace on a remote access basis (the "**Service**"), as further described in the Order Schedule. Subject to the terms and conditions of this Agreement, during the period this Agreement is in effect (together, the "**Term**"), Pepperdata will permit you to access and use the Service only for your internal business purposes as specified on the Order Schedule (the "**Permitted Use**"). The Permitted Use shall be limited to the number of Instances for which you have purchased a license from Pepperdata as provided in the Order Schedule. As used herein, **"Instance"** means each computing device or other connection point, whether physical or virtual, with respect to which you use the Service. You may permit access to and use of the Product by your employees and by your independent contractors who are bound by obligations consistent with this Agreement and who are not competitors of Pepperdata.

2.   **Restrictions.** The Product and the Service contain proprietary and trade secret information of Pepperdata. You will not, nor will you directly or indirectly permit anyone else to: (a) copy any portion of the Product; (b) adapt, alter, modify, improve, translate, or create derivative works of any portion of the Product, or circumvent or disable any technical restrictions in the Product; (c) attempt to access or download the technology used by Pepperdata to provide the Service; (d) or reverse engineer, decompile, disassemble, or otherwise attempt to reconstruct or obtain the source code to all or any portion of the Product or the underlying ideas, functions, algorithms, structure, sequence, organization, methods of operation, or trade secrets of or disclosed by the Software or the Service; (e) except as expressly permitted in this Agreement, provide any third party access to the Product or Service, or use the Product or Service on behalf of any third party, including as part of a time-sharing, outsourcing or service bureau environment; (f) transmit any file which contains viruses, worms, Trojan horses or any other contaminating or destructive features, or that otherwise interferes with the operation of the Product or Service; (g) attempt to test the vulnerability of the Service or Pepperdata's system or network or circumvent any security or authentication measures protecting the Service; (h) remove any proprietary notices or labels in the Product or output from use of the Product, including the Service; or (i) use the Product in any manner detrimental to Pepperdata, including any use of the Product or the Service for the purpose of creating or improving any services or technology that performs similar functions or is competitive with the Product, or for benchmarking purposes. You must comply with all applicable laws and regulations in connection with this Agreement, including in particular United States exports laws and regulations, and you covenant, represent and warrant that neither you nor any of your users have been prohibited from participating in U.S. export transactions by any federal agency of the U.S. government.

3.   **Open Source Software**. Certain of the Software may be subject to open source or other third party terms, as identified by Pepperdata in the applicable Documentation. If any such terms conflict with this Agreement, the other terms control with respect to that portion of the Software only.

4.   **User Restrictions**. Each user of the Service must be assigned a unique user identification and password. Each user must provide current, complete and accurate registration information for the Service. You are responsible for the security of the user access protocols and be responsible for all activity carried out under your account using associated user names and passwords. You agree to notify Pepperdata immediately of any unauthorized use of the Service or any other known or suspected breach of security.

5.   **Support and Other Services**. If the Order Schedule specifies any support as part of your subscription to the Service, Pepperdata will use commercially reasonable efforts to provide the specified technical support in the use of the Service as provided in the then-current Pepperdata Technical Support Handbook available to customers at help.Pepperdata.com ("**Support Handbook**"), which is incorporated into and made part of this Agreement by this reference. Such support may be requested only through your administrator and authorized contacts as designated in the Order Schedule. Any other services to be provided by Pepperdata to you are not covered by this Agreement and must be purchased under separate terms and conditions.

6.   **Modifications to Service and this Agreement**. From time to time, Pepperdata reserves the right to release updates, fixes or new versions of the Service and Product and to otherwise change or discontinue any aspect or feature of the Product or Service, which will apply generally to customers of the Product or Service. Changes may not be consistent across all platforms and devices. Pepperdata will use commercially reasonable efforts to notify you (including posting through the Service) of changes to the Product which Pepperdata believes will materially affect use of the Product or Service. In addition, Pepperdata reserves the right, at any time, to make changes to this Agreement by posting the modified version through the Service (which will be effective immediately such posting) or upon notice to you as provided in Section 8.4 below (which will be effective as of the date specified in Pepperdata's notice to you). **YOU AGREE THAT IF YOU USE THE PRODUCT OR SERVICE AFTER PEPPERDATA MAKES ANY CHANGE TO THE SERVICE OR THIS AGREEMENT, YOU THEREFORE ACCEPT, AND AGREE TO BE BOUND BY, SUCH CHANGE.**

2.   **Confidentiality.**

2.1.   **Generally.** Each party agrees to keep confidential and not disclose to any third party, and to use only for purposes of performing or as otherwise permitted under this Agreement, all proprietary or confidential information disclosed or made available by the other party pursuant to this Agreement ("**Confidential Information**"). You agree that Pepperdata's Confidential Information includes without limitation the Product and the Service, and techniques, processes, pricing, information and strategies related to the current, future, and proposed products and services of Pepperdata, and the terms of this Agreement. Pepperdata agrees that your Confidential Information consists of your non-public information regarding the Permitted Use that is processed through the Service to the extent specific to you. Each party will permit access to the other party's Confidential Information only by its employees, contractors and agents who have a need to know in furtherance of this Agreement. Each party shall take measures similar to those it takes with its own confidential information of a similar nature, and in any case no less than reasonable measures, to maintain the Confidential Information of the other party in confidence.

2.2.   **Disclosure.** Each party may disclose the other party's Confidential Information to the extent required by law, provided that the party gives the other party reasonable advance notice of such required disclosure and cooperates with the other party so that it has the opportunity to obtain appropriate confidential treatment for such Confidential Information.

3.   **Ownership/IP.**

3.1.   **Ownership.** Except for those limited license and access rights expressly granted in Section 1, Pepperdata retains all right, title, and interest (including all intellectual property rights) in and to the Product and the Service.

3.2.   **Feedback.** Notwithstanding any other provision of this Agreement, Pepperdata may use any technical information, suggestions or feedback relating to the Product and/or the Service, and anonymized data created in connection with your use of the Product and/or Service, for Pepperdata's business purposes, including for product support and product improvement and development. Pepperdata will have no liability to you for such use, provided that Pepperdata will not share any such information with any third party in a manner that would identify you.

4.   **Term and Termination.**

4.1.   **Termination.** This Agreement is effective until terminated. You may terminate this Agreement at any time by giving Pepperdata no less than 30 days prior written notice. Pepperdata may terminate this Agreement immediately by giving written notice to you if you breach any of the material terms or conditions of this Agreement (including but not limited to your payment obligations) and fails to cure such breach within 15 days of receipt of written notice, except that in the event of your breach of Section 1.2 (Restrictions) or Section 2 (Confidentiality), such termination will be effective immediately. Pepperdata also may terminate at any time any free subscription to the Service immediately with or without notice.

4.2.   **Suspension Rights.** In addition, Pepperdata reserves the right to take reasonable action, including suspension or termination of your access to or use of the Service, at any time without or without notice to you if Pepperdata reasonably believes continued access or use poses a security risk or may compromise the integrity of the Service or Pepperdata's or any other customer's or third party's network or system.

4.3. **Effect of Termination.** Upon expiration or termination of this Agreement, (i) you shall cease all use of the Product and will no longer be authorized to use the Product or the Service; and (ii) you will return to Pepperdata or destroy all copies of the Confidential Information of Pepperdata in your possession or under your control. Sections 1.2, 2, 3, 4.3, 5, 6.3, 7 and 8 shall survive any expiration or termination of this Agreement.

5.   **Payment and Related Terms.**

5.1. **Fees; Changes to Fees.** As consideration for the license and rights granted to you under this Agreement, you agree to pay all fees as provided in the Order Schedule. Pepperdata may change the fees for subscription renewals upon 90 days' notice. The new price also will apply to new subscriptions after the effective date of the price change.

5.2. **Payment.** You agree to pay all fees for the Service within the time period as provided in the Order Schedule (or if no such time period is provided, then within 30 days of invoice). Your payment is not subject to setoff and, unless otherwise provided in this Agreement, is non-refundable. You agree to pay a late fee of 1.5% per month (or, if less, the maximum amount allowed by applicable law) along with costs and expenses (including collection agency, attorneys' fees and the like) relating to collection of past due amounts.

5.3. **Taxes.** All fees are stated and payable in U.S. dollars and are exclusive of sales, use, excise, property or any other taxes. You are responsible for payment of, and will indemnify and hold harmless Pepperdata against, all such taxes (except those based on Pepperdata's net income).

5.4. **Certification.** From time to time as reasonably determined by Pepperdata, Pepperdata may request, and you agree to promptly provide, written certification signed an officer of your company that your use of the Product is in accordance with this Agreement.

6.   **DISCLAIMER OF WARRANTIES.** THE PRODUCT AND SERVICE ARE PROVIDED "AS IS," AND PEPPERDATA AND ITS LICENSORS AND SUPPLIERS, IF ANY, MAKE NO WARRANTY OF ANY KIND, WHETHER EXPRESS OR IMPLIED, REGARDING THE PRODUCTS OR SERVICE AND SPECIFICALLY DISCLAIM THE WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND AGAINST INFRINGEMENT. PEPPERDATA DOES NOT WARRANT THAT THE PRODUCTS OR THE SERVICE WILL MEET YOUR REQUIREMENTS, OPERATE WITHOUT INTERRUPTION, OR BE ERROR FREE OR SECURE.

7.   **Limitation of Liability.**

7.1. **Liability Limitation.** TO THE FULLEST EXTENT PERMITTED BY LAW, (a) PEPPERDATA WILL NOT BE LIABLE IN CONNECTION WITH THIS AGREEMENT FOR ANY INCIDENTAL, CONSEQUENTIAL, SPECIAL, PUNITIVE OR OTHER INDIRECT DAMAGES (INCLUDING WITHOUT LIMITATION LOST PROFITS, LOST REVENUES, UNREALIZED SAVINGS AND LOST BUSINESS OPPORTUNITIES), AND INCLUDING CLAIMS BASED ON NEGLIGENCE, AND (b) PEPPERDATA'S AGGREGATE LIABILTY SHALL NOT EXCEED THE FEES PAID BY YOU FOR THE SERVICE UNDER THE APPLICABLE ORDER SCHEDULE PURSUANT TO THIS AGREEMENT.

7.2. **No Liability for Hazardous Activities.** THE SOFTWARE AND THE SERVICE ARE NOT INTENDED FOR USE IN CONNECTION WITH ANY HIGH RISK OR STRICT LIABILITY ACTIVITY (INCLUDING, WITHOUT LIMITATION, AIR OR SPACE TRAVEL, POWER PLANT OPERATION, OR LIFE SUPPORT OR EMERGENCY MEDICAL OPERATIONS), AND PEPPERDATA MAKES NO WARRANTY AND SHALL HAVE NO LIABILITY IN CONNECTION WITH ANY USE OF THE SOFTWARE OR SERVICE IN SUCH SITUATIONS.

8.   **General.**

8.1. **Assignment.** This Agreement is binding upon and for the benefit of the parties and their permitted successors and assigns. Neither party may assign or transfer this Agreement or any of its rights or obligations under this Agreement without the other party's prior written consent. However, no such consent is needed if a party assigns and transfers this Agreement to an affiliate or as part of a transfer of the majority of its stock or all or substantially all of its assets in connection with a merger, acquisition, or similar event, provided that in no event may you assign this Agreement, or your licenses or rights pursuant to this Agreement, to a competitor of Pepperdata without Pepperdata's prior written consent.   In addition, Pepperdata may subcontract its obligations pursuant to this Agreement but remains responsible for performance of such obligations. Any attempted transfer, sublicense or assignment in violation of this Section is null and void.

8.2. **Governing Law**. The Agreement is governed by the laws of the State of California, without regard to its conflicts of laws provisions, and any proceeding related to this Agreement must be brought in a federal or state court located within the Northern District of California. Notwithstanding the foregoing, either party may seek interim injunctive relief in any court of

appropriate jurisdiction with respect to any alleged breach of such party's proprietary rights. The parties disclaim the application of the United Nations Convention on Contracts for the International Sale of Goods and the Uniform Computer Information Transactions Act to this Agreement.

8.3.   **Severability; Waiver.**   If any provision of this Agreement is unenforceable, such provision will be changed and interpreted to accomplish the objectives of such provision to the greatest extent possible under applicable law and the remaining provisions will continue in full force and effect.   Any failure to strictly enforce any provision of this Agreement will not be a waiver of that provision or any further default.

8.4.   **Notices.**   Each party consents to receiving electronic communications and notifications from the other party in connection with this Agreement.   Unless otherwise provided in this Agreement, notices must be in writing and will be considered given when sent by e-mail, by personal delivery, by registered or certified mail (return receipt requested) or by nationally recognized courier service.   Notice will be deemed given upon written verification of receipt.   Notices to Pepperdata must be sent to its principal business office, Attention: Legal Department (email: legal@pepperdata.com), and notices to you will be sent to the address (including email address) you provide on the Order Schedule.   Each party may change its address by written notice in accordance with this paragraph.

8.5.   **Entire Agreement; Modifications.**   This Agreement constitutes the entire agreement between Pepperdata and you with respect to the subject matter of this Agreement.   Except as otherwise expressly provided in this Agreement, this Agreement may be amended only in writing and signed by both parties. This Agreement is solely between Pepperdata and you.   Neither AWS nor any of its affiliates are a party to this Agreement, and none of them will have any liability or obligations hereunder.   Purchase orders and other documents you may issue in connection with this Agreement will not modify these terms.