



Last Updated on 5/9/2019

## University Dataport Data License Agreement

This Agreement is entered into by and between Pecan Street Inc. (“Pecan Street” or “we” or “our”), a Texas non-profit corporation and you (“your” or “user”).

**IMMEDIATELY STOP USING THIS WEBSITE AND CONTACT PECAN STREET IF YOU INTEND TO USE ANY CONTENT OBTAINED FROM ANY PORTION OF THIS WEBSITE FOR COMMERCIAL PURPOSES AND YOU DO NOT HAVE AN UNEXPIRED COMMERCIAL ACCESS DATA LICENCE AGREEMENT IN EFFECT WITH PECAN STREET.**

### ACCEPTANCE

By accessing and using the content, documentation, and related materials made available to you through this website (“Dataport”), you are accepting and agreeing to the terms of this Agreement on behalf of yourself and/or the entity you represent in connection with this access. You represent and warrant that you have the right, authority, and capacity to accept and agree to these terms on behalf of yourself or the entity you represent. If you do not agree with any of the provisions of these terms, you **MUST** immediately cease accessing or using Dataport. **IF YOU ARE ACCESSING DATAPORT FOR THE PURPOSE OF USING ANY DATAPORT CONTENT FOR COMMERCIAL PURPOSES, YOU MUST HAVE AN UNEXPIRED COMMERCIAL ACCESS DATA LICENCE AGREEMENT IN EFFECT WITH PECAN STREET, OTHERWISE, YOU MUST IMMEDIATELY CEASE ACCESSING DATAPORT.**

**YOUR ACCESS AND USE OF DATAPORT FOR COMMERCIAL PURPOSES IS GOVERNED BY THE TERMS AND CONDITIONS OF THE UNEXPIRED COMMERCIAL ACCESS DATA LICENCE AGREEMENT CURRENTLY IN EFFECT BETWEEN YOU AND PECAN STREET.**

## **I. DEFINITIONS**

In this Agreement, unless the context clearly indicates otherwise, the following words and expressions shall have the meanings defined here:

- 1.** “Academic Researcher” means an individual who is a teaching-faculty member or an enrolled student at a four-year postsecondary degree-granting academic institution in the U.S. (or the equivalent of such in other nations); or an individual conducting specific research that Pecan Street deems, in its sole discretion, upon review, to be in furtherance of Pecan Street’s nonprofit research mission (collectively, “Academic Researchers”).
- 2.** “Access Level” means the nature and scope of Licensed Confidential Information that Pecan Street allows you to access under this noncommercial-use license Agreement, which can be at least one of the following (a) University User Access Level, or (b) University Nonstandard User Access Level.
- 3.** “Confidential Information” means the data and information contained in the secured access portions of the Dataport Web Portal, all data and information in the Dataport Databases, and all communications with Pecan Street represented to you as confidential.
- 4.** “Dataport” means the Pecan Street brand name used to describe and identify this website, including, the suite of content, data, and services provided by Pecan Street and made accessible through: (a) the “Dataport Web Portal”; and (b) the “Dataport Databases”.
- 5.** “Dataport Databases” means the variety of data tables made accessible to users deemed eligible by Pecan Street based on, but not limited to, Eligibility Criteria defined at Item 6 of this Definitions section.
- 6.** “Dataport Web Portal” means the content accessible at <https://dataport.pecanstreet.org> including: (a) general-access content which is displayed to all site users without the requirement of a user account to access; and (b) secured content and data which requires application to Pecan Street for a user account prior to access.

- 7.** "Educational" means (a) as part of an instructional curriculum or course materials in a course taught by a faculty member at a four-year postsecondary degree-granting university or equivalent institution approved by Pecan Street according to the terms of this Agreement; and/or (b) for display, by a faculty member, to aid teaching in an academic setting, specifically excluding reproduction in any form (for example, display on a screen viewable in class, but prohibiting copies for distribution to students in the class).
- 8.** "Eligibility Criteria" means the following, non-exhaustive, criteria that Pecan Street evaluates in determining the suitable Access Level to grant a user:

  - A.** "University User Access Level" means access granted to academic researchers who are teaching-faculty members or enrolled students at four-year postsecondary degree-granting academic institutions in the U.S. (or the equivalent of such in other nations as deem acceptable by Pecan Street)
  - B.** "University Nonstandard User Access Level" means access granted to a non-commercial-use researcher that Pecan Street, in its sole discretion, determines to have satisfactorily demonstrated that the Licensed Confidential Information will be used in furtherance of Pecan Street's nonprofit mission and in complete compliance with the terms of this Agreement.
- 9.** "Licensed Confidential Information" is the subset of Confidential Information disclosed to you through secured access to the Dataport Web Portal and/or the Dataport Databases, as well as, any derivative works created based on the Licensed Confidential Information
- 10.** "Noncommercial Research" is research, conducted by a student or researcher at an institution approved under this Agreement, and is neither undertaken for profit nor intended to produce results, works, services, or data for commercial use by anyone.

## **II. TERMS AND CONDITIONS**

### Grant of License

- 11.** Pecan Street hereby grants to you, a non-exclusive, non-assignable, non-transferable license to use Licensed Confidential Information subject to the terms of this Agreement.
- 12.** Pecan Street retains the sole discretion to determine your eligibility to access any Licensed Confidential Information.
- 13.** Any permission granted to you under this Agreement is automatically revoked the moment you violate a term of this Agreement.

### Use of Licensed Confidential Information

- 14.** To access or use Licensed Confidential Information, you must register for a Dataport user account (“Account”) and provide certain information about yourself and your organization as prompted by the registration form. Your Account Access Level will be granted based on the information that you provide in the registration form, and other follow-up requests by Pecan Street (as, applicable).
- 15.** You represent and warrant that: (a) all required information that you submit to Pecan Street is truthful and accurate; (b) you will maintain the accuracy of all such information and promptly inform Pecan Street of any changes, in writing; (c) you will immediately cease accessing and/or using Dataport and any Licensed Confidential Information in your possession as soon as there is a change in the registration information you provided to us to gain Dataport Account access; and (d) your use of Dataport does not violate any U.S. or other applicable law or regulation.
- 16.** By using Dataport, you agree to comply with the Dataport Website Terms of Service, the Privacy Policy, this Dataport Data License Agreement and all other agreements required for use of any data, content or services offered by Pecan Street, as they may be updated from time to time.
- 17.** You certify that you have never been prohibited from accessing Dataport. If you have has been previously prohibited from using Dataport data, services, or content,

such prohibition is for a perpetual term, unless Pecan Street specifically grants you an express written exception.

#### Protection of Account Information

- 18.** You are entirely responsible for maintaining the confidentiality of your Account login information and for all activities that occur under your Account.
- 19.** You agree that you will never use another user's account to access Dataport. You understand and acknowledge that it is a violation of this Agreement to use or access any Dataport content under any identity that is not your own; such sharing is prohibited even within the same department or organization.
- 20.** You agree to use "strong" Account passwords, and to maintain Account passwords securely to prevent others from gaining access without your permission. You agree to immediately notify Pecan Street of any unauthorized use, or suspected unauthorized use, of your Account or any other breach of security.
- 21.** You agree not to transfer or distribute any Licensed Confidential Information to any person over email, web, or any other means of conveyance that can be copied and/or distributed.
- 22.** You agree not to make any externally accessible copies of the Licensed Confidential Information unless agreed to in writing by Pecan Street.
- 23.** You agree not to make a single or multiple downloads of the entire contents of the Dataport database at any time without obtaining prior written permission from Pecan Street.

#### Access Level Certifications

- 24.** You certify that you are an Academic Researcher (as specifically defined in Item 1 of the Definitions section) and will immediately cease accessing and/or using Licensed Confidential Information if you are no longer an Academic Researcher.
- 25.** You agree to use the Licensed Confidential Information for Noncommercial Research or Educational purposes only, and strictly according to the definitions of the terms "Noncommercial" and "Educational" provided in this Agreement.

- 26.** You agree to use the Licensed Confidential Information for Noncommercial Research and exclusively for the purpose(s) for which your registration was approved.
- 27.** In the event of a change in any of the information that you provided to Pecan Street to verify your eligibility to access Dataport, you agree to register for a new Dataport Account and resubmit verification information to Pecan Street. The foregoing re-registration requirement applies even if you believe that your changed information meets Eligibility Criteria for your current Access Level. Failure to comply with this provision may result in a permanent ban on your access to Dataport, and other penalties.

#### Protection of Confidentiality

- 28.** You agree that all data that you obtain from Dataport is Licensed Confidential Information regardless of whether it is marked “Confidential” or “Proprietary” or is not marked at all.
- 29.** Except for the agreed-to disclosures specified in this Agreement, you agree to treat all Licensed Confidential Information as confidential and not to disclose the same to any third party without obtaining prior written permission from Pecan Street.
- 30.** You agree that any oral or written discussions between Pecan Street and you that relate to the Licensed Confidential Information is also Confidential Information and you agree to keep all such information secret and confidential.
- 31.** You agree to immediately notify Pecan Street in writing of any misuse or misappropriation of the Licensed Confidential Information or violation of this Agreement that may come to your attention.
- 32.** You agree to keep and maintain all the Licensed Confidential Information in a safe and secure place with adequate safeguards to ensure that unauthorized persons do not have access to the Licensed Confidential Information.
- 33.** You acknowledge that the Licensed Confidential Information is proprietary and confidential information of Pecan Street, and agree to keep the information to protect the confidentiality of the information. Any works created by you while using the

Licensed Confidential Information shall not disclose or in any way abrogate the confidentiality of the Licensed Confidential Information.

- 34.** Pecan Street does not intend to provide you with access to any personally identifiable information on participants in Pecan Street's various research programs. In the event that you obtain any personally identifiable information ("PII") on participants in Pecan Street's various research programs, you agree that you will (a) immediately notify Pecan Street, (b) immediately delete all such PII without sharing with any other party, and (c) comply with all applicable laws regarding protection of personally identifiable information.
- 35.** You agree that you will protect the confidentiality of all information obtained under this Agreement with the same standard of care that the you use to protect your own confidential information, and in no event will you use less than a reasonable standard of care.
- 36.** Except for the agreed-to disclosures in this Agreement, you will not, for yourself or for the benefit of any person or entity, other than Pecan Street, use or disclose the Licensed Confidential Information without the express prior written approval of Pecan Street.

#### Prohibition Against Commercial Use

- 37.** You agree that you will not sell, rent, lease, transfer, assign, distribute, host, or otherwise commercially exploit Licensed Confidential Information or any data, content, or service provided through Dataport. Use of Licensed Confidential Information to develop products or services for sale, license, or similar commercial distribution ("Commercial Use") is beyond the scope of this Agreement, and you agree to seek a commercial use license from Pecan Street for such a use. Examples of activities that constitute commercial use and that are therefore outside the scope of this Agreement include, but are not limited to, the following:
  - A.** Commercialization of academic and/or scientific research
  - B.** Industry-funded research that potentially includes development of commercial applications

**C.** Consulting work to be performed by you and/or your agent in exchange for compensation

- 38.** You agree that it would be difficult to estimate an exact amount of potential damages should you breach this portion of the Agreement. In the event that you breach this “Prohibition Against Commercial Use” section of this Agreement, you agree to the following: (a) you will make a \$75,000 payment to Pecan Street within thirty (30) calendar days of receiving notice from Pecan Street of your breach, and (b) you will make to Pecan Street, royalty payments of 3% of any proceeds obtained from commercial use of Licensed Confidential Information within 90 days of receipt or accrual of such proceeds for a period of five years following the date of last disclosure of Licensed Confidential Information to you. You agree that this combination of the \$75,000 payment and royalty payment is a reasonable forecast of just compensation to Pecan Street.

#### Derivative Materials

- 39.** Materials that you prepare, using Licensed Confidential Information, are “Derivative Materials” and you agree to treat Derivative Materials as expressly provided under this Agreement.
- 40.** You shall not disclose Derivative Materials to any party who does not have a valid (unexpired) Dataport data license agreement in place with Pecan Street, without obtaining prior written permission from Pecan Street. You are responsible for verifying the validity of any party’s Dataport data license agreement with Pecan Street prior to disclosure.
- 41.** You agree to notify Pecan Street about any publication prepared by you using Derivative Materials, and to provide to Pecan Street with a copy of any such publications or materials free of charge.
- 42.** You grant to Pecan Street a worldwide, irrevocable, royalty-free license to use any Derivative Materials in the following manner:



- A.** Pecan Street may furnish copies of the Derivative Materials to Pecan Street's project collaborators, subject to nondisclosure agreements.
  - B.** Pecan Street may utilize the Derivative Materials in the creation of additional proprietary materials which shall be the sole property of Pecan Street.
  - C.** Pecan Street shall prominently attribute you as the source of the Derivative Materials.
- 43.** You agree that you do not acquire any title, ownership, or other intellectual property right or license under this Agreement to materials created by Pecan Street based on or derived from the Derivative Materials.

#### Attribution

- 44.** You agree to prominently attribute "Pecan Street Inc., Dataport" , as the source of the underlying data, in all Derivative Materials disclosure. Such attribution includes placing visibly the text "Source: Pecan Street Inc. Dataport" immediately next to, and on the same page or screen as, any graphics or text developed in whole or in part through access to the Licensed Confidential Information.
- 45.** In addition to the aforementioned Section 43 attribution requirement, you agree to prominently attribute the specific ISO or other third-party named in Dataport, as the source of the underlying data used in all Derivative Materials disclosure. For example, if you use ERCOT data for creation of any materials, you must attribute as follows: "Source: ERCOT, through Pecan Street Inc., Dataport".

#### Non-confidential Information

- 46.** Licensed Confidential Information does not include, and you have no obligation to preserve the confidentiality of, information that:
- A.** was previously known to you prior to the execution of this Agreement,

- B.** is or becomes publicly available, other than by an unauthorized disclosure,
- C.** is independently developed by you without knowledge of the Licensed Confidential Information as shown by your written records,
- D.** is disclosed to third parties by Pecan Street without restriction, or
- E.** is lawfully received by you from a third party whose disclosure did not violate any confidentiality or other legal obligation.

#### Disclosures Required by Law

- 47.** If you receive a subpoena, request, or directive by a court or other governmental law enforcement body, you agree to immediately notify Pecan Street of such request so that Pecan Street has a reasonable opportunity to protect the confidentiality of its information to the extent permitted by law. If no protective order or other remedy is obtained, you agree to disclose only that portion of the Licensed Confidential Information that you are legally compelled to disclose.

#### Term and Termination

- 48.** The term of this Agreement, and your access to Licensed Confidential Information, shall extend for a period of one year from the date that your Account access or Account renewal is approved by Pecan Street. The obligations of this Agreement with respect to the confidentiality of Licensed Confidential Information shall survive termination of this Agreement for a period of five years.
- 49.** At any time, in its sole discretion, Pecan Street may (a) suspend or terminate your rights to access or use Dataport, or (b) terminate the terms of this Agreement with respect to you.
- 50.** Upon termination of this Agreement for any reason, unless you have an unexpired renewal Dataport License Agreement in effect, you agree to immediately completely delete and destroy all Licensed Confidential Information in your possession or

under your control. Pecan Street retains the right to request proof and certification from you of such destruction, and you agree to promptly comply.

- 51.** Your obligations under this Agreement will remain in full force and effect so long as you continue to use Dataport and/or Licensed Confidential Information.

#### Export Control

- 52.** You acknowledge your obligations to control access to information, articles and services under the United States Export Laws and Regulations. You agree to adhere to such laws and regulations with regards to any information obtained under this Agreement.

#### Injunctive Relief

- 53.** If you breach this Agreement, you agree that the damage to Pecan Street will be difficult to quantify. Therefore, Pecan Street may apply to a court of competent jurisdiction for injunctive or other equitable relief without waiving its right to any other relief in either law or equity.

#### Jurisdiction and Venue

- 54.** This Agreement shall be governed by, and construed in accordance with, the laws of the State of Texas and of the United States of America, without regard to conflicts of laws principles which would apply the law of any other jurisdiction. Venue for any dispute concerning this Agreement shall be proper and lie exclusively in Travis County, Texas.

#### Intellectual Property Rights

- 55.** In the event that the Licensed Confidential Information is or becomes the subject of a patent application, patent, copyright application, or copyright, you agree and understand that Pecan Street will have all resulting rights available to it under the law, and that disclosure of Licensed Confidential Information to you does not affect those rights. You agree that you do not acquire any title, ownership, or other intellectual property right or license under this Agreement except as explicitly provided for herein.

## Assignment

- 56.** You agree that your rights as related to the Licensed Confidential Information are non-assignable and non-transferable. You shall not assign or otherwise transfer this Agreement.

## Indemnification

- 57.** You agree to indemnify and hold Pecan Street harmless from all losses, damages, causes of action, and attorneys' fees incurred by Pecan Street arising from your breach of this Agreement or misuse of personally identifiable information. This provision does not apply to Municipality users.

## Changes

- 58.** Pecan Street reserves the right to make changes to the terms of this Agreement at any time. Pecan Street will notify you of all such changes at your Dataport Account email address on file with Pecan Street. All such changes will be binding on you upon delivery of a notification of the changes to your Dataport Account email address. The most current version of this Agreement will be accessible to you at the Dataport "login" page. You understand and agree to the following terms regarding changes to this Agreement:
- A.** It is your responsibility to immediately notify Pecan Street of any changes to your Dataport Account email address. You accept that failure to inform Pecan Street of any such changes does not release you from your obligation to fully comply with the most current version of this Agreement so long as Pecan Street has notified you of the changes at your Dataport Account email address.
  - B.** You agree that you are bound by the terms and conditions of the most recent version of this Agreement whether or not you view it on Dataport after you are notified of changes.

## No Warranty

- 59.** The Licensed Confidential Information disclosed hereunder may relate to products that are under development or planned for development. PECAN STREET DISCLAIMS ANY IMPLIED WARRANTY OF MERCHANTABILITY, ANY

IMPLIED WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE, ANY IMPLIED WARRANTY OF NON-INFRINGEMENT, AND ANY EXPRESS WARRANTY WITH RESPECT TO ANY INFORMATION DISCLOSED HEREUNDER. Pecan Street accepts no responsibility as a result of any expenses, losses, damages, or actions incurred or undertaken by the you as a result of your receipt or use of any Dataport information.

No Waiver; Amendment; Exclusive Agreement

**60.** No failure or delay by any of the Parties in exercising any right, power or privilege hereunder shall operate as a waiver thereof, nor shall any single or partial exercise thereof preclude any other or further exercise thereof or the exercise of any other right, power or privilege hereunder. This Agreement may not be modified, supplemented or amended orally. This Agreement constitutes the entire agreement of the parties with respect to the subject matter contained herein, and supersedes all prior or contemporaneous oral or written agreements or understandings between you and Pecan Street regarding such subject matter.

Effective Date

**61.** The Effective Date of the Agreement is the date that Licensee's Account access is approved by Pecan Street.

Notices

**62.** All notices and requests under this Agreement must be in writing and made to:

For Pecan Street: Pecan Street Inc.

Attention: General Counsel

3924 Berkman Dr.

Austin, TX 78723

For you: The email address submitted with your registration for a Dataport Account shall be used to contact you.

## Acceptance

- 63.** You indicate acceptance of this Agreement by clicking the “Submit” button to sign up for an account on the Dataport website. Pecan Street indicates acceptance of this Agreement by sending you an email indicating that the Agreement has been accepted.