



Last Updated on January 1, 2020

University Free Access 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”, “user” or “Licensed 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, FUNDED RESEARCH PURPOSES, OR NON-ACADEMIC RESEARCH PURPOSES (AS DEFINED WITHIN THIS AGREEMENT), AND YOU DO NOT HAVE AN UNEXPIRED PAID 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 ANY PURPOSE OTHER THAN FOR ACADEMIC RESEARCH PURPOSES (AS DEFINED WITHIN THIS AGREEMENT), YOU MUST HAVE AN UNEXPIRED PAID ACCESS DATA LICENCE AGREEMENT IN EFFECT WITH PECAN STREET, OTHERWISE, YOU MUST IMMEDIATELY CEASE ACCESSING DATAPORT.**

YOUR ACCESS AND USE OF DATAPORT FOR ANY COMMERCIAL, FUNDED RESEARCH, OR NON-ACADEMIC RESEARCH PURPOSE IS

GOVERNED BY THE TERMS AND CONDITIONS OF THE SPECIFIC PAID 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 Research” means research conducted by an undergraduate, graduate, or post-graduate student enrolled at a University (as defined further herein) (“Student”), or by a teaching faculty member employed at a University (“Faculty”), with the intent of and for the exclusive purpose(s) of publishing the results in a thesis, dissertation, peer-reviewed journal article, or class assignment.
- 2.** “Access Level” is the scope of Licensed Confidential Information that Pecan Street discloses to a Licensed User based on the purpose for which the data will be used.
- 3.** “Confidential Information” is as defined above, and more specifically, includes all data and information contained in the secured access portions of Pecan Street’s Dataport web portal, all data and information in Pecan Street’s Dataport databases, and all data and information contained in Pecan Street’s other databases.
- 4.** “Dataport” is the suite of content, data, and services provided by Pecan Street, operated under and/or in association with the Pecan Street brand name, and made available through: (a) Pecan Street’s Dataport web portal; (b) Pecan Street’s Dataport databases; and (c) other media.
- 5.** “Funded Research” means any research that is: (a) conducted by any person or entity who has access to or possession of Licensed Confidential Information; and (b) funded by any person or entity (ex. grantors, commercial entities, or other third-party funders) that is not the University. This Agreement expressly prohibits use of the Licensed Confidential Information for Funded Research without a valid unexpired paid data license agreement in effect with Pecan Street.
- 6.** “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.

7. "Licensed User" means exclusively, a Student or Faculty as specifically defined within this Agreement.
8. "Non-Academic Research" means any Use of Licensed Confidential Information for a purpose that is not Academic Research as specifically defined in this Agreement. This Agreement expressly prohibits use of the Licensed Confidential Information for Non-Academic Research without a valid unexpired paid data license agreement in effect with Pecan Street.
9. "Teaching Faculty Member" means a person hired and paid by the University to conduct classroom or teaching activities.
10. "University" means a four-year postsecondary degree-granting academic institution in the U.S. (or the equivalent of such in other nations).
11. "Use" means: (a) any and all use, access and display of the Licensed Confidential Information; (b) creating any derivative works based on the Licensed Confidential Information; and/or (c) failure to delete and destroy Licensed Confidential Information upon termination of this Agreement or upon Pecan Street's request.

II. TERMS AND CONDITIONS

Grant of License

12. 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.
13. Pecan Street retains the sole discretion to determine your eligibility to access any Licensed Confidential Information.
14. 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

- 15.** To access or use Licensed Confidential Information, you must register for a Dataport user account (“Account”) and provide certain information about yourself and your University 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).
- 16.** 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.
- 17.** 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.
- 18.** You certify that you have never been prohibited from accessing Dataport. If you have 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

- 19.** You are entirely responsible for maintaining the confidentiality of your Account login information and for all activities that occur under your Account.
- 20.** 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, organization, or University.

- 21.** 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.
- 22.** 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.
- 23.** You agree not to make any externally accessible copies of the Licensed Confidential Information unless agreed to in writing by Pecan Street.
- 24.** 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

- 25.** You certify that you are a Licensed User obtaining access to and intending to use the Licensed Confidential Information for Academic Research Purposes (as specifically defined in the Definitions section) only, and that you will immediately cease accessing and/or using Licensed Confidential Information if your Use is no longer for Academic Research.
- 26.** You agree to use the Licensed Confidential Information exclusively for Academic Research that is not Funded Research unless you have a valid unexpired paid data license agreement in effect with Pecan Street.
- 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; and
 - 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 non-proratable payment of one hundred thousand dollars (\$100,000), for each year of Commercial Use, 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 licensee fee 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 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 twelve months 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, 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 your 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.