

# Software as a Service Subscription Agreement

## This Software as a Service Subscription Agreement (this "Agreement")

is made as of \_\_\_\_\_ (the "Effective Date") by and between **Pepperi Inc.** (the "Company" or "Pepperi"), a Delaware Corporation, with registered office at 106 W 32nd Street, New York, NY 10001, 106 W 32nd Street, New York, NY 10001, telephone +1-800-644-9146 and email address info@pepperi.com

and

\_\_\_\_\_ (the "Client"), a limited company incorporated under the Laws of \_\_\_\_\_, with registered office at \_\_\_\_\_, \_\_\_\_\_,

The **Company** and the **Client** shall each be referred to herein as a "**Party**" and collectively, the "**Parties**".

**WHEREAS** the Company operates and maintains and/or collaborates with third party vendors to operate and maintain a SaaS (Software as a Service) sales platform for brand manufacturers and wholesalers known as '**Pepperi Suite**' (the "**SaaS Platform**") and a variety of software tools and services through its website and its mobile application(s) (the "**Mobile App**"); and

**WHEREAS** the Client wishes to subscribe to the SaaS Platform and to certain tools and services;

**NOW, THEREFORE**, in consideration of the foregoing recitals and the shared covenants contained in this Agreement, the Parties agree as follows:

## 1 RECITALS, SCHEDULES AND APPENDICES; HEADLINES

1.1 The Recitals, Schedules, and Appendices to this Agreement constitute an integral part thereof.

1.2 The headings in this Agreement are for convenience only and shall not affect the interpretation thereof.

## 2 DEFINITIONS

"**Designated Account**" shall have the meaning set forth in Schedule I hereto (Consideration and Payment Term).

"**Documentation**" shall mean all information, data, instructions, guidance, and other materials related to the Software.

"**Effective Date**" shall mean the date this agreement is signed by both parties.

"**End Date**" shall mean 36 months from Production Date.

"**Kickoff Date**" shall mean the date of the initial meeting/on-line meeting for the implementation of the SaaS Platform Software.

"**License**" shall mean the non-exclusive, non-transferrable non-refundable limited license to use the **SaaS Platform Software** within the Territory during the Subscription Term and solely for the Purpose, granted by the Company to the Client subject to and in accordance with the terms of this Agreement. Each License shall be granted on either name basis for the Use by an individual User or for the client to use according to Schedule I hereto (Consideration and Payment Term).

"**Mobile App**" shall mean, the mobile application through which '**Pepperi Salesforce Automation**' (SFA) is operated by SFA Users and/or the mobile application through which '**Pepperi Mobile StoreFront**' is operated by StoreFront Users (as may be applicable).

"**Pepperi ST Edition**" shall mean "Pro", "Corporate", or "Ultimate" edition of the **SaaS Platform Software** as set forth in Schedule I hereto (Consideration and Payment Terms) and Appendix 1 Proposal.

"**Proposal**" shall mean Pepperi Pricing Proposal, dated \_\_\_\_\_, attached as **Appendix 1** hereto (Proposal).

**"Production Date"** shall mean the date from which the Client starts to generate real orders that are meant to be shipped to the customers or three months from the Kickoff, the earlier of the two.

**"SFA Users"** shall mean individuals employed or engaged by Client, designated and authorized by it to use the Site, the SaaS Platform and the Services and/or to install and use the Mobile App Software (all as applicable), and subscribed as users to the Pepperi ST Edition.

**"StoreFront Users"** shall mean individuals employed or engaged by Client's client, that are: (i) designated and authorized by the Client to use '**Pepperi Web StoreFront**' and/or '**Pepperi Mobile StoreFront**' (as may be applicable) and for this purpose to use the Site, the SaaS Platform and the applicable Services and/or to install and use the applicable Mobile App Software; and (ii) are subscribed as such users. To eliminate any doubts, any individual that is using the SaaS platform including Storefront on behalf of the client and is not employed or engaged to use Storefront by Client's client, is an SFA user.

**"Services"** shall mean (i) the '**Pepperi SaaS Platform Software** tools and services set forth under the applicable Proposal in **Appendix 1** hereto (Proposal) and related Support Services.

**"Site"** shall mean the Company's website [**www.PEPPERI.com**] and any other websites provided by the **Company** to access and/or use the Pepperi **Services**.

**"Software"** shall mean any software, library, utility, tool, component, or other computer or program code, in object (binary) or source-code form (i) contained in the SaaS Platform or otherwise used, operated or maintained by the Company in connection with the Site or the Services and related Documentation (the "**SaaS Platform Software**"), or if applicable (ii) contained in the Mobile App and locally installed on the mobile device of any User (as may be applicable) and related Documentation furnished to the Client from time to time by the Company in its sole discretion in conjunction therewith (the "**Mobile App Software**"), including, in each case, any Upgrades thereto.

**"SOW"** shall mean the Statement of Work specifically designed for the Client set forth as SOW and attached as **Appendix 5** hereto (SOW).

**"Subscription"** shall mean the nontransferable, non-refundable subscription to the SaaS Platform granted to the Client by the Company hereunder, permitting the Users to access and use the Site, the SaaS Platform, the Mobile App and the Services, in each case, during the Subscription Term, solely for the Purpose and subject to and in accordance with the terms of this Agreement and the T&C.

**"Subscription Fee"** shall have the meaning set forth in **Schedule I** hereto (Consideration and Payment Terms).

**"Support Services"** shall mean the Remote Support services and the Additional Support services, as terms are defined in Section 4 below.

**"Subscription Term"** shall mean the period commencing on the Production Date and ending on the End Date.

**"T&C"** shall mean the Pepperi Terms and Conditions of Use from time to time posted on the Site.

**"Term"** shall mean the period commencing on the Effective Date and ending on the End Date.

**"Territory"** shall mean \_\_\_\_\_.

**"Upgrades"** shall mean upgrades, updates, bug fixes or modified versions to the Software from time to time issued and applied by the Company in its sole discretion.

**"Users"** shall mean Users of the **SaaS Platform Software** including but not limited to users of the SFA and StoreFront, Admin users, back office tele sales, support and Managers.

### 3 SUBSCRIPTION

3.1 Subject to the terms and conditions of this Agreement (including, without limitation, timely payment of the Subscription Fee in accordance with Schedule I hereto) and the T&C, the Company hereby grants to the Client and the Client hereby accepts the Subscription and the License.

- 3.2 Client acknowledges and agrees that the Subscription and License are subject to the T&C and Client shall comply with and shall enforce and ensure compliance with the obligations of each User under the T&C. In addition to and without derogating from any other remedy available to the Company hereunder or under applicable law and notwithstanding anything to the contrary contained herein, if Client breaches or fails to promptly enforce compliance with the terms and conditions of this Agreement or the T&C, the Company shall have the right to enforce such terms and conditions as a third party beneficiary, terminate the Subscription and License and/or deny access of the applicable User(s) to the Services and the Site.
- 3.3 For the avoidance of doubt, the Client acknowledges and agrees as follows:
- The Subscription and the License are non-exclusive, non-transferrable and shall be limited to the Subscription Term and for the sole purpose of accessing and using the Site, the SaaS Platform, the Services and the Mobile App by Users employed or engaged by Client (or, in the case of '**Pepperi StoreFront**', by Client's client) within the Territory (including, subject to the T&C, such Users traveling out of the Territory) in connection with its sales activity within the Territory (the "**Purpose**"). Any use, activation, or operation of the Subscription, the License, the Site, the SaaS Platform, the Services or the Mobile App following the end of the Subscription Term, by Users employed or engaged outside of the Territory or in connection with any sales or business activity outside of the Territory or for any purpose other than the Purpose, in each case, without the Company's prior written consent in its sole discretion (and subject to the terms and conditions set forth in such consent) is strictly forbidden and shall be deemed a material breach of this Agreement.
- 3.3.1 SFA User subscriptions are provided on a per-seat, named basis, and may not be used or shared by multiple Users. Subscription may be installed on multiple devices, but are restricted to an individual named person.
- 3.3.2 The Subscription and the License expressly exclude, the Company will not provide, and the Client shall be solely responsible to purchase, obtain, install, activate, operate and maintain, any third-party software or license and any hardware or device (including, but not limited to, mobile devices used by Users for installation of the Mobile App and computer systems at Client's site or, in the case of '**Pepperi StoreFront**', at the site of the Client's client)) that may be required in order to install, run, activate, or access the Site, the SaaS Platform, the Services or the Mobile App, including, but not limited to, the applicable operating system and internet browsing software, in each case, in its most recent version released prior to the release of the most recent Upgrade. All such third-party software or licenses and hardware or devices shall meet the Company's system requirements and recommendations from time to time posted on the Site, and the Client acknowledges, agrees, and warrants that it has reviewed the current requirements and recommendations posted on the Site on the date hereof and will review the same upon any Upgrade and from time to time.
- 3.4 In addition to and without derogating from any other remedy available to the Company hereunder or under applicable law and notwithstanding anything to the contrary contained in this Agreement or the T&C, the Company shall have the right to deny access to the Site and/or the SaaS Platform and/or the Services by any or all Users and terminate the Subscription (or, in the Company's sole discretion, the subscription of any User thereunder) and the License (or, in the Company's sole discretion, the license of any User under the License) (i) in the event that the Client is in breach of this Agreement, and (ii) in the event that the Client or any User is in breach of the T&C, provided, however, in each case, that Client does not remedy such breach within 7 (seven) days following Company's written notice of such breach, unless immediate termination is required in Company's discretion to ensure due operation of the SaaS Platform, the Site, the Mobile App or the Services, in which case Company shall have the right to deny access to the Site, SaaS Platform and Mobile App and/or terminate the Subscription as aforesaid without notice.

## 4 SUPPORT

- 4.1 During the Subscription Term the Company shall provide the Client with remote support services required for purposes of the installation of the Mobile App Software and the activation and implementation of the Mobile App, the SaaS Platform, the Services, and the Site, by the Client and the Users (including help desk support and assistance, automatic backups, and Upgrades), in accordance with the Documentation and Pepperi Support Service Level Appendix attached as **Appendix 3** hereto (SLA).
- 4.2 In addition to the Standard Remote Support, following Client's prior written request and subject to the receipt by Company of the Additional Support Cost whether remote or onsite (as defined below), the Company shall provide Client consulting, training and integration services as may be agreed by the Parties in writing from time to time ("**Additional Support**").

## 5 CONSIDERATION AND PAYMENTS

- 5.1 In consideration for the Subscription, License and related Remote Support services, the Client shall pay to the Company the Fees set forth in Schedule I, payable to the Designated Account in accordance with the payment terms set forth therein.
- 5.2 In consideration for each Day of Additional Support services (and for purposes hereof, each Day shall include 8 (eight) working hours of one individual), the Client shall pay the Company the service fees set forth in Appendix I hereto, and reimburse Company for all travel expenses preapproved by Client (which approval shall not be unreasonably withheld), including flights, accommodation, food and beverages allowance and other expenses, in accordance with Pepperi Travel and Accommodation Expense Policy attached as **Appendix 4** hereto. The aggregate amount of the aforementioned daily service fees and reimbursement of travel expenses shall be collectively referred to herein as the "**Additional Support Cost**" and they shall be paid in accordance with the payment terms set forth in Schedule I (Consideration and Payment Terms).
- 5.3 All payments to the Company hereunder shall be in USD and without deductions or set-off based on any currency control restrictions, import duties, or sales, use, value-added, or other taxes or withholdings. Client will bear all applicable fees and taxes involved with the performance of this Agreement, including but not limited to all fees and taxes imposed by governmental authorities and banks due to international transactions. Payments will be linked to the American Consumer Price Index, plus additional linkage of 5(five)% on an annual basis since the Effective Date and until the payment is actually received. In addition to and without derogating from any remedy available to Company in accordance with this Agreement of applicable law, (i) the Client shall reimburse the Company for all collection costs and interest for any overdue amounts, and (ii) any late payment of the Subscription Fee or any part thereof shall bear interest from its respective due date hereunder until the its actual payment, at the rate of 8% (eight percent) per annum.

## 6 TERM AND TERMINATION

- 6.1 This Agreement shall enter into effect on the Effective Date and shall remain in effect until the End Date, and thereafter shall be automatically renewed for an additional 1 (one) year term, unless either Party informed the other Party in writing otherwise by 6 months advance notice, prior to expiration (all unless terminated earlier in accordance with the terms of This Agreement).
- 6.2 Without derogating from and in addition to its right under this Agreement or applicable law to any other or additional remedy or relief, either Party (in this Section 6, the "Terminating Party") may terminate this Agreement at any time during the term of this Agreement in the event that the other Party: fails to perform any obligation, warranty, duty or responsibility or is in default with respect to any term or condition undertaken under this Agreement and such failure or default continues un-remedied for a period of thirty (30) days following written notice thereof.

- 6.3 Without derogating from and in addition to the rights of the Terminating Party under this Agreement or applicable law to any other or additional remedy or relief, the Terminating Party may terminate this Agreement by serving a written notice to that effect to the other Party (in this Section 6.3 the "**Party in Default**") upon or after the grant of a bankruptcy or dissolution order in respect of the Party in Default, or upon an order being granted for the appointment of a temporary or permanent liquidator, receiver trustee or a similar officer of the court in respect of the Party in Default, or if the Party in Default passes a resolution for its voluntary winding-up, or if a temporary or permanent attachment order is granted on its assets, or a substantial portion thereof, or if it (or any third party) shall seek protection under any laws or regulations, the effect of which is to suspend or impair the rights of any or all of its creditors, or to impose a moratorium on such creditors, or if anything analogous to any of the foregoing under the laws of any applicable jurisdiction occurs in respect of the Party in Default.
- 6.4 Upon termination and/or expiration of this Agreement for any reason whatsoever: (i) Client shall not be relieved of any obligation hereunder, which shall have accrued prior to such termination or expiration, (ii) Client and all Users shall immediately cease exercising any rights granted to it hereunder and any use, activation or implementation of, the Subscription and the License, and (iii) any authorization permission and any other rights granted to Client hereunder, including with respect to the Site, the Services, the SaaS Platform, the Mobile App, or any Software, shall forthwith terminate.
- 6.5 The following provisions shall survive expiration or any termination of this Agreement: This Section 6 and Sections 5, 7.3, 8, 9, 10, 11, and 12.

## 7 REPRESENTATIONS WARRANTIES AND AGREEMENTS

- 7.1 Client represents warrants and agrees that:
- 7.1.1 It has the legal capacity and requisite corporate power and authority to execute, deliver and perform all of its obligations under this Agreement. The execution, delivery and performance of this Agreement have been duly authorized by Client [(including the Subsidiaries)]. This Agreement has been duly executed and delivered by Client on behalf Client [(including the Subsidiaries)] [ and constitutes a legal, valid and binding obligation of Client [(including the Subsidiaries)] enforceable against Client [(including each Subsidiary)] in accordance with its terms.
- 7.1.2 No consent, waiver, approval, authorization, exemption, registration, license or declaration is required to be made or obtained by Client in connection with the execution, delivery and performance of this Agreement and the consummation of the transactions contemplated hereby, and, without derogating from the above, should such consent be required to be made or obtained by it in accordance with applicable law, the Client shall obtain the said consent.
- 7.1.3 It has the personnel, financial capability and resources, knowledge, and knowhow required to successfully perform its undertakings and obligations hereunder.
- 7.1.4 It will use the Subscription, License, SaaS Platform, Services, and Mobile App solely for the Purpose and in accordance with this Agreement and the T&C and shall perform its undertakings hereunder, diligently, professionally, and in compliance with any and all applicable laws, regulations, agreements, this Agreement, the T&C, and the Documentation, as in effect from time to time.
- 7.1.5 It further agrees and acknowledges that each User shall agree and acknowledge under the T&C, *inter alia*, that:
- 7.1.5.1 It checked and verified the T&C, the Services, the Site, their respective components, their performance, functionality, access thereto, and availability thereof, found the same suitable for its needs and requirements, and shall have no claims or argument with respect thereto or with respect to the Software or the Site (including any Upgrades), and their respective components, performance, or functionality; and

7.1.5.2 The Company may perform and implement Upgrades and changes or modifications of the Services and the Site or any component thereof at any time, and Client and any User shall have no claims or arguments due to the performance or functionality of such Upgrades, changes or modifications.

7.1.6 In the event that Client or any User use the Site, the Services, and/or the Software in an inappropriate manner or otherwise does not comply with the T&C, Client and such User shall be jointly and severally liable for the Company for any consequences thereof and shall hold the Company harmless and indemnify the Company upon its demand for any damages, claims or actions regarding such content. By way of example, and not as a limitation, Client and Users will not use the Services, the Company's servers or the Site, to: (1) defame, abuse, harass, stalk, threaten or otherwise violate the legal rights (such as rights of privacy and publicity) of others; (2) upload, post, email, transmit or otherwise make available any inappropriate, defamatory, obscene, or unlawful content; (3) upload, post, transmit or otherwise make available any content

that infringes any patent, trademark, copyright, trade secret or other proprietary right of any party, unless it is the owner of the rights, or have the permission of the owner or other legal justification to use such content; (4) upload, post, email, transmit or otherwise make available any other content, message, or communication prohibited by applicable law; (5) promote or provide instructional information about illegal activities; (6) promote physical harm or injury against any group or individual; or (7) transmit any viruses, worms, defects, Trojan horses, or any items of a destructive nature.

7.1.7 Without derogating from the above, in the event that the Company receives report or complaint regarding "spam" email or emails that include link to, or otherwise direct to, landing page or pages (whether created using the Services or otherwise), the Company shall be entitled to immediately block all such links and all landing pages or pages that were created using the Services by, deny access to the Site and the services by, and terminate the Subscription of, such User, in each case, without notice, and such User and the Client shall be liable for the Company for any consequences thereof and shall hold the Company harmless and indemnify the Company for any damages, claims or actions regarding such circumstances. For the avoidance of doubt, nothing herein shall be construed to permit Company to terminate or otherwise interfere with landing pages or other pages that are not hosted within the Site or the SaaS Platform.

7.2 The Company represents warrants and agrees that:

7.2.1 It has the legal capacity and requisite corporate power and authority to execute, deliver and perform all of its obligations under this Agreement and grant the Subscription and License granted to Client hereunder. The execution, delivery and performance of this Agreement have been duly authorized by the Company. This Agreement has been duly executed and delivered by the Company and constitutes a legal, valid and binding obligation of the Company enforceable against the Company in accordance with its terms.

7.2.2 No consent, waiver, approval, authorization, exemption, registration, license or declaration is required to be made or obtained by the it in connection with the execution, delivery and performance of this Agreement and the consummation of the transactions contemplated hereby, and, without derogating from the above, should such consent be required to be made or obtained by it in accordance with applicable law, the Company shall obtain the said consent.

7.3 TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, NEITHER COMPANY (INCLUDING ITS OFFICERS, DIRECTORS, EMPLOYEES, AGENTS, REPRESENTATIVES VENDORS AND AFFILIATES) NOR ITS THIRD PARTY VENDORS OR SERVICE PROVIDERS ("VENDORS") (A) MAKE ANY WARRANTIES OR REPRESENTATIONS, AND HEREBY SPECIFICALLY DISCLAIM ANY AND ALL WARRANTIES AND REPRESENTATIONS OF ANY KIND, EXPRESS OR IMPLIED, WITH RESPECT TO THE SITE , THE SaaS PLATFORM, THE MOBILE APP, THE SOFTWARE OR THE SERVICES,

INCLUDING, WITHOUT LIMITATION, WARRANTIES OR REPRESENTATION AS TO THE AVAILABILITY, OPERATION, PERFORMANCE AND/OR USE OF THE SITE AND/OR SERVICES, OR ANY OTHER INFORMATION AND MATERIALS ON OR ACCESSED VIA THE SITE, THE SaaS PLATFORM, THE MOBILE APP, THE SOFTWARE OR THE SERVICES, INCLUDING, BUT NOT LIMITED TO, ANY WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR USE (WHETHER OR NOT THE PURPOSE OR USE HAS BEEN DISCLOSED), TITLE, NON-INFRINGEMENT, AND ANY IMPLIED WARRANTIES OR INDEMNIFICATION ARISING FROM COURSE OF DEALING OR COURSE OF PERFORMANCE; (B) WARRANT OR GUARANTEE THE ADEQUACY, ACCURACY, TIMELINESS, AVAILABILITY OR COMPLETENESS OF THE SITE, THE SaaS PLATFORM, THE MOBILE APP THE SOFTWARE OR THE SERVICES, OR ANY OTHER INFORMATION, CONTENT OR MATERIALS ACCESSIBLE VIA THE SITE, THE SaaS PLATFORM, THE MOBILE APP THE SOFTWARE OR THE SERVICES; (C) SHALL BE SUBJECT TO ANY DAMAGES OR LIABILITY FOR ANY ERRORS, OMISSIONS OR DELAYS THEREIN OR FOR ANY ADVERSE CONSEQUENCES RESULTING FROM THE CLIENT'S RELIANCE ON ANY ASPECT THEREOF; AND (D) MAKE ANY REPRESENTATIONS OR WARRANTIES THAT THE SITE AND/OR THE SERVICES AND/OR THE SOFTWARE WILL BE UNINTERRUPTED, SECURE, OR FREE OF ERRORS, VIRUSES, OR OTHER HARMFUL COMPONENTS; CLIENT EXPRESSLY AGREES THAT THE USE OF THE SITE, THE SaaS PLATFORM, THE MOBILE APP, THE SOFTWARE OR THE SERVICES AND ALL COMPONENTS THEREOF, AND ANY OTHER INFORMATION, CONTENT OR MATERIALS CONTAINED IN OR ACCESSED VIA THE SITE, THE SaaS PLATFORM, THE MOBILE APP, THE SOFTWARE OR THE SERVICES, ARE PROVIDED ON AN "AS IS" AND "AS AVAILABLE" BASIS, AND THE USE THEREOF IS AT CLIENT'S RISK.

## **8 LIMITATION OF LIABILITY**

- 8.1 IN NO EVENT SHALL COMPANY (INCLUDING ITS OFFICERS, DIRECTORS, EMPLOYEES, AGENTS, REPRESENTATIVES, VENDORS AND AFFILIATES) BE LIABLE (JOINTLY OR SEVERALLY) TO CLIENT, ANY USER OR ANY THIRD PARTY FOR any INDIRECT, INCIDENTAL OR CONSEQUENTIAL DAMAGES OF ANY KIND, INCLUDING, BUT NOT LIMITED TO, ANY SPECIAL, EXEMPLARY, PUNITIVE OR CONSEQUENTIAL DAMAGES, LOSS OF PROFITS, OR DAMAGES FOR LOST TIME OR GOODWILL, BUSINESS INTERRUPTION, OR LOSS OF DATA, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, AND REGARDLESS OF THE FORM OF ACTION, WHETHER IN CONTRACT, TORT, STRICT LIABILITY OR OTHERWISE, ARISING OUT OF OR RELATING IN ANY WAY TO THE USE OF, ACCESS TO, RELIANCE ON, FUNCTIONALITY, INABILITY TO USE OR IMPROPER USE OF THE SITE, THE MOBILE APP, THE SERVICES OR THE SOFTWARE OR ANY INFORMATION, CONTENT OR MATERIALS AVAILABLE VIA THE SITE, THE MOBILE APP, THE SERVICES OR THE SOFTWARE.
- 8.2 THE SOLE AND EXCLUSIVE MAXIMUM LIABILITY OF THE COMPANY (INCLUDING ITS OFFICERS, DIRECTORS, EMPLOYEES, AGENTS, REPRESENTATIVES VENDORS AND AFFILIATES) FOR ALL DAMAGES, LOSSES, CLAIMS AND CAUSES OF ACTION WHATSOEVER ARISING UNDER OR RELATED TO THIS AGREEMENT (WHETHER IN CONTRACT, TORT (INCLUDING, WITHOUT LIMITATION, NEGLIGENCE, BUT EXCLUDING WILLFUL MISCONDUCT OR DEATH OR BODILY INJURY CAUSED BY COMPANY'S NEGLIGENCE), OR OTHERWISE), SHALL NOT EXCEED, IN THE AGGREGATE, THE AMOUNT OF SUBSCRIPTION FEE ACTUALLY PAID TO THE COMPANY BY CLIENT DURING THE THREE (3) MONTHS PRIOR TO THE ACTION GIVING RISE TO SUCH DAMAGES, LOSSES, CLAIMS OR CAUSES OF ACTION.
- 8.3 In no event shall the Client seek or be entitled to rescission, injunctive or other equitable relief, or to enjoin or restrain the operation of the Site, the SaaS Platform, the Mobile App, the Services, or the Software, or any materials or advertising issued in connection therewith or displayed thereon or therethrough.
- 8.4 Without derogating from the generality of the above and for the avoidance of doubt, the Parties agree and acknowledge that notwithstanding any rules of conduct or provisions set forth herein and in the T&C, (i) Company and its Vendors do not control and therefore are not responsible for the actions of Users or any other users of the SaaS Platform or Services on or off the Site and the SaaS Platform, including any misuse or misappropriation of the Site, the

Mobile App or the Services, and (ii) No opinion, advice or statement of Company (including its officers, directors, employees, agents, and affiliates), its Vendors or any other users of the SaaS Platform or Services, any Users, whether made on the Site, via the Mobile App or the Services or related thereto or otherwise, shall create any representation or warranty hereunder.

- 8.5 Client hereby agrees that the limitation of liability provisions, including the exclusions of damages and disclaimers contained in this Agreement and the T&C are part of the basis of the bargain between Client and Company and without them the terms and prices charged and the availability of the Site and the Services would be different. In the event that any remedy is determined to have failed its essential purpose, all limitations of liability, the exclusions of damages and disclaimers set forth herein shall remain in full force and effect. If any applicable authority holds any portion of this section to be unenforceable, the Company's liability will be limited to the fullest possible extent permitted by applicable law.

## 9 CONFIDENTIAL INFORMATION AND NON-SOLICITATION

- 9.1 Each Party shall maintain in confidence, and shall not disclose or use Confidential Information (as defined below) disclosed to it by the other Party, other than for the sole purpose of performing its obligations under this agreement, and shall treat such Confidential Information with the same degree of care and confidentiality that it maintains or protects its own confidential information.

“**Confidential Information**” means any and all any trade secrets, technical information, technology, computer source and object codes, other computer codes, know-how, research, computer interfaces, procedures, theorems, algorithms, products, demonstration products, training and operations material and memoranda, pricing information, and financial information, employees, trading, profits, finances and business affairs disclosed or made available by one Party (the “**Disclosing Party**”) to the other Party for the purpose of, in the course of or in connection with this Agreement, including, without limitation, any information relating to the Software, the Site, the Services, this Agreement and the terms thereof, whether in written, oral, electronic or any other form. However, information shall not be considered Confidential Information to the extent that the other Party proves by documentary evidence that such information: (i) was known to the other Party prior to its disclosure by the Disclosing Party, (ii) is in the public domain at the time of disclosure or becomes part of the public domain thereafter other than as a result of a breach by the other Party of its confidentiality obligations herein, or (iii) the other Party is required to disclose under applicable law.

- 9.2 Each Party agrees to require its employees and others receiving Confidential Information hereunder to abide by the provisions of this Section 9.
- 9.3 In addition to and without derogating from any other remedy hereunder or under applicable law, Each Party shall be entitled to injunctive relief to enjoin or restrain the unauthorized disclosure by the other Party of any Confidential Information in breach of this Agreement.
- 9.4 Notwithstanding anything to the contrary contained above, Client agrees and acknowledges that during the Term the Company may, and Client hereby grants the Company with license to, include Client's name, logo and/or trade mark(s) in its client list or otherwise present, distribute or publish such name, logo(s) and/or trade mark(s) for the purpose of or in connection with Company's marketing and sales activities. In Addition, the Company may issue (i) within 30 days following the Effective Date, a press release announcing its relationship with the Client, and (ii) following successful implementation of the SaaS Platform by Client, a case study of the Client’s project (a written case study as well as video testimonial describing the case study), in each case, in the Company's sole discretion, provided, however that such press release and study (as applicable) shall be pre-approved by Client in advance, which approval shall not be unreasonably withheld or delayed.

- 9.5 Client further agrees and acknowledges that subject only to limitations imposed under applicable law, the Company shall have access to the Software data base and any data or information related to the Services or provided by Client in connection therewith, and shall have the right to review, use, or exploit such data for purposes of providing the Services, performing its undertakings and obligations hereunder, designing and implementing Upgrades or modification to the Site, the Services, the SaaS Platform or the Mobile App, and monitoring compliance of Client and Users with the terms hereof and the Terms of Use.
- 9.6 The parties hereby agree that for the duration of the Subscription Term and for an additional period of one year following the end of the Subscription Term, neither party shall, for any reason, directly or indirectly, on its own behalf or on behalf of others or as principal, agent, independent contractor, consultant, director, officer, member or employee of any other person, firm, corporation, partnership, company, association or other entity, hire, attempt to employ, contact with respect to hiring, solicit with respect to hiring or enter into a contractual arrangement with any full or part-time employee, former employee or any person who is an agent, partner, contractor or representative of the other party, who becomes known to such party in connection with this Agreement or services rendered pursuant to this Agreement.
- 9.7 Client acknowledges that:
- 9.7.1 The Site and Mobile App may permit or require the submission of information, and content by the Users in connection with the use of Tools or Services, including User names, information, data, links, orders, offers, quotations, merchandizing information (including pictures and visual data), and tasks, as well as sharing the same with, or messaging the same to, any or all of the Users, the hosting of such content and sharing it with, or messaging it to, any or all of the Users ("**Submission(s)**"). Any such content, including, without limitation, information, text, graphics, audio, images, and links which the User submit in connection with any of the foregoing activities is referred to as "**Submission(s)**" in the T&C and is subject to terms and conditions set forth herein.
  - 9.7.2 By Submitting a Submission on the Site both the Client and the User agree that any information that will be submitted by the User or by the Client (including personally identifiable information and other information as set forth in the T&C) will be saved in the Company's database, until the Client or the User shall requests its deletion. The Client acknowledges that it is responsible, under any circumstances (including in the event that the User and/or the Client ceases to use the Company's products and services) to request the Company to delete such information from the Company's database.
  - 9.7.3 Client may deliver the Company such a request at any time at [gdpr@pepperi.com](mailto:gdpr@pepperi.com).
  - 9.7.4 Client acknowledges that the Company use cookies on the Site. If the Client does not agree to this use of cookies it should cease using the Site.

## 10 INTELLECTUAL PROPERTY

- 10.1 Any and all rights not expressly granted hereunder to Client are retained by the Company. Client agrees and acknowledges, also on behalf of the Users, its directors, employees, collaborators, consultants, third party vendors and service providers, and affiliates, that Client shall not acquire or obtain, and Company does not assign, sell or otherwise transfer by virtue of this Agreement or the T&C, ownership or title to any intellectual property or other rights (including, without limitation trademarks, patents, developments, know-how, service or trade secrets and any other registered or non-registered intellectual property rights of any kind) ("**IP Rights**") (i) contained in, derived from, implemented in or related to the Site, the SaaS Platform, the Mobile App, the Services, or the Software, or (ii) the use of which by Client is permitted under the Subscription and the License in accordance with the terms of this Agreement and the T&C.

- 10.2 Neither Client nor any User will acquire any ownership or copyrights, or any other right in the Software by virtue of this Agreement, the Subscription or any agreement or arrangement entered into between the Client and any User.
- 10.3 Any and all IP Rights acquired and/or developed and/or implemented by the Company during, as a result of, or in connection with the provision of the Services to Client shall solely belong to the Company, and the Client hereby waives any and all rights in respect of such IP Rights. Without derogating from the above, Client hereby irrevocably assigns and transfers to the Company any and all ownership rights and title to the IP Rights.
- 10.4 Without derogating from the generality of the above, Client and Users shall have no right to, and will not: (1) copy, translate, modify, or make derivative works of the Software or any component thereof (2) redistribute, sublicense, rent, publish, sell, assign, lease, market, transfer, license or otherwise make the Software, the Site, the SaaS Platform, the Mobile App, the Services, the Subscription or the License available to third parties; (3) reverse engineer, decompile or otherwise attempt to extract or reconstruct the source code of the Software, the Site, the SaaS Platform, the Mobile App, the Services or any part thereof or the underlying ideas or algorithms thereof by any means whatsoever; (4) delete, obscure, or in any manner alter the Software, the Site, the SaaS Platform, the Mobile App, the Services or any part thereof; or (5) use the Software, the Site, the SaaS Platform, the Mobile App, the Services or any part thereof in a way that violates any law or any provision of the T&C. In the event Client obtains knowledge that a third party is attempting or may attempt to take any of the foregoing actions prohibited by this provision it shall immediately inform the Company of such action.
- 10.5 Except as expressly provided in this agreement with respect to the Mobile App, the Software shall remain at all times on the Company's servers and shall not be downloaded, delivered or transferred to, or copied by, Client or any User, and shall be accessed by Users via the Company's servers only and solely for the Purpose. Neither Client nor any User will obtain any right or license to or in connection with the SaaS Platform and the Site and, except as expressly provided in this agreement with respect to the License to use the Mobile App, neither Client nor any User will obtain any license to or in connection with the Software, in each case, by virtue of this Agreement or any agreement or arrangement entered into between the Client and any User.

## 11 GOVERNING LAW AND JURISDICTION

This Agreement shall be governed by and construed in accordance with the laws of the State of New York without regard to conflicts of laws' provisions. Any dispute arising under or in relation to this Agreement shall be resolved only by the competent courts of The State of New York sitting in New York County, and of the United States District Court of the Southern District of New York, and any appellate courts from any thereof and the Parties hereby irrevocably submit to the exclusive jurisdiction of such courts.

## 12 FORCE MAJEURE

- 12.1 For purposes of this Agreement, a "**Force Majeure Event**" shall mean the occurrence of unforeseen circumstances beyond a Party's control and without such Party's negligence or intentional misconduct, including, but not limited to, any act by any governmental authority, act of war or terror, natural disaster, strike, boycott, embargo, shortage, riot, complete lockdown, labor dispute, civil commotion(.
- 12.2 Subject to Section 12.3 below, notwithstanding anything to the contrary contained in this Agreement, neither Party shall be responsible for any failure to perform any of its obligations hereunder, other than a monetary obligation, due to a Force Majeure Event.

- 12.3 The Party claiming a Force Majeure Event shall use reasonable efforts to mitigate the effect of any such Force Majeure Event and to cooperate to develop and implement a plan of remedial and reasonable alternative measure to remove the Force Majeure Event. Upon the cessation of the Force Majeure Event, the Party affected thereby shall use its best efforts to resume normal performance of its obligations under the Agreement as soon as possible.

**Limitations.** Notwithstanding that a Force Majeure Event otherwise exists, the provisions of this Section shall not excuse (i) any obligation of either Party, including the obligation to pay money in a timely manner for Product actually delivered or other liabilities actually incurred, that arose before the occurrence of the Force Majeure Event causing the suspension of performance; or (ii) any late delivery of Product, equipment, materials, supplies, tools, or other items caused solely by negligent acts or omissions on the part of such Party; (iii) the Client's obligations to reach a minimum number of Users and Roll-out plan obligations if set forth in Schedule I hereto; For avoidance of any doubt, any decline in the Client's business or volume of activity, market share or profitability, including due to adverse changes related to the financial, liquidity or other situation of the Client, the its controlling shareholders, the applicable jurisdiction market or industry shall not constitute Forth Majeure hereunder. Without derogating from the above, it is clarified that the Client's minimum Users and/or Roll-out Plan Obligation (if set in Schedule I hereto) are material and therefore, any failure by Client to comply with them including due to an event that may but for the provision of this subsection would be considered a Force Majeure as aforesaid, shall constitute a breach of this Agreement. In such an event the Company may, in addition to and without derogating from any other remedy available hereunder or under any agreement or under applicable law, make price adjustments and re-negotiate the commercial terms hereof to reflect such reduction.

### 13 MISCELANEOUS

- 13.1 **Entire Agreement.** This Agreement, including the Schedules and Appendices hereto, and the T&C constitutes the entire agreement between the Parties in respect of the subject-matter hereof, and supersedes all prior agreements or understandings between the Parties relating to the subject-matter hereof, provided, however, that in the event of any discrepancies or contradictions between the provisions of this Agreement and the provisions of the T&C or any of the Schedules and Appendices hereto, the provisions of Proposal **Appendix 1** shall prevail over all other documents.
- 13.2 **Dissociation.** Should any clause in this Agreement be considered invalid, not executable or illegal for any reason, the validity or viability of execution of any or all remaining parts will not be affected. In this case, the Parties agree to replace the clause with a corresponding text which is valid and equivalent to the intended meaning.
- 13.3 **Assignment.** The Client shall not assign or otherwise transfer any of its rights or obligations under this Agreement and shall not delegate any of its duties hereunder without the Company's express written consent. Any attempt to assign, transfer, sell or delegate, contrary to this clause, will be void and shall have no effect.
- 13.4 **No Implied Waiver.** The waiver of one breach or default hereunder shall not constitute the waver of any other or subsequent breach or default. The failure of any Party to demand the execution of any of its rights under this Agreement shall not constitute a waiver of such right. All amendment hereto or waiver hereunder shall be made in writing and must be executed by the Parties.
- 13.5 **Expenses.** Except as expressly provided in this Agreement, each Party shall bear, pay and be responsible for all its costs, fees and expenses incurred or to be incurred by it in connection with or with respect to this Agreement.

- 13.6 **Notices.** All notices under this Agreement shall be in writing and shall be sent to the Parties' respective address or Email address set forth in the preamble to this Agreement. The Parties may change such addresses upon written notice sent to the other Party. Notices shall be deemed given upon the earlier of (i) the date indicated on a written confirmation receipt by the receiving Party, (ii) three workdays, or seven workdays for international notices, after dispatch by courier or certified mail, postage prepaid, properly addressed to the receiving party, or (iii) one workday (Monday through Friday) following confirmation by e-mail, as applicable.
- 13.7 **Counterparts.** This Agreement may be executed in any number of counterparts (including counterparts transmitted by fax), each of which shall be deemed to be an original, but all of which taken together shall be deemed to constitute one and the same instrument.

IN WITNESS WHEREOF, the Parties hereto have entered into this Agreement, as of the

**Effective Date hereof.**

**For Company:**

**Pepperi Inc.**

Name and Title

Ofer Yourvexel, CEO

**For Client:**

\_\_\_\_\_

Name and Title

\_\_\_\_\_

**Schedule I**  
**Consideration and Payment Terms**

**LICENSE AND SERVICES FEES**

1. Client shall pay to the Company the fees as specified in Appendix 1- **Proposal**.

**2. Payment Terms**

2.1. The Company shall invoice the Client for the Initial payment of the Subscription Fee on the Effective Date for immediate payment.

2.2. An invoice for any additional period shall be issued 30 (thirty) days before the end of the immediately preceding period for payment within 30 (thirty) days.

2.3. Any invoice issued for Travel expenses, adding products/users after Production Date and /or additional support and services above the initial SOW, shall be paid upon issuance.

2.4. Invoices shall be sent to Client's email according to the following billing information, and shall be deemed as received by client upon being sent:

Full Client name for billing: \_\_\_\_\_

VAT ID no. / Tax ID no.: \_\_\_\_\_

Full Address: \_\_\_\_\_

Email for invoicing: \_\_\_\_\_

3. "**Designated Account**" shall mean the Company's checking account number 01092857-01 at Bank Hapoalim B.M New York, or any other bank account as shall be notified to the Client in writing from time to time by the Company.

**APPENDIX 1: Proposal**

**APPENDIX 2: STANDARD PRICING**

**APPENDIX 3: SLA**

## **APPENDIX 4**

### **Pepperi Travel Expense Policy**

Client will reimburse PEPPERI for travel and living expenses for travels requested by Client, which will include airfare, transportation, hotel, meals and other travel related expenses:

- Air Travel – Economy Airfare, except when travel is requested or plans are changed at a short notice per Client’s request and economy flights are not available.
- Ground Transportation -
  - Local transportation costs such as taxis, buses and/or trains.
  - Car rentals - Compact size for one person and Intermediate for two or more people. Insurance for rental cars must include third party liability, theft protection and loss/collision damage waiver.
- Hotels / Service Apartment -
  - Comfortable, reasonably priced hotels in the vicinity of Client’s business, at Client’s discretion.
  - Laundry expenses will be reimbursed for business trips of over 5 days.
- Meals - Reasonable and customary meal expenses (tips included).
- Other Reimbursable Expenses
  - Road tolls and parking fees;
  - Courier of document and material to client as required;
  - Business related telephone charges including mobile, fax and internet connections;
  - Tipping when appropriate and commensurate with local practices and customs;
- Other Policies:
  - Change in Plans. Where travel plans are changed or canceled by client's requests and flights, hotel and other related expenses are already incurred by PEPPERI, Client will fully reimburse PEPPERI for such expenses, but only to the extent that PEPPERI is unable to recover such expenses directly or under a travel insurance policy.
  - Long Assignments. Where PEPPERI staff is required to stay aboard on long term assignments (more than one month), the staff will be entitled to and reimbursed for traveling home twice per month.
- Non-Reimbursable Expenses - Personal items and services purchased while traveling are not reimbursable. Some examples include: personal air travel and other personal trip insurance, airline club memberships, manicure, massage, theater tickets or hotel movies, workout room fees, toiletries, haircuts, newspapers/magazines/books, bar bills, private limousines, shoeshine, traffic fines, personal or employee gifts, snacks, phone calls on airplanes, entertainment of spouse while on company business.

APPENDIX 5 – SOW