

## COUPA EARLY ACCESS PRODUCT AGREEMENT

This Coupa Early Access Product agreement ("**Agreement**") between Coupa Software, Inc. ("**Coupa**") and the company or other legal entity ("**Customer**") that has executed an Order Form (as defined below), is made effective as of the last signature set forth on the first Order Form that references this Agreement ("**Effective Date**"). This Agreement sets forth the terms and conditions under which Customer is granted early access to the specific product feature set, or specific product, that is not generally or commercially available ("**Product**") as set forth in the Order Form (defined below) by Coupa during the Subscription Term.

"**Order Form**" as used herein means an order form mutually executed by Coupa and Customer detailing the purchase by Customer of early access Product subscriptions and specifying, among other things, the Subscription Term, and any applicable fees (if any). The Order Form(s), once mutually executed, shall be governed by, and become part of this Agreement, and is/are hereby incorporated by this reference.

"**Subscription Term**" means the period during which Customer is authorized to use the Product pursuant to an Order Form.

### 1. GRANT OF USE.

Subject to the terms and conditions of this Agreement, Coupa will provide to Customer access to the Product, during the Subscription Term, solely for internal proof of concept or internal evaluation purposes, or as otherwise mutually agreed by Coupa and Customer on an Order Form. Customer will not use, nor permit others to use, the Product in a manner inconsistent with the terms and conditions of this Agreement or otherwise inconsistent with Coupa's directions.

### 2. CUSTOMER'S RESPONSIBILITIES.

- a) **Participation in the Early Access Program.** Customer shall perform and/or comply with any requirements of the Early Access program as set forth in the applicable Order Form. Customer shall treat the Product and any other Coupa Confidential Information provided by Coupa hereunder with the same degree of care and safeguards that Customer takes with Customer's own Confidential Information (as defined below), but in no event less than a reasonable degree of care.
- b) **Restrictions.** Except as otherwise permitted under this Agreement, Customer shall not (i) license, sublicense, sell, resell, transfer, rent, lease, assign, distribute, disclose, or otherwise commercially exploit the Product; (ii) copy, modify or make derivative works based upon the Product; (iii) "frame" or "mirror" the Product on any other server or device; (iv) access the Product for competitive purposes or use the Product for application service provider, timesharing or service bureau purposes, or any purpose other than its own internal use; (v) decompile, disassemble, reverse engineer or attempt to discover any source code or underlying ideas or algorithms of the Product, (vi) remove, obscure or modify a copyright or other proprietary rights notice in the Product; (vii) use the Product to send or store infringing, obscene, threatening, libelous, or otherwise unlawful material; (viii) use the Product to create, use, send, store, or run material containing software viruses, worms, Trojan horses or otherwise engage in any malicious act or disrupt the security, integrity or operation of the Product; (ix) attempt to gain or permit unauthorized access to the Product or its related systems or networks; or (x) permit or assist any other party to do any of the foregoing.
- c) **Fees and Taxes.** Customer shall pay Coupa any amount(s) and fees (if any) set forth in the applicable Order Form. Any and all payment obligations are non-cancellable, and any and all amounts paid are nonrefundable except as otherwise specified in this Agreement. If Coupa charges for the Product subscription as set forth on the applicable Order Form, Coupa shall issue invoices to Customer as specified in the applicable Order Form and Customer agrees to pay such amounts not subject to a good faith dispute in accordance with the payment terms as specified in the applicable Order Form and if any such undisputed invoice is more than 30 days overdue, Coupa may, without limiting its other rights and remedies, suspend the Product until such undisputed invoice is paid in full. If Coupa charges for the Product subscription as set forth on the applicable Order Form, Customer agrees to pay Coupa in the currency specified in the applicable Order Form. Coupa's fees are exclusive of all taxes, levies, or duties imposed by taxing authorities, including for example, value-added, sales, use or withholding taxes, assessable by any jurisdiction whatsoever (collectively, "**Taxes**") and Customer shall be responsible for payment of all Taxes associated with this Agreement and all Order Forms

hereunder, except that Coupa is solely responsible for taxes assessable against Coupa based on Coupa's net income, property, and employees. If Customer is legally entitled to an exemption from any sales, use, or similar transaction tax, upon signing an Order Form, Customer shall provide to Coupa with a legally sufficient tax exemption certificate for each taxing jurisdiction, and Coupa shall not charge Customer any taxes from which it is exempt. If any deduction or withholding is required by law, Customer shall notify Coupa and shall pay Coupa any additional amounts necessary to ensure that the net amount that Coupa receives, after any deduction and withholding, equals the amount Coupa would have received if no deduction or withholding had been required. Upon request, Customer shall provide documentation showing that the withheld and deducted amounts have been paid to the relevant taxing authority.

- d) **Restricted Information.** Unless otherwise agreed by the parties in writing (including on an Order Form), Customer shall not upload, provide, or submit any Restricted Information to the Product or Coupa platform. "**Restricted Information**" means (i) sensitive personal information as defined in Article 9 and 10 of the EU General Data Protection Regulation (GDPR) and other applicable data protection laws, and/or (ii) personal health information (meaning health or medical condition of an individual or the provision of health care to an individual).

### 3. CONFIDENTIALITY.

- a) "**Confidential Information**" means all confidential and proprietary information of a party ("**Disclosing Party**") disclosed to the other party ("**Receiving Party**"), whether orally or in writing, that is designated as confidential or that reasonably should be understood to be confidential given the nature of the information and the circumstances of disclosure, including, without limitation, the terms and conditions of this Agreement, the Customer Data (as defined below), the Product, business and marketing plans, technology and technical information, product designs, and business processes. For avoidance of doubt, Customer Data is deemed Confidential Information of Customer under this Agreement, and the Product is deemed Confidential Information of Coupa under this Agreement. "**Customer Data**" means any data, information or material submitted by or on behalf of Customer to the Product.
- b) Confidential Information shall not include any information that: (i) is or becomes generally known to the public without breach of any obligation owed to the Disclosing Party; (ii) was known to the Receiving Party prior to its disclosure by the Disclosing Party without breach of any obligation owed to the Disclosing Party; (iii) was independently developed by the Receiving Party without either use of the Confidential Information or breach of any obligation owed to the Disclosing Party; or (iv) is received from a third party without breach of any obligation owed to the Disclosing Party.
- c) The Receiving Party shall not disclose or use any Confidential Information of the Disclosing Party for any purpose outside the scope of this Agreement, except with the Disclosing Party's prior written permission. Each party agrees to protect the confidentiality of the Confidential Information of the other party in the same manner that it protects the confidentiality of its own proprietary and confidential information of like kind (but in no event using less than reasonable care).
- d) If the Receiving Party is compelled by law to disclose Confidential Information of the Disclosing Party, it shall provide the Disclosing Party with prior notice of such compelled disclosure (to the extent legally permitted) and reasonable assistance, at Disclosing Party's cost, if the Disclosing Party wishes to contest the disclosure, and any information so disclosed shall continue to be treated as Confidential Information for all other purposes.
- e) Except as expressly provided in this Agreement, if the Receiving Party discloses or uses (or threatens to disclose or use) any Confidential Information of the Disclosing Party in breach of confidentiality protections hereunder, the Disclosing Party shall have the right, in addition to any other remedies available to it, to seek injunctive relief to enjoin such acts, it being specifically acknowledged by the parties that any other available remedies may be inadequate.
- f) Notwithstanding the foregoing, Coupa may collect, use, and disclose quantitative data derived from the use of the Product to support benchmarking, analytics, service improvements, industry analysis, Customer's use of the Product, and/or similar features of the Product. All data disclosed will be in aggregate and anonymous form and will not identify Customer or any specific Customer Confidential Information.

**4. OWNERSHIP.**

- a) **Coupa's Intellectual Property.** As between Coupa and Customer, all right, title, and interest in and to the Product (including all rights therein, and all derivatives, translations, modifications, and enhancements thereof) are, and shall remain, owned exclusively by Coupa notwithstanding any other provision in this Agreement or Order Form. Coupa alone shall own any suggestions, ideas, enhancement requests, feedback, recommendations, or other information provided by or on behalf of Customer or any other third party relating to the Product. This Agreement is not a sale and does not convey to Customer any rights of ownership in or related to the Product. Other than the authorization rights granted in Section 1, nothing in this Agreement will be construed to grant to Customer any rights to the Product.
- b) **Customer's Intellectual Property.** As between Coupa and Customer, Customer exclusively owns all rights, title, and interest in and to all Customer Data. Customer grants to Coupa a royalty-free, fully paid, non-exclusive, sub-licensable, worldwide right and license to use, reproduce, process, transfer, and store Customer Data during the term of the Agreement (and longer solely to the extent necessary to comply with any surviving obligations hereunder) within the scope of this Agreement or as otherwise agreed to by Customer in writing.

**5. TERM AND TERMINATION.**

- a) **Term and Termination.** The Agreement commences on the Effective Date and continues until all Order Forms subject to this Agreement have expired or terminated unless this Agreement is earlier terminated in accordance with this Section. Product subscriptions commence on the subscription start date specified in the relevant Order Form and continue for the Subscription Term specified therein. A party may immediately terminate this Agreement for cause: (i) upon 30 days written notice of a material breach to the other party if such breach remains uncured at the expiration of such period; or (ii) if the other party becomes the subject of a petition in bankruptcy or any other proceeding relating to insolvency, receivership, liquidation or assignment for the benefit of creditors that is not dismissed within sixty (60) days of its commencement or an assignment for the benefit of creditors. Upon any termination for cause by Customer, Coupa shall refund any prepaid fees covering the remainder of the Subscription Term after the effective date of termination. Termination shall not relieve Customer of the obligation to pay any fees accrued or payable to Coupa prior to the effective date of termination.
- b) **Survival.** The Confidentiality section, the Ownership section, this Survival section, the Warranty Disclaimer; Limitation of Liability section, the General Terms section, and any other terms which by their nature are intended to survive, shall survive termination or expiration of this Agreement.

**6. WARRANTY DISCLAIMER; LIMITATION OF LIABILITY.**

- a) THE PRODUCT IS PROVIDED UNDER THIS AGREEMENT 'AS IS' AND "AS AVAILABLE" WITHOUT WARRANTY OF ANY KIND, EITHER EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION, WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, NON-INFRINGEMENT, OR WARRANTIES THAT THE PRODUCT IS FREE OF DEFECTS. THIS DISCLAIMER OF WARRANTY CONSTITUTES AN ESSENTIAL PART OF THIS AGREEMENT. NO USE OF THE PRODUCT IS AUTHORIZED HEREUNDER EXCEPT SUBJECT TO THIS DISCLAIMER.
- b) IN NO EVENT SHALL EITHER PARTY BE LIABLE TO THE OTHER FOR ANY INDIRECT, INCIDENTAL, SPECIAL, PUNITIVE, OR CONSEQUENTIAL DAMAGES, INCLUDING LOSS OF PROFITS, REVENUE, DATA, OR USE, INCURRED BY EITHER PARTY OR ANY THIRD PARTY, WHETHER IN AN ACTION IN CONTRACT OR TORT OR BASED ON A WARRANTY, EVEN IF THE OTHER PARTY OR ANY OTHER PERSON HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.
- c) IN NO EVENT WILL EITHER PARTY'S TOTAL AND AGGREGATE LIABILITY TO THE OTHER ARISING OUT OF OR RELATED TO THIS AGREEMENT OR THE PRODUCT (AS DEFINED IN THIS AGREEMENT) EXCEED THE GREATER OF: (A) FIVE THOUSAND UNITED STATES DOLLARS (USD \$5,000); OR (B) THE FEES PAID OR PAYABLE BY CUSTOMER UNDER THIS AGREEMENT IN THE TWELVE (12) MONTH PERIOD IMMEDIATELY PRECEDING THE EVENT GIVING RISE TO SUCH LIABILITY UNDER THIS AGREEMENT. THE EXISTENCE OF MORE THAN ONE CLAIM SHALL NOT ENLARGE THIS LIMIT. THE FOREGOING LIMITATIONS SHALL NOT APPLY TO CUSTOMER'S OBLIGATION TO PAY FEES LEGALLY OWED UNDER THIS AGREEMENT, CUSTOMER'S BREACH OF SECTION 2(B)

(RESTRICTIONS) OF THIS AGREEMENT, INFRINGEMENT BY A PARTY OF THE OTHER PARTY'S INTELLECTUAL PROPERTY RIGHTS, GROSS NEGLIGENCE OR WILLFUL MISCONDUCT, FRAUD OR FRAUDULENT MISREPRESENTATION, OR DEATH OR BODILY INJURY CAUSED BY NEGLIGENCE.

## **7. PRIVACY & SUBPROCESSORS**

- a) **Privacy.** If and to the extent applicable to this Agreement, Coupa and Customer agree to comply with the relevant privacy exhibits made available at [https://success.coupa.com/Contract/03 Exhibit B](https://success.coupa.com/Contract/03_Exhibit_B), each of which are incorporated by reference into this Agreement as **Exhibit B: (Exhibit B-1) US Privacy Annex, (Exhibit B-2) EU Privacy Annex (DPA), and (Exhibit B-3) Brazil Privacy Annex.** Notwithstanding anything to the contrary, for purposes of this Agreement only, those exhibits will be deemed amend this Agreement (and not the Master Subscription Agreement). For further clarity, the foregoing exhibits do not apply to the extent Coupa is processing only dummy data (*i.e.*, not actual personal data in Customer Data).
- b) **Subprocessors and Data Transfer.** Coupa may engage Subprocessors and other Third-Party Suppliers (each as defined below) to perform some of its obligations under this Agreement. Coupa shall require that Subprocessors only access and use Customer Data in a manner consistent with the terms of this Agreement and bind Subprocessors to written obligations to protect Customer Data. At the written request of Customer, Coupa shall provide additional information regarding Subprocessors and their locations. Customer may send such requests to Coupa's Data Privacy Officer at [legalnotices@coupa.com](mailto:legalnotices@coupa.com). "**Third-Party Suppliers**" means third-party contractors and suppliers engaged by Coupa in the context of the provision of the Product. "**Subprocessors**" means those Coupa Affiliates and Third-Party Suppliers that have access to, and process, Customer Data. As part of providing the Product, Coupa and its Subprocessors may transfer, store and process Customer Data in the European Economic Area, United States, India, or any other country in which Coupa and its Subprocessors maintain facilities. As may be set forth in further detail in the applicable Order Form, certain Products may require processing of Customer Data (including personal data) by a Coupa Subprocessor as listed under <https://success.coupa.com/subprocessors>. Coupa shall not be relieved of its obligations under this Agreement by use of any Subprocessors or Third-Party Suppliers.

## **8. GENERAL TERMS.**

- a) The relationship created by this Agreement is one of independent contractors, and not partners or joint ventures. There are no third-party beneficiaries to this Agreement.
- b) Coupa may assign this Agreement, and its rights and obligations hereunder, in its sole discretion. Customer may not assign this Agreement, including by way of merger, regardless of whether Customer is the surviving entity or acquisition, without Coupa's prior written consent (not to be unreasonable withheld).
- c) This Agreement, including any and all Order Forms hereunder, constitutes the complete and exclusive agreement between Coupa and Customer with respect to its subject matter, and supersedes all prior oral or written understandings, communications, or agreements. In the event of an express conflict between the terms of this Agreement or an Order Form, the Order Form shall govern and control to the extent of the conflict.
- d) This Agreement may not be modified except in a writing duly signed by an authorized officer of Coupa and Customer.
- e) A waiver of any breach of this Agreement will not waive subsequent defaults of the same or a different kind by the breaching party.
- f) If any provision of this Agreement is held to be unenforceable for any reason, such provision shall be reformed only to the extent necessary to make it enforceable, and such decision shall not affect the enforceability of such provision under other circumstances, or of the remaining provision hereof.
- g) Each party shall comply with all applicable laws and government regulations in providing and using the Product. Without limiting the foregoing, (i) each party represents that it is not named on any U.S. government list of persons or entities prohibited from receiving exports, and (ii) Customer shall not permit users to access or use the Product in violation of any applicable export embargo, prohibition, or restriction.

- h) Except as provided elsewhere in this Agreement, either party may give notice by written communication sent by next-day mail delivered by a nationally recognized delivery service: (i) if to Customer, to Customer’s address on record in Coupa’s account information or the Customer address set forth on the Order Form, or (ii) if to Coupa, to 1855 S. Grant Street, San Mateo, CA 94402, addressed to the attention of: Legal Dept, with an email copy to [legalnotices@coupa.com](mailto:legalnotices@coupa.com). Such notice shall be deemed to have been given upon the expiration of 48 hours after mailing.
- i) This Agreement does not obligate or commit Coupa to deliver a generally available solution. If Coupa at its sole discretion elects to make the Product generally available at a later time, and if Customer wants to thereafter purchase a subscription to such generally available product, Customer will need to enter into a separate Coupa master subscription agreement to purchase generally available subscriptions. Customer agrees that Customer’s purchase of any subscription is neither contingent upon the delivery of any future functionality or features nor dependent upon any oral or written comments made by Coupa with respect to future functionality or features.
- j) **Governing Law, Jurisdiction and Dispute Resolution.** The governing law, and place of jurisdiction for purposes of this section shall be determined according to where the Customer is domiciled:

Customer domicile	Governing Law	Place of Jurisdiction	Forum
United Kingdom	The laws of England and Wales	London, United Kingdom	International Chamber of Commerce (ICC)
EEA or Switzerland	The laws of Switzerland	Zurich, Switzerland	
Australia	The laws of New South Wales	Sydney, Australia	Australian Centre for International Commercial Arbitration (ACICA)
New Zealand	The laws of New Zealand	Auckland, New Zealand	New Zealand International Arbitration Centre (NZIAC)
China, Japan, India or in one of the ASEAN member states	The laws of Singapore	Singapore, Republic of Singapore	Singapore International Arbitration Centre (SIAC)
Canada	The laws of Ontario	Toronto, Canada	Judicial Arbitration and Mediation Services, Inc. (JAMS)
in all other cases	The laws of California and controlling United States federal law	San Francisco, California, USA	

- k) This Agreement, and any disputes related to this Agreement or any Order Form hereunder, will be governed by the applicable Governing Laws above, without regard to conflicts of laws rules or the United Nations Convention on the International Sale of Goods.
- l) Any disputes, actions, claims, or causes of action arising out of or in connection with this Agreement shall be submitted to and finally settled by arbitration using the English language in accordance with the Arbitration Rules and Procedures of the applicable Forum above then in effect, by one or more commercial arbitrator(s) with substantial experience in the industry and in resolving complex commercial contract disputes. Judgment upon the award so rendered may be entered in a court having jurisdiction or application may be made to such court for judicial acceptance of any award and an order of enforcement, as the case may be. Notwithstanding the foregoing, each party shall have the right to institute an action in any court of proper jurisdiction for injunctive relief.

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