

## Wasabi Technologies Customer Agreement

This Customer Agreement (this “Agreement”) is effective on January 28, 2020 (“Effective Date”) between Wasabi Technologies, Inc., with offices at 111 Huntington Ave, 29th Floor, Boston, MA 02110 (“Wasabi”, “we”, “us” or “our”) and The Regents of the University of California on behalf of the University of California, Office of the President, with offices at 1111 Franklin Street, Oakland, CA 94607 (“Customer” or “you”). This Agreement contains the terms and conditions that govern Customer’s access to and use of the Wasabi data storage platform (the “Wasabi Service”). Customer’s signature below indicates its acceptance of the terms and conditions of this Agreement, its Exhibits (including the Terms Applicable to Educational Institutions attached hereto as Exhibit A), including any referenced policies (the “Policies”), including the Wasabi Service Level Agreement and Wasabi Platform Terms of Use and Acceptable Use Policy. In the event of any conflict between the terms and conditions of this Agreement, any Exhibit, or the Policies, the terms of the Exhibit shall prevail. Wasabi’s policies are found at [www.wasabi.com/legal](http://www.wasabi.com/legal) prior to the registration process.

YOU REPRESENT AND WARRANT THAT YOU HAVE THE LEGAL CAPACITY AND AUTHORITY TO ENTER INTO A BINDING AGREEMENT TO ADHERE TO THE TERMS AND CONDITIONS SET FORTH HEREIN, AND THAT THE WASABI SERVICE WILL BE USED ONLY IN ACCORDANCE WITH THIS AGREEMENT AND WITH ALL APPLICABLE LAWS. IF AN INDIVIDUAL IS REGISTERING OR USING THE WASABI SERVICE ON BEHALF OF AN ENTITY OR ORGANIZATION, THAT INDIVIDUAL WARRANTS, REPRESENTS, AND COVENANTS TO WASABI THAT SUCH INDIVIDUAL IS DULY AUTHORIZED TO AGREE TO THIS AGREEMENT ON BEHALF OF THE ORGANIZATION AND TO BIND THE ORGANIZATION TO THEM.

### 1. Use of the Wasabi Service

1.1 Access. Subject to the terms and conditions of this Agreement, Wasabi hereby grants you and your Authorized Users (as defined below), for your internal business purposes and for so long as you maintain a Customer Account (as defined in Section 1.2) in good standing, a non-exclusive, non-transferable, non-sublicensable right to access and use the Wasabi Service (including any customer portals which may also be made available to you in as part of or through with the Wasabi Service) in accordance with the Documentation. “Documentation” means the user, technical and admin guides for the Wasabi Service located at [wasabi.com/help/docs](http://wasabi.com/help/docs) (and any successor or related locations designated by Wasabi), as such Documentation may be updated by Wasabi from time to time.

1.2 Registration of Customer Accounts. (a) You must register an account with us (a “Customer Account”) in order to use the Wasabi Service. We will use your account information in accordance with the Privacy Policy, and you consent to such usage, where “Account Information” means information about you that you provide to us in connection with the creation or administration of your Customer Account. For example, Account Information includes names, usernames, phone numbers, email addresses and billing information associated with your Customer Account.

(b) Unless explicitly permitted by this Agreement, you will only create one Customer Account per email address. You agree to provide accurate and complete information in the creation of your Customer Account, and you acknowledge and agree you will update this information with any changes. You may authorize others (collectively, “Authorized Users”) to use the Wasabi Service on your behalf. Each Authorized User will establish or be provided with a username and password. You are responsible for the acts and omissions of your Authorized Users. Authorized Users may also be required to use other access credentials, such as an encryption key (collectively, “User Credentials”). We reserve the right to suspend or terminate the Customer Account, or the access of any Authorized User, for any reason, including if any registration information is inaccurate, untrue or incomplete, or if you or any of your Authorized Users fail to maintain the security of any User Credentials.

(c) You and your Authorized Users are responsible for ensuring that User Credentials are kept confidential and are not disclosed to any third party. You are fully responsible for all activity that occurs under your Customer Account using the User Credentials, including any loss or deletion of Your Content (as defined in Section 1.7 below), regardless of whether the activities are authorized by you or undertaken by you, your employees or a third party (including your contractors, agents or End Users). Wasabi and its Affiliates are not responsible for unauthorized access to your Customer Account.

“Affiliate” means any corporation, partnership or other entity now existing or hereafter organized that directly or indirectly controls, is controlled by or under common control with Wasabi. For purposes of this

definition “control” means the direct possession of a majority of the outstanding voting securities of an entity.

(d) You agree to, and will ensure that each Authorized User will, notify us at [support@wasabi.com](mailto:support@wasabi.com) immediately upon learning of any unauthorized access to a Customer Account or any other suspected security breach.

1.3 Third-Party Content. Third-Party Content made available by Wasabi through the Wasabi Service, if any, may be used by you, solely at your option. Third-Party Content solely governed by the separate terms and conditions accompanying such Third-Party Content, which terms and conditions may include separate fees and charges. “Third Party Content” means content made available to you by any third party on the Wasabi website or in conjunction with the Wasabi Service.

1.4 Usage Data. To provide billing and administration services, or to investigate fraud, abuse or violations of this Agreement, we may process usage data related to your Customer Account, such as resource identifiers, metadata tags, security and access roles, rules, usage policies, permissions, usage statistics and analytics (“Usage Data”).

1.5 Limited Wasabi Services. We may offer the Wasabi Service for free in limited circumstances, such as free trials, or may offer a pre-release version of any Wasabi Service (“Limited Wasabi Service”). The Limited Wasabi Service requires an active Customer Account and is subject to the time limits that are made known to you at the time of order fulfillment, via email or the Documentation. You acknowledge and agree that you will use the Limited Wasabi Service in compliance with any related Documentation and restrictions. You acknowledge that your, and your Authorized User’s, use of any Limited Wasabi Service is for the sole purpose of evaluating and testing the applicable such service and providing feedback to Wasabi. Further, you agree that any pre-release version of a Wasabi service may be experimental in nature, have not been fully-tested and may be discontinued at any time with or without notice. We may, in our discretion, discontinue any Limited Wasabi Service at any time, at which point your access will end and any Your Content shall be deleted.

1.6 Client Download. The Wasabi Service may require software be installed by you (as defined below) (the “Client Download”). Subject to the terms and conditions of this Agreement, and in consideration of the applicable fees paid by you, Wasabi grants to you a non-exclusive, nontransferable, limited license (without the right to sublicense) to install, execute and use the Client Download solely: (i) in object code format; (ii) for your internal use, with no right to make such software available to third parties either by transferring copies thereof or by providing a hosted service; and (iii) in accordance with Documentation and the terms hereof.

1.7 Your Content. “Your Content” means content that you or any Authorized User transfer to us for storage or hosting by the Wasabi Service in connection with your Customer Account. Your content does not include your Customer Account information. You will ensure that Your Content will not violate any terms of this Agreement or referenced Wasabi policies or Documentation, or any applicable law. You are solely responsible for the development, content, operation, maintenance, and use of Your Content.

You represent and warrant to us that: (a) you or your licensors own all right, title, and interest in and to Your Content and Feedback; (b) you have all rights in Your Content and Feedback necessary to grant the rights contemplated by this Agreement; and (c) none of Your Content use of the Wasabi Service will violate the Platform Terms of Use and Acceptable Use Policy (found at [www.wasabi.com/legal](http://www.wasabi.com/legal)).

## **2. Wasabi Changes; Support and Maintenance**

2.1 To the Wasabi Service. We may change or discontinue any or all of the Wasabi Service or change or remove functionality of any or all of the Wasabi Service from time to time. We will notify you of any material change to or discontinuation of the Wasabi Service by posting the revised version on our website and/or communicating it to you. Any changes to the Wasabi Services will be effective thirty (30) days from the time we post such changes. Your continued use of the Wasabi Services thereafter constitutes your acceptance the changed Wasabi Service.

2.2 To the APIs. We may change or discontinue any APIs for the Wasabi Service from time to time. For any discontinuation of or material change to an API, we will use commercially reasonable efforts to continue supporting the previous version of such API for 12 months after the change or discontinuation (except if doing so (a) would pose a security or intellectual property issue, (b) is economically or technically burdensome, or (c) would cause us to violate the law or requests of governmental entities).

2.3 To the Service Level Agreements. We may change, discontinue or add Service Level Agreements from time to time in accordance with the terms of this Customer Agreement.

2.4 Support and Maintenance. During the term of the Usage Term, Wasabi will provide you with reasonable support via the Wasabi ticketing system, in accordance with Wasabi's then-current service level agreement. Wasabi and its Affiliates will provide you with service updates and bug fixes that we in its sole discretion makes generally available to its other similarly users of the Wasabi Service at no charge. Wasabi will use commercially reasonable efforts to correct reproducible failures of the Wasabi Service to perform in substantial accordance with its Documentation. Premium support may be purchased from or through Wasabi for an additional fee. Further, Wasabi itself and through its Affiliates will use reasonable efforts to schedule maintenance to the Wasabi Service during non-peak usage hours. Wasabi may temporarily limit or suspend the availability of all or part of the Wasabi Service if it is necessary for reasons of public safety, security, maintenance of the Wasabi Service, interoperability of services, data protection, or to perform work that is necessary for operational or technical reasons.

### **3. Security and Data Privacy**

3.1 Wasabi Security. (a) Without limiting your obligations under Section 4.2 or the terms of Section 10, we will implement reasonable and appropriate measures designed to help you secure Your Content against accidental or unlawful loss, access or disclosure. (b) However, we cannot guarantee that unauthorized third parties will never be able to defeat our safeguards or use the Customer Account and/or Your Content for improper purposes. You are responsible for properly configuring and using the Wasabi Service and otherwise taking appropriate action to secure, protect and backup your Customer Account(s) and Your Content in a manner that will provide appropriate security and protection, which might include use of encryption to protect Your Content from unauthorized access and routinely archiving Your Content.

3.2 Data Privacy. You may specify the Wasabi regions in which Your Content will be stored. You consent to the storage of Your Content in, and transfer of Your Content into, the Wasabi regions you select. When choosing Wasabi regions outside of the European Union, you acknowledge that you are responsible for understanding applicable law(s) and regulation(s) concerning the transfer of Your Content and have expressly consented with the storage and transfer of Your Content outside of the European Union.

3.3 Access of Customer Data. We will not access or use Your Content except as necessary to maintain or provide the Wasabi Service (including as set forth in Section 1.5), or as necessary to comply with applicable laws, rules or regulations, or governmental orders. We will not move Customer Content from the Wasabi regions selected by you, except in each case as necessary to comply with applicable laws, rules or regulations, or governmental orders. Unless it would violate any of the foregoing, we will give you notice of any legal requirement or order regarding disclosure of Customer Data.

### **4. License Grant; Acknowledgment**

4.1 License of Your Content. You grant to Wasabi a worldwide, non-exclusive, royalty-free, fully-paid up, transferable and sublicensable right to use and store Your Content (subject to Section 3.3) for the purpose of performing this Agreement, improving the Wasabi Service, and as otherwise provided in Wasabi's privacy policy located at [wasabi.com/legal/privacy-policy](https://wasabi.com/legal/privacy-policy) (and any successor or related locations designated by us), as may be updated by us from time to time (the "Privacy Policy"). You retain all rights Your Content, subject to the rights granted to us in this Agreement with respect to the performance of our obligations. You may modify or remove the Your Content via the Customer Account. Your Content will be irretrievably deleted upon (i) you or your Authorized User's deletion of Your Content or (ii) cancellation or termination of the Customer Account.

4.2 Restrictions. You acknowledge and agree that you shall not, and shall ensure your Authorized Users do not: (i) access or use the Wasabi Service in any manner or for any purpose other than expressly permitted by the Documentation; (ii) change, modify or otherwise create derivative works of all or any portion of the Wasabi Service; (iii) modify, disassemble, decompile or reverse engineer any part of the Wasabi Service or apply any other process or procedure to derive source code of any software included in Wasabi Service (except solely to the extent permitted by applicable law); (iv) access or use the Wasabi Service in a way intended to avoid exceeding usage limits or quotas; (v) use Wasabi Service in order to build a similar or competitive application or service; or (vi) remove, tamper with or alter any disabling mechanism or circumvent any technical protection measures associated with the Wasabi Service, or otherwise use any tool to enable features or functionalities that are otherwise disabled in Wasabi Service.

You further acknowledge and agree that, unless otherwise expressly agreed or otherwise permitted by Wasabi, in writing (x) resell or sublicense the Wasabi Service; or (y) remove or alter any proprietary notices (e.g., copyright and trademark notices) pertaining to the Wasabi Service.

4.3 Log-In Credentials and Account Keys. Any log-in credentials and private keys provided to you by Wasabi or generated by the Wasabi Service are for your internal use only and you will not sell, transfer or sublicense them to any other entity or person, except that you may disclose your private key to your agents and subcontractors performing work on your behalf.

4.4 Authorized Users. You will be deemed to have taken any action that you permit, assist or facilitate any person or entity to take related to this Agreement, Your Content or use of the Wasabi Service. You are responsible for your Authorized Users' use of Your Content and the Wasabi Service. You will ensure that all Authorized Users comply with your obligations under this Agreement. If you become aware of any violation of your obligations under this Agreement caused by an Authorized User, you will immediately suspend access to Your Content and the Wasabi Service by such Authorized User. We do not provide any support or services to any Authorized User unless we have a separate agreement obligating us to provide such support or services to an Authorized User.

4.5 Assessments. You acknowledge and agree that (i) you assessed your data protection needs, network environment, technical specifications, and fees and cost of the Wasabi Service, and you are solely responsible for your decision to use the Wasabi Service even if Wasabi has provided guidance to you in connection with the Wasabi Service selected by you; and (ii) you are solely responsible for ensuring that you maintain and operate your information technology infrastructure in a manner appropriate to your use of the Wasabi Service and its Documentation.

4.6 Your Conduct. You represent and warrant that Your Content and you and your Authorized User's, use of the Wasabi Service, and the technology related thereto, shall not (i) interfere with the proper working of the Wasabi Services or impose an unreasonably large load on the Wasabi infrastructure; (ii) give rise to civil or criminal liability, e.g. defamatory, threatening, pornographic, indecent, abusive, libelous or otherwise objectionable actions; (iii) violate or infringe upon any third party right, including any intellectual property right or right of privacy, or that abuses, harasses or stalks any other person; or (iv) initiate a denial of service attack, software viruses or other harmful or deleterious computer code, files or programs such as Trojan horses, worms, time bombs, cancelbots, or spyware.

## **5. Fees and Payment**

5.1 Service Fees. Fees for the Wasabi Service ("Fees") are calculated and billed every thirty (30) days, as set forth at [wasabi.com/pricing/pricing-faqs](https://wasabi.com/pricing/pricing-faqs). If we suspect that your account is at risk of non-payment, as determined in our discretion, we may bill you more frequently. All amounts payable by you under this Agreement will be paid to us without any setoff or counterclaim. We may increase or add new fees and charges for any existing Wasabi Service by giving you at least thirty (30) days' prior notice.

Your failure to maintain your current credit card information or other alternative payment method may result in an interruption of your use of the Wasabi Service.

5.2 Credit Card Payments. We utilize third party payment providers to process credit card payments on Wasabi's behalf ("Payment Provider"). Such Payment Provider's policies govern the processing of your payment, and you must refer to those policies and not this Agreement to determine your rights and liabilities. By providing your credit card information to the Payment Provider, you authorize Wasabi, through such Payment Provider, to immediately charge the Fees for the Wasabi Service during any applicable term for Wasabi Service.

5.3 Taxes. All fees payable by you are exclusive of means any taxes and duties, including, without limitation, VAT, Service Tax, GST, excise taxes, sales and transactions taxes, and gross receipts tax ("Taxes"), which are your responsibility. We will charge and you will pay such applicable Taxes. We will not collect, and you will not pay, any Taxes for which you furnish us a properly completed exemption certificate or a direct payment permit certificate for which we may claim an available exemption. You shall indemnify, defend and hold Wasabi harmless for any liability or expense we may incur in connection with the failure to pay, or collection of, any Taxes.

5.4 No Deduction. All payments made by you to us under this Agreement will be made free and clear of any deduction or withholding. If any such deduction or withholding (including but not limited to cross-border

withholding taxes) is required on any payment, you will pay such additional amounts as are necessary so that the net amount received by us is equal to the amount then due and payable under this Agreement.

5.5 Ongoing Fees. You acknowledge and agree that your credit card or alternative payment method will be automatically charged usage Fees during such period as you have an active Customer Account and you use the Wasabi Service unless you cancel your Customer Account. You may cancel your Customer Account by following the steps set forth at: <https://wasabi-support.zendesk.com/hc/en-us/articles/115001405211-How-do-I-delete-my-Wasabi-account->.

## 6. Proprietary Rights; Confidentiality

6.1 Reservation of Rights. You acknowledge and agree that the software, code, hardware, trademarks, trade secrets, proprietary methods and systems used to provide the Wasabi Service (the “Wasabi Technology”) and the content made available or displayed by us through the Wasabi Service, including all text, graphics, images and the look and feel of such Wasabi Service (collectively, the “Wasabi Content”) are owned by or licensed to Wasabi, including all intellectual property rights therein. Nothing in this Agreement or any of the Documentation shall be considered an assignment or other transfer of ownership in and to the Wasabi Technology or Wasabi Content to you, either expressly, or by implication, estoppel, or otherwise. Other than the authorizations or licenses as may be conferred or granted by us to you in this Agreement or any of the Documentation, Wasabi reserves all right, title and interest in and to the Wasabi Technology and Wasabi Content. No right or license is granted by us to you or your Authorized Users to use any Wasabi trademark, trade name, service mark, product name or other source designator.

Subject to the terms of this Agreement, you are hereby granted a limited, revocable, non-exclusive, non-sublicensable, non-transferrable license to do the following: (a) access and use the Wasabi Service solely in accordance with this Agreement; and (b) copy and use the Wasabi Content solely in connection with your permitted use of the Wasabi Service. Except as provided in this Section 6.1, you obtain no rights under this Agreement from us, our Affiliates or our licensors to the Wasabi Service, including any related intellectual property rights. Some Wasabi Content and Third-Party Content may be provided to you under a separate license, such as the Apache License, Version 2.0, or other open source license. In the event of a conflict between this Agreement and any separate license, the separate license will prevail with respect to the Wasabi Content or Third-Party Content that is the subject of such separate license.

6.2 Ongoing Development. Wasabi may develop and provide ongoing innovation to the Wasabi Service, including new features, functionality, and efficiencies. In the event Wasabi adds new features or functionality (collectively, “New Features”) to the Wasabi Service, Wasabi may offer the New Features to you at no additional charge or, if Wasabi generally charges customers for such functionality, Wasabi may condition your use of the New Features on the payment of additional Fees.

6.3 Feedback. Notwithstanding anything to the contrary in this Agreement, you hereby agree that all intellectual property rights in the Feedback, and all other ownership in any ideas, modifications, enhancements, improvements, or any other suggestion specifically relating to the Wasabi Service, are hereby assigned to Wasabi and shall be the sole and exclusive property of Wasabi. All Feedback shall be treated as Wasabi’s Confidential Information. Without limiting the generality of the foregoing, you agree that your provision of Feedback does not give you any intellectual property or any other right, title, or interest in or to any aspects of the Wasabi Service, even if such Feedback leads to the creation of a new product or service by Wasabi, or New Features. “Feedback” means any suggestions, enhancement requests, recommendations, corrections or other feedback provided by you, your affiliates, and/or Authorized Users relating to the features or operation of the Wasabi Service and Documentation.

6.4 Confidentiality. Either party may, from time to time, deliver to the other certain non-public information including formulas, flow charts, diagnostic routines, business information, forecasts, financial plans and data, balance sheet information, customer information, marketing plans, hardware, software and unannounced product information (“Confidential Information”). Confidential Information shall also include the Wasabi Content and Your Content, and any other information disclosed by a party to the other party, in whatever form, including visually and orally, and designated in writing as proprietary or confidential, or which – to a reasonable person familiar with the disclosing party’s business and the industry in which it operates – is of a proprietary or confidential nature. During the term of this Agreement and following two (2) years after its termination, each party will not disclose any such Confidential Information except as set forth herein. The receiving party shall hold in confidence, and shall not disclose (or permit or suffer its personnel to disclose) any Confidential Information to any person or entity except to a director, officer,

employee, outside consultant, or advisor (collectively “Representatives”) who have a need to know such Confidential Information in the course of the performance of their duties for the receiving party and who are bound by a duty of confidentiality no less protective of the disclosing party’s Confidential Information than this Agreement. The receiving party and its Representatives shall use such Confidential Information only for the purpose for which it was disclosed and shall not use or exploit such Confidential Information for the benefit of another without the prior written consent of the disclosing party. Each party accepts responsibility for the actions of its Representatives and shall protect the other party’s Confidential Information in the same manner as it protects its own valuable confidential information, but in no event, shall less than reasonable care be used. The parties expressly agree that the terms of this Agreement are Confidential Information and you further agree that it shall not use the Wasabi Service for the purposes of conducting comparative analysis, evaluations or product benchmarks with respect to the services and will not publicly post any analysis or reviews of the services without Wasabi’s prior written approval. A receiving party shall promptly notify the disclosing Party upon becoming aware of a breach or threatened breach hereunder and shall cooperate with any reasonable request of the disclosing party in enforcing its rights

Information will not be deemed Confidential Information hereunder if such information: (i) is known prior to receipt from the disclosing party, without any obligation of confidentiality; (ii) becomes known to the receiving party directly or indirectly from a source other than one having an obligation of confidentiality to the disclosing party; (iii) becomes publicly known or otherwise publicly available, except through a breach of this Agreement; or (iv) is independently developed by the receiving party without use of the disclosing party’s Confidential Information. The receiving party may disclose Confidential Information pursuant to the requirements of applicable law, legal process or government regulation, provided that, where legally permitted to do so, it gives the disclosing party reasonable prior written notice to permit the disclosing party to contest such disclosure, and such disclosure is otherwise limited to the required disclosure.

Notwithstanding any other provision of this Agreement, both parties acknowledge that any use of the disclosing party’s Confidential Information in a manner inconsistent with the provisions of this Agreement may cause the disclosing party irreparable and immediate damage for which remedies other than injunctive relief may be inadequate. Therefore, both parties agree that, in addition to any other remedy which the disclosing party may be entitled hereunder, at law or equity, the disclosing party may be entitled to an injunction or injunctions (without the posting of any bond and without proof of actual damages) to restrain such use in addition to other appropriate remedies available under applicable law.

## **7. Term; Termination; Suspension**

7.1 Term. The term of your access to the Wasabi Service (a “Usage Period”) will continue for so long as you have an active and fully paid up Customer Account (the “Term”).

### 7.2 Termination.

(a) Termination For Convenience. Subject to Section 5, either party may terminate this Agreement and your Customer Account for any reason by providing the other party at least thirty (30) days’ advance notice.

### (b) Termination for Cause.

(i) By Either Party. Either party may terminate this Agreement and your Customer Account for cause if the other party is in material breach of this Agreement and/or your Customer Account and the material breach remains uncured for a period of thirty (30) days from receipt of notice by the other party.

(ii) By Wasabi. We may also terminate this Agreement and/or your Customer Account immediately upon notice to you (A) if our relationship with Affiliates and/or a third-party partner who provides software or other technology we use to provide the Wasabi Service expires, terminates or requires us to change the way we provide the software or other technology as part of the Wasabi Service, or (B) in order to comply with law.

7.3 Effect of Termination. Upon the Termination Date: (i) all your rights under this Agreement and your Customer Account immediately terminate; (ii) you remain responsible for all fees and charges you have incurred through the termination date and are responsible for any fees and charges you incur up to termination; (iii) you will immediately return or, if instructed by us, destroy all Wasabi content in your possession; and (iv) those terms intended to survive termination shall continue to apply in accordance with their terms.

7.4 Suspension. We may elect to suspend your or any Authorized User's right to access or use any portion or all of the Wasabi Service immediately upon notice to you if we determine:

- (a) your or an End User's use of the Wasabi Service (i) poses a security risk to Wasabi, the Wasabi Service, any other Wasabi customer, or any third party, (ii) could adversely impact our systems, the Wasabi Service or the systems or content of any other Wasabi customer, (iii) could subject us, our Affiliates, or any third party to liability, or (iv) could be fraudulent;
- (b) you are, or any Authorized User is, in material breach of this Agreement;
- (c) you are in breach of your payment obligations under Section 5; or
- (d) you have ceased to operate in the ordinary course, made an assignment for the benefit of creditors or similar disposition of your assets, or become the subject of any bankruptcy, reorganization, liquidation, dissolution or similar proceeding.

7.5 Effect of Suspension. If we suspend your right to access or use any portion or all of the Wasabi Service, (a) you remain responsible for all fees and charges you incur during the period of suspension; and (b) you will not be entitled to any service credits under the Service Level Agreements for any period of suspension.

## **8. Indemnification**

8.1 In General By You. You will defend, indemnify, and hold harmless us, our Affiliates and licensors, and each of their respective employees, officers, directors, and representatives from and against any claims, damages, losses, liabilities, costs, and expenses ("Losses") arising out of or relating to any third-party claim concerning: (a) your or any Authorized Users' use of the Wasabi Service (including any activities under your Customer Account and use by your Authorized Users); or (b) breach by you of your representations, warranties or obligations set forth in this Agreement or violation of applicable law rule or regulation by you, your Authorized Users or Your Content.

### **8.2 Intellectual Property.**

(a) Subject to the limitations in this Section 8, Wasabi will defend you and your employees, officers, and directors against any third-party claim alleging that the Wasabi Service infringes or misappropriates a third party's intellectual property rights, and will pay the amount of any adverse final judgment or settlement, agreed to by Wasabi in writing.

(b) Subject to the limitations in this Section 8, you will defend Wasabi, its Affiliates, and their respective employees, officers, and directors against any third-party claim alleging that any of Your Content infringes or misappropriates that third party's intellectual property rights, and will pay the amount of any adverse final judgment or settlement.

(c) Neither party will have obligations or liability under this Section 8.2 arising from infringement by combinations of the Wasabi Service or Your Content, as applicable, with any other product, service, software, data, content or method. In addition, Wasabi will have no obligations or liability arising from your or any Authorized User's use of the Wasabi Service after Wasabi has notified you to discontinue such use. The remedies provided in this Section 8.2 are the sole and exclusive remedies for any third-party claims of infringement or misappropriation of intellectual property rights by the Wasabi Services or by Your Content.

(d) For any claim covered by Section 8.2(a), Wasabi will, at its election, either: (i) procure the rights to use that portion of the Wasabi Service alleged to be infringing; (ii) replace the alleged infringing portion of the Wasabi Service with a non-infringing alternative; (iii) modify the alleged infringing portion of the Wasabi Service to make it non-infringing; or (iv) terminate the allegedly infringing portion of the Wasabi Services and this Agreement.

8.3 Process. The obligations under this Section 8 will apply only if the indemnified party: (a) gives the other party prompt written notice of the claim; (b) permits the other party to control the defense and settlement of the claim; and (c) reasonably cooperates with the other party (at the other party's expense) in the defense and settlement of the claim. In no event will a party agree to any settlement of any claim that involves any commitment, other than the payment of money, without the written consent of the other party.

## **9. Disclaimers**

THE WASABI SERVICE IS PROVIDED "AS IS." EXCEPT TO THE EXTENT PROHIBITED BY LAW, OR TO THE EXTENT OF ANY STATUTORY RIGHTS THAT CANNOT BE EXCLUDED, LIMITED

OR WAIVED, WE AND OUR AFFILIATES AND LICENSORS (A) MAKE NO REPRESENTATIONS OR WARRANTIES OF ANY KIND, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE REGARDING THE WASABI SERVICE OR THE THIRD-PARTY CONTENT, AND (B) DISCLAIM ALL WARRANTIES, EXPRESS OR IMPLIED, STATUTORY OR OTHERWISE, INCLUDING, WITHOUT LIMITATION, ANY IMPLIED OR EXPRESS WARRANTIES (I) OF MERCHANTABILITY, SATISFACTORY QUALITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT, OR QUIET ENJOYMENT, (II) ARISING OUT OF ANY COURSE OF DEALING OR USAGE OF TRADE, (III) THAT THE WASABI SERVICE OR ANY THIRD-PARTY CONTENT WILL BE UNINTERRUPTED, ERROR FREE OR FREE OF HARMFUL COMPONENTS, AND (IV) THAT ANY OF YOUR CONTENT WILL BE SECURE OR NOT OTHERWISE LOST OR ALTERED.

#### **10. Limitations of Liability**

WASABI AND ITS AFFILIATES AND LICENSORS WILL NOT BE LIABLE TO YOU FOR ANY DIRECT, INDIRECT, INCIDENTAL, SPECIAL, CONSEQUENTIAL OR EXEMPLARY DAMAGES (INCLUDING DAMAGES FOR LOSS OF PROFITS, REVENUES, CUSTOMERS, OPPORTUNITIES, GOODWILL, USE, OR DATA), EVEN IF WE HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, (WHETHER SUCH CLAIM IS BASED ON WARRANTY, CONTRACT, TORT (INCLUDING, BUT NOT LIMITED TO, NEGLIGENCE).

FURTHER, NEITHER WE NOR ANY OF OUR AFFILIATES OR LICENSORS WILL BE RESPONSIBLE FOR ANY COMPENSATION, REIMBURSEMENT, OR DAMAGES ARISING IN CONNECTION WITH: (A) YOUR INABILITY TO USE THE WASABI SERVICE, INCLUDING AS A RESULT OF ANY (I) TERMINATION OR SUSPENSION OF THIS AGREEMENT OR YOUR USE OF OR ACCESS TO THE WASABI SERVICE, (II) OUR DISCONTINUATION OF ANY OR ALL OF WASABI SERVICE, OR, (III) WITHOUT LIMITING ANY OBLIGATIONS UNDER THE WASABI SERVICE LEVEL AGREEMENT, ANY UNANTICIPATED OR UNSCHEDULED DOWNTIME OF ALL OR A PORTION OF THE WASABI SERVICE FOR ANY REASON; (B) THE COST OF PROCUREMENT OF SUBSTITUTE GOODS OR SERVICES; (C) ANY INVESTMENTS, EXPENDITURES, OR COMMITMENTS BY YOU IN CONNECTION WITH THIS AGREEMENT OR YOUR USE OF OR ACCESS TO THE WASABI SERVICE; OR (D) ANY UNAUTHORIZED ACCESS TO, ALTERATION OF, OR THE DELETION, DESTRUCTION, DAMAGE, LOSS OR FAILURE TO STORE ANY OF YOUR CONTENT OR OTHER DATA.

WASABI AND ITS AFFILIATES' AND LICENSORS' AGGREGATE LIABILITY UNDER THIS AGREEMENT, REGARDLESS OF THE FORM OF ACTION, WILL NOT EXCEED TWO TIMES (2X) THE AMOUNT YOU ACTUALLY PAY WASABI UNDER THIS AGREEMENT FOR THE WASABI SERVICE THAT GAVE RISE TO THE CLAIM DURING THE 12 MONTHS BEFORE THE LIABILITY AROSE. IF WASABI SERVICE (OR ANY OTHER WASABI PRODUCT) IS PROVIDED TO YOU WITHOUT CHARGE, THEN WASABI WILL HAVE NO LIABILITY TO YOU WHATSOEVER.

IN NO EVENT WILL WASABI BE LIABLE TO YOU OR ANY THIRD PARTY FOR ANY COST TO PROCURE SUBSTITUTE SERVICES, YOUR CONTENT (WHETHER LOST OR DAMAGED) OR THE COST OF RETRIEVING ANY OF YOUR LOST CONTENT. UNDER NO CIRCUMSTANCES WILL WASABI BE RESPONSIBLE FOR ANY DAMAGE, LOSS OR INJURY RESULTING FROM HACKING, TAMPERING OR OTHER UNAUTHORIZED ACCESS OR USE OF THE WASABI SERVICE, YOUR CUSTOMER ACCOUNT OR YOUR CONTENT.

YOU EXPRESSLY RECOGNIZE AND ACKNOWLEDGE THAT THE DISCLAIMERS AND LIMITATIONS SET FORTH IN THIS SECTION ARE AN ESSENTIAL PART OF THE AGREEMENT AND AN ESSENTIAL FACTOR IN ESTABLISHING THE PRICE OF WASABI SERVICE.

THE FOREGOING DISCLAIMERS AND LIMITATIONS WILL APPLY TO THE FULLEST EXTENT PERMITTED UNDER APPLICABLE LAW AND NOTWITHSTANDING A FAILURE OF ESSENTIAL PURPOSE OF ANY REMEDY PROVIDED IN THIS AGREEMENT.

#### **11. Modifications to the Agreement**

We may modify this Agreement (including any policies or any links referenced herein) at any time by posting a revised version on the Wasabi website or by otherwise notifying you in accordance with Section 12.10; provided, however, that we will provide at least thirty (30) days' advance notice in accordance with Section 12.10 for adverse changes to any Service Level Agreement. Subject to the foregoing, the modified



terms will become effective upon posting or, if we notify you by email, as stated in the email message. By continuing to use the Wasabi Service after the effective date of any modifications to this Agreement, you agree to be bound by the modified terms. It is your responsibility to check the Wasabi website regularly for modifications to this Agreement.

## **12. Miscellaneous**

12.1 Assignment. You will not and do not have the right to assign or otherwise transfer this Agreement or any of the rights and obligations under this Agreement, without Wasabi's prior written consent. Any assignment or transfer, or attempt thereof, in violation of this Section 12.1 will be void. We may assign this Agreement to any person or entity that is an affiliate, or acquires by sale, merger or otherwise, all or substantially all or a portion of our assets, stock or business. Wasabi will provide timely notice of any assignment (and in any event will use reasonable efforts to provide notice within thirty (30) days of any such assignment). If another entity merges with or acquires Wasabi, or all, substantially all or a portion of our assets, stock or business you agree your encrypted stored data and information that Wasabi has collected from you, including personally identifiable information, may, and you consent to, the secure transfer of such information to such successor or assignee.

12.2 Affiliates, Subcontractors and Vendors. Some or all of the Wasabi Service, including support services, may be provided by Wasabi's Affiliates, agents, subcontractors and information system vendors. The rights and obligations of Wasabi may be, in whole or in part, exercised or fulfilled by the foregoing entities.

12.3 Entire Agreement. This Agreement incorporates any policies or other information found at the published links by reference and is the entire agreement between you and us regarding the subject matter of this Agreement. This Agreement supersedes all prior or contemporaneous representations, understandings, agreements, or communications between you and us, whether written or verbal, regarding the subject matter of this Agreement. We will not be bound by, and specifically object to, any term, condition or other provision that is different from or in addition to the provisions of this Agreement (whether or not it would materially alter this Agreement) including for example, any term, condition or other provision (a) submitted by you in any order, receipt, acceptance, confirmation, correspondence or other document, (b) related to any online registration, response to any Request for Bid, Request for Proposal, Request for Information, or other questionnaire, or (c) related to any invoicing process that you submit or require us to complete. If the terms of this Agreement are inconsistent with the terms contained in document referenced or linked herein, the terms contained in such document will control.

12.4 Force Majeure. We and our Affiliates will not be liable for any delay or failure to perform any obligation under this Agreement where the delay or failure results from any cause beyond our reasonable control, including acts of God, labor disputes or other industrial disturbances, electrical or power outages, utilities or other telecommunications failures, earthquake, storms or other elements of nature, blockages, embargoes, riots, acts or orders of government, acts of terrorism, or war.

12.5 Governing Law. The laws of the California, without reference to conflict of law rules, governs this Agreement and any dispute of any sort that might arise between the parties. The United Nations Convention for the International Sale of Goods does not apply to this Agreement.

12.6 Trade Compliance. In connection with this Agreement, each party will comply with all applicable import, re-import, sanctions, anti-boycott, export, and re-export control laws and regulations. For clarity, you are solely responsible for compliance related to the manner in which you choose to use the Wasabi Service, including your transfer and processing of Your Content, the provision of Your Content to Authorized Users, and the Wasabi region in which any of the foregoing occur. You represent and warrant that you and your financial institutions, or any party that owns or controls you or your financial institutions, are not subject to sanctions or otherwise designated on any list of prohibited or restricted parties, including but not limited to the lists maintained by the United Nations Security Council, the U.S. Government (e.g., the Specially Designated Nationals List and Foreign Sanctions Evaders List of the U.S. Department of Treasury, and the Entity List of the U.S. Department of Commerce), the European Union or its Member States, or other applicable government authority.

12.7 Independent Contractors; Non-Exclusive Rights. Both parties are independent contractors, and this Agreement will not be construed to create a partnership, joint venture, agency, or employment relationship. Neither party, nor any of their respective Affiliates is an agent of the other for any purpose or has the authority to bind the other. Both parties reserve the right (a) to develop or have developed for it products, services, concepts, systems, or techniques that are similar to or compete with the products, services,

concepts, systems, or techniques developed or contemplated by the other party, and (b) to assist third party developers or systems integrators who may offer products or services which compete with the other party's products or services.

12.8 Language. All communications and notices made or given pursuant to this Agreement must be in the English language. If we provide a translation of the English language version of this Agreement, the English language version of the Agreement will control if there is any conflict.

12.9 Confidentiality and Publicity. You may use Wasabi Confidential Information only in connection with your use of the Wasabi Service as permitted under this Agreement. You will not disclose Wasabi Confidential Information during the Term or at any time during the 5-year period following the end of the Term. You will take all reasonable measures to avoid disclosure, dissemination or unauthorized use of Wasabi Confidential Information, including, at a minimum, those measures you take to protect your own confidential information of a similar nature. You will not issue any press release or make any other public communication with respect to this Agreement or your use of the Service Offerings.

12.10 Notice.

(a) To You. We may provide any notice to you under this Agreement by: (i) posting a notice on the Wasabi website; or (ii) sending a message to the email address then associated with your account. You agree that all disclosures, notices and communications are considered received by you within twenty-four (24) hours of the time posted to Wasabi's website, or within twenty-four (24) hours of the time emailed to you. It is your responsibility to keep your email address current. You will be deemed to have received any email sent to the email address then associated with your account when we send the email, whether or not you actually receive the email.

(b) To Us. To give us notice under this Agreement, you must contact Wasabi as follows: (i) by email transmission to support@wasabi.com; or (ii) by personal delivery, overnight courier or registered or certified mail to either Wasabi Technologies, Inc. (if you are an entity located outside Europe) or Wasabi Technologies, B.V. (if you are an entity located in Europe), either to the attention of General Counsel/Members of the Board. Notices provided by personal delivery will be effective immediately. Notices provided by email transmission or overnight courier will be effective one (1) business day after they are sent. Notices provided registered or certified mail will be effective three (3) business days after they are sent.

12.12 No Third-Party Beneficiaries. This Agreement does not create any third-party beneficiary rights in any individual or entity that is not a party to this Agreement.

12.13 No Waivers. The failure by either party to enforce any provision of this Agreement will not constitute a present or future waiver of such provision nor limit a party's right to enforce such provision at a later time. All waivers by a party must be in writing to be effective.

12.14 Severability. If any portion of this Agreement is held to be invalid or unenforceable, the remaining portions of this Agreement will remain in full force and effect. Any invalid or unenforceable portions will be interpreted to effect and intent of the original portion. If such construction is not possible, the invalid or unenforceable portion will be severed from this Agreement, but the rest of the Agreement will remain in full force and effect.

12.15 Marketing. Neither party may use the other party's name, trade name, trademarks, icons, and logos (collectively, the "Brands") without the other party's prior written consent.

13. Export Controls. Your use of the Wasabi Service is subject to compliance with United States and other applicable export control and trade sanctions laws, rules and regulations (collectively, "Export Control Laws"). You will not export, reexport, download or otherwise transmit the Wasabi Service, or technical data relating thereto, in violation of any applicable Export Control Laws. In particular, you acknowledge that the Wasabi Services, or any part thereof, may not be exported, transmitted, or re-exported to, or otherwise used in: (a) any country subject to a U.S. embargo or comprehensive trade sanctions or that has been designated a state sponsor of terrorism by the U.S. Government ("Sanctioned Countries"); or (b) anyone identified on any U.S. Government restricted party lists (collectively, "Restricted Party Lists"). By purchasing the Wasabi Service, you represent and warrant that you are not located in any Sanctioned Country or on any Restricted Party List. You acknowledge that the Wasabi Service may not be available in all jurisdictions and that you are solely responsible for complying with applicable Export Control Laws related to the manner in which

you choose to use the Wasabi Service, including your transfer and processing of your Your Content and the region in which any of the foregoing occur.

14. Electronic Communications. By using Wasabi Service, you acknowledge that we communicate with you electronically to the email address provided in your Customer Account. It is your responsibility to keep your email address current for notice purposes. For contractual purposes, you (a) consent to receive communications from Wasabi in an electronic form and (b) agree that all terms and conditions, agreements, notices, disclosures, and other communications that Wasabi provides to you electronically satisfies any legal requirement that such communications would satisfy if it were to be in writing.

15. Contact Us. To contact Wasabi regarding this Agreement (i) email Wasabi at support@wasabi.com, or (ii) write to Sales at Wasabi Technologies, Inc., at the address set forth in Wasabi’s contact page on the Wasabi website.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their duly authorized representatives as of the Effective Date first written above.

Wasabi Technologies Inc.  
DocuSigned by:  
*Michael Bayer*  
By: 8A30A64F43354FB  
Name: Michael Bayer  
Title: Chief Financial Officer  
Date: 1/30/2020

Customer:  
DocuSigned by:  
*Richard L. Greene*  
By: FB2E06D7C2E0487  
Name: Richard L. Greene  
Title: Manager OP Local Procurement  
Date: 1/26/2020