

# WASABI TECHNOLOGIES ACCOUNT CONTROL MANAGER PLATFORM TERMS AND CONDITIONS

Last Update: June 1, 2021

BEFORE ACCESSING AND USING THE WASABI TECHNOLOGIES LLC's ("WASABI") ACCOUNT CONTROL API AND WASABI'S ACCOUNT CONTROL MANAGER PLATFORM (COLLECTIVELY, THE "PLATFORM"), WHICH PROVIDES FEATURES AND FUNCTIONALITY TO ALLOW PARTNERS TO PROVISION, AND INVOICE PARTNER'S END USERS FOR THEIR USE OF, THE WASABI SERVICE, YOU (WHETHER AN INDIVIDUAL OR FORMAL LEGAL ENTITY, HEREINAFTER REFERRED TO AS "YOU") SHOULD CAREFULLY READ THE FOLLOWING TERMS AND CONDITIONS ("AGREEMENT") THAT APPLIES TO YOUR USE OF THE PLATFORM. IF YOU CLICK "I AGREE", CLICK ON THE "ACCEPT" BUTTON, OR CREATE AN ACCOUNT, YOU FULLY ACCEPT AND AGREE TO ALL OF THE PROVISIONS OF THIS AGREEMENT. CLICKING "I AGREE" OR OTHERWISE USING THE PLATFORM ESTABLISHES A BINDING AGREEMENT BETWEEN YOU AS THE PERSON ACCESSING THE PLATFORM, EITHER ON BEHALF OF YOURSELF OR ANY THIRD PARTY ENTITY AND WASABI. IF YOU DO NOT ACCEPT ALL OF THE TERMS OF THIS AGREEMENT, YOU DO NOT HAVE THE RIGHT TO ACCESS THE PLATFORM.

BY ACCESSING AND USING THE PLATFORM, YOU REPRESENT AND WARRANT THAT THE PLATFORM WILL BE USED ONLY IN ACCORDANCE WITH THESE TERMS AND CONDITIONS AND WITH ALL APPLICABLE LAWS.

## **1. Access Grant.**

1.1 Internal Use License. Subject to the terms and conditions of this Agreement, including payment of applicable access fees (the "Access Fee"), Wasabi hereby grants to you a limited, nonexclusive, non-transferable license to access and use the Platform, without the right to grant sublicenses, during the Term solely for your internal business purposes. You may permit its individual employees, contractors or agents ("Authorized Users") to access and use the Platform on your behalf and solely for your benefit. Wasabi may change, terminate, suspend or discontinue any aspect of the Platform, including the availability of any feature on the Platform with or without notice. Your use of the Platform following any such change constitutes your agreement to be bound by any updated Platform features (as well as any posted changes and updates to this Agreement).

You agree to comply with all notices, instructions and rules posted on the Platform, and implement at your sole expense all Internet access and all security procedures required to use the Platform.

1.2 Restrictions. You will not: (i) disassemble, reverse engineer, decompile, or otherwise attempt to derive source code of the Platform; (ii) modify, adapt, create derivative works based upon, or translate the Platform; (iii) copy, install or use the Platform on any of its computer systems, servers, or networks; (iv) assign, re-license or sublicense your use of the Platform; or (v) transfer, lease, loan, resell for profit, distribute or otherwise grant any rights in the Platform in any form to any other party, including commercial time-sharing, rental, or service bureau use. You may not use the Platform on behalf of any third party, or for any purpose other than monitoring, collecting, analyzing and using Licensee Data for Licensee's internal business purposes.

1.3 Compliance with Laws. You acknowledge and agree that it is your obligation to comply with all applicable laws and regulations in your use of the Platform, including those laws and regulations relating to personal data protection and privacy.

1.4 Registration. In order to view and access the Platform, you will be required to complete an account set up as a user of the Platform. In consideration of your use of the Platform, you agree to: (a) provide true, accurate, current and complete information about yourself, and (b) maintain and promptly update such information to keep it true, accurate, current and complete. If you provide any information that is untrue, inaccurate, not current, or incomplete, or Wasabi has reasonable grounds to suspect that such information is untrue, inaccurate, not current, or incomplete, Wasabi has the right to suspend or terminate your account and refuse any and all current or future use of the Platform. Wasabi reserves the right to verify any information you submit.

As a registered user, you will have login information to access the Platform. You are responsible for maintaining the confidentiality of any passwords and are fully responsible for all activities that occur under your password or account. You will not allow others to use the login information. You will notify Wasabi of any breach in secrecy of your login information and ensure that you logout of your account at the end of each session. You agree to immediately notify Wasabi of any potential breaches of secrecy. The Platform does store the initial Wasabi Account S3 API key set that is created when you use the Platform to create Wasabi accounts. It is recommended that you change the S3 API key set associated with your Wasabi account(s). You can do so via the Wasabi Management Console.

1.5 Third-Party Content and Links. From time to time, the Platform may contain references or links to third-party materials (including without limitation web sites) not controlled by Wasabi. Wasabi provides such information and links as a convenience to you and should not be considered endorsements of such sites or any content, products or information offered on such sites.

You acknowledge and agree that Wasabi is not responsible for any aspect of the information or content contained in any third-party materials or on any third-party sites accessible or linked to the Platform.

**2. Proprietary Rights.** You acknowledge and agree that subject to the limited rights expressly granted to you under Section 2, all trade secret, copyright, patent, trademark, trade name, and other intellectual and proprietary rights in the Platform, and in the technology embodied or reflected in the Platform, are and at all times shall remain the exclusive property of Wasabi or its licensors/suppliers. All content on the Platform (but excluding your data), including, for example, all images, logos, illustrations, graphics, audio clips, and text, represents valuable proprietary and intellectual property of Wasabi or its licensors/suppliers. Such content and information is protected by any and all applicable international, federal, and state laws, rules, orders and regulations relating to intellectual property. You agree not to reproduce, distribute, display, revise, create derivatives of, copy, publish, sell, license, or edit any such content and information. Any attempt to download, print, publish or maintain a significant portion of content or information from the Platform, to distribute copies of such information or content, or to otherwise exploit the information or content, is strictly prohibited by this Agreement.

Unless expressly provided in any written license agreement from Wasabi, the furnishing of the Platform or any materials contained in the Platform do not give you any license to any patents, trademarks, copyrights or other intellectual property of Wasabi or its licensors.

**3. Confidentiality.** The Platform may include non-public confidential and proprietary information (“Confidential Information”) of Wasabi, including, but not limited to, the terms and conditions of any agreements contained herein and any business, financial, or technical information that relates to Wasabi, as well as any follow-on discussions you may engage in with a Wasabi representative that includes such information. By gaining access to the Confidential Information, you hereby agree: (a) not to use, disseminate, or in any way disclose such Confidential Information to any person, firm or business, except as provided herein, and solely for exploring a potential business relationship between the parties (the “Purpose”); (b) to treat all Confidential Information with the same degree of care you accord your own Confidential Information, but in no case less than reasonable care; (c) to disclose Confidential Information only to those of your officers, directors, agents, employees, attorneys and advisors (collectively, “Representatives”) who need to know such information for the Purpose; (d) to ensure that each of your Representatives who are permitted to receive or have access to the Confidential Information is bound by a confidentiality obligation consistent with this Agreement; (e) not to modify, enhance, translate, supplement, create derivative works from, or reverse engineer, reverse compile or otherwise reduce the Confidential Information to human readable form; (f) not to disclose any Confidential Information to any third-party not authorized under the terms set forth herein; (g) immediately give notice to Wasabi of any unauthorized use or disclosure of Confidential Information; and (h) to assist Wasabi in remedying any such unauthorized use or disclosure of Confidential Information. The foregoing obligation will continue during the term your registered account is active with Wasabi, and for three (3) years thereafter. This obligation does not apply to information that: (i) is generally available to the public through means other than a breach by you or your users of the terms herein; (ii) you can demonstrate such information was in your possession prior to the time of disclosure by Wasabi; (iii) the information becomes available to you from a third-party who is not legally prohibited from disclosing such information; or (iv) you can demonstrate the information was developed by you independently without the use of such Confidential Information.

**4. Indemnity.** You agree to indemnify and hold harmless Wasabi and its licensors and suppliers, and their respective directors, officers, employees, agents and contractors, from all damages, injuries, liabilities, costs, fees, fines, penalties, and expenses (including, but not limited to, legal and accounting fees) arising from or in any way related to your violation of this Agreement or misuse of the Platform by you or any of your employees, contractors, representatives or agents.

**5. Disclaimer.** YOUR USE OF THE PLATFORM IS AT YOUR OWN RISK. THE PLATFORM IS PROVIDED “AS IS” AND YOU ACCEPT THE ENTIRE RISK AS TO THE QUALITY AND PERFORMANCE OF THE PLATFORM. EXCEPT AS OTHERWISE RESTRICTED BY LAW, WASABI AND ITS LICENSORS/SUPPLIERS DISCLAIM ALL OTHER WARRANTIES, REPRESENTATIONS, CONDITIONS, OR GUARANTEES OF ANY KIND, EITHER EXPRESS, IMPLIED, STATUTORY, OR OTHERWISE, ORAL OR WRITTEN, WITH RESPECT TO THE PLATFORM, INCLUDING WITHOUT LIMITATION ANY IMPLIED WARRANTIES OR CONDITIONS: (A) OF MERCHANTABILITY; (B) OF SATISFACTORY OR MERCHANTABILITY; (C) OF FITNESS FOR A PARTICULAR PURPOSE; (D) OF NONINFRINGEMENT; OR (E) ARISING FROM COURSE OF PERFORMANCE, COURSE OF DEALING, OR USAGE OF TRADE. SOME JURISDICTIONS MAY NOT ALLOW THE EXCLUSION OF CERTAIN WARRANTIES, SO THE ABOVE EXCLUSIONS MAY NOT APPLY.

Whenever you submit information via the Platform, you, on its behalf and on behalf of its users, consents to the collection, use, and disclosure of that information in accordance with Wasabi’s Privacy Policy (found here: [wasabi.com/legal/privacy-policy](https://wasabi.com/legal/privacy-policy)).

**6. Fees; Payment Terms.** The one-time Access Fee shall be invoiced in advance. Invoices will be stated in United States dollars and shall be due and payable within thirty (30) days following invoice date unless otherwise specified herein or agreed upon in writing by the parties. Late payments shall be subject to a service charge equal to the lesser of 1% per month or the maximum amount allowed by law, with respect to the overdue amount. Access Fees are non-refundable and are exclusive of all

applicable taxes, duties or other governmental assessments. This Platform is not eligible for Wasabi's Premium Support. The Platform is subject to the terms of the Basic Support Agreement.

## 7. Term; Termination

7.1 Term. This Agreement shall be in effect for one (1) year and shall renew only as agreed by the parties.

7.2 Termination. Either party may terminate this Agreement (a) upon thirty (30) days prior written notice if the other party has materially breached this Agreement and has not cured the same within the thirty (30) day notice period, or (b) immediately upon written notice in the event of (i) the bankruptcy, insolvency, or placing of the assets or the business of the other party in the hands of a receiver or trustee, (ii) the filing of a petition for bankruptcy or reorganization by or against the other party, or (iii) the dissolution or liquidation of the other party. A termination of this Agreement shall result in the automatic contemporaneous termination of the then current Subscription Term.

7.3 Effect of Termination. Upon any termination of this Agreement, (a) you shall promptly discontinue use of the Platform; (b) Wasabi shall terminate your access to the Platform; and (c) you shall promptly return or destroy Wasabi's Confidential Information. Wasabi shall have no obligation to maintain or provide any of your data and shall thereafter, unless legally prohibited, delete all of your data from the Platform. Any terms which by their nature were intended to survive any termination of this Agreement shall so survive. Details for decommissioning the Platform can be found in Wasabi's knowledge base portal, or by contacting Wasabi Support.

**8. Limitation of Damages.** IN NO EVENT SHALL WASABI BE LIABLE TO YOU, BASED ON ANY THEORY OF LAW, EQUITY, TORT, CONTRACT OR OTHERWISE FOR SPECIAL, INDIRECT, INCIDENTAL, PUNITIVE, OR CONSEQUENTIAL DAMAGES, INCLUDING BUT NOT LIMITED TO, LOSS OF PROFITS, LOSS OF REVENUE, LOSS OF USE, LOSS OF DATA, OR COSTS OF COVER, ARISING OUT OF THE PERFORMANCE OR NON-PERFORMANCE OF THE PLATFORM HEREUNDER OR OTHERWISE IN CONNECTION WITH THIS AGREEMENT, EVEN IF WASABI WAS ADVISED OF THE POSSIBILITY OF SUCH DAMAGES AND EVEN IF A REMEDY FAILS OF ITS ESSENTIAL PURPOSE. WASABI'S TOTAL LIABILITY UNDER THIS AGREEMENT FOR ANY CLAIMS OR DAMAGES OF ANY KIND AND BASED ON ANY THEORY OF LAW, EQUITY, TORT, CONTRACT OR OTHERWISE, SHALL NOT EXCEED, WITH ALL CLAIMS AGGREGATED, THE TOTAL AMOUNT OF THE ACCESS FEES PAID BY YOU DURING THE TWELVE (12) MONTH TERM IN WHICH THE CLAIM(S) AROSE.

**9. General.** (a) All notices required or permitted under this Agreement shall be in writing and shall be sent by hand, overnight courier or by facsimile (in each case with confirmation of receipt). Notices shall be deemed delivered on the date of delivery, if delivery occurs within normal business hours or on the next business day if delivery occurs outside of normal business hours. All communications will be sent to the respective addresses first set forth above or to such other address as may be designated by a party by giving written notice to the other party pursuant to this Section 9. (b) You may not assign this Agreement or any of its licenses, rights or duties under this Agreement, whether by operation of law or otherwise, without the prior written consent of Wasabi. (c) A waiver shall only be deemed to have been made if expressed in writing by the party granting such waiver and shall not be construed as a waiver of future performance of any such term. (d) Neither party will be liable for any failure or delay in its performance under this Agreement (or the performance of or access to the Software), other than payment obligations, due to causes that are beyond its reasonable control, including, but not limited to, an act of God, act of civil or military authority, fire, epidemic, pandemic, flood, earthquake, riot, war, terrorism, sabotage, and governmental action. (e) This Agreement constitutes the entire understanding between the parties, and supersedes all prior discussions, representations, understandings, or agreements (including any pre-existing nondisclosure agreement, except as to its surviving terms and with respect to information disclosed under that agreement), whether oral or in writing, between the parties with respect to the subject matter of this Agreement. No terms in any purchase order or other document delivered by you shall be deemed to amend the terms of this Agreement and any such additional or inconsistent terms shall be deemed unacceptable to and rejected by Wasabi. If any provision of this Agreement shall be held by a court of law of competent jurisdiction to be unenforceable, the remaining provisions shall remain in full force and effect and, to the extent allowed and practicable, the unenforceable provision shall be modified so as to be enforceable consistent with its original intent and economic effect. The headings and captions used in this Agreement are for convenience only, and shall not affect the interpretation of the provisions of this Agreement. The word "including" shall be construed non-exclusively, to mean "including but not limited to." The word "or" shall be construed inclusively, to mean that one or more of the options may occur. This Agreement and any amendment hereto may be executed in counterparts, each of which shall be deemed an original and both of which together shall constitute one instrument. (f) The Platform is subject to United States export laws and administrative regulations. (g) The relationship of the parties under this Agreement is that of independent contractors, and nothing contained in the Agreement will be construed to constitute the parties as partners, joint venturers, co-owners, or otherwise as participants in a joint undertaking. (h) This Agreement shall be governed by and construed under the laws of the Commonwealth of Massachusetts without regard to its conflict of law provisions. The prevailing party in any action to enforce this Agreement will be entitled to recover its attorneys' fees and costs in connection with such action.