

## Partner License and Service Agreement

### **1 Definitions**

In these conditions the following expressions have the following meanings unless the context otherwise requires:

- 1.1 "Application" means the Partner registering its details with Wapple on the website to apply for the Service;
- 1.2 "Architect" means web-based documentation, information and schemas available to the Partner to develop mobile Sites and mobile applications using WAPL;
- 1.3 "Business Day" means any day (other than Sunday) on which clearing banks are open for normal banking business;
- 1.4 "Canvas" means the web-based tool kit, more particularly described on the Wapple website which uses Wapple Intellectual Property, and is supplied by Wapple to the Partner for designing hosted Sites, managing Site content and integrating with third party applications together with Exhibit and Architect;
- 1.5 "Client" means the individual, partnership or corporate body for whom the Partner is using the Wapple Platform and sublicensing to provide a service;
- 1.6 "Commencement Date" means the Commencement Date on the Front Sheet;
- 1.7 "Community" means the restricted area on the Wapple Website where the Partner must be registered and logged into to gain access to resources to support their usage of the Wapple Platform including, but not limited to, web forums for discussion with other Wapple Partners, employees, directors, customers and licensees as well as access to videos, tutorials, case studies, sales tools and technical manuals.
- 1.8 "Community Content" means the content provided to the Community or web urls linking to content provided to the Community including but not limited to; videos, presentations, tutorials, manuals, case studies, Sites or any other material owned by Wapple or its customers and published to the Community.
- 1.9 "Conditions" means these Wapple terms and conditions;
- 1.10 "Confidential Information" means all technical commercial or financial information which touches or concerns the Wapple Intellectual Property and which is either designated as confidential or which by its very nature is confidential howsoever recorded or disclosed;
- 1.11 "Developer Key" means a series of unique numbers and characters given to the Partner by Wapple which allows access to WAPL and by which the Partner can be uniquely identified by Wapple;
- 1.12 "Domain(s)" means web domain such as a .com or .net that the Partners has associated with their Architect Site and Developer Key.
- 1.13 "Exhibit" means the Wapple technology created using Wapple Intellectual Property which allows any Site created using Canvas or Architect to be accessed via a specified URL, (Unique Resource Locator), such that any individual visiting the Site via the URL is able to view the content automatically reformatted and optimised for their Mobile Device;
- 1.14 "Fees" means the various charges specified in the Wapple Price List appended hereto payable by the Partner according to the level of Sites, Storage, Page Views, domains and API Requests forming the Site Package selected by the Partner; and any other fees agreed to be paid by the Partner to Wapple;
- 1.15 "Initial Term" means 12 months commencing on the Commencement Date;
- 1.16 "Know-How" means any and all technical and commercial information advice data knowledge drawings information source code and specifications relating to or useful in connection with the Wapple Platform, its use and sale;

- 1.17 "Liability" means liability for any and all damages, claims, proceedings, actions, awards, expenses, costs and any other losses and/or liabilities;
- 1.18 "Mobile Device" means any mobile telephone, Blackberry, PDA, handheld games console or any other device with a mobile web browser built into it;
- 1.19 "Month" means a calendar month;
- 1.20 "Package" means the level of Storage, Page Views, Domains, Users, service availability and outbound traffic specified in Appendix A and paid for by the Partner;
- 1.21 "Page Views" means either the number of times any page within a Site built using Canvas is accessed by a Mobile Device or each time a page is generated by Architect with WAPL;
- 1.22 "Partner" means the individual, partnership or corporate body who is entering into this Wapple Agreement with Wapple;
- 1.23 "Refund Policy" means the statement of policy found on the payment page of the Website and the terms contained therein are deemed to be incorporated into this Agreement as if repeated herein verbatim;
- 1.24 "Services" means the provision by Wapple to the Partner of access to the Wapple Platform in order to develop and manage Sites and site content using the same, together with the level of service support, all in accordance with the Site Package chosen by the Partner;
- 1.25 "Site(s)" means the mobile web site (s) created by the Partner using the Wapple Platform;
- 1.26 "Site Package" means the level of Storage, Page Views, Domains, Users, service availability and outbound traffic specified in Appendix A and paid for by the Partner
- 1.27 "Social Network Links" means web links, provided by Wapple for distribution by the Partner via social networks including, but not limited to, Twitter, Facebook, LinkedIn and email groups, to access restricted Community Content which requires the individual accessing via those links to register with Wapple and agree to these Conditions before viewing the full Community Content.
- 1.28 "Software" means all computer codes used collectively by Canvas, Architect and Exhibit their architecture, data, structure, algorithms, formulae whatsoever created by Wapple and used in connection with this Agreement;
- 1.29 "Storage" means the data stored and hosted on Wapple's own servers, measured in bytes;
- 1.30 "Users" means the amount of individual Partner log-ins to the Wapple Platform;
- 1.31 "WAPL" means the XML based mark-up language which forms part of the Wapple Intellectual Property that allows the Licensee to display conventional web applications and content in a form and format suitable for mobile browsers;
- 1.32 "Wapple" means Wapple North America Inc (3156 Lionshead Avenue, Suite 1, Carlsbad CA, 92011) and Wapple.net Limited (4 The Courtyard, Buntsford Drive, Bromsgrove, Worcs, B60 3DJ, UK)
- 1.33 "Wapple Agreement" means the agreement made up of the terms in these Conditions the Wapple Price list, and Appendix A between Wapple and the Partner for provision of the Services;
- 1.34 "Wapple Intellectual Property" means collectively the Know-How the patent application submitted by Wapple the Wapple registered trade mark copyright in all Wapple source code relating to or useful in connection with the Wapple Platform which are vested in Wapple or which it is entitled to use or which Wapple may acquire or acquire the right to use;
- 1.35 "Wapple Platform" means Canvas, Architect and Exhibit collectively licensed by the Licensee;
- 1.36 "Website" means the website located at <http://wapple.net> and such other websites as are used for the purpose of providing the Services;

## 2. Basis of Wapple Agreement

2.1 The Wapple Agreement shall govern the agreement between the Partner and Wapple to the exclusion of any other Conditions. No variation to the Wapple Agreement shall be binding on the parties hereto unless agreed in writing between the Partner and one of Wapple's authorised representatives.

2.2 The Partner shall be responsible for the accuracy of its Application and for giving Wapple any information necessary for Wapple to perform the Wapple Agreement.

2.3 The Site Package of Services the Partner is purchasing may be amended from time to time from that set out in the Wapple Price List (Appendix A) Wapple may change the content of Site Packages from time to time at its sole discretion and communicate them to the Partner.

## 3. Grant of License, Pricing and Services

3.1 Wapple hereby grants to the Partner a non-exclusive license to use and promote the Wapple Intellectual Property contained in the Wapple Platform to design, develop, manage and create Sites for its own use and for sale to its Clients.

3.2 The Partner shall pay the Fees unless opting for the Free Developer Program as described at 5.4 below and gain access to the Wapple Platform under these conditions.

3.3 The Partner shall be entitled to sub-license the Site(s) it has created for any particular Client using the Software to that Client and that Client shall be entitled to use the Software for the particular Site(s) created by the Partner for them. Partner shall inform Wapple of the name of its Clients.

3.4 The Partner is entirely free to set its own price structure and payment terms to its Client for the use of each Site it has created using the Software and for the fees it charges for that use.

3.5 Save as defined in clause 3.3, above, the Partner shall not otherwise have the right to grant sub-licenses nor in any way share or part with its rights under this Wapple Agreement.

3.6 Wapple shall disclose to the Partner such Know How as shall be necessary to enable the Partner to design develop manage and create Sites; however, no warranty is given by Wapple that the Partner shall be successful in the design of Sites nor that the Partner will achieve any particular design format or result or achieve the Page Impressions contracted for.

3.7 The Partner shall select and pay Wapple for its chosen Partner Package all as more particularly defined in Clauses 5 and 6 below.

3.8 Wapple will keep the Wapple Platform up-to-date and the Partner will be responsible for ensuring they purchase the most appropriate Site Package according to Appendix A.

## 4. Twelve Month Minimum Term

4.1 This Wapple Agreement starts on the Commencement Date and shall continue for the Initial Term.

4.2 After the Initial term the Agreement shall continue from month to month unless terminated by either party by giving not less than one Months notice of termination.

4.3 This Wapple Agreement can be terminated at any time in accordance with clause 15

## 5. Partner Packages (Levels)

5.1 The Site Packages are pre-purchased each month in accordance with the Appendix A.

5.2 Should the Partner's account exceed the Site, Domain, Page View or Storage capacity purchased in any month then Wapple will charge the Partner retrospectively at the appropriate amount for that Month for the additional usage, as described at Appendix A.

5.3 Wapple may (but is not obliged to) e-mail the Partner as soon as it is aware that the number of Page Views might exceed the number contracted for by the Partner, and offer the Partner the opportunity to upgrade the Site Package.

5.4 Where the Partner has opted for the Free Developer Package there will be no fees payable in return for the provision of Services, however their account will be restricted to a strict limit of Page Views, Sites, Domains and Storage as described on the Website and at Appendix A and the Partner will have to upgrade to a paid-for service in order to expand their capacity.

5.5 Pre-purchased Sites, Domains, Page Views and Storage are not accrued and therefore do not carry over to the following month.

5.6 Additional Services, including any request for bespoke development, Site design, Site build, content management, training and support will be agreed between the Parties under separate agreement or at Appendix C if applicable.

## 6. License Fee

6.1 In return for the provision of the Services by Wapple, the Partner shall pay Wapple the Fees unless opting for the Free Developer Package as described at 5.4 above. The Fees shall be payable forthwith if the Partner is using a Credit or Debit Card through the online payment mechanism or within 14 days of the Activation Date if the Partner is using any other method of payment as defined at Appendix B

6.2 Wapple may at its sole discretion send invoices to the Partner for any Fees by post or email (in which case a successful transmission receipt shall be proof of receipt of the invoice)

6.3 The Fees and all other payments payable under or in connection with this Wapple Agreement are exclusive of any State or Federal Tax which, if applicable, shall be payable in addition

6.4 No prior notice of price increases or decreases will necessarily be given by Wapple

6.5 Time for payment of the Fees is of the essence. Payment shall not be deemed to be made until Wapple have received cleared funds in respect of the full amount outstanding.

6.6 If the Partner fails to make any payment when due under this Wapple Agreement, Wapple may,

6.6.1 in addition to any other remedies Wapple may have, charge the Partner any reasonable interest (both before and after judgment) on the amount unpaid at the higher of the rate of 5% per annum or at the highest rate permitted by law;

6.6.2 suspend the Services, including but not limited to, withholding or suspending future or current access to the Site(s) and delivery and/or performance under this License and any other agreement with the Partner;

6.6.3 pass the debt to Wapple's contracted debt collection agency and charge an additional 15% administration fee on top of the total amount of the debt owing.

6.7 Except as stated in the Wapple.net Refund Policy there shall be no refund of the annual or monthly license fee or the initial Partner program fee.

6.8 There shall be no refund of unused Page Views contracted for.

## 7. The Wapple Platform

7.1 The Partner will register a username and password in order to access the Wapple Platform. In addition the Partner will receive Developer Keys to enable it to develop Sites using Architect. The Partner is solely responsible and liable for its use of the Wapple Platform and for the security of the login ID, password and Developer Key and must not disclose any of these to any third party. The Partner must notify Wapple immediately if the Partner suspects any breach of confidentiality and/or unauthorised use of the Wapple Platform and/or the Partner's login ID, password or Developer Key.

7.2 Sites created using the Wapple Platform will be accessed by all Mobile Browsers specified on the Website. Wapple can accept no Liability for mobile operator controlled restrictions.

7.3 Wapple shall have no liability for any failures of a Site due to the failure of third party applications.

7.4 Wapple shall use Wapple's reasonable endeavours to minimise any amount of down-time and any loss or damage resulting from viruses and/or any loss of data used in relation to the Wapple Platform. Except in the case of an emergency, Wapple will give reasonable notice of any downtime associated with the Wapple Platform for maintenance, servicing or other unavoidable reason.

7.5 Wapple will use Wapple's reasonable endeavours to ensure the security of all software and hardware involved in and/or necessary for the provision of the Wapple Platform and that all such software or hardware will remain secure in accordance with up-to-date industry standards for security.

7.6 Wapple shall use Wapple's reasonable endeavours to ensure the security of the Partner's data and will operate Wapple's servers behind firewalls.

7.7 Wapple may, at any time and without notice, remove the Wapple Platform from Wapple's servers and/or bar access to the Wapple Platform if the Partner breaches and/or if Wapple suspect the Partner

may have breached the Conditions of this Wapple Agreement and/or if Wapple are authorised to do so by any court or competent law enforcement agency.

7.8 Use of the Wapple Platform is conditional upon the Partner ensuring that the content of any Site created by them is legal ethical and moral. Use of the Wapple Platform will be terminated without notice in the event of any breach of this term.

## **8. Community**

8.1 The Partner will be provided with access to the Community where they must select a username other than their full personal identity or email address for communicating within it.

8.2 The Partner will be encouraged to promote Community Content to their own networks through Social Network Links;

8.2.1 Community Content promoted via Social Network Links will be restricted and any individual trying to gain access to that content will be asked to register with Wapple and agree to these Wapple Conditions in order to view it fully;

8.2.2 Except via the Social Network Links facility provided by Wapple within the Community the Partner must not:

8.2.2.1 republish Community Content including republication on another website;

8.2.2.2 sell, rent or sub-license Community Content;

8.2.2.3 show any Community Content in public;

8.2.2.4 reproduce, redistribute, edit, duplicate, copy or otherwise exploit Community Content for any commercial purpose except for material specifically and expressly made available for redistribution (such as any white labelled sales tools).

8.3 The Partner will be encouraged to share thoughts and knowledge of the Wapple Platform with other Community members but remains bound by these Wapple Conditions when doing so.

8.4 The Partner must not publish their full personal identity or share any private information that would reveal their identity within the Community including, but not limited to, name, address, location, age and social network identities or handles.

8.5 Wapple will monitor the Partner's activity within the Community and if the Partner breaches any of these Wapple Conditions they will have their access to the Community removed.

## **9. Partner's Obligations**

9.1 The Partner shall fairly represent the capabilities of the Sites using the Wapple Intellectual Property to their Clients.

9.2 The Partner shall at its own cost and expense promote the Sites built by the Partner utilising the Wapple Platform.

9.3 The Partner shall ensure that in respect of any data and/or content contained in or linked to the Sites it creates complies with any current applicable trading standards and laws and regulations.

9.4 The Partner undertakes to comply with generally accepted principles of Internet, mobile web and WAP usage (whether governed by the laws of California and/or any other jurisdiction) including without limitation:

9.4.1 not sending "spam" texts (i.e. unsolicited mass communications);

9.4.2 not sending mail bombs; trojan horses, viruses or other disruptive programs or devices;

9.4.3 not pirating or otherwise illegally copying software or other proprietary materials;

9.4.4 not breaching the copyright of any party, including but not limited to not using any third party images or photographs without consent; and/or

9.4.5 not violating the security of any website or engaging in unauthorised decompilation and/or decryption of protected materials.

9.5 The Partner will:

9.5.1 comply with the Wapple Agreement Conditions at all times;

9.5.2 provide Wapple with such information and assistance as Wapple may reasonably require to facilitate, as far as possible, the timely and uninterrupted provision of the Service;

9.5.3 if requested, provide design, functionality and technical feedback to Wapple to encourage future enhancements to the Services;

9.5.4 follow Wapple's guidelines for the creation of and to optimise Mobile Web sites in respect of performance, usage and "look and feel";

9.5.5 provide Wapple with at least 1 weeks email notice to info@wapple.net if a Partner is aware that its site might experience a significant or any exceptional demand that is likely to be put on the server due to their promotional activity;

9.5.6 be up to date with all the Wapple Intellectual Property as it may be altered or improved from time to time;

9.5.7 upon the Commencement Date, select a password that, in conjunction with its email address permits the Partner access to the Wapple Platform. The Partner shall keep the password and Developer Keys secure and shall immediately notify Wapple by email at info@wapple.net if the Partner believes that any unauthorised use has or may be made of such a password;

9.5.8 take all reasonable steps to correct any error, omission or mistake in the content of any Site(s);

9.5.9 ensure that its content is not of a nature likely to bring Wapple or any third party Partners into disrepute. The Partner also undertakes to promptly remove any information likely to result in a breach of this clause whether or not requested to do so by Wapple; and

9.5.10 install and maintain up to date generally accepted virus-checking software to ensure that all information has been so checked before delivery to any Client;

9.6 The Partner warrants that:

9.6.1 all information provided by it to Wapple is correct, and it will promptly notify Wapple of any changes in such information;

9.6.2 none of the content provided by the Partner via any Site is or shall breach or infringe the rights of any third party (including copyright, trade marks, privacy or other personal or proprietary rights); and

9.6.3 none of the content provided by the Partner via any Site or within the Community:

9.6.3.1 contains or will contain or promote anything defamatory, illegal or violent;

9.6.3.2 makes any criticism or negative comment in relation to Wapple, or the Services or uses any Wapple trade mark or trade name;

9.6.4 it will at all times act in a manner which reflects favourably on Wapple and will not make any statements or comments which are inconsistent with this Wapple Agreement;

9.6.5 it will promptly notify Wapple in the event of any complaint from or dispute with a Client in relation to any Site created by it and will take account of Wapple's reasonable requests in relation to any such dispute or complaint;

9.7 The Partner acknowledges and agrees that Wapple may be required by a law enforcement agency to monitor the content and traffic on the Site and/or any Wapple server and/or give evidence of the same together with details of any end-user, Client identification and/or use of the password to support or defend any dispute or actionable cause or matter which arises in relation to the same.

9.8 The Partner acknowledges and agrees that on occasion Wapple may use Sites, built by the Partner using the Wapple Platform, to demonstrate and present the capabilities of Wapple technology and service including, but not limited to, Wapple website presentations and electronic and paper documents that may be sent to prospective customers and/or future Partners of Wapple.

9.9 The Partner agrees to indemnify and keep indemnified Wapple from and against any Liability resulting in any way from the Partner's use of the Wapple Platform and/or any data obtained on the Wapple Platform except where such Liability arises as a direct result of Wapple's fault and/or negligence.

## 10. Undertakings

10.1 The Partner undertakes not to nor permit any third party to copy, reproduce, translate, adapt, reverse engineer, decompile, vary or modify any Software owned and/or used by Wapple or any part of such software.

## 11. Data Protection

11.1 The Partner shall ensure that in respect of any data and/or content contained in or linked to the Sites the collection, storage, processing and/or transfer of personal information on or from the Sites is in accordance with all current relevant data protection legislation. Wapple accepts no liability for any financial data disclosed or transmitted by a third party to the Partner and the Partner is responsible for the security of all financial information collected by it from any third party, via the Sites.

## 12. Confidentiality

12.1 The Partner shall:

12.1.1 keep confidential all Confidential Information and limit access to it to those of the Partner's employees, agents, sub-licenses and sub-contractors who have a need to know and ensure they are using the Confidential Information in accordance with the Conditions of this Wapple Agreement;

12.1.2 not reproduce (whether in machine readable or human readable form) any of the Software used on the Wapple Platform and/or the Wapple Intellectual Property; and

12.1.3 without prejudice to the foregoing, take all such other reasonable steps as shall from time to time be necessary to protect the Confidential Information the Wapple Intellectual Property and all software used on the Wapple Platform.

12.2 The Partner shall inform all relevant employees, agents and sub-contractors that Software used on the Wapple Platform constitutes Confidential Information and that all intellectual property rights in such Software are subject to the provisions of this clause 12 and belong to Wapple. The Partner shall take all such steps as shall be necessary to ensure compliance by the Partner's employees, agents and sub-contractors with the provisions of this clause 12.

12.3 The obligations of confidentiality in this clause 12 shall not extend to any matter which:

12.3.1 is in or becomes part of the public domain otherwise than by reason of a breach of the obligations of confidentiality in this Wapple Agreement;

12.3.2 the Partner can show was in its written records and/or possession prior to the date of disclosure of the same by the disclosing party;

12.3.3 is after the date of this Wapple Agreement received without any duty of confidentiality from a third party independently entitled to disclose it free from any obligations of confidentiality; and/or

12.3.4 is required by law or a regulatory authority to be disclosed provided that the Partner gives Wapple as much advance notice of the required disclosure as possible.

12.4 The Partner shall be responsible for the acts and/or omissions of the Partner's employees, agents and sub-contractors (whether or not they remain as the Partner's employees, agents or sub-contractors) and any persons and/or organisations to whom the Partner disclose any Confidential Information as if they were the Partner's own acts and/or omissions.

12.5 The Partner shall indemnify and keep indemnified Wapple (and any person who has provided the Partner with Confidential Information) against any and all claims, actions, proceedings, damages, lost

profits, damage to goodwill, costs, expenses, special indirect and consequential loss and any other loss and/or liability resulting from any breach of the Conditions of clause 12 by the Partner.

### **13. Intellectual Property Rights**

13.1 Nothing in this Wapple Agreement shall grant to the Partner any right to any of Wapple's Intellectual Property Rights before or after the Commencement Date, and thereafter only the limited rights granted in clause 3. For the avoidance of doubt, the Wapple Intellectual Property will remain the property of and will continue to be owned by Wapple. The structure, organisation and code of Wapple's Software are the valuable trade secrets and Confidential Information of Wapple.

This Wapple Agreement does not grant the Partner or any third parties any intellectual property rights in Wapple's Software and all rights are reserved by Wapple.

13.2 All intellectual property rights arising as a result of this Wapple Agreement including, but not limited to, improvements and/or adjustments to the Wapple Intellectual Property shall vest in Wapple and all such rights are hereby assigned by the Partner to Wapple with full title guarantee.

13.3 The Partner will at the request and expense of Wapple, both during and after the expiry of this Wapple Agreement, do all acts and/or things and execute all documents and/or deeds which are necessary or desirable to give effect to the Conditions of this Wapple Agreement and/or to perfect, register and/or protect Wapple's Intellectual Property Rights owned by Wapple before or after this Wapple Agreement commenced and/or created as a result of this Wapple Agreement.

### **14. Warranty and Liability**

14.1 Wapple agrees that it will use its reasonable commercial endeavours to provide the Services, but cannot guarantee that the Wapple Platform will be available 24 hours a day, 365 days a year.

14.2 Wapple does not warrant that the use of the Wapple Platform will meet the Partner's data processing and/or business requirements or that the operation of the Wapple Platform will be uninterrupted or error free.

14.3 Wapple shall have no Liability to the Partner for any:-

14.3.1 consequential losses;

14.3.2 loss of profits and/or damage to goodwill;

14.3.3 economic and/or other similar losses;

14.3.4 loss of and/or corruption of data;

14.3.5 special damages and indirect losses;

14.3.6 aggravated, punitive and exemplary damages; and/or

14.3.7 business interruption, loss of business, contracts, opportunity and/or production.

14.4 Wapple's total Liability to the Partner for any failure of any particular Site shall not exceed the Fees paid by the Partner in respect of that Site.

14.5 Each of the limitations and/or exclusions in this Wapple Agreement shall be deemed to be repeated and apply as a separate provision for each of:

14.5.1 Liability in contract (including fundamental breach);

14.5.2 Liability in tort (including negligence);

14.5.3 Liability for breach of statutory duty; and

14.5.4 Liability for breach of Common Law.

14.6 Nothing in this Wapple Agreement shall exclude or limit Wapple's Liability for death or personal injury due to its negligence or any Liability which is due to its fraud or any other Liability which Wapple is not permitted to exclude or limit as a matter of law.

14.7 All warranties, terms, conditions and duties implied by or relating to fitness, quality or adequacy or to skill and care are excluded to the fullest extent provided by law.

## 15. Termination

15.1 Wapple may at its sole option suspend or terminate this Wapple Agreement if the Partner:

15.1.1 breaches any term of this Wapple Agreement;

15.1.2 fails to make any payment when due;

15.1.3 ceases or threatens to cease to carry on business;

15.1.4 is, or is deemed to be, unable to pay its debts as they fall due or is insolvent, suspends making payments on any debts or announces an intention to do so, commences negotiations with one or more of its creditors with a view to rescheduling any of its indebtedness by reason of actual or anticipated financial difficulties, has a moratorium declared in respect of any of its indebtedness, ceases or threatens to cease to carry on business or has a bankruptcy petition presented against it, has appointed in respect of it or any of its assets a liquidator, trustee in bankruptcy, judicial custodian, supervisor, compulsory manager, receiver, administrative receiver, administrator or similar officer (in each case whether out of court or otherwise), pledges or charges any Goods which remain the property of the other party, takes or suffers any similar action in any jurisdiction or any step is taken (including, without limitation, the making of an application or the giving of any notice) by it or by any other person in respect of any of these circumstances;

15.1.5 appears to Wapple due to its credit rating to be financially inadequate to meet its obligations under this Wapple Agreement; and/or

15.1.6 appears reasonably to Wapple to be about to suffer any of the above events.

15.2 The Partner may terminate this Wapple Agreement if Wapple:

15.2.1 breaches any term of this Wapple Agreement;

15.2.2 is, or is deemed to be, unable to pay its debts as they fall due or is insolvent, commences negotiations with one or more of its creditors with a view to rescheduling any of its indebtedness by reason of actual or anticipated financial difficulties, has a moratorium declared in respect of any of its indebtedness, ceases or threatens to cease to carry on business or has a bankruptcy petition presented against it, has appointed in respect of it or any of its assets a liquidator, trustee in bankruptcy, judicial custodian, supervisor, compulsory manager, receiver, administrative receiver, administrator or similar officer (in each case whether out of court or otherwise), pledges or charges any Goods which remain the property of the other party, takes or suffers any similar action in any jurisdiction or any step is taken (including, without limitation, the making of an application or the giving of any notice) by it or by any other person in respect of any of these circumstances;

15.3 Any termination of this Wapple Agreement pursuant to this clause 15 shall be without prejudice to any other rights or remedies a party may be entitled to under this Wapple Agreement or at law and shall not affect any accrued rights or liabilities of either party nor the coming into or continuance in force of any provision which is expressly or by implication intended to come into or continue in force on or after such termination.

15.4 On termination of this Wapple Agreement for any reason:

15.4.1 the license granted to the Partner by Wapple under clause 3 above shall terminate; and

15.4.2 any monies due and owing by the Partner shall immediately become payable to Wapple.

## 16. General

16.1 No waiver by Wapple of any breach of this Wapple Agreement shall be considered as a waiver of any subsequent breach of the same provision or of any other provision. Where Wapple chooses to suspend this Wapple Agreement as a result of any of the events in clause 15.1 occurring, it may then terminate the Wapple Agreement in respect of the same event.

16.2 If any provision of this Wapple Agreement is held by any competent authority to be invalid or unenforceable in whole or in part the validity of the other provisions of this Wapple Agreement and the remainder of the affected provisions shall be unaffected and shall remain in full force and effect.

16.3 This Wapple Agreement constitutes the entire agreement between the parties in relation to its subject matter and supersedes all prior agreements understandings or discussions between the parties. None of the parties shall be entitled to rely on any agreement, understanding or discussion which is not expressly contained in this Wapple Agreement.

16.4 Any notice under this Wapple Agreement may be served by first class post, facsimile or email to the address set out below or such other address as may be notified by any of the parties from time to time. A notice shall be deemed served, if sent by facsimile or e-mail, on the Business Day immediately after the day on which it was sent and if sent by first class post, on the second Business Day after posting.

16.4.1 Address: Wapple North America, Inc. 3156 Lionshead Avenue, Suite 1, Carlsbad  
California 92011  
email:info@wapple.net

16.5 The Partner may not assign in whole or in part any of the Partner's rights and/or obligations under this Wapple Agreement without Wapple's prior written consent. Wapple may assign in whole or in part Wapple's rights and/or obligations under this Wapple Agreement.

16.6 All third party rights are excluded and no third party shall have any right to enforce this Wapple Agreement. Any rights of any third party to enforce this Wapple Agreement may be varied and/or extinguished by agreement between the parties without the consent of such third party.

16.7 This Wapple agreement is governed by, and is to be interpreted, construed and enforced in accordance with, the laws of the State of Delaware.

## Appendix A PRICING: PARTNER PROGRAM PACKAGES & EXTRAS

### 1 Partner Program Packages

1.1 The Partner will select a Package as defined by the following table:

PARTNER PACKAGES	Developer FREE	Developer Level 2	Agency Bronze	Agency Silver	Agency Gold	Bespoke
Monthly Price	\$0	\$25.00	\$110.00	\$240.00	\$485.00	Custom
Annual Price	\$0	\$259.20	\$1,188.00	\$2,592.00	\$5,238.00	Custom
Canvas Sites/Architect Domains (total of both)	3	5	10	20	N/A	Custom
Monthly Page Views	200	2,000	10,000	25,000	60,000	Custom
User Log-ons	1	1	3	3	5	Custom
Hosting, storage maximum	50mb	100mb	500mb	2GB	4GB	Custom
Standard SLA	N/A	95%	99%	99%	99%	99%
Community access	yes	yes	yes	yes	yes	yes
Standard Email support	no	no	yes	yes	yes	yes
Priority Email & Phone Support	no	no	no	yes	yes	yes
Dedicated out of hours support	no	no	no	no	no	yes

2 The Partner may expand their account capacity, defined by their chosen Package, by selecting and purchasing additional Sites/Domains, Page Views, User Logons as 2.1 below.

2.1 Extra account capacity table:

EXTRAS		
Training* & phone support	Hourly	\$110
	2hrs per month	\$160 (Additional hours are \$95/hr)
	5hrs per month	\$350 (Additional hours are \$95/hr)
Additional User Log-ons		\$24 per month
Additional Canvas Site or Architect Domain		\$24 per month
Additional Exhibit Page Views	1,000	\$16 per month

3 If, in any Month, the Partner exceeds the Site/Domain, Page View or Storage capacity they have purchased then their account will be upgraded according to the prices set out at 2.1 above and Wapple will charge the related Fees for that Month retrospectively.

3.1 Where the Partner pays for the Services by recurring Creditcard transaction the extra payment will be taken for exceeded capacity as 2.1, in addition to the regular recurring monthly Fee for the base Package.

- 4 Where the Partner has selected the Free Developer Package their site will be restricted to the capacity detailed in the table at 1.1. If Page View capacity is reached in this free Package then the Partner's Canvas built Sites will be redirected to a Wapple branded Site for the remainder of the Month or their Architect built Sites will return an error for the remainder of the Month.

\*Training is generally provided over the phone.

## Appendix B: PAYING WAPPLE

- 1 Where the Partner opts to pay Wapple by recurring credit or debit card payment using the Website facility (Developer Level 2 or Agency Bronze Packages plus Extras) the recurring payment will be processed at the beginning of every Month:
  - 1.1 If the Partner registers between 1<sup>st</sup> and the 10<sup>th</sup> of any Month then the full monthly price for the Package will be taken as an initial payment and the recurring payment will start on the 1<sup>st</sup> of the following Month for the regular monthly Package price.
  - 1.2 If the Partner registers between 11<sup>th</sup> and 20<sup>th</sup> of any Month then 50% of the monthly price for the Package will be taken as an initial payment and the recurring payment will start on the 1<sup>st</sup> of the following Month for the regular monthly Package price.
  - 1.3 If the Partner registers between 21<sup>st</sup> and the end of any Month then they will not be charged an initial fee and the recurring payment will start on the 1<sup>st</sup> of the following Month for the regular monthly Package price.
- 2 Where the Partner opts to pay upon receipt of an invoice (excludes Developer Level 2 package) then they have the following options for payment:

**2.1 Wire Payment** – This information is detailed on our invoices.  
The required information is detailed on the invoice that is sent to the customer the client needs to allow 3 working days for their payment to reach Wapple.

Wells Fargo Bank, N.A  
930 South Santa Fe Avenue  
Vista, Ca, 92084

Routing Number: 121042882  
Account Number: 5256722397

### **2.2 Check Payment**

Checks need to be made payable to Wapple North America Inc.  
Send checks to Wapple North America, 3156 Lionshead Avenue, Suite 1, Carlsbad, California, 92011

### **2.3 Pay Pal**

PayPal payments are made to [transactions@wapple.net](mailto:transactions@wapple.net)

Appendix C - Description of Additional Services (if applicable)