



**WASABI SYSTEMS INC.  
SOFTWARE EVALUATION AGREEMENT  
TERMS AND CONDITIONS**

Subject to the following terms and conditions, Wasabi grants Licensee the right to evaluate the software specified in Exhibit 1 (the “Wasabi Software”) in the form specified therein:

1. The Wasabi Software shall be considered “Confidential Information.” Licensee shall not use the Confidential Information except as expressly authorized, and will use commercially reasonable efforts to hold in confidence the Confidential Information. Licensee will implement measures to protect Confidential Information that are no less restrictive than those used for its own confidential materials and in any case are reasonable measures. Licensee shall disclose Confidential Information received from Wasabi only to employees or consultants of Licensee who (i) need to know such Confidential Information to evaluate the Software and (ii) have agreed in writing to disclosure and use provisions similar to those set forth herein. If Wasabi requests, Licensee may only disclose Confidential Information to such specific employees or specific divisions of Licensee as may be mutually agreed upon in advance. The foregoing obligations shall not apply solely to the extent that Confidential Information is required to be disclosed pursuant to the requirements of law, regulation or court order, provided that Licensee notify Wasabi as soon as reasonably practicable and cooperate with the other party to contest and limit the extent of such disclosure and to seek confidential treatment of any Confidential Information so disclosed.
2. The Wasabi Software shall remain the sole property of Wasabi. This agreement does not grant a license to use or distribute the Wasabi Software apart those uses required for internal evaluation purposes. Neither the source code nor the object code of the Wasabi Software may be shared with or disclosed to any third party. Licensee shall not itself and shall not permit its employees or contractors, or authorize other third parties to: (a) modify the source code of the Wasabi Software; (b) create any derivative works (as defined in the U.S. Copyright Act) based upon the Wasabi Software or Documentation; and (c) rent, lease, loan, transfer, or sublicense, distribute or allow access to the Wasabi Software except as expressly permitted in this Agreement. Licensee shall not, without Wasabi’s prior written permission, use the text of Wasabi promotional, technical, or other copyrighted materials in any materials it distributes to a third party.
3. Unless otherwise agreed in writing by Wasabi, sixty (60) days after the signing of this Agreement, all copies of any Confidential Information shall be returned to the supplying party, erased, or destroyed, and all of Licensee’s rights hereunder shall terminate. At Wasabi’s request, an executive officer of Licensee shall certify compliance with the terms of this paragraph.

4. Unauthorized disclosure or use of Confidential Information may cause irreparable harm to Wasabi, which may be difficult to ascertain. Accordingly, each party agrees that the other may be entitled to equitable relief, including, without limitation, an immediate injunction enjoining any breach by it of this Agreement, in addition to all other remedies available to such party at law or in equity.

5. NEITHER PARTY SHALL BE LIABLE TO THE OTHER OR ANY THIRD PARTY FOR CONSEQUENTIAL, INCIDENTAL, INDIRECT AND/OR SPECIAL DAMAGES FROM ANY CLAIMS ARISING FROM OR IN ANY WAY CONNECTED TO THIS AGREEMENT, EVEN IF THE POSSIBILITY OF SUCH DAMAGES, OR SHOULD HAVE BEEN, KNOWN.

6. If during the course of the evaluation of the Wasabi Software, Licensee provides comments, feedback, test results, or evaluation results; or provides oral or written observations or suggestions related to the Wasabi Software or potential improvements (collectively, the "Feedback"), Licensee grants Wasabi a non-exclusive, royalty-free, irrevocable, unrestricted, and worldwide license to use and copy the Feedback in any manner Wasabi determines, including in the development, manufacture, marketing, and maintenance of Wasabi products and services, without further obligation to Licensee. Wasabi shall not disclose Licensee's identity to any third party in connection with the Feedback.

7. Licensee agrees that it will not assert any Patent Right against Wasabi, its subsidiaries or affiliates, or their customers (direct or indirect), distributors (direct or indirect), and contractors (direct or indirect) for the manufacture, use, import, offer for sale or sale of the Wasabi Software or any process or method employed in the manufacture, testing, distribution or use thereof for so long as Wasabi does not assert any Patent Right against Licensee, its subsidiaries or affiliates, or their customers (direct or indirect), distributors (direct or indirect), and contractors (direct or indirect). Notwithstanding anything to the contrary contained in this Section, Wasabi shall not be bound or limited in any way by the foregoing covenant with respect to any Licensee Product for which Licensee's designers or developers studied any of Wasabi's patents, patent applications and Wasabi Software in the course of design or development. For purposes of this Section, a party's subsidiaries and affiliates shall mean any affiliate, subsidiary, parent, or sister company to that party or other entity in which that party owns greater than fifty per cent (50%) of the voting stock or which owns greater than fifty per cent (50%) of that party's voting stock.

8. During the sixty-day term of this agreement, and for six (6) months thereafter, Licensee agrees not to distribute, sell, or bring to market a software product that is competitive with the Wasabi Software, as such term shall be defined by a court of competent jurisdiction.

9. The parties shall be independent contractors hereunder. Neither this Agreement, nor any terms and conditions contained herein, shall be construed as creating a partnership, joint venture, employment or agency relationship or as granting a franchise. This Agreement may not be assigned or sublicensed by Licensee without the written agreement of Wasabi.

10. This Agreement and the relationship of the parties shall be governed by and construed in accordance with the laws of the state of Delaware, USA. Any suit brought in connection with this Agreement shall be brought in the state or federal courts sitting in the county of actual

residence of the non-moving party, or in such other venue as the parties may agree. Both parties waive any claim or defense that such forum is not convenient or proper. If any provision of this Agreement shall be held by a court of competent jurisdiction to be illegal, invalid or unenforceable, the remaining provisions shall remain in full force and effect.

**Exhibit 1**

**Software to be Evaluated:**

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**Storage Builder for NAS  
Storage Builder for IP-SAN**