

INTERCOMPANY LICENSE AGREEMENT

This Intercompany License Agreement (“Agreement”) is made as of July 1, 2021 (the “Effective Date”) by and between the **Wikimedia Foundation, Inc.** (“Foundation”), and **Wikimedia, LLC** (“Company”). In consideration of the agreements and covenants contained herein, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. Definitions.

1.1 “Documentation” means any information, including without limitation instructions, manuals, help files or other materials, regarding the installation, maintenance or use of the Technology.

1.2 “Free Culture License” means any copyright license approved by FreedomDefined.org including, but not limited to Creative Commons Attribution-ShareAlike licenses.

1.3 “Foundation IP Rights” means any and all intellectual property rights that Foundation presently or in the future owns or has the right to license to Company, including without limitation: (a) rights associated with works of authorship throughout the world, including but not limited to copyrights, moral rights and mask-works; (b) trademarks, service marks and trade name rights and similar rights; (c) trade secret rights; (d) patents, renewals, extensions, reissues and re-examinations thereof, design rights, inventions, and other industrial property rights; (e) all registrations and patent applications (including continuations, continuations-in-part and divisions thereof) in any of the foregoing; (f) all other intellectual and industrial property rights (of every kind and nature and however designated), including logos, domain names, “rental” rights and rights to remuneration, whether arising by operation of law, contract, license or otherwise; and (g) any additional applicable intangible property (whether or not in documentary form and whether or not patentable, copyrightable or otherwise protectable under applicable laws). For the avoidance of doubt, the Foundation IP Rights shall not include, and the terms of this Agreement shall not apply to, any other intellectual property rights owned or licensed by Foundation, including but not limited to any content or intellectual property licensed by Foundation to the public under an open source license or free culture license. Such content shall be subject to the Free Culture Licenses and Open Source Licenses specified in connection with such content.

1.4 “Company IP Rights” means any and all intellectual property rights that Company presently or in the future owns or has the right to license to Foundation, including without limitation: (a) rights associated with works of authorship throughout the world, including but not limited to copyrights, moral rights and mask-works; (b) trademarks, service marks and trade name rights and similar rights; (c) trade secret rights; (d) patents, renewals, extensions, reissues and re-examinations thereof, design rights, inventions, and other industrial property rights; (e) all registrations and patent applications (including continuations, continuations-in-part and divisions thereof) in any of the foregoing; (f) all other intellectual and industrial property rights (of every kind and nature and however designated), including logos, domain names, “rental” rights and rights to remuneration, whether arising by operation of law, contract, license or otherwise; and (g) any additional applicable intangible property (whether or not in documentary form and whether or not patentable, copyrightable or otherwise protectable under applicable laws). For the avoidance of doubt, the Company IP Rights shall not include, and the terms of this Agreement shall not apply to, other intellectual property rights owned or licensed by Company, including but not limited to any content or intellectual property licensed by Company to the public under an open source license or free culture license. Such content shall be subject to the Free Culture Licenses and Open Source Licenses specified in connection with such content.

1.5 “Open Source License” means any software license approved by the Open Source Initiative.

1.6 “Technology” means all ideas, concepts, specifications, designs, models, prototypes, techniques, tools, diagrams, outlines, descriptions and other documentation, information, data, and all other technology as described in greater detail on Exhibit A attached hereto.

2. License Grants.

2.1 Foundation License. Subject to the terms and conditions of this Agreement, Foundation hereby grants to Company a worldwide, non-exclusive, perpetual, royalty-free, transferable, sublicensable license under the Foundation IP Rights to use, make, have made, sell, offer to sell, market, copy, modify, reproduce, distribute, perform, create derivative works of, transmit, import, and export for the purpose of commercializing and otherwise exploiting the Technology and use the Documentation. In furtherance of the foregoing, Company shall be entitled to make or have made on behalf of Company improvements, modifications, enhancements, adaptations and upgrades to, and other derivative works of the Technology (collectively, “Company Improvements”). Foundation shall own all right, title and interest in and to all Company Improvements and to any derivative works of Foundation IP Rights created by Company (“Company Derivative Works”), and Foundation shall have the sole and exclusive right to file for protection of intellectual property rights in any such Company Improvements and Company Derivative Works with any applicable governmental or regulatory agency. Company hereby assigns and agrees to assign to Foundation all Company Improvements and Company Derivative Works. To the extent allowed by law, this Section and any rights of Foundation hereunder includes all rights of paternity, integrity, disclosure and withdrawal and any other rights that may be known as or referred to as “moral rights,” “artist’s rights,” “droit moral,” or the like. To the extent any of the foregoing is ineffective under applicable law, Company hereby waives any such rights and provides any and all ratifications and consents necessary to accomplish the purposes of the foregoing to the extent possible.

2.2 Company License. Subject to the terms and conditions of this Agreement, Company hereby grants to Foundation a worldwide, non-exclusive, perpetual, royalty-free, transferable, sublicensable license to use, make, have made, sell, offer to sell, market, copy, modify, reproduce, distribute, perform, create derivative works of, transmit, import, export, commercialize, and otherwise exploit the Company IP Rights. In furtherance of the foregoing, Foundation shall be entitled to make or have made on behalf of Foundation improvements, modifications, enhancements, adaptations and upgrades to, and other derivative works (collectively, “Foundation Improvements”). Company shall own all right, title and interest in and to all Foundation Improvements and to any derivative works of Company IP Rights created by Foundation (“Foundation Derivative Works”), and Company shall have the sole and exclusive right to file for protection of intellectual property rights in any such Foundation Improvements and Foundation Derivative Works with any applicable governmental or regulatory agency. Foundation Derivative Works to Company, and Foundation hereby assigns and agrees to assign to Company all Foundation Improvements and Foundation Derivative Works. To the extent allowed by law, this Section and any rights of Company hereunder includes all rights of paternity, integrity, disclosure and withdrawal and any other rights that may be known as or referred to as “moral rights,” “artist’s rights,” “droit moral,” or the like. To the extent any of the foregoing is ineffective under applicable law, Foundation hereby waives any such rights and provides any and all ratifications and consents necessary to accomplish the purposes of the foregoing to the extent possible.

2.3 Foundation and Company acknowledge that all licenses and assignments granted herein are subject to and superseded by the parties’ pre-existing commitments to Open Source Licenses and/or Free Culture Licenses.

3. Representations and Warranties. EACH PARTY DISCLAIMS ANY AND ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION, WARRANTIES OF MERCHANTABILITY, OR FITNESS FOR A PARTICULAR PURPOSE.

4. Confidentiality.

4.1 Both parties understand and acknowledge that by reason of their relationship, each party will have access to certain information and materials concerning the other’s business, plans, customers, technology and products that are confidential and of substantial value to the other (“Confidential Information”) and the value of such information and materials would be impaired if such information were disclosed to third parties. Each party agrees that it will

not disclose to any third party or use any such Confidential Information revealed to it by the other, other than to fulfill its express obligations or exercise its rights under this Agreement or as required by applicable law. Each party will take every reasonable precaution to protect the confidentiality of such information.

4.2 Each party acknowledges and agrees that breach of its confidentiality obligations hereunder may cause irreparable harm to the other party for which there may be no adequate remedy at law, and that in the event of such a breach the non-breaching party shall be entitled to seek equitable relief to protect its interests therein, including, but not limited to, injunctive relief.

5. Limited Liability.

5.1 NOTWITHSTANDING ANYTHING ELSE IN THIS AGREEMENT OR OTHERWISE, IN NO EVENT WILL EITHER PARTY HAVE ANY LIABILITY FOR ANY INDIRECT, INCIDENTAL, SPECIAL, EXEMPLARY OR CONSEQUENTIAL DAMAGES, HOWEVER CAUSED AND ON ANY THEORY OF LIABILITY, WHETHER FOR BREACH OF CONTRACT, TORT OR OTHERWISE, ARISING OUT OF OR RELATED TO THIS AGREEMENT, INCLUDING BUT NOT LIMITED TO, LOSS OF ANTICIPATED PROFITS, LOSS OF DATA, OR LOSS OF USE, EVEN IF SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

6. Term, Termination.

6.1 This Agreement shall commence on the Effective Date and shall remain in full force and effect for three (3) years unless otherwise terminated pursuant to this Section 6. This Agreement will automatically renew at the end of any term, for three (3) additional years, under the same terms and conditions, unless Foundation provides Company written notification thirty (30) days before the end of the current term of the Agreement indicating that the Agreement will not be automatically renewed.

6.2 Upon default in the performance of any provision of this Agreement, the non-defaulting party may issue a written notice to the defaulting party and if the default is not rectified or a plan is not submitted for remedy then the non-defaulting party may terminate the Agreement effective ninety (90) days after the date of the notice. In the event of Company's breach of this Agreement by exceeding the scope of Section 2, this Section 6.2 will not be deemed to prevent Foundation from seeking an injunction solely to prevent Company's improper use of the Technology; provided, however, any such injunction may not prevent or interfere with Foundation's use of the Technology or manufacture, use, sale distribution or other disposal of any Foundation's product or service that constitutes, includes, utilizes, relies upon or works with any part of the Technology. Company further expressly acknowledges and agrees that, in the event of any breach of this Agreement by Foundation, Company's remedies will be limited to a claim for money damages.

6.3 This Agreement shall automatically be terminated in the event that Company elects to be treated as a for-profit corporation and is no longer treated as a disregarded wholly owned entity of Foundation.

6.4 Either party may terminate this Agreement for any or no reason upon thirty (30) days' prior written notice to the other party.

6.5 Sections 1, the last four (4) sentences of Section 2.1, the last four (4) sentences of Section 2.2, and Sections 4 through 7 shall survive termination of this Agreement.

7. General.

7.1 Relationship of Parties. Neither this Agreement, nor and nothing herein will constitute either party as the employer, employee, agent or representative of the other party, or both parties as joint venturers or partners for any purpose.

7.2 Entire Agreement; Amendment, Modification or Waiver; Notices. This Agreement (and any attachments hereto incorporated herein) set forth the entire understanding of the parties as to the subject matter therein and may not be modified except in a writing executed by both parties. No change, consent or waiver hereunder will be effective unless in writing and signed by the party against which enforcement is sought. The failure or delay of either party to enforce any term of this Agreement shall not be deemed a waiver of such term. Any notices in connection with this Agreement will be in writing and sent by recognized international courier service, confirmed facsimile or confirmed electronic mail or major commercial rapid delivery courier service and shall be deemed received on the earlier of actual receipt or ten (10) days after posting. It is the express wish of the parties that this Agreement and all related documents have been drawn up in English. No version of this Agreement in any other language shall be binding or of any effect.

7.3 Assignment. Company may not transfer or assign this Agreement or any of its rights or obligations hereunder, whether by operation of law or otherwise, without the prior written consent of Foundation. This Agreement and the rights hereunder shall be fully transferable by Foundation upon written notice to Company. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and permitted assigns.

7.4 Severability. In the event that any provision of this Agreement shall be determined to be illegal or unenforceable, that provision will be limited or eliminated to the minimum extent necessary so that this Agreement shall otherwise remain in full force and effect and enforceable.

7.5 Force Majeure. Neither party shall be deemed to be in breach of this Agreement in the event of a delay, failure or default in performance of an obligation of such party hereunder to the extent caused by reasons outside such party's reasonable control.


7.6 Governing Law and Venue. This Agreement shall be governed by and construed in accordance with the laws of the State of California without regard to the conflicts of laws provisions thereof. All matters concerning the validity and interpretation of and performance under this Agreement shall be resolved in the state and federal courts located in San Francisco, California.

7.7 Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which taken together shall constitute one and the same instrument.

[Remainder of page intentionally left blank]

IN WITNESS WHEREOF, the parties hereto have duly executed this Agreement as of the date first set forth above.

Wikimedia Foundation, Inc. (Foundation):

By: 
Name: Jaime Villagomez
Title: CFO

Wikimedia, LLC (Company):


By: 
Name: Lane Becker
Title: President

Exhibit A

TECHNOLOGY DESCRIPTION

Wikimedia Enterprise Application Programming Interfaces (APIs), and the accompanying website(s), documentation, code, and related materials; and any future improvements to and later versions of the same.