

VMware Ready Virtual Appliance Program Agreement

This VMware Ready Virtual Appliance Program Agreement (this "Agreement"), is entered into as of _____ ("Effective Date") by and between VMware International Limited ("VMware") having an office at Parnell House, Barrack Square, Ballincollig, County Cork, Ireland, and _____, a _____ corporation ("Partner") having an office at _____.

In consideration of the mutual promises contained in this Agreement, the parties hereto agree as follows:

1. VMware Ready Virtual Appliance Program.

This Agreement sets forth the terms and conditions that govern Partner's participation in the VMware Ready Virtual Appliance Program ("Program") as more fully described in the program guidelines posted at <http://www.vmware.com/appliances/build/list.html#c7545> ("Program Guidelines"). VMware reserves the right to modify, suspend or terminate the Program and/or the Program Guidelines, from time to time at its sole discretion and without notice. Accordingly, Partner is encouraged to periodically review the Program Guidelines online to keep apprised of any updates.

2. Virtual Appliance Testing.

Under the Program, Partner must submit to VMware (a) a virtual appliance developed by or for Partner ("Virtual Appliance"); (b) all marketing placement content, description, information and URLs ("Placement Copy") for the Virtual Appliance to be listed on the VMware website; and (c) any websites, services and landing pages to which the Virtual Appliance or any Placement Copy links or directs viewers, and advertised services and products (collectively "Partner Solutions"). VMware, either directly or through its contractors, will test the Virtual Appliance as set forth in the Program Guidelines. VMware will provide Partner with a test report for the Virtual Appliance and notify Partner in writing whether the Virtual Appliance successfully completed the testing process and is a VMware Ready Virtual Appliance ("VMware Ready Virtual Appliance"). In the event the Virtual Appliance successfully completes the testing and is a VMware Ready Virtual Appliance, VMware will notify Partner that they may use the applicable VMware logo ("VMware Logo") as set forth in the Program Guidelines in accordance with Section 4 of this Agreement.

Partner hereby grants VMware all rights (including without limitation any copyright, trademark, patent, publicity or other rights) in the Virtual Appliance, Placement Copy and Partner Solutions necessary for VMware and its contractors to (i) conduct testing of the Virtual Appliance, (ii) operate any webpage(s) for the Virtual Appliance and Placement Copy (including without limitation any rights needed to host, cache, route, transmit, store, copy, market, distribute, perform, display, reformat, excerpt, and analyze Placement Copy or any Virtual Appliance, and modify Placement Copy), (iii) use, reproduce, publish, market, display, perform, and distribute without restriction the Virtual Appliance and Placement Copy.

3. Restrictions.

VMware reserves the right to randomly test, on an ongoing basis, the compliance of any current or future releases of a VMware Ready Virtual Appliance with the then-current Program Guidelines. VMware further reserves the right to revoke without liability the VMware Ready Virtual Appliance designation of any Virtual Appliance that is not in compliance with the Program Guidelines ("Noncompliant Virtual Appliance") and may remove any such Noncompliant Virtual Appliance from VMware's website. Upon notification from VMware, Partner must immediately cease use of the VMware Logo in connection with any Noncompliant Virtual Appliance. Partner may resubmit any such Noncompliant Virtual Appliance for testing by completing a new Program application and paying the requisite Program Fee (as defined below). For any Noncompliant Virtual Appliance, VMware may at its option revert to a previously approved VMware Ready Virtual Appliance version if one is available. All Virtual Appliance and Placement Copy submitted by Partner to VMware for the purposes of this Program are subject to VMware's approval, and placement and positioning of any Virtual Appliance and Placement Copy on the VMware website is solely at the discretion of VMware. VMware reserves the right to reject, discontinue, omit, or cancel any Placement Copy or portion thereof. This right shall not be deemed waived by any acceptance or use of Placement Copy. VMware reserves the right to place the word "Advertisement" with Placement Copy which, in VMware's opinion, resembles editorial matter provided on VMware webpage(s). Partner is prohibited from simulating any VMware webpage format or look-and-feel (unless Partner obtains VMware's prior written approval).

4. VMware Logo.

For each Virtual Appliance that successfully completes testing under the Program, VMware will provide Partner written notice granting access to the applicable VMware Logo. VMware may also include the VMware Ready Virtual Appliance and Placement Copy in a list of other virtual appliances (certified and uncertified) on VMware's website. Partner shall only use the VMware Logo in connection with VMware Ready Virtual Appliances, in accordance with the Program Guidelines and VMware branding guidelines posted on VMware's website at http://www.vmware.com/pdf/branding_partners.pdf. Partner acknowledges that damages for improper use of the

VMware Logo may cause irreparable harm to VMware; therefore, VMware is entitled to seek equitable relief, including injunction and preliminary injunction, in addition to all other remedies. VMware reserves all rights not expressly granted herein.

5. Support.

Partner agrees to support the VMware Ready Virtual Appliance at a level consistent with that of its other products. Partner shall provide VMware with, and make generally available to the VMware Ready Virtual Appliance end users, (a) any critical security patches for any VMware Ready Virtual Appliance, or portion thereof, within 48 hours of the general availability of same, and (b) any new versions, modifications, updates or upgrades of the VMware Ready Virtual Appliance, or portion thereof, within one week of the general availability of same. Partner shall provide VMware with a designated support contact for the Virtual Appliance that will monitor and answer support questions on the Virtual Appliance's Virtual Appliance Marketplace forum. Partner shall maintain at least one (1) VMware Certified Professional on its staff.

6. Marketing and Promotion.

In accordance with the Program Guidelines, Partner acknowledges and agrees it shall either join or is already a member of VMware's Technology Alliance Partner Program. Partner further agrees to comply with the marketing and promotion obligations for the Program as set forth in the Program Guidelines. Partner grants to VMware and its affiliates, the right to use, in VMware's sole discretion, Partner's trade names, trademarks, service marks, logos, domain names and other distinctive brand features in presentations, marketing materials, customer lists, financial reports and website listings (including links to Partner's website or the Virtual Appliance) for the purpose of advertising or publicizing Partner's participation in the Program and/or Partner's creation of a Virtual Appliance.

7. Program Fees.

Partner agrees to pay VMware the fees set forth in the Program Guidelines ("Program Fee") within 30 days ("Net 30") of accepting this Agreement. The Program Fee provides for the initial testing by VMware or its contractor, the test report, and in the event the Virtual Appliance does not pass the initial test, one (1) subsequent test by VMware or its contractors of the Virtual Appliance. Except as stated above, the Program Fee is required for each newly submitted or resubmitted Virtual Appliance, shall be paid in United States dollars and is non-refundable. The Program Fee is payable in full without offset or deduction for taxes (including any withholding tax) or customs duties. In addition, Partner shall be responsible for and shall pay any sales, use, value-added and similar transaction taxes and customs duties paid or payable, however designated, levied, or based on amounts payable by Partner hereunder (other than taxes based on VMware's net income).

8. Term.

This Agreement shall commence on the Effective Date and will continue until terminated by either party as set forth herein. Either party may terminate this Agreement for any reason, with or without cause, effective immediately upon written notice to the other party. Upon termination of this Agreement (a) any rights and licenses granted to either party under this Agreement shall immediately terminate, (b) VMware may revoke the VMware Ready Virtual Appliance designation and may remove the Virtual Appliance from its website. In the event of termination of this Agreement Sections 8, 9, 10 and 11 shall survive in accordance with their terms.

9. Warranties, Liabilities and Disclaimers.

9.1 Limited Warranties. Partner represents and warrants that: (a) Partner holds all rights in or has appropriate licenses for (including without limitation any copyright, trademark, patent, publicity or other rights) the Virtual Appliance, Placement Copy and Partner Solutions; (b) all Placement Copy is complete, correct and current; (c) any use of Partner Solutions and Virtual Appliance hereunder will not violate or encourage violation of any applicable laws, regulations, code of conduct, or third party rights (including without limitation intellectual property rights); (d) Partner shall not advertise anything illegal or engage in any illegal or fraudulent business practice; and (e) shall not use any automated means or form of mirroring to access, query or otherwise collect traffic from any webpage or property except as expressly permitted by VMware hereunder.

9.2 Disclaimers. SUBJECT ALWAYS TO SECTION 9.3.3, VMWARE MAKES NO REPRESENTATIONS OR WARRANTIES OF ANY KIND, WHETHER ORAL OR WRITTEN, WHETHER EXPRESS, IMPLIED, OR ARISING BY STATUTE, CUSTOM, COURSE OF DEALING OR TRADE USAGE, WITH RESPECT TO THE SUBJECT MATTER HEREOF, IN CONNECTION WITH THIS AGREEMENT. VMWARE SPECIFICALLY DISCLAIMS ANY AND ALL IMPLIED WARRANTIES OR CONDITIONS OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT OR OTHER TERMS WHETHER IMPLIED BY LAW, CUSTOM OR COURSE OF DEALING, INCLUDING THOSE RELATING TO QUALITY. SUBJECT ALWAYS TO SECTION 9.3.3 VMWARE DOES NOT WARRANT THAT ANY SERVICES PROVIDED HEREUNDER WILL MEET PARTNER'S OR ITS END USERS' REQUIREMENTS. SUBJECT ALWAYS TO SECTION 9.3.3, THE

FOREGOING DISCLAIMERS, LIMITATIONS AND EXCLUSIONS APPLY TO THE EXTENT PERMITTED BY APPLICABLE LAW.

Subject always to Section 9.3.3 and to the fullest extent permitted by applicable law, VMware shall have no liability for delays, interruptions or errors in the Virtual Appliance or Placement Copy whether or not formatted by VMware, nor for errors in references to or links to or from webpage(s) (such as in search terms, headings, Partner indices, product indices, or electronic or uniform resource locator links), but shall make corrections in a commercially reasonable time and fashion. Subject always to Section 9.3.3 and to the fullest extent permitted by law, VMware disclaims all guarantees regarding availability, positioning, levels, quality, or timing of: (i) webpage views; (ii) click-through or download rates; (iii) availability and delivery of any impressions, Placement Copy or Virtual Appliances on any webpage, or section thereof; (iv) conversions or other results for any marketing placement; (v) the accuracy of any webpage data (e.g. reach, size of audience, demographics or other purported characteristics of audience); and (vi) the adjacency or placement of other marketing copy or virtual appliance within a webpage. Partner understands that third parties may generate clicks on Partner's Virtual Appliance or Placement Copy for prohibited or improper purposes, and Partner accepts the risk of any such click. Subject always to Section 9.3.3 and to the fullest extent permitted by applicable law, VMware is not in any way responsible for the subsequent use or misuse by end users who may access Partner's Virtual Appliance.

9.3 Liability.

9.3.1 EXCEPT FOR PARTNER'S BREACH OF REPRESENTATIONS AND WARRANTIES, A BREACH OF INDEMNITY OBLIGATIONS, OR A BREACH OF ITS TRADEMARK OBLIGATIONS, TO THE EXTENT PERMITTED BY APPLICABLE LAW, AND SUBJECT ALWAYS TO SECTION 9.3.3, IN NO EVENT SHALL EITHER PARTY BE LIABLE TO THE OTHER (WHETHER SUCH LIABILITY ARISES IN CONTRACT, TORT, INCLUDING NEGLIGENCE, MISREPRESENTATION, STRICT LIABILITY, PRODUCT LIABILITY, UNDER AN INDEMNITY OR OTHERWISE) FOR ANY

- (a) LOSS OF DATA;
- (b) LOST PROFITS;
- (c) COSTS OF PROCUREMENT OF SUBSTITUTE GOODS OR SERVICES; OR
- (d) INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL, EXEMPLARY OR PUNITIVE DAMAGES.

9.3.2 SUBJECT ALWAYS TO SECTION 9.3.3, IN NO EVENT SHALL EITHER PARTY'S AGGREGATE LIABILITY TO THE OTHER ARISING OUT OF OR RELATED TO THIS AGREEMENT (WHETHER SUCH LIABILITY ARISES IN CONTRACT, TORT, INCLUDING NEGLIGENCE, MISREPRESENTATION, STRICT LIABILITY, PRODUCT LIABILITY, UNDER AN INDEMNITY OR OTHERWISE), EXCEED THE GREATER OF (A) THE AMOUNTS PAID OR PAYABLE FROM TIME TO TIME TO VMWARE BY PARTNER UNDER THIS AGREEMENT, AND (B) US\$50,000. THE FOREGOING LIMITATIONS SHALL APPLY NOTWITHSTANDING THE FAILURE OF ESSENTIAL PURPOSE OF ANY LIMITED REMEDY STATED IN THIS AGREEMENT.

9.3.3 Notwithstanding anything to the contrary in this Agreement, nothing in this Agreement shall operate so as to limit or exclude the liability of either party; (i) in negligence in respect of death or personal injury; (ii) for fraudulent misrepresentation; (iii) for breach of any condition as to title or quiet enjoyment implied by section 12 Sale of Goods Act 1979 or section 2 Supply of Goods and Services Act 1982; or (iv) if the limitation or exclusion is contrary to any applicable law.

10. Indemnity.

Partner agrees, at its own expense, to defend, indemnify and hold VMware and its affiliates harmless against any third party action brought against VMware arising from or related to (a) actual or alleged infringement or misappropriation by Partner or the Virtual Appliance or Placement Copy of any copyright, patent, trade secret or other intellectual property rights or similar rights of any third party, or (b) any loss, property damage or damage to person.

11. Miscellaneous Provisions.

This Agreement does not create any agency or partnership relationship between Partner and VMware. This Agreement is not intended to benefit, nor shall it be deemed to give rise to, any rights in any third party. Partner may not assign any part of this Agreement without the prior written consent of VMware. Any attempted assignment by Partner without consent shall be null and void. This Agreement will be interpreted and construed in accordance with the laws of England and Wales, without regard to conflict of law principles. All disputes arising out of this Agreement will be

subject to the exclusive jurisdiction of the English courts. Notwithstanding the foregoing, either party may seek injunctions to prevent and/or stop any breach of, and otherwise enforce, the provisions of Section 9 above, and VMware may seek injunctions to prevent and/or stop any infringement of, and otherwise enforce, its intellectual property rights of whatever nature, in the courts of any country, state or other territory which accepts jurisdiction. If any provision of these terms is found to be invalid or unenforceable, the remaining terms will continue to be valid and enforceable to the fullest extent permitted by law. All requests and notices given under this Agreement will be in writing and will be deemed given upon personal delivery, five (5) days after deposit in the mail, or upon acknowledgment of delivery of electronic transmission. Notices shall be sent to each party's address as set forth in the first paragraph of this Agreement. This Agreement and the Program Guidelines constitute the entire agreement between Partner and VMware with respect to the subject matter hereof and supersede all prior or contemporaneous understandings or agreements, written or oral, regarding such subject matter. Any waiver of these terms must be in writing by VMware to be effective. In the event of a conflict between this Agreement and the Program Guidelines, the terms of this Agreement shall control.

IN WITNESS WHEREOF, the parties by their duly authorized representatives have executed this Agreement as of the Effective Date set forth above.

VMware International Limited

Partner

Signature

Signature

Printed Name

Printed Name

Title

Title

Date

Date