

## 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, Inc. ("VMware") having an office at 3401 Hillview Avenue, Palo Alto, CA 94304, 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](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 contractors, 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, and (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.**

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. To the fullest extent permitted by law, VMWARE DISCLAIMS ALL WARRANTIES, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION FOR NONINFRINGEMENT, SATISFACTORY QUALITY, MERCHANTABILITY AND FITNESS FOR ANY PURPOSE.

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. 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. VMware is not in any way responsible for the subsequent use or misuse by end users who may access Partner's Virtual Appliance.

EXCEPT FOR PARTNER'S BREACH OF REPRESENTATIONS AND WARRANTIES, A BREACH OF INDEMNITY OBLIGATIONS, OR A BREACH OF PARTNER'S TRADEMARK OBLIGATIONS, TO THE FULLEST EXTENT PERMITTED BY LAW: (a) NEITHER PARTY WILL BE LIABLE FOR ANY CONSEQUENTIAL, SPECIAL, INDIRECT, EXEMPLARY, OR PUNITIVE DAMAGES (INCLUDING WITHOUT LIMITATION LOSS OF PROFITS, REVENUE, INTEREST, GOODWILL, LOSS OR CORRUPTION OF DATA OR FOR ANY LOSS OR INTERRUPTION TO CUSTOMER'S BUSINESS) WHETHER IN CONTRACT, TORT (INCLUDING WITHOUT LIMITATION NEGLIGENCE) OR ANY OTHER LEGAL THEORY, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES AND NOTWITHSTANDING ANY FAILURE OF ESSENTIAL PURPOSE OF ANY LIMITED REMEDY; AND (b) EACH PARTY'S AGGREGATE LIABILITY TO THE OTHER IS LIMITED TO AMOUNTS PAID OR PAYABLE TO VMWARE BY PARTNER FOR THE VIRTUAL APPLIANCE GIVING RISE TO THE CLAIM. Except for payment obligations, neither party is liable for failure or delay resulting from a condition beyond the reasonable control of the party, including without limitation to acts of God, government, terrorism, natural disaster, labor conditions and power failures.

**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, 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. These terms are governed by the laws of the State of California and the United States of America without regard to conflict of laws principles, and any action arising out of this Agreement must be brought in the federal or state courts of Santa Clara County, California, U.S.A and each party hereby consents to personal jurisdiction in those courts. 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 from shall be sent to the 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, Inc.**

**Partner**

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Printed Name

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Printed Name

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