NetApp Technology Alliance Program Agreement

This Technology Alliance Program Agreement is made between NetApp, Inc., with its principal place of business located at 1395 Crossman Avenue, Sunnyvale, California, on behalf of itself and its Affiliates (collectively "NetApp"), and ("Partner") is entered into on the day which NetApp accepted the Partner's offer to be a member of the NetApp Technology Alliance Program by issuing a confirmatory email to the Partner (the "Effective Date"). NetApp and Partner may each be referred to as a "Party" or collectively, as the "Parties".

1. Introduction. The NetApp Technology Alliance Program ("Program") consists of this Agreement and the Technology Alliance Program Guide provided by NetApp to Partner and as updated from time to time (hereinafter the "Program Guide"). The purpose and intent of this Agreement is to define the relationship and commitments between Partner and NetApp pursuant to the Program. The Program is designed to facilitate the development, testing and co-marketing of Partner products that are complementary and interoperable with NetApp products ("Product" or "Products"), as approved by NetApp.

2. Program Participation. Subject to the terms and conditions set forth in this Agreement, including the Program Guide, NetApp appoints Partner as a non-exclusive NetApp Technology Alliance Program Participant.

    a) Program Benefits. During the term of this Agreement, Partner may promote itself as specified in the Program Guide and shall have the opportunity to accrue applicable benefits as specified in the Program Guide. This Agreement does not authorize Partner to resell or distribute any NetApp Products. Any such distribution or resale by Partner must be pursuant to a separate reseller or distributor agreement between Partner and NetApp.

3. Program Conditions and Requirements. During the term of this Agreement, Partner shall comply with the conditions and requirements set forth in this Agreement and the Program Guide. NetApp reserves the right, to request information from Partner to confirm that Partner's compliance with the conditions and requirements set forth in this Agreement and the Program Guide. Partner agrees to reasonably cooperate with NetApp on all such inquiries, and to provide NetApp with all reasonably requested information relevant to Partner's participation in the Program.

4. Program Changes. NetApp reserves the right to modify or terminate the Program, including any condition, requirement or benefit at any time. Any such changes or modification shall be effective upon written notice to Partner. NetApp will use commercially reasonable efforts to give Partner thirty (30) days notice of termination of the Program, or of any material change to the Program that would adversely affect Partner. Should Partner disagree with any change or modification, they may terminate this Agreement pursuant to Section 11 below.

5. Software.

    a) Any not-for-resale or demonstration software ("Evaluation Software") provided by NetApp to Partner under the Program, will be used by Partner subject to the terms and conditions of the Program and applicable end user license accompanying the Evaluation Software ("EULA"),http://www.netapp.com/us/media/enduser-license-agreement-worldwide.pdf and is solely for purposes of Partner's non-production, internal evaluation or for Partner's demonstration for customers. All such Evaluation Software and related materials in Partner's possession shall be destroyed or returned to NetApp at NetApp's written request upon termination of this Agreement. In the event of a conflict between the terms of this Agreement and the EULA, the terms of the EULA shall prevail for the Evaluation Software. Notwithstanding the foregoing, and except for the evaluation period for Single Mailbox Recover ("SMBR") Evaluation Software, the evaluation period of the Evaluation Software is no more than the greater of ninety (90) days or the time period in the ordering documentation.

    b) Partner agrees to turn on and maintain the AutoSupport™ feature in all NetApp hardware Products loaned to or borrowed by Partner under this Agreement, and to provide NetApp with periodic reports regarding the condition of said systems, including a report on all software that is enabled on such systems. NetApp reserves the right to audit the use of the NetApp systems for compliance with these terms and reserves the right to collect all licensing or other fees for any hardware or software that enters into production, for-profit or commercial use by Partner.

6. Development. Partner acknowledges and agrees that any NetApp software developer kits, including those available from the NetApp Community website, are subject to the terms and conditions accompanying the software developer kits at that website.

7. Product Maintenance and Support. Product maintenance and support for Evaluation Software, if any, shall be set forth in the Program Guide or may otherwise be purchased by Partner pursuant to NetApp's standard terms and conditions.

8. Proprietary Rights.

    a) General. Partner will not remove, alter or obscure any copyright or other proprietary rights notices contained on any Product, Evaluation Software or materials provided by NetApp.

    b) Trademark Usage.

        i) Usage by Partner. Pursuant to the terms and conditions of this Agreement, NetApp grants Partner the non-exclusive terminable right and license to use the following trade names and trademarks: "NetApp", the NetApp logos for Products, the NetApp Technology Alliance Program, and the Partner designation and logo contained in the applicable Program Guide (collectively,

the "Marks"), during the term of this Agreement solely with respect to Partner's marketing of the Products. Partner agrees to abide by all NetApp trademark guidelines, including those set forth at http://www.netapp.com/us/legal/netapptmlist.aspx .

 ii) Usage by NetApp. Partner grants to NetApp the non-exclusive terminable right and license to utilize Partner's trade names, trademarks, and logos during the term of this Agreement for the purpose of representing Partner as a participant of the Program. NetApp agrees to abide by Partner's trademark and logo policies provided to NetApp in writing.

c) Ownership. Each Party retains all right, title and interest in and to its trademarks, logos, copyrights, trade names or designations. Partner acknowledges that NetApp owns and retains all proprietary rights in all the Products. Partner shall not at any time during or after this Agreement assert or claim any interest in or do anything that may adversely affect the validity or enforceability of any Mark (including, without limitation, any act, or assistance to any act, which may infringe or lead to the infringement of any proprietary right in NetApp Products, trade names or trademarks). Partner agrees to use reasonable efforts to protect NetApp's proprietary rights and to reasonably cooperate without charge in NetApp's efforts to protect its proprietary rights. Partner agrees to promptly notify NetApp of any known or suspected breach of NetApp's proprietary rights.

9. Confidentiality.

a) A Party's confidential information refers to any information disclosed by that Party arising out of or in connection with this Agreement and is designated "confidential" or "proprietary" or with words of similar import at the time of disclosure, whether in writing or orally, and shall include any reproduction of such information, but shall not include information that: (a) is or becomes a part of the public domain through no act or omission of the other Party; (b) was in the other Party's lawful possession prior to the disclosure and had not been obtained by the other Party either directly or indirectly from the disclosing Party; (c) is lawfully disclosed to the other Party by a third party without restriction on the disclosure; or (d) is independently developed by the other Party.

b) Each Party agrees (i) to hold the other Party's confidential information in confidence for a period of three (3) years from the date of disclosure; and (ii) to disclose the other Party's confidential information only to those employees or agents who are required to access it in furtherance of the Agreement and who are required to protect it against unauthorized disclosure.

10. Conduct of Business. Partner shall conduct its business in a manner professionally and favorably representing NetApp and its Products. Partner shall reasonably cooperate with NetApp in resolving any customer complaints.

11. Term and Termination.

a) This Agreement shall become effective on the day that NetApp accepts Partner's application to be a member of the NetApp Alliance Partner Program, by issuing a confirmatory email to the Partner, and shall continue in effect until terminated. NetApp may terminate this agreement, at their sole discretion, if the Partner fails to pay the annual Technology Alliance Program fee that is required in order to be a Partner in the Program.

a) Both parties shall have the right to terminate this Agreement at any time without cause by written notice. Each party shall use commercially reasonable efforts to give the other party thirty (30) days notice of termination in such circumstances.

b) NEITHER PARTY WILL BE LIABLE FOR SEVERANCE PAYMENTS OR OTHER DAMAGES OR COSTS OF ANY NATURE ARISING FROM THE EXPIRATION OR TERMINATION OF THIS AGREEMENT IN ACCORDANCE WITH ITS TERMS.

12. Relationship of Parties. Partner understands that notwithstanding the use of the term "partner", Partner shall remain an independent contractor and that this Program in no way creates a partnership, joint venture or alliance between Partner and NetApp or any joint liability. Neither party has, and shall not represent that it has, any power, right or authority to bind the other party, or to assume or create any obligation or responsibility, express or implied, on behalf of the other party or in the other party's name, except as expressly provided in this Agreement.

13. Indemnification. Partner shall indemnify, hold harmless, and, upon NetApp's request, defend NetApp against any claims, liabilities, and expenses, including but not limited to court costs and attorney's fees, arising from the acts or omissions of Partner, its employees, subcontractors and agents.

14. Limitation of Liability.

a) NETAPP SHALL HAVE NO LIABILITY UNDER THIS AGREEMENT OR OTHERWISE FOR CONSEQUENTIAL, INCIDENTAL, SPECIAL, OR OTHER INDIRECT DAMAGES, OR FOR LOST PROFITS OR LOST DATA, EVEN IF NETAPP HAS KNOWLEDGE OF THE LIKELIHOOD OF SUCH DAMAGES. ANY LIABILITY OF NETAPP TO PARTNER HEREUNDER SHALL BE LIMITED TO THE GREATER OF THE AMOUNTS PAID BY PARTNER TO NETAPP UNDER THIS AGREEMENT OR $10,000 U.S.

b) NetApp disclaims all express and implied warranties with regard to the Program and all Products, including the warranties of merchantability, SATISFACTORY QUALITY, NON-INFRINGEMENT and fitness for a particular purpose.

15. Laws.

a) Each party shall comply with all applicable federal, state, local and foreign laws, and regulations, including, but not limited to all export laws, restrictions and regulations of the Department of Commerce or other United States or foreign agency or authority.

b) Personal Data and Privacy. NetApp acknowledges and agrees that the data, including nominative data, which Partner communicates to NetApp in performance of the Agreement, may not be freely used by NetApp or transferred to third parties unless required to comply with relevant laws, to fulfill its obligations under the Agreement, or if prior written consent is obtained from the Partner through a Data Privacy Model Contract/Transfer Agreement. In such cases, NetApp agrees that any data NetApp transmits outside the European Economic Area, including to countries that do not guarantee the protection of nominative data in a manner identical to that applicable in The European Union, will be protected in accordance with the European Union requirements. Partner represents having obtained or that it shall obtain all consents or

authorizations necessary by virtue of applicable law to communicate the data to NetApp.

c) <u>Export</u>. Partner acknowledges that the NetApp Products, Services and technology are subject to export controls under the laws and regulations of the United States, and other countries as applicable, and that the Products, Services and technology may include export controlled technologies, including without limitation encryption technology. Partner agrees to comply with such laws and regulations and in particular shall not, unless authorized by U.S. export licenses or other government authorizations, directly or indirectly market, sell or otherwise provide Products, Services and technology to: (i) countries subject to U.S. embargoes or trade sanctions programs; (ii) persons whom it knows or has reason to know are involved in the design, development, production or use of nuclear missiles, chemical or biological weaponry, or other weapons of mass destruction; and (iii) entities identified on the most current U.S. government exclusion lists. Partner shall obtain all required authorizations, permits, or licenses to export, re-export or import, as required. Partner agrees to maintain full, true, and accurate records of exports, re-exports, and transfers of the Products, Services and technology, licensed and deployed for a minimum of five (5) years from date of shipment.

d) <u>Anti-Bribery</u>. Each Party shall comply with all applicable country laws relating to anti-corruption or anti-bribery, including but not limited to the requirements of the U.S. Foreign Corrupt Practices Act, as amended, the U.K. Bribery Act and legislation implementing the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions.

16. <u>General</u>. Sections 6 through 10 and 12 through 17 shall survive termination of this Agreement. This Agreement supersedes all previous agreements and representations of or on behalf of the parties with respect to the subject matter of this Agreement. NetApp's or Partner's failure or delay in exercising any of its rights will not constitute a waiver of such rights unless expressly waived in writing. Partner may not assign this Agreement without NetApp's prior written approval. This Agreement shall be governed and interpreted in accordance with the laws of the State of California, except for the body of law pertaining to conflicts of law. If a court of law finds any provision of this Agreement unenforceable, the parties agree to replace the offending provision with an enforceable provision that most nearly achieves the intent and economic effect of the unenforceable provision. Any notice provided hereunder must be in writing and will be deemed given upon the earlier of actual receipt or ten (10) days after being sent by first-class mail, return receipt requested, to the appropriate address set forth below, as such address may be changed by written notice. This Agreement, including the Program Guide, constitutes the entire agreement between the parties.

17. <u>ACCEPTANCE – PLEASE READ CAREFULLY</u>. **BY SIGNING BELOW, YOU ARE REPRESENTING TO NETAPP THAT YOU ARE AUTHORIZED TO BIND THE PARTNER AND ARE AGREEING ON BEHALF OF THE PARTNER THAT THE TERMS AND CONDITIONS HEREIN SHALL GOVERN THIS RELATIONSHIP. ACCEPTANCE INTO THE NETAPP TECHNOLOGY ALLIANCE PROGRAM IS AT THE SOLE DISCRETION OF NETAPP AND SHALL NOT BE BINDING UNTIL PARTNER RECEIVES FROM WRITTEN NOTICE OF ACCEPTANCE FROM NETAPP, SENT VIA THE E-MAIL ADDRESS PROVIDED FOR PARTNER IN THE NETAPP TECHNOLOGY ALLIANCE PROGRAM APPLICATION.**