

PARTNER RESELLER AGREEMENT

This Value Added Reseller ("Reseller") AGREEMENT (Agreement) is between nAppliance, Inc. ("nAppliance") a California corporation with offices at 540 Dado Street, San Jose, CA 95131, U.S.A. and _____ (Reseller), a _____, with offices at _____.

WHEREAS, nAppliance owns all rights, title and interest in or has the right to distribute certain Internet security, storage and communications servers, network load balancer Products and other related applications and third-party Products used in Internet computer network security and networking applications (Products), and desires to have others assist in marketing such Products and

WHEREAS, Reseller represents that it is a reseller of networking hardware, software and/or data communications Products and has in place facilities and an organization to promote and market such Products in appointed territory.

NOW, THEREFORE, the parties agree as follows:

1. SCOPE OF AGREEMENT

nAppliance hereby appoints Reseller to the level of _____ Reseller, and Reseller hereby accepts such appointment, as a nonexclusive, authorized reseller to market and distribute the Products, subject to the terms and conditions as set forth herein. Reseller shall not market or distribute the Products to other resellers, consultants, Service providers, programming companies, independent sales organizations, or original equipment manufacturers. Reseller agrees that it has no exclusive right to market the Products, and nAppliance expressly reserves the right to contract with others to market the Products, and to itself engage in such marketing, in competition with Reseller.

2. OBLIGATIONS OF nAppliance

2.1. Use its best efforts to fulfill in a timely manner any orders that are placed by Reseller and accepted by nAppliance.

2.2. Provide support to Reseller for all Products that have a current, fully paid Software and Hardware support agreement from nAppliance.

2.3. At its cost, furnish Reseller with such initial quantities as shall be determined by nAppliance of its standard information, marketing literature, brochures, manuals, Product information letters, etc., relating to the Products. Subsequent quantities of materials may be purchased from nAppliance.

2.4. Offer system, software, and sales training to Reseller personnel in accordance with nAppliance's support policies and procedures.

2.5. Make available to Reseller, at no additional charge, all new versions and releases of the Products that have a fully paid Software care and upgrade agreement.

2.6. Consider any written or oral proposals by Reseller's personnel for enhancements to the Products. Both parties agree that any enhancements to the Products based upon such proposals shall be the exclusive property of nAppliance. It is explicitly agreed that said proposals shall not constitute a work for hire nor a work of joint ownership, and nAppliance shall have the unlimited right to make, have made, use and disseminate any such enhancements in any manner whatsoever and without any compensation to Reseller.

3. GRANT OF LICENSE AND RIGHTS

3.1. Appointment. nAppliance hereby grants to Reseller a limited, nonexclusive and nontransferable right and license to market, sublicense and distribute the Products and Service to end users at nAppliance Retail Price List, and Reseller hereby accepts such appointment for the territory of _____ ("Territory"). nAppliance Price List is published on its website; at its sole discretion, nAppliance may amend the price list to add or delete Products and/or increase or decrease the pricings of Products and Services.

3.2. Limited Rights. Except as expressly provided hereunder in connection with the marketing and distribution of the Products, nAppliance does not convey any proprietary rights to Reseller, all of which are reserved by nAppliance and its vendors.

3.3. No Reverse Engineering. Reseller shall not, directly or indirectly, disassemble, decompile, reverse engineer, or otherwise rewrite any of the Products.

3.4. No Obligation. This Agreement does not establish a franchise or agency. Reseller shall have no authority to assume or create obligations on nAppliance's behalf with respect to the Products or otherwise, and Reseller shall not take any action which has the effect of creating the appearance of its having such authority.

3.5. Limited Relationship. The relationship of the parties under this Agreement shall be and at all times remains one of independent contractors. All persons furnished by Reseller shall be considered solely Reseller's employees or agents, and Reseller shall be responsible for payment of all unemployment, Social Security, and other payroll taxes, including contributions from them when required by law.

4. OBLIGATIONS OF RESELLER

4.1. Sales. Use its best efforts to promote, market, and expand the selling or furnishing of Products and Add-ons that nAppliance shall market to end users of the Products from time to time. Maintain a sales organization that is capable of demonstrating to its customers the use and capabilities of the Products and their applications and that actively respond to leads provided by nAppliance.

4.2. Provide Sale report by the 10th day of each month which includes the Product serial number, Support options sold, date sold, and end user contact information (including name, company, email, address, and email and phone number of main contacts).

4.3. Lawful. Representation. Conduct business in a manner that at all times reflects favorably on the Products and the good name, goodwill, and reputation of nAppliance; avoid deceptive, misleading, or unethical practices that are or might be detrimental to nAppliance, the Products, or the public, including but not limited to disparagement of nAppliance or the Products; make no false or misleading representations with regard to nAppliance or the Products; not publish or employ or cooperate in the publication or employment of any misleading or deceptive advertising materials; make no representations, warranties, or guarantees to customers or to the trade with respect to the specifications, features, or capabilities of the Products which are inconsistent with the literature distributed by nAppliance; and not distribute the Products to any person or organization that engages in illegal or deceptive trade practices. Refrain from taking any action that would cause nAppliance to be in violation of any law of any jurisdiction.

4.4. Publicity. Promptly inform nAppliance of any facts or opinions likely to be relevant in relation to marketing of the Products, including without limitation all suspected Product defects, network security problems and customer complaints.

4.5. Market Research. Provide requested data in reasonable detail on the overall marketplace, market potentials, and other information related to the Products furnished hereunder as an aid in measuring nAppliance's market potential and in its planning efforts.

4.6. Training. Make a best effort to participate in training programs that nAppliance recommends and provides. nAppliance shall provide such training courses from time to time either online or at nAppliance facilities at no charge to Reseller and Reseller agrees to pay travel and lodging expenses for Reseller personnel to attend such courses if they attend. Reseller will train its staff and provide online Product demonstration to potential customers in timely manner.

4.7. Internet Domain Names: Reseller will not use domain names referencing nAppliance, nAppliance Networks, nAppliance Appliances or similar names to market or sell nAppliance Products. Any such domain will be properly assigned to nAppliance upon written request with no payment other than compensation for domain registration Services.

4.8. Territory Allocation. Reseller agrees to not resale Products to end users or exports any nAppliance Products or Services outside the allocated Territory.

4.9. Price Advertising Restriction. Reseller may sell Products and Services at any price below or above nAppliance's published list price; however they cannot publish in online advertising or print media, a price below 5% of the published list price. nAppliance may revise the restriction percentage without notice; violation of this policy will result in termination of this agreement.

4.10. Ordering. Ensure that all orders submitted by Reseller shall contain the information necessary for the furnishing of the Products, including without limitation the date of the order, the shipping destination, and reference to any applicable Product specifications. All orders submitted by Reseller shall be deemed to incorporate and be subject to the terms and conditions of this Agreement, and any supplemental terms and conditions expressly agreed to in writing by authorized representatives of the parties. nAppliance reserves the right to reject any order if acting in good faith.

5. ORDERING

5.1. Deliveries of Products purchased under this Agreement shall be initiated by written, signed purchase orders sent to nAppliance by mail, electronic mail or fax. Reseller shall issue orders from one location within its organization to: nAppliance, Inc., 540 Dado Street, San Jose, CA, 95131, or Fax +1 408-943-8222. nAppliance reserves the right to accept or reject any purchase order from Reseller. nAppliance shall make every reasonable effort to accommodate any delivery date(s) stated in the order from the Reseller. However, nAppliance will not be liable for its failure to accommodate such date(s). nAppliance reserves the right to cancel any orders placed by Reseller, or to refuse or delay shipment thereof, if Reseller: (a) fails to make any payment as provided herein or under such other terms of payment as the parties may agree upon, except for disputed items; (b) exceeds the credit limit established reasonably and in good faith by nAppliance; or (c) is in material breach of this Agreement.

5.2. Reseller shall at all times comply with the then current nAppliance Order Guidelines, including any minimum order requirements.

6. PRICE AND TERMS

6.1. Purchase Price. Reseller shall pay the purchase price specified in the then-current list-price schedule for the Products ordered from nAppliance, less the applicable discount for each Product type. nAppliance may change the purchase price for the Products from time to time upon at least thirty (30) days prior written notice to Reseller. Purchase prices do not include transportation or shipping costs. Any tax or related charge resulting from this Agreement or any activities hereunder, exclusive of any tax based on or measured by net income, which nAppliance shall be required to pay to or collect for any government shall be billed to the Reseller as a separate item and shall be paid by the Reseller, unless a valid exemption certificate is furnished by the Reseller to nAppliance.

6.2. Price Change. In the event of a price increase, Reseller may cancel any unshipped orders. In the event of a price decrease, the Reseller shall receive a credit for all unsold Products shipped to Reseller within thirty (30) days prior to such price decrease in the amount equal to the difference in price at which the Products were sold to Reseller. Such a credit shall require documentation from the Reseller confirming the unsold Product quantity and Reseller agrees nAppliance shall have the right to audit during normal business hours the accuracy of such documentation.

6.3. Payment Terms. All Reseller orders shall be paid in advance by check, money order, wire transfer or credit card unless credit arrangements have been agreed and approved by nAppliance in sufficient amount to supply nAppliance Products, within a reasonable time period to end users.

6.4. Invoicing. Invoices for Product orders will be sent upon shipment or as soon thereafter as practicable. nAppliance may make partial shipments of Reseller's orders. Such partial shipments shall be separately invoiced. Invoices for Services will be sent as Services are performed or as soon thereafter as practicable. Reseller shall pay the invoiced amount within thirty (30) days from the date of shipment. The amount of credit or terms of payment may be changed or credit withdrawn by nAppliance at any time upon thirty (30) days prior written notice to Reseller. Each shipment shall constitute an independent transaction, and Reseller shall pay for same in accordance with the specified terms. All payments shall be made in United States dollars to nAppliance at the address designated by nAppliance. Interest shall accrue on any delinquent amounts owed by Reseller for Products, except on outstanding items in dispute, at the lesser of eighteen percent (18%) per annum or the maximum rate permitted by applicable usury law.

6.5. Subscription Services Payment. All value added security and IT applications and subscription Services, including software and hardware care Services (add-ons), shall be paid by credit card at the time of activation, unless Reseller has established credit terms with nAppliance, in which case Reseller may submit a signed, written Purchase Order for the add-ons, after which nAppliance shall activate said add-ons. In the event that any add-ons are not paid in full when due, either on initial order or upon renewal, nAppliance reserves the right to disable said Add-ons until such time as said Add-ons is paid in full.

6.6. Interest Payment. If any amount due hereunder is collected by or through an attorney-at-law, Reseller agrees to pay reasonable attorney fees in an amount not to exceed fifteen percent (15%) of the principal and interest collected, and any other collection fees or court costs allowable by law, where Reseller does not prevail.

7. SHIPMENTS, CANCELLATIONS AND CHANGES

7.1. The Reseller may cancel a shipment or request changes in a scheduled shipment date at no charge up to five (5) working days prior to scheduled shipment. Within five (5) working days of scheduled shipment, no cancellations or changes to the shipment schedule will be authorized by nAppliance. No cancellation or change may be made after shipment.

7.2. Title to Products and risk of loss and damage will pass to Reseller F.O.B. shipping point upon delivery to a common carrier or carrier designated by Reseller.

7.3. nAppliance may, at any time without advising Reseller, make changes in the Products, or modify the documentation and specifications relating thereto, or substitute Products of later design.

8. TRADEMARKS

8.1. During the term of this Agreement, Reseller is authorized by nAppliance to use and agrees to use various nAppliance trademarks for each of the nAppliance Products in connection with Reseller's advertisement, promotion and distribution thereof. Reseller's use of the trademarks will be in accordance with nAppliance's policies in effect from time to time, including but not limited to trademark usage and cooperative advertising policies.

8.2. Reseller has paid no consideration for the use of nAppliance's proprietary rights, and nothing contained in this Agreement shall give Reseller any interest in any of them. Reseller acknowledges that nAppliance and its vendors own and retain all copyrights and other proprietary rights in all Products and agrees that it will not at any time during or after the expiration of the term of this Agreement assert or claim any interest in or do anything that may adversely affect the validity or enforceability of any proprietary rights belonging or licensed to nAppliance or its vendors (including, without limitation, any act or assistance to any act which may infringe or lead to the infringement of any copyright in the Products). Reseller agrees not to attach any additional trademarks, logos or trade designations to any Products unless authorized by nAppliance in advance in writing. Reseller further agrees not to affix any nAppliance trademark to any non-nAppliance Product.

9. CONFIDENTIALITY

9.1. *Confidential Information* includes all information furnished by one party to the other party pursuant to this Agreement, from which the disclosing party derives economic value, actual or potential, from its not being known to others who can obtain economic value from its disclosure or use, including without limitation all technical and nontechnical data, specifications, formulas, algorithms, patterns, compilations, designs, programs, devices, methods, techniques, drawings, processes, financial data, lists of actual or potential customers or suppliers, manufacturing processes and procedures, documentation, research and development, pricing information, new Product and marketing plans, and any other information designated by a party in writing as confidential or which, under the circumstances surrounding disclosure, clearly ought to be treated as confidential. Confidential Information will not include any information that (i) becomes known to the general public without fault or breach on the part of the receiving party; (ii) is customarily provided by the disclosing party to others without restriction on disclosure; (iii) is already known to the receiving party prior to its disclosure; or (iv) is developed independently by the receiving party.

9.2. Reseller acknowledges and agrees that nAppliance or its vendors own all rights in certain Confidential Information that will be provided to Reseller from time to time to facilitate marketing or distribution of the Products. Each of nAppliance and Reseller agree to use the Confidential Information provided by the other only as authorized in this Agreement and to use diligent efforts and at least the same degree of care that it uses to protect its own Confidential Information of like importance to prevent unauthorized use, dissemination, and disclosure of the other's Confidential Information during and for a period of five (5) years after the term of this Agreement.

9.3. Reseller and nAppliance shall keep this Agreement and business dealings hereunder confidential, except as reasonably necessary for performance there under and except to the extent disclosure may be required by applicable laws or regulations, in which latter case, the party making such disclosure shall promptly inform the other prior to making such disclosure.

10. WARRANTY

10.1. nAppliance warrants solely to Reseller that the Products are and will be free from significant errors, malfunctions and defects. The term significant error, malfunction and defect shall mean any material deviation between the Products and the documentation, as amended or revised from time to time.

10.2. The Reseller and nAppliance agree that the procedures provided below for the return and repair or replacement of defective Products will be the Reseller's exclusive remedy for any claim relating to any alleged defect or nonconformity in nAppliance's Products. If the Reseller finds that any nAppliance Products sold to the Reseller by nAppliance is defective within thirty (30) days after its shipment or activation and prior to its sale to the Reseller, the Reseller will contact nAppliance regarding its repair or replacement. The Reseller will not ship (return) any Products to nAppliance without a "Return Materials Authorization" (RMA) number confirming the return. Approval for the RMA will be based solely on whether the Product is in fact defective and will not be unreasonably withheld. nAppliance, in its sole discretion, will determine whether to repair or replace the defective Products.

10.3. This warranty shall not include errors, malfunctions or defects to the extent caused by: (i) misuse or neglect; (ii) failure to use the Products in accordance with the documentation; or (iii) alteration or modification of the Products not expressly authorized by nAppliance. In the event that, after a reasonable number of attempts, nAppliance is unable to correct any warranted error, malfunction or defect, nAppliance shall, at its sole option, either replace the Products with functionally similar Products of equal or better performance or refund all license fees and other direct costs paid by Reseller respecting such copies of the Products. These remedies are Reseller's exclusive remedies for the breach of the warranty contained in this section.

10.4. Other than any warranty set forth herein, nAppliance makes no warranties or representation as to performance of the Products or as to any Service furnished to Reseller or to any other person. nAppliance reserves the right to change the warranty and Service policy set forth in such warranty, or otherwise, at any time, without further notice and without liability to Reseller or any other person. No such change shall affect nAppliance's warranty obligations with respect to Products ordered or delivered prior to the time Reseller is notified in writing of such change. To the extent permitted by applicable law, all implied warranties, including but not limited to implied warranties of merchant ability, fitness for a particular purpose and no infringement, are hereby excluded.

10.5 Defense of infringement and misappropriation claims

a. Agreement to protect. nAppliance will defend Reseller against any claims made by an unaffiliated third party that any Product infringes that party's patent, copyright, or trademark or makes intentional unlawful use of its trade secret or undisclosed information. nAppliance will also pay the amount of any resulting adverse final judgment (or settlement to which nAppliance consents). This section provides Reseller's exclusive remedy for these claims.

b. What Reseller must do. Reseller must notify nAppliance promptly in writing of the claim and give nAppliance sole control over its defense or settlement. Reseller must also provide nAppliance with reasonable assistance in defending the claim.

c. Limitations of defense obligation. nAppliance's obligation will not apply to the extent that the claim or award is based on:

- I. specifications Reseller or Customers provides nAppliance as part of Services Deliverable;
- II. code or materials provided by Reseller or Customer as part of Services Deliverables;
- III. Customer's use of the product after nAppliance notifies it to discontinue that use due to third party claim;

- IV. Customer's combination of Product with non-nAppliance products, data, or business process;
- V. Damages attributable to the value of the use of a non-nAppliance product, data or business process;
- VI. Modifications that customer or Reseller makes to the Product
- VII. Customer's redistribution of the product or its use for the benefit of, any third party;
- VIII. Customer's or Resellers use of a nAppliance's trademark without express written consent to do so;

11. LIMITED LIABILITY

IN NO EVENT SHALL EITHER PARTY BE LIABLE FOR ANY SPECIAL, INDIRECT, CONSEQUENTIAL OR INCIDENTAL DAMAGES ARISING IN CONNECTION WITH THIS AGREEMENT, INCLUDING ANY DAMAGES RESULTING FROM LOSS OF USE, LOSS OF DATA, LOSS OF PROFITS OR LOSS OF BUSINESS ARISING OUT OF OR IN CONNECTION WITH THE PERFORMANCE OF THE PRODUCTS OR nAPPLIANCE'S PERFORMANCE OF SERVICES OR OF ANY OTHER OBLIGATIONS RELATING TO THE PRODUCTS, EVEN IF SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, EXCEPT IP INDEMNITY. nAPPLIANCE'S LIABILITY FOR DAMAGES SHALL IN NO EVENT EXCEED THE AMOUNTS PAID BY RESELLER TO nAPPLIANCE PURSUANT TO THIS AGREEMENT.

12. TERM; TERMINATION OF AGREEMENT

12.1. This Agreement shall commence on the Effective Date and will continue unless terminated in writing by either party, with or without cause, upon ninety (90) days written notice.

12.2. Upon termination of this Agreement, all rights and licenses granted by nAppliance hereunder to Reseller shall immediately cease; Reseller shall cease holding itself out as a reseller of the Products; Reseller shall immediately return or destroy, at nAppliance's request, any and all promotional material supplied and paid for by nAppliance; all copies of the Products in its possession or control shall be returned to nAppliance; end users who have properly entered into a license agreement and registered their Products prior to termination may continue to use the Products under the terms of said agreement; within ten (10) days after termination or expiration, an authorized officer of Reseller shall certify in writing to nAppliance that Reseller has fulfilled all of its obligations set forth in this Section; and all user payments shall be immediately due and payable; and all discounts owed by nAppliance shall be immediately due and payable.

12.3. Reseller shall forthwith cease all use of all nAppliance trademarks and will not thereafter use any mark which is confusingly similar to any trademark associated with the Products.

13. MISCELLANEOUS

13.1. NOTICES: Any required notices shall be given in writing at the address of each party set forth above.

13.2. Except with respect to Reseller's obligation to make timely payments, neither party shall be held responsible for any delay or failure in performance to the extent that such delay or failure is caused by fires, strikes, embargoes, explosions, earthquakes, floods, wars, water, the elements, labor disputes, government requirements, civil or military authorities, acts of God or by the public enemy, inability to secure raw materials or transportation facilities, acts or omissions of carriers or suppliers, or other causes beyond its control, whether or not similar to the foregoing.

13.3. Reseller shall not assign any right or interest under this Agreement or delegate any work or other obligation to be performed or owed by Reseller under this Agreement without the prior written consent of nAppliance. Any attempted assignment or delegation in contravention of the above provision shall be void and ineffective. nAppliance shall have the right to assign this Agreement and to assign its rights and delegate its duties under this Agreement, either in whole or in part, at any time upon advance written notice to Reseller and without Reseller's consent, to any present or future affiliate of nAppliance.

13.4. If any of the provisions of the Agreement shall be invalid or unenforceable, such invalidity or unenforceability shall not invalidate or render unenforceable the entire Agreement, but rather the entire Agreement shall be construed as if it does not contain the particular invalid or unenforceable provision or provisions, and the rights and obligations of each party shall be construed and enforced accordingly. However, in the event such provision is considered an essential element of this Agreement, the parties shall promptly negotiate a replacement thereof.

13.5. This Agreement shall become effective only after it has been signed by Reseller and has been accepted by nAppliance, and its Effective Date shall be the date on which it is signed by nAppliance. The construction, interpretation, and performance of this Agreement shall be governed by the laws of the State of California (except that body of laws controlling conflict of laws). Any suit hereunder may be brought in the federal or state courts of the State of California, and both parties hereby submit to the personal jurisdiction thereof.

13.6. All notices under this Agreement shall be in writing and shall be given by facsimile or similar communication, or by certified or registered mail, addressed to the addresses set forth at the beginning of this Agreement, or to such other address as either party may designate by notice pursuant hereto. Such notices shall be deemed to have been given when received.

13.7. The terms and conditions contained in this Agreement supersede all prior oral or written understandings between the parties and shall constitute the entire agreement between them concerning the subject matter of this Agreement and shall not be contradicted, explained, or supplemented by any course of dealing between nAppliance or any of its affiliates and Reseller or any of its affiliates. There are no understandings or representations, express or implied, not expressly set forth in this Agreement. This Agreement shall not be modified or amended except by a writing signed by the party to be charged, and no changes or



additions to this Agreement shall be binding upon nAppliance unless signed by an authorized representative of nAppliance. Notwithstanding the foregoing, Reseller agrees that it shall abide by any agreements between nAppliance and Third Party Product vendors governing nAppliance's distribution of Third Party Products, provided that Reseller is given advance written notice of such agreements.

nAppliance Networks, Inc.

Reseller Partner

Company: _____

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

Date: _____

Date: _____