VMware VDDK 1.0

VMware® Virtual Disk Developer Kit License Agreement

VMware, Inc. ("VMware") provides this Virtual Disk Developer Kit (the "VDDK") to you subject to the following terms and conditions. If you disagree with any of the following terms, then do not use this VDDK.

- 1. This VDDK contains a variety of materials, including but not limited to, interface definitions, documentation, and sample code regarding programming interfaces to one or more VMware products as referenced in such materials ("VMware Products"). This VDDK is intended to serve as a guide for writing programs to interact with the VMware Software.
- 2. Use Rights: Subject to the restrictions below, you may download and make a reasonable number of copies of the VDDK contents for your personal use solely for the purpose of creating software that communicates with VMware Software ("Developer Software").
- 3. Restrictions: You may not (1) use the VDDK to design or develop anything other than Developer Software; (2) make any more copies of the VDDK than are reasonably necessary for the authorized internal use and backup and archival purposes; (3) modify, create derivative works of, reverse engineer, reverse compile, or disassemble the VDDK, except that you may modify and create derivative works of the sample code in connection with Developer Software; (4) distribute, sell, lease, rent, lend, or sublicense any part of the VDDK to any third party; (5) use the VDDK to (a) design or develop software or service to circumvent, enable, modify or provide access, permissions or rights which would violate the technical restrictions of VMware Products, any additional licensing terms provided by VMware via product documentation, email notification and/or policy change on VMware website, and/or the terms of the End User License Agreements of VMware products; (b) disable, remove, over-ride or modify the display of any VMware product End User License Agreements to the end customers; and (c) to upload or otherwise transmit any material containing software viruses or other computer code, files or programs designed to interrupt, destroy, or limit the functionality of any software or hardware.

The restrictions in this Section 3 shall not apply if and to the extent they contradict mandatory local law (including, but not limited to, law implementing the EC Software Directive) provided that, before you exercise any rights that you believe to be entitled to based on mandatory law, you provide VMware with 30 days prior written notice at SDK_Legal@vmware.com and provide all reasonably requested information to allow VMware to assess your claim and, at VMware's sole discretion, to provide alternatives that reduce any adverse impact on VMware's intellectual property or other rights.

- 4. VMware retains ownership of the VDDK, including without limitation all copyrights and other intellectual property rights therein. The VDDK is intended for your own personal non-commercial use only. If you are interested in distributing any part of the VDDK in connection with Developer Software, please submit your request to vddk-distribution-request@vmware.com.
- 5. You may not represent that the programs you develop using the VDDK are certified or otherwise endorsed by VMware. You may not use the VMware name or any other trademarks or service marks of VMware in connection with programs that you develop using the VDDK.
- 6. You will not receive any VMware support or subscription services for the VDDK or any other services from VMware in connection with the VDDK. If you have purchased support and/or

- subscription services for a VMware product, such support and/or subscription services shall not apply to the VDDK or your use of the VDDK.
- 7. Any open source software in the VDDK is provided under the terms of the open source license agreement or copyright notice accompanying such open source software in the VDDK.
- 8. Term, Termination and Changes: This Agreement shall continue as long as you are in compliance with the terms specified herein or until otherwise terminated. You and or VMware each may terminate this Agreement for any reason at any time. You agree, upon termination, to destroy all copies of the VDDK within your possession or control. The Limitations of Warranties, Liability section set out in this Agreement shall survive any termination or expiration of this Agreement.
- 9. Limitations of Warranties and Liability: THE VDDK IS PROVIDED "AS IS" WITHOUT ANY WARRANTIES OF ANY KIND. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, VMWARE DISCLAIMS ANY IMPLIED WARRANTIES, INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT OF INTELLECTUAL PROPERTY RIGHTS.

TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, IN NO EVENT WILL VMWARE BE LIABLE FOR ANY LOST PROFITS OR BUSINESS OPPORTUNITIES, LOSS OF USE, BUSINESS INTERRUPTION, LOSS OF DATA, OR ANY OTHER INDIRECT, SPECIAL, INCIDENTAL, OR CONSEQUENTIAL DAMAGES ARISING OUT OF THE VDDK OR YOUR USE OF THE VDDK, UNDER ANY THEORY OF LIABILITY, WHETHER BASED IN CONTRACT, TORT, NEGLIGENCE, PRODUCT LIABILITY, OR OTHERWISE. BECAUSE SOME JURISDICTIONS DO NOT ALLOW THE EXCLUSION OR LIMITATION OF LIABILITY FOR CONSEQUENTIAL OR INCIDENTAL DAMAGES, THE PRECEDING LIMITATION MAY NOT APPLY TO YOU.

VMWARE'S LIABILITY ARISING OUT OF THE VDDK PROVIDED HEREUNDER WILL NOT, IN ANY EVENT, EXCEED US\$5.00.

THE FOREGOING LIMITATIONS SHALL APPLY TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, REGARDLESS OF WHETHER VMWARE HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES AND REGARDLESS OF WHETHER ANY REMEDY FAILS OF ITS ESSENTIAL PURPOSE.

10. 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. You may not assign any part of this Agreement without the prior written consent of VMware. Any attempted assignment without consent shall be void. You agree to comply with all U.S. export and re-export restrictions applicable to the VDDK provided hereunder. These terms constitute the entire agreement between you and VMware with respect to the VDDK, and supersede all prior written or oral communications, understandings and agreements. Any waiver of these terms must be in writing to be effective. 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."

(The attachment includes Exhibit A which authorizes BakBone to redistribute portions of the VDDK in NetVault Backup Plugin for VMware.) The attachment is signed by VMware and Bakbone.