

BETA TEST AGREEMENT

THIS AGREEMENT is made by and between Nexenta Systems, Inc ("Nexenta"), located at 444 Castro Street, Mountain View, CA 94041 and _____ ("Beta Tester") having a principal place of business of _____ Effective Date_____.

1. Definitions.

1. **"Intellectual Property Rights"** means all patents, copyrights, moral rights, trademarks, trade secrets and any other form of intellectual property rights recognized in any jurisdiction, including applications and registrations for any of the foregoing.
 2. **"Software"** means all pre-General Availability software provided by Nexenta including but not limited to: the NexentaStor platform and associated plug-ins; NexentaVDI; and Partner NABAT.
 3. **"Support Services"** means the then-current standard support services outlined at described at www.nexenta.com/support (and incorporated into this Agreement by this reference).
 4. **"Trial Period"** means the 45 day period commencing upon the Effective Date.
2. **License; Delivery; Support Services.** Nexenta grants to Beta Tester a nonexclusive, nontransferable, nonsublicensable, revocable and limited license to access, use and reproduce the Software solely for Beta Tester's internal evaluation purposes. The Software is not to be placed in a production environment by the Beta Tester. After the trial period the software is to be destroyed by the Beta Tester.
 3. **License Restrictions.** Except as expressly authorized by this Agreement, Beta Tester may not: (i) modify, translate or create derivative works of the Software; (ii) decompile or reverse assemble any portion of the Software or attempt to discover any source code or underlying ideas or algorithms of any Software; (iii) publicly perform or publicly display any portion of the Software; (iv) sell, assign, sublicense, rent, lease, loan, provide, distribute or otherwise transfer all or any portion of the Software; (v) allow the transfer, transmission, export, or re-export of the Software, or any portion thereof, in violation of any export control laws or regulations administered by the U.S. Commerce Department, OFAC, or any other government agency; or (vi) cause or permit any other party to do any of the foregoing. In addition, Beta Tester will not remove, alter or obscure any proprietary notices in the Software, including copyright notices, or permit any other party to do so.
 4. **Ownership.** As between the parties and subject to the grants under this Agreement, Nexenta owns all right, title and interest in and to the Software and any and all Intellectual Property Rights embodied therein.
 5. **Nondisclosure.** "Confidential Information" means all information disclosed (whether in oral, written, or other tangible or intangible form) by Nexenta to Beta Tester concerning or related to this Agreement or Nexenta (whether before, on or after the Effective Date) which Beta Tester knows or should know, given the facts and circumstances surrounding the disclosure of the information by Nexenta, is confidential information of Nexenta. Confidential Information includes, but is not limited to, the components of the business plans, the Software, inventions, design plans, financial plans, computer programs, know-how, Beta Tester information, strategies and other similar information. Beta Tester will, during the term of this Agreement, and thereafter maintain in confidence the Confidential Information and will not use such

Confidential Information except as expressly permitted herein. Beta Tester will use the same degree of care in protecting the Confidential Information as Beta Tester uses to protect its own confidential information from unauthorized use or disclosure, but in no event less than reasonable care. Confidential Information will be used by Beta Tester solely for the purpose of carrying out Beta Tester's obligations under this Agreement. Confidential Information will not include information that: (i) is in or enters the public domain without breach of this Agreement through no fault of Beta Tester; (ii) Beta Tester can reasonably demonstrate was in its possession prior to first receiving it from Nexenta; (iii) Beta Tester can demonstrate was developed by Beta Tester independently and without use of or reference to the Confidential Information; or (iv) Beta Tester receives from a third party without restriction on disclosure and without breach of a nondisclosure obligation. Notwithstanding any terms to the contrary in this Agreement, any suggestions, comments or other feedback provided by Beta Tester to Nexenta with respect to the Software (collectively, "Feedback") will constitute Confidential Information. Further, Nexenta will be free to use, disclose, reproduce, license and otherwise distribute, and exploit the Feedback provided to it as it sees fit, entirely without obligation or restriction of any kind on account of Intellectual Property Rights or otherwise.

6. **Disclaimer.** THE SOFTWARE IS PROVIDED ON AN "AS IS" OR "AS AVAILABLE" BASIS WITHOUT ANY REPRESENTATIONS, WARRANTIES, COVENANTS OR CONDITIONS OF ANY KIND. NEXENTA DOES NOT WARRANT THAT THE SOFTWARE WILL BE FREE FROM BUGS, ERRORS, OR OMISSIONS. NEXENTA DISCLAIMS ANY AND ALL WARRANTIES AND REPRESENTATIONS (EXPRESS OR IMPLIED, ORAL OR WRITTEN) WITH RESPECT TO THE SOFTWARE WHETHER ALLEGED TO ARISE BY OPERATION OF LAW, BY REASON OF CUSTOM OR USAGE IN THE TRADE, BY COURSE OF DEALING OR OTHERWISE, INCLUDING ANY AND ALL (I) WARRANTIES OF MERCHANTABILITY, (II) WARRANTIES OF FITNESS OR SUITABILITY FOR ANY PURPOSE (WHETHER OR NOT NEXENTA KNOWS, HAS REASON TO KNOW, HAS BEEN ADVISED, OR IS OTHERWISE AWARE OF ANY SUCH PURPOSE), AND (C) WARRANTIES OF NONINFRINGEMENT OR CONDITION OF TITLE. BETA TESTER ACKNOWLEDGES AND AGREES THAT BETA TESTER HAS RELIED ON NO WARRANTIES.
7. **Limitation of Liability.** EXCEPT FOR ANY ACTS OF FRAUD, GROSS NEGLIGENCE, OR WILLFUL MISCONDUCT, IN NO EVENT WILL: (I) NEXENTA BE LIABLE TO BETA TESTER OR ANY THIRD PARTY FOR ANY LOSS OF PROFITS, LOSS OF USE, LOSS OF REVENUE, LOSS OF GOODWILL, ANY INTERRUPTION OF BUSINESS, OR FOR ANY INDIRECT, SPECIAL, INCIDENTAL, EXEMPLARY, PUNITIVE OR CONSEQUENTIAL DAMAGES OF ANY KIND ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT OR THE SOFTWARE, REGARDLESS OF THE FORM OF ACTION, WHETHER IN CONTRACT, TORT, STRICT LIABILITY OR OTHERWISE, EVEN IF NEXENTA HAS BEEN ADVISED OR IS OTHERWISE AWARE OF THE POSSIBILITY OF SUCH DAMAGES; AND (II) NEXENTA'S TOTAL LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT EXCEED THE aggregate of the amounts paid or payable by Beta Tester to NEXENTA, if any, UNDER THIS AGREEMENT. MULTIPLE CLAIMS WILL NOT EXPAND THIS LIMITATION.
8. **Termination.** Unless terminated as set forth herein, the term of this Agreement will be for the Trial Period. In the event of a breach of Sections 2, 3 or 5, Nexenta may immediately

terminate this Agreement. On or before the expiration of the Trial Period, Beta Tester may opt to enter into Nexenta's standard license agreement. Upon the expiration or termination of this Agreement: (i) all rights granted to Beta Tester under this Agreement will immediately cease; and (ii) Beta Tester will promptly provide Nexenta with all Confidential Information then in its possession or destroy all copies of such Confidential Information, at Nexenta's sole discretion and direction; provided, however, that if Beta Tester enters into Nexenta's standard subscription agreement, Beta Tester does not have to return the Software. In addition to all definitions and this sentence, the following Sections will survive any termination or expiration of this Agreement: 3, 4, 5, 6, 7, 8 and 9.

9. **Miscellaneous.** This Agreement together with any exhibits attached hereto, are the entire agreement of the parties regarding the subject matter hereof, superseding all other agreements between them, whether oral or written, regarding the subject matter hereof. This Agreement will be governed by and construed in accordance with the laws of the State of California applicable to agreements made and to be entirely performed within the State of California, without resort to its conflict of law provisions. The parties agree that any action at law or in equity arising out of or relating to this Agreement will be filed only in the state and federal courts located in San Mateo County, California. The parties hereby irrevocably and unconditionally consent and submit to the exclusive jurisdiction of such courts over any suit, action or proceeding arising out of this Agreement. Neither this Agreement nor any right or duty under this Agreement may be transferred, assigned or delegated by Beta Tester, by operation of law or otherwise, without the prior written consent of Nexenta, and any attempted transfer, assignment or delegation without such consent will be void and without effect. Nexenta may freely transfer, assign or delegate this Agreement or its rights and duties under this Agreement. Subject to the foregoing, this Agreement will be binding upon and will inure to the benefit of the parties and their respective representatives, heirs, administrators, successors and permitted assigns. If any provision of this Agreement is invalid, illegal, or incapable of being enforced by any rule of law or public policy, all other provisions of this Agreement will nonetheless remain in full force and effect so long as the economic or legal substance of the transactions contemplated by this Agreement is not affected in any manner adverse to any party. Upon such determination that any provision is invalid, illegal, or incapable of being enforced, the parties will negotiate in good faith to modify this Agreement so as to effect the original intent of the parties as closely as possible in an acceptable manner to the end that the transactions contemplated hereby are fulfilled. Notwithstanding any terms to the contrary in this Agreement, Nexenta may choose to electronically deliver all communications with Beta Tester, which may include email to Beta Tester's email address indicated in Beta Tester's communications with Nexenta. Nexenta's electronic communications to Beta Tester may transmit or convey information about action taken on Beta Tester's request, portions of Beta Tester's request that may be incomplete or require additional explanation, any notices required under applicable law and any other notices. Beta Tester agrees to do business electronically with Nexenta, and to receive electronically all current and future notices, disclosures, communications and information, and that the aforementioned provided electronically satisfies any legal requirement that such communications be in writing. An electronic notice will be deemed to have been received the day of receipt as evidenced by such email.

NEXENTA SYSTEMS, INC.

By: _____

Name: _____
(print)

Title: _____

Address: _____

COMPANY: _____

By: _____

Name: _____
(print)

Title: _____

Address: _____
