

PlateSpin® Forge 4 NetIQ End User License Agreement

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LICENSED USE

Commercial Software.

DEFINITIONS:

“Appliance Host” means the hypervisor which hosts the Software as well as the replicated Workloads.

“Management VM” means the management virtual machine containing the Software.

“Migration” means to move or copy a Workload from one computer to another.

“Operating System” means software that controls the operation of a computer and directs the processing of programs (as by assigning storage space in memory and controlling input and output functions). An Operating System may be installed either directly on a computer system or within a virtual machine. For example, a virtual machine server that hosts four virtual machines represents five Operating Systems.

“Software Product License Key” means the mechanism that enables You to install and use the Software subject to the restrictions set out in this Agreement and may be a printable digital key, a non-printable file or any other mechanism used by Licensor for license activation purposes.

“Source Computer” means the computer that contains the Workload that You desire to protect.

“Target Computer” means the computer that receives the Workload, which is a virtual computer running within the Appliance Host.

“Workload” means the software stack (Operating System, middleware, applications, data) that is installed and can run on a physical computer that has no other Operating System software loaded onto it, or that is installed and can run in a specialized virtual operating environment or hypervisor. For example, a physical server running a single Windows or Linux Operating System is running a single workload. A physical server running a hypervisor and 4 virtual machines is running 5 workloads.

“Workload Backup Copy” means a copy of a Workload, which may exist in any form, either encapsulated in an image file or installed on a computer, but it may not be used concurrently with the Workload to perform the normal tasks of the Workload.

LICENSE GRANT.

Licenses purchased for PlateSpin Forge 4 cannot be used for PlateSpin Forge 3.3 or prior versions. The hardware appliance that includes the Appliance Host and PlateSpin Forge 4 is referred to as the “Server Appliance”.

Provided that You comply with all of the terms and conditions of this Agreement and the License Grant Restrictions below, Licensor grants You a non-exclusive, non-transferable license, without the right to sublicense, to use the Software in object code form, solely in conjunction with Your use of the Server Appliance, in accordance with the Software License Key associated with the Software. You must purchase the appropriate number of licenses for the number of Workloads and the applicable model of Server Appliance.

1. You are permitted to create a Workload Backup Copy to a single Target Computer and to update that Workload Backup Copy an unlimited number of times.
2. You may assign the license to a specific Workload (an “Assigned Workload”), whatever form such Workload takes; provided however that once assigned, the Workload license applies only to the Assigned Workload until such Assigned Workload is permanently disabled or decommissioned (which would include discarding the computer or deleting and disassembling all the

components that constitute the Assigned Workload) after which the Workload license can be re-assigned to another Workload. You are permitted to re-assign (or Workload transfer) any or all of the Workload licenses You have purchased provided that the Assigned Workload is permanently disabled or decommissioned. In no circumstance other than as described above may You assign a Workload license to a Workload and then temporarily reassign it to another Workload (such as a Workload Migration).

3. You may only use the virtual machines contained within the Server Appliance. You may not create additional virtual machines in order to perform functions other than to protect Workloads on the Server Appliance.

4. You may only use the Management VM for the purposes stated herein and shall not use the Management VM for any other purpose including but not limited to: file sharing, application server, print server and general purpose web server.

5. Other than the Software, the hypervisor and any system utilities, You agree not to install or use any third party software on the virtual machines in the Server Appliance and not to install any third party software on the Appliance Host.

The Software License Key may be a printable digital key, a non-printable file, or any other mechanism used by Licensor for license activation purposes. You agree not to override or attempt to override the Software License Key.

The Software facilitates the distribution of additional operating systems and applications ("Guest Operating Systems and Applications") to run on a computer system. You must have a licensed copy of each Guest Operating System and Application for such use. You must have licensed any Operating System components the Software installs as part of the conversion process, such as HALs and Kernel modules. You agree to indemnify and hold Licensor harmless against any damages, costs (including legal attorneys' fees and costs) or other liability arising from claims resulting from Your failure to obtain any such required licenses. Licensor shall have the right to participate at its expense in the defense of any such dispute.

Specific Third Party Software. Licensor's contractual arrangements require that Licensor include the following provisions.

1. The Software contains Third Party Software referred to as Microsoft SQL Server 2005 (CAL Versions), and Microsoft Windows Server 2003 Standard R2 with the Server Appliance Software Version 3.1. Your use of this Third Party Software is subject to the terms and restrictions set forth in the product documentation.

2. The Software includes software licensed from VMware Inc. You agree not to de-compile, disassemble, reverse engineer or otherwise attempt to derive source code from the Product, in whole or in part (or in any instance where the law permits any such action, You agree to provide VMware at least forty-five (45) days advance written notice of Your belief that such action is warranted and permitted and provide VMware with an opportunity to evaluate if the law's requirements necessitate such action). You agree not to allow access to or permit use of the VMware product by any user other than the Forge server or modify or create derivative works based upon the VMware product.

DELIVERY, TITLE & RISK OF LOSS

Delivery.

For delivery from the U.S. to destinations within the U.S.A., delivery terms are FOB Licensor's Dock (INCOTERMS 2000). Licensor will ship ground only and prepay freight from Licensor's Dock to Your forwarder or named destination. All other freight arrangements will be billed to You.

For delivery from the U.S. to destinations outside the U.S.A., delivery terms are DAT (Delivery at Terminal) as defined in INCOTERMS 2000. Licensor will select a carrier and will prepay shipping and handling charges. You will be responsible for all applicable import duties and value added tax, goods and services tax, or other similar taxes and fees.

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Law. All matters arising out of or relating to the Agreement will be governed by the substantive laws of the United States and the State of Utah without regard to its choice of law provisions. Any suit, action or proceeding arising out of or relating to the Agreement may only be brought before a federal or state court of appropriate jurisdiction in Utah. If a party initiates Agreement-related legal proceedings, the prevailing party will be entitled to recover reasonable attorneys' fees. If, however, Your country of principal residence is a member state of the European Union or the European Free Trade Association, (1) the courts of Ireland shall have exclusive jurisdiction over any action of law relating to this Agreement; and (2) where the laws of such country of principal residence are required to be applied to any such action of law the laws of that country shall apply. The application of the United Nations Convention of Contracts for the International Sale of Goods is expressly excluded.

Entire Agreement. This Agreement, together with any other purchase documents or other agreement between You and Licensor, sets forth the entire understanding and agreement between You and Licensor and may be amended or modified only by a written agreement agreed to by You and an authorized representative of Licensor. NO LICENSOR, DISTRIBUTOR, DEALER, RETAILER, RESELLER, SALES PERSON, OR EMPLOYEE IS AUTHORIZED TO MODIFY THIS AGREEMENT OR TO MAKE ANY REPRESENTATION OR PROMISE THAT IS DIFFERENT FROM, OR IN ADDITION TO, THE TERMS OF THIS AGREEMENT.

Waiver. No waiver of any right under this Agreement will be effective unless in writing, signed by a duly authorized representative of the party to be bound. No waiver of any past or present right arising from any breach or failure to perform will be deemed to be a waiver of any future right arising under this Agreement.

Severability. If any provision in this Agreement is invalid or unenforceable, that provision will be construed, limited, modified or, if necessary, severed, to the extent necessary, to eliminate its invalidity or unenforceability, and the other provisions of this Agreement will remain unaffected.

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