

EMC Outbound Embedded OEM Sales Agreement

This EMC Outbound Embedded OEM Sales Agreement (“**Agreement**”) only applies to you, if you are an OEM Customer as defined below:

“**OEM Customer**” means you in your capacity as an original equipment manufacturer that is purchasing Products (as defined below) from the Dell EMC OEM Solutions (or its successor) business group for an OEM project. An OEM Customer (a) combines Product with OEM Customer’s proprietary hardware, software or other intellectual property, resulting in a specialized system or solution with industry or task-specific functionality (“**Marketed System**”) and (b) sells the Marketed System under OEM Customer’s own brand. This is not a Distribution agreement, as OEM Customer shall not resell EMC Products, but only sell **Marketed System to their own clients, hence OEM Customer shall not be understood as EMC distributor.**

This Agreement governs your (“**you**” or “**Buyer**” or “**OEM Customer**”) purchase and use of products and services ordered by you directly from **EMC Information Systems International**, VAT number IE9692485U, with headquarters at Ovens, County Cork, Ireland (“**EMC**”).

By (i) issuing a purchase order to EMC for products and/or services that references an EMC quote to Buyer; or (ii) signing such quote and returning it to EMC, you accept and are bound to the terms of this Agreement.

1. Definitions

- 1.1 **Affiliate** of EMC means Dell Inc. or Dell Inc.’s direct or indirect subsidiaries.
- 1.2 **Documentation** means the then-current, generally available written users manuals and online help and guides for Products provided by EMC.
- 1.3 **End User** means each entity who, for its own internal business purposes (not for resale, hosting, or use in a time-sharing or similar arrangement with others), obtains the Marketed System directly from Buyer or Reseller in the Target Market.
- 1.4 **End User Agreement** means the agreement between an End User and either Buyer or Reseller, for the purchase of a Marketed System, the licensing of Software included therein, or the provision of Services.
- 1.5 **Equipment** means Dell EMC-branded or EMC-branded hardware, or the unbranded OEM-ready version thereof, purchased by Buyer and delivered pursuant to the terms of this Agreement.
- 1.6 **Product Notice** means the notice by which EMC informs Buyer of product-specific use rights and restrictions, warranty periods, warranty upgrades and maintenance (support) terms. Product Notices may be delivered in writing and/or a posting on the applicable EMC website. The terms of the Product Notice in effect as of the date of the relevant purchase order shall be deemed incorporated into and made a part of such purchase order. Each Product Notice is dated and is archived when it is superseded by a newer version. EMC shall not change any Product Notice retroactively with regard to any Products listed on an accepted purchase order prior to the date of the applicable Product Notice.
- 1.7 **Product(s)** means the Equipment and Software.
- 1.8 **Product Maintenance** means the service which consists of EMC Technical Support (as defined below) and Software Releases (as defined in Exhibit A).
- 1.9 **Reseller(s)** means a third party who is: (i) deemed not to be, in the sole discretion of EMC, a competitor of EMC; (ii) authorized by Buyer to resell the Marketed System directly to End Users; (iii) under written contract with Buyer that complies with this Agreement; and (iv) approved in writing by EMC.
- 1.10 **Service** means service to be performed by or on behalf of EMC as described in this Agreement or applicable Product Notice or Service Agreement.
- 1.11 **Service Agreement** means any mutually agreed document or agreement describing services to be performed by or on behalf of EMC to Buyer, including without limitation, “Statements of Work” and “Service Descriptions” available at www.dell.com/servicecontracts/global, “Specification Sheets”, and “Task Orders”.
- 1.12 **Software** means licenses to the standard product object code purchased by Buyer and delivered pursuant to the terms of this Agreement. For clarity, Software includes Equipment microcode, firmware, and operating system software.
- 1.13 **Target Market** means the market for the sale of Marketed Systems as specified in the Agreement.
- 1.14 **Technical Support Services** means those services as further defined in Exhibit A.
- 1.15 **Territory** means the territorial division within which OEM Customer is incorporated and in which it may sell the Marketed System the services related to the them that have been duly registered and authorized by EMC, according to the guidelines of the program and the Agreement..
- 1.16 **Third Party Products** means hardware, software, or services that are not “EMC” branded or “Dell EMC” branded. Third Party Products may include, without limitation, products and services manufactured, created, licensed, or performed by or on behalf of EMC or EMC Affiliates, and may include hardware or software installed on a Product in the course of performing a Service.

2. Purpose; Buyer’s Obligations

- 2.1 **Purpose.** This Agreement sets forth the terms and conditions under which Buyer shall purchase, market and sell, the **Marketed System**. The Target Market for this Agreement, and the destination country(ies) in which Buyer may sell the **Marketed System**, will be the Territory defined above.
- 2.2 **Added Value.** It is the essence of this Agreement that Buyer shall add substantial value to the Products and use competent and effective efforts to remarket such Products, as incorporated into Marketed Systems, in the Target Market and that Buyer shall perform those functions customarily performed by an original equipment manufacturer relative to the advertising, marketing, sale and service of Marketed Systems. Added value shall, by objective examination of factors, represent an enhancement or transformation of Products provided under this Agreement, as to both value and function. EMC’s reasonable determination that Buyer’s added value fails or ceases to meet the standards of this **Section 2.2** shall be cause for EMC to delay or suspend processing of Buyer’s orders until such failure is cured to EMC’s reasonable satisfaction. Buyer agrees that Products provided under this Agreement shall be incorporated by Buyer as a part of a Marketed System and that Buyer will not resell, or allow the resale of, Products other than as part of a Marketed System.
- 2.3 **Incidental Re-Sale of EMC Product.** Notwithstanding **Section 2.2** above, Buyer may resell EMC Products and parts (as upgrades, add-ons or spares) to End Users who have previously purchased or are in the process of purchasing Buyer’s products, for the limited and sole purpose of incorporating such EMC Products or parts into an existing Marketed System or creating a Marketed System. Product Maintenance for EMC Products and parts sold under this Section shall be performed in accordance with **Exhibit A** and its addendum. These incidental re-sales, shall not be considered and will not make the Buyer as a distributor, as this document is not a master agreement, as it needs to be executed each time that the buyer intends to purchase Products.
- 2.4 **Customer Service.** Buyer shall diligently service and support End Users with respect to all Marketed Systems, including as required by **Exhibit A**. Buyer shall train and certify its personnel and obtain all needed parts and equipment to satisfy such obligation. EMC shall not be expected or obligated to receive or service any warranty claims or other service calls from Buyer’s customers. Buyer agrees to indemnify and hold EMC harmless from any loss, cost, damage,

expense and claim arising from any such warranty claims or other service calls of Buyer's customers.

- 2.5 **Test Units.** In addition to Product purchased for purposes of creating a Marketed System, Buyer may purchase Product to be used internally by Buyer as test units. Such purchases shall be subject to the terms and conditions set forth herein, including the limited license grants. Further, Buyer shall track the location of all such units and report the same to EMC upon request.
- 2.6 **Business Conduct Standards.** Buyer understands the US Foreign Corrupt Practices Act, the UK Bribery Act, anti-corruption or anti-bribery laws in effect in jurisdictions where Buyer markets or sells Products, and the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions (collectively the "**Anticorruption Laws**") and their applicability to conduct in relation to this Agreement. Buyer agrees not to cause EMC to breach the Anticorruption Laws and agrees to comply with the Anticorruption Laws as if they were applicable to Buyer. Buyer agrees to accurately record in its books and records any and all expenses related to EMC business. Buyer represents that none of the officers, directors, shareholders, or beneficial owners of Buyer are government officials. All payments to Buyer by EMC will be by check or wire transfer and will be made payable to Buyer as provided for in this Agreement. Buyer will grant EMC reasonable access to Buyer's books and records and the right to audit them on a periodic basis, including if EMC has reason to believe Buyer may have violated any of the Anticorruption Laws. The terms of this Agreement may be disclosed to the relevant government authorities, if deemed appropriate by EMC. Buyer will disclose in advance to EMC any future affiliation between Buyer and a government official. Buyer agrees to provide EMC with periodic certifications, in a form and manner acceptable to EMC, of compliance with the Anticorruption Laws as if Buyer were subject to those laws. EMC may terminate this Agreement or suspend its activities if EMC has reason to believe that Buyer has breached any of the Anticorruption Laws. Buyer shall comply with all applicable laws, orders and regulations and obtain all necessary governmental permits, licenses and clearances. If Buyer makes any modifications or additions to the Products (including adding trademarks, logos or markings) after the Products are shipped from EMC, Buyer is responsible for obtaining all necessary regulatory and agency approvals and other authorizations.
- 2.7 **Traceability.** Buyer shall cooperate with EMC in the event of any recall or corrective action regarding the Products. Buyer shall maintain complete distribution records by End User and by Product serial number (as applicable) for all sales of Marketed Systems and internal use of Products. Buyer shall obtain the consent of EMC prior to providing an End User with any Product for installation by End User. Should EMC provide such consent, Buyer shall notify EMC in writing not less than ten (10) days following delivery of such Product to End User and provide EMC with detailed information on the Product's then location.
- 2.8 **Licenses and Permits.** Buyer shall obtain and maintain at its expense all licenses, permits and other authorizations required by each government agency in connection with its obligations and activities under this Agreement, including without limitation the marketing, sale, distribution, export, and shipment of Marketed Systems to Resellers and End Users.
- 2.9 **End User Pricing.** Buyer is free to unilaterally determine its own resale prices for the Products as incorporated into the Marketed Systems and sale prices for the Service. No employee or representative of EMC or anyone else has any authority to determine or otherwise restrict Buyer's resale prices for the Products as incorporated into the Marketed Systems or sale prices for the Services.
- 2.10 **Services Software.** "Services Software" is software that EMC may make available to Buyer in connection with Services. Services Software may be hosted by EMC or installed on Equipment. Buyer agrees that it shall (i) only use the Services Software in connection with the EMC's Services, (ii) use any Services Software hosted by EMC in a lawful manner, without interfering with other EMC customers' use of the Services Software, and without attempting to disrupt the security or operation of the network or systems used to provide the Services Software; and (iii) not misappropriate, disclose, or otherwise violate EMC's or its providers' intellectual property rights in the Services Software. It may be necessary for EMC to perform scheduled or unscheduled repairs or maintenance, or remotely patch or upgrade the Services Software, which may temporarily degrade the quality of the Services or result in a partial or complete outage of the Services Software. **BUYER AGREES THAT THE OPERATION AND AVAILABILITY OF THE SYSTEMS USED FOR ACCESSING AND INTERACTING WITH THE SERVICES SOFTWARE, INCLUDING TELEPHONE, COMPUTER NETWORKS, AND THE INTERNET, OR TO TRANSMIT INFORMATION, CAN BE UNPREDICTABLE AND MAY, FROM TIME TO TIME, INTERFERE WITH OR PREVENT ACCESS TO OR USE OR OPERATION OF SUCH SERVICES SOFTWARE. EMC SHALL NOT BE LIABLE FOR ANY SUCH INTERFERENCE WITH OR PREVENTION OF BUYER'S ACCESS TO OR USE OF THE SERVICES SOFTWARE.** If EMC permits Buyer to provide Services Software to an End User in connection with Services, Buyer shall include, or require its Reseller to include, the preceding terms and conditions of this paragraph in a written agreement with such End User and shall provide written evidence of doing so upon receipt of request from EMC.

3. Orders

- 3.1 **Purchase Orders.** Buyer's purchase order may be issued in writing or electronically, and shall be in a form acceptable to EMC, shall reference the applicable EMC quote, and shall contain the following: (A) products and services to be purchased; (B) quantity of products to be purchased; (C) price of products and services to be purchased, consistent with the EMC quote; (D) requested delivery schedule; and (E) ship-to address. All purchase orders are subject to credit approval and are subject to EMC's acceptance. No purchase order shall be binding on EMC unless it satisfies EMC's standard configuration criteria. Purchase orders shall be governed exclusively by this Agreement and the terms and conditions referenced in this Agreement. All terms of Buyer's purchase order, including but not limited to (1) any terms that are inconsistent or conflict with this Agreement, an EMC quote, or both, and (2) any pre-printed terms, have no legal effect and do not modify or supplement the Agreement, even if EMC does not expressly object to those terms when accepting the purchase order.
- 3.2 **Sale of Marketed System Outside of the Territory.** Should Buyer wish to take delivery of Products from EMC in the Territory, integrate Products into Marketed Systems in the Territory but export Marketed Systems to End Users located outside of the Territory, Buyer shall first obtain written verification from EMC that EMC can provide service and support in such location and, if requested by EMC, Buyer shall execute a Local Participation Agreement with the appropriate EMC Affiliate that will provide service and support (including maintenance renewals) in such location. EMC shall not be obligated or liable to provide any service and/or support for any Products located outside of the Territory for which Buyer did not first obtain such written verification from EMC. Buyer acknowledges and agrees that if any Product is moved outside of the Territory to a geographic location in which the service and/or support for such Product is not available, or is not available at the same price as Buyer paid for the service and/or support, then Buyer and End User may not have coverage or may incur an additional charge to maintain the same categories of service and/or support coverage at the new location. If Buyer chooses not to pay such additional charges, the service and/or support may be automatically changed to categories of service and/or support which are available at such price or a lesser price in such new location with no refund available. Buyer shall inform the Reseller (if applicable) and End User of the foregoing limitations prior to or at the time the Reseller (if applicable) or End User places its order for the Product and the service and/or support. Buyer agrees to indemnify and hold EMC harmless from any loss, cost, damage, expense and claim arising from Buyer's failure to properly inform the End User or Reseller of the foregoing limitations in this paragraph.
- 3.3 **Shipment of Marketed Systems to End Users.** Buyer will package and ship all Products contained in the Marketed Systems to End Users using a degree of care and standards which are no less protective and careful than EMC's standard packing/shipping practices.
- 3.4 **Third Party Products.** Buyer may purchase Third Party Products through EMC. Buyer acknowledges and agrees the third-party manufacturer's standard terms, including warranty, indemnification, and technical support and maintenance terms and conditions, apply to purchases of Third Party Products unless Buyer has a separate negotiated agreement with the third party manufacturer for the applicable Third Party Product, in which case that negotiated agreement will govern. EMC has no liability to Buyer for any damages or issues that arise out of or relate to Third Party Products. **EMC provides Third Party Products "AS IS", makes no express warranties or conditions, and disclaims all implied warranties and conditions, including merchantability, fitness for a**

particular purpose, title, and non-infringement as well as any warranty arising by statute, operation of law, course of dealing or performance, or usage of trade.

3.5 **Third Party Software License Terms.** Software for which EMC is not the licensor ("Third Party Software") may come with its own license terms ("Separate License Terms"), such as a: (i) "click-to-accept" agreement included as part of the installation or download process; (ii) "shrink-wrap" agreement included in the product packaging; or (iii) a notice indicating that by installing or using a product or the component, the related license terms apply. The Separate License Terms govern Buyer's use and distribution of Third Party Software. **EMC provides Third Party Software "AS IS"; makes no express warranties or conditions, and disclaims all implied warranties and conditions, including merchantability, fitness for a particular purpose, title, and non-infringement as well as any warranty arising by statute, operation of law, course of dealing or performance, or usage of trade.**

3.6 **"Excluded Data"** means: (i) data that is classified, used on the U.S. Munitions list (including software and technical data) or both; (ii) articles, services, and related technical data designated as defence articles and defence services; and (iii) ITAR (International Traffic in Arms Regulations) related data; and (iv) other personally identifiable information that is subject to heightened security requirements as a result of Buyer's internal policies or practices or by law. Buyer acknowledges that Products and Services provided under the Agreement are not designed to process, store, or be used in connection with Excluded Data. Buyer is solely responsible for reviewing data that will be provided to or accessed by EMC to ensure that it does not contain Excluded Data.

4. Title and risk of loss; Delivery

4.1 Risk of loss or damage for hardware (either Equipment or Third-Party Product hardware) and licensed software (either EMC Software or Third-Party Product software) transfers to Buyer upon Delivery. Title to hardware product passes to Buyer upon Delivery. "Delivery" for hardware product occurs when the hardware is delivered in the local designated by the Buyer. "Delivery" for software product occurs either when EMC provides physical media to an EMC-designated carrier at EMC's designated point of shipment, or the date EMC notifies Buyer that the software is available for electronic download. All Product and Third-Party Product are deemed accepted by Buyer upon Delivery. Notwithstanding anything contrary in this Agreement, software is only licensed, and are not sold to Buyer. Unless otherwise agreed, EMC will choose the common carrier

4.2 EMC will pack and label Products according to EMC's standard practices. EMC may ship Product or Third-Party Product in advance of Buyer's requested schedule. EMC shall arrange for shipment and transit insurance, at Buyer's expense. Neither the carrier nor the insurer shall be an agent of EMC. All transportation, insurance, import, export and clearance charges shall be paid by Buyer or, at EMC's election, paid by EMC and reimbursed by Buyer to EMC upon invoice.

5. Payment

5.1 **Payment Terms.** Buyer must pay EMC's invoice in full and in US dollars within the time noted on EMC's invoice, or if not noted, then within thirty (30) days after the date of the invoice. In case the payment of the invoice is late, 1% monthly interests (one per cent), pro rata die, shall be applied, plus a 2% (two per cent) fine on the amount originally owed. EMC may invoice parts of a purchase order separately or together in one invoice. All invoices will be deemed accurate unless Buyer advises EMC in writing of a material error within ten days following receipt. If Buyer advises EMC of a material error, (i) any amounts corrected by EMC in writing must be paid within fourteen days of correction, and (ii) all other amounts shall be paid by Buyer by the due date. If Buyer withholds payment because Buyer believes an invoiced amount is incorrect, and EMC concludes that the amount is accurate, Buyer must pay penalty fee and late charges as described herein from the due date for the amount until EMC's receipt of payment. Buyer may not offset, defer or deduct any invoiced amounts that EMC determines are correct following the notification process stated above. EMC, without waiving any other rights or remedies and without liability to Buyer, may suspend any or all services until all overdue amounts are paid in full. Buyer will pay all reasonable legal fees and other costs related to the collection of overdue amounts.

6. Leadtime, Cancellation And Rescheduling

6.1 **Unique Component.** "Unique Component" means any components or supplies which are customized, which have long lead-time, or which are not otherwise readily usable in EMC's production of standard Products. EMC may procure Unique Components to support the manufacture of customized configurations for Buyer. If Buyer does not consume or use the Unique Components within ninety days of Buyer's purchase order date, then EMC may invoice the materials to Buyer. Buyer will pay EMC for the Unique Components and any stocking fees EMC may incur as a result of holding such materials in inventory longer than ninety (90) days. Utilization of Unique Components shall be arranged on a case-by-case basis; EMC is not committing to procure or utilize any Unique Components except as it may specifically agree in writing.

6.2 All purchase orders for EMC products, Third Party Products, Unique Components, discontinued or end-of-sale (EOL) standard Products, or customized Products may not be rescheduled, reconfigured or cancelled in whole or in part by the Buyer. Buyer agrees and understands the Dell EMC return policy is not available to Buyer. Buyer must inform End-Users that Del EMC return policy is not available on Products sold by OEM Customer.

7. Pricing

7.1 **Pricing.** EMC will provide Buyer with pricing quotes for products and services available to Buyer for purchase. Buyer shall pay EMC the prices as agreed for each individual purchase order between EMC and Buyer. Quoted prices are effective until the expiration date of the EMC quote, or if no expiration date is specified then the quoted prices are effective for thirty days from the EMC quote date. Quoted prices may change due to shortages in materials or resources, increase in the cost of manufacturing, or other factors. All Purchase Orders must reference this Agreement and contain the following information: (a) a description of the Product, including Product number, if applicable; (b) quantity; (c) price; (d) delivery schedule, (e) product purpose (resale, manufacturing or use), and (f) shipping address.

8. Taxes and Duties

8.1 Taxes. The prices for Products and Services include Taxes paid by EMC, as well as shipping and handling. In the event of an increase and/or imposition of new taxes upon the subject matter of this Agreement, the Parties shall renegotiate the amounts thereof. In the event Buyer is required by law to withhold any tax for the Service purchase and resale transactions, Buyer must give prior notice thereof to EMC, and if such tax is withheld, Buyer must submit the respective proof of withholding to EMC's financial department. All Purchase Orders must reference this Agreement and contain the following information: (a) a description of the Product, including Product number, if applicable; (b) quantity; (c) price; (d) delivery schedule, (e) product purpose (resale, manufacturing or use), and (f) shipping address.

8.2 Export or Import Duties. Prices do not include fees for domestic or foreign forwarding agent services, consular invoices, or for any other documents required by the country of destination (if other than the agreed delivery point), all of which fees shall be Buyer's responsibility. Buyer shall obtain all required export

clearances, import licenses, permits or other governmental orders. For clarity, nothing in this Section 0 shall limit Section 16.7.

9. Product Changes

9.1 **Changed or Discontinued Products or Services.** EMC may revise or discontinue Products, Services, and Third-Party Products at any time, including after Buyer places an order, but prior to EMC's shipment or performance. As a result, products and services Buyer receives may differ from those ordered. However, EMC branded, and Dell EMC branded Products will materially meet or exceed all published specifications for the Products.

9.2 **Mandatory Engineering Change Orders.** From time to time (e.g., for product safety reasons) EMC may issue mandatory engineering change orders ("MECOs"). As to any affected Products in Buyer's inventory or control, or already dispositioned by Buyer, Buyer shall obtain access to the Products to permit EMC or EMC's agents to install such MECOs.

9.3 **Engineering Change Orders.** EMC reserves the right to make substitutions and modifications in the specifications and design of any Products that do not materially, adversely affect form, fit or function. Substitutions and modifications do not create or imply any obligation to make substitutions or modifications to any Products previously provided.

10. Warranty and Disclaimer

10.1 **Equipment Warranty.** EMC warrants that Equipment and Equipment upgrades installed into the Equipment, under normal usage and with regular recommended service shall be free from material defects in materials and workmanship and perform substantially in accordance with the Documentation provided for the Equipment until the expiration of the warranty period. Unless otherwise noted on the Product Notice or EMC quote, the warranty coverage for the microcode, firmware or operating system software that enables Equipment to perform as described in its Documentation shall be no less than that which applies to such Equipment. For some types of Products, as noted on the Product Notice, EMC Technical Support Services associated with a Support Option (as described in the Product Notice) are included free of charge during the warranty period. In some cases, a Support Option upgrade during the warranty period may be available for a fee. EMC's contractual warranty includes the statutory warranty.

10.2 **Software Warranty.** EMC warrants that Software will substantially conform to the applicable Documentation for such Software and that any media will be free from manufacturing defects in materials and workmanship until the expiration of the warranty period. EMC does not warrant that the operation of Software shall be uninterrupted or error free, that all defects can be corrected, or that Software meets Buyer's requirements. EMC Technical Support Services for Software are available for separate purchase and the Support Options are identified in the Product Notice.

10.3 **Warranty Duration.** Unless otherwise stated on the EMC quote, the warranty period for Products shall be as set forth at the Product Notice. Equipment warranty commences upon Delivery. Software warranty commences upon Delivery of the media or the date Buyer is notified of electronic availability, as applicable. Equipment upgrades are warranted from Delivery until the end of the warranty period for the Equipment into which such upgrades are installed.

10.4 **Buyer Remedies.** EMC's entire liability and Buyer's exclusive remedies under the warranties described in this Section 10 shall be for EMC, at its option, to remedy the non-compliance or to replace the affected Product. If EMC is unable to effect such within a reasonable time, then EMC shall refund the amount paid by Buyer for the Product concerned as depreciated on a straight line basis over a five (5) year period, upon return of such Product to EMC. All replaced Products or portions thereof shall be returned to and become the property of EMC. If such replacement is not so returned, Buyer shall pay EMC's then current spare parts price therefore. EMC shall have no liability hereunder after expiration of the applicable warranty period. Parts used in repairing or servicing Products may be new, equivalent-to-new, or reconditioned.

10.5 **Warranty Exclusions.** Warranty does not cover problems that arise from (A) accident or neglect by Buyer or any third party; (B) any third party items or services with which the Product is used or any causes beyond EMC's control; (C) installation, operation or use not in accordance with EMC's instructions or the applicable Documentation; (D) use in an environment, in a manner or for a purpose for which the Product was not designed; (E) modification, alteration or repair by anyone other than EMC or its authorized representatives; (F) installation, operation or use by a Restricted Party (as defined herein); or (G) in case of Equipment only, causes attributable to normal wear and tear. EMC has no obligation for Software or Services Software installed or used beyond the licensed use, for Equipment which was moved from the installation site without EMC's consent or whose original identification marks have been altered or removed, or for any Software for which payment has not been received. The products and services provided under this Agreement are not fault-tolerant and are not designed or intended for use in hazardous environments requiring fail-safe performance, such as any application in which the failure of the products or services could lead directly to death, personal injury, or physical or property damage (collectively, "High-Risk Activities"). EMC expressly disclaims any express or implied warranty of fitness for High-Risk Activities.

10.6 **No Further Warranties. Other than the warranties set forth in this Agreement, and to the maximum extent permitted by applicable law, EMC and its Affiliates, and their suppliers: (i) make no other express warranties; (ii) disclaim all implied warranties, including merchantability, fitness for a particular purpose, title, and non-infringement; and (iii) disclaim any warranty arising by statute, operation of law, course of dealing or performance, or usage of trade.**

10.7 **No Warranty Pass Through.** BUYER ACKNOWLEDGES AND AGREES THAT ANY WARRANTIES PROVIDED PURSUANT TO THIS SECTION 10 ARE FOR THE BENEFIT OF BUYER ONLY AND THAT EMC GRANTS NO WARRANTY PASS-THROUGH FOR ANY PRODUCT. BUYER SHALL NOT PASS THROUGH TO RESELLERS, END USERS OR ANY THIRD PARTY THE WARRANTIES MADE BY EMC HEREUNDER AND BUYER WILL EXPRESSLY INDICATE TO ITS RESELLERS, END USERS AND ANY THIRD PARTIES THAT THEY MUST LOOK SOLELY TO BUYER (AND NOT EMC) IN CONNECTION WITH ANY WARRANTY CLAIMS AND/OR ANY WARRANTY RELATED MATTERS.

11. Term and Termination

11.1 **Term.** This Agreement is effective upon the earlier of Buyer's issuance of a purchase order to EMC, or Buyer's acceptance of the Agreement. The Agreement continues until it is terminated in accordance with this Section 11.

11.2 **Suspension of Services.** EMC may suspend, terminate, withdraw, or discontinue all or part of the Services when EMC believes, in its sole judgment, that Buyer is involved in any fraudulent or illegal activities.

11.3 **Termination.** Either party may terminate this Agreement, a Service Agreement, or license for Software: (A) for a material breach by the other party that is not cured within thirty (30) days of the breaching party's receipt of written notice of the breach; or (B) if a party declares bankruptcy or is adjudicated bankrupt or a receiver or trustee is appointed for substantially all of its assets. In addition, EMC may suspend or terminate the Agreement or one or more Services or software licenses with ten days' written notice if: (a) Buyer does not make payment as required by the Agreement (where the payment is not subject to a good faith dispute) or (b) Buyer fails to make payment within ten (10) days after receiving written notice of the past due amount. EMC may terminate the Agreement immediately if Buyer is acquired by or merged with a competitor of EMC or EMC Affiliate.

11.4 **Effect of Termination.** Termination of this Agreement shall not exclude other remedies for failure of a party to perform its obligations. Upon termination of this Agreement for Buyer's material breach, (i) all monies due to EMC hereunder shall become immediately due and payable by Buyer to EMC and (ii) if

requested by EMC, EMC and Buyer will work together to transition Service obligations from Buyer to EMC.

12. Support and Training

- 12.1 **Support.** Subject to the remainder of this **Section 12.1**, during the applicable Service term, EMC shall make available to Buyer the applicable support services stated in **Exhibit A** ("**Product Maintenance Service Schedule**"). Notwithstanding anything contained herein to the contrary, support service is subject to EMC's then-current "End-of-Service-Life" policy for the applicable Product and EMC reserves the right to amend and modify Exhibit A from time to time, in EMC's sole discretion.
- 12.2 **Training.** EMC may offer applicable training services described in Exhibit A, as and when the same are available and upon EMC's standard terms and charges for such services.

13. License Grants

- 13.1 **Internal Use of Software.** Subject to Buyer's compliance with the terms and conditions of this Agreement, EMC hereby grants to Buyer a limited, non-exclusive, non-transferable right to use, display, and reproduce the Software solely as necessary for (1) integration with Buyer's products to create the Marketed System, and (2) testing, quality assurance, manufacturing, back-up, demonstration, evaluation, training, development and Service purposes, each in conjunction with selling, licensing, distributing and providing Service for Marketed Systems.
- 13.2 **Licensing of Software.** The parties agree that any use of the terms "resell", "resale", "sell", "sale", "purchase" or "acquire" in relation to any Software in this Agreement will be deemed to mean "license on the terms contained this Agreement".
- (a) **To End User.** Subject to Buyer's compliance with the terms and conditions of this Agreement, EMC hereby grants to Buyer a limited, non-exclusive, non-transferable right to sublicense and distribute Software to End Users, solely as integrated into the Marketed Systems, and subject to an End User Agreement consistent with the terms set forth in **Exhibit B** ("Minimum Terms of End User License"). Additionally, with regard to Software that ships from EMC with media which is subject to a hard-copy, "break-the-seal" license agreement or an electronic "click-wrap" license (which must be assented to in order to obtain access thereto), Buyer is granted a non-exclusive, non-transferable, right to resell and distribute the licenses of such Software to End Users only. The quantity of Software and any other usage restrictions and/or descriptions (e.g., 'pool' or 'enterprise' licensing arrangements) shall be accurately detailed and agreed upon between the parties in the applicable purchase order issued to EMC.
- (b) **To Resellers.** Subject to Buyer's compliance with the terms and conditions of this Agreement, EMC hereby grants to Buyer a limited, non-exclusive, non-transferable right to sublicense and distribute Software to Resellers, solely as integrated into the Marketed Systems, and subject to a software license agreement consistent with the terms of Exhibit B and to grant such Resellers a limited, personal, non-exclusive, non-transferable right to sublicense and distribute licenses of Software directly to End Users subject to an End User Agreement consistent with the terms set forth in Exhibit B. Additionally, with regard to Software that ships from EMC with media which is subject to a hard-copy, "break-the-seal" license agreement or an electronic "click-wrap" license (which must be assented to in order to obtain access thereto), Buyer is granted a non-exclusive, non-transferable, right to resell sublicense and distribute the licenses of such Software to Resellers, for further resale by such Resellers to End Users subject to such "click wrap" license. The quantity of Software and any other usage restrictions and/or descriptions (e.g., 'pool' or 'enterprise' licensing arrangements) shall be accurately detailed and agreed upon between the parties in the applicable purchase order issued to EMC.
- (c) Subject to Buyer's compliance with the terms and conditions of this Agreement, EMC hereby grants to Buyer a limited, non-exclusive, non-transferable right to resell Equipment to End Users, solely as integrated into the Marketed Systems.
- 13.3 **End User License Agreement.** Prior to the transfer of a Marketed System to an End User, either directly or indirectly by any Reseller, Buyer shall ensure that each End User is legally bound and obligated by a software license agreement containing, at a minimum, the terms set forth in Exhibit B. Further, Buyer shall enforce, and require each Reseller to enforce, the provisions of each such software license agreement through the use of good faith, reasonable care and a level of diligent effort comparable to that generally used by licensors of software of a similar nature and importance, and shall, upon request of EMC, (A) assign over any rights to EMC from time to time which EMC may reasonably request to enforce one or more of such sublicense agreements; and (B) reasonably cooperate with EMC in order to enable EMC to enforce such software license agreement.
- 13.4 **Documentation.** From time to time, EMC shall provide to Buyer for Buyer's internal use for the purpose of selling Service for Marketed Systems, the standard EMC Documentation. Subject to Buyer's compliance with the terms and conditions of this Agreement, EMC hereby grants to Buyer a limited, non-exclusive, non-transferable right to distribute the standard EMC Documentation to End Users in conjunction with selling Service for Marketed Systems. Subject to Buyer's compliance with the terms and conditions of this Agreement and Buyer's payment of the applicable fees, and subject to any third-party rights or restrictions relating to content included in the EMC Documentation, EMC may grant to Buyer a limited, non-exclusive, non-transferable right to create and distribute derivative works based on the unbranded, OEM-ready version of the standard EMC Documentation under Buyer's name, provided that all whole or partial copies include all applicable copyright and other proprietary notices and software license terms as required by this Article 13. Buyer agrees to indemnify and hold EMC harmless from any loss, cost, damage, expense and claim arising from any inaccuracies or omissions in the derivative documentation described above.
- 13.5 **Trademarks.** Buyer agrees to market the Marketed Systems under its own name and/or trademarks. Buyer agrees that it shall not obscure or remove any trademark or trade name used by EMC or any markings, proprietary notices, colours or other insignia which are contained or affixed to Products at the time of shipment. Failure to abide by the terms of this Article 13 will be a material breach of the Agreement.
- 13.6 **Proprietary Notices.** Buyer shall not, without the express written permission of EMC, change the EMC copyright notices or software legends or proprietary notices which appear on or in any Documentation, Software or Equipment.
- 13.7 **Ownership.** Except for the rights expressly granted herein, nothing in this Agreement shall be deemed to be a grant of any intellectual property rights to Buyer or to any of its customers or to any other person or entity. Without limiting the foregoing, no title to or ownership of Software or copyright, patent or other intellectual property right therein is transferred to Buyer or to any of its customers. References to "sale" or "purchase" of Software in this Agreement shall be interpreted to mean "license upon the terms contained in this Agreement."
- 13.8 **Certain Restrictions.** Except for the rights expressly granted herein, Buyer shall not, nor shall it permit any third-party to: (A) translate, adapt, vary, modify or create derivative works based upon the Software or Documentation; (B) disclose the Software or Documentation to any third party; or (C) create any derivative works based on the Software or Documentation. Further, neither Buyer nor any of Buyer's employees or agents shall without the prior written consent of EMC modify, enhance, supplement, reverse assemble, reverse compile, reverse engineer or otherwise reduce any Software in whole or in part to human readable or source code form. Buyer shall promptly report to EMC any violation of this paragraph and shall take further steps as may be reasonably required by EMC to remedy any such violation and to prevent future violations.
- 13.9 **No Unauthorized Copying.** Except for the rights expressly granted herein, Buyer shall not make, or allow others to make, copies or media translations of Software or Documentation, in whole or in part, without EMC's prior written approval, and all such copies and media translations shall include EMC's copyright, trade secret or other proprietary notices.
- 13.10 **Data and Information.** Portions of data and information supplied by EMC relating to Products are proprietary and Buyer shall abide by any proprietary markings on the same. EMC retains for itself exclusively all proprietary rights (including manufacturing rights) in and to all designs, specifications, engineering

details and other data and information pertaining to material provided or offered to Buyer, and to all discoveries, inventions, patent rights, products and all other property rights arising out of work or Services performed by EMC solely or jointly with Buyer, including without limitation to rights relating to improvements or modifications to Products. A copyright notice on any data does not by itself constitute or evidence a publication or public disclosure.

14. Indemnity and Limit of Liability

- 14.1 **Indemnification by Buyer.** Buyer shall, at its expense, defend, indemnify and hold EMC and EMC Affiliates harmless against any third-party claim arising out of or relating to any acts or omissions of Buyer and/or its Resellers. The foregoing obligation is subject to the following: EMC (A) notifies Buyer promptly in writing of such claim (but late notice shall excuse Buyer's obligations in this Section only to the extent the lateness itself prejudiced Buyer's ability to fulfil its obligations); (B) grants Buyer sole control over the defence and settlement thereof; and (C) reasonably cooperates in response to a Buyer request for assistance. When settling or compromising any claim, Buyer shall not, without EMC's written approval, make any admissions of fact that expose EMC to the imposition of damages or other claims that are not covered by this indemnity.
- 14.2 **Limitation on Direct Damages.** EXCEPT FOR BUYER'S OBLIGATION TO PAY FOR PRODUCTS AND SERVICES AND BUYER'S VIOLATION OF THE RESTRICTIONS ON USE OF PRODUCTS, SERVICES, OR SERVICES SOFTWARE OR VIOLATION OF EMC'S INTELLECTUAL PROPERTY RIGHTS, EMC'S AND ITS SUPPLIERS' TOTAL LIABILITY AND BUYER'S SOLE AND EXCLUSIVE REMEDY FOR ANY CLAIM OF ANY TYPE WHATSOEVER, ARISING OUT OF OR RELATED TO THIS AGREEMENT, A QUOTE OR PURCHASE ORDER, OR ANY PRODUCT, SERVICE, SERVICES SOFTWARE PROVIDED HEREUNDER, SHALL BE LIMITED TO PROVEN DIRECT DAMAGES CAUSED BY EMC'S SOLE NEGLIGENCE IN AN AMOUNT NOT TO EXCEED (A) US\$1,000,000.00 FOR DAMAGE TO REAL OR TANGIBLE PERSONAL PROPERTY; AND (B) THE AMOUNT PAID BY BUYER TO EMC DURING THE TWELVE MONTHS BEFORE THE DATE THAT THE CLAIM AROSE FOR THE PRODUCT, SERVICES, OR BOTH THAT ARE THE SUBJECT OF THE CLAIM, BUT EXCLUDING AMOUNTS RECEIVED AS REIMBURSEMENT OF EXPENSES OR PAYMENT OF TAXES.
- 14.3 **No Indirect Damages.** EXCEPT FOR BUYER'S PAYMENT OBLIGATIONS AND VIOLATION OF EMC'S INTELLECTUAL PROPERTY RIGHTS, NEITHER BUYER NOR EMC (OR ITS SUPPLIERS) SHALL HAVE LIABILITY TO THE OTHER FOR ANY SPECIAL, CONSEQUENTIAL, EXEMPLARY, PUNITIVE, INCIDENTAL, OR INDIRECT DAMAGES, OR FOR LOSS OF PROFITS, REVENUES, DATA OR USE, OR FOR PROCUREMENT OF SUBSTITUTE PRODUCTS OR SERVICES.
- 14.4 **DISCLAIMER OF END USER(S) DAMAGES.** IN NO EVENT WILL EMC AND ITS SUPPLIERS BE LIABLE TO RESELLER(S), END USER(S) OR OTHER THIRD PARTIES FOR ANY DAMAGES, INCLUDING, BUT NOT LIMITED TO (A) DAMAGES CAUSED BY OR ARISING OUT OF BUYER'S FAILURE TO PERFORM ITS COVENANTS AND RESPONSIBILITIES, WHETHER BY REASON OF EMC'S ALLEGED NEGLIGENCE OR OTHERWISE; (B) DAMAGES CAUSED BY REPAIRS OR ALTERATIONS TO PRODUCT DONE WITHOUT EMC'S WRITTEN APPROVAL; OR (C) DAMAGES DUE TO PRODUCT DETERIORATION DURING PERIODS OF STORAGE BY BUYER, RESELLER OR ANY END USER.
- 14.5 **Basis of the Bargain; Failure of Essential Purpose.** The parties acknowledge that EMC has set its prices and entered into this Agreement in reliance upon the limitations and exclusions of liability and the disclaimers of warranties and damages set forth herein, and that the same form an essential basis of the bargain between the parties. The parties agree that the limitations and exclusions of liability and disclaimers specified in this Agreement will survive and apply even if there is a failure of the essential purpose of any limited remedy, and regardless whether a party has been advised of the possibility of the liabilities.

15. Confidentiality

- 15.1 **"Confidential Information"** is any information, technical data, or know-how furnished, whether in written, oral, electronic, website-based, or other form, by the discloser to the recipient that: (i) is marked, accompanied, or supported by documents clearly and conspicuously designating the documents as "confidential", "internal use", or the equivalent; (ii) is identified by the discloser as confidential before, during, or promptly after the presentation or communication; or (iii) should reasonably be known by recipient to be confidential. This Agreement imposes no obligation upon a recipient with respect to information designated as confidential which: (a) the recipient can demonstrate was already in its possession before receipt from the discloser; (b) is or becomes publicly available through no fault of the recipient or its Representatives (defined below); (c) is rightfully received by the recipient from a third party who has no duty of confidentiality; (d) is disclosed by the discloser to a third party without a duty of confidentiality on the third party; or (e) is independently developed by the recipient without a breach of the Agreement. If a recipient is required by a government body or court of law to disclose Confidential Information, to the extent permitted by law, the recipient agrees to give the discloser reasonable advance notice so that the discloser may contest the disclosure or seek a protective order. Recipient will use Confidential Information only for the purpose of and in connection with the evaluation of a potential, or continuation of, a business transaction or relationship between the parties. Recipient may disclose Confidential Information to its directors, officers, employees, and employees of its affiliates, as well as its and its affiliates' contractors, advisors, and agents, so long as those individuals have a need to know in their work for recipient in furtherance of the potential or continued business transaction or relationship, and are bound by obligations of confidentiality at least as restrictive as those imposed on recipient in this Agreement (collectively, "**Representatives**"). Recipient is fully liable for any breach of this Agreement by its Representatives. Recipient will use the same degree of care, but no less than reasonable care, as the recipient uses with respect to its own similar information to protect the Confidential Information. Recipient may only disclose Confidential Information as authorized by this Agreement. The terms of this Agreement do not restrict the right of recipient to independently design, develop, acquire, market, service, or otherwise deal in, directly or indirectly, products or services competitive with those of the discloser so long as the recipient does not use any of the discloser's Confidential Information for those activities. Unless the parties otherwise agree in writing, a recipient's duty to protect Confidential Information expires three years from the date of disclosure. However, subject to the terms of this Section, the obligation to protect technical information about EMC's current products and services and all information about possible unreleased products or services never expires. Upon the discloser's written request, recipient will promptly return or destroy all Confidential Information received from the discloser, together with all copies. Notwithstanding the foregoing, recipient's professional advisors (e.g., lawyers and accountants) may retain in confidence one file copy of their respective work papers and final reports in accordance with their professional and ethical obligations.

16. General Provisions

- 16.1 **Entire Agreement.** This Agreement, including the Exhibits hereto and online terms referenced in the Agreement, and EMC's quote and Buyer's purchase order: (i) comprise the complete statement of the agreement of the parties with regard to its subject matter and (ii) may be modified only in a writing signed by Buyer and EMC. Any item, service or support furnished by EMC in connection with this Agreement, although not specifically identified herein, will be covered by this Agreement, unless specifically covered by some other written agreement between the parties. If a particular Product is provided with a "clickwrap" agreement included as part of the installation and/or download process, or a "shrinkwrap" agreement included in the packaging for the Product, the terms of such clickwrap or shrinkwrap agreement shall prevail if it conflicts with the terms of this Agreement. Each Service Agreement will be interpreted independent of any other Service Agreement. If there is a conflict between any Service Agreement and the Agreement, the terms of the Service Agreement will take precedence. No party is relying upon the representations of statements of the other that are not fully expressed in this Agreement, and each party expressly disclaims reliance upon any representations or statements not expressly set forth in this Agreement. Any claims by any party of fraud in the inducement of this Agreement or any EMC quote or Buyer purchase order based on any statements, representations, understandings, or omissions, whether oral or written, that are not fully expressed in this Agreement or the applicable EMC quote are expressly waived and released. Cloud-type

services, such as software-as-a-service, storage-as-a-service, and the like, that Buyer orders from EMC are provided pursuant to the Cloud Services Terms of Services located at www.dell.com/dellemcloudterms. The attached Exhibits are incorporated into this Agreement:

- Exhibit A – OEM Support Schedule
 - Addendum A-1 – Support Services Exhibit
- Exhibit B – Minimum Terms of End User License
- Exhibit C – Professional Services Agreement

- 16.2 **Notices.** Any notices under this Agreement shall be in writing.
- 16.3 **Marketing.** Buyer agrees that EMC may, in its sole discretion, create and issue any press release, analyst briefing, sales collateral, advertising material, website posting, social media correspondence and/or any other public release, whether electronic or otherwise, (“**Marketing Communications**”) regarding Buyer’s use of Products in the Marketed System or Buyer’s use of EMC Services, or both. Buyer shall provide EMC with use of its logo(s), brand name(s), and high resolution images of the Marketed System for inclusion in any such Marketing Communications. Further, Buyer agrees to speak with analysts and press about why EMC Products or Services were selected for the Marketed System, participate in case studies as requested by EMC and to act as a public customer reference for EMC.
- 16.4 **Assignment.** Buyer may not assign the Agreement, an EMC quote, or Buyer’s purchase order, either in whole or in part, or assign any rights or obligations under this Agreement, an EMC quote or a purchase order, or delegate any performance, without the prior written consent of EMC (except an assignment of Buyer’s purchase order to Dell Financial Services LLC (“DFS”) or a local DFS affiliate, does not require consent), and any attempted assignment or delegation without such consent will be void. Even if EMC consents to an assignment or delegation, Buyer remains responsible for all obligations to EMC under the Agreement, an EMC quote, or a Buyer purchase order that Buyer incurred prior to the effective date of the assignment or delegation. EMC may use third parties, including EMC Affiliates and qualified subcontractors, to provide Services to Buyer, but EMC remains responsible to Buyer for the performance of those Services. This Agreement will bind and inure to the benefit of each party’s successors and permitted assigns.
- 16.5 **Survival.** All provisions relating to protection of Confidential Information, payment, records and audit, indemnification, warranty, and liability, and all rights of action accruing prior to termination, along with any other provision of the Agreement that expressly or by their nature and context is intended to survive, will survive termination of this Agreement.
- 16.6 **Governing Law.** This Agreement shall be governed by the laws of the State of Texas, United States of America. The Parties irrevocably agree to submit to the jurisdiction of ordinary courts in and for Travis or Williamson County, Texas, and further waive any other venue or jurisdiction as they may be entitled to by reason of their present or future domicile. The United Nations Convention on Contracts for the International Sale of Goods shall not be applicable.
- 16.7 **Export Control.** The Products and Services provided under this Agreement are subject to governmental restrictions on exports from the U.S.; restrictions on exports from other countries; disclosures of technologies to foreign persons; exports of derivative products thereof; and the importation and/or use of such Products, services and Support to/in countries outside of the United States (collectively, “**Export Laws**”), including without limitation the Export Administration Regulations of the U.S. Department of Commerce, the sanctions regulations of the U.S. Department of the Treasury or the U.S. Government, and the International Traffic in Arms Regulations of the U.S. Department of State, as applicable. Diversion contrary to Export Laws is expressly prohibited. Buyer shall comply, at its sole expense, with all applicable Export Laws and the Foreign Corrupt Practices Act as amended by the International Anti-bribery and Fair Competition Act of 1998, including without limitation all licensing, authorization, documentation and reporting requirements relating to Buyer’s import, use or export of the Products or derivative products thereof, services and Support. Buyer represents that it is not a “Restricted Party”. The term “Restricted Party” includes any person or entity: (A) located in or a national of Cuba, Iran, North Korea, Sudan, Syria, Crimea, or any other countries that may, from time to time, become subject to U.S. export control status for anti-terrorism reasons or with which U.S. persons are generally prohibited from engaging in financial transactions; (B) on the U.S. Department of Commerce Denied Person’s List, Entity List, or Unverified List; U.S. Department of the Treasury list of Specially Designated Nationals and Blocked Persons; or U.S. Department of State List of Debarred Parties; (C) engaged in activities involving nuclear materials or weapons, missile or rocket technologies, or proliferation of chemical or biological weapons; or (D) affiliated with or a part of any non-U.S. military organization. Buyer shall not sell, resell, loan, disclose, or otherwise transfer Products or Services to any Restricted Person. Buyer shall impose equivalent conditions on any Buyer customer, Reseller, End Users, sublicensees or other persons to whom Products and/or services are resold. Buyer shall indemnify, defend and hold EMC and EMC Affiliates harmless from any claim against EMC or EMC Affiliates arising from or related to Buyer’s violation or alleged violation of the Export Laws. Buyer shall not, directly or indirectly, import, export, re-export or tranship Products, services, or technical information in violation of any Export Laws. If Products are resold in violation of Export Laws, EMC shall not be obligated to provide any warranty service or technical support for such Products.
- 16.8 **Other Applicable Laws.** Without limiting anything contained herein, Buyer represents, warrants and covenants to EMC that Buyer will comply with all applicable laws and regulations.
- 16.9 **Audit.** Upon fifteen (15) days prior written notice to Buyer, EMC may, at its own expense, appoint an independent auditor to audit and examine such books and records of Buyer as are necessary to verify compliance with this Agreement at Buyer’s offices during normal business hours. Such audit may be made no more often than once every twelve (12) month period; provided that if any audit reveals non-compliance with this Agreement, then EMC may conduct a second audit within the same 12-month period. In the event that any audit reveals an underpayment by Buyer, Buyer agrees to promptly pay EMC the amount of such underpayment. The auditors will be subject to a mutually agreed upon confidentiality agreement that is consistent with the terms of **Section 15**. The entire cost of such audit shall be borne by EMC, unless the audit reveals an underpayment equal to or in excess of five percent (5%), in which case Buyer shall pay the cost of the audit. This audit provision shall survive expiration or termination of the Agreement for a period of five (5) years.
- 16.10 **Waiver or Modification.** Except as otherwise set forth herein, any waiver, amendment, supplement or modification of this Agreement will not be effective unless set forth in writing and signed by an authorized representative of both parties. Any such waivers, amendments, supplements and modifications will be deemed a part of this Agreement as if incorporated herein. The failure of either party to exercise any of its rights under this Agreement will not be deemed a waiver or forfeiture of such rights.
- 16.11 **Force Majeure.** Neither party will be liable for any failure or delay in performance of its obligations hereunder, other than payment of amounts due, by reason of any event or circumstance beyond its reasonable control (“**force majeure**”), including without limitation acts of God, acts of government, war, fire, flood, epidemic, or shortage or failure of suppliers; provided, however, that for any force majeure extending for more than sixty (60) days, the party not claiming the existence of a force majeure will have the right to give notice pursuant to Section 11.3, and terminate this Agreement without penalty.
- 16.12 **Independent Contractors.** The Parties to this Agreement are independent contractors and that it will not represent itself as an agent or legal representative of the other. Nothing in this Agreement will be construed to create a partnership, joint venture or agency relationship.
- 16.13 **Severability.** The invalidity or unenforceability of one or more provisions of this Agreement will not affect the validity or enforceability of any of the other provisions hereof, and this Agreement will be construed in all respects as if such invalid or unenforceable provision(s) were omitted.
- 16.14 **No Third-Party Beneficiaries.** This Agreement is solely between EMC and Buyer and does not create rights in third parties; there are no third-party beneficiaries to this Agreement.
- 16.15 **Disposal of Electronic Waste.** Buyer shall comply with all applicable laws and regulations regarding disposal of electronic waste, and all non-functional and

functional Products of which Buyer chooses to dispose (collectively "Waste Products") shall be done in accordance with applicable law. Buyer will use approved e-waste vendors in the disposal of Waste Products, will maintain an audit process on those vendors and will require certification of vendors at such time as industry certification programs are available. As part of Buyer's disposal process for Waste Products, including disk drives and solid-state drives, Software (except firmware) and data will be wiped using a process no less stringent than the standards dictated by the U.S. Department of Defence and applicable law. Non-functional drives and functional drives that Buyer chooses to destroy will be destroyed by shredding or otherwise destroying the devices in a controlled, secure environment. For all Waste Products that are disposed of by Buyer, EMC trademarks and trade names will be removed and/or destroyed.

16.16 **Order of Documents.** In the event of a conflict between an Exhibit and the main terms of this Agreement, the main terms of this Agreement shall prevail.

Exhibit A- OEM Support Schedule

This OEM Support Schedule (“**Exhibit A**”) supplements the Agreement between the parties and is incorporated therein. Capitalized terms not defined herein shall have the meaning given to them in the Agreement.

This Exhibit A, along with any separate, applicable agreement enabling Buyer to perform Services for EMC Products, or other applicable Dell EMC Services enablement program terms agreed to by Buyer, reflects the overall agreement of the Parties that:

Buyer will refer to the EMC Support Partner Guide, handbook or other such documentation that will set forth the support processes and operational guidelines between Buyer and EMC. Such documentation will provide the Buyer information on installation, warranty and maintenance obligations, service call and call escalation procedures, service event tracking process, training, and other information as required to enable the Buyer to fulfil their support obligations, if applicable;

- (a) Buyer’s Support arrangement with each End User will be set forth in a separate agreement between Buyer and End User;
- (b) Buyer will typically be the initial point of contact for each End User requesting Support;
- (c) Subject to Buyer’s payment of EMC Support Fees and Buyer’s compliance with the terms of the Agreement, EMC shall use good faith efforts to provide Buyer with Parts, Technical Support, subsequent Software Releases and Maintenance Aids, in a manner specified herein; and
- (d) EMC may, upon request of Buyer, and subject to Buyer’s compliance with the terms of the Agreement, provide Support directly to End User(s) in place of Buyer acting as Buyer’s subcontractor provided that Buyer’s agreement with End User for Support includes terms that are substantially similar to the corresponding EMC Support Services terms set forth in Addendum A-1.

1. Definitions

- 1.1 “**EMC Service Area**” means a location that is within (i) 160 km from an EMC service location in Latin America and (ii) the country in which the Installation Site is located.
- 1.2 “**Parts**” means each individual hardware component in Equipment supplied by EMC to Buyer, or Buyer’s End User, or listed in the then current EMC parts listing, a copy of which shall be made available to Buyer and periodically updated by EMC; shall be new or repaired like-new parts (provided that repaired like-new parts shall not evidence substantially diminished performance of the Equipment in which it is properly installed); and, when provided as a replacement for a component returned by Buyer to EMC in accordance with EMC’s standard returns process shall either be the same as, or interchangeable with, the component sent to EMC.
- 1.3 “**Problem**” means a failure by a Product to perform in substantial conformance with the applicable EMC published specifications.
- 1.4 “**Software Releases**” means any subsequent version of a specific Software that is made generally available by EMC after initial delivery of the Software at no separate or additional charge and such Software is the subject of a then current and valid EMC warranty or a post-warranty Product Maintenance contract with EMC but does not mean a new Software.
- 1.5 “**Level 0 Technical Support**” means the Technical Support offering made available to End Users by personnel located at support centres and in the field. The Level 0 Technical Support activities shall include but not be limited to: (i) initial point of contact for End User(s) regarding any Support requests or related inquiries; (ii) isolation and identification of Problems using tools provided by EMC; and (iii) escalation of Problems, as applicable, to the Level 1 Technical Support organization for Problem resolution. Level 0 Technical Support personnel shall use their generally acquired education, experience and specific knowledge resources made available from EMC to provide Level 0 Technical Support.
- 1.6 “**Level 1 Technical Support**” means the Technical Support offering made available to End User(s) by support personnel located at support centres and in the field. Such Level 1 Technical Support activities shall include, but not be limited to: (i) provision of general product information (pre-sales and post-sales) about the Products and processes relating to configuration, installation, updates and feature set support; (ii) regular Error resolution status reports to End User(s); (iii) resolution of Errors previously identified and addressed through documentation available through EMC Web Support; (iv) basic support on the standard protocols and features of Products; and (v) collection of relevant Error determination information for escalation to Level 2 Technical Support. Level 1 Technical Support personnel shall use their generally acquired education, experience and specific knowledge resources made available from EMC to resolve the Problem by working directly with the impacted End User(s), dispatch appropriately trained personnel to the Installation Site for Problem investigation or resolution or escalate the Problem to the Level 2 Technical Support team.
- 1.7 “**Level 2 Technical Support**” means the Technical Support made available to End-User(s) by support personnel located at support centres and in the field. Such Level 2 Technical Support activities shall include, but not be limited to: (i) managing configuration Problems through troubleshooting; (ii) determination and resolution of most Equipment and Software Problems; (iii) in the event a Problem requires simulation steps for resolution, doing the initial Problem isolation and re-creation on a best efforts basis to determine if the apparent Problem resides with the Equipment or Software; (iv) defining an action plan for Problem troubleshooting/resolution; (v) providing advanced support on all Equipment and Software protocols and features; (vi) having the ability to analyse and diagnose Problems remotely to the extent possible using available tools; (vii) providing EMC with known End User environment variables for assistance in parallel reproduction of a Problem; and (viii) working with Level 3 Technical Support to resolve all Problems escalated by Level 2 Technical Support. Level 2 Technical Support personnel shall use their generally acquired education and experience and the specific knowledge resources made available from EMC to resolve the Problem by (i) using all knowledge resources to expertly address field installation and break/fix issues; (ii) performing iterative procedures with field service personnel to understand and correct Problems; and (iii) resolving the Problems directly or, for those Problems that have not been resolved by Level 2 Technical Support personnel, escalating Problems to Level 3 Technical Support personnel for assistance. Escalations shall include all knowledgebase searches tried as well as a transferable zip file containing all applicable logs, the H/W platform and base code revision of the array and steps used to recreate the problem.
- 1.8 “**Level 3 Technical Support**” shall be delivered by EMC and means the same as Level 2 Technical Support but with the additional capabilities of (i) performing engineering diagnostic activities such as resolving Problems in respect of which (a) no documentation exists within EMC’s knowledgebase, websites or other format; or (b) documentation does exist but does not resolve the Problem; (ii) collaborating with EMC’s engineering department on Problem re-creation and root cause analysis; (iii) resolving Problems associated with an identified bug that is not yet published on EMC’s website; (iv) fixing and generating clear and concise documented End User performable workarounds; (v) validating that all proposed Problem resolutions are tested prior to release to the Level 2 Technical Support personnel; (vi) providing access to Level 2 Technical Support for tracking Problem descriptions, bug fixes, case status, and case root cause analysis; and (vii) working with authorized Level 2 Technical Support personnel to supply additional Problem resolution information that may not be available on EMC’s website.

At EMC’s discretion, Level 3 Technical Support personnel may be available to travel to Installation Sites. If EMC and Buyer mutually agree that such a visit is warranted, EMC shall not charge Buyer or Buyer’s End User therefore. If EMC does not agree that such a visit is necessary but conducts such a visit at the request of Buyer, such visit shall be subject to EMC’s then current time and materials terms, conditions and pricing. Buyer shall accompany EMC on all on-

site visits to Installation sites without charge to EMC.

- 1.9 “Installation Site(s)” means the ship-to address or other location identified on the EMC quote, approved Sales Order or other document prepared by EMC as the site of installation and/or use of a Product, or a subsequent location provided by Buyer.

2. Product Installation Obligations

- 2.1 Installation Services – Except for those Products which EMC indicates in its published specifications and/or Product Notice as “customer installable”, Buyer shall offer to provide installation services for the Products (as described in this **Section 2.1** and **Section 2.3** below) to End Users or subcontract these services to EMC, if agreed to by EMC and located within an EMC Service Area. Installation services shall be performed at the Installation Site and shall include set-up, connection, Equipment verification and any pre-production or acceptance testing required by the End Users. Installations are to be performed only by EMC, employees of Buyer, or a pre-approved Buyer designee, who have been trained and certified by EMC’s Customer Service and Training organizations on the Products being installed. Installation services are to be performed in accordance with EMC site preparation and installation procedures and other related documents or procedures made available by EMC.

- 2.2 Installation Fees – Should Buyer request and EMC elect, in its sole discretion, to provide installation assistance to Buyer, EMC shall invoice Buyer for such assistance and related expenses in accordance with EMC’s then current terms, conditions, pricing and policies. Payment of such invoice(s) shall be due within thirty (30) days after the date of the invoice. Except for those instances where EMC specifically agrees in writing to provide installation services, EMC shall have no obligation to provide any installation or on-site assistance to Buyer for the Products identified in this Agreement.

- 2.3 Installation Obligations – In providing the installation services described in **Section 2.1** above, the providing party shall:

- (a) use only EMC trained personnel that have successfully completed the applicable EMC training courses;
- (b) follow all of the applicable guidelines in the EMC Support Partner Guide (“**Partner Guide**”) which shall define the operational relationship between Buyer and EMC including, but not limited to, points of contact, installation and warranty service notification, service call flow, call escalation, service event tracking process, spare parts logistics and training;
- (c) notify EMC of the final installation location of the product within 10 days of installation. Notification can be accomplished by using the product’s registration utility or the notification tool on the EMC Services Partner web site;
- (d) be responsible for the End User’s host system configuration requirements and installation/implementation of the relevant Software; and
- (e) use all Parts, Software Releases, and Problem resolutions provided hereunder solely to provide support to End Users for the Products specified above which are obtained by Buyer from EMC under this Exhibit A.

- 2.4 Availability of Installation Related Remote EMC Technical Support – To assist Buyer in the resolution of Problems that arise in Buyer’s performance of its installation obligations, EMC shall make the following available by live chat, web portal or telephone, during EMC’s normal business hours in the applicable EMC location, to authorized members of Buyer’s centralized personnel, as more specifically described in the Partner Guide: (i) technical support from personnel with knowledge of Products; and (ii) diagnostic and problem re-creation resources of EMC’s Development Engineering Department, when appropriate.

3. Buyer’s Ongoing Support Obligations

- 3.1 Pre-Staging of Products – In the event that the Buyer’s Marketed System requires a centralized staging process prior to installation at the End User site, such arrangement, training requirements and associated charges will be detailed in the Partner Guide. If applicable and once the integrated solution is complete, the Buyer is responsible to ensure that each Marketed Solution is re-packaged and re-shipped, at the Buyer’s expense, to the End User in the same manner and condition in which the Product(s) was originally received from EMC.

- 3.2 Support Services – During the warranty period provided by Buyer to its End User(s), and during any subsequent, post-warranty maintenance term between Buyer and its End User(s), Buyer, at a minimum, shall provide the services set forth in Section 1 above and the Partner Guide.

- (a) Within An EMC Service Area – Buyer’s written arrangement with the End User for Support shall: (i) contain warranty and maintenance terms that are substantially similar to EMC’s Support Services terms as contained in Addendum A-1; (ii) clearly set forth the Buyer supplied warranty for any products provided by Buyer that are not EMC Products and indicates that Buyer has sole responsibility for such portions; and (iii) provide that if Product Maintenance has lapsed, at Buyer’s or End User’s request, all service delivered by EMC shall be provided and charged for on a “per event” basis, or on a re-activated, continuous basis after a certification is performed at EMC’s then current rates and/or a Software reinstatement fee.
- (b) Outside An EMC Service Area – Except to the extent that EMC furnished Support is independent of the Equipment’s location, EMC shall have no obligation to provide any installation, on-site services, warranty, Support services or to offer any post-warranty support to End Users located outside an EMC Service Area notwithstanding anything to the contrary. Without limiting the foregoing, the following shall apply for all Products to be installed or located outside of an EMC Service Area:
 - (i) Buyer shall not offer EMC furnished Support to End Users unless otherwise agreed in advance by EMC in writing. Buyer shall have sole responsibility for providing End User with Buyer’s own warranty and post-warranty support for such Products and fulfilling its obligations thereunder. If EMC should be contacted directly by the End User, EMC shall refer the End User back to Buyer and Buyer shall thereafter have full responsibility for responding. Buyer shall train all Buyer personnel delivering Buyer’s own warranty and post-warranty support for Products outside an EMC Service Area as specified in this Exhibit A and as otherwise instructed by EMC; and
 - (ii) If EMC determines that Support outside an EMC Service Area is available from an EMC servicing partner, EMC may, in its sole discretion, contract directly with the servicing partner to provide Support if there are no additional costs to EMC. If additional costs would be incurred by EMC for such Support, EMC will offer Buyer the option of paying additional costs or contracting directly with the EMC servicing partner for such Support. Support outside an EMC Service Area would in most cases require Buyer to purchase spare parts from EMC.
- (c) Subcontracting of Buyer’s Support Obligations to a Third Party – Buyer may subcontract its obligation to provide support only to those third-party subcontractors that have been pre-approved by EMC in writing, in its sole discretion, and have received comparable training from EMC. Buyer shall be fully responsible to EMC for any violation or breach by a subcontractor of any Buyer Support obligations or other Buyer obligations contained in this Agreement.

- 3.3 Staffing & Training – Buyer and EMC shall determine the initial staffing levels of trained Buyer personnel for field locations, integration/staging site(s) and centralized support centre(s) to enable Buyer to provide support to its End Users. If Buyer personnel require training, Buyer and EMC shall enter into a separate agreement to identify the specific training to be provided, along with pricing and other terms generally included by EMC in its training related contracts. The Parties shall periodically meet to re-examine the staffing and training levels in light of the current and future business environment and Products.

- 3.4 Business Review - EMC and Buyer shall formally review the results and records of Buyer and EMC Technical Support including Support Centre and End-User satisfaction issues that resulted in increased time to resolution, Parts transactions (as applicable), product and feature updates, quality issues, call escalation metrics, training conducted under the terms of the Agreement and all other items that the parties agree are relevant. As part of this review, Buyer shall allow EMC to (i) audit a sample of its End Users to determine whether End User satisfaction results are similar to those obtained when EMC provides service directly; and (ii) assess the skills and competencies of Buyer’s personnel. Failure by Buyer’s personnel to achieve results which are satisfactory to EMC shall be deemed a default under the Agreement and EMC shall have the option of increasing the EMC Technical Support Fees, terminating this Exhibit

A or terminating the Agreement.

3.5 **Support and Escalation Process** - For each Problem that the Technical Support personnel determines is related to Products obtained by Buyer from EMC hereunder, typically Buyer shall first utilize Buyer's Level 0 Technical Support organization unless otherwise specified in a separate agreement between Buyer and EMC. Thereafter, the escalation process shall be from the Level 0 Technical Support team to Level 1 Technical Support, then to Level 2 Technical Support, and finally to EMC Level 3 Technical Support all in accordance with the criteria set forth in Section 1.0 above.

3.6 **Parts and Technical Support Usage** - All Parts and EMC Technical Support provided hereunder shall be used solely for the delivery of Support for Equipment, Parts, and Software (including all Software Releases related thereto) obtained by Buyer from EMC under this Exhibit A to the Agreement.

3.7 **Returns Or Replacements** - Buyer agrees for itself, and shall take all steps necessary to ensure that Buyer's End-User(s) agree, that all Buyer and/or End User rights in replaced Parts shall terminate immediately upon replacement. All replaced Parts are deemed to be the property of EMC and, except as otherwise specifically stated in the Agreement, such Parts shall be returned to EMC in the manner specified by EMC. If such replaced Parts are not so returned, Buyer shall pay EMC's then current spare parts price therefore in accordance with the payment terms specified in the Agreement.

4. **Exclusive Obligations**

4.1 In no event shall EMC be obligated to provide Support beyond the scope set forth in this Exhibit A unless otherwise agreed in advance by EMC in writing. The resale and sublicensing of Products by Buyer to an End-User in accordance with this Agreement does not extinguish EMC's obligations to Buyer as described in this Exhibit A.

5. **Product Maintenance Ordered By Buyer**

5.1 **Pricing for Product Maintenance** - Buyer may order Product Maintenance at EMC's prices in effect at the time of the purchase order less any discount Buyer may be entitled. EMC will provide Product Maintenance to the End User, but the agreement for Product Maintenance shall be between Buyer and EMC. Buyer may not create any obligations with the End User on behalf of or in the name of EMC. Buyer's order for Product Maintenance must contain the following information: (i) support level (identifying the level of service ordered); (ii) Product description; (iii) serial number; (iv) End-User name and Installation Site; (v) term of service; (vi) start date of term; and (vii) charges. EMC shall charge Buyer, and Buyer shall pay EMC in accordance with the payment terms specified in the Agreement, EMC's then EMC Technical Support prices in effect at the time of the order less any discount Buyer may be entitled, if any ("EMC Technical Support Fees").

Buyer shall order Maintenance services from EMC for its End Users in the event that any of the following applies:

- (a) Buyer charged its own End User's for such Maintenance, or
- (b) Buyer's distributors or resellers charged the End User for and paid Buyer for Maintenance
- (c) Buyer's service partner or the End User asks EMC for support for the Product(s)
- (d) To be eligible to receive bug fixes and updates.

5.2 **Renewal of Product Maintenance** - EMC shall provide Buyer with one-hundred and twenty (120) days' notice prior to the end of a warranty period or Product Maintenance term, as applicable. If Buyer has not placed an order for Product Maintenance within sixty (60) days after such notice, EMC shall have the right to solicit the End User directly for the End User's Product Maintenance business.

6. **Field Change Orders**

6.1 **Equipment Revisions and Software Releases** - When so determined by EMC, EMC shall provide Buyer or End User with the applicable Equipment, Parts or Software Releases needed for safety related or other such Field Change Orders designated by EMC as "mandatory". Buyer shall provide EMC with a purchase order to enable the EMC to bill the Buyer for the FCO material. Buyer shall be credited back the cost of the FCO material once EMC has received the replaced parts back into EMC inventory.

6.2 Where Buyer is responsible for onsite support delivery, Buyer shall promptly implement/install such Field Change Orders with its End Users at no charge to EMC. EMC reserves the right to increase its charges for installation assistance and/or EMC Technical Support for Products in which Buyer has failed to implement such Field Change Orders. Buyer shall keep accurate records of change activity for periodic review and audit by EMC for a minimum period of ten (10) years.

7. **Parts Availability Options**

7.1 **Non-EMC Parts; Parts Pricing** - Buyer acknowledges that EMC's fees and any other pricing contained in this Exhibit A for Parts and EMC Technical Support are based on Buyer's use of Parts obtained directly from EMC. The quality and reliability of any parts obtained from other sources is not known. EMC shall have no obligation to provide any EMC Technical Support or installation services for any Problems that result from parts obtained from other sources. EMC reserves the right to terminate its obligations under this Exhibit A and/or to assess charges on Buyer in accordance with EMC's then current practices should EMC learn that it provided installation assistance or EMC Technical Support for problems that involved parts obtained from other sources. Buyer shall pay such assessed charges in accordance with the payment terms specified in the Agreement.

8. **Maintenance Aids and Maintenance Related Diagnostics and Tools**

8.1 **Ownership and License** - Maintenance Aids shall also include any maintenance related tools and diagnostics made available to Buyer by EMC to assist Buyer in performing onsite support. Maintenance Aids are owned by or licensed to EMC. Maintenance Aids may be placed, at EMC's discretion, at the Installation Site for use solely by EMC, EMC designated personnel or Buyer subject to Buyer's compliance with the terms of this Exhibit A and the Agreement. EMC grants Buyer a limited, personal, revocable, non-transferable, non-assignable, and non-sublicensable right to use the Maintenance Aids installed by EMC at plant of manufacture, and any other Maintenance Aids to which EMC provides Buyer with access, solely for the purpose of providing Buyer Support to its End Users during the period for which Buyer has paid, or agreed to pay, EMC the applicable EMC Technical Support Fees. If such EMC Technical Support Fees are not paid when due or in the event that Buyer violates the terms of this Exhibit A or the Agreement, such license shall automatically terminate and Buyer shall make prompt arrangements for EMC to disable or remove the Maintenance Aids from the affected Equipment and/or return to EMC or discontinue accessing and using all maintenance related tools and diagnostics previously provided to Buyer. EMC is authorized, upon the conclusion of the EMC Technical Support or at any other time, upon reasonable notice to Buyer, to enter the Installation Site, or to use remote means, to remove and/or disable Maintenance Aids and Buyer shall reasonably cooperate in this effort. Except as expressly stated in this Section, Buyer shall have no rights in and shall make no use of Maintenance Aids whatsoever. Buyer shall not copy Maintenance Aids, shall protect them from disclosure to anyone else by use of the same standard of care as Buyer uses to protect its own information of a similar nature and importance, and no less than reasonable care, and shall not disclose such to any third party, including but not limited to Buyer's subcontractors, unless EMC, in its sole discretion, pre-approves disclosure of Maintenance Aids to Buyer's subcontractors in writing and so long as such subcontractors agree in writing with Buyer to comply with the requirements of this Exhibit A and Buyer shall be fully responsible to EMC for any misuse thereof. EMC may grant such access to those designated personnel of Buyer who have completed EMC required training and to whom EMC has assigned any applicable user names and passwords necessary to use such tools. EMC may change such user names, passwords and security privileges from time to time. Buyer will promptly notify EMC of the termination or reassignment of any employee, contractor, subcontractor or agent who has been granted access to such tools.

8.2 EMC (INCLUDING ITS SUPPLIERS) PROVIDES MAINTENANCE AIDS "AS IS" AND MAKES NO OTHER EXPRESS OR IMPLIED WARRANTIES, WRITTEN OR ORAL, AND ALL OTHER WARRANTIES ARE SPECIFICALLY EXCLUDED, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE AND NON-INFRINGEMENT, AND ANY WARRANTY

ARISING BY STATUTE, OPERATION OF LAW, COURSE OF DEALING OR PERFORMANCE, OR USAGE OF TRADE.

- 8.3 Buyer acknowledges that improper use of Maintenance Aids may cause damage to Buyer, End Users and/or EMC. Buyer shall defend, indemnify and hold EMC harmless from and against any liabilities, damages, costs, expenses and settlement amounts related to third party claims alleging that Buyer's acts or omissions related to use of the Maintenance Aids caused such third-party damages. Any limitation of or cap on damages stated in the Agreement shall not apply to the foregoing indemnity. Any services or efforts required to remedy, repair or replace Products arising out of or in connection with Buyer's misuse of Maintenance Aids are not included within the scope of EMC Technical Support or this Exhibit A. Should Buyer request and should EMC elect, in its sole discretion, to provide such services or assistance to Buyer, EMC shall invoice Buyer for such services/assistance in accordance with EMC's then current time and materials terms, conditions and pricing, and Buyer shall pay such invoices in accordance with the payment terms specified in the Agreement.
- 8.4 **Modifications and Customizations** - Promptly after the commencement of the Agreement, and thereafter on an "as needed" basis, EMC and Buyer shall arrange to make modifications and customizations to the Maintenance Aids to enable the remote support capabilities (available for certain Products) to contact Buyer instead of EMC and to enable Buyer to perform such other activities as are agreed in writing between EMC and Buyer.
- 9. EMC Technical Support Services to Buyer**
- 9.1 **General Description** – During the period(s) covered by Buyer's payment of the EMC Technical Support Fees described in Section 5.1, EMC shall make available the following EMC Technical Support to Buyer as more fully described in the Partner Guide:
- (a) Level 1 and Level 2 onsite and/or remote Technical Support, when contracted for by Buyer as set forth in the Partner Guide. EMC Level 3 Technical Support shall be provided in accordance with the escalation process set forth in Sections 1.0 and 3.5 above, in the English language, via live chat, web portal, telephone or other electronic media (with on-site visits only as specifically agreed by EMC, in its sole discretion, on a case-by-case basis for EMC Level 3 Technical Support), for the purpose of bringing the Equipment and related Parts and Software into substantial conformance with the applicable EMC published operating specifications. EMC may, at its sole discretion, remotely monitor, diagnose and test the performance and operation of and distribute bug fixes for Software; and
 - (b) Copies of subsequent Software Releases of Software, in quantities reflective of the amount of licenses purchased by Buyer from EMC, as they are made generally available by EMC provided always that EMC reserves the right to charge an additional fee for new or substantially improved functionality of features not considered by EMC (at its sole discretion) to be a subsequent Software Release of the applicable Software. Any Software Releases supplied by EMC to Buyer hereunder shall be used by Buyer only to update licenses for Software obtained by Buyer from EMC under this Exhibit A and for which Buyer has paid EMC the applicable EMC Technical Support Fees. Such Software Releases shall only be made available by Buyer pursuant to a license agreement with the applicable End-User that conforms to the requirements set forth in the Agreement. Buyer shall keep track of such Software Releases and the End Users to whom Buyer provides such Software Releases.
- 9.2 **Additional Support during Warranty Period** - During the warranty period for the applicable Hardware, EMC may also make available additional support services, such as remote and/or on-site remedial and preventative services to maintain conformance with EMC published specifications and/or access to help-line services and subsequent releases of the applicable Software. The availability and extent to which these additional services are made available for a specific Product, either as part of the warranty or as a warranty upgrade to separately chargeable maintenance, shall be made known to Buyer by such means of the Product Notice.
- 9.3 **Non-Standard Configurations** - For Products that are not configured to meet EMC's then current guidelines for technical compatibility and for connectivity to non-EMC products, EMC has the right to restrict its diagnostic and corrective procedures to those problems that originate entirely within such Products and do not arise out of or in connection with the Products' interoperability with any other non-EMC products.
- 9.4 **Time & Materials Service** – EMC shall be entitled to charge Buyer for any service, maintenance or support beyond the scope of or excluded from this Exhibit A, and Buyer shall pay any such invoices in accordance with the payment terms specified in the Agreement. Such service, maintenance or support may be made available by EMC, at its discretion, in accordance with EMC's then current terms and conditions and charges applicable thereto.
- 9.5 **Effects of Termination** – Should EMC cease to provide EMC Technical Support to Buyer, the Parties shall promptly meet (before the effective date of such cessation, if possible) and make good faith efforts to develop a transition plan to minimize the impact on End Users. Without limiting the "Survival" terms specified in the Agreement, this Section shall survive the expiration or termination of the Agreement.

Addendum A-1 - Support Services Exhibit

This Support Services Exhibit (the "Exhibit") set forth the basic provisions under which EMC makes available Support Services (as defined below) to Buyer (also referred to as "OEM") or, upon OEM's request, directly to End User in place of OEM as OEM's subcontractor subject to OEM's compliance with the provisions of Exhibit A and this Addendum A-1.

NOW, THEREFORE, in consideration of the premises and obligations contained herein, it is agreed as follows:

1. **Definitions.**
 - (a) **"End User Support Tools"** means any software or other tools made available by EMC to OEM or directly to End User to enable OEM or End User (as applicable) to perform various self-maintenance activities.
 - (b) **"Support Services"** mean services provided by EMC or its designee to OEM for the support and maintenance of standard Products.
 - (c) **"Software Release"** means any subsequent version of Software provided by EMC after initial delivery of Software but does not mean a new Product.
 - (d) **"Time and Materials Service"** means any maintenance or support service that is provided by EMC but not part of fixed-fee Support Services or other generally available service related offering from EMC using a pre-established fee, but which will be separately charged to OEM on a time and materials basis and may be made available under a separate set of Time and Materials Services Terms and Conditions.
2. **Support services.**
 - (a) **Scope of Support Services.** The contents of Support Services for each Product are set forth in the Product Notice, and unless otherwise indicated in the Product Notice, consist of (i) using commercially reasonable efforts to remedy failures of Products to perform substantially in accordance with EMC's applicable specifications; (ii) providing English-language (or, where available, local language) help line service (via live chat, web portal, telephone or other electronic media); and (iii) providing, or enabling

OEM to download, Software Releases and Documentation updates made generally available by EMC at no additional charge to other purchasers of Support Service for the applicable Product. EMC reserves the right to change the scope of the Support Services on sixty (60) days' prior written notice to OEM.

- (b) **Additional Support.** EMC reserves the right to charge for Support Services performed outside the time frames of the applicable Support Option as a Time and Materials Service. Except to the extent that Support Services are independent of the Equipment's location, EMC will have no obligation to provide Support Services with respect to Equipment that is outside the EMC Service Area. Support Services do not apply to any Software other than the current and the immediately prior Software Release. Support Services are subject to EMC's then-current "End-of-Service-Life" policy for the respective Product. EMC shall have no obligation to provide Support Services for Software problems that cannot be reproduced at EMC's facility or via remote access to OEM and/or End-User's facility (as applicable). Support Services do not include Equipment upgrades, if any, needed to utilize new features or functionality in a Software Release.
- (c) **Support Services Exclusions.** Support Services do not cover any problems that arise from (i) accident or neglect by OEM, End-User or any third party; (ii) any third party items or services with which the Product is used or other causes beyond EMC's control; (iii) installation, operation or use not in accordance with EMC's instructions or the applicable Documentation; (iv) use in an environment, in a manner or for a purpose for which the Product was not designed; (v) modification, alteration or repair by anyone other than EMC or its authorized representatives; or (vi) in case of Equipment only, causes attributable to normal wear and tear. EMC has no obligation whatsoever for Software installed or used beyond the licensed use, for Equipment which was moved from the Installation Site without EMC's consent or whose original identification marks have been altered or removed.
- (d) **Re-Instatement of Support.** If OEM wishes to re-instate support for Product that is not then currently under Support Services, then re-instatement shall be subject to certification at EMC's then current Time and Materials Service rates and conditions. Once so certified, Support Services shall commence upon payment to EMC of (i) the charge for the above described Time and Materials Service; (ii) the amount EMC would have normally charged had Support Services been in effect during the period of the lapse or discontinuation; and (iii) the charge for the next twelve (12) months of the newly commenced Support Services.

3. OEM responsibilities.

- (a) **Cooperation.** OEM shall (i) promptly notify EMC when Products fail and provide EMC with sufficient details of the failure such that the failure can be reproduced by EMC; (ii) allow EMC remote and on-site (when determined necessary by EMC) access to the Products to provide Support Services; and (iii) furnish necessary facilities (which for on-site access means suitable work space, computers, power, light, phone, internet network availability, software and equipment reasonably required by EMC), information and assistance required to provide the Support Services.
- (b) **Support Contacts.** Unless a specific number of authorized contacts are indicated in Exhibit A, this Addendum A-1 or on the Product Notice, OEM shall designate in writing a reasonable number of authorized contacts, as determined by OEM and EMC, who shall initially report problems and receive Support Services from EMC. Each OEM representative shall be familiar with OEM's and End Users' requirements and shall have the expertise and capabilities necessary to permit EMC to fulfil its obligations. A change to the authorized support contacts by OEM shall be submitted to EMC in writing.

4. Additional terms.

- (a) **Maintenance Aids and Spare Parts for Equipment.** OEM authorizes EMC to store Maintenance Aids and spare parts at the Installation Site and agrees that such are for use only by EMC authorized personnel. OEM shall not make any use thereof or authorize any third party to do so. EMC is authorized, upon the conclusion of the Support Services or at any other time, upon reasonable notice to OEM, to enter the Installation Site, or to use remote means, to remove and/or disable Maintenance Aids and spare parts and OEM shall reasonably cooperate in this effort. OEM shall obtain any approvals or consents required by its End Users to enable EMC to exercise its rights specified in this Section 4.A.
- (b) **End User Support Tools.** EMC may choose to make various End User Support Tools available to assist OEM or End User (as applicable) in performing various maintenance or support related tasks. OEM shall use, and shall ensure that End User uses, End User Support Tools only in accordance with terms under which EMC makes such available.
- (c) **Equipment Replacements and Data Security Options.** All replaced Equipment (or portions thereof) shall become the property of EMC upon OEM's or End User's receipt of the corresponding replacement, and OEM shall promptly return such replaced Equipment (or portions thereof) upon EMC's request. If such replaced Equipment is not so returned, OEM shall pay EMC's then current spare parts price therefore. OEM is responsible for removing or ensuring that End User has removed all information from any replaced parts, or any other items that OEM and/or End User releases to EMC as a trade-in or for disposal, before such are released to EMC. EMC is not responsible for any information contained on such items notwithstanding anything to the contrary. In order to assist in securing any data, OEM can request a quote from EMC for EMC's then currently available disk retention or data erasure offering.
- (d) **Proactive Product Changes.** EMC may, at its expense, implement changes to the Products upon reasonable notice to OEM (i) when such changes do not adversely affect interchangeability or performance of the Products; (ii) when EMC reasonably believes such changes are required for purposes of safety or reliability; or (iii) when EMC is required by law to do so. OEM shall give EMC, or require End-User to give EMC, reasonable access to the Products for such purpose.
- (e) **Software Releases.** Upon use of a Software Release, OEM shall, and shall ensure that its End-Users, remove and make no further use of all prior Software Releases, and protect such prior Software Releases from disclosure or use by any third party. OEM is authorized to retain a copy of each Software Release properly obtained by OEM for OEM's archive purposes and use such as a temporary back-up if the current Software Release becomes inoperable. OEM shall, and shall ensure that its End-Users, use and deploy Software Releases strictly in accordance with terms of the original license for the Software.
- (f) **Change of Equipment Location or Configuration.** OEM or End User may change the installation location or configuration of a Product that is under Support Services by EMC only after written notice to EMC. If the new location is in a different country, then such move is subject to EMC's prior written approval. OEM shall promptly notify EMC of any changes to the configuration, or movement of the Equipment by anyone other than EMC. EMC reserves the right to inspect and evaluate the changes in

configuration or location of the affected Equipment at EMC's then current Time and Materials Service terms, conditions and rates. Additional charges, if any, related to any changes in configuration or location of Equipment shall apply from the date the change took place.

- (g) **Movement of Software.** If OEM is current in the payment of the applicable Support Services fee, End User may, to the extent technologically compatible, discontinue all use of the Software on the hardware or network environment for which it was originally licensed and begin the corresponding use thereof on a different End User owned or controlled hardware or network environment provided that OEM (i) provides EMC with advance, written notice of such move; and (ii) pays the applicable transfer and/or upgrade fees assessed by EMC for such a move (if any).
- (h) **Remote Support Capability.** As part of the Support Services, EMC makes various remote support capabilities available for certain Products in accordance with its then current policies and procedures. EMC's Support Services fees are based on the availability and use of such remote support capabilities. OEM or End-User has the option to have EMC activate or disable remote support capabilities, but OEM shall notify EMC thereof without undue delay. If the remote support features are disabled by anyone other than EMC, then, with regard to all Products affected by such disablement (i) EMC may assess OEM a surcharge in accordance with EMC's then current standard rates; and (ii) any agreed response times or other agreed service levels (if any) shall no longer apply.
- (i) **Alterations and Attachments to Equipment.** EMC does not restrict OEM or End-Users from making alterations to, or installing other products in or with, the Equipment at OEM's or End User's expense; provided OEM is responsible for any inspection fees and/or additional charges resulting from such activities. If the alterations or attachments prevent or hinder EMC's performance of Support Services, OEM shall, upon EMC's request, take or cause End User to take corrective action. OEM's failure to take appropriate corrective action shall be deemed a breach hereof.
- (j) **Transfer of Equipment to Secondary Purchasers.** If End User decides to sell, assign or otherwise transfer the use and/or ownership of Equipment to a Secondary Purchaser (meaning a bona fide end user that (i) is not considered, in EMC's reasonable discretion, to be a competitor of EMC; and/or (ii) has not had prior disputes with EMC), to the extent EMC resources reasonably permit, EMC shall make available to OEM, as a Time and Materials Service, de-installation services. In addition, and to the extent EMC resources reasonably permit, EMC shall make available to the Secondary Purchaser, (a) Equipment installation and re-certification services as a Time and Materials Service; and (b) Support Services for Equipment meeting the certification criteria.
- (k) **Software Support Services affected by Change in Equipment Status.** For Software used on or operated in connection with Equipment that ceases to be covered by Support Services or the EMC Equipment warranty, EMC reserves the right to send OEM written notice that EMC has either chosen to discontinue or change the price for Support Services for such Software (with such price change effective as of the date the applicable Equipment ceases to be so covered). If EMC sends a discontinuation notice, or if OEM rejects or does not respond to the notice of a proposed price change within thirty (30) days after receipt, OEM will be deemed to have terminated the Software Support Services for its convenience and the terms of subsection 6 (e) shall apply.

5. Support services warranty.

EMC shall perform the Support Services in a workmanlike manner in accordance with generally accepted industry standards. OEM shall notify EMC of any failure to so perform within ten (10) days after the date on which such failure first occurs. OEM's exclusive remedy and EMC's entire liability under the foregoing warranty shall be for EMC to, at its option, (i) use reasonable efforts to (a) re-perform the deficient services within a reasonable time, or (b) replace any replacement parts which become defective during a period in which the Product containing the replacement part is covered by warranty or Support Services, or sixty (60) days after installation thereof, whichever occurs later; and (ii) if, after reasonable efforts, EMC is not able correct such deficiencies, then OEM has the right to terminate for breach in accordance with section 6 F of this Addendum A-1.

EXCEPT AS EXPRESSLY STATED IN THIS Addendum A-1, EMC MAKES NO OTHER EXPRESS OR IMPLIED WARRANTIES, WRITTEN OR ORAL. INsofar AS PERMITTED UNDER APPLICABLE LAW, ALL OTHER WARRANTIES IN RELATION TO SUPPORT SERVICES ARE SPECIFICALLY EXCLUDED, INCLUDING WARRANTIES ARISING BY STATUTE, COURSE OF DEALINGS OR USAGE OF TRADE.

6. Term and Termination.

- (a) **Software Support Services Term.** Software related Support Services that are ordered at the same time as the license for such Software shall commence on the date of shipment of the physical media or electronic availability of the Software and continue for the period specified on the EMC quote. Renewals of Software Related Support Services shall commence and expire in accordance with the dates on the applicable EMC quote.
- (b) **Equipment Support Services Term.** For some types of Equipment, as described in the Product Notice, Support Services are provided at no additional charge during the warranty period of the Equipment (unless Support Option upgrades are ordered by OEM). Renewals of Equipment related Support Services shall commence and expire in accordance with the dates on the applicable EMC quote. Support Services for hardware upgrades installed into Equipment are coterminous with the Support Services that are then in effect for the Equipment into which such upgrades are installed.
- (c) **Termination for Convenience.** EMC may terminate the Support Services for a Product(s) for its convenience upon sixty (60) days' prior written notice to OEM.
- (d) **By EMC.** If EMC terminates for its convenience, OEM's sole and exclusive remedy and EMC's sole and exclusive obligation shall be to refund to OEM the portion of any pre-paid Support Services fee that corresponds to the period between the effective date of the termination for convenience and the end of the then current Support Services period.
- (e) **By OEM.** If OEM terminates for its convenience as described in Section 4(k) of this Addendum A-1, OEM's sole and exclusive remedy and EMC's sole and exclusive obligation shall be to grant OEM a credit that corresponds to the period between the effective date of the termination for convenience and the end of the then current Support Services period. Such credit may only be used against future purchases of Products or Support Services from EMC and may be reduced to recapture unearned discounts (meaning discounts to Support Services fee that were based on a OEM obligation that can no longer be fulfilled due to

the termination).

- (f) **Termination for Breach.** Either Party may terminate the Support Services for a specific Product for cause due to a failure of the other party to comply with the terms of this Addendum A-1 with regard to such Product, provided that the terminating party has given thirty (30) days' written notice specifying the failure and the other party has not remedied such failure within such time. If EMC terminates the Support Services for any Product(s) affected by such a failure by OEM, such termination shall be without further liability for EMC and without any obligation to refund any fees already paid therefore. If OEM terminates for EMC's breach, OEM's sole and exclusive remedy and EMC's sole and exclusive obligation shall be to either issue a credit for use against current or future purchases of Products or Support Services or grant a refund (as selected by OEM) for that portion of any pre-paid Support Service fee that corresponds to the period between the effective date of the termination for breach and the end of the then current Support Services period.

7. Limitation of Liability.

- (a) **Limitation on Direct Damages.** EMC'S TOTAL LIABILITY AND OEM'S SOLE AND EXCLUSIVE REMEDY FOR ANY CLAIM OF ANY TYPE WHATSOEVER, ARISING OUT OF SUPPORT SERVICES PROVIDED HEREUNDER, SHALL BE LIMITED TO PROVEN DIRECT DAMAGES CAUSED BY EMC'S SOLE NEGLIGENCE IN AN AMOUNT NOT TO EXCEED (i) US\$1,000,000, FOR DAMAGE TO REAL OR TANGIBLE PERSONAL PROPERTY; AND (ii) THE PRICE PAID BY OEM TO EMC FOR THE SPECIFIC SUPPORT SERVICE (CALCULATED ON AN ANNUAL BASIS, WHEN APPLICABLE) FROM WHICH SUCH CLAIM ARISES, FOR DAMAGE OF ANY TYPE NOT IDENTIFIED IN (i) ABOVE OR OTHERWISE EXCLUDED HEREUNDER.
- (b) **No Indirect Damages.** EXCEPT WITH RESPECT TO CLAIMS REGARDING VIOLATION OF EMC'S INTELLECTUAL PROPERTY RIGHTS, NEITHER OEM NOR EMC (OR ITS SUPPLIERS) SHALL HAVE LIABILITY TO THE OTHER FOR ANY SPECIAL, CONSEQUENTIAL, EXEMPLARY, PUNITIVE, INCIDENTAL, OR INDIRECT DAMAGES, OR FOR LOSS OF PROFITS, REVENUES, DATA OR USE, OR FOR PROCUREMENT OF SUBSTITUTE PRODUCTS OR SERVICES.
- (c) **Disclaimer of End User(s) Damages.** IN NO EVENT WILL EMC AND ITS SUPPLIERS BE LIABLE TO RESELLER(S), END-USER(S) OR OTHER THIRD PARTIES FOR ANY DAMAGES, INCLUDING BUT NOT LIMITED TO (A) DAMAGES CAUSED BY OR ARISING OUT OF OEM'S FAILURE TO PERFORM ITS COVENANTS AND RESPONSIBILITIES, WHETHER BY REASON OF EMC'S ALLEGED NEGLIGENCE OR OTHERWISE; (B) DAMAGES CAUSED BY REPAIRS OR ALTERATIONS TO PRODUCT DONE WITHOUT EMC'S WRITTEN APPROVAL; OR (C) DAMAGES DUE TO PRODUCT DETERIORATION DURING PERIODS OF STORAGE BY OEM, RESELLER OR ANY END USER.
- (d) **Basis of the Bargain; Failure of Essential Purpose.** The parties acknowledge that EMC entered into this Addendum A-1 in reliance upon the limitations of liability and the disclaimers of warranties and damages set forth herein, and that the same form an essential basis of the bargain between the parties. The parties agree that the limitations and exclusions of liability and disclaimers specified in this Addendum A-1 will survive and apply even if there is a failure of the essential purpose of any limited remedy, and regardless whether a party has been advised of the possibility of the liabilities.
- (e) **Regular Back-ups.** As part of its obligation to mitigate damages, OEM shall ensure that OEM and/or End-User take reasonable data back-up measures. In particular, OEM shall ensure that OEM and/or End User provides for a daily back-up process and back-up the relevant data before EMC performs any remedial, upgrade or other works on OEM's and/or End User's production systems. To the extent EMC's liability for loss of data is not anyway excluded under this Agreement, EMC shall in case of data losses only be liable for the typical effort to recover the data which would have accrued if OEM had fulfilled its obligations to ensure that OEM or End User(s) had appropriately backed up its data.
- (f) **Suppliers.** The foregoing limitations shall also apply in favour of EMC's suppliers.

EXHIBIT B - Minimum Terms of End User License

This **Exhibit B** supplements the Agreement between the parties and is incorporated therein. Capitalized terms not defined herein shall have the meaning given to them in the Agreement.

This **Exhibit B** sets forth the terms and conditions under which i) Buyer shall sublicense the Software to End Users and Resellers, and ii) Buyer shall require Resellers to include in Resellers' sublicense of Software directly to End Users.

1. General Requirements

- (a) Buyer shall sublicense Software to Resellers for sublicense by Resellers directly to End Users only in the manner specified in the Agreement and as more fully set forth in this **Exhibit B** and shall require that Resellers comply with the terms herein. Resellers shall not have any right or license to use the Software.
- (b) Buyer is not authorized to, and shall not authorize Reseller to, sublicense any source code.
- (c) Buyer shall not authorize Resellers and/or End Users to use Software on other than originally designated computer(s) or related items, or in excess of the original licensed capacity, without EMC's prior written approval and Buyer's payment of EMC's then current license upgrade fee.

2. Software Sublicense Requirements

Buyer shall sublicense Software to an End User in accordance with Buyer's own license agreement, provided such license agreement between Buyer and End User shall, at a minimum and without contradiction, contain provisions that:

- (a) authorize the End-User, on a personal, non-exclusive and non-transferable basis, to use firmware on only the designated EMC Equipment with which it is shipped for as long as End User complies with the terms of the license, and to use Software, up to the capacity specified on the order as permitted and measured by the scope of the applicable license for which the End User has paid the fee for as long as End User complies with the terms of the license;
- (b) require the End User to not provide, not disclose and/or not otherwise make available Software in any form to any person other than End User's agents employees, independent contractors or consultants, who shall use the Software solely for End User's

- internal business purposes in a manner consistent with the license;
- (c) authorize the End User to make no more than one (1) copy of the Software for back-up and archival purposes and to make use thereof on a substitute for the originally licensed Equipment, network, device or CPU only during the period in which the originally licensed designated EMC Equipment or host CPU or related items, as applicable, is inoperable due to malfunction or initiation of a disaster recovery program, and only if the original Software is deleted from the originally licensed Equipment or network device;
 - (d) authorize the End User, only after written notice to Buyer, to change the location of a designated EMC Equipment upon which the Software is licensed to a replacement location;
 - (e) specify that (i) Software is licensed only, and no title to, or ownership of, the Software is transferred to End User; (ii) End User shall reproduce and include EMC's copyright and other proprietary notices on and in any copies, including but not limited to partial, physical or electronic copies of the Software; (iii) End User shall not cause or permit any other to modify, enhance, supplement, create derivative works from, reverse assemble, reverse engineer, reverse compile or otherwise reduce the Software to human readable form; (iv) End User shall promptly report any violation of this clause and shall take such further steps as may be reasonably requested to remedy any such violation and to prevent future violations; and (v) all subsequent updates, revisions and changes to Software provided to End User shall be governed by the sublicensing agreement between Buyer and End User;
 - (f) prohibit End User from assigning, sublicensing or otherwise transferring Software; provided however, that if End User sells or transfers the designated EMC Equipment, Buyer shall offer, with the prior approval of EMC (such approval shall not be unreasonably withheld) to license the firmware and to render Equipment and firmware maintenance pursuant to EMC's licensing and Equipment certification requirements to any bona fide end user (hereinafter "Secondary Purchaser") to whom End User has transferred the designated EMC Equipment;
 - (g) state that (i) Maintenance Aids are owned by or licensed to EMC and are placed, at EMC's discretion, at Buyer's End User for use by Buyer and EMC personnel only; (ii) Buyer and EMC are authorized to store Maintenance Aids at the applicable facility; (iii) End User shall not make a copy of or any use of Maintenance Aids whatsoever; and (iv) End User shall protect Maintenance Aids from disclosure to any third party, give EMC reasonable access thereto, and not impede EMC's removal thereof;
 - (h) with regard to patent and copyright infringement indemnity, limitation of liability, disclaimer of implied warranties, exclusion of consequential, incidental and indirect damages, export compliance, destruction/return of Software that is no longer in use or for which the license has been terminated, and compliance with applicable laws, are substantially similar to the corresponding provisions contained in this Agreement between EMC and Buyer;
 - (i) permit any Software which is accompanied by a hard-copy, "break-the-seal" license agreement, or which is obtained after accepting a license agreement by electronic means, to be licensed solely under the terms of such agreement and not under the sublicense agreement between Buyer and End User;
 - (j) state that (i) End User shall upon Buyer's request, promptly provide Buyer with a written statement certifying the extent of End User's usage of Software identified by Buyer and/or allow Buyer or its designee to conduct a reasonable audit of the applicable End User facilities and records to determine whether or not End User's usage of such Software is in conformance with its paid for license usage; (ii) End-User shall reasonably cooperate with and assist Buyer or its designee in any such audit, which shall be conducted during End User's normal business hours and shall not unreasonably interfere with End User's business activities; and (iii) should such audit statement indicate usage in excess of that for which End User is licensed, End User shall promptly reconcile its account with Buyer and pay the Buyer invoice, if any, that results from such reconciliation; and
 - (k) state that Buyer has no obligation whatsoever for Software installed or used beyond the licensed use, for Equipment which was moved from the original installation site without Buyer's consent or whose original identification marks have been altered or removed.

Exhibit C – Professional Services Agreement

This Professional Services Agreement sets forth the general terms and conditions under which Buyer (also referred to as "Customer") may periodically engage EMC to provide certain professional, educational/training, operational and technical services ("**Professional Services**") on a project basis pursuant to a Statement of Work ("**SOW**") to be entered into between EMC and Customer for each engagement.

1. DEFINITIONS.

- A. "Affiliate"** means a legal entity that is controlled by, controls, or is under common control with EMC or Customer, respectively. "Control" means more than 50% of the voting power or ownership interests.
- B. "Deliverables"** means any reports, analyses, scripts, code or other work results which have been delivered by EMC to Customer within the framework of fulfilling obligations under the SOW.
- C. "Proprietary Rights"** mean all patents, copyrights, trade secrets, methodologies, ideas, concepts; inventions, know-how, techniques or other intellectual property rights of a party.
- D. "Statement of Work" or "SOW"** means a document agreed between Customer and EMC containing specifications and other transaction-specific details of the Professional Services to be provided by EMC. SOWs may, among other things, consist of (i) a separately executed, long form services specification; or (ii) a short form service description (called a "**Service Brief**") with an accompanying EMC model number identified on a quote.
- E. "Supplier(s)"** means an entity (other than Customer) whose components, subassemblies, software and/or services have been incorporated into Products and/or Services.

2. PROFESSIONAL SERVICES.

A. Scope. Each project for Professional Services shall be governed by a separate SOW. Each SOW (excluding a Service Brief) shall (i) be signed by the parties; (ii) incorporate by reference this Agreement; and (iii) state the pertinent business parameters, including, but not limited to, pricing, payment, expense reimbursement, and a detailed description of the Professional Services to be provided. In case of conflict between the SOW and the terms of this Agreement, the SOW shall normally take precedence. However, to the extent that the SOW contains terms that conflict with terms in the Agreement pertaining to intellectual property and/or proprietary rights, indemnification, warranty (including remedies and disclaimers), and/or limitation of liability, the conflicting terms in the SOW shall supersede those in the Agreement only if the SOW clearly indicates that the parties are intentionally overriding the terms in the Agreement solely for purposes of such SOW. Professional Services are provided as a separate and independent service to Customer even if offered together with the sale or licensing of Products by EMC in the same EMC quote or Customer purchase order.

B. Placement of EMC Personnel. EMC shall have the sole responsibility for personnel placement as well as for all other human resources issues (e.g. vacation). EMC will only utilize employees or contractors that are sufficiently qualified. If specific EMC personnel cease to perform due to illness, resignation or any other reason, EMC shall without undue delay use reasonable efforts to provide a substantially equivalent replacement as soon as reasonably possible. EMC's contact person responsible for liaising with Customer will exclusively be the person identified by EMC as being responsible for the project. No employee/employer relationship is intended or shall be established by any SOW.

C. Standard Work Day. The standard work day is any eight (8) hour period of work, between 8:00 AM and 6:00 PM, Monday through Friday, excluding public holidays at the EMC location providing Professional Services.

D. Customer Responsibilities. Customer shall provide EMC personnel with timely access to appropriate facilities, space, power, documentation, networks (including internet and telephone), files, information, additional software (if needed), and skilled and authorized Customer personnel to assist in the performance and cooperate with EMC. Customer shall also perform its specific obligations as described in the relevant SOW, and, if necessary, assist and support EMC in the provision of the Professional Services as reasonably requested by EMC, and shall provide all conditions in its business necessary for due performance of Professional Services by EMC. EMC shall not be responsible for any failure to perform, or delay in performing, any of its obligations, if such failure or delay is caused by (i) Customer's failure to provide or delay in providing such access or (ii) failure or delay in the performance of other Customer obligations or responsibilities under this Agreement and/or the applicable SOW.

3. PROPRIETARY RIGHTS.

A. Grant of Copyright Rights in Deliverables. Subject to Customer's payment of the applicable amounts due EMC and to EMC's Proprietary Rights in any underlying intellectual property embodied therein or used by EMC to perform Professional Services, Customer shall own all copyright rights to the portion of Deliverables that consists solely of written reports, analyses and other working papers prepared and delivered by EMC to Customer in the performance of EMC's obligations under the SOW.

B. Grant of License Rights in Deliverables. For the portion of Deliverables that consists of scripts and code, EMC grants Customer a non-exclusive, non-transferable, irrevocable (except in case of breach of the PSA or SOW) perpetual right to use, copy and create derivative works from such (without the right to sublicense) for Customer's internal business operations, as contemplated by the applicable SOW. The license granted in this section does not apply to (i) Customer furnished materials, and (ii) any other Products or items licensed, or otherwise provided, under a separate agreement.

C. Customer Furnished Materials. Customer does not relinquish any of its rights in materials it furnishes for use by EMC in connection with the performance of Professional Services. Pursuant to Customer's Proprietary Rights therein, Customer grants EMC a non-exclusive, non-transferable right to use such solely for the benefit of Customer in fulfillment of EMC's obligations under the SOW.

D. Reservation of Proprietary Rights. Each party reserves for itself all Proprietary Rights that it has not expressly granted to the other. EMC shall not be limited in developing, using or marketing services or products which are similar to the Deliverables or Professional Services provided hereunder, or, subject to EMC's confidentiality obligations to Customer, in using the Deliverables or performing similar Professional Services for any other projects.

4. LIMITATION OF LIABILITY.

For all claims for damages under, in connection with or in relation to this Agreement, any SOW or any purchase order, whatever the legal basis (including tort) may be, the following shall apply:

A. Unlimited liability. In case of death or personal injury caused by EMC's or Customer's negligence, in case of EMC's or Customer's willful misconduct, fraud or gross negligence, and where a limitation of liability is not permissible under applicable mandatory law, either party shall be liable according to statutory law.

B. Limited liability. Without prejudice to Section 4. A. above:

(I) Except with respect to claims regarding violation of EMC's intellectual property rights, neither party shall be liable to the other party, however that liability arises, for consequential, special, incidental or indirect losses.

(II) EMC's maximum potential liability shall, for each damaging event or series of events, be limited to (i) £1,000,000, for damage to real or tangible personal property; and (ii) the price paid to EMC for the specific professional service (calculated on an annual basis, when applicable) from which such claim arises, for damage of any type not identified in (i) above or otherwise excluded hereunder and EMC's liability shall be further limited to losses actually sustained as a direct result of the said event or event(s).

(III) Without prejudice to Section 4.B. (I) and (II) above, EMC shall not be liable to Customer, however that liability arises, for the following losses, whether direct, consequential, special, incidental, punitive or indirect: (i) loss of actual or anticipated revenue or profits; (ii) loss of actual or anticipated savings; (iii) loss of or breach of contracts; (iv) loss of goodwill or reputation; (v) loss of business opportunity; (vi) losses suffered by third parties; (vii) loss of business; (viii) loss of data or (ix) wasted management time; and in each case whether or not any such losses were direct, foreseen, foreseeable, known or otherwise, and whether or not that party was aware of the circumstances in which such losses could arise.

C. Regular Back-ups. As part of its obligation to mitigate damages, Customer shall take reasonable data back-up measures. In particular, Customer shall provide for a daily back-up process and back-up the relevant data before EMC performs any remedial, upgrade or other works on Customer's production systems. To the extent EMC's liability for loss of data is not anyway excluded under this Agreement, EMC shall in case of data losses only be liable for the typical effort to recover the data which would have accrued if Customer had appropriately backed up its data.

D. Suppliers. The foregoing limitations shall also apply in favor of EMC's Suppliers.

5. INVOICING AND PAYMENT.

A. Purchasing and Invoicing. Each SOW (excluding the Service Brief) becomes binding on both parties when it is signed by EMC and Customer countersigns and returns the SOW to EMC (along with a purchase order if so required in the SOW). EMC shall submit invoices for fees and reimbursable costs and are expenses and be paid in the manner specified in the applicable SOW.

B. Payment. Buyer must pay EMC's invoice in full and in US dollars within the time noted on EMC's invoice, or if not noted, then within thirty (30) days after the date of the invoice. In case the payment of the invoice is late, 1% monthly interests (one per cent), pro rata die, shall be applied, plus a 2% (two per cent) fine on the amount originally owed. EMC may invoice parts of a purchase order separately or together in one invoice. All invoices will be deemed accurate unless Buyer advises EMC in writing of a material error within ten days following receipt. If Buyer advises EMC of a material error, (i) any amounts corrected by EMC in writing must be paid within fourteen days of correction, and (ii) all other amounts shall be paid by Buyer by the due date. If Buyer withholds payment because Buyer believes an invoiced amount is incorrect, and EMC concludes that the amount is accurate, Buyer must pay penalty fee and late charges as described herein from the due date for the amount until EMC's receipt of payment. Buyer may not offset, defer or deduct any invoiced amounts that EMC determines are correct following the notification process stated above. EMC, without waiving any other rights or remedies and without liability to Buyer, may suspend any or all services until all overdue amounts are paid in full. Buyer will pay all reasonable legal fees and other costs related to the collection of overdue amounts.

6. TRAINING SERVICES.

A. Courses. EMC's standard training Services are available through the applicable catalogue or website. EMC customized training Services are available pursuant to an SOW.

B. Cancellation and Refunds. If Customer prepays and subsequently cancels standard training Services, EMC shall provide (i) a full refund, if EMC receives written notice of cancellation two (2) or more weeks before the scheduled start date; or (ii) a 50% refund, if EMC receives written notice of cancellation less than two (2) weeks before, but prior to, the scheduled start date. Cancellation charges for customized training Services shall be as mutually agreed between the parties in the applicable SOW.

7. WARRANTY.

A. Professional Services. EMC shall perform Professional Services in a workmanlike manner in accordance with generally accepted industry standards. Customer must notify EMC of any failure to so perform within ten (10) days after the performance of the applicable portion of Professional Services.

B. Customer Remedies. EMC's entire liability and Customer's sole remedy for EMC's failure to so perform shall be for EMC to, at its option, (i) correct such failure; and/or (ii) terminate the applicable SOW and refund that portion of any fees received that correspond to such failure to perform.

C. No Further Warranties. EXCEPT AS EXPRESSLY STATED HEREIN, AND TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, WITH REGARD TO PRODUCTS, PROFESSIONAL SERVICES OR ANY OTHER ITEMS OR MATTERS ARISING HEREUNDER, EMC (INCLUDING ITS SUPPLIERS) MAKES NO OTHER EXPRESS WARRANTIES, WRITTEN OR ORAL, AND DISCLAIMS ALL IMPLIED WARRANTIES. INSOFAR AS PERMITTED UNDER APPLICABLE LAW, ALL OTHER WARRANTIES ARE SPECIFICALLY EXCLUDED, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE AND NON-INFRINGEMENT, AND ANY WARRANTY ARISING BY STATUTE, OPERATION OF LAW, COURSE OF DEALING OR PERFORMANCE, OR USAGE OF TRADE.

8. CONFIDENTIALITY. "Confidential Information" means any information that is marked "confidential" or "proprietary" or any other similar term or in relation to which its confidentiality should by its nature be inferred or, if disclosed orally, is identified as being confidential at the time of disclosure and, within two (2) weeks thereafter, is summarized, appropriately labeled and provided in tangible form. Confidential Information does not include information that is (i) rightfully in the receiving party's possession without prior obligation of confidentiality from the disclosing party; (ii) a matter of public knowledge; (iii) rightfully furnished to the receiving party by a third party without confidentiality restriction; or (iv) independently developed by the receiving party without reference to the disclosing party's Confidential Information. Each party shall (a) use Confidential Information of the other party only for the purposes of exercising rights or performing obligations in connection with this Agreement or any purchase order hereunder; and (b) protect from disclosure to any third parties, by use of a standard of care equivalent to that as used by recipient to protect its own information of a similar nature and importance, and, no less than the use of reasonable care, any Confidential Information disclosed by the other party for a period commencing upon the date of disclosure until three (3) years thereafter, except with respect to (1) Customer data to which EMC may have access in connection with the provision of Professional Services, which shall remain Confidential Information until one of the exceptions stated in the above definition of Confidential Information applies; and (2) Confidential Information that constitutes, contains or reveals, in whole or in part, EMC proprietary rights, which shall not be disclosed by the receiving party at any time. Notwithstanding the foregoing, the receiving party may disclose Confidential Information (A) to its Affiliate for the purpose of fulfilling its obligations or exercising its rights hereunder as long as such Affiliate complies with the foregoing; and (B) to the extent required by law (provided the receiving party has given the disclosing party prompt notice).

9. TRADE COMPLIANCE. All content, Professional Services and the technology included therein (collectively the "Materials") provided under this Agreement are subject to governmental restrictions on exports and imports including without limitation (i) exports from the U.S and the European Union as well as re-export from third countries in the form received; (ii) exports from other countries in which the Materials may be produced or located; (iii) disclosures of technology to non-U.S persons; (iv) exports from other countries of the same or products derivative of Materials; and (v) the importation and/or use the Materials outside of the U.S. or other countries (collectively, "Trade Laws"). Customer must comply with all Trade Laws. Diversion contrary to U.S. law or other Trade Laws is expressly prohibited. In addition, Customer shall not send or deliver to EMC any data controlled by the International Traffic in Arms Regulations ("ITAR"), and shall not request Materials or Professional Services from EMC where an ITAR license is required in order for EMC to provide such Materials or Professional Services, unless the EMC Global Trade Compliance Group Office has signed a specific agreement consenting to provide ITAR controlled Materials or Professional Services to Customer. Customer represents and warrants that it is not (a) listed on any of the lists of restricted parties found at <http://www.bis.doc.gov/index.php/policy-guidance/lists-of-parties-of-concern>; (b) located in any country subject to embargo by the U.S. (identified as an E:1 country in Supplement 1 to Part 740 of the United States Export Administration Regulations ("EAR"), as shown here and updated from time to time: <http://www.ecfr.gov/cgi-bin/text-idx?SID=7f51b38428b0614519eea4b4fdc8640e&node=15:2.1.3.4.25.0.1.21.28&rgn=div9>); or (c) engaged in the proliferation of weapons of mass destruction (i.e., nuclear, chemical or biological weapons or missiles). Customer will not participate or ask EMC to participate in any illegal boycott.

10. TERM AND TERMINATION. This Agreement takes effect on the Effective Date and continues until (i) terminated for cause; or (ii) terminated by either party for convenience by giving sixty (60) days' prior written notice. Any provision that by its nature or context is intended to survive any termination or expiration, including but not limited to provisions relating to payment of outstanding fees, confidentiality and liability, shall so survive. Termination of this Agreement shall not affect the validity of any order and/or SOW entered into by the parties hereunder, which order or SOW shall continue until expiry or termination in its own right. Notwithstanding any termination of this Agreement, the terms and conditions contained herein shall continue to apply to any valid SOW and/or order as if the Agreement had not been terminated.

A. Term of SOW. Each SOW begins on the date stated therein, and, unless terminated for breach, continues in accordance with its terms. A termination for convenience shall only be permitted if expressly agreed in the SOW.

B. Termination for Breach of SOW. Either party may notify the other in writing in case of the other's alleged breach of a material provision of the applicable SOW. The recipient shall have thirty (30) days from the date of receipt of such notice to effect a cure (the "Cure Period"). If the recipient of the notice fails to effect a cure within the Cure Period, then the sender of the notice shall have the option of sending a written notice of termination of the applicable SOW(s), which notice shall take effect upon receipt.

11. MISCELLANEOUS.

A. References. EMC may identify Customer as a user of EMC's Professional Services. Each party shall not, and shall not authorize or assist another to, originate, produce, issue or release any written publicity, news release, marketing collateral or other publication or public announcement, relating in any way to this Agreement, without the prior written approval of the other, which approval shall not be unreasonably withheld.

B. Notices. Any notices hereunder shall be in writing.

C. Entire Agreement. Nothing stated in this paragraph shall have the effect of excluding or limiting liability for fraud. This Agreement and each purchase order and its referenced SOW (i) comprise the complete statement of the agreement of the parties with regard to the subject matter thereof; (ii) replaces any prior oral or written communications between the Customer and EMC and (iii) may be modified only in a writing with evidence of acceptance by both parties. In entering into this Agreement, including each applicable purchase order and SOW, neither party is relying on any representation that is not specified in this Agreement. All terms of any purchase order or similar document provided by Customer, including but not limited to any pre-printed terms thereon and any terms that are inconsistent or conflict with this Agreement and/or EMC quote, shall be null and void and of no legal force or effect, even if EMC does not expressly object to such terms when accepting a purchase order or similar document provided by Customer; however, terms in such document deviating from an EMC quote do become binding upon the parties when such deviating terms are expressly accepted by EMC in writing in an order acknowledgement or similar document.

D. Force Majeure. Except for payment of fees, neither party will be liable for failure to perform its obligations during any period if performance is delayed or rendered impracticable or impossible due to circumstances beyond that party's reasonable control.

E. Assignment. Customer will not assign this Agreement, an SOW or a purchase order or any right or obligation herein or delegate any performance without EMC's prior written consent, which consent will not be unreasonably withheld. Any other attempted assignment or transfer by Customer will be void. EMC may use its Affiliates or other sufficiently qualified subcontractors to provide Professional Services to Customer, provided that EMC remains responsible to Customer for the Professional Services' performance.

F. Governing Law. This Agreement shall be governed by the laws of the State of Texas, United States of America. The Parties irrevocably agree to submit to the jurisdiction of ordinary courts in and for Travis or Williamson County, Texas, and further waive any other venue or jurisdiction as they may

be entitled to by reason of their present or future domicile. The United Nations Convention on Contracts for the International Sale of Goods shall not be applicable.

G. Waiver. Failure to enforce or a delay in enforcing a provision of this Master Agreement will not constitute a waiver. No waiver shall be deemed a waiver of any prior or subsequent default hereunder.

H. Equitable and other Relief. Each party acknowledges that any breach of its obligations with respect to the proprietary rights of the other party may cause such other party irreparable harm for which there may be inadequate remedies at law and that such other party will be entitled to injunctive relief, in addition to any other legal remedies available to it. The parties further agree to mitigate and prove all damages claimed.

I. Independent Contractors. The parties shall act as independent contractors for all purposes under this Agreement. Nothing contained herein shall be deemed to constitute either party as an agent or representative of the other party, or both parties as joint venturers or partners for any purpose. Neither party shall be responsible for the acts or omissions of the other party, and neither party shall have authority to speak for, represent or obligate the other party in any way without the prior written approval of the other party.

J. Severability. If any part of this Agreement, a purchase order, SOW or an EMC quote is held unenforceable, the validity of the remaining provisions shall not be affected. The headings in this Agreement are for convenience only and shall not affect its construction or interpretation.

K. Anti-bribery and corruption. Customer understands the U.S. Foreign Corrupt Practices Act, the UK Bribery Act, any other anti-bribery laws in countries in which Customer performs services in relation to EMC, and the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions (collectively the "**Anticorruption Laws**") and their applicability to conduct in relation to this Master Agreement. Customer agrees not to cause EMC to breach the Anticorruption Laws, and agrees to comply with the Anticorruption Laws as if they were applicable to Customer. Customer agrees to accurately record in its books and records any and all expenses related to EMC business. Customer represents it is a publicly held company or, if privately held, that none of the officers, directors, shareholders, or beneficial owners of Customer are government officials and that no more than 40% of Customer is owned or controlled by the government. All payments to Customer by EMC will be by check or wire transfer and will be made payable to Customer as provided for in this Master Agreement. The terms of this Master Agreement may be disclosed to the relevant government authorities, if deemed appropriate by EMC. Customer agrees to provide EMC with periodic certifications, in a form and manner acceptable to EMC, of compliance with the Anticorruption Laws as if Customer were subject to those laws. Customer will grant EMC reasonable access to Customer's books and records and the right to audit them on a periodic basis, including if EMC has reason to believe Customer may have violated any of the Anticorruption Laws. EMC may terminate this Master Agreement if EMC has reason to believe that Customer has breached any of the Anticorruption Law.