EMC²
where information lives

SOFTWARE LICENSE AND MAINTENANCE AGREEMENT

*** IMPORTANT INFORMATION – PLEASE READ CAREFULLY ***

This Software contains computer programs and other proprietary material and information, the use of which is subject to and expressly conditioned upon acceptance of this Software License and Maintenance Agreement (the "Agreement").

This Agreement is a legally binding document between you (meaning the individual person or the entity that the individual represents that has obtained the Software for its internal productive use and not for outright resale) (the "Customer") and EMC (which means (i) EMC Corporation, if Customer is located in the United States; (ii) the local EMC sales subsidiary, if Customer is located in a country in which EMC Corporation has a local sales subsidiary; and (iii) EMC Information Systems International ("EISI"), if Customer is located outside the United States and in a country in which EMC Corporation does not have a local sales subsidiary). Unless EMC agrees otherwise in writing, this Agreement governs Customer's use of the Software except to the extent all or any portion of the Software is: (a) the subject of a separate written agreement; or (b) governed by a third party licensor's terms and conditions. Capitalized terms have meaning stated in the Agreement.

If Customer does not have a currently enforceable, written and separately signed software license agreement directly with EMC or the Distributor from whom Customer obtained this Software, then by clicking on the "Agree" or "Accept" or similar button at the end of this Agreement, or proceeding with the installation, downloading, use or reproduction of this Software, or authorizing any other person to do so, you are representing to EMC that you are (i) authorized to bind the Customer; and (ii) agreeing on behalf of the Customer that the terms of this Agreement shall govern the relationship of the parties with regard to the subject matter in this Agreement and are waiving any rights, to the maximum extent permitted by applicable law, to any claim anywhere in the world concerning the enforceability or validity of this Agreement.

If Customer has a currently enforceable, written and separately signed software license agreement directly with EMC or the Distributor from whom Customer obtained this Software, then by clicking on the "Agree" or "Accept" or similar button at the end of this Agreement, or proceeding with the installation, downloading, use or reproduction of this Software, or authorizing any other person to do so, you are representing that you are (i) authorized to bind the Customer; and (ii) agreeing on behalf of the Customer that the terms of such written, signed agreement shall replace and supersede the terms of this Agreement and shall govern the relationship of the parties with regard to this Software, and are waiving any rights, to the maximum extent permitted by applicable law, to any claim anywhere in the world concerning the enforceability or validity of such written signed agreement.

If you do not have authority to agree to the terms of this Agreement on behalf of the Customer, or do not accept the terms of this Agreement on behalf of the Customer, click on the "Cancel" or "Decline" or other similar button at the end of this Agreement and/or immediately cease any further attempt to install, download or use this Software for any purpose, and remove any partial or full copies made from this Software.

1. DEFINITIONS.

A. "Affiliate" means a legal entity that is controlled by, controls, or is under common "control" of EMC or Customer. "Control" means more than 50% of the voting power or ownership interests.

B. "Confidential Information" means and includes the terms of this Agreement, Software, and Support Tools and all confidential and proprietary information of EMC or Customer, including without limitation, all business plans, product plans, financial information, software, designs, and technical, business and financial data of any nature whatsoever, provided that such information is marked or designated in writing as "confidential," "proprietary," or any other similar term or designation. Confidential Information does not include information that is (i) rightfully in the receiving party's possession without obligation of confidentiality prior to receipt from the disclosing party, (ii) a matter of public knowledge through no fault of the receiving party, (iii) rightfully furnished to the receiving party by a third party without restriction on disclosure or use; or (iv) independently developed by the receiving party without use of or reference to the disclosing party's Confidential Information.

C. "Distributor" means a reseller, distributor, system integrator, service provider, independent software vendor, value-added reseller, OEM or other partner that is authorized by EMC to license Software to end users. The term shall also refer to any third party duly authorized by a Distributor to license Software to end users.

D. "Documentation" means the then-current, generally available, written user manuals and online help and guides for Software provided by EMC.

E. "Product Notice" means the notice by which EMC informs Customer of product-specific use rights and restrictions, warranty periods, warranty upgrades and maintenance (support) terms. Product Notices may be delivered in an EMC quote, otherwise in writing and/or a posting on the applicable EMC website, currently located at http://www.emc.com/products/warranty_maintenance/index.jsp. The terms of the Product Notice in effect as of the date of the EMC quote shall be deemed incorporated into and made a part of the relevant Customer 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 Software or Support Services listed on an EMC quote issued prior to the date of the applicable Product Notice. At Customer's request, EMC shall without undue delay provide Customer with a copy of the applicable Product Notice and/or attach it to the relevant EMC quote.

F. "Software" means the EMC software product which requires acceptance of this Agreement, and any copies made by or on behalf of Customer, Software Releases, and all Documentation for the foregoing.

G. "Software Release" means any subsequent version of Software provided by EMC after initial delivery of Software but does not mean a new item of Software.

H. "Support Services" means the annual service available from EMC or its designee which provides Software Releases and support services for Software as set forth in the Product Notice.

I. "Support Tools" means any hardware, software and other tools and/or utilities used by EMC to perform diagnostic or remedial activities in connection with Software including any software or other tools made available by EMC to Customer to enable Customer to perform various self-maintenance activities.

2. DELIVERY AND INSTALLATION.

A. Delivery. Title and risk of loss to the physical media, if any, which has been sold to Customer and contains Software shall transfer to Customer upon EMC's delivery to a carrier at EMC's designated point of shipment (**"Delivery"**). Unless otherwise agreed, a common carrier shall be specified by EMC. Software may be provided by (i) Delivery of physical media; or (ii) electronic means (where available from EMC). If the physical media containing Software has not been sold (for example - a lease or rental transaction), then risk of loss thereto transfers at Delivery, but title does not.

B. Installation and Acceptance. EMC's obligation, if any, to install Software as part of the Software's licensing fee, is set forth in the Product Notice. Acceptance that Software operates in substantial conformity to the Software's Documentation occurs upon Delivery or electronic availability, as applicable. Notwithstanding such acceptance, Customer retains all rights and remedies set forth in Section 4 (WARRANTY AND DISCLAIMER) below.

3. LICENSE TERMS.

A. General License Grant. Subject to Customer's compliance with this Agreement, the Product Notice, and payment of all license fees, EMC grants to Customer a nonexclusive and nontransferable (except as otherwise permitted herein) license (with no right to sublicense) to use (i) Software for Customer's internal business purposes; and (ii) the Documentation related to Software for the purpose of supporting Customer's use of Software. Licenses granted to Customer shall, unless otherwise indicated on the Product Notice or quote from EMC or Distributor) be perpetual and commence on Delivery of the physical media or the date Customer is notified of electronic availability, as applicable. Documentation is licensed solely for purposes of supporting Customer's use of Software as permitted in this Section. To the extent applicable to Software, Customer may be required to follow EMC's then current product registration process, if any, to obtain and input an authorization key or license file.

B. Licensing Models. Software is licensed for use only in accordance with the commercial terms and restrictions of the Software's relevant licensing model, which are stated in the Product Notice and/or quote from EMC or Distributor. For example, the licensing model may provide that Software is licensed for use solely (i) for a certain number of licensing units; (ii) on or in connection with certain hardware, or a CPU, network or other hardware environment; and/or (iii) for a specified amount of storage capacity. Microcode, firmware or operating system software required to enable the hardware with which it is shipped to perform its basic functions, is licensed for use solely on such hardware.

C. License Restrictions. All Software licenses granted herein are for use of object code only. Customer is permitted to copy Software as necessary to install and run it in accordance with the license, but otherwise for back-up purposes only. Customer may copy Documentation insofar as reasonably necessary in connection with Customer's authorized internal use of Software. Customer shall not, without EMC's prior written consent (i) use Software in a service bureau, application service provider or similar capacity; or (ii) disclose to any third party the results of any comparative or competitive analyses, benchmark testing or analyses of Software performed by or on behalf of Customer; (iii) make available Software in any form to anyone other than Customer's employees or contractors; or (iv) transfer Software to an Affiliate or a third party.

D. Software Releases. Software Releases shall be subject to the license terms applicable to Software.

E. Audit Rights. EMC (including its independent auditors) shall have the right to audit Customer's usage of Software to confirm compliance with the agreed terms. Such audit is subject to reasonable advance notice by EMC and shall not unreasonably interfere with Customer's business activities. Customer will provide EMC with the support required to perform such audit and will, without prejudice to other rights of EMC, address any non-compliant situations identified by the audit by forthwith procuring additional licenses.

F. Termination. EMC may terminate licenses for cause, if Customer breaches the terms governing use of Software and fails to cure within thirty (30) days after receipt of EMC's written notice thereof. Upon termination of a license, Customer shall cease all use and return or certify destruction of the applicable Software (including copies) to EMC.

G. Reserved Rights. All rights not expressly granted to Customer are reserved. In particular, no title to, or ownership of, the Software is transferred to Customer. Customer shall reproduce and include copyright and other proprietary notices on and in any copies of the

Software. Unless expressly permitted by applicable mandatory law, Customer shall not modify, enhance, supplement, create derivative works from, reverse assemble, reverse engineer, decompile or otherwise reduce to human readable form the Software without EMC's prior written consent, nor shall Customer permit any third party to do the same.

4. WARRANTY AND DISCLAIMER.

A. Software Warranty. EMC warrants that Software will substantially conform to the applicable Documentation for such Software and that any physical media provided by EMC 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 Customer's requirements, except if expressly warranted by EMC in its quote. Support Services from EMC for Software are available for separate purchase and the Support Options are identified at the Product Notice.

B. Warranty Duration. Unless otherwise stated on the EMC quote, the warranty period for Software shall (i) be as set forth at the Product Notice; and (ii) commence upon Delivery of the media or the date Customer is notified of electronic availability, as applicable.

C. Customer Remedies. EMC's entire liability and Customer's exclusive remedies under the warranties described in this section shall be for EMC, at its option, to remedy the non-compliance or to replace the affected Software. If EMC is unable to effect such within a reasonable time, then EMC shall refund the amount received by EMC for the Software concerned. All replaced Software contained on physical media supplied by EMC shall be returned to and become the property of EMC. EMC shall have no liability hereunder after expiration of the applicable warranty period. The foregoing shall not void any supplementary remedies made available to Customer by a Distributor, with respect to which EMC shall have no liability or obligation.

D. Warranty Exclusions. Warranty does not cover problems that arise from (i) accident or neglect by Customer or any third party; (ii) any third party items or services with which Software 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 Software was not designed; or (v) modification, alteration or repair by anyone other than EMC or its authorized representatives;. EMC has no obligation whatsoever for Software installed or used beyond the licensed use, or whose original identification marks have been altered or removed. Removal or disablement of remote support capabilities during the warranty period requires reasonable notice to EMC. Such removal or disablement, or improper use or failure to use applicable Customer Support Tools shall be subject to a surcharge in accordance with EMC's then current standard rates.

E. No Further Warranties. Except for the warranty set forth herein, and to the maximum extent permitted by law, EMC (INCLUDING ITS SUPPLIERS) MAKES NO OTHER EXPRESS OR IMPLIED WARRANTIES, WRITTEN OR ORAL. INSOFAR AS PERMITTED UNDER APPLICABLE LAW, ALL OTHER WARRANTIES ARE SPECIFICALLY EXCLUDED, INCLUDING WARRANTIES ARISING BY STATUTE, COURSE OF DEALING OR USAGE OF TRADE.

5. SUPPORT SERVICES.

A. Support Services. If Customer has purchased Support Services for Software (or its related hardware, if any) directly from EMC, such shall be delivered by EMC as specified in the applicable Product Notice. If Customer has purchased maintenance and support from a Distributor, then EMC may provide Support Services to the extent that the Distributor has contracted with EMC to provide Customer with Support Services.

B. Reinstatement of Lapsed Support. If Support Services expire or are terminated, and Customer subsequently seeks to reinstate Support Services, Customer shall pay: (i) the cumulative Support Services fees applicable for the period during which Support Services lapsed; (ii) the annual support fees for the then-current current period; and (iii) the then-current reinstatement fee and/or certification fees, as quoted by EMC or a Distributor.

C. Support Tools. EMC may use Support Tools or may make certain Support Tools available to assist Customer in performing various maintenance or support related tasks. Customer shall use Support Tools only in accordance with the terms under which EMC makes such available.

D. Additional Support Terms. Unless otherwise indicated in the Product Notice, Support Services provided by EMC shall consist of (i) using commercially reasonable efforts to remedy failures of Software to perform substantially in accordance with EMC's applicable Documentation; (ii) providing English-language (or where available, local language help line service (via telephone or other electronic media); and (iii) providing, or enabling Customer 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 Software.

E. Software Releases. Upon use of a Software Release, Customer shall 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. Customer is authorized to retain a copy of each Software Release properly obtained by Customer for Customer's archive purposes and use such as a temporary back-up if the current Software Release becomes inoperable. Customer shall use and deploy Software Releases strictly in accordance with terms of the original license for the Software.

F. Support Services for Software affected by Change in Hardware Status. For Software used on or operated in connection with hardware that ceases to be covered by Support Services or the EMC hardware warranty, EMC reserves the right to send Customer 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 EMC hardware ceases to be so covered). If EMC sends a discontinuation notice, or if Customer rejects or does not respond to the notice of a proposed price change within thirty (30) days after receipt, Customer will be deemed to have terminated the Support Services for its convenience.

G. Support Services Exclusions. Support Services do not cover problems that arise from (i) accident or neglect by Customer or any third party; (ii) any third party items or services with which the Software 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 Software or its related hardware was not designed; or (v) modification, alteration or repair by anyone other than EMC or its authorized designees. EMC has no obligation whatsoever for Software installed or used beyond the licensed use. Removal or disablement of Software's remote support capabilities during the term of Support Services requires reasonable notice to EMC. Customer's removal, disablement of remote support capabilities, or improper use of or failure to use Support Tools made available to Customer shall subject Customer to a surcharge in accordance with EMC's then current standard rates.

6. INDEMNITY. EMC shall (i) defend Customer against any third party claim that Software or Support Services infringes a patent or copyright existing in the country in which EMC is located, the United States of America or the European Union; and (ii) pay the resulting costs and damages finally awarded against Customer by a court of competent jurisdiction or the amounts stated in a written settlement negotiated by EMC. The foregoing obligations are subject to the following: Customer (a) notifies EMC promptly in writing of such claim; (b) grants EMC sole control over the defense and settlement thereof; (c) reasonably cooperates in response to an EMC request for assistance; and (d) is not in material breach of this Agreement. Should any such Software or Support Service become, or in EMC's opinion be likely to become, the subject of such a claim, EMC may, at its option and expense, (1) procure for Customer the right to make continued use thereof; (2) replace or modify such so that it becomes non-infringing; (3) request return of the Software and, upon receipt thereof; refund the price paid by Customer, less straight-line depreciation based on a three (3) year useful life for Software; or (4) discontinue the Support Service and refund the portion of any pre-paid Support Service fee that corresponds to the period of Support Service discontinuation. EMC shall have no liability to the extent that the alleged infringement arises out of or relates to: (A) the use or combination of Software or Support Service with third party products or services; (B) use for a purpose or in a manner for which the Software or Support Service was not designed; (C) any modification made by any person other than EMC or its authorized representatives; (D) any modifications to Software or Support Service made by EMC pursuant to Customer's specific instructions; (E) any technology owned or licensed by Customer from third parties; or (F) use of any older version of the Software when use of a newer Software Release made available to Customer would have avoided the infringement. THIS SECTION STATES CUSTOMER'S SOLE AND EXCLUSIVE REMEDY AND EMC'S ENTIRE LIABILITY FOR THIRD PARTY INFRINGEMENT CLAIMS.

7. LIMITATION OF LIABILITY.

A. Limitation on Direct Damages. EXCEPT WITH RESPECT TO CLAIMS ARISING UNDER SECTION 6 ABOVE, EMC'S TOTAL LIABILITY AND CUSTOMER'S SOLE AND EXCLUSIVE REMEDY FOR ANY CLAIM OF ANY TYPE WHATSOEVER, ARISING OUT OF SOFTWARE OR SERVICE 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 CUSTOMER TO EMC FOR THE SPECIFIC SERVICE (CALCULATED ON AN ANNUAL BASIS, WHEN APPLICABLE) OR SOFTWARE 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 OR CLAIMS ARISING UNDER SECTION 6 ABOVE, NEITHER CUSTOMER NOR EMC SHALL HAVE LIABILITY TO THE OTHER FOR ANY SPECIAL, CONSEQUENTIAL, EXEMPLARY, INCIDENTAL, OR INDIRECT DAMAGES (INCLUDING, BUT NOT LIMITED TO, LOSS OF PROFITS, REVENUES, DATA AND/OR USE), EVEN IF ADVISED OF THE POSSIBILITY THEREOF.

C. Special Exclusion. IN JURISDICTIONS THAT DO NOT ALLOW LIMITATION OR EXCLUSION OF CONSEQUENTIAL OR INCIDENTAL DAMAGES, ALL OR A PORTION OF SECTION 7.A AND/OR 7.B ABOVE MAY NOT APPLY.

D. Regular Back-ups. As part of its obligation to mitigate damages, Customer shall take reasonable data back-up measures. In particular, Customer shall back-up the relevant data before EMC performs any remedial, upgrade, new Software Release 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.

E. Limitation Period. Unless otherwise required by applicable law, the limitation period for claims for damages shall be eighteen (18) months after the cause of action accrues, unless statutory law provides for a shorter limitation period.

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

8. EVALUATION AND LOANED SOFTWARE.

A. This Agreement shall also apply to (i) **"Evaluation Software"** (meaning the copy of Software which contains this Agreement, including any copies made by or on behalf of Customer, and all Documentation for the foregoing, which are licensed for a limited duration for the specific purpose of evaluation prior to making a final decision on procurement; and (ii) "**Loaned Software"** (meaning the copy of Software which contains this Agreement, including any copies made by or on behalf of Customer, and all Documentation for the foregoing, which are licensed for a limited duration directly to Customer for a limited period of time at no charge), subject to the following:

B. The particular Evaluation or Loaned Software, period of use, Installation Site and other transaction-specific conditions shall be as mutually agreed between EMC and Customer and recorded in the form of an evaluation or loan schedule.

C. Notwithstanding any deviating terms in this Agreement, all licenses for Evaluation and Loaned Software expire at the end of the evaluation or loan period.

D. Customer shall return Evaluation and Loaned Software at the end of the evaluation or loan period or when sooner terminated by EMC for convenience by giving thirty (30) days' written notice, whichever occurs first. Customer shall bear the risk of loss and damage for return of physical media, if any, and de-installation.

E. Customer may use Evaluation and Loaned Software free of charge, but, in the case of Evaluation Software, solely for the purpose of evaluation and not in a production environment.

F. Without prejudice to any other limitations on EMC's liability set forth in this Agreement (which shall also apply to Evaluation and Loaned Software), Evaluation and Loaned Software are provided "AS IS" and any warranty or damage claims against EMC in connection with Evaluation and Loaned Software are hereby excluded, except in the event of fraud or willful misconduct of EMC.

G. Unless otherwise specifically agreed in writing by EMC, EMC does not provide maintenance or support for any Evaluation Software. CUSTOMER RECOGNIZES THAT EVALUATION SOFTWARE MAY HAVE DEFECTS OR DEFICIENCIES WHICH CANNOT OR MAY NOT BE CORRECTED BY EMC. EMC shall have no liability to Customer for any action (or any prior related claims) brought by or against Customer alleging that Customer's sale, use or other disposition of any Evaluation Software infringes any patent, copyright, trade secret or other intellectual property right. In event of such an action, EMC retains the right to terminate this Agreement and take possession of the Evaluation Software. THIS SECTION STATES EMC'S ENTIRE LIABILITY WITH RESPECT TO ALLEGED INFRINGEMENTS OF INTELLECTUAL PROPERTY RIGHTS BY EVALUATION SOFTWARE OR ANY PART OF IT OR ITS OPERATION.

9. CONFIDENTIALITY. Each party shall (i) use Confidential Information of the other party only for the purposes of exercising rights or performing obligations in connection with this Agreement; and (ii) use at least reasonable care to protect from disclosure to any third parties 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 Customer data to which EMC may have access in connection with the provision of Services, which shall remain Confidential Information until one of the exceptions stated in the above definition of Confidential Information applies. Notwithstanding the foregoing, either party may disclose Confidential Information (a) to an Affiliate for the purpose of fulfilling its obligations or exercising its rights hereunder as long as such Affiliate complies with the foregoing; and (b) if required by law provided the receiving party has given the disclosing party prompt notice.

10. GOVERNMENT REGULATIONS AND EXPORT CONTROL. Software and the technology included therein provided under this Agreement are subject to governmental restrictions on (i) exports from the U.S.; (ii) exports from other countries in which such Software and technology included therein may be produced or located; (iii) disclosures of technology to foreign persons; (iv) exports from abroad of derivative products thereof; and (v) the importation and/or use of such Software and technology included therein outside of the United States or other countries (collectively, "**Export Laws**"). Customer shall comply with all Export Laws and EMC export policies to the extent such policies are made available to Customer by EMC. Diversion contrary to U.S. law or other Export Laws is expressly prohibited.

11. TERMINATION. Customer may terminate this Agreement for its convenience upon thirty (30) days' notice to EMC. Either Customer or EMC may terminate this Agreement upon written notice due to the other party's material breach of the terms governing use of the Software; provided that such breach is not cured within thirty (30) days after the provision of written notice to the breaching party specifying the nature of such breach. Upon termination of this Agreement, Customer shall cease all use and return or certify destruction of the applicable Software (including copies) to EMC. 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.

12. MISCELLANEOUS.

A. References. EMC may identify Customer for reference purposes unless and until Customer expressly objects in writing

B. Notices and Language. Any notices permitted or required under this Agreement shall be in writing, and shall be deemed given when delivered (i) in person, (ii) by overnight courier, upon written confirmation of receipt, (iii) by certified or registered mail, with proof of delivery, (iv) by facsimile transmission with confirmation of receipt, or (v) by email, with confirmation of receipt (except for routine business communications issued by EMC, which shall not require confirmation from Customer). Notices shall be sent to the address, facsimile number or email address set forth below, or at such other address, facsimile number or email address as provided to the other party in writing. Notices shall be sent to: EMC Corporation, 176 South Street, Hopkinton, MA 01748. Fax for legal notices: 508.293.7780. Email for legal notices: legalnotices@emc.com. The parties agree that this Agreement has been written in the English language, that the English language version shall govern and that all notices shall be in the English language.

C. Entire Agreement. This Agreement (i) is the complete statement of the agreement of the parties with regard to the subject matter hereof; and (ii) may be modified only by a writing signed by both parties. 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, shall be null and void and of no legal force or effect.

D. Force Majeure. Except for the payment of fees, if any, due EMC from Customer, neither party shall be liable under this Agreement because of a failure or delay in performing its obligations hereunder on account of any force majeure event, such as strikes, riots, insurrection, terrorism, fires, natural disasters, acts of God, war, governmental action, or any other cause which is beyond the reasonable control of such party.

E. Assignment. Customer shall not assign this Agreement or any right or delegate any performance without EMC's prior written consent, which consent shall not be unreasonably withheld. Customer shall promptly notify EMC, and EMC may terminate this Agreement on thirty days' notice, if Customer merges with or is acquired by a third party or otherwise undergoes a change of control.

F. Governing Law. This Agreement is governed by: (i) the laws of the Commonwealth of Massachusetts when EMC means EMC Corporation; (ii) the laws of the applicable country in which the applicable EMC subsidiary is registered to do business when EMC means the local EMC subsidiary, and (iii) the laws of Ireland when EMC means EISI. In each case, the applicability of laws shall exclude any conflict of law rules. The U.N. Convention on Contracts for the International Sale of Goods shall not apply. In the event of a dispute concerning this Agreement, Customer consents to the sole and exclusive personal jurisdiction of the courts of competency in the location where EMC is domiciled.

G. Waiver. No waiver shall be deemed a waiver of any prior or subsequent default hereunder. If any part of this Agreement is held unenforceable, the validity of the remaining provisions shall not be affected.

H. Partial Invalidity. If any part of this Agreement, a purchase order or an EMC quote is held unenforceable, the validity of the remaining provisions shall not be affected.

13. COUNTRY SPECIFIC TERMS.

A. CANADA. The terms in this subsection A apply only when EMC means the EMC sales subsidiary located in Canada (currently EMC Corporation of Canada):

1. Section 2.A (Delivery). The second sentence is deleted in its entirety and replaced with: "Title and risk of loss to physical media, if any, transfers to Customer at the time and place that the media clears Canadian Customs."
2. Section 3.A (General License Grant). The last two sentences are deleted and replaced with: "Licenses granted shall commence on the date the physical media, if any, clears Canadian Customs or electronic availability of such Software to Customer." Documentation is licensed solely for purposes of supporting Customer's use of the Software as permitted in this Section.
3. Section 12 (MISCELLANEOUS). Add the following as new subsection I:

   I. The parties have required that this Agreement be drawn up in English and have also agreed that all notices or other documents required by or contemplated in this Agreement be written in English.

   Les parties ont requis que cette convention soit rédigée en anglais et ont également convenu que tout avis ou autre document exigé aux termes des présentes ou découlant de l'une quelconque de ses dispositions sera préparé en anglais.

B. United Kingdom. The terms in this subsection B apply only when EMC means the EMC sales subsidiary located in the United Kingdom (currently EMC Computer Systems (UK) Limited):

1. Section 4.D (Warranty Exclusions). The entire section is deleted and replaced with:

   D. Warranty Exclusions. Except as expressly stated in the applicable warranty set forth in this Agreement, EMC (including its suppliers) provides Software "AS IS" and makes no other express or implied warranties, written or oral, and ALL OTHER WARRANTIES AND CONDITIONS (SAVE FOR THE WARRANTIES AND CONDITIONS IMPLIED BY SECTION 12 OF THE SALE OF GOODS ACT 1979) ARE SPECIFICALLY EXCLUDED TO THE FULLEST EXTENT PERMITTED BY LAW, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, AND ANY WARRANTY ARISING BY STATUTE, OPERATION OF LAW, COURSE OF DEALING OR PERFORMANCE, OR USAGE OF TRADE.
2. Section 7 (LIMITATION OF LIABILITY). This Section is deleted in its entirety and replaced with:

   7. LIMITATION OF LIABILITY AND PRESERVATION OF DATA.

   A. The entire aggregate liability of EMC (including its suppliers) under or in connection with the supply of the Software or Service, whether in tort (including negligence), for breach of contract, misrepresentation or otherwise, is limited in respect of each event or a series of events: (i) to the amounts actually paid by Customer for the Software or Services which give rise to such liability during the twelve (12) month period immediately preceding the date of the cause of action giving rise to such claim; or (ii) Great British Pounds Sterling one million (£1,000,000), whichever is the greater amount. In no event shall EMC (including its suppliers) or Customer be liable to the other or any other person or entity for loss of profits, loss of revenue, loss of use or any indirect, special, incidental, consequential or exemplary damages arising out of or in connection with this Agreement, the license of the Software or the provision of Services, and the use, performance, receipt or disposition of such Software or Services, even if such party has been advised of the possibility of such damages or losses. Nothing in this Agreement shall operate to exclude or restrict EMC's liability for: (a) death or personal injury resulting from negligence; (b) breach of obligations arising from section 12 of the Sale of Goods Act 1979; or (c) fraud.

   B. CUSTOMER OBLIGATIONS IN RESPECT OF PRESERVATION OF DATA. During the Term of the Agreement, the Customer shall:

   1) from a point in time prior to the point of failure, (i) make full and/or incremental backups of data which allow recovery in an application consistent form, and (ii) store such back-ups at an off-site location sufficiently distant to avoid being impacted by the event(s) (e.g. including but not limited to flood, fire, power loss, denial of access or air crash) and affect the availability of data at the impacted site;

   2) have adequate processes and procedures in place to restore data back to a point in time and prior to point of failure, and in the event of real or perceived data loss, provide the skills/backup and outage windows to restore the data in question;

3) use anti-virus software, regularly install updates across all data which is accessible across the network, and protect all storage arrays against power surges and unplanned power outages with Uninterruptible Power Supplies; and

4) ensure that all operating system, firmware, system utility (e.g. but not limited to, volume management, cluster management and backup) and patch levels are kept to EMC recommended versions and that any proposed changes thereto shall be communicated to EMC in a timely fashion.

3. Section 12 (MISCELLANEOUS). Add the following as new subsection I:

I. Each of the parties acknowledges and agrees that in entering into this Agreement, it does not rely on, and shall have no remedy in respect of, any statement, representation, warranty or understanding (whether negligently or innocently made) of any person (whether party to this Agreement or not) other than as expressly set out in this Agreement as a warranty. The only remedy available to Customer for a breach of the warranties shall be for breach of contract under the terms of this Agreement. Nothing in Section 7 shall however operate to limit or exclude any liability for fraud. No term of this Agreement shall be enforceable under the Contracts (Rights of Third Parties) Act 1999 by a person that is not a party to this Agreement. If any part of this Agreement is held unenforceable, the validity of the remaining provisions shall not be affected.

C. Ireland. The terms in this subsection C apply only when EMC means the EMC sales subsidiary located in Ireland (currently EMC Information Systems International:

1. Section 4.D (Warranty Exclusions). The entire section is deleted and replaced with:

D**. Warranty Exclusions**. Except as expressly stated in the applicable warranty set forth in this Agreement and the applicable exhibits, EMC (including its suppliers) and makes no warranties, and ALL WARRANTIES, TERMS AND CONDITIONS, WHETHER ORAL OR WRITTEN, EXPRESS OR IMPLIED BY LAW, CUSTOMER OR OTHERWISE, INCLUDING, BUT NOT LIMITED TO, ANY WARRANTIES, TERMS AND CONDITIONS, OF FITNESS FOR PURPOSE, DESCRIPTION, AND QUALITY ARE HEREBY EXCLUDED TO THE MAXIMUM EXTENT PERMITTED UNDER APPLICABLE LAW.

2. Section 7 (LIMITATION OF LIABILITY). This section is deleted in its entirety and replaced with the following:

7. LIMITATION OF LIABILITY.

A. EMC does not exclude or limit its liability to the Customer for death or personal injury, or, breach of obligations implied by Section 12 of the Sale of Goods Act, 1893, as amended by the Sale of Goods and Supply of Services Act, 1980, or, due to the fraud or fraudulent misrepresentation of EMC, its employees or agents.

B. Subject always to subsection 7.A, the liability of EMC (including its suppliers) to the Customer under or in connection with an order, whether arising from negligent error or omission, breach of contract, or otherwise ("Defaults") shall be: (i) the aggregate liability of EMC for all Defaults resulting in direct loss of or damage to the tangible property of the Customer shall be limited to damages which shall not exceed the greater of two hundred per cent (200%) of the applicable price paid and/or payable for the Software or Service, or one million euros (€1,000,000); or (ii) the aggregate liability of EMC for all Defaults, other than those governed by subsection 7.B(i) shall be limited to damages which shall not exceed (a) in respect of the Software, the greater of one hundred and fifty per cent (150%) of the applicable price paid and/or payable or five hundred thousand euro (€500,000); or (b) in respect of the services, if any, the greater of one hundred and fifty per cent (150%) of the applicable charges paid and/or payable or five hundred thousand euro (€500,000).

C. In no event shall EMC (including its suppliers) be liable to Customer for (i) loss of profits, loss of business, loss of revenue, loss of use, wasted management time, cost of substitute services or facilities, loss of goodwill or anticipated savings, loss of or loss of use of any software or data; and/or (ii) indirect, consequential or special loss or damage; and/or (iii) damages, costs and/or expenses due to third party claims; and/or (iv) loss or damage due to the Customer's failure to comply with obligations under this Agreement, failure to do back-ups of data or any other matter under the control of the Customer. For the purposes of this Section 7, the term "loss" shall include a partial loss, as well as a complete or total loss.

D. The parties expressly agree that should any limitation or provision contained in this Section 7 be held to be invalid under any applicable statute or rule of law, it shall to that extent be deemed omitted, but if any party thereby becomes liable for loss or damage which would otherwise have been excluded such liability shall be subject to the other limitations and provisions set out in this Section 7.

E. The parties expressly agree that any order for specific performance made in connection with this Agreement in respect of EMC shall be subject to the financial limitations set out in sub-section 7.B.

F. The parties expressly agree that the provisions of Section 6 (INDEMNITY) shall not be subject to the limitations and exclusions of liability set out in this Section 7.

G. CUSTOMER OBLIGATIONS IN RESPECT OF PRESERVATION OF DATA. During the Term of the Agreement the Customer shall:

1) from a point in time prior to the point of failure, (i) make full and/or incremental backups of data which allow recovery in an application consistent form, and (ii) store such back-ups at an off-site location sufficiently distant to avoid being impacted by the event(s) (e.g. including but not limited to flood, fire, power loss, denial of access or air crash) and affect the availability of data at the impacted site;

2) have adequate processes and procedures in place to restore data back to a point in time and prior to point of failure, and in the event of real or perceived data loss, provide the skills/backup and outage windows to restore the data in question;

3) use anti-virus software, regularly install updates across all data which is accessible across the network, and protect all storage arrays against power surges and unplanned power outages with Uninterruptible Power Supplies; and

4) ensure that all operating system, firmware, system utility (e.g. but not limited to, volume management, cluster management and backup) and patch levels are kept to EMC recommended versions and that any proposed changes thereto shall be communicated to EMC in a timely fashion.

3. Section 7.D (Limitation Period). This Section is deleted in its entirety and replaced with the following as a totally separate section:

WAIVER OF RIGHT TO BRING ACTIONS: The Customer waives the right to bring any claim arising out of or in connection with this Agreement more than twenty-four (24) months after the date of the cause of action giving rise to such claim**.**

D. European Union. The terms in this subsection D apply only when EMC means an EMC sales subsidiary located in the European Union:

1. Section 3.A (General License Grant). The following is added at the end of this section:

Customer shall not, and Customer shall not permit any third party to, modify, enhance, supplement, create derivative works from, reverse assemble, reverse engineer, reverse compile or otherwise reduce to human readable form the Software without EMC's prior written consent, except to the extent that local, mandatory law grants Customer the right to decompile such Software in order to obtain information necessary to render such interoperable with other software. In such event, Customer shall first inform EMC of its intention and request EMC to provide Customer with the necessary information. EMC may impose reasonable conditions on the provision of the requested information, including the payment of a reasonable fee.

E. Australia. The terms in this subsection E apply only when EMC means the EMC sales subsidiary located in Australia (currently **EMC Global Holdings Company (Australian Branch)** ABN 86 669 010 6895:

1. Section 7 (LIMITATION OF LIABILITY). This section is deleted in its entirety and replaced with the following:

7. LIMITATION OF LIABILITY.

A. Limitation on Direct Damages. EXCEPT WITH RESPECT TO CLAIMS ARISING UNDER SECTION 6 OF THIS AGREEMENT, EMC'S AND ITS SUPPLIERS' TOTAL LIABILITY AND CUSTOMER'S SOLE AND EXCLUSIVE REMEDY FOR ANY CLAIM OF ANY TYPE WHATSOEVER, ARISING OUT OF SOFTWARE OR SERVICE PROVIDED HEREUNDER, SHALL BE LIMITED TO PROVEN DIRECT DAMAGES CAUSED BY EMC'S SOLE NEGLIGENCE IN AN AMOUNT NOT TO EXCEED (i) AUD$2,000,000, FOR DAMAGE TO REAL OR TANGIBLE PERSONAL PROPERTY; AND (ii) THE PRICE PAID BY CUSTOMER TO EMC FOR THE SPECIFIC SERVICE (CALCULATED ON AN ANNUAL BASIS, WHEN APPLICABLE) OR SOFTWARE 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 OR CLAIMS ARISING UNDER SECTION 6 ABOVE, NEITHER CUSTOMER NOR EMC (INCLUDING EMC'S SUPPLIERS) SHALL (a) HAVE LIABILITY TO THE OTHER FOR ANY SPECIAL, CONSEQUENTIAL, EXEMPLARY, INCIDENTAL, OR INDIRECT DAMAGES (INCLUDING, BUT NOT LIMITED TO, LOSS OF PROFITS, REVENUES, DATA AND/OR USE), EVEN IF ADVISED OF THE POSSIBILITY THEREOF; AND (b) BRING ANY CLAIM BASED ON SOFTWARE OR SERVICE PROVIDED HEREUNDER MORE THAN EIGHTEEN (18) MONTHS AFTER THE CAUSE OF ACTION ACCRUES.

C. Trade Practices Legislation: EMC's liability under any statutory right or any condition or warranty, including any implied by any State Fair Trading Act or the Trade Practices Act, 1974 (Cth) is, to the maximum extent permitted by law, excluded. To the extent that such liability cannot be excluded, EMC's liability is limited at the option of EMC to: (a) in the case of Software, any one or more of the following: (i) the replacement thereof or the supply of its equivalent; (ii) the repair thereof; (iii) the payment of the cost of replacement thereof or of acquiring its equivalent; or (iv) the payment of the cost of having such repaired, and (b) in the case of any Services performed by EMC under or in connection with this Agreement: (i) the supply of those Services again; or (ii) the payment of the cost of having those Services supplied again.

F. New Zealand - The terms in this subsection F apply only when EMC means the EMC sales subsidiary located in New Zealand (currently EMC CORPORATION (NEW ZEALAND BRANCH) AKOS. 1188883:

1. Section 7 (LIMITATION OF LIABILITY). This section is deleted in its entirety and replaced with the following:

7. LIMITATION OF LIABILITY.

A. Limitation on Direct Damages. EXCEPT WITH RESPECT TO CLAIMS ARISING UNDER SECTION 6 OF THIS AGREEMENT, EMC'S AND ITS SUPPLIERS' TOTAL LIABILITY AND CUSTOMER'S SOLE AND EXCLUSIVE REMEDY FOR ANY CLAIM OF ANY TYPE WHATSOEVER, ARISING OUT OF SOFTWARE OR SERVICE PROVIDED HEREUNDER, SHALL BE LIMITED TO PROVEN DIRECT DAMAGES CAUSED BY EMC'S SOLE NEGLIGENCE IN AN AMOUNT NOT TO EXCEED (i) NZ$2,000,000, FOR DAMAGE TO REAL OR TANGIBLE PERSONAL PROPERTY; AND (ii) THE PRICE PAID BY CUSTOMER TO EMC FOR THE SPECIFIC SERVICE (CALCULATED ON AN ANNUAL BASIS, WHEN APPLICABLE) OR SOFTWARE 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 OR CLAIMS ARISING UNDER SECTION 6 ABOVE, NEITHER CUSTOMER

NOR EMC (INCLUDING EMC'S SUPPLIERS) SHALL (a) HAVE LIABILITY TO THE OTHER FOR ANY SPECIAL, CONSEQUENTIAL, EXEMPLARY, INCIDENTAL, OR INDIRECT DAMAGES (INCLUDING, BUT NOT LIMITED TO, LOSS OF PROFITS, REVENUES, DATA AND/OR USE), EVEN IF ADVISED OF THE POSSIBILITY THEREOF; AND (b) BRING ANY CLAIM BASED ON SOFTWARE OR SERVICE PROVIDED HEREUNDER MORE THAN EIGHTEEN (18) MONTHS AFTER THE CAUSE OF ACTION ACCRUES.

C. Fair Trading Legislation. EMC's liability under any statutory right or any condition or warranty, including any implied by the Fair Trading Act 1986 or Consumer Guarantees Act 1993 ("**FTA**") or any similar law is, to the maximum extent permitted by law, excluded. To the extent that such liability cannot be excluded, EMC's liability is limited at the option of EMC to: (a) in the case of any Software, any one or more of the following: (i) the replacement thereof or the supply of its equivalent; (ii) the repair thereof; (iii) the payment of the cost of replacement thereof or of acquiring its equivalent; or (iv) the payment of the cost of having such repaired, and (b) in the case of any Services performed by EMC under or in connection with this Agreement: (i) the supply of those Services again; or (ii) the payment of the cost of having those Services supplied again.