

# MASTER ORDERING AGREEMENT

## UNITED KINGDOM

By and between:

**EMC Computer Systems (UK) Limited (“EMC”)**  
**EMC Tower**  
**Great West Road**  
**Brentford, Middlesex TW8 9AN**

And

\_\_\_\_\_  
 (“Customer”)  
\_\_\_\_\_  
\_\_\_\_\_

This Master Agreement governs Customer's procurement and use of all Products and Services ordered by Customer directly from EMC on or after the Effective Date.

### 1. DEFINITIONS.

“**Additional Brands**” has the meaning ascribed to it under Clause 2D below

“**Affiliate**” means a legal entity that is controlled by, controls, or is under common “control” of a related entity.

“**Control**” means more than 50% of the voting power or ownership interests.

“**Authorised Users**” means the categories of persons described in Clause 4.A(2) below

“**Customer Support Tools**” means any software or other tools made available by EMC to Customer to enable Customer to perform various self-maintenance activities.

“**Delivery**” has the meaning set out in Clause 3 (Delivery and Installation)

“**Documentation**” means the then-current, written user manuals and online help and guides for Products provided by EMC.

“**Effective Date**” means the date of last signature below.

“**Equipment**” means any hardware delivered by EMC to Customer.

“**Governing Agreement**” has the meaning ascribed to it under Clause 2D below.

“**Installation Site**” means the ship-to address or other location identified on the EMC quote or other document prepared by EMC as the Customer's site of installation and/or use of a Product, or a subsequent location approved by EMC.

“**Master Agreement**” means this Master Ordering Agreement, the attachments hereto, any Addenda, Product Notices, Statements of Work, and Service Briefs.

“**Maintenance Aids**” mean any hardware, software or other tools, other than Customer Support Tools, used by EMC to perform diagnostic or remedial activities on Products.

“**Product(s)**” means “**Equipment**” and “**Software**”

“**Product Notice**” means the notice by which EMC informs Customer of product-specific use rights and restrictions, warranty periods, warranty upgrades and Support Services. 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](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 Products 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.

“**Professional Services**” means consulting, installation, implementation, or other services that are not Support Services.

“**Services**” mean services provided by EMC or its designee to Customer and may consist of Support Services and/or Professional Services.

“**Software**” means any programming code provided by EMC to Customer as a standard product, also including microcode, firmware and operating system software.

“**Software Release**” means any subsequent version of Software provided by EMC after initial Delivery of Software, but does not mean a new Product.

“**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, be concluded in the structure of a long form services specification, or a short form service description and EMC model number called a “**Service Brief**.”

“**Support Services**” means services for the support and maintenance of standard Products.

### 2. PURCHASING AND PAYMENT.

**A. Purchasing.** Each Customer purchase order shall reference the applicable EMC quote and becomes binding on both parties when it is submitted by Customer and accepted by EMC (i) issuing an e-mail or other written communication to Customer; or (ii) delivering the Products and/or Services identified in the purchase order to Customer. In the absence of a Customer purchase order, an EMC quote becomes binding on both parties when Customer signs and submits such quote to EMC prior to the expiration date stated on such quote. Each SOW becomes binding on both parties when it is signed by EMC and Customer (i) countersigns and returns the SOW to EMC; or (ii) Customer sends EMC a purchase order referencing such SOW. An executed SOW supersedes the EMC proposal upon which it is based.

**B. Payment.** EMC shall submit invoices for fees and reimbursable costs and expenses and Customer shall pay each

invoice in the manner specified in the applicable SOW or otherwise, subject to EMC's credit approval, thirty (30) days from date of invoice, in the same currency as used on EMC's invoice. Customer acknowledges that its payment obligations in respect of Products shall be wholly independent of the performance by EMC of any Services that may be ordered in addition to such Products. Customer will also pay or reimburse to EMC for all related value added (VAT), sales, use, excise, withholding, personal property and similar taxes resulting from a Customer purchase, except for taxes based on EMC's net income. If Customer is required to withhold taxes, then Customer will forward any withholding receipts to EMC at [tax@emc.com](mailto:tax@emc.com).

**C. Orders by Affiliates.** Customer Affiliates domiciled in the United Kingdom are entitled to order Products and Services under this Master Agreement if the Products and Services are ordered for installation/delivery in the United Kingdom. Before ordering Products and Services for installation/delivery in any other country than the United Kingdom, the Customer Affiliate operating in such other country and the local EMC Affiliate, if any, that engages in direct sales/licensing activities of Products and Services in the ordinary course of its business for such country, must first execute a local participation agreement that (i) incorporates by reference the terms of this Master Agreement that are applicable to it; and (ii) addresses such issues as are necessary to conform to local country laws and business requirements and practices. Thereafter, an EMC quote, referencing the local participation agreement may be issued by such local EMC Affiliate to the local Customer Affiliate and a purchase order may be placed pursuant to such EMC quote. If there is no such local EMC Affiliate, then EMC shall advise Customer on any available alternative methods of procurement.

**D. Transactions with Certain EMC Affiliates.** Certain EMC Affiliates may market brands of products and services ("Additional Brands") not typically available from the EMC entity signing this Master Agreement or a local participation agreement (separately or collectively, as appropriate, referred to in this clause 2.D. as the "Relevant Governing Agreement"). EMC and Customer recognize that it may be to their mutual advantage to use the Relevant Governing Agreement to expedite purchases of Additional Brands. Accordingly, Customer and Customer Affiliates may order Additional Brands from Certain EMC Affiliates by issuing a purchase order that references, or by signing, a quote for Additional Brands which (i) is issued by the applicable Certain EMC Affiliate; (ii) references the Relevant Governing Agreement; and (iii) includes any additional or different requirements or terms that specifically apply to the Additional Brands. For purposes of such quote, references in the Relevant Governing Agreement to "EMC" are deemed to apply to the Certain EMC Affiliate issuing the quote. In case of conflict between such quote and the Relevant Governing Agreement, such quote shall supersede and control the applicable transaction.

### 3. DELIVERY AND INSTALLATION.

**A. Product Delivery.** Title and risk of loss for sold Equipment and physical media containing Software shall transfer to Customer upon EMC's delivery to a carrier at EMC's designated point of shipment ("**Delivery**"). EMC shall pay all

shipment related charges and transit insurance, on behalf of Customer. 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).

**B. Product Installation and Acceptance.** EMC's obligation, if any, to install a Product as part of the Product's purchase price or licensing fee, is set forth in the Product Notice. Acceptance that a Product operates in substantial conformity to the Product's Documentation occurs upon Delivery or electronic availability, as applicable. Notwithstanding such acceptance, Customer retains all rights and remedies set forth in the section entitled "Product Warranty."

### 4. LICENSE TERMS.

**A. General License Grant.** EMC grants to Customer a nonexclusive and nontransferable (except as otherwise permitted herein) license (with no right to sublicense) to:

(1) use (i) the Software for Customer's internal business purposes; and (ii) the Documentation related to Software for the purpose of supporting Customer's use of the Software. Licenses granted to Customer shall, unless otherwise indicated on the EMC quote, be perpetual and commence on Delivery of the physical media or the date Customer is provided with electronic availability, as applicable

(2) allow Licensee's Affiliates, subcontractors, agents, clients, vendors, suppliers and consultants to use the Software solely on behalf of Licensee in accordance with this Agreement, provided such contractor agrees to be bound by the terms of this Agreement and Licensee is responsible for such use ("Authorised Users"). The Customer is and will remain responsible for the use of the Software by its Authorised Users. This sub clause shall be deemed written consent in respect of Authorised Users for the purposes of Clause 4.C. (iii) below.

**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 EMC quote. 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 equipment, 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 Equipment with which it is shipped to perform its basic functions, is licensed for use solely on such Equipment.

**C. License Restrictions.** All Software licenses granted herein are for use of object code only. Customer is permitted to copy the 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 licensed use of the 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 EMC Products 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 the relevant Software.

**E. Audit Rights.** EMC 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 such support as may reasonably be required to perform such audit and will, without prejudice to other rights of EMC, take such steps as may reasonably be required to address any non-compliant situations identified by the audit, save that the Parties agree that in the event that the audit reveals that insufficient licenses were procured by Customer, Customer shall forthwith procure such additional licenses required to remedy the situation retrospectively.

**F. Termination.** EMC may terminate licenses for cause, if Customer breaches the terms governing use of the Software and fails to cure within thirty (30) days after receipt of EMC's written notice requiring it to do so. 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 and for the avoidance of doubt, 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 made by it. 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.

**H. Other License Terms.** 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, in case of conflict with the terms of this Master Agreement, (i) prevail with regard to Products for which EMC is not the licensor; and (ii) not prevail with regard to Products for which EMC is the licensor.

## **5. PRODUCT WARRANTY.**

**A. Equipment Warranty.** EMC warrants that Equipment, and Equipment upgrades installed into the Equipment, purchased from EMC, 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 Equipment, as

noted on the Product Notice, Support Services associated with a Support Option (as described at 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.

**B. 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 Customer's requirements, except if expressly warranted by EMC in its quote. Support Services for Software are available for separate purchase and the Support Options are identified in the Product Notice.

**C. 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 Customer 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.

**D. 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 Product. If EMC is unable to effect such within a reasonable time, then EMC shall refund the amount paid by Customer 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 within fourteen (14) days of Delivery of the replacement Product or portions thereof, failing which Customer shall pay EMC's then current spare parts price therefore. EMC shall have no liability hereunder after expiration of the applicable warranty period.

**E. 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 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 not 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. Removal or disablement of Equipment's 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 may affect EMC's ability to provide warranty services.

**F. No Further Warranties.** Except for the warranty set forth in this Master Agreement, 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.

**6. THIRD PARTY IPR INDEMNITY.** EMC shall (i) defend Customer against any third party claim that a Product or Service infringes a patent or copyright enforceable in a country that is a signatory to the Berne Convention ("Indemnified Claim"); 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 to the extent based upon such Indemnified Claim(s). 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 Master Agreement. Should any such Product or 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 Product and, upon receipt thereof, refund the price paid by Customer, less straight-line depreciation based on a five (5) year useful life for Products; or (4) discontinue the Service and refund the portion of any pre-paid Service fee that corresponds to the period of Service discontinuation. Furthermore, EMC shall have no liability or obligation under this Section 6 for any third party claim of infringement that arises out of or relates to: (A) the use or combination of a Product or Service with technology, products, services, apparatus or business methods that EMC did not provide if the infringement would not have occurred were it not for such combination, operation or use; (B) use for a purpose or in a manner for which the Product or Service was not designed; (C) any modification made by any person other than EMC or its authorized representatives; (D) any modifications to a Product or 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. Customer acknowledges that EMC shall only be responsible for any damages that are based on EMC's revenues or profits from such Product or Service. THIS SECTION STATES CUSTOMER'S SOLE AND EXCLUSIVE REMEDY AND EMC'S ENTIRE LIABILITY FOR THIRD PARTY INFRINGEMENT CLAIMS.

**7. LIMITATION OF LIABILITY.** For all claims of Customer for damages under or in connection with this Master Agreement 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 negligence, in case of EMC's willful misconduct, fraud or gross negligence, and where a limitation

of liability is not permissible under applicable mandatory law, EMC shall be liable according to statutory law.

**B. Limited liability.** In all other cases, the following shall apply: Neither Party shall be liable to the other Party however that liability arises, for consequential, special, incidental or indirect losses and EMC's maximum potential liability shall, for each damaging event or series of events, be limited to the greater of (i) Great British Pounds Sterling one million (£1,000,000) or (ii) the price paid by Customer to EMC in the 12 months immediately preceding such event or series of events for the specific Service (in case of ongoing Services to be provided for a minimum period of more than one year calculated on an annual basis) or specific Product from which such claim arises and EMC's liability shall be further limited to losses sustained as a direct result of the said event or event(s).

**C.** Without prejudice to clause 7.B., neither party shall be liable to the other party, 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; or (viii) loss of data; 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.

**D. Regular Back-ups.** During the Term of this Master Agreement and 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 Master 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.** All claims for damages based on defects of Products or Services shall be time-barred 12 months after delivery (or acceptance, if applicable), except if the parties have agreed on a shorter warranty period. Unless otherwise required by applicable law, the limitation period for all other claims for damages shall be eighteen (18) months after the cause of action accrues, unless statutory law provides for a shorter limitation period in which case such shorter period shall apply

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

**8. EMC SELECT OR BROKERAGE PRODUCTS.** Periodically, EMC may offer to supply or license certain products that are made by a third party manufacturer/supplier and not EMC. Some of such products are specifically identified as "EMC Select Products" and listed at <http://www.emc.com/partnersalliances/programs/select.jsp>.

Other such third party manufacturer/supplier products may be provided by EMC on a case-by-case basis in response to a Customer request ("Brokerage Products"), and will be



identified on the EMC quote using “Brokerage” or a similar descriptor. Notwithstanding any other provisions of this Master Agreement, EMC Select Products and Brokerage Products are subject to the standard license, warranty, indemnity and support terms of the third party manufacturer/supplier (or an applicable agreement between Customer and such manufacturer/supplier), to which Customer shall adhere. Even if support fees are invoiced through EMC, EMC Select Products and Brokerage Products are not supported by EMC and Customer must contact such third party directly for support services. Any warranty or indemnity claims against EMC in relation to EMC Select Products or Brokerage Products are expressly excluded. In no event shall EMC be liable to Customer for any damages that in any way arise out of or relate to any EMC Select Products or Brokerage Products. Except where EMC acted with willful misconduct or gross negligence EMC Select Products and Brokerage Products are provided by EMC “AS IS.”

## **10. LEASING TRANSACTIONS.**

**A. General.** From time to time, Customer may obtain “**Leased Products**” (meaning Products made available by EMC directly to Customer pursuant to a separate lease or financing agreement. However, the terms of this Master Agreement shall govern Customer’s use of the Leased Products and any Services identified in the applicable lease or financing agreement subject to the exceptions set forth immediately below.

**B. Leasing Specific Exceptions.** For Leased Products: (i) no title shall pass to Customer, but shall remain with EMC or its assignee, or a third party finance partner; (ii) in lieu of a refund, if any, due from EMC to Customer pursuant to a claim under warranty or of indemnification for patent or copyright infringement, EMC shall assume all of Customer’s remaining financial obligations for the affected Leased Products. Notwithstanding the payment and termination terms of this Master Agreement or any applicable SOW, if Support Services fees and/or Professional Services fees are financed with EMC under a lease or financing agreement, payment of such fees shall be made in accordance with the terms of the lease or financing agreement and shall continue unabated in accordance with the terms and conditions thereof.

**11. CONFIDENTIALITY.** “**Confidential Information**” means all confidential and proprietary information of a party, including, without limitation, the terms of this Master Agreement, all business plans, product plans, financial information, software designs, formulas, methods, know-how, processes, technical information, Support Tools, quotes as well as any information that is marked “confidential” or “proprietary” or with any other similar term or, if disclosed orally, is identified as being confidential at the time of disclosure, or in relation to which its confidentiality should by its nature be inferred. 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 through no fault of the receiving party; (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 (i) use Confidential Information of the other party only for the purposes of exercising rights or performing obligations in connection with this Master Agreement or any purchase order hereunder; and (ii) 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 following the later of (i) the termination date of this Master Agreement, or (ii) the last date of completion or other termination of Services under each SOW entered into hereunder, provided, however, that Confidential Information that constitutes, contains, or reveals, in whole or in part, EMC proprietary rights shall not be disclosed by the receiving party at any time unless and 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 is bound to the party receiving the confidential information to comply with the foregoing; and (b) if required by law provided the receiving party has given the disclosing party prompt notice where legally permissible. This Confidentiality clause supersedes the provisions of any prior non disclosure agreement entered into by the Parties in respect of the subject matter of this Agreement from the Effective Date.

**12. EXPORT CONTROL.** The Products, Services and the technology included therein provided under this Master Agreement are subject to governmental restrictions on (i) exports from the U.S.; (ii) exports from other countries in which such Products 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 Products and technology included therein outside of the United States or other countries (collectively, “**Export Laws**”). Customer shall comply with all Export Laws managed by the United States Department of Commerce Bureau of Industry and Security (“**BIS**”) and in particular the United States Export Administration Act, as amended from time to time, information relating to which can be accessed at: <http://www.bis.doc.gov/index.htm> and <http://www.access.gpo.gov/bis/index.html>, 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.

**13. TERM AND TERMINATION.** This Master Agreement takes effect on the Effective Date and continues until (i) terminated for cause; or (ii) terminated by either party for convenience by giving ninety (90) days’ prior written notice to the other party. 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, limitation of liability, warranty, proprietary rights, licensing, and governing law shall so survive. Termination of this Master Agreement shall not affect the validity of any Order 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 Master Agreement, the terms and

conditions contained herein shall continue to apply to any valid SOW as if the Master Agreement had not been terminated.

#### **14. MISCELLANEOUS.**

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

**B. Notices.** Any notices hereunder 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; or (iv) by email, with confirmation of receipt. Notices shall be sent to the address set forth above, or at such other address, or email address as either party may indicate by at least ten (10) business days prior written notice to the other party. All notices shall be addressed to the Legal Department.

**C. Entire Agreement.** This Master Agreement and each purchase order with regard to the subject matter thereof (i) comprise the complete statement of the agreement of the parties; (ii) supersedes any prior oral or written communications/representations; and (iii) may be modified only in writing. 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 Master Agreement and/or EMC quote, shall be null and void and of no legal force or effect, even if EMC does not expressly reject such terms when accepting a purchase order or similar document provided by Customer.

**D. Force Majeure.** Except for payment of fees, neither party shall be liable under this Master Agreement because of a failure or delay in performing its obligations due to any force majeure event, including 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.** Neither party may assign this Master Agreement or a purchase order or any right herein or delegate any performance to a third party, without EMC's prior authorized written consent. Neither party shall unreasonably withhold or delay such consent; provided, however, that such written consent shall not be required if (i) either party assigns this Master Agreement to a third party in connection with a merger, acquisition, or sale of all or substantially all of its assets with or to such other third party, unless the surviving entity of the merger, acquisition, or sale of assets is a direct competitor of the other party. Nothing herein shall limit EMC's right to assign its right to receive and collect payments hereunder. EMC may use EMC Affiliates or other sufficiently qualified subcontractors to provide Services to Customer, provided that EMC shall remain responsible to Customer for the performance thereof.

**F. Governing Law.** This Master Agreement is governed by the laws of England and Wales, excluding its conflict of law rules. The parties agree to irrevocably submit to the exclusive jurisdiction of the Courts of England and Wales in respect of all disputes arising out of or in connection with this Master Agreement and all purchase orders. The U.N. Convention on Contracts for the International Sale of Goods does not apply.

**G. Waiver.** No waiver shall be deemed a waiver of any prior or subsequent default hereunder.

**H. Severability.** If any part of this Master Agreement, a purchase order or an EMC quote is held unenforceable, the parties shall substitute for the affected provision an enforceable provision which approximates the intent and economic effect of the affected provisions. The validity of the remaining provisions shall not be affected.

**I. Exhibits.** The following Exhibits form part of this Master Agreement.

Attachment 1 – Support Services Exhibit

Attachment 2 – Professional Services Exhibit

**J. Precedence.** All documents and provisions referred to in this Master Agreement shall be read consistently so far as is reasonably practicable. In the event that various parts of this Master Agreement are inconsistent, the following order of precedence shall apply unless expressly otherwise stated:

- (i) The Attachments to the Master Ordering Agreement;
- (ii) Addendums modifying the Master Agreement;
- (iii) the provisions of this Master Ordering Agreement;
- (iv) SOW

**K Headings.** The headings in this Master Agreement are for convenience only and shall not affect its construction or interpretation.

**L. Independent Contractors.** The parties shall act as independent contractors for all purposes under this Master Agreement. Nothing contained herein shall be deemed to constitute either party as an agent or representative of the other, nor 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 speak for or represent the other party without the prior written approval of the other party.

**M. 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.

**N EMC Disclaimer.** EMC shall not be liable under this Master Agreement because of failure or delay in performing its obligations hereunder on account of Customer's failure to provide EMC with reasonable access to or information about or cooperation regarding anything required to be provided by Customer as contemplated in this Master Agreement in order that EMC may perform its obligations hereunder.

**O Third Party.** The parties to this Agreement do not intend that any of its terms shall be enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999 by any other person not a party to it.

**P. Counterparts.** This Master Agreement may be executed in counterparts. A facsimile or scanned copy of this Master Agreement duly executed by the sending party may be relied upon as an original and if there is any inconsistency between such facsimile or scanned copy and a subsequently received hard copy, the facsimile or scanned copy shall prevail.

**EMC Computer Systems (UK) Limited (“EMC”)**

By (Sign): \_\_\_\_\_  
Name (Print): \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

**Customer**

By (Sign): \_\_\_\_\_  
Name (Print): \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

# Attachment 1 to Master Agreement

## Support Services Exhibit

This Support Services Exhibit (“**Exhibit**”) sets forth the terms governing the provision of Support Services by EMC to Customer.

### 1. DEFINITIONS.

**A.** All definitions set forth in the main body of the Master Agreement shall also apply to this Exhibit.

**B. “EMC Service Area”** means a location that is within (i) a one hundred (100) mile radius of an EMC service location; and (ii) the country in which the Installation Site is located.

**C. “Time and Materials Service”** means any maintenance or support service that is provided by EMC at the Customer’s request but that is not part of fixed-fee Support Services or other generally available service related offering from EMC, using a pre-established fee and failing a pre-established fee at the EMC’s then current time and materials rates, which will be separately charged to Customer and which may be made available under a separate set of terms and conditions (“Time and Materials Services Terms and Conditions”).

### 2. SUPPORT SERVICES.

**A. Scope of Support Services.** The content 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 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 Product. EMC reserves the right to change the scope of the Support Services on sixty (60) days’ prior written notice to Customer.

**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 Customer’s facility. 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 problem that would also have been excluded from coverage pursuant to Section 5.E. in the main body of the Master Agreement had the problem arisen during the warranty period of the affected Product.

**D. Re-Instatement of Support.** If Customer 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 Terms and conditions and applicable rates. 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. CUSTOMER RESPONSIBILITIES.

**A. Cooperation.** Customer 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 on the Product Notice, Customer shall designate in writing a reasonable number of authorized contacts, as determined by Customer and EMC, who shall initially report problems and receive Support Services from EMC. Each Customer representative shall be familiar with Customer’s requirements and shall have the expertise and capabilities necessary to permit EMC to fulfill its obligations. A change to the authorized support contacts by Customer shall be submitted to EMC in writing.

### 4. ADDITIONAL TERMS.

#### A. [NO LONGER USED]

**B. Customer Support Tools.** EMC may choose to make various Customer Support Tools available to assist Customer in performing various maintenance or support related tasks. Customer shall use Customer 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 Customer’s receipt of the corresponding replacement, and shall be returned promptly upon EMC’s request. If such replaced Equipment is not so returned within fourteen (14) calendar days after such request, Customer shall pay EMC’s then current spare parts price therefore. Customer is responsible for removing all information from any replaced parts, or any other items that Customer 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 herein. In order to assist in securing any data,



EMC may propose to Customer, a separate disk retention or data erasure offering.

**D. Proactive Product Changes.** EMC may, at its expense, implement changes to the Products upon reasonable notice to Customer (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. Customer shall give EMC reasonable access to the Products for such purpose.

**E. Software Releases.** Upon installation 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. Change of Equipment Location or Configuration.** Customer 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. Customer 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 and Conditions and relevant 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 Customer is current in the payment of the applicable Support Services fee, Customer 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 Customer owned or controlled hardware or network environment provided that Customer (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. Customer has the option to activate or disable remote support capabilities, but it shall notify EMC thereof in writing seven (7) days prior to activating or disabling such remote support capabilities. If Customer chooses to disable the remote support features, then, with regard to all Products affected by such disablement (i) EMC may assess Customer a surcharge Support Service fee 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 Customer from making alterations to, or installing other products in or with, the Equipment at Customer's expense; provided Customer 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, Customer shall, upon EMC's request, take corrective action. Customer's failure to take appropriate corrective action shall be deemed a breach hereof.

**J. Transfer of Equipment to Secondary Purchasers.** If Customer 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 Customer, 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 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 Equipment 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 Software Support Services for its convenience and the terms of subsection 7 C 2 shall apply.

## **5. PRICING.**

The fee for Support Services for Products shall be as set forth on the applicable quote from EMC. Additions to the Products on the EMC quote requiring Support Services may result in additional Support Services fees charged at EMC's then current Time and Materials Service rates and will be charged and invoiced by EMC in accordance with terms governing each such Time and Materials Service engagement.

## **6. SUPPORT SERVICES WARRANTY.**

EMC shall perform the Support Services in a workmanlike manner in accordance with generally accepted industry standards. Customer shall notify EMC of any failure to so perform within ten (10) days after the date on which such services are delivered. Customer'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 to correct such deficiencies, then Customer has the right to

terminate for breach in accordance with section 7 D of this Support Services Exhibit.

**EXCEPT AS EXPRESSLY STATED IN THIS SUPPORT EXHIBIT, 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.** However, EMC's liability for willful misconduct and gross negligence remains unaffected.

## **7. 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 Customer). 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.** Except as otherwise stated in this Exhibit, either party may terminate the Support Services for a Product(s) for its convenience upon sixty (60) days' prior written notice to the other.

1. **By EMC.** If EMC terminates for its convenience, Customer's sole and exclusive remedy and EMC's sole and exclusive obligation shall be to refund to Customer 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.

2. **By Customer.** If Customer terminates for its convenience, Customer's sole and exclusive remedy and EMC's sole and exclusive obligation shall be to grant Customer 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 Customer obligation that can no longer be fulfilled due to the termination).

**D. Termination for Breach.** Each party shall notify the other in writing in case of the other's alleged breach of a material provision of the Support Services for a particular Product. The recipient shall have thirty (30) calendar days from the date of receipt of such notice to effect a cure (the "Cure Period"). If the recipient of such notice fails to effect such cure within the Cure Period, then the sender of such notice shall have the option to terminate the Support Services in respect of that Product for breach.

**C. Notice of Termination:** A party shall exercise an option to terminate as contemplated under D. above in writing and within fourteen (14) calendar days of the end of the Cure Period (or such other period as the parties shall in writing agree), failing which the option to terminate shall lapse, the breach shall be deemed to have been waived, and the Support Services in respect of that Product shall continue as if the breach had not occurred. Any notice of termination issued hereunder shall be effective upon receipt thereof by the other party.

# Attachment 2 to Master Agreement

## Professional Services Exhibit

This Professional Services Exhibit (“**Exhibit**”) sets forth the terms governing Professional Services provided by EMC to Customer.

### 1. DEFINITIONS.

All definitions set forth in the main body of the Master Agreement shall also apply to this Exhibit.

### 2. PROFESSIONAL SERVICES.

**A. Provision of Services.** EMC shall provide Professional Services in accordance with the applicable SOW. In case of conflicts between the SOW and the terms of this Master Ordering Agreement, the SOW shall take precedence. Each project for Professional Services shall be governed by a separate SOW, which shall be signed by Customer and EMC. 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 suitably 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 the 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 seven and one half (7.5) hour period of work, between 8:00 AM and 6:00 PM, Monday through Friday, excluding public holidays in the UK.

**D. Customer Responsibilities.** Customer shall provide EMC personnel with such access to appropriate facilities, space, power, documentation, networks (including internet and telephone), files, information, additional software (if needed), and skilled and authorized Customer personnel as may reasonably be required in order to assist in the performance of Professional Services 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.

**E. Adjustment to Milestone Dates.** If Customer fails to perform Customer Responsibilities in a timely manner, the completion date(s) for milestones, if any, in the relevant SOW shall be extended by a period equal to the delay in Customer’s performance.

### 3. TERM OF PROFESSIONAL SERVICES.

**A. Term.** 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 and on such terms therein specified.

**B. Termination for Breach.** Each party shall 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, except to the extent specifically provided otherwise in the applicable SOW, thirty (30) calendar days from the date of receipt of such notice to effect a cure (the “Cure Period”). If the recipient of such notice fails to effect such cure within the Cure Period, then the sender of such notice shall have the option to terminate the SOW for breach.

**C. Notice of Termination:** A party shall exercise an option to terminate as contemplated under B. above in writing and within fourteen (14) calendar days of the end of the Cure Period (or such other period as the parties shall in writing agree), failing which the option to terminate shall lapse, the breach shall be deemed to have been waived, and the Professional Services shall continue as if the breach had not occurred. Any notice of termination issued hereunder shall be effective upon receipt thereof by the other party.

### 4. PROPRIETARY RIGHTS.

**A. EMC Proprietary Rights.** Subject to section 4.D, all patents, copyrights, trade secrets, methodologies, ideas, inventions, concepts, know-how, techniques or other intellectual property developed or provided by EMC (“**EMC Proprietary Rights**”) are and remain the sole property of EMC. All rights not expressly granted to Customer are reserved by EMC.

**B. Customer Furnished Materials.** The ownership in and to materials furnished by Customer for use by EMC remains with Customer. Customer shall indemnify EMC from any third party claims against EMC for infringement of any intellectual property rights related to Customer’s materials provided to EMC; furthermore, Customer shall defend EMC at its own expense against any such third party claims and shall compensate EMC for any damages arising therefrom.

**C. Ownership in Deliverables.** The ownership in copyrights to any reports, analyses, customized scripts and other work results which have been developed and delivered by EMC for Customer within the framework of fulfilling the contractual obligations under the SOW (“**Deliverables**”) shall pass to Customer to the extent they are documented in writing and handed out to Customer. To the extent the Deliverables include EMC Proprietary Rights, either party’s rights to use the Deliverables is governed by the following section.

**D. Rights to Use Deliverables.** With regards to any EMC Proprietary Rights contained in Deliverables, EMC grants Customer the non-exclusive, non-transferable right to use (without the right to sublicense) the Deliverables perpetually for its internal business purposes and only for such purposes for which the Deliverables have been delivered to Customer. EMC shall not be limited in developing, using or marketing services or products which are similar to the Deliverables, or in

using the Deliverables for future projects, but EMC shall comply with its confidentiality obligations when doing so. The license granted in this Section excludes Customer furnished materials, EMC's generally available Products which are licensed via terms in a separate ordering agreement and pre-released products Customer may have received from EMC under a separate testing agreement.

#### **5. PAYMENT AND INVOICING.**

EMC shall submit invoices for fees and reimbursable costs and expenses and be paid in the manner specified in the applicable SOW, and in accordance with the main terms of this Master Agreement.

#### **6. TRAINING SERVICES.**

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

**B. Cancellation and Refunds.** If Customer prepays and subsequently cancels standard training related 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 related Services shall be as mutually agreed between the parties in the applicable SOW.

#### **7. WARRANTY.**

**A. General Warranty for Professional Services.** EMC shall perform Professional Services in a workmanlike manner in accordance with generally accepted industry standards. Customer shall notify EMC of any failure to so perform within ten (10) days after the date on which delivery of the relevant milestone occurs. 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. EMC's liability for willful misconduct and gross negligence remains hereby unaffected.

**B. No Further Warranties.** Except as expressly stated in this Exhibit, EMC makes no other express or implied warranties, written or oral. Insofar as permitted under applicable law, all other warranties in relation to Professional Services are specifically excluded, including warranties arising by statute, course of dealings or usage of trade. However, EMC's liability for willful misconduct and gross negligence remains unaffected.