



## EVALUATION AGREEMENT

### \*\*\* IMPORTANT INFORMATION – PLEASE READ CAREFULLY \*\*\*

This Product contains computer programs and other proprietary material and information, the use of which is subject to and expressly conditioned upon acceptance of this Evaluation Agreement (the “Agreement”).

This Agreement is a legally binding document between you (the “Customer”) and RSA (which means (i) RSA Security LLC, if Customer is located in the United States, Mexico or South America; (ii) the local EMC Corporation sales subsidiary, if Customer is located outside the United States, Mexico or South America and in a country in which EMC Corporation has a local sales subsidiary; and (iii) EMC Information Systems International (“EISI”), if Customer is located outside United States, Mexico or South America and in a country in which EMC Corporation does not have a local sales subsidiary). Unless RSA agrees otherwise in writing, this Agreement governs Customer's use and evaluation of the Product. 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 Product, or signing a Schedule that references this Agreement, or authorizing any other person to do so, you are representing to RSA 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 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 Product for any purpose, and remove any partial or full copies made from this Product.*

#### 1. DEFINITIONS:

- A. “**Equipment**” means the hardware identified on the applicable Schedule.
- B. “**Evaluation Period**” means the period identified on the applicable Schedule unless earlier terminated pursuant to Section 2 herein.
- C. “**Installation Site**” means the location specified on the applicable Schedule.
- D. “**Product**” means the Equipment, the Software and such incidental related services (meaning services which are not provided under a separate, signed agreement provided to customer) set forth on a Schedule.
- E. “**Schedule**” means a Product evaluation schedule signed by Customer and RSA. Any fully executed Schedule shall be incorporated into and amend the Agreement.
- F. “**Software**” means: (i) “**Core Software**” means the programming and/or microcode firmware included by RSA with Equipment to enable it to perform its basic functions; and (ii) “**RSA Application Software**” means the programming, other than Core Software, licensed or distributed by RSA and identified on the applicable Schedule, and all documentation for the Software and Equipment which RSA makes generally available to its customers.

2. **LOAN, ORDER, AND TERMINATION:** RSA agrees to loan and Customer agrees to accept the loan of the Products listed on the Schedule and to use such Products solely for evaluation in Customer’s internal environment (“**Authorized Use**”). There is no charge to Customer for Authorized Use during the Evaluation Period. At the end of the Evaluation Period, Customer shall purchase/license the Products for the price stated on a valid RSA Quotation provided to Customer or promptly return the same to RSA. If Customer fails to procure or return the Products at the end of the Evaluation Period, RSA may at any time during normal working hours, and not excluding any other remedies RSA may have, enter the Installation Site, de-install the Product and remove the Products with no liability to Customer or RSA and at Customer’s expense; provided that if previously authorized by RSA in writing, Customer may de-install and/or wipe the Product pursuant to RSA’s instructions. This Agreement and any Schedule(s) may be terminated at any time by either Party at its option, without liability. Upon termination of a Schedule or the Agreement, Customer shall cease all use and return the Products to RSA, or, at RSA’s option, certify destruction thereof (including copies) to RSA.

3. **TITLE, RISK OF LOSS, SHIPMENT, INSTALLATION AND PRODUCT RETURN:** Title to Product shall remain with RSA at all times during the Evaluation Period. Risk of loss to the Product shall be with Customer during shipping and the Evaluation Period. Customer shall insure the Equipment and Software for its full replacement value during the Evaluation Period. RSA shall arrange and pay for shipment of the Equipment and Software to the Installation Site. Software may be delivered by electronic means. At no time during the Evaluation Period shall the Customer move or remove the Product from the Installation Site or install the Product in a different environment without RSA's prior written authorization. During installation, Customer shall allow RSA to provide its personnel with remote access to the Products solely for problem resolution and diagnostic testing during the Evaluation Period. The parties hereto acknowledge and agree that RSA's potential access to Customer confidential information, which may include personal information, pursuant to such remote access and generally during the installation of the Product shall be deemed to have occurred pursuant to Customer's instructions and with Customer's consent. Notwithstanding anything to the contrary herein, Customer represents and warrants that Customer has obtained all consents and approvals required by applicable laws or regulations to allow RSA to access, use and/or disclose such Customer confidential information for the purposes of the evaluation as stated herein. Following the Evaluation Period, Customer shall arrange return shipping of the Product pursuant to RSA's instructions and at RSA's cost. Customer shall wipe all Customer confidential information from the Product prior to returning the Product to RSA. Such wiping of the Product shall be done in accordance with RSA's guidelines. Products returned to RSA shall be in the same condition as received, less normal wear and tear and Customer shall be liable for noncompliance with this Section.
4. **WARRANTY: DURING THE EVALUATION PERIOD, RSA (INCLUDING ITS SUPPLIERS) PROVIDES EACH PRODUCT "AS IS" AND MAKES NO EXPRESS WARRANTIES, WRITTEN OR ORAL, REGARDING SUCH PRODUCT. ALL OTHER WARRANTIES ARE SPECIFICALLY DISCLAIMED AND EXCLUDED, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND ANY WARRANTY ARISING BY STATUTE, OPERATION OF LAW, COURSE OF DEALING OR PERFORMANCE, OR USAGE OF TRADE.**
5. **SOFTWARE:**
  - A. **License:** RSA grants Customer a license to use: (i) the Core Software on the Equipment which it is shipped; and (ii) RSA Application Software, up to the permitted capacity, on the Equipment, network, device or central processing unit specified in the Schedule, in each case solely for the Authorized Use. Such license commences on shipment and remains in effect for the Evaluation Period, provided Customer complies with the Agreement. The foregoing licenses shall be non-exclusive, non-transferable, non-sub-licensable, temporary and limited. Customer shall not disclose the results of any comparative or competitive analyses, benchmark testing, infringement testing, or analyses of the Products to any third party. Customer shall not copy, provide, disclose or otherwise make available the Products in any form to anyone other than Customer's employees, agents, consultants or independent contractors ("**Personnel**"), who shall use Products solely for the Authorized Use and in a manner consistent with this Agreement. Customer shall be fully responsible to RSA for the compliance of its Personnel herewith. Any new revision, update or replacement of the Products provided by RSA shall be governed by this Agreement.
  - B. **Ownership:** RSA or its licensors or suppliers are the exclusive owners of the Products (including in each case any revisions, modifications and enhancements thereto) and any other specifications, documentation, ideas, know-how, techniques, processes, inventions or other intellectual property that RSA or its licensors or suppliers may develop, conceive or deliver. Neither Customer nor any of its Personnel shall modify, enhance, supplement, create derivative works from, reverse assemble, reverse engineer, reverse compile or otherwise reduce the Software to human readable form.
6. **INDEMNITY:** RSA shall defend Customer against any third party claim that the Product(s) infringes a patent or copyright in a jurisdiction that is signatory to the Berne Convention, and pay the resulting costs and damages awarded against Customer by a court of competent jurisdiction, provided Customer: (i) notifies RSA promptly in writing of such claim; (ii) grants RSA sole control over the defense and settlement thereof; and (iii) reasonably cooperates in response to an RSA request for assistance. Should any Product(s) become, or in RSA's opinion be likely to become, the subject of such a claim, RSA shall, at its option and expense: (a) procure for Customer the right to make continued use thereof; (b) replace or modify the Product(s) so that it becomes non-infringing; or (c) terminate the applicable Schedule and require Customer to promptly return the affected Product(s). RSA shall have no liability if the alleged infringement is based on: (1) combination with non-RSA products; (2) use for a purpose or in a manner for which the Product was not designed; (3) use of any older version of the Product when use of a newer RSA version or revision would have avoided the infringement; (4) any modification not made

with RSA's written approval; (5) any modifications made by RSA pursuant to Customer's specific instructions; or (6) any intellectual property right owned or licensed by Customer. THIS SECTION STATES CUSTOMER'S SOLE AND EXCLUSIVE REMEDY AND RSA'S ENTIRE LIABILITY FOR INFRINGEMENT CLAIMS.

7. **LIMITATIONS OF LIABILITY:** EXCEPT AS PROVIDED OTHERWISE IN SECTION 6 ABOVE, RSA'S AND ITS SUPPLIER'S TOTAL LIABILITY AND CUSTOMER'S SOLE AND EXCLUSIVE REMEDY FOR ANY CLAIM OF ANY TYPE WHATSOEVER, ARISING OUT OF PRODUCT(S) PROVIDED HEREUNDER, SHALL BE LIMITED TO PROVEN DIRECT DAMAGES CAUSED BY RSA'S SOLE NEGLIGENCE IN AN AMOUNT NOT TO EXCEED US\$50,000. EXCEPT FOR CLAIMS ARISING UNDER SECTION 5 OR 6 ABOVE, NEITHER CUSTOMER NOR RSA (INCLUDING RSA'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), REGARDLESS OF THE FORM OF ACTION, EVEN IF ADVISED OF THE POSSIBILITY THEREOF; AND (b) BRING ANY CLAIM BASED ON A PRODUCT PROVIDED HEREUNDER MORE THAN 18 MONTHS AFTER THE CAUSE OF ACTION ACCRUES.

8. **CONFIDENTIALITY:**

A. **Confidential Information:** As a result of the relationship entered into under this Agreement, the parties hereto acknowledge that they may from time to time require or gain access to information that is confidential or proprietary to one another. All information disclosed by a party hereunder that (a) is in writing and marked with an appropriately restrictive legend indicating the confidential or proprietary nature of the information, (b) is disclosed orally and reduced to a writing marked with an appropriately restrictive legend promptly after the oral disclosure, or (c) by its nature or under the circumstances of its disclosure should reasonably be understood to be confidential is referred to herein as "**Confidential Information.**" For avoidance of doubt, Customer shall treat the terms of this Agreement as RSA's Confidential Information.

B. **Obligations:** The receiving party (1) shall hold all Confidential Information in confidence; (2) shall use the Confidential Information only for the purpose of performing its obligations under this Agreement; (3) shall reproduce the Confidential Information only to the extent necessary for such purpose; (4) shall restrict disclosure of the Confidential Information to its Personnel; and (5) shall not disclose or cause to be disclosed the Confidential Information to any third party without prior written approval of the disclosing party, except as allowed under (4) above.

C. **Exceptions:** The foregoing restrictions do not apply to Confidential Information that (1) is or becomes a part of the public domain through no wrongful act or omission of the receiving party; (2) was in the receiving party's lawful possession before the disclosure as shown by written documentation obtained by the receiving party either directly or indirectly from the disclosing party; (3) is lawfully disclosed to the receiving party by a third party without restriction on disclosure; (4) is independently developed by the receiving party without reference to or reliance on the Confidential Information; or (5) the disclosing party agrees in writing is free of such restrictions. In addition, if the receiving party is requested pursuant to, or required by, applicable law or regulation or by legal process to disclose any Confidential Information, then the receiving party shall, to the extent legally permissible, promptly notify the disclosing party in writing of such request(s) to enable the disclosing party to seek an appropriate protective order. If no such order is obtained within a reasonably prompt time, the receiving party may, without liability hereunder, disclose that portion of the Confidential Information that the receiving party's legal counsel advises is legally required to be disclosed.

9. **PRODUCT MAINTENANCE:** RSA may provide new revisions of Software and may provide continuous support and maintenance for Products in accordance with RSA's then current policies and procedures ("**Product Maintenance**"), at no additional charge during the Evaluation Period. During the Evaluation Period, Customer shall:

- i. not move the Product from the Installation Site without RSA's approval.
- ii. maintain an environment consistent with Product specifications;
- iii. notify RSA promptly if the Product fails; and
- iv. permit changes to the Product by RSA at RSA's expense which do not adversely affect performance or interchangeability or are required by law or for safety or reliability.

Failure to comply with the foregoing shall allow RSA to terminate this Agreement or the applicable Schedule without liability or obligation to Customer. RSA may change the scope of Product Maintenance at any time. Product Maintenance does not include efforts to remedy, repair or replace Products as a result of:

- a. accident or neglect;
- b. problems relating to or residing in other items or services with which the Product(s) are used;
- c. installation not in accordance with RSA's instructions or the applicable specifications;
- d. use in an environment, in a manner, or for a purpose for which the Product was not designed; or
- e. installation, modification, alteration or repair by anyone other than RSA or its authorized representatives.

All replaced Equipment or portions thereof shall be returned to and become the property of RSA. Customer authorizes RSA to store diagnostic programming tools and related materials used in warranty or maintenance services at Customer's site, but Customer shall (1) not copy or make any use thereof whatsoever; and (2) protect such tools and related materials from disclosure to any third party and give RSA reasonable access thereto.

- 10. MISCELLANEOUS:** Customer shall comply with and obtain all authorizations required by U.S. export control laws and all related regulations. Customer shall not assign this Agreement or any right or delegate any performance. This Agreement is the complete statement of the agreement of the parties with regard to the subject matter hereof and may be modified only by a writing signed by both parties. This Agreement is governed by the law of the Commonwealth of Massachusetts, excluding its conflict of law rules and The U.N. Convention on Contracts for the International Sale of Goods. In case of an inconsistent or conflicting term set forth on a Schedule, the Schedule shall control. 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. The relationship between Customer and RSA is solely that of independent contractors and not that of an agency, partnership, or joint venture. Neither party has the authority to represent or bind the other.