



## LICENSE 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 License 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 and Hardware for its internal productive use and not for outright resale) (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 of the Software and Hardware, except to the extent all or any portion of the Software or Hardware is: (a) the subject of a separate written agreement set forth in a quotation issued by RSA; or (b) governed by a third party licensor's terms and conditions. Capitalized terms have meaning stated in the Agreement.

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 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 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 RSA 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 and Software and all confidential and proprietary information of RSA 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 RSA 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 or Hardware provided by RSA.

**E. “Hardware”** means the hardware product that the Software is incorporated in or bundled with and sold as a unit and all Documentation for the foregoing.

**F. “Product Notice”** means the notice by which RSA informs Customer of product-specific use rights and restrictions, warranty periods, warranty upgrades and maintenance (support) terms. Product Notices may be delivered in an RSA quote, otherwise in writing and/or a posting on the applicable RSA 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 RSA 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. RSA shall not change any Product Notice retroactively with regard to any Software listed on an RSA quote issued prior to the date of the applicable Product Notice. At Customer's request, RSA shall without undue delay provide Customer with a copy of the applicable Product Notice and/or attach it to the relevant RSA quote.

**G. “Quote(s)”** means one or more documents issued by RSA specifying the Software or Hardware that Customer seeks to obtain from RSA, the related pricing and sufficient other information to complete the transaction. Each Quote shall incorporate this Agreement by reference.

**H. “Schedule(s)”** means a document provided by RSA to Customer by which Customer orders Software or Hardware (including Evaluation Products) and which is executed by the parties. Each Schedule shall incorporate this Agreement by reference.

**I. “Software”** means the RSA software product which requires acceptance of this Agreement, and any copies made by or on behalf of Customer and all Documentation for the foregoing.

**J. “Supplier(s)”** means an entity (other than Customer) whose components, subassemblies, software and/or services have been incorporated into Software and/or Hardware.

## **2. ORDERING, PRICING AND PAYMENT.**

A Schedule or Quote will be deemed accepted by Customer when Customer places an order by: (i) providing an executed Schedule to RSA, (ii) signing a Quote and returning it to RSA, (iii) issuing an executed purchase order for the Software or Hardware on the Quote referencing this Agreement or the Quote, or (iv) sending an email or other writing accepting the Quote. RSA may also accept a purchase order referencing this Agreement or the Quote and issued by Customer provided however, this Agreement and any Schedule or Quote shall control in the event that there are different or additional terms set forth in any purchase order submitted by Customer. RSA will issue an invoice upon (i) shipment when Hardware is included, or (ii) when Software is made available to Customer through electronic file transfer or shipment of media containing the Software. Such invoice will reflect the price for such Software or Hardware as set forth on the Schedule or Quote. Fees for maintenance services, if any, shall be payable annually, in advance. Customer shall pay RSA the price stated on the invoice and also pay or reimburse RSA for all related taxes or withholdings, except for those taxes based on RSA’s net income. If Customer is required to withhold taxes, then Customer will forward any withholding receipts to RSA. All amounts are due in US currency and in full thirty (30) days after the date of RSA’s invoice, with interest accruing thereafter at the lesser of 1.5% per month or the highest lawful rate.

## **3. DELIVERY AND INSTALLATION.**

**A. Delivery.** Title and risk of loss to the Hardware shall transfer to Customer upon RSA’s delivery to a carrier at RSA’s designated point of shipment (“**Delivery**”). Unless otherwise agreed, a common carrier shall be specified by RSA. Software may be provided by (i) Delivery of physical media; or (ii) electronic means (when so offered by RSA). If the Hardware 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.** RSA’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 or Hardware operates in substantial conformity to the Documentation occurs upon Delivery or electronic availability, as applicable. Notwithstanding such acceptance, Customer retains all rights and remedies set forth in Section 5 (WARRANTY AND DISCLAIMER) below.

## **4. LICENSE TERMS.**

**A. General License Grant.** Subject to Customer’s compliance with this Agreement, the Product Notice, and payment of all license fees, RSA 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 for the purpose of supporting Customer’s use of Software or Hardware. Licenses granted to Customer shall, unless otherwise indicated on the Product Notice or quote from RSA 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 or Hardware as permitted in this Section. To the extent applicable to Software, Customer may be required to follow RSA’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 RSA or Distributor.

**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 RSA’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; (iv) transfer Software to an Affiliate or a third party; or (v) for any Software that is licensed with Hardware, Customer may only use such Software on the Hardware on which it was provided.

**D. No Combination with Open Source Software.** Some third party license terms require that computer code be generally (a) disclosed in source code form to third parties, (b) licensed to third parties for the purpose of making derivative works, or (c) redistributable to third parties at no charge (collectively, “**Excluded License Terms**”). If RSA grants Customer the right to incorporate, modify, combine or distribute any of the Software licensed hereunder, then Customer shall not incorporate, modify, combine or distribute the Software with any other computer code in a manner that would subject the Software to Excluded License Terms.

**E. Audit Rights.** RSA (including its independent auditors) shall have the right to audit Customer’s usage of Software and Hardware to confirm compliance with the agreed terms. Such audit is subject to reasonable advance notice by RSA and shall not unreasonably interfere with Customer’s business activities. Customer will provide RSA with the support required to perform such audit and will,

without prejudice to other rights of RSA, address any non-compliant situations identified by the audit by forthwith procuring additional licenses.

**F. Termination.** RSA may terminate licenses for cause, if Customer breaches the terms governing use of Software or Hardware and fails to cure within thirty (30) days after receipt of RSA'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 RSA.

**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 RSA's prior written consent, nor shall Customer permit any third party to do the same.

## **5. WARRANTY AND DISCLAIMER.**

**A. Warranty.** RSA warrants that Software will substantially conform to the applicable Documentation for such Software and that any Hardware provided by RSA will be free from manufacturing defects, malfunctions, errors or other defects in materials and workmanship until the expiration of the applicable warranty period. RSA does not warrant that the operation of Software or Hardware shall be uninterrupted or error free, that all defects can be corrected, or that Software or Hardware meets Customer's requirements, except if expressly warranted by RSA in its quote.

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

**C. Customer Remedies.** RSA's entire liability and Customer's exclusive remedies under the warranties described in this section shall be for RSA, at its option, to remedy the non-compliance or to replace the affected Software or Hardware. If RSA is unable to effect such within a reasonable time, then RSA shall refund the amount received by RSA for the Software or Hardware concerned. All replaced Software contained on physical media supplied by RSA and Hardware shall be returned to and become the property of RSA. RSA 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 RSA 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 or Hardware is used or other causes beyond RSA's control; (iii) installation, operation or use not in accordance with RSA's instructions or the applicable Documentation; (iv) use in an environment, in a manner or for a purpose for which Software or Hardware was not designed; or (v) modification, alteration or repair by anyone other than RSA or its authorized representatives;. RSA has no obligation whatsoever for Software or Hardware installed or used beyond the licensed use, or whose original identification marks have been altered or removed.

**E. No Further Warranties.** Except for the warranty set forth herein, and to the maximum extent permitted by law, RSA (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. LIMITATION OF LIABILITY.**

**A. Limitation on Direct Damages.** RSA'S TOTAL LIABILITY AND CUSTOMER'S SOLE AND EXCLUSIVE REMEDY FOR ANY CLAIM OF ANY TYPE WHATSOEVER, ARISING OUT OF SOFTWARE OR HARDWARE PROVIDED HEREUNDER, SHALL BE LIMITED TO PROVEN DIRECT DAMAGES CAUSED BY RSA'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 RSA FOR THE SPECIFIC SERVICE (CALCULATED ON AN ANNUAL BASIS, WHEN APPLICABLE) OR SOFTWARE OR HARDWARE 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 RSA'S INTELLECTUAL PROPERTY RIGHTS, NEITHER CUSTOMER NOR RSA 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 6.A AND/OR 6.B ABOVE MAY NOT APPLY. CUSTOMER ACKNOWLEDGES AND AGREES THAT NO INDEMNITY IS GIVEN WITH RESPECT TO THE SOFTWARE OR HARDWARE.

**D. 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.

**E. Suppliers.** The foregoing limitations shall also apply in favor of RSA's Suppliers.

**F. Regular Back-ups.** As part of its obligation to mitigate damages, Customer shall take reasonable data back-up measures. In particular, Customer shall provide for a daily back-up process and back-up the relevant data before RSA performs any remedial, upgrade or other works on Customer's production systems. To the extent RSA's liability for loss of data is not in any way excluded

under this Agreement, RSA shall in such 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.

## **7. EVALUATION PRODUCTS.**

**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 **Evaluation Hardware** (meaning the hardware product that the Evaluation Software is incorporated in or bundled with and all Documentation for the foregoing, which is provided for a limited duration for the specific purpose of evaluation prior to making a final decision on procurement); and (ii) “**Beta Test Products**” (meaning the Software and/or Hardware that is in a beta phase, including any related Documentation, that RSA may provide to Customer under this Agreement, subject to the remainder of this Section 7. “**Evaluation Products**” means Evaluation Software, Evaluation Hardware and Beta Test Products.

**B.** The particular Evaluation Products, period of use, Installation Site and other transaction-specific conditions shall be as mutually agreed between RSA and Customer and recorded in the form of a Schedule or via an online evaluation request form on an RSA website.

**C.** Notwithstanding any deviating terms in this Agreement, the period of use shall be thirty (30) days from date of delivery of the Evaluation Products, unless otherwise agreed by the Parties in a Schedule or in an online request form on an RSA website. All licenses for Evaluation Software expire at the end of the evaluation period.

**D.** Customer shall either delete all copies of the Evaluation Software and Beta Test Products or return the Evaluation Products at the end of the evaluation or loan period, or when sooner terminated by RSA for convenience whichever occurs first. Customer shall bear the risk of loss and damage for return of physical media and Evaluation Products, if any, and de-installation.

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

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

**G.** Unless otherwise specifically agreed in writing by RSA, RSA does not provide maintenance or support for any Evaluation Products. CUSTOMER RECOGNIZES THAT EVALUATION PRODUCTS MAY HAVE DEFECTS OR DEFICIENCIES WHICH CANNOT OR MAY NOT BE CORRECTED BY RSA. RSA 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 Products infringes any patent, copyright, trade secret or other intellectual property right. In the event of such an action, RSA retains the right to terminate this Agreement and take possession of the Evaluation Products. THIS SECTION STATES RSA’S ENTIRE LIABILITY WITH RESPECT TO ALLEGED INFRINGEMENTS OF INTELLECTUAL PROPERTY RIGHTS BY EVALUATION PRODUCTS OR ANY PART OF IT OR ITS OPERATION.

**H.** Customer shall treat the Beta Test Products, including the nature and features thereof and materials relating thereto and the results of Customer’s testing and evaluation of the Beta Test Products as RSA’s Confidential Information. Customer agrees that any feedback or ideas it or any of its employees, contractors or customers provided to RSA regarding the Beta Test Products or any suggested improvements thereto will be the exclusive property of RSA. Customer understands that RSA may never release the Beta Test Products as a commercial product.

**8. 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 or any purchase order hereunder; 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. 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.

**9. GOVERNMENT REGULATIONS AND EXPORT CONTROL.** Hardware, 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 Hardware, 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 Hardware, Software and technology included therein outside of the United States or other countries (collectively, “**Export Laws**”). Customer shall comply with all Export Laws and RSA export policies to the extent such policies are made available to Customer by RSA. Diversion contrary to U.S. law or other Export Laws is expressly prohibited.

**10. TERMINATION.** Either Customer or RSA may terminate this Agreement upon written notice due to the other party’s material breach of the terms governing use of the Software or Hardware; 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 RSA. 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.

## 11. MISCELLANEOUS.

**A. References.** Each party shall not, and shall not authorize or assist another to, originate, produce, issue or release any written publicity, news release, marketing collateral or other publication or public announcement, relating in any way to this Agreement, without the prior written approval of the other, which approval shall not be unreasonably withheld; provided, however, that RSA may identify Customer for reference purposes and use Customer's logo in its marketing material.

**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 RSA, 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: RSA Security LLC, 174 Middlesex Turnpike, Bedford, MA 01730. Fax for legal notices: 781-515-5450. 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, even if RSA does not expressly object to such terms when accepting a purchase order or similar document provided by Customer.

**D. Force Majeure.** Except for payment of fees, if a party's performance of its obligations is prevented or interfered with 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 ("Non-Performance Cause"), such Party shall (i) promptly notify the other; (ii) be excused from the performance of the affected obligations on a day-for-day basis, during the Force Majeure Event; (iii) use reasonable efforts to avoid or remove the Non-Performance Cause; and (iv) move to resume performance as soon as possible after the Non-Performance Cause is removed or ceases.

**E. Assignment.** Customer shall not assign this Agreement or any right or delegate any performance without RSA's prior written consent, which consent shall not be unreasonably withheld. Customer shall promptly notify RSA, and RSA 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 RSA means RSA Security LLC; (ii) the laws of the applicable country in which the applicable RSA subsidiary is registered to do business when RSA means the local EMC subsidiary, and (iii) the laws of Ireland when RSA 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 RSA 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 RSA quote is held unenforceable, the validity of the remaining provisions shall not be affected.

**I. Select or Brokerage Products.** Periodically, RSA may offer to supply or license certain products that are made by a third party manufacturer/supplier and not RSA. Some of such products are specifically identified as "EMC Select Products for RSA". Other such third party manufacturer/supplier products may be provided by RSA on a case-by-case basis in response to a Customer request ("Brokerage Products"), and will be identified on the Quote using "Brokerage" or a similar descriptor. Notwithstanding any other provisions herein, EMC Select Products for RSA 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 RSA, EMC Select Products for RSA and Brokerage Products are not supported by RSA and Customer must contact such third party directly for support services. Any warranty or indemnity claims against RSA in relation to EMC Select Products for RSA or Brokerage Products are expressly excluded. In no event shall RSA be liable to Customer for any damages that in any way arise out of or relate to any EMC Select Products for RSA or Brokerage Products. EMC Select Products for RSA and Brokerage Products are provided by RSA "AS IS."

## 12. COUNTRY SPECIFIC TERMS.

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

1. Section 5D (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, RSA (including its suppliers) provides Hardware and 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 6 (LIMITATION OF LIABILITY). This Section is deleted in its entirety and replaced with:

**6. LIMITATION OF LIABILITY AND PRESERVATION OF DATA.**

**A.** The entire aggregate liability of RSA (including its suppliers) under or in connection with the supply of the Hardware or Software, 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 Hardware 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 RSA (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, and the use, performance, receipt or disposition of such Software or Hardware, 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 RSA'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 RSA recommended versions and that any proposed changes thereto shall be communicated to RSA in a timely fashion.

3. Section 11 (MISCELLANEOUS). Add the following as new subsection J:

J. 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 6 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.

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

1. Section 5D (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, RSA (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 6 (LIMITATION OF LIABILITY). This section is deleted in its entirety and replaced with the following:

**6. LIMITATION OF LIABILITY.**

**A.** RSA 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 RSA, its employees or agents.

**B.** Subject always to subsection 6.A, the liability of RSA (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 RSA 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 Hardware, or one million euros (€1,000,000); or (ii) the aggregate liability of RSA for all Defaults, other than those governed by subsection 6.B(i) shall be limited to damages which shall not exceed 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).

**C.** In no event shall RSA (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 6, 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 6 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 6.

**E.** The parties expressly agree that any order for specific performance made in connection with this Agreement in respect of RSA shall be subject to the financial limitations set out in sub-section 6.B.

**F. 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 and regularly install updates across all data which is accessible across the network; 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 RSA recommended versions and that any proposed changes thereto shall be communicated to RSA in a timely fashion.

3. Section 6.D (Limitation Period). This Section is deleted in its entirety and replaced with the following as a totally separate section:

**(D)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.

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

1. Section 4.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 RSA'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 RSA of its intention and request RSA to provide Customer with the necessary information. RSA may impose reasonable conditions on the provision of the requested information, including the payment of a reasonable fee.

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

1. Section 6 (LIMITATION OF LIABILITY). This section is deleted in its entirety and replaced with the following:

#### **6. LIMITATION OF LIABILITY.**

**A. Limitation on Direct Damages.** RSA'S AND ITS SUPPLIERS' TOTAL LIABILITY AND CUSTOMER'S SOLE AND EXCLUSIVE REMEDY FOR ANY CLAIM OF ANY TYPE WHATSOEVER, ARISING OUT OF SOFTWARE, HARDWARE OR SERVICE PROVIDED HEREUNDER, SHALL BE LIMITED TO PROVEN DIRECT DAMAGES CAUSED BY RSA'S SOLE NEGLIGENCE IN AN AMOUNT NOT TO EXCEED (i) AUD\$1,000,000, FOR DAMAGE TO REAL OR TANGIBLE PERSONAL PROPERTY; AND (ii) THE PRICE PAID BY CUSTOMER TO RSA FOR THE SPECIFIC SERVICE (CALCULATED ON AN ANNUAL BASIS, WHEN APPLICABLE) HARDWARE 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 RSA'S INTELLECTUAL PROPERTY RIGHTS, 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), EVEN IF ADVISED OF THE POSSIBILITY THEREOF; AND (b) BRING ANY CLAIM BASED ON HARDWARE, SOFTWARE OR SERVICE PROVIDED HEREUNDER MORE THAN EIGHTEEN (18) MONTHS AFTER THE CAUSE OF ACTION ACCRUES.

**C. Trade Practices Legislation:** RSA's liability under any statutory right or any condition or warranty, including any implied by any State Fair Trading Act or the Competition and Consumer Act 2010 is, to the maximum extent permitted by law, excluded. To the extent that such liability cannot be excluded, RSA's liability is limited at the option of RSA to 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.

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

1. Section 6 (LIMITATION OF LIABILITY). This section is deleted in its entirety and replaced with the following:

**6. LIMITATION OF LIABILITY.**

**A. Limitation on Direct Damages.** RSA'S AND ITS SUPPLIERS' TOTAL LIABILITY AND CUSTOMER'S SOLE AND EXCLUSIVE REMEDY FOR ANY CLAIM OF ANY TYPE WHATSOEVER, ARISING OUT OF HARDWARE, SOFTWARE OR SERVICE PROVIDED HEREUNDER, SHALL BE LIMITED TO PROVEN DIRECT DAMAGES CAUSED BY RSA'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 RSA FOR THE SPECIFIC SERVICE (CALCULATED ON AN ANNUAL BASIS, WHEN APPLICABLE) HARDWARE 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 RSA'S INTELLECTUAL PROPERTY RIGHTS, 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), EVEN IF ADVISED OF THE POSSIBILITY THEREOF; AND (b) BRING ANY CLAIM BASED ON SOFTWARE, HARDWARE OR SERVICE PROVIDED HEREUNDER MORE THAN EIGHTEEN (18) MONTHS AFTER THE CAUSE OF ACTION ACCRUES.

**C. Fair Trading Legislation.** RSA'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, RSA's liability is limited at the option of RSA to 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.

**13. CUSTOMER OBLIGATIONS**

**A.** Customer may not engage any third parties to conduct security audits of RSA Products without the prior written consent of RSA.

**B.** Customer agrees to comply with the RSA Security Vulnerability Reporting Policy, currently located at <http://www.emc.com/contact-us/contact/product-security-response-center.htm>.

**C.** If Customer has purchased maintenance services, Customer understands that such maintenance services are subject to the Maintenance Agreement for RSA Products, currently located at <http://www.emc.com/collateral/legal/rsa-maintenance-agreement.pdf>, which Customer agrees to accept.