



The Security Division of EMC

Managed Services Agreement

THIS MANAGED SERVICES AGREEMENT ("AGREEMENT") IS EFFECTIVE AS OF THE DATE OF THE APPLICABLE STATEMENT OF WORK MAKING REFERENCE TO THIS AGREEMENT.

ANY AND ALL REFERENCES TO "CUSTOMER" SHALL BE DEEMED TO MEAN THE CUSTOMER SET FORTH IN AN APPLICABLE STATEMENT OF WORK.

If Customer is located in the United States, Mexico or South America, then this is a legal agreement between the Customer and RSA with "RSA" meaning RSA Security LLC.

If Customer is located outside of the United States, Mexico or South America, then this is a legal agreement between the Customer and RSA, with "RSA" meaning (i) the local EMC sales subsidiary, if Customer is located in a country in which RSA does business through a local EMC Corporation sales subsidiary; or (ii) EMC Information Systems International ("EIS"), if Customer is located in a country in which EMC Corporation does not have a local sales subsidiary).

THIS AGREEMENT SETS FORTH THE GENERAL TERMS AND CONDITIONS UNDER WHICH RSA WILL PROVIDE AND CUSTOMER WILL RECEIVE THE MANAGED SERVICES SET FORTH HEREIN IN THE STATEMENT OF WORK.

1. SERVICES.

Each Statement of Work shall (i) be signed by the parties; (ii) incorporate by reference this MSA; and (iii) state the pertinent business parameters, including, but not limited to, pricing, payment, expense reimbursement, and a detailed description of the Services to be provided. Such business parameters shall control as to the engagement described in an Statement of Work, but additional or conflicting legal terms may only be added by express amendment to this MSA signed by authorized representatives of the parties, even if they are to apply only to one Statement of Work. Any terms contained herein but not defined will have the meaning as set forth in the applicable Statement of Work.

2. TERM & TERMINATION.

- a. Term. The term of this MSA commences on its Effective Date and shall remain in effect for as long as there is a Statement of Work in effect unless terminated as set forth herein ("Term"). Notwithstanding the above, each Statement of Work may be in effect only for the specific period of time ("Statement of Work Term") as set forth in each respective Statement of Work. The Statement of Work Term may be extended upon mutual written agreement of the parties.
- b. Termination for Breach. Either party may notify the other in writing in case of the other's alleged breach of a material provision of this MSA and/or an applicable Statement of Work. The recipient shall have thirty (30) days from the date of receipt of such notice to effect a cure. If the recipient of the notice fails to effect a cure within such period, then the sender of the notice shall have the option of sending a written notice of termination of the applicable Statement of Work(s), or the MSA if the breach affects multiple Statements of Work, which notice shall take effect upon receipt.
- c. Survival. Upon termination of the applicable Statement of Work, Customer shall promptly return to RSA, or destroy and certify in writing to RSA, that it has destroyed the original and all copies, in whole or in part, in any form, of the Documentation, and any other Confidential Information disclosed by RSA under the Statement of Work. The termination of the Statement of Work shall not discharge any payment obligations accrued as of the effective date of such termination even if such obligations are payable after the termination date. Upon any termination of this MSA, Sections 2, 3, 4, 5(A), 6(B), and 8 through 12 hereof shall survive in accordance with their terms.

3. PROPRIETARY RIGHTS.

- a. Ownership. RSA shall retain and own all right, title and interest and all Intellectual Property in and to the Services and nothing herein transfers or conveys to the Customer any ownership right, title or interest in or to the Service or any license right with respect to same not expressly granted herein. As used herein, "**Intellectual Property**" shall include, without limitation, copyrights, trade-secrets, service names, trademarks (including the RSA Marks), trade-names, domain names, patents, know-how, formulation, data, technology, designs, inventions, improvements, discoveries, processes, models or sales, financial, contractual and marketing information and all other intellectual or industrial property and like rights whether or not registered and the applications thereof;
- b. License Grant. Subject to the terms and conditions of this MSA, including the payment of applicable fees, RSA grants Customer a non-exclusive, non-transferable, non-sub-licensable right to access and use the Services for the purpose for which it is made available to Customer in accordance with the Documentation and the applicable Statement of Work.

- c. Reservation of Rights. Customer acknowledges that in providing the Services, RSA may utilize (i) the RSA name, the RSA logo, the RSA domain name, the product names associated with the Services and other trademarks; (ii) certain methodology, information, documents, software and other works of authorship; and (iii) other technology, software, hardware, products, processes, algorithms, user interfaces, know-how and other trade secrets, techniques, designs, inventions, look and feel of the Services and other tangible or intangible technical material or information (collectively "RSA Technology") and that the RSA Technology is the exclusive property of RSA, contains valuable trade secrets and Confidential Information of RSA, and is covered by Intellectual Property rights owned or licensed by RSA. Other than as expressly set forth in this Agreement, no license or other rights in the RSA Technology or the Services are granted to Customer, and all such rights are hereby expressly reserved. Nothing contained in this MSA shall be deemed to convey to Customer any right, title or interest in or to the Services or data therein or the RSA Technology, except to the extent of the limited license granted in this MSA.
- d. Restrictions. Customer shall not (i) modify, copy or make derivative works based on the RSA Technology or the Services; (ii) disassemble, reverse engineer, or decompile any of the RSA Technology; or (iii) sell, sublicense, transfer or make available the RSA Technology or the Services to any third parties.

4. **CONFIDENTIALITY.**

- a. Confidential Information. "**Confidential Information**" means the terms of this MSA (including the terms of each Statement of Work) and all confidential and proprietary information of RSA or Customer, including without limitation all business plans, product plans, financial information, software, designs, formulas, methods, know how, processes, materials provided to Customer in the course of performing Services under this MSA, and technical, business and financial data of any nature whatsoever (including, without limitation, any marketing, pricing and other information regarding the Services), 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. 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 MSA or any Statement of Work 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 from the date hereof until three (3) years following the later of (i) the termination date of this MSA or (ii) the last date of the completion or other termination of Services under each Statement of Work entered into hereunder, provided, however, that Confidential Information that constitutes, contains or reveals, in whole or in part, RSA proprietary rights shall not be disclosed by the receiving party at any time. Notwithstanding the foregoing, a receiving party may disclose Confidential Information pursuant to a valid order of a court or authorized government agency provided that the receiving party has given the disclosing party prompt notice, to the extent legally permissible, so that the disclosing party will have an opportunity to defend, limit or protect against such disclosure.
- b. References. RSA may identify Customer for reference purposes unless and until Customer expressly objects in writing.
- c. Performance Tests. Customer may not disclose the results of any performance tests of a Service to any third party without RSA's prior written approval. Notwithstanding the foregoing, (i) RSA may disclose Customer Confidential Information to an Affiliate or contractor (who is under an obligation of confidentiality) for the purpose of fulfilling RSA's obligations or exercising RSA's rights hereunder so long as RSA and its Affiliates comply with the confidentiality obligations above.

5. **PAYMENT TERMS; AFFILIATE ORDERS.**

- a. Invoicing and Payment. RSA shall submit invoices for fees and reimbursable costs and expenses and Customer shall pay each invoice in the manner specified in the applicable Statement of Work. Customer will also pay all related taxes and withholdings, except for those based on RSA's net income. If Customer is required to withhold taxes, then Customer will forward any withholding receipts to RSA. Subject to RSA's credit approval, all amounts are due in the currency stated on the invoice and in full 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.
- b. Affiliate Orders. An Affiliate (defined below) may place an order pursuant to a Statement of Work referencing this Agreement. Statement of Works for non-U.S. Affiliates or for export outside of the U.S. will be identified as such and shall be governed by a local participation agreement executed by the local RSA Affiliate and local Customer Affiliate. Such local participation agreement shall incorporate by reference the terms of this Agreement and address such issues as are necessary to conform to the local business requirements and practices as well as laws of the applicable country. "**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 or the power to elect at least a majority of the directors, of such legal entity.

6. **WARRANTY.**

- a. Warranty. During the term of each Statement of Work, RSA shall perform the Service (i) in a workmanlike manner and in accordance with generally accepted industry standards and (ii) substantially in accordance with the Documentation for such Service. Customer must notify RSA of any failure to so perform within ten (10) days after the date on which such failure first occurs. If RSA is unable to correct and/or re-perform the Service within a

reasonable time, then RSA's entire liability and Customer's exclusive remedy for failure to so perform shall be at Customer's sole option and upon written notice to RSA, termination of the affected Statement of Work forthwith and RSA shall refund the remainder of any unused fees paid in advance by Customer for the affected Service and which remain undelivered as of the termination date.

- b. Disclaimer and Exclusions. Except as expressly stated in Section 6(A) above, RSA (including its suppliers, subcontractors, employees and agents) provides Services "AS IS" and makes no other express or implied warranties, written or oral, and ALL OTHER WARRANTIES ARE SPECIFICALLY EXCLUDED, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE AND NON-INFRINGEMENT, AND ANY WARRANTY ARISING BY STATUTE, OPERATION OF LAW, COURSE OF DEALING OR PERFORMANCE, OR USAGE OF TRADE. NOTHING HEREIN IS INTENDED TO CONSTITUTE OR CREATE ANY REPRESENTATION OR WARRANTY BY RSA TO ANY THIRD PARTY, (INCLUDING END USERS), DIRECTLY OR AS A THIRD PARTY BENEFICIARY, WITH RESPECT TO ANY OF THE SERVICES PROVIDED HEREUNDER.

7. IP INDEMNITY.

RSA shall (i) defend Customer against any third party claim that the Services and the related materials provided by RSA to Customer infringe a patent, or a copyright enforceable in a country that is a signatory to the Berne Convention, 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 signed by RSA. Customer shall (i) defend RSA against any third party claim that the materials provided by Customer or its agents for use by RSA infringe a patent, or a copyright enforceable in a country that is a signatory to the Berne Convention, and (ii) pay the resulting costs and damages finally awarded against RSA by a court of competent jurisdiction or the amounts stated in a written settlement signed by Customer. The foregoing obligations are subject to the following: the indemnitee (a) notifies the indemnitor promptly in writing of such claim, (b) grants the indemnitor sole control over the defense and settlement thereof, (c) reasonably cooperates in response to an indemnitor request for assistance, and (d) is not in material breach of this MSA. Should such a claim be made, or in the indemnitor's opinion be likely to be made, the indemnitor may, at its option and expense, (1) procure for the indemnitee the right to make continued use thereof, (2) replace or modify such so that it becomes non-infringing, (3) request return of the subject material, or (4) discontinue the Service and refund the portion of any pre-paid Service fee that corresponds to the period of Service discontinuation. The indemnitor shall have no liability under this Section 7 to the extent that the alleged infringement arises out of or relates to: (A) the use or combination of the subject Services and/or materials with third party products or services, (B) use for a purpose or in a manner for which the subject Services and/or materials were not designed, (C) any modification to the subject Services and/or materials made by anyone other than the indemnitor or its authorized representatives, (D) any modifications to the subject Services and/or materials made by the indemnitor pursuant to the indemnitee's specific instructions, or (E) any technology owned or licensed by the indemnitee from third parties. THIS SECTION STATES THE INDEMNITEE'S SOLE AND EXCLUSIVE REMEDY AND THE INDEMNITOR'S ENTIRE LIABILITY FOR THIRD PARTY INFRINGEMENT CLAIMS.

8. LIMITATION OF LIABILITY.

- a. Limitation on Direct Damages. EXCEPT AS OTHERWISE PROVIDED IN SECTION 7 ABOVE, RSA'S TOTAL LIABILITY (INCLUDING THE LIABILITY OF ANY SUPPLIER, SUBCONTRACTOR, EMPLOYEE OR AGENT OF RSA), AND CUSTOMER'S SOLE AND EXCLUSIVE REMEDY FOR ANY CLAIM OF ANY TYPE WHATSOEVER ARISING OUT OF OR IN CONNECTION WITH ANY SERVICES 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 FROM WHICH SUCH CLAIM ARISES IN THE TWELVE (12) MONTH PERIOD IMMEDIATELY PRECEDING THE EVENT GIVING RISE TO A CLAIM HEREUNDER, FOR DAMAGE OF ANY TYPE NOT IDENTIFIED IN (i) ABOVE BUT NOT OTHERWISE EXCLUDED HEREUNDER.
- b. No Indirect Damages. EXCEPT WITH RESPECT TO CLAIMS REGARDING VIOLATION OF RSA PROPRIETARY RIGHTS (INCLUDING ANY LICENSE GRANTED THEREUNDER) OR CLAIMS FOR INDEMNITY ARISING UNDER SECTION 7 (IP INDEMNITY), NEITHER CUSTOMER NOR RSA (INCLUDING RSA'S SUPPLIERS, SUBCONTRACTORS, EMPLOYEES AND AGENTS) SHALL (i) 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 (ii) BRING ANY CLAIM BASED ON ANY SERVICE PROVIDED HEREUNDER MORE THAN EIGHTEEN (18) MONTHS AFTER THE CAUSE OF ACTION ACCRUES.

9. GOVERNMENT REGULATIONS.

The Services and any technology delivered in connection therewith pursuant to this MSA and/or any Statement of Work entered into hereunder may be subject to governmental restrictions on (i) exports from the U.S.; (ii) exports from other countries in which such Services and technology may be provided 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 technology included therein outside of the United States (collectively, "Export Laws"). Diversion contrary to U.S. law is expressly prohibited. Customer shall, at its sole expense, comply with all Export Laws and RSA export policies made available to Customer by RSA. Customer represents that it is not a Restricted Person, which shall be deemed to include any person or entity: (1) located in or a national of Cuba, Iran, Libya, North Korea, Sudan, Syria, or any other countries that may,

from time to time, become subject to U.S. export controls for anti-terrorism reasons or with which U.S. persons are generally prohibited from engaging in financial transactions; or (2) on any restricted person or entity list maintained by any U.S. governmental agency. Certain information, Services or technology may be subject to the International Traffic in Arms Regulations. This information, Services or technology shall only be exported, transferred or released to foreign nationals inside or outside the United States in compliance with such regulations. Certain information, products or technology may be subject to the International Traffic in Arms Regulations ("ITAR"). This information, products or technology shall only be exported, transferred or released to foreign nationals inside or outside the United States in compliance with ITAR.

11. NOTICES.

Any notices permitted or required under this MSA and/or any Statement of Work entered into 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; (iv) by facsimile transmission with confirmation of receipt; or (v) by email, with confirmation of receipt. Notices shall be sent to the address, facsimile number or email address set forth above, or at such other address, facsimile number or email address as provided to the other party in writing.

12. INDEPENDENT CONTRACTORS.

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

13. MISCELLANEOUS.

This MSA and any Statement of Work(s) entered into hereunder (i) shall constitute 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 authorized representatives of both parties. Except for the payment of fees, neither party shall be liable under this MSA or any Statement of Work because of a failure or delay in performing its obligations hereunder on account of any force majeure event, such as strikes, riots, insurrection, terrorism, fires, natural disasters, acts of God, war, governmental action, or any other cause which is beyond the reasonable control of such party. RSA shall not be liable under this MSA or any Statement of Work because of failure or delay in performing its obligations hereunder on account of Customer's failure to provide timely access to facilities, space, power, documentation, networks, files, software, and Customer personnel that are reasonably necessary for RSA to perform its obligations. Neither party may assign this MSA to a separate legal entity, without the other party's 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 MSA to a separate entity in connection with a merger, acquisition, or sale to such other separate entity, unless the surviving entity of the merger, acquisition, or sale of assets is a direct competitor of the other party. Nothing herein shall limit RSA's right to assign its right to receive and collect payments hereunder. This MSA (including any Statement of Work entered into hereunder) is governed by the laws of the Commonwealth of Massachusetts, excluding its conflict of laws rules. 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, add to, or conflict with this MSA and/or an Statement of Work, shall be null and void and of no legal force or effect. No waiver shall be deemed a waiver of any prior or subsequent default hereunder. If any part of this MSA and/or any Statement of Work entered into hereunder is held unenforceable, the validity of the remaining provisions shall not be affected. In case of any conflict between a Statement of Work and this Agreement, the Statement of Work shall control.