

# EMC Product Warranty and Support Service

## DEFINITIONS.

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

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

**C. “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.

**D. “Installation Site”** means the ship-to address or other location identified to EMC as the site of installation and/or use of a Product, or a subsequent location approved by EMC.

**E. “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.

**F. “Products”** mean “Equipment” (which is the hardware delivered by EMC to Customer) and/or “Software” (which is any programming code provided by EMC to Customer as a standard product, also including microcode, firmware and operating system software).

**G. “Product Notice”** means the notice by which EMC informs Customer of product-specific use rights and restrictions, warranty periods, warranty upgrades and maintenance (support) terms. Product Notices may be delivered in 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).

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

**I. “Time and Materials Service”** means any maintenance or support service that is provided by EMC but not part of fixed-fee Support Services or other generally available service related offering from EMC using a pre-established fee, but which will be separately charged on a time and materials basis and may be made available

under a separate set of Time and Materials Services Terms and Conditions.

## 1. 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, 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. Support Services for Software are available for separate purchase and the Support Options are identified at the Product Notice.

**C. Warranty Duration.** 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. If such replacement is not so returned, 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 shall be subject to a surcharge in accordance with EMC's then current standard rates.

**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.

## **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 be excluded from coverage pursuant to Section 1E above 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 rates and conditions. 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. Maintenance Aids and Spare Parts for Equipment.** Customer authorizes EMC to store Maintenance Aids and spare parts at the Installation Site and agrees that such are for use only by EMC authorized personnel. Customer shall not make any use thereof or authorize any third party to do so. EMC is authorized, upon the conclusion of the Support Services or at any other time, upon reasonable notice to Customer, to enter the Installation Site, or to use remote means, to remove and/or disable Maintenance Aids and spare parts and Customer shall reasonably cooperate in this effort.

**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, 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 use of a Software Release, Customer shall remove and make no further use of all prior Software Releases, and protect such prior Software Releases from disclosure or use by any third party. Customer is authorized to retain a copy of each Software Release properly obtained by Customer for Customer's archive purposes and use such as a temporary back-up if the current Software Release becomes inoperable. Customer shall use and deploy Software Releases strictly in accordance with terms of the original license for the Software.

**F. 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, conditions and 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 without undue delay. 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 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.

## **5. 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 were provided. 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 correct such deficiencies, then Customer has the right to

terminate for breach in accordance with section 7 D of this document.

**EXCEPT AS EXPRESSLY STATED HEREIN, 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.**

**6. LIMITATION OF LIABILITY.** EXCEPT FOR DAMAGES FOR WILLFUL MISCONDUCT, EMC'S LIABILITY TO FOR DAMAGES FROM ANY AND ALL CLAIMS AND CAUSES WHATSOEVER, REGARDLESS OF THE FORM OF ACTION, WHETHER IN CONTRACT OR IN TORT (INCLUDING NEGLIGENCE), WILL, IN THE AGGREGATE, BE LIMITED TO ACTUAL DIRECT DAMAGES UP TO ONE MILLION DOLLARS (\$1,000,000.00 USD). IN NO EVENT SHALL EITHER PARTY BE LIABLE OR RESPONSIBLE TO THE OTHER FOR ANY TYPE OF INCIDENTAL, PUNITIVE, INDIRECT, SPECIAL OR CONSEQUENTIAL DAMAGES, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, WHETHER ARISING UNDER THEORY OF CONTRACT, TORT (INCLUDING WITHOUT LIMITATION NEGLIGENCE), STRICT LIABILITY OR OTHERWISE.

## **7. TERM**

**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 with EMC 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 with EMC 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.