



For EMC Use Only

Reference Number

**SUPPORT EXHIBIT TO
TEXAS ORDERING AGREEMENT (TOA)**

Product Maintenance/Support

These Terms and Conditions for Product Maintenance (the “Support Exhibit”) set forth the basic provisions under which EMC makes available Product Maintenance to Texas and it’s AUTHORIZED ORDERING ACTIVITIES (customer). The specific Product programs and other details of coverage shall be identified on the Product Notice. In the event of a conflict of terms, DIR Contract for Products and Services No. DIR-TSO-2634 and Appendix A – Standard Terms and Conditions for Product and Related Services Contracts will control. Capitalized terms used in this Support Exhibit shall have the same meaning as used in the General Terms and Conditions.

1.0 DEFINITIONS

- 1.1 “Maintenance” shall mean maintenance services identified as such in this Exhibit.
- 1.2 “Designated EMC System” shall mean the Equipment that consists of a storage device, identified by serial number on its cabinetry or packing slip, on which the Core Software and/or Enhanced Feature Software operates.
- 1.3 “EMC Service Area” shall mean a location within a one hundred (100) mile radius of an EMC service location. See Exhibit 1 for a list of current locations.
- 1.4 “Host CPU” shall mean a central processing unit designated by Customer to operate with the Designated EMC System.
- 1.5 “Time and Materials Service” shall mean any maintenance or remedial service beyond the scope of or excluded from Maintenance.

2.0 PRODUCT MAINTENANCE

2.1 General –Maintenance shall be provided by EMC for the Products for which Customer pays the applicable Maintenance fee. Time and Materials Service shall be made available by EMC in accordance with EMC’s then current, standard charges applicable thereto (subject to the terms of the DIR Contract DIR-TSO-2634) and shall apply to any Maintenance type services provided by EMC to Customer that are not covered by Maintenance.

2.2 Equipment and Software – For Equipment and Software, Maintenance consists of the services and content applicable thereto as specified on the applicable Product Notice, which may generally include (i) maintaining such in good operating condition in conformance with EMC’s applicable specifications (including on-site remedial Maintenance and installation of engineering changes when deemed necessary by EMC); (ii) providing English-language help line service (via telephone or other electronic media), Software Releases and documentation updates, as they become available all in accordance with the Product Notice and options selected by Customer, if applicable; and (iii) replacing Software media

provided by EMC if the media becomes destroyed or unusable through no fault or negligence of Customer, but does not include Equipment upgrades, if any, needed to utilize features or functionality in a Software Release.

2.3 Response Times - EMC shall use its best efforts to provide a telephone response, when applicable to the Product and selected service level, to requests for Maintenance within the time period stated in the Product Notice after receipt of such request. When EMC determines that the request requires an on-site response, EMC shall use its best efforts to arrive at the Installation Site (if located within an EMC Service Area) within the time period stated in the Product Notice for the service level selected by Customer after EMC makes such determination.

2.4 Exclusions and Limitations – Maintenance does not include services required or efforts to remedy, repair or replace Products as a result of (i) accident or neglect or causes not attributable to normal wear and tear; (ii) problems relating to or residing in other hardware, software or services with which the Products are used; (iii) installation of the Products not in accordance with EMC's instructions or their specifications; (iv) use of the Products in an environment, in a manner or for a purpose for which they were not designed; and (v) installation, modification, alteration or repair of the Equipment or the Software by anyone other than the equipment manufacturer's authorized repair personnel, EMC or its authorized representatives. EMC will have no Maintenance obligations whatsoever with respect to Equipment that has been moved without EMC's consent, Software which is installed on hardware other than Equipment, Host CPU, network, or device for which it was licensed, or Equipment or Software on which the original identification marks have been removed or altered. Maintenance does not apply to any Software Release other than the current and immediately prior Software Release, but EMC may, in its discretion, make available support therefor as a Time and Materials Service

2.5 Re-Instatement of Continuous Coverage – If Maintenance has lapsed or been discontinued, Customer may request re-instatement thereof by retaining EMC under a Time and Materials Service engagement to perform an inspection and determine what steps, if any, are needed to restore the applicable Products to proper operating condition. Once so restored, such Products shall be certified by EMC and qualify for re-instatement of Continuous Coverage upon payment to EMC of (i) the charge for the above described Time and Materials Service and the EMC charges, if any, for the restoration; and (ii) the charge for the next twelve (12) months of the newly commenced Maintenance.

2.6 Customer Responsibilities - Customer shall (i) notify EMC when Products fail; (ii) allow EMC reasonable access to any Product to perform Product Maintenance or implement the terms of this Exhibit; (iii) furnish necessary facilities (suitable work space, computers, power, light, phone, software and equipment reasonably required by EMC); and (iv) promptly notify EMC of any changes to, or movement of, the configuration by anyone other than EMC. EMC reserves the right to inspect and evaluate the changes in configuration or location at EMC's then current Time and Materials Service terms, conditions and rates. Additional Maintenance charges, if any, related to any such changes in configuration or location, shall apply from the date the change took place. Customer shall fulfill the responsibilities described in this sub-section promptly at no charge to EMC.

2.7 Support Contacts - Customer shall designate in writing a reasonable number of authorized contacts, as determined by Customer and EMC, or as specified in the Product Notice, who shall initially report problems and receive support from EMC. Each Customer representative shall be familiar with Customer's requirements and shall have the expertise and capabilities necessary to permit EMC to complete its obligations. A change to the authorized Support Contacts by Customer must be submitted in writing to EMC by a duly authorized representative of Customer.

3.0 ADDITIONAL TERMS

3.1 Alterations and Attachments - 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 Maintenance, Customer shall, upon EMC's request, take appropriate corrective action. Customer's failure to take appropriate corrective action shall be deemed a breach of this Exhibit.

3.2 Replacement Parts - All Equipment and Software (or parts thereof) replaced hereunder shall belong to EMC and shall be returned promptly upon EMC's written request. If the replaced part is not so returned, Customer shall pay EMC the reasonable market value of such item of all prior versions and Software Releases of the Software, and protect such prior versions and Software Releases from disclosure or use by any third party by use of the same degree of care as used by Customer to protect its own information of a similar nature and importance. Customer is authorized to retain a copy of each prior 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.

3.3 Product Changes - EMC reserves the right, at its expense, to make changes to the Products (i) upon reasonable notice to Customer, when such changes do not adversely affect interchangeability or performance of the Products; (ii) when EMC believes 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.

3.4 Software Releases - All or any portion of any Software Release provided hereunder shall be treated as Software. Upon use of a Software Release on the applicable Designated EMC System, (or multiple items of Equipment, devices, network(s) and/or related central processing unit(s) ("CPU") if Customer is so licensed) Customer shall remove and make no further use of all prior versions and Software Releases of the Software, and protect such prior versions and Software Releases from disclosure or use by any third party by use of the same degree of care as used by Customer to protect its own information of a similar nature and importance. Customer is authorized to retain a copy of each prior 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.

3.5 Transfer of Equipment to Secondary Purchasers - In the event that 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) Maintenance for Equipment meeting the certification criteria.

3.6 Use and Non-transferability of Software - Customer shall use Software Releases for Core Software only on the Designated EMC System with which the Core Software was shipped. Except as stated in sub-section 3.7 below, Customer shall use Software Releases for Application Software and Enhanced Feature Software, up to the permitted capacity and/or number of units (if applicable and for which Customer is so licensed) and for Enhanced Feature Software only on or in connection with the Designated EMC System (or multiple items of Equipment, devices, network(s) and/or related CPUs if Customer is so licensed) with which the Enhanced Feature Software was shipped; or the Designated EMC System, or other items of

Equipment, devices, network(s), related CPUs, or environment for which such Software was specifically ordered and/or licensed by Customer. Customer shall not, without EMC's prior written consent, (i) copy, provide, disclose or otherwise make available any Software Releases in any form to anyone other than Customer's employees, consultants or independent contractors, who shall use such Software Releases solely for Customer's internal business purposes in a manner consistent with this Exhibit. Customer has no right to sell, assign, sub-license or otherwise transfer any Software Releases to any third party in any way; and (ii) shall provide EMC with reasonable notice and opportunity to retrieve and/or disable such Software Releases prior to any sale, assignment, sub-licensing or other transfer of the related Equipment. To the extent that EMC resources reasonably permit, EMC shall make available to the Secondary Purchaser (a) Equipment installation and re-certification services pursuant to EMC Time and Materials Service; and (b) Maintenance for Equipment meeting the certification criteria. EMC shall make available to the Secondary Purchaser a license to use Software pursuant to EMC's then current licensing terms, conditions and pricing. To the extent the Core Software is subsequently licensed by EMC to a Secondary Purchaser, Customer's license to use such Core Software shall be deemed terminated.

3.7 Change of Location or System - Customer may change the location of a Designated EMC System or Host CPU upon which Application Software or Enhanced Feature Software is used, to a replacement location, only after written notice to EMC. If the replacement location is in a different country, then such move is subject to EMC's prior written approval. Customer may move the Application Software or Enhanced Feature Software to a different Designated EMC System or Host CPU with a different model number than the originally Designated EMC System or Host CPU, only after written notice to EMC, provided Customer shall pay, if applicable, an upgrade fee. Beginning with the next Maintenance billing cycle, Customer shall pay applicable fees based upon the replacement model number.

4.0 PAYMENT AND PRICING TERMS

4.1 Pricing – The initial Maintenance fee, warranty upgrade fees, Maintenance upgrade fees, and affected configuration shall be in accordance with DIR-TSO-2634 and shall be set forth on the applicable Quote, schedule or purchasing document. Additions to such configuration may result in additional Maintenance fees. EMC may implement price changes affecting the Maintenance fees no more than once per calendar year after approval by DIR and by sending Customer notice thereof. Such price changes shall not take effect until the latter of (i) sixty (60) days after the date the notice is issued; or (ii) the expiration of the pre-payment period, if any. Customer shall also pay supplementary amounts (surcharges and/or time and materials charges) invoiced by EMC for EMC's performance of (a) service calls outside of an EMC Service Area; (b) refurbishment services; (c) installation of Products designated by EMC as customer installable; (d) installation or configuration of Application Software or Enhanced Feature Software provided under this Exhibit; and/or (e) configuration changes. If EMC commences work pursuant to Maintenance and subsequently determines that an exclusion or limitation (as set forth in sub-section 2.4 above) applies, the work shall be deemed Time and Materials Service.

4.2 Change in Equipment Status – With regard to Software that is used on or operated in connection with Equipment that ceases to be covered by Equipment Maintenance or an EMC Equipment warranty, EMC reserves the right to (i) discontinue Maintenance for such Software; or (ii) change the price for Maintenance for such Software, with such price change effective as of the date that the applicable Equipment ceases to be covered by Equipment Maintenance or an EMC Equipment warranty. If EMC discontinues Maintenance for such Software under this sub-section, EMC shall send Customer written notice thereof, such discontinuation shall be deemed a termination for convenience, and the payment credit provisions of sub-section 6.2 shall apply. If EMC changes the price for Maintenance for such Software

under this sub-section, EMC shall send Customer written notice thereof and Customer shall have thirty (30) days from receipt of the notice (the "Response Period") to send EMC a written notice that either (a) accepts such price change; or (b) rejects such price change and terminates the Maintenance for such Software. Such termination by Customer shall be deemed a termination for convenience and the payment credit provisions of sub-section 6.2 shall apply. If Customer does not so respond within the Response Period, Customer shall be deemed to have accepted rejected the price change and terminated the Maintenance for such Software.

4.3 Remote Support Capability - As part of Maintenance, EMC makes various remote support capabilities available for certain Products in accordance with its then current policies and procedures. One aspect of this remote support capability enables certain Designated EMC Systems to directly contact the appropriate EMC support center if the self-monitoring programming detects an abnormality that may affect performance. Upon such contact, EMC has the ability to call back to the Designated EMC System to gather additional diagnostic data, conduct further tests and remotely perform certain repairs and/or adjustments (collectively called the "Connect Home Feature"). EMC shall use stringent security measures, such as authentication and encryption, when communicating with the service module to protect against unauthorized access. EMC's standard Maintenance pricing is based on the use of the Connect Home Feature for early detection and remediation.

4.4 Disablement of Remote Support and Surcharge - Customer acknowledges that it has been informed by EMC that disabling or interfering in the operation of all or any portion of the Connect Home Feature increases the cost to EMC of providing Maintenance, downgrades EMC's ability to provide early detection and prompt resolution of problems, and shall serve as the basis for EMC to increase the charge to Customer for Maintenance. If Customer sends EMC written notice requesting disablement of all or any portion of the Connect Home Feature for a specific Product, EMC shall do so and notify Customer of the date on which such disablement becomes effective. Commencing on the date on which disablement of all or any portion of the Connect Home Feature becomes effective, and continuing for the period thereafter in which EMC provides Product Maintenance for the affected Product(s), EMC shall invoice Customer and Customer shall pay EMC a surcharge in accordance with EMC's then current, standard rates.

5.0 WARRANTY

5.1 Product Maintenance - EMC warrants that it shall perform Maintenance in a workmanlike manner in accordance with generally accepted industry standards. Customer must notify EMC of any failure to so perform within ten (10) days after the date on which such failure first occurs. 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 re-perform the deficient services within a reasonable time, or replace any replacement parts which become defective within sixty (60) days after installation thereof; and (ii) if, after reasonable efforts EMC is not able correct such deficiencies, refund the portion of any pre-paid Maintenance fee that corresponds to such failure to perform.

5.2 Disclaimer of Warranties - **EXCEPT AS EXPRESSLY STATED IN THIS WARRANTY SECTION, EMC (INCLUDING ITS SUPPLIERS) PROVIDES CONTINUOUS COVERAGE PRODUCT MAINTENANCE "AS IS" AND MAKES NO OTHER EXPRESS WARRANTIES, WRITTEN OR ORAL, AND ALL OTHER WARRANTIES ARE SPECIFICALLY EXCLUDED, INCLUDING BUT NOT LIMITED TO THE IMPLIED WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR NON-INFRINGEMENT, AND ANY WARRANTY ARISING BY STATUTE, OPERATION OF LAW, COURSE OF DEALING OR PERFORMANCE, OR USAGE OF TRADE.**

6.0 TERM AND TERMINATION

Termination of the Maintenance for a Product shall take place in accordance with Appendix A, Section 11, B, to DIR Contract No. DIR-TSO-2634.

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EXHIBIT 1

EMC Corporate Headquarters

176 South Street
Hopkinton MA 01748

EMC Service/Support Locations

Texas

11044 Research Boulevard
Building B, Suite B-500
Austin TX 78759

3900 N Capital of Texas Highway
Suites 400 & 500
Austin TX 78746

750 Canyon Drive
200 & 300
Coppell TX 75019

14755-14785 Preston Road
Suites 200, 290, 850
Dallas TX 75254

14841 North Dallas Parkway
4th Floor
Dallas TX 75254

4849 Alpha Road
Dallas TX 75244

2611 Internet Boulevard
Suite 114
Frisco TX 75034

3010 Gaylord Parkway
Suite 130
Frisco TX 75034

Texas

One Riverway
Suite 300
Houston TX 77056

1500 N. Greenville Ave
Suite 1100, 11th floor
Richardson TX 75081

1801 North Glenville Drive
Richardson TX 75081

State of Texas Data Center
2200 Dena Drive
San Angelo, TX 76904

9830 Colonnade Blvd.
Suite 120
San Antonio TX 78230

Oklahoma

1437 South Boulder Avenue
Tulsa OK 74119