

**Appendix G to DIR Contract No. DIR-SDD-1656**  
**Services Agreement**

This Services Agreement (“SA”) is effective as of \_\_\_\_\_, 20\_\_ (the “Effective Date”) between:

EMC Corporation (“EMC”)

176 South Street

Hopkinton, MA 01748

Fax for legal notices: 508.497.6994

Email for legal notices: legalnotices@emc.com

and

**CUSTOMER** \_\_\_\_\_

Address: \_\_\_\_\_

\_\_\_\_\_

Fax for legal notices: \_\_\_\_\_

Email for legal notices: \_\_\_\_\_

DIR Contract No. DIR-SDD-1656 (“the Contract”) and this SA set forth the general terms and conditions under which EMC and AUTHORIZED ORDERING ACTIVITIES (Customer) may periodically engage EMC to provide certain educational, operational and technical services (“Services”) on a project basis pursuant to a Statement of Work that will be entered into between EMC and Customer (“SOW”) for each engagement. In the event of a conflict of terms, DIR Contract No. DIR-SDD-1656 will prevail.

**GENERAL TERMS AND CONDITIONS**

**1. SERVICES.**

EMC shall provide the Services described in an SOW that details the relationship of the parties with regard to a specific project. Each SOW shall (i) be signed by the parties; (ii) incorporate by reference DIR Contract No. DIR-SDD-1656 and this SA; 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. To the extent allowable by DIR Contract No. DIR-SDD-1656, such business parameters shall control as to the engagement described in an SOW, but additional terms may only be added by express amendment to this SA signed by authorized representatives of the parties, even if they are to apply only to one SOW.

**2. TERM AND TERMINATION.**

**A.** Either party may terminate this SA for convenience by providing the other with written notice, which termination shall become effective upon the later of (1) fourteen days after receipt of such notice by such other party or (2) completion and payment for the Services set forth in any SOW(s) effective on the date of receipt of such notice. In addition, Customer may terminate any SOW hereunder fourteen days after EMC’s receipt of Customer’s written notice and Customer shall pay EMC for the value of all work performed through the date of termination.

**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 SA and/or an applicable SOW. 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 SOW(s), or

the SA if the breach affects multiple SOWs, which notice shall take effect upon receipt.

**C. 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 SA and/or an applicable SOW. 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 SOW(s), or the SA if the breach affects multiple SOWs, which notice shall take effect upon receipt.

**3. PROPRIETARY RIGHTS.**

**A. Ownership.** Customer shall own all copyright rights in written reports, analyses and other working papers delivered by EMC to Customer in the course of performing Services, as well as Customer’s derivative works thereof, subject to Customer’s payment in full under such SOW and subject to EMC’s rights in the underlying intellectual property embodied therein or used by EMC to perform the Services.

**B. License Grant.** Subject to the terms and conditions of this SA, EMC grants Customer the worldwide, non-exclusive, non-transferable, non-sublicenseable, perpetual, irrevocable (except as set forth in Section 2(C)) right to use, copy, and create derivatives of any materials provided by EMC in the course of performing Services solely for Customer’s internal business operations as contemplated by the applicable SOW. The foregoing license excludes EMC’s generally available products which are licensed via separate ordering agreement or pre-released products Customer may have received from EMC under a separate testing agreement.

**C. Reservation of Rights.** EMC reserves all rights not expressly granted to Customer in this SA. Except as expressly stated, nothing herein shall be construed to (1) directly or indirectly grant to a receiving party any title to or ownership of a providing party's intellectual property rights in services or materials furnished by such providing party hereunder, or (2) preclude such providing party from developing, marketing, using, licensing, modifying or otherwise freely exploiting services or materials that are similar to or related to the Services or materials provided hereunder. Notwithstanding anything to the contrary herein, Customer acknowledges that EMC has the right to use any Customer provided materials solely for the benefit of Customer in connection with the Services performed hereunder for Customer.

#### **4. CONFIDENTIALITY.**

**A. Confidential Information. "Confidential Information"** means, to the extent allowable under the Texas Public Information Act, all confidential and proprietary information of EMC 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 SA, 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. To the extent allowable by the Texas Public Information Act, 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 SA or any SOW 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 SA or (ii) the last date of the completion or other termination of Services under each SOW entered into hereunder, provided, however, that Confidential Information that constitutes, contains or reveals, in whole or in part, EMC 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.

**B. Publicity.** To the extent allowable by the Texas Public Information Act, 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 SA or any SOW entered into hereunder, without the prior written approval of the other, which approval shall not be unreasonably withheld.

#### **5. PAYMENT TERMS.**

**A. Invoicing and Payment.** EMC shall submit invoices for fees and reimbursable costs and expenses and Customer shall pay each invoice in the manner specified in Sections 7.B. and 7.C. of Appendix A to DIR Contract No. DIR-SDD-1656.

#### **6. WARRANTY.**

**A. Warranty.** EMC shall perform Services 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. EMC's entire liability, and Customer's sole remedy, for EMC's failure to so perform shall be for EMC to, at its option, (i) use reasonable efforts to correct such failure, and/or (ii) terminate the applicable SOW and refund that portion of any fees received that correspond to such failure to perform.

**B. Disclaimer and Exclusions.** Except as expressly stated in Section 6(A) above, EMC (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.

**7. IP INDEMNITY.** Indemnity Terms are set forth in Section 9.A.2. of Appendix A to DIR Contract No. DIR-SDD-1656.

#### **8. LIMITATION OF LIABILITY.**

Limitation of Liability terms are set forth in Section 9.K. of Appendix A to DIR Contract No. DIR-SDD-1656.

**9. GOVERNMENT REGULATIONS.** The Services and any technology delivered in connection therewith pursuant to this SA and/or any SOW entered into hereunder may be subject to governmental restrictions on exports from the U.S.; restrictions on exports from other countries in which such Services and technology may be provided or located; disclosures of technology to foreign persons; exports from abroad of derivative products thereof; and 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 EMC export policies made available to Customer by EMC. 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.

**10. NOTICES.** Notice terms are set forth in Section 11.A. of Appendix A to DIR Contract No. DIR-SDD-1656.

**11. INDEPENDENT CONTRACTORS.** The parties shall act as independent contractors for all purposes under this SA. 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.

**12. MISCELLANEOUS.** DIR Contract No. DIR-SDD-1656, this SA and any SOW(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. In the event of a conflict among provisions, the order of precedence shall be the DIR Contract, the SA, then the SOW.

IN WITNESS WHEREOF, the parties hereto have caused this SA to be executed by their duly authorized representatives as of the Effective Date.

**EMC CORPORATION**

By (Sign): \_\_\_\_\_  
Name (Print): \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

**CUSTOMER**

By (Sign): \_\_\_\_\_  
Name (Print): \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_