

APPENDIX D
Support Service and Professional Service Agreement
DIR-TSO-4299
Attachment 1
Support Services Exhibit

This Support Services Exhibit (“**Exhibit**”) sets forth the terms governing the provision of Support Services by EMC to Customer during or after the applicable warranty period.

1. DEFINITIONS.

A. All definitions set forth in the main body of DIR Contract, DIR-TSO-4299 (“Contract”) shall also apply to this Exhibit.

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

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

D. “EMC Channel Partner” means a reseller, distributor or system integrator that is authorized by EMC to sell Software licenses and Support Services. The term shall also refer to any third party duly authorized by an EMC Channel Partner to do the same.

E. “EMC Service Area” means the area that is within (i) one hundred (100) drivable miles of an EMC service location; and (ii) the same country as the EMC service location.

F. “Installation Site” means the ship-to-address or other location identified on the EMC quote or other document prepared by EMC as the site of installation and/or use of Software, or a subsequent location approved by EMC.

G. “Maintenance Aids” mean any hardware, software or other tools, other than Customer Support Tools, used by EMC to perform diagnostic or remedial activities on Software.

H. “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 an EMC quote, otherwise in writing and/or a posting on the applicable EMC website, currently located at http://www.emc.com/products/warranty_maintenance/index.jsp. The terms of the Product Notice in effect as of the date of the EMC quote to the Customer (when Customer purchases directly from EMC) or the EMC Channel Partner (when Customer purchases via an EMC Channel Partner) shall be deemed incorporated into and made a part of this Agreement. Each Product Notice is dated and is archived when it is superseded by a newer version. EMC shall not change any Product Notice retroactively with regard to any Software or Support Services listed on an EMC quote issued prior to the date of the applicable Product Notice. At Customer’s request, EMC shall without undue delay provide Customer with a copy of the applicable Product Notice and/or attach it to the relevant EMC quote.

I. “Service Offering” means Customer’s service offering offered on a software-as-a-service (“SaaS”), infrastructure as a service (“IaaS”), platform as a service (“PaaS”) hosted, turn-key, on-demand, service bureau, or similar basis.

J. “Software” means any programming code provided by EMC to Customer as a standard product, also including microcode, firmware and operating system software, which requires acceptance of this Agreement, and any copies made by or on behalf of Customer.

K. “Software Release” means any subsequent version of Software provided by EMC after initial Delivery of Software but does not mean a new product.

L. “Support Services” or “**Services**” means the services for the support and maintenance of Software as set forth in Appendix D – Service Terms to this Agreement.

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

N. “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 to Customer on a time and materials basis and may be made available under a separate set of Time and Materials Services Terms and Conditions.

2. SUPPORT SERVICES.

A. Scope. The contents of Support Services for each Product (the “**Support Option**”) 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 Services for the applicable Product. EMC reserves the right to change the scope of 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 the supply of Equipment upgrades, if any, needed to utilize new features or functionality in a Software Release.

C. Exclusions. Support Services do 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.

D. Re-Instatement of Support. If Customer wishes to re-instate Support Services for a Product that is not then currently covered thereby, such re-instatement shall be subject to a certification at EMC's then current Time and Materials Service rates in accordance with Appendix C Pricing Index 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 a Product fails and provide EMC with sufficient details so that the failure can be reproduced by EMC; (ii) allow EMC remote and on-site (when deemed necessary by EMC) access to the Product 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 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, and shall not authorize any third party to, make any use thereof. 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. Customer shall reasonably cooperate in this effort.

B. Customer Support Tools. EMC may choose to make 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. 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 within fifteen (15) days after EMC's request, Customer shall pay EMC's then current spare parts list price therefore.

D. Data Security Options. Customer is, at its own expense, fully responsible for the permanent erasure, of all information, including without limitation all personally identifiable and other protected information placed on, and by use of a method that does not cause damage to, any replaced parts or any other items that Customer provides to EMC for repair, trade-in, or disposal, before such items are returned to EMC, and for all costs associated with such erasure. Descriptions and charges associated with EMC's then currently offered data erasure services are available on request. EMC is not responsible for any information contained on such items notwithstanding anything to the contrary herein.

E. 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.

F. 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 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 Software.

G. Change of Equipment Location or Configuration. Customer may change the Installation Site or configuration of a Product under Support Services by EMC only after written notice to EMC. If the new location is in a different country, such move is subject to EMC's prior written approval. Customer shall promptly notify EMC of any changes to the configuration, or movement of Equipment by anyone

other than EMC. EMC reserves the right to inspect and evaluate the changes in configuration or location of affected Equipment at EMC's then current Time and Materials Service terms, conditions and rates. Additional charges, if any, related to changes in configuration or location of Equipment shall apply from the date the change took place.

H. 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) gives EMC advance, written notice of such move; and (ii) pays the applicable transfer and/or upgrade fee assessed by EMC for such a move (if any).

I. Remote Support Capability. As part of Support Services, EMC makes various remote support capabilities available for certain Products in accordance with its then current policies and procedures. EMC's warranty and Support Services fees are based on the availability and use of such remote support capabilities. Customer has the option to not activate or to disable remote support capabilities, but it shall notify EMC thereof without undue delay. If Customer chooses to disable or to not activate the remote support capabilities, 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) agreed response times or other agreed service levels (if any) shall no longer apply.

J. 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.

K. 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.

L. 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 and the terms of Section 7 C 2 below shall apply.

5. PRICING.

In cases where Customer has ordered Support Services directly from EMC, the fee for Support Services for Products shall be as set forth on the applicable quote from EMC. Additions to the Products on the EMC quote may result in additional Support Services fees. Time and Materials Service will be charged and invoiced by EMC in accordance with terms governing each such Time and Materials Service engagement in compliance with the Contract. The Time and Material pricing will be agreed to between the parties at time of service.

6. WARRANTY.

A. Support Services. EMC shall perform the labor portion of Support Services in a workmanlike manner in accordance with generally accepted industry standards. Customer shall notify EMC of any failure to so perform as soon as reasonably possible, and in no event more than ten (10) days after the date on which such failure first occurs. A replacement part provided in connection with Support Services receives the remainder of the warranty or Support Services coverage applicable to the Product containing the replacement part.

B. Customer Remedies. Customer's exclusive remedy and EMC's entire liability under the foregoing warranties shall be for EMC to, at its option, (i) use reasonable efforts to (a) re-perform the deficient labor services within a reasonable time, or (b) replace any replacement parts which become defective during the remainder of the warranty or Support Services coverage applicable to the Product containing the replacement part, 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.C.(2) below.

C. No Further Warranties. EXCEPT AS EXPRESSLY STATED HEREIN, AND TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, WITH REGARD TO PRODUCTS, REPLACEMENT PARTS, SERVICES OR ANY OTHER ITEMS OR MATTERS ARISING HEREUNDER, EMC (INCLUDING ITS SUPPLIERS) MAKES NO OTHER EXPRESS WARRANTIES, WRITTEN OR ORAL, AND DISCLAIMS ALL IMPLIED WARRANTIES. INsofar AS PERMITTED UNDER APPLICABLE LAW, 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. TERM AND TERMINATION.

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 shall commence and expire in accordance with the dates on the applicable EMC quote.

B. Equipment Support Services Term. Support Services (including Support Option upgrades, if applicable) for Equipment are provided during the warranty period. Renewals of Equipment related Support Services 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.

C. Termination.

Termination for Convenience. Termination shall be in accordance with Appendix A, Section 11.B of Appendix A of the Contract. In addition to the term and termination provisions set forth in the main body of the Agreement, the following apply to support Services: In addition to Appendix A, Section 11.B Termination of the Contract, the following apply to Support Services:

1. **By EMC.** If EMC terminates for its convenience, Customer's sole and exclusive remedy and EMC's sole and exclusive obligation shall be to refund to Customer the portion of any pre-paid Support Services fee that corresponds to the period between the effective date of the termination for convenience and the end of the then current Support Services period.
2. **By Customer.** If Customer terminates Support Services for its convenience, Customer's sole and exclusive remedy and EMC's sole and exclusive obligation shall be arrange for the issuance to Customer (in cases where Customer orders Support Services directly from EMC) or to the applicable EMC Channel Partner, as applicable, a credit that corresponds to the period between the effective date of the termination for convenience and the end of the then current Support Services period. Such credit may only be used against future purchases of Products or Support Services from EMC and may be reduced to recapture unearned discounts (meaning discounts to a Support Services fee that were based on a Customer obligation that can no longer be fulfilled due to the termination).
3. **Termination for Breach.** In addition to the term and termination provisions set forth in the Agreement, either party may terminate the Support Services for a specific Product for cause due to a failure of the other party to comply with the terms of this Support Exhibit with regard to such Product, provided that the terminating party has given thirty (30) days' written notice specifying the failure and the other party has not remedied such failure within such time. If EMC terminates the Support Services for any Product(s) affected by such a failure by Customer, such termination shall be without further liability for EMC and without any obligation to refund any fees already paid therefore. If Customer terminates for EMC's breach, Customer's sole and exclusive remedy and EMC's sole and exclusive obligation shall be to either issue a credit for use against current or future purchases of Products or Support Services or arrange for the issuance of a refund (as selected by Customer) for that portion of any pre-paid Support Service fee that corresponds to the period between the effective date of the termination for breach and the end of the then current Support Services period.

Professional Services Exhibit

This Professional Services Exhibit (“**Exhibit**”) sets forth the terms governing Professional Services provided by EMC to Customer.

1. DEFINITIONS.

A. All definitions set forth in the main body of DIR-TSO-4299 (“Contract”) shall also apply to this Exhibit.

2. PROFESSIONAL SERVICES.

A. Scope. Each project for Professional Services shall be governed by a separate SOW. Each SOW (excluding a Service Brief) shall (i) be signed by the parties; (ii) incorporate by reference this Contract and (iii) state the pertinent business parameters, including, but not limited to, pricing, payment, expense reimbursement, and a detailed description of the Professional Services to be provided. Professional Services are provided as a separate and independent service to Customer even if offered together with the sale or licensing of Products by EMC in the same EMC quote or Customer purchase order.

B. Placement of EMC Personnel. EMC shall have the sole responsibility for personnel placement as well as for all other human resources issues (e.g. vacation). EMC will only utilize employees or contractors that are sufficiently qualified. If specific EMC personnel cease to perform due to illness, resignation or any other reason, EMC shall without undue delay use reasonable efforts to provide a substantially equivalent replacement as soon as reasonably possible. EMC’s contact person responsible for liaising with Customer will exclusively be the person identified by EMC as being responsible for the project. No employee/employer relationship is intended or shall be established by any SOW.

C. Standard Work Day. The standard work day is any eight (8) hour period of work, between 8:00 AM and 6:00 PM, Monday through Friday, excluding public holidays at the EMC location providing Professional Services.

D. Customer Responsibilities. Customer shall provide EMC personnel with timely access to appropriate facilities, space, power, documentation, networks (including internet and telephone), files, information, additional software (if needed), and skilled and authorized Customer personnel to assist in the performance and cooperate with EMC. Customer shall also perform its specific obligations as described in the relevant SOW, and, if necessary, assist and support EMC in the provision of the Professional Services as reasonably requested by EMC, and shall provide all conditions in its business necessary for due performance of Professional Services by EMC.

3. PROPRIETARY RIGHTS. Appendix A, Section 14. Proprietary Rights of the Contract shall apply to Professional Services provided under this Exhibit

4. PAYMENT AND INVOICING. EMC shall submit invoices for fees and reimbursable costs and are expenses and be paid in

the manner specified in the applicable SOW, and in accordance with the terms of the Appendix A, Section 8.J of the DIR contract, DIR-TSO-4299.

5. TRAINING SERVICES.

A. Courses. EMC’s standard training Services are available through the applicable catalogue or website. EMC customized training Services are available pursuant to an SOW.

B. Cancellation and Refunds. If Customer prepays and subsequently cancels standard training Services, EMC shall provide (i) a full refund, if EMC receives written notice of cancellation two (2) or more weeks before the scheduled start date; or (ii) a 50% refund, if EMC receives written notice of cancellation less than two (2) weeks before, but prior to, the scheduled start date. Cancellation charges for customized training Services shall be as mutually agreed between the parties in the applicable SOW.

6. WARRANTY.

A. Professional Services. EMC shall perform Professional 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 performance of the applicable portion of Professional Services.

B. Customer Remedies. EMC’s entire liability and Customer’s sole remedy under the foregoing warranty for EMC’s failure to so perform shall be for EMC to, at its option, (i) 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.

C. No Further Warranties. EXCEPT AS EXPRESSLY STATED HEREIN, AND TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, WITH REGARD TO PRODUCTS, SERVICES OR ANY OTHER ITEMS OR MATTERS ARISING HEREUNDER, EMC (INCLUDING ITS SUPPLIERS) MAKES NO OTHER EXPRESS WARRANTIES, WRITTEN OR ORAL, AND DISCLAIMS ALL IMPLIED WARRANTIES. INsofar AS PERMITTED UNDER APPLICABLE LAW, 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.