



PLEASE READ THE FOLLOWING TERMS AND CONDITIONS

This Product contains computer programs and other proprietary material and information, the use of which is subject to and expressly conditioned upon acceptance of this end-user license and service agreement ("Agreement").

This Agreement is a legally binding document between the organization that will make end-use of the Product (the "Customer") and EMC and/or Hexistor (which means (i) EMC and/or Hexistor Corporation, if Customer is located in the United States; (ii) the local EMC and/or Hexistor sales subsidiary, if Customer is located in a country in which EMC and/or Hexistor Corporation has a local sales subsidiary; and (iii) EMC and/or Hexistor Information Systems International, if Customer is located outside the United States and in a country in which EMC and/or Hexistor Corporation does not have a local sales subsidiary). Unless EMC and/or Hexistor agrees otherwise in writing, this Agreement governs Customer's use of the Product except to the extent all or portion of the Product: (a) is the subject of a separate written agreement; (b) is the subject of a separate written agreement between Customer and a Distributor (provided such complies with EMC and/or Hexistor's agreement with the Distributor), or (c) is governed by a third party licensor's terms and conditions. Capitalized terms have the definitions in Section 1 or as otherwise indicated below.

By clicking on the "Agree" or "Accept" or similar button at the end of this Agreement, or proceeding with the installation, use or reproduction of this Product, or authorizing any other person to do so, you are representing to EMC and/or Hexistor that you are authorized to bind the Customer, and that you are agreeing on behalf of the Customer that the terms of this Agreement shall govern the relationship of the parties with regard to the subject matter in this Agreement and are waiving any rights, to the maximum extent permitted by applicable law, to any claim anywhere in the world concerning the enforceability or validity of this Agreement. If the terms of this Agreement are considered an offer by EMC and/or Hexistor, acceptance by Customer is expressly limited to the terms of this Agreement, to the exclusion of all other terms.

If you do not have authority to agree to the terms of this Agreement on behalf of the Customer, or do not accept the terms of this Agreement, (i) click on the "Cancel" or "Decline" or other similar button at the end of this Agreement and/or immediately cease any further attempt to install or use this Product for any purpose, (ii) remove any partial or full copies made from this Product; and (iii) return the Product, along with proof of purchase, to the company from whom you obtained the Product. In such event, no license shall be deemed to have been granted by EMC and/or Hexistor.

1. DEFINITIONS.

A. "Confidential Information" means and includes the terms of this Agreement (including all Quotes), the Products and Support Tools and all confidential and proprietary information of EMC and/or Hexistor or Customer, including without limitation, all business plans, product plans, financial information, software, designs, 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.

B. "Customer" means either (i) a natural person who is personally bound by the terms of this Agreement and utilizes the Product for personal use and not within the scope of employment with a business entity; or (ii) a business entity, its officers, directors, proprietors, trustees, owners, principals, employees, contractors, agents or representatives.

C. "Distributor" means a reseller, distributor, system integrator, service provider, independent software vendor, value-added reseller, OEM or other partner that is authorized by EMC and/or Hexistor to license the Product to end users. The term shall also refer to any third party duly authorized by a Distributor to license the Products to end users.

D. "Documentation" means the then-current, generally available, written user manuals and online help and guides for the Product provided by EMC and/or Hexistor.

E. "Evaluation Product" means a copy of the generally available or pre-release version of EMC and/or Hexistor software product which contains this Agreement, and any copies made by or on behalf of Customer, and all Documentation for the foregoing, licensed for a limited duration for the specific purpose of evaluation prior to licensing or purchase.

F. "Product" means the EMC and/or Hexistor software product which contains this Agreement, and any copies made by or on behalf of Customer, Software Releases, and all Documentation for the foregoing. Products do not include Evaluation Products.

G. "Product Notice" means the then-current notice by which EMC and/or Hexistor informs Customer of a Product's then-current use rights and restrictions, warranty term, warranty upgrade and maintenance terms. Product Notices may be delivered by means of Quotes, written notices, contract riders and/or a posting on the applicable EMC and/or Hexistor website, currently located at <http://www.EMC and/or Hexistor.com> The terms of all applicable Product Notices shall be deemed incorporated into and made a part of this Agreement.

H. "Quote(s)" means one or more documents issued by EMC and/or Hexistor or a Distributor which identifies this Product, Evaluation Product, and/or a related Service, the applicable pricing and sufficient other information to complete the transaction.

I. "Service" means all services provided by EMC and/or Hexistor pursuant to this Agreement, if any.

J. "Software Release" means any new version of Product that is made generally available by EMC and/or Hexistor to customers who are current in the payment of maintenance and support fees, but does not mean a new Product.

K. "Support Tools" means any hardware, software and other tools and/or utilities used by EMC and/or Hexistor to perform diagnostic or remedial activities in connection with Products.

L. "User" means Customer's agents, employees, consultants or independent contractors authorized by Customer to use the Products on Customer's behalf.

2. ORDERING, PRICING AND PAYMENT.

A. Products -- EMC and/or Hexistor Quotes. A Quote issued by EMC and/or Hexistor to Customer will be deemed accepted by Customer when Customer places an order by: (i) signing the Quote and returning it to EMC and/or Hexistor, (ii) issuing a purchase order for the Products and/or Services on the Quote, or (iii) sending EMC and/or Hexistor an email or other writing accepting the Quote. A Customer order is complete as to Products when the Product is made available to Customer. Following EMC and/or Hexistor's completion of an order or portion thereof, EMC and/or Hexistor will issue an invoice for the Products with respect to which the order is completed, such invoice to reflect the price for such Products as set forth on the Quote. Customer shall pay EMC and/or Hexistor the price stated on the invoice and also pay or reimburse EMC and/or Hexistor for all related taxes or withholdings, except for those taxes based on EMC and/or Hexistor's net income. If Customer is required to withhold taxes, then Customer will forward any withholding receipts to EMC and/or Hexistor at tax@EMC and/or Hexistor.com. All amounts are due in the currency stated on the Quote and in full 30 days after the date of EMC and/or Hexistor's invoice, with interest accruing thereafter at the lesser of 1.5% per month or the highest lawful rate.

B. Products -- Distributor Quotes. Customer shall not be liable to EMC and/or Hexistor for payment related to Products or Services obtained by Customer through a Distributor. EMC and/or Hexistor's delivery obligation with respect to Quotes issued by a Distributor and accepted by Customer is complete when EMC and/or Hexistor makes the Product available to Customer or to Distributor for delivery to Customer, as the case may be. Any terms and conditions in a Quote issued by Distributor or any purchase order or other ordering documentation issued by Customer to Distributor shall not be binding upon EMC and/or Hexistor for any reason.

C. Delivery. Product may be provided by shipment of physical media or by electronic means, if available. Title and risk of loss to physical media, if any, transfers to Customer upon shipment except for Canada, where such title and risk of loss pass when at the time and place when the media clears Canadian Customs. Customer shall pay all shipment related charges and transit insurance.

D. Audit Rights. EMC and/or Hexistor shall have the right to audit Customer's usage of the Product to confirm compliance with the terms of the Agreement and the Quote. Should such audit indicate usage of Product in excess of that for which Customer has paid, in addition to any other rights EMC and/or Hexistor may have for breach of this Agreement and the Quote, Customer shall promptly reconcile its account with EMC and/or Hexistor and pay the EMC and/or Hexistor invoice, either directly or through the applicable Distributor designated by EMC and/or Hexistor, if any, that results from such reconciliation.

3. RIGHT TO USE

A. LICENSE GRANT. Subject to Customer's compliance with this Agreement, the Product Notice, and payment of all license fees, EMC and/or Hexistor grants to Customer a nonexclusive, perpetual (except as otherwise set forth in the applicable Product Notice and/or Quote), and non-transferable license (with no right to sublicense) to use the Product for internal business purposes only, for the number of applicable licensing units and in accordance with any other license terms or restrictions set forth in the Product Notice and/or Quote. The foregoing license shall commence on the date of shipment or physical media, if any or electronic availability of such Product to Customer. Documentation is licensed solely for purposes of supporting Customer's use of the Product as permitted in this Section.

B. EVALUATION PRODUCTS. For an Evaluation Product, subject to Customer's compliance with this Agreement and the Product Notice, EMC and/or Hexistor grants to Customer a nonexclusive, revocable, limited term, and non-transferable license (with no right to sublicense) to use such Evaluation Product for non-production evaluation purposes only, for the number of applicable licensing units and in accordance with any other license terms or restrictions set forth in the Product Notice and/or Quote. The foregoing license shall commence on the date of shipment or electronic availability of such Evaluation Product to Customer for a period not to exceed thirty (30) days ("Evaluation Period"). Documentation is licensed solely for purposes of supporting Customer's use of the Evaluation Product as permitted in this Section. Customer shall not, without EMC and/or Hexistor's prior written consent, copy, provide, disclose or otherwise make available the Evaluation Product in any form to anyone other than Customer's Representative, who shall use the Evaluation Product solely for Customer's internal evaluation purposes in a manner consistent with this Section. Customer shall be fully responsible to EMC and/or Hexistor for the compliance of its Representatives herewith. Customer shall not disclose the results of any comparative or competitive analyses, benchmark testing, infringement testing, or analyses of EMC and/or Hexistor's products to any third party. Customer hereby assigns to EMC and/or Hexistor all of Customer's right, title and interest in any feedback related to any pre-release version of the Evaluation Product. EMC and/or Hexistor does not commit, promise, or

agree to finally release and/or offer for sale the Evaluation Product, whether or not perfected. EMC and/or Hexistor reserves the right to unilaterally cease and abandon any Evaluation Product development project at any time without any obligation or liability whatsoever. Customer shall have no obligation or commitment to license an Evaluation Product, whether such is subsequently perfected or not. Evaluation Products are Confidential Information under this Agreement. EMC and/or Hexistor does not provide maintenance or support for any Evaluation Product. CUSTOMER RECOGNIZES THAT EVALUATION PRODUCTS MAY HAVE DEFECTS OR DEFICIENCIES WHICH CANNOT OR MAY NOT BE CORRECTED BY EMC and/or Hexistor. EMC and/or Hexistor shall have no liability to Customer for any action (or any prior related claims) brought by or against Customer alleging that Customer's sale, use or other disposition of any Evaluation Product infringes any patent, copyright, trade secret or other intellectual property right. In event of such an action, EMC and/or Hexistor retains the right to terminate this Agreement and take possession of the Evaluation Product. THIS SECTION STATES EMC and/or Hexistor'S ENTIRE LIABILITY WITH RESPECT TO ALLEGED INFRINGEMENTS OF INTELLECTUAL PROPERTY RIGHTS BY THE EVALUATION PRODUCT OR ANY PART OF THEM OR BY THEIR OPERATION.

C. License Restrictions. All Product licenses granted herein are for use of object code only. Customer may copy the Product for backup purposes only, and may copy Documentation as reasonably necessary in connection with Customer's authorized internal use of the Product. Customer shall not, without EMC and/or Hexistor's prior written consent, use Product in a service bureau or similar capacity, or copy, provide, disclose or otherwise make available Product in any form to anyone other than Customer's Users, who shall use Product solely for Customer's internal business purposes in a manner consistent with this Agreement. Customer shall be fully responsible to EMC and/or Hexistor for the compliance of Customer's Users herewith.

4. WARRANTY AND DISCLAIMER.

A. Duration. The warranty term for the Products shall be as set forth in the applicable Product Notice in effect as of the date of the Quote under which Customer ordered each Product. In the event of a conflict between the Product Notice and this Agreement, the Product Notice shall control. Evaluation Products contain no warranty and are provided to Customer "AS IS."

B. Product Warranty. EMC and/or Hexistor warrants that, from the date of shipment or the date of electronic availability, as applicable, the Product (excluding Product Releases) will substantially conform to the applicable Documentation for such Software. EMC and/or Hexistor does not warrant that the operation of the Product shall be uninterrupted or error free, or that all defects can be corrected. EMC and/or Hexistor's entire liability and Customer's exclusive remedies under the warranties described in this Section shall be for EMC and/or Hexistor, at its option, to use reasonable efforts to remedy such defects or performance failure or to replace the affected Product. If EMC and/or Hexistor is unable to make the affected Product operate as warranted within a reasonable time, then EMC and/or Hexistor shall refund the amount received by EMC and/or Hexistor for the affected Product upon return of the specific Software to EMC

and/or Hexistor or its Distributor. The foregoing shall not void any supplementary remedies made available to Customer by a Distributor, with respect to which EMC and/or Hexistor shall have no liability or obligation.

C. Warranty Exclusions. Except as expressly stated in the applicable warranty set forth in this Agreement, and to the maximum extent permitted by law, EMC and/or Hexistor (including its suppliers) provides Product and Evaluation Product "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.

5. PRODUCT SUPPORT.

A. Support and Maintenance. If Customer has purchased maintenance or support Services for the Product from EMC and/or Hexistor, such shall be delivered by EMC and/or Hexistor as specified in applicable Product Notices. If Customer ceases support and later wishes to re-instate support, then re-instatement may be subject to certification at EMC and/or Hexistor's then-current rates. If Customer has purchased maintenance or support Services for the Product from a Distributor, then such shall be delivered as specified in Customer's agreement with the Distributor.

B. Support Tools. Support Tools are owned by or licensed to EMC and/or Hexistor. Customer authorizes EMC and/or Hexistor to store Support Tools and spare parts at the installation site and agrees that such are for use only by EMC and/or Hexistor authorized personnel. Customer shall not make, and shall use reasonable care to prohibit its personnel or any third party from making any copies, use, disclosure or transfer of Support Tools and/or such spare parts. EMC and/or Hexistor is authorized, upon the conclusion of any maintenance or warranty period 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 Support Tools and spare parts and Customer shall reasonably cooperate in this effort.

6. CONFIDENTIALITY. 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 Agreement, 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 EMC and/or Hexistor's issuance of the first Quote until three (3) years following the termination date of this Agreement, except with respect to the Products, Evaluation Products and Support Tools, which shall remain Confidential Information until one of the exceptions stated in Section 1(A) above applies. 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 so that the disclosing party will have an opportunity to defend, limit or protect against such disclosure.

7. **OWNERSHIP AND RESTRICTIONS.** Products and Evaluation Products are licensed only. No title to, or ownership of, the Products or Evaluation Products is transferred to Customer. Customer shall reproduce and include copyright and other proprietary notices on and in any copies, including but not limited to partial, physical or electronic copies, of the Product and Evaluation Products. Neither Customer nor its Users shall modify, enhance, supplement, create derivative works from, reverse assemble, reverse engineer, reverse compile or otherwise reduce to human readable form the Product or Evaluation Products without EMC and/or Hexistor's prior written consent, nor shall Customer permit any third party to do the same.

8. **INDEMNITY.** EMC and/or Hexistor shall (i) defend Customer against any third party claim that a Product or Service infringes 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 EMC and/or Hexistor. The foregoing obligations are subject to the following: Customer (a) notifies EMC and/or Hexistor promptly in writing of such claim, (b) grants EMC and/or Hexistor sole control over the defense and settlement thereof, (c) reasonably cooperates in response to an EMC and/or Hexistor request for assistance, and (d) is not in material breach of this Agreement. Should any such Product or Service become, or in EMC and/or Hexistor's opinion be likely to become, the subject of such a claim, EMC and/or Hexistor may, at its option and expense, (1) procure for Customer the right to make continued use thereof, (2) replace or modify such so that it becomes non-infringing, (3) request return of the Product and, upon receipt thereof, refund the price paid by Customer, less straight-line depreciation based on a four year useful life for Equipment and a three year useful life for Product, or (4) discontinue the Service and refund the portion of any pre-paid Service fee that corresponds to the period of Service discontinuation. EMC and/or Hexistor shall have no liability under this Section 8 to the extent that the alleged infringement arises out of or relates to: (A) the use or combination of a Product or Service with third party products or services, (B) use for a purpose or in a manner for which the Product or Service was not licensed or designed, (C) any modification made by anyone other than EMC and/or Hexistor, (D) any modifications to a Product or Service made by EMC and/or Hexistor pursuant to Customer's or a Distributor's specific instructions, (E) any technology owned or licensed by Customer or a Distributor from third parties, (F) any Evaluation Products, or (G) use of any older version of the Product when use of a newer Software Release made available to Customer would have avoided the infringement. THIS SECTION STATES CUSTOMER'S SOLE AND EXCLUSIVE REMEDY AND EMC and/or Hexistor'S ENTIRE LIABILITY FOR THIRD PARTY INFRINGEMENT CLAIMS.

9. **LIMITATION OF LIABILITY.**

A Limitation on Direct Damages. TO MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, AND EXCEPT WITH RESPECT TO CLAIMS ARISING UNDER SECTION 8 OF THESE GENERAL TERMS AND CONDITIONS, EMC and/or Hexistor'S AND ITS SUPPLIERS' TOTAL LIABILITY AND CUSTOMER'S SOLE AND EXCLUSIVE REMEDY FOR ANY CLAIM OF ANY TYPE WHATSOEVER, ARISING OUT OF PRODUCT, EVALUATION PRODUCT OR SERVICE

PROVIDED HEREUNDER, SHALL BE LIMITED TO PROVEN DIRECT DAMAGES CAUSED BY EMC and/or Hexistor'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 EMC and/or Hexistor FOR THE SPECIFIC SERVICE (CALCULATED ON AN ANNUAL BASIS, WHEN APPLICABLE) OR PRODUCT FROM WHICH SUCH CLAIM ARISES, FOR DAMAGE OF ANY TYPE NOT IDENTIFIED IN (i) ABOVE OR OTHERWISE EXCLUDED HEREUNDER.

B. No Indirect Damages. TO MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, AND EXCEPT WITH RESPECT TO CLAIMS REGARDING VIOLATION OF EMC and/or Hexistor'S INTELLECTUAL PROPERTY RIGHTS OR CLAIMS ARISING UNDER SECTIONS 6 OR 8 ABOVE, NEITHER CUSTOMER NOR EMC and/or Hexistor (INCLUDING EMC and/or Hexistor'S SUPPLIERS) SHALL 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.

10. WAIVER OF RIGHT TO BRING ACTIONS. Customer waives the right to bring any claim arising out of or in connection with this Agreement more than eighteen (18) months after the earlier of the date that the Customer became aware of the cause of action giving rise to such claim or the date that it should reasonably have become aware of it.

11. GOVERNMENT REGULATIONS. The Products and the technology included therein provided under this Agreement are subject to governmental restrictions on exports from the U.S.; restrictions on exports from other countries in which such Products and technology included therein may be produced or located; disclosures of technology to foreign persons; exports from abroad of derivative products thereof; and the importation and/or use of such Products and 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 and/or Hexistor export policies made available to Customer by EMC and/or Hexistor. 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, 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, 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.

12. TERMINATION. Customer may terminate this Agreement for its convenience upon thirty (30) days' notice to EMC and/or Hexistor or Distributor. With respect to Evaluation Products only, this Agreement shall automatically expire and terminate upon the conclusion of the Evaluation Period. Either Customer or EMC and/or Hexistor may terminate this Agreement

upon written notice due to the other party's material breach of the terms governing use of the Product; provided that such breach is not cured within thirty (30) days after the provision of written notice to the breaching party specifying the nature of such breach. Upon termination of this Agreement, Customer shall cease all use and return or certify destruction of the applicable Product (including copies) to EMC and/or Hexistor. Upon termination of the Agreement, the following Sections hereof shall survive in accordance with their terms: 1, 2 (only if fees are due and owing at termination), 4C, 5B, 6, 7, 8, 9, 10, 11, 12, 13, 14 and 15.

13. NOTICES. Any notices permitted or required under this Agreement 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 (except for routine business communications issued by EMC and/or Hexistor, which shall not require confirmation from Customer). Notices shall be sent to the address, facsimile number or email address set forth below, or at such other address, facsimile number or email address as provided to the other party in writing. Notices for EMC and/or Hexistor Corporation shall be sent to: 176 South Street, Hopkinton, MA 01748. Fax for legal notices: 508.293.7780. Email for legal notices: legalnotices@EMC and/or Hexistor.com

14. MISCELLANEOUS. EMC and/or Hexistor may identify Customer for reference purposes. This Agreement (i) is the complete statement of the agreement of the parties with regard to the subject matter hereof; and, with the exception of the Customer Guide, (ii) may be modified only by a writing signed by both parties. Except for the payment of fees, neither party shall be liable under this Agreement 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. Customer shall not assign this Agreement or any right or delegate any performance without EMC and/or Hexistor's prior written consent, which consent shall not be unreasonably withheld. Customer shall promptly notify EMC and/or Hexistor, and EMC and/or Hexistor may terminate this Agreement on thirty days' notice, if Customer merges with or is acquired by a third party or otherwise undergoes a change of control event. 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 or conflict with this Agreement and/or a Quote, 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 Agreement is held unenforceable, the validity of the remaining provisions shall not be affected. This Agreement is governed by: (i) the laws of the Commonwealth of Massachusetts when EMC and/or Hexistor means EMC and/or Hexistor Corporation; (ii) the laws of the applicable country in which the applicable EMC and/or Hexistor subsidiary is registered to do business when EMC and/or Hexistor means the local EMC and/or Hexistor subsidiary, and (iii) the laws of Switzerland when EMC and/or Hexistor means EMC and/or Hexistor (Benelux) B.V., S.a.r.l. In each case, the applicability of laws shall exclude any conflict of law rules. The U.N. Convention on Contracts for the International Sale of Goods shall not apply. In the event of a dispute

concerning this Agreement, Customer consents to the sole and exclusive personal jurisdiction of the courts of competency in the location where EMC and/or Hexistor is domiciled.

15. COUNTRY SPECIFIC TERMS.

A. CANADA - The terms in this subsection A apply only when EMC and/or Hexistor means the EMC and/or Hexistor entity located in Canada - EMC and/or Hexistor Corporation of Canada:

1. Section 2.C. - The second sentence is deleted in its entirety and replaced with "Title and risk of loss to physical media, if any, transfers to Customer at the time and place that the media clears Canadian Customs.

2. Section 3.A. - The last two sentences are deleted and replaced with "The foregoing license shall commence on the date of shipment or physical media, if any when the media clears Canadian Customs or electronic availability of such Product to Customer." Documentation is licensed solely for purposes of supporting Customer's use of the Product as permitted in this Section.

3. Add the following at the end of Section 14.

The parties have required that this Agreement be drawn up in English and have also agreed that all notices or other documents required by or contemplated in this Agreement be written in English.

Les parties ont requis que cette convention soit rédigée en anglais et ont également convenu que tout avis ou autre document exigé aux termes des présentes ou découlant de l'une quelconque de ses dispositions sera préparé en anglais.

B. United Kingdom - The terms in this subsection B. apply only when EMC and/or Hexistor means the EMC and/or Hexistor entity located in the United Kingdom - EMC and/or Hexistor Computer Systems (UK) Limited:

1. Section 4.C. - The entire section is deleted and replaced with

C. Warranty Exclusions. Except as expressly stated in the applicable warranty set forth in this Agreement and the applicable exhibits, EMC and/or Hexistor (including its suppliers) provides Products "AS IS" and makes no other express or implied warranties, written or oral, and ALL OTHER WARRANTIES AND CONDITIONS (SAVE FOR THE WARRANTIES AND CONDITIONS IMPLIED BY SECTION 12 OF THE SALE OF GOODS ACT 1979) ARE SPECIFICALLY EXCLUDED TO THE FULLEST EXTENT PERMITTED BY LAW, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, AND ANY WARRANTY ARISING BY STATUTE, OPERATION OF LAW, COURSE OF DEALING OR PERFORMANCE, OR USAGE OF TRADE.

2. Section 9 is deleted in its entirety and replaced with the following:

9. LIMITATION OF LIABILITY AND PRESERVATION OF DATA.

A. The entire aggregate liability of EMC and/or Hexistor under or in connection with the supply of the Products, Evaluation Products or Service, whether in tort (including negligence), for breach of contract, misrepresentation or otherwise, is limited in respect of each event or a series of events: (i) to the amounts actually paid by Customer for the Products, Evaluation Products or Services which give rise to such liability during the twelve (12) month period immediately preceding the date of the cause of action giving rise to such claim; or (ii) Great British Pounds Sterling one million (£1,000,000), whichever is the greater amount. In no event shall either party be liable to the other or any other person or entity for loss of profits, loss of revenue, loss of use or any indirect, special, incidental, consequential or exemplary damages arising out of or in connection with this Agreement, the license of the Product or Evaluation Product, the provision of Services, and the use, performance, receipt or disposition of such Product or Evaluation Product or Services, even if such party has been advised of the possibility of such damages or losses. Nothing in this Agreement shall operate to exclude or restrict EMC and/or Hexistor's liability for: (a) death or personal injury resulting from negligence; (b) breach of obligations arising from section 12 of the Sale of Goods Act 1979; or (c) fraud.

B. CUSTOMER OBLIGATIONS IN RESPECT OF PRESERVATION OF DATA. During the Term of the Agreement, the Customer shall:

A. from a point in time prior to the point of failure, (i) make full and/or incremental backups of data which allow recovery in an application consistent form, and (ii) store such back-ups at an off-site location sufficiently distant to avoid being impacted by the event(s) (e.g. including but not limited to flood, fire, power loss, denial of access or air crash) and affect the availability of data at the impacted site;

B. have adequate processes and procedures in place to restore data back to a point in time and prior to point of failure, and in the event of real or perceived data loss, provide the skills/backup and outage windows to restore the data in question;

C. use anti-virus software, regularly install updates across all data which is accessible across the network, and protect all storage arrays against power surges and unplanned power outages with Uninterruptible Power Supplies; and

D. ensure that all operating system, firmware, system utility (e.g. but not limited to, volume management, cluster management and backup) and patch levels are kept to EMC and/or Hexistor recommended versions and that any proposed changes thereto shall be communicated to EMC and/or Hexistor in a timely fashion.

3. Section 14 is amended by adding the following at the end: ". Each of the parties acknowledges and agrees that in entering into this Agreement, it does not rely on, and shall

have no remedy in respect of, any statement, representation, warranty or understanding (whether negligently or innocently made) of any person (whether party to this Agreement or not) other than as expressly set out in this Agreement as a warranty. The only remedy available to Customer for a breach of the warranties shall be for breach of contract under the terms of this Agreement. Nothing in this Section 9 shall however operate to limit or exclude any liability for fraud. No term of this Agreement shall be enforceable under the Contracts (Rights of Third Parties) Act 1999 by a person that is not a party to this Agreement. If any part of this Agreement is held unenforceable, the validity of the remaining provisions shall not be affected."

C. Ireland - The terms in this subsection C. apply only when EMC and/or Hexistor means the EMC and/or Hexistor entity located in Ireland - EMC and/or Hexistor Computer Systems Ireland Limited:

1. Section 4.C. - The entire section is deleted and replaced with

C. Warranty Exclusions. Except as expressly stated in the applicable warranty set forth in this Agreement and the applicable exhibits, EMC and/or Hexistor (including its suppliers) and makes no warranties, and ALL WARRANTIES, TERMS AND CONDITIONS, WHETHER ORAL OR WRITTEN, EXPRESS OR IMPLIED BY LAW, CUSTOMER OR OTHERWISE, INCLUDING, BUT NOT LIMITED TO, ANY WARRANTIES, TERMS AND CONDITIONS, OF FITNESS FOR PURPOSE, DESCRIPTION, AND QUALITY ARE HEREBY EXCLUDED TO THE MAXIMUM EXTENT PERMITTED UNDER APPLICABLE LAW.

2. Sections 9 is deleted in its entirety and replaced with the following:

9. LIMITATION OF LIABILITY.

A. EMC and/or Hexistor does not exclude or limit its liability to the Customer for death or personal injury, or, breach of obligations implied by Section 12 of the Sale of Goods Act, 1893, as amended by the Sale of Goods and Supply of Services Act, 1980, or, due to the fraud or fraudulent misrepresentation of EMC and/or Hexistor, its employees or agents.

B. Subject always to subsection 9.A, the liability of EMC and/or Hexistor (including its suppliers) to the Customer under or in connection with an order, whether arising from negligent error or omission, breach of contract, or otherwise ("Defaults") shall be: (i) the aggregate liability of EMC and/or Hexistor for all Defaults resulting in direct loss of or damage to the tangible property of the Customer shall be limited to damages which shall not exceed the greater of two hundred per cent (200%) of the applicable price paid and/or payable for the Product, Evaluation Product or Service, or one million euros (euro 1,000,000); or (ii) the aggregate liability of EMC and/or Hexistor for all Defaults, other than those governed by subsection 9.B(i) shall be limited to damages which shall not exceed (a) in respect of the Product or Evaluation Product, the greater of one hundred and fifty per cent (150%) of the applicable price paid and/or payable or five hundred thousand euro (euro 500,000); or (b) in respect of the Services, the greater of one

hundred and fifty per cent (150%) of the applicable charges paid and/or payable or five hundred thousand euro (euro 500,000).

C. In no event shall EMC and/or Hexistor (including its suppliers) be liable to Customer for (i) loss of profits, loss of business, loss of revenue, loss of use, wasted management time, cost of substitute services or facilities, loss of goodwill or anticipated savings, loss of or loss of use of any software or data; and/or (ii) indirect, consequential or special loss or damage; and/or (iii) damages, costs and/or expenses due to third party claims; and/or (iv) loss or damage due to the Customer's failure to comply with obligations under this Agreement, failure to do back-ups of data or any other matter under the control of the Customer. For the purposes of this Section 9 the term "loss" shall include a partial loss, as well as a complete or total loss.

D. The parties expressly agree that should any limitation or provision contained in this Section 9 be held to be invalid under any applicable statute or rule of law, it shall to that extent be deemed omitted, but if any party thereby becomes liable for loss or damage which would otherwise have been excluded such liability shall be subject to the other limitations and provisions set out in this Section 9.

E. The parties expressly agree that any order for specific performance made in connection with this Agreement in respect of EMC and/or Hexistor shall be subject to the financial limitations set out in sub-section 9.B.

F. The parties expressly agree that the provisions of Section 8, Indemnity, shall not be subject to the limitations and exclusions of liability set out in this Section 9.

G. CUSTOMER OBLIGATIONS IN RESPECT OF PRESERVATION OF DATA. During the Term of the Agreement the Customer shall:

A. from a point in time prior to the point of failure, (i) make full and/or incremental backups of data which allow recovery in an application consistent form, and (ii) store such back-ups at an off-site location sufficiently distant to avoid being impacted by the event(s) (e.g. including but not limited to flood, fire, power loss, denial of access or air crash) and affect the availability of data at the impacted site;

B. have adequate processes and procedures in place to restore data back to a point in time and prior to point of failure, and in the event of real or perceived data loss, provide the skills/backup and outage windows to restore the data in question;

C. use anti-virus software, regularly install updates across all data which is accessible across the network, and protect all storage arrays against power surges and unplanned power outages with Uninterruptible Power Supplies; and

D. ensure that all operating system, firmware, system utility (e.g. but not limited to, volume management, cluster management and backup) and patch levels are kept to EMC and/or

Hexistor recommended versions and that any proposed changes thereto shall be communicated to EMC and/or Hexistor in a timely fashion.

3. Section 10 is deleted in its entirety and replaced with the following:

10. WAIVER OF RIGHT TO BRING ACTIONS: The Customer waives the right to bring any claim arising out of or in connection with this Agreement more than twenty-four (24) months after the date of the cause of action giving rise to such claim.

D. European Union - The terms in this subsection D. apply only when EMC and/or Hexistor means an EMC and/or Hexistor entity located in the European Union:

1. The following is added at the end of section 3.A

Customer or its Users shall not, and Customer shall not permit any third party to, modify, enhance, supplement, create derivative works from, reverse assemble, reverse engineer, reverse compile or otherwise reduce to human readable form the Product or Evaluation Product without EMC and/or Hexistor's prior written consent, except to the extent that local, mandatory law grants Customer the right to decompile such Product or Evaluation Product in order to obtain information necessary to render the Product or Evaluation Product interoperable with other software. In such event, Customer shall first inform EMC and/or Hexistor of its intention and request EMC and/or Hexistor to provide Customer with the necessary information. EMC and/or Hexistor may impose reasonable conditions on the provision of the requested information, including the payment of a reasonable fee.

E. Australia - The terms in this subsection E. apply only when EMC and/or Hexistor means an EMC and/or Hexistor entity located in Australia - EMC and/or Hexistor Global Holdings Company (Australian Branch) ABN 86 699 010 685:

1. Sections 9 is deleted in its entirety and replaced with the following:

9. LIMITATION OF LIABILITY.

A. Limitation on Direct Damages. EXCEPT WITH RESPECT TO CLAIMS ARISING UNDER SECTIONS 6 OR 8 OF THIS AGREEMENT, EMC and/or Hexistor'S AND ITS SUPPLIERS' TOTAL LIABILITY AND CUSTOMER'S SOLE AND EXCLUSIVE REMEDY FOR ANY CLAIM OF ANY TYPE WHATSOEVER, ARISING OUT OF PRODUCT, EVALUATION PRODUCT OR SERVICE PROVIDED HEREUNDER, SHALL BE LIMITED TO PROVEN DIRECT DAMAGES CAUSED BY EMC and/or Hexistor'S SOLE NEGLIGENCE IN AN AMOUNT NOT TO EXCEED (i) AUD\$2,000,000, FOR DAMAGE TO REAL OR TANGIBLE PERSONAL PROPERTY; AND (ii) THE PRICE PAID BY CUSTOMER TO EMC and/or Hexistor FOR THE SPECIFIC SERVICE (CALCULATED ON AN ANNUAL BASIS, WHEN APPLICABLE) OR PRODUCT FROM WHICH SUCH CLAIM ARISES, FOR DAMAGE OF ANY TYPE NOT IDENTIFIED IN (i) ABOVE OR OTHERWISE EXCLUDED HEREUNDER.

B. No Indirect Damages. EXCEPT WITH RESPECT TO CLAIMS REGARDING VIOLATION OF EMC and/or Hexistor'S INTELLECTUAL PROPERTY RIGHTS OR CLAIMS ARISING UNDER SECTIONS 6 OR 8 ABOVE, NEITHER CUSTOMER NOR EMC and/or Hexistor (INCLUDING EMC and/or Hexistor'S SUPPLIERS) SHALL (a) 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 (b) BRING ANY CLAIM BASED ON PRODUCT OR SERVICE PROVIDED HEREUNDER MORE THAN EIGHTEEN (18) MONTHS AFTER THE CAUSE OF ACTION ACCRUES.

C. Trade Practices Legislation: EMC and/or Hexistor's liability under any statutory right or any condition or warranty, including any implied by any State Fair Trading Act or the Trade Practices Act, 1974 (Cth) is, to the maximum extent permitted by law, excluded. To the extent that such liability cannot be excluded, EMC and/or Hexistor's liability is limited at the option of EMC and/or Hexistor to: (a) in the case of Product or Evaluation Product, any one or more of the following: (i) the replacement thereof or the supply of its equivalent; (ii) the repair thereof; (iii) the payment of the cost of replacement thereof or of acquiring its equivalent; or (iv) the payment of the cost of having such repaired, and (b) in the case of any Services performed by EMC and/or Hexistor under or in connection with this Agreement: (i) the supply of those Services again; or (ii) the payment of the cost of having those Services supplied again.

F. New Zealand - The terms in this subsection F. apply only when EMC and/or Hexistor means an EMC and/or Hexistor entity located in New Zealand - EMC and/or Hexistor CORPORATION (NEW ZEALAND BRANCH) AKOS. 1188883:

1. Sections 9 is deleted in its entirety and replaced with the following:

9. LIMITATION OF LIABILITY.

A. Limitation on Direct Damages. EXCEPT WITH RESPECT TO CLAIMS ARISING UNDER SECTIONS 6 OR 8 OF THESE GENERAL TERMS AND CONDITIONS, EMC and/or Hexistor'S AND ITS SUPPLIERS' TOTAL LIABILITY AND CUSTOMER'S SOLE AND EXCLUSIVE REMEDY FOR ANY CLAIM OF ANY TYPE WHATSOEVER, ARISING OUT OF PRODUCT OR SERVICE PROVIDED HEREUNDER, SHALL BE LIMITED TO PROVEN DIRECT DAMAGES CAUSED BY EMC and/or Hexistor'S SOLE NEGLIGENCE IN AN AMOUNT NOT TO EXCEED (i) NZ\$2,000,000, FOR DAMAGE TO REAL OR TANGIBLE PERSONAL PROPERTY; AND (ii) THE PRICE PAID BY CUSTOMER TO EMC and/or Hexistor FOR THE SPECIFIC SERVICE (CALCULATED ON AN ANNUAL BASIS, WHEN APPLICABLE) OR PRODUCT FROM WHICH SUCH CLAIM ARISES, FOR DAMAGE OF ANY TYPE NOT IDENTIFIED IN (i) ABOVE OR OTHERWISE EXCLUDED HEREUNDER.

B. No Indirect Damages. EXCEPT WITH RESPECT TO CLAIMS REGARDING VIOLATION OF EMC and/or Hexistor'S INTELLECTUAL PROPERTY RIGHTS OR CLAIMS ARISING UNDER SECTIONS 6 OR 8 ABOVE, NEITHER CUSTOMER NOR EMC and/or Hexistor

(INCLUDING EMC and/or Hexistor'S SUPPLIERS) SHALL (a) 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 (b) BRING ANY CLAIM BASED ON PRODUCT OR SERVICE PROVIDED HEREUNDER MORE THAN EIGHTEEN (18) MONTHS AFTER THE CAUSE OF ACTION ACCRUES.

C. Fair Trading Legislation. EMC and/or Hexistor's liability under any statutory right or any condition or warranty, including any implied by the Fair Trading Act 1986 or Consumer Guarantees Act 1993 ("FTA") or any similar law is, to the maximum extent permitted by law, excluded. To the extent that such liability cannot be excluded, EMC and/or Hexistor's liability is limited at the option of EMC and/or Hexistor to: (a) in the case of any Product or Evaluation Product, any one or more of the following: (i) the replacement thereof or the supply of its equivalent; (ii) the repair thereof; (iii) the payment of the cost of replacement thereof or of acquiring its equivalent; or (iv) the payment of the cost of having such repaired, and (b) in the case of any Services performed by EMC and/or Hexistor under or in connection with this Agreement: (i) the supply of those Services again; or (ii) the payment of the cost of having those Services supplied again.