

# EMC® Velocity<sup>2</sup> SMB Solution Provider Agreement

EMC Corporation (“EMC”), with a place of business at 3003 Oak Road, Walnut Creek, CA USA and \_\_\_\_\_ enter into this Agreement (the “Agreement”) as of the date of last signature below (the “Effective Date”). This Agreement sets forth the terms and conditions under which the parties will perform for the EMC Velocity SMB Partner Program, as more specifically described below.

ACCORDINGLY, in consideration of the premises and obligations contained herein, it is agreed as follows:

## 1. DEFINITIONS

- 1.1 “EMC Logos” shall be the designated EMC logo for SP or any other EMC logo that EMC in its sole discretion may designate.
- 1.2 “Information” shall mean all information contained on the EMC “EMC Insignia” web site and/or such other EMC web site as EMC may designate from time to time.
- 1.3 “Product(s)” means EMC Insignia Hardware, core software embedded or provided with the EMC Insignia Hardware, and EMC Insignia Software identified on the then-current EMC partner web site currently at the following URL: [www.EMCInsignia.com](http://www.EMCInsignia.com)
- 1.4 “Product Notice” means the notice by which EMC informs SP of a Product’s then current warranty, warranty upgrade, and Maintenance terms, by quotations, written notices, published specifications, contract riders and/or a posting on the applicable EMC website (currently [http://www.emc.com/products/warranty\\_maintenance/index.jsp](http://www.emc.com/products/warranty_maintenance/index.jsp)).
- 1.5 “Program” means the promotional and support activities of SP and EMC directed at the marketing of EMC Insignia Products to its resellers and/or end-users in accordance with this Agreement.
- 1.6 “Program Schedule” means the then-current specified program requirements located on the EMC website, currently identified as [www.EMCInsignia.com](http://www.EMCInsignia.com) called EMC Velocity SMB Partner Program for the SP’s designated level as defined hereinabove and which contains the requirements for SP’s participation in EMC’s authorized Velocity-SMB Program, and any subsequent versions thereof which become effective under the terms of this Agreement. EMC may change the Program Schedule or items in the Program Schedule with ninety (90) days written notice to SP.
- 1.7 “Territory” means the United States of America.

## 2. PROGRAM DESCRIPTION

- 2.1 Benefits and Requirements. The various benefits and requirements, for participating in the EMC Velocity SMB Partner Program for SP at the specified program participation level will be as set forth in the Program Schedule. SP agrees to comply with the Program Schedule in exchange for the benefits stated in said Schedule.

- 2.2 Initial Participation Level. SP’s initial participation Program level is: Solution Provider Tier \_\_
- 2.3 Warranty and Maintenance. The provisions governing warranty and Maintenance are set forth in EMC’s Product Notice.
- 2.4 Responsibilities of SP. SP shall make commercially reasonable efforts to:
  - 2.4.1 maintain a competent and aggressive sales force and otherwise promote the sale, lease and other distribution of the EMC Insignia Products in the Territory consistent with good business practices and in a manner that will reflect favorably on the Products and on the goodwill and reputation of EMC;
  - 2.4.2 use due care and skill in performing all activities under or in association with this Agreement, including any and all services offered or provided by it, and comply with all applicable laws and in a manner which will not in any way, directly or indirectly, bring EMC or any Product or service into disrepute;
  - 2.4.3 transmit to EMC or its distributor all complaints concerning the Products or maintenance that SP may experience itself or receive from its end-users SP Agreement
  - 2.4.4 follow and comply with the commercially reasonable criteria and policies of EMC which relate to SP’s obligations under this Agreement, upon receipt thereof from EMC, including but not limited to periodic business audit requirements which shall occur no more than twice during any year during regular business hours, with thirty (30) days advance written notice, at EMC’s sole cost and expense.
  - 2.4.5 deliver such reports as identified in the Program Schedule to EMC in a timely manner and containing the data as specified in said Program Schedule;
  - 2.4.6 submit to EMC for approval prior to their use, all advertising and sales promotion materials prepared by SP, which contain an EMC trademark or trade name;
  - 2.4.7 not alter, obscure or remove any trademark or trade name used by EMC, or any markings, colors or other EMC Insignia which are contained on or in or affixed to Products at the time of shipment (any use by SP of EMC’s trademarks or trade names in any advertising or promotional literature or announcement to the press by the SP shall inure to the benefit of EMC); and
  - 2.4.8 transfer the EMC warranty for the Products to the end-users who have purchased the Products.

# EMC® Velocity<sup>2</sup> SMB Solution Provider Agreement (Continued)

## 3. WEB ACCESS RIGHTS AND OBLIGATIONS

- 3.1 For the term of this Agreement, EMC grants SP a limited, non-exclusive, non-transferable right to access EMC's EMC Insignia web site and/or such other EMC web site as EMC may designate from time to time, solely for the purpose of viewing the Information contained therein and using such Information solely for the purpose of familiarizing itself with EMC products and services in order to (i) assist SP in the marketing of EMC products and services; or (ii) develop or enhance SP products and services that are used with or complement EMC products and services. All Information made available hereunder shall remain the property of EMC. No license under any patent or other intellectual property right is granted or conveyed by this Agreement with respect to the Information. EMC reserves all other rights in the Information and the web site to itself. Except as expressly permitted under this Agreement, SP shall make no other use of Information or the web site.
- 3.2 SP and EMC shall mutually determine from personnel of SP who have completed any required training, the individuals to whom EMC shall assign the user names and passwords necessary for access and use under this Agreement. EMC may change such user names, passwords and security privileges from time to time and shall notify SP thereof. SP shall promptly notify EMC of the termination or reassignment of any personnel granted access and use hereunder.

## 4. RESTRICTIONS ON DISCLOSURE AND USE

- 4.1 SP shall not (i) make Information available to any of its employees or consultants who do not have a "need to know" in order to carry out the purposes of this Agreement; or (ii) disclose to any third party any Information that is (a) not generally available to the public, or (b) labeled "Confidential" on the web site.
- 4.2 SP shall not (i) use the Information in a manner which will in any way, directly or indirectly, bring EMC or any EMC product or service into disrepute; (ii) use the Information to engage in deceptive, misleading and unethical practices that are or might be detrimental to EMC or EMC products and services, or (iii) make products or services that are inconsistent with the Information.

## 5. LOGO LICENSE GRANT

- 5.1 Subject to and expressly conditioned upon compliance with the terms and conditions of this Agreement and distributor's standard terms and conditions of sale, EMC hereby grants to SP a nonexclusive, nontransferable, royalty-free, personal right to use the EMC Logo during the term of the Agreement, only in connection with the marketing, advertising distribution and/or sale of the Products.
- 5.2 SP may not use or reproduce the EMC Partner Logo in any manner whatsoever other than as expressly permitted under this Agreement.
- 5.3 EMC reserves the right to amend the EMC logo or to replace it with a different EMC Logo. Upon notice from EMC, SP shall cease use of the EMC Logo as quickly as reasonably possible.
- 5.4 SP agrees and acknowledges that EMC solely retains all right, title and interest in and to the EMC Logos. Except as explicitly granted in this Agreement, SP shall not have any rights in the EMC Logos. Under no circumstances will anything in this Agreement be construed as granting, by implication, estoppel or otherwise, a license to any EMC technology or proprietary right.

- 5.5 SP shall not challenge EMC's ownership or use of the EMC Logos; attempt to register any of the EMC Logos; remove, alter or add to the EMC Logo; or incorporate any of the EMC Logos into SP's product names, service names, company names, domain names, or any other similar designations. SP's use of the EMC Logos inures to the sole benefit of EMC.

- 5.6 If, at any time, SP acquires any rights in, or to registrations or applications for the EMC or any of the EMC Logos by operation of law or otherwise, SP will immediately and at no expense to EMC assign such rights, registration or applications to EMC, along with any and all associated goodwill.

## 6. IDENTIFICATION AND USE

- 6.1 SP's use of the EMC Logo must comply with the following:
- (i) SP must use the EMC Logo only in the exact form of approved camera-ready electronic artwork received from EMC.
  - (ii) SP's use of the EMC Logos shall comply with the then current EMC Logo Use Guidelines, which EMC may modify from time to time and provide to SP.
  - (iii) Wherever SP displays the EMC Logo, it must display its own corporate name and logo, and shall display the EMC Logo
    - (a) in a size or style less prominent than, and separately from any of SP's own names,
    - (b) marks or logos; (b) separately from any other name, mark or logo; © accompanied by a <sup>TM</sup> symbol.
- 6.2 SP shall display the following Logo legend on all materials on which SP displays the EMC Logos in an appropriate location of such materials: "The EMC Logos are registered Logos of EMC Corporation."
- 6.3 SP shall use best efforts to use the EMC Logos in a manner that does not derogate EMC's reputation or EMC's rights in the EMC or EMC Logos and will not take any action that will interfere with or diminish EMC's rights in the EMC Logo.

## 7. TERM, TERMINATION

- 7.1 Term. The Agreement shall commence on the Effective Date and shall remain in effect until terminated as provided herein below or pursuant to the Program Schedule.
- 7.2 Termination for Cause. Either party has the right to terminate this Agreement if the other party breaches or is in default of any obligation herein (including the failure to make any payment when due) which default is incapable of cure or which, being capable of cure, has not been cured within thirty (30) days after receipt of written notice from the non-defaulting party or within such additional cure period as the non-defaulting party may authorize in writing. Additionally, upon the occurrence of any of the following acts or events ("Event of Default") SP shall be in default of this Agreement:
- 7.2.1 SP fails to meet its commitments, as specified in the Program Schedule, for a period of thirty (30) days following written notice thereof from EMC (or, if not curable within thirty days, if the cure is not commenced within that period and thereafter diligently completed); and upon receipt of written notice from EMC does not attempt to cure;
  - 7.2.2 SP fails to secure or renew any license, permit authorization or approval for the conduct of its business in its Territory;



7.2.3 SP ceases to do business or otherwise terminates its business operations; or

7.2.4 SP merges, is acquired or otherwise undergoes a change in control or attempts to assign any of its rights or delegate any of its obligations hereunder without the prior written consent of the other party, which shall not be unreasonably withheld (any action violating the foregoing restriction on assignment or delegation shall be void).

7.3 Either party may terminate this Agreement for its convenience at any time and without cause by sending the other written notice thereof, and such notice shall be effective upon receipt. In addition, EMC shall have the right to deny any SP personnel access and use hereunder and take all steps necessary in, EMC's sole discretion, to prevent such personnel from such access and use. Termination of this Agreement shall not relieve a party of its obligations, which were validly accrued during the term of this Agreement. Upon termination of this Agreement, SP shall cease to use the Information and shall return, at its own costs, all tangible copies of the Information to EMC.

**8. LIABILITY, INDEMNIFICATION**

8.1 EMC PROVIDES ACCESS AND INFORMATION ON AN "AS IS" BASIS AND MAKES NO OTHER EXPRESS WARRANTIES, WRITTEN OR OTHERWISE OF ANY EMC LOGO, OR OTHER INTELLECTUAL PROPERTY RIGHT LICENSED UNDER OR IN CONNECTION WITH THIS AGREEMENT, 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 STATURE, OPERATION OF LAW, COURSE OF DEALING OR PERFORMANCE, OR USAGE OF TRADE. NEITHER PARTY SHALL BE LIABLE TO THE OTHER OR ANY THIRD PARTY FOR CONSEQUENTIAL, INCIDENTAL, INDIRECT AND/OR SPECIAL DAMAGES FOR ANY CLAIMS ARISING FROM OR IN ANY WAY CONNECTED WITH THIS AGREEMENT, EVEN IF THE POSSIBILITY OF SUCH DAMAGES IS, OR SHOULD HAVE BEEN, KNOWN.

**9.0 INFRINGEMENT**

9.1 SP shall promptly notify EMC of any suspected infringement or challenge to the EMC Logos or any of their constituent elements.

9.2 EMC agrees to defend SP in any action against SP from any third party claims that the EMC Logo infringes any registered logo rights enforceable and to pay all damages awarded against SP in such action or settlements entered into by EMC arising from such action, provided EMC is notified promptly in writing of any such action and has sole control over its defense or settlement and SP provides reasonable assistance in defense of the same.

9.3 In the event EMC receives information concerning an infringement claim related to the EMC Logos EMC may, at its expense, without obligation to do so, either (i) procure for SP the right to continue use of the alleged infringing Logo; or (ii) replace or modify such EMC Logo to make it non-infringing, in which case SP shall cease use of the alleged infringing EMC Logo.

9.4 EMC shall not have any liability for any intellectual property claim based on SP's use of the EMC Logo after EMC's notice to SP that SP shall cease use of any such EMC Logo.

9.5 THIS SECTION 9 STATES THE ENTIRE LIABILITY OF EMC WITH RESPECT TO ALLEGED INFRINGEMENT OF THE EMC LOGOS OR ANY OTHER INTELLECTUAL PROPERTY RIGHT.

**10.0 SOLUTION PROVIDER INDEMNITY**

10.1 SP shall indemnify EMC and hold EMC harmless against all claims asserted by third parties against EMC as a result of SP's failure to comply with its obligations hereunder or any acts or omissions of SP.

**11.0 MISCELLANEOUS**

11.1 SP shall not assign this Agreement or any of its rights, or delegate any its obligations hereunder without EMC's prior written consent, and any such action in violation of the foregoing shall be void. This Agreement shall (i) constitute the entire agreement of the parties concerning the subject matter hereof; (ii) supersede any prior or contemporaneous written or oral agreement; (iii) not be modified except in a subsequent writing signed by both parties, and (iv) be governed by the laws of the Commonwealth of Massachusetts, excluding its conflict of law rules. The parties shall at all times and for all purposes be deemed to be independent contractors and neither party shall have the right or power to bind the other party.

*IN WITNESS WHEREOF, the parties have caused this Agreement to be signed as of the respective dates indicated below.*

**Solution Provider:**

By:

Name (Print):

Title:

Date:

**EMC Corporation**

By:

Name (Print):

Title:

Date:



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