

Terms and Conditions for Remote Support Services

Terms and conditions for Remote Support Services (hereinafter referred to as "Document") with regard to the Remote Support Services (as defined under Article 1 and hereinafter referred to as "Services") provided by EMC Japan K.K. (hereinafter referred to as "EMC") shall be as follows.

Article 1 (Definition of Term)

"Remote Support Services" means the service where (1) failure information is automatically sent from EMC system equipment at Customer site to EMC via Internet connection, (2) in response to (1) EMC engineers remotely obtain related data including failure information from EMC system equipment at Customer site and perform failure recovery work on such equipment.

Article 2 (Provision of Services)

EMC shall provide Services to Customer as a part of the warranty and/or maintenance services for EMC system product during the validities of such warranty and/or related maintenance service agreements.

Article 3 (Responsibilities of Customer)

Customer shall cooperate with EMC and assume responsible for the following matters.

1. Customer shall give their approval for installing the dedicated programs for Services in the equipment including servers managed by Customer and for running such programs on such equipment including servers.
2. Customer shall give any login information required for Services to EMC promptly upon EMC's request if the dedicated programs for the Services are installed by persons other than EMC or its authorized representative.
3. Customer shall give approval for having EMC support engineers collect failure logs and related data stored in EMC system equipment during the performance of Services and for applying program patches to EMC system for failure correction.
4. Customer shall be responsible for making backups of Customer's data or programs stored in EMC system equipment or related servers in preparation for the occurrence of damage to or loss of such data or programs as a result of the use of Services.
5. Customer shall be responsible for preparation, operation and management of any facilities such as server, communication device, and Internet connection at Customer site necessary for using Services. Further, Customer shall give prior notice to EMC of any event that may have an impact on the operation of Services such as renewal of server equipment.
6. Customer shall be responsible for paying expenses for internet connection at customer site necessary for Services.
7. Customer shall acknowledge that in the event where Customer causes damages to EMC in relation to each of the items of this Article, whether intentionally or by negligence, EMC may claim for reasonable damages (including attorney's fee) against Customer.

Article 4 (Operation and Restriction of Services)

1. Operational hours for Services shall be the same as the service hours under EMC system product warranty and maintenance service agreements. Accordingly, any failure report sent out to EMC out of the maintenance service hours will be received but the failure will be handled during the next maintenance service hours.
2. The purpose of Services is to report automatically the failure information on EMC system equipment to EMC, thereby shortening the fault repair time of EMC system equipment at Customer site and improving the reliability and availability. However, Services shall not serve as a substitute for reporting all the failures from Customer.
3. In the event of any of the following, EMC may suspend the performance of all or any part of Services without prior notice to Customer:
 - (1) The equipment and environment necessary for Services are not ready.
 - (2) It becomes difficult to continue the performance of Services for reasons not attributable to EMC including force majeure event such as natural disaster.
 - (3) The equipment and devices necessary for Services inside or outside Customer site are under maintenance or construction.
 - (4) Accident or failure has occurred on the equipment, devices or Internet networks necessary for Services inside or outside of Customer site.
 - (5) EMC has judged that it is unavoidable in order to protect the interests of EMC, Customer, or any other third party.
4. EMC may make changes to the contents of Document without prior notice to Customer. In that case, Services shall be used in accordance with the revised terms and conditions and EMC shall notify Customer of the revised terms and conditions in written or by e-mail and so on without delay.
5. EMC may terminate the operation of Services at its convenience. In that case also, EMC shall notify Customer of the termination in written or by e-mail and so on without delay.

Article 5 (Handling of Obtained Information)

EMC shall use all the failure logs and related data collected during the course of the performance of Services solely for the purpose of performing maintenance and support works to Customer, treat the data collected as confidential, and use the data in such a manner that no third party can use it.

Article 6 (Warranty)

1. EMC shall assume no quality assurance responsibility whatsoever for the items listed below.
 - (1) Performance of Services is free from any failure or error.
 - (2) Disconnection of Internet will not occur and the equipment and device used for Services are free from any failure.
2. During the performance of Services, EMC support engineers shall not arbitrarily browse, delete, or steal information stored in the equipment such as Customer's server used for Services, or deliberately carry out an operation that would cause the loss of normal operation of the equipment. However, EMC shall assume no responsibility for any unexpected information divulgence or failure of the equipment. Further, EMC shall assume no responsibility for any failure of the equipment or any of its peripherals during or after the performance of Services.
3. EMC shall assume no responsibility for any damage that may be incurred by Customer for reasons of delay or suspension of the provision of Services due to any of the items listed in paragraph 3 of Article 4, or any other reasons.

Article 7 (Ownership of Intellectual Properties)

All the copyrights, trademark rights, patent rights, design rights, and other intellectual property rights for all works (information, software, various programs and data, images, materials, documents, audio and other works) provided under Document shall belong to EMC and shall be subject to the terms of Basic Ordering Agreement or Master Ordering Agreement entered into by and between Customer and EMC. In the absence of such agreement, terms of current EMC ordering agreement in effect at the time of completion of work shall be applied.

Article 8 (Liability and Limitation of Liability)

EMC'S TOTAL LIABILITY FOR ANY CLAIM OF ANY TYPE WHATSOEVER ARISING IN RELATION TO DOCUMENT SHALL BE LIMITED TO PROVEN DIRECT DAMAGES CAUSED BY EMC'S SOLE NEGLIGENCE. THE AMOUNT OF DAMAGES BORN BY EMC SHALL NOT EXCEED (i) JPY100,000,000 FOR DAMAGE TO REAL OR TANGIBLE PERSONAL PROPERTY; AND (ii) THE PRICE ACTUALLY PAID BY CUSTOMER TO EMC DURING THE PAST 12 MONTHS FOR THE SPECIFIC PAID MAINTENANCE SERVICE FROM WHICH SUCH CLAIM ARISES, FOR DAMAGE OF ANY TYPE NOT IDENTIFIED IN (i) ABOVE OR OTHERWISE EXCLUDED HEREUNDER. NEITHER CUSTOMER NOR EMC 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. THE LIMITATION PERIOD FOR CLAIMS FOR DAMAGES SHALL BE EIGHTEEN (18) MONTHS AFTER THE CAUSE OF ACTION ACCRUES, UNLESS STATUTORY LAW PROVIDES FOR A SHORTER LIMITATION PERIOD..

Article 9 (General Terms)

1. For matters not provided in Document, terms of the maintenance service agreement provided by EMC during EMC system product warranty period and maintenance service agreement period shall be applied. If there is any conflicts between the terms of Document and those of the maintenance service agreement, terms of Document shall prevail.
2. Customer shall comply with applicable export control laws and regulations of the US and Japan and shall make sure to obtain required export license as necessary. Customer shall not transfer or assign any right or obligation under Document without EMC's prior written consent. If any part of Document is held illegal, invalid or unenforceable, the remaining terms shall continue to be valid and Customer and EMC shall strive for the performance of Document. Document constitutes the entire agreement between EMC and Customer as of the date of execution hereof, and supersedes all prior discussions or agreements between Customer and EMC or various materials and offers delivered by one party to the other party that have contradictory contents to Document. Any matter not provided in Document or any question arising out of, or in connection with Document shall be settled amicably each time upon consultation between both Parties. Tokyo District Court shall be the exclusive agreement jurisdictional court of first instance for any legal action related to Document.