



EVALUATION AGREEMENT

***** IMPORTANT INFORMATION – PLEASE READ CAREFULLY *****

The Software contains computer programs and other proprietary material and information, the use of which is subject to and expressly conditioned upon acceptance of this Evaluation Agreement (the “Agreement”). This Agreement is a legally binding document between you (the “Customer”) and RSA (which means (i) RSA Security LLC, if Customer is located in the United States, Mexico or South America; (ii) the local EMC Corporation sales subsidiary, if Customer is located outside the United States, Mexico or South America and in a country in which EMC Corporation has a local sales subsidiary; and (iii) EMC Information Systems International (“EISI”), if Customer is located outside United States, Mexico or South America and in a country in which EMC Corporation does not have a local sales subsidiary). Unless RSA agrees otherwise in writing, this Agreement governs Customer's use and evaluation of the Software. By clicking on the “Submit,” “Agree” or “Accept” or similar button on the VPC (as hereinafter defined) registration page, or proceeding with the access or use of this Software, or authorizing any other person to do so, you are representing to RSA that you are (i) authorized to bind the Customer; and (ii) 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 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 on behalf of the Customer, **DO NOT** click on the “Submit” or other similar button on the VPC registration page and/or immediately cease any further attempt to access or use the Software for any purpose.*

1. DEFINITIONS:

- A. “**Evaluation Period**” means the period identified on the VPC registration page and which shall not exceed eight (8) hours unless otherwise agreed in writing by RSA.
- B. “**Software**” means the RSA® NetWitness® suite of products.
- C. “**VPC**” means the Gigamon Virtual Private Cloud environment called “Test Drive” with a registration site currently located at <https://insight.gigamon.com/aws-test-drive-partner-rsa.html>.

2. **ACCESS AND TERMINATION:** RSA agrees to allow Customer to access the Software in the VPC and Customer agrees to use such Software solely in the VPC and solely for evaluation purposes (“**Authorized Use**”). There is no charge to Customer for Authorized Use during the Evaluation Period. This Agreement may be terminated at any time by either Party at its option, without liability. Upon termination the Agreement, Customer shall cease all access to and use of the Software.

3. SOFTWARE:

- A. **License:** RSA grants Customer a license to use the Software solely for the Authorized Use. Such license commences on Customer’s access to the VPC and remains in effect for the Evaluation Period, provided Customer complies with the Agreement. The foregoing licenses shall be non-exclusive, non-transferable, non-sublicensable, temporary and limited. Customer shall not disclose the results of any comparative or competitive analyses, benchmark testing, infringement testing, or analyses of the Software to any third party. Customer shall ensure that only its employees use the Software and solely for the Authorized Use and in a manner consistent with this Agreement. Except for Authorized Use as explicitly set forth herein, Customer shall not provide, disclose, or make available the Software in any form to anyone. Customer shall not copy the Software, move the Software, or remove the Software from the VPC. Customer shall not place any confidential information of it or any third party into the VPC. Customer shall be fully responsible to RSA for the compliance of its personnel herewith. Any new revision, update or replacement of the Software provided by RSA in the VPC shall be governed by this Agreement.

- B. **Ownership:** RSA or its licensors or suppliers are the exclusive owners of the Software (including in each

case any revisions, modifications and enhancements thereto) and any other specifications, documentation, ideas, know-how, techniques, processes, inventions or other intellectual property that RSA or its licensors or suppliers may develop, conceive or deliver. Neither Customer nor any of its personnel shall modify, enhance, supplement, create derivative works from, reverse assemble, reverse engineer, reverse compile or otherwise reduce the Software to human readable form. The Software is confidential to RSA and protected by applicable trade secret and intellectual property laws.

4. **INDEMNIFICATION:** Customer will defend, indemnify, and hold harmless RSA (including its officers, employees, directors, subsidiaries, representatives, affiliates, agents, and licensors) from and against any damages (including reasonable attorneys' fees and expenses), claims, and lawsuits that arise or result from Customer's breach of any provision of this Agreement.
5. **WARRANTY:** RSA (INCLUDING ITS SUPPLIERS) PROVIDES THE SOFTWARE "AS IS" AND MAKES NO EXPRESS WARRANTIES, WRITTEN OR ORAL, REGARDING SUCH PRODUCT. ALL OTHER WARRANTIES ARE SPECIFICALLY DISCLAIMED AND EXCLUDED, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT, AND ANY WARRANTY ARISING BY STATUTE, OPERATION OF LAW, COURSE OF DEALING OR PERFORMANCE, OR USAGE OF TRADE.
6. **LIMITATIONS OF LIABILITY:** RSA'S AND ITS SUPPLIER'S TOTAL LIABILITY AND CUSTOMER'S SOLE AND EXCLUSIVE REMEDY FOR ANY CLAIM OF ANY TYPE WHATSOEVER, ARISING OUT OF SOFTWARE PROVIDED HEREUNDER, SHALL BE LIMITED TO PROVEN DIRECT DAMAGES CAUSED BY RSA'S SOLE NEGLIGENCE IN AN AMOUNT NOT TO EXCEED US\$5,000. EXCEPT FOR CLAIMS ARISING UNDER SECTIONS 3 AND/OR 4 ABOVE, NEITHER CUSTOMER NOR RSA (INCLUDING RSA'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), REGARDLESS OF THE FORM OF ACTION, EVEN IF ADVISED OF THE POSSIBILITY THEREOF; AND (b) BRING ANY CLAIM BASED ON A PRODUCT PROVIDED HEREUNDER MORE THAN 18 MONTHS AFTER THE CAUSE OF ACTION ACCRUES.
7. **MISCELLANEOUS:** Customer shall comply with and obtain all authorizations required by U.S. export control laws and all related regulations. Customer shall not assign this Agreement or any right or delegate any performance. This Agreement is the complete statement of the agreement of the parties with regard to the subject matter hereof and may be modified only by a writing signed by both parties. This Agreement is governed by the laws of the Commonwealth of Massachusetts, excluding its conflict of laws rules and The U.N. Convention on Contracts for the International Sale of Goods. In case of an inconsistent or conflicting term set forth on a Schedule, the Schedule shall control. 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. The relationship between Customer and RSA is solely that of independent contractors and not that of an agency, partnership, or joint venture. Neither party has the authority to represent or bind the other.