

EMC Implementation for Avamar with VMware vSphere Integration QuickStart

Model Number: PS- BAS-AVVBLK

Introduction

Direct Sale from EMC to Customer: This *Service Brief* and the performance of the Services (as defined below) detailed herein are subject to (i) the terms and conditions specified in the applicable signed professional services agreement (“PSA”) between EMC and Customer; or (ii) in the absence thereof, EMC’s standard terms and conditions for professional services specified below. In the event of a conflict between this *Service Brief* and your PSA, this *Service Brief* shall govern.

Sale by EMC Authorized Reseller to Customer: If you have purchased the Services detailed herein through an EMC authorized reseller, this document is for descriptive and informational purposes only and does not establish a contractual relationship or any rights or obligations between you and EMC. Such Services are governed solely by the agreement between you and your EMC authorized reseller. EMC has permitted your EMC authorized reseller to provide this document to you. Your EMC authorized reseller may make arrangements with EMC to perform all or a portion of the Services on behalf of the reseller.

Sale from EMC to EMC Authorized Reseller: This *Service Brief* and the performance of the Services detailed herein are subject to the professional services terms and conditions between you (“Partner”) and EMC that are specified in (i) the signed product and services ordering agreement, if any; or (ii) the applicable signed stand-alone professional services agreement (“PSA”) if any, and in case both exist, the document having the later effective date shall govern; or (iii) in the absence of the previously described agreements, EMC’s standard terms and conditions for professional services specified below. Partner acknowledges and agrees that: (a) its agreements with its customers (“End-Users”) for the Services detailed herein are not contracts of EMC; (b) Partner has no right or power to bind EMC to any commitments unless otherwise explicitly agreed upon in writing by EMC and shall not represent otherwise or purport to do so; (c) End-Users are not third-party beneficiaries of this *Service Brief* or any other agreement between EMC and Partner; (d) all references to “Customer” in this *Service Brief* shall mean the Partner who is purchasing the Services; and (e) where the provision of the Services by EMC is contingent on a Partner obligation, then that obligation may also apply to its End-User with respect to the provision of Services to such End-User. Partner shall ensure that such End-User complies with such obligations where applicable. In the event the End-User fails to meet such an obligation, then EMC shall not be liable for any resulting failure to perform its obligations. In the event of a conflict between this *Service Brief* and the agreements referenced in (i) and (ii) above, this *Service Brief* shall govern.

Project Overview

This EMC® (“EMC”) *Service Brief* details the *EMC Implementation for Avamar® with VMware vSphere Integration QuickStart*. This service offering installs and configures Avamar VMware proxy software for integration of the Avamar with VMware vSphere environment. This service offering is implemented as an image backup and restore solution and is fully integrated with VMware vCenter server to provide easy detection of virtual machine clients within the vCenter, and enable the efficient centralized management of backup jobs or as complementary technology to existing backup infrastructure. Implementation services include the planning, design, and installation for Avamar Virtual Proxy software in a pre-qualified VMware server environment provided by the Customer, and addresses the processes, procedures and tasks for a complete and comprehensive implementation.

Project Scope

EMC personnel or authorized agents (“**EMC Personnel**”) shall work closely with Customer’s staff to perform the services specified below (“**Services**”), subject to the Customer satisfying the “Customer Responsibilities” detailed in this *Service Brief*. EMC:

- Meets with the Customer to ensure that the environment and operational implementation requirements (hardware, software, and infrastructure) are met by the Customer, and provides the Customer with a list of required or beneficial updates.
- Plans and estimates a schedule for the installation and configuration tasks for the Services.
- Conducts an implementation review meeting prior to the implementation tasks to verify schedule and site readiness.
- Configures the integration of one Avamar system with one VMware vCenter environment to enable Virtual Machine backups and management.
- Installs and configures up to two Avamar Backup Proxy Virtual Appliances in a VMware environment.
- Activates up to 10 Supported Virtual Machine Clients for Avamar Backup.
- Verifies the installation and configuration results of the Avamar integration with VMware.
- Reviews the EMC Avamar with VMware vSphere integration and Virtual Machine Client Backup testing requirements with the Customer-assigned resource(s).
- Provides the Customer with the applicable documentation specified in the *Materials* section below.
- Conducts a basic product Functional Overview to familiarize the Customer with the implemented Avamar VMware with vSphere Integration demonstrating the normal Avamar backup for Virtual Machine operations as installed in the Customer’s environment.

Note: Such Functional Overview relates to the Customer’s storage environment and is not a substitute for the formal EMC product Customer Education courses available. EMC strongly encourages attendance at Customer Education classes to gain further insight into the product architecture and its integration.

Deliverables

The following *EMC Implementation for Avamar with VMware vSphere Integration QuickStart* Deliverables are provided in connection with this Service:

- *EMC Project Completion Form*.
- *EMC Test Plan*, which may include a basic Functional Overview to demonstrate *Implementation for Avamar with VMware vSphere Integration QuickStart* capabilities.
- *EMC Configuration Guide* documenting the implementation described in the “Project Scope” section above.

EMC Staffing

EMC will provide appropriate EMC Personnel to perform the Services specified in the “Project Scope” section above.

Customer Responsibilities

- Provide at least one technical contact with system administration responsibilities and appropriate system/information access privileges.
- Make appropriate system maintenance window(s) available for EMC (and its authorized agents) as needed to prepare equipment.
- Ensure that all environment and operational requirements are met prior to commencement of the Services.

- Provide EMC onsite/offsite personnel and authorized agents with access to the Customer's systems and networks (including, without limitation, remote systems and remote network access) as necessary to perform the Services during EMC's normal business hours, or at mutually agreed times.
- Provide support from technical support teams for all vendors and third parties, as necessary.
- Assume all responsibility for network connectivity, performance, and configuration issues.
- Verify that the equipment location is prepared prior to the commencement of the Services.
- Ensure that all Customer data has been backed-up prior to commencement of the Services. EMC assumes no responsibility or liability for any loss of, loss of access to, or unrecoverable data in connection with the Services.

Service Schedule

Unless otherwise mutually agreed in writing, the anticipated start date of the Services is within two (2) weeks after EMC's receipt and approval of the Customer's purchase order for this Service.

Customer shall have twelve (12) months from the date of EMC's invoice to use the Services described herein ("Service Period"). The Services automatically expire on the last day of the Service Period, unless otherwise approved by EMC. Under no circumstances shall Customer be entitled to a credit or refund of any unused portion of the Services.

Services Scope Changes

Any changes to the Services, the schedule, charges or this *Service Brief* must be mutually agreed upon by EMC and the Customer in writing. Depending on the scope of such changes, EMC may require that a separate Statement of Work be executed by the parties detailing the changes, the impact of the proposed changes on the charges and schedule, and other relevant terms.

Services Scope Exclusions

EMC is responsible for performing only the Services expressly specified in this *Service Brief*. All other services, tasks and activities are considered out of scope.

Fixed Bid Service Fee and Invoicing Schedule

The Services described in this *Service Brief* are delivered on consecutive days during EMC's normal business hours (8:00 A.M.–6:00 P.M. local time, M–F, excluding EMC and local holidays).

The Services described in this *Service Brief* are performed on a fixed price basis at the fees specified on the applicable EMC quote.

The Services will be delivered using EMC's standard delivery model, which may include onsite and/or offsite delivery of the Services. If the Customer requires a different delivery model, the charges, expenses, scope of work and/or schedule are subject to modification in accordance with the "Services Scope Changes" section above. If the Customer does not authorize such changes in accordance with the "Services Scope Changes" section, EMC's standard delivery model applies.

Invoices are issued upon EMC's receipt and approval of the Customer's purchase order. Customer authorizes EMC to invoice for and shall pay additional amounts related to (i) changes or exceptions to the Services; (ii) performance outside EMC's normal business hours or consecutive days; and (iii) reimbursement of travel related expenses.

PROFESSIONAL SERVICES TERMS AND CONDITIONS

The following terms and conditions govern this *Service Brief*.

1.1 Term; Termination. This *Service Brief* begins on the date specified in the "Service Schedule" section above, and, unless terminated for breach, continues in accordance with its terms. A party shall notify the other in

writing in case of the other's alleged breach of a material provision of this *Service Brief*. The recipient shall have thirty (30) calendar days from the date of receipt of such notice to effect a cure ("**Cure Period**"). If the recipient of such notice fails to effect a cure within the Cure Period, then the sender of the notice shall have the option of sending a written notice of termination, which shall take effect upon receipt.

1.2 Grant of Copyright or License Rights in Deliverables. Subject to Customer's payment of all amounts due EMC, the parties agree (i) Customer shall own all copyright rights to the portion of Deliverables (defined below) that consists solely of written reports, analyses and other working papers prepared and delivered by EMC to Customer in the performance of EMC's obligations hereunder, and (ii) for the portion of Deliverables that consists of scripts and code, EMC grants Customer a non-exclusive, non-transferable, irrevocable (except in case of breach of this *Service Brief*) perpetual right to use, copy and create derivative works from such (without the right to sublicense) for Customer's internal business operations, as contemplated hereunder. The license granted in this section does not apply to (a) Customer furnished materials, and (b) any other EMC products or items licensed, or otherwise provided, under a separate agreement. "**Deliverables**" means any reports, analyses, scripts, code or other work results which have been delivered by EMC to Customer within the framework of fulfilling obligations under this *Service Brief*.

1.2.1 Customer Furnished Materials. Customer does not relinquish any of its rights in materials it furnishes to EMC for use in performing the Services. Pursuant to Customer's Proprietary Rights (defined below) therein, Customer grants EMC a non-exclusive, non-transferable right to use such solely for the benefit of Customer in fulfillment of EMC's obligations hereunder.

1.2.2 Reservation of Proprietary Rights. Each party reserves for itself all Proprietary Rights that it has not expressly granted to the other. EMC shall not be limited in developing, using or marketing services or products which are similar to the Deliverables or Services provided hereunder, or, subject to EMC's confidentiality obligations to Customer, in using the Deliverables or performing similar Services for any other projects. "**Proprietary Rights**" mean all patents, copyrights, trade secrets, methodologies, ideas, concepts, inventions, know-how, techniques or other intellectual property rights of a party.

1.3 Confidential Information; Publicity. "**Confidential Information**" means any information that is marked "confidential", "proprietary" or the like or in relation to which its confidentiality should by its nature be inferred or, if disclosed orally, are identified as being confidential at the time of disclosure and, within two (2) weeks thereafter, is summarized, appropriately labeled and provided in tangible form. Confidential Information does not include information that is (i) rightfully in the receiving party's possession without prior obligation of confidentiality from the disclosing party; (ii) a matter of public knowledge; (iii) rightfully furnished to the receiving party by a third party without confidentiality restriction; or (iv) independently developed by the receiving party without reference to the disclosing party's Confidential Information. Each party shall (a) use Confidential Information of the other party only for the purposes of exercising rights or performing obligations hereunder; and (b) protect from disclosure to any third parties, by use of a standard of care equivalent to that as used by recipient to protect its own information of a similar nature and importance, and, no less than the use of reasonable care, any Confidential Information disclosed by the other party for a period commencing upon the date of disclosure until three (3) years thereafter, except with respect to (1) Customer data to which EMC may have access in connection with the provision of Services, which shall remain Confidential Information until one of the exceptions stated above applies; and (2) Confidential Information that constitutes, contains or reveals, in whole or in part, EMC proprietary rights, which shall not be disclosed by the receiving party at any time. Notwithstanding the foregoing, the receiving party may disclose Confidential Information (A) to its Affiliate (defined below) for the purpose of fulfilling its obligations or exercising its rights hereunder as long as such Affiliate complies with the foregoing; and (B) to the extent required by law (provided the receiving party has given the disclosing party prompt notice). "**Affiliate**" means a legal entity that is controlled by, controls, or is under common "control" with EMC or Customer, respectively. "**Control**" means more than 50% of the voting power or ownership interests. Each party shall not, and shall not authorize or assist another to, originate, produce, issue or release any written publicity, news release, marketing collateral or other publication or public announcement, relating in any way to this *Service Brief*, without the prior written approval of the other, which approval shall not be unreasonably withheld.

1.4 Payment. Customer shall pay EMC's invoices in full and in the same currency as the EMC invoice within thirty (30) days after the date of EMC's invoice, with interest accruing thereafter at the lesser of 1.5% per month or the highest lawful rate. The charges due hereunder are exclusive of and Customer shall pay or reimburse EMC for all value added (VAT), sales, use, excise, withholding, personal property, goods and services and other taxes, levies, customs and duties resulting from Customer's purchase order, except for taxes based on EMC's net income. If Customer is required to withhold taxes, then Customer will forward any withholding receipts to EMC at tax@emc.com.

1.5 Warranty; Warranty Disclaimer. EMC shall perform the 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 Services. EMC's entire liability and Customer's sole remedy for EMC's failure to so perform shall be for EMC to, at its option, (i) correct such failure, and/or (ii) terminate this *Service Brief* and refund that portion of any fees received that correspond to such failure to perform. **EXCEPT AS EXPRESSLY STATED IN THIS WARRANTY SECTION, AND TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, EMC (INCLUDING ITS SUPPLIERS) MAKES NO OTHER EXPRESS WARRANTIES, WRITTEN OR ORAL, AND DISCLAIMS ALL IMPLIED WARRANTIES. IN SO FAR 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.**

1.6 LIMITATIONS OF LIABILITY. **EMC'S TOTAL LIABILITY AND CUSTOMER'S SOLE AND EXCLUSIVE REMEDY FOR ANY CLAIM OF ANY TYPE WHATSOEVER, ARISING OUT OF OR IN CONNECTION WITH THIS *SERVICE BRIEF* OR SERVICES PROVIDED HEREUNDER, SHALL BE LIMITED TO PROVEN DIRECT DAMAGES CAUSED BY EMC'S SOLE NEGLIGENCE IN AN AMOUNT NOT TO EXCEED THE PRICE PAID TO EMC FOR THE SERVICES RENDERED HEREUNDER. EXCEPT WITH RESPECT TO CLAIMS REGARDING VIOLATION OF EMC'S INTELLECTUAL PROPERTY RIGHTS, NEITHER PARTY 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.**

1.7 Miscellaneous. The parties shall act as independent contractors for all purposes hereunder. Nothing contained herein shall be deemed to constitute either party as an agent or representative of the other, or both parties as joint venturers or partners for any purpose. Neither party shall be responsible for the acts or omissions of the other, and neither party will have authority to speak for, represent or obligate the other party in any way without the prior written approval of the other party. Each party shall comply with all applicable export laws, orders and regulations and obtain all necessary governmental permits, licenses and clearances. Diversion contrary to US law, including US export laws is expressly prohibited. This *Service Brief* shall be governed by the laws of the Commonwealth of Massachusetts for transactions taking place in the United States and the country in which the EMC entity is located for transactions taking place outside of the United States, excluding any conflict of law rules. The U.N. Convention on Contracts for the International Sale of Goods does not apply.

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