License Agreement for LSI Software

READ THIS LICENSE CAREFULLY BEFORE USING SOFTWARE ORDERED OR OTHERWISE ACQUIRED FROM LSI CORPORATION ("LSI") OR AN LSI RESELLER, INCLUDING WITHOUT LIMITATION ANY SOFTWARE EMBEDDED IN APPLICABLE HARDWARE. YOUR USE OF THE SOFTWARE CONSTITUTES YOUR ASSENT TO THE TERMS OF THIS AGREEMENT. SIMILARLY, THE ACTIVATION OF ANY SOFTWARE KEY TO ENABLE ADDITIONAL FUNCTIONALITY CONTAINED IN ANY APPLICABLE HARDWARE CONSTITUTES YOUR ASSENT TO THE TERMS OF THIS AGREEMENT. IF YOU DO NOT WANT TO ENTER INTO THIS LICENSE AGREEMENT, DO NOT USE THE SOFTWARE (AND/OR ANY APPLICABLE SOFTWARE KEY), AND RETURN THE UNOPENED PACKAGE TO YOUR LSI SALES REPRESENTATIVE OR RESELLER FOR CREDIT.

1. Scope.

This Agreement governs your use of the software of LSI (and/or its licensors), including any additional functionality embedded in any firmware which you may cause to be activated, and any additional software or firmware you order or otherwise acquire from LSI or an LSI reseller (together the "Software"). These terms and conditions apply unless you entered into a separate written license agreement with LSI or its reseller for the use of the Software, in which case that separate agreement shall govern.

2. License.

Subject to the terms of this Agreement, LSI (and/or its licensor, if applicable) grants you a limited and non-exclusive license to use and operate the Software, provided however, that you may use and operate Support Monitor and/or SANtricity software solely on an LSI storage system (the "System"). Nothing in this Agreement provides you with any right in the Software except for the license granted herein. You may make a reasonable number of copies of the Software for backup and archival purposes only. Except as expressly permitted under this Agreement or by applicable law without the possibility of contractual waiver, you may not copy, merge, transmit, modify, reverse engineer, decompile or disassemble the Software, or sublicense, rent, lease, assign or otherwise transfer the Software to anyone.

a) Central Coordinator. With respect to the Central Coordinator component of any Profiler software (the "Coordinator"), you may install and operate the Coordinator on one server for which you have been validly issued a Coordinator license key by LSI or its licensor ("Coordinator License Key"). A Coordinator License Key is issued by LSI (or its licensor) upon delivery by You of certain licensing information and written confirmation of such receipt by LSI (or its licensor) of the information. Each Coordinator License Key designates a number of "Right to Use" authorizations (each a "RTU"), for the devices, applications, processes, platforms, etc., on which the Collector (as defined below) may be installed and operated. Each such device requires an available RTU.

b) Profiler. With respect to the Collector component of the Profiler (individually, a "Collector"), a Collector license key (a "Collector License Key") must be issued by LSI or its licensor in connection with the number and type of devices, applications, processes, platforms, etc. that are licensed to be monitored by each Central Coordinator. A Collector License Key is issued by LSI (or its reseller) upon delivery by you of certain licensing information and written confirmation of such receipt by LSI (or its licensor) of the information. Collectors access RTUs from the available pool as defined in the Coordinator License Key.

Use of an alias to allow multiple Collectors to share the same RTU concurrently, or attempts to disable or circumvent any of the licensing mechanisms within the Software, each constitute a material breach of this Agreement and result in the immediate termination of this Agreement, without any further action required on the part of LSI, it licensor, or an LSI

reseller.

3. License Conditions; Confidentiality.

The Software is Confidential Information of LSI and/or its licensors. You may not give copies of the Software to others and you may not let others gain access to it. You may not post the Software, or otherwise make available, in any form, on the Internet or in other public places or media. You may not modify, adapt, translate, rent lease, loan or resell for profit, or create derivative works based upon the Software or any part of it. You may not reverse engineer, decompile, disassemble or otherwise attempt to derive source code from the Software except to the extent allowed by law.

4. Proprietary Markings.

You may not remove any copyright notices, proprietary markings, trademarks or trade names from the Software.

5. Termination.

Your license shall automatically terminate when you are no longer in possession of any applicable System or you violate the terms of this Agreement. Upon termination of the license you shall immediately stop using the Software, and purge and destroy any and all copies of the Software with notice to LSI of such destruction or return the copies to LSI.

6. Disclaimer of Warranty.

(a) THE PARTIES AGREE THAT LSI AND ALL APPLICABLE LICENSORS FURNISH THE SOFTWARE TO YOU "AS IS," UNSUPPORTED, WITHOUT WARRANTY OF ANY KIND. LSI AND ITS LICENSORS DISCLAIM ALL WARRANTIES, EXPRESS OR IMPLIED, INCLUDING THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE AND NON-INFRINGEMENT, INCLUDING ANY THAT MAY ARISE FROM A COURSE OF PERFORMANCE, A COURSE OF DEALING OR TRADE USAGE. LSI AND ITS LICENSORS SHALL NOT BE LIABLE FOR ANY ERROR, OMISSION, DEFECT, DEFICIENCY, OR NONCONFORMITY OF ANY TYPE IN THE SOFTWARE.

(b) LSI AND ITS LICENSORS DISCLAIM ANY AND ALL LIABILITY IN CONNECTION WITH YOUR USE OF THE LSI SOFTWARE IN ANY MEDICAL, NUCLEAR, AVIATION, NAVIGATION, MILITARY, OR OTHER HIGH RISK DEVICE OR APPLICATION ("HIGH RISK USES"). YOU REPRESENT AND WARRANT THAT YOU WILL NOT USE THE SOFTWARE IN ANY MEDICAL, NUCLEAR, AVIATION, NAVIGATION, MILITARY, OR OTHER HIGH RISK DEVICE OR APPLICATION. YOU SHALL INDEMNIFY, DEFEND, AND HOLD LSI AND ITS LICENSORS HARMLESS AGAINST ANY LOSS, LIABILITY, OR DAMAGE OF ANY KIND THAT LSI AND/OR ITS LICENSORS INCUR IN CONNECTION WITH BREACH OF THE WARRANTY IN THIS SECTION.

7. Limitation of Liability.

Regardless of the basis for any claim, whether in contract, tort, or otherwise, LSI and its licensors will be liable to you only for the amount of your actual direct loss or damage relating to the Software, up to the license fee paid by you for the Software. Irrespective of the basis of the claim, LSI and its resellers, licensors and developers of the Software will not be liable for any special, indirect, punitive, incidental or consequential damages of any kind (including, without limitation lost profits, loss of or damage to your records or data, or the cost of cover), nor will LSI or its licensors be liable for any third party claims unless specifically provided in this Agreement. Neither party may bring a legal action under this Agreement more than two years after the cause of action arose.

8. Export Policy.

You agree that you shall not directly or indirectly, export, re-export or transship the Software in violation of any applicable export control laws or regulations promulgated and administered by the governments of the countries claiming jurisdiction over the parties or transactions. You acknowledge that U.S. laws, regulations and requirements regulate the export of U.S. origin products/technology and prohibit use, sale or re-export if you know, or have reason to know, that such products/technology are for use in connection with the design, development, production, stockpiling or use of nuclear, chemical or biological weapons or missiles.

9. Restricted Rights.

U.S. Government End Users. The Software qualify as "commercial items," as that term is defined at 48 C.F.R. 2.101, consisting of "commercial computer software" and "commercial computer software documentation" as such terms are used in 48 C.F.R. 12.212. Consistent with 48 CFR 52.227-19, 48 C.F.R.12.212 and 48 C.F.R. 227.7202-1 through 227.7202-4, You will provide to Government End User, or, if this Agreement is direct Government End User will acquire, the Software with only those rights set forth herein that apply to non-governmental End Users. Use of the Software constitutes agreement by the government entity that the computer software is commercial, and constitutes acceptance of the rights and restrictions herein.

10. High Risk Activities.

THE SOFTWARE IS NOT DESIGNED, MANUFACTURED, OR INTENDED FOR USE OR RESALE AS AN ON-LINE CONTROL PRODUCT REQUIRING FAIL-SAFE CONTROLS, SUCH AS IN THE OPERATION OF NUCLEAR FACILITIES, AIRCRAFT NAVIGATION OR COMMUNICATIONS SYSTEMS, AIR TRAFFIC CONTROL, LIFE SUPPORT, OR WEAPONS SYSTEMS WHERE FAILURE OF THE SOFTWARE COULD LEAD DIRECTLY TO DEATH, PERSONAL INJURY AND/OR SUBSTANTIAL PROPERTY DAMAGE. YOU AGREE NOT TO USE THE SOFTWARE FOR ANY SUCH PURPOSES, AND LSI, ITS LICENSORS AND ITS AFFILIATES EXPRESSLY DISCLAIM AND ARE RELEASED FROM ANY RESPONSIBILITY OR LIABILITY FOR ANY AND ALL DAMAGES THAT MAY BE INCURRED DUE TO THE USE OF THE SOFTWARE IN SUCH APPLICATIONS.

11. No Software Support.

No Software support is provided to you from LSI or its affiliates.

12. General.

You assume full responsibility for the legal and responsible use of the Software. You agree that this Agreement is the complete agreement between you and LSI (and that any verbal or written statements that are not reflected in this Agreement and any prior agreements, are superseded by this Agreement). To be effective, any amendment of this Agreement must be in writing and signed by both you and LSI. Should any provisions of this Agreement be held to be unenforceable, then such provision shall be separable from this Agreement and shall not affect the remainder of the Agreement. This Agreement shall be governed by California law, not including its choice of law provisions. The United Nations Convention on the International Sale of Goods shall not be applied to this Agreement. All rights in the Software not specifically granted in this Agreement are reserved by LSI and its licensors. The English language version of this Agreement shall be the official version. These End-User Software License Terms shall be binding upon you and your respective heirs, successors, and assigns.

13. Open Source Technology

Notwithstanding anything to the contrary in this Agreement, to the extent there is a conflict between the above provisions and any applicable license to open source technology, the provisions of the open source license shall be followed, but only to the minimum extent reasonably necessary to comply with the applicable open source license.

Copyright (C) 1999-2011 LSI Corporation. All rights reserved.