

SECURITIES AND EXCHANGE COMMISSION

FORM 8-K

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EMACHINES INC /DE/

CIK: **1090710** | IRS No.: **943311182** | State of Incorporation: **DE** | Fiscal Year End: **1231**
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SIC: **5045** Computers & peripheral equipment & software

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SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549

FORM 8-K

CURRENT REPORT
Pursuant to Section 13 or 15(d) of
the Securities Exchange Act of 1934

November 19, 2001

Date of Report (Date of earliest event reported)

EMACHINES, INC.

(Exact name of registrant as specified in its charter)

Delaware

(State or other jurisdiction of incorporation)

000-29715

94-3311182

Commission File Number)

(IRS employer identification no.)

14350 Myford Road, Suite 100
Irvine, California 92606

(Address of principal executive offices and zip code)

(714) 481-2828

(Registrant's telephone number, including area code)

Item 5. Other Events.

On November 20, 2001, EM Holdings, Inc. ("EM Holdings") and eMachines, Inc. ("eMachines") issued a press release announcing that they had signed an Agreement and Plan of Merger, dated as of November 19, 2001, as amended and restated November 26, 2001 (the "Merger Agreement"), by and among EM Holdings, Empire Acquisition Corp., a wholly-owned subsidiary of EM Holdings ("Purchaser"), and eMachines. EM Holdings is wholly owned by Mr. Lap Shun Hui, a director of eMachines. The Merger Agreement is filed as Exhibit 2.1 hereto and is incorporated herein by reference. The press release is filed as Exhibit 99.1

hereto and is incorporated herein by reference.

Under the terms of the Merger Agreement, Purchaser will commence a tender offer (the "Offer") to purchase all the outstanding shares of common stock, par value \$0.0000125 per share, of eMachines (the "eMachines Common Stock"), for \$1.06 per share, net to the seller in cash without interest. The consummation of the Offer is subject to, among other things, the receipt of funds pursuant to EM Holdings' financing commitments and a number of shares being tendered in the Offer (when added to shares held by Mr. Hui, Korea Data Systems (USA), Inc., an affiliate of Mr. Hui, EM Holdings and their respective affiliates and shares purchasable from idealab! Holdings L.L.C. ("idealab!") pursuant to a stock purchase agreement entered into with Mr. Hui) that constitute at least 90% of the outstanding shares of eMachines Common Stock. Pursuant to the Merger Agreement, following the completion of the Offer and the satisfaction or waiver of certain other conditions, Purchaser will be merged with and into eMachines (the "Merger") and eMachines will be the surviving corporation. In the Merger, each outstanding share of eMachines Common Stock (other than shares held by stockholders who perfect appraisal rights under Delaware law) will be converted into the right to receive \$1.06 per share, the same consideration paid to those stockholders who tendered their eMachines Common Stock in the Offer.

Concurrently with the execution of the Merger Agreement, EM Holdings, Purchaser and eMachines entered into a Buyer Option Agreement (the "Buyer Option Agreement") which provides that, if Purchaser waives the minimum condition such that fewer than 90% of the outstanding shares of eMachines Common Stock are required to be tendered to consummate the Offer and less than 90% actually tender into the Offer, then Purchaser will have the option to Purchase from eMachines a sufficient number of shares of eMachines Common Stock to permit the Merger to be effected as a "short-form" merger under Section 253 of the Delaware General Corporation Law, which would not require stockholder approval. The Option Agreement is filed as Exhibit 2.2 hereto and is incorporated herein by reference.

In connection with the execution of the Merger Agreement, Mr. Hui and idealab! entered into a Stock Purchase Agreement, dated October 30, 2001 (the "Stock Purchase Agreement"), pursuant to which idealab! agreed, among other things, to sell the shares of eMachines Common Stock held by idealab! to Mr. Hui or Purchaser effective as of the acceptance by Purchaser of the shares tendered into the Offer and not to tender such shares into the Offer. The Stock Purchase Agreement is filed as Exhibit 2.3 hereto and is incorporated herein by reference

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On October 31, 2001, eMachines entered into Amendment No. Two to the Original Design Manufacture Agreement with TriGem Computer, Inc. ("TriGem"). Under the terms of the amendment, eMachines can return defective returns to TriGem Computer, subject to a deduction schedule. eMachines is responsible for nondefective returns and shall resell all refurbished defective computers, which

are to be consigned from TriGem. TriGem shall also provide replacement parts to eMachines for its customer support programs. In the event that more than a specified percentage of any product that TriGem produces pursuant to the agreement is returned, eMachines may initiate a recall of that product or model after consultation with TriGem. In the event of a recall, eMachines is entitled to a full credit from TriGem for all recalled and returned products. Amendment No. Two to the Original Design Manufacture Agreement with TriGem is filed as Exhibit 2.4 hereto and is incorporated herein by reference.

On October 31, 2001, eMachines entered into a Settlement and Release Agreement with TriGem and TriGem America Corporation relating to all payments due by eMachines to TriGem under the Original Design Manufacture Agreement dated as of January 24, 2000, as amended. The Settlement and Release Agreement is filed as Exhibit 2.5 hereto and is incorporated herein by reference.

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Item 7. Financial Statements, Pro Forma Financial Information and Exhibits.

(c) Exhibits.

- 2.1 Agreement and Plan of Merger, dated as of November 19, 2001, by and among EM Holdings, Inc., Empire Acquisition Corp. and eMachines, Inc. (incorporated by reference to the Schedule 14D-9 filed by eMachines on November 27, 2001).
- 2.2 Buyer Option Agreement, dated as of November 19, 2001, by and among EM Holdings, Inc., Empire Acquisition Corp. and eMachines, Inc. (incorporated by reference to the Schedule 14D-9 filed by eMachines on November 27, 2001).
- 2.3 Stock Purchase Agreement, dated as of October 30, 2001, between Lap Shun Hui and idealab! Holdings, L.L.C. (incorporated by reference to the Schedule 14D-9 filed by eMachines on November 27, 2001).
- 2.4 Amendment No. Two to Original Design Manufacture Agreement between TriGem, dated as of October 31, 2001, between eMachines, Inc. and TriGem Computer, Inc.
- 2.5 Settlement and Release Agreement, dated as of October 31, 2001, between eMachines, Inc., TriGem Computer, Inc. and TriGem American Corporation.
- 99.1 Press Release of EM Holdings, Inc. and eMachines, Inc., dated November 19, 2001 (incorporated by reference to the Schedule 14D-9C filed by eMachines on November 20, 2001).

SIGNATURES

Pursuant to the requirements of the Securities Exchange Act of 1934, the registrant has duly caused this report to be signed on its behalf by the undersigned hereunto duly authorized.

Dated: November 30, 2001

EMACHINES INC.

By: /s/ Adam Andersen

Name: Adam Andersen
Title: Senior Vice President and Chief
Operating Officer

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INDEX TO EXHIBITS

| Exhibit Number ----- | Description of Document ----- |
|----------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 2.1 | Agreement and Plan of Merger, dated as of November 19, 2001, by and among EM Holdings, Inc., Empire Acquisition Corp. and eMachines, Inc. (incorporated by reference to the Schedule 14D-9 filed by eMachines on November 27, 2001). |
| 2.2 | Buyer Option Agreement, dated as of November 19, 2001, by and among EM Holdings, Inc., Empire Acquisition Corp. and eMachines, Inc. (incorporated by reference to the Schedule 14D-9 filed by eMachines on November 27, 2001). |
| 2.3 | Stock Purchase Agreement, dated as of October 30, 2001, between Lap Shun Hui and idealab! Holdings, L.L.C. (incorporated by reference to the Schedule 14D-9 filed by eMachines on November 27, 2001). |
| 2.4 | Amendment No. Two to Original Design Manufacture Agreement between TriGem, dated as of October 31, 2001, between eMachines, Inc. and TriGem Computer, Inc. |
| 2.5 | Settlement and Release Agreement, dated as of October 31, 2001, between eMachines, Inc., TriGem Computer, Inc. and TriGem American Corporation. |

99.1 Press Release of EM Holdings, Inc. and eMachines, Inc., dated November 19, 2001 (incorporated by reference to the Schedule 14D-9C filed by eMachines on November 20, 2001).

AMENDMENT NUMBER TWO TO THE ORIGINAL DESIGN MANUFACTURER AGREEMENT

This Amendment Number Two to the Original Design Manufacture Agreement ("Amendment") is entered into on October 31, 2001, between TriGem Computer, Inc., a Korean corporation whose principal office is located at TriGem Computer Bldg., 45-2 Yoido-dong, Youngdeungpo-ku, Seoul 150-010, Korea ("TriGem") and eMachines, Inc., a Delaware corporation whose principal office is located at 14350 Myford Road, Bldg. 100, Irvine, California 92606-1002, U.S.A. ("eMachines"). TriGem and eMachines shall be referred collectively as "Parties" or individually as "Party."

WITNESSETH:

WHEREAS, TriGem and eMachines entered into that certain Original Design Manufacturer Agreement (the "Agreement"), dated January 24, 2000, whereby TriGem manufactures, assembles and provides Support for the Products and whereby eMachines markets and sells the Products on a worldwide basis; and

WHEREAS, the Parties now desire to amend certain portions of the Agreement.

NOW, THEREFORE, in consideration of the mutual premises and covenants contained herein, the Parties hereby agree as follows:

- 1. New Exhibit B. The Parties hereby agree that as of June 1, 2001, Exhibit B of the Agreement shall be replaced with the new Exhibit B, which is attached to this Amendment.
2. New Section 15.4. Section 15.4 of the Agreement is hereby deleted and replaced with the following:

"Arbitration Venue. The arbitration shall be conducted in Los Angeles, California, and shall be conducted in accordance with the Rules of Arbitration of the International Chamber of Commerce ("ICC Rules")."

- 3. Other Provisions. All other provisions, terms and definitions of the Agreement not deleted, altered or otherwise modified by this Amendment shall remain in full force and effect. If there is any conflict between the Amendment and the Agreement, the provisions of the Amendment shall prevail.

IN WITNESS WHEREOF, the duly authorized representatives of the parties hereto have executed this Amendment as of the Amendment Date.

TRIGEM COMPUTER, INC.

EMACHINES, INC.

By: /s/ Brian Yoom
Name: Brian Yoom
Title: Director

By: /s/ Adam Andersen
Name: Adam Andersen
Title: Senior Vice President and Chief Operating Officer

EXHIBIT B SUPPORT TERMS

TriGem and eMachines agree to the following terms and processes for Product Support:

- I. Definitions. As used in this Exhibit B, the following terms shall be

defined as follows:

- A. "DF" shall mean the definition mutually agreed to between the Parties and attached hereto as Attachment A.

- B. "NDF" shall mean the definition mutually agreed to between the Parties and attached hereto as Attachment A.

- C. "RA" shall mean Return Authorization to eMachines of a specific Product unit by eMachines' resellers during the warranty period.
- D. "RMA" shall mean Return Material Authorization to eMachines of a specific Product unit returned by eMachines' end users ("End Users") during the warranty period.
- E. "Service Charge" shall mean the support costs associated with the Agreement for the period June 1, 2001 through September 30, 2001. The Service Charge shall be Three Dollars and Fifty Cents (\$3.50), which includes all costs for labor, freight, handling, replacement components, packaging material and other associated items.
- F. "Support Charge" shall mean the support costs associated with the Agreement for the period beginning October 1, 2001. The Support Charge shall be Three Dollars and Fifty Cents (\$3.50), which includes all costs for labor, freight, handling, replacement components, packaging material and other associated items.

II. RA Products.

- A. Effective June 1, 2001 until September 30, 2001 the following provisions shall apply:
 - a. If the Product unit is DF, then eMachines shall be entitled to a full credit from TriGem for the returned Product unit, minus the Service Charge.
 - b. If the Product unit is NDF, then eMachines shall be entitled to a full credit from TriGem for the returned Product unit, minus the Service Charge. However, in the event that the NDF Product units returned exceeds ten percent (10%) of all RA NDF returned Product units, then TriGem shall be entitled to a fee of One Hundred Fifty Dollars (\$150) per NDF RA returned Product unit for each Product unit in excess of the ten percent (10%) threshold.
 - c. TriGem shall repair and refurbish all RA returned Product units. TriGem may resell the repaired and refurbished Product units received by September 30, 2001 (the "Resold Units"). eMachines hereby grants TriGem the right to use eMachines' figure "e" and "EMACHINES" mark on the Resold Units and all associated materials included with such units. TriGem agrees to remove all eMachines licensed software, and all consumer information and the rear eMachines label from the Resold Units.
 - d. TriGem shall provide timely and accurate report of all Product unit returns and all Resold Unit sales, in a format reasonably specified by eMachines, within fifteen (15) days but no later than thirty (30) days after the end of each month. In the event TriGem fails to provide such reports within the specified time, then the defect rate will be calculated based on the three (3) month rolling average based on the last three (3) months for which there are timely reports.
 - e. Upon request by eMachines, TriGem shall disclose to eMachines its inspection process used to determine whether a returned Product unit is DF, and shall permit eMachines and its representatives to inspect such process and audit any documentation related to such process or the determination of whether any Product returned hereunder is DF. eMachines may direct TriGem to modify its inspection process as necessary to meet prevailing industry standards.
- B. Effective October 1, 2001, eMachines shall screen all RA Product units to determine whether such units are DF or NDF. eMachines shall

return to TriGem only those units that satisfy the definition of DF. Further, the following provisions shall apply:

- a. eMachines shall receive a credit from TriGem for the returned DF Product, minus the Support Charge. The amount of such credit from TriGem shall be determined according to the devaluation schedule attached hereto as Attachment B. TriGem will be responsible for

payment of all freight charges associated with shipment of DF Product units.
- b. Upon request by TriGem, eMachines shall disclose to TriGem its inspection process used to determine whether a returned Product unit is DF, and shall permit TriGem and its representatives to inspect such process and audit any documentation related to such process or the

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determination of whether any Product returned hereunder is DF. TriGem may direct eMachines to modify its inspection process as necessary to meet prevailing industry standards.

- c. TriGem shall consign to eMachines the repaired and refurbished DF Product units received on or after October 1, 2001 (the "Repackaged Units") for resale.
- d. Beginning October 1, 2001, TriGem shall apply credits to eMachines based on TriGem's screening results of RA Product units within seven (7) business days of receipt by TriGem. In the event that TriGem does not provide a report within the time period specified herein, then eMachines may debit its account with TriGem. TriGem shall credit eMachines for DF Product units only. TriGem shall not be obligated to issue credit to eMachines for missing parts, missing system units, NDF units, incorrect model units or any non-TriGem units. TriGem shall return to eMachines such NDF and incorrect model Product units to eMachines at eMachines' expense.
- e. Upon request by eMachines, TriGem shall disclose to eMachines its inspection process used to determine whether a returned Product unit is NDF, and shall permit eMachines and its representatives to inspect such process and audit any documentation related to such process or the determination of whether any Product returned hereunder is NDF. eMachines may direct TriGem to modify its inspection process as necessary to meet prevailing industry standards.
- f. eMachines shall remove and replace the original serial numbers on all NDF refurbished units screened by eMachines. In exchange for eMachines releasing any claim to a warranty for such units, eMachines shall receive a credit from TriGem based upon the schedule attached hereto as Attachment C. TriGem shall not

provide any warranty on the NDF Refurbished units refurbished by eMachines or eMachines selected Third (3rd/) Party. eMachines shall make best efforts to provide TriGem the original serial number labels from the NDF refurbished units.

III. RMA Products

- A. For the period beginning June 1, 2001 until September 30, 2001, the following provisions shall apply:
 - a. If the Product is DF, TriGem shall repair or replace the DF Product with a Product of equal or better specifications (such decision to be made at TriGem's discretion) and return the repaired/replaced Product unit within seven (7) business days after TriGem receives the DF

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Product unit from eMachines or End User (at eMachines' instructions). Invalid orders, such as incorrect model, incorrect systems, incorrect address or any incorrect orders associated with Product that can not be serviced shall be escalated to

eMachines for resolution. All such invalid orders shall be resolved by eMachines within seven (7) business days. All shipping costs associated with returning the Product unit to eMachines or End User (as applicable) shall be borne exclusively by TriGem.

- b. If the Product is NDF, then eMachines shall pay TriGem an aggregate amount of Twenty-Two Dollars and Fifty Cents (\$22.50) and all shipping cost incurred by TriGem in return shipping such products to eMachines or End User (as applicable). TriGem shall return the Product unit to eMachines or End User within seven (7) business days after TriGem receives the Product from eMachines or End User (at eMachines' instructions).
 - c. Per eMachines' request, End Users may directly ship the Product units to TriGem and TriGem may directly return such Product units to End Users.
- B. For the period beginning October 1, 2001, eMachines shall screen all RMA Product units to determine whether they are DF or NDF. eMachines shall return to TriGem only those Product units that are DF. Further, the following provisions shall apply:
- a. eMachines shall receive a credit from TriGem for the returned DF Product units, minus the Support Charge. TriGem shall credit eMachines for returned DF Product units for a credit determined according to the schedule attached hereto as Attachment B.

eMachines shall be responsible for shipping of the Product units to TriGem.
 - b. Upon request by TriGem, eMachines shall disclose to TriGem its inspection process used to determine whether a returned Product unit is DF, and shall permit TriGem and its representatives to inspect such process and audit any documentation related to such process or the determination of whether any Product unit returned hereunder is DF. TriGem may direct eMachines to modify its inspection process as necessary to meet prevailing industry standards.
 - c. TriGem shall consign to eMachines the Repackaged Units for resale.
 - d. Beginning October 1, 2001, TriGem shall apply credits to eMachines based on TriGem's screening results of RMA Product units within seven (7) business days of receipt by TriGem. In the event that TriGem does not provide a report within the time period specified

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herein, then eMachines may debit its account with TriGem. TriGem shall credit eMachines for DF Product units only. TriGem shall not be obligated to issue credit to eMachines for missing parts, NDF units or incorrect model units. TriGem shall return to eMachines such NDF and incorrect model Product units to eMachines at eMachines' expense.

- e. eMachines shall remove and replace the original serial numbers on all NDF refurbished units screened by eMachines. In exchange for eMachines releasing any claim to a warranty for such units, eMachines shall receive a credit from TriGem based upon the schedule attached hereto as Attachment C. TriGem shall not

provide any warranty on the NDF Refurbished units refurbished by eMachines or eMachines selected Third (3rd/) Party. eMachines shall make best efforts to provide TriGem the original serial number labels from the NDF refurbished units.

IV. Parts Replacement

- A. Effective October 1, 2001, eMachines shall screen all parts to determine whether they are DF or NDF. eMachines shall return to TriGem only those parts that satisfy the definition of DF. Further, the following provisions shall apply:
 - a. TriGem will furnish to eMachines, at no additional charge, a sufficient seed stock to enable eMachines to advance ship

replacement parts for those parts that are still under the Product unit warranty. TriGem hereby provides to eMachines a warranty on all replacement parts used by eMachines for the remaining warranty period of the Product unit for which the part is inserted.

- b. The parties shall mutually agree as to eMachines' initial seed stock. In the event that the DF rate for parts exceeds TriGem's component failure rate data, then TriGem shall provide additional seed stock, at no additional charge, to meet the actual demand for the DF parts. eMachines shall provide parts forecasts, consumption rate and inventory control reports on a monthly basis.
- c. eMachines shall exchange DF parts for NDF parts with TriGem on a one-for-one basis. TriGem will replace the DF parts by no later than seven (7) business days from the date received by TriGem. In the event TriGem cannot supply replacement parts within such time period, then TriGem shall replace the entire Product unit or component with one that is of better specifications. Each party shall bear the costs of freight in one direction.

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- d. TriGem shall retain ownership of the consigned parts inventory. eMachines shall be responsible for management of the consigned parts inventory and shall maintain a ninety-eight and one half percent (98.5%) accuracy of such inventory. In the event that any portion of the slippage in the one and one half percent (1.5%) allowance is due to eMachines' intentional loss or gross negligence, eMachines shall reimburse TriGem the bill of materials costs for that portion. eMachines shall conduct physical inventory count per quarter. Upon TriGem's request, eMachines shall conduct additional physical inventory count of the consigned parts inventory and TriGem shall have the right to audit the physical inventory count. All costs associated with physical inventory counts requested by TriGem shall be the sole responsibility of TriGem. eMachines shall provide TriGem with weekly and monthly inventory reports for the consigned parts.
- e. Beginning January 1, 2002, if a the percentage of DF part returned by eMachines (as reasonably determined by TriGem) that are NDF exceed two percent (2%) of the total number of returned parts, then TriGem shall have the right to charge eMachines a restocking fee of fifteen percent (15%) of the weighted average bill of materials costs per NDF Parts returned that exceeds the two percent (2%) allowance.
- f. Upon request by TriGem, eMachines shall disclose to TriGem its inspection process used to determine whether a returned part is DF, and shall permit TriGem and its representatives to inspect such process and audit any documentation related to such process or the determination of whether any part returned hereunder is DF. TriGem may direct eMachines to modify its inspection process as necessary to meet prevailing industry standards.
- g. Upon request by eMachines, TriGem shall disclose to eMachines its inspection process used to determine whether a returned part is NDF, and shall permit eMachines and its representatives to inspect such process and audit any documentation related to such process or the determination of whether any part returned hereunder is NDF. eMachines may direct TriGem to modify its inspection process as necessary to meet prevailing industry standards.

- B. TriGem shall work with eMachines and eMachines' agents to share information in an electronic format.

V. Class Failures

- A. From the Effective Date of the Agreement, in the event eMachines deems a specific Product model or certain Product batch (those Products that can

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be identified by a sequence of serial numbers or other reasonable method) to be a Class Failure, eMachines, after consultation with TriGem, may

1. Initiate a recall for the relevant Product model or Product batch; or
2. Recall particular units of the relevant Product model or Product batch.

In either case, eMachines shall be entitled to a full credit from TriGem for all recalled and returned Product units. TriGem shall reimburse eMachines for all costs associated with a recall, including, but not limited to, any administrative costs and attorneys' fees.

- B. In the event of a Class Failure prior to the Effective Date of the Agreement, regardless whether DF or NDF, then eMachines shall be entitled to receive any and all fees paid by eMachines to TriGem for such Product units.

VI. Additional Terms

- A. Prior to October 1, 2001, in the event that TriGem is allowed to resell any Product units, TriGem must delete all licensed software and materials from the Products and return to eMachines any and all Certificate of Authorizations ("COAs"). In the event that TriGem fails to remove any licensed item and return the COAs, eMachines may charge to TriGem the actual costs of such license and any costs incurred by eMachines in tracking such licensed items. TriGem shall also indemnify eMachines for any usage of such licensed products, including attorneys' fees.
- B. After October 1, 2001, eMachines shall be responsible for the removal of all COAs from any returned Product units.
- C. TriGem shall provide accurate reports to eMachines at the time of shipment specifying the status and location of any resale of Product units. The specific information and format of such reports shall be in a format reasonably requested by eMachines. The provisions of this section shall only apply to those Product units that retain any Marks of eMachines.
- D. TriGem agrees to provide eMachines' support team with bill of materials and any updates to it during the support life of each Product listed in Product Addenda.
- E. TriGem agrees that it shall pursue its vendors to improve business terms. From such modifications, TriGem shall reduce the Service Charge and Support Charges to more accurately reflect its new costs.

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- F. Nothing in this Exhibit or Agreement shall be construed as eMachines granting TriGem any right to license to use eMachines' Marks. Unless otherwise provided, under no circumstances may TriGem use any of eMachines Marks without first obtaining eMachines' prior express written consent.
- G. With respect to all Product units and associated material that TriGem is allowed to resell, TriGem agrees that it shall comply with all applicable regulations and industry guidelines, and maintain a level of quality that is at least comparable to the level of quality generally expected by consumers in the market. Under no circumstances may TriGem resell any Product units into any market without the express prior written consent of eMachines.

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Attachment A

Definition of DF and NDF

<TABLE>

<CAPTION>

| FAILURE SYMPTOM | No Boot | System Hang | Abnormal Operation | Recognition Error | Read Error | Write Error | Video Error | Sound Error | Loopback Test Error | K/B & Mouse Error | CMOS Error | No Dialtone |
|-----------------|---------|-------------|--------------------|-------------------|------------|-------------|-------------|-------------|---------------------|-------------------|------------|-------------|
| <S> | <C> | <C> | <C> | <C> | <C> | <C> | <C> | <C> | <C> | <C> | <C> | <C> |
| CPU | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Memory | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Mother Board | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| CD ROM | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| DVD ROM | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| CD RW | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Combo | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| FDD | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| HDD | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Modem | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Lan Card | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Video Card | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| PSU | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Cable | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| CPU Fan | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| DEVICES | DEFECT | | | | | | | | | | | |

<CAPTION>

| FAILURE SYMPTOM | Noise | Cable Conn Error | Mechanical Failure | O/S Corruption | Driver Corruption | Scratch | Physical Damage |
|-----------------|-------|------------------|--------------------|----------------|-------------------|---------|-----------------|
| <S> | <C> | <C> | <C> | <C> | <C> | <C> | <C> |
| CPU | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Memory | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Mother Board | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| CD ROM | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| DVD ROM | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| CD RW | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Combo | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| FDD | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| HDD | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Modem | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Lan Card | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Video Card | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| PSU | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Cable | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| CPU Fan | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| DEVICES | NDF | | | | | | |

</TABLE>

A. Conditions

1. Physical damage and scratches caused by Customer mishandling will be defined as "NDF"
2. Test failed by 3rd/ Party Hardware will be considered "NDF"
3. Failure caused by loose connection with broken QA Seal will be re-seated and re-tested for the result.

- B. Test Program to determine the status of the returns shall be PC Check and/or any other commercially available products as mutually agreed to by the parties.
- C. eMachines, eMachines' 3rd/ Party Vendor and TriGem shall use the Test Program stated above to determine whether the returned Product is DF or NDF. Other software not agreed in this Appendix to determine the quality of the return shall not be valid.
- D. Any quality areas that are not clearly defined in this Appendix shall be escalated to eMachines and TriGem to resolve.

SETTLEMENT AND RELEASE AGREEMENT

This Settlement Agreement (the "Agreement") is entered into as of October 31, 2001 (the "Settlement Date") by and between eMachines, Inc. ("eMachines"), TriGem Computer, Inc. ("TGI") and TriGem America Corporation ("TGA").

RECITALS

WHEREAS, eMachines and TGI (with the assistance of TGA) have operated under certain Product Support terms as specified in Exhibit B of the Original Design Manufacturer Agreement ("ODM Agreement"), dated January 24, 2000, by and between TGI and eMachines.

NOW, THEREFORE, in consideration of the mutual promises and agreements contained herein, and other good and valuable consideration, the parties hereto agree as follows:

AGREEMENT

1. In consideration of and in full and final accord and satisfaction of all amounts and property owed by eMachines under the following:
 - a. Old Programs (as defined in the ODM Agreement), including missing parts charges and TGA and TGI supplied technical support inventory;
 - b. New Programs (as defined in the ODM Agreement) through December 31, 2000, including missing parts charges, TGA and TGI supplied technical support parts and out of warranty changes;
 - c. All in warranty technical support parts;
 - d. All Restore CD expenses;
 - e. Virus Expenses,

eMachines hereby absolutely and unconditionally promises to pay to TGI the total sum of Three Million Two Hundred Forty-Eight Thousand Nine Hundred Ninety-Three Dollars (\$3,248,993) (the "Settlement Payment").

2. Upon execution of this Agreement, Any and all amounts due to TGI or TGA by eMachines for services and products rendered or provided to eMachines by TGI or TGA through December 31, 2000 under the terms of the ODM Agreement shall be deemed paid in full and no further amounts shall be due or payable from eMachines to TGI or TGA in respect thereof.

3. For and in consideration of the foregoing and the covenants contained herein, TGI and TGA hereby agree to release, acquit and forever discharge eMachines and its Affiliates (as hereinafter defined) from any and all claims, demands, causes of action of any kind whatsoever, nature and description, both

at law and in equity, whether known or unknown, direct or indirect, liquidated or unliquidated, absolute or contingent (collectively, "Claims") that TGI or TGA may now have, or may have in the future have,

for or because of any matter or thing done, omitted or suffered to be done by eMachines in connection with Exhibit B of the ODM Agreement. As used in this Agreement, "Affiliates" shall mean the respective successors and assigns and all parents, subsidiaries, related and affiliated corporations, representatives, attorneys, agents, officers, directors, stockholders and every person (whether natural or artificial) in any firm or entity now or previously affiliated with any of the foregoing, or who may become affiliated with any of the foregoing, of the parties hereto.

4. The parties intend and agree that the release of claims contained herein shall be effective as a full and final accord and satisfaction and general release of and from all Claims released and discharged hereunder. In furtherance thereof, TGI and TGA acknowledge that they have been informed of and is aware of the provision of Section 1542 of the California Civil Code which states as follows:

"A general release does not extend to claims which the creditor does not know or suspect to exist in its favor at the time of executing the release, which if known by him would materially affect the settlement with the debtor."

TGI and TGA are executing this Agreement voluntarily, and hereby waives any and all rights it has or may have under California Civil Code Section 1542, any successor section to it, and/or any other statute or common law principle of similar effect. In connection with this waiver and the Agreement, TGI and TGA acknowledge that they are aware that they may discover claims presently unknown or unsuspected or facts in addition to or different from those which TGI or TGA now know or believe to be true with respect to the Claims released and discharged hereunder. Nevertheless, TGI and TGA intend by this Agreement, and with and upon the advise of independently selected counsel, to release fully, finally and forever all Claims released and discharged hereunder. In furtherance of such intention, the releases set forth in this Agreement shall be and remain in effect as full and complete releases of the Claims released and discharged hereunder notwithstanding the discovery or existence of any such additional or different claims or facts relevant hereto.

5. If any provision or provisions contained herein shall contravene or be invalid under applicable law, such contravention or invalidity shall not invalidate the whole Agreement, but the Agreement shall be construed as not containing the particular provision or provisions held to be invalid and the rights and obligations of the parties shall be construed and enforced accordingly.

6. Any notice, request, consent, demand or other communication required or permitted to be given by this Agreement shall be in writing and shall be

personally served or sent by telecopy (with a copy by prepaid registered or certified mail sent on that same day), commercial courier service or prepaid registered or certified mail. Any written notice delivered by telecopy shall be deemed to have been given on the day telecopied to the other party. Any written notice given by commercial courier service or registered or certified mail shall be deemed communicated as of actual receipt. For purposes of this

Agreement, the addresses of the parties, until notice of a change thereof, shall be as set forth below:

If to eMachines:

eMachines, Inc.
14350 Myford Road; Bldg. #100
Irvine, California 92606-1002
Attn: General Counsel
Fax: (714) 508-1135

If to TGI:

TriGem Computer, Inc.
45-2, Yoido-dong
Youngdeungpo-lan
Seoul 150-010
Korea

If to TGA:

TriGem America Corporation
1 Icon Road
Lake Forest California,
Attn: K.B. Lee
Fax: (949-580-3677

7. This Agreement, which shall be construed in accordance with the laws of the State of California, constitutes the entire agreement and understanding between the parties in connection with the above matters and supersedes all prior agreements, whether written or oral, in connection therewith. All causes of action arising out of this Agreement shall be brought exclusively in the state and federal courts located in the County of Orange, State of California. The parties hereby irrevocably submit to the personal jurisdiction of and waive any venue objections against such courts in any litigation arising out of the Agreement. If either party employs attorneys to enforce any rights arising out of or relating to this Agreement, the prevailing party shall be entitled to recover reasonable attorney's fees. Each party waives any right and agrees not to apply to have any disputes under this Agreement tried or otherwise determined by a jury, except where required by law.

8. This Agreement shall be binding on and inure to the benefit of the successors and assigns of the parties hereto.

9. This Agreement may be executed in counterparts and each counterpart shall have the same force and effect as an original and shall constitute an effective, binding Agreement on the part of each of the undersigned.

By signing in the spaces provided below, the parties accept and agree to all of the terms and conditions hereof.

TriGem Computer, Inc.

/s/ Brian Yoom

Name: Brian Yoom

Title: Director

TriGem America Corporation

/s/ Moonchun Hong

Name: Moonchun Hong

Title: Chief Executive Officer

eMachines, Inc.

/s/ Adam Andersen

Name: Adam Andersen

Title: Senior Vice President and Chief Operating Officer
