DEMO IT PROGRAM TERMS

GENERAL TERMS

These Demo It Program Terms ("Program Terms") govern the provision and your use of the Products and Services from either Dell Marketing L.P. (in the U.S.) or EMC Corporation (in the U.S.) or Dell Canada Inc. (in Canada), as applicable ("Supplier"), as reflected in an Evaluation Program Participation document that references these Program Terms accepted by you ("you" or "Customer") (such document that incorporates these Program Terms, an "Agreement").

1. PURPOSE. Supplier may provide you with hardware and software products ("Products") and services ("Services") at no charge as documented in writing. Subject to these Program Terms, Supplier grants Customer a temporary, non-transferable and nonexclusive license (with no right to sublicense) to use the Products and Services and associated documentation during the Evaluation Period for the sole purposes of (a) internal evaluation and testing for purchase, if applicable, in a secure, non-production environment, or (b) supporting Supplier’s development activities, including without limitation, activities such as hardware and/or software evaluation, integration, testing and validation of Products and Services requested by Supplier (the "Purpose"). All reports, testing data or results, feedback, benchmarking or other analysis provided to Supplier by you or developed in conjunction with usage of the Product or Services shall be deemed part of the Products and Services and owned by Supplier.

2. EVALUATION PERIOD. Customer’s right to use Products begins upon receipt at Customer’s designated premises and will continue for thirty (30) days or such longer period as agreed in writing by the parties, unless (a) terminated in writing prior to that time in compliance with Section 15 below, or (b) as extended by mutual written agreement of the parties ("Evaluation Period").

3. OWNERSHIP AND RISK OF LOSS. Supplier will retain exclusive ownership of and title to the Products (software products are subject to the licenses set forth below). Customer will not represent or assert any ownership interest in the Products and will keep them free of liens, attachments and other encumbrances. The risk of loss and damage to the Products shall be with Customer while in Customer’s possession. Customer shall maintain reasonable insurance coverage for the Products until returned to Supplier.

4. LIMITATIONS ON USE. YOU MAY NOT USE THE PRODUCTS AND SERVICES IN A PRODUCTION ENVIRONMENT. Except for the Purpose, Customer shall not use the Products and Services, or any information gained from such use, for any purpose including for commercial purposes or for designing or developing, or authorizing or assisting others in designing or developing hardware, software, and related offerings. Customer shall not, and will not allow others to (A) reverse engineer, decompile or disassemble the Products or otherwise seek to discover information about the internal architecture, design, operation, manufacture, features, or functionality of the Products, (B) sell, lease, license, sublicense, encumber, assign, distribute or otherwise transfer or dispose in whole or in part the Products or Services, (C) modify or create derivative works based upon the Products or Services, or (D) provide, make available to, or permit use of the Products and Services in whole or in part by, any third party, including contractors, without Supplier’s prior written consent, unless such use by the third party is solely on your behalf, is strictly in compliance with the terms and conditions of these Program Terms, and you are fully liable for the third party’s breach of these Program Terms. Channel Partners (defined below) may be authorized to provide the Products and Services to End-Users as expressly permitted in the Customer Specific Terms for
Channel Partners below. Supplier may audit Customer to ensure compliance with these Program Terms.

5. **SOFTWARE.**

5.1 Software provided to you is licensed by Dell Products L.P., a Texas Limited Partnership; Dell Global B.V. (Singapore Branch), the Singapore branch of a company incorporated in the Netherlands with limited liability on behalf of itself, Dell Inc. and “Dell Affiliates” (which are Dell Inc.’s direct and indirect subsidiaries); or the applicable Dell Affiliate or third party identified at www.dell.com/swlicensortable (“Licensor”) and, except as provided otherwise in Section 5.2 below, shall be governed by the following:

**A. General License Grant.** Licensor grants to Customer a nonexclusive and nontransferable temporary license (with no right to sublicense) to use (a) the software solely for Customer’s internal evaluation and testing in accordance with the Purpose; (b) microcode, firmware, and operating system software shipped with hardware, or other software licensed together with hardware and designed to enable the hardware to perform enhanced functions, solely on that hardware; and (c) the then-current, generally available, written user manuals and online help and guides (“Documentation”) related to such software for the purpose of supporting Customer’s use of such software.

**B. License Restrictions.** All software licenses granted in this Section 5.1 are for use of object code. Customer is permitted to copy the software as necessary to install and run it in accordance with the license, but otherwise for back-up purposes only. Customer may copy Documentation as reasonably necessary in connection with Customer’s authorized internal use of the software. Customer shall not (a) use software in a service bureau, application service provider or similar capacity; or (b) disclose to any third party the results of any comparative or competitive analyses, benchmark testing or analyses of the Products and Services that Customer performs or that are performed on Customer’s behalf; (c) make software available in any form to anyone other than Customer’s employees or contractors; or (d) transfer software to an affiliate or a third party.

**C. Reserved Rights.** All rights not expressly granted to Customer are reserved. No title to, or ownership of, the software is transferred to Customer. Customer shall reproduce and include copyright and other proprietary notices on and in any copies of the software. Unless applicable law expressly permits, Customer shall not modify, enhance, supplement, create derivative works from, reverse assemble, reverse engineer, decompile or otherwise reduce to human readable form the software, nor shall Customer permit any third party to do the same.

5.2 **Other License Terms.** If a particular Product is provided with a "click-to-accept" agreement included as part of the installation and/or download process, or a "shrink-wrap" agreement is included in the Product packaging, the terms of such "click-to-accept" or "shrink-wrap" agreement shall, in case of conflict with these terms, (a) prevail (excluding any perpetual license language) with regard to software for which Supplier or a Dell Affiliate is not the licensor; and (b) not prevail with regard to software for which Supplier or a Dell Affiliate is the licensor. Notwithstanding any deviating terms in a “click-to-accept” or “shrink-wrap” license, all licenses to use software expire at the end of the Evaluation Period.

5.3 **Software Releases.** Software versions that Supplier provides after initial delivery of the software (but not a new product) shall be subject to the license terms applicable to the software being updated.

7. **CONFIDENTIALITY.** Customer agrees to protect Supplier’s Confidential Information with the same degree of care, but no less than a reasonable degree of care, as Customer uses with respect to its own confidential information. Customer will not disclose Supplier Confidential Information without Supplier’s prior written consent. "Confidential Information” means any oral, written, graphic or machine-readable information disclosed by Supplier that should be reasonably understood to be confidential. The Products and Services, including all features, capabilities and related problems encountered by Customer, are Supplier Confidential Information.

8. **SECURE ENVIRONMENT.** Products shall be kept in a secure environment with access limited to Customer’s employees or personnel who have a need to access the Products to complete the Purpose. Customer will maintain physical control of and keep the Products at the location where they are delivered by Supplier.

9. **WARRANTY DISCLAIMER.** The Products and Services are provided "AS IS,” with all faults. Supplier disclaims any and all warranties and conditions, express, implied or otherwise, with respect to the Products and Services, including without limitation: (a) any warranties or conditions of merchantability, merchantable quality, fitness for a particular purpose, title and noninfringement, and (b) any warranties arising by statute, operation of law, course of dealing or performance or usage of trade.

10. **HIGH-RISK APPLICATIONS.** Customer acknowledges that the Products and Services are not designed or intended for use in High-Risk Activities (defined below) and that Supplier does not test or certify the Products and Services for use in High-Risk Activities. Supplier expressly disclaims any express or implied warranty of fitness for High-Risk Activities. “High-Risk Activities” means the use of the Products and Services in hazardous environments requiring fail safe performance, such as any application in which the failure of the Products or Services could lead directly to death, personal injury, or physical or property damage.

11. **LIMITATION OF LIABILITY.** SUPPLIER, ITS AFFILIATES, AND ITS SUBCONTRACTORS SHALL NOT BE LIABLE FOR ANY INDIRECT, PUNITIVE, INCIDENTAL, CONSEQUENTIAL, EXEMPLARY OR SPECIAL DAMAGES, OR FOR LOSS OF PROFITS; LOSS OF REVENUE; LOSS OF USE; LOSS OR CORRUPTION OF DATA; OR BUSINESS INTERRUPTION OF ANY KIND. SUPPLIER’S TOTAL LIABILITY FOR ANY AND ALL DISPUTES (DEFINED BELOW) AND DAMAGES ARISING OUT OF OR IN CONNECTION WITH AN AGREEMENT AND/OR ANY PRODUCTS AND SERVICES WILL NOT EXCEED THE LESSER OF: (A) THE LIST PRICE OF THE APPLICABLE PRODUCTS AND SERVICES GIVING RISE TO THE CLAIM OR (B) $50,000 USD. THESE LIMITATIONS APPLY WHETHER ARISING UNDER ANY CONTRACT, TORT, WARRANTY OR ANY OTHER THEORY OF LIABILITY, EVEN IF ADVISED OR AWARE OF THE POSSIBILITY OF SUCH DAMAGES AND EVEN IF ANY REMEDY FAILS OF ITS ESSENTIAL PURPOSE. ALL CLAIMS MUST BE MADE WITHIN THE PERIOD SPECIFIED BY APPLICABLE LAW. IF THE LAW ALLOWS THE PARTIES TO SPECIFY A SHORTER PERIOD FOR BRINGING A CLAIM, OR THE LAW DOES NOT PROVIDE A TIME AT ALL, THEN CLAIMS MUST BE MADE WITHIN 18 MONTHS AFTER THE CAUSE OF ACTION ACCRUES.

12. **INTELLECTUAL PROPERTY RIGHTS.** All rights, titles and interests to Supplier’s intellectual property, including without limitation those embodied in the Products and Services, remain
with Supplier. Customer will not use the name of Supplier nor any Supplier trademarks, trade names, service marks, or quote the opinion of any Supplier employee in any advertising or otherwise without first obtaining the prior written consent of Supplier.

13. MODIFICATIONS TO PRODUCT. Supplier retains the right during the Term to modify, revise, or remove the Products from Customer's designated premises. Upon request by Supplier, Customer shall provide Supplier with reasonable access to Customer’s premises for these purposes. Supplier shall retain ownership of any modifications, derivative works, changes, expansions or improvements to Products.

14. COMPLIANCE WITH LAWS. You will comply with all laws and regulations applicable to your use of the Products and Services in the countries in which you do business including, without limitation, any laws relating to taxes, U.S and applicable local export and sanctions laws, anti-bribery, or competition laws (“Applicable Laws”). Supplier is providing and Customer accepts the Products or Services and access to related technology (the “Materials”) for the Purpose, and not for resale, export, re-export, or transfer. Customer is subject to and responsible for compliance with the export control and economic sanctions laws of the United States and other applicable jurisdictions. Materials may not be used, sold, leased, exported, imported, re-exported, or transferred except with Supplier's prior written authorization and in compliance with such laws, including, without limitation, export licensing requirements; end-user, end-use, and end-destination restrictions; and prohibitions on dealings with sanctioned individuals and entities, including but not limited to persons on the Office of Foreign Assets Control's Specially Designated Nationals and Blocked Persons List or the U.S. Department of Commerce Denied Persons List. Customer represents and warrants that it is not the subject or target of, and that Customer is not located in a country or territory (including without limitation, North Korea, Cuba, Iran, Syria, and Crimea) that is the subject or target of, economic sanctions of the United States or other applicable jurisdictions.

15. TERMINATION; RETURN OF PRODUCTS. Customer may terminate an Agreement and the license granted under these Program Terms at any time upon written notice and the return of the Products to Supplier. Supplier may terminate an Agreement or any license granted hereunder upon written notice to the other party. All obligations of confidentiality, intellectual property rights, and limitations on liability, as well as the terms set forth in Section 19 (General), will survive termination of an Agreement for any reason. Termination of an Agreement terminates all rights of Customer to use the Products and Services. Upon termination of an Agreement and no later than at the end of each Evaluation Period, Customer shall promptly return all Products as directed by Supplier and in the same condition as when delivered, reasonable wear and tear excepted. Supplier may request at any time (a) that the Products be returned to Supplier or (b) that Customer stop using any provided software and certifying distribution of such software (including copies), and Customer agrees to promptly comply with such request.

16. SOFTWARE/DATA BACKUP AND REMOVAL. CUSTOMER MUST BACKUP ANY DATA OR SOFTWARE AND REMOVE ANY CONFIDENTIAL, NON-PUBLIC OR SENSITIVE DATA (“COVERED DATA”) FROM THE PRODUCTS PRIOR TO RETURNING THEM TO SUPPLIER. UNDER NO CIRCUMSTANCES WILL SUPPLIER BE LIABLE FOR LOST DATA OR SOFTWARE, FOR COSTS ASSOCIATED WITH DATA OR SOFTWARE RESTORATION, FOR ANY DISCLOSURE OF CONFIDENTIAL OR SENSITIVE DATA RESIDING ON THE PRODUCTS OR UTILIZED IN THE SERVICES OR FOR ANY LEGAL OR COMPLIANCE REQUIREMENTS TO COMPLY WITH SPECIAL RULES OR OTHER REQUIREMENTS THAT MAY APPLY TO THE COVERED DATA. Customer agrees to indemnify, defend and hold harmless Supplier from any and all claims or liability against Supplier arising from any Covered Data that may be on the Products or utilized in the Services.
17. **GOVERNING LAW.** THESE PROGRAM TERMS, ANY AGREEMENT AND ANY CLAIM, DISPUTE, OR CONTROVERSY (WHETHER IN CONTRACT, TORT, OR OTHERWISE, INCLUDING STATUTORY, CONSUMER PROTECTION, COMMON LAW, INTENTIONAL TORT AND EQUITABLE CLAIMS) BETWEEN CUSTOMER AND SUPPLIER, including their affiliates, contractors, and agents, and each of their respective employees, directors, and officers (a “Dispute”) will be governed by the laws of the State of Texas (or by U.S. federal laws if you are a Federal End User or by laws of the province of Ontario and the federal laws of Canada applicable therein if you are a Canadian entity), without regard to conflicts of law. The UN Convention for the International Sale of Goods and the Uniform Computer Information Transactions Act will not apply.

18. **PRE-RELEASE FEATURES.** The Products and Services may include pre-release features and capabilities which may not be available in Supplier’s generally available commercial versions of the Products and Services. These Products and Services may not have been approved by the Federal Communications Commission (FCC), Underwriters Laboratory (UL), CSA Group, or other regulatory or certification agencies.

19. **GENERAL.** These Program Terms and any associated Agreement (GENERAL TERMS and applicable CUSTOMER-SPECIFIC TERMS) constitutes the entire agreement between you and Supplier regarding the Products and Services. Customer will not transfer or assign an Agreement. Supplier and Customer are independent contractors and neither is a legal representative or agent of the other.

Customer-Specific Terms apply to you if you are a Channel Partner, Federal Reseller or Public Customer. If there is a conflict, the Customer Specific Terms will take precedence over the GENERAL TERMS.

**CUSTOMER SPECIFIC TERMS**

**CHANNEL PARTNERS**

Additional terms applicable to resellers (including Federal Resellers), distributors, system integrators, OEM Customers and other channel partners (“Channel Partners”)

The additional terms and conditions in this section apply if you are a Channel Partner. These additional terms and conditions supplement, amend or revise the GENERAL TERMS as described below.

1. Supplier may provide or authorize you to provide, at no charge to Channel Partner, the Products and Services to your direct or indirect customer or potential customer (each, “End User”) for the End User to use solely for the Purpose. All reports, testing data or results, feedback, benchmarking or other analysis completed in whole or in part in conjunction with usage of the Products and Services shall be deemed part of the Products and Services and owned by Supplier.

2. You shall not provide, and shall not request Supplier to provide, any Products or Services to an End User unless and until the End User is bound by a written agreement with you (“End User Agreement”). The End User Agreement shall require End User to agree to and abide by these Program Terms (for the foregoing purpose, the applicable references to “you” or “Customer” in an Agreement shall mean “End User”). You shall require each End User to comply with these Program Terms and all Applicable Laws. You shall indemnify and hold Supplier and its licensors and suppliers harmless from any and all claims or liability against Supplier related to or arising out of End User’s noncompliance with the terms or End User’s use of the Products and Services. The End User Agreement cannot be inconsistent with or
less protective of Supplier’s ownership rights and proprietary and intellectual property rights in the Confidential Information, Products and Services than these Program Terms. You will enforce the End User Agreement with the same degree of diligence that you use to enforce similar customer agreements.

3. For the avoidance of doubt, you remain Supplier’s sole contractual partner under an Agreement and as such are solely responsible for returning the Products to Supplier at the end of each Evaluation Period or at Supplier’s request, as described in Section 15 of the GENERAL TERMS.

FEDERAL RESELLERS
Additional terms applicable to Federal Resellers

The additional terms and conditions in this section apply to you if you are a reseller to any department, agency, division, or office of the United States government ("Federal Reseller"). These additional terms and conditions supplement, amend or revise the GENERAL TERMS as described below. For purposes of this section, the term “Supplier” will mean Dell Marketing L.P. or Dell Federal Systems L.P.

Clauses 1 through 5 set forth below in the U.S. Public Customer Terms shall apply to Federal Resellers, and the term “Federal Reseller” shall be substituted for the term “Public Customer” in each instance.

PUBLIC CUSTOMERS
Additional terms applicable to Public Customers

United States
Additional Terms for US Public and Healthcare Customers

The terms in this Additional Terms for US Public and Healthcare Customers section ("US Public Customer Terms") below apply to public sector or healthcare customers such as any healthcare provider, department, agency, division, or office of the United States government ("Federal End User"), or any department, agency, division, or office of any district, state, county or municipal government within the United States (together with Federal End Users, "Public Customer") and supplement the GENERAL TERMS. If you are a Federal End User then references to “Supplier” below will mean Dell Marketing L.P. or Dell Federal Systems L.P.

1. Any portion of the GENERAL TERMS that is not applicable by law shall not apply to you.

2. Public Customer shall notify Supplier when evaluation and testing is complete. Supplier will arrange for the return of the Products at no cost. In addition to the obligation set forth in Section 16 of the GENERAL TERMS, Federal End User (or Federal Reseller, if applicable) agrees that before returning any Products to Supplier that it shall remove all data in accordance with applicable standards, including but not limited to NIST SP 800-88. Disputes with Federal End Users shall be governed by the Contract Disputes Act of 1978, as amended.

3. Software and documentation provided with the Products and Services constitutes "commercial items" as is defined at 48 C.F.R. 2.101; consisting of "commercial computer software" and "commercial computer software documentation" as used in 48 C.F.R. 12.212. Consistent with 48 C.F.R. 12.212 and 48 C.F.R. 227.7202-1 to 227.7202-4, Federal End Users acquire only the rights set forth in the applicable EULA. Agreements referenced in Section 5.2 of the GENERAL TERMS will be provided to you upon request.
4. Public Customer does not intend to award a contract on the basis of Supplier’s provision of the Products and Services, nor grant Supplier any preferential treatment in any contracts or task or delivery orders currently being performed by Supplier, or future procurement actions.

5. You confirm that (a) you are a contracting officer or other authorized representative of Public Customer with authority to bind the Public Customer for purposes of accepting the Products and Services as set forth herein, and (b) you have read and agree to be bound by the terms and conditions of any licensing agreement applicable to the Products (see Section 5 of the GENERAL TERMS) or service terms applicable to Services (see Section 6 of the GENERAL TERMS).