TRY IT PROGRAM TERMS

GENERAL TERMS

These Try It Program Terms ("Program Terms") govern the provision and your use of the Products and Services as reflected in a Try It Program Participation document that references these Program Terms with 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"), and 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") as quoted by Supplier at no charge. You have a non-transferable right to use, perform and execute the Products and Services solely for internal evaluation and testing purposes in a secure, non-production environment ("Purpose") as further set forth herein. You shall not, and shall not offer to, lease, sublicense, encumber, sell, assign or otherwise transfer or dispose of the Products and Services, or move the Products and Services from the original ship-to location, except Channel Partners (defined below) may be authorized to provide the Products and Services to End-User as expressly permitted in the Customer Specific Terms for Channel Partners below.

2. SOFTWARE.

2.1 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 2.2 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 2.1 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.
2.2 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.

2.3 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.

3. SERVICES. Services provided under an Agreement are governed by supplemental terms and conditions applicable to such service and located at www.dell.com/servicecontracts/global and/or www.delltechnologies.com/en-us/customer-services/product-warranty-and-service-descriptions.htm.

4. EVALUATION PERIOD. The “Evaluation Period” begins five (5) days after the Products are shipped and will continue, subject to Section 11, for forty five (45), sixty (60), ninety (90), or one hundred and twenty (120) days as agreed between the Parties unless terminated in writing prior to that time in compliance with Section 11 below, or as extended by mutual written agreement of the parties. At the end of the Evaluation Period, Customer will either: (a) return the Products in accordance with Supplier’s instructions in good condition, reasonable wear and tear excluded, within 10 days after expiration or termination of the Evaluation Period or (b) pay the purchase price of the Products within 30 days. If Customer does not so return the Products within the prescribed timeline, and without limiting Supplier’s other remedies, Supplier may automatically invoice Customer for the purchase price of the Products.

5. TITLE AND RISK OF LOSS. Title to the hardware Products (except for the software provided with such hardware) shall remain with Supplier until Customer has paid the purchase price in accordance with Section 4(b) above. However, title to any software will always remain with Supplier or the applicable licensor(s) (your rights are subject to license). All related reports, testing, feedback, benchmarking or other analysis shall be owned by Supplier. 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.

6. WARRANTY DISCLAIMER. THE PRODUCTS AND SERVICES ARE PROVIDED "AS IS," WITH ALL FAULTS. SUPPLIER DISCLAIMS ANY AND ALL WARRANTIES AND CONDITIONS, EXPRESS, IMPLIED OR STATUTORY, WITH RESPECT TO THE PRODUCTS AND SERVICES, INCLUDING WITHOUT LIMITATION, ANY WARRANTIES OR CONDITIONS OF MERCHANTABILITY, MERCHANTABLE QUALITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE AND NONINFRINGEMENT.

7. LIMITATION OF LIABILITY. SUPPLIER, ITS AFFILIATES, AND SUBCONTRACTORS SHALL NOT BE LIABLE FOR ANY INDIRECT, PUNITIVE, INCIDENTAL, CONSEQUENTIAL, EXEMPLARY OR SPECIAL DAMAGES, OR FOR LOSS OF PROFITS; LOSS OF USE; LOSS OR USE OF DATA; OR BUSINESS INTERRUPTION OF ANY KIND. SUPPLIER’S TOTAL LIABILITY FOR ANY AND ALL CLAIMS 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 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.

8. 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.

9. COMPLIANCE WITH LAWS. You will comply with all laws and regulations applicable to your use of the Products and Services in any country in which you conduct business, including without limitation any laws relating to taxes, U.S. and applicable local export and sanctions laws, and anti-bribery or competition laws ("Applicable Laws"). The Products and Services are for your own use, and you will not, and will not allow, the Products and Services to be exported, re-exported, sold or transferred (i) to U.S. embargoed countries (including without limitation, North Korea, Cuba, Iran, Syria, and Crimea) or (ii) without a license where such license is required by Applicable Laws.

10. CONFIDENTIALITY AND NON-DISCLOSURE. 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 the confidential information of Supplier without the prior written consent of Supplier. "Confidential Information" means any oral, written, graphic or machine-readable information disclosed by Supplier that should be reasonably understood to be confidential.

11. TERMINATION AND DATA BACKUP AND REMOVAL. Either party may terminate an Agreement and the rights granted hereunder at any time upon written notice. All confidentiality obligations will survive termination. Upon termination, Customer shall promptly return the Products as directed by Supplier. At any time, Supplier may require that the Products be returned. As directed by Supplier, Customer shall promptly cease all use and provide written notice certifying destruction of software (including copies) to Supplier. CUSTOMER MUST BACKUP ANY DATA OR SOFTWARE AND REMOVE ANY CONFIDENTIAL, NON-PUBLIC OR SENSITIVE DATA ("COVERED DATA") FROM THE PRODUCTS PRIOR TO SURRENDERING 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 OR SPECIAL RULES 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.

12. 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 will not apply.

13. 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 or a 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, Distributors, System Integrators, OEM Customers and other Channel Partners (“Channel Partners”)

Supplier may provide, or may authorize you to provide, the Products and Services to your customer or potential customer (each, “End User”) for the Purpose. You must provide the End User's name and address, and any other information requested by Supplier. Products and Services may be provided to an End User only if the End User has agreed in writing to these Program Terms. For the foregoing purpose, the applicable references to “you” or “Customer” in an Agreement shall mean “End User”. You shall ensure End User agrees and complies with these Program Terms and all Applicable Laws, and you are responsible for End User's failure to comply with such terms and Applicable Laws. You shall indemnify and hold Supplier and its licensors and suppliers harmless against any claims arising out of End User's noncompliance with these Program Terms or use of the Products and Services. You may not modify the Products and Services without Supplier’s prior written permission; and if Supplier grants such permission, you agree to take responsibility for all issues and claims related to your modifications, for maintaining regulatory and safety compliance after you have modified the Products and Services, and for obtaining any regulatory approvals or certifications that may be required as a result of your modification. If you do not purchase the Products, you are responsible for removing all modifications and restoring the Products to their original condition (reasonable wear and tear excluded) before returning the Products to Supplier. You will indemnify, defend and hold Supplier and its licensors and suppliers harmless from any and all claims or liability against Supplier arising from your modifications. 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 and Services to Supplier at the end of the Evaluation Period unless you have purchased the Products and Services.

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

A. Federal End User is authorized to perform any testing it deems necessary to evaluate the Products and Services for official Government purposes only, without obligation to pay any compensation or consideration.

B. Federal End User shall notify Supplier when evaluation and testing is complete. Supplier will arrange for the return of the Products and Services at no cost, unless the Federal End User has entered into a separate agreement to purchase or lease the Products and Services from
Supplier or a Channel Partner. Disputes with Federal End Users shall be governed by the Contract Disputes Act of 1978, as amended.

C. Software and documentation provided with the Products and Services constitutes "commercial items" as 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 licensing agreement (see Section 2 of the GENERAL TERMS).

D. 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.

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 2 of the GENERAL TERMS) or service terms applicable to Services (see Section 3 of the GENERAL TERMS).