



End User License Agreement
Tegile Systems, Inc. Software

This End User License Agreement (this "EULA") is made between Tegile Systems, Inc. ("Tegile") and the DIR customer ("Customer").

- 1. License Grant.** Subject to the terms and conditions of DIR Contract No. DIR-TSO-3014, and this EULA, Tegile hereby grants End User a perpetual, nonexclusive, nontransferable, limited license to use the copy of the software and any related documentation included therewith (collectively, the "Software"), without the right to sublicense the Software, solely for End User's internal use on a single storage center system (consisting of one or two controllers and related disk drives and ancillary hardware) that is compatible with the Software. End User may not, nor may it permit any third party to, loan, lease, distribute, transfer or make available the Software to any third party, nor modify or remove any proprietary rights notices in the Software, decompile, disassemble, reverse engineer or otherwise attempt to create the source code for the Software. Except as necessary for the use of the Software, no copying of the Software, in whole or in part, is permitted.
- 2. License Fee.** End User's license to use the Software hereunder is contingent upon End User's payment when due of all license fees with respect thereto in accordance with Appendix A, Section 8J of DIR Contract No. DIR-TSO-3014.
- 3. Ownership.** Title to the Software is not transferred to End User, and ownership of all copies of, and all rights including all intellectual property rights in and to, the Software is and remains vested in Tegile, subject to the limited rights granted to Customer in DIR Contract No. DIR-TSO-3014, and this EULA.
- 4. LIMITED WARRANTY AND WARRANTY DISCLAIMER.** Tegile warrants to Customer for a period of ninety (90) days after Customer's purchase of the license granted hereunder that the Software will operate substantially in accordance with the documentation provided therewith. If the foregoing warranty is breached, and if Customer notifies Tegile of such breach not more than 180 days after Customer's purchase of the license granted hereunder, Tegile will, in its discretion, either modify the Software so as to correct such breach or refund the license fees that Customer paid for the license granted hereunder. The foregoing is Customer's exclusive remedy for any breach of warranty hereunder. This exclusive remedy shall not be deemed to have failed of its essential purpose so long as Tegile is willing and able to modify the Software or to refund the license fees paid in the manner provided herein. EXCEPT AS EXPLICITLY PROVIDED HEREIN, THE SOFTWARE IS PROVIDED "AS IS," WITHOUT WARRANTY OF ANY KIND, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO ANY WARRANTY PERFORMANCE, MERCHANTABILITY, OR FITNESS FOR A PARTICULAR PURPOSE. Tegile does not warrant that the Software will meet Customer's requirements, operate without interruption or be error-free.
- 5. Indemnification for Infringement.** Indemnification for Infringement will be handled in accordance with Appendix A, Section 10A of DIR Contract No. DIR-TSO-3014.
- 6. Term and Termination.** This EULA and the license granted to Customer to use the Software herein shall remain effective in accordance with Section 2 of DIR Contract No. DIR-TSO-3014. Terminations will be handled in accordance to Appendix A, Section 11B of DIR Contract No. DIR-TSO-3014. Upon any termination, Customer shall promptly return the Software and any copies thereof in any form, unless Customer terminates for cause and requires temporary use of the Software for transition or winding down. Except when Customer terminates for cause, Tegile will not have any obligation to refund any portion of any license fee upon the termination of this EULA. Sections 3, 5, 6, 7, 8, 9, and 10 of this EULA shall survive its termination.
- 7. Copyright.** United States copyright laws and international treaty provisions protect the Software. Unauthorized use or copying of the Software, including Software that has been modified, merged, or included with other software, or of the written materials or documentation included with the Software is expressly prohibited, except as explicitly set forth in this EULA. Any copies that you are authorized to make pursuant to this EULA, must contain the same copyright and other proprietary notices that appear on or in the Software.
- 8. Confidentiality.** To the extent allowable under the Texas Public Information Act and subject to any legal requirements, Customer acknowledges and agrees that the Software and documentation related to its use include proprietary information, trade secrets, know-how and confidential information, that is Tegile's exclusive property. Customer agrees that, without Tegile's prior written consent, it will not grant access to the Software or its documentation, including any flow charts, logic diagrams, user manuals and screens, to any persons or entities except for employees and agents of Customer who have a business need to have such access and who are obligated (by a separate confidentiality agreement, by operation of employment policies or otherwise) to maintain the confidentiality thereof.

APPENDIX E TO DIR CONTRACT NO. DIR-TSO-3014

9. **LIMITATION OF LIABILITY.** Limitation of liability shall be handled in accordance with Appendix A, Section 10K of DIR Contract No. DIR-TSO-3014.

10. **General.** DIR contract NO. DIR-TSO-3014 and this EULA (a) constitutes the entire agreement between the parties relating to the subject matter hereof and supersedes any prior negotiations, proposals, representations and agreements; (b) may only be changed by a writing signed by the parties specifically referencing this EULA; (c) shall be interpreted in accordance with the laws of the State of Texas, U.S.A., excluding its choice of law rules; and (d) is not assignable, in whole or in part, by Customer, except to a parent or subsidiary of Customer or in connection with the sale of substantially all of the assets of Customer, in each case upon timely notice to Tegile of such assignment. Any prohibited assignment is null and void. Should a conflict arise between this agreement and DIR Contract No. DIR-TSO-3014, the DIR contract shall prevail. Failure by either party to enforce any term hereof shall not be deemed a waiver. The prevailing Party shall have the right to receive costs and expenses, including reasonable attorneys' fees, incurred in connection with the enforcement of this EULA. All claims arising out of or relating to the EULA shall be heard in an appropriate court sitting in the State of Texas, USA. In the event any provision of this EULA is declared invalid, the remainder shall continue in binding effect.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed as of the day and year written below.

Tegile Systems, Inc.

[CUSTOMER]

Signature

Signature

Name

Name

Title

Title

Date

Date