



**EMC CORPORATION, DBA SYSTEM PERIPHERALS, INC.
(EMC)**

**SOFTWARE LICENSE TERMS for
Texas Department of Information Resources**

DIR Contract for Products and Services No. DIR-TSO-2634 (“the Contract”) and this Software License Agreement set forth the general terms and conditions under which EMC and Customer may periodically engage EMC to provide software to Customer. In the event of a conflict of terms, DIR Contract for Products and Services No. DIR-TSO-2634 will control.

A. DEFINITIONS.

1. **“Affiliate”** means a legal entity that is controlled by, controls, or is under common “control” of EMC or Customer. “Control” means more than 50% of the voting power or ownership interests.
2. **“Confidential Information”** means and includes all confidential and proprietary information of EMC or Customer, including without limitation, work product, all business plans, product plans, financial information, software, designs, and technical, business and financial data of any nature whatsoever, provided that such information is marked or designated in writing as “confidential,” “proprietary,” or any other similar term or designation. Confidential Information does not include information that is (i) rightfully in the receiving party’s possession without obligation of confidentiality prior to receipt from the disclosing party, (ii) a matter of public knowledge through no fault of the receiving party, (iii) rightfully furnished to the receiving party by a third party without restriction on disclosure or use; or (iv) independently developed by the receiving party without use of or reference to the disclosing party’s Confidential Information.
3. **“Distributor”** means a reseller, distributor, system integrator, service provider, independent software vendor, value-added reseller, OEM or other partner that is authorized by EMC to license Software to end users. The term shall also refer to any third party duly authorized by a Distributor to license Software to end users.
4. **“Documentation”** means the then-current, generally available, written user manuals and online help and guides for Software provided by EMC.
5. **“Product Notice”** means the notice by which EMC informs Customer of product-specific use rights and restrictions, warranty periods, warranty upgrades and maintenance (support) terms. Product Notices will be delivered in an EMC quote or in writing to Customer and may be posted on the applicable EMC website, currently located at http://www.emc.com/products/warranty_maintenance/index.jsp. The terms of the Product Notice in effect as of the date of the EMC quote shall be deemed incorporated into and made a part of the relevant Customer purchase order when delivered to Customer. Each Product Notice is dated and is archived when it is superseded by a newer version. EMC shall not change any Product Notice retroactively with regard to any Software or Support Services listed on an EMC quote issued prior to the date of the applicable Product Notice. At Customer’s request, EMC shall without undue delay provide Customer with a copy of the applicable Product Notice and/or attach it to the relevant EMC quote.
6. **“Software”** means the EMC software product which requires acceptance of this Agreement, and any copies made by or on behalf of Customer, Software Releases, and all Documentation for the foregoing.
7. **“Software Release”** means any subsequent version of Software provided by EMC after initial delivery of Software but does not mean a new item of Software.
8. **“Support Services”** means the annual service available from EMC or its designee which provides Software Releases and support services for Software as set forth in the Product Notice.
9. **“Support Tools”** means any hardware, software and other tools and/or utilities used by EMC to perform diagnostic or remedial activities in connection with Software including any software or other tools made available by EMC to Customer to enable Customer to perform various self-maintenance activities.

B. Installation and Acceptance. EMC’s obligation, if any, to install Software as part of the Software’s licensing fee, is set forth in the Product Notice. Unless Customer notifies EMC that the Software is not in conformity with its documentation, acceptance that Software operates in substantial conformity to the Software’s Documentation occurs

three (3) business days after Delivery or notice of electronic availability, as applicable. For orders issued after December 10th of each year, acceptance shall occur upon EMC's delivery to a carrier at EMC's designated point of shipment. Notwithstanding such acceptance in either circumstance, Customer retains all rights and remedies as set forth in Section 5 (WARRANTY) of the Texas Ordering Agreement (TOA).

C. LICENSE

1. **General License Grant.** EMC grants to TEXAS and its AUTHORIZED ORDERING ACTIVITIES (Customer) a nonexclusive and nontransferable (except as otherwise permitted herein) license (with no right to sublicense) to use (i) the Software for Customer's internal business purposes; and (ii) the Documentation related to Software for the purpose of supporting Customer's use of the Software. Licenses granted to Customer shall, unless otherwise indicated on the EMC quote, be perpetual and commence on Delivery of the physical media or the date Customer is notified of electronic availability, as applicable. Documentation, is provided solely for purposes of supporting Customer's use of the Software.
2. **Licensing Models.** Software is licensed for use only in accordance with the commercial terms and restrictions of the Software's relevant licensing model, which are stated in the Product Notice and/or EMC quote. For example, the licensing model may provide that Software is licensed for use solely (i) for a certain number of licensing units; (ii) on or in connection with certain equipment, or a CPU, network or other hardware environment; and/or (iii) for a specified amount of storage capacity. Microcode, firmware or operating system software required to enable the Equipment with which it is shipped to perform its basic functions, is licensed for use solely on such Equipment.
3. **License Restrictions.** All Software licenses granted herein are for use of object code only. 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 insofar as reasonably necessary in connection with Customer's authorized internal use of the Software. Customer shall not, without EMC's prior written consent (i) use Software in a service bureau, application service provider or similar capacity; or (ii) make available Software in any form to anyone other than Customer's employees or contractors; or (iii) transfer Software to an Affiliate or a third party.
4. **Software Releases.** Software Releases shall be subject to the license terms applicable to Software.

D. SUPPORT SERVICES. If Customer has purchased Support Services for Software (or its related hardware, if any) directly from EMC, such shall be delivered by EMC as specified in the applicable Product Notice. If Customer has purchased maintenance and support from a Distributor, then EMC may provide Support Services to the extent that the Distributor has contracted with EMC to provide Customer with Support Services pursuant to the Support Exhibit to the TOA.

E. INDEMNITY. EMC shall indemnify Customer in accordance with Appendix A, Section 10, A to DIR Contract DIR-TSO-2634.

F. LIMITATION OF LIABILITY. Shall be determined in accordance with Appendix A, Section 10, K to DIR Contract DIR-TSO-2634.

G. Audit Rights. EMC shall have the right to audit Customer's usage of Software to confirm compliance with the agreed terms. Such audit is subject to reasonable advance notice by EMC and shall not unreasonably interfere with Customer's business activities, and shall be subject to Customer's security and confidentiality requirements. Customer will provide EMC with the support required to perform such audit and will, without prejudice to other rights of EMC, and address any agreed upon non-compliant situations identified by the audit by procuring additional licenses where applicable.

H. Termination. Termination of the agreement shall be made in accordance with Appendix A, Section 11, B, to DIR Contract DIR-TSO-2634.

I. Reserved Rights. All rights not expressly granted to Customer are reserved. In particular, 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 expressly permitted by applicable mandatory law, Customer shall not modify, enhance, supplement, create derivative works from, reverse assemble, reverse engineer, decompile or otherwise reduce to human readable form the Software without EMC's prior written consent.

J. Governing Law. This Agreement is governed by the laws of the State of Texas.