

Technical Support Services Agreement

This Technical Support Services Agreement (“Agreement”) is entered into as of this ____ day of _____, 20__ (“Effective Date”) by and between Tegile Systems, Inc., a California Corporation (“Tegile”) and _____ (“Customer”).

1. Services

- 1.1. Performance of Services. Tegile shall perform (or cause to be performed) the services set forth on Exhibit A (“Tegile Support Information”) on the schedule set forth herein.
- 1.2. Personnel. Tegile shall assign employees and subcontractors with suitable qualifications to perform the Services. Customer shall provide a suitable and safe work environment for Tegile employees and subcontractors while such Tegile personnel are on Customer’s premises. While on Customer’s premises, Tegile’s employees and subcontractors will not be required to sign any waivers, releases or other documents to gain access to Customer’s premises in connection with the performance of the Services, and any such waivers, releases or other documents shall be invalid and have no effect between the parties. Tegile may replace or change employees and subcontractors as required. Each Party agrees that it shall not actively solicit or hire any employees or contractors of the other Party who have directly been involved in the performance of Services under this Agreement without the prior written consent of such Party. Each Party’s obligations under this Section shall continue for a period of one (1) year after completion of the applicable Services without regard to conflict of law principles. Publically advertised employment does not apply to this provision.
- 1.3. Customer’s Obligations. Customer acknowledges that Customer’s timely provision of (and Tegile’s access to) Customer facilities, equipment, assistance, cooperation and complete and accurate information and data from Customer’s officers, agents, and employees (“Cooperation”) is essential to the performance of the Services, and that Tegile shall not be liable for any deficiency in performing the Services if such deficiency results from Customer’s failure to provide full Cooperation as provided hereunder. Cooperation includes, but is not limited to, designating a project manager to interface with Tegile during the course of Services, allocating and engaging additional resources as may be required to assist Tegile in performing the Services.

2. Payments.

- 2.1. Fees. Customer shall pay to Tegile the fees in accordance with Appendix C, Pricing Index of DIR Contract No. DIR-TSO-3014.
- 2.2. Expenses. With prior Customer approval, Customer shall reimburse Tegile for travel, lodging, communications, and out of pocket expenses incurred by Tegile in connection with providing Services in accordance and as allowable under the State of Texas Travel Management Program Guide.
- 2.3. Payment Terms. Unless otherwise specified in the quotation, Tegile shall submit to Customer, on a monthly basis, an invoice for all Services performed and expenses incurred during the prior month. All amounts payable shall be paid in accordance with Appendix A, Section 8J of DIR Contract No. DIR-TSO-3014.

- 2.4. Taxes. Taxes shall be handled in accordance with Appendix A, Section 8E of DIR Contract No. DIR-TSO-3014.
3. Term; Termination.
 - 3.1. Term. This Agreement shall commence on the Effective Date and continue in effect for the period set forth on Exhibit A ("Initial Term"). This Agreement may be renewed with 30 day written notice from Customer to Vendor prior to expiration.
 - 3.2. Termination. Termination shall be handled in accordance with Appendix A, Section 11B of DIR Contract No. DIR-TSO-3014.
4. Proprietary Rights. All intellectual property shall be handled in accordance with Appendix A, Section 5 of DIR Contract No. DIR-TSO-3014.
5. Limited Warranty.
 - 5.1. Limited Warranty. Tegile hereby represents and warrants to Customer that (i) the Services will be performed in a professional and workmanlike manner and in accordance with the requirements of DIR Contract, DIR-TSO-3014; Exhibit A to this Agreement ("Tegile Support Information"), and any agreed statements of work thereunder. In the event of a breach of warranty set forth in this Section 5.1, Tegile agrees to use commercially reasonable efforts to modify or correct the Services provided to Customer.
 - 5.2. No Other Warranties. EXCEPT AS EXPRESSLY PROVIDED IN THIS SECTION 5, TEGILE MAKES NO OTHER WARRANTIES, EITHER EXPRESS OR IMPLIED, AS TO ANY OTHER MATTER WHATSOEVER, INCLUDING, WITHOUT LIMITATION, THE CONDITION OF THE SERVICES OR ANY WORK PRODUCT DEVELOPED HEREUNDER, AND TEGILE HEREBY EXPRESSLY DISCLAIMS ANY IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR ANY PARTICULAR PURPOSE OR NEED, ACCURACY, NON-INFRINGEMENT OF THIRD PARTY RIGHTS AND TITLE, AND ANY WARRANTIES THAT MAY ARISE FROM THE COURSE OF DEALING, OF PERFORMANCE OR USAGE OF TRADE.
6. Limitation of Liability.
 - 6.1. General Limitation. Limitation of liability shall be handled in accordance with Appendix A, Section 10K of DIR Contract No. DIR-TSO-3014.
7. Confidentiality.
 - 7.1. Confidential Information. "Confidential Information" means: (a) the Services and any Work Product; (b) any business or technical information of Tegile or Customer, including but not limited to any information relating to Tegile's or Customer's product plans, designs.
 - 7.2. Exceptions. Confidential Information shall not include information that: (a) is in or enters the public domain without breach of this Agreement through no fault of the receiving party; (b) the receiving party was demonstrably in authorized possession prior to first receiving it from the disclosing party; (c) the receiving party can demonstrate was developed by the receiving party independently and without use of or reference to the disclosing party's Confidential Information; or (d) the receiving party receives from a third party without restriction on disclosure and without breach of a nondisclosure obligation.
 - 7.3. Obligations. To the extent allowable under the Texas Public Information Act and subject to any legal requirements, each party will maintain the Confidential Information of the other party in strict confidence and will exercise due care with respect to the handling and protection of such Confidential Information, consistent with its own policies concerning protection of its own

Confidential Information of like importance. Each party will use the Confidential Information of the other party only as expressly permitted herein, and will disclose such Confidential Information only to its employees, contractors and advisors who need to know in connection with the exercise of its rights and obligations under this Agreement (and only subject to binding use and disclosure restrictions at least as protective as those set forth herein executed in writing by such employees, contractors and advisors). However, each party may disclose Confidential Information of the other party pursuant to the order or requirement of a court, administrative agency, or other governmental body, provided that the receiving party gives reasonable notice to the other party to contest such order or requirement. Any such disclosure by the receiving party of the Confidential Information of the disclosing party, will, in no way, be deemed to change, affect or diminish the confidential and proprietary status of such Confidential Information.

- 7.3.1. Tegile acknowledges that the Customer is subject to the requirements of the Texas Public Information Act, and the Customer may disclose information concerning this Agreement either without consulting with Tegile or following consultation having taken its views into account
- 7.4. Each party acknowledges that improper use or disclosure of the Confidential Information of the other party might cause substantial harm to the other party that could not be remedied by the payment of damages alone. Accordingly, each party will be entitled to seek preliminary and permanent injunctive relief and other equitable relief for any breach of this Section 7, and in accordance with Appendix A, Sections 5E and 5F.
8. Miscellaneous.
 - 8.1. Assignment. Assignments shall be handled in accordance with Appendix A, Section 4D of DIR Contract No. DIR-TSO-3014.
 - 8.2. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Texas, without regard to conflict of law principles in effect for the State. In no way shall this be construed to waive the sovereign immunity of the State of Texas.
 - 8.3. Publicity. Any press release or marketing campaigns must have the prior approval of DIR and Customer.
 - 8.4. Severability. If any provision of this Agreement is found invalid or unenforceable, that provision will be enforced to the maximum extent permissible, and the other provisions of this Agreement will remain in force.
 - 8.5. Force Majeure. Force Majeure shall be handled in accordance with Appendix A, Section 11C of DIR Contract No. DIR-TSO-3014.
 - 8.6. Notices and Inquiries. All notices and inquiries shall be handled in accordance with Appendix A, Section 12A of DIR Contract No. DIR-TSO-3014.
 - 8.7. Independent Contractors. The parties to this Agreement are independent contractors. There is no relationship of partnership, joint venture, employment, franchise, or agency between the parties. Neither party will have the power to bind the other or incur obligations on the other's behalf without the other's prior written consent.
 - 8.8. Waiver. No failure of either party to exercise or enforce any of its rights under this Agreement will act as a waiver of such rights.

8.9. Entire Agreement. DIR contract No. DIR-TSO-3014 and this Agreement and its exhibits, the terms of which are incorporated herein by reference, are the complete and exclusive agreements between the parties with respect to the subject matter hereof, superseding and replacing any and all prior agreements, communications, and understandings (both written and oral) regarding such subject matter. This Agreement may only be modified, or any rights under it waived, by a written document executed by both DIR and Vendor. Should a conflict arise between this agreement and DIR Contract No. DIR-TSO-3014, the DIR contract shall prevail.

In witness whereof, the parties have caused this Agreement to be executed by their duly authorized representatives as of the Effective Date.

TEGILE SYSTEMS, INC.

By: _____

Name: _____

Title: _____

CUSTOMER

By: _____

Name: _____

Title: _____

Exhibit A

Tegile Support Information

Tegile's Support Services give Customers direct access to Tegile's resources to help ensure fast and expert response required to solve critical storage issues.

Term of Support: [One, or Three]

Tegile's support services include:

1. 24 x 7 unlimited phone access to support engineers

- Customers can reach Tegile Support on the phone by calling +1-855-483-4453 or via email at support@tegile.com
- Tegile's support engineers assist in:
 - Configuration assistance
 - Investigation, root cause analysis and resolution of any software issues
 - Identification and replacement of any failed hardware components that are field replaceable
- Response time targets
 - Urgent/P1 – 15 minutes
 - Important/P2 – 1 hour
 - Normal/P3 – 4 hour
 - Low/P4 – 8 hour

2. Parts replacement

Tegile offers two options for parts replacement of failed/faulty hardware

a. Option 1: Silver

i. Next Business Day replacement

Advanced replacement parts are delivered the next business day between 9am – 5pm Central Standard Time, provided the request is received before 3pm Pacific Standard Time on the prior business day.

b. Option 2: Gold

i. 4-Hour on-site parts replacement

On-site spares kit - All field replaceable parts are included in an onsite spares kit that will be stored at the customer site. If it is determined that a part needs to be replaced, the part from the on-site spares kit will be used to replace the failed/faulty part. To replenish the on-site spares kit, a replacement part will be shipped to be delivered next business day between 9am – 5pm Central Standard Time.

If the customer has purchased the on-site spares kit, ownership of same will reside with Customer. If Tegile has provided the on-site spares kit within a support contract, Tegile will maintain ownership of the spares kit.

3. Field technician to perform basic hardware replacement

A Tegile support engineer dispatches the field technician, once he/she determines that a part has failed and requires replacement.

Tegile or subcontractor will respond to the end-user location as soon as possible within a 4-hour response time or 'Next Business Day' response time (based on customer entitlement) and based on customer location. This is a best efforts response time; these response times have better than 99% achievement rates, but are not warranted or guaranteed.

All hardware on-site services are subject to acceptance by Tegile of location serviceability.

4. On-going software upgrades

Customers will have access to all minor and major, on-going feature release upgrades.

5. Call home for certain failure conditions

Tegile's Zebi storage appliance has 'Call Home' capabilities, which if configured sends email notification to Tegile's support team on certain failure events.

On receiving the Call-Home notification, Tegile's support team attempts to contact the customer to identify, confirm and resolve the failure event.

Tegile's product architecture provides high availability by providing redundant components on the hardware. On the Zebi appliances, the following parts are redundant:

1. Power Supplies
2. Controllers
3. Meta Data SSD: The Meta Data SSDs are always deployed in a mirrored pair
4. Write Cache SSD: The Write Cache SSD can be configured to be in a mirrored pair
5. Hard Drive: The Hard Drives will be configured to be part of a software RAID storage pool. In addition Hot Spare disks will be configured to be activated in case of a HDD failure.

On Tegile's Zebi appliance, the following parts are field replaceable and are included in the on-site spares kit:

- Power Supply
- Controller
- SSD
- HDD
- PCIe 10GB Ethernet, 8GB FC and LSI SAS cards

In case of a hardware failure in any of the above-mentioned parts, the field technician will replace the part with a replacement part from the on-site spares kit.