

State of Oregon  
Rider to CommVault Systems, Inc. End User License and Limited Warranty Agreement

This rider ("Rider") is attached to and made a part of the CommVault Systems, Inc. End User License and Limited Warranty Agreement ("EULA") between CommVault Systems, Inc. ("CommVault") and the State of Oregon, acting by and through the Department of Administrative Services ("Agency" or "You") dated April 19, 2011. This Rider amends and supersedes any provision to the contrary in the EULA and is effective as of the date of the EULA. This Rider and EULA, together with any exhibits, constitute the entire agreement (collectively "Agreement") between the parties and merges all prior and contemporaneous communications with respect to the matters described in this Agreement.

Notwithstanding any language in the EULA to the contrary, CommVault and Agency agree as follows:

1. Confidentiality.

a. Agency's obligation to maintain the confidentiality of CommVault's proprietary information provided to Agency under the EULA is conditioned by and subject to Agency's obligations under the Oregon Public Records Law, ORS 192.410 to 192.505, which may require disclosure of proprietary information as a "public record" unless exempt under ORS 192.501 or ORS 192.502.

b. CommVault acknowledges that, in the course of performing its responsibilities under this Agreement, CommVault and its employees or agents maybe exposed to or acquire information that is confidential to Agency or Agency's clients. Any information CommVault or its employees or agents receive or acquire relating to Agency or Agency's clients in the performance of this Agreement is deemed to be confidential information of Agency ("Confidential Information"), with the exception of:

- (i) information that becomes part of the public domain through lawful means and without breach of any confidentiality obligation by CommVault;
- (ii) information subsequently and rightfully received from third parties who have the necessary rights to transfer the information without any obligation of confidentiality;
- (iii) information that was known to CommVault prior to the effective date of the EULA without obligation of confidentiality;
- (iv) information that is independently developed by CommVault and documented in writing without use of, or reference to, any confidential information of Agency; and
- (v) information required to be disclosed by compulsory judicial or administrative process or by law or regulation.

If CommVault is required to disclose confidential information under clause (v), CommVault shall first give Agency notice and shall provide such information as may reasonably be necessary to enable Agency to take action to protect its interests.

c. CommVault shall comply with the Oregon Consumer Identity Theft Protection Act, ORS 646A.600 through 606A.628, to the extent applicable to this Agreement.

2. Indemnification.

a. To the extent Agency is required under the EULA to indemnify or hold CommVault harmless against claims brought by third parties against CommVault, Agency's obligation to indemnify is subject to the limitations of Article XI, section 7 of the Oregon Constitution and the Oregon Tort Claims Act, ORS 30.260 through 30.300.

b. CommVault shall indemnify and defend and hold Agency and the State of Oregon and their officials and employees harmless from all claims, suits, actions, proceedings, damages and costs (including reasonable attorneys' fees and expenses at trial, on appeal and in connection with any petition for review), which may be brought or made against Agency, the State of Oregon, or their officials or employees and arising out of or related to any of the following (each, an "indemnifiable loss"):

- (i) any personal injury, death or property damage caused by any grossly negligent act, omission, error, fault, mistake of CommVault, its employees, agents, or representatives in connection with or incident to CommVault's performance under or related to the EULA; or
- (ii)

the infringement of any patent, copyright, trademark, trade secret or other proprietary right of any third party by CommVault's delivery or Agency's use of the license provided under the EULA. CommVault's obligation to indemnify under this section is CommVault's sole liability to Agency with respect to third party infringement claims.

c. Agency shall promptly notify CommVault in writing of any action, claim or demand of which Agency becomes aware and which Agency reasonably expects to result in an indemnifiable loss. CommVault's obligation under this section does not extend to any indemnifiable loss to the extent caused by:

- (i) the negligence or willful misconduct of Agency, the State of Oregon, or their agents, officials or employees;
- (ii) Agency's Modification, or combination with other materials not provided by CommVault, of CommVault's software without CommVault's approval and in a manner inconsistent with the purpose or proper usage of the license as evidenced by the terms of the EULA; or
- (iii) Agency's failure to implement a release/update of the CommVault software which, if such implementation had occurred, would have avoided the claim of infringement.

3. Defense of Claims. To the extent CommVault is required under this Agreement to defend Agency against claims asserted by third parties, Agency shall reasonably cooperate in good faith, at CommVault's reasonable expense, in the defense of the claim and CommVault shall select counsel reasonably acceptable to the Oregon Attorney General to defend the claim and shall bear all costs of counsel. The Oregon Attorney General's acceptance of counsel may not be unreasonably withheld, conditioned or delayed. Counsel must accept appointment as a Special Assistant Attorney General under ORS Chapter 180 before counsel may act in the name of, or represent the interests of, the State of Oregon, Agency, its officers, employees or agents. Agency may elect to assume its own defense with an attorney of its own choice and its own expense at any time Agency determines important governmental interests are at stake. Agency shall promptly provide notice to CommVault of any claim that may result in an obligation on the part of CommVault to defend. Subject to these limitations, CommVault may defend a claim with counsel of its own choosing, on the condition that no settlement or compromise of any claim which requires Agency to engage in or refrain from any act or pay any amounts may occur without the consent of Agency, which consent must not be unreasonably withheld, conditioned or delayed.

If the software licensed to Agency by CommVault or any part thereof becomes, or CommVault reasonably determines that such software or any part thereof is likely to become, subject to a claim of infringement for which CommVault must indemnify Agency hereunder, CommVault may at its option (a) procure for Agency the right to continue to access and use the software, (b) replace or modify the software so that it becomes non-infringing without causing a material negative effect on the functionality provided by the infringing software; or (c) if, in CommVault's reasonable discretion, neither of the foregoing options are available, remove the infringing part of the software refund a pro rata portion (based on a three year straight line amortization) of the fee paid by Agency for the infringing part of the software in which case this EULA shall terminate with respect to the infringing part of the software.

4. Governing Law; Jurisdiction; Venue. This Agreement is governed by the laws of the State of Oregon, without giving effect to its conflict of law principles, and applicable federal law. Any action or suit brought by the parties relating to this Agreement must be brought and conducted exclusively in the Circuit Court of Marion County for the State of Oregon in Salem, Oregon, unless the claim must be brought in a federal forum, in which case it must be brought and adjudicated exclusively within the United States District Court for the District of Oregon. CommVault hereby consents to the personal jurisdiction of these courts, waives any objection to venue in these courts, and waives any claim that either of these courts is an inconvenient forum. Neither this section or any other term of this Agreement is a waiver by the State of Oregon of any form of defense or immunity, whether it is sovereign immunity, governmental immunity, immunity based on the Eleventh Amendment to the Constitution of the United States, or otherwise, from any Claim or from the jurisdiction of any court.

5. Attorney Fees. Neither party to this Agreement is entitled to obtain judgment from the other party for attorney fees it has incurred in any litigation between the parties or in defense of any claim asserted by a third party.

6. Dispute Resolution. Any dispute between the parties that is not resolved through informal discussions may be submitted to mediation upon the consent of both parties. If informal discussions or mediation are unsuccessful, either party may initiate litigation to resolve the dispute. The parties specifically disclaim any right to arbitration of disputes.

7. Termination.

a. Agency may terminate this Agreement at any time by destroying all copies of Software and corresponding documentation.

b. If Agency fails to comply with any provision of the Agreement and fails to cure the default with thirty (30) days of written notice from CommVault, CommVault may terminate this Agreement.

c. Nothing in this Agreement may be construed to permit any violation of Article XI, Section 7 of the Oregon Constitution or any other law regulating liabilities or monetary obligations of the State of Oregon. Agency's payment for services performed or license fees due after the last day of the current biennium is contingent upon Agency receiving funding, appropriations, limitations, allotments or other expenditure authority from the Oregon Legislative Assembly (including its Emergency Board) sufficient to allow Agency, in the exercise of its reasonable administrative discretion, to continue to compensate CommVault. Agency may immediately terminate this Agreement upon written notice if Agency fails to receive funding, appropriations, limitations, allotments, or other expenditure authority as contemplated by Agency's budget or spending plan and Agency determines, in its assessment and ranking of the policy objectives explicit or implicit in its budget or spending plan, that it is necessary to terminate this Agreement. Agency represents that upon issuance of a Purchase Order to CommVault or, if applicable, a CommVault authorized reseller, Agency has sufficient appropriations to make payments under the Purchaser Order.

d. Upon termination, Agency must destroy all copies of Software in Agency's possession or control.

8. Records Maintenance; Access. CommVault shall maintain all financial records relating to the subject matter of this Agreement in accordance with Generally Accepted Accounting Principles ("GAAP"). CommVault shall also maintain any other records pertinent to this Agreement in such a manner as to document clearly CommVault's performance of its duties under this Agreement. CommVault shall retain and keep accessible all financial records, books, documents, papers, plans, and writings for a minimum of six (6) years, or such longer period as may be required under applicable law, following final payment and termination of this Agreement, or until the conclusion of any audit, controversy, or litigation arising out of or related to this Agreement, whichever date is later. CommVault shall permit Agency and its duly authorized representatives access to CommVault's financial records and other books, documents, papers, plans, and examinations and audits and make excerpts and transcripts when requested.

9. Independent Contractor. CommVault shall act at all times as an independent contractor and not as an agent or employee of Agency. CommVault has no right or authority to incur or create any obligation for or legally bind Agency in any way. Although Agency reserves the right to evaluate the quality of CommVault's completed performance, Agency cannot and will not control the means or manner by which CommVault performs its obligations under this Agreement, except to the extent the means and manner in which these obligations are to be performed is specifically set forth in this Agreement. CommVault shall determine the appropriate means and manner of performing its obligations. CommVault is not an "officer," "employee" or "agent" of Agency or any other agency, office, or department of the State of Oregon, as those terms are used in ORS 30.265, and CommVault shall make no representations to third parties to the contrary. Neither party shall make any statements, representations, or commitments of any kind or to take any action binding on the other except as provided for in this Agreement or authorized in writing by the party to be bound.

10. Incorporation of Oregon Statutes. 279B.230 is incorporated into this Agreement by reference.

11. Counterparts. This Rider may be executed in two or more counterparts, by facsimile or otherwise, each of which is an original, and all of which together constitute one and the same instrument, notwithstanding that all parties are not signatories to the same counterpart.

12. Amendments.

a. This Agreement may be amended only by written agreement of the parties. To the extent CommVault wishes to revise the provisions of the EULA, CommVault shall notify Agency of any such change. If Agency accepts the proposed revisions, the parties shall amend the Agreement. If Agency rejects the revision, Agency may terminate this Agreement as set forth above.

b. The parties anticipate amending this Agreement to include other Products and Services, extend the term, and increase or decrease the fees due CommVault.

13. Assignments. Notwithstanding any provision in the EULA, Agency may transfer or assign all its rights under this Agreement, including the right to use the Software, to a sister agency or other political subdivision of the State of Oregon, provided Agency gives CommVault prior written notice of the transfer or assignment.

14. Tax Compliance Certificate. By executing this rider, the undersigned certifies under penalty of perjury that he or she is authorized to act on behalf of CommVault and that, to the best of the undersigned's knowledge, CommVault is not in violation of any Oregon Tax Laws. For purposes of this certification, "Oregon Tax Laws" means a state tax imposed by ORS 320.005 to 320.150 and 403.200 to 403.250 and ORS chapters 118, 314, 316, 317, 318, 321 and 323 and the elderly rental assistance program under ORS 310.630 to 310.706 and local taxes administered by the Department of Revenue under ORS 305.620.

15. Payment. Agency's obligation to pay late charges is subject to ORS 293.462.

**COMMVAULT:**

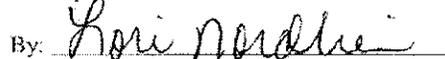
CommVault Systems, Inc.

By: 

As: DIR, SALES OPERATIONS  
4-20-2011

**AGENCY:**

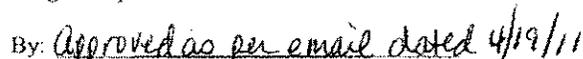
The State of Oregon, acting through  
the Department of Administrative Services

By:  4/20/11

As: State Procurement Analyst

Approved:

Oregon Department of Justice

By:  4/19/11  
Assistant Attorney General

Date: \_\_\_\_\_