

**State of Oregon**  
**Rider to Software License and Maintenance Agreement**

This rider (“Rider”) to the software license and maintenance agreement (“SL and M A”) between Trustwave Holdings, Inc. (“Licensor”) and the State of Oregon, its Agencies, and political subdivisions including ORCPP members, acting through its Department of Administrative Services (“Licensee”), a copy of which is attached as Exhibit A and B, amends and supersedes any provision to the contrary in the SL AND M A and is effective as of the date of purchase. This Rider and SL AND M A, together with any exhibits, constitutes the entire agreement (collectively “Agreement”) between the parties and merges all prior and contemporaneous communications with respect to the matters described in this Agreement. This software license and maintenance may be used by Licensee for the benefit of the Department of Human Services and the Oregon Health Authority, in support of their program service delivery efforts. The SL AND M A is procured under a Department of Administrative Services Price Agreement # 2590.

Notwithstanding any language in the SL AND M A to the contrary, Licensor and Licensee agree as follows:

1. Confidentiality.

a. Any obligation of Licensee to maintain the confidentiality of Licensor’s proprietary information provided to Licensee under the SL AND M A is conditioned by and subject to Licensee’s obligations under the Oregon Public Records Law, Oregon Revised Statutes (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. Licensor acknowledges that, it and its employees, subcontractors or agents in the course of performing the services under this Agreement may be exposed to or acquire information that is confidential to Licensee or Licensee’s clients. Any information Licensor or its employees or agents receive or acquire relating to Licensee or Licensee’s clients in the performance of this Contract is deemed to be confidential information of Licensee (“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 Licensor;
- (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 Licensor prior to the effective date of the SL AND M A without obligation of confidentiality;
- (iv) information that is independently developed by Licensor and documented in writing without use of, or reference to, any confidential information of Licensee; and
- (v) information required to be disclosed by compulsory judicial or administrative process or by law or regulation.

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

c. Licensor 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 Licensee is required under the SL AND M A to indemnify or hold Licensor harmless against claims brought by third parties against Licensor, Licensee’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.

3. Defense of Claims. To the extent Licensor is required under this Agreement to defend Licensee against claims asserted by third parties, Licensee shall reasonably cooperate in good faith, at Licensor's reasonable expense, in the defense of the claim and Licensor 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, Licensee, its officers, employees or agents. Licensee may elect to assume its own defense with an attorney of its own choice and its own expense at any time Licensee determines important governmental interests are at stake. Licensee shall promptly provide notice to Licensor of any claim that may result in an obligation on the part of Licensor to defend. Subject to these limitations, Licensor may defend a claim with counsel of its own choosing, on the condition that no settlement or compromise of any claim may occur without the consent of Licensee, which consent must not be unreasonably withheld, conditioned or delayed.

4. Governing Law; Jurisdiction; Venue. This Agreement is to be construed and enforced in accordance with 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. Licensor 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. In no way may this section or any other term of this Agreement be construed as 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 for Lack of Funding. 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. Licensee's payment for services performed or license fees due after the last day of the current biennium is contingent upon Licensee receiving funding, appropriations, limitations, allotments or other expenditure authority from the Oregon Legislative Assembly (including its Emergency Board) sufficient to allow Licensee, in the exercise of its reasonable administrative discretion, to continue to compensate Licensor.

Licensee may immediately terminate this Agreement upon written notice if Licensee fails to receive funding, appropriations, limitations, allotments, or other expenditure authority as contemplated by Licensee's budget or spending plan and Licensee 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.

8. Records Maintenance; Access. Licensor shall maintain all financial records relating to the subject matter of this Agreement in accordance with Generally Accepted Accounting Principles ("GAAP"). Licensor shall also maintain any other records pertinent to this Agreement in such a manner as to document clearly Licensor's performance of its duties under this Agreement. Licensor shall retain and keep accessible all financial records, books, documents, papers, plans, and writings for a minimum of two 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. Licensor shall permit Licensee, the Oregon Secretary of State's Office, and the federal government, and their duly authorized representatives access to Licensor's financial records and other books, documents, papers, plans, and examinations and audits to verify Licensor's compliance with the SL and MA and make excerpts and transcripts when requested.

9. Independent Contractor. Licensor shall act at all times as an independent contractor and not as an agent or employee of Licensee. Licensor has no right or authority to incur or create any obligation for or legally bind Licensee in any way. Although Licensee reserves the right to evaluate the quality of Licensor's completed performance, Licensee cannot and will not control the means or manner by which Licensor 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. Licensor shall determine the appropriate means and manner of performing its obligations. Licensor is not an "officer," "employee" or "agent" of Licensee or any other agency, office, or department of the State of Oregon, as those terms are used in ORS 30.265, and Licensor 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. ORS 279B.220, 279B.230 and 279B.235 are 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. 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 Licensor and that, to the best of the undersigned's knowledge, Licensor is not in violation of any Oregon Tax Laws. For purposes of this certification, "Oregon Tax Laws" means a state tax imposed by ORS 401.792 to 401.816 (Tax For Emergency Communications), chapters 118 (Inheritance Tax), 314 (Income Tax), 316 (Personal Income Tax), 317 (Corporation Excise Tax), 318 (Corporation Income Tax), and 323 (Cigarettes And Tobacco Products Tax), and the elderly rental assistance program under ORS 310.630 to 310.706; and any local taxes administered by the Department of Revenue under ORS 305.620.

13. Payment. Licensee's obligation to pay late charges is subject to ORS 293.462.

**LICENSOR:**

Trustwave Holdings, Inc.

By: \_\_\_\_\_

As: \_\_\_\_\_

**LICENSEE:**

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

By: \_\_\_\_\_

As: \_\_\_\_\_

Attachments:

Exhibit A – Maintenance Agreement

Exhibit B – End User License Agreement