



COMMVault SOFTWARE SERVICES MASTER SERVICES AGREEMENT

This Commvault Software Services Master Services Agreement (the “Agreement”) between Commvault Systems, Inc. (“Commvault”) and the client identified in the order form (“Client”) for the provision certain Services (as defined in Section 1.1) states the terms upon which Commvault provides such Services to Client. The “Effective Date” of the Agreement shall be the date upon which Client first executes the order form for Services (“Order Form”). By executing an Order Form or placing an order for additional Services, as described in Section 1.2, Client agrees to the terms of this Agreement; provided that, to the extent of any conflicting term, the Order Form shall supersede this Agreement solely with respect to the conflicting term. No other purchase order or other terms on any Client order, acknowledgement or other document shall have any force or effect.

1. SERVICES.

1.1. Commvault Services. Subject to Client’s compliance with this Agreement, Commvault will provide, and hereby grants Client the limited, non-exclusive, non-sublicensable right to access and use Commvault’s software as a service set forth in the Order Form executed by Client and purchased pursuant to Section 1.2 (“Services”). Such Commvault software is separately licensed pursuant to the terms of the End User License and Limited Warranty Agreement (the “EULA”). Services offerings are detailed in the Commvault Software Services Description and Security Guide located at <http://www.Commvault.com/services> and incorporated herein by reference (the “Services Guide”). Commvault may modify the Services offerings and the Service Guide from time to time, provided that such modifications do not materially, adversely affect the Services, and such modifications are effective as of the date noted in the Service description.

1.2. Additional Services. Following the execution of the Order Form, Client may order additional Services. Additional Services will be included in the definition of Services upon Commvault’s acceptance of the Order Form, and such Services are subject to the terms of this Agreement. All Services purchased according to this Section 1.2 co-terminate with the then current Term (as defined in Section 7.1) and are subject to any renewals thereof.

1.3. Services Activation. Following execution of the Order Form, or acceptance of an order for additional Services, Commvault shall initiate activation of the Service by providing Client with access to an account within the applicable Service (“Activation Date”).

1.4. Data Retention. Except as set forth below, Commvault will retain the Client’s data uploaded to the Services (the “Client Data”) for no longer than the Term of the Agreement. Client may implement its own specific retention policies within the Services. Any specific retention policies will be based on variables assigned to Client Data by Client and Client shall be solely responsible for the retention policies and any other policy settings, schedules, and configurable parameters applied to Client Data. Following termination or expiration of this Agreement, Commvault will retain the Client Data for one hundred and twenty (120) days. Client has the sole responsibility to save or delete the Client Data at the end of the Term or earlier termination or expiration of this Agreement. Commvault reserves the right, in its sole discretion, to retain or delete Client Data after such period. At no point during or after the Term shall CommVault be required to comply with Client instructions, including litigation hold requests, relating to Client Data.



1.5. Support. Commvault will provide the level of support applicable to the Services purchased by Client as set forth in the then-current Commvault Support Guide, incorporated herein, which may be changed from time to time. Commvault will conduct maintenance, to the extent reasonably possible, during times other than normal US business hours. In the event Commvault is performing maintenance which may result in disruption in the Services, Commvault will provide notice of such maintenance on its Maintenance Advantage website.

https://ma.commvault.com/AdditionalInfo/SaaS_MasterServicesAgreement

1.7. Trial Services. Commvault may provide Client with a temporary account to one or more of the Services free of charge (a "Trial Account"). The Trial Account shall be accessible for the trial period set forth in the Order Form, or if no trial period is stated, the trial period shall be thirty (30) days. During the trial period, the Trial Account and associated Services are provided "AS IS" and without representation or warranty of any kind. Commvault is under no obligation to store or retain Client Data during the trial period and may delete such data unless Client purchases the same Services as the Trial Account Services. Commvault will not be responsible for any direct, indirect, consequential or any other damages resulting from Client's access to, or use of the Trial Account or the Trial Account Services during the trial period. A Trial Account may not be used for production purposes.

1.8 Supply of Services. If at any time continued provision of the Services would compromise the security of the Services such as in the event of hacking attempts, denial of service attacks, mail bombs or other malicious activities either directed at or originating from Client's domains, Client agrees that Commvault may temporarily suspend Services to the Client. In such event, Commvault will promptly inform Client and will work with Client to resolve such issues, re-instating Service at the earliest opportunity.

1.9 Update Services. Commvault may update the Services at any time in order to maintain the effectiveness of the Services.

1.10 Location of Services. Subject to applicable legislation, or unless specified in an Order Form, Commvault may provide the Services from anywhere in the world and may, at any time, transfer the provision of the Services from one location to another.

2. FEES FOR SERVICES.

2.1. Payment of Fees. Client shall pay the fees for the Services as set forth in the Order Form, or the fees for additional Services ordered by Client ("Fees"). Fees may include Implementation Fees and/or Monthly Fees. Implementation Fees shall be invoiced upon execution of the Order Form, or in the case of additional Services on the date purchased ("Implementation Fees"). Seat license, email hosting or web/content archiving Fees ("Monthly Fees") are invoiced in arrears on the last of day of the applicable month following the Activation Date. Monthly Fees are not pro-rated. All Fees shall be due and payable within thirty (30) days following the date of invoice. Commvault may charge a late fee of 1.5% per month on any Fees not paid when due. Commvault reserves the right to suspend Client's access to the Services in the event Client fails to pay the Fees when due.

2.2. License Audits. From time to time Commvault may review Client's account within the Services. Additionally, Client agrees to provide Commvault with usage reports in the format Commvault may reasonably request. If Client's use of a Services exceeds Client's license for such Service, Client shall pay Commvault the difference in the Monthly Fees due.

2.3. Taxes. All Services purchased under this Agreement are exclusive of any value added and other applicable taxes. Such taxes will be added to any invoice for the Services. Client is responsible for all such taxes, fees or charges.

3. CLIENT OBLIGATIONS.

3.1 Obligations. Client agrees to do each of the following: (i) comply with all applicable laws, rules and regulations, including those regarding data privacy, transmission and storage of technical or personal data, communications, SPAM communications, copyright, export control, the Digital Millennium Copyright Act, FCPA, Commvault's acceptable use policy ("AUP") and the terms of this Agreement; (ii) pay the fees for the Services when due; (iii) use reasonable security precautions for providing access to the Services by its employees or other individuals to whom Customer provides access including private keys and other security options; (iv) cooperate with Commvault's reasonable investigation of outages, security problems, and any suspected breach of this Agreement; (v) comply with all license terms or terms of use for any software, technology, content, service or website (including "Client Content", as defined herein) (whether made available to Client through the Services by Commvault or a third party) Client uses or accesses when using the Services; (vi) give Commvault true, accurate, current, and complete information ("Account Information") when establishing Client's account associated with the Services; (vii) keep Client's billing contact and other Account Information up to date; (viii) be responsible for the use of the Services or Client Offering by Client, Service Users (as defined in Section 3.2, herein), any person to whom Client has given access to the Content or Services, and any person who gains access to Client's Content or the Services; (ix) use commercially reasonable efforts to prevent unauthorized access to or use of the Services and immediately notify Commvault of any known or suspected unauthorized use of Client's account, the Services, or any other breach of security; (x) where Client resells Services as permitted under this Agreement, Client must enter into an agreement with Client's customers and end users which shall include the relevant terms of this Agreement and release Commvault from any and all liability for damages or losses Client's customers or end users may incur as a result of using the Services; (xi) unless expressly authorized by Commvault, use the most current version of the Services or any portion thereof; and (xii) where Client provides a Client offering, Client must enter into an agreement with Client's customers or end users which shall include the relevant terms of this Agreement and release Commvault from any and all liability for damages or losses Service Users may incur as a result of using the Services or Client offering. Client may not use the Services in any situation where failure or fault of the Services could lead to death or serious bodily injury of any person, or to physical or environmental damage. For example, Client may not use, or permit any other person to use, the Services in connection with aircraft or other modes of human mass transportation, nuclear or chemical facilities, or Class III medical devices under the Federal Food, Drug and Cosmetic Act. In the event of a dispute between Commvault and Client regarding the interpretation of applicable law or this Agreement, Commvault's reasonable determination shall control.

3.2 Representations and Warranties. Client represents and warrants that the Client Data or Client Content does not and shall not: (a) infringe any third party right, including, without limitation, third party rights in patent, trademark, copyright, or trade secret; or (b) constitute a breach of any other right of a third party, including without limitation, any right under contract or tort theories. "Client Content" means any software, online service, feature or technology, data or other content that Client, Client's employees, Client's contractors, and Client's customer and end



users (collectively, “Service Users”) , may provide to Commvault pursuant to this Agreement. Content includes, but is not limited to, any of the foregoing that Service Users (i) upload to the Services, and/or (ii) create and/or modify using the Services.

3.3. Client Account. Client shall create an account within the Services. Client is responsible for (a) ensuring that Client’s account registration information is complete and accurate; and (b) the security and confidentiality of Client’s account credentials. Client shall designate at least one authorized user who shall have administrative access to Client’s account, with full access privileges and the authority to place orders under Section 1.2 (“Authorized User”). The Authorized User is responsible for managing all aspects of the Services, including without limitation, requesting changes or modifications to the Services, adding or removing users, webpages, URL(s), or adding or deleting Authorized Users. Client acknowledges and agrees that Commvault will only accept such requests from Authorized Users. Commvault may, in its sole discretion, refuse to comply with any request if the identity of the Authorized User making any such request cannot be reasonably verified. The Services may only be used by Client’s authorized employees, agents or contractors in the performance of their duties for Client. Client shall notify Commvault immediately of any unauthorized use of any password or account or any other known or suspected breach of security. Client shall not permit Commvault competitors to access the Services for any reason. Client is solely responsible for all activity which occurs within Client’s account and for the actions of its employees, contractors or agents, whether or not such person is or was acting within the scope of their employment, engagement or agency relationship.

3.4. Lawful Use. Client may only use the Services for lawful business purposes and in compliance with the acceptable use policy. If Client does not comply with this requirement, Commvault reserves the right to suspend all or part of the Services immediately during such non-compliance, without compensation to Client of any kind.

3.5 Acceptable Use Policy. Client shall comply with Commvault’s Acceptable Use Policy, incorporated by reference herein, available at <http://www.Commvault.com/legal-acceptable-use-policy>. The Acceptable Use Policy may be updated from time to time by Commvault. Client is prohibited from, and shall not copy, modify, adapt, transmit, sell, distribute or otherwise use the Services, in whole or in part, except as expressly permitted in this Agreement. Client is solely responsible for the Client Data and Client Content provided to Commvault via the Services.

3.4. Client Data Transmission. Client acknowledges and agrees that (a) it is Client’s sole responsibility to monitor Client Data to ensure that Client Data is properly transmitted to Commvault; (b) despite any monitoring services provided by Commvault, Client shall notify Commvault of any delivery failures or outages of Client’s systems (or its service providers) which may affect the transmission of Client Data; and (c) it is Client’s responsibility to encrypt data sent to Commvault. Commvault is not responsible or liable for any update, upgrade, patch, maintenance or other change which affects the transmission of Client Data to Commvault. It is Client’s responsibility to (i) ensure that Commvault is notified of all email domains, or other electronic messages to be archived; and (ii) to obtain all necessary consents with respect to the transmission, collection and storage of Client Data.

3.5. License to Client Content. “Client Data” means the data of Client which is either (a) transmitted to Commvault by or on behalf of Client in connection with the provision of the

Services; or (b) collected or received via the Services at the direction of Client. Client hereby grants Commvault the limited, non-exclusive, irrevocable, worldwide, royalty-free, license to use, import, distribute, access, transmit, download, display, perform, modify and distribute modifications of, perform, create and distribute derivative works of, copy, and reproduce Client Data solely as necessary to provide, support and improve the Services, or as otherwise authorized hereunder. Client represents and warrants that Client has all necessary rights in and to the Client Data to grant the foregoing license to Commvault.

3.6. Client shall indemnify, defend and hold harmless Commvault, its officers, directors, employees and agents, from and against all claims, losses, damages, liabilities and expenses (including reasonable attorneys' fees), arising from Client's breach of any of Client's obligations under this Section 3. Client's obligation for indemnification shall be predicated upon (a) Commvault providing Client with prompt written notice upon becoming aware of any such claim; provided that, Client shall not be relieved of its obligation for indemnification as the result of Commvault's failure to provide such notice unless Client is actually prejudiced in defending such a claim as a result of Commvault's failure to provide notice; (b) if requested by Client, and at Client's expense, Commvault reasonably cooperating with the defense of such claim; and (c) Commvault allowing Client sole and exclusive control over the defense and settlement of any such claim, provided that Commvault shall not be obligated to take any action or pay any money without its prior written consent.

4. CONFIDENTIALITY.

4.1. Confidential Information. "Confidential Information" means (a) the non-public business or technical information of either party, including but not limited to information relating to either party's product plans, customers, designs, costs, prices, finances, marketing plans, business opportunities, personnel, research, development or know-how; (b) any information designated by either party as "confidential" or "proprietary" or which, under the circumstances taken as a whole, would reasonably be deemed to be confidential; (c) the terms of this Agreement; or (d) Client Data. "Confidential Information" will not include information that: (i) is in, or enters, the public domain without breach of this Agreement; (ii) the receiving party lawfully receives from a third party without restriction on disclosure and without breach of a nondisclosure obligation; (iii) the receiving party knew prior to receiving such information from the disclosing party; or (iv) the receiving party develops independently without reference to the Confidential Information.

4.2. Confidentiality Obligations. Each party agrees: (a) that it will not disclose to any third party, or use for its own benefit or the benefit of any third party, any Confidential Information disclosed to it by the other party except as expressly permitted in this Agreement; and (b) that it will take reasonable measures to maintain the confidentiality of Confidential Information of the other party in its possession or control, which will not be less than the measures it uses to maintain the confidentiality of its own information of similar importance. Either party may disclose Confidential Information of the other party: (x) pursuant to the order or requirement of a court, administrative or regulatory agency, or other governmental body, provided that the receiving party, if feasible and/or legally permitted to do so, gives reasonable notice to the disclosing party to contest such order or requirement; or (y) to the parties agents, representatives, subcontractors or service providers who have a need to know such information provided that such party maintain the Confidential Information on a confidential basis.

4.3. Remedies. Each party acknowledges and agrees that a breach of the obligations of this Section 4 by the other party will result in irreparable injury to the disclosing party for which there will be no adequate remedy at law, and the disclosing party shall be entitled to seek equitable relief, including injunction and specific performance, in the event of any breach or threatened breach or intended breach by recipient.

5. CLIENT CONTENT DISCLAIMER

Client is solely responsible for the information contained in Client Content and disseminated on its websites or by other public means using the Services and complying with all laws, rules or regulations which apply to Client's business, including those related to the content of information provided to the public. Commvault is not responsible for, and expressly disclaims any liability for any information or Client Content provided on any web site, including truth, veracity and/or content of the information found on the website.

6. DATA PRIVACY

6.1 Collection of PII. Client consents to Commvault's collection, use and disclosure of information associated with the Services in accordance with Commvault's Privacy Policy, and to the processing of Client Data and Client Content in, and the transfer of Client Data and Client Content into, the regions Client selects.

6.2 Commvault Access to Client Content. The parties acknowledge that the structure of the Commvault systems used in connection with the Services makes it technically possible for Commvault to access Client Content; however, the nature of the Services is such that direct access to Client Content by Commvault is not intended. In the event Commvault is required to access Client Content, Commvault will not use or disclose Client Content to non-Commvault third parties except: (i) with consent or as otherwise directed or instructed by Client; (ii) in furtherance of or in connection with performing Services pursuant to this Agreement; (iii) to respond to duly authorized information requests of police, law enforcement, or other governmental authorities; (iv) to comply with any applicable law, regulation, subpoena, discovery request or court order; (v) to investigate and help prevent security threats, fraud, or other illegal, malicious, or inappropriate activity; (vi) to enforce/protect the rights and properties of Commvault or its affiliates or subsidiaries; or (vii) with the prior informed consent of the data subject about whom the PII pertains.

6.3 Data Controller. Client is and shall remain the data controller of the Client Data and Client Content it uploads or provides as part of the Services. Commvault is a service provider to Client and has the role of data processor. Commvault does not own or otherwise act as data controller of the Client Data and Client Content. It is Client's responsibility to verify that the security and privacy protections offered by the Services are adequate and in compliance with all applicable laws governing the type of data included in the Client Content which is uploaded in or provided to the Services. The data privacy and security measures relating to the provision of the Services is detailed in the Services Guide, incorporated herein.

6.4 Cross Border Data Transfers. For Clients that are required to comply with international data protection laws and regulations governing the international or cross-border data transfer of PII, and who are not using the Services' content delivery network option, please be advised that the data centers in which the infrastructure for the Services and Client Data and Client Content are housed are located in the United States of America and any obligations of Commvault



pursuant to this Agreement may be performed by any Commvault company, subsidiary, affiliate or authorized third party worldwide.

7. INTELLECTUAL PROPERTY RIGHTS.

As between Commvault and Client, all server hardware, software and applications required to operate the Services, and other associated technology or documentation, are the sole and exclusive property of Commvault. To the extent provided by Client to Commvault, any feedback relating to the Services or Software ("Feedback") shall be owned solely by Commvault.

Except as expressly stated herein, nothing in this Agreement shall serve to transfer to Client any intellectual property right in or to the Services, Software, Commvault trademarks or other intellectual property. Commvault retains all right, title and interest in and to the Services, Software and the associated technology and documentation. As between Commvault and Client, Client Data and Client Content is the sole and exclusive property of Client and, other than the limited license to Client Data and Client Content granted in Section 3, nothing in this Agreement shall serve to transfer to Commvault any intellectual property right in the Client Data and/or Client Content.

8. THIRD PARTY NETWORKS, PLATFORMS AND COMPONENTS.

8.1. Certain Services offered by Commvault may be dependent on or incorporate third party software, applications, platforms (such as third party social media or business networking platforms), messaging or communication services or API's ("Third Party Services"). These Third Party Services are not offered, controlled or provided by Commvault. In some cases the Third Party Service may make changes to its service, or components thereof, or discontinue a service without notice to Commvault. Accordingly, Commvault expressly disclaims any liability related to, or arising from, these Third Party Services, including Client's use thereof, or any updates, modifications, outages, delivery failures, corruptions, discontinuance of services or termination of Client's account by the Third Party Service. Commvault is not responsible or liable for how the Third Party Service transmits, accesses, processes, stores, uses or provides data to Commvault.

9. TERM, SUSPENSION AND TERMINATION.

9.1. Term. The Agreement shall commence of the Effective Date and shall remain in effect for an initial term of twelve (12) months from the Activation Date, unless a different term is specified in the Order Form. Unless Commvault or Client provides the other party with at least ninety (90) days prior written notice, this Agreement and all purchased Services will automatically renew for additional twelve (12) month terms. The initial twelve (12) month term plus any renewal terms are, collectively, the "Term."

9.2. Suspension. Without limiting other remedies, Commvault reserves the right to suspend any portion or all of Client's Services immediately without liability if: (a) Commvault reasonably believes that the Services are being used (or have been or will be used) by Client in violation of this Agreement; (b) Client's or Client's end user's use of or registration for the Services (i) poses a security risk to the Services or any third party, (ii) may adversely impact the Services, network, systems or data and content of any other Commvault Services client or third party, or (iii) may be

fraudulent; (c) Client's use of the Services may expose Commvault, its affiliates, or any third party to liability; (d) suspension is required by law; or (e) Client is in material breach or default in performance of its obligations under this Agreement or has otherwise violated this Agreement, if the reason for that breach, default or violation is not remedied to Commvault's reasonable satisfaction within thirty (30) days following Client's receipt of written notice of (i) the breach, default or violation, or (ii) non-payment pursuant to Section 2. The onus is on Client to resolve or cure the specific concerns to Commvault's reasonable satisfaction prior to the Services being reinstated. Commvault will not be liable to Client for any suspension in accordance with this Section 9.2. Fees will continue to apply and accrue during any suspension of the Services by Commvault.

9.3 Termination for Breach. Either party may terminate this Agreement if the other party materially breaches its obligations hereunder and such breach remains uncured for thirty (30) days following the written notice of such breach to the non-breaching party. Commvault reserves the right to suspend Client's access to the Services in the event of any breach of this Agreement and shall not be liable for any damages resulting from such suspension.

9.4. Termination for Bankruptcy. This Agreement shall terminate immediately, upon written notice, where (a) either party is declared insolvent or adjudged bankrupt by a court of competent jurisdiction; or (b) a petition for bankruptcy or reorganization or an arrangement with creditors is filed by or against that party and is not dismissed within sixty (60) days.

9.5. Effect of Termination. Upon any termination or expiration the Agreement: (a) all rights and licenses to the Services shall immediately terminate; (b) Client shall make payment to Commvault of any Fees then due and payable up to the date of termination, including any and all Minimum Commitment fees; and (c) upon request, each party shall return to the other or delete Confidential Information of the other party, provided however, if Client wishes Commvault to return Client Data, Client agrees to pay Commvault's then current data extraction and exportation fees.

10. WARRANTY AND DISCLAIMERS.

10.1. Commvault warrants that the Services shall be performed in a diligent, prompt and professional manner by personnel with the knowledge, skills expertise and training to provide the Services. Commvault further warrants that the Services shall be accessible 99.9% of the time measured on a monthly basis ("Performance Warranty"). The Performance Warranty shall not apply where the downtime or interruption of the Services resulted from: (a) routine or planned maintenance, repair and upgrade; (b) issues or failures with Client's environment, hardware, software, communications and internet providers, security settings; (c) issues or failures of Third Party Services or applications, software, hardware or other components not supplied by Commvault; (d) third party attacks, intrusions, distributed denial of service attacks or other third party actions; (e) issues related to third party domain name systems (DNS) errors or failures (f) Client's acts or omissions; or (g) force majeure events.

10.2. Proper Authority. Each party to this Agreement represents that it has the right and authority to enter into this Agreement, to grant to the other party the rights hereunder, and that the performance of the obligations under this Agreement will not breach or be in conflict with any other agreement to which either party is a party to.

10.3. Intellectual Property Warranty. Commvault represents that, to the best of Commvault's knowledge, the provision of the Services does not infringe any third party's United States patent or copyright.

10.4 Compliance with Laws. Commvault warrants that it will comply with the laws and regulations applicable to Commvault's business in the performance of the Services. Client agrees that it shall comply with the laws and regulations applicable to its industry. In the event that such laws and regulations require specific Services offerings that differ from the standard Services offerings, such offerings shall be set forth in the applicable Order Form and, if necessary, a detailed statement of work ("SOW") between the parties.

10.4. EXCEPT AS SET FORTH IN SECTIONS 10.1 — 10.3 ABOVE, COMMVAULT MAKES NO REPRESENTATION OR WARRANTY OF ANY KIND IN CONNECTION WITH THE SERVICES OR SOFTWARE, INCLUDING, WITHOUT LIMITATION, ANY OTHER INFORMATION OR MATERIALS PROVIDED, OR MADE AVAILABLE, BY COMMVAULT. COMMVAULT HEREBY DISCLAIMS ANY AND ALL REPRESENTATIONS AND WARRANTIES, WHETHER EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, ALL IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND NON-INFRINGEMENT. OTHER THAN AS EXPRESSLY SET FORTH HEREIN, COMMVAULT DOES NOT REPRESENT OR WARRANT THAT THE SERVICES OR SOFTWARE WILL BE AVAILABLE OR ERROR FREE. COMMVAULT SHALL NOT BE LIABLE FOR DELAYS, INTERRUPTIONS, SERVICE FAILURES OR OTHER PROBLEMS INHERENT IN THE USE OF THE INTERNET, ELECTRONIC COMMUNICATIONS OR OTHER SYSTEMS OUTSIDE THE REASONABLE CONTROL OF COMMVAULT. COMMVAULT MAKES NO REPRESENTATION OR WARRANTY THAT USE OF THE COMMVAULT SERVICES GUARANTEES LEGAL COMPLIANCE UNDER ANY FEDERAL, STATE OR INTERNATIONAL, OR ANY INDUSTRY SPECIFIC STATUTE, LAW, RULE, REGULATION, OR DIRECTIVE.

11. REMEDIES AND LIMITATION OF LIABILITY.

11.1. In the event of a breach of the Performance Warranty under Section 10.1, Commvault shall use commercially reasonable efforts to provide Client with an error correction or work-around that corrects the reported non-conformity, and will provide Client the credit specified in the applicable Service Level Agreement as set forth in the Services Guide. Credits must be requested in writing within thirty (30) days and must be verified by Commvault. Credits shall be credited towards Client's next invoice. The foregoing represents Client's sole remedy for any breach of the Performance Warranty.

11.2. IN NO EVENT WILL EITHER PARTY BE LIABLE TO THE OTHER, OR TO ANY THIRD PARTY, FOR ANY SPECIAL, INDIRECT, INCIDENTAL, PUNITIVE, EXEMPLARY OR CONSEQUENTIAL DAMAGES, INCLUDING BUT NOT LIMITED TO: (a) LOSS OF USE, (b) LOSS OF DATA, (c) LOSS OF BUSINESS OR PROFITS, or (d) COST OF PROCUREMENT OF SUBSTITUTE GOODS, SERVICES OR TECHNOLOGY, ARISING OUT OF OR IN CONNECTION WITH THE SERVICES, WHETHER BASED ON BREACH OF CONTRACT, BREACH OF WARRANTY, TORT (INCLUDING NEGLIGENCE), OR OTHERWISE, REGARDLESS OF WHETHER SUCH DAMAGE WAS FORESEEABLE OR WHETHER THE PARTY HAD BEEN ADVISED OF THE POSSIBILITY OF SUCH



DAMAGE. COMMVault's AGGREGATE LIABILITY HEREUNDER FOR ALL DAMAGES ARISING UNDER OR RELATING TO THE PROVISION OF SERVICES, NOTWITHSTANDING THE FORM (E.G., CONTRACT, TORT, OR OTHERWISE) IN WHICH ANY ACTION IS BROUGHT, SHALL BE LIMITED TO THE TOTAL AMOUNT OF REGULAR MONTHLY FEES ACTUALLY RECEIVED BY COMMVault FROM CLIENT FOR THE APPLICABLE SERVICES IN THE TWELVE (12) MONTH PERIOD PRECEDING THE MONTH IN WHICH THE INCIDENT CAUSING THE DAMAGES AROSE.

12. INDEMNIFICATION.

12.1. Client shall indemnify, defend and hold harmless Commvault, its officers, directors, employees and agents, from and against all claims, losses, damages, liabilities, costs, and expenses (including reasonable attorneys' fees) awards, fine, or settlement imposed on Commvault arising from or relating to Client's use of the Services, including but not limited to Client's: (a) actual or alleged negligence, (b) willful misconduct or gross negligence, (c) violation of law, (d) failure to meet the security obligations required by this Agreement, (e) misappropriation or infringement of a third party's intellectual property right or (f) violation of this Agreement. Client's obligations under this Section 12.1 include claims arising out of the acts or omissions of Client's employees, any other person to whom Client has given access to the Services, Client Data and Client Content, and any person who gains access to the Services, Client Data and Client Content as a result of Client's failure to use reasonable security precautions, even if the acts or omissions of such persons were not authorized by Client. If any portion of the Client Content or Client Data is, or is in the Client's opinion is likely to be, held to constitute an infringing item, Client shall at its election and expense either: (i) procure the necessary rights to that portion of Client Content alleged to be infringing; (ii) replace the alleged infringing portion with a non-infringing equivalent; (iii) modify the alleged infringing portion to make it non-infringing; or (iv) immediately termination use of the allegedly infringing portion of the Client Content.

12.2 Commvault will defend Client against third party claims, and indemnify and hold Client harmless against final judgments (including reasonable attorneys' fees), arising out of a breach of a claim that the Services infringe any United States patent, trademark or copyright, provided that (a) Client provides Commvault with prompt written notice upon becoming aware of any such claim; (b) Client reasonably cooperates with Commvault in the defense of such claim; and (c) Commvault has sole and exclusive control over the defense and settlement of any such claim. Notwithstanding the foregoing, Commvault will have no liability of any kind to the extent any claim is based on or arises from: (i) custom functionality provided to Client based on Client's specific requirements; (ii) any modification of the Services by Client or any third party; (iii) the combination of Services with any technology or other services not provided by Commvault; or (iv) the failure of Client to use updated or modified versions of the Services made available by Commvault to avoid such a claim. If the Services are subject to a claim of infringement of the intellectual property rights of a third party, Commvault may, in its sole discretion, either (a) procure for Client the right to continue to use the Services; (b) modify the Services such that they are non-infringing; or (c) if in the reasonable opinion of Commvault, neither (a) or (b) are commercially feasible, then Commvault may upon thirty (30) days prior notice to Client, terminate the applicable Service.

12.3 Process. Any third party claim subject to this Section 12, each party shall give the other party prompt written notice of such claim and will reasonably cooperate with the other party in providing information in connection with such claim.

12.4. The indemnification obligation contained in this Section 12.2, shall be Client's sole remedy, and Commvault's sole obligation, with respect to claim of infringement.

13. GENERAL PROVISIONS.

13.1. Export Restrictions. The Services, including any software, documentation and any related technical data included with, or contained in the Services, may be subject to United States export control laws and regulations. Client shall comply with the export laws and regulations of the United States and other applicable jurisdictions in providing or using the Services. Without limiting the foregoing: (a) Client represents that it is not named on any United States government list of persons or entities prohibited from receiving exports; (b) Client represents that Client will not use the Services in a manner which is prohibited under United States Government export regulations; (c) Client will comply with all United States antiboycott laws and regulations; (d) Client shall not provide the Service to any third party, or permit any User to access or use the Service in violation of any United States export embargo, prohibition or restriction; and (e) Client shall not, and shall not permit any user or third party to, directly or indirectly, export, re-export or release the Services to any jurisdiction or country to which, or any party to whom, the export, re-export or release is prohibited by applicable law, regulation or rule.

13.2. U.S. Government End User Provisions. Commvault provides the Services to federal government end users solely in accordance with the following: government technical data and software rights related to the Services include only those rights customarily provided to the public as defined in this Agreement. This customary commercial license is provided in accordance with FAR 12.211 (Technical Data) and FAR 12.212 (Software) and, for Department of Defense transactions, DFAR 252.227-7015 (Technical Data – Commercial Items) and DFAR 227.7202–3 (Rights in Commercial Computer Software or Computer Software Documentation). If a government agency has a need for rights not conveyed under these terms, it must negotiate with Commvault to determine if there are acceptable terms for transferring such rights, and a mutually acceptable written addendum specifically conveying such rights must be included in any applicable contract or agreement.

13.3. Assignment. Neither party may assign this Agreement, in whole or in part, without the other party's prior written consent, except that either party may assign this Agreement without the other's consent in the case of a merger, reorganization, acquisition, consolidation, or sale of all, or substantially all, of its assets. Any attempt to assign this Agreement other than as permitted herein will be null and void. Without limiting the foregoing, this Agreement will inure to the benefit of and bind the parties' respective successors and permitted assigns.

13.4. Force Majeure. No failure or omission by the parties hereto in the performance of any obligation of this Agreement shall be deemed a breach of this Agreement, nor shall it create any liability, provided the party uses reasonable efforts to resume performance hereunder, if the same shall arise from any cause or causes beyond the reasonable control of the parties, including, but not limited to the following, which, for the purpose of this Agreement, shall be regarded as beyond the control of the parties in question: (a) acts of God; (b) acts or omissions of any governmental entity; (c) any rules, regulations or orders issued by any governmental authority or any officer, department, agency or instrumentality thereof; (d) fire, storm, flood, earthquake,

accident, war, rebellion, insurrection, riot, strikes and lockouts; or (e) utility or telecommunication failures.

13.5. Governing Law. This Agreement will be governed by and construed in accordance with the laws of the State of Delaware, without regard to conflict/choice of law principles. Any legal action or proceeding arising under this Agreement will be brought exclusively in the federal or state courts located in Monmouth County, in the State of New Jersey, and the parties hereby irrevocably consent to the personal jurisdiction and venue therein.

13.6. Notices. Any legal notice under this Agreement will be in writing and delivered by personal delivery, express courier, or certified or registered mail, postage prepaid and return receipt requested. Notices will be deemed to be effective upon personal delivery, one (1) day after deposit with express courier, five (5) days after deposit in the mail. Notices will be sent to Client at the address set forth on the Order Form or such other address as Client may specify. Notices will be sent to Commvault at the following address: Commvault, Systems Inc., Attention: Legal, 1 Commvault Way, Tinton Falls, NJ 07724.

13.7. No Agency. The parties are independent contractors and will have no power or authority to assume or create any obligation or responsibility on behalf of each other. This Agreement will not be construed to create or imply any partnership, agency, or joint venture.

13.8. Entire Agreement. This Agreement is the complete and exclusive agreement between the parties with respect to the subject matter hereof, and supersedes any prior or contemporaneous agreements, negotiations and communications (both written and oral) regarding such subject matter.

13.9. Marketing. Client grants Commvault the limited right to disclose that Client is a customer of the Commvault. Commvault agrees to obtain the prior written approval for any use of Client's name in any print marketing materials, press release, blog posts, case studies or white papers.

13.10. Severability. If for any reason a court of competent jurisdiction finds any provision or portion of this Agreement to be unenforceable, that provision of the Agreement will be enforced to the maximum extent permissible so as to affect the intent of the parties, and the remainder of this Agreement will continue in full force and effect.

13.11. Waiver. Failure of either party to insist on strict performance of any provision herein shall not be deemed a waiver of any rights or remedies that either party shall have and shall not be deemed a waiver of any subsequent default of the terms and conditions thereof.

13.12. Electronic Signatures and Communications. The parties agree that electronic signatures, whether digital or encrypted, by an Authorized User or a party's authorized signatory are intended to authenticate such signatures and give rise to a valid, enforceable, and fully effective agreement. The parties expressly agree that any terms in Client's purchase order forms, or electronic communications, other than orders placed by Client pursuant to Section 1.2, form no part of this Agreement.

13.13. Modifications. Commvault may make non-material modifications to this Agreement by posting the modifications to the weblink to this Agreement. Material modifications may be made by posting an updated version of this Agreement with the updated version number to a new version weblink. https://ma.commvault.com/AdditionalInfo/SaaS_MasterServicesAgreement Client agrees to the updated version upon execution of an Order Form referencing the updated version



number and weblink, https://ma.commvault.com/AdditionalInfo/SaaS_MasterServicesAgreement and, upon execution, the terms of the updated version shall apply to all Services purchased by Client.