



August 14, 2019

The Board of Regents of the University of Nebraska, a public body corporate, for and on the behalf of The University of Nebraska at Omaha (UNO) hereby awards Arrow Enterprise Computing Solutions, Inc. (Arrow ECS) the University of Nebraska at Omaha Department of Information Services, Invitation to Bid for Commvault Software, Invitation 5271605, incorporated hereto as Attachment A. Arrow ECS's vendor response is incorporated hereto as Attachment B.

This award to distribute Commvault software shall extend from Effective Date through June 30<sup>th</sup>, 2020 with an option to renew for an additional two (2), one (1) year periods when mutually agreeable.


Notifications regarding the Agreement shall be sent to:

University of Nebraska at Omaha  
Procurement – EAB 208  
6001 Dodge St.  
Omaha, NE 68182

Arrow ECS                      855-326-4757                      [Jo.Zack@immixgroup.com](mailto:Jo.Zack@immixgroup.com)  
Jo Zack  
5612 24<sup>th</sup> N.  
Arlington, VA 22205

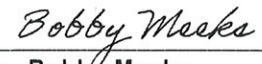
IN WITNESS WHEREOF, the authorized representatives of the parties have executed this Agreement as of this 22nd day of August, 2019.

**Board of Regents of the University of Nebraska (UNO)**

Signature:   
Printed Name: Douglas A. Ewald  
Title: Vice Chancellor Business, Finance and Business Development

DATE: 8.27.19

**Arrow Enterprise Computing Solutions, Inc.**

Signature:   
Printed Name: Bobby Meeks  
Title: Contract Manager

DATE: 08/22/2019

**Amendment #1 TO MASTER PRICE AGREEMENT  
MHEC-06152017  
BETWEEN  
MIDWESTERN HIGHER EDUCATION COMMISSION  
AND  
ARROW ENTERPRISE COMPUTING SOLUTIONS, INC.**

Whereas, this Amendment #1 ("Amendment #1") is entered into by and between Arrow Enterprise Computing Solutions, Inc. and the Midwestern Higher Education Commission (MHEC), contract number MHEC-06152017, effective as of February 15, 2018 (the Effective Date"),

Whereas, MHEC has entered into separate agreements with the New England Board of Higher Education (NEBHE), the Southern Regional Education Board (SREB) and the Western Interstate Commission for Higher Education (WICHE) respectively to allow entities in the NEBHE Member States, the SREB Member States and the WICHE Member States access to MHEC's Technology Initiative contracts, including this Master Agreement; and

Whereas, the parties entered into the Master Price Agreement dated October 30, 2017 (the "Master Agreement") and the parties now desire to amend the terms of the Master Agreement.

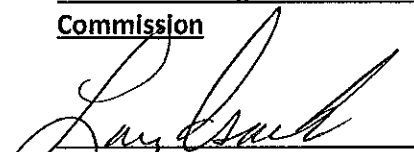
Now, therefore:

**Section 3. Member State.** Section 3. shall be deleted in its entirety and replaced with the following:

**3. Member State:** refers to any state that is a member, or an affiliate member, of the MHEC, NEBHE, SREB, and WICHE as defined herein and for MHEC in the above Whereas clause. The current NEBHE Member States are Connecticut, New Hampshire, Maine, Massachusetts, Rhode Island, and Vermont. The current SREB Member States are Alabama, Arkansas, Delaware, Florida, Georgia, Kentucky, Louisiana, Maryland, Mississippi, North Carolina, Oklahoma, South Carolina, Tennessee, Texas, Virginia, and West Virginia. The current WICHE Member States are Alaska, Arizona, California, Colorado, Hawaii, Idaho, Montana, Nevada, New Mexico, Oregon, Utah, Washington and Wyoming. The term "Member State" is used collectively to refer to members of MHEC, NEBHE, SREB, and WICHE.

Except as set forth above, the Master Price Agreement shall remain as stated. In the event of a conflict between the terms found elsewhere in the Master Agreement and this Amendment #1, this Amendment #1 shall control.

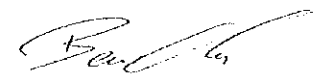
Midwestern Higher Education  
Commission

  
Signature

Larry Isaak, President  
Name and Title

3/6/18  
Date

Arrow Enterprise Computing Solutions, Inc.

  
Signature

Ben Klay, Vice President, Sales  
Name and Title

February 28, 2018  
Date

**MHEC Addendum to  
University of Nebraska at Omaha Invitation to Bid - Commvault Software**

**Whereas**, the University of Nebraska at Omaha (University) underwent a competitive sourcing event for the procurement and maintenance of Commvault Software pursuant to Invitation Number 5271605; and

**Whereas**, University extended access to any contract resulting from the competitive sourcing event to the organizations eligible (Eligible Organizations) to utilize contracts held by the Midwestern Higher Education Commission (MHEC); and

**Whereas**, MHEC, in conjunction with the University's competitive sourcing event, reserved the right to enter into an Addendum to any contract entered into between the University and the successful vendor resulting from the competitive sourcing event; and

**Whereas**, Arrow Enterprise Computing Solutions, Inc., 9201 East Dry Creek Road, Centennial, Colorado 80112-2818 (hereinafter "Vendor") was awarded the bid resulting in a contract with the University upon completion of the competitive sourcing event, such contract consisting of Invitation Number 5271605, Successful Vendors response dated June 17, 2016, and University of Nebraska contract award letter dated August 10, 2016 (Contract); and

**Whereas**, the Midwestern Higher Education Compact (Compact) is an interstate compact of twelve Midwestern states, such states being Illinois, Indiana, Iowa, Kansas, Michigan, Minnesota, Missouri, Nebraska, North Dakota, Ohio, South Dakota and Wisconsin (Member States); and MHEC, a nonprofit 501(c) (3), is a statutorily created governing body of the Compact established for the purposes, in part, of determining, negotiating and providing quality and affordable services for the Member States, the entities in those Member States, and the citizens residing in those Member States; and

**Whereas**, MHEC has entered into separate agreements with the Southern Regional Education Board (SREB) and the Western Interstate Commission for Higher Education (WICHE) respectively to allow entities in the SREB Member States and the WICHE Member States access MHEC's Technology Initiative contracts, including this Addendum to the Contract; and

**Therefore**, in consideration of the mutual covenants, conditions and promises contained herein, MHEC and successful Vendor agree as follows:

1. **Contract Modifications or Additional Terms and Conditions to the Contract:** The terms and conditions of the Contract shall apply to procuring Eligible Organizations unless amended or modified in this Addendum. For purposes of this Addendum MHEC and Vendor are referred to collectively as the "Parties" or individually as "Party".
2. **Term:** This Addendum shall be effective on October 23, 2017, and shall be coterminous with the Contract and any extensions of the Contract, unless terminated pursuant to the terms of the Addendum.

3. **Member State:** refers to any state that is a member, or an affiliate member, of the MHEC, SREB and WICHE as defined herein and for MHEC in the above Whereas clause. The current SREB Member States are Alabama, Arkansas, Delaware, Florida, Georgia, Kentucky, Louisiana, Maryland, Mississippi, North Carolina, Oklahoma, South Carolina, Tennessee, Texas, Virginia, and West Virginia. The current WICHE Member States are Alaska, Arizona, California, Colorado, Hawaii, Idaho, Montana, Nevada, New Mexico, Oregon, Utah, Washington and Wyoming. The term "Member State" is used collectively to refer to members of MHEC, SREB and WICHE.
4. **Eligible Organizations:** This Addendum shall be a framework for the general program under which the MHEC, will make aware to Eligible Organizations the ability to buy Products and Services from Resellers, as defined in Section 8 below. Eligible Organizations shall include:
  - a) all not-for-profit private and public institutions and/or systems of higher education (colleges, universities, community colleges, technical institutions and equivalent institutions) located in a Member State;
  - b) all K-12 schools and school districts located in a Member State;
  - c) all city, county, and other local government located in a Member State
  - d) all state governments and their departments of Member States;
5. **Order:** Purchase Orders issued by Eligible Organizations to Resellers.
6. **Product:** refers to the full line of Commvault software licenses and support that Vendor makes available to Resellers for resale to Eligible Organizations in Member States and as set forth in the Product List on Exhibit A.
7. **Services:** refers to the full line of Commvault consulting services, and training that Vendor makes available to Resellers for resale to Eligible Organizations in Member States, and as set forth in the Services List as Exhibit A. Eligible Organizations purchasing Services, including professional services, training and/or on-site consultative services, shall negotiate the terms and conditions of such purchase with the party providing the services.
8. **Reseller:** refers to resellers authorized by Vendor to resell Commvault Products and Services to Eligible Organizations in Member States. Vendor will certify and register Resellers by ensuring that when reselling to Eligible Organizations Resellers adhere to terms no less material than those set forth in this Master Agreement. This may be accomplished through Vendor's quote process using Vendor's quote form and standard Terms and Conditions of Sale if Vendor determines that such documents are sufficient to ensure that for any sales made by Resellers to Eligible Organizations in Member States Reseller will adhere materially to the same terms as those in this Addendum or by separate contracts entered into by Vendor and Reseller. Vendor must maintain a dedicated website and provide a list of authorized Resellers at <http://ecs.arrow.com/MHEC>. At any time during the term of this Addendum should MHEC protest the inclusion of a Reseller on this list for cause, Vendor will require that Reseller undergo recertification. Vendor will notify MHEC in writing, within 30 days, Resellers additions or deletions made to the list.
9. **Scope of Offering:** Procuring Eligible Organizations shall purchase from Reseller, and Vendor shall distribute to Reseller who will in turn resell the Products and Services to procuring Eligible Organizations in accordance with the terms established between the Eligible Organization and Reseller. This Addendum sets forth the discount schedule for the Products

and Services. Accordingly, Resellers shall provide Products or Services only upon the issuance and acknowledgement by Reseller of a valid Order. An Eligible Organization may purchase any quantity of Products and Services listed on Product and Services List - Exhibit A at the discounts stated therein. For large Order quantities, Reseller and Eligible Organization may negotiate quantity discounts below the Product and Services List discount(s) for a given Order. As it sees fit, Reseller may offer under this Addendum promotional discounts that result in discounts below those listed in the Product and Service List. Vendor is solely responsible for fulfillment of the responsibilities under the terms and conditions of this Addendum. The MHEC shall not be liable for any Eligible Organization that executes an Order. An Eligible Organization shall not be responsible for any other Eligible Organization that executes its own Order. Vendor agrees to allow MHEC to extend the same discount pricing model as that set forth on Exhibit A – Product and Services Discount, and will consent to MHEC’s disclosure of the list authorized Resellers at <http://ecs.arrow.com/MHEC> to SREB and WICHE so as to allow for Eligible Organizations within SREB and WICHE to buy Products and Services from the Resellers. For avoidance of doubt SREB and WICHE will not be third party beneficiaries to this Agreement.

**10. Purchasing Under Addendum:**

- a) **Products and Services:** Eligible Organizations shall purchase from the Reseller the Products and/or Services listed on the Product or Services List by delivering to Reseller an Order. The Order should include: (i) Eligible Organization by name and address; (ii) the quantity, and description of the Product or Service with SOW if applicable, that Eligible Organization desires to purchase or license; (iii) the discount of the Product or Service in accordance with that as agreed to between Reseller and Eligible Organization; (iv) the “bill-to” address; (v) the “ship-to” address; (vi) the requested delivery dates and shipping instructions; (vii) a contact name and telephone number; and (viii) reference this Addendum. Eligible Organizations purchasing Services, including professional services, training and/or on-site consultative services, shall negotiate the terms and conditions of such Services with the party providing the Services.
- b) Each Reseller purchase order that is acknowledged by Vendor will become subject to terms and conditions that materially reflect the terms and conditions of this Addendum; no additional terms or conditions will be added to this Addendum as a result of the acknowledgment of the Resellers’ purchase order by Vendor.
- c) All Products furnished will be subject to acceptance pursuant to the terms and conditions of Section 12. A (“Acceptance”) by Eligible Organization after delivery. No substitutions or cancellations are permitted without approval of the Eligible Organization. Nothing in this Section precludes any agreements for the use of electronic purchase orders.
- d) Eligible Organization may request in writing changes to an Order (“Change Request”) that Reseller has previously accepted. In response to a Change Request, Reseller will provide written quotations to the Eligible Organization, including any changes to discounts, license fees, shipment or completion dates. A Change Request is a separate Order subject to Reseller’s change order process.
- e) Reseller will accept a purchasing card for order placement in addition to accepting a purchase order.

- 11. Quantity Guarantee:** This Addendum is not a purchase order, nor does it guarantee any purchases to be made by any Eligible Organization. This Addendum is not an exclusive

agreement. Eligible Organizations may obtain Product and Services from other sources during the term of the Addendum.

**12. Payment Provisions:**

- a) **Acceptance.** (1). Products shall be deemed accepted upon successful download, installation and acceptance of the End User License Agreement. (2) For Services, Eligible Organization shall accept or reject the Services upon completion of installation and verification tests. Acceptance shall be evidenced by Eligible Organization's signature of an Installation Completion document attesting to successful completion of the Services. Rejection of the Services must be provided in writing at the time of Service completion and will state the reason for such rejection. If Services are not rejected at the time of completion they will be deemed accepted. Products shall be invoiced upon shipment. Services shall be invoiced upon acceptance.
- b) **Payment of Invoice.** Invoices shall be submitted to the Eligible Organization. Payments shall be remitted to Reseller at the address shown on the invoice. Payment shall be tendered to Reseller within thirty (30) days of the date of the invoice. After the thirtieth (30) day from the date of the invoice, unless mutually agreed to, interest shall be paid on the unpaid balance due to Reseller at the rate of one and one-half percent (1½) per month. The Eligible Organization shall make a good faith effort to pay within thirty (30) days after the date of the invoice.
- c) **Dispute Notice.** Eligible Organization shall notify Reseller of any billing discrepancies or disputes about an invoice within ten (10) days after receiving it, specifying with particularity the basis of any such dispute ("Dispute Notice"). Tender of a Dispute Notice does not relieve Eligible Organization of its obligations to pay the undisputed portion of any invoice subject to a Dispute Notice. Any amounts that were the subject of a Dispute Notice and are subsequently resolved in favor of Reseller will be subject to interest charges accruing from the original due date.
- d) **Partial Shipment.** In the event an Order is shipped incomplete (partial), the Eligible Organization must pay for each shipment as invoiced by Reseller unless the Eligible Organization has clearly specified "No Partial Shipment" on each Order.
- e) **Payment of Taxes.** The discounts listed under this Addendum do not include, and Eligible Organization shall reimburse Reseller for, any and all taxes and/or duties assessed against or payable by Reseller in connection with the sale of licensing of software or performance of Services except for taxes imposed upon Reseller and/or Vendor's net income. Unless the Eligible Organization provides a proof of tax exemption, taxes will be additive to the contracted discount.

13. **Shipping:** Vendor shall ship the Products F.O.B. destination unless otherwise agreed to by Reseller and Eligible Organization. Title to Products shall pass to Eligible Organization upon shipment. Risk of loss or damage to the Products shall pass to Procuring Eligible Organization upon delivery to the Procuring Eligible Organization. Vendor shall bear the risk of loss with respect to returned Products except for loss or damage directly attributable to the negligence of the Eligible Organization.

**14. Product Delivery:**

- a) Unless otherwise agreed to by Eligible Organization and Reseller, Reseller will deliver Products to Eligible Organization within thirty (30) days from receipt of Order. If delivery

cannot be made within thirty (30) days from receipt of Order, Reseller will notify Eligible Organization as soon as it becomes aware that delivery in the agreed upon time is not feasible, and Eligible Organization, as its sole remedy, can cancel the Order by written, electronic, or facsimile notification or request expedited delivery.

- b) Vendor may choose to deliver Products electronically where practicable. This option must be under independent control of each Eligible Organization.
15. **Discount Guarantees:** The Eligible Organization shall pay the lower of the discounts contained in the Product and Services List or an Announced Promotion Discount or Large Order Negotiated Discount (provided that, with respect to the applicability of Large Order Negotiated Discounts, the Eligible Organization is a party to the Large Order Negotiated Discount negotiations and the purchase is part of the project for which the Large Order Negotiated Discount was negotiated). Vendor shall require that Resellers not sell Products or Services to Eligible Organizations at discounts higher than those awarded via this Addendum and in instances where this provision is applied, this Addendum shall be referenced in the authorized Reseller's invoice.
16. **Product List:** Vendor agrees to maintain the Product List in accordance with the following provisions:
- a) The initial Product Discount on Exhibit A will be based on a discount off the Product list price currently in effect with Commvault. Except as set forth in Section 15, "Discount Guarantees", the discount percentage set forth in the Product List shall not decrease for the duration of this Addendum. List discounts are subject to change with prior written notice.
  - b) Should the list price of a Product decrease at any time during this Addendum, Vendor agrees to a similar price reduction as basis for the discount calculation on the Product and Service List for the same Product, prior to the Administrative Fee set forth in Paragraph 41 of this Addendum.
  - c) Vendor shall add new product(s) to the Product List when new product(s) shall become available for sale by Commvault. The discounts for all new Products shall incorporate, to the extent possible, similar or comparable discount levels provided herein, as agreed by the Parties.
  - d) Vendor will delete obsolete and discontinued Products from the Product and Services List on a timely basis.
  - e) The Product and Service List shall be maintained by Vendor on an Internet web site. Notification of specific changes to this list shall be provided to the MHEC within thirty (30) days of modification. Failure to comply with the requirements in this Paragraph 16, Product List, will be grounds for action to be taken against Vendor, including termination of this Addendum.
17. **Services List:** Vendor agrees to maintain the Service List in accordance with the following provisions:
- a) The initial Service discount on Exhibit A will be based on a discount off the Service list prices currently in effect with Commvault. Except as set forth in Section 15, "Discount Guarantees", the discount percentage set forth in the Product and Service List shall not decrease for the duration of this Addendum. List price increases are subject to change with prior written notice. Should the list price of a Service on the Product and Services list decrease at any time during this Addendum, Vendor agrees to a similar price reduction as a

basis for the discount calculation for the same Service, prior to the Administrative Fee set forth in Paragraph 41 of this Addendum.

- b) The Service List shall be maintained by Vendor on an Internet web site. Notification of specific changes to this list shall be provided to MHEC within thirty (30) days of modification. Failure to substantially comply with the requirements in this Paragraph 17, Service List, will be grounds for action to be taken against Vendor, including termination of this Addendum.

**18. License:**

Eligible Organization shall use all licensed Product in accordance with this Section 18. All Commvault software licenses provided by Vendor are subject to Commvault's Standard End User Software License (EULA) and as amended in the attached Exhibit B AMENDMENT TO COMMVAULT END USER LICENSE AGREEMENT.

**19. Warranties:**

- a) Software: The Product warranty is set forth in Commvault's End User License Agreement and Limited Warranty Agreement, as attached hereto in Exhibit B.
- b) Services: Vendor represents and warrants that the Services provided under this Addendum will be performed in a skillful, competent, timely, professional and workmanlike manner, and that the Vendor employees, agents and contractors assigned to perform Services under this Addendum have the proper skill, training and background so as to be able to perform in a skillful, competent, timely, professional and workmanlike manner. The warranty period for Services is thirty (30) days from the date of Acceptance by Eligible Organization as determined by Section 14 A of this Addendum. If Vendor determines that it cannot, in a commercially reasonable manner correct any Services, then Vendor may, in its sole discretion, refund to Eligible Organization the price of the Services less a reasonable adjustment for beneficial use.
- c) Vendor warrants that it has obtained the rights that are necessary to grant to Reseller the right to market and sell the Products and Services under this Addendum. Vendor further warrants and represents that, to the best of its knowledge, Commvault owns all rights and title to Products and Services.
- d) MHEC acknowledges that except as specifically set forth or referenced in this paragraph, THERE ARE NO REPRESENTATIONS OR WARRANTIES OF ANY KIND (INCLUDING, WITHOUT LIMITATION, IN ADVERTISING MATERIALS, BROCHURES, OR OTHER DESCRIPTIVE LITERATURE) BY VENDOR OR ANY OTHER PERSON, EXPRESS OR IMPLIED, AS TO THE CONDITION OR PERFORMANCE OF ANY PRODUCTS, THEIR MERCHANTABILITY, OR FITNESS FOR A PARTICULAR PURPOSE, OR OTHERWISE. VENDOR ASSUMES NO RESPONSIBILITY OR LIABILITY WHATSOEVER FOR MANUFACTURER'S PRODUCT SPECIFICATIONS OR THE PERFORMANCE OR ADEQUACY OF ANY DESIGN OR SPECIFICATION PROVIDED TO VENDOR BY OR ON BEHALF OF THE MHEC OR ANY ELIGIBLE ORGANIZATION.

**20. Termination:**

- a) At any time MHEC may terminate this Addendum, in whole or in part, by giving Vendor ninety (90) days written notice; provided however, the Eligible Organization cannot terminate a specific Order for convenience after it has been acknowledged by Vendor. At any time, Vendor may terminate this Addendum, in whole or in part, by giving MHEC ninety (90) days written notice. Such termination shall not relieve Vendor of any warranty or other service obligations incurred under the terms of this Addendum.



- b) Either Party may terminate this Addendum for cause based upon material breach of the Addendum by the other Party, provided that the non-breaching Party shall give the breaching Party written notice specifying the breach and shall afford the breaching Party a reasonable opportunity to correct the breach. If within thirty (30) days after receipt of a written notice the breaching Party has not corrected the breach or, in the case of a breach that cannot be corrected in thirty (30) days, begun and proceeded in good faith to correct the breach, the non-breaching Party may declare the breaching Party in default and terminate this Addendum effective immediately. The non-breaching party shall retain any and all remedies available to it under the law.
  - c) In the event that either Party be adjudged insolvent or bankrupt by a court of competent jurisdiction, or upon the institution of any proceedings by or against it seeking relief, reorganization or arrangement under any laws relating to insolvency, or upon any assignment for the benefit of creditors, or upon the appointment of a receiver or trustee of any of its property or assets, or upon the liquidation, dissolution or winding up of its business, then and in any such event this Addendum may immediately be terminated or cancelled by the other Party hereto.
  - d) In the event this Addendum expires or is terminated for any reason, an Eligible Organization shall retain its rights in all Product and Services accepted prior to the effective termination date or ordered before the effective termination date and ultimately delivered.
21. **Non-Appropriation:** This provision applies only to publicly funded Eligible Organizations. The terms of this Addendum and any resulting Order is contingent upon sufficient appropriations being made by the legislature or other appropriate governing entity. Notwithstanding any language to the contrary in this Addendum or in any Order or other document, Eligible Organization may terminate its Orders if sufficient appropriations are not made by the governing entity to pay amounts due for multiple year agreements. The Eligible Organization's decision as to whether sufficient appropriations are available shall be accepted by Reseller and shall be final and binding. An Eligible Organization shall provide sixty (60) days' notice, if possible, of its intent to terminate an Order for non-appropriation. The Eligible Organization shall send to Reseller a notice of its decision not to appropriate funds for the installment sale payments for the subsequent fiscal year. Such termination shall relieve the Eligible Organization, its officers and employees from any responsibility or liability for the payment of any future Orders. However, all outstanding invoices from Reseller will be paid by the Eligible Organization.
22. **Records and Audit:** Vendor agrees to require Resellers to maintain detailed records pertaining to the sale of Services rendered and Products delivered for a period of six (6) years from the date of Acceptance of each Order. These records shall be subject to inspection by Eligible Organization and appropriate governmental authorities with Eligible Organization's state. The Eligible Organization shall have the right to audit billings either before or after payment provided that Eligible Organization has provided Reseller with thirty (30) day prior written notice of such audit and the audit is limited to normal working hours, initiated one time during any 12-month period. Payment under this Addendum shall not foreclose the right of the Eligible Organization to recover excessive or illegal payments.
23. **Independent Contractor:** Vendor and its agents and employees are independent contractors and are not employees of MHEC or any Eligible Organization. Vendor has no authorization, express or implied to bind MHEC or any Eligible Organization to any

agreements, settlements, liability or understanding whatsoever, and agrees not to perform any acts as agent of MHEC or any Eligible Organization, except as expressly set forth herein. Nothing in this Addendum is intended, or shall be deemed, or construed to constitute a partnership or a joint venture between the Parties.

- 24. Patent, Copyright, Trademark and Trade Secret Indemnification:** To the extent represented and warranted by Commvault, Vendor will indemnify, defend and hold the MHEC harmless from a claim that any Product purchased by Reseller to fulfill the requirements of this Addendum infringes on another person's or entity's patent, copyright, trade secret or any other proprietary right of a third party. Vendor will have no obligation under this section with respect to any Claim of infringement resulting from (a) Services performed, or Product provided, pursuant to Eligible Organization's specification or design; (b) an Eligible Organization's unauthorized modification of a Product; or (c) any combination, operation, or use of the Product with systems other than those provided by Vendor to the extent that such a Claim is caused by such modification, combination, operation, or use of the Product. Following notice of a Claim or a threat of actual suit, Vendor will, at its own expense and option, (1) resolve the claim in a way that permits continued ownership and use of the affected Product; (2) provide a comparable replacement at no cost; or (3) in the case of a Product accept return of the Product, freight collect, and provide a reasonable depreciated refund and in the case of a Service, provide a refund less a reasonable adjustment for beneficial use. Notwithstanding the foregoing, any indemnification available pursuant to this Section 24 shall be limited to what is provided by Commvault.
- 25. Indemnification:** Vendor will indemnify, protect, save and hold harmless the MHEC, as well as the representatives, agents and employees of the MHEC, from any and all claims or causes of action related to a claim of personal injury or damage to tangible property, including all reasonable attorneys' fees incurred by the MHEC, arising from Vendor's negligence or willful misconduct during the performance of the Addendum by Vendor, Vendor's agents, or employees. MHEC shall give Vendor written notice, by registered mail, promptly after it becomes aware of any claim to be indemnified hereunder, and, subject to any legally required approval, including approval of state's attorney general, or consistent with applicable law, permit Vendor to control the defense of any such claim or action at Vendor's own expense. MHEC agrees that Vendor may employ attorneys of its own choice to appear and defend the claim or action and that the MHEC shall do nothing to compromise the defense of such claim or action or any settlement thereof and shall provide Vendor with all reasonable assistance that Vendor may require. Notwithstanding the foregoing, any indemnification pursuant to this Section 25 shall be limited to what is provided by Commvault to Vendor.

**26. Limitation of Liability:** Vendor shall not be liable to MHEC for any direct damages in excess of the amounts paid for the Product and Services subject to the claim. The foregoing limitation does not apply to any indemnification obligations under this Addendum provided that the Product manufacturer provides such indemnification to Vendor or End User, or to damages resulting from personal injury or property damage caused by Vendor's negligence or willful misconduct. Neither Vendor nor the MHEC shall be liable for any special, indirect, incidental, consequential or punitive damages arising out of or relating to this Addendum, whether the claim alleges tortious conduct (including negligence) or any other legal theory.

**27. Confidentiality:**

- a) While Vendor is providing Services hereunder, Eligible Organization or Vendor may disclose to the other certain business information identified as confidential ("Confidential Information"). All such information shall be marked or otherwise designated as "Confidential" or "Proprietary". In order for such information to be considered Confidential Information pursuant to this Section 27 of the Addendum, it must conform to the data practices laws or similar type laws of the State in which the Eligible Organization is located or was founded. Information of a proprietary nature which is disclosed orally to the other party shall not be treated as Confidential Information unless it is stated at the time of such oral disclosure that such information is Confidential Information and such information is reduced to writing and confirmed as Confidential Information to the recipient within ten (10) days after oral disclosure. Both Eligible Organization and Vendor agree that, with respect to Confidential Information it receives (as "Recipient") from the other (as a "Discloser") in connection with this Addendum or an Order pursuant to this Addendum, that it (i) will use such Confidential Information solely for the purposes contemplated by the Addendum or an Order placed under this Addendum, (ii) shall not use any such Confidential Information for any other purpose and in particular shall not so use such Confidential Information in any manner either to the detriment of the Discloser or for the benefit of the Recipient or any third party, and (iii) shall receive and hold such Confidential Information in trust and confidence for the benefit of the Discloser.
- b) Each Party will make reasonable efforts not to disclose the other Party's Confidential Information to any third party, except as may be required by law, unless such Confidential Information: (i) was in the public domain prior to, at the time of, or subsequent to the date of disclosure through no fault of the non-disclosing party; (ii) was rightfully in the non-disclosing party's possession or the possession of any third party free of any obligation of confidentiality; or (iii) was developed by the non-disclosing party's employees or agents independently of and without reference to any of the other party's Confidential Information. Confidential Information shall remain the property of and be returned to the Disclosure (along with all copies or other embodiments thereof) within fifteen (15) days of (a) the termination or completion of the Order under this Addendum, or (b) the earlier receipt by the Recipient from the Discloser of a written demand following a breach by Eligible Organization or Vendor of this Addendum or an order under this Addendum directing that Confidential Information described generally or specifically in such demand be returned to the Discloser.
- c) Notwithstanding anything to the contrary in this Agreement or amendment to this Addendum, Vendor agrees to comply with the data practices or similar type laws of the State in which Eligible Participant is located or founded.

28. **FERPA (and Other Privacy Laws):** Where applicable the Parties agree to comply with the Family Education Rights and Privacy Act (FERPA), the Health Insurance Portability and Accountability Act (HIPPA), the Gramm-Leach Bliley Act (GLBA) and all other state and federal privacy laws; that are applicable to this Addendum, and Vendor agrees to require resellers to do the same.
29. **Amendments:** Except as provided for in Section 16, "Product List"; and Section 17 "Service List"; this Addendum shall only be amended by written instrument executed by the Parties.
30. **Scope of Agreement:** This Addendum incorporates all of the agreements of the Parties concerning the subject matter of this Agreement, and all prior agreements have been merged into this Addendum. No prior agreements, verbal or otherwise, of the Parties or their agents shall be valid or enforceable unless embodied in this Addendum.
31. **Invalid Term or Condition:** If any term or condition of this Addendum shall be held invalid or unenforceable, the remainder of this Addendum shall not be affected and shall be valid and enforceable.
32. **Enforcement of Agreement:** A Party's failure to require strict performance of any provision of this Addendum shall not waive or diminish that Party's right thereafter to demand strict compliance with that or any other provision. No waiver by a Party of any of its rights under this Addendum shall be effective unless express and in writing, and no effective waiver by a Party of any of its rights shall be effective to waive any other rights.
33. **Web Site Maintenance:** MHEC agrees to maintain and support Internet website(s) for access to the Product List, Service List, Product description, Product specifications, Service descriptions, Service specifications and other aids in accordance with mutually agreed to terms. Vendor shall notify MHEC when there are additions and/or deletions made to the list of authorized Resellers.
34. **Equal Opportunity Compliance:** The Parties agree to abide by all applicable laws, regulations, and executive orders pertaining to equal employment opportunity, including federal laws and the laws of the state in which its primary place of business is located. In accordance with such laws, regulations, and executive orders, the parties agree that no person in the United States shall, on the grounds of race, color, religion, national origin, sex, age, veteran status or handicap, be excluded from employment with or participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity performed by a Party under this Addendum. If a Party is found to be not in compliance with these requirements during the life of this Addendum, such Party agrees to take appropriate steps to correct these deficiencies.
35. **Compliance with Law:** The Parties shall comply with all applicable laws and governmental regulations, which by their terms, apply to their performance pursuant to this Addendum.
36. **Applicable Law:**
  - a) INTENTIONALLY OMITTED.
  - b) As between the MHEC and Vendor this Addendum will be construed in accordance and its performance governed by the laws of the state of Minnesota. Venue for all legal

proceedings arising out of this Addendum, or breach thereof, shall be in a state or federal court with competent jurisdiction located in the State of Minnesota.

- c) As between Eligible Organization, and Resellers, Orders will be construed in accordance with and its performance governed by the laws of the state in which the Eligible Organization resides as agreed to by the Reseller and Eligible Organization and if the Eligible Organization is a governmental educational entity, nothing in this Addendum will be construed to deprive such an entity of any applicable sovereign immunity that is provided for by law. Venue for all legal proceedings arising out of this Addendum, or breach thereof, shall be in a state or federal court with competent jurisdiction located in the State, which the Eligible Organization resides.

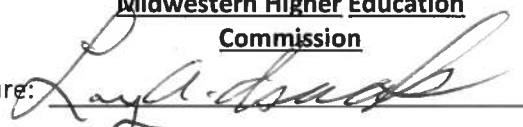
37. **Conflict of Interest:** The Parties warrant that it presently has no interest and shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of services required under this Addendum.
38. **Assignment:** Neither Party shall sell, transfer, assign or otherwise dispose of the Addendum or any portion thereof or of any right, title, or interest herein without the prior written consent of the other Party. This consent requirement includes reassignment of this Addendum due to change in ownership, merger, or acquisition of a Party or its subsidiary or affiliated corporations. Nothing in this Section 38 shall preclude Vendor from employing a subcontractor in carrying out its obligations under this Addendum. Vendor's use of such subcontractors will not release Vendor from its obligations under this Addendum.
39. **Survival:** Certain paragraphs of this Addendum including but not limited to Indemnification; and Limitation of Liability shall survive the expiration of this Addendum. Software licenses, warranty and service agreements, and non-disclosure agreements that were entered into under terms and conditions of this Addendum shall survive this Addendum.
40. **Notification:**
- a) **Between the Parties:** Whenever under the terms of this Addendum any notice is required or permitted to be given by one Party to the other, such notice shall be given in writing and shall be deemed to have been sufficiently given for all purposes hereof upon evidence of receipt of a facsimile, overnight delivery or mail, postage prepaid, to the Parties at the addresses set forth below, or at such other address as the Parties may direct in writing from time to time:

Midwestern Higher Education Compact	Arrow Enterprise Computing Solutions, Inc.
Name: Nathan Sorensen	Name: Contracts and Proposals Group
Address:	Address: 9201 East Dry Creek Road
105 Fifth Avenue South, Suite 450	Centennial, CO 80112-2818
Minneapolis, Minnesota 55401	
Email: <a href="mailto:Nathans@mhec.org">Nathans@mhec.org</a>	Email: <a href="mailto:ContractsNA@arrow.com">ContractsNA@arrow.com</a>
Fax: 612-767-3353	

41. **Administrative Reporting and Fees:** On a quarterly basis (where quarter one is January 1 – March 31 and the quarter one report is due by April 30), Vendor will, in a timely manner, make available to MHEC reports and information generated by this Addendum, including, but not limited to, state-by-state and institution-by-institution information on sales volume and volume savings. The information and reports shall be accompanied with a check payable to Midwestern Higher Education Commission for an amount equal to one and one-half percent (1.5%) of the net Product and Service sales for that quarter period (the “Fee”). The Parties will mutually agree to any change to the percentage of the Fee. Any change in the Fee may also require a change in the Product and Service List discount. Vendor shall not include in the calculation of the Fee any sales of Products and Services to the University of Nebraska system institutions.
42. **The MHEC Not Liable for Eligible Participants:** MHEC is not liable to Vendor or any other entities for the failure of any Eligible Organization to make any payment or to otherwise fully perform pursuant to the terms and conditions of an Order.
43. **Announcements and Publicity:** Any announcements and publicity related to this Addendum must receive the prior approval of the Parties. Neither Party will make any representations of the other Party’s opinion or position as to the quality of effectiveness of the Products and/or Services that are the subject of this Addendum without the prior written consent of the other Party, (or Eligible Organization).
44. **Marketing:** Vendor will provide commercially reasonable assistance to MHEC in developing and implementing appropriate marketing strategies including seminars, printed materials and a full service, on-line MHEC-specific web site to receive information on Products, supplies, Services and discounts. Vendor will respond to Resellers requesting a quote who receive RFPs from Eligible Organizations for the Products offered under this Addendum.
45. **Oversight Committee:** An Oversight Committee comprised of representatives of Eligible Organizations shall be appointed by the MHEC to assist and support MHEC and Vendor in developing and refining the implementation of this Addendum. This shall include, but not be limited to, assistance with commercially reasonable efforts for supporting marketing strategies, representing the interests of Eligible Organizations in assuring quality and timely Products and Services; and to advise Vendor on the effectiveness of its implementation progression. There will be an annual meeting between Vendor and the MHEC (and perhaps members of the Oversight Committee) to perform a contract health check; including items such as those above.
46. **Force Majeure:** Neither Vendor nor the MHEC shall be liable to the other during any period in which its performance is delayed or prevented, in whole or in part, by a circumstance beyond its reasonable control, which circumstances include, but are not limited to, the following: act of God (e.g., flood, earthquake, wind); fire; war; act of a public enemy or terrorist; act of sabotage; epidemic; strike or other labor dispute; riot; piracy or other misadventure of the sea; embargo; inability to secure materials and / or transportation; or, a restriction imposed by legislation, an order or a rule or regulation of a governmental entity. If such a circumstance occurs, the Party unable to perform shall undertake reasonable action to notify the other Party of the same.

47. **Sovereign Immunity:** Notwithstanding anything to the contrary in this Addendum or Order under this Addendum, this Addendum shall not be construed to deprive an Eligible Organization of its sovereign immunity, or of any legal requirements, prohibitions, protections, exclusions or limitations of liability applying to this Addendum or afforded by Eligible Organization's State to the Eligible Organization.
48. **Miscellaneous:** All parties to this Addendum may retain a reproduction (e.g., electronic image, photocopy, facsimile) of this Addendum that shall be considered an original and shall be admissible in any action to enforce this Addendum. The Parties shall accept this Addendum by its authorized signature. Except as provided for in this Addendum, all changes to this Addendum must be made in writing signed by both parties; accordingly, any additional terms on the Orders shall be of no force or effect.

The Parties, by their representatives signing below, agree with the terms of this Addendum and further certify that their respective signatories are duly authorized to execute this Agreement.

<p><u>Midwestern Higher Education</u> <u>Commission</u></p> <p>Signature: </p> <p>Name: <u>Larry Isaak</u></p> <p>Title: <u>President</u></p> <p><u>Midwest Higher Education Compact</u></p> <p>Address: <u>1300 South Second Street, Suite 130</u></p> <p><u>Minneapolis, Minnesota, 55454</u></p> <p>Date: <u>10/30/17</u></p>	<p><u>Arrow Enterprise Computing</u> <u>Solutions, Inc.</u></p> <p><u>Ben Klay</u></p> <p><u>Vice President, Sales, NA</u></p> <p><u>Arrow Enterprise Computing Solutions, Inc.</u></p> <p><u>9201 East Dry Creek Road</u></p> <p><u>Centennial, CO 80112-2818</u></p> <p><u>10-30-17</u></p>
---	---

**Exhibit A – Product and Services List**

Commvault Offering	Discount %
Software	15%
Maintenance	23% of Net Software cost
Training and Certifications	0%
Professional Services, Implementation Support, and Remote Managed Hosting	0%
Orders Greater Than \$150,000	20%



**Exhibit B**  
**Amendment to**  
**Commvault System Inc.**  
**End User License and Limited Warranty Agreement**

This Amendment to Commvault Software Release 11.0.0 End User License and Limited Warranty Agreement ("EULA") applies to all acquisitions of Commvault System Inc. ("Commvault") Software by or for governmental or governmental education entities in the United States, and applies to any U.S. state. Should there be a conflict between the Commvault System Inc. End User License and Limited Warranty Agreement and this Amendment, the terms and conditions of this Amendment to the EULA will apply.

Except with respect to feedback, You retain all ownership and intellectual property rights in and to Your data and information. Commvault will not process any personnel data in the performance of its services.

This EULA shall be governed by the laws of the State where You are located, without regard to any provisions concerning the applicability of the laws of other jurisdictions. You agree that exclusive jurisdiction for any claim or dispute arising out of or in connection with this EULA resides in the courts of the State where You are located and you hereby consent and submit to the personal jurisdiction of such courts for the purposes of litigating any such action. Nothing in this End User License Agreement shall be construed to deprive You of sovereign immunity that is mandated by applicable law.

You agree that any information provided to You by Commvault, including the Software and related Documentation, shall be considered confidential information. You shall not disclose such confidential information without the prior written consent of Commvault. Notwithstanding the foregoing, confidential information may be disclosed as required by law or court order. Commvault will indemnify, defend and hold You harmless to the extent based on a claim that Commvault's Software infringes on another person's or company's patent, copyright, trade secret or any other proprietary right of a third party. Commvault will have no obligation under this section with respect to any claim of infringement resulting from an unauthorized modification of Software by You or from any combination, operation, or use of the Software with systems other than those provided by Commvault to the extent that such a claim is caused by such modification, combination, operation, or use of the Software. Following notice of a claim or threat of actual suit, Commvault will, at its own expense and option, (1) resolve the claim in a way that permits continued ownership and use of the affected Software; (2) provide a comparable replacement at no cost; or (3) accept return of the Software and provide a reasonable depreciated refund.

**Limitation of Liability**

NEITHER COMMVAULT, NOR ANY OF ITS LICENSORS, WILL, UNDER ANY CIRCUMSTANCES, BE LIABLE TO YOU OR ANY OTHER PARTY, FOR COSTS OF PROCUREMENT OF SUBSTITUTE PRODUCTS OR SERVICES, LOST PROFITS, LOSS OF INFORMATION OR DATA OR ANY OTHER SPECIAL, INCIDENTAL, PUNITIVE, INDIRECT OR CONSEQUENTIAL DAMAGES WHATSOEVER OR FOR DEATH, PERSONAL INJURY OR DAMAGE TO PHYSICAL PROPERTY OR ENVIRONMENTAL DAMAGES, REGARDLESS OF THE FORM OF ACTION, EVEN IF COMMVAULT HAS BEEN NOTIFIED

OF THE POSSIBILITY OF SUCH DAMAGES AND NOTWITHSTANDING ANY FAILURE OF AN ESSENTIAL PURPOSE OF THIS LIMITED WARRANTY.

IN THE EVENT COMMVAULT OR ITS LICENSORS ARE SUBJECT TO ANY LIABILITY IN CONNECTION WITH THE SOFTWARE PRODUCTS OR ANY SERVICES FOR ANY REASON WHATSOEVER, WHETHER ARISING FROM NEGLIGENCE, BREACH OF CONTRACT OR OTHERWISE, NEITHER COMMVAULT'S LIABILITY NOR THE LIABILITY OF ITS LICENSORS SHALL EXCEED THE SUM PAID BY YOU TO COMMVAULT FOR THE SOFTWARE PRODUCT WHICH WAS FOUND TO HAVE NOT COMPLIED WITH THE LIMITED WARRANTY. THIS LIMITATION SHALL APPLY EVEN IF COMMVAULT OR ITS LICENSORS HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES AND NOTWITHSTANDING ANY FAILURE OF ESSENTIAL PURPOSE OF ANY LIMITED WARRANTY. THE FORGOING LIMITATION OF LIABILITY SHALL NOT BE APPLICABLE TO COMMVAULT'S INDEMNIFICATION OBLIGATIONS UNDER THIS END USER LICENSE AGREEMENT.

All indemnification obligations of You under this EULA shall only apply to the extent permitted by applicable law.

**Commvault Systems, Inc.**

**End User License and Limited Warranty Agreement**

Commvault® Software Release 11.0.0

(Including Microsoft® SQL Server™ 2008 Enterprise Edition, Microsoft® SQL Server™ 2008 R2 Enterprise Edition, Microsoft® SQL Server™ 2012 Enterprise Edition, SQL Server™ 2008 Express Edition, SQL Server™ 2008 R2 Express Edition, SQL Server™ 2012 Express Edition and Windows Pre-Installation Environment)

**End User License Agreement**

**IMPORTANT- READ CAREFULLY: THIS END USER LICENSE AGREEMENT (“EULA”) IS A LEGAL AGREEMENT BETWEEN YOU (EITHER AS AN INDIVIDUAL OR ENTITY) (“YOU”) AND COMMVAULT SYSTEMS, INC. (“COMMVAULT”) FOR SERVICES PROVIDED BY COMMVAULT, AS WELL AS THE ABOVE-REFERENCED SOFTWARE PRODUCT(S), WHICH INCLUDES COMPUTER SOFTWARE AND MAY INCLUDE ASSOCIATED MEDIA, AND “ONLINE” OR ELECTRONIC DOCUMENTATION (“SOFTWARE”). BY INSTALLING, COPYING OR OTHERWISE USING THE SOFTWARE, OR RECEIVING THE SERVICES YOU AGREE TO BE BOUND BY THE TERMS OF THIS EULA. IF YOU DO NOT AGREE TO THE TERMS OF THIS EULA, DO NOT INSTALL OR USE THE SOFTWARE. YOU SHALL INFORM ALL USERS OF THE SOFTWARE OF THE TERMS AND CONDITIONS OF THIS EULA.**

This EULA, grants You, the user, a non-exclusive license to use the Software under the terms and conditions stated herein. You agree that all updates, enhancements, maintenance releases, patches, bug-fixes or other modifications to the Software provided to You, on a when and if available basis, shall be governed by the terms and conditions, including the limited warranty, exclusive remedies and limitations of liability provisions, contained in this EULA, or the then-current version of this EULA. This EULA may be amended from time to time by Commvault, in its discretion, and will be made available at [www.Commvault.com](http://www.Commvault.com). Except as otherwise provided herein, the license granted herein shall be perpetual provided You comply with the terms hereof. This EULA shall be in effect until terminated except as expressly otherwise provided herein. You may terminate this EULA at any time by destroying all copies of Software and corresponding documentation. This EULA will terminate immediately without notice from Commvault if You fail to comply with any provision of this EULA. Upon termination, You must destroy all copies of Software in Your possession or control.

You may: (i) use the Software, with the same or lower version number identified herein, in numbers equal to the number of licenses purchased for all items, or in the event You are licensing the Software on a capacity basis, up to the maximum capacity purchased; (ii) make copies of the Software, documentation or other user information accompanying the Software solely for back-up purposes, provided such back-up copies are only utilized as a replacement for the original copy on the same computer that the Software was previously installed; and, (iii) make a copy of or print documentation provided in electronic form for Your internal use only, and You may use Commvault trademarks solely for these purposes, but You must incorporate all patent, copyright, trademark and other notices included on the materials on any copies or partial copies that You make.

You may not: (i) make a copy of any of the Software for any purpose not explicitly permitted herein; (ii) provide commercial hosting services, sell, sublicense, rent, loan or lease the Software to another party, without the prior written consent of Commvault; (iii) except to the extent that such a prohibition is expressly prohibited by law, decompile, disassemble, reverse engineer or modify, in any manner, any of the Software; (iv) transfer or assign Your rights to use the Software; (v) use the Software in violation of applicable local, federal or other laws or regulations; (vi) use the Software for any purpose other than as

permitted in this EULA; or, (vii) remove, destroy, erase, alter or otherwise modify Commvault's trademarks.

Unless this software is provided to You for beta, demonstration, test, or evaluation purposes or is labeled "Not for Resale" as further described herein, You agree to use the Software solely for Your internal data center operations and to restrict any access to the Software, documentation, or other user information accompanying the Software only to those of your employees having a demonstrable need to have such access for your internal data processing operations. You agree that you shall not permit any access to the Software, documentation, or other user information accompanying the Software to any person engaged in product research, development, support, sales, marketing, or other functions not directly related to your internal data processing operations. You also agree not to use the Software, documentation, or user information accompanying the Software to assist, directly or indirectly, in the development or design of any computer hardware or software program including, but not limited to, a program that provides or is intended to provide or include a similar feature or functionality as the Software, or any conversion utility or aid relating to the Software intended to enable or facilitate a user's conversion from the use of the Software to an alternative program. Any software Commvault and/or its licensors may provide You as part of maintenance and support services are governed by this EULA, unless separate terms are provided. This EULA does not obligate Commvault and/or its licensors to provide any maintenance and support services or to support any Software provided as part of those services. If support services are provided, they shall be provided subject to the terms of this EULA and in accordance with Commvault's then current policies, as such may be amended from time to time. In the event You elect to purchase maintenance and support services, You must purchase such maintenance and support services for all of the licensed Software in Your entire environment. Such maintenance and support services shall begin on the date Software is shipped to You. Personal health information, personal financial information, or any other personally identifiable information is not necessary for Commvault's provision of services. You agree that You will not provide any such information to Commvault.

You agree that Commvault and/or its licensors may, for business purposes, collect, process, and use technical information gathered as part of any product maintenance and support services provided to You related to the Software and any other technical information You provide to Commvault provided that such information does not personally identify You. By providing data or information to Commvault, including personal data or information, You hereby consent to Commvault's use, storage or processing of such data or information in the United States (or in any other country in which we operate) for purposes of providing products and/or services to You.

All title and intellectual property rights in and to the Software, and any copies You are permitted to make herein, are owned by Commvault and/or its licensors and is protected by United States and other country patent, copyright, trade secret, and other laws and by international treaty provisions. Such licensors, in addition to any other rights or remedies available to them, are third party beneficiaries of this EULA for their respective software and may have the right to enforce such terms against You. **This Software is licensed, not sold.** The purchase of a license to the Software is final, non-returnable and non-refundable. Acceptance of the Software occurs upon shipment by Commvault or its licensors. No rights are granted to You other than a license to use the Software upon the terms expressly set forth in this EULA. The structure, sequence, organization and source code of the Software are valuable trade secrets of Commvault and/or its licensors. The export of the Software may be restricted by the export control laws of the United States of America and other countries. You agree to comply strictly with all such regulations and acknowledge that You have the responsibility to obtain licenses to export, re-export, or import Software. This EULA shall be governed by the laws of New Jersey, USA, without regard to any provisions concerning the applicability of the laws of other jurisdictions. You agree that exclusive jurisdiction for any claim or dispute arising out of or in connection with this EULA resides in the courts of New Jersey and you hereby consent and submit to the personal jurisdiction of such courts for the purposes of litigating any such action. This EULA is the complete and exclusive statement of Your agreement with Commvault with respect to the subject matter hereof and supersedes all prior agreements. This EULA supersedes all terms and conditions contained in any purchase order, order acknowledgment form, invoice or other business form submitted by You. No advertisements, catalogues or other publications or statements, whether written or oral, regarding the

performance of the Software licensed under this EULA shall form part of this EULA. If any provision of this EULA is held to be invalid or unenforceable by a court of competent jurisdiction, the remaining provisions of this EULA shall remain in full force and effect.

In the event You license the Software on a capacity basis, if you exceed the maximum capacity purchased, the Software may cease to operate normally and/or performance may be impaired; provided however that reducing Your usage to the purchased capacity level or purchasing additional capacity will return the Software to its normal operation. Any excess capacity usage above the purchased maximum shall entitle Commvault to invoice You for licensed capacity and maintenance and support amounts owed, and if You fail to pay for the excess usage, Commvault shall be entitled to any self-help or other remedies available. You shall provide Commvault with any usage reports immediately upon request (and You shall not interfere with any automated reporting features) in order to enable Commvault to verify Your capacity usage. In the event that You license the Software by virtue of Your purchase or use of a hardware appliance, this license is limited to the hardware appliance on which the Software was originally shipped, and the Software may not be used on or transferred to any other hardware or appliance.

To ensure compliance with this EULA, You agree that upon reasonable notice, Commvault or Commvault's authorized representative shall have the right to inspect and audit Your installation and use of the Software. Any such inspection or audit shall be conducted during regular business hours at your facilities or electronically. Any information obtained during the course of such audit will be used by Commvault solely for the enforcement of Commvault's rights under this EULA and applicable law. If such audits disclose that you have installed, accessed, used, or otherwise permitted access to the Software in a manner that is not permitted by the terms of this EULA, then Commvault may terminate this EULA immediately and You shall reimburse Commvault for any unpaid license fees and all reasonable expenses related to such audit. Nothing in this section shall be deemed to limit any legal or equitable remedies available to Commvault for violation of this EULA or applicable law.

Any reports regarding Your use of the Software and any other usage information, results, comments, or suggestions provided by You to Commvault regarding the Software (collectively, the "Feedback") shall be deemed non-confidential to You. By providing Feedback, You grant and assign to Commvault, under Your intellectual property rights and other ownership rights, a worldwide, royalty-free, irrevocable, and non-exclusive license, with the right to sublicense to Commvault licensees and customers, the rights to use and disclose the Feedback in any manner Commvault chooses, and to display, perform, copy, make, have made, use, sell, and otherwise dispose of Commvault's products embodying the Feedback in any manner and via any media Commvault or its licensees choose, without obligation to You. You also agree that the Software may automatically provide certain reports and survey information, including the generation and collection of geolocation data, regarding its use to Commvault and its third-party licensors, and which reporting features You may disable at any time. Any such reports or information shall be used in a manner that does not identify you or shall be kept confidential and used solely by Commvault or its third party licensors for internal purposes.

Your agreement to this EULA serves as Your consent to the generation and collection of such reports and information by Commvault and its third-party licensors. To the extent that You may acquire by operation of law or equity, any right, title, or interest, including any intellectual property rights, in or to the Feedback, or any modifications, or developments related thereto, You hereby assign to Commvault Your entire right, title, and interest, including all intellectual property rights, therein and thereto, and agree to execute any necessary documents as reasonably required and requested by Commvault in connection with the foregoing. The above provisions and rights granted regarding title and intellectual property rights associated with the Software and the Feedback shall survive termination of this EULA.

You agree that any information provided to You by Commvault, including the Software and related Documentation, shall be considered confidential information. You shall not disclose such confidential information without the prior written consent of Commvault.

If the Software is provided to You electronically, You may not request, and Commvault is under no obligation to provide, physical delivery of any Software or media. You agree to be responsible for all taxes and any penalties and/or interest associated with Your purchase or use of the Software. You understand and agree that subsequent Software deliveries may not be eligible for electronic delivery, and in the event physical delivery is made, You shall be solely responsible for any taxes on that, or any prior, purchase. You represent and warrant that neither You, nor any of Your affiliates, have received any physical media from Commvault containing the Software. In the event that any taxing or governmental authority makes a claim against Commvault for taxes, interest, penalties or other payments related to the delivery and/or purchase by You of the Software, You agree to indemnify and hold Commvault harmless from and against all such claims, proceedings, actions and liabilities associated therewith.

All rights not expressly granted hereunder are expressly reserved by Commvault.

**Software Labeled “Not for Resale” or Provided for Beta, Demonstration, Test, or Evaluation Purposes**

If the Software is provided to You for beta, demonstration, test or evaluation purposes or is labeled “Not for Resale,” then, notwithstanding anything to the contrary in the EULA: (i) The licenses granted herein shall be for a term of thirty (30) days (the “Evaluation Period”) unless otherwise agreed to in writing by Commvault, and Commvault reserves the right to terminate this EULA or any licenses granted hereunder immediately upon written notice at its convenience; (ii) Your use of the Software is limited to use for demonstration, test or evaluation purposes, and You may not resell or otherwise transfer the Software; (iii) You agree to keep confidential and not to disclose or otherwise make publicly available any information related to the Software, including, but not limited to test results, characteristics, and performance of the software; (iv) You agree not to copy the Software and not to provide a copy of the Software to any other party; (v) You agree not to use the Software in a production environment or for production data processing purposes, and that any use of the Software in a production environment or for production data processing purposes is at Your sole risk to backup data and take other appropriate measures to protect Your computer programs and data; and (vi) You agree to immediately, on or before the end of the Evaluation Period, promptly remove, destroy, and erase from computer memory and storage media any installed copy of the Software, and return the Software to Commvault together with all documentation and other materials provided by Commvault. Limited duration licenses, site licenses, beta, evaluation, test or demonstration Software products are delivered “*AS IS*” without a warranty of any kind. Commvault shall have no obligation to support, maintain, or provide other assistance regarding any limited duration licenses, site licenses, beta, evaluation, test, or demonstration Software products. IF THE SOFTWARE IS PROVIDED TO YOU FOR BETA, DEMONSTRATION, TEST, OR EVALUATION PURPOSES OR IS LABELED “NOT FOR RESALE,” IN NO EVENT WILL COMMVAULT BE LIABLE FOR ANY DAMAGES FOR ANY CAUSE OR FOR ANY CLAIM BY BORROWER OR FOR ANY THIRD PARTY CLAIM, INCLUDING BUT NOT LIMITED TO ANY DIRECT DAMAGES, ACTUAL DAMAGES, LOST PROFITS, LOST DATA OR ANY SPECIAL, INDIRECT, INCIDENTAL, OR CONSEQUENTIAL DAMAGES, EVEN IF COMMVAULT HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

*Note on JAVA Support*

THIS SOFTWARE PRODUCT MAY CONTAIN SUPPORT FOR PROGRAMS WRITTEN IN JAVA. JAVA TECHNOLOGY IS NOT FAULT TOLERANT AND IS NOT DESIGNED, MANUFACTURED, OR INTENDED FOR USE OR RESALE AS ONLINE CONTROL EQUIPMENT IN HAZARDOUS ENVIRONMENTS REQUIRING FAIL-SAFE PERFORMANCE, SUCH AS IN THE OPERATION OF NUCLEAR FACILITIES, AIRCRAFT NAVIGATION OR COMMUNICATION SYSTEMS, AIR TRAFFIC CONTROL, DIRECT LIFE SUPPORT MACHINES, OR WEAPONS SYSTEMS, IN WHICH THE FAILURE OF JAVA TECHNOLOGY COULD LEAD DIRECTLY TO DEATH, PERSONAL INJURY OR SEVERE PHYSICAL OR ENVIRONMENTAL DAMAGE. Microsoft Corporation obligated Commvault to make this disclaimer.

### **Limited Warranty**

With the exception of Software provided to You for beta, demonstration, test or evaluation purposes or that is labeled "Not for Resale", Commvault warrants that the Software licensed hereunder shall be new and shall operate substantially in accordance with its user documentation for a period of ninety (90) days from the date of shipment by Commvault or its licensors (hereinafter the "Warranty Period"). If, during the Warranty Period, You believe any Software product to be defective, You must immediately notify Commvault in writing and follow Commvault's instructions regarding the return of such Software. Nothing in this EULA is intended to exclude, restrict or modify any rights that You may have under any applicable legislation, which may not be excluded, restricted or modified by agreement (hereinafter the "non-excludable statutory rights"). Except in relation to any non-excludable statutory rights which may not be restricted or modified by agreement, Commvault's sole liability to You, and Your sole remedy, shall be, at Commvault's option, (i) repair or replacement of the Software product which does not comply with this Limited Warranty, or (ii) return of the amount paid by You for the Software product which does not comply with the Limited Warranty. In the event Commvault determines that the Software product is in compliance with this Limited Warranty, You shall pay the cost of all charges associated with the inspection and shipment of such Software product by Commvault. The user documentation is the exclusive statement of performance of the Software licensed hereunder.

Commvault warrants that any services provided by Commvault shall be performed by competent personnel of Commvault's and shall be of professional quality consistent with generally accepted industry standards for the performance of such services.

The following four sentences only apply if You purchased Commvault Software in Australia and You are a 'consumer' under the Australian Consumer Law: Commvault's Software comes with guarantees that cannot be excluded under the Australian Consumer Law. You are entitled to a replacement or refund for a major failure and compensation for any other reasonably foreseeable loss or damage. You are also entitled to have the Software repaired or replaced if the Software fails to be of acceptable quality and the failure does not amount to a major failure.

If You have an enquiry or You wish to claim under this Limited Warranty, please contact Commvault.

### **Disclaimer**

**COMMVAULT DOES NOT WARRANT THAT THE SOFTWARE WILL OPERATE UNINTERRUPTED OR ERROR FREE. THE LIMITED WARRANTIES PROVIDED HEREIN ARE IN LIEU OF ALL OTHER WARRANTIES. COMMVAULT AND ITS LICENSORS DISCLAIM ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, EITHER IN FACT OR BY OPERATION OF LAW, STATUTORY OR OTHERWISE, AND COMMVAULT AND ITS LICENSORS EXPRESSLY EXCLUDE AND DISCLAIM ANY WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, LACK OF VIRUSES OR NON-INFRINGEMENT OF INTELLECTUAL PROPERTY RIGHTS. THE PROVISIONS SET FORTH ABOVE STATE COMMVAULT'S AND ITS LICENSORS' ENTIRE RESPONSIBILITY AND YOUR SOLE AND EXCLUSIVE REMEDY WITH RESPECT TO ANY BREACH OF ANY WARRANTY.**

### **Limitation of Liability**

**NEITHER COMMVAULT, NOR ANY OF ITS LICENSORS, WILL, UNDER ANY CIRCUMSTANCES, BE LIABLE TO YOU OR ANY OTHER PARTY, FOR COSTS OF PROCUREMENT OF SUBSTITUTE PRODUCTS OR SERVICES, LOST PROFITS, LOSS OF INFORMATION OR DATA OR ANY OTHER SPECIAL, INCIDENTAL, PUNITIVE, INDIRECT OR CONSEQUENTIAL DAMAGES WHATSOEVER OR FOR DEATH, PERSONAL INJURY OR DAMAGE TO PHYSICAL PROPERTY OR ENVIRONMENTAL DAMAGES, REGARDLESS OF**

**THE FORM OF ACTION, EVEN IF COMMVAULT HAS BEEN NOTIFIED OF THE POSSIBILITY OF SUCH DAMAGES AND NOTWITHSTANDING ANY FAILURE OF AN ESSENTIAL PURPOSE OF THIS LIMITED WARRANTY.**

**IN THE EVENT COMMVAULT OR ITS LICENSORS ARE SUBJECT TO ANY LIABILITY IN CONNECTION WITH THE SOFTWARE PRODUCTS OR ANY SERVICES FOR ANY REASON WHATSOEVER, WHETHER ARISING FROM NEGLIGENCE, BREACH OF CONTRACT OR OTHERWISE, NEITHER COMMVAULT'S LIABILITY NOR THE LIABILITY OF ITS LICENSORS SHALL EXCEED THE SUM PAID BY YOU TO COMMVAULT FOR THE SOFTWARE PRODUCT WHICH WAS FOUND TO HAVE NOT COMPLIED WITH THE LIMITED WARRANTY. THIS LIMITATION SHALL APPLY EVEN IF COMMVAULT OR ITS LICENSORS HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES AND NOTWITHSTANDING ANY FAILURE OF ESSENTIAL PURPOSE OF ANY LIMITED WARRANTY.**

These terms and conditions, warranties, limitations and remedies contain an allocation of risk between You and Commvault. Accordingly, Commvault's prices reflect such allocation of risk. Because some jurisdictions restrict the ability to exclude implied warranties, limit or exclude incidental or consequential damages or limit liability, the foregoing limitations and exclusions may not apply to You.

#### United States Government and DOD

This article applies to all acquisitions of this Software by or for the Federal Government. By accepting delivery of this Software, You hereby agree that this software qualifies as "commercial computer software" as that term is used in the acquisition regulation(s) applicable to this procurement. The terms and conditions of this EULA shall pertain to the Government's use and disclosure of this Software, and shall supersede any conflicting contractual terms and conditions. If this EULA fails to meet the Government's minimum needs or is inconsistent in any respect with Federal procurement law, the Government agrees to return this software, unused, to Commvault.

All Software provided to the U.S. Government pursuant to solicitations issued on or after December 1, 1995 is provided with the commercial license rights and restrictions described elsewhere herein. All Software provided to the U.S. Government pursuant to solicitations issued prior to December 1, 1995 is provided with "Restricted Rights" as provided for in FAR, 48 CFR 52.227-14 (JUNE 1987) or DFAR, 48 CFR 252.227-7013 (OCT 1988), as applicable.

The following paragraph is applicable only to Commvault 1-Touch products containing Microsoft Windows Pre-Installation Environment (WinPE) software: (i) The license for the Commvault 1-Touch product is limited to its use as a boot, diagnostic, disaster recovery, setup, restoration, emergency services, installation, test and/or configuration utilities program and not for use as a general purpose operating system or a fully functional version of any operating system product; (ii) the WinPE software is provided "as is"; (iii) the 1-Touch products, by virtue of the inclusion of WinPE, contain a security feature that will cause the computer system to reboot without prior notification to You after 24 hours of continuous use; (iv) neither Microsoft nor any Microsoft affiliate shall have any liability related to the 1-Touch or the WinPE products; and (v) all customer support issues will be handled solely by Commvault.

The Software may contain certain software licensed by Microsoft to Commvault. You warrant that You are not licensing Microsoft products under this EULA and that any copies of Microsoft software that You receive from Commvault as a result of licensing the Software do not entitle You to maintain on Your computer systems any more copies of Microsoft software than you may have previously licensed from Microsoft or other third parties. Microsoft is an intended third party beneficiary of this EULA with the right to enforce warranties and any other provision of the EULA and to verify Your compliance with same.



The Software may contain certain software licensed by third parties to Commvault. Such licensors are intended third party beneficiaries of this EULA with the right to enforce warranties and any other provision of the EULA and to verify Your compliance with same.

Portions copyright © 1991, 2011 Oracle and/or its affiliates. All rights reserved.

The Software may contain Data Files of IBM Lotus Domino © Copyright IBM Corporation 2007. All Rights Reserved.

Portions copyright 1992-2010 FairCom Corporation.

#### ***Trademark Acknowledgment***

Commvault, Commvault and logo, the “C hexagon” logo, Commvault Systems, Solving Forward, SIM, Singular Information Management, Simpana, the “Simpana” logo, Commvault Galaxy, Unified Data Management, QiNetix, Quick Recovery, QR, CommNet, GridStor, Vault Tracker, InnerVault, QuickSnap, QSnap, Recovery Director, CommServe, CommCell, ROMS, IntelliSnap and CommValue are trademarks, and may be registered trademarks, of Commvault Systems, Inc. By using any of the Commvault trademarks as authorized herein, in whole or part, You agree to be bound by the then-current Commvault Trademark Guidelines located at [www.Commvault.com/trademarks](http://www.Commvault.com/trademarks) [www.Commvault.com/trademarks](http://www.Commvault.com/trademarks). All other third party brands, products, service names, trademarks, or registered service marks are the property of and used to identify the products or services of their respective owners.

#### ***Patent Acknowledgment***

This Software is patented: see [www.Commvault.com/legal-notice](http://www.Commvault.com/legal-notice) [www.Commvault.com/legal-notice](http://www.Commvault.com/legal-notice) [www.Commvault.com/legal-notice](http://www.Commvault.com/legal-notice) for information about the patents and patents pending covering this Software.

#### ***Copyright Acknowledgment***

© 1997-2016 Commvault Systems, Inc. All rights reserved.



The Board of Regents of the University of Nebraska, a public body corporate, for and on the behalf of The University of Nebraska at Omaha (UNO) hereby awards Arrow Enterprise Computing Solutions, Inc. (Arrow ECS) the University of Nebraska at Omaha Department of Information Services, Invitation to Bid for Commvault Software, Invitation 5271605, incorporated hereto as Attachment A. Arrow ECS's vendor response is incorporated hereto as Attachment B.

This award to distribute Commvault software shall extend from Effective Date through June 30<sup>th</sup>, 2019 with an option to renew for an additional three (3), one (1) year periods when mutually agreeable.

Notifications regarding the Agreement shall be sent to:

University of Nebraska at Omaha  
Procurement – EAB 208  
6001 Dodge St.  
Omaha, Ne 68182

Arrow ECS  
Jo Zack  
5612 24th N.  
Arlington, Va 22205

IN WITNESS WHEREOF, the authorized representatives of the parties have executed this Agreement as of this \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

**The Board of Regents of the University of Nebraska (UNO)**

Signature: Carol A. Kirchner

Date: 8/10/16

Printed Name: Carol A. Kirchner

Title: Assoc Vice Chancellor, Finance

**Arrow Enterprise Computing Solutions, Inc.**

Signature: Yvonne Barcewski

Date: 8/2/2016

Printed Name: Yvonne Barcewski

Title: Contract Manager

INVITATION NO: <5271605>

OPENING DATE: June 17th, 2016

OPENING TIME: 2:00 PM CDT

BUYER: Lynn McAlpine  
lmc Alpine@unomaha.edu  
(402)554-3514

MAIL TO: UNIVERSITY OF NEBRASKA AT OMAHA  
Purchasing Department  
6001 DODGE ST  
Omaha, NE 68182

HAND-CARRY TO: UNO PURCHASING  
6001 DODGE ST, EAB 208 P  
OMAHA, NE 68182

## INVITATION TO BID – NOT AN ORDER

# UNIVERSITY OF NEBRASKA AT OMAHA Department of Information Services

May 27, 2016

Invitation Number <5271605>

## INVITATION TO BID FOR COMMVault SOFTWARE

The University of Nebraska ("University") is requesting quotations for the purchase and maintenance of Commvault software.

It is the intent of the University of Nebraska to establish a contract to supply Commvault Product Catalog per the attached specifications from **the date of award** through **June 30, 2019** with an option to renew for an additional three (3), one (1) year periods when mutually agreeable to the successful bidder and the University.

It is also the intent of the University of Nebraska to extend access to this competitive sourcing event and resulting contract award to entities eligible to purchase under contracts held by the Midwestern Higher Education Compact ("MHEC"). Upon final award, and execution of contract with University of Nebraska, vendor(s) shall enter in to the attached Addendum A with MHEC to extend the contract to MHEC eligible entities. MHEC reserves the right to add additional terms and conditions and modify the scope of the contract in the MHEC participating addendum. Additional information on MHEC can be found at <http://www.mhec.org/> and MHEC technology initiatives <http://www.mhetecth.org>, as well as the attached Exhibit A

## Invitation to Bid

This Invitation to Bid will be submitted to vendors via email.

The bidder agrees that if they are awarded this bid, the contract established under this award may, at the option of the University, be extended to any public agency or instrumentality of the government of the State of Nebraska or political subdivisions with the State of Nebraska. In addition, any contract established may be extended to any entity in which the Board of Regents of the University of Nebraska has at least a 50% controlling interest, the Nebraska Medical Center, and their affiliates.

## Bid Submissions

**Bids are due at 2:00 pm CDT on June 17th, 2016**

Bids are valid only if they are received prior to the designated due date and time. Bids sent via U.S. Mail or expedited delivery services are delivered to the University's central mail room for subsequent delivery on a scheduled basis. Bidder should allow one (1) additional day for on-campus delivery.

## Format Requirements

Two original hard copies and one electronic copy (flash drive preferred) of the vendor response shall be submitted on standard 8.5" x 11" paper in 10pt minimum type. Bidders shall respond to the items in the order they are given, electronic copies should be returned in the same format as originally given. Bidder responses should describe the most favorable terms and shall remain firm for 120 days from the bid opening date. Responses should be submitted exclusive of all Federal, State and local taxes.

### **MAILING ADDRESS:**

**Lynn McAlpine – Commvault Bid**  
UNO PURCHASING DEPARTMENT  
6001 Dodge Street, EAB 208P  
OMAHA, NE 68182

## Non-Compliance Statement

Read these specifications carefully. Any and all exceptions to these specifications must be written on or attached to the quotation request. Any non-compliance may void your quotation. It is the responsibility of Bidders to obtain information and clarifications as provided below. The University of Nebraska is not responsible for any erroneous or incomplete understandings or wrongful interpretations of this Invitation to Bid by any Bidder. No interpretation related to the meaning of bid specifications or other pre-bid documents will be made orally to any Bidder by the University of Nebraska.

### Award

All purchases, leases, or contracts which are based on competitive bids will be awarded to the lowest responsible bidder, determined according to the provision of the State Statute Section 81-161, R.R.S 1943. The University reserves the right to reject any or all bids, wholly or in part, and to waive any deviations or errors that are not material, do not invalidate the legitimacy of the bid, and do not improve the competitive position. This contract may be awarded item-by-item, group of items, or total, to best serve the interest of the University of Nebraska. The University of Nebraska will be the sole judge of equivalence and any decision will be final. All awards will be made in a manner deemed in the best interest of the University.

### Procurement Timetable

<b>SCHEDULE OF ACTIVITIES:</b>	<b>TIMELINE (times are in CST)</b>
RFP Published	May 27 <sup>th</sup> , 2016
Written Vendor Inquiry Deadline	June 3 <sup>th</sup> , 2016 - 2p.m.
University Responses to Written Vendor Inquiries Published	June 7 <sup>th</sup> , 2016
Bid Submission Deadline	June 17 <sup>nd</sup> , 2016 – 2p.m.
Decision	June 30 <sup>th</sup> , 2016

### Inquiries

Questions regarding this Invitation to Bid should be sent to Lynn McAlpine by 2 p.m. June 3<sup>rd</sup>, either by email or mail. All questions received will be complied, answered and returned by June 7<sup>th</sup> to all vendors.

### Communication

All communications, either oral, written, or by any electronic method, must be addressed to:

**Lynn McAlpine**  
**(402) 554-3514**  
**lmc Alpine@unomaha.edu**

**<5271605> Commvault Product Catalog must appear in the subject line.**

### Proprietary Information

As the University is a public entity, the information submitted will not remain confidential within the University community and may be shared with any other outside entity.

## GENERAL TERMS

### Scope

These standard terms and conditions of bid solicitation and acceptance apply in like force to this Invitation to Bid and to any subsequent contract resulting therefrom.

### Prices

Price quoted shall be discount from manufacturer's list price by category and are to be net; including transportation and delivery charges fully prepaid by the bidder, F.O.B. Destination as specified on orders. No additional charges will be allowed for packing, handling, fuel surcharge, or partial delivery costs. When an arithmetic error has been made in the extended total, the unit price will govern.

### Execution

Bids must be signed in ink by the bidder on the University of Nebraska's Invitation to Bid form. All bids must be typewritten or in ink on the University of Nebraska's Invitation to Bid form. Erasures and alterations must be initialed by the bidder in ink. An additional electronic copy of the bid should be submitted via flash drive. No telephone or voice bids will be accepted. Failure to comply with these provisions may result in the rejection of the bid.

### Discounts

Prices quoted shall be inclusive of ALL trade discounts. Cash discount terms of less than thirty (30) days will not be considered as part of the bid. Cash discount periods will be computed from the date of receipt of a properly executed claim voucher or the date of completion of delivery of all items in satisfactory condition, whichever is later.

### Payment

Payment will be made in conjunction with the State of Nebraska Prompt Payment Act §81-2401 through 2408. The University may request that payment be made electronically.

### Collusive Bidding

The bidder guarantees that the prices quoted have been arrived at without collusion with other eligible bidders and without effort to preclude the University from obtaining the lowest possible competitive price.

### Specifications

Any manufacturer's names, trade names, brand names, information and/or catalog numbers listed in a specification are for reference and not intended to limit competition, but will be used as the standard by which equivalent material offered will be judged. The University will be the sole judge of equivalency. The bidder may offer any brand which meets or exceeds the specification. When a specific product is required, the Invitation to Bid will so state. Any item bid is to be the latest current model under standard production at the time of order. No used or refurbished equipment will be accepted, unless otherwise stated.

## Samples

When requested, samples shall be furnished at the bidder's expense prior to the opening of the bid, unless otherwise specified. Each sample must be labeled clearly and identify the bidders name, the Invitation to Bid number, and the item number. Samples submitted must be representative of the commodities or equipment which would be delivered if awarded the bid. The University reserves the right to request samples even though this may not have been set forth in the Invitation to Bid. Samples not destroyed in testing will be returned to at bidder's expense, if requested, or will be donated to a public institution.

## Late Bids

All bids will be time and date stamped upon receipt by the University and this shall be the official date and time of receipt. Bids received after the time of the bid opening will be considered late bids and will be returned to the bidder unopened. The University is not responsible for late bids or lost requests due to mail service inadequacies, traffic, or other similar reasons.

## No Bid

If not submitting a bid, respond by returning the Invitation to Bid form explaining the reason in the space provided. Failure to respond to an Invitation to Bid may be cause for the removal of the bidder's name from the mailing list. NOTE: To qualify as a respondent, bidder must submit a "NO BID" and it must be received no later than the stated bid opening date and time.

## Award

All purchases, leases, or contracts which are based on competitive bids will be awarded to the lowest responsible bidder, determined according to the provisions of Nebraska State Statute § 81-161, R.R.S 1943. The University reserves the right to reject any or all bids, wholly or in part and to waive any deviations or errors that are not material, do not invalidate the legitimacy of the bid, and do not improve the bidders competitive position. All awards will be made in a manner deemed in the best interest of the University.

## Performance and Default

The University reserves the right to require a performance bond from the successful bidder, as provided by law, without expense to the University. Otherwise, in case of default of the contractor, the University may procure the articles from other sources and hold the contractor responsible for any excess cost occasioned thereby.

## In-State Preference

A resident bidder shall be allowed a preference against a nonresident from a state which gives or requires a preference to bidders from that state. The preference shall be equal to the preference given or required by the state of the nonresident bidders. Where the lowest responsible bid from a resident bidder is equal in all respects to one from a nonresident bidder from a state which has no preference law, the resident bidder shall be awarded the contract.

### Nondiscrimination

The Nebraska Fair Employment Practice Act prohibits contractors of the State of Nebraska, and their subcontractors, from discriminating against any employee or applicant for employment, to be employed in the performance of such contracts, with respect to hire, tenure, terms, conditions, or privileges of employment because of race, color, religion, sex, disability, or national origin (Nebraska State Statute § 48-1101 through 48-1125). The bidder guarantees compliance with the Nebraska Fair Employment Practice Act, and breach of this provision shall be regarded as a material breach of contract. The contractor shall insert a similar provision in all subcontracts for services to be covered by any contract resulting from this Invitation to Bid.

### Contract Amendments

Any contract established as a result of this Invitation to Bid may be amended at any time in writing upon the agreement of both Parties.

### Breach of Contract

If the successful bidder breaches any contract established as a result of this Invitation to Bid, the University may, at its discretion, terminate the contract immediately upon written notice the successful bidder. The University shall pay the successful bidder only for such performance as has been properly completed and is of use to the University. The University may, at its discretion, contract for provision of the goods or services required to complete the contract and hold the successful bidder liable for all expenses incurred in such additional contract over and above the total cost of performance. This provision shall not preclude the pursuit of other remedies for breach of contract as allowed by law.



## COMMVAULT PRODUCT CATALOG SPECIFICATIONS

### Catalog List Pricing

Prices for Commvault Product Catalog shall be determined by applying the quoted discount for the item to the manufacturer's current catalog or price list. The percentage discount for the items shall remain firm for the duration of the contract period. Bidder must use the current Commvault catalog price list.

The percentage discount rate for Commvault Product Catalog items or categories will remain firm and not decrease during the life of the contract.

A firm percentage rate must be quoted—a range of percentages will not be considered.

Catalog Categories have been identified as follows:

1. Commvault Software
2. Commvault Maintenance & Support Contract, one (1) year term
3. Commvault Maintenance & Support Contract, three (3) year term
4. Training and Certifications
5. Professional Services, Implementation Support, and Remote Managed Hosting

### Price Lists and Catalogs

After award of the contract(s), the successful bidder shall make the current catalog available electronically and provide an updated catalog, at least, quarterly throughout the term of the contract.

All items bid shall be of the latest manufacture in production as of the date of the Invitation to Bid, be of proven performance, and under standard design, complete as regularly advertised and marketed. All necessary materials for satisfactory performance of the supplies shall be incorporated into the Commvault Product Catalog whether or not they may be specifically mentioned.

### Usage Reports

Successful bidder agrees to provide the University with an annual report of products purchased on this contract in Microsoft Excel format. Additional usage reports for other reporting periods may be requested by the University based on need.

### Substitutions

Products bid must be the Commvault brand. The University will not accept alternatives to the brand specified.

Successful bidder will not substitute any Commvault Product Catalog item that has been awarded without prior written approval from the University.

### Quality

Product quality must meet specifications and be consistent for the term of the contract. A guarantee of satisfactory performance by the supplier and meeting delivery dates are considered to be an integral part of the purchase contract resulting from the Invitation to Bid. All materials must be of first quality, under standard production by the manufacturer and be of standard design, complete as regularly advertised and marketed and be of proven performance. Products are to be fully guaranteed and may be returned for full credit or replacement (at the University's option) for any reason and for the duration of the contract with no additional charges for shipping or restocking.

### Gray Market Products Prohibition

The University will not accept Gray Market Products for this Invitation to Bid. Gray Market is defined as the trade of a commodity through distribution channels which, while legal, are unofficial, unauthorized, or unintended by the original manufacturer. Gray Market Products are not designed to be sold in a particular market and cannot be supported by the authorized importer because of various reasons.

### Authorized Dealer and Warranty

To the extent required by the manufacturer, the Bidder shall be an authorized dealer. Bidder may be required to substantiate that he/she is an authorized dealer. Proof, if required, must be submitted to the University within three (3) days of the request and prior to the award of any contract. The terms of the original manufacturer's standard warranty shall apply to all equipment acquired from this Invitation to Bid for the entire warranty period.

### Warranty

The awarded Commvault authorized reseller will be required to fulfill all Commvault maintenance & support contracts directly through/by Commvault or authorized Commvault support partner.

### Delivery

Delivery desired within 45 days after receipt of order. Order fulfillment will be provided directly from a Commvault authorized distributor or Commvault directly.

Delivery personnel will be required to deliver and offload all products to a specified area on the inside of the designated facility or dock. It will be the Vendor's responsibility to provide any equipment needed to complete the delivery process. Vendor's delivery personnel must wait for the order to be received, invoice(s)/packing slip(s) verified and signed with discrepancies (shortages, longs, damage, etc.) documented on the delivery invoice. Deliveries must be clearly marked with the purchase order number.

At the time of delivery, a designated University employee will sign the "invoice/packing slip." This signature will only indicate that the order has been received and that the items actually

delivered agree with the delivery invoice. This signature does not indicate that all items were received in good condition and/or that there is not possible hidden damages.

### Orders

The vendor shall supply quotes upon request. Each quote shall include the list price, discount percentage, discounted unit price and extended price per item. The awarded bidder shall provide additional discounts for orders greater than \$150,000 contract pricing. Orders will be placed either by fax, email, or Internet (if available and not to the exclusion of other methods). All orders must reference a purchase order number and the purchase order number must be referenced on the packing slip and invoice. Invoices are to be sent to the "Invoice to" address on the purchase order. Invoices shall have detailed information sufficient to process for a payment.

### Packaging

Cartons are to be clearly marked with size, weight, color, quantity, and the purchase order number. Cartons must be of a suitable size and of sufficient strength to protect the contents during shipping, handling, and storage. Packing slips shall include serial numbers.

### Payment

Payment will be made in conjunction with the State of Nebraska Prompt Payment Act §81-2401 through 2408. Payment shall be within 45 days of receipt of service or invoice, whichever is received later. The University may require the contractor to accept payment by electronic means such as ACH/EFT deposit. In no event shall the University be responsible or liable to pay for any services provided by the vendor prior to the Effective Date, and the vendor hereby waives any claim or cause of action for any such services.

### Customer Service

The vendor shall list the name, phone number, and email address of the customer service representative who will be assigned to the University's account:

Customer Service Representative: \_\_\_\_\_  
Phone Number: \_\_\_\_\_  
Email Address: \_\_\_\_\_

## References

The University reserves the right to check any reference(s) regardless of source of the reference information, including but not limited to, those that are identified by the company in the bid, those indicated through explicitly specified contracts, those that are identified during the review of the bid, or those that result from communication with other entities involved with similar projects.

List the name, address, and the telephone numbers of three companies/businesses that we may contact who are currently using the same equipment being bid for the same application.

1. \_\_\_\_\_
2. \_\_\_\_\_
3. \_\_\_\_\_

## E-Rate

Each Bidder must have a Service Provider Identification Number (SPIN) from the Universal Service Administrative Company and be eligible to participate in the Universal Service Fund discount program for telecommunications services provided to the E-Rate eligible entities. Bidder agrees to provide any discounts, including any accrued credits, for which the entity is eligible under the Universal Service Fund for school telecommunications services. Bidder will, at its expense, prepare and file all carrier documents and reports required for the eligible entities to receive the benefit of such discounts and credits. The Bidder's Service Provider Identification Number (SPIN) issued to Bidder by the Universal Service Administrative Company must be included in the responding bid.

As required by federal law, providers of eligible services must comply with the Lowest Corresponding Price (LCP) rule:

47 CFR § 54.500(f): Lowest corresponding price is the lowest price that a service provider charges to non-residential customers who are similarly situated to a particular school, library, or library consortium for similar services. ("Similarly situated" means the "geographic service area" in which a service provider seeking to serve customers with any of its E-Rate services.)

47 CFR § 54.511(b): Providers of eligible service shall not charge schools, school districts, libraries, library consortia, or consortia including any of these entities a price above the lowest corresponding price for supported services, unless the Federal Communications Commission, with respect to interstate services or the state commission with respect to intrastate services, finds that the lowest corresponding price is not compensatory.

The Billed Entity Applicant Reimbursement (BEAR) FCC Form 472 is filed by the applicant and approved by the service provider after the applicant has paid for services in full. The Service Provider Invoice (SPI) FCC Form 474 is filed by the service provider after the applicant has been

billed for the non-discount portion of the cost of eligible services. Note: Applicants can choose their method of invoicing; service providers cannot force applicants to use a particular method.

As required by USAC policy, the contractor must retain documents from the bidding process through five (5) years past the last date of service. Documents may be retained in electronic format or paper. The document list includes, but is not limited to, copies of bids, signed contracts, proof of service delivery, invoices, documentation of any service down time, and any other document retention required by the FCC.

## UNIVERSITY BID TERMS AND CONDITIONS

The University will not be liable for any costs incurred by respondents in the preparation and production of a proposal or the costs of any services performed prior to contract award. All proposals and materials submitted in conjunction with the proposals shall become the property of the University for use as deemed appropriate, respecting all copyrights.

The information contained in this section is a partial listing of standard terms commonly appearing in contracts awarded by University of Nebraska. All proposals are subject to these terms, unless otherwise explicitly stated.

### General

The specifications, terms, and conditions set forth in this bid and any related award document shall be incorporated by reference, without Bidder exception, into any resulting contract between the University and the successful Bidder. Any additional or different terms proposed by the successful Bidder are not accepted, unless the same are expressly accepted in writing by UNIVERSITY. The contract may not be changed in any way except by an instrument in writing signed by both parties. The contract cancels and supersedes any prior understandings or agreements between the parties with respect to the subject matter hereof. Failure of any party to enforce its rights under the contract shall not constitute a waiver of such rights or of any other rights under the contract.

### Termination for Cause

UNIVERSITY may terminate the contract at any time if the successful Bidder fails to carry out its terms or fails to make substantial progress toward the fulfillment of those terms. In such an event, UNIVERSITY shall provide the successful Bidder with a thirty (30) day written notice of the terms in breach. If after such notice, the successful Bidder fails to remedy the breach within those 30 days, UNIVERSITY may immediately cancel the contract.

### Contract Assignment

Contracts granted pursuant to this bid shall not be transferred or assigned without prior written consent of UNIVERSITY.

### Indemnity, General and Patent

The successful Bidder shall indemnify and save harmless UNIVERSITY and its respective officers, agents and employees from and against any and all liabilities and losses whatsoever, including without limitation, costs and expenses in connection therewith, on account of, or by reason of, injury to or death of, any person whosoever, or loss of or damage to any property whatsoever, suffered or sustained in the case of, or in connection with, the performance of the contract, except for that liability and loss arising from the acts or omissions of UNIVERSITY or its agents.

With respect to anything provided to UNIVERSITY by the Bidder pursuant to this bid, the Bidder shall indemnify the University and its respective officers, agents and employees against liability, including costs and attorney's fees for infringement of any United States patent, copyright,

trade infringement or other intellectual property right arising out of the manufacture, delivery and use of such by UNIVERSITY.

#### Governing Law; Venue

The laws of the State of Nebraska shall govern any contract awarded to the successful Bidder. Any dispute arising under any contract awarded, which is not settled by agreement of the parties, shall be resolved in forums (except for applicable federal appellate courts) located in the State of Nebraska.

#### Force Majeure

Neither party to the contract shall be liable to the other for damages for any delay in performance directly arising out of causes beyond its reasonable control and without its fault or negligence, including without limitation: (1) fire, flood or water damage, elements of nature or other acts of God, including any of the foregoing that are harmful to electronic circuitry; (2) outbreak or escalation of hostilities, war, riots, or civil disorders in any country; (3) act or omission of the other party or any governmental authority, (4) labor disputes (whether or not the employees' demands are reasonable or within the party's power to satisfy), (5) non-performance by a third party (including any voice or data telecommunications common carrier), (6) failures or fluctuations in telephone, computer or other telecommunications equipment or lines or other equipment, (7) the real, potential, or credible threat of terrorist activity, or (8) a health emergency (e.g. serious outbreak of contagious disease such as a influenza pandemic) which in the judgment of UNIVERSITY poses a serious threat to the public health. In the case of any such excusable delay, the non-performing party will be excused from performance of any affected obligation only for so long as the cause of the excusable delay prevails and such party continues to use commercially reasonable efforts to re-commence performance of its obligations as soon as possible; provided however, that the parties may mutually agree that such excusable delay is cause to cancel the contract in its entirety, in which case neither party shall be liable to the other for any further performance in relation obligations arising after cancellation.

#### Compliance with Laws and Regulations; Gramm Leach Bliley; University of Nebraska Policies

This contract must comply with all applicable federal, state and local laws, specifically including all laws and regulations related to the protection and security of any personal information gathered by the successful Bidder, such as the Gramm Leach Bliley Act implemented at the University of Nebraska by Presidential Executive Memorandum No. 26 (<http://www.nebraska.edu/docs/president/26%20Information%20Security%20Plan%20%28GLB%20Compliance%29.pdf>) which requires specific vendor contract provisions; and all other applicable policies of the University of Nebraska. Bidder agrees to indemnify UNIVERSITY against any loss, cost, liability, or damage by reason of Bidder's violation of any applicable law or regulation. Any successful Bidder must be qualified to conduct the business necessary to the performance of the contract in the State of Nebraska throughout the duration of the contract term or any renewal thereof. The successful Bidder shall obtain, at its own cost and expense, all

necessary licenses, professional certifications and permits and shall assume the responsibility for and pay all applicable fees and all other taxes, which are now or may be imposed in the future by any governmental authority arising out of the conduct of Bidder's business.

### Sexual Harassment

State and federal law, as well as the policies of the Board of Regents of the University of Nebraska, prohibit sexual harassment of members of the UNIVERSITY community. Sexual harassment includes any unwelcome sexual advance, any request for a sexual favor, or any other verbal or physical conduct of a sexual nature that is so pervasive as to create a hostile or offensive environment. UNIVERSITY contractors, subcontractors and suppliers for this project are required to exercise control over their employees so as to prohibit acts of sexual harassment of UNIVERSITY employees, students and other members of the UNIVERSITY community. The employer of any person who UNIVERSITY, in its reasonable judgment, determines has committed an act of sexual harassment agrees as a term and condition of any contract awarded hereunder to cause such person to be removed from the project site and from UNIVERSITY premises and to take such other action as may be reasonably necessary to cause the sexual harassment to cease.

### Drug Free Workplace

The successful Bidder agrees that in the performance of this contract, neither the Bidder nor any of its employees shall engage in the University unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance in conducting any activity covered by the contract. UNIVERSITY reserves the right to request a copy of the Bidder's Drug Free Workplace Policy. The Bidder further agrees to insert a provision similar to this statement in all subcontracts or services required in response to this bid.

### Weapons Policy

Possession of dangerous weapons (concealed or unconcealed) on UNIVERSITY property, on the work site, in UNIVERSITY vehicles, or in personal vehicles when on UNIVERSITY property shall be a violation of UNIVERSITY policy. (A dangerous weapon shall include guns, knives, explosives, or any other device as determined by UNIVERSITY, which in the manner used or intended is capable of producing death or bodily injury. Devices authorized by the Vice Chancellor for Business and Finance and/or provided to its employees for the purpose of carrying out work responsibilities shall not be deemed dangerous weapons for the purpose of this policy.) Violations of this policy shall make the offender subject to appropriate disciplinary action. Should UNIVERSITY in its reasonable judgment determine that the Bidder or its employee or agent has committed an act in violation of this policy, the Bidder agrees as a term and condition of the contract awarded hereunder to cause such person and weapon to be removed from the project site and from UNIVERSITY premises and to take such other action as may be reasonably necessary to ensure compliance with this weapons policy.



### Equal Opportunity in Procurement and Contracts

The University of Nebraska recognizes the importance of a strong culturally diverse business community and the positive impact that successful businesses have upon the people of the State of Nebraska. The University of Nebraska assumes a leadership role in actions that will provide business opportunities for all businesses in the State of Nebraska.

Accordingly, the University of Nebraska reaffirms its policy of providing equal opportunity to small business enterprises and to minority, disadvantaged and women owned business enterprises in all aspects of the University of Nebraska's procurement and contracting activities. This includes procurement of contracts for operational supplies and equipment, construction projects and materials, service contracts and License agreements. It is also the University of Nebraska's policy that any person or business seeking the opportunity to do business with the University of Nebraska shall not be discriminated against on the basis of race, color, religion, sex, national or ethnic origin, age, disability, marital status, or veteran status. The University of Nebraska conducts its procurement and contracting activities in a manner designed to prevent unlawful discrimination. University of Nebraska policies are consistent with applicable state and federal laws and regulations prohibiting unlawful discrimination.

### Proprietary Information; Confidential Employee Information; HIPAA; FERPA

It is to be expected that the parties to the contract may find it necessary to reveal certain proprietary information to each other. The contract may, when proprietary information is exchanged, include certain provisions to mutually protect against the use and disclosure of the proprietary information of each party. In the unusual circumstance that the contract should result in the sharing of employee information protected by the law or University of Nebraska policy, information protected by the Health Insurance Portability and Accountability Act, information protected by the Family Educational Rights and Privacy Act of 1974, or any other information deemed confidential and protected by the law, the parties to the contract agree to maintain the confidentiality of such information to the extent and manner required by the law and University policy.

### Subcontractors

The successful Bidder shall not subcontract all or substantially all of any facet of the proposed goods or services without the prior written approval of UNIVERSITY. The successful Bidder shall be fully responsible for the acts and omissions of its subcontractors and of the persons directly or indirectly employed by them. Every subcontractor shall be bound by the terms of any contract awarded under this bid; provided however, that no contractual relationship shall exist between any subcontractor and UNIVERSITY, unless it is evidenced in a separate contract independent of the contract with the successful Bidder.

### Legislative Funding Out Clause

Notwithstanding any provision in the contract to the contrary, if the legislative body appropriating funds, does not allocate sufficient funds to allow UNIVERSITY to make any periodic payment agreed to in the contract for any future fiscal period, UNIVERSITY will not be

obligated to pay the contract balance remaining at the time of the governmental funding shortfall.

#### Parking

UNIVERSITY shall not be responsible for providing parking for successful Bidder's parking needs. The successful Bidder and/or its employees and agents will be solely responsible for any fines resulting from parking violations occurring on UNIVERSITY property.

#### Building Rules and Regulations; Tobacco Use

Employees of the successful Bidder and any subcontractors shall comply with all UNIVERSITY rules and regulations pertaining to conduct in UNIVERSITY's facilities. UNIVERSITY reserves the right to request the removal or replacement of any Bidder or subcontractor employee who fails to comply with such rules and regulations.

All buildings and University owned vehicles on the UNIVERSITY campus are tobacco-free. Use of tobacco products is not permitted inside any UNIVERSITY facility. The successful Bidder is expected to respect this tobacco-free policy and fully comply with it.

#### Use of Premises

To the extent that any contract awarded requires the successful Bidder or its employees or agents to be present on or within UNIVERSITY's properties, then the Bidder shall limit its presence and activities to such areas as are reasonably necessary in order to perform under the contract. The successful Bidder shall take such precautions as are required to avoid damage to buildings, facilities, utilities, ground resources, trees and landscape amenities, and other properties adjacent to the Bidder's activities within the scope of the contract and agrees to be responsible and/or carry out any repairs for which it is liable, as a result of its performance under the contract.

#### Hazardous Waste

Any hazardous waste that is generated from the performance of any contract awarded shall be properly disposed of by the successful Bidder in a timely fashion and in accordance with applicable hazardous waste laws and regulations. The cost for hazardous waste management and disposal is successful Bidder's responsibility. Should UNIVERSITY deem it prudent to dispose of any hazardous waste left on its property, as a result of the successful Bidder's failure to meet its responsibilities, all costs associated with such disposal shall be deducted from any amount yet to be paid to the Bidder and/or billed to the Bidder. University Environmental Health Services is to be notified of all hazardous waste issues. Any non-hazardous waste generated in the performance of this contract must be disposed of off campus by the successful Bidder.

#### Delivery; F.O.B.; Shipping

The successful Bidder shall bear all costs of transportation, packing, crating, delivery, installation, storage, and service under warranty for any goods or related services, delivered

pursuant to the contract. The successful Bidder shall be responsible for and make delivery, including costs of delivery, cartage, temporary storage, off-loading costs, and insurance, F.O.B. destination. Unless otherwise specified, all shipments will utilize best commercial practices to insure safe arrival at the UNIVERSITY delivery point.

### Quantity

With respect to the quantity of any good purchased under the contract, UNIVERSITY need not accept any variation in quantity except as specified in the contract. Over-shipments may be returned to the Bidder at the Bidder's expense, which shall include a reasonable cost for UNIVERSITY handling, or may be retained by UNIVERSITY at no increase in price.

### Inspection

UNIVERSITY may, at any time in the course of the contract, inspect and test materials and supplies being used in the performance of the contract, including at the point of manufacture. If inspection and tests are made on contractor's premises, successful Bidder without additional charge, shall provide reasonable facilities and assistance for the safety and convenience of the testing/inspection personnel. Except as otherwise agreed in writing, all goods, equipment and supplies furnished under the contract shall be subject to final inspection and acceptance by UNIVERSITY at the delivery destination.

### Defective Goods or Work

UNIVERSITY, notwithstanding any prior acceptance, at its option, may reject or require prompt correction (in place or elsewhere) of any goods, equipment, supplies, or other work, which are defective in material or workmanship or otherwise fail to meet the requirements of the contract. All supplies furnished under the contract shall be subject to inspection at F.O.B. destination, and successful Bidder shall be given notice of any defects, other than latent defects, within a reasonable time after receipt of the goods, equipment, and supplies, along with all records of delivery. UNIVERSITY may, in addition to any rights it may have by law, prepare for shipment and ship the defective goods, equipment, and supplies to the successful Bidder, require the successful Bidder to remove them, or direct a correction in place. The expense of any such remedy shall be borne by the successful Bidder, including any excess cost.

### Liens

Successful Bidder warrants that it has title to any goods delivered under the contract and shall deliver same free of all liens, claims, and encumbrances.

### Federal, State and Local Sales Taxes; Federal Excise Taxes

Purchases made by the University of Nebraska are exempt from the payment of State Sales and Use Taxes and Federal Excise Taxes. Certification of these exemptions will be provided to the successful Bidder upon request.

### Ambiguities

Should the successful Bidder perceive an ambiguity in the contract, the successful Bidder shall request an interpretation from UNIVERSITY before proceeding. If a successful Bidder fails to make such a request, failure to perform with respect to the alleged ambiguity shall not be excused.

### Recycling Policy

When purchasing products, materials, or supplies for use, the University, when making such purchases shall actively pursue the purchase of products, materials, or supplies which are manufactured or produced with at least 10% post-consumer recycled materials. This policy shall not operate when it would result in the purchase of products, materials, or supplies that are of inadequate quality, not readily available or substantially higher in cost. It is the intent of the University to continually increase the percentage produced from post-consumer recycled material, and, to increase each year the types and variety of products, materials, or supplies purchased with post-consumer recycled material.

### Successful Bidder Identification

The successful Bidder shall cause each of its employees or any person acting on behalf of the successful Bidder, while providing goods/services to the University under the contract and working on University property, to carry identification, with photo, showing that the individual is an employee or person acting on behalf of the successful Bidder. A badge worn outside of clothing is appropriate for this purpose. Such identification shall be produced upon request of any University representative, in order to confirm that the successful Bidder's representative is authorized to be present on University property and/or performing as authorized by the contract. Whereas campus security is of utmost importance, failure of any successful Bidder representative to produce the requisite identification upon request, shall be a material breach of the contract and shall be cause, at the discretion of the University, for immediate termination of the contract.

For those who commonly wear a work uniform, such uniform shall be worn while providing the services related to the contract in order that the University may quickly and clearly identify successful Bidder's service representatives when necessary. A uniform, however, does not take the place of a photo identification badge.

### Legal Relationship

The successful Bidder shall under no circumstances be considered as an agent or employee of the University and shall have no right or authority to, in any manner, obligate the University to any person or company except as authorized in writing by the University.

### Use of University Names and Logos

The successful Bidder shall not use any University name, sign, logo, symbol, etc. for any purpose, without the prior written approval of the University. Use of University brands generally requires licensing.

### Improper Business Relationships and Conflict of Interest Prohibited

In connection with this bid, each Bidder shall ensure that no improper, unethical, or illegal relationships, or conflict of interest exists between or among the Bidders, the University and any staff and faculty, and any other party to this bid. The University reserves the right to determine the materiality of such relationships, when discovered or disclosed, whether intended or not; and to decide whether or not Bidder disqualification and/or cancellation of award shall result. Such disqualification and/or cancellation shall be at no fault or liability whatsoever to the University.

### Electronic and Information Technology Accessibility

All electronic and information technology procurements, agreements, and contracts shall comply with Americans with Disabilities, Section 508 or the Rehabilitation Act of 1998 as amended and the Nebraska Accessibility Policy to be found at:

[http://www.nitc.state.ne.us/standards/accessibility/accessibility\\_standards.pdf](http://www.nitc.state.ne.us/standards/accessibility/accessibility_standards.pdf)

### LB403 Compliance

The successful Bidder, on behalf of itself and any subcontractor to the Contract agrees that it shall use a federal immigration verification system to determine the work eligibility status of new employees physically performing services within the State of Nebraska pursuant to Neb. Rev. Stat. 4-108 to 4-114 as amended.

### Equal Opportunity

Equal Opportunity Clause Certification of Non-Segregated Facilities, Executive Order 11246: This will be provided and shall be executed by the successful Bidder upon notice of award.

### Contractor's Certificate of Insurance

Successful Bidders will be required to furnish a certificate of insurance with coverages to bodily injury/personal injury/liability coverage, property damage liability coverage, and workman's compensation coverage. This certificate must be on file prior to any commencement of work. It is absolutely necessary that "The Board of Regents of the University of Nebraska is listed as an additional insured" be added to the face of the certificate for all coverage except worker's compensation. The above statement must be worded in this manner. It is also absolutely necessary that "Completed Operations Coverage" must be included as part of the successful Bidders General Liability.

### Debarment

Each Bidder certifies that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in the transaction (contract), by any governmental department or agency. If the Bidder cannot certify this statement, such Bidder must submit a written explanation for review by UNIVERSITY.

### Qualified to Do Business in Nebraska

Each Bidder certifies that they are qualified to do business in Nebraska (<http://www.sos.ne.gov> or contact Nebraska Secretary of State, Corporations Division, State Capital 1301, Lincoln NE 68509 phone 402-471-2554 or fax 402-471-3666). If the bidder cannot validate they are certified to do business in Nebraska they must submit a written explanation. A bidder shall be solely responsible for providing the defense to any challenge regarding their qualification to do business in the State of Nebraska.

### LB429 Compliance

Pursuant to Nebraska's Taxpayer Transparency Act (Neb. Rev. Stat. §84-602.01, as may be amended), as of July 1, 2014, the University of Nebraska is required to provide the Nebraska Department of Administrative Services with a copy of each contract that is a basis for an expenditure of state funds, including any documents incorporated by reference in the contract. Copies of all such contracts and documents are published by the Nebraska Department of Administrative Services at [www.nebraskaspending.gov](http://www.nebraskaspending.gov). It shall be the sole responsibility of the Contractor to notify the University of any redactions to such contracts and documents under Neb. Rev. Stat. 84-712.05(3) prior to contract execution.

Additional University bid terms and conditions can be found at:

<http://www.unomaha.edu/accounting-services/procurement-office/policies/bid-requirements.php>

## Bid Responses

**Bidder must respond to each of the following statements.** Specifications listed are minimum conditions that must be met in order for a bidder to qualify for the award. A “YES” response means the bidder guarantees they can meet this condition. A “NO” response means the bidder cannot meet this condition and will not be considered. “NO & PROVIDE ALTERNATE” responses should be used only with a narrative response in the NOTES/COMMENTS section explaining in detail any deviation from the bidder’s ability to meet the condition and an explanation of how this would be determined to be an acceptable alternate to meeting the condition. Alternatives must be detailed in such a way that allows such deviations to be fully evaluated. The University shall determine, at its sole discretion, whether or not the bidder’s alternative is an acceptable alternative.

### Specification 1.

YES	NO	NO & PROVIDE ALTERNATIVE	
Bidder must be an accredited Commvault Business Partner.			
NOTES/COMMENTS:			

### Specification 2.

YES	NO	NO & PROVIDE ALTERNATIVE	
All order fulfillments will be made directly from Commvault or from a Commvault authorized distributor.			
NOTES/COMMENTS:			

### Specification 3.

YES	NO	NO & PROVIDE ALTERNATIVE	
Bidder will fulfill all Commvault maintenance & support contracts directly through/by Commvault or authorized Commvault support partner.			

<b>NOTES/COMMENTS:</b>
------------------------

Specification 4.

YES	NO	NO & PROVIDE ALTERNATIVE	
Include with this Invitation to Bid a Microsoft Excel document with the most current Commvault Product Catalog with the Manufacturer List Price. Include training courses, certifications, professional services, and implementation support line items.			
<b>NOTES/COMMENTS:</b>			

Specification 5.

YES	NO	NO & PROVIDE ALTERNATIVE	
Bidder has read, understands, and agrees to comply with the E-Rate specifications.			
<b>NOTES/COMMENTS:</b>			

Specification 6.

YES	NO	NO & PROVIDE ALTERNATIVE	
Provide Service Provider Identification Number (SPIN): _____			
<b>NOTES/COMMENTS:</b>			



Specification 7.

**DISCOUNT STRUCTURE**

1. Minimum discount percentage off Commvault list price for software: \_\_\_\_\_%
2. Minimum discount percentage off one (1) year maintenance & support contract: \_\_\_\_\_%
3. Minimum discount percentage off three (3) year maintenance & support contract: \_\_\_\_\_%
4. Minimum discount percentage off training and certifications: \_\_\_\_\_%
5. Minimum discount percentage off professional services, implementation support, and remote managed hosting: \_\_\_\_\_%
6. Discount Payment Terms: \_\_\_\_\_% \_\_\_\_\_ Days

## Signature Authority

I/we the undersigned, having carefully examined the specifications and conditions of this Invitation to Bid, and fully understand the type and quality of products required, hereby propose to offer the above contract at the terms, conditions and discounts stated and certify that such prices include all costs of product, packaging, and delivery.

FIRM NAME: \_\_\_\_\_

ADDRESS: \_\_\_\_\_

\_\_\_\_\_

CITY: \_\_\_\_\_ STATE: \_\_\_\_\_

PHONE: \_\_\_\_\_

FAX: \_\_\_\_\_

EMAIL: \_\_\_\_\_

SIGNATURE: \_\_\_\_\_

BY (PRINTED): \_\_\_\_\_

TITLE: \_\_\_\_\_

DATE: \_\_\_\_\_

On the behalf of the Board of Regents of the University of Nebraska, d/b/a the University of Nebraska at Omaha, this Invitation to Bid Vendor Submission is accepted by:

SIGNATURE: \_\_\_\_\_

BY (PRINTED): \_\_\_\_\_

TITLE: \_\_\_\_\_

DATE: \_\_\_\_\_

## Exhibit A

### MIDWESTERN HIGHER EDUCATION COMPACT

#### Introduction

The Midwestern Higher Education Compact (Compact), through its governing body, the Midwestern Higher Education Commission (MHEC or the Commission), is joining the University of Nebraska in competitively soliciting proposals for the purchase and maintenance of Commvault software. Upon final award and execution of a contract with the University of Nebraska (Contract), the successful Bidder shall enter into an addendum to the Contract (Addendum). The Addendum terms and conditions are attached as Exhibit B. MHEC reserves the right to add additional terms and conditions and modify the scope of the Contract in the Addendum. MHEC also reserves the right to reject all proposals and not enter into an Addendum with the successful Bidder should, in MHEC's sole discretion, the successful Bidder fail to meet MHEC's needs. MHEC will not be liable for any costs incurred by respondents in preparation and production of a proposal or the costs of any services performed prior to contract award.

#### The Midwestern Higher Education Compact

The Midwestern Higher Education Compact was established in 1991 through a common statute enacted into law by each of the 12 Midwestern member states (Illinois-Illinois Statute: Chapter 45 ILCS 155, Indiana-Indiana Statute: Chapter IC 21-28-3-3, Iowa-Iowa Statute: Chapter 261D.2, Kansas-Kansas Statute: Chapter 72-60b01, Michigan-Michigan Statute: Section 390.1531, Minnesota-Minnesota Statute: Section 135A.20, Missouri-Missouri Statute: Section 173.700, Nebraska-Nebraska Statute: Section 85-1301, North Dakota-North Dakota Statute: Chapter 15 - 10.2, Ohio-Ohio Statute: Chapter 3333.40, South Dakota-South Dakota Statute: Chapter 13-53C-, and Wisconsin-Wisconsin Statute: Chapter 14.90) The purpose of the Compact is to promote higher education through interstate cooperation and resource sharing.

A 60-member Commission composed of five delegates from each state who are appointed by their respective Governors, House Speakers and Senate Presidents governs the Compact. The statute establishing the Compact makes the Commission an instrumentality of the Compact's twelve member states and confers upon it very broad authority to enact solutions and enter into agreements on behalf of the member states. Once a state enacts the necessary legislation to become a member of the Compact, all of the public and private non-profit colleges, universities, community colleges and technical colleges in the state are eligible to participate in the solutions established by the Commission, including purchasing under MHEC agreements.

The Commission receives its primary financial support from member state appropriations, from foundations having special interests in specific solutions, and from administrative service fees.

The primary constituents served by the Midwestern Higher Education Compact are the approximately 1000 public and private non-profit institutions in the member states whose

combined enrollments total over four (4) million students. In addition, where appropriate, state government agencies and local school districts are also invited to participate in MHEC solutions.

One of the Compact's top priorities is to establish public-private relationships to improve services to higher education, and reduce administrative costs for both providers and institutions. Since 1991, the Compact has engaged in several highly successful initiatives in cooperation with leading corporations. These relationships have been quite innovative, and have produced financial benefits for all of the involved parties. Beyond excellent pricing and terms, MHEC agreements deliver a primary benefit to institutions and vendors by avoiding the time and expense of the RFP process since MHEC has already completed the RFP and awarded the contract on behalf of all institutions in the twelve states.

### Eligible Organizations

All public and private non-profit colleges, universities, community colleges, technical colleges and higher education agencies in MHEC's 12 Midwestern member states shall be eligible to participate in any Contract Addendum entered into between MHEC and successful Bidder.

Additionally, because MHEC is an instrumentality of state government for each of the Compact's 12 member states, participation may be offered to any of the following entities if agreeable by all parties:

- K-12 schools and districts, including public libraries;
- cities, counties, and local subdivisions;
- state agencies;

At a minimum the successful Bidder shall be certified to do business in each of the Compact's twelve member states and the proposed offering shall be made available for all eligible organizations in those twelve states.

MHEC makes no guarantee that any eligible organization or number of eligible organizations will utilize any contract and/or addendum resulting from this solicitation process. Each Eligible Organization will determine whether or not utilization of the contract and /or addendum is in its best interest.

## Addendum A

### University of Nebraska Commvault Software and Maintenance Contract MHEC Addendum

Whereas, the University of Nebraska at Omaha (University) underwent a competitive sourcing event for the purchase and maintenance of Commvault software pursuant to Invitation Number xxxxxx; and

Whereas, University extended access to any contract resulting from the competitive sourcing event to the Eligible Organizations eligible to utilize contracts held by the Midwestern Higher Education Commission (MHEC); and

Whereas, MHEC reserved the right to enter into an addendum to any contract entered into between the University and the successful Bidder resulting from the competitive sourcing event; and

Whereas, successful Bidder was awarded the bid and entered into a contract with the University upon completion of the competitive sourcing event, Contract Number xxxxxx (Contract); and

Therefore, in consideration of mutual covenants, conditions and promises contained herein, MHEC and Successful Bidder agree as follows:

**Scope:** This contract addendum (Addendum) allows for the purchase by Eligible Organizations under the Midwestern Higher Education Compact the Commvault Product catalogue categories awarded to successful Bidder pursuant to the University of Nebraska at Omaha Invitation to Bid, Invitation Number xxxxx. Eligible Organization shall purchase under this Addendum by executing a valid order with successful Bidder. Each quote supplied to Eligible Organization from successful Bidder, and each order placed pursuant to this Amendment, shall incorporate the terms and conditions of the Contract and include the Addendum contract number MHEC-xxxxxxx.

Midwestern Higher Education Commission (or MHEC) shall be defined as the governing body of the Midwestern Higher Education Compact, an interstate compact of twelve Midwestern states, such states being: Illinois, Indiana, Iowa, Kansas, Michigan, Minnesota, Missouri, Nebraska, North Dakota, Ohio, South Dakota and Wisconsin.

Eligible Organizations shall be defined as all public and private non-profit colleges, universities, community colleges, technical colleges and higher education agencies located in a member state of the Midwestern Higher Education Compact. Additionally, because MHEC is an instrumentality of state government for each of the Compact's 12 member states, participation may be offered to any of the following entities if agreeable by all parties: K-12 schools and

districts, including public libraries; cities, counties, and local subdivisions; and state agencies, located in a member state of the Midwestern Higher Education Compact.

Procuring Eligible Organization shall be defined as an Eligible Organization which desires to purchase under this contract addendum and has executed a valid order.

The terms and conditions of the Contract shall apply to the Procuring Eligible Organization as well as to the University unless amended or modified in this Addendum. Where the terms and conditions of the Contract and/or Addendum are in conflict with the Procuring Eligible Organization's state and/or institutional laws or regulations, the Procuring Eligible Organization and successful Bidder may enter into an amendment to amend the terms and conditions of the Contract and/or Addendum to conform to the Procuring Eligible Organization's state and/or institutional laws or regulations.

This Addendum will be effective upon the signature of the parties hereto. The Addendum will be coterminous with the Contract and any extension of the Contract, unless terminated pursuant to the terms of this addendum.

**Order of Precedence:**

- 1) An executed amendment between Procuring Eligible Organization and successful Bidder the terms and conditions of which shall only apply between applicable Procuring Eligible Organization and successful Bidder;
- 2) The terms and conditions of this Addendum which shall not diminish, change or impact the rights of the University of Nebraska with regard to the University of Nebraska's contractual relationship with the successful Bidder under the terms of the Contract;
- 3) The Contract between the University of Nebraska and successful Bidder

**Contract Modifications or Additional Terms and Conditions to Contract:**

1. Termination of Addendum: (a) MHEC may terminate the Addendum at any time if the successful Bidder fails to carry out its terms or fails to make substantial progress toward the fulfillment of those terms. In such event, MHEC shall provide the successful Bidder with thirty (30) day written notice of the terms in breach. If after such notice, the successful Bidder fails to remedy the breach within those 30 days, MHEC may immediately cancel the Addendum. In the event the Addendum is terminated for any reason, a Procuring Eligible Organization shall retain its rights in all products and services accepted prior to the effective termination date or ordered before the effective termination date and ultimately accepted. (b) Procuring Eligible Organization may, at its discretion, terminate an order under this Addendum at any time if the successful Bidder

fails to carry out its terms or fails to fulfill the terms of the Addendum. In such event, Procuring Eligible Organization shall provide the successful Bidder with thirty (30) days written notice of the terms in breach. If after such notice, the successful Bidder fails to remedy the breach within those 30 days, Procuring Eligible Organization may immediately cancel the Addendum. The Procuring Eligible Organization shall pay the successful Bidder only for such performance as has been properly completed and is of use to Procuring Eligible Organization. The Procuring Eligible Organization may, at its discretion, contract for provision of the goods or services required to complete the order and hold the successful bidder liable for all expenses incurred in such additional contract over and above the total cost of performance. This provision shall not preclude the pursuit of other remedies for breach of contract as allowed by law.

2. Indemnity, General and Patent: The successful Bidder shall indemnify, defend and save harmless MHEC and its respective officers, agents and employees from and against any and all liabilities and losses whatsoever, including without limitation, costs and expenses in connection therewith, on account of, or by reason of, injury to or death of, any person whosoever, or loss of or damage to any property whatsoever, suffered or sustained in the case of, or in connection with, the performance of the contract, except for that liability and loss arising from the acts or omissions of MHEC.

With respect to anything provided to MHEC or Procuring Eligible Organization by the Bidder pursuant to this bid, the Bidder shall indemnify and defend MHEC and its respective officers, agents and employees against liability, including costs and attorney's fees for infringement of any United States patent, copyright, trade infringement or other intellectual property right arising out of the manufacture, delivery and use of such by Procuring Eligible Organization.

3. Governing Law; Venue: (a) As between Procuring Eligible Organization and successful Bidder, this Addendum will be construed in accordance with, and its performance governed by the laws of the state in which Procuring Eligible Organization resides. Venue for all legal proceedings arising out of this Addendum, or breach thereof, shall be in a state or federal court with competent jurisdiction located in a state in which Procuring Eligible Organization resides. (b) As between MHEC and successful Bidder, this Addendum will be construed in accordance with, and its performance governed by the laws of the State of Minnesota. Venue for all legal proceedings arising out of this Addendum, or breach thereof, shall be in a state or federal court with competent jurisdiction located in the State of Minnesota. (c) As between Procuring Eligible Organization, MHEC and successful Bidder, this Addendum will be construed in accordance with, and its performance governed by the laws of the state in which Procuring Eligible Organization resides. Venue for all legal proceedings arising out of

this Addendum, or breach thereof, shall be in a state or federal court with competent jurisdiction located in a state in which Procuring Eligible Organization resides.

4. **Qualified to do Business and Compliance with Laws:** Successful Bidder certifies that it is qualified to conduct business in each of the member states of the Midwestern Higher Education Compact, such states being Illinois, Indiana, Iowa, Kansas, Michigan, Minnesota, Missouri, Nebraska, North Dakota, Ohio, South Dakota and Wisconsin, and shall comply with all applicable laws and governmental regulations required by such states.
5. **Federal, State and Local Sales Taxes; Federal Excise Taxes:** Purchases made by Procuring Eligible Organization may be exempt from payment of state sales and use taxes and federal excise taxes. Certification of these exemptions will be provided to the successful Bidder upon request.
6. **Sovereign Immunity:** All parties to this Addendum and any orders placed hereunder acknowledge and agree that nothing in the solicitation or the Contract or Addendum shall be construed as a modification, compromise or waiver by the Procuring Eligible Organization of any rights or defenses of any immunities provided by Federal law or the laws of the state where Procuring Eligible Organization resides to Procuring Eligible Organization or any of its officers and employees, which they may have had, now have or will have with respect to all matters arising out of the Contract or Addendum. To the extent that this section conflicts with any other section of the Contract or Addendum, this section shall govern.
7. **Records and Audit:** Successful Bidder agrees to maintain records directly related to the invoices and orders under this Addendum for a period of six (6) years or such term as required by applicable law from the date of receipt of final payment after termination of the Addendum. These records shall be subject to inspection, which may be initiated no more than twice annually, with reasonable advance notice, by Procuring Eligible Organization and appropriate governmental authorities within Procuring Eligible Organization's state. The Procuring Eligible Organization shall have the right to request copies of invoices either before or after payment. Payment under this Addendum shall not foreclose the right of the Procuring Eligible Organization to recover excessive or illegal payments.
8. **Legal Relationship:** Successful Bidder and its agents and employees are independent contractors and are not employees of MHEC or any Eligible Organization. Successful Bidder has no authorization, express or implied to bind MHEC or any Eligible Organization to any agreements, settlements, liability or understanding whatsoever, and agrees not to perform any acts as agent of MHEC or any Eligible Organization, except as expressly set forth herein. Nothing in this Addendum is intended, or shall be



deemed, or construed to constitute a partnership or a joint venture between the parties.

9. Assignment: This Addendum shall not be transferred or assigned without the prior written consent of MHEC.
10. MHEC not Liable for Procuring Eligible Organizations: MHEC shall not be liable to successful Bidder for the failure of any Procuring Eligible Organization to make any payment or to otherwise fully perform pursuant to the terms and conditions of the Contract and this Addendum or an order made pursuant to the Contract and this Addendum. An Eligible Organization shall not be liable or responsible for any other Eligible Organization that executes its own order pursuant to the Contract and this Addendum. MHEC makes no guarantee that any Eligible Organization or number of Eligible Organizations will make any purchases or utilize the Contract and/or Addendum in any manner.
11. Administrative Reporting and Fees: On a calendar-quarterly basis (where quarter one is January 1 - March 31 and the quarter one report is due by April 30), successful Bidder will, in a timely manner, make available to MHEC utilization reports and information generated by this Addendum, reflecting net product and service sales to all Procuring Eligible Organizations. The information and reports shall be accompanied with a check payable to the Midwestern Higher Education Commission for an amount equal to one and one half percent (1.5%) of the net Product and Service sales for that quarter period (the "Fee"). The successful Bidder shall not include in the calculation of the Fee any sales of product or services to the University of Nebraska.
12. Announcement and Publicity: Any announcement and publicity given to MHEC (or an Eligible Organization) resulting from this Addendum must receive the prior approval of MHEC (or Eligible Organization). Successful bidder will not make any representations of MHEC's (or Eligible Organization's) opinion or position as to the quality or effectiveness of the products, supplies, and/or services that are subject of this Addendum without the prior written consent of MHEC (or Eligible Organization).
13. Marketing: Successful bidder will assist MHEC in the development and implementation of appropriate marketing strategies including seminars, printed material and full service, on-line MHEC-specific web site to receive information on products, supplies, services and prices and to place orders.
14. Oversight Committee: An oversight committee comprised of representatives of Eligible Organizations shall be appointed by MHEC to assist and support MHEC and Successful bidder in developing and refining the implementation of the Contract and Addendum in the Compact member states. This shall include, but not be limited to, assistance with marketing strategies, representing the interests of Eligible Organizations in assuring quality and timely products and services; and to advise the Successful bidder on the

effectiveness of its implementation progression. There will be an annual meeting between Successful bidder and MHEC (and perhaps members of the oversight committee) to perform a contract health check; including items such as those above.

15. Vendor Representative: Successful Bidder shall assign a senior level representative who shall be the primary MHEC contact for all matters related to this Addendum and all sales and marketing efforts made pursuant to this Addendum.
16. Notification: Whenever under the terms of this Addendum any notice is required or permitted to be given by one party to the other, such notice shall be given in writing and shall be deemed to have been sufficiently given for all purposes hereof if given by facsimile or mail, postage prepaid, to the parties at the addresses set forth below, or at such other address as the parties may direct in writing from time to time:

To MHEC	To Successful Bidder
Nathan Sorensen	
105 Fifth Avenue South	
Suite 450	
Minneapolis, MN 55401	
e-mail: <a href="mailto:nathans@mhec.org">nathans@mhec.org</a>	
Fax: 612-767-3353	

To Procuring Eligible Organizations: Notices shall be sent to Procuring Eligible Organization's business address. The term "business address" shall mean the "Bill" to address set forth in an invoice submitted to Procuring Eligible Organization.

IN WITNESS WHEREOF, the parties have executed this Addendum as of the date of execution by both parties below.

Midwestern Higher Education Commission

Successful Bidder

\_\_\_\_\_

\_\_\_\_\_

Name: \_\_\_\_\_

\_\_\_\_\_

Title: \_\_\_\_\_

\_\_\_\_\_

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

\_\_\_\_\_

**University of Nebraska at Omaha**  
**Department of Information Services**  
*Invitation to Bid for Commvault Software*  
*Invitation Number 5271605*



Presented by:

**Arrow Enterprise Computing Solutions, Inc.**  
9201 E. Dry Creek Road  
Centennial, CO 80112

June 17, 2016

June 17, 2016

UNO Purchasing Department  
c/o Ms. Lynn McAlpine  
6001 Dodge Street, EAB 208P  
Omaha, NE 68182

RE: University of Nebraska at Omaha Proposal for Commvault Software

Dear Ms. McAlpine:

Arrow Enterprise Computing Solutions, Inc. (Arrow ECS), a wholly owned subsidiary of Arrow Electronics, Inc., a Fortune 200 company and distributor of computer software and hardware, is pleased to have the opportunity to serve the procurement needs of the University of Nebraska at Omaha for Commvault Software. We believe that the attached response to the Invitation to Bid is best suited to meet the needs of the University, is competitive and hope that it will be favorably received.

Arrow Enterprise Computing Solutions, Inc. (Arrow ECS) has been chosen by original equipment manufacturers (OEMs), such as Commvault, as a distributor of their enterprise computing solution products/services. Arrow is pleased to partner with Commvault to provide software and related services to include implementation support, training and certifications, professional services, remote managed hosting and maintenance and support. These services will be provided by Commvault through a maintenance/support agreement or by one of the many Commvault of Certified valued-added reseller partners (VARs) who have been authorized by Commvault to resell products and services to the University.

Our strength as a premier Commvault distribution partner since 2007 and industry-wide reputation for operational excellence make us a solid choice as the partner to meet the University's goal of establishing public-private relationships designed to improve services to higher education while reducing costs for both providers and institutions. Arrow ECS's dedication to customer service and focus on offering specialized solutions to customers sets us apart from the competition.

We thank you for this opportunity to propose Commvault products that will meet the needs of the University of Nebraska at Omaha.

Sincerely,

Yvonne Barcewski  
Contracts Manager

## Contents

Arrow Electronics, Inc Introduction .....	4
General Terms.....	6
COMMVAULT PRODUCT CATALOG SPECIFICATIONS.....	7
Specification 1. ....	10
Specification 2. ....	10
Specification 3. ....	11
Specification 4. ....	11
Specification 5. ....	11
Specification 7. ....	12
Attachment A .....	13
Signature Authority.....	13
Attachment B .....	14
Attachment C .....	15
Attachment D .....	16
Limited Warranty.....	16
Attachment E .....	17
Customer Service .....	17
Attachment F.....	18
References.....	18
Attachment G .....	19
Attachment H .....	21
Attachment I.....	27
Attachment J .....	28
Limited Warranty.....	31
Trademark Acknowledgment.....	33
Patent Acknowledgment .....	34
Copyright Acknowledgment.....	34

# Arrow Electronics, Inc Introduction

**Arrow Electronics, Inc.** [NYSE: ARW] is a global provider of products, services, and solutions to industrial and commercial users of electronic components and enterprise computing solutions, with 2015 sales of \$28 billion. Arrow serves as a supply channel partner for over 1,200 suppliers and 115,000 original equipment manufacturers, contract manufacturers and commercial customers through a global network of more than 460 locations in 85 countries. A Fortune 200 company with 18,500 employees worldwide, Arrow brings the technology solutions of its customers and suppliers to a breadth of markets, including education, industrial equipment, information systems, automotive and transportation, medical and life sciences, telecommunications and consumer electronics.

Arrow Enterprise Computing Solutions is a \$10 billion business segment of Arrow Electronics Inc. Established over 15 years ago, Arrow ECS represents more than 31 percent of Arrow's total annual revenue of \$23.3 billion, and is a leading distributor of enterprise and midrange computing products, services, and solutions to VARs in North America and the EMEA region and provider of unified communications products and related services in North America.

We bring our more than 12,000 value-added resellers broad market access, extensive supplier relationships and the resources and scale to meet their needs. Arrow ECS provides comprehensive channel management services to help suppliers effectively manage their channels, and to help resellers develop new markets, with the goal of helping them grow faster than the market and faster than their competition.

Arrow ECS builds strong relationships with our reseller partners with a collaborative and consultative approach. We support our resellers with presales technical support, order fulfillment management, bundled solutions, customized configurations, business planning, flexible financing and many other services that simplify their business, identify new markets and increase sales. When you work with Arrow ECS, you expand your team of professionals with experts who can help your business grow.

Revenue from sales of Commvault was approximately \$227M across 345 unique partners in North America in 2015.

## **Supporting the University of Nebraska at Omaha Contract**

Arrow serves as a prime contract holder of the MHEC Virtualization Software and Related Services Contract. Arrow performs all administrative additions and modifications ensuring that the contract meets the current and evolving requirements of MHEC and its members, specifically the University of Nebraska at Omaha.

As a distributor, Arrow will enable the Commvault value added reseller community to market to and transact with the University of Nebraska at Omaha through the amended MHEC Contract (MHEC – 021213). These agreements will require the agents, among other things, to transact at the MHEC Contract price and report sales to Arrow for fulfillment and for the calculation of contract fees to be paid to MHEC. The proposed business model will provide the University with the benefit of centralized and efficient management of the contract while utilizing the large network of Commvault value added resellers to market, promote to, transact and support the University.



## General Terms

Section Description	Response	Notes
Scope	Noted & Understood	
Prices	Noted & Understood	The list price may change but the discounts offered will be firm until June 30, 2019. Additional option periods will be subject to a pricing quote at the time UNO expresses interest in exercising the option.
Execution	Noted & Understood	<b>See Attachment A</b>
Discounts	Noted & Understood	
Payment	Noted & Understood	
Collusive Bidding	Noted & Understood	
Specifications	Noted & Understood	
Samples	Noted & Understood	
Late Bids	Noted & Understood	
No Bid	Noted & Understood	
Award	Noted & Understood	
Performance & Default	Noted & Understood	Although UNO or a Buyer reserve the right to require a performance bond, discount off list percentages and subsequent pricing do not include the costs associated with a performance bond. Arrow expects that any request for a performance bond will be communicated at the time of award; and Arrow reserves the right to adjust pricing if such a bond is required.
In-State Preference	Noted & Understood	
Nondiscrimination	Noted & Understood	
Contract Amendments	Noted & Understood	
Breach of Contract	Exception Taken	<b>See Attachment B</b>

# COMMVAULT PRODUCT CATALOG SPECIFICATIONS

Section Description	Response	Notes
Catalog List Pricing	Noted & Understood	
Price Lists and Catalogs	Noted & Understood	The list price may change but the discounts offered will be firm until June 30, 2019. Additional option periods will be subject to a pricing quote at the time UNO expresses interest in exercising the option. <b>See Attachment C</b>
Usage Reports	Noted & Understood	
Substitutions	Noted & Understood	
Quality	Noted & Understood	
Gray Market Products	Noted & Understood	
Authorized Dealer and Warranty	Exception Taken	Arrow is a distributor, not an authorized dealer. Authorized Commvault dealers will take orders and invoice on behalf of Arrow. <b>Attachment D</b>
Delivery	Noted & Understood	
Orders	Noted & Understood	Resellers will acknowledge or reject Buyer orders based on whether or not the requested delivery date can be met and Arrow will do the same upon placement of an order by a reseller to Arrow. Delivery personnel will be required to deliver and offload all Products to a specified area on the inside of the designated facility or dock. Software will be downloaded.
Packaging	Noted & Understood	
Payment	Noted & Understood	
Customer Service	Noted & Understood	<b>See Attachment E</b>
References	Noted & Understood	<b>See Attachment F</b>
E-Rate	Exception Taken	E-Rate is not applicable to Arrow as Arrow will not make any direct sales to a Buyer. All resellers approved to sell on this contract will have a SPIN number issued by E-Rate. <b>See Attachment G</b>

# UNIVERSITY BID TERMS AND CONDITIONS

Section Description	Response	Notes
General	Noted & Understood	
Termination for Cause	Noted & Understood	
Contract Assignment	Noted & Understood	
Indemnity, General & Patent	Partial Exception	<b>See Attachment B</b>
Governing Law; Benue	Noted & Understood	
Force Majeure	Noted & Understood	
Compliance with Laws & Regs, etc.	Noted & Understood	
Sexual Harassment	Noted & Understood	
Drug Free Workplace	Noted & Understood	
Weapons Policy	Noted & Understood	
Equal Opportunity	Noted & Understood	
Proprietary Information	Noted & Understood	
Subcontractors	Partial Exception	Arrow sells to resellers who in turn sell to Buyers. All resellers will be approved by MHEC, Commvault and UNO.
Legislative Funding Out Clause	Noted & Understood	
Parking	Noted & Understood	
Building Rules & Regulations	Noted & Understood	
Use of Premises	Noted & Understood	
Hazardous Waste	Noted & Understood	
Delivery; F.O.B. Shipping	Noted & Understood	Hardware will be shipped FOB Destination, with all freight included in the price quoted at the time of order. No additional charges will be made for packing, handling, fuel surcharge or delivery costs.
Quantity	Noted & Understood	
Inspection	Noted & Understood	
Defective Goods or Work	Noted & Understood	
Liens	Noted & Understood	
Taxes	Noted & Understood	
Ambiguity	Noted & Understood	

Section Description	Response	Notes
Recycling Policy	Noted & Understood	
Successful Bidder Identification	Noted & Understood	
Legal Relationship	Noted & Understood	
Use of University Names & Logos	Noted & Understood	
Improper Business Relationships & COI Prohibited	Noted & Understood	
Electronic & IT Accessibility	Noted & Understood	<b>See Attachment H</b>
LB403 Compliance	Noted & Understood	
Equal Opportunity	Noted & Understood	
Contractor's Certificate of Insurance	Noted & Understood	
Debarment	Noted & Understood	
Qualified to Do Business in NE	Noted & Understood	<b>See Attachment I</b>
LB429 Compliance	Noted & Understood	
Exhibit A	Noted & Understood	
Addendum A	Exception Taken	Arrow has a contract with MHEC (MHEC -021213) and will amend that contract or enter into a Commvault specific contract that mirrors the terms of the existing MHEC contract. Arrow takes exception to Addendum A as it already has a contract with MHEC which has negotiated terms (such as who is an Eligible Buyer, indemnification and limitation fo liability) that will apply to the Commvault product sale.

# BID RESPONSES

**Bidder must respond to each of the following statements.** Specifications listed are minimum conditions that must be met in order for a bidder to qualify for the award. A “YES” response means the bidder guarantees they can meet this condition. A “NO” response means the bidder cannot meet this condition and will not be considered. “NO & PROVIDE ALTERNATE” responses should be used only with a narrative response in the NOTES/COMMENTS section explaining in detail any deviation from the bidder’s ability to meet the condition and an explanation of how this would be determined to be an acceptable alternate to meeting the condition. Alternatives must be detailed in such a way that allows such deviations to be fully evaluated. The University shall determine, at its sole discretion, whether or not the bidder’s alternative is an acceptable alternative.

## Specification 1.

YES	NO	NO & PROVIDE ALTERNATIVE	
X			
Bidder must be an accredited Commvault Business Partner.			
NOTES/COMMENTS: Arrow is an authorized Commvault Distributor			

## Specification 2.

YES	NO	NO & PROVIDE ALTERNATIVE	
X			
All order fulfillments will be made directly from Commvault or from a Commvault authorized distributor.			
NOTES/COMMENTS:			

### Specification 3.

YES	NO	NO & PROVIDE ALTERNATIVE	
X			
Bidder will fulfill all Commvault maintenance & support contracts directly through/by Commvault or authorized Commvault support partner.			
NOTES/COMMENTS:			

### Specification 4.

YES	NO	NO & PROVIDE ALTERNATIVE	
X			
Include with this Invitation to Bid a Microsoft Excel document with the most current Commvault Product Catalog with the Manufacturer List Price. Include training courses, certifications, professional services, and implementation support line items.			
NOTES/COMMENTS: See Attachment C			

### Specification 5.

YES	NO	NO & PROVIDE ALTERNATIVE	
		X	
Bidder has read, understands, and agrees to comply with the E-Rate specifications.			
NOTES/COMMENTS:			
<p>E-Rate is not applicable to Arrow as Arrow will not make any direct sales to a Buyer. All resellers approved to sell on this contract will have a SPIN number issued by E-Rate.</p> <p><b>See Attachment G</b></p>			

## Specification 6.

YES	NO	NO & PROVIDE ALTERATIVE	
		<b>X</b>	
Provide Service Provider Identification Number (SPIN): E-Rate is not applicable to Arrow as Arrow will not make any direct sales to a Buyer. All resellers approved to sell on this contract will have a SPIN number issued by E-Rate. <b>See Attachment G</b>			
<b>NOTES/COMMENTS:</b>			

## Specification 7.

<b>DISCOUNT STRUCTURE</b>
<ol style="list-style-type: none"> <li><b>1. Minimum discount percentage off Commvault list price for software: 15%</b></li> <li><b>2. Minimum discount percentage off one (1) year maintenance &amp; support contract: 15%</b></li> <li><b>3. Minimum discount percentage off three (3) year maintenance &amp; support contract: 15%</b></li> <li><b>4. Minimum discount percentage off training and certifications: 5%</b></li> <li><b>5. Minimum discount percentage off professional services, implementation support, and remote managed hosting: 5%</b></li> <li><b>6. Discount Payment Terms: 0% 45 Days</b></li> <li><b>7. Orders for Software and Maintenance greater than \$150,000 contract pricing: 20%</b></li> </ol>

## Attachment A

### Signature Authority

I/we the undersigned, having carefully examined the specifications and conditions of this Invitation to Bid, and fully understand the type and quality of products required, hereby propose to offer the above contract at the terms, conditions and discounts stated and certify that such prices include all costs of product, packaging, and delivery.

FIRM NAME: Arrow Enterprise Computing Solutions, Inc.

ADDRESS: 9201 E. Dry Creek Road

CITY: Centennial STATE: CO 80112

PHONE: 303-824-7762

FAX: 631-622-3436

EMAIL: ybarcewski@arrow.com

SIGNATURE: \_\_\_\_\_

BY (PRINTED): Yvonne Barcewski

TITLE: Contracts Manager

DATE: June 17, 2016

On the behalf of the Board of Regents of the University of Nebraska, d/b/a the University of Nebraska at Omaha, this Invitation to Bid Vendor Submission is accepted by:

SIGNATURE: \_\_\_\_\_

BY (PRINTED): \_\_\_\_\_

TITLE: \_\_\_\_\_

DATE: \_\_\_\_\_



## Attachment B

### Arrow Addendum:

**Breach of Contract and Indemnity, General and Patent:** Arrow understands that if there is a breach of any resulting contract between Arrow and UNO, UNO may decide to terminate the contract. However, Arrow is not selling Products to UNO. Rather the contract that Arrow has with MHEC will be modified to include the Products. Resellers approved by Commvault, MHEC and UNO will buy Products from Arrow and sales of the Products will be between the reseller's and Buyers. Therefore there is no real contractual relationship between Arrow and UNO or any other Buyer. As a result, Arrow takes full exception to the term in the Breach of Contract section that provides for UNO or any Buyer being able to hold Arrow responsible for costs associated with a reseller's failure to deliver on time or otherwise breach its contract with a Buyer. Arrow takes exception to the indemnification terms of the Bid. Arrow will indemnify for its willful misconduct and gross negligence. All other indemnifications are limited to those that Commvault has with Arrow as a distributor of the Products and which are available for pass through to Buyers or reseller's.

ARROW WILL HAVE ANY LIABILITY OR OBLIGATION TO ANY PERSON FOR ANY CLAIM, LOSS, DAMAGE, OR EXPENSE CAUSED IN WHOLE OR IN PART BY (a) ANY INADEQUACY, DEFICIENCY, OR DEFECT IN ANY PRODUCTS OR SERVICES (WHETHER OR NOT COVERED BY ANY WARRANTY), (b) THE USE OR PERFORMANCE OF ANY PRODUCTS OR SERVICES, OR (c) ANY FAILURE OR DELAY IN SELLER'S PERFORMANCE HEREUNDER, OR FOR ANY SPECIAL, DIRECT, INDIRECT, INCIDENTAL, COST OF REPLACEMENT GOODS OR SERVICES, REWORK, LOSS OF DATA, CONSEQUENTIAL, EXEMPLARY OR PUNITIVE DAMAGES, HOWEVER CAUSED, WHETHER OR NOT YOU HAVE INFORMED SELLER OF THE POSSIBILITY OR LIKELIHOOD OF ANY SUCH DAMAGES. IN NO EVENT WILL ARROW'S LIABILITY, REGARDLESS OF BASIS, EXCEED THE PRICE PAID FOR THE PRODUCTS OR SERVICES GIVING RISE TO THE CLAIM

# **Attachment C**

**Offered Pricing  
PROVIDED BY SEPARATE DOCUMENT**

## Attachment D

The warranty associated with the Products is that offered by Commvault. The warranty remedy during the applicable warranty period specified by Commvault is repair (hardware), replace or if repair or replacement is not available, a credit will be issued to the Buyer by the reseller. All returns must be accompanied by a Return Material Request issued by the reseller or if so instructed, Buyer will contact Commvault for return directions or support. This is the sole warranty and warranty remedy offered by Arrow to any reseller and subsequent Buyer. **OTHER THAN THOSE OFFERED IN THIS PARAGRAPH, THERE ARE NO REPRESENTATIONS OR WARRANTIES OF ANY KIND BY ARROW, EXPRESS OR IMPLIED, AS TO THE CONDITION OR PERFORMANCE OF ANY PRODUCTS OR SERVICES, THEIR MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR USE, NON-INFRINGEMENT, OR OTHERWISE. ARROW ASSUMES NO RESPONSIBILITY OR LIABILITY FOR SUPPLIERS' PRODUCT OR SERVICE SPECIFICATIONS OR THE PERFORMANCE OR ADEQUACY OF ANY DESIGN OR SPECIFICATION PROVIDED TO ARROW.**

### Limited Warranty

With the exception of Software provided to You for beta, demonstration, test or evaluation purposes or that is labeled "Not for Resale", Commvault warrants that the Software licensed hereunder shall be new and shall operate substantially in accordance with its user documentation for a period of ninety (90) days from the date of shipment by Commvault or its licensors (hereinafter the "Warranty Period"). If, during the Warranty Period, You believe any Software product to be defective, you must immediately notify Commvault in writing and follow Commvault's instructions regarding the return of such Software. Nothing in this EULA is intended to exclude, restrict or modify any rights that You may have under any applicable legislation, which may not be excluded, restricted or modified by agreement (hereinafter the "non-excludable statutory rights"). Except in relation to any non-excludable statutory rights which may not be restricted or modified by agreement, Commvault's sole liability to You, and Your sole remedy, shall be, at Commvault's option, (i) repair or replacement of the Software product which does not comply with this Limited Warranty, or (ii) return of the amount paid by You for the Software product which does not comply with the Limited Warranty. In the event Commvault determines that the Software product is in compliance with this Limited Warranty, You shall pay the cost of all charges associated with the inspection and shipment of such Software product by Commvault. The user documentation is the exclusive statement of performance of the Software licensed hereunder.

Commvault warrants that any services provided by Commvault shall be performed by competent personnel of Commvault's and shall be of professional quality consistent with generally accepted industry standards for the performance of such services.

The following four sentences only apply if You purchased Commvault Software in Australia and You are a 'consumer' under the Australian Consumer Law: Commvault's Software comes with guarantees that cannot be excluded under the Australian Consumer Law. You are entitled to a replacement or refund for a major failure and compensation for any other reasonably foreseeable loss or damage. You are also entitled to have the Software repaired or replaced if the Software fails to be of acceptable quality and the failure does not amount to a major failure.

If You have an enquiry or You wish to claim under this Limited Warranty, please contact Commvault.

# Attachment E

## Customer Service

The vendor shall list the name, phone number, and email address of the customer service representative who will be assigned to the University's account:

Customer Service Representative:	Jo Zack, Contracts Operation Manager
Phone Number:	571-250-5572
Email Address:	jzack@arrow.com

# Attachment F

## References

The University reserves the right to check any reference(s) regardless of source of the reference information, including but not limited to, those that are identified by the company in the bid, those indicated through explicitly specified contracts, those that are identified during the review of the bid, or those that result from communication with other entities involved with similar projects.

List the name, address, and the telephone numbers of three companies/businesses that we may contact who are currently using the same equipment being bid for the same application.

1. University of Nebraska Lincoln ITS. Linda Holsclaw at 402-472-6843 or lholsclaw@unl.edu
2. BYU – Idaho. Tony McCarty at 208-496-7095 or mccartyt@byui.edu
3. State of Colorado. Don Wisdom at 303-764-7846 or don.wisdom@state.co.us

# **Attachment G**

## **Authorized Resellers**



Company	States covered	SPIN#	Contact	email address	City	State	Phone
Alexander Open Systems	IL, IN, IA, KS, MI, MN, M	143004953	Steven Andrews	<a href="mailto:steven.andrews@aos5.com">steven.andrews@aos5.com</a>	Overland Park	KS	913-307-2383
Big Sur Technologies	FL	143032264	Dana Bisbee	<a href="mailto:dana@bigsurtech.com">dana@bigsurtech.com</a>	Tampa	FL	813-405-3028
Davenport Group	National	143048485	Paul Cummings	<a href="mailto:Paul.cummings@davenportgroup.com">Paul.cummings@davenportgroup.com</a>	St. Paul	MN	612-413-2676
CDW Corporation	National	143005588	Patricia Karakash	<a href="mailto:patrkar@cdw.com">patrkar@cdw.com</a>	Lincolnshire	IL	847-371-5819
CompuNet, Inc.	OR, WA, ID, MT, UT	143024653, 143020349	Luke Lesh	<a href="mailto:llesh@compunet.biz">llesh@compunet.biz</a>	Lake Oswego	OR	503-214-4610
CORE BTS	National	143034833, 143020510	David Dowler	<a href="mailto:david.dowler@corebts.com">david.dowler@corebts.com</a>	Indianapolis	IN	317-566-6221
Custom Storage (cStor)	NE, IL, OH, WI, AZ, NM,	143034396	Larry Gentry	<a href="mailto:Larry.gentry@cstor.com">Larry.gentry@cstor.com</a>	Scottsdale	AZ	920-327-3483
Data Strategy	National	143034987	Pam Eaglen	<a href="mailto:pam.eaglen@data-strategy.com">pam.eaglen@data-strategy.com</a>	Grand Rapids	MI	616-281-5566
En Pointe Technologies Sales	National	143005005, 143022321	Imran Yunus	<a href="mailto:ivunus@enpointe.com">ivunus@enpointe.com</a>	Gardina	CA	310-337-52908
Heartland Business Systems	IL, WI, MN, IA	143046764	Mark Koxlien	<a href="mailto:mkoxlien@hbs.net">mkoxlien@hbs.net</a>	Eau Claire	WI	715-598-3916
ISG Tech	KS, MO, OK	143030005	Dan Strickland	<a href="mailto:dstrickland@isgtech.com">dstrickland@isgtech.com</a>	Springfield	MO	417-447-1664
Ivoxy Consulting	WA, OR, MT, CA	143048061	Lori Ireton	<a href="mailto:lori@ivoxy.com">lori@ivoxy.com</a>	Kirkland	WA	425-292-9852
Kovarus	UT, OR	143048148	Dan Morris	<a href="mailto:dmorris@kovarus.com">dmorris@kovarus.com</a>	Centennial	CO	650) 392-7848
Logicalis	National	143004779	Allison West	<a href="mailto:allison.hughes@us.logicalis.com">allison.hughes@us.logicalis.com</a>	Tempe	AZ	480-346-2306
LPS Integration, Inc.	National	143035877	Todd Sanford	<a href="mailto:tsanford@lpsint.com">tsanford@lpsint.com</a>	Nashville	TN	615-564-5951
Meridian IT	National	143031169	James Hagemann	<a href="mailto:jhagemann@meridianitinc.com">jhagemann@meridianitinc.com</a>	Deerfield	IL	262-705-1456
MNJ Technologies	National	143030284	Paul Kozak	<a href="mailto:vendorprograms@mnjtech.com">vendorprograms@mnjtech.com</a>	Buffalo Grove	IL	847-634-0700
NetSource One, Inc.	MI	143020508	Andy Skrzypczak	<a href="mailto:andy@nsoit.com">andy@nsoit.com</a>	Salinaw	MI	989-498-4534
Paragon Micro	National	143034998	Rick Phillips	<a href="mailto:rphillips@paragonmicro.com">rphillips@paragonmicro.com</a>	Lake Zurich	IL	312-340-6526
Pivot Solutions (dba Sigma Solutions)	MO, NE, ND, OH, SD,	143032245	Jon Chappell	<a href="mailto:JChappell@Sigmasolinc.com">JChappell@Sigmasolinc.com</a>	San Antonio	TX	210-348-9876
Pomeroy	Nationwide	143005447	Colin Henry	<a href="mailto:Colin.Henry@pomeroy.com">Colin.Henry@pomeroy.com</a>	Hebron	KY	859-586-0600
Presidio	Nationwide	143015315	Jim Doyle	<a href="mailto:jdoyle@presidio.com">jdoyle@presidio.com</a>	Dedham	MA	781-638-2253
SHI	WI, MN, OH, KY, TN,	143028315, 143028315	Brian Gomez	<a href="mailto:Brian_Gomez@shi.com">Brian_Gomez@shi.com</a>	Chicago	IL	312-505-2025
Technology Integration Group (TIG)	National	143006033	Georgia Vasilion	<a href="mailto:contractadmin@tig.com">contractadmin@tig.com</a>	San Diego	CA	800-858-0549 x4942
United Data Technologies	FL, TN, GA, AR, MS, KY a	143020605	Nicole Antos	<a href="mailto:nicole.antos@udtonline.com">nicole.antos@udtonline.com</a>	Doral	FL	305-882-0435
Works Computing Inc.	MN, SD, ND, IA, WI, NE	143030213	Mitch Prust	<a href="mailto:Mitch.Prust@workscomputing.com">Mitch.Prust@workscomputing.com</a>	Bloomington	MN	612-860-7700
World Wide Technology, Inc.	NM, WA, AK	143020028	Carol Harting	<a href="mailto:carol.harting@wwt.com">carol.harting@wwt.com</a>	Maryland Heights	MO	314-995-6103
Xiologix	CO, TX	143025394	Sheryl Still	<a href="mailto:sstill@xiologix.com">sstill@xiologix.com</a>	Tualatin	OR	503-691-4364
Zones	National	143030023	Jim Grass	<a href="mailto:jim.grass@zones.com">jim.grass@zones.com</a>	Chicago	IL	235-205-3115
Zunesis, inc.	NM, ID	143035061	Justin McDonald	<a href="mailto:justin.mcdonald@zunesis.com">justin.mcdonald@zunesis.com</a>	Denver	CO	720-221-5211

## Attachment H



# 508 Usability VPAT

## Voluntary Product Accessibility Template

This document provides a set of common responses relative to meeting 508 compliance requirements with the Commvault Data Management solution.

CommVault Product Team  
VPAT Common Responses  
Doc Rev 2



## CommVault VPAT Section 508

The purpose of the Voluntary Product Accessibility Template (VPAT) is to assist Federal and State Government contracting officials in making preliminary assessments regarding the availability of commercial Electronic and Information Technology products and services with features that support accessibility. It is assumed that offerers will provide additional contact information to facilitate more detailed inquiries.

The first table of the Template provides a summary view of the section 508 Standards. The subsequent tables provide more detailed views of each subsection. There are three columns in each table. Column one of the Summary Table describes the subsections of subparts B and C of the Standards. The second column describes the supporting features of the product or refers you to the corresponding detailed table, "e.g., equivalent facilitation." The third column contains any additional remarks and explanations regarding the product. In the subsequent tables, the first column contains the lettered paragraphs of the subsections. The second column describes the supporting features of the product with regard to that paragraph. The third column contains any additional remarks and explanations regarding the product.

CommVault® provides its software suite to ensure high-performance data protection, universal availability and simplified management of data on complex storage networks. The CommVault® platform, based on CommVault's Common Technology Engine, integrates backup and recovery, point-in-time replication, hierarchical storage management, archiving for compliance, service level management and storage resource management software solutions.

The CommVault product family is deployed with two primary graphical user interfaces which support the administration and operations of our products; a Java client working in conjunction with Windows Accessibility features. Relative to the section 508 usability requirements, we have determined that the Java / Windows Accessibility features can meet a majority of the criteria; however, third party Assistive Technology software will be required for criteria that are not met.

This document outlines the common CommVault VPAT responses relative to 508 / Data Protection criteria. The responses describe features and functions within the CommVault software environment that can be configured to administrate, operate and manage the CommVault's data management solution relative to those criteria. All testing in this document has been completed with baseline Microsoft Windows 2003 and Windows 2008 Server Operating systems.

This document is intended for informational purposes only. Specific questions or clarifications can be directed through your local account team or by emailing [Products@commvault.com](mailto:Products@commvault.com).

CommVault makes no warranties, express or implied, in this document. CommVault regularly updates its websites and provides new information about the accessibility of products as that information becomes available.

COMMVAULT SYSTEMS INC.  
Attn: Products@CommVault.com  
1 CommVault Way  
Tinton Falls, NJ 07724

**Summary Table**  
**Voluntary Product Accessibility Template**

Criteria	Supporting Features	Remarks and explanations
Section 1194.21 Software Applications and Operating Systems	See below	As data management software we have concentrated our efforts on assessing the accessibility capabilities of CommVault's management interface based on Java working with Windows Accessibility features against the 1194.21 requirements. The use Java and Windows Accessibility features call for icon driven navigation as the interface text menu bar is non-functional with these tools.
Section 1194.22 Web-based internet information and applications	Not Applicable	CommVault's product set is not considered a web-based internet information and applications product.
Section 1194.23 Telecommunications Products	Not Applicable	CommVault's product set is not considered a telecommunications product.
Section 1194.24 Video and Multi-media Products	Not Applicable	CommVault's product set does not use multimedia.
Section 1194.25 Self-Contained, Closed Products	Not Applicable	CommVault's product set is not a self-contained product.
Section 1194.26 Desktop and Portable Computers	Not Applicable	CommVault's product set is software as defined under section 1194.21.
Section 1194.31 Functional Performance Criteria	See section 1194.31 below.	

**Section 1194.21 Software Applications and Operating Systems - Detail**  
**Voluntary Product Accessibility Template**

Criteria	Supporting Features	Remarks and explanations
(a) When software is designed to run on a system that has a keyboard, product functions shall be executable from a keyboard where the function itself or the result of performing a function can be discerned textually.	<b>Supported With Exception</b>  Java / Windows Accessibility features support keyboard access, navigation and execution for the CommCell user. The built-in features of Windows Accessibility enables users with addition features such as Hot Keys, StickyKeys, FilterKeys, ToggleKeys, MouseKeys, and High Contrast.	<ul style="list-style-type: none"> <li>There is no way to sort columns with the keyboard.</li> <li>In some of the property pages, there is no way to access context-sensitive help from the keyboard.</li> <li>Some icons are now accessible from the keyboard, primarily the control Panel.</li> </ul>
(b) Applications shall not disrupt or disable activated features of other products that are identified as accessibility features, where those features are developed and documented according to industry standards. Applications also shall not disrupt or disable activated features of any operating system that are identified as accessibility features where the application programming interface for those accessibility features has been documented by the manufacturer of the operating system and is available to the product developer.	<b>Supported</b>  Java / Windows Accessibility features	The Java / Windows Accessibility components and the underlying Microsoft Windows 2000 / 2003 / 2008 Server will not disrupt or disable accessibility features of the operating system or other software products
(c) A well-defined on-screen indication of the current focus shall be provided that moves among interactive interface elements as the input focus changes. The focus shall be programmatically exposed so that Assistive Technology can track focus and focus changes.	<b>Supported With Minor Exception</b>  Java / Windows Accessibility features	<p>Visual on-screen focus and tracking is provided across the Windows Accessibility/ Java framework except as noted in the Remarks section.</p> <p>Microsoft Windows 2000 / 2003 / 2008 Server supports technologies that make computer programs more accessible to people who use assistive technology</p> <p><u>Windows Accessibility exceptions</u></p> <ul style="list-style-type: none"> <li>When any action occurs, focus is lost.</li> <li>When some actions are performed that close a dialog box, focus is lost when returning to the screen that the dialog box was launched from.</li> </ul>
(d) Sufficient information about a user interface element including the identity, operation and state of the element shall be available to Assistive Technology. When an image represents a program element, the information conveyed by the image must also be available in text.	<b>Supported</b>  Java Access Bridge/ Windows Accessibility features	The Java Access Bridge programming interface tools can be used to identify GUI elements and enable Assistive Technology access to them.
(e) When bitmap images are used to identify controls, status indicators, or	<b>Supported</b>  Java / Windows Accessibility	Images used throughout Java / Windows Accessibility components for control, status and

other programmatic elements, the meaning assigned to those images shall be consistent throughout an application's performance.	features	programmatic elements maintain consistency. No outstanding issues have been identified.
(f) Textual information shall be provided through operating system functions for displaying text. The minimum information that shall be made available is text content, text input caret location, and text attributes.	<b>Supported</b> Java / Windows Accessibility features	Java / Windows Accessibility components use standard system functions of the Microsoft framework to send textual information to the operating system. No outstanding issues have been identified.
(g) Applications shall not override user selected contrast and color selections and other individual display attributes.	<b>Supported</b> Java / Windows Accessibility features	Java / Windows Accessibility components inherit the contrast and color selections as identified in the operating system display properties.
(h) When animation is displayed, the information shall be displayable in at least one non-animated presentation mode at the option of the user.	<b>Supported</b> Animation is not applied in the CommVault user interface design.	Animation is not used with in Java / Windows Accessibility.
(i) Color coding shall not be used as the only means of conveying information, indicating an action, prompting a response, or distinguishing a visual element.	<b>Supported With Minor Exception</b> Java / Windows Accessibility features / Reports Manager Module	Color-coding is used within the output format of the reports manager to convey distinctions within tabular results. These reports are generated in HTML and contain tags which can be used to textually interpret these distinctions. These reports may also be run using Text Output instead of HTML, eliminating any issue associated with report header color coding.
(j) When a product permits a user to adjust color and contrast settings, a variety of color selections capable of producing a range of contrast levels shall be provided.	<b>Supported</b> Java / Windows Accessibility features	All controls provided for color formatting of content or the custom assignment of color to UI elements in Microsoft Windows 2000/ 2003 / 2008 Server allow for a wide range of color and contrast selections.
(k) Software shall not use flashing or blinking text, objects, or other elements having a flash or blink frequency greater than 2 Hz and lower than 55 Hz.	<b>Supported</b> Java / Windows Accessibility features	In Microsoft Windows 2000 / 2003 / 2008 Server, flashing or blinking text, objects, or other elements have a flash or blink frequency within the recommended range. No outstanding issues have been identified.
(l) When electronic forms are used, the form shall allow people using Assistive Technology to access the information, field elements, and functionality required for completion and submission of the form, including all directions and cues.	<b>Supported</b> Java / Windows Accessibility features	Microsoft Windows 2000 / 2003 / 2008 Server forms provide access through Assistive Technology. No outstanding issues have been identified.

**Section 1194.31 Functional Performance Criteria - Detail**  
**Voluntary Product Accessibility Template**


Criteria	Supporting Features	Remarks and explanations
(a) At least one mode of operation and information retrieval that does not require user vision shall be provided, or support for Assistive Technology used by people who are blind or visually impaired shall be provided.	<b>Supported</b> Java / Windows Accessibility features can be enabled through Microsoft Windows 2000 and 2003 Server to support the use of assistive technology.	Commonly used assistive technologies may be used with these products. Users of assistive technology should contact their assistive technology vendor to assess the compatibility of specific assistive technology with Microsoft products and to learn how to adjust their settings to <u>optimize interoperability</u> .
(b) At least one mode of operation and information retrieval that does not require visual acuity greater than 20/70 shall be provided in audio and enlarged print output working together or independently, or support for Assistive Technology used by people who are visually impaired shall be provided.	<b>Supported</b> Java / Windows Accessibility features can be enabled through Microsoft Windows 2000 and 2003 Servers to support the use of screen readers.	The Windows Magnifier requires a split-screen view between the magnified screen and system's normal resolution.  Windows 2008: No longer requires a split-screen view, however the split-screen does allow for optimized viewing.
(c) At least one mode of operation and information retrieval that does not require user hearing shall be provided, or support for Assistive Technology used by people who are deaf or hard of hearing shall be provided	<b>Supported</b> Audio interfaces are not applied in the CommVault user interface design.	
(d) Where audio information is important for the use of a product, at least one mode of operation and information retrieval shall be provided in an enhanced auditory fashion, or support for assistive hearing devices shall be provided.	<b>Supported</b> Audio interfaces are not applied in the CommVault user interface design.	
(e) At least one mode of operation and information retrieval that does not require user speech shall be provided, or support for Assistive Technology used by people with disabilities shall be provided.	<b>Supported</b> Speech recognition is not applied in the CommVault user interface design.	
(f) At least one mode of operation and information retrieval that does not require fine motor control or simultaneous actions and that is operable with limited reach and strength shall be provided.	<b>Supported with Exception</b> Java / Windows Accessibility features can be navigated and executed by the keyboard	CommVault UI offers limited access to icons through keyboard features.  Windows Accessibility features do not allow toolbar text menu to be accessed.

This document is intended for informational purposes only. CommVault makes no warranties, express or implied, in this document. CommVault regularly updates its websites and provides new information about the accessibility of products as that information becomes available.

# Attachment I

Official Nebraska Government Website

NEBRASKA.GOV

All State Agencies | All State Services |  Select Language | ▼

Nebraska Secretary of State

Corporate & Business Search

New Search

FAQs / Help ▼

ARROW ENTERPRISE COMPUTING SOLUTIONS, INC.

Wed Jun 1 13:03:59 2016

<b>SOS Account Number</b> 10114854	<b>Status</b> Active	
<b>Principal Office Address</b> 7459 S LIMA ST ENGELWOOD, CO 80112	<b>Registered Agent and Office Address</b> NATIONAL REGISTERED AGENTS, INC. 5601 SOUTH 59TH STREET LINCOLN, NE 68516	
<b>Nature of Business</b> WHOLESALE DISTRIBUTION OF ELECTRONIC COMPONENTS	<b>Entity Type</b> Foreign Corp Qualifying State: DE	<b>Date Filed</b> Sep 03 2008



# Attachment J

## Commvault Systems, Inc.

### End User License and Limited Warranty Agreement

Commvault® Software Release 11.0.0

(Including Microsoft® SQL Server™ 2008 Enterprise Edition, Microsoft® SQL Server™ 2008 R2 Enterprise Edition, Microsoft® SQL Server™ 2012 Enterprise Edition, SQL Server™ 2008 Express Edition, SQL Server™ 2008 R2 Express Edition, SQL Server™ 2012 Express Edition and Windows Pre-Installation Environment)

#### End User License Agreement

**IMPORTANT- READ CAREFULLY: THIS END USER LICENSE AGREEMENT (“EULA”) IS A LEGAL AGREEMENT BETWEEN YOU (EITHER AS AN INDIVIDUAL OR ENTITY) (“YOU”) AND COMMVAULT SYSTEMS, INC. (“COMMVAULT”) FOR SERVICES PROVIDED BY COMMVAULT, AS WELL AS THE ABOVE-REFERENCED SOFTWARE PRODUCT(S), WHICH INCLUDES COMPUTER SOFTWARE AND MAY INCLUDE ASSOCIATED MEDIA, AND “ONLINE” OR ELECTRONIC DOCUMENTATION (“SOFTWARE”). BY INSTALLING, COPYING OR OTHERWISE USING THE SOFTWARE, OR RECEIVING THE SERVICES YOU AGREE TO BE BOUND BY THE TERMS OF THIS EULA. IF YOU DO NOT AGREE TO THE TERMS OF THIS EULA, DO NOT INSTALL OR USE THE SOFTWARE. YOU SHALL INFORM ALL USERS OF THE SOFTWARE OF THE TERMS AND CONDITIONS OF THIS EULA.**

This EULA, grants You, the user, a non-exclusive license to use the Software under the terms and conditions stated herein. You agree that all updates, enhancements, maintenance releases, patches, bug-fixes or other modifications to the Software provided to You, on a when and if available basis, shall be governed by the terms and conditions, including the limited warranty, exclusive remedies and limitations of liability provisions, contained in this EULA, or the then-current version of this EULA. This EULA may be amended from time to time by Commvault, in its discretion, and will be made available at [www.Commvault.com](http://www.Commvault.com). Except as otherwise provided herein, the license granted herein shall be perpetual provided You comply with the terms hereof. This EULA shall be in effect until terminated except as expressly otherwise provided herein. You may terminate this EULA at any time by destroying all copies of Software and corresponding documentation. This EULA will terminate immediately without notice from Commvault if You fail to comply with any provision of this EULA. Upon termination, You must destroy all copies of Software in Your possession or control.

You may: (i) use the Software, with the same or lower version number identified herein, in numbers equal to the number of licenses purchased for all items, or in the event You are licensing the Software on a capacity basis, up to the maximum capacity purchased; (ii) make copies of the Software, documentation or other user information accompanying the Software solely for back-up purposes, provided such back-up copies are only utilized as a replacement for the original copy on the same computer that the Software was previously installed; and, (iii) make a copy of or print documentation provided in electronic form for Your internal use only, and You may use Commvault trademarks solely for these purposes, but You must incorporate all patent, copyright, trademark and other notices included on the materials on any copies or partial copies that You make.

You may not: (i) make a copy of any of the Software for any purpose not explicitly permitted herein; (ii) provide commercial hosting services, sell, sublicense, rent, loan or lease the Software to another party, without the prior written consent of Commvault; (iii) except to the extent that such a prohibition is expressly prohibited by law, decompile, disassemble, reverse engineer or modify, in any manner, any of the Software; (iv) transfer or assign Your rights to use the Software; (v) use the Software in violation of applicable local, federal or other laws or regulations;

(vi) use the Software for any purpose other than as permitted in this EULA; or, (vii) remove, destroy, erase, alter or otherwise modify Commvault's trademarks.

Unless this software is provided to You for beta, demonstration, test, or evaluation purposes or is labeled "Not for Resale" as further described herein, You agree to use the Software solely for Your internal data center operations and to restrict any access to the Software, documentation, or other user information accompanying the Software only to those of your employees having a demonstrable need to have such access for your internal data processing operations. You agree that you shall not permit any access to the Software, documentation, or other user information accompanying the Software to any person engaged in product research, development, support, sales, marketing, or other functions not directly related to your internal data processing operations. You also agree not to use the Software, documentation, or user information accompanying the Software to assist, directly or indirectly, in the development or design of any computer hardware or software program including, but not limited to, a program that provides or is intended to provide or include a similar feature or functionality as the Software, or any conversion utility or aid relating to the Software intended to enable or facilitate a user's conversion from the use of the Software to an alternative program. Any software Commvault and/or its licensors may provide You as part of maintenance and support services are governed by this EULA, unless separate terms are provided. This EULA does not obligate Commvault and/or its licensors to provide any maintenance and support services or to support any Software provided as part of those services. If support services are provided, they shall be provided subject to the terms of this EULA and in accordance with Commvault's then current policies, as such may be amended from time to time. In the event You elect to purchase maintenance and support services, You must purchase such maintenance and support services for all of the licensed Software in Your entire environment. Such maintenance and support services shall begin on the date Software is shipped to You. Personal health information, personal financial information, or any other personally identifiable information is not necessary for Commvault's provision of services. You agree that You will not provide any such information to Commvault.

You agree that Commvault and/or its licensors may, for business purposes, collect, process, and use technical information gathered as part of any product maintenance and support services provided to You related to the Software and any other technical information You provide to Commvault provided that such information does not personally identify You. By providing data or information to Commvault, including personal data or information, You hereby consent to Commvault's use, storage or processing of such data or information in the United States (or in any other country in which we operate) for purposes of providing products and/or services to You.

All title and intellectual property rights in and to the Software, and any copies You are permitted to make herein, are owned by Commvault and/or its licensors and is protected by United States and other country patent, copyright, trade secret, and other laws and by international treaty provisions. Such licensors, in addition to any other rights or remedies available to them, are third party beneficiaries of this EULA for their respective software and may have the right to enforce such terms against You. **This Software is licensed, not sold.** The purchase of a license to the Software is final, non-returnable and non-refundable. Acceptance of the Software occurs upon shipment by Commvault or its licensors. No rights are granted to You other than a license to use the Software upon the terms expressly set forth in this EULA. The structure, sequence, organization and source code of the Software are valuable trade secrets of Commvault and/or its licensors. The export of the Software may be restricted by the export control laws of the United States of America and other countries. You agree to comply strictly with all such regulations and acknowledge that You have the responsibility to obtain licenses to export, re-export, or import Software. This EULA shall be governed by the laws of New Jersey, USA, without regard to any provisions concerning the applicability of the laws of other jurisdictions. You agree that exclusive jurisdiction for any claim or dispute arising out of or in connection with this EULA resides in the courts of New Jersey and you hereby consent and submit to the personal jurisdiction of such courts for the purposes of litigating any such action. This EULA is the complete and exclusive statement of Your agreement with Commvault with respect to the subject matter hereof and supersedes all prior agreements. This EULA supersedes all terms and conditions contained in any purchase order, order acknowledgment form, invoice or other business form submitted by You. No advertisements, catalogues or other publications or statements, whether written or oral, regarding the performance of the Software licensed under this EULA shall form part of this EULA. If any provision of this EULA is held to be invalid or unenforceable by a court of competent jurisdiction, the remaining provisions of this EULA shall remain in full force and effect.



In the event You license the Software on a capacity basis, if you exceed the maximum capacity purchased, the Software may cease to operate normally and/or performance may be impaired; provided however that reducing Your usage to the purchased capacity level or purchasing additional capacity will return the Software to its normal operation. Any excess capacity usage above the purchased maximum shall entitle Commvault to invoice You for licensed capacity and maintenance and support amounts owed, and if You fail to pay for the excess usage, Commvault shall be entitled to any self-help or other remedies available. You shall provide Commvault with any usage reports immediately upon request (and You shall not interfere with any automated reporting features) in order to enable Commvault to verify Your capacity usage. In the event that You license the Software by virtue of Your purchase or use of a hardware appliance, this license is limited to the hardware appliance on which the Software was originally shipped, and the Software may not be used on or transferred to any other hardware or appliance.

To ensure compliance with this EULA, You agree that upon reasonable notice, Commvault or Commvault's authorized representative shall have the right to inspect and audit Your installation and use of the Software. Any such inspection or audit shall be conducted during regular business hours at your facilities or electronically. Any information obtained during the course of such audit will be used by Commvault solely for the enforcement of Commvault's rights under this EULA and applicable law. If such audits disclose that you have installed, accessed, used, or otherwise permitted access to the Software in a manner that is not permitted by the terms of this EULA, then Commvault may terminate this EULA immediately and You shall reimburse Commvault for any unpaid license fees and all reasonable expenses related to such audit. Nothing in this section shall be deemed to limit any legal or equitable remedies available to Commvault for violation of this EULA or applicable law.

Any reports regarding Your use of the Software and any other usage information, results, comments, or suggestions provided by You to Commvault regarding the Software (collectively, the "Feedback") shall be deemed non-confidential to You. By providing Feedback, You grant and assign to Commvault, under Your intellectual property rights and other ownership rights, a worldwide, royalty-free, irrevocable, and non-exclusive license, with the right to sublicense to Commvault licensees and customers, the rights to use and disclose the Feedback in any manner Commvault chooses, and to display, perform, copy, make, have made, use, sell, and otherwise dispose of Commvault's products embodying the Feedback in any manner and via any media Commvault or its licensees choose, without obligation to You. You also agree that the Software may automatically provide certain reports and survey information, including the generation and collection of geolocation data, regarding its use to Commvault and its third-party licensors, and which reporting features You may disable at any time. Any such reports or information shall be used in a manner that does not identify you or shall be kept confidential and used solely by Commvault or its third party licensors for internal purposes.

Your agreement to this EULA serves as Your consent to the generation and collection of such reports and information by Commvault and its third-party licensors. To the extent that You may acquire by operation of law or equity, any right, title, or interest, including any intellectual property rights, in or to the Feedback, or any modifications, or developments related thereto, You hereby assign to Commvault Your entire right, title, and interest, including all intellectual property rights, therein and thereto, and agree to execute any necessary documents as reasonably required and requested by Commvault in connection with the foregoing. The above provisions and rights granted regarding title and intellectual property rights associated with the Software and the Feedback shall survive termination of this EULA.

You agree that any information provided to You by Commvault, including the Software and related Documentation, shall be considered confidential information. You shall not disclose such confidential information without the prior written consent of Commvault.

If the Software is provided to You electronically, You may not request, and Commvault is under no obligation to provide, physical delivery of any Software or media. You agree to be responsible for all taxes and any penalties and/or interest associated with Your purchase or use of the Software. You understand and agree that subsequent Software deliveries may not be eligible for electronic delivery, and in the event physical delivery is made, You shall be solely responsible for any taxes on that, or any prior, purchase. You represent and warrant that neither You, nor any of Your affiliates, have received any physical media from Commvault containing the Software. In the event that any taxing or governmental authority makes a claim against Commvault for taxes, interest, penalties or other

payments related to the delivery and/or purchase by You of the Software, You agree to indemnify and hold Commvault harmless from and against all such claims, proceedings, actions and liabilities associated therewith.

All rights not expressly granted hereunder are expressly reserved by Commvault.

#### **Software Labeled “Not for Resale” or Provided for Beta, Demonstration, Test, or Evaluation Purposes**

If the Software is provided to You for beta, demonstration, test or evaluation purposes or is labeled “Not for Resale,” then, notwithstanding anything to the contrary in the EULA: (i) The licenses granted herein shall be for a term of thirty (30) days (the “Evaluation Period”) unless otherwise agreed to in writing by Commvault, and Commvault reserves the right to terminate this EULA or any licenses granted hereunder immediately upon written notice at its convenience; (ii) Your use of the Software is limited to use for demonstration, test or evaluation purposes, and You may not resell or otherwise transfer the Software; (iii) You agree to keep confidential and not to disclose or otherwise make publicly available any information related to the Software, including, but not limited to test results, characteristics, and performance of the software; (iv) You agree not to copy the Software and not to provide a copy of the Software to any other party; (v) You agree not to use the Software in a production environment or for production data processing purposes, and that any use of the Software in a production environment or for production data processing purposes is at Your sole risk to backup data and take other appropriate measures to protect Your computer programs and data; and (vi) You agree to immediately, on or before the end of the Evaluation Period, promptly remove, destroy, and erase from computer memory and storage media any installed copy of the Software, and return the Software to Commvault together with all documentation and other materials provided by Commvault. Limited duration licenses, site licenses, beta, evaluation, test or demonstration Software products are delivered “**AS IS**” without a warranty of any kind. Commvault shall have no obligation to support, maintain, or provide other assistance regarding any limited duration licenses, site licenses, beta, evaluation, test, or demonstration Software products. IF THE SOFTWARE IS PROVIDED TO YOU FOR BETA, DEMONSTRATION, TEST, OR EVALUATION PURPOSES OR IS LABELED “NOT FOR RESALE,” IN NO EVENT WILL COMMVAULT BE LIABLE FOR ANY DAMAGES FOR ANY CAUSE OR FOR ANY CLAIM BY BORROWER OR FOR ANY THIRD PARTY CLAIM, INCLUDING BUT NOT LIMITED TO ANY DIRECT DAMAGES, ACTUAL DAMAGES, LOST PROFITS, LOST DATA OR ANY SPECIAL, INDIRECT, INCIDENTAL, OR CONSEQUENTIAL DAMAGES, EVEN IF COMMVAULT HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

#### *Note on JAVA Support*

THIS SOFTWARE PRODUCT MAY CONTAIN SUPPORT FOR PROGRAMS WRITTEN IN JAVA. JAVA TECHNOLOGY IS NOT FAULT TOLERANT AND IS NOT DESIGNED, MANUFACTURED, OR INTENDED FOR USE OR RESALE AS ONLINE CONTROL EQUIPMENT IN HAZARDOUS ENVIRONMENTS REQUIRING FAIL-SAFE PERFORMANCE, SUCH AS IN THE OPERATION OF NUCLEAR FACILITIES, AIRCRAFT NAVIGATION OR COMMUNICATION SYSTEMS, AIR TRAFFIC CONTROL, DIRECT LIFE SUPPORT MACHINES, OR WEAPONS SYSTEMS, IN WHICH THE FAILURE OF JAVA TECHNOLOGY COULD LEAD DIRECTLY TO DEATH, PERSONAL INJURY OR SEVERE PHYSICAL OR ENVIRONMENTAL DAMAGE. Microsoft Corporation obligated Commvault to make this disclaimer.

#### **Limited Warranty**

With the exception of Software provided to You for beta, demonstration, test or evaluation purposes or that is labeled “Not for Resale”, Commvault warrants that the Software licensed hereunder shall be new and shall operate substantially in accordance with its user documentation for a period of ninety (90) days from the date of shipment by Commvault or its licensors (hereinafter the “Warranty Period”). If, during the Warranty Period, You believe any Software product to be defective, You must immediately notify Commvault in writing and follow Commvault’s instructions regarding the return of such Software. Nothing in this EULA is intended to exclude, restrict or modify any rights that You may have under any applicable legislation, which may not be excluded, restricted or modified by agreement (hereinafter the “non-excludable statutory rights”). Except in relation to any non-excludable statutory

rights which may not be restricted or modified by agreement, Commvault's sole liability to You, and Your sole remedy, shall be, at Commvault's option, (i) repair or replacement of the Software product which does not comply with this Limited Warranty, or (ii) return of the amount paid by You for the Software product which does not comply with the Limited Warranty. In the event Commvault determines that the Software product is in compliance with this Limited Warranty, You shall pay the cost of all charges associated with the inspection and shipment of such Software product by Commvault. The user documentation is the exclusive statement of performance of the Software licensed hereunder.

Commvault warrants that any services provided by Commvault shall be performed by competent personnel of Commvault's and shall be of professional quality consistent with generally accepted industry standards for the performance of such services.

The following four sentences only apply if You purchased Commvault Software in Australia and You are a 'consumer' under the Australian Consumer Law: Commvault's Software comes with guarantees that cannot be excluded under the Australian Consumer Law. You are entitled to a replacement or refund for a major failure and compensation for any other reasonably foreseeable loss or damage. You are also entitled to have the Software repaired or replaced if the Software fails to be of acceptable quality and the failure does not amount to a major failure.

If You have an enquiry or You wish to claim under this Limited Warranty, please contact Commvault.

#### **Disclaimer**

**COMMVAULT DOES NOT WARRANT THAT THE SOFTWARE WILL OPERATE UNINTERRUPTED OR ERROR FREE. THE LIMITED WARRANTIES PROVIDED HEREIN ARE IN LIEU OF ALL OTHER WARRANTIES. COMMVAULT AND ITS LICENSORS DISCLAIM ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, EITHER IN FACT OR BY OPERATION OF LAW, STATUTORY OR OTHERWISE, AND COMMVAULT AND ITS LICENSORS EXPRESSLY EXCLUDE AND DISCLAIM ANY WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, LACK OF VIRUSES OR NON-INFRINGEMENT OF INTELLECTUAL PROPERTY RIGHTS. THE PROVISIONS SET FORTH ABOVE STATE COMMVAULT'S AND ITS LICENSORS' ENTIRE RESPONSIBILITY AND YOUR SOLE AND EXCLUSIVE REMEDY WITH RESPECT TO ANY BREACH OF ANY WARRANTY.**

#### **Limitation of Liability**

**NEITHER COMMVAULT, NOR ANY OF ITS LICENSORS, WILL, UNDER ANY CIRCUMSTANCES, BE LIABLE TO YOU OR ANY OTHER PARTY, FOR COSTS OF PROCUREMENT OF SUBSTITUTE PRODUCTS OR SERVICES, LOST PROFITS, LOSS OF INFORMATION OR DATA OR ANY OTHER SPECIAL, INCIDENTAL, PUNITIVE, INDIRECT OR CONSEQUENTIAL DAMAGES WHATSOEVER OR FOR DEATH, PERSONAL INJURY OR DAMAGE TO PHYSICAL PROPERTY OR ENVIRONMENTAL DAMAGES, REGARDLESS OF THE FORM OF ACTION, EVEN IF COMMVAULT HAS BEEN NOTIFIED OF THE POSSIBILITY OF SUCH DAMAGES AND NOTWITHSTANDING ANY FAILURE OF AN ESSENTIAL PURPOSE OF THIS LIMITED WARRANTY.**

**IN THE EVENT COMMVAULT OR ITS LICENSORS ARE SUBJECT TO ANY LIABILITY IN CONNECTION WITH THE SOFTWARE PRODUCTS OR ANY SERVICES FOR ANY REASON WHATSOEVER, WHETHER ARISING FROM NEGLIGENCE, BREACH OF CONTRACT OR OTHERWISE, NEITHER COMMVAULT'S LIABILITY NOR THE LIABILITY OF ITS LICENSORS SHALL EXCEED THE SUM PAID BY YOU TO COMMVAULT FOR THE SOFTWARE PRODUCT WHICH WAS FOUND TO HAVE NOT COMPLIED WITH THE LIMITED WARRANTY. THIS**

**LIMITATION SHALL APPLY EVEN IF COMMVAULT OR ITS LICENSORS HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES AND NOTWITHSTANDING ANY FAILURE OF ESSENTIAL PURPOSE OF ANY LIMITED WARRANTY.**

These terms and conditions, warranties, limitations and remedies contain an allocation of risk between You and Commvault. Accordingly, Commvault's prices reflect such allocation of risk. Because some jurisdictions restrict the ability to exclude implied warranties, limit or exclude incidental or consequential damages or limit liability, the foregoing limitations and exclusions may not apply to You.

### United States Government and DOD

This article applies to all acquisitions of this Software by or for the Federal Government. By accepting delivery of this Software, You hereby agree that this software qualifies as "commercial computer software" as that term is used in the acquisition regulation(s) applicable to this procurement. The terms and conditions of this EULA shall pertain to the Government's use and disclosure of this Software, and shall supersede any conflicting contractual terms and conditions. If this EULA fails to meet the Government's minimum needs or is inconsistent in any respect with Federal procurement law, the Government agrees to return this software, unused, to Commvault.

All Software provided to the U.S. Government pursuant to solicitations issued on or after December 1, 1995 is provided with the commercial license rights and restrictions described elsewhere herein. All Software provided to the U.S. Government pursuant to solicitations issued prior to December 1, 1995 is provided with "Restricted Rights" as provided for in FAR, 48 CFR 52.227-14 (JUNE 1987) or DFAR, 48 CFR 252.227-7013 (OCT 1988), as applicable.

The following paragraph is applicable only to Commvault 1-Touch products containing Microsoft Windows Pre-Installation Environment (WinPE) software: (i) The license for the Commvault 1-Touch product is limited to its use as a boot, diagnostic, disaster recovery, setup, restoration, emergency services, installation, test and/or configuration utilities program and not for use as a general purpose operating system or a fully functional version of any operating system product; (ii) the WinPE software is provided "as is"; (iii) the 1-Touch products, by virtue of the inclusion of WinPE, contain a security feature that will cause the computer system to reboot without prior notification to You after 24 hours of continuous use; (iv) neither Microsoft nor any Microsoft affiliate shall have any liability related to the 1-Touch or the WinPE products; and (v) all customer support issues will be handled solely by Commvault.

The Software may contain certain software licensed by Microsoft to Commvault. You warrant that You are not licensing Microsoft products under this EULA and that any copies of Microsoft software that You receive from Commvault as a result of licensing the Software do not entitle You to maintain on Your computer systems any more copies of Microsoft software than you may have previously licensed from Microsoft or other third parties. Microsoft is an intended third party beneficiary of this EULA with the right to enforce warranties and any other provision of the EULA and to verify Your compliance with same.

The Software may contain certain software licensed by third parties to Commvault. Such licensors are intended third party beneficiaries of this EULA with the right to enforce warranties and any other provision of the EULA and to verify Your compliance with same.

Portions copyright © 1991, 2011 Oracle and/or its affiliates. All rights reserved.

The Software may contain Data Files of IBM Lotus Domino © Copyright IBM Corporation 2007. All Rights Reserved.

Portions copyright 1992-2010 FairCom Corporation.

### Trademark Acknowledgment

Commvault, Commvault and logo, the "C hexagon" logo, Commvault Systems, Solving Forward, SIM, Singular Information Management, Simpana, the "Simpana" logo, Commvault Galaxy, Unified Data Management, QiNetix,

Quick Recovery, QR, CommNet, GridStor, Vault Tracker, InnerVault, QuickSnap, QSnap, Recovery Director, CommServe, CommCell, ROMS, IntelliSnap and CommValue are trademarks, and may be registered trademarks, of Commvault Systems, Inc. By using any of the Commvault trademarks as authorized herein, in whole or part, You agree to be bound by the then-current Commvault Trademark Guidelines located at [www.Commvault.com/trademarks](http://www.Commvault.com/trademarks) [www.Commvault.com/trademarks](http://www.Commvault.com/trademarks) [www.Commvault.com/trademarks](http://www.Commvault.com/trademarks). All other third party brands, products, service names, trademarks, or registered service marks are the property of and used to identify the products or services of their respective owners.

#### Patent Acknowledgment

This Software is patented: see [www.Commvault.com/legal-notices](http://www.Commvault.com/legal-notices) [www.Commvault.com/legal-notices](http://www.Commvault.com/legal-notices) [www.Commvault.com/legal-notices](http://www.Commvault.com/legal-notices) for information about the patents and patents pending covering this Software.

#### Copyright Acknowledgment

© 1997-2016 Commvault Systems, Inc. All rights reserved.