

**COMMVault SYSTEMS, INC.
SUPPORT AGREEMENT**

Customer Name: Gila County Computer Services

Customer Address: 1400 E Ash St.

Globe, AZ 85501

Customer Contact: Kelly Riggs

Agreement Number: GILA-GXY-GLO1

Term Dates: 1/18/2011 – 1/17/2012

This Support Agreement consists of the Support Terms and Conditions attached hereto and the Schedules set forth below (together the "Agreement"):

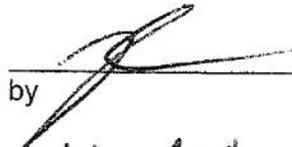
- Schedule 1- Product(s)
- Schedule 2- Support Offering(s)

By signing below, Customer acknowledges that it has read, understands and agrees to be bound by all terms and conditions contained in this Agreement.

Customer

CommVault Systems, Inc.

by _____

by  _____

printed name _____

John Aiello
printed name

title _____

Service Contracts Mgr.
title

date _____

1/3/11
date

SUPPORT AGREEMENT
Support Terms and Conditions

CommVault Systems, Inc. with an office at 2 Crescent Place, P.O. Box 900, Oceanport, New Jersey 07757 (hereinafter "CommVault") and the customer identified above ("Customer") hereby agree that CommVault shall provide support ("Support") on the products set forth in **Schedule 1** ("Products"), and any amendments and/or supplements thereto upon the terms and conditions set forth below:

1 TERM/ SUPPORT FEATURES/ SUPPORT RESPONSIBILITY

- 1.1 Beginning on the date identified above (the "Effective Date") and continuing for a period of one (1) year (the "Term"), CommVault shall provide Support pursuant to the specific support plan ("Support Plan") chosen by Customer. The Term of this Agreement shall be automatically extended for one (1) year periods unless terminated as provided herein. CommVault may perform Support itself or subcontract the performance of the Support, in whole or in part.
- 1.2 CommVault's Support will only be provided on all, but not less than all, CommVault Licenses that are used in Customer's software configuration. If Customer wishes to purchase maintenance and support for less than 100% of its Licenses, it shall forfeit the non-supported Licenses. Any such forfeited License must be repurchased for future use.
- 1.3 The features and specifications of the Support shall be provided in accordance with CommVault's then current policies, which may be amended from time to time, in CommVault's discretion.

2 CUSTOMER RESPONSIBILITIES

Customer shall:

- a) follow all of CommVault's published instructions, which include administrative documentation and release notes provided to the Customer with respect to use and operation of the Products;
- b) immediately notify the CommVault customer service center of any Support requirement, at 877-780-3077 or at any other telephone number(s) as CommVault may designate from time to time;
- c) provide sufficient information at the time the trouble call is placed to identify the Product requiring Support, such information shall include, as applicable: remote dial-in access number, Product type and CommCell identification number;
- d) to the extent possible, provide CommVault at the time of the trouble report call with sufficient information to allow CommVault the opportunity to determine the cause of the problem over the telephone;
- e) properly maintain, at its expense, all network Support and/or third party equipment required in order to facilitate the Product properly functioning and, if applicable, remote dial-in access;
- f) provide CommVault personnel with full and safe access to the premises and Products in connection with CommVault's performance of its obligations;
- g) maintain Products at the current generally available Product version levels; and,
- h) otherwise cooperate with CommVault to resolve any trouble report or Support matter.

3 ADDITIONAL PRODUCTS

Upon Customer's request, additional Products shall appear as amendments and/or supplements to **Schedule 1** and shall co-terminate with the Term. Charges for additional Products shall be prorated based upon the Term.

4 PRODUCT RELOCATION

Customer is free to relocate Products, however, Customer shall provide to CommVault at least ten (10) days prior written notice of Product relocation. Customer shall provide CommVault information reasonably requested by CommVault, including any new internet protocol address. Customer acknowledges that the Product licenses are dependent on an internet protocol address and in the event that the Products are relocated, the Products will disable themselves immediately. Customer waives any and all claims resulting from such an event.

5 EXCLUSIONS FROM SUPPORT/ PRODUCT EXCHANGE/PRODUCT RETURN/EOL

- 5.1 CommVault shall not be obligated to furnish Support, nor shall CommVault be liable under this Agreement, or any other, for repair or replacement of Products, or additions thereto, due to improper use, theft, natural disasters, strikes, riots, sabotage, acts of war, changes or modifications by other than CommVault personnel or without CommVault supervision or authority, shock, electrical damage, accident, fire, water damage, air conditioning failure, and/or failure by Customer to maintain the site specifications recommended by CommVault. If Support is required due to any of the above causes, CommVault will provide such Support at prevailing Time and Material rates, plus actual expenses incurred. CommVault shall have no obligation to perform any Support hereunder in the event the provisioning of such Support would pose a health or safety risk to CommVault's personnel.
- 5.2 The dispatch of a Customer Engineer will be subject to availability and will be charged to Customer at CommVault's then current time & material charge or as otherwise agreed upon by the parties.
- 5.3 In the event Customer requests replacement of Products which are rendered unrepairable or unusable due to an event set forth in **Section 5.1**, Customer acknowledges and agrees that CommVault shall have the right to invoice Customer for such Products. All Products returned to CommVault for exchange shall become the property of CommVault. Replacement Products delivered to Customer shall become Customer's property.
- 5.4 Customer acknowledges that, from time to time, CommVault may obsolete certain products and that Customer may be required to update their product version level in order to meet certain support requirements. The Support services provided hereunder remain subject to CommVault's Product Obsolescence Policy, which is available on CommVault's web site at http://www.commvault.com/product_support.asp.

6 PRICE AND PAYMENT TERMS

- 6.1 Customer agrees to pay for Support on Products as set forth in **Schedule 1** and any supplements and amendments thereto. The charge for Support during the Term (the "Charge") shall be invoiced by CommVault on an annual basis, in advance. Payment of the Charge for the initial Term shall be due upon execution of this Agreement by Customer. Thereafter, CommVault will invoice Customer each year in advance of the applicable anniversary of the Effective Date. The Charge shall not increase during the initial Term, however, the Charge may be increased or terms of payment may be changed on renewal, upon a minimum of thirty (30) days notice to Customer. In addition, CommVault may adjust the charges during the Term if specifications, attachments or features of the Products change. Hourly rates and other time and materials rates shall be those in effect when the Support are rendered and shall be payable as specified in the invoice for such charges.
- 6.2 Payment, in US dollars, shall be due within thirty (30) days from date of invoice. However, CommVault reserves the right to change payment terms upon written notice to Customer if Customer is delinquent in the payment of any invoice or if CommVault deems such change appropriate. All overdue amounts shall bear interest at the rate of 1½% per month, or the highest rate permitted by applicable law, whichever is less, until such overdue invoices are paid in full. Interest shall accrue on a daily basis. CommVault reserves the right to suspend Support, without any liability to Customer, in the event any invoice remains unpaid for more than sixty (60) days beyond the date of invoice, unless such non-payment is the result of a bona fide dispute.
- 6.3 If a Customer has received a special discount based on volume or term commitment and Customer fails for any reason to meet that commitment, CommVault reserves the right to bill-back the full amount of such discount.

7 TAXES, DUTIES AND TARIFFS

Customer agrees to pay amounts equal to any applicable taxes or other governmental charges imposed or levied on or in connection with the Support rendered, the Products or other transactions under this Agreement. These taxes shall include, by way of illustration and not by limitation, sales taxes, use and excise taxes; and, all duties, tariffs and taxes (such as Value Added Tax or VAT)

imposed or levied by the US Government, any state or local authority, and any foreign government or agency; and, any taxes or similar amounts paid or payable by CommVault, except taxes based on CommVault's net income.

8 TERM AND TERMINATION

- 8.1 This Agreement shall begin on the Effective Date and shall continue for the Term as specified herein, and shall continue thereafter until terminated as provided herein. Either party may terminate this Agreement or Support for any Product set forth in **Schedule 1**, for its convenience, by providing sixty (60) days written notice prior to the end of any Term.
- 8.2 Customer may terminate this Agreement, or Support for any Product set forth in **Schedule 1**, for CommVault's non-performance of its Support obligations hereunder, provided Customer has given CommVault thirty (30) days written notice, and CommVault has not corrected, or taken steps to correct such non-performance, to the satisfaction of Customer.
- 8.3 CommVault may terminate this Agreement, or Support for any Product set forth in **Schedule 1**, as follows: (a) for Customer's non-performance of any obligation hereunder upon thirty (30) days written notice; and, (b) for non-payment by Customer upon ten (10) days notice.

9 INSURANCE

Both parties shall maintain, during the term of this Agreement, the following insurance coverage as well as any other insurance required by law: (1) Worker's Compensation, in amounts required by law; (2) Employer's liability with a limit of at least one million (\$1,000,000) dollars per occurrence; (3) Comprehensive General Liability with a minimum of at least two hundred thousand five hundred (\$200,500) per occurrence; and (4) Comprehensive Motor Vehicle Liability Insurance with a limit of at least one million (\$1,000,000) dollars per occurrence. Each party shall, upon request, furnish the other party with evidence or adequate proof of such insurance required hereunder. Each party shall notify the other party at least thirty (30) days in advance in writing prior to the cancellation or any material change in any such insurance policy. Notwithstanding the foregoing, CommVault shall have the option to self retain any and all of the foregoing options.

10 ASSIGNMENT

Neither party shall assign, transfer or otherwise dispose of this Agreement or any of its rights or obligations hereunder, without the prior written consent of the other party, which consent shall not be unreasonably withheld. Notwithstanding the foregoing, CommVault may, upon written notice to Customer, assign this Agreement to a related entity or a purchaser of all or substantially all of its assets.

11 FORCE MAJEURE

Neither party shall be liable for any failure to perform or delay in performing any of its obligations hereunder (other than the payment of money) when such failure or delay is due to circumstances beyond its reasonable control, including, without limitation, an act of God, catastrophe, war, strike, lockout, labor disturbance, late or non-delivery by suppliers, shortage or unavailability of materials, components or transportation facilities, assertion by a third party of an infringement claim, and legal restrictions.

12 GOVERNING LAW/VENUE

This Agreement, its construction, validity, performance and all other questions arising hereunder shall be construed in accordance with and governed by the laws of the State of New Jersey, without regard to its provisions concerning the applicability of the laws of other jurisdictions. Any suit hereunder shall be brought in the federal or state courts in the districts which include Monmouth County, New Jersey and Customer hereby agrees and submits to the personal jurisdiction and venue thereof.

13 LIMITED WARRANTY/DISCLAIMER/LIMITATION OF LIABILITY

CommVault warrants to Customer that it will perform the Support in a good and workmanlike manner. Customer's exclusive remedy and CommVault's sole liability for the breach of such warranty shall be to re-perform the affected Support. CommVault warrants its replacement parts for a period of thirty (30) days from the date of receipt by Customer or for the remainder of the original product warranty,

whichever is longer. Except as set forth in this paragraph, COMMVAULT DISCLAIMS ALL WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, THE IMPLIED WARRANTIES OF MERCHANTABILITY AND OF FITNESS FOR A PARTICULAR PURPOSE AND ANY STATUTORY WARRANTY OF NON-INFRINGEMENT.

Neither CommVault nor its support provider shall be liable for any incidental, special, indirect or consequential damages of any kind or nature whatsoever, arising out of or in any way related to this Agreement, the Products, the Support or the use or inability to use any Products, including, without limitation, lost goodwill, lost profits, loss of data or software, work stoppage or impairment of other goods, and whether arising out of breach of warranty, breach of contract, tort (including negligence), strict liability or otherwise, even if advised of the possibility of such damage or if such damage could have been reasonably foreseen, except only in case of personal injury where and then only to the extent applicable law requires such liability. Such limitation is intended to apply **notwithstanding any failure of essential purpose of any exclusive remedy provided herein.**

Notwithstanding any other provision hereof, in no event shall CommVault or its Support provider's entire liability related to or in connection with the performance of Support under this Agreement, whether based on contract, warranty, tort (including negligence), strict liability or otherwise, exceed the actual amount received by CommVault for the most recent annual Support fee hereunder. Such limitation of liability shall not apply only if and to the extent required by applicable law. In all cases, any claim against CommVault or its Support providers must be brought within 12 months after the occurrence of the alleged act or omission giving rise to damages.

14 NOTICES

All notices required or permitted under this Agreement shall be deemed to have been duly given when made in writing and (i) when delivered personally, by overnight express, or (ii) three (3) days after mailing if mailed by certified or registered mail. Notices shall be provided to Customer at the address set forth on the first page of this Agreement and to CommVault as shown below. Either party may designate a different address by written notice as provided herein.

CommVault Systems, Inc.
2 Crescent Place
PO Box 900
Oceanport, New Jersey 07757
ATTN: Service Contract Administration
With a copy to: Corporate Attorney

15 EMPLOYMENT PRACTICES

CommVault shall not discriminate against any employee or applicant for employment to be employed in the performance of this Agreement, with respect to hire, tenure, terms, conditions or privileges of employment, or any other matter directly or indirectly related to employment, because of race, sex, religion, color, national origin, ancestry, age, handicap, disabled veteran status and Vietnam-era veteran status.

16 NO SOLICITATION

Customer recognizes that CommVault expends considerable time, effort and expense in training its employees. As such, in the event Customer hires any employee of CommVault, in any capacity whatsoever, whether full-time, part-time or on a consultant basis, on behalf of itself or any person or entity, during the term of this Agreement and for a period of twelve (12) months thereafter, Customer shall pay CommVault the sum equal to three (3) months pay at the rate paid by CommVault to employee or \$20,000 whichever is greater. This provision shall apply during the period of any such employee's employment by CommVault and for ninety (90) days thereafter.

17 ENTIRE AGREEMENT

This Agreement, including the Support Terms and Conditions and all applicable Schedules, constitutes the entire agreement between the parties relating to the subject matter hereof and supersedes all prior oral and written and all contemporaneous oral negotiations, commitments and understandings of the parties. This Agreement supersedes all pre-printed terms and conditions

contained in any purchase order, order acknowledgment form, invoice or other business form submitted hereafter by either party to the other. This Agreement may not be changed, modified or amended except by a written document signed by duly authorized representatives of both parties.

18. SEVERABILITY

If any provision of this Agreement shall be held illegal, invalid or unenforceable, in whole or in part, such provision shall be modified to the extent necessary to make it legal, valid and enforceable, and the legality, validity and enforceability of all other provisions of this Agreement shall not be affected thereby. This Agreement shall be fairly interpreted in accordance with its terms without any strict construction in favor of or against either party and ambiguities shall not be interpreted against the drafting party.

19. SURVIVAL OF OBLIGATIONS

The following Sections shall survive termination of this Agreement for whatever reason: **Sections 6 (until paid in full), 7, 10, 11, 12, 13, 14, 15, 16, 17, 18 and 19.**

20. WAIVER

A waiver by any party hereto of a breach or violation of any provision of this Agreement will not be a waiver of any subsequent breach or violation of that provision, or a waiver of any other provision of this Agreement. Customer shall not require waivers or releases of personal rights from employees or representatives of CommVault in connection with the fulfillment of CommVault's obligations hereunder.

21. Relationship to Parties

Provider is an independent contractor of the County. Provider represents that he has or will secure, at his own expense, all personnel required in performing the services under this contract. Such personnel shall not be employees of or have any contractual relationship with the County. All personnel engaged in work under this contract shall be fully qualified and shall be authorized or permitted under State and local law to perform such services. It is further agreed by provider that he shall obey all state and federal statutes, rules, and regulations which are applicable to provisions of the services called for herein. Neither provider nor any employee of the provider shall be deemed an officer, employee, or agent of the County.

22. Non-Appropriations Clause

Provider acknowledges that the County is a governmental entity, and the contract validity is based upon the availability of public funding under its authority. In the event that public funds are unavailable and not appropriated for the performance of County's obligations under this contract, then this contract shall automatically expire at the end of the then current term without penalty to County after written notice to provider of the unavailability and non-appropriation of public funds. It is expressly agreed that the County shall not activate this non-appropriation provision for its convenience or to circumvent the requirements of this contract, but only as an emergency fiscal measure. The County represents that it has secured sufficient funding for the initial term of this Agreement.

23. Entire Contract Clause

The provider and the County have read this contract and agree to be bound by all of its terms, and further agree that it constitutes the entire contract between the two parties and may only be modified by a written mutual contract signed by the parties.

24. Non-Waiver of Enforceability

Failure of the County to enforce, at any time, any of the provisions of this contract, or to request at any time performance by provider of any of the provisions hereof, shall in no way be construed to be a waiver of such provisions, nor in any way affect the validity of this contract or any part thereof, or the right of the County to enforce each and every provision.

25. Governing Law

Both parties agree that this contract shall be governed by the laws of the state of Arizona. The parties further agree that the jurisdiction for any legal disputes arising out of this contract shall be the Superior Court of the State of Arizona. The parties agree that even if this contract does not specifically reference any provision required by state or federal law, those state and federally required provisions are incorporated into this contract by this reference as though they were specifically listed herein.

26. Cancellation

Cancellation pursuant to A.R.S. §38-511. This contract is subject to the cancellation provisions of A.R.S. §38-511.

27. Legal Arizona Workers Act Compliance

Provider hereby warrants that it will at all times during the term of this Contract comply with all federal immigration laws applicable to Provider's employment of its employees, and with the requirements of A.R.S. § 23-214 (A) (together the "State and Federal Immigration Laws"). Provider shall further ensure that each subcontractor who performs any work for Provider under this contract likewise complies with the State and Federal Immigration Laws.

County shall have the right at any time to inspect the books and records of Provider and any subcontractor in order to verify such party's compliance with the State and Federal Immigration Laws.

Any breach of Provider's or any subcontractor's warranty of compliance with the State and Federal Immigration Laws, or of any other provision of this section, shall be deemed to be a material breach of this Contract subjecting Provider to suspension or termination of this Contract as a sole remedy. If the breach is by a subcontractor, and the subcontract is suspended or terminated as a result, Provider shall be required to take such steps as may be necessary to either self-perform the services that would have been provided under the subcontract or retain a replacement subcontractor as soon as possible so as not to delay project completion.

Provider shall advise each subcontractor of County's rights, and the subcontractor's obligations, under this Article warranting that each Subcontractor will at all times during the term of this contract comply with all federal immigration laws applicable to Subcontractor's employees, and with the requirements of A.R.S. § 23-214 (A) that the County may inspect the Subcontractor's books and records to insure that Subcontractor is in compliance with these requirements. Any breach of this paragraph by Provider or Subcontractor will be deemed to be a material breach of this contract for which the County may suspend or terminate this contract as its sole remedy.

**COMMVault SYSTEMS, INC.
SUPPORT AGREEMENT**

SCHEDULE 1

| |
|--|
| Customer Name: Gila County Computer Services GILA-GXY-GLO1 |
|--|

Supported Products and Charges

| Start Date | Quantity | Description | CCID # | Annual Charge | |
|------------|---------------------------|-----------------------------|--------|---------------|---------------------|
| 1/18/2011 | 1 | CommServe StorageMgr | F4DD6 | \$ 13,191.81 | |
| | 2 | DA-Exch DB/MB/PF/WF | | | |
| | 1 | DA-IBM AIX | | | |
| | 1 | DA-SharePoint Portal | | | |
| | 2 | DA-SQL | | | |
| | 4 | DA-Windows 64 bit Server | | | |
| | 16 | DA-Windows Server | | | |
| | 3 | DDO | | | |
| | 3 | Drive Management Software | | | |
| | 3 | Library Management Software | | | |
| | 3 | MediaAgent (Windows) | | | |
| | 1 | ROMS Renewal | | | \$ 1,764.00 |
| | Total Items=39 | | | | \$ 14,955.81 |

The initial term of the above services shall start on 1/18/2011 and end on 1/17/2012.

| | | |
|--|--------------------------------------|--------------|
| Total Annual Contract Charge = Total of All Pages | Total Amount Due: | \$ 14,955.81 |
| | <i>(Due upon receipt of invoice)</i> | |
| Out of Coverage Rates: \$500.00 per Hour - *2-Hour Minimum* | | |

Customer Contact at Equipment Locations:

| NAME/TITLE | PHONE, FAX, EMAIL | ADDRESS |
|-------------|--|----------------------------------|
| Kelly Riggs | (928) 402-8772 kriggs@co.gila.az.us | 1400 East Ash Globe, AZ 85501 |

**COMMVault SYSTEMS, INC.
SUPPORT AGREEMENT**

SCHEDULE 2

| |
|--|
| Customer Name: Gila County Computer Services GILA-GXY-GLO1 |
|--|

Select Services and Coverage Times for Products Included on This Sheet:

| | |
|--|---|
| COVERAGE: | |
| A | Standard (7a.m – 7p.m, Monday through Friday, no holidays) |
| B <input checked="" type="checkbox"/> | Premier (24 hours, 7 days, Monday through Sunday, all holidays) |
| C | Other: _____ |

CommVault® Contacts

| | | |
|--|---|-------------------------------------|
| Designated Support Center Address: | All correspondence from customer in reference to this agreement shall be addressed to: | |
| CommVault® 2 Crescent Place Oceanport, NJ 07757 | CommVault® 2 Crescent Place Oceanport, NJ 07757 Attention: John Aiello | |
| Customer Call Center Telephone Number (877) 780-3077 | Email servicecontracts@commvault.com | |
| | Telephone Number 7328704209 | Fax Number (732) 728-7118 |

Service Support Contacts

| | <u>Name</u> | <u>Office Telephone Number</u> |
|--------------------------------------|-----------------|--------------------------------|
| Contract Representative | Dena Mirto | 7328704209 |
| Contract Manager | John Aiello | (732) 728 - 7127 |
| License Manager | Rodney Pennella | (732) 870 – 4051 |