

# LiveVault Limited Warranty and Service Level Agreement for Microsoft Windows Platforms (the "Agreement")

LiveVault, Inc. ("LVC") agrees to provide the Customer identified below ("You") the LiveVault® Online Backup Service (the "LiveVault Service") for Your initial server and any subsequent servers you may choose to enroll (each, a "Protected Server"), as described in the following Service Level Agreement (the "SLA" or "Service Level Agreement") for the retention period You selected in accordance with the following Terms and Conditions.

## 1. TERM OF AGREEMENT

1.1 This Agreement shall remain in force until terminated by either party upon thirty (30) days written notice to the other party, except as otherwise provided in this Agreement.

1.2 LVC may also terminate this Agreement (a) as provided in the SLA, (b) upon LVC's receipt of notice from Your authorized distributor of the LiveVault Service ("Distributor") that the Distributor elects to terminate the provision of the LiveVault Service to You or (c) the termination of LVC's relationship with the Distributor.

1.3 In the event of any termination of this Agreement pursuant to Sections 1.2(b) or (c), LVC or any LVC authorized distributor may offer to provide the LiveVault Service to You under terms agreed upon by You and LVC or such distributor, as the case may be.

1.4 Except as explicitly provided in this Agreement, Your relationship with the Distributor is independent of this Agreement.

1.5 If this Agreement is terminated by LVC, LVC shall notify you via email to Your Primary Technical Contact, as designated by You in Your deployment of the LiveVault Service, and, following such notice, may delete Your Data from the LiveVault Service. For purposes of this Agreement "Your Data" shall be deemed to include any information transmitted from your Protected Server(s) to LVC regardless of its ownership or origin. Termination of this Agreement shall be in addition to, and shall not prejudice, any of the parties' remedies at law or in equity.

1.6 Sections 1.4, 1.5, 1.6, 2.2, 3, 4.1, 4.2, 4.3, 4.4, 4.5, 4.6.2, 4.6.3, 4.6.6, 4.7 and 4.8 shall survive the termination or expiration of this Agreement.

## 2. LIMITED WARRANTY

2.1 LVC WARRANTS SOLELY TO YOU THAT, ONCE THE INITIAL BACKUP (AS DEFINED IN SECTION C OF THE SLA) HAS SUCCESSFULLY COMPLETED ON A PROTECTED SERVER, THE LIVEVAULT SERVICE PROVIDED BY LVC FOR SUCH PROTECTED SERVER WILL SUBSTANTIALLY CONFORM TO THE SERVICE LEVEL AGREEMENT BELOW, PROVIDED THAT YOU COMPLY WITH THE CONDITIONS AND REQUIREMENTS SET FORTH IN SUCH SLA. NOTWITHSTANDING THE FOREGOING, YOU UNDERSTAND AND AGREE THAT (A) THE LIVEVAULT SERVICE REQUIRES ACCESS TO AND USE OF THE INTERNET AND THAT THE INTERNET IS AN UNREGULATED, PUBLIC NETWORK OVER WHICH LVC EXERTS NO CONTROL AND (B) LVC HAS NO RESPONSIBILITY FOR OPERATING AND MAINTAINING YOUR SERVERS AND THEIR CONNECTION TO THE INTERNET TO ACCESS AND USE THE LIVEVAULT SERVICE.

2.2 EXCEPT FOR THE LIMITED WARRANTY DESCRIBED IN SECTION 2.1, LVC, ITS LICENSORS AND DISTRIBUTORS DISCLAIM ANY AND ALL OTHER WARRANTIES AND CONDITIONS, EXPRESS OR IMPLIED, RELATING TO THE LIVEVAULT SERVICE AND OTHERWISE RELATING TO THIS AGREEMENT, INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, AND NON-INFRINGEMENT, OR ARISING FROM A COURSE OF DEALING, USAGE OR TRADE PRACTICE. LVC SPECIFICALLY DISCLAIMS ANY WARRANTY THAT THE OPERATION OF THE LIVEVAULT SERVICE WILL BE UNINTERRUPTED OR ERROR FREE. FURTHER, LVC MAKES NO REPRESENTATIONS OR WARRANTIES WHATSOEVER, AND SHALL HAVE NO LIABILITY WHATSOEVER, WITH RESPECT TO

THE ACCURACY, DEPENDABILITY, PRIVACY, SECURITY, AUTHENTICITY OR COMPLETENESS OF DATA TRANSMITTED OVER THE INTERNET, OR ANY INTRUSION, VIRUS, DISRUPTION, LOSS OF COMMUNICATION, LOSS OR CORRUPTION OF DATA, OR OTHER ERROR OR EVENT CAUSED OR PERMITTED BY OR INTRODUCED THROUGH THE INTERNET OR YOUR SERVERS. YOU ARE SOLELY RESPONSIBLE FOR IMPLEMENTING ADEQUATE FIREWALL, PASSWORD AND OTHER SECURITY MEASURES TO PROTECT YOUR SYSTEMS, DATA AND APPLICATIONS FROM UNWANTED INTRUSION, WHETHER OVER THE INTERNET OR BY OTHER MEANS.

2.3 Some jurisdictions do not allow limitations on how long an implied warranty or condition lasts, so the above limitation may not apply to You. The limited warranty in Section 2.1 gives You specific legal rights, and You may also have other rights, which vary from jurisdiction to jurisdiction. If You believe that the LiveVault Service does not conform to the warranty described in Section 2.1, contact LVC Customer Service. LVC's exclusive liability and Your sole remedy for breach of the limited warranty in Section 2.1 shall be, at LVC's option, either reperformance, at no charge to You from LVC, of the specific part of the service which failed, or, refund of any fees paid by You for the period in which the specific service component failed to conform to this limited warranty.

## 3. LIMITATION OF LIABILITY

3.1 LVC'S, ITS LICENSORS' AND DISTRIBUTORS' CUMULATIVE LIABILITY TO YOU AND ALL OTHER PARTIES FOR ANY LOSS OR DAMAGES RESULTING FROM ANY CLAIMS, DEMANDS, OR ACTIONS ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE USE OF THE LIVEVAULT SERVICE OR ANY FAILURE OR DELAY IN DELIVERING THE LIVEVAULT SERVICE, REGARDLESS OF THE FORM OF ANY CLAIM OR ACTION OR THEORY OF LIABILITY (INCLUDING CONTRACT, TORT, OR WARRANTY), SHALL NOT EXCEED THE TOTAL FEES ACTUALLY RECEIVED BY LIVE VAULT, EITHER FROM YOU OR FROM THE LICENSOR OR DISTRIBUTOR, WITH RESPECT TO THE LIVEVAULT SERVICE PROVIDED TO YOU DURING THE PERIOD OF THREE (3) MONTHS IMMEDIATELY PRECEDING THE DATE ON WHICH THE EVENT GIVING RISE TO THE CLAIM OCCURRED OR THE PRORATA EQUIVALENT IF YOU HAVE PURCHASED AN ANNUAL PLAN.

3.2 LVC, ITS LICENSORS AND DISTRIBUTORS SHALL NOT BE LIABLE FOR ANY SPECIAL, INCIDENTAL, CONSEQUENTIAL, EXEMPLARY, PUNITIVE OR OTHER INDIRECT DAMAGES, OR FOR LOST PROFITS OR LOST DATA, WHETHER ARISING OUT OF OR IN CONNECTION WITH THE USE OR PERFORMANCE OF THE LIVEVAULT SERVICE OR ANY DATA SUPPLIED THEREWITH OR ANY FAILURE OR DELAY IN DELIVERING THE LIVEVAULT SERVICE, OR OTHERWISE UNDER THIS AGREEMENT, HOWEVER CAUSED, EVEN IF LVC, ITS LICENSORS OR DISTRIBUTORS HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

3.3 Some jurisdictions do not allow the exclusion or limitation of special, incidental, consequential, indirect or exemplary damages, or the limitation of liability to specified amounts, so the above limitation or exclusion may not apply to You.

## 4. OTHER

### 4.1 ACTS BEYOND LVC'S CONTROL

LVC shall not be deemed to be in breach of this Agreement and shall have no liability hereunder if its obligations are delayed or prevented by any reason of any act of God, war, fire, floods, earthquakes, natural disaster, accident, riots, acts of government, civil disturbance, terrorist act, shortage of materials or supplies, failure of any transportation or communication system, non-performance of any of Your agents or Your third party providers (including, without limitation,

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the failure or performance of common carriers, interchange carriers, local exchange carriers, internet service providers, the Distributor, suppliers, subcontractors) or any cause beyond its reasonable control.

## 4.2 NOTICE OF CLAIM AND FILING OF SUIT

You must present any claim in writing to LVC within a reasonable time, and in no event longer than sixty (60) days after the event for which the claim is presented. No action may be maintained against LVC for loss, damage or destruction of data transmitted, or for any other claim under this Agreement, unless timely written claim has been given as provided above, and unless such action is commenced within nine (9) months after the date on which such written claim, delivered in accordance with the foregoing, has been received by LVC.

## 4.3 OWNERSHIP WARRANTY

You represent and warrant that You are the owner or legal custodian of the data transmitted to LVC pursuant to the terms of this Agreement and that You have full authority, including, without limitation, under all export control and data protection laws and regulations of the United States and each country where the data transmitted to LVC is located, to transmit said data and direct its disposition in accordance with the LiveVault Service and the terms of this Agreement.

## 4.4 CONFIDENTIALITY

4.4.1 "Confidential Information" means any of Your Data..

4.4.2 Confidential Information shall be held in confidence by LVC and shall be used only for the purposes of providing the services to You or as otherwise provided for in this Agreement. LVC shall use the same degree of care to safeguard Confidential Information as it utilizes to safeguard its own confidential information.

4.4.3 LVC may comply with any subpoena or similar order of a court or other governmental body or political subdivision thereof related to data on the LVC Server or otherwise stored by LVC pursuant to this Agreement, or with any other legal requirement requiring disclosure of such data, provided that LVC notifies You promptly upon receipt thereof, unless such notice is prohibited by law. You shall pay LVC's reasonable expenses and charges for such compliance.

## 4.5 INDEMNIFICATION

You agree to fully indemnify and hold harmless LVC, its licensors and distributors and their employees and agents for any liability, cost or expense (including litigation expenses and reasonable attorneys' fees) arising out of (i) LVC's possession of Your Data, or (ii) Your breach of the terms and conditions of this Agreement.

## 4.6 MODIFICATION; AUTHORITY; ASSIGNMENT

4.6.1 Any aspect of the SLA may be modified by LVC upon thirty (30) days prior notice. If You do not wish to be bound by such modification for each of Your Protected Servers, You may terminate the LiveVault Service for any one or all of Your Protected Servers for which You do not wish to be bound by such modification by sending a termination notice to [LiveVaultServices@livevault.com](mailto:LiveVaultServices@livevault.com) at any time prior to the effective date of such modification. Otherwise such modification shall be in effect for the remaining term of LiveVault Service to be provided for Your Protected Server(s).

4.6.2 You represent and warrant that the person signing this Agreement has the authority to enter in to this Agreement on Your behalf and that You may authorize other individuals to purchase additional services.

4.6.3 This Agreement binds any of Your authorized users, as well as Your heirs, executors, successors, and assigns and can only be changed by a written instrument signed by You and LVC.

4.6.4 As a condition precedent to Your installation of the LiveVault Agent, as defined in Section C of the SLA, on a Protected Server, You must accept the this Agreement and the then-current Software License Agreement ("Software License Agreement"), which is

available upon request. In the event You do not accept such agreements, then a) you will not be authorized to install the LiveVault Agent on that Protected Server and, b) if that Protected Server is your only Protected Server, this Agreement shall automatically terminate without further action or notice and without liability to LVC, but if you have other Protected Servers then this Agreement and the then current form of the Software License Agreement shall be binding with respect to those other Protected Servers. CUSTOMER IS ADVISED TO CAREFULLY REVIEW THIS AGREEMENT AND ANY MODIFICATIONS FOR IMPORTANT INFORMATION REGARDING SERVICE REQUIREMENTS, USAGE RESTRICTIONS AND SUPPORT FUNCTIONS RELATING TO THE LIVEVAULT SERVICE. You shall also comply with, and/or acknowledge, as applicable, any "terms of use" and "privacy policy" posted on the LiveVault Service's web site. LVC SHALL BE UNDER NO OBLIGATION TO PROVIDE THE LIVEVAULT SERVICE TO YOU UNLESS AND UNTIL YOU HAVE ACCEPTED THIS AGREEMENT AND THE SOFTWARE LICENSE AGREEMENT.

4.6.5 This Agreement may not be assigned by You (other than to an affiliate which shall assume Your obligations by written instrument, a copy of which shall be provided to LVC) without the written consent of LVC, which shall not be unreasonably withheld or delayed.

4.6.6 This Agreement may be assigned by LVC.

## 4.7 GOVERNING LAW; JURISDICTION

4.7.1 This Agreement is governed by the laws of the Commonwealth of Massachusetts, excluding its conflicts of laws principles.

4.7.2 You hereby submit to the exclusive jurisdiction of the federal and state courts of the Commonwealth of Massachusetts; provided, however, that LVC shall have the right to institute judicial proceedings against You or anyone acting by, through or under You, in other jurisdictions in order to enforce LVC's rights hereunder through reformation of contract, specific performance, injunction or similar equitable relief. Each party hereby irrevocably waives any and all rights to a jury trial and any objection which it may now or hereafter have to the laying of venue of any suit, action or proceeding relating to this Agreement in Boston, Massachusetts and further irrevocably waives any claim that Boston, Massachusetts is not a convenient forum for any such suit, action or proceeding.

## 4.8 ENTIRE AGREEMENT

This Agreement, together with the following SLA and the Software License Agreement, constitute the entire understanding between LVC and You with respect to the subject matter hereof. Terms and conditions as set forth in any purchase order submitted by You to LVC or Your Distributor which differ from, conflict with, or are not included in this Agreement, shall not become part of this Agreement unless specifically accepted by LVC in writing.

## SERVICE LEVEL AGREEMENT (SLA)

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The LiveVault Service is warranted to substantially conform to the service levels specified below for any Protected Server after the Initial Backup has taken place on such Protected Server.

### A. DATA PROTECTION

#### A.1 CURRENT DATA PROTECTION

Depending upon the options you have elected, backup configurations may be set to run continuously 24 X 7 or to run on a scheduled basis (See Section D System Requirements for supported configurations). When a backup configuration is running, only changes to files and databases you have selected for backup on the Protected Server are captured by the LiveVault Agent and sent to the LiveVault Server. Queued Changes, as defined in Section C below, are sent to the

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LiveVault Server when there is a Valid Connection, as defined in Section E below, between the Protected Server and the LiveVault Server and there are no preceding items waiting to be sent.

media will be available for shipment based on the time the restore is requested and the actual amount of data being restored.

## A.2 HISTORIC DATA PROTECTION

Historic images of your data are retained based on one of the following retention periods as identified in your end user agreement.

### 30-day service

The LiveVault Servers hold daily backups of Your Data for 30 days. You may initiate restore requests from any of these data sets.

### 1-year service

The LiveVault Servers hold daily backups of Your Data for 30 days and copies from the end of each month for the past 12 months. You may initiate restore requests from any of these data sets.

### 7-year service

The LiveVault Servers hold daily backups of Your Data for 30 days, copies from the end of each month for the past 12 months and copies from the end of each quarter for the past 24 quarters. You may initiate restore requests from any of these data sets.

Restored Data	Request Submitted (EST)	
	by 5:00PM	5:00PM – 12:00AM
0 – 100 GB	Next Day (5:00PM EST)	Next Day (5:00PM EST)
100 – 200 GB	Next Day (5:00PM EST)	Second Day (9:00AM EST)
200+ GBs	After the initial delivery, as described above, an additional 200 GB will be available for shipment each 24 hour period until the complete restore is shipped	

## B GUARANTEED RECOVERABILITY

### B.1 RESTORE PERFORMANCE

Restore time over the internet is limited by Your connection bandwidth speed and quality up to speeds of approximately 2 Mbps. At speeds faster than 2 Mbps, other factors may limit network restore times. The following table provides approximate restore times after a restore has started for various bandwidths and data sizes:

Bandwidth (kbps)	Total Restored Data (MB)				
	20	100	1000	4000	10000
384	0.1	0.5	4.8	19.3	48.3
1,000	0.1	0.2	1.9	7.4	18.5
1,500	0.1	0.1	1.3	5.0	12.4
> 7,000 or LAN	0.1	0.1	0.4	1.6	4.0

Restore estimations assume at least 60% of the subscribed bandwidth is available for the restore. Network performance, data compressibility, and end user systems may affect restore times.

Should LVC, as part of its monitoring function, observe any unusual, abnormal or excessive number of restore requests, then LVC reserves the right to contact You and require You to modify Your procedures and behavior in this area.

### B.2 PHYSICAL MEDIA RESTORES (NAS)

Restores via physical media utilizing NAS (network attached storage) disks is supported. Each NAS device is rented to you and must be returned to LVC within two (2) weeks of shipment from LVC. LVC is not responsible for arranging return shipment.

Shipment of physical media restores is dependent on 1) the time the restore request is received and 2) the amount of data being restored. The following table indicates the latest time at which the physical

## C THE LIVEVAULT SERVICE

When used in accordance with the following usage requirements and guidelines, the LiveVault Service provides on-line backup protection for the operating systems listed in Section D. The LiveVault Service is able to protect applications, open files, open databases, and registry and security information.

To deploy the LiveVault Service You download a software module (the “LiveVault Agent”) from this web site on to each Protected Server which you have registered. Once configured and deployed, the LiveVault Agent replicates the selected data in its entirety (the “Initial Backup”) to one of LVC’s backup appliances and/or offsite data storage backup vaults (the “LiveVault Server”). After the initial Backup, only changes to files and databases selected for backup on the Protected Server (the “Changes”) are sent to the appliance or LiveVault Server.

You manage the LiveVault Service through a web management interface that is personalized with Your custom content. A dynamic management page shows You the current status of all of Your backup and restore jobs, and enables You to make immediate modifications or requests. You may view an inventory of all data files, current and historic; initiate restores from the web; and view all backup and restore processes.

Your backup and restore processes are also monitored and managed by the LVC Service Operations Center (the “SOC”). If any problems arise, LVC customer service and/or Your Distributor’s customer service, if applicable, will notify You and suggest corrective action.

From time-to-time this Service Level Agreement may change. A modification may include, but is not limited to, changes in system requirements, restrictions, limitations, or bandwidth requirements. You will be notified at least 30 days prior to such a Service Level Agreement change via electronic mail and through a Web site posting, whose location will be specified in the electronic mail notification. You are responsible for ensuring that Your system conforms to any updated restrictions, limitations or requirements.

In the event that Your use of the LiveVault Service is adversely affecting the operation of the LiveVault Service, Your LiveVault Service may be terminated by LVC without liability to LVC, its distributors or suppliers or other end users, upon prior written notice (from LVC or its authorized distributor, as the case may be), unless in LVC’s sole technical discretion, a technical emergency shall require immediate termination (which shall be without liability to LVC, its distributors or suppliers or other end users) in order to prevent Your use of the LiveVault Service from adversely affecting the effectiveness of the LiveVault Service for other end users, or to preserve system integrity or prevent network abuse in which case

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notice shall be provided to You via telephone call and e-mail promptly following such emergency termination. You are responsible for updating LVC and Your authorized distributor, if any, as to any changes to Your email and contact information to facilitate communication of these notices.

## D SYSTEM REQUIREMENTS

Each Protected Server must meet the following system requirements in order to effectively utilize the LiveVault Service:

- A continuously available Internet connection with an upload speed of at least 56 Kbps (see Bandwidth Requirements below for specifics)
- Windows Server 2003 (Standard, Enterprise, or Web Edition) – Service Pack 1 required for continuous backup, Windows Storage Server 2003, Windows 2000 (Server, or Advanced Server) or Server Appliance Kit (SAK) (Continuous backup is currently not supported on the Windows 2000 platform)
- FAT-32 (Windows 2000 Server only), NTFS or NTFS 5.0 file systems
- Pentium III or faster CPU technology
- 128 MB of free memory under normal load
- the greater of 150 MB or 5% free disk space

## E BANDWIDTH REQUIREMENTS

The LiveVault Service is able to measure the rate at which data on a Protected Server is changing. After a few hours of routine operation, during normal business hours, the SOC will be able to provide an estimate of the completion time for the Initial Backup and an estimate of bandwidth required for Your continuous operation of the LiveVault Service. Bandwidth requirements are based on a combination of rated bandwidth, latency and bandwidth error rates. The estimated completion time will be available on Your custom web page. You will be notified if the SOC determines that there is insufficient bandwidth for Your continuous operation.

Changes are sent to the LiveVault Server when there is a Valid Connection between the Protected Server, backup appliance and the LiveVault Server. "Valid Connection" means that the bandwidth actually available between Your Protected Server(s) and the LiveVault Server is adequate for the amount of data being protected and the rate of the data changes as discussed below. The bandwidth actually available can be affected by other network traffic into or out of Your premises and may be affected by occasional or intermittent slowdowns or interruptions in the network path(s) to the LiveVault Server. The LiveVault Service will continue operation during brief periods when limited bandwidth is available and will automatically resume operation following network interruptions; however,

LVC estimates that a typical file system will see a daily change rate of 5%. At this change rate, the expected bandwidth requirement is 20 Kbps per protected gigabyte ("GB"). The following table provides an estimate of the upstream bandwidth required to protect various amounts of data:

Protected GB	Bandwidth
6 GB	128 Kbps
20 GB	384 Kbps
60 GB	1.0 Mbps
80 GB	1.5 Mbps

Highly dynamic servers such as mail servers and active database servers may have additional bandwidth requirements. Higher rates of change will result in a linear increase in bandwidth required.

Increased amounts of protected data, increased rates of data change, other demands for bandwidth, or other factors that contribute to latency may, at a given time, limit the effectiveness of Your use of LiveVault Service.

## F RESTRICTIONS AND LIMITATIONS

The maximum size of any single file which the LiveVault Service can support on a Protected Server is 100 GB.

Open file managers: A Protected Server must not be running an open file protection product. This includes other LVC products, and the open file options on other traditional backup products.

There are some other restrictions associated with other software products such as anti-virus software and Microsoft SMS as documented in the LiveVault Service Management Portal help system.

The LiveVault Service does not back up the following:

- Object IDs (These are used by Microsoft's File Replication service (FRS) and for Distributed Link Tracking) (Windows 2000 Server only)
- Remote Storage Service

## G INITIAL PROTECTION TIME REQUIREMENTS

The Initial Backup process for each Protected Server must complete before a Protected Server is fully protected by the LiveVault Service. This process may take several days. Data transfer rates for the Initial Backup can be estimated at 2 GB per day for each 256 Kbps of available bandwidth. The data transfer rate may improve by as much as 50% when a few large files, as opposed to an equivalent amount of data consisting of many smaller files, are being protected. Typically, if only the minimum bandwidth is available for the given capacity, it could take nine days or more to complete the Initial Backup. It is recommended that You have enough bandwidth to complete the Initial Backup for any single large file in five days or fewer. Extended network interruptions can force a retransmission of the current file, thereby delaying your Initial Backup.

## H CUSTOMER SERVICE

The LiveVault Service provides you with access to customer service as more fully described below:

- Maintenance Updates to the LiveVault Agent. Updates include any corrections and patches to the LiveVault Agent and the LiveVault Service as well as any available improvements of existing features.
- Technical support for the LiveVault Service during normal business hours, which, if LVC is your provider, are (8:30 AM to 5:00PM) Eastern Time, Monday through Friday.
- Emergency 24 hour, 7 days per week (24 X 7) technical support for the LiveVault Service. This emergency service is available for critical off-hours issues that must be resolved quickly.