



SpamVault Managed Services Agreement

1. **Scope:** Online Data Vault dba SpamVault and/or its affiliated companies (collectively "SpamVault") agree to provide Customer Services described in this Managed Services Agreement ("Agreement"). Customer agrees to pay for these Services and abide by all terms contained in this Agreement. This Agreement is subject to credit approval by SpamVault in its sole discretion. By subscribing to the SpamVault service you acknowledge and accept that you are entering into binding contract with Online Data Vault dba SpamVault. You further acknowledge having read this Agreement in full and that you understand all of your rights and obligations as defined within this Agreement. SpamVault shall use its best efforts to provide SpamVault SPAM Protection Service, AntiVirus Services, email Backup Services, Support Services, Other Professional Services and Hardware Service (collectively "Managed Services") and will license to Customer the Licensed Software and Technology ordered by Customer.
2. **Customer Use of the Services:** All use of the SpamVault Managed Services and SpamVault's network shall comply with the SpamVault Acceptable Use Policy ("AUP"), which is posted on SpamVault's web site at www.spamvault.net and which is made a part of this Agreement. SpamVault reserves the right to amend the AUP effective upon posting to the web site or other notice to Customer. Customer agrees to defend, indemnify and hold harmless SpamVault, its affiliates, and contractors from any and all liabilities, costs and expenses, including reasonable attorney's fees, arising from or related to use of the Managed Services by Customer or Customer's Users. For purposes of this Agreement, "Customer's Users" shall refer to customers of Customer or any other third parties who utilize or access the Managed Services or the SpamVault network pursuant this Agreement. In addition to "Cause" as defined in the Agreement, Cause shall also include the violation of the AUP or conduct that SpamVault, in its reasonable discretion, believes may subject SpamVault to civil or criminal litigation or liability, charges and/or damages. If SpamVault has suspended the Managed Services pursuant to this Section, SpamVault may require a re-initiation fee in order to resume Managed Services.
3. **Description of Service:** The SpamVault's Managed Services currently provides users with access to Internet email spam filtering, email anti-virus scanning and optional offsite mail backup. You understand and agree that the service may include certain communications from SpamVault sent by email such as service and product announcements, administrative messages and communications related to your account and that these communications are considered part of the Managed Service and that you will not be able to opt out of receiving these communications. Unless explicitly stated otherwise and in writing, any new features that augment, enhance or modify the current Managed Services, including the release of new Managed Services properties, features or options, shall be subject to this agreement. You understand and agree that the Managed Services are provided "AS-IS" and that SpamVault assumes no responsibility for the timeliness, deletion or incorrect delivery of any email communications processed by the Managed Services. SpamVault is not a mail-hosting service (excluding mail backup store-and-forward) and that you must provide and are responsible for all equipment necessary to receive email forwarded to you through our Managed Services
4. **Registrations Obligations:** In consideration of your use of the Service, you agree to: (a) provide true, accurate, current and complete information about yourself as prompted by the Service's registration form (such information being the "Registration Data") and (b) maintain and promptly update the Registration Data to keep it true, accurate, current and complete. If you provide any information that is untrue, inaccurate, not current or incomplete, or SpamVault has reasonable grounds to suspect that such information is untrue, inaccurate, not current or incomplete, SpamVault has the right to suspend or terminate your account and refuse any and all current or future use of the Service (or any portion thereof).
5. **Subscriber Account, Password and Security:** You are responsible for maintaining the confidentiality of your account, account access and password and are fully responsible for all activities that occur within the Service and to the Service under access through your account. You agree to (a) immediately notify SpamVault of any unauthorized use of your account or password or any other breach of security, and (b) ensure that you exit from all account sessions at the end of each user session whether at private or public access terminals. SpamVault shall not be liable for any loss or damage arising from your failure to comply with the terms and conditions of this section.
6. **Services:** SpamVault shall provide SpamVault Managed Services at the Rates listed on www.spamvault.net. Customer shall be invoiced monthly for (i) the monthly charges. The first invoice shall be for the first two months (prorated for any partial month) and any applicable one-time (non-recurring charges); each invoice thereafter shall be for the following month.
7. **Term:** The Term of this Agreement shall be one (1) year. This Agreement will be automatically renewed for an equivalent Term ("Renewal Term") upon expiration of the Initial Term or the immediately preceding Renewal Term, unless (i) earlier terminated; or (ii) written notice has been given by either party at least thirty (30) days prior to the end of the then current Term that such party does not consent to renewal. "Term" shall mean the "Initial Term" and all "Renewal Terms" collectively.



8. **30 Day Free Trial:** Customer will receive service at no charge for the initial thirty (30) days of service ("Thirty Day Trial Period"). Within this initial Thirty Day Trial Period, Customer may cancel this Agreement without any further obligation by providing written Notice to SpamVault. If Notice is not received within the initial Thirty Day Trial Period, Customer agrees to Monthly Rates and standard Terms and Conditions of this Agreement.
9. **Payment Terms:** Invoices for Services are due and payable in U.S. dollars upon receipt. If any invoice is not paid by Past Due Date, SpamVault may (i) apply a late charge; (ii) require an additional Security Deposit or other form of security; and/or (iii) take any action in connection with any other right or remedy SpamVault may have under this Agreement and its tariffs, whether at law, or in equity, including the disconnection of service.

You agree that SpamVault in its sole discretion, may terminate your password, account (or any part thereof) or use of the Managed Services, and remove and discard any Content within the Service, for any reason, including, without limitation, nonpayment of your outstanding undisputed invoice balance. You agree that any termination of your access to the Service under any provision of this Agreement may be effected without prior notice, and acknowledge and agree that SpamVault may immediately deactivate or delete your account and all related information and files in your account and/or bar any further access to such files or the Managed Services. Further, you agree that SpamVault shall not be liable to you or any third-party for any termination of your access to the Managed Service.

10. **Billing Disputes:** If Customer in good faith submits a qualified dispute for any portion of any SpamVault invoice, Customer shall submit to SpamVault, full payment of the undisputed portion of the invoice and written documentation identifying and substantiating the disputed amount. Disputes must be received by SpamVault within sixty (60) days of Invoice Date or Customer's right to any billing adjustment shall be waived. A qualified dispute shall be determined by SpamVault in its sole discretion.
11. **Effective Date:** The effective date of each Agreement shall be the first day of the calendar month in which service and billing commence.
12. **Notices:** All notices and other communications hereunder, including notices of breach of this Agreement, shall be in writing and shall be deemed to have been duly given as the date of delivery. If mailed, notice shall be sent first class postage prepaid, certified or registered mail, return receipt requested and becomes effective upon confirmed delivery.
13. **Events of Default:** A "Default" shall occur if (a) Customer fails to make payment as required under this Agreement and such failure remains uncorrected for seven (7) calendar days after written notice from SpamVault; or (b) either party fails to perform or observe any material term or obligation (other than making payment) contained in this Agreement, and any such failure remains uncorrected for thirty (30) calendar days after written notice from the non-defaulting party informing the defaulting party of such failure. If Customer uses the Services for any unlawful purpose or in any unlawful manner, SpamVault shall have the right to immediately suspend and/or terminate any or all Services hereunder without notice to Customer.

In the event of a Customer Default for any reason, SpamVault may: (i) suspend Service to Customer; (ii) cease accepting or processing orders for Services and/or; (iii) terminate this Agreement. If this Agreement is terminated due to a Customer Default, such termination shall not affect or reduce Customer's minimum monthly commitments required under this Agreement, if applicable, and all Early Termination Charges shall apply. Customer agrees to pay SpamVault's reasonable expenses (including attorney and collection agency fees) incurred in enforcing SpamVault's rights in the event of a Customer Default.

In the event of a SpamVault Default, Customer may terminate this Agreement without incurring Early Termination Charges. Customer will, however, remain liable for all charges incurred for Services provided prior to Customer's termination of this Agreement.

14. **Waiver of Breach or Violation not Deemed Continuing:** The waiver by either party of a breach or violation of any provision of this Agreement shall not operate as or be construed to be a waiver of any subsequent breach hereof.
15. **Regulatory:** Customer shall be responsible for all sales, gross receipts, use, excise and other federal, state and local taxes, charges and assessments, which will be separately listed on each invoice along with any fees or surcharges applicable to the Services.
16. **Business Relationship:** This Agreement shall not create any agency, employment, joint venture, partnership, representation, or fiduciary relationship between the parties. Neither party shall have the authority to, nor shall any party attempt to, create any obligation on behalf of the other party.



17. **System Maintenance:** In the event SpamVault determines that it is necessary to interrupt Service or that there is a potential for Services to be interrupted for the performance of system maintenance, SpamVault will use good faith efforts to notify Customer prior to the performance of such maintenance. In no event shall interruption for system maintenance constitute a failure of performance by SpamVault.
18. **SpamVault Property:** Any equipment including all associated software (collectively "Equipment") installed by SpamVault at the Customer's premises remains the personal property of SpamVault, and nothing contained in this Agreement shall give or convey to Customer any right, title or interest whatsoever in such Equipment. Customer agrees not to interfere with or damage the Equipment, and further agrees to reimburse SpamVault for any loss or damage thereto that is caused by the intentional or negligent acts of Customer, its agents, employees, authorized users or representatives. Customer will allow SpamVault to promptly remove the Equipment from Customer's premises upon termination of the Services for which the Equipment was installed.
19. **Confidentiality:**
 - a. Each party agrees:
 - i. to keep confidential all the other party's Confidential Information (whether written or oral) which it has obtained or received as a result of the discussions leading up to or the entering into, or obtains or receives in performance or during the term of, the Agreement;
 - ii. not to disclose the other party's Confidential Information in whole or in part to any third party without the disclosing party's written consent, save to those of its employees, agents and contractors involved in the implementation of this Agreement and who have a need to know the same and are bound to keep it confidential;
 - iii. to use the other party's Confidential Information solely in connection with the performance of the Agreement and not otherwise or for the benefit of any other third party.
 - b. The provisions of Sections 19a(i) through 19a(iii) shall not apply to the whole or any part of Confidential Information which is:
 - i. lawfully obtained free of any duty of confidentiality otherwise than directly or indirectly from the disclosing party;
 - ii. already in a party's possession other than as a result of a breach of this Section 19;
 - iii. in the public domain (other than as a result of a breach of this Section 19) or (4) necessarily disclosed pursuant to a statutory obligation.
 - c. Each party, upon the request of the other, shall return all of the other party's Confidential Information and copies in its possession to the other party or destroy such Confidential Information and copies as directed by the other party and provide to such party a certificate of an officer of the party certifying such destruction.
 - d. Each party acknowledges and agrees that: (a) the restrictions set forth in this Section 19 are reasonable in the circumstances and all defenses to the strict enforcement thereof by a disclosing party of Confidential Information ("Disclosing Party") are hereby waived; (b) a violation of any of the provisions of this Section 19 shall result in immediate and irreparable harm and damage to the disclosing party; and (c) in the event of any violation of any provision of this Section 19, the Disclosing Party shall, in addition to any other right to relief, shall be entitled to equitable relief by way of temporary or permanent injunction and to such other relief as any court of competent jurisdiction may deem just and proper.
 - e. The restrictions contained in this Section 19 shall continue to apply after the termination of the Agreement without limit in time.
20. **Disclaimer of Warranties:** You agree that: YOUR USE OF THE SERVICE IS AT YOUR SOLE RISK. THE SERVICE IS PROVIDED ON AN "AS IS" AND "AS AVAILABLE" BASIS. SPAMVAULT EXPRESSLY DISCLAIMS ALL WARRANTIES OF ANY KIND, WHETHER EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT.
 - a. SPAMVAULT INC. MAKES NO WARRANTY THAT (i) THE SERVICE WILL MEET YOUR REQUIREMENTS, (ii) THE SERVICE WILL BE UNINTERRUPTED, TIMELY, SECURE, OR ERROR-FREE, (iii) THE RESULTS THAT MAY BE OBTAINED FROM THE USE OF THE SERVICE WILL BE ACCURATE OR RELIABLE, (iv) THE QUALITY OF ANY PRODUCTS, SERVICES, INFORMATION, OR OTHER MATERIAL OBTAINED BY YOU THROUGH THE SERVICE WILL MEET YOUR EXPECTATIONS. ANY MATERIAL OBTAINED THROUGH THE USE OF THE SERVICE IS DONE AT YOUR OWN DISCRETION AND RISK AND THAT YOU WILL BE SOLELY RESPONSIBLE FOR ANY DAMAGE TO YOUR COMPUTER SYSTEM OR LOSS OF DATA THAT RESULTS FROM THE RECEIPT OF ANY SUCH MATERIAL.
 - b. NO ADVICE OR INFORMATION, WHETHER ORAL OR WRITTEN, OBTAINED BY YOU FROM SPAMVAULT INC. OR FROM THE SERVICE SHALL CREATE ANY WARRANTY NOT EXPRESSLY STATED IN THE SA.



21. **Limitation of Liability:** YOU EXPRESSLY UNDERSTAND AND AGREE THAT SPAMVAULT SHALL NOT BE LIABLE FOR ANY DIRECT, INDIRECT, INCIDENTAL, SPECIAL, CONSEQUENTIAL OR EXEMPLARY DAMAGES, INCLUDING BUT NOT LIMITED TO, DAMAGES FOR LOSS OF PROFITS, GOODWILL, USE, DATA OR OTHER INTANGIBLE LOSSES (EVEN IF SPAMVAULT HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES), RESULTING FROM: (i) THE USE OR THE INABILITY TO USE THE SERVICE; (ii) THE COST OF PROCUREMENT OF SUBSTITUTE GOODS AND SERVICES RESULTING FROM ANY GOODS, DATA, INFORMATION OR SERVICES PURCHASED OR OBTAINED OR MESSAGES RECEIVED OR TRANSACTIONS ENTERED INTO THROUGH OR FROM THE SERVICE; (iii) UNAUTHORIZED ACCESS TO OR ALTERATION OF YOUR TRANSMISSIONS OR DATA; (iv) STATEMENTS OR CONDUCT OF ANY THIRD PARTY ON THE SERVICE; OR (v) ANY OTHER MATTER RELATING TO THE SERVICE.
22. **Member Conduct:** You understand that all information, data, text, software, music, sound, photographs, graphics, video, messages, tags, or other materials (“Content”), whether publicly posted or privately transmitted, are the sole responsibility of the person from whom such Content originated. This means that you, and not SpamVault, are entirely responsible for all content that you upload, post, email, transmit or otherwise make available via the SpamVault Managed Services. SpamVault does not control the Content posted via the SpamVault Managed Services and, as such, does not guarantee the accuracy, integrity or quality of such Content. You understand that by using the SpamVault Managed Services, you may be exposed to Content that is offensive, indecent or objectionable. Under no circumstances will SpamVault be liable in any way for any Content, including, but not limited to, any errors or omissions in any Content, or any loss or damage of any kind incurred as a result of the use of any Content posted, emailed, transmitted or otherwise made available via the SpamVault Managed Services.

You agree to not use the SpamVault Managed Services to:

- a. upload, post, email, transmit, or otherwise make available any Content that is unlawful, harmful, threatening, abusive, harassing, tortious, defamatory, vulgar, obscene, libelous, invasive of another’s privacy, hateful, or racially, ethnically, or otherwise objectionable;
- b. harm minors in any way;
- c. impersonate any person or entity, including, but not limited to, a SpamVault official, forum leader, guide or host, or falsely state or otherwise misrepresent your affiliation with a person or entity;
- d. forge headers or otherwise manipulate identifiers in order to disguise the origin of any Content transmitted through the SpamVault Service;
- e. upload, post, email, transmit, or otherwise make available any Content that you do not have a right to make available under any law or under contractual or fiduciary relationships (such as inside information, proprietary and confidential information learned or disclosed as part of employment relationships or under nondisclosure agreements);
- f. upload, post, email, transmit or otherwise make available any Content that infringes any patent, trademark, trade secret, copyright or other proprietary rights (“Rights”) of any party;
- g. upload, post, email, transmit, or otherwise make available any unsolicited or unauthorized advertising, promotional materials, “junk mail,” “spam,” “chain letters,” “pyramid schemes,” or any other form of solicitation, except in those areas (such as shopping) that are designated for such purpose (please read our complete Spam Policy);
- h. upload, post, email, transmit, or otherwise make available any material that contains software viruses or any other computer code, files or programs designed to interrupt, destroy or limit the functionality of any computer software or hardware or telecommunications equipment;
- i. disrupt the normal flow of dialogue, cause a screen to “scroll” faster than other users of the SpamVault Managed Services are able to type, or otherwise act in a manner that negatively affects other users’ ability to engage in real time exchanges;
- j. interfere with or disrupt the SpamVault Managed Services or servers or networks connected to the SpamVault Managed Services, or disobey any requirements, procedures, policies or regulations of networks connected to the SpamVault Managed Services, including using any device, software or routine to bypass our robot exclusion headers;



k. intentionally or unintentionally violate any applicable local, state, national or international law, including, but not limited to, regulations promulgated by the U.S. Securities and Exchange Commission, any rules of any national or other securities exchange, including, without limitation, the New York Stock Exchange, the American Stock Exchange, or the NASDAQ, and any regulations having the force of law;

l. provide material support or resources (or to conceal or disguise the nature, location, source, or ownership of material support or resources) to any organization(s) designated by the United States government as a foreign terrorist organization pursuant to section 219 of the Immigration and Nationality Act;

m. "stalk" or otherwise harass another; and/or

n. collect or store personal data about other users in connection with the prohibited conduct and activities set forth in paragraphs a through m above.

You acknowledge that SpamVault may or may not pre-screen Content, but that SpamVault and its designees shall have the right (but not the obligation) in their sole discretion to pre-screen, refuse, or remove any Content that is available via the SpamVault Managed Services. Without limiting the foregoing, SpamVault and its designees shall have the right to remove any Content that violates the TOS or is otherwise objectionable. You agree that you must evaluate, and bear all risks associated with, the use of any Content, including any reliance on the accuracy, completeness, or usefulness of such Content. In this regard, you acknowledge that you may not rely on any Content created by SpamVault or submitted to SpamVault, including without limitation information in SpamVault Message Boards and in all other parts of the SpamVault Managed Services.

You acknowledge, consent and agree that SpamVault may access, preserve and disclose your account information and Content if required to do so by law or in a good faith belief that such access preservation or disclosure is reasonably necessary to: (i) comply with legal process; (ii) enforce the TOS; (iii) respond to claims that any Content violates the rights of third parties; (iv) respond to your requests for customer service; or (v) protect the rights, property or personal safety of SpamVault, its users and the public.

You understand that the SpamVault Managed Services and software embodied within the SpamVault Managed Services may include security components that permit digital materials to be protected, and that use of these materials is subject to usage rules set by SpamVault and/or content providers who provide content to the SpamVault Managed Services. You may not attempt to override or circumvent any of the usage rules embedded into the SpamVault Managed Services. Any unauthorized reproduction, publication, further distribution or public exhibition of the materials provided on the SpamVault Managed Services, in whole or in part, is strictly prohibited.

23. **Force Majeure:** SpamVault shall not be liable for any failure of performance hereunder due to causes beyond its reasonable control including, but not limited to: acts of God, fire, explosion, vandalism, cable cut, problems within RBOC or ILEC networks, Email provider, flood, storm, or other similar catastrophe; any law, order, regulation, direction, action or request of the United States government, including state and local governments having jurisdiction over either of the parties, or of any department, agency, commission, court, bureau, corporation or other instrumentality of any one or more of said governments, or of any civil or military authority; national emergencies; insurrections; riots; terrorist actions; wars; or strikes, lock outs, or work stoppages.
24. **Early Termination Charges:** Early Termination Charges apply if, 1) Customer terminates this Agreement prior to the expiration of any Term, for reasons other than for a SpamVault Default; or 2) SpamVault terminates this Agreement as a result of a Customer Default, Customer will be required to pay, as an Early Termination Charge, and not as a penalty, in addition to all accrued but unpaid charges through the date of such termination, the amount obtained by multiplying the monthly total charge for Managed Services by the number of months left in the term.
25. **Legal Construction:** In the event one or more of the provisions contained in this Agreement shall, for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision hereof, and this Agreement shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein.
26. **Survival:** The covenants and agreements of Customer contained in this Agreement with respect to payment of amounts due, confidentiality, liability, ownership of intellectual property and indemnification shall survive any termination of this Agreement. The rights and obligations under this Agreement shall survive any merger or sale of either party and shall be binding upon the successors and permitted assigns.



27. **Waiver:** Under no circumstance shall the failure of SpamVault to enforce any provision of this Agreement in any particular instance be construed as a waiver of that provision.
28. **Entire Agreement/ Amendments/ Riders:** This Agreement constitute the entire and final agreement and understanding between the parties with respect to its subject matter and supersedes all other and prior representations, understandings or agreements relating to such subject matter, which are of no further force of effect. The Supplements referred to herein are integral parts of this Agreement and are hereby made a part of this Agreement. This Agreement may only be modified or supplemented by an instrument in writing executed by each party. Customer represents that it has the authority to execute this Agreement.
29. **Governing Law:** This Agreement is deemed to be entered into in the State of Washington and shall not become a binding obligation of SpamVault until it has been executed by an officer of SpamVault. The parties agree that any dispute arising under this Agreement shall be governed by and construed in accordance with the laws of the State of Washington and both parties agree to the jurisdiction of Washington state and federal courts. .
30. **Section Titles:** The section titles in the Agreement are for convenience only and have no legal or contractual effect.