

## **Client-Software License Agreement**

PLEASE READ THIS CLIENT-SOFTWARE LICENSE AGREEMENT (HEREINAFTER REFERRED TO AS THE "AGREEMENT") CAREFULLY. TO COMPLETE YOUR ORDER FOR THE CLIENT-SOFTWARE, YOU (HEREAFTER REFERRED TO AS "YOU" &/OR "YOUR") MUST ACCEPT THE TERMS AND CONDITIONS OF THIS AGREEMENT BY ELECTRONICALLY CHECKING THE BOX MARKED "I ACCEPT." THIS AGREEMENT GOVERNS YOUR USE OF THE GIGA VAULT STORAGE, INC. CLIENT-SOFTWARE AND ALL RELATED COMPONENTS AND/OR MODULES. IT IS STRONGLY RECOMMENDED THAT YOU PRINT AND RETAIN A COPY OF THIS AGREEMENT FOR YOUR RECORD, YOU MAY FIND A VERSION OF THIS AGREEMENT POSTED AT THE FOLLOWING URL HERE. <http://gigavaultstorage.com/tos>

IF YOU CHOOSE TO REJECT THIS LICENSE AGREEMENT PRIOR TO YOUR USE OF THE PRODUCT, YOU SHALL NOT BE CHARGED A FEE OR YOU ARE ENTITLED TO A FULL REFUND OF ANY PREPAID LICENSE FEES. TO RECEIVE A REFUND OF PREPAID LICENSE FEES FOR PRODUCT(S) YOU NO LONGER WISH TO LICENSE BASED ON YOUR REJECTION OF THIS LICENSE AGREEMENT, YOU SHOULD CONTACT YOUR GIGA VAULT STORAGE SALES EXECUTIVE.

### **Definitions**

"Licensed Product(s)" means the Giga Vault Storage Client-Software as developed by Giga Vault Storage, Inc., a USA corporation (hereinafter referred to as "Giga Vault Storage"), in machine-readable form of the object code, associated modules, user documentation, user manuals, installation guides, training materials, Updates, Upgrades, New Releases, products and maintenance, ordered by You and provided by Giga Vault Storage while this Agreement is in effect.

"Update(s)" and/or "Upgrade(s)" means a subsequent release of a particular Licensed Product, which provides patches, fixes, modifications, error corrections or enhanced functionality and for which Giga Vault Storage does not charge a license or other additional fee to You for that Licensed Product.

### **License Grant & Restrictions**

License Grant. The Licensed Product(s) are licensed only and are not sold to you. Giga Vault Storage hereby grants, and You accept, a non-exclusive, non-assignable, non-transferable, non-sub licensable, limited license to use the Licensed Products in machine readable form only, and to utilize the Licensed Product(s), by You, for Your individual use only, in accordance with the user documentation for the term indicated when You downloaded the Licensed Products from Giga Vault Storage 's web pages and/or purchased the Licensed Products from Giga Vault Storage (hereinafter referred to as the "Term"). You may use the Licensed Product(s) subject to the terms and conditions contained herein, and any use shall always remain subject to this Agreement.

You shall display and retain Giga Vault Storage's and/or its suppliers' copyright, trademark, proprietary, or confidentiality statement and other notices on any portion of the Licensed Products, however such Licensed Products are used. You shall (i) not attempt to reverse engineer, decompile, disassemble, or attempt to derive the source code of the Licensed Product or any portion thereof, or otherwise derive its source code; (ii) not modify, port, translate, localize or create derivative works of the Licensed Product; (iii) not disclose the results of any performance tests or qualitative analysis on the Licensed Products(s) to any third party without the prior written consent of Giga Vault Storage; (iv) not use the Licensed Product(s) in a way that (a) infringes on the intellectual property rights of any third party or any rights of publicity or privacy; (b) violates any law, statute, ordinance or regulation (including, but not limited to the laws and regulations governing export/import control, unfair

competition, anti-discrimination and/or false advertising); (c) is defamatory, trade libelous, unlawfully threatening, or unlawfully harassing; (d) is obscene, pornographic or indecent in violation of applicable law; or (e) to propagate any virus, worms, Trojan horses or other programming routine intended to damage any system or data; (vi) not use the Licensed Product(s) in any application that may involve risks of death, personal injury, severe property damage or environmental damage, or in any life support applications, devices or systems and (vii) not use a total number of licenses in excess of the total amount allocated to You. The license granted hereunder is specific to you only, and is not transferable to any other person or business entity, including subsidiaries and successors-in-interest to you, without the prior written consent of Giga Vault Storage.

## **Termination & Suspension**

Termination for Breach. Giga Vault Storage may, by written notice to You, which may include electronic mail (email), terminate this Agreement, including all licenses granted hereunder, if any of the following event(s) occurs: (a) the failure of you to pay Giga Vault Storage in full for any fee(s) and/or charge(s) due to Giga Vault Storage if payment is not rendered within thirty (30) days after the payment was due; (b) any breach of any material term or obligation of this Agreement if not remedied within thirty (30) days after receipt of written notice; (c) any material breach of license grants, license restrictions, intellectual property rights, or confidentiality provisions provided herein effective immediately upon receipt of notice from Giga Vault Storage; or (d) Your insolvency.

## **ACCOUNTS, PASSWORDS, AND SECURITY**

You must be a registered user to access the Service. You are responsible for keeping your password secure. You will be solely responsible and liable for any activity that occurs under your user name. If you lose your password for your account, you will not be able to access your Data.

## **INTELLECTUAL PROPERTY**

You acknowledge that Giga Vault Storage, Inc. or third parties own all right, title and interest in and to the Software and Service, portions thereof, or software or content provided through or in conjunction with the Software or Service, including without limitation all intellectual property rights. Except for the license granted in this Section, all rights in and to the Software and Service are reserved, and no implied licenses are granted by Giga Vault Storage, Inc.

If you have comments on the Software or Service or ideas on how to improve them, please visit <http://gigavaultstorage.com/contact> . Please note that by doing so, you also grant Giga Vault Storage, Inc. a perpetual, royalty-free, irrevocable, transferable license, with right of sublicense, to use and incorporate your ideas or comments into the Software or Service (or third party software, content, or services), and to otherwise exploit your ideas and comments, in each case without further compensation.

## **Automatic conversion of Trial to Paid Accounts**

Giga Vault Storage may offer trial accounts that require users to provide credit card information which may be used to convert the trial to a paid account at the end of free trial period. If the card transaction fails at the end of free trial period, an email would be sent to the user requesting the user to contact their account representative. In addition, status of the account (Free Trial or Paid), Number of free trial days remaining and Option to Opt for the paid account are prominently displayed on the browser application once user logs in. If the user fails to upgrade to a paid account before end of free trial, account may be terminated.

## **Data Backups**

Giga Vault Storage maintains regular backups of data to recover from software or hardware failures. Multiple Snapshots of your data are maintained online. Giga Vault Storage may also keep a copy of data at a geographically distanced data center from the primary location for additional protection. However, we advise you to audit your logs periodically to ensure that the backups are taking place successfully and in case of errors, take corrective action. We have the rights to automatically upgrade the client to the most recent version to improve the quality and reliability of the service.

## **Restrictions**

You are permitted to store, manipulate, analyze, reformat, print, and display the Content only for your personal use. Unauthorized use of the service or the resale of the Services without Giga Vault Storage's prior written consent, is expressly prohibited. You shall not copy, license, sell, transfer, transmit, make available, distribute, publish, or assign this license or the Content in any format to any third party.

## **User Responsibilities**

You are solely responsible for any and all activities that occur under your account and ensuring that you exit or log-off from your account at the end of each session of use. You shall notify Giga Vault Storage immediately of any unauthorized use of your password or account or any other breach of security that is known or suspected by you. You shall also use your best efforts to stop immediately any copying or distribution of Content that is known or suspected by you. Giga Vault Storage shall not be responsible for any unauthorized access to, or alteration of, your transmissions or data, any material, information or data sent or received, regardless of whether the data is actually received by Giga Vault Storage, or any transactions entered into through the Service or failure to abide by this Agreement.

## **Account Information and Data**

Giga Vault Storage does not own any data, information or material that you submit to the Service or store in your account ("Data"). Giga Vault Storage will not monitor, edit, or disclose any information regarding you or your account, including any Data, without your prior permission except in accordance with this Agreement or our Privacy Policy. Giga Vault Storage may access your account, including its Data, to respond to service or technical

problems or as stated in this Agreement or our Privacy Policy. You, not Giga Vault Storage, shall have sole responsibility for the accuracy, quality, integrity, legality, reliability, appropriateness and copyright of all Data and Giga Vault Storage shall not be responsible or liable for the deletion, correction, destruction, damage, loss or failure to store any Data.

## **Payment of Fees**

Giga Vault Storage offers its Paid Service, as published within the Service, for monthly or annual fees (the "Fees") which you will pay to Giga Vault Storage by authorized credit card or net term account. The Fees applicable for the Paid Service are available from your sales executive. Giga Vault Storage reserves the right to change the Fees or applicable charges and to institute new charges at any time, upon thirty (30) days prior notice to you, which may be sent by email. Your authorized credit card could automatically be charged Fees on the day you sign up for the Paid Service, or the expiration of the initial trial period, if any, whichever is later. Thereafter, the Fees will automatically be charged to your authorized credit card, in advance, on the date of the month the Paid Service was initially charged. In the event you cancel the Service, Giga Vault Storage will not refund any Fees already paid by you.

Your Giga Vault Storage account will be considered delinquent if your credit card company refuses for any reason to pay the amount billed to it and that amount remains unpaid at the beginning of the next accounting cycle. The Paid Service may be suspended, archived or purged from system if account is delinquent for more than one billing cycle.

If you believe Giga Vault Storage has billed you incorrectly, you must contact Giga Vault Storage no later than 30 days after the closing date on the first billing statement in which the error or problem appeared, in order to receive an adjustment or credit. Billing inquiry and support contact information can be found in the Support section of the Paid Service.

## **Trial Offers, Coupons, Credits and Special Offers**

Giga Vault Storage reserves the right to discontinue or modify coupons, credits and special promotional offers, if any, at our discretion. The Free Trial offer associated with Giga Vault Storage Paid, if any, entitles new, registered subscribers to a one-time free trial usage of the service. Free Trial terms vary by promotional offer. At the end of the trial period you might be subscribed and we may bill your credit card for the fees to the Service plan you selected at registration or to a default Service plan for trial subscribers selected by Giga Vault Storage. If you wish to terminate the trial and do not wish to subscribe to a plan, you must cancel before the end of your trial period. For cancellation instructions, contact your account manager.

## **Copyrighted Material**

You agree that under no circumstances will you upload and/or share copyrighted materials (for example, copyrighted music or video files) through the Giga Vault Storage Service if you do not have the right to do so. Giga Vault Storage retains the right to terminate an account that contains copyrighted material that has not been legally

obtained. In addition, Giga Vault Storage does not permit sharing copy-protected works including copyrighted music or video files.

## **Indemnification**

You shall indemnify and hold Giga Vault Storage and its parents, subsidiaries, affiliates, officers, directors, employees, attorneys, and agents, harmless from and against any and all claims, costs, damages, losses, liabilities, and expenses (including attorneys' fees and costs) arising out of or in connection with your use of the Service (including the Content) or breach of this Agreement.

Giga Vault Storage and its vendors grant you a personal, non-exclusive, non-transferable limited license to install the software and services distributed by Giga Vault Storage in object code form only on any computer or device from which you wish to access the Giga Vault Storage service for the sole and exclusive purposes of connecting to and using the Giga Vault Storage Products in accordance with these Terms of Use. You may not sub-license, or charge others to use or access the Giga Vault Storage Service. Giga Vault Storage occasionally will provide automatic upgrades to improve your Giga Vault Storage experience, although these upgrades may not be consistent across all platform and devices. You agree to accept and to take no action to interfere with such automatic upgrades, scanning, and related services.

You are responsible for obtaining your own Internet access, such as maintaining all telephone, computer hardware and other equipment needed for access to and use of the Giga Vault Storage Products, and all charges related thereto. Any telephone or other communications charges incurred by you to access Giga Vault Storage are your responsibility.

Giga Vault Storage needs to collect limited amounts of basic data about files on your computer. None of this data is shared with third parties. Giga Vault Storage's software routinely scans your computer in order to detect new, modified or deleted data files that require our software to take further action to complete backup and restore operations. Giga Vault Storage's software also catalogs the number and total storage size of various file types on your computer. Giga Vault Storage's software inspects file headers and related information in order to confirm that each file's type is properly represented by its file extension. Giga Vault Storage will never examine the contents of your files for any other purpose, and no information about a file's content, other than its type (e.g. digital photos, word processing document, etc.) and size, will ever be collected, tracked or stored by Giga Vault Storage. Contents of all files are encrypted before they are transmitted to Giga Vault Storage's data center. By using Giga Vault Storage Products, you expressly agree to allow Giga Vault Storage to collect and use data as specified in our "Software Data Collection and Privacy Policy."

## **Disclaimer of Warranty; Limitation of Liability**

DISCLAIMER OF WARRANTIES. YOUR USE OF GIGA VAULT STORAGE PRODUCTS AND SOFTWARE IS AT YOUR SOLE RISK. THE GIGA VAULT STORAGE PRODUCTS AND SOFTWARE ARE PROVIDED "AS IS," "WITH ALL FAULTS" AND "AS AVAILABLE" FOR YOUR USE, WITHOUT WARRANTIES OF ANY KIND, EITHER EXPRESS OR IMPLIED, UNLESS SUCH WARRANTIES ARE LEGALLY INCAPABLE OF EXCLUSION. SPECIFICALLY, GIGA VAULT STORAGE AND ITS VENDORS DISCLAIM IMPLIED WARRANTIES THAT THE GIGA VAULT STORAGE PRODUCTS AND SOFTWARE ARE MERCHANTABILITY, OF SATISFACTORY QUALITY, ACCURATE, FIT FOR A PARTICULAR PURPOSE OR NEED, OR NON-

INFRINGING. GIGA VAULT STORAGE AND ITS VENDORS DO NOT WARRANT THAT THE FUNCTIONS CONTAINED IN THE GIGA VAULT STORAGE PRODUCTS AND SOFTWARE WILL MEET YOUR REQUIREMENTS OR THAT THE OPERATION OF THE GIGA VAULT STORAGE PRODUCTS AND SOFTWARE WILL BE UNINTERRUPTED OR ERROR-FREE, OR THAT DEFECTS IN THE GIGA VAULT STORAGE PRODUCTS AND SOFTWARE WILL BE CORRECTED. GIGA VAULT STORAGE AND ITS VENDORS DO NOT WARRANT OR MAKE ANY REPRESENTATIONS REGARDING THE USE OR THE RESULTS OF THE USE OF THE GIGA VAULT STORAGE PRODUCTS, SOFTWARE OR RELATED DOCUMENTATION IN TERMS OF THEIR CORRECTNESS, ACCURACY, RELIABILITY OR OTHERWISE. GIGA VAULT STORAGE PROVIDES THE GIGA VAULT STORAGE PRODUCTS AND SOFTWARE ON A COMMERCIALY REASONABLE BASIS AND DOES NOT GUARANTEE THAT USERS WILL BE ABLE TO ACCESS OR USE THE GIGA VAULT STORAGE PRODUCTS AT TIMES OR LOCATIONS OF THEIR CHOOSING.

LIMITATION OF LIABILITY. GIGA VAULT STORAGE'S ENTIRE LIABILITY AND YOUR EXCLUSIVE REMEDY WITH RESPECT TO ANY DISPUTE WITH GIGA VAULT STORAGE (INCLUDING WITHOUT LIMITATION YOUR USE OF THE SOFTWARE OR GIGA VAULT STORAGE PRODUCTS) IS TO DISCONTINUE YOUR USE OF THE GIGA VAULT STORAGE PRODUCTS AND SOFTWARE. GIGA VAULT STORAGE AND ITS VENDORS SHALL NOT BE LIABLE FOR ANY INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL OR EXEMPLARY DAMAGE ARISING FROM YOUR USE OF THE GIGA VAULT STORAGE PRODUCTS, SOFTWARE OR FOR ANY OTHER CLAIM RELATED IN ANY WAY TO YOUR USE OR REGISTRATION WITH GIGA VAULT STORAGE PRODUCTS AND SOFTWARE. THESE EXCLUSIONS FOR INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL OR EXEMPLARY DAMAGES INCLUDE, WITHOUT LIMITATION, DAMAGES FOR LOST PROFITS, LOST DATA, LOSS OF GOODWILL, WORK STOPPAGE, COMPUTER FAILURE OR MALFUNCTION, OR ANY OTHER COMMERCIAL DAMAGES OR LOSSES, EVEN IF GIGA VAULT STORAGE HAD BEEN ADVISED OF THE POSSIBILITY THEREOF AND REGARDLESS OF THE LEGAL OR EQUITABLE THEORY UPON WHICH THE CLAIM IS BASED. BECAUSE SOME STATES OR JURISDICTIONS DO NOT ALLOW THE EXCLUSION OR THE LIMITATION OF LIABILITY FOR CONSEQUENTIAL OR INCIDENTAL DAMAGES, IN SUCH STATES OR JURISDICTIONS, GIGA VAULT STORAGE AND ITS VENDORS' LIABILITY IN SUCH STATE OR JURISDICTION SHALL BE LIMITED TO THE EXTENT PERMITTED BY LAW.

### **Local Laws and Export Control**

Giga Vault Storage controls and operates this Service from its location in the United States of America and is subject to the United States Export Administration Laws and Regulations. Giga Vault Storage makes no representation that the Service is appropriate or available for use in other locations. If you use the Service from outside the United States of America, you are solely responsible for compliance with all applicable laws, including without limitation export and import regulations of other countries. Any diversion of the Content contrary to United States law is prohibited. None of the Content, nor any information acquired through the use of the Service, is or will be acquired for, shipped, transferred, or re-exported, directly or indirectly, to proscribed or embargoed countries or their nationals, nor is or will be used for nuclear activities, chemical biological weapons, or missile projects, unless specifically authorized by the United States Government for such purposes. You shall comply strictly with all United States export laws and assume sole responsibility for obtaining licenses to export or re-export as may be required.

### **MISCELLANEOUS PROVISIONS**

You acknowledge and agree that the Software which is the subject of this Agreement, may be controlled for export purposes. You agree to comply with all United States export laws and regulations. You assume sole responsibility for any required export approval and/or licenses and all related costs and for the violation of any United States export law or regulation. If you are located in a country subject to embargo by the United States government, you are not entitled to use the Software or Service.

This agreement will be governed by and construed in accordance with the laws of the State of Massachusetts, without giving effect to any conflict of laws and provisions that would require the application of the laws of any other jurisdiction. The United Nations Convention on Contracts for the International Sale of Goods shall not apply to this Agreement.

The failure of Giga Vault Storage, Inc. to exercise or enforce any right or provision of this Agreement does not constitute a waiver of such right or provision. If for any reason a court of competent jurisdiction finds any provision or portion of this Agreement to be unenforceable, the remainder of this Agreement will continue in full force and effect.

This Agreement, which incorporates the Giga Vault Storage, Inc. Privacy Policy, constitutes the entire agreement between the parties with respect to the subject matter hereof and supersedes and replaces all prior or contemporaneous understandings or agreements, written or oral, regarding such subject matter. Any waiver of any provision of this Agreement will be effective only if in writing and signed by Giga Vault Storage, Inc..

All disputes arising out of this Agreement will be subject to the exclusive jurisdiction of the state and federal courts serving Worcester County, Massachusetts, and the parties agree and submit to the

personal and exclusive jurisdiction and venue of these courts, except that nothing will prohibit Giga Vault Storage, Inc. from instituting an action in any court of competent jurisdiction to obtain injunctive relief or protect or enforce its intellectual property rights.

You may not assign or transfer any of your rights or obligations under this Agreement to a third party without the prior written consent of Giga Vault Storage, Inc. Giga Vault Storage, Inc. may freely assign this Agreement. Any attempted assignment or transfer in violation of the foregoing will be void from the beginning.