

XO Cloud Backup Service Terms and Conditions

The XO Cloud Backup Service is a resold service governed by the “XO Cloud Solutions Services Agreement” and all other general terms at www.terms.xo.com, as they may be modified from time to time, as well as any terms and conditions governing any service elements or licenses provided to Customer by any Third Party supplier as part of the Service.

As part of the provision of the Cloud Backup Service, client software must be installed on the Customer’s system. Use of the client software is subject to the terms and conditions set forth in the End User License Agreement presented by XO’s Third Party supplier/licensor with the client software. Additionally, certain limited terms controlled by that Third Party supplier can be found at <http://evault.com/terms-of-use/product-terms-of-use-us/other> and shall only apply to Customer’s use of the Services as follows: Customer is bound by: (1) Exhibit A – Product Specific Terms and Conditions; and (2) Exhibit C – Definitions (only to the extent such definitions are not otherwise defined in the XO Cloud Solutions Services Agreement). Notwithstanding the foregoing, all of Customer’s rights and remedies are with XO. Upon cancellation or termination for any reason not occasioned by XO breach, Customer shall be liable for any non-recurring charges, special construction or other non-standard charges incurred by or on behalf of Customer up to the date of cancellation or termination, plus the monthly recurring charges for the remaining Service Term of the Service Order.

Customer’s Responsibilities

General Responsibilities. Customer will perform regular backups using the Third Party supplier software to hardware owned and maintained by the Third Party supplier. Customer will report any errors in executing such backups promptly to XO. Customer will arrange for and maintain communications services used to connect the Service and is responsible for any communication costs associated with the connection.

Subscriber’s Covenant. In addition to Customer’s obligations under Section 5.3.1 of the XO Cloud Solutions Terms and Conditions, Customer additionally represents and warrants that it: (i) will not include Protected Data in any communication to XO or its suppliers for technical support or otherwise; (ii) will implement privacy and security safeguards in the systems, applications and software Customer controls, configures and/or maintains using the Service; and (iii) shall use the encryption features in the products and Services to encrypt any and all Protected Data that is transmitted, provided to or stored using the Services. In addition to the indemnification obligations set forth in Section 5.3.1 of the XO Cloud Solutions Terms and Conditions, Customer shall defend and indemnify XO and its suppliers from and against any damages and costs arising from or relating to the failure of Customer to implement appropriate privacy and security safeguards or encrypt Protected Data.

U.S. Based Entity. Customer represents and warrants that it is established and registered under the laws of the United States. All billing for International Services will be in U.S. Dollars and addressed to Customer’s U.S. location(s) only.

International Use. Notwithstanding anything to the contrary in the Services Agreement, the Parties acknowledge that the Service is accessible internationally as it is provisioned at strategic international locations. Customer is responsible for the use of its Customer Materials and Customer represents and warrants that its use of such Customer Materials is in compliance with all applicable U.S. and foreign privacy and export laws, and that Customer has such rights and consents required under the laws of the country where the Customer Materials are located. Customer will indemnify XO, its affiliates, employees, directors, officers and agents against any claims, suits, losses, damages, costs, or expenses as a result of Customer’s breach of the foregoing representation and warranty.