

## Qwest Personal Digital Vault™ Terms of Service

### Acceptance of Terms

**NOTICE TO ALL USERS: BEFORE YOU PLACE A CHECK IN THE “I HAVE READ AND AGREE” BOX:** Please carefully read these Terms of Service relating to your purchase of Services, and your licensing of the Software, described below (collectively referred to as “Service”). The Terms of Service may also be found at <http://www.qwest.com/legal/digitalvault/> (referred to as the “Site”). Qwest shall have the right at any time to change or modify the Terms of Service or to impose new conditions. Such changes, modifications, additions or deletions will be effective immediately upon notice thereof, which may be given by means including, but not limited to, the posting on the Site or by electronic mail. Your use of the Services after such notice will be your acceptance of such changes, modifications, additions or deletions. The Terms of Service do not alter in any way the terms or conditions of any other written or online agreement you may have with Qwest.

Your check in the box labeled "I have read and agree" is an electronic signature and acknowledges: (1) you agree the Terms of Service contain the terms under which the Services are offered and provided to you; (2) you understand and agree to such terms (even if you don't read them); (3) you understand and agree to the prices, charges, and other terms and conditions quoted to you during the ordering process and on the Site, all of which are incorporated by reference; (4) you represent that you are at least 18 years of age; and (5) you agree that your continued use of the Services after your initial acceptance of the Terms of Service will constitute acceptance of the then current Terms of Service. Federal and some state laws provide for certain disclosures, and the relevant language from the federal act can be viewed at <http://www.qwest.com/legal/electronic signatures.html>. You may provide yourself a paper copy of these Terms of Service by printing them from the Site. Qwest does not otherwise provide you with a paper copy. A standard connection to the Internet/World Wide Web, a device that sends and accepts standard e-mail, and a software program that permits you to display standard Internet Web sites are the only hardware/software that we know of that are needed to communicate with Qwest and access this information in electronic form. **IF YOU DO NOT AGREE WITH THE TERMS OF SERVICE, DO NOT CHECK THE BOX AND DO NOT USE THE SERVICE. NOTE: BY INSTALLING, COPYING, DOWNLOADING, ACCESSING OR OTHERWISE USING THE SOFTWARE OR SERVICE, YOU AGREE TO BE BOUND BY THE TERMS OF SERVICE.**

These terms and conditions, together with the other terms and conditions referenced herein (“Terms of Service” or “Agreement”) are between Qwest Corporation (“Qwest”) and the end user of the Service (“you” or “Customer”).

### Description of Service.

Qwest Personal Digital Vault enables you to back-up documents, such as personal photographs and videos, sound and graphics (“Content”) from your personal computer to Qwest’s remote data back-up via the Internet. The Service also gives you the ability to access, manage and share your Content from any computer with Internet access. Qwest will provide to you the amount of back-up space that is mutually agreed upon at the time you order the Service. It is your responsibility to routinely back-up your Content, whether you choose automatic or manual back-up. Content you back-up will be retained for the life of your account, as further described below.

All or portions of the Services provided hereunder may be provided by a third-party provider, including but not limited to, the storage of Customer Content backed up via the Services as well as credit card processing. By accepting these Terms of Service, you consent to the provision of all or any portion of the

Services by such third-party provider; and you understand and agree that payment may be collected from you through a third party credit card processor. You agree that the payment and credit card processing services, and any of your personally identifiable information required for payment and credit card processing services, may be transferred from such third party to Qwest at any time.

### **SERVICE DISCLAIMERS**

**QWEST PERSONAL DIGITAL VAULT IS NOT AN ARCHIVAL SERVICE. YOU ARE SOLELY RESPONSIBLE TO MAINTAIN ORIGINAL VERSIONS OF YOUR CONTENT ON YOUR PERSONAL COMPUTER THAT YOU BACK-UP THROUGH QWEST PERSONAL DIGITAL VAULT. DUE TO THE NATURE OF BACKUP SERVICE, IT IS RECOMMENDED THAT YOU PERFORM OCCASIONAL TEST RESTORES AND FAMILIARIZE YOURSELF WITH THE OPERATION OF THE SOFTWARE AND SERVICE BEFORE AN EMERGENCY SITUATION ARISES.**

**FILES THAT ARE DELETED FROM YOUR PERSONAL COMPUTER OR DESELECTED FROM YOUR BACK-UP PROFILE WILL BE RETAINED IN YOUR BACK-UP FOR THE LIFE OF YOUR ACCOUNT AND WILL COUNT TOWARDS YOUR BACK-UP LIMIT, UNLESS YOU CONTACT CUSTOMER SUPPORT TO REQUEST REMOVAL.**

**PRIOR VERSIONS OF BACKED-UP FILES MAY BE RETAINED IN QWEST'S SYSTEMS FOR ACCOUNT MANAGEMENT PURPOSES BUT ARE NOT ACCESSIBLE OR VISIBLE TO YOU.**

**CONTENT THAT YOU SHARE IS NOT ENCRYPTED. SHARED FILES MAY BE FORWARDED BY RECIPIENTS.**

#### **Software.**

**Grant Of License For Non-Commercial Use.** Subject to the terms of this Agreement, Qwest grants to You, a personal, non-exclusive, non-transferable, non-sublicensable and non-commercial limited license to install and use the software program (the "Software") and related information, materials and documentation (the "Documentation") on one computer only. Non-commercial means that you cannot charge other people to use the Software, nor may you charge them for work you do on their behalf if it involves use of the Software. This license authorizes you to make one copy of the Software solely for backup or archival purposes, provided that the copy you make contains all the proprietary notices.

**Ownership of Software.** The Software is owned by Qwest or its third party licensors and its structure, organization and code are the valuable trade secrets of Qwest or its third party licensors and are protected by United States Copyright and other laws, international treaty provisions and applicable laws, including intellectual property, of the country in which it is being used. The Software and Documentation are licensed and not sold to you. Except as licensed in this Agreement, Qwest or its third party licensors retains all right, title and interest in and to the Software and Documentation worldwide.

All trademarks, service marks or other similar items appearing on the Site are the property of Qwest or their respective owners.

**Software Upgrades.** A Software upgrade replaces and or supplements (sometimes disables) the product that formed the basis for your eligibility for an upgrade. Any Software upgrades provided by Qwest or its third party licensors are subject to the terms of this Agreement and may be provided automatically without notice to you.

#### **Related Policies (AUP, Privacy).**

Your access and use of this Service must comply with Qwest's [Acceptable Use Policy](#).

Qwest values your business and respects your privacy. Qwest's Privacy Policies posted at [www.qwest.com/legal/privacy.html](http://www.qwest.com/legal/privacy.html) ("Privacy Policy") summarizes what information we collect and how we use and disclose that information.

**Restrictions.** You are solely responsible for all Content and account information you access, manage, transmit, back-up, view, restore or share through the Service. Content that you share is not encrypted. You agree to comply with all applicable laws, rules and regulations. You may not rent, lease, subdivide, modify, translate or sublicense the Software, Service or Documentation. You may only use the Software and Documentation in connection with the Qwest Personal Digital Vault automatic backup network and not with any other backup or related service. You may not (i) decompile, disassemble, or otherwise reverse engineer or attempt to reconstruct or discover any of Qwest or its third party licensor's source code, underlying ideas, algorithms, trade secrets or other proprietary information by any means whatsoever, (ii) create derivative works from or otherwise modify this Software, (iii) copy or otherwise reproduce the Documentation; (iv) back-up, access or share any Content that infringes, misappropriates or violates the intellectual property, publicity, privacy or other proprietary rights of any party; (v) transmit any viruses, worms, defects, Trojan horses or other items of a destructive nature; (vi) back-up, access or share any Content that is unlawful or promotes or encourages illegal activity; (vii) back-up, access or share any Content which may be pornographic, obscene or defamatory; (viii) share your passwords or otherwise make your Qwest Personal Digital Vault available to third parties; or (viii) use the Service in a business or for any commercial purpose.

**YOU MAY NOT TRANSFER FOR VALUE OR RESELL THE SOFTWARE OR SERVICE OR USE THE SOFTWARE OR SERVICE TO PROVIDE SERVICES TO ANY ONE.**

#### **Term And Termination.**

This Agreement is effective for the term of Service ordered by you, beginning on the date you order the Service and ending on the last day of the billing cycle of the term of Service you ordered. Service provided on a month-to-month basis will automatically renew monthly until you cancel your Service. Service provided on an annual basis will automatically renew on the anniversary of your Service order date unless you cancel. If you select annual Service, Qwest will notify you thirty (30) days prior to the expiration of the term. Prices are subject to change. If you do not wish to renew, you must call Qwest at **1-866-809-3018** and cancel your Service, otherwise, Qwest will renew your Service for another year and bill you in advance, using the method of payment you provided when you ordered the Service.

You may terminate this Agreement and your use of the Services at any time and without cause by calling Qwest at **1-866-809-3018** and returning or destroying all copies of the Software and Documentation. If you selected an annual term, Qwest may refund a pro-rated portion of any pre-paid amounts. Your Content will be handled in the manner described in the section entitled *Disposition of Content Upon Termination*, below. Access to any Content following termination or expiration may be possible for a forty-five (45) day period only and may require you to renew your account. Your rights under this Agreement will terminate automatically without notice if you fail to comply with any term(s) of this Agreement. THERE ARE ADDITIONAL TERMINATION PROVISIONS SET FORTH BELOW WHICH AFFECT YOUR RIGHTS AND ABILITY TO OBTAIN A COPY OF YOUR CONTENT. PLEASE READ THEM.

**IF QWEST DOES NOT RECEIVE A REQUEST FOR SERVICE TERMINATION BY CALLING QWEST AT 1-866-809-3018 YOU ACKNOWLEDGE AND UNDERSTAND THAT QWEST WILL CONTINUE TO CHARGE YOU IN ADVANCE FOR SERVICE AS LONG AS YOUR ACCOUNT REMAINS ACTIVE WHETHER THE SERVICE IS USED OR NOT.**

Qwest does not control the Content of your account. Qwest may, but is not obligated to monitor your use of the Service or your Content. Notwithstanding the foregoing, Qwest reserves the right, in its sole discretion, to deny use of and access to all or any portion of the Service, suspend or terminate this Agreement, your password, your account and/or your use of the Service without notice and for any

reason, including without limitation, if you are not a Qwest High-Speed Internet® customer, if you fail to pay any charges when due, if your use is deemed excessive or if Qwest reasonably believes you or someone using your account has violated this Agreement. In addition, Qwest reserves the right to suspend or terminate any account without notice if Qwest believes, in its sole discretion, that false, incomplete or incorrect information was provided during account creation or at any other time. Qwest reserves the right to modify or discontinue this Service at any time without notice to you. Upon notice from Qwest, certain users may be required to activate additional accounts at no additional charge.

You agree that Qwest may, in its sole discretion and from time to time, establish or amend general operating practices to maximize the operation and availability of the Service and to prevent abuses. As part of these practices, we reserve the right to monitor our systems to identify excessive consumption of network or storage resources and to take such technical and other remedies as we deem appropriate.

### **Service Fees and Payment**

All fees for the Qwest Personal Digital Vault Services are charged automatically in advance using the payment method you provide when you order the Service. If you provide Qwest your credit card information, you authorize Qwest to automatically charge your credit card for charges that apply to your account. Fees are billed monthly or annually in advance and are subject to change. You will provide all information necessary for Qwest to bill for the Services. You affirm that the information you supply is correct and complete and will promptly notify Qwest whenever your personal or billing information changes. Specifically, if you elect to pay by credit card, you are responsible for directly updating, or notifying Qwest of any changes to your credit card (including, but not limited to card number, expiration date, billing address or card status).

If you upgrade your Service during an existing subscription term, you will be billed in full, in advance for the new Service. Any remainder of the prior pre-paid subscription may not be refunded.

If, at any time, the Service fee is declined or otherwise rejected by your bank or credit card company or you otherwise fail to pay for the Services, Qwest may immediately suspend your account until you provide a valid payment method and pay any past due amounts. You will have thirty (30) days to contact Qwest and update your payment method and have your account reactivated. If no action is taken, Qwest will terminate your account. Service will not resume until you contact Qwest at **1-866-809-3018**. In order to reactivate your account, you will be charged any past due amounts and any fees incurred by Qwest for rejected payments. You may also be billed in advance for ongoing services as described above.

*Disputes:* The billed rate will continue unless you call us promptly and inform us that the billed monthly rate is not the one quoted to you. You must give Qwest notice of any dispute on your bill.

**Passwords.** You will maintain the confidentiality of all passwords assigned to your account. You may not share passwords with third parties or attempt to access the Service without providing your password.

### **International Access.**

If you access this Service from outside of the United States, any information that you transmit through the Service will be transferred to the United States and stored in servers located there, which may be owned and maintained by a third party processor. Qwest contractually requires such processors to maintain your personally-identifiable information under specific confidentiality terms which comply with United States law. When contacting Qwest for help, you may be referred to a support agent who will request your permission to use "click to chat" help functionality. That functionality may involve processing of information through data centers that may be located in the United States or in other countries. Your communication will be processed through the data center closest to your accessing computer. In either of the cases described above, information may be subject to less protective data protection laws than the country in which you are located.

**Export Assurances.** You acknowledge there are specific restrictions and complex laws regarding the export of software outside the United States, and you agree not to export, or allow the re-export of the Software, Documentation, or any direct product thereof except with all necessary export licenses and approvals. Specific export controls prohibit the software from being downloaded or exported or re-exported (i) into (or to a national or resident of) Cuba, Iran, Iraq, Libya, North Korea, Sudan, Syria or any other country to which the United States has embargoed goods; or (ii) to anyone on the United States Treasury Department's list of Specially Designated Nations or the United States Commerce Department's Table of Denial Orders. By restoring Content or using the Software, you are agreeing to the foregoing provisions and you are certifying that you are not located in, under the control of, or a national or resident of any such country or on any such list.

**Confidentiality and Privacy.** Qwest will use reasonable efforts to prevent the unauthorized disclosure of your Content and confidential information. Qwest, however, will not be responsible for any matter beyond its reasonable control, including, without limitation, unauthorized electronic access of your Content, confidential information or data. Qwest and its third party provider may provide customer information to third parties or governmental entities when required, or permitted by law; to establish rights or obligations under this Agreement; or to protect Qwest's or others rights or property regarding our Services or the services of other providers from fraudulent, abusive or unlawful use of, or subscription to, such services. See also Qwest Privacy Policies posted at [www.qwest.com/legal/privacy.html](http://www.qwest.com/legal/privacy.html), which may change from time to time. Additionally, Qwest, its affiliates and third-party vendors, may access and use information regarding your bandwidth and storage usage (including the type and content of files you have stored) and performance of your Service to: (a) perform maintenance, support, and other service-quality activities and (b) verify AUP compliance and network performance.

**Disclaimer of Warranty.** THE SERVICE IS PROVIDED ON AN "AS IS" AND "AS AVAILABLE" BASIS, WITH ALL FAULTS. QWEST AND ITS LICENSORS PROVIDES THE SERVICE WITHOUT WARRANTIES OF ANY KIND, WRITTEN OR ORAL, STATUTORY, EITHER EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION, WARRANTIES OF TITLE, NONINFRINGEMENT, MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, ACCURACY, NON-INTERFERENCE, COMPATIBILITY OF COMPUTER SYSTEMS, INTEGRATION, AND THOSE REGARDING THE SECURITY, RELIABILITY, TIMELINESS AND PERFORMANCE OF THE SERVICE, INCLUDING, BUT NOT LIMITED TO, THOSE ARISING FROM COURSE OF DEALING OR COURSE OF TRADE AND DISCLAIMS ANY SUCH WARRANTIES. QWEST AND ITS LICENSORS DO NOT WARRANT THAT THE SERVICE OR SOFTWARE WILL BE UNINTERRUPTED, ERROR-FREE, SECURE, OR FREE OF VIRUSES OR OTHER HARMFUL COMPONENTS. NO ADVICE OR INFORMATION GIVEN BY QWEST, ITS LICENSORS, AFFILIATES, AGENTS, OR ITS CONTRACTORS OR THEIR RESPECTIVE EMPLOYEES WILL VARY THE TERMS OF THIS AGREEMENT OR CREATE ANY WARRANTY. QWEST IS NOT RESPONSIBLE FOR DEFAACEMENT, MISUSE, ABUSE, NEGLIGENCE, IMPROPER USE, IMPROPER ELECTRICAL VOLTAGES OR CURRENT, REPAIRS BY OTHERS, ALTERATIONS, MODIFICATIONS, ACCIDENTS, FIRE, FLOOD, VANDALISM, ACTS OF GOD, OR THE ELEMENTS. QWEST TECHNICAL SUPPORT IS NOT WARRANTED AND IS USED AT YOUR OWN RISK. QWEST AND ITS LICENSORS MAKE NO WARRANTY REGARDING TRANSACTIONS EXECUTED AND CONTENT AND INFORMATION ACCESSED BY USING THE SERVICE. TO THE EXTENT THAT ANY LIMITATION IN THIS SECTION IS NOT PERMITTED BY APPLICABLE LAW, SUCH LIMITATION WILL NOT APPLY TO CUSTOMER TO THE EXTENT IT IS BARRED BY APPLICABLE LAW.

**Liability Limitation.**

(a) YOU ASSUME TOTAL RESPONSIBILITY FOR USE, RESULTS OF USE, AND PERFORMANCE OF THE SERVICE. QWEST AND ITS LICENSORS EXERCISE NO CONTROL OVER AND DISCLAIM ANY RESPONSIBILITY FOR THE CONTENT CREATED OR ACCESSIBLE USING THE SERVICE. YOU AGREE NOT USE THE SERVICE IN HIGH RISK ACTIVITIES WHERE AN ERROR COULD CAUSE DAMAGE OR INJURY.

(b) REGARDLESS OF THE LEGAL THEORY UNDER WHICH LIABILITY IS ASSERTED AND

REGARDLESS OF WHETHER QWEST HAS BEEN ADVISED OF THE POSSIBILITY OF LIABILITY, LOSS OR DAMAGE, QWEST, ITS LICENSORS, AFFILIATES, AGENTS, AND CONTRACTORS WILL NOT BE LIABLE TO YOU FOR ANY INCIDENTAL, INDIRECT, SPECIAL, RELIANCE, PUNITIVE OR CONSEQUENTIAL DAMAGES OF ANY KIND (INCLUDING, WITHOUT LIMITATION, ANY LOSS OF USE, LOSS OF BUSINESS, LOST OR IMPUTED PROFITS OR REVENUES, LOSS OR DESTRUCTION OF CONTENT, INFORMATION OR DATA, COSTS OF COVER, INTERRUPTED SERVICE, OR RELIANCE UPON THE SOFTWARE AND/OR ASSOCIATED DOCUMENTATION) ARISING OUT OF OR RELATED TO THIS AGREEMENT, SERVICE OR SOFTWARE EVEN IF ANY SUCH DAMAGES ARE CAUSED BY QWEST, ITS LICENSORS, AFFILIATES, AGENTS, OR CONTRACTORS.

(c) WITH REGARD TO ANY SERVICE RELATED CLAIM FOR DAMAGES THAT IS NOT LIMITED BY THIS SECTION, YOUR EXCLUSIVE REMEDIES FOR SUCH CLAIM WILL BE LIMITED TO THE TOTAL CHARGES PAID BY YOU TO QWEST FOR THE AFFECTED SERVICE IN THE ONE MONTH IMMEDIATELY PRECEDING THE OCCURRENCE OF THE EVENT GIVING RISE TO THE CLAIM. QWEST'S TOTAL AGGREGATE LIABILITY ARISING FROM OR RELATED TO THIS AGREEMENT WILL NOT EXCEED THE TOTAL CHARGES PAID BY YOU TO QWEST UNDER THIS AGREEMENT IN THE ONE MONTH IMMEDIATELY PRECEDING THE OCCURRENCE OF THE EVENT GIVING RISE TO THE CLAIM ("DAMAGE CAP").

(d) QWEST AND ITS LICENSORS DISCLAIM ALL LIABILITY OR RESPONSIBILITY IF SERVICE CHANGES REQUIRE EQUIPMENT CHANGES, DEGRADE EQUIPMENT PERFORMANCE OR SERVICE PERFORMANCE WITH THE EQUIPMENT, OR MAKE EQUIPMENT OBSOLETE.

(e) Any claim or dispute arising out of or relating to this Agreement must be brought within one year after the cause of action arises.

**Personal Injury, Death, and Property Damage.** QWEST'S LIABILITY TO YOU ON ACCOUNT OF ANY ACT OR OMISSION OF QWEST RELATED TO THIS AGREEMENT WILL BE LIMITED TO ACTUAL DAMAGE TO REAL OR TANGIBLE PERSONAL PROPERTY (AS LIMITED ABOVE), OR BODILY INJURY OR DEATH DIRECTLY CAUSED BY QWEST'S WILLFUL MISCONDUCT OR GROSS NEGLIGENCE. EXCEPT FOR DAMAGES DESCRIBED IN THE PREVIOUS SENTENCE, YOU WILL NOT BE ENTITLED TO ANY OTHER DAMAGES, INCLUDING INDIRECT OR CONSEQUENTIAL DAMAGES, REGARDLESS OF THE FORM OF ACTION. QWEST AND OUR LICENSORS, AFFILIATES, AGENTS, AND CONTRACTORS WILL HAVE NO LIABILITY WHATSOEVER FOR ANY DAMAGES OR MODIFICATIONS TO, OR LOSS OR DESTRUCTION OF, ANY OF YOUR SOFTWARE, FILES, CONTENT, DATA OR PERIPHERALS, REGARDLESS OF THE CAUSE. Damages under this Section will be subject to the limitation of liability in this Agreement but not the Damage Cap. TO THE EXTENT THAT ANY LIMITATION IN THIS SECTION IS NOT PERMITTED BY APPLICABLE LAW, SUCH LIMITATION WILL NOT APPLY TO CUSTOMER TO THE EXTENT IT IS BARRED BY APPLICABLE LAW.

**Indemnification.** You agree to indemnify, defend, and hold harmless Qwest and its licensors, affiliates, contractors, officers, directors, employees, or agents from any and all third-party claims, liabilities, costs, and expenses, including reasonable attorney fees and punitive damages arising from: (a) violation of any provision of this Agreement by you or others who use your Service or Software; (b) claims for libel, slander, invasion of privacy, or infringement of any intellectual property rights arising from the use of the Service; (c) patent infringement arising from your acts combining or using the Service in connection with facilities or equipment (circuit, apparatus, system or method) furnished by you; (d) negligent acts, errors, or omissions by you; or (e) injuries to or death of any person and for damages to or loss of any property,

which may in any way arise out of or result from or in connection with this Agreement, except to the extent that such liabilities arise from the gross negligence or willful misconduct of Qwest.

**Dispute Resolution and Arbitration; Governing Law.** PLEASE READ THIS SECTION CAREFULLY. IT AFFECTS RIGHTS THAT YOU MAY OTHERWISE HAVE. IT PROVIDES FOR RESOLUTION OF DISPUTES THROUGH MANDATORY ARBITRATION WITH A FAIR HEARING BEFORE A NEUTRAL ARBITRATOR INSTEAD OF IN A COURT BY A JUDGE OR JURY OR THROUGH A CLASS ACTION.

(a) Arbitration Terms. You agree that any dispute or claim arising out of or relating to the Services or this Agreement (whether based in contract, tort, statute, fraud, misrepresentation or any other legal theory) will be resolved by binding arbitration. The sole exceptions to arbitration are that either party may pursue claims: (1) in small claims court that are within the scope of its jurisdiction, provided the matter remains in such court and advances only individual (non-class, non-representative, non-consolidated) claims; and (2) in court if they relate solely to the collection of any debts you owe to Qwest.

(i) *Arbitration Procedures.* Before commencing arbitration you must first present any claim or dispute to Qwest in writing to allow Qwest the opportunity to resolve the dispute. If the claim or dispute is not resolved within 60 days, you may request arbitration. The arbitration shall be conducted by the American Arbitration Association (“AAA”). The Federal Arbitration Act, 9 U.S.C. Sections 1-16, not state law, shall govern the arbitration of the dispute. Colorado state law, without regard to choice of law principles, shall otherwise govern and apply to any and all claims or disputes. All face-to-face proceedings shall be conducted at a location which is reasonably convenient to both you and Qwest. Arbitration is final and binding. Any arbitration shall be confidential, and neither you nor Qwest may disclose the existence, content or results of any arbitration, except as may be required by law or for purposes of enforcement of the arbitration award. The arbitrator may award any relief or damages that a court could award, except an arbitrator may not award relief in excess of or contrary to what this Agreement provides. Judgment on any arbitration award may be entered in any court having jurisdiction.

(ii) *Costs of Arbitration.* The party requesting arbitration must pay the applicable AAA filing fee, except that if you are an individual using the Services for household or personal use and you initiate arbitration against Qwest: (1) you must pay one-half the arbitrator’s fees up to a maximum of \$125 if your claim does not exceed \$10,000; (2) you must pay one-half the arbitrator’s fees up to a maximum of \$375 if your claim is more than \$10,000 but less than \$75,000; and (3) you must pay an Administrative Fee in accordance with the AAA’s Commercial Fee Schedule if your claim exceeds \$75,000 or if your claim is non-monetary. Except as provided in the preceding sentence, each party shall pay its own expenses of the arbitration, including the expense of its own counsel, witnesses, and presentation of evidence at the arbitration. If any party files a judicial or administrative action asserting a claim that is subject to arbitration and another party successfully stays such action or compels arbitration, the party filing that action must pay the other party’s costs and expenses incurred in seeking such stay or compelling arbitration, including reasonable attorneys’ fees.

(b) Waiver of Jury and Class Action. By this Agreement, both you and Qwest are waiving rights to litigate claims or disputes in court (except small claims court as set forth in paragraph (a) above). Both you and Qwest also waive the right to a jury trial on your respective claims, and waive any right to pursue any claims on a class or consolidated basis or in a representative capacity.

**Notices.** Except as otherwise provided herein, all required notices to Qwest must be in writing and sent to 1801 California Street, Suite 900, Denver, Colorado 80202; Facsimile #: 1 888-778-0054; Attn.: Legal Department. Except as otherwise provided herein, you agree that all required notices to you will be

provided by one or more of the following: posting, bill message, bill insert, postcard, letter, call to your billed telephone number, **or e-mail to an address provided by you when you ordered Service**. You agree to provide Qwest with any and every change to your e-mail address by calling **1-866-809-3018** or updating your account information at <https://digitalvault.qwest.com>. Except as otherwise provided herein, all notices will be deemed given: (a) when delivered in person to the recipient named above; (b) three business days after mailed via regular U.S. Mail; (c) when delivered via overnight courier mail; or (d) when delivered by facsimile so long as duplicate notification is also sent in the manner set forth in subsection (b).

**General.** If any term of this Agreement is held invalid, illegal or unenforceable, such term will be construed as nearly as possible to reflect the original intent of the parties and the remaining terms will remain in effect. Neither party's failure to insist upon strict performance of any provision of this Agreement will be construed as a waiver of any of its rights hereunder. All terms of this Agreement that should by their nature survive the termination of this Agreement will so survive. This Agreement, together with the other agreements and policies and posted information referenced herein, constitutes the entire agreement between you and Qwest with respect to the subject matter hereof, and supersedes all prior or contemporaneous oral or written agreements or understandings relating to the subject matter hereof. In the event of any inconsistency between this Agreement and any other documents exchanged between you and Qwest related to the Service, the provisions of this Agreement will control.

**Force Majeure.** Qwest and its licensors shall not be liable for nonperformance, delay, errors, data loss or other loss caused by any event reasonably beyond Qwest's control including, but not limited to acts of God, war, hostilities, revolution, civil disorder, national emergency, strikes, lockouts, unavailability of supplies, non-use of product, epidemics, fire, flood, earthquake, force of nature, explosion, embargo or any law, proclamation, regulation, ordinance or other act or order of any court, government or governmental agency.

#### **Disposition Of Content On Termination.**

THIS AGREEMENT AND THE FOLLOWING PROVISIONS GOVERN WHAT HAPPENS TO YOUR CONTENT OR DATA ON TERMINATION OF THE SERVICE OR THIS AGREEMENT.

The Services provided to you by Qwest may be terminated under the Term and Termination Section above. You understand that forty-five (45) days after the termination or expiration of the Service or this Agreement, your Content will remain encrypted, will no longer be readable or accessible by you, and the disk space where your Content resides will eventually be overwritten, rendering it unrecoverable (the "Termination Period"). You must call Qwest at **1-866-809-3018** or go to <https://digitalvault.qwest.com> prior to the expiration of the Termination Period if you wish to extend or renew your Service. By using the Service you are agreeing to release Qwest and its licensors from any and all liability, claims and damages due to lost or stolen Content or data.

During the term of Service and any time thereafter until your Content is rendered unrecoverable, Qwest, or its third party providers, may be required to provide Content to law enforcement in response to a subpoena or other formal legal process.

#### **Back Up File Protection Requirements**

In order for you to properly back up your Content, they must meet the following requirements:

1. File has to exist on your computer.



2. File must be selected as part of the backup set.
3. You must routinely confirm that your automatic backup was successful or complete a manual backup.

Failure to meet the above requirements may result in back up failure or deletion of back up files.

You are responsible for and must provide and pay separately for all computer equipment and services necessary to use the Service, including access to the Internet.