

Managed Backup – Evault Terms and Conditions

These terms and conditions apply to business clients only.

These product specific terms and conditions, along with the accompanying Master Service Agreement and Business Service Agreement, supplement and compose the entirety of the contract between the parties.

VENYU's Managed Backup-Evault service **includes** the following:

- Pre-implementation analysis of Client's infrastructure and systems environment to determine backup requirements.
- Optional pre-implementation consulting to determine best-practices backup strategy, if applicable.
- Professional installation by trained Provider technicians or contractors.
- Post installation testing and acceptance.
- Unlimited number of computers or servers utilizing Managed Backup-Evault services.
- Daily monitoring of backup completion status.
- Remote diagnosis, troubleshooting, and repair of backup issues including remediating failed backups.
- Processing Managed Backup-Evault restore requests as specified in a support case.
- Processing Managed Backup-Evault data deletions requests as specified in a support case.
- Providing upgrades to agents as they become available.
- Registering all agents in the backup portal.
- Storing a single copy of Client's Managed Backup-Evault data in the VENYU Baton Rouge, Louisiana, or Shreveport, Louisiana, data center.
- Bare metal restores for supported O/S systems when total system recovery is required by Client.
- Providing monthly status report(s) that summarize(s) the Managed Backup-Evault services being provided.
- Processing changes to Managed Backup-Evault services as requested by a support case submitted by the Client's authorized contact.

VENYU's Managed Backup-Evault service **excludes** the following:

- Hardware, supported operating system, Internet access and appropriate network connectivity that is needed for the software provided by VENYU (the "Software") to operate properly. If upgrades to any of these items are required, VENYU may provide additional services that will be billed as Administrative Services.
- Support and troubleshooting on Client owned servers, desktop computers, laptops, workstations, printers, copiers, fax machines, or other networked devices for issues not related to VENYU Managed Backup-Evault services.
- Complex Data Restores which may include but is not limited to SQL, Exchange, SharePoint database recovery, table level restores, and/or database mounting. These restore services may be provided upon Client request and will be billed as Administrative Services.
- Application support for Client owned/operated applications.
- Anti-virus software, malware detection, or other security related software.

BACKUP SCHEDULE AND RETENTION: Client shall be responsible for determining the data that is sent to VENYU and remains on VENYU's infrastructure.

The default backup job schedule and backup retention schedule includes the following:

- Daily Backup (14 Daily Backups);
- Weekly Backup (15 Weekly Backups)

This default backup schedule and backup retention schedule results in 3 months of data recovery points.

Client shall be responsible for determining and communicating to VENYU any changes to the default backup job schedule and backup retention schedule. In the event of any such change, Client acknowledges and agrees that they shall assume all risks and liabilities associated with or resulting from such changes. Any change of services requires that Client initiate a service order that is reviewed and approved by Provider.

OVERAGE CHARGES: If Client's actual usage of the Managed Backup – Evault services exceeds the quantity specified in their Business Service Agreement, then the Client will be invoiced for the overage in accordance with rates charged for Managed Backup – Evault services as specified in the applicable Business Service Agreement.

ADMINISTRATIVE SERVICES: Additional hours for administration services are billed at one hundred seventy-five dollars (\$175) per hour, unless otherwise noted. Administrative services are billed in fifteen (15) minute increments with no minimums. Client will be billed for reasonable and customary related travel expenses that may be incurred as part of the services provided by Provider.

THIRD PARTY SOFTWARE UPGRADES: VENYU shall upgrade the third-party software necessary to provide Managed Backup-Evault services. Client may refuse to allow VENYU to upgrade this third-party software in the event that Client's existing third party software supplier does not authorize such upgrade, provided, however, VENYU HEREBY DISCLAIMS ANY AND ALL LIABILITY OR HARM ASSOCIATED WITH ANY FAILURE OF ANY SERVICES, SOFTWARE, HARDWARE OR ANY OTHER FAILURE RELATED, DIRECTLY OR INDIRECTLY, TO THE FAILURE OF CLIENT TO UPGRADE VENYU OR THIRD PARTY SOFTWARE IN A TIMELY MANNER.

DISCLAIMER OF WARRANTIES, LIMITATIONS OF LIABILITY AND EXCLUSIVE REMEDY

CLIENT ACKNOWLEDGES THAT DATA TRANSMISSION SECURITY SERVICES SUCH AS THOSE PROVIDED VIA MANAGED BACKUP-EVAULT SERVICES ARE NOT FOOLPROOF AND, THEREFORE, ARE NOT GUARANTEED. IN ADDITION TO THE DISCLAIMERS AND LIMITATIONS SET FORTH IN THESE TERMS, NEITHER PROVIDER NOR ITS SUPPLIERS WILL BE LIABLE FOR ANY DAMAGES (INCLUDING, WITHOUT LIMITATION, ANY LOSS OR DAMAGE TO DATA) RELATING TO OR ARISING FROM THE USE OF THE SERVICES PROVIDED HEREUNDER.

CLIENT UNDERSTANDS AND AGREES THAT PROVIDER IS PROVIDING SERVICES, AND ANY RELATED HARDWARE, SOFTWARE AND DOCUMENTATION TO CLIENT AND CLIENT HEREBY WAIVES ANY LIABILITY AGAINST PROVIDER AND AGREES TO HOLD PROVIDER HARMLESS FROM ANY AND ALL LIABILITY ARISING FROM LOSS OR DAMAGE DUE TO DELAY OF SERVICE COMMENCEMENT OR INABILITY TO PROVIDE THE SERVICE, FAILURE OF ALL OR PART OF THE SERVICE, INCLUDING ANY BETA SERVICE, OR ANY RELATED SERVICE PROVIDED HEREUNDER.

PROVIDER PROVIDES, AND CLIENT HEREBY ACCEPTS, ANY PROVIDER OR THIRD PARTY HARDWARE OR SOFTWARE PROVIDED TO OR USED BY CLIENT IN CONNECTION WITH THE SERVICES "AS IS" WITH NO EXPRESS OR IMPLIED WARRANTIES OR CONDITIONS OF ANY KIND, INCLUDING, WITHOUT LIMITATION, WARRANTIES OF MERCHANTABILITY, TITLE, NON-INFRINGEMENT OR FITNESS FOR A PARTICULAR PURPOSE. NOTHING HEREIN SHALL BE INTERPRETED TO ENHANCE OR CREATE ANY WARRANTY WITH RESPECT TO ANY THIRD PARTY SOFTWARE. PROVIDER DISCLAIMS ANY AND ALL LIABILITY ARISING OUT OF THE DELIVERY, INSTALLATION, SUPPORT OR USE OF ANY SOFTWARE. PROVIDER ASSUMES NO OBLIGATION TO CORRECT ERRORS IN ANY SOFTWARE. CLIENT UNDERSTANDS AND ACCEPTS ALL RESPONSIBILITY FOR ANY SOFTWARE MEETING CLIENT'S REQUIREMENTS OR EXPECTATIONS.

NEITHER PROVIDER NOR ANY OTHER PARTY MAKES ANY WARRANTIES EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. PROVIDER'S LIABILITY IN CONNECTION WITH THIS AGREEMENT, WHETHER IN CONTRACT, TORT OR OTHERWISE, SHALL NOT EXCEED THE AGGREGATE FEES, IF ANY, PAID BY CLIENT TO PROVIDER UNDER THIS AGREEMENT. IN NO EVENT SHALL PROVIDER OR ANY OF ITS LICENSORS BE LIABLE FOR ANY INDIRECT, SPECIAL OR CONSEQUENTIAL DAMAGES OF ANY KIND.

Provider is NOT responsible for:

1. Determining data to be sent to VENYU to reside on VENYU infrastructure.

2. Determining backup schedules and/or retention schedules required by client to meet any internal requirements and/or rules, regulations or applicable laws.
3. Resolving incompatibilities between Client infrastructure and the backup software.
4. Ensuring that Managed Backup-Evault services provided to Client comply with Clients' compliance related obligations under any rules, regulations, applicable laws or similar requirements. VENYU may, upon Client request, provide documentation to assist Client in its compliance related obligations.

Client is responsible for:

1. Designating a technical point of contact to work with Provider to lend support for a successful implementation and ongoing support.
2. Providing Provider with all required infrastructure and system information to successfully complete the initial assessment as a basis for the service implementation. Client may incur a charge for any information omitted during the assessment, whether intentional or accidental, that requires additional Provider services.
3. Cooperating in scheduling installations as required by Provider personnel.
4. Authorizing any and all modifications, updates, additions/deletions, etc. to the Managed Backup-Evault services through a support case submitted by an authorized contact in the Client portal.
5. IT support and troubleshooting on Client owned servers and workstations. Client may request assistance from VENYU which will be billed as Administrative Services.
6. Configuration, management, maintenance, and support of any equipment not expressly provided by Provider for use with the Managed Backup-Evault services.
7. The performance of its applications across the network.
8. Requesting managed backup restores through a support case submitted in the Client portal.
9. Requesting data deletions through a support case submitted in the Client portal.
10. Providing Provider the necessary physical and logical user access to perform Services and adding Provider to Client's distribution list to allow Provider to receive related notifications.
11. Maintaining an updated list in the Client portal of authorized Client users including the Authorizing Officer, Technical Contact, and Billing Contact.
12. Communicating any issues promptly to VENYU.
13. Reviewing service status report(s) for completeness and accuracy.
14. Notifying VENYU, through a support case submitted in the Client portal, of any critical changes in the non-managed Client environment that may impact the Services provided by Provider.
15. Ensuring the communication services and equipment used to connect to the VENYU services are reliable. Client agrees to provide a technical environment for the required access to and use of the Software and the services. This environment must meet the standard system requirements as determined by VENYU from time to time.
16. Ensuring Client's technical environment complies with the minimum requirements specified in the installation notes for the Software provided to Client including, but not limited to bandwidth availability, system I/O and processor speed. VENYU shall have no obligation to provide any services to Client if Client has: (i) deleted or modified the Software or the database tables or procedures created or maintained therein or (ii) failed to maintain the minimum technology standards required as noted in the installation notes of the Software.

BUSINESS BACKUP AND BACKUP PRO SERVICES

Pricing is based on initial assessment. Pricing for Services provided assume no significant changes to the client environment, client data, or client infrastructure. If, in the sole discretion of Provider, such significant changes occur during the term of the Agreement, the parties agree that Service activities and the associated price will be revised to accommodate such changes.

Additional hours for administration services are billed at one hundred seventy-five dollars (\$175) per hour, unless otherwise noted. Administrative services are billed in fifteen (15) minute increments with no minimums. Client will be billed for reasonable and customary related travel expenses that may be incurred as part of the services provided by Provider.

Subject to the MSA, Client has sole and exclusive control and responsibility for the determination of what data is sent to Provider and remains on Provider's infrastructure.

Client shall provide and incur the cost for the hardware, supported operating system, Internet access and appropriate network connectivity that is needed for the software provided by Provider (the "Software") to operate properly. At the request of Provider, Client shall upgrade any third party software in a timely manner. Client may refuse to upgrade third party software in the event that Client's existing third party software supplier does not authorize such upgrade, provided, however, Provider HEREBY DISCLAIMS ANY AND ALL LIABILITY OR HARM ASSOCIATED WITH ANY FAILURE OF ANY SERVICES, SOFTWARE, HARDWARE OR ANY OTHER FAILURE RELATED, DIRECTLY OR INDIRECTLY, TO THE FAILURE OF CLIENT TO UPGRADE PROVIDER OR THIRD PARTY SOFTWARE IN A TIMELY MANNER.

Client shall perform regular backups using the Software, communicate any errors promptly to Provider and also monitor backups and work with Provider to resolve any noted errors.

Client shall be responsible for ensuring the communication services and equipment used to connect to the Provider Services are reliable and agrees to provide a technical environment for the required access to and use of the Software and the Services, which environment meets the standard system requirements as determined by Provider from time to time.

Client shall designate an on-site coordinator to manage day-to-day support and interactions with Provider and be responsible for addressing training, implementation and support issues related to the Services. Client is also responsible for notifying Provider of any changes in authorized personnel who can request additions, removals or other Service activities and shall notify Provider of any changes in servers, tasks, retention schedules or technical environment so that the vaulted data may be adjusted.

If Client designates a consultant to coordinate backup and recovery activities, Client shall be responsible for the actions or breaches of the consultant and shall notify Provider promptly of any change of consultants.

Provider shall provide Client the following support services ("Support Services") in connection with the Backup Service: Monday to Friday, from 8:00 a.m. to 6 p.m. CST: (i) problem reporting (ii) telephone support for problem determination, verification, and resolution (or instruction as to work around, as applicable) on a call-back basis; (iii) commercially reasonable efforts to diagnose and resolve defects and errors in the Services; and (iv) upgrades to the Services as may be developed in Provider's sole discretion. Support services do not include the provision of or support for products other than the Services. Fees for additional services beyond basic service rates and installation charges are listed below in the Professional Services and Other Fees table.

Provider does not represent or warrant that the Services provided under this proposal comply with Clients' compliance related obligations under any rules, regulations, applicable laws or similar requirements. Provider may, upon Client request, provide documentation to assist Client in its compliance related obligations.

Provider shall use reasonable commercial efforts to provide Client access to the Services. Client acknowledges and agrees that actual access to Client's data may be delayed if Client's technical environment does not comply with the minimum requirements specified in the installation notes for the Software provided to Client including, but not limited to bandwidth availability, system I/O and processor speed. Provider shall have no obligation to provide any Services to Client if Client has: (i) deleted or modified the Software or the database tables or procedures created or maintained therein or (ii) failed to maintain the minimum technology standards required as noted in the installation notes of the Software.

A list of optional services and associated fees beyond basic service rates and installation fees can be found in the Business Backup Professional Services and Other Fees Table.

Business Backup Professional Services and Other Fees Table	
Description of Service	Fees
Mobile Vault Initial Seed Dispatch (Storage device sent to client site in hard-shell protected case)	Included (up to 3 days)
Mobile Vault Rental Post-Install (for disaster recovery testing or large recoveries)	\$195 (up to 3 days)
Mobile Vault Rental Over 3 Days (Scheduled or Unscheduled)	\$50/additional day
Post-Install Formal Training (done through remote session)	\$175/hour
Tailored Professional Services Agreement (includes: onsite, customized reporting, training etc.)	\$175/hour + expenses
Password Escrow Service (physical storage of client password at Provider site)	\$195/year
Additional Billing Group (after setup - for purpose of billing multiple client sites separately)	\$175/hour
Media Cut of All or Portion of Client's Backup Data	\$1/GB (\$500 minimum)
Storage Device Provided by Provider for Media Cut	Market Rates