

XO™ Dedicated Server

1.0 SERVICES DESCRIPTION

1.1 XO Dedicated Server ("Dedicated Server") Service provides an outsourced hosting solution including space within an XO Data Center, server hardware, operating system software, basic monitoring and hardware maintenance and management. Different levels of committed bandwidth, load balancing, and other management options are also available. Customer's order shall identify the specific Products and Services Customer is purchasing.

1.2 Dedicated Server Services release to Customer the root password on Customer's server for the purpose of allowing Customer to assume responsibility for the XO server designated for Customer's use during the term of this Agreement (hereinafter referred to as the "Customer's Server") and all software and programming residing thereon or any terminal or computer communicating with such server or access to the base of a hard disk (such Customer responsibility hereinafter referred to as "Root Access"). Capitalized terms not otherwise defined herein shall have the meaning given them in the Agreement. Except as specifically set forth herein, all terms and conditions of the Agreement shall remain in full force and effect.

2.0 SERVER CONFIGURATION

2.1 Customer's Server is configured to the XO standard default settings upon delivery. The default settings are XO recommended settings that enable Dedicated Server Services to be performed .

2.2 Customer understands and acknowledges that changes made directly to Customer's Server via Root Access may render Customer's Server unstable and/or inoperable, and Customer assumes full responsibility for such changes and the ramifications thereof.

3.0 TERM AND TERMINATION

3.1 Dedicated Server Service Commencement Date

XO will notify Customer that the Dedicated Server Services are installed or connected, successfully tested and available for Customer use, and if XO is installing any CPE, the CPE has been installed (the "Service Commencement Date"). Billing will begin on the Service Commencement Date, regardless of whether Customer is prepared to initiate usage of the Dedicated Server Services. XO shall not be liable for any damages whatsoever resulting from delays in meeting requested or specified service dates, or inability to provide Dedicated Server Service. Customer agrees to cooperate with XO to accomplish Dedicated Server Service.

3.2 Termination and Cancellation Charges

Upon the expiration or termination of any order, Customer shall, within ten (10) days of such expiration or termination, return, at Customer's expense, any software, and other information and material provided by XO. If Dedicated Server Service is cancelled after the Dedicated Server Service has been ordered but prior to the Dedicated Server Service Commencement Date, Customer shall return, at Customer's expense, any software, and other information and material provided by XO and pay one (1) month's recurring charges, plus any applicable service ordering and installation charges. If Dedicated Server Service is cancelled after it has been activated, including cancellation of Dedicated Server Services under Section 2.4 of the Agreement, Customer shall return, at Customer's expense, any software, and other information and material provided by XO and Customer is liable for all charges, which Customer agrees is reasonable, associated with the service ordering and installation as well as the first month recurring charges and for the monthly recurring charges for the remaining term of the order, unless such Dedicated Server Service does not meet the specifications set forth herein. It is agreed that XO's damages in the event of Dedicated Server Service cancellation shall be difficult or impossible to ascertain. These provisions are intended, therefore, to establish liquidated damages in the event of cancellation and are not intended as a penalty.

4.0 USE OF DEDICATED SERVER SERVICES

Use of Dedicated Server Services are limited to Customer, Customer's employees and Customer's consultants performing work for Customer (collectively, "End Users"). Customer shall notify XO within five (5) days of any notices that are served on Customer that might adversely affect XO, including but not limited to notices of any claims or proceedings that involve the Dedicated Server Services. Customer shall promptly notify XO of any errors, "bugs", or problems with the Dedicated Server Services of which Customer becomes aware. XO exercises no control over, and accepts no responsibility for, the content of the information passing through XO's host computers, network hubs and POPs (the "XO Network"). XO MAKES NO WARRANTIES OF ANY KIND, WHETHER EXPRESS OR IMPLIED, FOR THE DEDICATED SERVER SERVICES AND EQUIPMENT IT IS PROVIDING AND DISCLAIMS ANY WARRANTY OF TITLE, MERCHANTABILITY, NON-INFRINGEMENT OR FITNESS FOR A PARTICULAR PURPOSE.

Use of any information obtained via the XO Network is at Customer's and End User's own risk. XO specifically denies any responsibility for the accuracy or quality of information obtained through its Dedicated Server Services.

5.0 ACCEPTABLE USE POLICY

Customer acknowledges that it has reviewed the XO Acceptable Use Policy ("AUP") which may be found at www.xo.com/legal/index.html and agrees to be bound by the then current version of the AUP. The terms and conditions of the AUP, which may be updated from time to time, are hereby incorporated by reference and made a part of this Agreement. The Customer agrees to check back to the AUP website periodically to review any changes to the AUP.

6.0 PRICING

Customer shall pay XO all fees, including any applicable one time set up charges, monthly fees, and usage fees, indicated on an order. Monthly and usage fees shall commence on the Service Commencement Date. If Customer exceeds their committed rate of bandwidth or data transfer rate, the Customer may be charged for the each Mbps of usage over their committed rate at a fee not to exceed a ten percent (10%) premium over their current \$/Mbps charge or \$/GB charge, respectively. The Customer will have the option of increasing their committed rate of bandwidth commensurate with their usage at any time.

7.0 SERVICE LEVEL AGREEMENT

Customer acknowledges that it has reviewed the service level agreement ("SLA") associated with Dedicated Server Services which may be found at: (<http://www.xo.com/legal/sla/dia.html?f=dedicatedhosting>). The terms and conditions of the SLAs, which may be updated from time to time, are hereby incorporated by reference and made a part of this Agreement. The Customer agrees to check back to the SLA website periodically to review any changes to the SLA. The SLA credits granted in accordance with the applicable SLA shall represent the Customer's sole and exclusive remedy and the entire liability of XO for any failure of the Dedicated Server Services provided hereunder.

8.0 DEDICATED SERVER SERVICES SUPPORT

8.1 XO will provide Customer the following Dedicated Server Services support:

1. Management of the server hardware
2. 24x7 monitoring of the server
3. Remote access software
4. Initial operating system installation; and
5. Administrator ID and password to system

8.2 XO will restart the remote access software service at no charge only if Customer provides XO an administrative access login in order for XO to perform this function.

8.3 Any XO technical support or programming required to troubleshoot, configure or repair Customer's operating system and/or any third party applications residing thereon, which results either directly or indirectly from Customer's Root Access, shall subject Customer to the then current XO standard time and

material fees and charges necessary to repair or replace hardware or software resulting from Customer being provided Root Access, including, if necessary, a complete re-installation of the operating system to XO default settings.

9.0 CUSTOMER RESPONSIBILITIES

9.1 Customer shall provide:

9.1.1 operating system maintenance, including service packs and hot fixes; and

9.1.2 management and support of: (i) XO-approved default installed and third party applications, and (ii) post-image Customer-installed native and third party applications.

9.2 Customer shall interact with Data Center management personnel with regard to power requirements including, if applicable, third party power strips that may not be used without the express written consent of Data Center management.

9.3 Customer shall not utilize any power circuit beyond eighty-five percent (85%) of the maximum capacity of the XO-provided power strip (rated at 15 amps) or seventy percent (70%) of another power strip authorized for use by XO on an individual case basis. If any use exceeds these maximums, XO, without notice, may take emergency corrective action to disable the circuit and all others with power strips that do not self-trip or reset to an acceptable threshold. Such disabling will not affect the Customer's obligation to pay for the circuit(s). From time to time, XO may conduct power audits to ascertain whether Customer is operating in full compliance with these capacity limitations. Any Customer found to be operating in variance of these limitations will be sent a fourteen (14) day notice to remedy the variance, assuming earlier action is not required to disable the circuit(s) in order to protect life and property. Failure to remedy a noticed variance may result in one or more of the following: i) installation by Data Center Operations of new circuits(s) for which Customer will incur circuit, power strip, remote hands and other charges associated with the installation(s); ii) suspension of application of SLA until power variance is remedied; iii) charging for SLA credits awarded other customers adversely affected by Customer's power variance; iv) removal from operation of any circuit that is in variance; or v) termination of Service without further notice and the imposition on Customer of liabilities associated with the termination.

10.0 NETWORK NUMBERS/DOMAIN NAME POLICY

Customer agrees to the Network Number and Domain Name Policies established by XO. In all instances, XO Domain Name and TCP/IP Addresses that are provided pursuant to the Agreement remain XO property, and upon termination of Dedicated Server Services, use by Customer will terminate. Unless otherwise mutually agreed to in writing by the Parties, Customer at all times has responsibility for maintaining its own Domain Name when purchasing Dedicated Server Services and for paying all charges associated with the Domain Name, including charges billed to Customer for Domain Name registration by third parties. XO has sole discretion as to the Internet routing of XO provided IP addresses.

11.0 LIMITATION OF LIABILITY

11.1 In addition to the Limitation of Liability provisions set forth in XO's General Terms and Conditions, Customer agrees and acknowledges that XO will not be held liable in any manner for:

1. server outages resulting from Customer's changes to its server's operating system or installed software
2. changes made directly to Customer's Server via Root Access that result in rendering the server unstable and or inoperable; and
3. any failure of the remote access software or the backup software running properly as the result of any changes effected by Customer to such software.

11.2 Customer expressly agrees that XO shall not be liable to Customer for any action XO takes to remove or restrict access to obscene, indecent or offensive content made available by Customer, nor for any action taken to restrict access to material made available in violation of any law, regulation or rights of a third

party, including but not limited to, rights under the copyright law and prohibitions on libel, slander and invasion of privacy.

12.0 SOFTWARE AND INFORMATION SERVICES AND INTELLECTUAL PROPERTY

12.1 Software and Information Products and Services

Customer acknowledges that except for software, information products or services (referred to herein as "Software/IT Product") clearly identified as being owned and licensed by XO under separate terms, Software/IT Products are owned and licensed by suppliers, licensors, or affiliates of XO. Any Software/IT Product accessible through the XO Dedicated Server Service, and all merchandise, information and services offered or made available or accessible through the XO Dedicated Server Service, are provided "AS IS." NOTHING IN THIS AGREEMENT OR YOUR USE OF THE DEDICATED SERVER SERVICES CONSTITUTES A TRANSFER OF ANY OWNERSHIP RIGHTS IN ANY SOFTWARE/IT PRODUCT. CUSTOMER FURTHER ACKNOWLEDGES THAT USE OF THE XO DEDICATED SERVER SERVICE IS AT YOUR SOLE RISK AND CUSTOMER AGREES THAT ANY SOFTWARE/IT PRODUCT ACCESSIBLE THROUGH THE DEDICATED SERVER SERVICE (i) MAY BE SUBJECT TO US AND INTERNATIONAL COPYRIGHT, PATENT AND TRADEMARK PROTECTION, AS WELL AS U.S. EXPORT CONTROLS AND RESTRICTIONS; (ii) ARE TO BE USED SOLELY IN CONNECTION WITH THE DEDICATED SERVER SERVICES; AND (iii) ARE PROVIDED WITHOUT WARRANTIES FROM XO AS FURTHER DESCRIBED BELOW. CUSTOMER MAY NOT MAKE COPIES OF ANY SOFTWARE/IT PRODUCT, EXCEPT FOR BACKUP PURPOSES IF NECESSARY TO EFFECTUATE CUSTOMER'S USE OF THE DEDICATED SERVER SERVICES, NOR MODIFY, REVERSE ENGINEER, DECOMPILE OR DISASSEMBLE ANY SOFTWARE/IT PRODUCT. CUSTOMER MAY NOT, DIRECTLY OR INDIRECTLY, RENT, RESELL OR TRANSFER ANY SOFTWARE/IT PRODUCTS OR USE THEREOF TO ANYONE NOT AUTHORIZED UNDER THIS AGREEMENT. CUSTOMER UNDERSTANDS THAT SOFTWARE/IT PRODUCTS MAY NOT BE FAULT TOLERANT AND ARE NOT INTENDED FOR USE WHERE ANY FAILURE THEREOF COULD LEAD TO INJURY, DEATH OR DAMAGE. The terms of this Section shall survive the termination of this Agreement.

12.2 IP Usage

Neither Party may use the other Party's name, trademarks or other proprietary identifying symbols without the prior written approval of the other Party. Customer shall stop using the Dedicated Server Services and all XO proprietary and confidential information, including but not limited to XO's trademarks, logos, trade names, copyrighted materials, and trade secrets which may be in Customer's possession, at the end of this Agreement.

13.0 INDEMNIFICATION

Customer agrees to indemnify, defend and hold XO and its officers, directors, employees, agents, affiliates and suppliers harmless from and against any claims, actions, demands, losses, damages and expenses, including attorney's fees, relating to any violation of this Agreement, including but not limited to a breach or failure of any representation or warranty contained in this Agreement by Customer, its End Users, or other users of its account, the placement or transmission of any message, information, software or other materials on the Internet by Customer or End Users of Customer's account, a violation of the XO AUP or Customer's traffic being processed through the XO switch, port or node. This indemnification shall survive the termination of the Agreement.

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