

XO ENTERPRISE CLOUD TERMS AND CONDITIONS

The Services referenced in this exhibit are offered to Customer by XO Communications Services, LLC. These terms and conditions apply to XO's provision and Customer's use of XO Enterprise Cloud Services ("XO Enterprise Cloud" or the "Services") and is hereby incorporated into and made part of the XO Cloud Solutions Services Agreement set forth at www.terms.xo.com. Capitalized terms not otherwise defined herein shall have the meanings ascribed to such terms in the Services Agreement.

1.0 Service Description. XO Enterprise Cloud is a virtual private cloud computing platform built to host virtual machines that can be placed on the XO private network for secure access to their cloud computing resources that Customers can deploy, provision and manage via the XO cloud portal.

2.0 Service Level Agreements. XO will provide guaranteed levels of service with rights and remedies as described below. Customer acknowledges that service level credits for uptime/downtime and the service performance standards as set forth below shall be Customer's sole and exclusive remedy for individual Service Level Agreement ("SLA") failures under that SLA. XO has the right to amend the SLA at its sole discretion upon fifteen (15) days notice.

2.1 XO SLA Commitments. In delivering the Service to Customer, XO will meet the SLAs set forth below.

(a) 100% Network Uptime Guarantee. XO provides a Network Uptime Guarantee of 100% availability of the "XO Cloud Network." XO Cloud Networks, comprising of border routers and switches, are customer-specific Layer 2 network VLAN's for which virtual machines can be deployed and configured on the XO Enterprise Cloud platform with firewall, load balancing and VPN capabilities. For purposes of this SLA, the uptime guarantee does not include the dedicated Customer systems or operating system layer. The XO Cloud Network will be deemed 'available' if the networking components are available and responding to XO monitoring tools as designed and in a non-degraded manner (as evidenced in the XO monitoring tool).

(b) 100% Server Uptime Guarantee. XO provides a Server Uptime Guarantee of 100% availability of individual servers within the XO Enterprise Cloud environment. For purposes of this SLA, only failures due to the hypervisor layers delivering individual servers are covered. The individual server will be deemed 'available' if the hypervisor layers delivering individual servers are available and responding to XO monitoring tools as designed and in a non-degraded manner (as evidenced in the XO monitoring tool).

2.2 Sixty (60) Minute Support Response Time Guarantee. XO support personnel shall review and update any case submitted by Customer within sixty (60) minutes of XO's receipt of submission for an Emergency Case and within one hundred twenty (120) minutes of XO's receipt of submission for all other cases. An Emergency Case is any case where XO determines that a server is down and unavailable. XO may reclassify any case misclassified as an Emergency Case, and such case will not qualify for Emergency treatment. Resolution and repair times vary, and therefore are not covered under this SLA (as evidenced in the XO monitoring tool).

2.3 <1 ms Latency Guarantee. XO provides a latency guarantee of less than 1 ms for the transfer of data packets from one server to another within the XO Cloud environment and within

the same network (VLAN). Latency measurements are based on XO standard monitoring systems. Latency between separate networks (VLANs) is not covered under this SLA.

2.4 SLA Exceptions. The following items or situations are exempt from XO's guarantee of 100% availability:

(a) Unavailability during Maintenance. Unavailability of Customer's virtual machines during a Scheduled Maintenance Window, Emergency Maintenance or any other agreed-to Downtime.

(b) Unavailability due to Customer. Downtime that resulted from modifications or changes of the operating system, database, application code or other Customer Materials.

(c) Unavailability due to Force Majeure. Force Majeure events beyond XO's control, provided that XO makes every reasonable effort to maintain current versions of software patches.

(d) Latency due to Unavailability. If Customer qualifies for Downtime credits, Customer will not be eligible for any service credits associated with Latency.

(e) Current in Payments. Customer's account must be current (i.e., no balance older than thirty (30) days) to be eligible for the credits referenced in this SLA.

2.5 SLA Request. Service credits must be requested by Customer in writing by sending an email to cloudcredit@XO.com within fifteen (15) days of the qualifying event. The request must identify the specific breach of the SLA commitment including information such as the hostnames of the affected servers, names of the affected XO Cloud Networks, the duration of the outage, and the time and date of the event. XO will investigate the request and respond within fifteen (15) days of receipt of the request. If XO confirms the SLA violation, a credit will be issued to Customer's invoice within sixty (60) days of the applicable event.

2.6 SLA Service Credit Calculation. XO shall calculate the service credit for Customer. In the event of a failure to meet the 100% Server Uptime Guarantee and 100% Network Uptime Guarantee, the duration of such failure period will be considered downtime. In the event of failure to meet the Support Response Time Guarantee, the duration of time beyond the allotted response time shall be considered response delay. In the event of failure to meet the Latency Guarantee, the duration of time with latency equal to or exceeding 1 ms shall be considered latency degradation. Each affected Customer will accrue Service credits based on the table below. Total credits in a given month are limited to 100% of the MRC or Cloud Services Commit for the affected Service for the month in which the Service does not meet the guarantees.

Monthly Cumulative Response Delay (listed in minutes)	Monthly Cumulative Downtime for both networks and servers (listed in minutes)	Monthly Cumulative Latency Degradation (listed in minutes)	Service Credits (% of MRC or Cloud Services Commit credit attributable to Customer)
0 - 30	0 - 60	0 - 60	5%
31 - 120	61 - 120	61 - 120	10%
121 - 180	121 - 180	121 - 180	15%
181 - 240	181 - 240	181 - 240	20%
241 - 300	241 - 300	241 - 300	30%

Monthly Cumulative Response Delay (listed in minutes)	Monthly Cumulative Downtime for both networks and servers (listed in minutes)	Monthly Cumulative Latency Degradation (listed in minutes)	Service Credits (% of MRC or Cloud Services Commit credit attributable to Customer)
301 – 360	301 - 360	301 – 360	40%
361 – 420	361 - 420	361 – 420	50%
421 – 480	421 - 480	421 – 480	60%
481 – 540	481 - 540	481 – 540	70%
541 – 600	541 - 600	541 – 600	80%
601 – 660	601 - 660	601 – 660	90%
660+	660+	660+	100%

3.0 Authorization and License to Use the Services. Subject to Customer’s acceptance of and compliance with this Agreement, XO hereby grants to Customer a limited, non-exclusive, non-transferable, non-sublicenseable right and license to access and use the Services as set forth herein.

3.1 Permitted Uses Generally

(a) XO hereby grants Customer a limited, non-exclusive, non-transferable, non-sublicensable right and license to write a software application or Web site (“Application”) that interfaces with the Services. Customer acknowledges that XO may change, deprecate, or republish APIs for any Service or feature of a Service from time to time, and that it is the Customer’s responsibility to ensure that the Application calls made to any Service are compatible with then-current APIs for the Service. Customer further acknowledges that XO may change or remove features or functionality of the Services at any time. XO will provide at least ten (10) days written notice of any material change to the Services.

(b) Customer may make network calls or requests to the API functions of the Services any time that the Services are available, provided that Customer does not exceed the maximum file size or maximum API requests per second set forth in the then-current API documentation for any particular Service.

3.2 Monitoring Use of the XO Cloud Services. Customer agrees to provide information and/or other materials related to its Content as reasonably requested by XO to verify Customer’s compliance with this Agreement.

3.3 Limitation of Liability - Damage Caused by Customer. XO shall not be responsible for any damage to Customer or Customer’s systems that is caused by Customer. Any downtime in Customer’s system that occurs as a result of Customer’s actions or directives or any downtime in Customer’s system that occurs while Customer is making changes to the code or the system shall render the SLA inapplicable for such downtime.

4.0 Warranties, Representations and Agreements

4.1 Public Software. Customer represents and warrants that Customer will not use, and will not authorize any Third Party to use, any Open Source Software (as defined below) in connection with the Services in any manner that requires, pursuant to the license applicable to such Open Source Software, that any portion of the Services be (a) disclosed or distributed in source code

form, (b) made available free of charge to recipients, or (c) modifiable without restriction by recipients. "Open Source Software" means any software, documentation or other material that contains, or is derived (in whole or in part) from, any software, documentation or other material that is distributed as free software, open source software (e.g., Linux) or similar licensing or distribution models, including, but not limited to software, documentation or other material licensed or distributed under any of the following licenses or distribution models, or licenses or distribution models similar to any of the following: (i) GNU's General Public License (GPL), Lesser/Library GPL (LGPL), or Free Documentation License, (ii) The Artistic License (e.g., PERL), (iii) the Mozilla Public License, (iv) the Netscape Public License, (v) the Sun Community Source License (SCSL), (vi) the Sun Industry Standards License (SISL), (vii) the BSD License and (viii) the Apache License.

4.2 Responsibility for Content. XO specifically disclaims all liability, and Customer shall be solely responsible for all Customer Materials and Content. Customer shall, without limitation, be solely responsible for:

- (a) The accuracy and appropriateness of Customer Content;
- (b) Ensuring that the Application accurately and adequately discloses, either through a privacy policy or otherwise, how Customer collects, uses, stores, and discloses data collected from visitors, including, where applicable, that third parties (including advertisers) may serve Content and/or advertisements and collect information directly from visitors and may place or recognize cookies on visitors' browsers;
- (c) Any of Customer's End Users' or clients' claims relating to the Services.

5.0 Suspension of Services/Termination of Agreement

5.1 Procedure. If Customer elects to terminate Service for convenience, in whole or in part, or if Customer elects not to renew Service, in whole or in part, for a subsequent Service Term, it must provide XO with written notice of its request to disconnect Service(s) at support@xo.com. Such notice must identify with specificity the Service(s) to be disconnected and the requested effective date of disconnection, which date may not be less than thirty (30) days from the date notice is received by XO. Customer may not place a disconnection request more than ninety (90) days prior to an actual disconnection date and will be responsible for all charges incurred up to and including the date of disconnection. Any attempted termination via any other method or approach will not be effective. If Customer elects to terminate Service for convenience, it will be liable for all charges incurred up to the date of disconnections, as well as early termination charges set forth below.

5.2 Early Termination Charges. If Service is terminated after it has been activated, including termination of Services by XO due to Customer's non-payment of charges due under the Agreement, Customer shall be liable for all charges, which Customer agrees is reasonably associated with the service ordering and installation as well as the monthly recurring charges (MRC) or Cloud Services Commit associated with the Services for the remaining Service Term.

5.3 Post-Termination Assistance. Following the suspension or termination of the right to use the Services for any reason other than a for cause termination under Sections 2.3 or 4.2(c) of the Services Agreement, XO may offer Customer post-termination assistance with respect to the Services, such as data retrieval arrangements. Customer's request to take advantage of any

such assistance, whether generally made available with respect to the Services or made available uniquely to Customer, must be requested in advance of such termination and shall be conditioned upon Customer's acceptance of and compliance with any fees and terms XO may specify for such assistance.

6.0 Usage Charges. Pursuant to the terms set forth herein, Customer may use any and all of the Service resources available through the Service in any quantity and configuration chosen by Customer during the Service Term. In the event Customer's actual usage during a billing cycle exceeds the Monthly Commit Charges set forth on the Service Order, overage charges based on the usage rates set forth in the Service Order will apply. For Customers with a Cloud Services Commit, at the end of each monthly billing cycle, XO will measure Customer's actual aggregate usage across all applicable Service(s) and Customer will be responsible to pay actual usage or actual usage plus a shortfall amount if Customer's actual usage is less than the Cloud Services Commit.

7.0 Definitions. The XO SLAs rely on the following definitions:

(a) Scheduled Maintenance Window means, unless categorized as Emergency Maintenance, XO follows the normal maintenance schedule to be announced by XO operations.

(b) Scheduled Downtime means scheduled time to perform routine, non-emergency or Emergency Maintenance on hardware, software or related equipment.

(c) Downtime means time that the system is not available which is not Scheduled Downtime or Scheduled Maintenance Window.

(d) Latency means the amount of time it takes for a packet of data to travel from one point to another.