

XO COMMUNICATIONS SERVICES, LLC CLOUD SOLUTIONS SERVICES AGREEMENT

The services referenced in the Agreement (“Service” or “Services”) are offered to Customer by XO Communications Services, LLC, on behalf of itself and its operating Affiliates to the extent such operating Affiliate(s) directly provides Service hereunder (collectively, “XO”) (each a “Party” and collectively, the “Parties”). The Agreement between XO and Customer sets forth the legal rights and obligations governing XO’s offer, provisioning and delivery of Services and Customer’s receipt and use thereof. Customer shall contract for, and order, Service on a XO-designed Service Order.

The Agreement in its entirety shall consist of the terms and conditions in each Service Order, the Supplemental Service Terms elsewhere on this website, this Services Agreement, and XO’s Acceptable Use Policy (“AUP”). In the event of an inconsistency between a term or condition contained in any component document(s) comprising the Agreement (but only to the extent of the inconsistency), including any incorporated attachments, appendices, exhibits or other documents, the order of precedence, from the most to the least controlling, shall be:

- (1) Any mutually agreed upon Addenda to a Service Order properly executed by authorized representatives of both XO and Customer;
- (2) Supplemental Service Terms, including exhibits and Service Level Agreements (“SLAs”);
- (3) This Services Agreement and AUP; and
- (4) Terms of a Service Order, or any Promotions.

The offer, provisioning and delivery of Services are subject at all times to the receipt by XO of all required approvals or authorizations from regulatory agencies having jurisdiction over the Services or XO. If Customer receives and uses Services without a Service Order as described herein, Customer nevertheless shall be deemed to have accepted, and therefore will be bound by, all the applicable terms and conditions relating to the Services received and used.

THIS SERVICES AGREEMENT, THE SUPPLEMENTAL SERVICE TERMS AND CONDITIONS, AND XO AUP WILL BE LOCATED AT [HTTP://WWW.XO.COM/LEGAL-AND-PRIVACY/](http://www.xo.com/legal-and-privacy/) AND MAY BE MODIFIED BY XO AT ANY TIME AS PERMITTED OR REQUIRED BY LAW. XO SHALL PROVIDE CUSTOMER WITH AT LEAST FIFTEEN (15) DAYS PRIOR NOTICE OF ANY CHANGES THAT WOULD MATERIALLY AND ADVERSELY AFFECT CUSTOMER SO THAT CUSTOMER MAY ELECT TO DISCONTINUE SERVICE AND AVOID THE EFFECTS OF THE CHANGES. NOTICE FROM XO MAY BE FURNISHED BY: (1) MESSAGE INCLUDED WITH THE INVOICE; (2) POSTCARD OR LETTER; (3) TELEPHONE OR VOICEMAIL; OR (4) E-MAIL. CUSTOMER SHALL BE BOUND BY CHANGES AFTER THEY BECOME EFFECTIVE.

ARTICLE 1 - PROVISION OF SERVICE

1.1 This is a contract for services only. Only the limited, non-exclusive, non-transferable, non-sublicensable right to use the Services is granted to Customer. In providing the Services, XO may also use commercially available Third Party Elements or deliver all or part of the Service through use of Third Party suppliers which are subject to copyright, patent, license or other rights granted to XO. Third Party Elements used or made available to Customer by XO shall be governed in all respects by the terms applicable to the specific Third Party Element and unless expressly provided, no right, title, express or implied license, sublicense, right of resale, warranty or other rights or remedies in any XO or Third Party Elements is granted under this Agreement. XO reserves the right to make changes and improvements to the Services and Service Terms from time to time. XO will provide Customer commercially reasonable advance notice of any such modification. Customer’s continued use of the Services following any such changes shall constitute Customer’s acceptance of such changes. In the event such changes materially and adversely affect Customer’s ability to use the Service or Third Party Elements, Customer may terminate receipt and use of such Service or Third Party Element without penalty.

1.2 Internet Access Services. Internet access services needed to access the Services will, in all respects, be subject to the terms applicable to such services between Customer and its Internet service provider, whether such provider is an Affiliate of XO or another entity.

1.3 Services and Service Terms. XO shall provide to Customer the Services set forth on a Service Order pursuant to the applicable Service Terms, AUP, and Privacy Policy, which are set forth at <http://www.xo.com/legal-and-privacy/> and made a part hereof.

1.4 Service Availability. Service is offered and furnished subject to the availability of all necessary facilities, including those acquired by XO from or through third parties. XO may limit or allocate Service, if necessary, due to facilities availability, taking into account XO's then-current and projected capacity and the reasonable expectations of its existing and future customers.

1.5 Evolution of Services. The Parties acknowledge that Company's Services will evolve over time and consequently Company or any of its Affiliates may introduce new Services to replace existing Services or cease to offer new instances of a Service in whole or in part (referred to here as grandfathering). Accordingly, Company may terminate Services upon not less than six (6) months' written notice in the event that it generally decommissions any Services (that is, ceases to provide such Services on a commercial basis to its customers). Company may grandfather a Service (or any part thereof) at any time. Where available, Company will advise Customer of any alternative service offerings that have comparable technical characteristics.

ARTICLE 2 - BILLING AND PAYMENT

2.1 Billing will begin on the Start of Service Date. Depending on the Service ordered by Customer, the Service Order will set forth Customer's minimum monthly charges as either: (1) Monthly Recurring Charges ("MRCs") or (2) Cloud Commit Charges. MRCs are billed in advance (with any partial month being billed on a prorated basis) while Cloud Commit Charges (which are monthly minimum charges for Enterprise Cloud, Cloud Vault and Cloud Drive), as well as any other usage-based charges, overages, and any special charges, are billed in arrears. With respect to Services with a Cloud Commit Charge, Customer may, pursuant to the terms of the Agreement, use one or more Service(s) in any quantity and configuration. 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.

2.2 Customer agrees to pay all Fees in the manner specified when invoiced. Fees are exclusive of, and Customer agrees to pay, all taxes, surcharges, and similar charges. Except for amounts disputed in good faith in accordance with Section 2.4 below, Fees not paid in full within thirty (30) days of the date of invoice will be past due and subject to a 1.5% per month interest fee or the maximum rate permitted by law, whichever is less, and Customer will be liable for any costs of collection.

2.3 If Customer is in Default of its payment obligations, XO may immediately suspend any and all Service provided to Customer. If Customer cures its non-payment within ten (10) days of Service suspension, Customer may be assessed reconnect fees and/or be required to pay a deposit equal to two (2) month's charges prior to reconnection. If Customer has not cured such non-payment within ten (10) days of Service suspension, Customer will be deemed to have terminated Services immediately and without the need for further notice by XO. Such termination will be deemed a termination for convenience by Customer and, in addition to other remedies, shall entitle XO to collect from Customer any applicable early termination charges. Customer acknowledges and agrees that, during any such suspension, Customer will be denied access to the Services and all Customer Materials and that, during such suspension, Customer remains liable for all Customer Materials.

2.4 If Customer disputes any Fees in good faith, it may withhold payment of that charge so long as Customer makes timely payment of all undisputed charges and notifies XO in writing within the payment period specified above (providing the billing identification, any trouble ticket number and a reasonably detailed explanation for the dispute). If

a disputed amount is determined to be a legitimate charge, it may be deemed overdue and interest may be charged on the unpaid balance. No charges may be disputed more than one hundred twenty (120) days after the invoice date and, if not disputed within that time, such charges will be deemed undisputed by Customer. Payment will not prejudice Customer's right to dispute charges, so long as they are disputed in the manner and within the time specified in this Section.

2.5 XO may at any time request information from Customer or a reporting agency to enable XO to assess Customer's credit history and current credit standing. Further, as a condition of initial or continued Service, and, based thereon, XO may modify the payment terms or require other reasonable assurance of payment if, in the commercially reasonable judgment of XO, Customer's financial condition or ability to pay deteriorates, or if Customer has failed to pay any undisputed invoice or portion thereof within sixty (60) days of the invoice date.

2.6 Minimum Commitment. If the Parties agree to require Customer to purchase a certain amount of Services from XO over a certain period of time (e.g., month, year, or Service term) ("Minimum Commitment") and, at the end of each such time period, Customer's purchase of Services are less than the Minimum Commitment, then Customer, unless specified otherwise in the applicable Service Terms, shall pay: (1) all accrued but unpaid Service charges and other charges incurred by Customer; and (2) a shortfall charge (which Customer hereby agrees is reasonable) equal to the difference between the Minimum Commitment and Customer's actual purchase of XO's Services (including any applicable cancellation or early termination charges), excluding taxes, tax related surcharges, and other surcharges during that month.

2.7 Special Construction. If XO is required to undertake special development and/or acquire, software, equipment or other facilities from a third party in order to provide Service to Customer ("Special Construction"), and the costs are not included in the MRC or Cloud Services Commit for a particular Service(s), then XO will advise Customer in writing of the estimated charges associated with such Special Construction prior to the undertaking of the activity by XO, and, if accepted, Customer becomes responsible for the payment of all such Special Construction.

ARTICLE 3 - GOVERNMENTAL CHARGES AND TAXES

3.1 Applicability. Service charges do not include Governmental Charges or Taxes to be invoiced to Customer, as applicable, in connection with the furnishing of Service.

3.2 Payment and Other Obligations. Customer must pay existing and future Governmental Charges and Taxes and comply with new or revised terms and conditions imposed by XO as a result of Governmental Activity. If XO decides to impose a new or revised Governmental Charge or Tax, XO will furnish Customer with at least thirty (30) days notice of the new or revised charge or terms and conditions. In the event such new or revised Governmental Charge or Tax materially and adversely affect Customer's Service, Customer may discontinue, without any termination or other payment obligation (except for any charges owed for Service up to the time of termination or due third parties), the affected Service by furnishing XO with at least thirty (30) days prior written notice of its intent to discontinue the Service.

3.3 Exemption Certificate. If Customer believes itself to be exempt from any Governmental Charges or Taxes, it may provide XO with a certificate demonstrating its eligibility for exemption. If the certificate is accepted, XO will cease imposing the applicable Governmental Charges or Taxes and, if such charges previously had been imposed and collected, XO will credit Customer in an amount equal to the charges paid by Customer during the ninety (90) day period immediately preceding the delivery of the accepted certificate, unless otherwise required by law or regulation.

3.4 Survival. Customer's obligation to pay Governmental Charges and Taxes under this Article 3 will survive the expiration or early termination of the Agreement.

ARTICLE 4 - TERM AND TERMINATION

4.1 Agreement Term and Service Term. Each Service Order entered into by the Parties will indicate a service term for the Services ordered thereunder. Collectively, the initial term and any renewal terms are referred to herein as the

“Term.” If no Term is set forth in the applicable Service Order, the term of the Service Order shall be the greater of (i) one (1) year, or (ii) the term commensurate with the pricing for the Service as set out in the Service Order (e.g., pricing associated with a one (1) year term shall indicate a one (1) year Service Term and pricing associated with a three (3) year term shall indicate a three (3) year Service Term, etc.). The Service Term will begin on the Start of Service Date. Unless one Party provides written notice to the other of its intent not to renew Service at least thirty (30) days prior to the expiration of the Service Term, the Service shall automatically renew for the same term as set forth on the Service Order pursuant to the rates, terms and conditions contained in this Agreement.

4.2 Cancellation, Termination or Suspension of Service.

(a) Procedure. Customer may terminate a Service according to the terms of the applicable Service Terms. Customer will be responsible for all charges incurred up to and including the actual date Services are discontinued, as well as any applicable early termination charges. Any attempted termination via any other method or approach will not be effective.

(b) Cancellation and Termination Charges. Upon cancellation for any reason not occasioned by XO's breach after the Service has been ordered but prior to the Start of Service Date, Customer shall pay XO a cancellation charge in an amount equal to: (i) all charges then due and owing, including without limitation, any non-recurring, special construction or other non-standard charges, incurred by or on behalf of Customer up to the date of termination; plus (ii) two (2) months MRC or Cloud Services Commit. If Service is terminated after it has been activated or installed, including termination by XO due to Customer's non-payment of charges due, Customer shall, if applicable, pay the early termination charges as set forth in the corresponding Service Terms. The Parties agree that these cancellation charges are reasonable and that XO's damages if a Service is cancelled or disconnected would be difficult or impossible to ascertain. Accordingly, this Section is intended to provide liquidated damages and not serve as a penalty.

(c) Termination for Default. Except as otherwise provided in this Agreement, if either Party is in Default, the other Party, may, by giving written notice to the defaulting Party, immediately terminate the applicable Service or the entire Agreement, in addition to remedies available at law or in equity to the non-defaulting Party.

(d) Termination or Suspension for Cause by XO. XO, at its sole discretion, may: (1) terminate or suspend this Agreement or a Service provided hereunder immediately for cause, if any act or omission by Customer results in a suspension described in Sections 2.3 and 6.1 of the Services Agreement, or (2) terminate, suspend or modify the Services on reasonable advance notice: (i) if a Third Party provider of XO Materials or a Third Party Element terminates, suspends or modifies its provision of such Materials or Elements to XO, (ii) in order to comply with the Law or requests of governmental entities, or (iii) if XO determines that use of the Service by Customer or XO's provision of any of the Services to Customer has become impractical or unfeasible for any business, legal or regulatory reason.

4.3 Effect of Termination. Immediately upon termination of a Service for any reason, the affected Service will cease to be available or accessible to Customer and all resources previously allocated to Customer for use as part of the Service will be reformatted, reconfigured, and reallocated and all Customer Materials, therefore, purged from the Services. Customer agrees that Customer Materials, and the timely, complete and proper removal of Customer Materials, are the sole and exclusive responsibility of Customer and that XO will have no liability, and Customer will indemnify and hold XO harmless, for removal of Customer Materials, including any obligations related to the retention or disposal of Customer Materials or Protected Data. Upon termination, Customer will be responsible for all Fees incurred up to and including the date of termination.

4.4 Effect of Suspension. In the event of a suspension by XO of Customer's access to any Service pursuant to Section 2.3 above, Customer acknowledges during the period of suspension that, (i) XO may upgrade, update, or reconfigure the resources used to deliver Services to Customer in the ordinary course of business (e.g., thereby affecting access to Customer Content) and (ii) applicable Service data storage charges, if any, will continue to accrue.

ARTICLE 5 - PARTY OBLIGATIONS

5.1 The Parties. Each Party covenants, represents and warrants to the other Party that it is an entity, duly organized, validly existing and in good standing under the laws of the place of its origin, with all requisite power and authority to enter into and perform its obligations under this Agreement in accordance with its terms.

5.2 XO. XO owns or otherwise has the right to use the XO Materials necessary to provide the Services and its provision of the Services, as and in the manner delivered, will comply with U.S. Laws applicable to the Services. If XO is unable to correct any failure of the foregoing, XO will, at its option, modify or replace the Service (or the affected portion thereof) with something functionally comparable, or if such remedies are not feasible in XO's sole discretion, terminate the Service (or affected portion thereof) and refund the Fees paid for such during the time period while XO is unable to correct such failure. Customer's sole and exclusive remedies for any such failures are limited to the foregoing remedies or refund of such Fees. CUSTOMER AGREES THAT THE FOREGOING LIMITED WARRANTY AND REMEDIES RELATED THERETO ARE IN LIEU OF ALL OTHER WARRANTIES AND REMEDIES. All XO Materials are the sole and exclusive property of, and all rights therein expressly and exclusively reserved by, XO or its suppliers, which reserve the right to reconfigure, replace and relocate XO Materials in any manner. Other than the right to use the Services, no interest in any XO Materials is transferred or granted to Customer or End Users. The foregoing will not apply and Customer will indemnify, defend and hold harmless XO for any Claims arising from: (a) Customer provided designs, specifications, or modifications to the Service; or (b) combination of the Service or components thereof with Customer Materials.

5.3 Customer. Customer represents and warrants that: (a) Customer owns or otherwise has all necessary rights, licenses or permissions to generate, use, store, copy, publish, display, transmit, or make Customer Materials available and/or combine Customer Materials with the Services; (b) Customer's use of and business activities related to the Services provided by XO under this Agreement comply and conform in all respects to all applicable Laws and Privacy Rules; and (c) Customer is not in receipt of, nor is Customer aware of, any facts that would justify a complaint to any foreign or domestic, federal or state regulatory authority concerning any of Customer's business, trade or telemarketing practices or otherwise related to Customer's actual or anticipated use of the Services. All Customer Materials will be the sole and exclusive property and/or responsibility of Customer. Customer shall have full possession, custody and control over, and all legal obligations regarding retention and production of all Customer Materials. No responsibility for Customer Materials is transferred or granted to XO under this Agreement and all right and interest in Customer Materials are exclusively reserved by Customer. Customer will indemnify, defend and hold harmless XO, its officers, employees, parent and Affiliates as well as suppliers and any providers of Third Party Elements from and against any Claims arising from or relating to breach of its representations and warranties or violations of law by Customer.

5.3.1 Notwithstanding anything to the contrary herein, in connection with Customer's and its End User's use of the Services: Customer is solely responsible, liable, and shall defend, indemnify and hold XO and suppliers harmless, for: (i) the security of all Customer and End User authentication and password credentials used to access the Services; (ii) Customer's and End User's collection, access, use, storage, sharing, transfer, security, encryption, disposal and destruction of all Personal Data and compliance with all Privacy Rules applicable to such Personal Data, as well as any notifications, liabilities or other consequences resulting from such activities or any breach of privacy or data security within the meaning of any Privacy Rules; (iii) ensuring Customer and its End Users have the necessary rights and licenses, consents, permissions, waivers and releases to use and display all Customer Materials and any Third Party Elements licensed to Customer or End Users; (iv) the development, operation, and maintenance of Customer Materials, including without limitation, the collection, storage, distribution, use, accuracy, appropriateness and completeness of all Content. Customer and its End Users will not reverse engineer, disassemble, decompile, or otherwise attempt to derive source code from the Services or any software, nor attempt to access, alter, abuse or destroy information or other materials, nor use the Services in a manner that can cause interference with XO or its other customers' use of the XO network or services. Customer will assist XO in the remediation. Customer will take all necessary steps to prevent the foregoing activities, will promptly cooperate with XO to prevent and remedy any such acts by Customer or End Users.

5.4 Retention of Rights. All Parties retain all right, title and interest in and to their respective materials and data and all Intellectual Property and rights and responsibilities associated therewith, and no licenses in the foregoing will be deemed to have been granted hereunder unless expressly provided.

5.5 Exclusion of Other Warranties. EXCEPT AS, AND THEN ONLY TO THE EXTENT, EXPRESSLY PROVIDED IN THE APPLICABLE SERVICE TERMS, CUSTOMER HEREBY ACCEPTS ANY XO SERVICE (INCLUDING ANY XO MATERIALS OR THIRD PARTY ELEMENTS PROVIDED TO OR USED BY CUSTOMER IN CONNECTION WITH THE SERVICE) "AS IS." XO DISCLAIMS ALL OTHER WARRANTIES, WRITTEN OR ORAL, STATUTORY, EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, THE WARRANTY OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE OR USE, NON-INTERFERENCE, AND NON-INFRINGEMENT AND ASSUMES NO LIABILITY TO CUSTOMER FOR ANY THIRD PARTY ELEMENTS.

ARTICLE 6 - USE OF SERVICE

6.1 Acceptable Use Policy. Customer agrees to conform to the XO Acceptable Use Policy ("AUP") posted at: <http://www.xo.com/legal-and-privacy/acceptable-use/> as reasonably amended from time to time by XO which is incorporated herein by reference and made a part of this Agreement. Customer agrees to check the AUP website periodically to review any changes made to the AUP. Customer must bind End Users to the AUP and will, in any event, be liable for its and its End Users' use the Services that may violate the AUP. Customer will indemnify, defend and hold harmless XO, its officers, employees, parent and Affiliates as well as suppliers and any providers of Third Party Elements from and against any Claims arising from or relating to Customer and/or its End Users use of the Service(s) in violation of the AUP, terms of this Agreement, or related to Content.

6.2 Resale of Services.

(a) Customer is the customer-of-record for all Service(s) acquired under this Agreement and all Customer information provided when registering for the Services is accurate and complete. Customer will not resell the Services to others, but Customer may use the Services as a component of other services provided to End Users. In doing so, Customer will not make any representations or warranties, whether written or oral, to any third parties (including, without limitation, Customer's End Users) concerning the Services. Customer will be solely responsible for interfacing with its End Users with respect to all matters pertaining to its services including, without limitation, service provisioning, billing and collection, dispute resolution and crediting. Customer is responsible for the payment of all charges for Service furnished to Customer and its End Users. This responsibility is not diminished or otherwise affected by any: (1) use, misuse, fraud or abuse by Customer, its employees, its End Users, or other members of the public of the Service or of Customer-provided systems, equipment, facilities or services interconnected to Service; or (2) Customer inability to collect payments or charges from its End Users, or others.

(b) Customer is responsible for: (1) applying and enforcing all applicable provisions of this Agreement on its End Users; and (2) any liability arising from a violation of a Customer or End User obligation under this Agreement. If XO discontinues providing Service to Customer for any reason, Customer will be solely responsible for furnishing any required notice to its affected End Users.

(c) XO will have no obligation to interact with Customer's End Users, nor will XO incur any liability to End Users for its performance under this Agreement.

6.3 Restricted Uses Generally

(a) Customer may not interfere or attempt to interfere in any manner with the functionality or proper working of the Services or its use by others.

(b) Customer may not copy, modify, create a derivative work of, reverse engineer, reverse assemble, disassemble, or decompile any Intellectual Property made available to Customer via the Services or any part thereof or otherwise attempt to discover any source code, modify XO or Third Party Materials or Intellectual Property made available to Customer via the Services in any manner or form, or use unauthorized modified versions of Intellectual Property made available to Customer via the Services, including without limitation for the purpose of building a similar or competitive product or service or for the purpose of obtaining unauthorized access to the Services. No part of the Intellectual Property made available to Customer via the Services may be copied, reproduced, distributed, republished, displayed, posted or transmitted in any form or by any means.

6.4 Noncompliance. Customer or its End Users failure to comply with any provision of this Section shall be deemed a material breach of the Agreement and XO or its suppliers may terminate or suspend Services to Customer or its End User as appropriate. Customer releases XO from all liability or obligations in connection with the affected Service(s), and Customer will indemnify XO for all costs and damages that XO incurs as a result of Customer's noncompliance.

ARTICLE 7 – CONFIDENTIAL INFORMATION

7.1 Confidential Information. As used in this Agreement, "Confidential Information" means information not generally known to the public, and maintained by the Disclosing Party as confidential, whether of a technical, business, pricing or other nature that relates to the provisioning of Services and that should reasonably have been understood by the Receiving Party, because of (i) legends or other markings, (ii) the circumstances of disclosure or (iii) the nature of the information itself, to be proprietary and confidential to the Disclosing Party. Confidential Information may be disclosed in written or other tangible form (including information in computer software or held in electronic storage media) or by oral, visual or other means. Receiving Party shall not disclose the Disclosing Party's Confidential Information to anyone without the Disclosing Party's prior written consent and will (i) restrict access, possession, knowledge, development and use of Confidential Information to (a) its employees, agents, subcontractors, consultants, advisors and entities controlled by it ("Personnel"); (b) who have a need to know Confidential Information of the other Party; and (c) who are bound by confidentiality obligations substantially similar to those contained herein; and (ii) be responsible for its Personnel's compliance with this Agreement. Further, use of Service by Customer does not constitute, nor should any use be construed to constitute, a "disclosure" or "receipt" of Customer's Confidential Information or Protected Data, such that XO would be or become a recipient, data processor or handler on behalf of Customer or others. Customer will protect its Protected Data and Content and agrees to configure and maintain its Content to use encryption algorithms, key lengths, and other measures that are consistent with security standards applicable to Customer Protected Data or Content (e.g., PCI, ISO, NIST, and other data privacy standards). Customer's use of Services does not guarantee Customer's compliance with any compliance standard.

7.2 Exceptions. The provisions of this Article 7 shall not apply to any information that (i) is or becomes publicly available without breach of this Agreement; (ii) can be shown by documentation to have been known to the Receiving Party without confidentiality restrictions at the time of its receipt from the Disclosing Party; (iii) is rightfully received from a third Party who did not acquire or disclose such information by a wrongful or tortious act, or in breach of a confidentiality restriction; (iv) can be shown by documentation to have been independently developed by the Receiving Party without reference to any Confidential Information; or (v) is identified by the Disclosing Party as no longer proprietary or confidential.

7.3 Unless or until otherwise instructed by Customer, XO may share Customer information with its suppliers, agents and independent contractors for the purpose of furnishing Customer with Services and other information about XO, its parent company's, and others' products and services that may be of interest to Customer.

ARTICLE 8 - LIMITATION OF LIABILITY

8.1 Consequential Damages. Except to the extent damages are part of a claim for which indemnification is due under this Agreement, neither Party is liable to the other Party for any indirect, consequential, special, incidental, reliance, or punitive damages of any kind or nature whatsoever including, without limitation, any lost profits, lost revenues, lost savings, or any other business loss including goodwill, loss of use of property, loss of data, cost of substitute equipment or services, downtime costs and claims for damages or harm to business, regardless of foreseeability or whether damages are caused by the willful misconduct, negligent acts or omissions, or wrongful acts arising from or related to this Agreement. For any provision in which an express remedy or measure of damages is provided, such express remedy or measure of damages will be the exclusive remedy of the Parties and the sole liability of each.

8.2 Service Credits and Liability Limits. Customer's sole remedy for Service failure, installation delays, or XO's inability to provide Service is the right to receive credits or other remedies as set forth in this Agreement and the Service Exhibits hereto. **EXCEPT FOR CLAIMS SUBJECT TO INDEMNIFICATION (UNLESS OTHERWISE NOTED) OR FOR FEES DUE AND OWING, EACH PARTY'S ENTIRE LIABILITY FOR CLAIMS AGAINST THE**

OTHER FOR ALL CAUSES OF ACTION AND CLAIMS OF ANY KIND, INCLUDING, WITHOUT LIMITATION, BREACH OF CONTRACT, BREACH OF WARRANTY, STRICT LIABILITY, NEGLIGENCE, MISREPRESENTATION, OR ANY OTHER TORT IS LIMITED TO THE LESSER OF I) ACTUAL DIRECT DAMAGES OR II) THE TOTAL AMOUNT PAID BY CUSTOMER TO XO FOR SERVICE DURING THE PREVIOUS THREE (3) MONTHS IMMEDIATELY PRECEDING A CLAIM.

ARTICLE 9 - FORCE MAJEURE

In no event shall a Party have any claim or right against the other Party for any failure of performance due to causes beyond its control, including but not limited to: natural disasters; war, acts of terrorism or civil unrest; mechanical, electronic, or communications failure, labor disputes, government restrictions or supplier unavailability, or any other cause or circumstance, whether of a similar or dissimilar nature to the foregoing, beyond the reasonable control of the affected Party.

ARTICLE 10 - DISPUTE RESOLUTION

10.1 Arbitration. XO and Customer agree to use the dispute resolution procedures set forth in this Article 10.1 in situations where Customer's annual spend is sixty-thousand dollars (\$60,000) or less.

(a) Upon ten (10) days written notice, either Party may submit disputes to binding arbitration by a single arbitrator with a professional arbitration service selected by the Parties. If the Parties cannot agree on an arbitration service, such services shall be provided pursuant to the American Arbitration Association ("AAA") Commercial Arbitration Rules and Mediation Procedures. The costs of arbitration, including the fees and expenses of the arbitrator, shall be paid equally by the Parties. Each Party will bear the cost of preparing and presenting its case. The arbitration will be conducted in Fairfax County, Virginia at a site acceptable to the Parties.

(b) The Parties agree that this Article 10 and the arbitrator's authority to grant relief are subject to the Federal Arbitration Act, 9 U.S.C. §§ 1-16, *et seq.* ("FAA"), the provisions of this Agreement, and the AAA Code of Ethics for Arbitrators in Commercial Disputes. The Parties agree that the arbitrator may not award punitive or exemplary damages or damages otherwise limited or excluded in this Agreement. The arbitrator's decision shall be final and binding. The award may, as necessary, be confirmed and enforced in any court of competent jurisdiction. All post-award proceedings shall be governed by the FAA.

10.2 Mediation and Litigation. XO and Customer agree to use the dispute resolution procedures set forth in this Article 10.2 in situations where Customer's annual spend is greater than sixty-thousand dollars (\$60,000).

(a) **Mediation.** Before either Party may commence a litigation in a court of law or equity, regarding any right, obligation, or claim arising out of this Agreement and the Services provided pursuant thereto, the Party must first attempt to engage the other Party in non-binding mediation. Each Party will bear its own costs in mediation and all third party mediation costs will be shared equally between the Parties, unless otherwise agreed. If the other Party is not amenable to mediation, or does not respond to the request to mediate within ten (10) days of the request, the initiating Party may commence litigation. In the event a Party seeks to enforce a right or obligation under this Agreement or prevent a violation of the terms of this Agreement and the Party will experience immediate and irreparable harm which cannot be quantified if the right or obligation is not enforced, or the violation is not ceased immediately, the Party may forgo the requirement to seek mediation and file for a temporary injunction exclusively in either the US District Court for the Eastern District of Virginia, or the Circuit Court of Fairfax County, Virginia, depending upon which court has the more appropriate jurisdiction.

(b) **Litigation.** Either Party may commence a litigation regarding any right, obligation, or claim arising out of this Agreement and the Services provided pursuant thereto. The Parties agree that the litigation will be commenced and conducted exclusively in either the US District Court for the Eastern District of Virginia, or the Circuit Court of Fairfax County, Virginia, depending upon which court has appropriate jurisdiction. If either Party commences the litigation in a venue other than the Alexandria Division of the Eastern District of Virginia, or the Circuit Court of Fairfax County, Virginia, that Party will be responsible for all costs and attorneys' fees associated with the transfer of the venue back to Alexandria or Fairfax County, Virginia. The Parties agree that regardless of the claim or claims raised, and the jurisdictional amounts alleged in the litigation, the limitation of damages and liability addressed in Section 8 above shall apply. The Parties further agree that all claims raised in the litigation will be governed by the substantive law of the Commonwealth of Virginia law without reference to its principles of conflict of its laws.

ARTICLE 11 - ASSIGNMENT

Customer is prohibited from selling, transferring or assigning this Agreement without written consent from XO.

ARTICLE 12 - NOTICES

Notice required of Customer under the Agreement shall be in writing and delivered by certified mail, return receipt requested, to XO Communications Services, LLC, **One Verizon Way, Basking Ridge, NJ 07920**, Attn: Executive Vice President, General Counsel and Secretary. A notice shall be effective on the date of its receipt by XO.

ARTICLE 13 – MISCELLANEOUS

13.1 Interpretation. This Agreement may not be construed or interpreted against either Customer or XO because that Party drafted, or caused its legal representative to draft, any of its provisions.

13.2 U.S. Law and Export. Customer acknowledges that the Services are provided in the United States, governed by U.S. Law, intended for domestic use by U.S. based Customers and End Users only, and provided exclusively in English. XO is not liable for any acts of a government authority or network that may prevent delivery of content from a specific geography or such authority filtering, blocking, altering or damaging data sent by Customer over the XO network. Customer shall not require XO to assist Customer with any laws, policies or regulations that apply to Customer's Content implemented by a government authority. Customer is solely responsible for compliance with the Laws where such Services are accessed by Customer or its End Users. Additionally, Customer's use of the Services may be subject to U.S. export laws and regulations and that any use or transfer of the Confidential Information or Customer Materials or access and use of Services by Customer or End Users outside the U.S. must be authorized under those laws and regulations and that compliance with such transfer or use is Customer's sole responsibility.

13.3 Relationship of the Parties. The Parties are independent contractors, bound to each other only as provided for in this Agreement. Neither Party has the authority to bind, act on behalf of, or represent the other. Except as otherwise expressly provided, nothing in this Agreement will be deemed to create any rights in third parties, including Customer's End Users, suppliers and vendors.

13.4 Waiver. No waiver of any of the provisions of this Agreement shall be binding unless it is in writing and signed by both Parties. The failure of either Party to insist on the strict enforcement of any provision of this Agreement shall not constitute a waiver of any provision and all terms shall remain in full force and effect.

13.5 Subsequent Agreement. No subsequent agreement among the Parties concerning the Service shall be effective or binding unless it is made in writing and executed by authorized representatives of the Parties. Neither e-mail nor instant messaging (IM) shall be considered a "writing" sufficient to change, modify, extend or otherwise affect the terms of the Agreement.

13.6 Entire Agreement. This Agreement sets forth the entire understanding of the Parties and supersedes any and all prior or contemporaneous agreements, arrangements or understandings relating to the subject matter hereof, written, oral or otherwise. The Service Exhibits and other documents referred to herein are integral parts hereof and are hereby made a part of this Agreement.

13.7 Severability. If any provision of this Agreement is found to be invalid or unenforceable under applicable law, it will be ineffective only to the extent of such invalidity and will not affect the remaining provisions of this Agreement.

13.8 Applicable Law and Venue. This Agreement is made pursuant to and shall be construed and enforced in accordance with the laws of the Commonwealth of Virginia, without regard to its choice of law principles. Any action arising out of or related to this Agreement shall be brought in the state or Federal courts located in Fairfax County, Virginia, and Customer consents to the exclusive jurisdiction and venue of such courts.

13.9 Publicity. Customer will not: (a) issue any public announcement or press release regarding this Agreement or its use of the Services, or (b) identify XO or its suppliers, either expressly or by implication, nor use, remove, alter or obscure any trademarks or domain names of XO or its supplier without prior written consent.

13.10 Survival. The terms of this Agreement which, by their usage and context, are intended to survive this Agreement including, without limitation, the obligation to make payments for Service and obligations to indemnify, will survive its expiration or termination.

13.11 Headings. The Article and Section headings in this Agreement, including all its incorporated documents, are for convenience only and may not be considered in interpreting the provisions in which they appear.

ARTICLE 14 - DEFINITIONS

Terms have their normal or common meaning, except as defined in this Agreement:

(a) **Affiliate** means a legal entity that controls, is controlled by, or is under common control with XO. "Control" means the ability to affect, directly or indirectly, the policies, management and operations of an entity through ownership of voting securities, by contract, or otherwise.

(b) **Agreement** means this Services Agreement, including Supplemental Service Terms, Service Orders, XO's AUP and other documents made a part hereof, as well as any written amendments to this Agreement executed by the authorized representatives of the Parties.

(c) **Claims** means any actual or threatened losses, liability, claims, damages, penalties, costs, fees, fines, levies, assessments or expenses (including without limitation attorneys' fees and costs) asserted by a third party or government agency arising from or incurred in connection with any inquiries, investigations, litigation, settlement, judgment, enforcement proceedings, consent decrees and other penalties

(d) **Content** means any software, data, text, images, audio, video or communications, information or materials that may be acquired, generated, stored, cached, copied, published, received, transmitted or otherwise used by or made available by Customer through its use of the Service.

(e) **Customer Materials** means anything provided by, used by or necessary for Customer or End Users to access, use or enjoy the Services, including without limitation, any hardware, software, applications, data (including Protected Data), databases, Content, or other materials and information, whether proprietary to Customer or Customer-provided Third Party Elements, that may be collected, used, accessed, stored, made available, distributed, processed or handled by Customer or End Users in connection with the Services.

(f) **Default** means (i) breach of a representation or warranty made by a Party; (ii) a material breach of the Agreement (other than a failure to pay or a violation of the AUP) that is not cured within thirty (30) days after notice of breach to the breaching Party; (iii) failure to make any payment when such payment or amount is due and such failure continues for five (5) business days after receipt of notice of such failure; or (iv) failure to cure a violation of the AUP within five (5) days after receipt of notice of such failure.

(g) **Emergency Maintenance** means maintenance which, if not accomplished promptly by XO, could result in damage to XO's network or a degradation or loss of Service to Customer, its End Users or other XO customers.

(h) **End User** means Customer or the Person who accesses and ultimately uses the services provided or applications sponsored by Customer.

(i) **Fees** mean all monthly recurring, monthly minimum, usage, set up, special construction, and other charges applicable to a given Service.

(j) **Governmental Charges and Taxes** means charges incurred during the term of this Agreement, both retroactive and prospective, that XO is required or permitted to collect from Customers in connection with its furnishing Service. The charges result from the application, enforcement or interpretation of existing, new or revised laws or regulations, actions taken by federal, state, local or foreign regulatory authorities, or judicial acts or decisions (collectively, "Governmental Activity") that directly or indirectly impose costs on XO. Governmental Charges and Taxes include, but are not limited to, those arising out of local, state, federal, foreign and third party actions, programs or requirements, including state and federal Universal Service, number portability, TRS, E911, access, reciprocal compensation, franchising, CALEA, personal property taxes on property used to provide Service, sales, use, gross receipts, telecommunications, excise, utility, or other similar transaction-based taxes, however designated, imposed directly on Service or upon XO as a result of its provision of Service. "Taxes" does not include any tax based on

XO's net income, net worth, capital structure or payroll.

(k) **Intellectual Property** means those statutory or common law rights in and relating to copyrights, patents, trademarks and trade secrets rights established under U.S. law.

(l) **Law** means all laws, statute, regulation, ordinance, rule, order, decree or governmental requirement enacted, promulgated or imposed by any governmental authority at any level.

(m) **Person** means any individual, corporation, proprietorship, firm, partnership, limited-liability company, trust, association or other entity.

(n) **Protected Data** means any personal identifying information including, without limitation, any information that, either individually or when combined with other data, could be used to derive information specific to a particular natural person, information which Customer acquires, derives, stores, accesses, provides or uses in connection with Customer's activities and use of the Services. Protected Data may include, but is not limited to, information regarding Customer, End Users or a natural person's identity, social security, employee or other identification number; any credit card, financial or other account information; health care information; physical and e-mail addresses; telephone numbers; transaction information; and any other personally identifiable Information as such term may be generally used or defined under any applicable Privacy Rules.

(o) **Privacy Rules** means any Law or industry standard, as amended from time to time, that relates to the collection, storage, access, handing, use, confidentiality, security or protection of Protected Data, electronic data, telecommunication or internet usage information, location tracking, trans-border data flow (including Safe Harbor Privacy Principles[♦]) or data protection generally.

(p) **Scheduled Maintenance** means any disruption or material degradation of Service caused by scheduled or routine maintenance or planned enhancements or upgrades to the XO network.

(q) **Service** means the XO-provided service as further described in the applicable Service Terms.

(r) **Service Terms** means either the on-line terms and conditions made a part of this Services Agreement or an attachment to a hard-copy of this Services Agreement containing product-specific terms and conditions for a particular Service, including any applicable schedules or statements of work made a part thereof, ordered by Customer.

(s) **Start of Service Date**, unless otherwise specified in the applicable Service Terms, shall be the earlier of the date XO notifies Customer that the Service is available for Customer use or the date Customer or an End User begins to use the Service.

(t) **Service Order** means an order request submitted on a form (electronic or otherwise) provided by XO to Customer, and mutually executed by and between XO and Customer. Should any term contained on a Service Order conflict with a term herein, the terms of this Agreement shall prevail unless the Service Order is intended, by its express terms, to amend this Agreement and is mutually executed by the parties.

(u) **Third Party** means any party that is neither a Party to this Agreement nor an Affiliate of a Party.

(v) **Third Party Elements** collectively means all hardware, software, open-source code, applications, tools, methods, documentation, technical information materials, service, support and other items, components or functionality which are provided or licensed by Third Parties to whom the Intellectual Property rights therein belong.

(w) **XO Materials** means all hardware, software, tools, techniques, equipment, methods, systems, processes, algorithms, ideas, know-how, design, documentation, technical information, technology, material, Intellectual Property, trade secret and other items, whether reduced to practice, patentable, copyrightable or not, as well as any other pre-existing or newly-developed materials proprietary to XO or XO-provided Third Party Elements developed, used, provided, or made available by XO in the creation, provision or operation of the Services, whether such rights belong to or are licensed by XO, along with any XO Confidential Information.

[♦] See <http://xo.com/legal-and-privacy/privacy-policy/safe-harbor>. Reliance on XO compliance with Safe Harbor Privacy Principles by a Customer in connection with its use of the Services hereunder must be addressed in a Safe Harbor Addendum signed by the Parties.

