

Business Messenger Service (BMS) Terms of Service

A. SERVICE OFFERING. XO Communications Services, LLC agrees to provide the Business Messenger services ("Services") referenced in this agreement through its applicable subsidiaries and affiliates (herein, "XO"). This Agreement (as defined below) between you ("you" may also be referred to as "Customer") and XO sets forth the legal rights and obligations governing XO provisioning or delivering Services to you and your use of those Services. In order to receive the Services set forth herein, you must have an established account for XO Web Site Hosting Services ("Hosting Services"). Hosted Exchange Services are provided by XO pursuant to the Hosting Services terms and conditions ("Hosting Services Terms"), which are incorporated herein by reference, in addition to these terms and conditions. Please review the Hosting Services Terms set forth at www.terms.xo.com, under the heading "Web Hosting and Dial-Up Internet Service." This Agreement consists of the terms and conditions set forth herein, the Hosting Services Terms, any applicable "Product Ts and Cs" (those terms applicable only to other XO Services ordered or used by you), and both of which are listed at <http://www.terms.xo.com> (collectively, and as applicable, the "Terms and Conditions"), along with any applicable tariffs, which are fully incorporated herein (collectively, the "Agreement"). For any Tariffed Services, in the event of a conflict between the Terms and Conditions and a tariff, the tariff shall control unless cancelled, upon which the Terms and Conditions shall control. In the event of any inconsistency between the terms and conditions contained herein and the Hosting Services Terms, and only to the extent of the inconsistency, these terms and conditions shall control. In the event of any inconsistency between the terms contained herein and other applicable documents, and only to the extent of the inconsistency, the additional terms and/or Product Ts and Cs shall control. For example, to the extent early termination charges for a product are detailed in the other Product Ts and Cs, those terms shall control to the extent inconsistent with the terms contained herein.

B. TERM/TERMINATION. This Agreement shall become binding and effective upon the earlier of your acceptance or your first payment for Services, and shall continue on a month-to-month basis until such time as terminated in accordance with the terms hereof. Either party may terminate the agreement and your subscription at any time for any reason or no reason upon 10 days notice; provided that, in the event you have agreed to a minimum term commitment, if you terminate Service prior to the expiration of the committed term, then you will be subject to an early termination charge of fifty percent (50%) of the monthly recurring charges (MRC) associated with the Services for the remaining months in the term or any renewal term. Unless either XO or you terminate the Services at least ten (10) days prior to the end of any committed term or renewal term, the term for the Services shall automatically renew for identical successive terms.

C. RATES AND PAYMENT. You agree to pay XO the then-current monthly charges for the XO Service, as further set forth in the Hosting Services Terms. Charges for Business Messenger Services do not include costs associated with connecting through an available access number. To avoid unwanted toll or long-distance charges, please check with your local phone company to determine if the selected number is a non-toll/local call. In some cases, 800 number access may be subject to connect-time surcharges.

D. TERMS OF USE.

(1) All permits, licenses, and authorizations necessary to use the Services must be maintained at all times.
(2) All commercially reasonable efforts shall be made to maintain and safeguard records regarding the identity of any end user of the Services while ensuring compliance with all applicable privacy legislation in the use of the Services, as further described in the Hosting Services Terms.

(3) Use of the Services is subject to the XO Acceptable Use Policy, in addition to the following limitations. You agree to be bound by the XO Acceptable Use Policy ("AUP") found at <http://www.xo.com/legal/>, and which is incorporated by reference herein. You acknowledge that you have read the AUP and agree to be bound by the current version of the AUP, which may be updated from time to time, and to comply with its terms, all laws, regulations and other legal requirements that apply to these terms and conditions, your use of the Service and your presence on the Internet. By way of example, and not limitation, uses described below are expressly prohibited:

- Any use of the Services (a) to post, transmit, re-transmit or store material which violates local, state, or federal law, including all export, use, import and other relevant laws in the jurisdiction; (b) in any way that could be considered threatening, obscene, indecent, defamatory, or that otherwise could adversely affect any individual or entity ("Person"); (c) for any unlawful, invasive, infringing, defamatory, fraudulent or obscene purpose; (d) to forge IP address information and/or XMPP/BOSH packets ; (e) to alter, steal, corrupt, disable,

destroy, trespass or violate any security or encryption of any computer file, database or network; or (f) so as to interfere with the use of the connectivity partner network by other customers or authorized users.;

- Deceptive or fraudulent practices;
- Any activity infringing on the intellectual property rights of others, including, but not limited to, copyrights, trademarks, service marks, trade secrets, patents. Actions that restrict or inhibit any Person, whether a customer, XO, or otherwise, in its use or enjoyment of any XO Service;
- The deliberate transmission of computer viruses worms, trojan software, or other malicious programs.
- Interfering with, disrupting, or denying service including, but is not limited to, using any technique to intentionally degrade or disable the delivery of any legitimate data (e.g., denial of service attacks).
- Attempting to gain unauthorized entry to any site, chat room or network including but not limited to executing any form of network probing, monitoring or other information-gathering on someone else's site or network.
- Attempting to circumvent host or user authentication or other security measures of any host, network or account.
- Allowing any data to be sent through one's system by an unrelated third party, including, but is not limited to, via open e-mail gateways and open proxy servers.
- Sending unsolicited instant messages, including the sending of "junk messages" or other advertising material to individuals who did not specifically request such material, who were not previous customers or with whom the sender did not have an existing business relationship. XO reserves the right to determine in its sole discretion and based on the information available (1) what constitutes unsolicited messages as well as (2) what measures are necessary in response to complaints.
- Harassment including, but not limited to, through language, frequency or size of messages.
- Unauthorized use, or forging, of IP address information and/or XMPP/BOSH packets..
- Accessing Business Messenger through any automated means including the use of scripts, web crawlers or bots.
- Impersonation of another user's Business Messenger ID
- Solicitations of mail for any other E-mail address other than of the email address of the Business Messenger's user account. with the intent to harass or to collect replies.

E. **SUSPENSION OR TERMINATION OF SERVICES.** Your participation in online communication or use of the Service is not edited, censored or otherwise controlled by XO. However, XO reserves the right to monitor content and to remove content, disable sites, or suspend or terminate Services if XO, in its discretion, determines such content or user practices are harmful, offensive, or otherwise in violation of the Terms of Use including the XO AUP.

Violating any of these Terms of Use grants XO the authority to take action to restrict or terminate your access to Services. XO reserves the right, at its discretion, to update or revise this policy, any other policy or statement on any XO website, and any product offerings or programs described on any XO website. Please check back periodically to review any changes to this policy.

F. **SCHEDULED AND EMERGENCY MAINTENANCE.** Service will not be available during periods of scheduled maintenance, or emergency maintenance. Schedule maintenance windows will be posted in the online account management URLs referenced in the Hosting Services Terms. Please check these locations periodically for changes to scheduled maintenance, as they may change from time to time.

G. **SOFTWARE AND INFORMATION PRODUCTS AND SERVICES.**

(1) You acknowledge that except for software, information products or services "Software/IT Product") clearly identified as being owned and licensed by XO under separate terms, Software/IT Product accessible through the XO Service, and all merchandise, information and services offered or made available or accessible through the XO Service, are provided "AS IS." NOTHING IN THIS AGREEMENT OR YOUR USE OF THE SERVICES CONSTITUTES A TRANSFER OF ANY OWNERSHIP RIGHTS IN ANY SOFTWARE/IT PRODUCT. YOU ACKNOWLEDGE THAT USE OF THE XO SERVICE IS AT YOUR SOLE RISK AND YOU AGREE THAT ANY SOFTWARE/IT PRODUCT ACCESSIBLE THROUGH THE SERVICE (i) MAY BE SUBJECT TO US AND INTERNATIONAL COPYRIGHT, PATENT AND TRADEMARK

PROTECTION, AS WELL AS U.S. EXPORT CONTROLS AND RESTRICTIONS AND OTHER CONDITIONS IMPOSED BY LICENSOR(S); (ii) ARE TO BE USED SOLELY IN CONNECTION WITH THE SERVICES; AND (iii) ARE PROVIDED WITHOUT WARRANTIES FROM XO AS FURTHER DESCRIBED BELOW. YOU MAY NOT MAKE COPIES OF ANY SOFTWARE/IT PRODUCT, EXCEPT FOR BACKUP PURPOSES IF NECESSARY TO EFFECTUATE YOUR USE OF THE SERVICES, NOR MODIFY, REVERSE ENGINEER, DECOMPILE OR DISASSEMBLE ANY SOFTWARE/IT PRODUCT. YOU MAY NOT, DIRECTLY OR INDIRECTLY, RENT, RESELL OR TRANSFER ANY SOFTWARE/IT PRODUCTS OR USE THEREOF TO ANYONE NOT AUTHORIZED UNDER THIS AGREEMENT. YOU UNDERSTAND 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 Uniform Computer Information Transaction Act is specifically excluded from application to this Agreement. The terms of this Section will survive any termination of this Agreement.

(2) END USER LICENSE TERMS

The Business Messenger Service (“BMS”) is designed to supplement your/your company’s existing hosting services provided by XO Communications Services, LLC on behalf of itself and its operating affiliates (“XO” or “Licensor”). As a BMS user, your participation is governed by your/your company’s Terms of Service/Agreement with XO. These End User License Terms govern your installation and use of the Business Messenger Client.

PLEASE NOTE: IN ORDER TO USE BUSINESS MESSENGER CLIENT AND THE BUSINESS MESSENGER SERVICE, YOU MUST HAVE THE FOLLOWING MINIMUM HARDWARE AND SOFTWARE REQUIREMENTS:

Windows

- Intel® Pentium® III 1GHz or faster processor
- Windows XP with Service Pack 2; Windows XP Tablet PC Edition; or Windows Vista® Home Premium, Business, Ultimate, or Enterprise including 64 bit editions; Microsoft® Windows® 2000 with Service Pack 4; Windows 2003 Server
- 512MB of RAM

or

- Mac OS X
- Intel Core™ Duo 1.83GHz or faster processor; PowerPC® G4 1GHz or faster processor
- Mac OS X 10.4.11 or Mac OS X 10.5.2
- 512MB of RAM

PLEASE READ THE FOLLOWING AGREEMENT CAREFULLY BEFORE DOWNLOADING OR INSTALLING THE BUSINESS MESSENGER CLIENT. BY INSTALLING AND USING THE TOOL, AND ACCESSING BMS, YOU AGREE TO BE BOUND BY THE TERMS AND CONDITIONS APPLICABLE TO THE SERVICE AS UPDATED FROM TIME TO TIME.

This License is granted pursuant to and made a part of the Services Agreement between you/your company and XO for the BMS. Nothing in this License shall enhance, change or alter any other XO-provided service or the terms under which any other XO service may be provided to you or your company. In the event of a conflict between the Agreement and/or any other terms appearing on www.terms.xo.com and this License, the terms of this License shall control to the limited extent of any such conflict only and to the limited application to the license granted hereunder.

1. Grant of License. XO hereby grants, and you accept, a nonexclusive license to use the Business Messenger Client and any associated user documentation subject to the following:

2. Term of License. The license hereunder is granted as of the initial delivery of the Business Messenger Client and continues until the earlier of: (a) when you discontinuing use of the Product or (b) the related Business Messenger or Hosting services are terminated by you/your company or XO. Upon termination for any reason, you must uninstall the Business Messenger Client and destroy all copies of it.

3. Use of License. The Business Messenger Client and any related documentation will be used only to enable your access to and use of the Business Messenger Service.

4. Copies. You may not distribute the Business Messenger Client. You may not copy the Business Messenger Client for any purpose other than in connection with ordinary back-ups by you/your company; and if you do so, you must to maintain appropriate records of the location and number of all such copies and include the copyright and other proprietary notices and product identifications provided by Licensor on the copies, in whole or in part, or on any form thereof.

5. Title. Title to and all rights and interests in the Business Messenger Client any related documentation are the exclusive proprietary property of XO. If any part of the Business Messenger Client or any related documentation is, or in the sole judgment of XO, might be infringing on misappropriating any third party's rights, or if use of the Business Messenger Client may be restricted, XO will have the option to either (i) procure the necessary rights for its users to continue using the Business Messenger Client or any related documentation, (ii) modify it to conform, or (iii) terminate this License immediately upon notice to you or your company.

6. Disclaimer. EXCEPT FOR WARRANTIES SPECIFIED HEREIN, XO GRANTS NO WARRANTIES, EITHER EXPRESS OR IMPLIED. WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, LICENSOR DISCLAIMS ANY AND ALL IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. XO FURTHER DISCLAIMS ANY RIGHTS IN ANY OPEN SOURCE CODE THAT MAY BE INCORPORATED IN OR LINKED TO THE BUSINESS MESSENGER CLIENT, INCLUDING WITHOUT LIMITATION XIFF LIBRARY PURSUANT TO THE LGPL; DATEFORMAT CLASS FROM ACTIONSCRIPT COOKBOOK CODE; CRYPTOACTION SCRIPT PURSUANT TO THE BSD LICENSE; AND OTHERS THAT MAY BE ADDED FROM TIME TO TIME. IN ADDITION, XO FURTHER DISCLAIMS ANY RIGHTS IN ADOBE FLEX SDK, ADOBE AIR SDK, USED UNDER THEIR RESPECTIVE LICENSES FROM ADOBE SYSTEMS INCORPORATED.

7. Disputes: Any claim arising out of or related to this Agreement, shall be resolved in accordance with the dispute resolution provisions set forth in the Agreement governing the services to which this license relates.

REV. 09/01/11