

## Managed Server Services

A. SERVICE OFFERING. XO Communications Services, LLC agrees to provide the Managed Server 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"). Managed Server 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](http://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, and any other applicable terms and conditions for other XO Services ordered or used by you, 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 set forth in such other applicable documents shall control. For example, to the extent early termination charges for a product are detailed in the other Product Ts and Cs located at [www.terms.xo.com](http://www.terms.xo.com), those terms shall control to the extent inconsistent with the terms contained herein. These Terms and Conditions shall govern all Managed Server Services ordered by you and provided by XO, including additional Managed Server Services added to your existing account. Your acceptance herein constitutes acceptance of these Terms and Conditions for all current and future orders of Managed Server Services.

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 business 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 you notify XO at least ten (10) business days prior to the end of any committed term or renewal term of your intention not to renew the Services, 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, including any overage rates for traffic or additional resources utilized by Customer in excess of Customer's configuration allocation, at such rates are established by XO from time to time. Charges for Managed Server 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. SERVICE AND SERVICE USE.

1. Service Description/Upgrades.

(a) Description. Managed Server Service is a managed hosting service whereby XO provides an enterprise-class hosting solution for Customer server needs. XO provides the customer-selected configurations of hardware, software, management levels, and other add-on components, applications or services. Additional product descriptions, features, and pricing are set forth at <http://admin.cnchost.com>.

(b) Billing for Upgrades. Additional charges apply for upgrades which result in additional resources to Customer's server configuration. Billing for additional resources will be effective as of the date of the upgrade (whether or not Customer has rebooted the server). Billing for reductions in server resources will become effective on the next billing cycle after the change has been made. In any billing cycle in which server or configuration upgrades are performed, Customer will be billed the applicable rate for the highest level of resources selected by Customer within the billing cycle. Frequent changes in the

server configuration within a billing cycle to attempt to use higher resources without paying will be considered a violation of TOS and service is subject to termination

2. Packages. Customers may order Managed Server Services by going through a custom configuration process, or by selecting pre-defined Managed Server Packages. Managed Server Packages may be subject to minimum term commitment as detailed in the Service Order Agreement. Services purchased under minimum term commitments are subject to early termination charges as set forth above in Section B above.

3. Acceptable Use Policy. Use of the Services is subject to the XO Acceptable Use Policy. 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. In addition to, and without limiting the terms of the AUP, Customer may not cycle through IP addresses for the purpose of spamming or other improper or illegal uses.

4. Limitations and Additional Requirements.

(a) Customer may not un-install and/or install version upgrades (other than regular maintenance updates from OS vendors) to the operating system ("OS"), and any attempt by Customer to do so will be considered a material breach, for which XO may immediately suspend and/or terminate the Service. XO will not be liable for any losses or damages, including but not limited to loss of Customer data, due to any changes made by Customer to its server configuration.

(b) XO will notify Customer when OS updates are required. The notification shall be sent to the email address provided on the Customer's account. Customer will have the option, depending on the Server Management Level selected to either perform updates manually at Customer-determined dates, or automatically, by XO. XO will not be liable for any losses or damages resulting from Customer's failure to schedule updates. Further, XO may in its sole discretion, perform OS updates as needed to protect XO's network and servers in the event Customer fails to schedule updates within a reasonable time.

(c) Customer must respond in a timely manner to email alerts from XO host monitoring. XO reserves the right to shutdown or restart Customer's failed managed servers in the event Customer does not respond to XO alerts and escalations. XO will not be liable for any losses or damages incurred by Customer due to Customer's failure to respond to XO alerts.

(d) Managed Server Service is not intended to support dedicated clustering, and no specialized hardware will be provided by XO to enable dedicated clustering by Customer.

(e) Un-installation of applications provided by XO must be done through XO Customer Care.

(f) Customer may not retrieve product keys of the OS and applications provided by XO from the OS registry.

5. Third Party Software. In addition to and without limiting the terms regarding Software and Information Products and Services, as set forth in the Hosting Services Terms, the following terms apply to with respect to software provided by third parties.

(a) Customer represents and warrants that Customer shall not install or run any third party software that is not provided by XO, without the requisite rights, licenses, permits and authorizations from the owner of such third party software. Customer will indemnify and hold harmless XO, its affiliates and their officers, directors, employees and agents from and against any claims, losses, damages, suits or liabilities arising from Customer's installation or use of non-XO provided third party software in violation of this provision. Further, Customer may not install any third party virtualization software onto managed servers under this Agreement.

(b) With respect to third party software provided by XO, including the Customer-selected Microsoft® operating system software, Customer acknowledges that XO will be able to gain administrative access to Customer's Managed Server(s) in order to validate software components and/or perform audits at

any time to ensure compliance with software licenses. By accepting these terms, Customer also accepts the Microsoft End User License Agreement for the operating system purchased, as well as any other Microsoft server applications. The Microsoft End User License Agreement may be viewed by going to the following url: <http://www.microsoft.com/about/legal/useterms/default.aspx>.

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