

XO Hosted PBX Terms and Conditions

1.0 Service Description

1.1 XO Hosted PBX ("Service" or "Hosted PBX") is a service offering within the domestic United States consisting of a bundle of XO-provided hardware, software and network services which includes: (i) the provision of Hosted PBX manufacturer hardware and telephone handset(s) at Customer-specified service location(s) ("Premises"); (pursuant to compliance with Section 7.3 below, Customer may provide and utilize some of its own equipment); (ii) the furnishing of voice and data access, local, and long distance services; and (iii) the Service and Support (as defined in Section 7.2 below) of hardware and software provided by XO and located on Customer's Premises ("Equipment"). Service is provided, in part, via a cloud PBX that interoperates with pre-approved IP telephone stations and allows access to XO's IP VPN network.

1.2 The cloud PBX is furnished as part of the Service providing basic voice service calling features with each seat license ordered. XO will evaluate, design, provision, maintain and manage Service based on a configuration proposed to, and accepted by, Customer during the Hosted PBX Service Delivery.

1.3 Customer acknowledges and agrees that XO's provisioning of Hosted PBX Service is predicated on the accuracy and timeliness of Customer's answers to XO Service questionnaires. XO will not be liable for any installation delays or any reduction in or failure of the Hosted PBX Service as a result of any inaccuracy in Customer's answers to Service questionnaires, or any material changes to Customer's environment that would render such information inaccurate.

2.0 Suspension, Termination and Cancellation Charges

2.1 XO may suspend the Hosted PBX Service: (i) immediately, when Customer or an End User uses the Hosted PBX Services: (1) to make calls which might reasonably be expected to frighten, abuse, torment or harass others, or (2) in any way that exposes XO's network to material and imminent harm, to other necessary XO facilities or systems or to XO's ability to provide Services to other customers, and Customer does not (or fails to cause its End Users to) immediately cease and desist from the activity giving rise to such harm upon receiving notice of such material and imminent harm from XO; or (ii) immediately, when Customer or End Users are making unlawful use of the Services and Customer does not (or fails to cause its End Users to immediately cease and desist such use) upon receiving notice of such unlawful use from XO.

2.2 In the event of suspension under Subsection 2.1 above, XO shall provide Customer with an opportunity to cure as set forth in the General Terms and Conditions.

2.3 XO reserves the right either to discontinue furnishing Service or to move Customer to an alternative usage plan or product if Customer's usage pattern is outside the scope of XO projections when the Service is installed or if the Service is being used by Customer for any prohibited application. Customer will remain responsible for any applicable early termination charges if Customer chooses to terminate Service as a result of XO's discontinuation of Service for cause or XO's modification of Customer's usage plan or product.

2.4 XO reserves the right to determine, in its sole reasonable discretion, not to arrange for or to discontinue provisioning of such Services and to terminate the Agreement for any reason whatsoever by giving Customer not less than one hundred and twenty (120) days prior written notice thereof. Such Service termination by XO may be based upon, but not limited to, a determination that the rules, regulations or policies of the Federal Communications Commission, state Public Utility Commission or equivalent regulatory entity, or any other applicable federal, state, or local governmental agency or entity may cause the provisioning of such Services to be unlawful, unprofitable, impractical or undesirable in the sole determination of XO.

3.0 Pricing, Billing and Charges

3.1 XO reserves the right to modify prices after the initial term. XO will provide Customer with thirty (30) days notice of any price increases. Price reductions will be effective immediately without any written notification. If Customer elects not to accept a price increase, it may notify XO in writing of its intent to terminate the Service within thirty (30) days of receipt of the notice of the rate increase. After XO receives such notice, it will terminate Customer's Service within sixty (60) days of receipt without imposing any

termination liabilities. Customer's use of the Service after the thirty (30) day notice period will constitute its acceptance of the price increase.

3.2 XO's Service and Support obligations do not include moves and changes or installation of additional equipment Customer is authorized to make on its own; application configuration or troubleshooting, or any other services not covered under this Exhibit. Such additional charges will be quoted to Customer at XO's then-current rates.

3.3 Hosted PBX Billing Commencement. Notwithstanding anything to the contrary in the Agreement, billing for the Service will begin on the Start of Service Date unless Customer fails to complete its obligations necessary to use the Service through no fault of XO, in which case billing will begin on the date XO notifies Customer that the Service is installed or connected and available for Customer use.

4.0 Service Requirements and Restrictions

4.1 To receive Hosted PBX Service, Customer must provide the following:

1. Customer-acknowledged/approved detail of network services including, but not limited to, complete and correct inventory of Customer's telephone numbers to be ported to XO (as required).
2. Customers porting telephone numbers from previous Service Providers are required to provide a Customer Service Record from their previous provider that details the following:
 - a. Customer Account Name
 - b. Customer Account Address
 - c. Customer Account Number
 - d. List of telephone numbers porting to XO
3. Required supporting documentation to be submitted with Customer-acknowledged network order.
4. Customer contact information that includes telephone number and valid email address.
5. VoIP-ready local area network ("LAN") meeting the XO VoIP readiness requirements to provision, service, and support Hosted PBX Services. The XO VoIP readiness requirements are:
 - a. A Local Area Network (LAN) running the Internet Protocol (IP) technology with Ethernet line interfaces.
 - b. Client-side LAN support for Dynamic Host Configuration Protocol (DHCP), Domain Name System (DNS), Hypertext transfer Protocol (HTTP and HTTPS) and 802.1q Virtual LAN (VLAN) tagging.
 - c. LAN switches with Ethernet line interfaces with sufficient available ports to connect all Session Initiation Protocol (SIP) endpoints (phone sets) provided as part of the Hosted PBX service.
 - d. Availability of a consistent QoS policy across the LAN through which the Hosted PBX voice traffic will receive highest level of prioritization.
 - e. Availability of IP routing services that permit network endpoints to have concurrent access to the XO network service and the public Internet.
 - f. DHCP server capable of providing an IP address to SIP devices.
 - g. DNS server or DNS relay functionality that allows resolution of URL's used by SIP devices to communicate with external service platforms.
 - h. Customer firewall configured to allow the following services:
 - i. HTTP and HTTPS traffic to allow SIP devices to communicate with external configuration servers.
 - ii. SIP and Realtime Transport Protocol (RTP) traffic to allow SIP devices to place and receive calls.

Customer must refer to the XO Hosted PBX Support website at www.xo.com/care/notices/Pages/hostedpbxsupport.aspx for a list of the latest LAN configurations / topologies supported for Hosted PBX services.

6. A single point of contact to work with XO and the technical installation team on all project activities and approve all job change orders. If Customer's project includes more than one installation location, a local contact must be provided for each location.
7. Customer will co-develop the project plan with the XO Program Manager to include mutually agreed upon project schedule, installation / milestone dates.

8. It is Customer's responsibility to provide properly terminated and labeled Category 5 or better station level cabling for each XO provided SIP endpoint. Customer will ensure that cabling has been terminated on patch panels and that terminations are labeled to designate each patch panel port with the correct corresponding work station communications outlet.
9. Customer must provide a port on its LAN / WAN through which the XO provided QoS equipment will have Internet access and remote access capabilities. Customer must not touch or move the QoS equipment in any manner without the permission or direction of XO.
10. Customer LAN must be sized to allow maximum amount of required data bandwidth plus the total number of simultaneous voice calls required by the Hosted PBX users.
11. Customer will ensure that its LAN / WAN is configured according to VoIP specifications prior to scheduled Hosted PBX service activation.
12. During scheduled Hosted PBX service activation activity, Customer will provide an IT administrator with requisite access to all LAN / WAN hardware to make any configuration changes in coordination with XO.
13. Customer is responsible for the performance and (re)configuration of the user desktop computers and / or corporate applications following the installation of XO-provided IP telephone sets.
14. Customer will provide a detailed floor plan, labeled to identify the name, extension number and location for every telephone and analog device to be installed by deadline established in the Hosted PBX project plan.
15. Customer will gather, define, and provide all required Hosted PBX programming information to XO by the designated due date defined by the Program Manager. Information may include, and is not limited to:
 - a. Telephone number assignments;
 - b. End user information;
 - c. User telephone set type;
 - d. Voice mail permissions;
 - e. Hunt groups and hunt assignments;
 - f. User line appearance(s) on telephone sets other than the prime user's telephone;
 - g. Auto attendant and dialed selection trees;
 - h. Recording or Auto attendant greetings and tree selection announcements; and
 - i. Enhanced feature parameters and configuration.

4.2 Customer Provided Broadband Services. Any other provision to the contrary notwithstanding, Customer may access the XO Hosted PBX Service through Customer provided broadband services, or other WAN access service provided by Customer that extends XO IP VPN Network services, to a service location detailed in the Service Order under the following conditions:

- a. XO makes no guarantee or representation to any performance SLA, QoS, or operation of Hosted PBX Service when accessed through Customer provided broadband services or Customer provided WAN access service.
- b. Customer is responsible for procurement, sizing, installation, configuration, and operation of Customer provided broadband services or Customer provided WAN access service.
- c. Customer is responsible for the maintenance, repair, and replacement of Customer provided broadband service or Customer provided WAN access service.
- d. Customer shall be responsible for the installation and activation of XO provided Hosted PBX equipment upon confirmation from XO of Hosted PBX service provisioning. XO will provide Customer the toll free number to contact the XO National Activations Center for remote activations support.
- e. The total number of XO provided Hosted PBX phone sets shall not exceed fifteen (15) at any one service location utilizing Customer provided broadband services or Customer provided WAN access service.

- f. Customer shall have at least one (1) service location with no fewer than twenty (20) Hosted PBX phone sets utilizing XO IP VPN Network services.
- g. Customer shall utilize XO IP VPN Network services for Hosted PBX service at the service location carrying the highest volume of voice traffic as determined by XO.
- h. XO shall provide remote Service and Support of XO provided Hosted PBX equipment. Service and Support is defined in Section 7.2.
- i. Network at Customer's Service location meets the XO VoIP readiness requirements set forth in Section 4.1; and
- j. Hosted PBX Services are not available outside of XO service area.

4.3 E911 Capability. To receive Hosted PBX Service, Customer must review and acknowledge acceptance of a Disclosure Addendum indicating that any E911 calling capability associated with Service: (a) may not be available during an electrical power outage affecting the Service location; (b) will not be available if Customer's broadband connection service has been disrupted and not restored; (c) will not be available if Service has been discontinued for any reason, including Customer non-payment; (d) may not be available or may be routed to emergency personnel unable to respond at locations other than the location for which a Service address has been furnished to XO; (e) may not be available or may be routed to emergency personnel unable to respond if Customer has disabled or damaged XO-provided router, Quality of Service ("QoS") device, or other Hosted PBX-specific equipment or removed it to a location other than one for which a Service address has been provided to XO; or (f) may be delayed or unavailable due to network congestion or other problems affecting the network. Customers are encouraged to acquire and maintain alternative means of accessing E911 service and to inform their authorized users of emergency calling alternatives available to them. XO shall not be liable for either: (1) the misrouting of any calls made to PSAPs or to municipal emergency service providers; or (2) any information provided to PSAPs by a third party Private Switch Automatic Location Information ("PS/ALI") vendor used by Customer.

4.4 Nomadic 911 Service. The Nomadic 911 Service enables the routing of E911 emergency calls from a particular Customer Premises where a Service is established, as well as any location other than such Customer Premises, to the appropriate public safety answering point ("PSAP"), designated statewide default answering point, or appropriate local emergency authority as required that serves Customer's or its End User's physical location. In order to utilize XO's Nomadic 911 Service, Customer must comply with the Nomadic 911 Service Terms and Conditions set forth at www.terms.xo.com and use the Nomadic 911 Service for each telephone number that can be used at a location other than the particular Customer Premises at which a Service is being provided by XO. Customer is prohibited from making 911 calls via XO's Hosted PBX Service from any location other than the particular Customer Premises at which Hosted PBX Service is being provided by XO, unless Nomadic 911 has been implemented by Customer's administrator. Nomadic 911 Service is not available for telephone numbers for which Customer uses a PS/ALI vendor.

4.5 XO WorkTime Feature. XO WorkTime is an application of XO's VoIP services that allows Customers to use their existing or XO-provided telephone numbers ("TN") as a mobile application. Customers must provide their own devices and such devices must be Operating System compatible (i.e., Android or Apple iOS). XO WorkTime includes voice and video calling. Data usage is not included with XO WorkTime and must be provided by Customer. There are no guarantees or SLAs associated with XO WorkTime. Customer is authorized to originate calls using XO WorkTime from the United States. Nomadic 911 is included with the PC [and Tablet] version[s] of XO WorkTime. Customers that are using [either] the PC [or Tablet] version of XO WorkTime must comply with XO's Nomadic 911 Terms and Conditions set forth at www.terms.xo.com and use the Nomadic 911 Service for each telephone number that can be used at a location other than the particular Customer Premises at which Service is being provided by XO.

5.0 Local Services

Hosted PBX includes unlimited local calling minutes subject to the Usage Requirements described below, which includes features such as Local Directory Assistance, Local Operator Services and Directory Listings at the rates set forth at www.terms.xo.com.

Hosted PBX includes unlimited 'Site to Site' Calling (i.e., calls for customers with multiple locations calling

between locations are included at no additional charge). This Hosted PBX benefit does not apply to multi-location customers who subscribe to both Hosted PBX and XO IP Flex, XO IP Flex with VPN, XO IP FLEX and XO IPBX (when XO IP Flex is used for connectivity).

6.0 Long Distance Services

Long Distance Services refers to long distance usage outside of the local calling area (i.e., IntraLATA, Intrastate, Interstate and International). Unless otherwise set forth on XO's website at www.terms.xo.com with respect to specific Long Distance Plans, all Domestic Long Distance calls (i.e., IntraLATA, Intrastate, and Interstate calls) for the below listed Long Distance products are billed in six (6) second minimums and six (6) second increments and rounded to the nearest penny. All other Long Distance calls, such as International Long Distance calls, will be billed in XO standard billing increments in accordance with the terms and conditions set forth at www.terms.xo.com. If in any given month more than ten percent (10%) of Customer's Long Distance calls are six (6) seconds or less in duration ("Short Duration Calls"), then XO will bill, and Customer agrees to pay, a surcharge of one penny (\$.01) per call for such Short Duration Calls to be billed by XO in the following month or quarter, depending on the review period, as determined by XO.

Hosted PBX Service includes several long distance rate plans which are set forth at Message Toll (Dedicated, Dial Tone and Switched Long Distance Services) Product Rates and Charges at www.terms.xo.com.

7.0 Equipment

7.1 XO-provided Equipment. Equipment provided by XO and delivered to Customer is only to be used in conjunction with the Hosted PBX Service and Customer is not authorized to use the Equipment for any other purpose. Customer is obligated to comply with all documentation and manufacturer's instructions that accompany such Equipment as strict adherence to technical documentation is required for warranty pass-through. Any violation of the preceding sentence will be considered a Default pursuant to the terms of the Agreement. Customer will take all reasonable measures to protect and care for the Equipment as it would its own equipment. Customer shall be responsible for all loss, damage or destruction of the Equipment from the date of delivery to Customer's premise until the date the Equipment is removed from Customer's premises by XO or its contractors or agents. Upon termination or expiration of the Agreement, the Equipment must be in the same condition as when originally delivered, normal wear and tear accepted. If Equipment cannot be recovered by XO, or if Equipment is damaged beyond the ordinary wear and tear resulting from its use, Customer will be liable to XO for either the replacement value of the Equipment or its repair costs, both of which shall be determined by XO. Under no circumstance may Customer or its employees, agents, contractors or subcontractors move the Equipment furnished as part of the Service outside of the facility in which it was installed without prior XO approval.

7.2 XO shall furnish Service and Support of XO provided Equipment only during the Hosted PBX Service Term, provided that the Equipment is used by Customer in compliance with these terms and conditions. For the purposes of this Exhibit, "Service and Support" is defined as fault isolation and diagnosis, hardware replacement for defective hardware, and software updates for defective software.

7.3 Customer-provided equipment. Customers providing their own equipment shall present an itemized list of equipment to be activated in conjunction with the Hosted PBX Service. All Customer equipment shall meet all manufacturer's interoperability specifications and vintage or firmware requirements for solution. Customer is responsible for all costs associated with any necessary upgrade of its equipment required to meet manufacturer interoperability specifications. Customer shall refer to the XO Hosted PBX Support website at www.xo.com/care/notices/Pages/hostedpbxsupport.aspx for a list of the supported vintage and firmware requirements.

7.4 XO will not provide service to or support any Customer provided equipment or hardware. If, after diagnosing a problem with the Service XO determines that the Customer provided equipment or hardware is the cause of the problem, Customer will be responsible for servicing such equipment or hardware.

7.5 For Customer provided equipment, Customer acknowledges and accepts the following:

- a. There is no guarantee that Customer provided equipment or any of Customer's previously purchased and installed IP phone set manufacturer-specific software or feature module will work with XO Hosted PBX Service.

- b. All Customer provided equipment must be in sound working order. Any defective cord, cable, or other components that impact the proper configuration, testing and operation of the equipment will be notated by the XO technician, and must be replaced at the Customer's expense.

After completion of the re-flash of Customer provided equipment, Customer will no longer have administrative access to said equipment.

7.6 For XO to re-flash and re-configure Customer provided equipment and to download Hosted PBX service settings to Customer provided equipment, Customer is responsible for the following:

- a. Customer must provide XO with phone administrator password(s) or alternatively the "unlock" password(s) that Customer must obtain from current service provider.
- b. All Customer provided phone sets must be reset to factory default mode in order to re-flash and re-configure Customer provided phones.
- c. If available, Customer may provide XO with additional Customer provided equipment to be connected to the Customer's existing public Internet access. This will assist XO technicians in the site survey at validating the amount of time to be allocated for the re-flash and re-configuration of the Customer provided equipment.

Customer provided phones must have a firmware version that meet's XO's minimum requirements. If the firmware release is not at that level, Customer bears the responsibility of upgrading the phones' firmware prior to their Hosted PBX site survey. Customer shall refer to the XO Hosted PBX Support website at www.xo.com/care/notices/Pages/hostedpbxsupport.aspx for a list of the supported firmware requirements.

7.7 Equipment Purchased Through XO. Customer may purchase equipment through XO for use in connection with Service. Such equipment in all instances will remain the responsibility of Customer and under no circumstance will XO's responsibility with respect to the provisioning of Service extend to such Customer's equipment.

7.8 QoS Monitoring. For purposes of monitoring the Service quality and diagnosing root cause of Service-impacting issues, XO will install a QoS device during CPE installation at the Customer Premise. This CPE securely routes traffic data to the XO Service cloud for Customer and/or site-specific analysis.

8.0 Hosted PBX Service Delivery

8.1 Hosted PBX service delivery will be completed during normal business hours, Monday through Friday, 8AM - 5PM local Customer time, excluding XO holidays. Delivery of Hosted PBX services outside of normal business hours may be subject to additional charges that will be presented to Customer through the Order Change Management process defined below.

8.2 Program Management. XO may provide a remote Program Manager to be Customer's primary point of contact throughout the Hosted PBX service delivery process. The Program Manager is responsible for:

1. Coordinating the installation and activation of XO provided Equipment and network service;
2. Co-developing project plan with Customer to include mutually agreed upon project schedule and milestone dates;
3. Providing Customer with all associated circuit order numbers;
4. Providing and maintaining the project schedule;
5. Coordinating with Customer all project related tasks, including:
 - i. Hosted PBX equipment procurement and shipping;
 - ii. Hosted PBX programming and database collection;
 - iii. Building access for technicians and network services
 - iv. Completing the Hosted PBX site survey with Customer
 - v. Delivery, installation, and testing of XO network services
 - vi. Delivery and installation of Hosted PBX equipment,
 - vii. Hosted PBX service activation
6. Documenting order changes and facilitating the order change management process.

8.2.1 Order Change Management. Customer requested changes may result in additional charges to those listed in the SOA and may impact the project timeline as defined by the XO Program Manager. XO Program Manager will coordinate all project changes received prior to the designated change freeze date with the Customer-designated contact and facilitate changes to the project through XO's change management process prior to XO performing work. Change requests received following the change freeze date will be processed through the Moves, Adds, and Changes process outlined in Section 12.4. XO will present Customer with a Job Change Order ("JCO") request that includes applicable service charges. Customer must notify XO Program Manager of JCO approval in writing. Changes include:

1. The addition or change of hardware components and/or software license quantities provided for within the Service Order;
2. Changes in the Hosted PBX Service Delivery Description;
3. Any XO-performed modification to network services once Customer has provided network order acknowledgement and XO has provisioned network service to accommodate network service activation;
4. Requests for additional professional services;
5. Delays in the project caused by Customer readiness;
6. XO technician dispatch cancellation without 24-hour notice; and
7. Upon a finalized project delivery schedule, any delays not directly caused by XO or any XO subcontractors.

8.3 Project Kickoff. The XO Program Management will coordinate a project kickoff conference call with the designated Customer project contacts to review the following:

1. Service Order and Hosted PBX Service Delivery milestones and required XO deliverables;
2. Review customer deliverables; and
3. Coordinate Hosted PBX site survey.

8.4 Site Survey. A XO technician will be dispatched to Customer's service location to inspect and verify the following:

1. Customer provided environment meet XO and/or manufacturer's requirements;
2. XO will determine if sufficient network cable/wire facilities are present between the building minimum point of entry (MPOE) and the Customer's desired network service termination point (DMARK); and
3. The XO technician will determine if sufficient station-level cable / wire facilities are present between the Customer's desired network service termination point and the respective IP endpoint locations.

8.5 Service Extension Charges. XO will terminate Service at no additional charge at a minimum point of entry ("MPOE") on Customer or End User Premises. The MPOE will be determined in all instances solely by XO. If Customer needs an extension of Service beyond the MPOE (and XO is willing to provide the extension), the charge for such extension will be as set forth at www.xo.com/SiteCollectionDocuments/information/Rates_Charges/dedicated_transport_service_charges.pdf. If, after preparing to begin work on Customer or End User Premises, XO determines that additional work is required, XO will so advise Customer and the Parties will agree in writing to any additional charges before XO continues with the work.

If XO, or its Hosted PBX installation vendor, determines that there are insufficient station-level cable/wire facilities to deliver the services detailed in the SOA, Customer understands that Customer will install, at Customer expense, new / additional cable/wire facilities between the desired network installation point and the user desktop locations required for XO to fulfill the Hosted PBX services delivery.

The Hosted PBX site survey may be conducted in collaboration with XO network service delivery.

8.6 Hosted PBX System Configuration and Set Up. XO will configure and set up the Service and IP Phone Sets as specified by Customer in the Hosted PBX Planning Guide. Hosted PBX phone sets may be shipped directly to Customer's service location and will be configured in accordance with manufacturer's published specifications. XO may impose additional costs to configure certain features.

8.7 XO IP VPN Network Services and Hosted PBX Phone Set Installation. XO IP VPN network services will

be ordered and delivered in accordance with standard industry processes and procedures. Upon successful installation and testing of network facilities on the designated Firm Order Commitment date established by the incumbent local exchange carrier, XO will install network routing and QoS monitoring equipment in preparation for the Hosted PBX Service activation date. At that time, XO may install and activate a limited number of Hosted PBX phone sets to validate customer LAN readiness.

8.8 Hosted PBX Service Activation by Service Location. The XO Program Manager will coordinate a conference bridge with XO National Activations Center and designated Customer contacts for the activation and testing of Hosted PBX Service. XO will install and test each XO provided phone set for proper user name, extension, location and basic operation. XO will install and test all analog terminal adapters for basic operation.

8.9 Hosted PBX System Training and Administration. XO will provide Customer with web-based training videos and user guides sufficient for Customer to learn all available Hosted PBX system administrative and phone set portals and phone set features and functionality. It is Customer's responsibility to complete the web-based training courses available on the Hosted PBX Support website at www.xo.com/care/notices/Pages/hostedpbxsupport.aspx. Additional remote or on-site Hosted PBX system / phone set training are available upon Customer request for an additional charge. Terms and conditions related to this training is set forth at www.terms.xo.com. XO will pass through to Customer any third party costs XO incurs as a result of Customer cancelling or re-scheduling training less than ten (10) business days prior to the scheduled training session. Hosted PBX system administration is outlined in Section 12.3.

9.0 Customer Representations and Warranties

In addition to the representations and warranties as set forth in the Agreement, Customer acknowledges that the Hosted PBX Service governed by the Agreement is subject to U.S. export laws and regulations and that any use or transfer of the Hosted PBX Service must be authorized under those laws and regulations. Further, use of the Hosted PBX Service outside of the U.S. may subject Customer and/or Customer's End Users to export or import regulations in other countries. Without limiting the foregoing, goods, software or technical data related to the Hosted PBX Service are prohibited for export or re-export to Cuba, Iran, Sudan, North Korea, Syria or foreign nationals thereof, or any other country that is subject to U.S. economic sanctions or comprehensive export controls restricting such export or re-export, as well as to persons or entities barred from engaging in export transactions by the U.S. Departments of Commerce, State or Treasury (see Country Group E at http://www.export.gov/ecr/eg_main_023148.asp, as such list may be updated from time to time). Customer represents and warrants that it will comply with such export controls set forth above. Customer is responsible for notifying its End Users of such restrictions and agrees to be responsible for End Users' use. Customer will not use, distribute, transfer or transmit, directly or indirectly, information or any immediate product (including processes and services) utilizing the Hosted PBX Service, except in compliance with U.S. export laws and regulations.

10.0 Disclaimers and Limitation of Liability

IN ADDITION TO THE LIMITATION OF LIABILITY AS SET FORTH IN THE AGREEMENT, XO DISCLAIMS ANY AND ALL LIABILITY ARISING OUT OF THE DELIVERY, INSTALLATION, SUPPORT OR USE OF ANY SOFTWARE. XO ASSUMES NO OBLIGATION TO CORRECT ERRORS IN ANY SOFTWARE. CUSTOMER UNDERSTANDS AND ACCEPTS ALL RESPONSIBILITY FOR ANY SOFTWARE MEETING CUSTOMER'S REQUIREMENTS OR EXPECTATIONS.

XO PROVIDES, AND CUSTOMER HEREBY ACCEPTS, ANY XO OR THIRD PARTY HARDWARE OR SOFTWARE PROVIDED TO OR USED BY CUSTOMER IN CONNECTION WITH THE SERVICES "AS IS" WITH NO EXPRESS OR IMPLIED WARRANTIES OR CONDITIONS OF ANY KIND, INCLUDING, WITHOUT LIMITATION, WARRANTIES OF MERCHANTABILITY, TITLE, NON-INFRINGEMENT OR FITNESS FOR A PARTICULAR PURPOSE. NOTHING HEREIN SHALL BE INTERPRETED TO ENHANCE OR CREATE ANY WARRANTY WITH RESPECT TO ANY THIRD PARTY SOFTWARE. XO DISCLAIMS ANY AND ALL LIABILITY ARISING OUT OF THE DELIVERY, INSTALLATION, SUPPORT OR USE OF ANY SOFTWARE. XO ASSUMES NO OBLIGATION TO CORRECT ERRORS IN ANY SOFTWARE. CUSTOMER UNDERSTANDS AND ACCEPTS ALL RESPONSIBILITY FOR ANY SOFTWARE MEETING CUSTOMER'S REQUIREMENTS OR EXPECTATIONS.

11.0 Service Level Agreements and Associated Credits

11.1 Network. The Wide Area Network ("WAN") Service Level Agreement ("SLA") set forth at www.terms.xo.com apply and are incorporated herein by reference unless Customer has executed a WAN Services Exhibit, in which case, the SLAs set forth in the WAN Exhibit will apply.

11.2 Voice. For Hosted PBX Voice Service outages due exclusively to the fault or failure of XO, Customer, after an outage has been reported and the fault or failure is shown, will receive credit based on the monthly recurring charge (MRC) for the applicable Hosted PBX Voice Service as follows:

- 1 hour to 4 hours 1/4 day credit
- 4 hours to 8 hours 3/4 day credit
- 8 hours to 24 hours 1 day credit
- Over 24 hours 1 day for each 8 hour period over 24 hours

11.3 Credit Limits and Reporting Procedures. Total credits under this SLA are limited to 100% of the MRC for the affected XO Hosted PBX Service for the month in which Service does not meet the guarantees. The above guarantees do not include the local access circuit (e.g. local loop), Customer Premises Equipment (router or CPE) or Customer's Local Area Network (LAN), scheduled maintenance events, Customer caused outages or disruptions, interconnections to or from and connectivity within other Internet Service Provider (ISP) networks, and force majeure events (as defined in the relevant service contract).

To report a Service failure and request an SLA credit, Customer must call XO Customer Care at 1.888.575.6398 within 10 business days of the service outage or service affecting issue.

12.0 HOSTED PBX SERVICES AND SUPPORT

12.1 HOSTED PBX EQUIPMENT AND SERVICES SUPPORT. After Hosted PBX Service activation, Customer will be required to contact XO Customer Care to report Hosted PBX and/or XO network service repair issues, or to request moves, adds, changes to the Hosted PBX and XO network services. Only the authorized Customer representatives may request changes to XO Hosted PBX and network services.

If XO, or its contractors and agents, provide and continue to own the Equipment needed for Customer to use Hosted PBX Service, then during the Initial Term or any renewal thereof, XO or its designee shall furnish Service and Support of the Equipment when required, provided that the Equipment is used in compliance with XO's normal operating instructions and not abused or modified by Customer. Customer will be responsible for making any requests for Service and Support by contacting XO via telephone or by giving XO written notice. For the avoidance of doubt, XO will not furnish Service and Support for Customer provided equipment and all costs or expenses related to fault isolation, diagnosis, hardware replacement and software updates for Customer-provided equipment will be Customer's sole responsibility.

12.2 Details regarding XO's Services and Support are as follows:

1. XO Network and Hosted PBX Service Coverage Hours. XO Network and Hosted PBX Service and Support is provided on a 24 x 7 x 365 basis.
2. Hosted PBX Service Repair Response Intervals. Hosted PBX Service Repair Response interval is measured from the time Customer initiates requests for Service and Support by contacting XO via telephone or by giving XO written notice. Service and Support work will be performed during Customer's coverage hours. XO's response to Customer's request for Service and Support will include contacting Customer, remotely accessing the equipment or by dispatching technical resources to Customer's Premise. XO will then diagnose and remedy the fault. XO's repair response intervals for Hosted PBX Services are stated below:
 - a. Priority 1: Within (4) hours of a properly reported request for service and support service.
 - b. Priority 2: Within (8) XO business hours of a properly reported request for service and support service.
3. Definition of Service and Support Priority:
 - a. Priority 1: A problem which makes the continued use of one or more critical functions impossible (or severely restricted). Any defect that severely risks business operations. Problem may cause

- loss of data and/or restrict data availability and/or cause significant financial impact, such as:
- i. 50% or more of the SIP endpoints cannot receive or place calls or retrieve voicemail.
 - ii. An outage of the main business number for the Customer's site
 - iii. An outage of the automated attendant
- b. Priority 2: A problem which severely affects or restricts major functionality. The problem is of a time sensitive nature and important to long term productivity but is not causing an immediate work stoppage. Operations can continue in a restricted fashion, such as:
- i. 20% or more of the SIP endpoints cannot receive or place calls or retrieve voicemail
 - ii. Certain features are not functioning properly or at all
 - iii. Outage of the Web Portal administrative dashboards
- c. Priority 3: A minor condition or error that has no significant effect on an End User's site operations, such as:
- i. Outages of less than 20% of the SIP endpoints
 - ii. A partial Hosted PBX Web Portal administrative dashboard outage or certain functions not working properly
- d. Priority 4: Internal XO work order, non-customer initiated.
4. Hosted PBX-Service and Support includes the provision of replacement XO-provided hardware. Replacement hardware provided as part of Service and Support Services may be refurbished and will be furnished only on an exchange basis. Returned hardware that has been replaced by XO will remain XO's property.
- a. End of Life Equipment.
- i. XO may discontinue, or limit the scope of Service and Support Services, for Equipment that a third party manufacturer has declared "end of life", "end of service", "end of support", "manufacture discontinue", or similar designation ("End of Support") from time to time.
 - ii. XO agrees to notify customer of any hardware and/or software application elements that become End of Support by the manufacturer(s) at any time during the initial or extended service agreement. Upon notification, XO will consult customer as to the impact to the Hosted PBX Service agreement. Consultation will include any recommendation to upgrade, replace, and/or deploy a new technology along with defining any applicable one-time or monthly service charges.
5. XO may electronically monitor supported Equipment for the following purposes:
- a. Remote diagnostics and corrective actions;
 - b. To determine applicable charges;
 - c. To verify compliance with applicable software license terms and restrictions
6. None of the following are included in Service and Support provided by XO:
- a. Diagnosis or support of equipment or software other than supported Equipment provided by XO in connection with the Hosted PBX Service, including without limitation, systems interfacing with supported Equipment;
 - b. Support of user-defined applications;
 - c. Data recovery services;
 - d. Services associated with relocation of supported Equipment;
 - e. Support of Equipment used in breach of applicable license restrictions or contrary to capacity and other use limitations under which the Equipment was licensed by the manufacturer;
 - f. Support of Equipment that have had their serial numbers altered, defaced or deleted;
 - g. Service and Support or repair resulting from any of the following:
 - i. Neglect, misuse, power failures or surges, fault or negligence of any persons other than XO or its contractors, or causes external to the supported Equipment;
 - ii. The combination or integration of non-XO furnished equipment, software, or facilities with supported Equipment (except as provided in the XO documentation);
 - iii. Supported Equipment that have been changed, modified or altered if such changes, modifications or alterations are not performed or directed by XO;

- iv. Changes to the environment in which the supported Equipment were installed;
- v. Any failure to follow XO's or the manufacturer's installation, operation or service and support instructions, including the failure to permit XO timely remote access to the supported Equipment;
- vi. Actions of non-XO or XO authorized contractor personnel; or
- vii. Force majeure conditions outside of XO's reasonable control.

12.3 HOSTED PBX SYSTEM ADMINISTRATION

12.3.1 Hosted PBX System Administration. XO will retain all administrator privileges for hardware and software delivered under the Hosted PBX Service.

12.3.2 Customer System Administration. XO will grant Customer with limited administrator privileges for the purpose of self-administering the XO-provided Hosted PBX Equipment. It is the Customer's responsibility to complete online training of the Hosted PBX Customer Management portal and My Phone User Portal available on the Hosted PBX Support website at www.xo.com/care/notices/Pages/hostedpbxsupport.aspx. Customer shall defend, indemnify, and hold XO, its principals, officers, directors, agents, and employees harmless from and against any loss, cost, damage, liability, claims and expenses of any kind arising directly or indirectly from the installation, operation, maintenance and repair of XO-provided Customer Equipment, or from Customer's or any of Customer's subcontractors' or agents' acts or omissions including, but not limited to, reasonable attorneys' fees and court costs, except to the extent such loss, damage, cost or expense is due to the gross negligence or willful misconduct of XO, its employees or agents.

Web Portal and Passwords - The Service includes Customer secure access to web portals for viewing, configuring and managing available options and features within the allowable permissions for Customer administrators and end users. Call Detail Records are viewable in the portal by both administrators and end users.

Customer agrees that all administrators and end users will utilize XO-provided training materials and use reasonable commercial efforts to perform all available portal functions themselves. XO may optionally assist a Customer by performing a portal function remotely on behalf of a Customer should the Customer experience difficulty or be in an emergency situation. In the event Customer requires XO to fully manage the functions available to the Customer via the portal, XO reserves the right to charge applicable Professional Service fees.

Customer administrators and users are responsible for the security of all user ID and password information. This agreement applies to all IDs and passwords associated with the Services account. By enrolling for and using the Services, Customer accepts sole responsibility for the security and confidentiality of all passwords, including immediately updating temporary passwords sent to users via email for their initial portal login.

Accidental or unauthorized disclosure of passwords or user ID or inappropriate use may have serious consequences and XO shall have no liability for failure to securely maintain this information. Additionally, Customer remains responsible for the use of each of its accounts, whether used under any name or by any person, and for ensuring full compliance with this agreement by all users of the account. In the event of a breach of security through Customer's account, immediately contact XO customer service.

12.4 CUSTOMER MOVES, ADDS, CHANGES AND UPGRADE POLICY

Only authorized Customer contacts can request changes to the Hosted PBX Service that cannot be performed via the Hosted PBX customer portal. XO will provide Customer with an order number and a requested service date. Note that certain remote changes may require a reboot of the phones(s) to take effect. All Moves, Adds, and Changes performed by XO will be charged at then current service rates.

Upgrades. Upgrades will be co-terminus with the current service agreement unless otherwise defined within amended contract.

- a. Customer will be charged and agrees to pay a non-recurring charge as designated by XO in connection with related configuration, installation and training.
- b. XO will adjust and Customer agrees to pay applicable additional monthly recurring charges for equipment and service and support services charges associated with Customer approved equipment and service and support service additions.

Upgrades requested in last 6 months of the term of the Agreement are subject to XO review and approval and may require a new term agreement. If upgrade requires new hardware, software and on-site installation and less than half of the term of the Agreement remains in place, then a new agreement may be required at XO's discretion.

13.0 Acceptable Use Policy. Customer acknowledges that it has reviewed the XO Acceptable Use Policy ("AUP") which may be found at <http://www.xo.com/legal-and-privacy/acceptable-use/> 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.

14.0 Call Recording. Call Recording is available as an optional feature for an additional cost. XO recommends Customers interested in recording calls consider seeking the advice of a qualified attorney before engaging in any recording activity. There are both federal and state statutes governing the use of recording technology, including single- and multi-party consent requirements, industry standards, business exceptions, and evidentiary issues. See *e.g.*, <http://transition.fcc.gov/cgb/consumerfacts/recordcalls.pdf>. (This information is provided for informational purposes ONLY and is not intended to offer legal advice regarding Customer's compliance obligations regarding any particular use of call recording technology.) By using the Call Recording feature, Customer represents and warrants that it is familiar with, understands and will abide by applicable laws, standards, rules and expectations concerning electronic recording of telephone conversations and the legality of Customer's recording activity. The unauthorized or unlawful use of such technology can result in civil and criminal penalties, among other consequences, to Customer's business. XO is not legally responsible for Customer's call activity, for any lack of Customer's knowledge, understanding or interpretation of any applicable rules, whether or not Customer's call recording activities are legal or illegal and regardless of the nature of the calls being recorded (e.g. if information that is sensitive or subject to any protection is being recorded). Customer will defend and indemnify XO, its Affiliates and their respective employees, directors, officers and agents, from and against any and all losses, expenses, costs, liabilities, including reasonable attorneys' fees, arising out of any suit, proceeding or other claim brought by a third party which is caused by, arises from or relates to Customer's use of the Call Recording feature.

15.0 Hosted PBX Concierge. Hosted PBX Concierge is an optional feature that may be added to the Hosted PBX Service for an additional fee that allows Customers to outsource to XO certain administrative functions (e.g., adding, deleting or changing phone numbers).

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