

## **XO™ Server Collocation**

If Customer requires a cross connect to a telecommunications circuit facility, Customer must coordinate such cross connect with XO and comply with XO operational procedures and requirements. If Customer exceeds its committed rate of bandwidth, Customer may be subject to additional charges for each Mbps of usage over its committed rate. Any additional charge will not exceed one hundred twenty-five percent (125%) of its current \$/Mbps charge. As an alternative to paying the additional charge, Customer may increase its committed rate of bandwidth to a level commensurate with its higher usage.

The service level agreement (SLA) associated with Server Collocation services may be reviewed at: <http://www.xo.com/legal/sla/dia.html?f=dedicatedhosting>. The terms and conditions of the SLAs which may be updated from time to time, are hereby incorporated by reference. Customer agrees to check back to the SLA web site periodically to review any changes to the SLA. For purposes of this SLA the term "backbone" shall mean the circuitry, components and facilities that provide a path from the Data Center Gateway routers, including the Data Center Gate routers, themselves, to the peering points of the XO Network. The SLA credits granted in accordance with the applicable SLA shall represent the sole and exclusive remedy for XO's failure to perform.

### **LICENSE TO OCCUPY AND PERMISSIBLE USE OF SERVICES**

Subject to the terms provided below, XO hereby grants to Customer a license (the "License") to install, operate, maintain, and repair a communications system, associated equipment, lines and cables connected thereto, and/or hardware server(s) and its associated cables (collectively, the "Equipment") in a portion of the Premises depicted in the Server Collocation Schedule incorporated by reference and made a part hereof (the "Equipment Space"). As defined herein, the term "Equipment" shall mean only transmission equipment, such as optical terminating equipment and multiplexes, including but is not limited to the server hardware and other associated equipment necessary for the support of such hardware. The term "Equipment" shall specifically not include voice circuit switching equipment. Customer shall co-locate the Equipment with XO's communications facilities and associated equipment (the "Facilities") at the Premises.

Customer shall use the Equipment Space and the Equipment installed within the Premises solely to provide communications services to or for the benefit of its customers. Such usage is further subject to the provisions of the individual Server Collocation Schedule. Customer shall not prohibit or interfere with the use of the Premises or any portion thereof, by XO or other tenants, customers or occupants of the Premises. Customer shall not sublicense, lease, rent, share, resell or allow the use of the Equipment or Equipment Space, in whole or in part, by any third party, including but not limited to other providers of computer or communications services, without XO's prior written consent.

XO reserves the right to grant, renew or extend similar licenses to others for locating equipment and facilities in the Premises. Customer acknowledges that it has been granted only a license to use and occupy the Space and that it has not been granted, nor does it possess, any real property interests in the Space. No use of the Space or XO Location by Customer or payment of any charges required under this Agreement shall create or vest in Customer any easements or other ownership or real property interest of any kind or nature.

XO shall allow Customer to connect the Equipment to the XO Facilities in accordance with industry-accepted practices and procedures.

**Liens.** Customer shall be responsible for the satisfaction or payment of any liens for any provider of work, labor, material or services claiming by, through or under Customer. Customer shall also indemnify, hold harmless and defend XO against any such liens, including reasonable attorneys' fees. Such liens shall, at XO's discretion, be discharged by XO within thirty (30) days after notice of filing thereof by bonding, payment or otherwise, provided that Customer may contest any such liens in good faith and by appropriate proceedings.

## **TERM AND TERMINATION**

**Term.** Based on Customer's requested service date, XO will notify Customer of the "Start of Service Date". The term of the License to occupy each Equipment Space shall begin on the Start of Service Date provided for each individual Server Collocation Schedule or on the date that XO completes the build-out of the Equipment Space, whichever is later. In the event that Customer does not accept the Equipment Space within seventy-two (72) hours of XO's build-out completion, XO will begin billing for the Space. The minimum term of Customer's License to occupy the Equipment Space shall be the period set forth in each individual Collocation Schedule (the "Term"). In the event that XO is delayed in tendering possession of the Equipment Space to the Customer for any reason other than the acts or omissions of Customer, Customer shall not be obligated to pay the Service Fees (as defined in the applicable Collocation Schedule) set forth in the Collocation Schedule until such time as XO tenders possession of the Equipment Space to Customer. Except as provided herein, XO shall not be liable to Customer in any way as a result of such delay or failure to tender possession.

**Reservation Rights.** XO reserves the right to grant, renew or extend similar licenses to others for locating equipment and facilities in the Premises. Customer acknowledges that it has been granted only a license to use and occupy the Space and that it has not been granted, nor does it possess, any real property interests in the Space. No use of the Space or XO Location by Customer or payment of any charges required under this Agreement shall create or vest in Customer any easements or other ownership or real property interest of any kind or nature. If this Agreement shall be construed by the landlord or the sub-landlord of the XO Location (if applicable) to be a violation of the lease or sublease under which XO occupies the XO Location, then upon the request of XO, Customer shall either enter into an agreement approved by such landlord or sub-landlord, or immediately remove Customer's Equipment from the XO Location. XO agrees to use commercially reasonable efforts to cooperate with Customer in obtaining the approvals Customer may need to obtain from the landlord or sub-landlord.

**Termination and Cancellation Charges.** If Customer chooses to end a License for any site prior to the end of the contracted Term for the site, the Customer will be responsible for a cancellation charge equal to the monthly recurring charges for the site multiplied by the number of months remaining in the contracted term. It is agreed that XO's damages in the event of Service cancellation shall be difficult or impossible to ascertain. These provisions are intended, therefore, to establish liquidated damages in the event of cancellation and are not intended as a penalty. In addition, if Customer fails to pay any invoice(s) for thirty (30) days or more from the date of such invoice as set forth in the Agreement, Customer shall be denied access to the Premise until such time as the invoice(s) has been paid in full.

**Termination for Breach.** In addition to the termination for default provisions set forth in the Agreement, any of the following events shall also be considered a material breach of the Agreement whereby XO may terminate the Services, in whole or in part, provided under this Agreement, including any individual Server Collocation Schedule:

1. interference or damage caused to Facilities or other equipment or facilities

- at the Premises by the installation, operation, maintenance, replacement or repair of the Equipment, which breach must be cured within twenty-four (24) hours;
2. if Customer abandons or deserts the Equipment during the Term hereof or Customer removes from the Premises (and does not replace or substitute equipment for) all of the Equipment;
  3. Customer's failure to complete all installation activities within one (1) month of the Effective Date; or
  4. cancellation of this Agreement or an individual Server Collocation Schedule either prior to or after Customer has taken possession of the space and/or XO has begun the build-out of the requested space.

## **ACCESS TO PREMISE**

Subject to XO's operational rules and regulations related to XO's Server Collocation Services, including XO's reasonable security measures, and Customer's agreement to comply with such rules and regulations, XO shall provide Customer reasonable access to the Premises, including the Equipment Space, so that Customer may perform installation, operation, maintenance, replacement and repair functions (to the extent that Customer has not contracted with XO to provide such services). XO may, in its sole discretion, limit Customer's access to a reasonable number of authorized Customer employees or designees. All such access and other activities shall be further subject to Customer's providing XO with at least twenty-four (24) hour advance notice. During such access, Customer must be accompanied at all times by XO's designated representative. Customer shall not interfere with any other customers of XO, or such other customers' use of an XO Premise. Customer shall provide full and free access to XO to the Equipment at all times.

**Subcontractors.** Customer may subcontract any portion of work within the Premises contemplated by this Agreement to any entity competent to perform such work. Customer must obtain XO's written approval before utilizing any subcontractor to perform any activities under this Agreement and provide evidence that subcontractor maintains the same or additional insurance coverage as Customer. In no event shall such subcontract relieve Customer of any of its obligations or liabilities under this Agreement for its subcontractors.

## **CUSTOMER'S COVENANTS AND WARRANTIES**

Customer hereby covenants and warrants that it will:

1. keep the Equipment Space and the Equipment in good order, repair and condition throughout the Term and to promptly and completely repair all damage to the Premises caused by Customer;
2. comply with federal, state and municipal laws, orders, rules and regulations applicable to its activities and the Equipment;
3. not disrupt, adversely affect or interfere with other providers of services in the Premises or with any occupant's use and enjoyment of its leased premises or the common areas of the Premises;
4. pay its monthly License fee when due and to provide written notice to XO if such payment is disputed;
5. hold, obtain or maintain, at Customer's sole expense and prior to the installation of any Customer Equipment, all leases, licenses, authorizations, permits, rights of way, building access agreements and easements ("Authorizations") necessary to install and operate Customer's Equipment within the XO's Location(s);
6. interact with Data Center management personnel with regard to power requirements including, if applicable, third party power strips that may not be used without the express written consent of Data Center management;
7. not utilize any power circuit beyond eighty-five percent (85%) of the

maximum capacity of the XO-provided power strip (rated at 15 amps) or seventy percent (70%) of another power strip authorized for use by XO on an individual case basis. If any use exceeds these maximums, XO, without notice, may take emergency corrective action to disable the circuit and all others with power strips that do not self-trip or reset to an acceptable threshold. Such disabling will not affect the Customer's obligation to pay for the circuit(s). From time to time, XO may conduct power audits to ascertain whether Customer is operating in full compliance with these capacity limitations. Any Customer found to be operating in variance of these limitations will be sent a fourteen (14) day notice to remedy the variance, assuming earlier action is not required to disable the circuit(s) in order to protect life and property. Failure to remedy a noticed variance may result in one or more of the following: i) installation by Data Center Operations of new circuit(s) for which Customer will incur circuit, power strip, remote hands and other charges associated with the installation(s); ii) suspension of application of SLA until power variance is remedied; iii) charging for SLA credits awarded other customers adversely affected by Customer's power variance; iv) removal from operation of any circuit that is in variance; or v) termination of Service without further notice and the imposition on Customer of liabilities associated with the termination.

## **ENVIRONMENTAL RESPONSIBILITY**

XO and Customer agree to comply with applicable federal, state and local environmental and safety laws and regulations including U.S. Environmental Protection Agency (EPA) regulations issued under the Clean Air Act, Clean Water Act, Resource Conservation and Recovery Act, Comprehensive Environmental Response, Compensation and Liability Act, Superfund Amendments and Reauthorization Act and the Toxic Substances Control Act and OSHA regulations issued under the Occupational Safety and Health Act of 1970 ("EH&S Laws"). Each Party has the responsibility to notify the other if compliance inspections occur and/or citations are issued that impact any aspect of this Agreement or involve XO potential employee exposure.

XO and Customer shall provide notice of known and recognized physical hazards or hazardous chemicals that must include providing Material Safety Data Sheets ("MSDSs") for materials existing on site or brought on site to the Facility. Each Party is required to provide specific notice for potential imminent danger conditions which could include, but is not limited to, a defective utility pole or significant petroleum contamination in a manhole.

Customer owns any materials brought, used or remaining at the Facility by Customer. Customer will indemnify XO for these materials. No substantial new safety or environmental hazards can be created or new hazardous materials can be used at an XO Facility. Customer must demonstrate adequate emergency capabilities for its materials used or remaining at the XO Facility.

Customer should obtain and use its own environmental permits, approvals, or identification numbers, to the extent such permits, approvals, or identification numbers are required under applicable EH&S Laws. If the relevant regulatory authority refuses to issue a separate permit, approval, or identification number to Customer, XO's permit, approval, or identification number may be used, and Customer must comply with all of XO's environmental practices/procedures relating to the activity in question, including use of environmental "best management practices" ("BMP") and/or selection of disposition vendors and disposal sites in accordance with XO's selection criteria.

Customer visitors must comply with XO security, fire safety, environmental and

building practices/codes including any necessary training when working in XO Facilities.

Customer and XO shall coordinate plans or information required to be submitted to government agencies, such as emergency response plans and community reporting. If fees are associated with filing, Customer and XO must develop a cost sharing procedure.

Notwithstanding anything to the contrary, with respect to environmental responsibility as set forth herein, XO and Customer shall indemnify, defend, and hold harmless the other Party from and against any claims (including without limitation, third party claims for personal injury or real or personal property damages), judgments, damages (including direct and indirect damages, and punitive damages), penalties, fines, forfeitures, cost, liabilities, interest and losses approximately caused by the indemnifying Party's neglect or willful misconduct regardless of form, or in connection with the violation or alleged violation of any applicable requirement with respect to the presence or alleged presence of contamination arising out of the indemnifying Party's acts or omissions concerning its operations at the Facility.

Activities impacting safety or environment of a Right of Way must be harmonized with the specific agreement and the relationship between XO and the private landowner. This could include limitations on equipment access due to environmental conditions (e.g. wetland area with equipment restrictions).

## **INSURANCE**

Customer shall maintain such insurance, including through a blanket policy, as will fully protect both Customer and XO from any and all claims by employees of Customer under the Workers' Compensation Act or employer's liability laws, including any employers' disability insurance laws, and from any and all other claims of whatever kind or nature for any and all damage to property or for personal injury, including death to anyone whomsoever, that may arise from Customer's acts or omissions, including without limitation installation, operations, maintenance or repair services, in or around the Premises by Customer or by anyone directly or indirectly engaged or employed by Customer. Customer shall provide XO with certificates evidencing the required coverage before XO begins any installation work or services in or around the Premises and indicating that XO shall be notified not less than thirty (30) days prior to any cancellation or material change in any coverage. Such insurance shall also name XO as an additional insured party under the coverage.

Customer's General Liability Insurance shall be a combined single limit of \$5,000,000.

Insurance described in herein shall be maintained by Customer throughout the term of this Agreement and any period during which any claims arising from this Agreement are or may be outstanding. Upon Customer's default in obtaining or delivering any such policy or certificate of insurance or Customer's failure to pay the premiums therefore, XO may (but shall not be obligated to) secure or pay the premium for any such policy and charge Customer the cost of such premium, or XO may terminate this Agreement without liability to Customer.

## **INSTALLATION AND MAINTENANCE**

The installation and de-installation of racks or cabinets in licensed cage space, regardless of whether XO-provided or Customer-provided, shall be accomplished only through XO or a XO-designated subcontractor. XO will invoice Customer for

installation and de-installation of such racks and cabinets and it is Customer's responsibility to pay XO.

XO provides basic support (RemoteHands™ 1000) at no extra charge. RemoteHands™ 1000 encompasses only the most basic activities of an on-site technician, performed with eyes, ears, and fingers, but without involvement of tools, equipment, physical labor, keyboard, or other data input. Some examples of the basic support XO performs under RemoteHands™ 1000 are as follows:

- Server reboots
- Pushing a button
- Switching a toggle
- Setting an external dip switch
- Securing existing physical connections (for example; cabling)
- Observing, describing or reporting on indicator lights or display information on machines or consoles
- Basic observation and reporting on local environment within XO data center premises

Enhanced support (RemoteHands™ 2000 and RemoteHands™ Professional) is offered for an additional fee.

XO shall not be liable for any damages whatsoever resulting from the Customer's direction and instruction regarding the implementation of enhanced support (RemoteHands™ 2000 and RemoteHands™ Professional).

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