

XO™ Carrier DIA Service Terms and Conditions (Effective July 8, 2011)

1.0 DESCRIPTION OF SERVICE

1.1 Dedicated Internet Access. Carrier Dedicated Internet Access ("CDIA") Service, which includes T1, DS-3, Ethernet, Fast Ethernet, Gigabit Ethernet, OC-3, and OC-12 speeds, provides Internet access to Customer via either a cross-connect or a local loop from Customer's router to a port on the XO Internet access network interface. Where access is provided via a local loop, the local loop is provided by XO between the XO Internet access network interface and Customer's router. Service may involve special routing requests by the Customer or XO. If Customer's router is located in an XO collocation facility, access to Service will be provided to Customer via a cross-connect and will be available to Customer under the applicable XO Telco Collocation terms and conditions. CDIA Service may be provisioned using fiber, copper or wireless access methodologies, or any combination thereof.

1.2 CPE & Maintenance. Service must terminate into an XO-approved router or similar type of equipment ("CDIA Equipment"). CDIA Equipment required for the exchange of traffic between the XO Network and Customer may be furnished by Customer or provided by XO at either no additional charge or for a monthly recurring charge, depending on the speed of Service. If provided by XO, XO will maintain, manage, and support the CDIA Equipment, including all associated router configurations and operational usernames and passwords. Customer must provide XO unrestricted access to XO-provided CDIA Equipment for purposes of testing, upgrading, and other maintenance activities. Customer will provide continuous electrical service to XO-provided CDIA Equipment. XO will not be responsible for management of XO-provided CDIA Equipment if Customer has modified the CDIA Equipment, including making any configuration changes. Customers who provide their own CDIA Equipment will be solely responsible for all router maintenance, management, and support. In addition, Customer must provide a single Layer-3 (IP) interface on Customer-provided CDIA Equipment for the termination of Service. XO will configure a single IP address on the single Layer-3 IP interface. Multiple Layer-3 or Layer-2 interfaces may not be used to connect directly to any single DIA Service Circuit.

1.3 Service Demarcation. The point of demarcation for Service is the physical network location to which Customer-provided CDIA Equipment is connected or, if CDIA Equipment is furnished by XO, the LAN port at which interconnection takes place. Customer will provide XO with access to its or its End User's premises, as necessary, to facilitate Service installation, testing and maintenance requirements.

1.4 Service Provisioning. If XO intends to provide Service or is providing Service in whole or in part using facilities acquired from a third-party service provider including, but not limited to, copper facilities acquired from a serving Local Exchange Carrier, and subsequently ascertains that said facilities are or will be unavailable for use, XO may cancel the affected Service Order, or discontinue the affected Service, without liability or any further obligation to Customer. In addition, if certain facilities proposed for Service are unavailable or deemed by XO to be unsuitable for the Service or speed requested, Customer will be so advised and may request a different Service or speed, which may result in different or additional charges.

1.5 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 requests an extension of Service beyond the MPOE (and XO is willing to accept the request), the Parties will agree in writing to the charge for such extension, which will be established in a Service Order prior to XO's undertaking the work. 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.

1.6 DIA Application Xpress. Upon request by Customer, XO will prioritize Customer's CDIA traffic traversing from XO's edge router to Customer's CPE into two types: voice and data. The charges for this undertaking will be established in a Service Order.

(a) XO will not prioritize Customer traffic across the XO Network or other service provider networks. Customer's CDIA traffic will be prioritized based on the source IP address specified by Customer, in writing, prior to the Start of Service Date. If Customer requests changes to the source IP address after the Start of Service Date, the Parties will establish a rate or charge to achieve that undertaking by XO. Once provisioned, XO will test and validate that Customer's traffic is properly prioritized from XO's edge router to Customer's CPE. Once validated, XO will so advise Customer and Service will be deemed to be accepted, thereby establishing the Start of Service Date.

(b) If there is insufficient bandwidth available from XO's edge router to Customer's CPE, voice traffic will take priority over any data traffic transmitted. Regardless of the prioritization requested by Customer, its traffic may not be prioritized or delivered if the volume of traffic sent by Customer exceeds what an affected port is capable of supporting. In addition, XO disclaims any responsibility for the quality of voice traffic within Customer's LAN, or between Customer's CPE and XO's edge router or within

any other service provider's network. Customer or its End Users are solely responsible for the provisioning and management of Customer's or End Users' CPE and LAN.

2.0 USE OF INTERNET SERVICES

2.1 Service Use. Service may only be used by Customer and its End Users, if any.

2.2 Notices. Customer will notify XO within five (5) days of any information or notices served on Customer that might adversely affect XO including, but not limited to, notices of any claims or proceedings that involve the Service.

2.3 Disclaimers. XO exercises no control over, and accepts no responsibility for, information content passing through XO's host computers, Network hubs and POPs (the "XO Network"). EXCEPT AS EXPRESSLY SET FORTH IN SECTION 6 BELOW, XO MAKES NO WARRANTIES OF ANY KIND, WHETHER EXPRESS OR IMPLIED, FOR THE SERVICE AND EQUIPMENT IT IS PROVIDING, AND IT DISCLAIMS ANY WARRANTY OF TITLE, MERCHANTABILITY, NON-INFRINGEMENT OR FITNESS FOR A PARTICULAR PURPOSE. XO expressly denies any responsibility for the accuracy or quality of information obtained by Customer or its End Users through the use of the Service. The use of any information obtained via the XO Network is at Customer's and its End User's own risk.

3.0 TERM AND TERMINATION

3.1 Start of Service Date. XO will notify Customer when: (a) Service is installed or connected, successfully tested, and available for Customer's use; and (b) if XO is providing CDIA Equipment, the CDIA Equipment has been installed and is operational. Billing will begin on the Start of Service Date regardless of whether Customer is prepared to use the Service. XO will not be liable for any damages of any nature resulting from delays in meeting requested or specified service dates or its inability to provide Service.

3.2 Term. The minimum term of Service is one (1) year beginning on the Start of Service Date. Unless one Party notifies the other in writing not less than thirty (30) days prior to the expiration of the original or renewal term of Service that it intends not to renew the Service, the Service will automatically renew on a month-to-month basis at the same pricing, terms, and conditions.

3.3. Termination and Cancellation Charges.

3.3.1 Return of Equipment. Within ten (10) days of the cancellation, expiration or termination of Service or any Service Order, Customer must, at its expense, return any CDIA Equipment provided by XO in the same condition as when it was initially delivered and installed, reasonable wear and tear excepted, as well as any software and other materials provided by XO.

3.3.2 Change and Cancellation Charges. Change and cancellation charges, as established in an ASR or Service Order, will apply if Customer changes or cancels a Service between the date an ASR or Service Order is accepted by XO and the projected Start of Service Date. These charges are additional to any charges due under Section 3.8 of the Agreement or imposed by third-party providers responsible for provisioning portions of Service.

3.3.3 Early Termination Charges. An early termination charge will apply if Customer discontinues Service without cause, or XO terminates Service for Customer's default, between the Start of Service Date and the expiration of the Service term. If Service is so discontinued by Customer, or terminated by XO, Customer will pay all charges associated with the installation of Service, plus one hundred percent (100%) of the monthly recurring charges multiplied by the number of months remaining in the Service term.

3.3.4 Liquidated Damages. Because XO's damages would be difficult or impossible to ascertain with certainty if a Service is cancelled or discontinued prior to the end of its Service term, Sections 3.3.2 and 3.3.3 are intended to establish an amount of liquidated damages and not a penalty.

4.0 ACCEPTABLE USE POLICY

4.1 Customer acknowledges that it has reviewed XO's Acceptable Use Policy ("AUP") located at the following web address:

<http://www.xo.com/about/policy/Pages/acceptable-use.aspx>.

Said AUP which may be amended by XO from time to time, is incorporated by reference into the Agreement and is binding on Customer.

5.0 PRICING

5.1 Service Charges. Unless specified in this Exhibit, pricing for the Services furnished under this Exhibit will be established by XO's Network Access Pricing Tool ("NAPT") or provided to Customer on an individual case basis ("ICB") and will be set forth on the applicable Service Order.

5.2 Committed Data Rate. If Customer selects a burstable Service and a minimum per Mbps data rate ("Committed Data Rate") applies to a particular IP port, Customer's per-port usage of Service (both Send Traffic and Receive Traffic) via such port will be sampled every five (5) minutes for the previous five (5) minute period. At the end of each monthly billing period, the top five percent (5%) of Send Traffic and Receive Traffic samples for such port will be discarded. The higher of the resulting ninety-fifth (95th) percentile value for Send Traffic or Receive Traffic for such port will be compared to the Committed Data Rate applicable to the port. If the ninety-fifth (95th) percentile of either Send Traffic or Receive Traffic is higher than the applicable Committed Data Rate, Customer, in addition to being liable for the Committed Data Rate, will be liable for payment at the ninety-fifth (95th) percentile level for any usage in excess of the Committed Data Rate at the contracted per Mbps rate. For the purposes of this Exhibit, "Receive Traffic" means traffic from any origination point that is received by Customer from the XO IP Network and "Send Traffic" means traffic from any origination point that is sent by Customer onto the XO IP Network.

6.0 NETWORK NUMBERS / DOMAIN NAME POLICY

6.1 XO's Network Number and Domain Name Policies are set forth in the AUP located at the following web address:

<http://www.xo.com/about/policy/Pages/acceptable-use.aspx>.

In all instances, the XO Domain Name and TCP/IP Addresses provided in connection with the Service remain the property of XO and, upon discontinuation of Service, Customer's right to use XO's Domain Name and TCP/IP Addresses will cease. Unless otherwise mutually agreed to in writing, Customer is at all times responsible for maintaining its own Domain Name when purchasing Services and for paying all charges associated with the Domain Name, including charges billed to Customer for Domain Name registration by third parties.

6.2 XO will have sole and exclusive discretion with regard to the Internet routing of XO-provided IP addresses.

7.0 SOFTWARE LICENSE

7.1 Customer will not reproduce, modify, translate, transform, decompile, reverse engineer, disassemble, or otherwise determine or attempt to determine source code from any XO or third party software, nor will it permit or authorize any third party to do so. Title to such software, and all related technical know-how and intellectual property rights therein are and will remain the exclusive property of XO or its suppliers. Customer will not take any action to jeopardize, limit or interfere in any manner with XO or a supplier's ownership rights with respect to any licensed software.

7.2 XO PROVIDES, AND CUSTOMER HEREBY ACCEPTS, ANY XO OR THIRD PARTY SOFTWARE PROVIDED TO OR USED BY CUSTOMER IN CONNECTION WITH THE SERVICE "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 MAY 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 AND ASSUMES NO OBLIGATION TO CORRECT ERRORS IN ANY SOFTWARE. CUSTOMER UNDERSTANDS AND ACCEPTS ALL RESPONSIBILITY FOR ANY SOFTWARE MEETING CUSTOMER'S REQUIREMENTS OR EXPECTATIONS.

8.0 ADDITIONAL LIMITATION OF LIABILITY

8.1 XO will not be liable for any action it takes to remove or restrict access to obscene, indecent or offensive content made available by Customer or its End User, nor for any action taken to restrict access to material made available in violation of any law, regulation or rights of a third party including but not limited to, rights under copyright law and prohibitions on libel, slander and invasion of privacy.