

DEDICATED INTERNET ACCESS SERVICE TERMS AND CONDITIONS

1.0 Description of Service

1.1 Dedicated Internet Access. Dedicated Internet Access Service ("DIA" or "Service") includes T1, DS-3, Ethernet, Fast Ethernet, and Gigabit Ethernet speeds. The Service provides Internet access to Customer via either a cross-connect or a local loop from Customer router to a port on an XO access router. Where access is provided via a local loop, the local loop is provided by XO between the XO router and Customer's router.

1.2 CPE and Maintenance. Service must terminate into XO-approved Customer Premises Equipment ("CPE"). CPE is required for Customer to exchange traffic with the XO Network and may be provided or leased from XO ("XO CPE") or provided by Customer. XO will maintain, manage and support all XO CPE, including all associated router configurations and operational usernames and passwords. Customer agrees to allow XO unrestricted access to XO CPE for purposes of testing, upgrading, and other maintenance activities. Customer must provide continuous electrical service to such CPE as required to fulfill the terms of the Agreement. XO will not be responsible, however, for management of XO CPE if Customer has modified the CPE, including any changes in router configuration. Customers who choose to provide their own routers will be solely responsible for all router maintenance, management, and support.

1.3 Required Equipment. If Customer provides its own CPE, Customer, at its own expense, must provide at least the following equipment and materials: (a) a router or interface device compatible with XO Service and Network; (b) Internet Protocol software for the router, if used; and (c) connector and power cables. Customer must furnish a demarcation point at each Customer Premise to which XO DIA Service is to be provisioned.

1.4 Service Provisioning. If XO, in its sole discretion, decides to provide Service facilities acquired from a serving Local Exchange Carrier and subsequently ascertains that said facilities are no longer available for use, XO may cancel the Service Order Agreement without liability and without any further obligation to Customer. In the event of such cancellation, XO will provide Customer with as much notice as reasonably possible under the circumstances.

2.0 Use of Internet Services. Use of Service is limited to Customer and its End Users, if any. Customer must notify XO within five (5) days of any notices that are served on Customer that might adversely affect XO including, but not limited to, notices of any claims or proceedings that involve the Service. Customer will promptly notify XO of any errors, "bugs", or problems of which Customer becomes aware. XO exercises no control over, and accepts no responsibility for, the content of the information passing through XO's host computers, network hubs and POPs (the "XO Network"). Use of any information obtained via the XO Network is at Customer's and End User's own risk. XO specifically denies any responsibility for the accuracy or quality of information obtained through its Services.

3.0 Acceptable Use Policy. Customer acknowledges it has reviewed the Company's Acceptable Use Policy ("AUP") located at <http://www.xo.com/legal-and-privacy/acceptable-use/>. Said Policy, which may be amended by XO from time to time, is incorporated by reference herein and binding on Customer.

4.0 Committed Data Rate.

4.1 If Customer selects a burstable Service and a minimum per Mbps data rate ("Committed Data Rate"), the Committed Data Rate will be applied either to a particular XO IP port or, in the aggregate, to additional XO IP ports established in a Service Order. The "Aggregate CDR"

billing option, as defined below, is not available for all port interface speeds.

4.2 If the 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. Unless stated otherwise, the contracted per Mbps rate is determined by dividing the port monthly recurring charge by the Committed Data 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.

4.3 If the Committed Data Rate applies in the aggregate to more than one XO IP port ("Aggregate CDR"), as set forth in the Service Order for such ports, Customer's usage of Service (both Send Traffic and Receive Traffic) will be sampled every five (5) minutes for the previous five (5) minute period for each such port. At the end of each monthly billing period, the top five percent (5%) of Send Traffic and Receive Traffic samples will be discarded for each port. The higher of the resulting 95th percentile value for Send Traffic or Receive Traffic for each such port will be added together to determine Customer's aggregate usage, and such aggregate usage will be compared to the Aggregate CDR. If the aggregate usage is higher than the Aggregate CDR, Customer, in addition to being billed for the Aggregate CDR, will be billed for any aggregate usage in excess of the Aggregate CDR at the contracted per Mbps rate. Unless stated otherwise, the contracted per Mbps rate is determined by dividing the port monthly recurring charge by the Committed Data Rate. Unless otherwise agreed in writing by the Parties, Aggregate CDRs apply only to the ports set forth in the Service Order. If Customer orders additional ports in a separate Service Order, the Aggregate CDR stated in that Service Order shall be as stated therein. Alternatively, if Customer seeks to have the ports previously subject to an Aggregate CDR also contribute to the Aggregate CDR set forth in the separate Service Order, that Service Order may provide for an increase in the Aggregate CDR for all such ports.

5.0 Service Level Agreement ("SLA"). Customer acknowledges it has reviewed the Service Level Agreement ("SLA") located at www.terms.xo.com. Said SLA, which may be amended from time to time, is incorporated by reference herein and is binding on XO and Customer.

6.0 Network Numbers and Domain Name Policies. Customer agrees to the Network Number and Domain Name Policies established by XO, which fall under the XO AUP, located at <http://www.xo.com/legal-and-privacy/acceptable-use/>. In all instances, XO Domain Name and TCP/IP Addresses that are provided pursuant to the Agreement remain XO property, and upon termination of DIA Services, use of such by Customer will terminate. Unless otherwise mutually agreed to in writing by the Parties, Customer at all times has responsibility for maintaining its own Domain Name when purchasing DIA Services and for paying all charges associated with the Domain Name, including charges billed to Customer for Domain Name registration by third parties. XO has sole discretion as to the Internet routing of XO provided IP addresses.

7.0 DIA Monitoring. For an additional fee, Customer may choose an option whereby XO will monitor Customer's CPE device. Pursuant to this option, the CPE device will be monitored every five (5) minutes by IP polling. If the CPE device cannot be contacted via IP Polling, XO will notify Customer within thirty (30) minutes of XO's determination that no connectivity is occurring with the router at the Customer premise.

8.0 Software License.

8.1 Customer agrees not to reproduce, modify, translate, transform, decompile, reverse engineer, disassemble, or otherwise determine or attempt to determine source code from any XO or third party software, or to permit or authorize a 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 and/or its suppliers. Customer must not take any action to jeopardize, limit or interfere in any manner with XO and its supplier's ownership of and rights with respect to any licensed software.

8.2 XO PROVIDES, AND CUSTOMER HEREBY ACCEPTS, ANY XO OR THIRD PARTY SOFTWARE PROVIDED TO OR USED BY CUSTOMER IN CONNECTION WITH 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.

9.0 Limitation of Liability. Customer expressly agrees that XO will not be liable for any action XO takes to remove or restrict access to obscene, indecent or offensive content made available by Customer, 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 the copyright law and prohibitions on libel, slander and invasion of privacy.

10.0 Indemnification. Customer will indemnify, defend and hold XO and its officers, directors, employees, agents, affiliates and suppliers harmless from and against any claims, actions, demands, losses, damages and expenses, including attorney's fees, relating to any violation including, but not limited to, a breach by Customer, its End Users or other users of its account of their obligations with regard to Service, the placement or transmission of any message, information, software or other materials on the Internet by Customer, its End Users or other users of its account, a violation of the AUP, or Customer's traffic being processed through the Company's switch, port or node. This indemnification will survive the termination of the Service Term.

11.0. Termination Charges. As set forth in Section 8 of the General Terms and Conditions, an early termination charge equal to one hundred percent (100%) of the monthly recurring charge multiplied by the number of months remaining in the Service Term will apply if Service is terminated after the Start of Service Date but prior to the expiration of the Service Term, including discontinuation of Service due to Customer's failure to pay any amount required under the Agreement when payment is due.

12.0 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](http://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.

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