

XO MANAGED ROUTER SERVICE TERMS AND CONDITIONS

1.0 Service Description

1.1 The XO Managed Router Service ("Service") is an XO service offering within the domestic United States consisting of network device management services which include: (i) the provision of a Customer specified network device ("Router") located at Customer-specified Premises; (ii) monitoring of Router(s); (iii) alerting Customer of fault events; and (iv) Professional Services as set forth below in Section 8.4.

1.2 XO will evaluate, design, provision, maintain and manage Service based on a Router configuration proposed to, and accepted by, Customer prior to installation. Customer acknowledges and agrees that XO's provisioning of 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 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.

1.4 XO will provide Service to Routers on both the XO-network and non-XO-networks pursuant to Section 9.0 ("Foreign Network").

2.0 Suspension, Termination and Cancellation Charges

2.1 XO may suspend Service immediately: (i) when Customer or an End User uses the Service in any way that exposes to material and imminent harm: (a) XO's network or other necessary XO facilities or systems; or (b) 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) 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 Agreement.

2.3 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.

2.4 XO reserves the right to determine, in its sole 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 thirty (30) 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.

2.5 If Service is terminated after it has been activated, but prior to the expiration of the Service Term, including discontinuation of Service by XO due to Customer non-payment or other Customer Default, Customer must pay all charges, which Customer agrees is reasonable, associated with the service ordering and installation, as well as the monthly recurring charges for the remaining Service Term of the Service Order. It is agreed that XO's damages in the event of Service termination will be difficult or impossible to ascertain. The provisions set forth above are intended, therefore, to establish liquidated damages in the event of termination and are not intended as a penalty.

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.

4.0 Service Requirements and Restrictions

4.1 To receive Service, Customer must provide the following:

- Customer-acknowledged/approved detail of a network diagram including, but not limited to, Router brand name, model name, serial number, location address, equipment maintenance contract (e.g. Cisco SmartNet), current router configuration, desired router configuration and other information related to Router requested by XO.
- 2. Required supporting documentation to be submitted with Customer-acknowledged network order.
- 3. Customer contact information that includes telephone number and valid email address.

5.0 Letter of Authorization

In the course of providing Service to Customer, XO will possess Customer account information from third parties that Customer contracts with in conjunction with the Router to be managed by XO. Customer grants XO permission to contact such third parties on behalf of Customer when XO requires Router-related information from the third parties.

6.0 Equipment

6.1 XO-provided equipment. Equipment provided by XO and delivered to Customer is only to be used in conjunction with the 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.

6.2 XO shall furnish service and support of XO provided equipment only during the Service Term, provided that the equipment is used by Customer in compliance with these terms and conditions.

6.3 Customer-provided equipment.

6.3.1 Customers providing their own equipment shall present an itemized list of equipment to be activated in conjunction with the Service. Customer equipment must match Router make, model name specified in the order. Customer is responsible for all costs associated with any necessary upgrades or additional licenses of its equipment required by XO. If Customer-provided equipment is manufactured by Cisco, the equipment must be covered by Cisco SmartNet and the account information of Cisco SmartNet must be provided to XO. Notwithstanding the foregoing, it is Customer's sole responsibility to coordinate all equipment issues with Cisco SmartNet.

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

6.3.3 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 manufacturer-specific software or feature will work with Service.
- b. All Customer-provided equipment must be in sound working order. Any defective components that impact the proper configuration, testing and operation of the Service will be notated by the XO technician, and must be replaced at the Customer's expense.

After completion of the configuration of Customer-provided equipment, XO will not be responsible for changes to Router made by Customer.

6.4 For XO to configure Customer-provided equipment and to download Service settings to Customer-provided equipment, Customer is responsible for the following:

- a. Customer must provide XO with administrator password(s) or alternatively the "unlock" password(s); and
- b. Customer-provided equipment must have the latest software version; and
- c. Customer must provide XO with appropriate software licenses required by XO to configure and manage Router.

7.0 Router Monitoring and Alerting.

7.1 For purposes of monitoring the Service quality and diagnosing root cause of Service-impacting issues, XO provides proactive monitoring of all Routers 24 hours a day seven days a week. XO will perform internet control message protocol ("ICMP") ping operation at five minute intervals after Router installation at the Customer Premise is complete. The ICMP ping operation is performed to determine whether Router runs without fault. If deemed necessary solely by XO, XO will monitor Router through simple network management protocol ("SNMP") trap/polling in order to obtain detailed performance status of Router.

7.2 XO will notify Customer when a Router is not functioning properly (i.e., a fault event). XO's network operation center ("NOC") will create a trouble ticket and attempt to notify Customer within 15 minutes after a fault event. The XO NOC will verify, troubleshoot and resolve issues if the Router is related to the XO network. If it is determined that the issue is related to a Foreign Network, it is Customer's responsibility to notify its Foreign Network provider for resolution.

8.0 Change Management. Customer requested changes may result in additional charges to those listed in the SOA and may impact the project timeline. XO will coordinate all changes received with the Customer-designated contact and facilitate changes to the project through XO's change management process. Customer is responsible for notifying XO of any changes to Router and Foreign Network that may impact Service. Change requests received will be processed through the Moves, Adds and Changes process defined by XO.

9.0 Foreign Network. Customer will be charged five hundred dollars (\$500) per Router operating on a Foreign Network in order to provision and configure Router. Foreign Networks must be operating within the domestic United States. Upon XO's request, Customer must provide the service provider of the Foreign Network with a Letter of Authorization to permit XO to work with the service provider of the Foreign Network to provide the Services described herein. XO will not be liable for any issues, installation delays, or any reduction in or failure of the Service, or any material changes stemming from the Foreign Network.

10.0 Professional Services. XO will provide professional services that Customer may need in conjunction with the managed Router Service. The scope of professional services may include, but are not limited to: (i) custom configuration of the Router; (ii) technical consulting, network assessment, and/or network design; and (iii) network integration. Customers will be charged the following rates for professional services: (a) for all requests that can be resolved remotely by a managed services technician: \$250 an hour; (b) for all requests that require a field engineer or on-site support: \$500 an hour. All other professional service requests will be priced on an individual case basis and will be communicated to customer prior to implementation.

11.0 Customer Representations and Warranties

In addition to the representations and warranties as set forth in the Agreement, Customer acknowledges that the Service governed by the Agreement is subject to U.S. export laws and regulations and that any use or transfer of the Service must be authorized under those laws and regulations. Further, use of the 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 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 Service, except in compliance with U.S. export laws and regulations.

12.0 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.

13.0 SERVICE AND SUPPORT

13.1 ROUTER AND SERVICES SUPPORT. After Service activation, Customer will be required to contact XO Customer Care to request moves, adds, changes to the Service. Only the authorized Customer representatives may request changes to the XO Service. However XO is not responsible for maintenance of physical Router hardware and software.

13.2 XO Service Coverage Hours. Service and Support is provided on a 24 x 7 x 365 basis.

13.3 ROUTER ADMINISTRATION

13.3.1 Router Administration. XO will retain all administrator privileges for hardware and software delivered under the Service.

13.3.2 Customer Router Administration. XO will grant Customer with limited administrator privileges for the purpose of self-administering the Router. XO shall have no liability for failure to provide the Service if the failure is related to actions taken by Customer. 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, support of Router, 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.

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.

13.4 Only authorized Customer contacts can request changes to the Service that cannot be performed via the portal. XO will provide Customer with an order number and a requested service date. Note that certain remote changes may require a reboot of Router to take effect.

14.0 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](#). 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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