

## TELCO COLLOCATION TERMS AND CONDITIONS

### 1. LICENSE AND PERMISSIBLE USES.

**A. License Grant.** Subject to the terms and conditions of the Agreement, including these Terms and Conditions, and the acquisition by Customer of telecommunications Services from XO, XO grants Customer a nonexclusive limited license ("License") to install, operate, maintain, and repair its systems, equipment and connecting lines and cables (collectively, "Equipment") in designated space at real property locations owned, leased or licensed by XO ("XO Premises"). In all instances, Customer must use this License exclusively to connect to XO or, as permitted, alternative service provider telecommunications facilities and equipment ("Facilities") depicted in an applicable Service Order Agreement and accompanying Telco Collocation Request Form ("Equipment Space"). The License granted is only a limited license to use the Equipment Space, and to obtain the Services, as applicable, in accordance with the Agreement.

**B. License Restrictions.** Customer must use the License in a lawful manner exclusively to provide telecommunications services to its customers or End Users. In doing so, Customer may not interfere with the use of XO Premises by XO or others, nor may Customer sublicense (or otherwise seek to convey) the XO Premises or allow third parties to use its Equipment Space or Equipment situated on XO Premises. In addition, Customer may not use Equipment Space as a business location or work site by, among other things, housing personnel or receiving mail there.

**C. Monthly Minimum Purchase Requirements.** Customer must purchase from XO the following minimum amounts of Service:

1) For each collocation cage, Customer must purchase from XO at least FIVE THOUSAND DOLLARS (\$5,000) of Services (not including Telco Collocation Services) during each monthly billing period, plus an additional FIFTY DOLLARS (\$50) for each square foot of space in excess of 100 square feet.

2) For each collocation cabinet, Customer must purchase from XO at least FOUR HUNDRED FIFTY (\$450) of Services (not including Telco Collocation Services) during each monthly billing period.

Failure to satisfy these minimums will be a material breach entitling XO either to terminate the License in accordance with Article 17 B. 2 below, or increase the License Fee.

**D. Cross-connections.** If XO determines it is unable to furnish any Service requested by Customer, XO will allow Customer to cross-connect to a third party carrier in a neutral "meet-me room." In addition, cross-connections between two collocating Customers may be achieved in a meet-me room or such other location designated by XO. In all instances, XO will install and manage the cross-connections at the rates set forth in the Service Order Agreement.

**E. Equipment Deliveries.** Customer is responsible for receiving Equipment deliveries at each licensed XO Premises and must schedule any delivery with XO's local contact at least twenty-four (24) hours in advance of a delivery. Any delivery made at a loading dock or other receiving area at XO Premises must be removed by Customer to its Equipment Space within five (5) hours of delivery. If Customer fails to do so, XO may remove the delivered Equipment at Customer's risk and expense. Under no circumstance will XO be responsible for receiving Equipment deliveries at XO Premises.

**F. Technical Services.** Customer may obtain XO Technical Services at XO Premises in accordance with the terms, conditions and pricing set forth at [www.terms.xo.com](http://www.terms.xo.com), which XO may modify from time to time upon at least thirty (30) days prior written notice.

### 2. CONDITION OF XO PREMISES.

XO makes no warranty regarding XO Premises including, without limitation, the suitability of: (a) Equipment Space; (b) Shared Space (as defined below); or (c) Facilities to be used by Customer. Customer will inspect the XO Premises and other space and must accept them "AS IS" without any need on XO's part to provide additional labor or materials. If Customer is obtaining any space at XO Premises not within a Customer-specific cage or cabinet ("Shared Space"), Customer accepts that such Shared Space is not secure from others with access to XO Premises.

### 3. COLLOCATION LICENSE FEES.

Collocation License Fees, which are additional to all charges associated with Service(s) acquired by Customer, are established in applicable Service Order Agreement. Notwithstanding any other provision of this Agreement, Customer is not entitled to abate the payment of a License Fee during any *Force Majeure* event as described in the Agreement.

### 4. TERM AND RENEWAL.

**A. Term.** The term of a License for each Equipment Space shall be stated on the Service Order Agreement ("License Term"). The

License Term, and the commencement of billing, will begin on the Start of Service Date. The minimum License Term is one (1) year.

**B. Renewal.** Unless one Party notifies the other in writing not less than thirty (30) days prior to the expiration of the original or any renewal License Term that it intends not to renew the License, the License will automatically renew pursuant to the same terms and conditions, except that XO may modify the License Fee for the renewal License Term. Any renewal License Term is subject to XO's continued ownership, lease or rights as a licensee of the XO Premises at which the Equipment Space is located.

#### **5. DELAYS.**

XO will not be liable for any delay in meeting an accepted Service Request Date for Equipment Space, and Customer may not cancel an accepted Service Order Agreement for such Space unless the delay: (a) is due solely to XO; (b) extends more than ninety (90) days beyond the accepted Service Request Date; and (c) is not caused by any construction undertaken in the Equipment Space.

#### **6. RESERVATION OF RIGHTS; NON-EXCLUSIVITY; UNDERLYING LEASE/LICENSE.**

**A. Reservation of Rights.** Except for rights expressly granted in the License, XO retains all rights: (i) in any lease, sublease or license under which XO occupies the Premises ("Underlying Lease/ License"); (ii) in any ingress or egress rights involving XO Premises; and (iii) XO Facilities, the Equipment Space, and any property therein (other than the Customer Equipment), whether or not embedded in or attached to realty. The License granted herein does not constitute a lease, sublease, assignment or easement of or with respect to real estate and, further, gives Customer (or others) no right of title or ownership in XO Premises, XO or alternative service provider telecommunications Facilities, the Equipment Space or any other XO property.

**B. Non-exclusivity.** XO may extend the same or similar licenses to others to situate their Equipment and Facilities in Equipment Space at XO Premises.

**C. Underlying Lease/License.** If the Agreement, including this Exhibit, is ever interpreted by a landlord, sub-landlord or licensor of XO Premises to violate an Underlying Lease or License, Customer and XO either will co-operate with one another to amend the Agreement or these Terms and Conditions to render them acceptable to the landlord, sub-landlord or licensor, or Customer will remove its Equipment from the XO Premises.

#### **7. ACCESS TO XO PREMISES.**

Except in locations where XO requires escorted access or other limitations on access as specified by XO, XO will provide Customer 24 x 7 key card access to Equipment Space. Key cards will be provided by XO during its normal business hours at specified locations. Customer will be charged for any replacement key cards. Any required special security arrangements may result in additional charges, including escort charges at the rates set forth below. Customer also may be subject to escort charges if XO is required to escort Customer to its Equipment Space. All such access and other activities at XO Premises will be at Customer expense and subject to Customer's providing XO with reasonable advance notice. Escort charges for which Customer is responsible, and which XO may modify from time to time upon at least thirty (30) days prior written notice, are as follows:

XO Business Hours (Monday-Friday, 8:00 am to 5:00 pm local time (except XO holidays): ONE HUNDRED SIXTY DOLLARS (\$160.00) per hour, with a one (1) hour minimum charge per event.

All other times: TWO HUNDRED FORTY (\$240.00) per hour, with a one (1) hour minimum charge per event.

Any work in excess of one (1) hour will be invoice in increments of fifteen (15) minutes or fraction thereof.

XO may deny Customer access to XO Premises during any period Customer is in breach of the Agreement unless the access is essential to cure the breach. Customer waives all claims arising out of any permissible denial of access.

#### **8. INSTALLATION AND OTHER WORK.**

**A. Pre-installation.** Prior to commencing any work at XO Premises, Customer, at its expense, will prepare and deliver to XO working drawings, plans and specifications ("Plans") detailing the technical characteristics and size of the Equipment, its intended location for placement in the Equipment Space, and the proposed schedule of installation activities. No work may commence until XO has approved the Plans in writing.

**B. Installation.** Customer will:

i. perform installation and other work in a safe manner consistent with Equipment specifications, industry standards and practices, and other requirements imposed by XO.

ii. install Equipment in a manner that minimizes interference with XO and others at XO Premises;

- iii. perform installation activities reasonably characterized as disruptive or noisy before 8:00 a.m. and after 5:00 p.m. local time, or as otherwise requested by XO;
- iv. obtain all required governmental authorizations prior to commencing any work at XO Premises;
- v. use properly trained, competent, and qualified technicians to install Equipment in accordance with applicable industry standards;
- vi. provide a safe working environment at all times; and
- vii. upon completion of installation or other work, leave XO Premises clean and free of all materials, tools and equipment not required after installation, as well as all rubbish and debris resulting from installation.

C. XO Intervention. XO may intervene in Customer installation or other work activities if XO reasonably determines that such undertakings are interfering in operations at the XO Premises or the rights of others in the quiet enjoyment thereof.

## **9. UTILITIES AND INTERRUPTIONS.**

A. Utility Rates, Charges and Costs at XO Premises. XO will use commercially reasonable efforts to have furnished the electrical power necessary to meet reasonable Customer requirements at the rates and charges set forth in the Service Order Agreement. Service Order Agreement utility rates and related charges notwithstanding, XO, upon thirty (30) days written notice, may increase the charges payable at an XO Premises as a result of any new or revised charge imposed on XO by or through an underlying utility provider or any other cost increase incurred by XO related to the provisioning of electrical power. If the electrical power interferes with the proper operation of Customer Equipment, Customer, at its own expense, is responsible for acquiring and installing any filtering or regulation devices within the Equipment Space in order to eliminate the interference.

B. Separate Electrical Service. If Customer elects to install a separate electrical panel and meter in the Equipment Space for its Equipment, Customer will pay all costs associated with such installation. In addition, Customer must pay all utility rates and charges attributable to the separate panel and meter, as well as reimburse XO for any costs imposed on it by the utility in connection with Customer's separate panel and meter. Customer will pay the utility directly or pay XO the Customer's pro-rata share of the amount invoiced to XO, plus a reasonable management fee.

C. Interruptions. XO will use commercially reasonable efforts to notify Customer in advance of any known, planned utility or other interruptions that might affect Customer. In addition, the Parties will use commercially reasonable efforts to avoid any electrical service interruptions and, if necessary, coordinate with one another in connection with any interruptions so as to minimize adverse impacts on Customer Equipment or XO Facilities. In no event will XO be liable to Customer or others as a result of any interruption of electrical service.

## **10. CUSTOMER EQUIPMENT.**

A. Characteristics. Customer Equipment must be designed and constructed to prevent electromagnetic and radio frequency signal leakage. Equipment interconnection to XO Facilities will be in accordance with industry-accepted practices and procedures.

B. Equipment Grounding. Customer must ground racks and cabinets not installed by XO pursuant to XO specifications at a ground source furnished by XO. If Customer fails to acquire proper grounding as specified by XO, XO may in its sole discretion, and upon notice to Customer, install the proper grounding at Customer expense.

C. Ownership; Risk of Loss. Title to Customer Equipment will remain in Customer, as will the risk of loss associated with such Equipment while on XO Premises. XO will not be liable for any loss of, or damage to, Equipment situated at XO Premises unless the loss or damage results exclusively from XO's gross negligence or willful misconduct. All Equipment supplied by Customer must be conspicuously labeled as its own.

D. Maintenance and Repair. Customer, at its expense, will maintain and repair its Equipment to avoid damaging XO Premises or the Facilities of XO or alternative third party telecommunications providers or causing injury to XO employees or others. Under no circumstance will XO be responsible for maintaining or repairing Customer Equipment.

E. Removal from XO Premises. Upon the expiration or termination of the License Term, Customer, subject to Article 7 above, will remove its Equipment and other Customer property from XO Premises in a neat and orderly manner and, as necessary, repair any damage caused by such removal. Such removal will be at Customer expense. Any Equipment or property not removed within sixty (60) days of the expiration or termination of a License Term will be removed and disposed of by XO at Customer expense, including costs incurred to repair or restore XO Premises or Facilities. Under no circumstance will XO be liable for any loss or damage caused to Customer's Equipment or other property resulting from such removal and storage.

## **11. LIMITS ON USE; RELOCATION.**

A. Limits on Use. XO, without liability to Customer or others, may: (i) limit the use of Equipment Space by Customer when necessary

due to causes beyond XO's control; (ii) suspend any and all Services or Facilities, or both, including, without limitation, the furnishing of electrical power; and (iii) terminate the operation of Customer Equipment without notice, if XO reasonably believes such action is necessary to protect life, property, or both. When practicable, XO will notify Customer promptly of such action and will cooperate with Customer to return the Equipment to operation.

**B. Equipment Relocation.** XO may relocate, or require the relocation of, Customer Equipment if XO reasonably believes that relocation is necessary (i) to protect XO Premises, (ii) due to the closure or relocation of XO Premises (including but not limited to the termination or expiration of the Underlying Lease or License), (iii) to maximize the efficient use of space within the XO Premises, or (iv) to maximize the efficiency of heat dissipation within the XO Premises. In such event, XO will provide Customer with reasonable advance notice of the required relocation and will cooperate with Customer in the relocation effort. Customer will be responsible for all relocation costs. If Customer elects not to relocate its Equipment, Customer may terminate the License, subject to its paying all sums due and owing XO up to the time of License termination.

## **12. ENVIRONMENTAL RESPONSIBILITIES.**

**A. Compliances.** Consistent with their obligation to comply with applicable legal requirements, the Parties will satisfy federal, state and local environmental, health and safety laws and regulations, including U.S. Environmental Protection Agency 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 and all similar or related state laws. Each Party will notify the other Party if compliance inspections occur or citations are issued that impact any aspect of the Agreement, including these Terms and Conditions, or involve any exposure to hazardous materials at XO Premises.

**B. Posting of Notices.** If required by federal, state or local law, XO and Customer will prepare, distribute or post notices pertaining to known, recognized or suspected physical or chemical hazards including, but not limited to, Material Safety Data Sheets (MSDSs) for materials present on, or brought to, XO Premises.

**C. Customer Materials.** Customer is responsible for materials brought by, or on behalf of, Customer onto XO Premises. Customer may not use its materials to create environmental hazards via the use or storage of such materials. Customer will adopt plans to address risks associated with the presence of hazardous materials on XO Premises and, if requested by XO, Customer will demonstrate to XO or others the adequacy of its plans to deal with the risks associated with the materials.

**D. Permits and Approvals.** Customer, at its expense, will obtain, maintain and comply with all permits and approvals required under applicable federal, state or local law. If a regulator refuses to issue a permit or approval to Customer, Customer may request that XO allow Customer to use an existing XO permit or approval. If XO allows such use, Customer, at its expense, will undertake to obtain the permits and approvals required for its use of XO's authorizations. Customer will provide XO with copies of all documents associated with its use of XO's permits and approvals and will cooperate with XO in the creation of any reports or responses to inquiries relating to Customer's use of XO permits and approvals. At all times, Customer will comply with XO's environmental practices and procedures, including the use of environmental "best management practices" (BMP) or the selection of disposition vendors and disposal sites in accordance with XO's selection criteria.

**E. XO Premises Requirements.** Customer is responsible for compliance with XO security, fire, safety, environmental and building requirements by its employees, contractors, visitors and all others whom Customer controls or has the obligation to control. Customer will provide any necessary training with regard to those requirements to those whom it allows to enter XO Premises.

**F. Emergency Response Plans.** Customer, at its expense, will prepare and submit emergency response plans and community right-to-know reporting as required by law in connection with Customer undertakings on XO Premises. Customer will provide XO with a copy of these plans and reports, including revisions as they are made. If XO is required to prepare and submit emergency response plans and community right-to-know reporting, Customer will provide XO with the information needed by XO to complete such plans or reports and will, as needed, cooperate with XO in the implementation of the plans. Customer will be solely responsible for fee payments associated with its plans or reports, and Customer will share, as reasonably agreed between the Parties, in the payment of fees pertaining to any XO plans or reports.

**G. Special Indemnity.** In addition to (and without limiting) the indemnities set forth in the Agreement, including Article 18 below, XO and Customer, with respect to environmental responsibility under this Article 12, will indemnify, defend, and hold each other harmless from and against any claims: (i) proximately caused by the indemnifying Party's gross negligence or willful misconduct; or (ii) resulting from the violation or alleged violation of any applicable requirement involving the presence (or alleged presence) of contamination arising out of the indemnifying Party's acts or omissions on XO Premises.

**H. Harmonization.** Any activity affecting safety, health or the environment must: (i) comply with the Underlying Lease or License, and any

other applicable agreement; and (ii) not interfere in any way with the relationship between XO and landowner or licensor, if any. To achieve these, Customer activities may be limited by, among other things, restricting access to Customer Equipment.

### 13. CUSTOMER'S REPRESENTATIONS AND WARRANTIES.

Customer represents and warrants that it will:

- A. maintain at all times during the License Term its Equipment and the Equipment Space in good order, repair, and condition;
- B. provide XO at all times with unrestricted access to the Equipment;
- C. promptly repair any damage to XO Premises caused by Customer or its representatives;
- D. not disrupt or otherwise adversely affect XO or others in their use and enjoyment of the XO Premises;
- E. timely pay its monthly License Fee and other charges; and
- F. timely obtain at its expense from public or private authorities, and thereafter maintain, all authorizations required to operate and maintain its Equipment at XO Premises.

### 14. INSURANCE

A. Coverage. Notwithstanding any other provision of the Agreement, Customer will maintain throughout the Term of the Agreement the following insurance coverage with a **company** licensed ["insurance company"], **authorized or permitted to conduct business in the state where the Equipment Space is located** and rated A- or better by A.M. Best: (a) Worker's Compensation Insurance ["to comply with the state laws in which the Equipment Space is located"] **in compliance with the statutory requirements of the state of operation and Employer's Liability with a limit of \$1,000,000 each accident/disease/policy limit**; (b) Commercial General Liability in an amount ["not less than"] of \$5,000,000 per occurrence **for bodily injury and property damage and \$5,000,000 General Aggregate including premises-operations, independent contractors, contractual liability, personal and advertising injury and products/completed operations**; (c) "All Risk" Property Insurance in an amount equal to the replacement cost of all Equipment used by Customer, and (d) Automobile Liability, ["including"] **covering all owned, non-owned and hired ["Auto liability"] vehicles**, in an amount not less than \$1,000,000 Combined Single Limit **each accident for bodily injury and property damage.** "XO Communications, LLC" and the building owner/landlord or underlying lease holder (as applicable) will be ["added"] **included** as an Additional Insured **as their interest may appear** on Customer's **Commercial General Liability and Automobile Liability** policies ["and such policies will waive all rights of subrogation"]. All **liability** insurance carried by Customer will be primary and non-contributory with any insurance **or program of self-insurance** carried by XO or the building owner/landlord or underlying lease holder. Customer will provide certificates of insurance **at least ten (10) days** prior to entering the Premises. Customer will ensure all agents/contractors entering the Premises will maintain the levels of insurance stated above **and provide evidence of such coverage.** Additional insurance requirements may be imposed on Customer at the discretion of the building owner/landlord or underlying lease holder.

B. Period. Insurance described above will be maintained by Customer throughout any License Term and any period during which any claims arising from the 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 will not be obligated to) secure or pay the premium for any such policy and charge Customer the cost of such premium, which Customer agrees to pay, or XO may terminate the Agreement, in whole or in part, without liability to Customer.

### 15. LIENS.

Customer will not permit any mechanic's, material men's or other liens to be filed against all or any part of the XO Premises, Equipment Space, or Facilities, by reason of or in connection with any repairs, alterations, improvements or other work contracted for or undertaken by Customer. Customer, upon request, will provide XO with enforceable, conditional and final lien releases (or other reasonable evidence demonstrating the non-existence or satisfaction of liens) from its contractors or other parties performing work. XO may at all reasonable times post on XO Premises and record any notices of non-responsibility which it deems necessary for protection against such liens. If any liens are filed, Customer, at its expense and, within thirty (30) days after the filing thereof, will cause such lien to be released of record or bonded so that it no longer affects title to the XO Premises, Equipment Space, or Facilities. If Customer fails to timely cause such lien to be so released or bonded, XO may, without waiving its rights and remedies based on such breach, and without releasing Customer from any of its obligations, cause such lien to be released or bonded. Customer will reimburse XO, within ten (10) business days after receipt of invoice from XO, any sum paid by XO to obtain such bond or release.

### 16. SUBCONTRACTORS.

Customer, with XO's prior written consent (which will not be unreasonably withheld), may subcontract any portion of work on XO Premises to any entity competent to perform such work. Customer's subcontractor will be required to provide evidence to XO's reasonable satisfaction that it carries at least the same insurance coverage required of Customer. In no event will any subcontract relieve Customer of its obligations or liabilities under this Agreement.



## 17. TERMINATION.

A. Termination for Default. XO may terminate a License, in whole or in part, if Customer is in default of its obligations as established in the Agreement or these Terms and Conditions. In such event, Customer will be subject to liability for early termination as set forth in 17.D.

B. Default Events. Events constituting a default by Customer (and their applicable cure periods) are as follows:

1. interference or damage to XO Facilities or other equipment or facilities located at XO Premises caused by the installation, operation, maintenance, replacement or repair of Customer Equipment, which interference or damage must be remedied or cured by Customer within twenty four (24) hours of notice;
2. failure by Customer to pay the License Fee, including monthly minimums, or any charges due under the Agreement or this or other Service Order Agreements, which failure must be remedied or cured by Customer as provided in the Agreement;
3. abandonment or removal (without replacement) by Customer of Equipment during the applicable License Term;
4. failure of Customer to complete the installation of Equipment within one (1) month of the Start of Service Date.
5. failure of Customer to comply with use and limitation provisions pertaining to Equipment, as set forth in the Agreement and Article 1 above, which failure must be remedied and cured immediately upon Customer's receipt of notice;
6. abandonment of XO Premises by Customer either after Customer has taken possession of the Equipment Space or XO has commenced to construct for Customer at the requested XO Premises; and
7. default of any Customer Covenant and Warranty under Article 13.

C. Cancellation and Early Termination Charges.

1. Prior to Start of Service Date. A cancellation charge applies if a Service Order Agreement for a License is cancelled by Customer without cause after it is accepted by XO, but prior to the Start of Service Date. In such event, Customer must pay XO an amount equal to twice the monthly License Fee established in the Service Order Agreement. In addition, XO may pursue such other available remedies at law or in equity.

2. On or After Start of Service Date. An early termination charge applies if Customer terminates a License without cause between the Start of Service Date and expiration of the License Term. If a License is so terminated by Customer, or terminated by XO for cause, Customer must pay XO an amount equal to the monthly License Fee established in the Service Order Agreement, multiplied by the number of months remaining in the License Term. In addition, XO may take immediate action to enforce payment, including the denial of Customer access to XO Premises, and pursue such other available remedies at law or in equity.

3. Liquidated Damages. Because XO's damages would be difficult or impossible to ascertain with any certainty in connection with any License cancellations or terminations provided for in Articles 17. C. 1 and 2, respectively, the payments required thereunder are intended to serve as liquidated damages and not a penalty.

## 18. INDEMNIFICATION.

In addition to and without limiting any other provision of this Agreement, Customer shall defend, indemnify, and hold XO, its principals, officers, directors, agents, and employees harmless from and against any, losses, costs, damages, liabilities, claims and expenses, including but not limited to, reasonable attorneys' fees and court costs (collectively, "Losses") resulting from third party claims arising directly or indirectly from the installation, operation, maintenance and repair of Customer's Equipment, or from Customer's or any of Customer's subcontractors' or agents' acts or omissions in connection with Customer's use of the Equipment Space, Premises or Facilities, except to the extent such Losses are due to the gross negligence or willful misconduct of XO or its employees or agents. The provisions of this Article 18 shall survive termination of the Agreement and/or related License(s).

## 19. DAMAGES LIMITATION AND DISCLAIMER.

EXCEPT AS SET FORTH IN THE AGREEMENT, IN NO EVENT WILL XO BE LIABLE TO CUSTOMER, AND CUSTOMER HEREBY WAIVES ANY CLAIMS AGAINST XO FOR DAMAGES, DIRECT OR INDIRECT, ARISING OUT OF CUSTOMER'S USE OF THE PREMISES OR THE SERVICES PROVIDED HEREUNDER.

