

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

ARTICLE 1 - SERVICE DESCRIPTION

1.1 Service Types. XO Virtual Private Networking ("VPN") Service is of two (2) types: IP-Virtual Private Network ("IP-VPN") Service and Virtual Private LAN ("VPLS") Service.

(a) IP-VPN Service. IP-VPN Service is a Layer 3 (*i.e.*, Network layer) data networking service that supports traditional private data networking services (*e.g.*, Frame Relay and Ethernet) over a Multi-Protocol Label Switching ("MPLS")-enabled IP backbone; and

(b) VPLS Service. VPLS Service is a Layer 2 (*i.e.*, data link layer) data networking service that supports traditional private data networking services over a MPLS core network.

1.2 Access Methods and Port Speeds. VPN Service supports the following access methods and port speeds:

Port Speed	IP-VPN	VPLS
DS1 and DS3	X	N/A
OC3 and OC12	X	N/A
Ethernet	X	X

Other port speeds and configurations (*e.g.*, bonded DS1s) may be provided on an individual case basis ("ICB").

1.3 Network-to-Network Interfaces. XO may offer IP VPN Service to Customer at locations served by other provider networks through Network-to-Network Interfaces ("NNI's") established between XO and third-party providers. IP VPN Service furnished to Customer through an NNI is Off-Net and subject to the terms and conditions of applicable interconnect agreement(s) between XO and the third party provider(s), including limitations pertaining to Class of Service, the availability of DIA, and SLA reporting.

1.4 Additional Definitions

(a) Class of Service ("CoS"): A traffic-managing approach that involves combining similar types of traffic (*e.g.*, e-mail, streaming video, voice, large document file transfer) and treating each traffic type as a separate class having its own unique level-of-service priority.

(b) Committed Data Rate ("CDR"): The minimum data rate (expressed in Megabits per second ("Mbps")) to which a Customer commits, as set forth in a Service Order.

(c) DIA: Dedicated Internet Access Service.

(d) Point of Termination: For VPN Service, the location at which a Customer's Local Area Network (LAN) and the VPN Service interconnect, *e.g.*, RJ-x, Ethernet hand-off interfaces or Telco Smartjacks.

(e) Receive Traffic: Traffic received by the Customer via the XO IP Network from any origination point.

(f) Send Traffic: Traffic sent by the Customer via the XO IP Network to any termination point.

1.5 Traffic Use Restriction. Customer may not use VPN Service provisioned over unbundled network element facilities exclusively for interexchange traffic or mobile wireless traffic. If Customer uses VPN Service in such manner, XO may discontinue the affected Service or pass through to Customer any costs incurred by XO as a result of such use including, but not limited to, charges imposed on XO by a third-party provider, or both.

ARTICLE 2 - BUNDLED SERVICES

IP-VPN Service and VPLS Service may be ordered individually or on a bundled basis, as follows:

- VPLS and IP VPN Services
- VPLS, IP-VPN and DIA Services
- VPLS and DIA Services
- IP-VPN and DIA Services

ARTICLE 3 - CLASS OF SERVICE

Customer may use the CoS employed by XO to prioritize traffic when there is congestion at a port. The following XO CoS classifications are available:

Real-Time CoS: For Customer applications highly sensitive to latency and jitter (e.g., VoIP and Citrix).

Critical CoS: For Customer applications capable of withstanding higher latency and jitter, but which remain sensitive to delay and jitter (e.g., video applications).

Priority CoS: For Customer applications requiring priority treatment, but which are not susceptible to variations in latency or jitter (e.g., database applications).

Standard CoS: For Customer applications capable of withstanding moderate to high variations in latency or jitter (e.g., e-mail and web browsing).

The maximum bandwidth per port for Real-Time CoS is fifty percent (50%) of the total port bandwidth for speeds of OCx and greater. Regardless of the CoS classification employed, Customer traffic may not be deliverable if the traffic volume exceeds a port's maximum bandwidth.

ARTICLE 4 - CHARGES AND BILLING

4.1 Charges. Charges for VPN Service will be established in a Service Order and will be billed either on a flat-rate basis for the local loop, port and CoS or on a usage basis as set forth in Article 4.1 (a) immediately below.

(a) Usage Billing. For usage-based billing, Customer will be billed for Service based on the CDR and the applicable fixed rates established in a Service Order. Fixed-rate charges consist of two (2) components: (a) a non-recurring installation charge per port; and (b) a monthly recurring port charge. Usage-based billing is available only on stand-alone IP-VPN ports at speeds of 1Gbps and 10Gbps. The CDR will be applied to each port.

(b) DIA. If the CDR applies to a particular DIA VPN, Customer's per-VPN usage of Service (both Send Traffic and Receive Traffic) via such VPN will be sampled every five (5) minutes for the previous five (5) minute period. At the end of the month, the highest five percent (5%) of Send Traffic and Receive Traffic samples for such VPN will be discarded. The greater of the resulting ninety-fifth (95th) percentile value for Send Traffic or Receive Traffic for such VPN will be compared to the CDR applicable to the DIA VPN. If the ninety-fifth (95th) percentile of either Send Traffic or Receive Traffic exceeds the applicable CDR, Customer, in addition to being liable for the CDR, will be liable for payment at the ninety-fifth (95th) percentile level for any usage in excess of the CDR at the contracted per-Mbps rate.

(c) IP-VPN. If the CDR applies to a particular IP-VPN, Customer's per-VPN usage of Service (Send Traffic) via such VPN will be sampled every five (5) minutes for the previous five (5) minute period. At the end of the month, the highest sample of Send Traffic for such VPN will be compared to the CDR applicable to the VPN. If the Send Traffic exceeds the applicable CDR, Customer, in addition to being liable for the CDR, will be liable for payment for any usage in excess of the CDR at the contracted per-Mbps rate.

ARTICLE 5 - MONTHLY REPORTING

5.1 Monitoring and Reporting. Monthly Service reports for IP-VPN and DIA traffic are available to Customer using XO's online reporting system, "XO Stats," which may be accessed by clicking on the following: <http://x41.xostats.xo.com/cgi-bin/xostats/Login.pl>

5.2 Management VPN. A Management VPN port for IP-VPN Service is available to Customer to manage its various End User networks. It is Customer's responsibility to obtain all End User consents necessary and, in addition, to maintain at all times the security of its and its End User networks.

ARTICLE 6 - POINT OF TERMINATION

6.1 XO will provision and maintain VPN Service up to the Point of Termination. Customer will be responsible for all VPN Service-related facilities, equipment and software situated on Customer Premises beyond the Point of Termination ("CPE").

6.2 If requested, XO will lease to Customer CPE in the form of routers for use with Service on Customer Premises pursuant to the terms and conditions, including charges, set forth in an Equipment Lease Addendum to this Exhibit. XO will not be responsible for maintaining this CPE unless the Customer subscribes to XO's Router Maintenance Service pursuant to an Attachment appended to the Equipment Lease Addendum.

6.3 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.

ARTICLE 7 - RESPONSIBILITIES OF THE PARTIES

7.1 Service Maintenance Responsibilities:

(a) For CPE not furnished by XO, or provided by XO without Router Maintenance Service, Customer is responsible for maintenance and repair undertakings relating to problems arising on the Customer's side of the Point of Termination including, without limitation, IP configuration issues such as IP routing and the disabling of usage over WAN connection(s).

(b) For XO-provided CPE furnished with Router Maintenance Service, XO is responsible for maintenance and repair undertakings and, at its option, either may repair or replace defective CPE.

7.2 In all events, Customer is solely responsible for the effects of any changes to its firewall policies (e.g., lower level of security and unsecured access to Customer's Network) and assumes all risks and liabilities associated with or resulting from such changes.

ARTICLE 8 - TERM AND TERMINATION

8.1 Start of Service Date. XO will notify Customer of Service availability, the date of which will be the Start of Service Date when billing commences, regardless of Customer's readiness at that time. XO will not be liable for any delay in meeting requested or specified installation dates or from an inability on its part to provide Service. Customer will cooperate with XO to install and test Service including, but not limited to, providing (a) complete and accurate information required for the timely completion of site surveys; and (b) adequate space and power for Service-related equipment furnished by XO.

8.2 Term and Renewal Options. The term of each Service provided hereunder will be established in a Service Order. Unless one Party notifies the other in writing not less than thirty (30) days prior to the expiration of the original or any renewal term that it intends not to renew the Service, the Service will automatically renew on a month-to-month basis pursuant to the same terms and conditions, including charges, established in the applicable Service Order and this Exhibit.

8.3 Termination and Cancellation Charges.

(a) **Change and Cancellation Charges.** Change and cancellation charges, as established in an ASR or Service Order, will apply if Customer changes or cancels 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 as a result of special construction or acquisition of telecommunications facilities or imposed by third-party providers responsible for provisioning portions of Service.

(b) **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 for all charges associated with the installation of the Service, plus one hundred percent (100%) of the monthly recurring charges multiplied by the number of months remaining in the Service term.

(c) **Liquidated Damages.** Because XO's damages would be difficult or impossible to ascertain with certainty if a Service was cancelled or discontinued, this provision is intended to establish liquidated damages and not a penalty.

ARTICLE 9 - ACCEPTABLE USE POLICY

Customer use of the Service is subject to XO's Acceptable Use Policy ("AUP"), which is located at: (<http://www.xo.com/legal>). Said AUP is incorporated into these VPN Service terms and condition by reference and may be updated from time to time by XO.