

## **CONCENTRIC CONNECTS DEDICATED INTERNET ACCESS SERVICE**

**1.1 Description of Service:** Dedicated Internet Access ("DIA") Service ("Service"), which includes 3MB/second and 5MB/sec speeds, provides Internet access to the Customer via either a cross-connect or a local loop from the Customer Premises 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 the Customer Premises router. Service may accommodate special routing access requests by the Customer and/or by XO.

**1.2 DIA Equipment and Maintenance:** Service must terminate into a XO-approved router on the customer premises (CPE). A CPE router is required for the exchange of traffic between the XO Network and the Customer. It will be furnished and managed by XO as part of the Service. Customer must provide XO unrestricted access to XO-provided DIA Equipment for purposes of testing, upgrading, and other maintenance activities. Customer will provide continuous electrical service to XO-provided DIA equipment. XO will not be responsible for management of XO-provided DIA Equipment if Customer has modified the DIA Equipment, including making any configuration changes. 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 DIA Service Demarcation:** The point of demarcation for Service is the LAN port at which interconnection takes place. Customer will provide XO with access to Customer's premises, as necessary, to facilitate Service installation, testing and maintenance requirements.

**1.4 Service Provisioning:** If XO determines that the Local Exchange Carrier is unable to provide copper facilities in accordance with general guidelines for this service, XO may cancel the Service Order Agreement or Master Service Order Agreement without liability and without any further obligation to Customer.

**1.5 Service Use:** Service use is limited to Customer and its End Users.

**1.6 Notices:** Customer shall 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 Service. In addition, Customer shall promptly notify XO of any errors, "bugs," or Service problems of which Customer becomes aware when using Service.

**1.7 Disclaimers:** XO exercises no control over, and therefore accepts no responsibility for information or content passing through the Company's host computers, XO Network hubs and POPs (the "XO Network"). EXCEPT AS EXPRESSLY SET FORTH IN SECTION 1.12 *INFRA*, XO MAKES NO WARRANTIES OF ANY KIND, WHETHER EXPRESS OR IMPLIED, FOR THE SERVICE OR EQUIPMENT IT PROVIDES, 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 Service. The use of any information obtained via the XO Network is at Customer's and End User's own risk.

### **1.8 Term and Termination**

**1.8.1 Service Commencement:** XO will notify Customer when the service is installed or connected, successfully tested, and available for Customer use. Billing will begin on the Start of Service Date regardless of whether Customer is prepared to use Service. XO shall 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.

**1.8.2 Term:** The minimum term of Service is two (2) year2 beginning on the Start of Service Date. Unless one Party notifies the other in writing at least thirty (30) days prior to the expiration of the original or any renewal term of Service that it intends not to renew Service, Service shall automatically renew for the same term of Service period at the same pricing, terms and conditions.

### **1.9 Cancellation and Termination Charges.**

**1.9.1** If Customer cancels Service after an order has been placed but before the Start of Service Date, Customer will (a) pay XO one (1) month's monthly recurring charges for Service, plus any applicable service ordering and installation charges incurred by XO in undertaking to provision Service, and (b) return, at Customer's expense, any XO equipment in the same condition as when it initially was delivered and installed, reasonable wear and tear excepted, as well as any software or other materials provided by Company.

**1.9.2** If Customer terminates Service after the Start of Service Date, Customer must pay for all charges associated with the ordering and installation of Service, as well as the first month's recurring charges and for the monthly recurring charges for the remainder of the Service term, unless the Customer's termination is for cause. In addition, Customer will return, at its expense, any XO equipment in the same condition as when it initially was delivered and installed, reasonable wear and tear excepted, as well as any software or other materials provided by the Company.

**1.9.3** Customer agrees that the damages specified in Sections 1.9.1 and 1.9.2 are difficult or impossible to ascertain with certainty and, therefore, the damages specified therein are intended to serve as liquidated damages and not a penalty.

### **1.10 Acceptable Use Policy**

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

**1.11 Pricing**

**1.11.1** Pricing for Service is as set forth in the applicable Service Order and may vary depending on port speed and term.

**1.12 Service Level Agreement ("SLA")**

**1.12.1** Customer acknowledges it has reviewed the Service Level Agreement ("SLA") located at (<http://www.xo.com/legal/sla/index.html>). Said SLA, which may be amended from time to time, is incorporated by reference herein and is binding on XO and Customer.

**1.13 Network Numbers and Domain Name Policies**

**1.13.1** XO Network Number and Domain Name Policies are set forth in the AUP located at (<http://www.xo.com/legal>). In all instances, the XO Domain Name and TCP/IP Addresses provided in connection with Service remain the property of XO and upon Service termination, Customer's right to use XO Domain Name and TCP/IP Addresses will cease. Unless otherwise mutually agreed in writing, Customer at all times is responsible for maintaining its own Domain Name when purchasing Service and for paying all charges associated with the Domain Name, including charges billed to Customer for Domain Name registration by third parties.

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

**1.14 Software License**

**1.14.1** 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, 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's or a supplier's ownership rights with respect to any licensed software.

**1.14.2** 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.

**1.15 Limitation of Liability**

**1.15.1** NEITHER PARTY WILL BE LIABLE FOR ANY INDIRECT, INCIDENTAL, SPECIAL, PUNITIVE OR CONSEQUENTIAL DAMAGES THAT RESULT FROM CUSTOMER'S OR CUSTOMER'S ENDUSERS' USE OF THE XO NETWORK AND SERVICE INCLUDING, WITHOUT LIMITATION, ANY SUCH DAMAGES FOR LOSS OF DATA RESULTING FROM DELAYS, NON-DELIVERIES OR SERVICE INTERRUPTIONS. NOTWITHSTANDING ANY OTHER PROVISION HEREOF, CUSTOMER'S SOLE REMEDIES FOR ANY CLAIMS RELATING TO SERVICE OR THE XO NETWORK ARE LIMITED TO CREDIT OUTAGE ALLOWANCES FOR WHICH THE CUSTOMER MAY BE ELIGIBLE.

**1.15.2** 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, 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.

**1.16 Indemnification**

**1.16.1** 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.

**REV: 05/07/08**