

## XO Wide Area Network Services IP Virtual Private Network and Ethernet VPLS Services

### 1.0 Service Description

**1.1 XO IP VPN** is a Layer 3 data networking service that supports traditional private data networking services, such as Frame Relay and Ethernet, over a Multi-Protocol Label Switching (“MPLS”) enabled IP backbone.

**1.2 XO Ethernet VPLS** is a Layer 2 data networking service that supports traditional private data networking services over a MPLS core network.

**1.3 Access Port Speeds.** The following access port speeds are supported by the Services:

Access Port Speed*	IP-VPN	VPLS
DS1 and DS3	✓	N/A
Ethernet	✓	✓

Supported Protocols	Access Methods	Service	
		IP VPN	VPLS
Frame Relay, Point-to-Point Protocol (PPP)	DS1 & DS3	✓	
	E1 & E3	✓	
	10/100/1000/10G Ethernet	✓	✓

\*Other port speeds and configurations, e.g., bonded DS1s, may be provided on an Individual Case Basis (“ICB”).

### 1.4 Additional Definitions

**(a) Class of Service (“CoS”):** A traffic-managing scheme that takes different traffic types such as e-mail, streaming video, voice, large document file transfer etc. and assigns each traffic type a unique traffic class with its own service priority.

**(b) Committed Data Rate (“CDR”):** The minimum data rate, in Megabits per second (“Mbps”), that a Customer commits to in a Service Order.

**(c) Demarcation Point:** For IP VPN Service, the location where a Customer's Local Area Network (“LAN”) and the IP VPN Service interconnect, e.g., RJ-x, Ethernet hand-off interfaces or Telco Smartjacks.

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

**2.0 Class of Service.** Customer may use XO's Class of Service (“CoS”) option to prioritize traffic when there is congestion at a port. Additional charges may apply.

The following Classes of Service are available:

- **Real Time** is intended for applications such as VoIP and Citrix that are extremely sensitive to latency, loss and jitter.
- **Critical Plus** is intended for applications such as Telnet and Routing Protocols that are very

sensitive to latency, loss and jitter.

- **Critical** is intended for applications such as SAP that can withstand higher latency and jitter.
- **Priority Plus** is intended for applications such as FTP that are sensitive to latency and jitter.
- **Priority** is intended for applications such as databases that need network priority, but are not susceptible to variations in latency or jitter.
- **Standard** is intended for applications such as e-mail and web browsing that can withstand moderate to high variations in latency or jitter.

Class of Service does not guarantee delivery of traffic in the event of over utilization of the port.

### **3.0 Charges and Billing**

**3.1 Pricing for Services** shall be set forth on the Service Order. Monthly Recurring Charges ("MRC") are billed in advance either on a flat-rate basis for the local loop, port and CoS or on a usage basis per article 3.2 below. Customers should note failure to allow or accept a scheduled installation may result in a Service charge.

**3.2 Usage Billing.** If Customer selects a burstable Service and a minimum per Mbps data rate ("Committed Data Rate"), the Committed Data Rate will be applied to a particular XO IP port. Customer's per-port Send Traffic usage of Service 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 samples for such port will be discarded. The ninety-fifth (95th) percentile value for Send Traffic for such port will be compared to the Committed Data Rate applicable to the port. If the ninety-fifth (95th) percentile of Send 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, "Send Traffic" means traffic from the origination point that is sent by Customer onto the XO IP Network.

**4.0 Monthly Reporting.** XO monitors and manages the XO IP VPN and VPLS Services and provides monthly reports to Customers through the XO online reporting system ("XO Stats") at the following link: <http://x41.xostats.xo.com/cgi-bin/xostats/Login.pl>.

**5.0 Demarcation Point.** XO will provision and maintain IP VPN Service up to the Demarcation Point. Customer will be responsible for all VPN Service-related facilities, equipment and software at Customer Premises beyond the Demarcation Point.

**6.0 Leased Routers.** If requested, XO will lease routers to Customer for use with Service on Customer Premises per the terms and conditions, including charges, in an Equipment Lease Addendum to this Exhibit.

**7.0 XO CPE Management/Monitoring.** If Customer rents or purchases router(s) from XO and also chooses the management/monitoring option for an additional fee, Customer will receive initial and ongoing XO standardized configuration support of these devices. XO will also monitor CPE devices. CPE devices are monitored every 5 minutes by IP polling. If a CPE device cannot be contacted via IP Polling, XO Customer Care will proactively contact Customer via e-mail and/or telephone notifying Customer of the outage, and detail steps being taken to resolve the outage. Customer will be notified within 30 minutes of when XO determines that no connectivity is occurring with the router at the Customer premise.

**8.0 Off-Network Connections.** XO may offer IP VPN Services to Customer at locations served by other carrier networks. IP VPN Services provided to Customer through a Network-to-Network Interface ("NNI") are considered Off-Net and subject to the terms and conditions of the interconnect agreement(s) between XO and other carrier(s). For such locations, Customer acknowledges that limitations may apply

to Class of Service usage, DIA availability, SLA reporting, as well as other terms and limitations, in accordance with the terms of such interconnect agreement(s).

**9.0 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.

#### **10.0 Responsibilities of the Parties**

**10.1** The parties are responsible for working together to determine the best design and configuration based on Customer's needs and requirements. This includes completion of a site survey.

**10.2** 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 Demarcation Point including, without limitation, IP configuration issues such as IP routing and the disabling of usage over WAN connection(s).

**10.3** 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.

**11.0 Customer's Representations and Warranties.** In addition to the representations and warranties as set forth in the Agreement, Customer agrees, represents and warrants that Customer is responsible for any adverse effects caused by changes to Customer's Firewall policies, and that such changes may result in a lower level of security and may allow unsecured access to its Network. In the event of any such change, Customer acknowledges and agrees that it shall assume all risks and liabilities associated with or resulting from any such changes.

#### **12.0 Disclaimer and Limitations of Liability**

**12.1** CUSTOMER ACKNOWLEDGES THAT DATA TRANSMISSION SECURITY SERVICES SUCH AS THOSE PROVIDED UNDER THIS EXHIBIT ARE NOT FOOLPROOF AND, THEREFORE, ARE NOT GUARANTEED. IN ADDITION TO THE DISCLAIMERS AND LIMITATIONS SET FORTH IN THE AGREEMENT, NEITHER XO NOR ITS SUPPLIERS WILL BE LIABLE FOR ANY DAMAGES (INCLUDING, WITHOUT LIMITATION, ANY LOSS OR DAMAGE TO DATA) RELATING TO OR ARISING FROM THE USE OF THE SERVICES PROVIDED HEREUNDER (THIS EXCLUSION DOES NOT APPLY TO ANY SERVICE WARRANTIES OR SERVICE LEVEL AGREEMENTS FOR ANY COMMUNICATION SERVICES PROVIDED BY XO UNDER THE AGREEMENT).

**12.2** CUSTOMER UNDERSTANDS AND AGREES THAT XO IS PROVIDING SERVICES, AND ANY RELATED HARDWARE, SOFTWARE AND DOCUMENTATION TO CUSTOMER AND CUSTOMER WAIVES ANY LIABILITY AGAINST XO AND AGREES TO HOLD XO HARMLESS FROM ALL LIABILITY ARISING FROM LOSS OR DAMAGE DUE TO DELAY OF SERVICE COMMENCEMENT OR INABILITY TO PROVIDE THE SERVICE, FAILURE OF ALL OR PART OF THE SERVICE, INCLUDING ANY BETA SERVICE, OR ANY RELATED SERVICE PROVIDED HEREIN.

**12.3** XO PROVIDES, AND CUSTOMER ACCEPTS, ANY XO OR THIRD PARTY HARDWARE OR SOFTWARE PROVIDED TO OR USED BY CUSTOMER IN CONNECTION WITH THE SERVICES "AS

IS" WITH NO EXPRESS OR IMPLIED WARRANTIES OR CONDITIONS OF ANY KIND, INCLUDING, WITHOUT LIMITATION, WARRANTIES OF MERCHANTABILITY, TITLE, NONINFRINGEMENT OR FITNESS FOR A PARTICULAR PURPOSE. NOTHING HEREIN SHALL 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. 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 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, in whole or in part, 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.

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