

XO Wireless Backup Service Terms and Conditions

1.0 Description of Service

XO provides Wireless Backup Service (the "XO Wireless Backup Service") to Customer either directly or through one or more third party service providers as a failover solution for XO IPVPN and IP Flex with VPN (collectively "Eligible Services") to help ensure Service availability in the event of outages on the local loop at locations where Customer purchases XO Wireless Backup Service. XO Wireless Backup Service provides Customer with a 3g wireless link utilizing cellular telephone service that is furnished by one or more participating wireless carriers ("Participating Carriers"). XO will provide a wireless modem to Customer on a rental basis. XO will install and configure the modem at each Customer location.

2.0 SLA Limitations

2.1 Service Level Agreements (SLA's). XO Wireless Backup Service is provided to Customer strictly on an "as is" basis. Customer acknowledges that standard SLAs for the Eligible Services including, but not limited to, SLA objectives for Latency, Jitter, and Packet Loss will not apply for traffic carried over XO Wireless Backup Services. Notwithstanding the foregoing, XO will honor the applicable XO Network Availability SLA for Eligible Services in the event of Service Outages on Eligible Services due to failure of the XO Wireless Backup Service provided hereunder.

2.2 Class of Service (Cos). Class of Service is not available for IPVPN traffic carried over XO Wireless Backup Services.

3.0 Privacy and Security

Customer acknowledges that neither XO nor its underlying providers will have responsibility for the selection and use of any codes or passwords as may be permitted or required for the use of the XO Wireless Backup Services by Customer and/or End Users. Neither XO nor the underlying provider nor any Participating Carrier can guarantee the privacy or security of any transmission, and Customer acknowledges that XO Wireless Backup Services are capable of being intercepted without the knowledge or permission of XO, the underlying provider, Customer or any End User by third parties. Accordingly, XO, the underlying provider, and Participating Carriers shall not be liable to Customer or any third party (including without limitation any End User) for interception or use of any XO Wireless Backup Service by unauthorized third parties.

4.0 Abuse or Fraudulent Use

4.1 General. Customer shall not assist or participate in any fraudulent use or abuse of any XO Wireless Backup Service. Customer agrees to promptly report to XO any abuse or fraudulent use of which Customer becomes aware, and to fully cooperate in any investigation or prosecution initiated by XO or a Participating Carrier. Customer acknowledges that XO Service to a wireless modem may be restricted or cancelled if there is a reasonable suspicion of abuse or fraudulent use. Customer further acknowledges that a Participating Carrier may temporarily block automatic roaming due to fraudulent usage. Customer shall have sole liability for charges, costs or damages resulting from any abuse or fraud by Customer, Customer's employees, Customer's agents or End Users.

4.2 Examples. Abuse and fraudulent use of the XO Wireless Backup Services include, but are not limited to: (i) attempting or assisting an unauthorized person to access, alter, or interfere with the communications of and/or information about another wireless customer; (ii) tampering with or making an unauthorized connection to the XO or underlying provider network, or the network of a Participating Carrier; (iii) using the XO Wireless Backup Service in an unauthorized manner so as to interfere unreasonably with the use of the service by other customers of XO or the underlying provider, or End Users, or to interfere unreasonably with XO's ability to provide the XO Wireless Backup Services; (iv) intentionally using XO Wireless Backup Service to convey obscene, salacious, or unlawful information; (v) any unauthorized use of XO Wireless Backup Service through the unauthorized modification of an authentication method associated with a wireless modem provided hereunder; or (vi) any other violation of the XO Acceptable Use Policy (AUP).

5.0 Customer Usage

XO Wireless Backup Services are intended for use by Customer as a failover on Eligible Services only. Customer acknowledges that wireless backup modems are portable, and always active and able to carry traffic. Customer will be responsible for all charges associated with modem usage by its employees and/or End Users.

6.0 Pricing

Customer will pay Monthly Recurring Charges (MRC) for XO Wireless Backup Services as set forth in the Service Order Agreement. The MRC includes the rental of the wireless modem and the usage associated with the XO Wireless Backup Service package selected. Any usage in excess of the included usage will be billed at the applicable overage rate. The overage rates associated with each XO Wireless Backup Service package are shown in the Service Order Agreement.

7.0 Term and Termination

7.1 Term. XO Wireless Backup Services ordered will have a minimum term of one (1) year from the applicable Start of Service Date. Unless a Party notifies the other Party in writing not less than thirty (30) days prior to the expiration of the original or renewal term that it intends not to renew the Service, the Service will automatically renew for the same service Term and at the same pricing, terms, and conditions as set forth herein.

7.2 Termination and Cancellation Charges. Upon the expiration or termination of Service, Customer must, within ten (10) days of such expiration or termination, return, at Customer's expense, any equipment owned by XO or its underlying service provider(s) in the same condition as when initially installed or delivered (less reasonable wear and tear), as well as any software and other materials provided by XO. If Service is cancelled after the Service has been ordered but prior to the Start of Service Date, Customer will pay two (2) month's monthly recurring charges, plus any applicable service ordering and installation charges. If Service is terminated after it has been activated but prior to the expiration of the current Service Term, including termination by XO for cause, Customer will pay all charges, which Customer agrees is reasonable associated with the service ordering and installation, as well as one hundred percent (100%) of the monthly recurring charges for the remaining Service Term. It is agreed that XO's damages in the event of Service cancellation/termination will be difficult or impossible to ascertain. The provisions set forth above are intended, therefore, to establish liquidated

damages in the event of cancellation or termination and are not intended as a penalty.

8.0 Limitations and Warranties

In addition to the limitations on liability set forth in the Agreement, Customer acknowledges that the XO Wireless Backup Service provided by XO hereunder is based upon service furnished to XO by one or more underlying service providers and utilizes cellular telephone service that is furnished to such provider(s) by one or more Participating Carriers pursuant to agreements between such provider(s) and such Participating Carriers. CUSTOMER FURTHER ACKNOWLEDGES THAT XO, ITS UNDERLYING PROVIDER, AND PARTICIPATING CARRIERS DISCLAIM ALL LIABILITY OF ANY NATURE TO SERVICE USER, WHETHER DIRECT, INDIRECT, INCIDENTAL OR CONSEQUENTIAL, ARISING OUT OF CUSTOMER'S USE OF XO WIRELESS BACKUP SERVICE, AND CUSTOMER AGREES THAT SERVICE USER SHALL HAVE NO CLAIMS AGAINST XO, ITS UNDERLYING PROVIDER, OR PARTICIPATING CARRIERS OF ANY KIND WITH RESPECT THERETO.

9.0 Indemnification for Fraud

Without limiting Customer's indemnification obligations otherwise set forth in the Agreement, Customer agrees to defend, indemnify and hold harmless XO, its officers, director, employees, agents, contractors and affiliates from and against any damages, liabilities, claims, costs and expenses (including any reasonable attorneys' fees) to the extent arising out of or resulting from (a) Customer's fraudulent use or abuse of XO Wireless Backup Service, (b) intentional assistance by Customer to any third party in fraudulently using or abusing XO Wireless Backup Service, or (c) any fraudulent use or abuse of XO Wireless Backup Service by an End User.

REV: 7/19/12