

XO High Speed IP Transit Service (Carrier Services)

1.0 DESCRIPTION OF SERVICES

1.1 High Speed IP Transit Service. High Speed IP Transit Service ("Service") is an IP transit service that includes dedicated IP access port(s) and access to the XO IP Network and the global Internet. High Speed IP Transit Service is available through Serial/POS and Ethernet interfaces up to 10 Gbps.

1.2 Interconnection. Service is delivered using either a cross-connect or a local loop from the Customer Premises (or such other point of interconnection) to the dedicated IP access port. The method of interconnection is offered subject to additional terms and conditions as provided in the Agreement. The charges for such interconnection will be set forth in the applicable Service Order.

1.3 Required Equipment. Customer, at its own expense, must provide: (a) a router compatible with XO Service; (b) Internet Protocol software for the router; and (c) appropriate connector and power cables.

1.4 Availability of Service. Service is offered and furnished subject to the availability of all necessary facilities, including those acquired by XO from or through third parties. XO may limit or allocate Service, if necessary, due to facilities availability, taking into account XO's then-current and projected capacity and the reasonable expectations of its existing and future customers.

1.5 Additional Definitions.

1.5.1 "Committed Data Rate" means the minimum data rate committed by Customer and set forth in the Service Order. The Rate will be expressed in Megabits per second (Mbps).

1.5.2 "Receive Traffic" means traffic from any origination point that is received by Customer from the XO IP Network.

1.5.3 "Send Traffic" means traffic from any origination point that is sent by Customer onto the XO IP Network.

1.5.4 "IP Transport Extension" means a connection between the Point of Termination on the XO Network and the physical location of the XO IP Aggregation Router. A standard IP Transport Extension, for which there is no additional charge, is provided as an unprotected Wavelength Circuit and is not part of the XO IP Network for the purposes of measuring Service performance.

2.0 USE OF INTERNET SERVICES

2.1 The Service is limited to use by Customer and its End Users. Customer must notify XO within five (5) days of any notices received by Customer that could adversely affect XO including, but not limited to, notices of claims or proceedings that involve the Service. Customer must promptly notify XO of any errors, "bugs," or problems experienced in using the Service. XO exercises no control over, and accepts no responsibility for, the informational content traversing the Service. EXCEPT AS EXPRESSLY SET FORTH IN SECTION 6.0 BELOW, XO MAKES NO WARRANTIES OF ANY KIND, WHETHER EXPRESS OR IMPLIED, FOR THE SERVICE AND IT DISCLAIMS ANY WARRANTY OF TITLE, MERCHANTABILITY, NON-INFRINGEMENT OR FITNESS FOR A PARTICULAR PURPOSE. Use of any information involving the Service is at Customer's and End Users' own risk. XO specifically denies any responsibility for the accuracy or quality of information obtained via the Service.

3.0 TERM AND TERMINATION

3.1 Start of Service Date. XO will notify Customer when the Service is available for Customer's use. Billing will begin on the Start of Service Date regardless of Customer readiness at that time. Anything to the contrary herein notwithstanding, XO will not be liable for any delays in meeting requested or specified installation dates or from an inability on its part to provide Service. Customer will cooperate with XO in all facets relating to the installation and testing of the Service.

3.2 Term. The initial term of Service will be set forth in the applicable Service Order but in no event will be less than one (1) year. Unless one Party notifies the other Party in writing not less than thirty (30) days prior to the expiration of the initial or any renewal term that it intends not to renew the Service, the Service will automatically renew for successive one (1) month Service terms at the same pricing and terms and conditions.

3.3 Termination and Cancellation Charges.

3.3.1 Upon the cancellation, expiration or termination of any Service Order or Service, Customer, within ten (10) days will return, at its expense, any XO equipment used or to be used in connection with the Service, as well as any software or other materials provided by XO.

3.3.2 If Service is cancelled after being ordered but prior to the Start of Service Date, Customer will pay a cancellation charge equal to one (1) month's recurring charges, plus any applicable service ordering and installation charges.

3.3.3 If Service is terminated after the Start of Service Date for Customer's default, including termination of Service for non-payment, Customer will be required to pay, in addition to all other amounts due and owing XO, applicable early termination charges equal to: (a) one hundred percent (100%) of the monthly recurring charge due for Service during the remainder of the initial term or any renewal term, plus (b) all charges associated with the service ordering and installation.

3.3.4 The parties agree that XO's damages in the event of cancellation or early termination are difficult or impossible to ascertain and, therefore, the provisions set forth above are intended to establish liquidated damages and are not intended as a penalty.

4.0 ACCEPTABLE USE POLICY

4.1 Customer's 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 by reference herein and may be updated from time to time by XO.

5.0 PRICING CONSIDERATIONS

5.1 Customer will pay for Service based on the Committed Data Rate and applicable fixed rates as set forth in the applicable Service Order or in this Exhibit. The Committed Data Rate will be applied either to a particular XO IP port or, in the aggregate, to additional XO IP ports established in a Service Order. The "Aggregate CDR" billing option, as defined below, is not available for all port interface speeds.

5.1.1 If the Committed Data Rate applies to a particular IP port, Customer's per-port usage of Service (both Send Traffic and Receive Traffic) via such port will be sampled every five (5) minutes for the previous five (5) minute period. At the end of the month, the top five percent (5%) of Send Traffic and Receive Traffic samples for such port will be discarded. The higher of the resulting ninety-fifth (95th) percentile value for Send Traffic or Receive Traffic for such port will be compared to the Committed Data Rate applicable to the port. If the ninety-fifth (95th) percentile of either Send Traffic or Receive 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.

5.1.2 If the Committed Data Rate applies in the aggregate to more than one XO IP port ("Aggregate CDR"), as set forth in the Service Order for such ports, Customer's usage of Service (both Send Traffic and Receive Traffic) will be sampled every five (5) minutes for the previous five (5) minute period for each such port. At the end of the month, the top five percent (5%) of Send Traffic and Receive Traffic samples will be discarded for each port. The higher of the resulting 95th percentile value for Send Traffic or Receive Traffic for each such port will be added together to determine Customer's aggregate usage, and such aggregate usage will be compared to the Aggregate CDR. If the aggregate usage is higher than the Aggregate CDR, Customer, in addition to being billed for the Aggregate CDR, will be billed for any aggregate usage in excess of the Aggregate CDR at the contracted per Mbps rate. Unless otherwise agreed in writing by the Parties, Aggregate CDRs apply only to the ports set forth in the Service Order. If Customer orders additional ports in a separate Service Order, the Aggregate CDR stated in that Service Order will be as stated therein. Alternatively, if Customer seeks to have the ports previously subject to an Aggregate CDR also contribute to the Aggregate CDR set forth in the separate Service Order, that Service Order may provide for an increase in the Aggregate CDR for all such ports.

5.1.3 The fixed rate charges for Service consist of two (2) components: (a) a non-recurring installation charge per port; and (b) a monthly recurring port charge.

5.2 Pricing is based, in part, on the routing flow to which Customer commits at the time of placing a Service Order or, if no commitment is then made, on standard traffic patterns experienced in the XO Network. If Customer's delivered traffic deviates from either of these criteria, as applicable, as a result of its routing abnormal or excessive amounts of traffic to specific networks or routes, XO, upon the delivery of written notice to Customer, may restrict the routes available to Customer.

6.0 SERVICE LEVEL AGREEMENTS ("SLA")

6.1 The service level agreement ("SLA") for Service may be updated from time to time by XO.

7.0 NETWORK NUMBERS / DOMAIN NAME POLICY

7.1 Customer is subject to the Network Number and Domain Name Policies established by XO under the AUP. In all instances, XO Domain Name and TCP/IP Addresses are and will remain XO property and, upon the termination of Service will revert to XO. Unless otherwise mutually agreed in writing between the Parties, Customer must maintain its own Domain Name and pay all charges associated therewith, including charges billed to Customer by third parties for Domain Name registration. XO will have sole discretion for the Internet routing of XO-provided IP addresses.

8.0 SOFTWARE LICENSE

8.1 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 Customer permit or authorize a third party to do so. Title to such software, and all related technical know-how and intellectual property rights therein, are, and remain, the exclusive property of XO and/or its suppliers. Customer may take no action to jeopardize, limit or interfere in any manner with XO and any supplier's ownership rights with respect to any licensed software.

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