

## **Xfone USA Terms & Conditions – Residential Internet**

All provisions in this Service Agreement apply to all accounts of Xfone USA d/b/a NTS Communications (hereinafter referred to as Xfone), its subsidiaries, divisions, and resellers of Xfone, Inc. The benefits of, or rights conferred by, this agreement are non-transferable. Use of an account is expressly limited to the individual or entity whose name appears on the account. Xfone makes no warranties of any kind, whether expressed or implied, for the services it provides. Xfone also disclaims any warranty of merchantability or fitness for a particular purpose. Xfone will not be responsible for damages or losses suffered due to service interruptions.

Xfone reserves the right to change without notice such services as (but not limited to) access procedures, menu structures, commands, documentation, hardware, software, and services offered.

1. We provide a connection to the Internet.

Xfone provides subscribers with a connection to the Internet through its Xfone.com service, and other domain names or organization names that are owned by Xfone. We believe the Internet to be a valuable resource for communication and for information retrieval and exchange. However, we did not create the Internet or the sources connected to it. All we can do is provide you, our subscriber with a connection.

2. We are not responsible for what's on the Internet or its reliability.

We are in no way responsible for content, reliability, suitability or accuracy of information, programs, or other material. We make no claim regarding fitness for any purpose. We disavow any responsibility for any kind of damages or loss you may incur as a result of using the service.

3. You must provide your own hardware, software and connection lines.

Our business is to provide a connection to the Internet. But you must provide your own telephone line (or other connection means) to Xfone's service. It is your responsibility to purchase the necessary computing and communications equipment, software programs, and communication line to establish your connection and to run the applications that are of interest to you. We do not manufacture, sell or maintain end-user hardware or software. There are many reputable vendors from whom you can purchase such products and whose business it is to support them.

4. Your telephone bill. Please READ CAREFULLY. Xfone will NOT pay for any charges on your telephone bill. (a) You must determine whether the modem dial-up telephone number you are assigned is a local call. Xfone may assign or suggest a telephone number for your computer modem to dial in order to connect to the Internet. Xfone maintains dial-up lines in many geographical areas in order to provide local access to as many customers as possible. It is not practical for Xfone to know that a particular number may be outside your local calling area and that by dialing it you will incur long distance charges. Only you can make that determination. You must determine whether the Xfone number you dial to access the service is local or long distance. Xfone cannot be responsible for long-distance calls.

(b) Local Optional Service (LOS) may also incur charges. If you use Local Optional Service (LOS) or a comparable cost-saving plan provided by your telephone company,

please be aware that there may be a time limit on your usage that may result in additional charges if you exceed the limit. This is a service provided by your telephone company. Xfone cannot know about and cannot be responsible for any charges you incur from your telephone company. You must check with your telephone company to determine whether there is a time limit or additional charges. Xfone will not pay for charges on your telephone bill.

5. We offer connectivity and Internet products on an "as is" basis.

As a courtesy to our customers we may supply diskettes, compact disks or other media containing connectivity and application software. Alternatively, we may provide such software for downloading from our servers or from external sites. These may be freeware or shareware products that we obtain from various sources and configure to work with Xfone.com or other domains owned by Xfone.

6. We do not guarantee those products.

Although we make every reasonable effort to obtain reliable products, we cannot guarantee that they will not fail or that they will not fail catastrophically. We distribute these products as a courtesy to you on an "AS IS" basis and you, by accepting these terms and conditions of subscription, agree to accept them on that basis. We completely disavow any responsibility for them and any loss you might experience by installing and using them.

7. You are responsible for your own data, even if it resides on our computers.

Xfone may provide for the use of web mail, web pages, or other service in which a subscriber's programs and/or data reside on Xfone's servers (computers.) It is your responsibility to insure that your programs and data are backed up on your own computers or media. You may have spent a great deal of time, effort and money designing and building your personal or commercial web page; you may have sent an important e-mail message that you need to keep a copy of; you may have meticulously created an address book or contact list with important data. It is vitally important to understand that computing and network systems can and do fail and that, for this reason, it is essential that you keep your important programs, scripts, pictures, messages, and data backed up on your own media. It is in Xfone's best interest to provide you, our customer, with reliable services and facilities. But Xfone cannot guarantee that a catastrophic failure will not occur. Xfone completely disavows any responsibility for any loss you might incur in regard to the use of such facilities.

8. We purge mail on our servers 30 days old or older (and may purge it more often if needed.)

Thousands of people receiving hundreds of thousands of e-mail messages requires lots of disk space on our servers. It is necessary, therefore, that we monitor this space to insure the proper and efficient operation of the mail system. You are strongly encouraged not to leave mail on our servers. We regularly purge mail that is 30 or more days old from our servers. Although we haven't had to purge mail any more frequently than every 30 days, if a critical shortage of disk space should arise, Xfone reserves the right to purge mail even more often, say after 15 days.

9. There are security and privacy risks associated with using the Internet.

You should exercise caution when using the Internet. Xfone cannot guarantee that data or information residing on your computer connected to the Internet or transmitted via the Internet will not be compromised or that it will not be used in some harmful manner even

if the programs you use reside on our servers. Nor can Xfone guarantee that you will not be the recipient of false, erroneous, misleading, unlawful, or pornographic material even if you are using a program or service designed to filter out such material. You should be extremely cautious when downloading material from the Internet or when accessing attachments you receive via e-mail or other facility. Xfone cannot guarantee that such material will not be harmful, objectionable, or destructive (as in the case of computer viruses, worms, Trojan horses, and the like.) Again, Xfone completely disavows any responsibility for any loss you might incur in regard to the use of such facilities.

10. Guard your passwords.

You are responsible for the confidentiality of your password(s). Xfone will cancel access and change access to your account(s) upon notification that your password has been compromised.

11. Use the service legally and within the bounds of acceptable Internet standards.

In subscribing to Xfone.com, or any other service owned by Xfone, you agree to use the service only for legal purposes. You agree that you will not use your Xfone.com account or any other account obtained through Xfone or one of its subsidiaries, nor allow your account to be used (1) for the transmittal or exchange of material that would be in violation of copyright laws, (2) for the transmittal or exchange of libelous, slanderous, obscene or pornographic material, (3) for sending threatening or harassing messages, (4) for violating the export laws of the United States of America, (5) for spamming, that is, flooding Internet mailboxes with unsolicited or commercial messages via e-mail or other messaging facility or (6) for any other illegal or immoral purpose.

12. Do not engage in abusive or harmful activity.

You further agree that you will not (1) seek unauthorized access to system directories, files, data, and programs, (2) intercept nor attempt to intercept private messages or other material not intended for you, (3) log in to your account more than once at any particular time, that is, you and a friend or other family member cannot both be logged into the same account at the same time, (4) log in and remain logged in all day or all night at one time; if you find that you need a continuous log-in, you should upgrade your account for that type of service, and (5) run programs or store massive amounts of data that consume excessive system resources.

13. You are billed for service in advance and payment is due upon receipt of bill.

Xfone offers billing on monthly, quarterly, and annual cycles. You may choose to be billed by U.S. mail, e-mail, credit card, and ACH withdrawal from your banking account. (For technical reasons, not all of those options are available at all locations or on all products. Please check with your local representative.) Charges are due when billed and will include the fee for the next cycle plus any fee due for excess time and resources previously used. (Fees incurred for excess usage will be billed no less frequently than monthly, regardless of the chosen billing cycle.) Any invoice not paid within one month following the statement date shall result in a late payment charge. Past due invoices not brought current within ten (10) days of the late charge assessment will be suspended. Reactivation is subject to a reactivation fee.

14. By logging in to your account, you accept these terms and conditions.

When you log into your account for the first time, you are accepting and agreeing to the terms and conditions stated herein and to the charges that accrue by use of the account until you tell us in writing to close the account.

15. You will be charged for your account until you tell us in writing to close the account. As long as your account is open, we will charge you for it whether you use it or not. It is your responsibility to inform us to close the account when you no longer want or need the service. If you inform us by voice (by telephone or in person) that you want the account closed, we will cordially comply with your wishes and thank you for having used our service. However, for your own protection, we strongly suggest that you make your request in writing and keep a copy for your records.

16. We reserve the right to change prices with 30 days advance notice. Xfone will post price change notices on its paper and e-mail bills and on its web pages.

17. You can be billed for the use of excessive resources. If by web page, mail or other facility, you allow your account to consume excessive resources (like web page hits, disk storage, etc.) Xfone will charge you for them.

18. Your personal files will be deleted from our servers upon termination of service.

19. You can lose your account and incur extra charges for violating the terms and conditions. If you violate the terms and conditions herein, Xfone may revoke your service and not give you a refund. Additionally, Xfone may charge you for any damage you caused or services or resources you used over and above your normal subscription rate.

20. We will vigorously prosecute illegal and/or abusive activity. Please be warned that Xfone strongly objects to the use of its facilities or the Internet for illegal and immoral activities and will vigorously prosecute those who knowingly and illegally abuse the service. Within the framework of the law, Xfone cooperates with law-enforcement officials in the pursuit of criminal activities and those who perpetrate such activities.

21. You must be a competent adult to subscribe. To subscribe to and use the facilities of Xfone (Xfone.com or other domain or facility owned by Xfone), you must be a competent adult, 18 years of age or older, OR you must gain authorization from your parent or guardian. Students accessing the system through school accounts will be deemed to have appropriate authorization. That is, the subscriber is responsible for the use of subscriber's account.

22. Twelve (12) Month Commitment Required to Receive FREE Modem and FREE Shipping. In order to receive a FREE Modem and FREE Shipping of Modem, you must agree to use one of the Xfone Total Solutions for the Home bundled service packages, including DSL Service for 12 months.

23. FREE Modem and Shipping Credit. Xfone may provide a refurbished modem. You will be billed for the selected modem and Xfone will apply a credit equal to the amount billed for the modem and for shipping of the modem. Should you select Professional Installment, you will be billed for the

professional installation fee less the Modem cost and Xfone will apply a credit equal to the amount billed for the professional installation charges only. You will be responsible for any additional wiring/installation costs outside of ordinary installations and you will be billed according to the rates listed on the Installation Work Order that will be presented for your approval by an Xfone technician prior to additional installation costs incurred. To qualify for this special offer, you must maintain your Xfone Total Solutions for the Home bundled service, including DSL Service, for at least twelve months after the Ship Date and pay all applicable charges in connection therewith in a timely fashion.

24. Early Termination Fee.

If you don't maintain Xfone Total Solutions for the Home bundled service, including DSL Service for 12 months, Xfone may charge you for the modem (unless you have returned the modem in accordance with the procedures outlined below) as follows: 100% of the credit amount for your modem, whether shipped or professionally installed (unless you return your modem within 30 days - see below), and 100% of the credit amount for shipping charges, if the modem was shipped to you.

25. Limited time offer.

Xfone reserves the right to discontinue the FREE Modem Credit offer, or any offer, at any time.

26. Scope of FREE Modem Credit Offer and other FREE Tools.

Offer is for residential customers only who order Xfone Total Solutions for the Home bundled service, including DSL Service. Additional Free Tools consists of Spam Filter, Pop-Up Blocker, Mobile Briefcase® and On-Line Account Center® which can be downloaded after the installation of Total Solutions DSL for the Home.

27. Xfone Total Solutions for the Home DSL Equipment - Payment Terms.

If you are a new customer and elect to purchase a modem from Xfone, the equipment will be billed to your credit card at the time of subscription. If you are a new customer and elect the 12 month commitment for Xfone Total Solutions for the Home bundled service, including DSL Service, your credit card will not be billed for the equipment and shipping charges. If you are an existing customer and choose Xfone Total Solutions for the Home bundled service, including DSL Service and elect the 12 month commitment, you will be billed for the equipment and shipping charges, however, you will also receive a credit on your bill for the total amount of the equipment and shipping charges. If you are a new customer or an existing customer and do not commit to a 12 month term for your bundled services, your credit card will be billed in advance at the time of subscription for the modem, shipping charges and for installation charges. Equipment credit will be applied for DSL modems returned within 30 days of equipment ship date (or professional installation date). However, no equipment credits will be applied for cancellations of Xfone Total Solutions for the Home service. Also no credit will be given for DSL modems returned after 30 days of equipment ship date (or professional installation date).

28. Xfone Total Solutions for the Home DSL Equipment Return Policy.

If you decide within thirty (30) days of the Ship Date or Installation Date that you want to return the modem for any reason, you may return it and you will not be charged for the modem, but (1) you must notify Xfone at 1-800-310-4481 within 30 days of the Ship Date/Professional Installation Date; (2) you must return the modem with the return authorization number and label obtained from Xfone. Xfone must receive the modem in

good working order with all original parts, accessories, disks, instruction manuals and related documentation intact within thirty (30) days after your notification to Xfone.

#### 29. Installation and Service Activation

Most customers will be able to self-install the equipment necessary for Xfone Total Solutions for the Home DSL service. If you request or are deemed by Xfone to require an authorized technician to install your service, Xfone will charge you a one-time installation fee of \$99.95. If you are unsuccessful in self-installing the equipment necessary for Xfone Total Solutions for the Home DSL service and request installation assistance at your home, you will be charged the professional installation fee of \$99.00. These installation fees may include any of the following items of equipment if required: phone line splitter and a reasonable amount of inside wiring and cabling materials as may be necessary to install the service at your location. The amount of these installation fees is not dependent on whether or how much equipment or materials are required (within Xfone's standard installation parameters).

#### 30. Modem Support.

For modem customers, Xfone will provide DSL technical support only for the computer for which the modem is installed. If you have obtained a router or Home Networking gateway from a source other than Xfone, Xfone does not at this time provide technical support for such equipment. In such event, Xfone will not be responsible for any system incompatibilities or hardware/software conflicts that may arise due to incompatible equipment installed beyond the router interface; the DSL must be restored to a single-user configuration before troubleshooting support can be provided.

#### 31. Back-up Internet Dial Account.

Xfone Total Solutions for the Home DSL service includes access to a back-up Xfone Dial Internet Service account. This account is intended to be used while you are traveling or in the event that DSL is temporarily interrupted. The back-up dial account provides for 1,000 minutes of usage per month at no additional cost to you. (You will, however, be responsible for any long distance charges that may be incurred for all back-up dial usage.) In the event you use your back-up dial account for more than 1,000 minutes of usage in any month, you agree to pay Xfone \$0.05 per minute of use each additional minute of usage in excess of 1,000 minutes of use. The total charge for the back-up dial account will not exceed \$50.00 per month. Should it appear that the back-up dial account is consistently using in excess of 1,000 minutes of use every month, Xfone has the right to terminate the back-up dial account.

#### 32. Billing.

Unless otherwise specified in any applicable promotion, upon registration or selection of the Xfone Total Solutions for the Home DSL service pricing plan, you will be billed in full for the applicable installation and service activation charges.

#### 33. Regulatory Cost Recovery Fee.

Xfone imposes a Regulatory Cost Recovery Fee of \$2.97 per month to offset costs incurred in complying with regulatory obligations. This fee, in the aggregate, offsets Xfone's Universal Service Fund payments for the DSL used in our Xfone Total Solutions for the Home DSL service and recovery of other expenses incurred to support specific regulatory requirements unique to Xfone as a DSL provider. This fee is not a tax or charge imposed by a government entity.

#### 34. The Federal Universal Service Charge.

All telecommunications service providers are required to contribute to the Federal Universal Service Fund. The Universal Service Fund subsidizes programs for schools, libraries, and health care providers. Xfone recovers the cost of these contributions through a surcharge on its customers' bills.

#### 35. Refusal to Serve Customers

A. COMPLIANCE BY CUSTOMER - We may decline to serve a customer or prospective customer until he has complied with all state and/or municipal regulations governing the service applied for and has also complied with the reasonable rules and regulations of Xfone USA.

B. INADEQUATE FACILITIES - We may decline to serve an applicant for service, or materially change the service of any customer, if in our judgment, the applicant does not have adequate facilities to render the service applied for or the desired service is of such character that is likely to affect unfavorably the service to other customers; provided, if our facilities otherwise obligated to serve the applicant or change the service of the customer, we shall do so as soon as it may reasonably provide the required facilities.

C. HAZARDOUS EQUIPMENT - We may refuse to serve a customer if, in our best judgment, the customer's installation of equipment is regarded as hazardous or of such character that satisfactory service cannot be given. This rule shall not be construed as imposing any duty upon Xfone USA to determine the safety or suitability of a customer's installation of equipment for the use intended.

D. FOR INDEBTEDNESS - We may decline to serve any applicant who is indebted to us for the same kind of service as that applied for; provided, however, that in the event the indebtedness of the applicant for service is in dispute, the applicant shall be served upon complying with the deposit or payment required in addition thereto, making a special deposit in an amount equal to the net balance in dispute. Upon settlement of a disputed account, the balance, if any, of such special deposit due the applicant shall be promptly repaid.

E. COMPLAINT TO COMMISSION - In any case of a dispute concerning refusal of service, we will inform the customer that he is privileged to lodge a complaint with the state Public Service Commission concerning the matter if chosen to do so.

F. DANGEROUS CONDITIONS EXIST - Where a dangerous condition exists on a customer's premises, service may be refused or discontinued without notice.

#### 36. Billing Cancellation

You may cancel billing for your service at any time by calling Xfone's customer service number or by using such other means as Xfone may make available from time to time, and you will remain liable for any fees to which you have committed at the time of registration.