

Xfone USA, Inc., Terms and Conditions - Business

Agreement: Customer hereby agrees to (i) all the rates, terms and conditions of this Agreement for Service (“Agreement”); (ii) the rates, terms and conditions of the state and federal tariffs of Xfone USA, Inc. (“Xfone”), if applicable; and/or, (iii) the rates, terms and conditions that appear on Xfone’s website, (www.xfoneusa.com) if applicable. If no state and/or federal tariff applies, in each case as the same exist or may be modified in the future by Xfone, including limitations on Xfone liabilities. The service is intended only for the use of Customer, its authorized agents and employees, and may not be resold without the prior written consent of Xfone and any resale of Xfone services or products will be considered a breach of this Agreement.

Effective Date, Initial Term and Renewal Term (together “Term”): The initial term of a service provided under this Agreement (“Initial Term”) shall commence on the following date, as applicable: (i) for long distance service, the date of Customer’s first usage (ii) for all other services, the date the service first becomes available to Customer, or (iii) if Customer purchases more than one service, the date the final service becomes available to Customer. Customer agrees to an Initial Term of no (month-to-month), one (1), two (2) or three (3) year(s), as indicated on the Agreement. Upon expiration of the Initial Term, the Agreement shall continue on a month-to-month basis until terminated.

Savings Guarantee: Xfone guarantees the stated savings under this Agreement on (i) monthly recurring local telephone services, available calling features and voice mail services used by the Customer, (ii) monthly recurring data/Internet services used by the Customer, (iii) and will charge the long distance per U.S. domestic minute rate as represented on the Service Agreement on those minutes of use (MOUs) used above the package amount. Should the Savings not be represented correctly on the applicable services provided under this Agreement, Customer shall immediately notify the Company either in written notice or by calling Customer Service at 1-800-310-4481 specifying the billing error. Xfone will immediately review and make the necessary adjustments, including any credits that may be due, should there be an error in billing. All adjustments and credits will be represented on the next full monthly billing representing the correct savings as represented under this Agreement.

Our Best Guarantee: In addition to the Savings Guarantee, if Customer is not satisfied with any Service provided by Xfone under this Agreement, Customer shall provide written notice specifying the performance deficiency in the Service and allow Xfone 20 business days (“Notice Period”) to bring the deficient performance to customarily acceptable industry performance standards (“Cure”), or if not capable of Cure within such notice period, make reasonable progress toward such Cure during the Notice Period. The written notice must cite this provision and reasonably detail the deficient performance. Notice under this section must be submitted by mail, registered, or certified mail, return receipt requested to Customer Care Center, Attn: Customer Care, 5307 W. Loop 289, Lubbock, TX 79414-1610 and received by Xfone at least 30 days prior to the discontinuance becoming effective. Should the parties agree in writing that Xfone failed to Cure or make progress toward such Cure within the Notice Period, Xfone will cancel this Agreement upon request of Customer and Customer shall be responsible for paying all accrued charges for any Service used by Customer through the date of cancellation.

Deposits: A deposit may be required for the purpose of establishing a Customer's credit but shall not exceed two (2) months of the estimated bill for Service. Xfone may require the Customer to increase the amount of deposit at any time, in its opinion, the charges billed to the Customer for Service(s) are found to warrant such an increase. The establishment of a Deposit shall not affect regular collection practices. The fact that a deposit has been made shall in no way relieve the Customer from complying with Xfone's regulations as to advance payments and prompt payment of bills on presentation, nor constitute a waiver or modification of the regular practices of Xfone providing for the discontinuance of Service for non-payment of any sums due Xfone for Service(s) rendered. Xfone may discontinue Service(s) to any Customer failing to pay current bills without regard to the fact that Customer has made a deposit with Xfone to secure payment of such bills.

Discontinuance Charge: If Customer terminates this Agreement after execution by Customer but prior to commencement of service, Customer shall incur charges of \$1,500.00 per T1; \$150 per dialable line account; and \$150.00 per Internet service. If Customer terminates this Agreement after commencement of service and before the expiration date of the Initial Term or Renewal Term, as applicable, Early Contract Termination Liability Charges will be due immediately. Early Contract Termination Liability Charges will equal: (i) all unpaid and waived non-recurring and installation charges; (ii) the unpaid balance due from any Promissory Note, paid to the Customer as incentive to participate in the 15% Guaranteed Savings Program or to participate in other Service programs; (iii) the amount of \$20.00 per dialable line(s) (telephone lines capable of carrying voice conversation or data/Internet connection, multiplied by the remaining months of the Initial Term or Renewal Term, as applicable. Internet T1 Service is defined as six (6) dialable lines and XNET Total Solutions dialable lines are identified on the XNET package selected. All three (3) components represent the total Early Contract Termination Liability Charges. Any Customer notice of termination of the Agreement or any Service thereunder must be submitted by mail, registered, or certified mail, return receipt requested and received by Xfone at least 60 days prior to the discontinuance becoming effective. Because damages resulting from early termination would be difficult to determine, the parties agree that the Discontinuance Charge is a reasonable approximation of such damage and shall be considered a liquidated damage and not a penalty.

Incentives: Incentive(s) include but are not limited to free or discounted services under the Service Agreement, waiver of any fees (i.e., installation charges, loop charges), waived rental or other charges for the use of equipment, etc. If Customer cancels any service provided under an Incentive in full or in part, then Customer shall pay any fees Customer would have incurred without the Incentive. Likewise, Customer shall pay the then current rate for any equipment received under an Incentive (i.e., data CPE: multiplexers, CSU/DSU, routers, modems, etc.) and/or, at Xfone's discretion, allow Xfone to retrieve the equipment from the Customer's premise during normal business hours.

Internet Access (if applicable) :

a. If Customer elects to receive Xfone Internet Access ("Access") as part of this Agreement, Customer covenants that none of Customer's Internet content, transmission or any other internet activities will be in violation of any local, state, federal or international laws, regulations or treaties or **Xfone's Internet Acceptable Use Policy**. Any such violations may be grounds for termination of the Access. Customer acknowledges

receipt of Xfone's Internet Acceptable Use Policy, which is available for review by Customer at <http://www.xfone.com/acceptableusepolicy.html>.

- b. Xfone provides no user access security with respect to any of Customer's facilities or facilities of others. Customer shall be responsible for user access security and network access. Xfone will assist in network security breach detection or identification at Xfone's standard rate, but shall not be liable for any inability, failure, or mistake in doing so.
- c. If Customer provides services through other networks, Xfone accepts no responsibility for authorization of such networks. Use of other networks may require approval of the respective network authorities and use will be subject to any acceptable usage policies such networks establish.
- d. Xfone does not own or control networks outside of Xfone, nor is Xfone responsible for performance (or non performance) within or over those networks or within non-Xfone-operated interconnection points between Xfone and other networks.
- e. Xfone shall provide to Customer, in accordance with the Terms of this Agreement, technical consultation and instruction regarding network hardware, software, access techniques and commands at Xfone's standard rates. Xfone is not responsible to Customer for the cost or expense of administrative, technical, emergency, or support personnel at Customer's location necessary for dealing with Xfone and for providing and maintaining Customer's own computer equipment, or Xfone's or other network access. Consultation Services that are extended to Customer over the phone and which exceed the customer support commitments as described in this paragraph will cost \$100.00 per hour; or \$150.00 per hour, if performed on the customer's site.
- f. Customer agrees to give Xfone polling rights to its router for the duration of this Agreement. This information will be kept in confidence and used for network polling and monitoring.
- g. Xfone warrants that the Access will pass data packets from Customer's Router to the Internet. Use of any information obtained through the Access is at Customer's risk. Xfone specifically denies any responsibility for the speed, accuracy or quality of information obtained through the Access.
- h. Xfone is not responsible for the reliability of equipment which Xfone did not install or configure or for the Customers' local networks or other hardware. Customer is responsible for assessing its own computer and transmission network needs, and is solely responsible for the results obtained therefrom.
- i. If Xfone is listed as the billing contact for Customer's domain name, customer hereby consents to Xfone's annual renewal of Customer domain name unless otherwise instructed.

Secure Access and/or IP/VPN (if applicable): The Secure Access service provided hereunder is the delivery via Internet protocol of the Customer's data between two remote points utilizing Secure Access equipment. Xfone's Secure Access service includes the provision of the equipment as set forth in this Agreement necessary to encode and decode the Customer's data, but excludes the provision of the Local Loop, which must be contracted for separately. Xfone agrees to provide its Secure Access service within a certain minimum service level as is stated on the Service Agreement. Customer acknowledges that Xfone does not represent or warrant that the Secure Access service will ensure uninterrupted or error-free operation.

Customer Premise Equipment (if applicable): In the event Xfone furnishes customer premise equipment of any sort ("CPE") to Customer for use in connection with the services, Customer shall, unless waived as an Incentive, pay the aggregate rental

charge for each item of CPE for the full Term of this Agreement. Should Customer return any item of CPE ordered by Customer and that has been used or taken out of its box, Customer will pay Xfone a Restocking charge.

Xfone, through its employees or other repair personnel, will provide maintenance as required to keep CPE in good operating condition as a result of Customer's normal use. Any manufacturer's warranties or maintenance contracts will be for the benefit of Xfone. Xfone reserves the right to substitute another type of CPE of similar functionality at its discretion. Any substituted CPE or repair and replacement parts may be new or like new. Customer shall provide Xfone or other repair personnel reasonable access to the CPE. Customer agrees to assume and bear the entire risk of any partial or complete loss with respect to the CPE from any and every cause whatsoever including theft, loss, damage, (including damage caused by Acts of God, or Force Majeure), destruction or governmental taking, whether or not such loss is covered by insurance or caused by any fault or neglect of Customer. If Customer is receiving CPE at no rental cost to Customer, then Customer shall be billed a Monthly Equipment Maintenance Coverage charge and payment of such charge shall relieve Customer of liability for Acts of God, including lightning, power surge, fire, wind, flood and earthquake. Damage caused by power surge, fire, and flood, which is not the result of an Act of God, is specifically excluded from coverage. Customer agrees to give Xfone prompt notice of any damage to or loss of any CPE, or any abandonment or relocation from Customer's premise. All CPE furnished by Xfone remain the property of Xfone. For Xfone-furnished CPE that cannot be recovered from Customer's site, Customer will pay Xfone the listed purchase price for such CPE. CUSTOMER SHALL DEFEND AND INDEMNIFY XPHONE FROM ANY AND ALL CLAIMS, ACTIONS, LOSSES, DAMAGES, (INCLUDING REASONABLE ATTORNEYS FEES) ARISING OUT OF THE PURCHASE, POSSESSION, OPERATION, CONDITION, RETURN OR USE OF THE CPE OR BY OPERATION OF LAW, EXCLUDING, HOWEVER, ANY OF THE FOREGOING RESULTING SOLELY AND DIRECTLY FROM THE NEGLIGENT OR WILLFUL ACTS OF XPHONE.

Exclusive Local Provider (applicable to T-1s with integrated local and Internet/data services and XNET Total Solutions Services for Business with integrated local and Internet/data services): I certify that Xfone is my exclusive local service provider for this location and I understand the services provided at the rates herein are based upon this certification and that additional charges/fees will apply in the event that it is discovered that the foregoing conditions have not been met.

Software (if applicable): Customer may be required to use special software to use some of the Services and software may be embedded in some of the CPE used by Customer. Customer is granted a limited, non-exclusive, non-transferable license under the software manufacturer's copyrights to use the software (in executable code form) as specifically configured by the software manufacturer solely in connection with Xfone's services. All rights not specifically granted to Customer herein are expressly reserved by Xfone and/or the software manufacturer. Customer will perform regular backups using the Software and will report any errors in executing such backups promptly by fax or e-mail to software manufacturer. Customer will arrange for and maintain communication services used to connect to software manufacturer's site. The security mechanisms implemented by the software manufacturer may have inherent limitations and Customer is solely responsible for determining that this mechanism sufficiently meets Customer's security and operational needs.

The Customer is responsible for any communication costs associated with the connection between the Customer site and software manufacturer's site. Customer further agrees that it shall not place any data on the Server that: (a) infringes on the intellectual property rights of any third party or any rights of publicity or privacy; (b) violates any law, statute, ordinance or regulation (including without limitation the laws and regulations governing export control, unfair competition, antidiscrimination or false advertising); (c) is defamatory, trade libelous, unlawfully threatening or unlawfully harassing; (d) is obscene, child pornographic or indecent; or (e) contains any viruses, trojan horses, worms, time bombs, cancelbots or other computer programming routines that are intended to damage, detrimentally interfere with, surreptitiously intercept or expropriate any system, data or personal information. Customer shall defend, indemnify and hold Xfone and the software manufacturer harmless against any third party claim, action, suit or proceeding alleging any breach of the covenants contained herein. Customer agrees not to: (a) modify, adapt, alter, translate, or create derivative works from the Software; (b) merge the Software with other software; (c) sublicense, lease, rent, loan, or otherwise transfer the Software to any third party; (d) reverse engineer, decompile, disassemble, or otherwise attempt to derive the source code for the Software; (e) use the Software to process data or provide any service bureau activity for any third party; or (f) otherwise use or copy the Software, except as expressly allowed by this provision. Customer will not remove, alter, or obscure any proprietary notices (including copyright notices) of on the Software

Rebiller - Resell Service Provider Agreement: If Customer intends to resell or rebill Xfone services, Customer hereby certifies that it has all necessary state, federal, legal and regulatory authority to resell or rebill any telecommunication services to its tenants or customers. In no event will Xfone directly bill any tenant or other customer of Customer. If Customer is found to be in violation of any federal, state or local law or regulation for reselling or rebilling telecommunications services, Customer shall indemnify Xfone for any related claims by any third party against Xfone, including attorneys' fees and costs. All such indemnity obligations of Customer shall survive termination or expiration of the Agreement.

Default: Should Customer fail to pay any invoiced item within 30 days of the date of invoice, Xfone reserves the right to cease providing the service invoiced until such time as the invoice is paid. Such interruption of service shall not be a breach of this Agreement, and shall not afford Customer any relief outlined in this Agreement or any other document. If, after 10 days written notice to Customer, the invoice shall remain unpaid, Xfone, at its election, may declare Customer in default. If Customer defaults, all amounts remaining to be paid under the Term of this Agreement shall immediately become due and payable. The remedies contained in this paragraph are cumulative and in addition to all other rights and remedies available to Xfone under this Agreement, by operation of law or otherwise. In addition, in the event of default, Customer shall pay Xfone for installation and removal of any CPE in the amount of Five Hundred and 00/100 Dollars (\$500.00) per unit (i.e., per CPE router); such amount shall be immediately due and payable. Further, Xfone, at its option, may, upon written notice thereof, take immediate possession of any and all of the items of CPE owned by Xfone, wherever situated, and for such purpose enter upon any premises without liability for so doing and sell, dispose of, hold, use or lease any items of CPE which have not been fully paid for as Xfone in its sole discretion may decide. If Xfone is unable to retrieve any items of CPE, Customer shall be invoiced for the full, then current sales price of such CPE.

Arbitration: Any dispute, controversy or claim arising out of, connected with or relating to this Agreement, its performance or the breach thereof which cannot be settled by mutual agreement of the Parties shall be resolved by final and binding arbitration by a panel of three (3) arbitrators in accordance with and subject to the Commercial Arbitration Rules of the American Arbitration Association ("AAA") then in effect with such arbitration to be conducted in Jackson, Mississippi.

Following notice of a Party's election to require arbitration, each Party will within thirty (30) days select one arbitrator, and those two arbitrators will within thirty (30) days thereafter select a third arbitrator. If the two arbitrators are unable to agree on a third arbitrator within thirty (30) days, the AAA will within thirty (30) days thereafter select such third arbitrator. Discovery as permitted by the Federal Rules of Civil Procedure then in effect will be allowed to the extent consistent with the purpose of the arbitration and as allowed by the arbitrators. Judgment upon the award rendered in any arbitration may be entered in any court having jurisdiction thereof, or application may be made to such court for a judicial acceptance of the award and enforcement, as the law of the state having jurisdiction may require or allow.

The fact that arbitration is or may be allowed will not impair the exercise of any termination rights under this Agreement. The Parties agree that this arbitration provision has been included to rapidly and inexpensively resolve any disputes between them with respect to this Agreement, and that this provision shall be grounds for dismissal of any court action commenced by either Party with respect to this Agreement, other than (i) actions to compel a Party to comply with these dispute resolution procedures; (ii) actions specified in this provision; (iii) post-arbitration actions seeking to enforce an arbitration award; (iv) a dispute, controversy or claim relating to a breach or alleged breach on the part of either Party regarding confidential information; (v) a suit, action or proceeding to compel a Party to comply with its obligations to indemnify the other party pursuant to this Agreement; or (vi) a suit, action or proceeding arising out of or related to any Party's intellectual property rights. The Parties shall keep confidential, and shall not disclose to any person, except as may be required by law, the existence of any controversy hereunder, the referral of any such controversy to arbitration or the status or resolution thereof. The procedures specified in this provision shall be the sole and exclusive procedures for the resolution of an arbitral dispute; provided, however, that a Party, without prejudice to these procedures, may file a complaint or seek a temporary restraining order, preliminary injunction, or other provisional judicial relief, if in its sole judgment such action is necessary to avoid irreparable damage or to preserve the status quo. Customer indemnifies Xfone for any costs associated with Customer's violation of this Arbitration provision.

General: Customer acknowledges that it has not been induced to enter into this Agreement by any representation or warranty not set forth in this Agreement. This Agreement contains the entire agreement of the parties with respect to its subject matter and supersedes all existing agreements and all other oral, written or other communications between them concerning its subject matter. This Agreement shall not be modified in any way except by a writing subscribed to by both parties. This Agreement is not assignable by Customer except with Xfone's express written consent, without which, any such assignment or attempted assignment shall be void. If any provisions of this Agreement shall be held to be invalid, illegal or unenforceable, the validity, legality or enforceability of the remaining provisions shall not in any way be affected or impaired thereby. The headings in the Agreement are intended for

convenience of reference and shall not affect its interpretation. The waiver or failure of Xfone to exercise in any respect any right provided for in this Agreement shall not be deemed a waiver of that right or any other right under this Agreement. The individual executing this Agreement on behalf of Customer hereby represents and warrants that he or she is duly authorized by all necessary action to execute this Agreement on behalf of Customer. All notices to Xfone shall be in writing and shall be delivered or sent by mail, requested to Customer Care, 5307 W. Loop 289, Lubbock, TX 79414-1610 or to such other address as Xfone shall specify by notice given pursuant hereto. Xfone shall not be liable or deemed to be in default for any delay or failure to perform under this Agreement or for interruption of service resulting directly or indirectly, from Acts of God or any other cause beyond Xfone's reasonable control (Force Majeure).

EXCEPT AS SPECIFICALLY PROVIDED HEREIN, THERE ARE NO WARRANTIES EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. NEITHER XPHONE NOR ANY CPE, SERVICE, OR SOFTWARE PROVIDER TO XPHONE WILL BE LIABLE FOR ANY LOST OR ANTICIPATORY PROFITS OR REVENUES, OR SPECIAL OR PUNITIVE DAMAGES, OR ANY OTHER INCIDENTAL OR CONSEQUENTIAL DAMAGES OR FOR ANY CLAIM OR DEMAND AGAINST CUSTOMER BY ANY OTHER PARTY, EVEN IF XPHONE HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES OR CLAIMS. IN NO EVENT SHALL XPHONE BE LIABLE FOR DAMAGES GREATER THAN THE SUM TOTAL OF PAYMENTS MADE BY CUSTOMER TO XPHONE DURING THE THREE (3) MONTHS IMMEDIATELY PRECEDING THE EVENT FOR WHICH DAMAGES ARE CLAIMED.

This Agreement shall be governed by, construed, and interpreted in accordance with the laws of the State where the Services are rendered. Customer authorizes Xfone to conduct an investigation of Customer's credit history for the purpose of determining Customer's creditworthiness for payment for the service(s) and options. Customer agrees to pay all costs of collection, including reasonable attorney's fees, whether incurred by suit or otherwise. Only an authorized officer of Xfone may agree to modifications to the terms and conditions of this Agreement. This Agreement may only be executed by an authorized Xfone sales person, management person or executive, and is subject to final credit approval.

Long Distance Service: The rates and long distance service for both residential and business customers under this Agreement are contingent upon the Customer's election to receive Xfone's local telephone service. If Customer cancels its local telephone services, Customer's long distance service will also be canceled immediately.

Residential Service - Unlimited Long Distance Policy: Call detail is currently not available with the unlimited long distance service plans. Customers must be subscribers to one of Xfone's bundled service plans that includes local telephone services and unlimited long distance service and receive billing for these plans from the Xfone. Those plans that apply are: UNLIMITED, BASIC and XTRA. Subscribers to these plans may use the service only for typical residential voice usage and may not use it for extended Internet or data calling. Subscribers to this plan cannot use it for any commercial use. Customer lines associated with educational institutions, (colleges, universities, etc.) are not eligible for this plan. Unlimited plan usage does not include multi-party conference calls, calls to 900 numbers, directory assistance, calling card, operator services,

international calling and toll free calling services. If Xfone determines that usage under this plan is not consistent with typical Residential Customer usage as described herein, the Customer will be subject to an additional fee of \$50.00 per month or offered an alternative plan at the Company's sole discretion. For the purposes of this plan, usage of more than 1,000 minutes per month shall be considered not to be typical residential usage.

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 he chooses 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.