



Effective July 1, 2008

SUBJECT TO CHANGE AT ANY TIME, these Xanadoo Wireless High-Speed Internet Prepaid Program Terms of Service (the "TOS") provide the terms and conditions under which you may access the Xanadoo wireless high-speed internet service (the "Service") using a Xanadoo prepaid Service access card (the "Prepaid Program"). The Prepaid Program is offered by Xanadoo, LLC ("Xanadoo") as an alternative to Xanadoo's standard subscription based programs. Accessing the Service through the Prepaid Program requires you to have a Xanadoo wireless modem (the "Equipment") and prepaid increments of access which can be purchased in the form of Xanadoo high-speed internet access cards ("Access Cards").

1. Acceptance of TOS

By activating an Access Card, you accept and agree to be bound by these TOS as they may be updated from time to time. You agree to regularly check your Xanadoo Prepaid Program email account and all postings on the Xanadoo website for updates to these TOS, and bear the risk for failing to do so. These TOS apply to you and anyone who uses the Prepaid Service sold to you (Users").

2. Access Cards

Access Cards may only be used to access the Service from geographic locations served by the Xanadoo network. Access cards are good for access to the Service in the increments printed on the Access Card. Additional increments of access may be purchased from a participating retailer or directly from Xanadoo.

Access Cards are sold in the time delimited increments stated on the Access Card. Access increments are measured in twenty-four hour periods from the time the Access Card was first redeemed through the Xanadoo online activation portal, subject to the usage limit applicable to the increment of service you purchased. If you exhaust the usage limit prior to the expiration of the purchased time increment, your access to the Prepaid Service will be terminated and you will need to purchase additional access in order to continue using the Xanadoo network.

Please protect your Access Card. Xanadoo is not responsible for lost or stolen cards.

3. Account

The account you have created in connection Xanadoo's Prepaid Program will be maintained by Xanadoo for ninety days following the last account activity and User created account information such as unique electronic mail addresses and similar information will be retained for subsequent access and use by the user for up to ninety days after last account activity. Notwithstanding the foregoing, Xanadoo does not guarantee the continued availability of this information on its system nor does it guarantee that such information will be eliminated from its system in the specified time frame, or any time frame.

4. Certain Responsibilities Undertaken by You

You are responsible for ensuring that your equipment has the minimum hardware and operating system requirements necessary to use the Prepaid Service and any Equipment purchased or obtained from us for use in connection with the Prepaid Service. You are responsible for integrating and troubleshooting your local area network and internal network, as necessary. Xanadoo will not be responsible for any loss of use of the Service or degradation in performance resulting from your use of incompatible equipment. Xanadoo will troubleshoot and provide limited support on Service and Equipment issues pertaining to the Xanadoo network and Prepaid Service only, and Xanadoo reserves the right to determine that a problem or issue is your responsibility.

You will keep your Equipment secure against use by unauthorized parties. You will keep confidential all identification, user authentication and log-in information required to access any of our services. We are not responsible for your failure to do so.

You are responsible for any and all liability that may arise out of the content transmitted by or to you or any person, whether authorized or unauthorized, using the Prepaid Service and or your account. You will assure that your or User's use of the Service and content will at all times comply all applicable laws, regulations, rules and written and electronic instructions for use. Xanadoo reserves the right to terminate or suspend you or any other User's access, and/or remove you or any other User's content from the Service, if Xanadoo determines that such use or content does not conform with the requirements set forth in these TOS or interferes with Xanadoo's ability

to provide service to you or others or receives notice that you or any User's use or content may violate any laws or regulations. Xanadoo's action or inaction under this provision will not constitute review or approval of your or User's use or content. You will defend, indemnify and hold Xanadoo, its affiliates, and their agents harmless against any and all liability arising from the content transmitted by or to you or to Users using the Service.

5. Acceptable Use of the Service

You may not sell, resell, directly or indirectly transfer, or distribute any portion of the Service without Xanadoo's prior written consent. You will not use the Service in a manner prohibited by any federal, state or local law or regulation, and will abide by Xanadoo's TOS. Without limiting the foregoing, you may not use the Service, or allow the Service to be used, for any abusive purpose or in any way that damages Xanadoo's property or interferes with or disrupts Xanadoo's network or other users or subscribers. You may not attempt to circumvent user authentication or security of any host, network or account. This includes, but is not limited to, accessing data not intended for you, logging into a server or account that you are not expressly authorized to access, or probing the security of other networks. You may not use the Service or take any action that will result in excessive consumption or utilization of Xanadoo's system or network resources, or which may weaken network performance, or which adversely affects the performance of the Service for other Xanadoo customers, all as determined in Xanadoo's sole discretion. Such prohibited actions include, but are not limited to: using the Service to host a web server site which attracts excessive traffic at your premises, continuously uploading or downloading streaming video or audio, Usenet hosting, or continuous FTP uploading or downloading. In the event that Xanadoo detects excessive use by you, Xanadoo may restrict your access to Xanadoo's network or terminate your access to the Service altogether. Xanadoo has the right but not the obligation to restrict any uses of the Service that Xanadoo believes, in its sole discretion, violate the TOS or applicable law.

6. Credits

No credit or adjustment will be made for interruptions of the Service unless the interruption continues for a period of twenty-four hours or more, measured from the time you report the interruption to Xanadoo. Where warranted a credit or adjustment will consist of an extension of your increment of access for a period equivalent to the length of the service interruption. The credit or adjustment will be available only where the service interruption is in no part due to your or User's acts or omissions whether negligent or otherwise. The foregoing credit or adjustment will be your sole and exclusive remedy for any interruption of the Service or any degradation of performance of the service.

7. Materials Accessible on the Internet

You acknowledge that there are materials and content on the Internet or otherwise accessible through use of the Service which may not be in compliance with all federal, state, and local laws and regulations, and which may be sexually explicit, offensive or otherwise objectionable to you. Xanadoo assumes not responsibility for and exercises no control over the content or materials contained on the Internet or that is otherwise accessible to you or Users through the Service.

8. Investigations; Illegal Activity

You acknowledge that Xanadoo may cooperate fully with investigations of possible illegal activity or violations of systems or network security at third party sites, including cooperating with law enforcement authorities in the investigation of suspected criminal violations. Xanadoo may immediately suspend or terminate your access to the Service and the Xanadoo network if Xanadoo suspects abuse or fraudulent use of its network, use of its network for an illegal purpose, interference with our network or violation of this Agreement.

9. Termination or Suspension of Service

Xanadoo reserves the right to suspend or discontinue providing the Service generally, or to terminate your Service, either in whole or in part, at any time in its sole discretion.



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10. Disclaimer of Warranties, Liability and Responsibility

(A) TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, THE SERVICE IS PROVIDED ON AN "AS IS" AND "AS AVAILABLE" BASIS, AND XANADOO DISCLAIMS AND MAKES NO REPRESENTATIONS OR WARRANTIES AND THERE ARE NO CONDITIONS OF ANY KIND, EITHER EXPRESS, IMPLIED OR STATUTORY, INCLUDING BUT NOT LIMITED TO ANY WARRANTIES OF NON-INTERFERENCE, MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR USE, SECURITY, VIRUSES, OR ARISING FROM COURSE OF DEALING OR USAGE OF TRADE. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, XANADOO ALSO DISCLAIMS ANY COMMON-LAW DUTIES RELATING TO ACCURACY OR LACK OF NEGLIGENCE. IN ADDITION, THERE IS NO WARRANTY OF TITLE, AGAINST INTERFERENCE WITH YOUR ENJOYMENT OF THE SERVICE, OR AGAINST INFRINGEMENT. ANY STATEMENTS MADE IN ANY PACKAGING, MANUALS OR OTHER DOCUMENTS, WRITTEN OR ELECTRONIC, OR BY ANY XANADOO EMPLOYEES OR REPRESENTATIVES, ARE PROVIDED FOR INFORMATIONAL PURPOSES ONLY AND NOT AS REPRESENTATIONS OR WARRANTIES OF ANY KIND BY XANADOO. NEITHER XANADOO NOR ITS AFFILIATES OR SUPPLIERS WARRANT THAT THE SERVICE WILL BE UNINTERRUPTED OR ERROR FREE OR FREE FROM SERVICE DEGRADATION, OR THAT ANY INFORMATION, SOFTWARE, OR OTHER MATERIAL ACCESSIBLE ON THE SERVICE ARE FREE FROM VIRUSES, WORMS, TROJAN HORSES, OR OTHER CODE THAT MANIFESTS CONTAMINATING, INTERFERING OR DESTRUCTIVE PROPERTIES. WITHOUT LIMITING THE FOREGOING, THE QUALITY OF THE SERVICE MAY BE AFFECTED BY CONDITIONS WITHIN OR BEYOND OUR CONTROL, INCLUDING ATMOSPHERIC, GEOGRAPHIC, OR TOPOGRAPHIC CONDITIONS, OVERALL NETWORK USAGE LEVELS, NETWORK SIGNAL QUALITY, USER AND THIRD PARTY EQUIPMENT PERFORMANCE, INTERNET TRAFFIC LEVELS, AND OTHER FACTORS. WITHOUT LIMITING THE FOREGOING, XANADOO WILL NOT BE RESPONSIBLE FOR ANY DELAY OR FAILURE IN PERFORMANCE DUE TO EVENTS OUTSIDE XANADOO'S REASONABLE CONTROL, INCLUDING WITHOUT LIMITATION ANY FLOOD, FIRE, ACCIDENT, EMBARGO OR OTHER GOVERNMENTAL ACT OR DIRECTIVE, ABSENCE OF GOVERNMENTAL APPROVAL OR CONSENT, MATERIAL CHANGES IN APPLICABLE LAW OR REGULATION, OR DECREE OF ANY COURT, DELAY OR DEFECT IN DELIVERY BY SUPPLIERS, TRANSPORTATION DELAY OR UNAVAILABILITY, RIOT, WAR, ACT OF TERRORISM OR OF THE PUBLIC ENEMY, POWER OUTAGE, LABOR DISPUTE OR SHORTAGE, THIRD PARTY NETWORK PROBLEMS, ACTS OR OMISSIONS OF UNDERLYING CARRIERS OR OTHER THIRD PARTIES, OR ACTS OF GOD. SERVICE IS ONLY AVAILABLE WITHIN THE COVERAGE AREA OF THE XANADOO NETWORK, WHICH IS SUBJECT TO CHANGE. YOU ACKNOWLEDGE THAT SERVICE MAY BE TEMPORARILY UNAVAILABLE FOR SCHEDULED OR UNSCHEDULED MAINTENANCE, EQUIPMENT MODIFICATIONS OR UPGRADES, AND FOR OTHER REASONS WITHIN AND WITHOUT THE DIRECT CONTROL OF XANADOO. YOU ACKNOWLEDGE THAT THE SERVICE WILL NOT FUNCTION IN THE EVENT OF A POWER FAILURE. YOU ARE RESPONSIBLE FOR IMPLEMENTING SUFFICIENT PROCEDURES TO SATISFY YOUR PARTICULAR REQUIREMENTS FOR THE ACCURACY OF DATA INPUT AND OUTPUT, AND FOR MAINTAINING A MEANS EXTERNAL TO THE SERVICE FOR THE RECONSTRUCTION OF ANY LOST DATA OR FILES. ALTHOUGH MEASURES ARE EMPLOYED, XANADOO CANNOT AND DOES NOT GUARANTEE THE SECURITY OR INTEGRITY OF DATA TRANSMISSION OR STORAGE, PRIVACY, OR THAT VIRUSES, WORMS, TROJAN HORSES, OR OTHER CODE THAT MANIFESTS CONTAMINATING OR DESTRUCTIVE PROPERTIES WILL BE DETECTED OR REMEDIATED BY THE SERVICE. Some states do not allow the disclaimer of implied warranties, so the above exclusion may not apply to you in whole or in part.

(B) NOTWITHSTANDING ANYTHING ELSE IN THIS AGREEMENT, TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, NEITHER XANADOO NOR ITS AFFILIATES OR SUPPLIERS WILL BE LIABLE OR OBLIGATED UNDER ANY SECTION OF THIS AGREEMENT OR UNDER ANY THEORY, WHETHER CONTRACT, TORT, NEGLIGENCE, PRIVACY, SECURITY, STRICT OR PRODUCT LIABILITY, OR OTHER LEGAL OR EQUITABLE THEORY (I) FOR ANY AMOUNTS IN EXCESS OF THE AMOUNT PAID FOR YOUR ACCESS CARD; (II) FOR ANY COST OF PROCUREMENT OF SUBSTITUTE GOODS, TECHNOLOGY, SERVICES, PRODUCTS, OR RIGHTS; (III) FOR ANY LOSS OR CORRUPTION OF DATA OR DELAYED OR INTERRUPTED USE OF THE SERVICE OR ACCESS TO THE INTERNET; (IV) FOR ANY INDIRECT, SPECIAL, INCIDENTAL, PUNITIVE OR CONSEQUENTIAL DAMAGES OR LOST PROFITS; OR (V) FOR ANY LACK OR BREACHES OF SECURITY OF THE SERVICE OR IN THE STORAGE OR INTEGRITY OF YOUR DATA OR ANY USER'S DATA. THESE EXCLUSIONS AND LIMITATIONS APPLY WHETHER THE CLAIM IS BASED ON BREACH OF CONTRACT, TORT, BREACH OF WARRANTY, NEGLIGENCE, PRODUCT LIABILITY, OR ANY OTHER BASIS, AND APPLY WHETHER OR NOT XANADOO WAS INFORMED OF THE LIKELIHOOD OF ANY PARTICULAR TYPE OF DAMAGES. IN ADDITION, THESE EXCLUSIONS AND LIMITATIONS WILL APPLY EVEN IF ANY REMEDY FAILS OF ITS ESSENTIAL PURPOSE. IF YOU ARE DISSATISFIED WITH THE SERVICE OR EQUIPMENT OR IF YOU HAVE ANY OTHER DISPUTE WITH XANADOO, OR CLAIM AGAINST XANADOO, THEN, TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, YOUR SOLE AND EXCLUSIVE REMEDY IS TO DISCONTINUE USING THE SERVICE AND ANY LIABILITY (IF ANY) WILL BE LIMITED TO THE RECOVERY OF YOUR DIRECT DAMAGES INCURRED IN REASONABLE RELIANCE, LIMITED TO THE AMOUNT AND EXCLUSIONS SET



FORTH HEREIN. Some states do not allow the exclusion or limitation of incidental or consequential damages, or other modifications of or limitations to certain remedies, so the above exclusion or limitation may not apply to you, in whole or in part.

11. Change of Information

You agree to give Xanadoo prompt notice of any change in the contact information you have provided to us (e.g. mailing address, telephone number, e-mail address) or of any change in your name.

12. Complaint Resolution/Notices

In order to resolve a complaint regarding the Service or to receive further information regarding the use of the Service, please contact Xanadoo Customer Support as set forth at www.Xanadoo.com. Xanadoo may require you to describe the matter in writing. Written notices to you will be effective three (3) days following the date deposited in the U.S. Mail addressed to your address as provided to us by you. You are responsible for notifying us of any changes in your address. Written notice to Xanadoo will be effective when directed to Xanadoo's Customer Support Department, 225 City Line Avenue, Suite 100, Bala Cynwyd, PA 19004 and received at that address. Except as provided in these TOS, notices must be in writing to be effective. Notices sent by e-mail to you at the e-mail address given us by you at account activation, as updated by you, will constitute written notice. Notices sent by e-mail will be effective upon being sent by us.

13. Indemnification

You will defend, indemnify, and hold Xanadoo, its affiliates, and their directors, officers, employees, agents, and shareholders and any other service provider or supplier (collectively, the "Xanadoo Parties") harmless against any and all claims, losses, damages, and liabilities sustained by the Xanadoo Parties resulting from, arising out of these TOS, the Service, the Equipment, any breach or non-fulfillment of any representation, warranty, or covenant by you set forth in the TOS or from your use of the Equipment or the Service. You also agree to pay Xanadoo's reasonable attorneys' and expert witness fees and costs incurred in enforcing the TOS, including any such fees incurred in connection with any appeal. This paragraph will survive the termination of your participation in the Prepaid Program, regardless of the reason for such termination.

14. Assignment

You may not assign or attempt to assign any of your rights, duties or obligations under the TOS at any time. Once redeemed, you may not assign or transfer any of the rights or benefits granted to you pursuant to a Xanadoo Prepaid Access Card. Xanadoo may sell, assign or transfer your Prepaid Program account and/or its rights and obligations under these TOS, including to a third party, without notice to you.

15. Entire Agreement/Severability

These TOS, together with any terms appearing on the Access Card redeemed by you (each as they may be amended from time to time) together contain the entire agreement and understanding concerning the Service and supersede all prior negotiations, proposed agreements, and all other agreements, whether electronic, written, or oral. In the event that it is determined by a court of competent jurisdiction as a part of a final non-appealable judgment that any provision of the TOS (or part thereof) is invalid, illegal, or otherwise unenforceable, such provision will be enforced as nearly as possible in accordance with the stated intention of the parties, while the remainder of the TOS will remain in full force and effect.

16. Dispute Resolution

In order to expedite and control the cost of disputes, you and Xanadoo agree that any legal claim relating to these TOS or the Service



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(referred to as a "Claim") will be resolved as follows:

(a) Informal Resolution. The parties will first try to resolve any Claim informally. Accordingly, neither you nor Xanadoo may start a formal proceeding (except for Claims described in Section d below) for at least sixty (60) days after one party notifies the other of a Claim in writing. You will send your notice to Xanadoo at 225 City Line Avenue, Suite 100, Bala Cynwyd, PA 19004; Attention Legal Department. Xanadoo will send its notice to you at your billing address.

(b) Formal Resolution. Except as provided in Section d, if we cannot resolve a Claim informally, any Claim asserted by either party will be resolved only by binding arbitration. The arbitration will be conducted under the Commercial Arbitration Rules of the American Arbitration Association that are in effect at the time the arbitration is initiated (referred to as the "AAA Rules") and under the rules set forth in the TOS. If there is a conflict between the AAA Rules and the rules set forth in the TOS, the rules set for in the TOS will govern. **ARBITRATION MEANS THAT YOU WAIVE YOUR RIGHT TO A JURY TRIAL.** If you initiate the arbitration, you agree to pay a fee of \$125 or, if less and you tell Xanadoo in writing, the amount that you would pay to initiate a lawsuit against Xanadoo in the appropriate court of law in your state. Xanadoo agrees to pay any additional fee or deposit required by the American Arbitration Association in excess of your filing fee. Xanadoo also agrees to pay the costs of the arbitration proceeding up to a maximum of one-half day (four hours) of hearings. Other fees, such as attorney's fees, expenses of travel to the arbitration and the costs of a proceeding that goes beyond one-half day will be paid in accordance with the AAA Rules. The arbitration will be held at a location within one hundred miles of your residence unless you and Xanadoo both agree to another location. To start arbitration, you or Xanadoo must do the following things:

(i) Write a demand for arbitration. The demand must include a description of the Claim and the amount of damages sought to be recovered.

(ii) Send three copies of the demand for arbitration plus the appropriate filing fee to:

**American Arbitration Association
13455 Noel Road, Suite 1750
Dallas, TX 75240-6636**

(iii) Send one copy of the demand for arbitration to Xanadoo at the address noted in Section a above.

(c) Special Rules. In the arbitration proceeding, the arbitrator must follow applicable law, and any award may be challenged if the arbitrator fails to do so. Otherwise, the arbitrator's decision is final and binding on all parties and may be enforced in any federal or state court that has jurisdiction. A court may sever any portion of this Dispute Resolution Section that it finds to be unenforceable.

(d) Exceptions. Notwithstanding the foregoing: (i) any dispute over the validity of either party's intellectual property rights or our licenses to operate our business, (ii) any Claim based on the unauthorized use of the Service, and (iii) any dispute involving a violation of the Communications Act of 1934, 47 U.S.C. §605, or the Electronic Communications Privacy Act, 18 U.S.C. § 2510-2521, may be decided only by a court of competent jurisdiction. Nothing in this Agreement shall affect our ability to terminate your Service for non-payment of amounts owed to us at the time due.