

Terms of Service r3.21

If you have have accounts with Netcom or any of its related businesses (herein collectively called "Netcom") but choose to not agree to all or any of the following terms and conditions after reading this agreement in full, immediately stop using all services and call Netcom to cancel your account.

You (the Netcom customer and/or user, hereafter collectively referred to as "You and/or Client") agree to purchase and/or use Netcom services in accordance with the terms and conditions of this Terms of Service Agreement ("Agreement"). Netcom will exercise no control whatsoever over the content of any information passing through it. No guarantee of end-to-end bandwidth on the internet is made. You will use Netcom services only for lawful purposes. Any transmission or re-transmission of material in violation of any Federal or State laws and/or regulations is expressly prohibited. This extends to include, but is not limited to: any copyrighted materials, materials or communications prohibited by trade secret. As a customer of Netcom and a user of services, you (as an individual, and/or officer or agent of a company, and/or company) agree to indemnify and to hold harmless Netcom from ANY and ALL claims resulting from the use of any services which causes damage to you or any other party and any equipment. Netcom shall not be liable, either in contract or in tort, or for protection from unauthorized access of its customer's transmission facilities or customer-owned equipment on premises, or for unauthorized access to, alteration, theft or destruction of a customer's data files, programs, or information through accident, fraudulent means or devices, or any other method, even should such access occur as a result of Netcom's negligence. Netcom shall not be in any way responsible for claims or damages caused by a customer, through fault, negligence or failure to perform customer's responsibilities, claims against a customer by any other party; any act or omission of any party furnishing services and/or products; or for the installation and/or removal of any and all equipment supplied by any service provider or Netcom. Netcom will not be responsible for any damages you or your business suffers. Netcom makes NO WARRANTIES OF ANY KIND, EXPRESSED OR IMPLIED, for services provided. Netcom also DISCLAIMS ANY WARRANTY OR MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. This includes loss of data resulting from delays, non deliveries, wrong deliveries and any and all service interruptions caused by Netcom, its employees or vendors by its own negligence or your errors or omissions - this also applies to your carrier, equipment and its services. Any and all information you obtain through Netcom data network services (public and or private) is at your own risk. Any and all access to other networks via Netcom must be in compliance with all policies and rules of those networks. This applies to any other network that Netcom attaches to. In the event of cancellation of service for any reason, Netcom may

retake possession of any and all hardware and/or software it has supplied you, employees and/or agents (before, during and after any sanctions to recover sums of money). In such a case, you will provide Netcom full and free access to the hardware and/or software for this purpose. Netcom will retain all payments made hereunder, and recover charges you owe as well as any damages Netcom may have sustained due to your default. Title and property rights, including all intellectual property rights to services, are and shall remain with Netcom whether or not they are embedded in any programming, software and/or hardware. You recognize and acknowledge that any and all Netcom services and/or products, programming and software used hereunder constitute valuable trade secrets of Netcom. You will use your best efforts to protect and keep confidential any and all programming and software used by you, your employees, and/or agents and shall never make any attempt to copy, examine in any way, alter or re-engineer, tamper with, or otherwise misuse such services, programs, hardware, etc.

Client agrees to indemnify and hold harmless Netcom from all claims (including costs and expenses of defending against such claims) arising or alleged to arise from Client's use of the systems and/or services. In no event shall Netcom, its officers and/or employees be liable to client for any indirect, special or consequential damages or lost profits or revenues, arising out of or related to this agreement or the performance or breach thereof. Client understands that VOIP is a mobile service and that e911 operators might not be presented with the location where the phone is currently located and may not carry emergency call data over an Internet Protocol (IP) connection. Client agrees to indemnify and hold harmless Netcom from all claims (including costs and expenses of defending against such claims) arising or alleged to arise from Client's use of the systems and/or services. In no event shall Netcom, its officers and/or employees be liable to client for indirect, special or consequential damages or lost profits or revenues, arising out of or related to this agreement or the performance or breach thereof to include data corruption and/or data loss. Client understands that Off Site Data Storage should not be the only copy of critical files. Client understands that a properly designed data backup plan has redundancy on the primary and secondary locations at the client facility. Client understands that data transfer speeds are governed by the speed of the internet service at client site.

Cancellation: Netcom may cancel and/or terminate service for any reason. Only a written request to terminate agreements, as applicable to you, relieves you and/or your company from the obligation to pay your charges. An act of default will accelerate payment to be due at once, and any type of credit agreement will be immediately and automatically terminated. You shall provide all necessary preparations required to comply with Netcom installations, maintenance and operational specifications. Customers will be responsible for all costs of relocation of service once installed by Netcom and/or its vendors, and will provide Netcom, and its suppliers of communication service and equipment, reasonable access to your

premises to perform any acts required by this agreement. Physical Equipment and/or software products that are NOT provided by Netcom are the responsibility of the customer, company or individual or both as the limits of the law allows for. Netcom will not be responsible for the installation of and/or service on equipment and/or software not provided by Netcom. All customers are responsible for the use and compatibility of hardware and software not provided by Netcom. In the event that the customer uses hardware and/or software that does impair the customer's use of Netcom services, the customer shall nonetheless be liable for regular payment to Netcom. Upon notice from Netcom that the hardware and/or software not provided by Netcom is causing, or in the sole opinion of Netcom, is likely to cause hazard, interference's or service obstruction, the customer shall eliminate the hazard, interference or service obstruction at once. Customers will, if necessary, pay Netcom to troubleshoot problems caused by such equipment and/or software not provided by Netcom. Netcom will not be responsible if any changes in hardware, software or services cause equipment not provided by Netcom to become obsolete, require modification or alteration, or in any other way affect the total performance of Netcom on an end-to-end basis and protect the Netcom backbone network and those networks attached to the Netcom network. In the case of customer-owned hardware and/or software connected to the Netcom network, the customer is totally responsible for any and all service to that equipment. Netcom, at its option, may supply technical services in the form of consulting and/or service to Netcom customers at their request. Such services will be billed out at rates set on the Netcom pricing sheet and/or at rates in effect at the time such services are requested. Netcom has the right to refuse any such technical services at its sole option. On leased telephone lines, no matter who the leasing party is, Netcom must have free and open access to such lines. Netcom always reserves the right to change its rates and otherwise modify these Terms and Conditions. These Terms and Conditions hereby supersede all previous representations, understanding, or agreements and shall prevail notwithstanding any variance with terms and conditions of ANY and ALL orders submitted. As a Netcom customer you may not sell, assign or transfer your service order without the prior written consent of Netcom. Netcom may at any time sell, assign or transfer this agreement with no notice. Netcom will not be responsible for performance of its obligations thereunder where delayed or hindered by war, terrorism, riots, embargoes, strikes or acts of its vendors and will attempt to notify customers in the event of any of the foregoing occurrences. Should such occurrences continue for more than 90 days, Netcom or its customers may cancel service for the affected services and/or products with no further liability. These terms shall be governed by the laws of the State of Hawaii.

ALL USERS ARE SUBJECT TO THE TERMS OF SERVICE ALSO REFERRED TO AS AN ACCEPTABLE USE POLICY.

Use of Netcom services by you as a company and/or an individual constitutes acceptance of these Terms of Service in full.