



## Terms Of Service Policy for SOFTCOM

Updated September 4, 2007

[Terms Of Service](termservice.php) [Authorized Use Policy](authorizeduse.php)

PLEASE CAREFULLY READ THIS CONTRACT AND SOFTCOM'S AUTHORIZED USE POLICY (AVAILABLE AT [www.softcom.net/aboutus/aup.shtml](http://www.softcom.net/aboutus/aup.shtml)) BEFORE OPENING OR CONTINUING TO USE AN ACCOUNT WITH SOFTCOM. WITH RESPECT TO SOFTWARE AND DOCUMENTATION FROM A THIRD PARTY PROVIDED BY SOFTCOM, THE SOFTWARE AND DOCUMENTATION ARE PROVIDED FOR USE ONLY (i) WITH THE INTERNET ACCESS SERVICES OFFERED BY SOFTCOM IN CONJUNCTION WITH THE DISTRIBUTION OF THE SOFTWARE AND DOCUMENTATION AND (ii) IN ACCORDANCE WITH THE TERMS OF THIS AGREEMENT. NO RIGHT OR LICENSE IS GRANTED TO USE THE SOFTWARE OR DOCUMENTATION WITH ANY OTHER INTERNET ACCESS OR OTHER NETWORK SERVICE. THIS CONTRACT, TOGETHER WITH THE ACCEPTABLE USE GUIDELINES, ALL APPLICABLE QUOTES, PRICE LISTS AND SOFTWARE LICENSE AGREEMENTS OF SOFTCOM AND THIRD PARTIES (COLLECTIVELY "THE AGREEMENT" OR "THIS AGREEMENT") REPRESENTS THE COMPLETE AGREEMENT AND UNDERSTANDING BETWEEN SOFTCOM INTERNET COMMUNICATIONS ("SOFTCOM") AND YOU, THE SOFTCOM ACCOUNT HOLDER ("YOU"), AND SUPERSEDES ANY OTHER WRITTEN OR ORAL AGREEMENT PERTAINING TO YOUR SOFTCOM SERVICES. BY USING SOFTCOM SERVICES OR SOFTCOM SOFTWARE, OR BOTH, YOU AGREE TO BE BOUND BY AND TO COMPLY WITH THIS AGREEMENT JUST AS IF YOU HAD SIGNED IT. VIOLATION OF ANY PROVISION OF THIS AGREEMENT IS GROUNDS FOR IMMEDIATE TERMINATION OF YOUR SOFTCOM ACCOUNT.

IF YOU DO NOT AGREE TO BE BOUND BY THE AGREEMENT, YOU SHOULD IMMEDIATELY END YOUR USE OF SOFTCOM SERVICES AND SOFTCOM SOFTWARE AND NOTIFY THE SOFTCOM CUSTOMER SERVICE DEPARTMENT TO CLOSE YOUR ACCOUNT. YOU SHOULD RETURN OR DESTROY ALL COPIES OF SOFTWARE PROVIDED BY SOFTCOM INCLUDING THIRD PARTY SOFTWARE DISTRIBUTED BY SOFTCOM.

SOFTCOM MAY MAKE CHANGES TO THESE GUIDELINES AND/OR THE TERMS OF SERVICE AT ANY TIME. SUCH CHANGES AND THEIR EFFECTIVE DATE WILL BE POSTED ON THE SOFTCOM WEBSITE OR BROUGHT TO YOUR ATTENTION BY APPROPRIATE MEANS. THESE TERMS OF SERVICE SUPERCEDE ANY AND ALL PRIOR TERMS OF SERVICE. PRIOR TERMS OF SERVICE ARE CONSIDERED NULL AND VOID. YOU AGREE TO REVIEW THESE GUIDELINES AND THE TERMS AND CONDITIONS FOR SERVICE PERIODICALLY, AND IF ANY CHANGE IS NOT ACCEPTABLE TO YOU, YOU AGREE TO TERMINATE YOUR SUBSCRIPTION OR AUTHORIZED USE BY NOTIFYING THE SOFTCOM CUSTOMER SERVICE DEPARTMENT. YOUR CONTINUED USE OF SOFTCOM SERVICES AFTER THE EFFECTIVE DATE OF ANY SUCH CHANGE CONSTITUTES ACCEPTANCE OF ALL THE CHANGES. "SERVICES" REFERS TO ALL SERVICES AND EQUIPMENT PROVIDED BY OR THROUGH SOFTCOM, INCLUDING WITHOUT LIMITATION INTERNET ACCESS AND THE LICENSING OF SOFTCOM OR THIRD PARTY SOFTWARE.

### Section 1: Services

This Agreement establishes the terms and conditions for all Internet access accounts offered by SOFTCOM, both personal and business, and the services available through those accounts. SOFTCOM will provide Services on its systems to you in exchange for recurring payment of subscription fees and full compliance with this Agreement. Recurring payments are due on the 1st day of the month for your respective billing cycle. For example, if you are on a month-to-month agreement with SOFTCOM, payment will be due on the 1st day of each month. If you are on a quarterly agreement with SOFTCOM, payment will be due on the 1st day of the month that starts each "calendar quarter." If you are on a semi-annual agreement with SOFTCOM, payment is due on the 1st of January and the 1st of July. If you are on an annual service agreement with SOFTCOM, payment is due on the 1st day of your anniversary month. SOFTCOM will publish a notice of fee increases at least 30 days before such increases take effect. SOFTCOM reserves the right to charge and require payment of setup fees prior to activation of any Services. Bundled products may not be unbundled or used separately. You may not lease, rent, transfer or resell SOFTCOM Services or any portion of SOFTCOM Services to any other party in any other way. You may not use SOFTCOM Services to compete with SOFTCOM or promote products or services that compete with SOFTCOM.

SOFTCOM reserves the right to discontinue any and all Services to you at any time, without prior notice or liability, for any conduct which SOFTCOM, in its sole discretion, determines to violate the Agreement or is

otherwise harmful to SOFTCOM's interests or the interests of others. SOFTCOM also may limit, restrict or prohibit access to its system resources as SOFTCOM, in its sole discretion, considers appropriate to provide the availability of such resources.

You are responsible for obtaining and maintaining any communications equipment necessary to connect to SOFTCOM services, including modems, computer hardware and software, and long distance or local telephone service. You are responsible for ensuring that such equipment or service is compatible with SOFTCOM's requirements. In addition, you are responsible for maintaining the security of your account, password, files, network and user access, and any information you disseminate through SOFTCOM services or other Internet services, and for all use of your account with or without your knowledge or consent. SOFTCOM ONLY SUPPORTS HARDWARE WHICH WE HAVE TESTED TO BE 100% COMPATIBLE WITH OUR SERVICE. ALL OTHER CUSTOMER EQUIPMENT IS SUPPORTED ON A "BEST-EFFORT" BASIS. THE CUSTOMER IS RESPONSIBLE FOR OWNING AND/OR MAINTAINING COMPATIBLE EQUIPMENT. A LIST OF "SOFTCOM APPROVED" EQUIPMENT IS ON FILE WITH OUR TECHNICAL SUPPORT OFFICE.

If SOFTCOM receives complaints or otherwise becomes aware of possible violations of the Agreement, SOFTCOM may, in its sole discretion, initiate an investigation. This investigation may include gathering information from and about account holders and examining the content of personal electronic communications, Web pages or SOFTCOM Personal Pages on SOFTCOM's servers. During any investigation, SOFTCOM may suspend services to any customer being investigated and/or remove the material from its servers. You agree to cooperate with any such investigation. If SOFTCOM determines, in its sole discretion, that a violation of the Agreement has occurred, it may, but will not be obligated to, take enforcement measures as defined in the Acceptable Use Policy. Violations of this nature could also subject you to criminal or civil liability including monetary damages and a \$200 handling fee charged to your SOFTCOM account. You grant SOFTCOM permission to bill this fee to your credit card.

Any use of SOFTCOM software or third party software distributed by SOFTCOM is governed by the end-user license agreements that accompany the software. Use of such software indicates your acceptance of all terms in any such license agreement.

While the number of on-line hours per month is un-metered, the monthly fee that SOFTCOM assesses the customer is not intended to constitute an offer of a dedicated line. A dedicated line is a modem and telephone line specifically for the usage of one customer and SOFTCOM, providing that customer guaranteed access upon demand with no time restrictions. You agree that in order to keep SOFTCOM's costs low and ensure maximum utilization by all users, SOFTCOM reserves the right to determine reasonable usage on a case-by-case basis, and terminate any connection for any reason.

No more than one connection can be used at anytime by the Customer. If the Customer establishes two or more connections at one time, the Customer will be charged monthly fees for two or more connections.

SOFTCOM makes no warranty regarding system and/or network availability and/or system access speed. Although SOFTCOM strives to maintain 100% network availability and usability for customers, there are many factors and variables which are out of SOFTCOM's direct control. System availability and response speed can and will vary, and no warranty or guarantee for either is made and/or claimed. All speed and throughput claims are stated as maximum under ideal conditions, and do vary. Refer to Section 4 for information on liability information.

Actual data transfer rates may vary as measured between NIC at customer's location and the DSL-equipped Central Office or Remote Terminal, dependant upon several factors including line quality and loop length. Minimum service speeds are subject to 10%-20% protocol overhead. Actual transfer rates above 80% of the listed minimum transfer rate will be considered acceptable. SOFTCOM makes no guarantees regarding the availability of DSL until service is established.

SOFTCOM will not be responsible for outages that it is not notified about by the customer. Customer must be available for troubleshooting and connection setup. Customer has sole responsibility for any local network infrastructure at the installation premises.

## Section 2: Content

SOFTCOM Services include access to many areas of the Internet. Some of these areas contain discussion, materials, and pictures that could be harmful, offensive and/or intended for adult audiences. SOFTCOM account holders must be at least eighteen (18) years of age. If you are a minor's parent or legal guardian, you agree: (a) to exercise supervision over the minor's access to the Internet, (b) to assume all risk associated with viewing content or exposing any minor or other person to content in the Internet, and (c) to defend, indemnify and hold SOFTCOM harmless from any claims, losses and damages, including attorney's fees, resulting from viewing content or exposing any minor or other person to content on the Internet.

SOFTCOM exercises no control whatsoever over the content of information passing through its network or equipment. It is foreseeable that disputes may arise between you and other individuals or entities or between you and SOFTCOM related to such content. Such disputes could involve, among other things, the use or misuse of domain names, the infringement of copyrights, trademarks or other rights in intellectual property, defamation, fraud, and the use or misuse of information. You agree that all claims, disputes or wrongdoing which result from or which are related in any way to the content of information passing

through SOFTCOM's network or equipment are your sole and exclusive responsibility. You agree to indemnify and hold SOFTCOM harmless from and against all claims, damages, costs and expenses (including attorneys' fees) which result from or which are related in any way to the content of information passing through SOFTCOM's network or equipment, or to your use of SOFTCOM Services, equipment, bundled software or the Internet. It is your responsibility to use SOFTCOM Services for lawful purposes only. This agreement to indemnify shall survive the termination of the Agreement. You will not assign or transfer the rights and Services granted hereunder to any other person or any other location. Use of SOFTCOM Services, equipment, any bundled software or the Internet constitutes acceptance of this Agreement in full. Use of the Internet and the information available through it is at your own risk.

Our facilities are used by numerous persons or entities including, without limitation, other subscribers to the Service. As a result, there is a risk that you could be subject to "eavesdropping." This means that other persons or entities may be able to access and/or monitor your use of the Service. This risk of eavesdropping exists not only with our facilities, but also on the Internet and other services to which access is provided as a part of the Service. Any sensitive or confidential information posted, stored, transmitted or disseminated by you is done so at your sole risk, and neither SOFTCOM nor its affiliates, suppliers, or agents shall have any liability whatsoever for any claims, losses, actions, damages, suits or proceedings arising out of or otherwise relating to such actions by you. You acknowledge that software programs claiming to be capable of encryption are commercially available. We make no representation or warranty regarding the effectiveness of these programs.

SOFTCOM makes no representation or warranty that any software or content installed on your computer(s) or downloaded using our service does not contain a virus or other harmful feature or software and it is your sole responsibility to take appropriate precautions to protect any computer or other hardware of yours from damage to its software, files or data as a result of any such virus or other harmful feature or software. We may, but are not required to, terminate all or any portion of the installation or operation of the service if a virus or other harmful feature or software is found to be present on your system. We are not required to provide you with any assistance in removal of the virus or other harmful feature or software. If we decide, in our sole discretion, to install or run virus or other harmful software check software on your computer(s), we make no representation or warranty that the check will detect or correct any or all viruses or other harmful features or software. You acknowledge that you may incur additional charges for any service call made or required on account of any problem related to a virus or other harmful feature or software detected on your system. NEITHER Softcom NOR ITS AFFILIATES, SUPPLIERS, OR AGENTS SHALL HAVE ANY LIABILITY WHATSOEVER FOR ANY DAMAGE TO OR LOSS OR DESTRUCTION OF ANY HARDWARE, SOFTWARE, FILES OR DATA RESULTING FROM ANY VIRUS OR OTHER HARMFUL FEATURE OR SOFTWARE OR FROM ANY ATTEMPT TO REMOVE IT.

To comply with applicable laws and appropriate requests from government and law enforcement to operate our systems properly, or to protect ourselves or our account holders, SOFTCOM reserves the right to access and disclose any information including without limitation to the user names of account holders, the contents of the of personal electronic communication passing through its network, and any other information it deems necessary or appropriate.

SOFTCOM will fully cooperate with law enforcement authorities in investigating suspected lawbreakers. SOFTCOM reserves the right to report to law enforcement any suspected illegal activity of which it becomes aware.

You agree that you do not own or have any right, title or interest in your email address if that address is a part of an SOFTCOM-owned domain (such as softcom.net), and that SOFTCOM may change your email address at any time for any reason.

SOFTCOM has no obligation to forward email sent to any email address you may maintain or may have once maintained on any SOFTCOM system to any other account you may currently or in the future maintain either on an SOFTCOM system or a third party system.

SOFTCOM has no obligation to allow you continuing access to our systems (including, but not limited to, E-mail servers, web servers, news servers, etc.) if your service is suspended or terminated for any reason with SOFTCOM.

You agree that if you choose to use a SOFTCOM spam and/or virus filtering service that you release SOFTCOM from any and all obligation to cache or maintain such email, any responsibility for errors or omissions introduced when SOFTCOM's services alter or delete such email, and/or any obligation to deliver such email either to or from your account.

If you choose to use an SOFTCOM spam and/or virus filtering service that you understand that such services are highly automated and foolproof, and that the use of such services will reduce, but not eliminate, any spam and/or virus infected email you may receive.

We use third-party advertising companies to improve the relevancy and usefulness of ads presented to you while you are online and to provide us with information on general Internet usage patterns. These companies may use anonymous information including but not limited to zip code, web-sites visited, search criteria, advertisements clicked, advertisements not clicked, time of day, and speed of connection about your visits to various Web sites in order to increase the relevancy and usefulness of advertisements for goods and services that may be of interest to you. This anonymous information will not include your name,

email address, telephone number, or any other private personally identifiable information. Our systems and processes have been certified to verify that no private or personally identifiable information is stored, nor is it provided to third-parties for the purposes of serving advertisements to you. By opting out you will continue to receive advertisements as normal; except these advertisements will be less relevant and less useful to you. If you would like to opt out of this, click <http://www.nebuad.com/company/optout.php> [here](#).

### Section 3: Billing

You agree to provide SOFTCOM with accurate and complete billing information, including your legal name, address, and telephone number, and to update this information within 30 days of any change to it. Payment for a SOFTCOM account or Service by fraudulent means will result in immediate and permanent termination of the account, possible civil damages and criminal penalties.

Your SOFTCOM account will be considered delinquent if payment is not received at the Customer Service office by the 10th day of the month for the billing cycle that your account follows (as defined in section 1). If the 10th day of the month falls upon a non-business day, payment is due on the prior business day. All accounts that are delinquent will be charged a \$20.00 late charge fee. Accounts that are delinquent by more than one billing cycle may be suspended, cancelled, and/or sent to a collections agency. Suspended accounts continue accruing charges until reinstated or canceled even if the account holder does not use the account. You acknowledge responsibility for any account you have opened until payment in full is made. If your account is delinquent, SOFTCOM will not release your domain name.

SOFTCOM reserves the right to charge a fee for payments received past due.

SOFTCOM bills 30 days in advance for all DSL services. Failure to pay DSL service 30 days in advance constitutes a breach of your DSL contract, and may result in forfeiting of the remainder of prepaid DSL service.

If SOFTCOM has your credit card number on file, we may charge your monthly fee to it in lieu of assessing a late fee. If you wish to remove the credit card number on file, please contact the billing office.

SOFTCOM reserves the right to charge a service reconnection fee to reinstate suspended accounts.

SOFTCOM reserves the right to charge a \$20.00 service charge for each returned check.

Should SOFTCOM determine, in its sole discretion, that you have violated any aspect of the Agreement, then without limiting or excluding any other remedy available to SOFTCOM, SOFTCOM may charge to your account a \$200 handling fee.

SOFTCOM Customer Service may be reached by telephone at 209-744-4220 or by facsimile at 209-745-9350.

To cancel your account, you must contact SOFTCOM's Customer Service department. Cancellation requests must be received in writing by either facsimile or postal mail. No other methods or forms of cancellation requests will be accepted by SOFTCOM. Cancellation requests must include all identifying information as it appears in SOFTCOM's billing records, including, but not limited to, your name, your address, your telephone number, the security code that you gave the SOFTCOM sales representative upon initiating service with SOFTCOM, the reason for cancellation, and the effective date that you wish to cancel your account. If the information provided to SOFTCOM for an account does not match the account's records, cancellation may be delayed or prevented. DSL cancellations received will be effective on the later of (a) the end of last day of the calendar month during which such thirty (30) day period ends (e.g., a valid written termination request received by SOFTCOM any time during January will result in termination effective at the end of February) or (b) the end of last day of the calendar month requested by the Monthly Subscriber. (c) the end of last day of a DSL customers committed term. Dial-up cancellations must be received in Customer Service by 5:00 PM Pacific Time on the 25th of the current month in order to be effective for the following month and to avoid charges for the following month. Be aware that the Customer Service Department may not receive cancellation requests directed to other SOFTCOM departments by the 25th; SOFTCOM will not be liable for delays incurred by you sending cancellation requests to the incorrect department. All SOFTCOM accounts must be paid in full before a cancellation will be considered complete. Cancellation of service does not, under any circumstances, relieve your obligation to pay any debts to SOFTCOM. Allowing your account to become past due in multiple billing cycles or refusing to pay for service is not the an acceptable method for canceling your service.

SOFTCOM offers a thirty (30) calendar day money-back guarantee to new dialup customers for our services. If during your INITIAL thirty (30) calendar days of dialup service with SOFTCOM you are not satisfied and your usage does not exceed "normal usage", you may cancel your account by contacting customer service. If your usage does not exceed "normal usage" during your INITIAL thirty (30) calendar days of dialup service with SOFTCOM, you will receive a refund for your access fees, minus any setup fees that you may have paid. If your usage is deemed to be above "normal usage", but you are still within the INITIAL thirty (30) calendar days of new dialup service, a setup fee and a service charge equal to one month of monthly dialup service will be charged. After the first thirty (30) calendar days of dialup service, your dialup service may be cancelled by contacting customer service; however, any fees paid to SOFTCOM for dialup service, in setup of service, or in advance for dialup services, shall be forfeited to SOFTCOM as a cancellation fee, and will NOT be refunded. Customers who renew their dialup accounts, whether they have

modified their plan or not, are not considered new customers, and, as such, are not subject to our money-back guarantee. Additionally, renewed or modified dialup service may be cancelled by contacting customer service, however, any fees paid to SOFTCOM for dialup service, in setup of service, or in advance for dialup services, shall be forfeited to SOFTCOM as a cancellation fee, and will NOT be refundable. SOFTCOM defines "normal usage" as any usage that does not exceed 5 hours per month.

SOFTCOM offers a ten (10) calendar day money-back guarantee to new DSL customers for our services, from activation date. If during your INITIAL ten (10) calendar days of DSL service with SOFTCOM you are not satisfied, you may cancel your account by contacting customer service. All hardware must be returned as prescribed by the customer service representative in "like new" and working condition and all original packaging, including all cables, connectors, and manuals. Hardware not returned in "like new" and working condition or with missing cables, connectors, or manuals will have their return rejected without refund. Restocking fees may apply. After the first ten (10) calendar days of DSL service, your DSL service may be cancelled by contacting customer service; however, any fees paid to SOFTCOM for DSL service, in setup of service, for purchase of hardware, or in advance for DSL services, shall be forfeited to SOFTCOM as a cancellation fee, and will NOT be refunded. Customers who renew their DSL accounts, whether they have modified their plan or not, are not considered new customers, and, as such, are not subject to our money-back guarantee. Additionally, renewed or modified DSL service may be cancelled by contacting customer service; however, any fees paid to SOFTCOM for DSL service, in setup of service, or in advance for DSL services, shall be forfeited to SOFTCOM as a cancellation fee, and will NOT be refundable.

Discontinuing DSL service prior to the end of this one-year term will result in an early termination fee of \$200.00 or the balance of normal payments remaining in the term, whichever is the smaller amount. After the initial one-year term, service is on a month-to-month basis.

Equipment provided by SOFTCOM for DSL circuits has a one-time cost of \$99.95 plus applicable sales tax. If a PCI ethernet card (NIC) is required, there is an additional \$19.95 equipment fee with associated sales tax. If, for reasons beyond the control of the customer, SOFTCOM is unable to provide a DSL circuit, we will accept returned equipment in new condition. SOFTCOM will replace any faulty equipment within one year.

Customer must provide and maintain a valid credit card number for the duration of the one-year term. Applicable fees will be charged to this account in the event of early termination. After the one-year term, pricing reverts to the then current price. Any applicable taxes, telecommunications surcharges or other governmental charges are the customer's sole responsibility. A Federal Universal Service Recovery Fee will be applied to all new circuits. Customer must maintain SBC telephone service in continuous working order in order to maintain DSL circuit. Any action taken by the customer resulting in telephone service being disconnected or moved will result in loss of DSL service. Customer remains bound by the one-year term in all such cases, and early termination fees still apply. Any change to service level or any service disconnection or move voids the introductory rate and pricing immediately reverts to normal. Any collections actions taken on delinquent accounts will appear on customer's credit rating. You must be over 18 years of age to order DSL service.

SOFTCOM is not responsible for maintaining material that it deletes from its servers if you cancel your service with SOFTCOM, or if the material violates any provision of these Terms and Conditions, or SOFTCOM's Acceptable Use Policy.

#### Section 4: Liability

The Services provided by SOFTCOM and any equipment owned by SOFTCOM and used by you, are provided AS IS, WITHOUT WARRANTY OF ANY KIND, INCLUDING THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. YOU AGREE THAT SOFTCOM WILL NOT BE LIABLE FOR ANY LOSS OF PROFITS, LOSS OF USE, INTERRUPTION OF BUSINESS, OR ANY DIRECT, INDIRECT, INCIDENTAL OR CONSEQUENTIAL DAMAGES OF ANY KIND WHETHER UNDER THIS AGREEMENT OR OTHERWISE, EVEN IF SOFTCOM IS ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. SOFTCOM, its employees, agents, suppliers, vendors and distributors make no warranty of any kind, either express or implied, regarding the quality, accuracy, or validity of the data and/or information available on its systems, or residing on or passing through its interconnecting networks, or that SOFTCOM Services will be uninterrupted or error free.

SOFTCOM is not and will not be responsible for interruptions or discouragements of service caused by factors beyond its control, including, but not limited to, equipment failure, delays, negligence (by either SOFTCOM or SOFTCOM's suppliers and/or vendors), strikes, or acts of God and/or nature.

Neither party will be liable to the other for any loss, damage, liability, claim or expense arising out of or in relation to this Agreement or your use of or inability to use SOFTCOM Services, other than for payment of fees due and for indemnification under section 4, however caused, whether grounded in contract, tort (including negligence) or theory of strict liability. Use of information obtained from or through SOFTCOM is at your own risk. Under no circumstances will SOFTCOM be liable to you or any other person for any loss or damage caused by reliance on data or information available from or on SOFTCOM's services and systems.

The Service is not fail-safe and is not designed or intended for use in situations requiring fail-safe performance or in which an error or interruption in the Service could lead to severe injury to business, persons, property or environment ("High Risk Activities"). These High Risk Activities may include, without limitation, vital business or personal communications, or activities where absolutely accurate data or

information is required. You expressly assume the risks of any damages resulting from High Risk Activities.

In no circumstances will SOFTCOM be liable for any charges incurred by usage of SOFTCOM's services, including, but not limited to, telephone, long distance, or foreign exchange charges. It is your responsibility to verify that the SOFTCOM access number that you use or is given to you by a SOFTCOM representative is a non-toll call for you.

You agree to waive and hold SOFTCOM harmless from claims related to any action taken by SOFTCOM as part of its investigation of a suspected violation of this Agreement or as a result of its conclusion that a violation of this Agreement has occurred. This means that you cannot sue or recover any damages whatsoever from SOFTCOM as a result of SOFTCOM's decision to remove material from its servers, cancel a newsgroup posting, warn you, suspend or terminate your account, or take any other action during the investigation of a suspected violation or as a result of SOFTCOM's conclusion that a violation has occurred. This waiver applies to all violations described in the Agreement. IN NO EVENT WILL SOFTCOM BE LIABLE FOR ANY INDIRECT, INCIDENTAL, PUNITIVE OR OTHER CONSEQUENTIAL DAMAGES (INCLUDING, WITHOUT LIMITATION, LOST PROFITS) ARISING OUT OF OR RELATED TO THE AGREEMENT OR YOUR USE OF OR INABILITY TO USE SOFTCOM SERVICES. SOFTCOM'S ENTIRE LIABILITY AND YOUR EXCLUSIVE REMEDY SHALL BE AT SOFTCOM'S OPTION, EITHER RETURN OF THE SERVICE FEES PAID FOR THE CURRENT MONTH OF SERVICE AND ANY SET-UP FEES PAID, OR REPLACEMENT OF CONNECTION SERVICES OR PRODUCTS. In any case, SOFTCOM's entire liability under or arising out of this Agreement will be limited to the amount you paid for the Services in the twelve (12) months prior to the act or injury that gave rise to the liability. However, some jurisdictions may not allow a limitation on liability for negligence that causes death or personal injury, and SOFTCOM limits its liability in such jurisdictions only to the degree allowed by applicable laws.

You agree to defend, indemnify and hold SOFTCOM harmless from any claims, losses and damages, including attorney's fees, resulting from your violation of any of the provisions of this Agreement or your placement or transmission of any materials or content onto SOFTCOM's servers, or from any and all use of your account, with or without your knowledge or consent. This agreement to indemnify shall survive the termination of the Agreement.

The installation, configuration, use, inspection, maintenance, repair and removal of the SOFTCOM Equipment and/or certain Customer Equipment used in connection with the Service may result in service outage or potential damage to your computer(s) and other Customer Equipment. Except for gross negligence or willful misconduct by us, neither SOFTCOM nor any of its affiliates, suppliers, and agents shall have any liability whatsoever for any damage, loss or destruction to the Customer Equipment (including without limitation your computer(s) and peripherals). In addition, as part of the installation process for the software and other components of the Service, system files on your computer may be modified. SOFTCOM does not represent, warrant or covenant that these modifications will not disrupt the normal operations of any Customer Equipment including without limitation your computer(s), or cause the loss of files. FOR THESE AND OTHER REASONS, IT IS RECOMMENDED THAT YOU BACK-UP ALL FILES TO ANOTHER STORAGE MECHANISM PRIOR TO SUCH ACTIVITIES. YOU UNDERSTAND AND ACCEPT THE ASSOCIATED RISKS OF ANY DECISION BY YOU NOT TO DO SO. NEITHER SOFTCOM NOR ANY OF ITS AFFILIATES, SUPPLIERS, OR AGENTS SHALL HAVE ANY LIABILITY WHATSOEVER FOR ANY DAMAGE TO OR LOSS OR DESTRUCTION OF ANY SOFTWARE, FILES OR DATA. In addition, the opening of your computer may void warranties provided by the computer manufacturer or other parties relating to the computer's hardware or software. You understand that your computer may need to be opened, either by you or by us or our agents, in connection with the installation or repair of the Service. NEITHER SOFTCOM NOR ANY OF ITS AFFILIATES, SUPPLIERS, OR AGENTS SHALL HAVE ANY LIABILITY WHATSOEVER AS THE RESULT OF THE VOIDING OF ANY SUCH WARRANTIES.

#### Section 5: Equipment and Labor Policy

New merchandise may be exchanged or returned for refund with your original packaging subject to the conditions listed below. Softcom reserves the right to decline any return or exchange where the product is not in "like-new" condition. "Like-new" means the complete product in the original carton with all equipment, packaging, warranties, manuals and accessories. Shipping charges incurred in connection with the exchange or return of new merchandise is non-refundable.

Wireless cards and related WiFi equipment may be returned within 30 days of purchase, provided the merchandise is in "like-new" condition - the complete product in the original carton with all equipment, packaging, warranties, manuals and accessories. Between 30-90 days a 30% Open Box Fee will be charged on all returns unless the product is defective and is exchanged for the identical product. After 90 days no equipment, except where a specific written agreement is made, can be returned.

Canopy equipment or equipment related to Softcom's Fixed Wireless product may be returned within the first 30 days of service for a full refund. Labor, installation services and any shipping charges are non-refundable. After 30 days, Softcom may consider purchasing equipment from the customer at a discounted price. Purchasing equipment will be made on a case by case basis. In the event the customer receives a rebate form with the Canopy equipment, the customer will be refunded based on the terms listed in this section less the amount of the rebate. It is the customer's responsibility to properly submit the rebate form to Motorola and work directly with the manufacturer in order to receive the rebate. Softcom takes no responsibility for incomplete or rejected rebates.

All other products not listed above may be returned within 30 days of purchase, provided the merchandise is in "like-new" condition - the complete product in the original carton with all equipment, packaging, warranties, manuals and accessories.

Special buy or clearance items are not returnable unless otherwise indicated on the label attached to the product. Special buy or clearance items may only be exchanged, and only if defective, within 30 days of purchase if in "like-new" condition. Labor, installation services and any shipping charges are non-refundable.

Refunds will take up to 14 business days to process from the date that Softcom receives the merchandise, and will be credited to the credit card account used for the original purchase.

#### Section 6: Miscellaneous

This Agreement will be governed by and construed in accordance with the laws of the State of California, excluding its conflict of laws principles. The parties' consent to the exclusive jurisdiction and venue of the state and federal courts located in and serving Sacramento County, California. The parties submit to the personal jurisdiction of such courts.

Section 4 and your obligation to pay amounts due under this Agreement will survive termination of this Agreement.

If any aspect of the Agreement is held to be unenforceable, such aspect will be performed only to the extent necessary and in such a manner to preserve to the greatest extent possible to effect the original intent of the parties. The remainder of this Agreement will remain in full force and effect.

You shall not sell, transfer or assign this Agreement.

Except for the payment of money, neither party will be liable for any failure or delay in performance under the Agreement which might be due, in whole or in part, directly or indirectly, to any contingency, delay, failure, or cause of any nature beyond the reasonable control of such party, including without limitation acts of nature, court or government.

#### Addendum A: Fixed Wireless Customers After September 4, 2007

The following additional terms apply to any customer who purchases fixed wireless internet service from us after September 4, 2007.

You agree that except for the wiring installed inside the Premises ("Inside Wiring"), all Softcom equipment belongs to us and will not be deemed fixtures or in any way part of the Premises. Softcom Equipment includes all new or reconditioned fixed wireless subscriber modules installed, provided or leased to you by us, including but not limited to, cabling or wiring and related electronic devices, and any other hardware and all software or "downloads" to Softcom Equipment. You agree to use Softcom Equipment only for the Services pursuant to this Agreement. We may remove or change the Softcom Equipment at our discretion at any time the Services are active or following the termination of your Service(s). You agree to allow us access to the Premises for these purposes. You may not sell, lease, abandon or give away the Softcom Equipment, or permit any other provider of high speed data or telephone services to use the Softcom Equipment. The Softcom Equipment may only be used in the Premises. At your request, we may relocate the Softcom Equipment in the Premises for an additional charge, at a time agreeable to you and us. YOU UNDERSTAND AND ACKNOWLEDGE THAT IF YOU ATTEMPT TO INSTALL OR USE THE SOFTCOM EQUIPMENT OR SERVICES AT A LOCATION OTHER THAN THE PREMISES, THE SERVICES MAY FAIL TO FUNCTION OR MAY FUNCTION IMPROPERLY. You agree that you will not allow anyone other than Softcom employees or agents to service the Softcom Equipment. We suggest that the Softcom Equipment in your possession be covered by your homeowners, renters, or other insurance. You will be directly responsible for loss, repair, replacement and other costs, damages, fees and charges if you do not return the Softcom Equipment to us in an undamaged condition.

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