

# End User Agreement

## CITY OF WADSWORTH ELECTRIC AND COMMUNICATIONS

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### Definitions

1. Wadsworth Electric and Communications is the department of the City of Wadsworth which provides electric, cable TV, Internet access, and other communications services.
2. Customer is The purchaser of Electric and Communications services.
3. Internet Access or Internet service is the data connection to the Internet over the City of Wadsworth Hybrid Fiber coaxial network.
4. Month is one twelfth of a year, as near 30 days as practicable.

Customer warrants that he/she is at least eighteen (18) years of age.

Customer agrees not to resell, redistribute, assign, transfer or sub-license membership in any manner and customer must not allow anyone other than members of customer immediate family living with customer to access the Service using customer name or account.

Customer agrees not to resell Internet Service.

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### Service Provided

Wadsworth Electric and Communications will furnish and install facilities necessary to provide access to the Internet, through its HFC cable system. Customer is permitted to own equipment such as cable modem and router, or rent equipment that is currently provided for that purpose by Wadsworth Electric and Communications.

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### Software Supported

Wadsworth Electric and Communications assumes no responsibility for installation or assistance with regard to any software currently owned by Customer or purchased by Customer after installation of Internet access.

Any proprietary software used to facilitate customer service is the property of Wadsworth Electric Communications.

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## **Service Availability**

Wadsworth Electric and Communications will make reasonable efforts to assure that the shared Internet service is available to customers 24 hours per day, seven days per week. It is possible, however, that there will be interruptions of service. If an outage condition is known sufficiently in advance, Wadsworth Electric and Communications will attempt to provide customer with notification.

Via the "Network Maintenance" e-mail mailing list (<http://mailinglist.wadsnet.com>) or by phone call.

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## **Installation**

The initial routing of the cables on Customer's premises necessary for the provision of Internet Access shall be in a location agreed to between Wadsworth Electric and Communications and the Customer. Any relocation of the Internet Access cabling or facilities solely for the convenience or at the request of Customer shall be at the Customer's expense. Customer agrees to furnish the necessary right of way on its premises for the installation of facilities required to provide Internet access to Customer and confers upon Wadsworth Electric and Communications the right to enter the premises for the purposes of installation, maintenance and repair of said facilities and equipment at a mutually agreed time.

Wadsworth Electric and Communications does not warrant that the opening of the Customer Computer or the installation of software will not disrupt the normal operations of the Customer Computer or cause the loss of files. Wadsworth Electric and Communications recommends that the customer back up all files prior to installation.

Wadsworth Electric and Communications requires the presence of an adult (at least 18 years old) during any equipment installation. Wadsworth Electric and Communications may have to install an additional outlet on customer premises for the use of the Service. The use of this outlet is strictly limited for the purpose of accessing the Internet service.

Customer understands that equipment rented from Wadsworth Electric and Communications remains the property of Wadsworth Electric and Communications and must be returned promptly at the time of disconnection from service. Wadsworth Electric and Communications may charge for this rented equipment that may be lost, stolen or otherwise not returned or damaged. Customer agrees to not service, modify or otherwise tamper with any cable modem furnished to customer and agrees to reimburse Wadsworth Electric and Communications for damage caused by any attempt to enter, tamper with, or service the cable modem or by negligent mistreatment of the equipment. Customer agrees not to remove or allow to be removed the notice of ownership attached to the cable modem or to otherwise deface it.

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## **Limitation of Liability**

Wadsworth Electric & Communication's sole liability for loss or damage arising out of mistakes, omissions, interruptions, delays, errors, or defects in the service or transmission of service provided by Wadsworth Electric & Communications or any underlying communications carrier shall be as follows:

A credit allowance may be made at the Customer's request in the form of a pro-rata adjustment of the recurring monthly charges billed to Customer. Credit allowance shall be based upon the period of the time which such mistakes, omissions, delays, errors or defects in the service or its transmission caused interruptions in the rendering of the service. Any such period of time an interruption occurs will be measured from the time it is reported to Wadsworth Electric & Communications. In the event Customer is affected by such interruption for a period of less than 24 hours, no such adjustment shall be made. When an interruption exceeds 24 hours, the length of the interruption will be measured in 24 hour days. A fraction of a day consisting of less than 12 hours will not be credited, but a period of 12 hours or more will be considered an additional day. The credit allowance will be computed by dividing the length of the service interruption by a standard 30 day month and then multiplying the result by Wadsworth Electric & Communication's fixed monthly charges for each interrupted access account ID. In no case will the credit exceed the fixed monthly charges.

A credit allowance will not be given for mistakes, omissions, interruptions, delays, errors or defects, or curtailments in the service caused by the negligence or willful act of customers, or other parties, or mistakes, omissions, interruptions, delays, errors, or defects caused by failure of equipment or service not provided by Wadsworth Electric & Communications.

Wadsworth Electric & Communications shall in no event be liable for service or equipment interruptions or delays in transmission, errors or defects in service or equipment, when caused by Acts of God, fire, war, riots, government authorities, default of supplier, or other causes beyond Wadsworth Electric & Communications or any underlying communications carrier's control.

Customer acknowledges that the Internet Service is a public access facility used to transmit voice and data communications and that the service may not be completely private. Wadsworth Electric & Communications is not liable to Customer for any claims, loss, damages or cost which may result from lack of privacy on the system. Customer acknowledges that Internet Service may carry material which may be considered abusive, profane or sexually offensive and that Wadsworth Electric & Communications is not liable to Customer for any claims, loss, damages or cost which may result from such material.

Wadsworth Electric and Communications treats private communication on or through its network as strictly confidential and does not access, use, or disclose the contents of private communications except within prevailing legal requirements. Wadsworth Electric and Communications does not warrant that any data or files sent or received by customer over the network, or communications directed to or received from outside of the network, will not be subject to unauthorized access by others or that other users will not gain access to customers home computer. Wadsworth Electric and Communications has no responsibility and assumes no liability for such acts or occurrences. If customer chooses to run applications which permit others to gain access to it, customer must take appropriate security measures. Wadsworth Electric and Communications is not responsible for and assumes no liability for any damages resulting from the use of such applications.

Wadsworth Electric and Communications makes no representation or warranty that any software installed on the Customer computer or which customer may download from the Internet, on-line service provider, or other information provider does not contain any virus or other damaging or destructive attribute.

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## **Disclaimer of Warranties and Limitation of Remedies**

Customer acknowledges and agrees that Wadsworth Electric & Communications is not the manufacturer of equipment or software, and Wadsworth Electric & Communications hereby disclaims all representations and warranties, direct or indirect, express or implied, written or oral, in connection with the equipment or service or internet software including but not limited to any and all express and implied warranties of suitability, durability, merchantability, and fitness for a particular purpose. Wadsworth Electric & Communications, to the extent permitted by law, assigns to Customer any and all manufacturers' warranties relating to equipment purchased by Customer, and Customer acknowledges receipt of any and all such manufacturers' warranties. Without limiting the above, Wadsworth Electric & Communications shall have no liability or obligation to Customer, in either contract or tort, for special, incidental, or consequential damages of any kind incurred by Customer, such as, but not limited to, claims or damages for personal injury, wrongful death, loss of use, loss of anticipated profits, or other incidental or consequential damages or economic losses of any kind incurred by Customer directly or indirectly resulting from or related to any equipment or service or software described hereunder, whether or not caused by company's negligence, to the full extent same may be disclaimed by law.

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## **Indemnification and Release**

Customer agrees to release, defend, indemnify and hold harmless Wadsworth Electric & Communications, its officers, and employees, and contractors to the full extent permitted by law from and against any and all claims, damages, liabilities and expenses, including legal and attorney fees, of any nature arising directly or indirectly out of these Rules and Regulations, including, without limitation, claims for personal injury or wrongful death to Customer or users of the equipment, products or services provided by Wadsworth Electric & Communications or sued in conjunction with such equipment, products or services provided by Wadsworth Electric & Communications and arising out of the manufacture, purchase, operation, condition, maintenance, installation, return or use of the equipment or service, or arising by operation of law, whether the claim is based in whole or in part on negligent acts or omissions of Wadsworth Electric & Communications, its agents or employees.

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## **Operating Rules**

Customer agrees not to publish on or over the internet content which violates or infringes upon the rights of any other. If Wadsworth Electric & Communications is challenged by any third party regarding the suitability of Customer's content, Wadsworth Electric & Communications may at Wadsworth Electric & Communication's sole discretion delete Customer's content from the internet service. Customer agrees not to send unsolicited electronic mail to Wadsworth Electric & Communication's customers without Wadsworth Electric & Communication's explicit written permission for each instance of communication. Customer agrees to accept electronic mail communications from the Wadsworth Electric & Communications from time to time in the interest of providing timely information about the services provided by Wadsworth Electric & Communications. Customer shall have the right to not have their electronic mail address published on the Wadsworth Electric & Communication's website, but shall not have the right to be excluded from the occasional electronic mail communications from Wadsworth Electric & Communications relative to the status of its services or other

information deemed by Wadsworth Electric & Communications to be vital to residents of Wadsworth.

Customer acknowledges that some areas of the Service contain material that is unsuitable for minors, and customer agree to supervise and be totally responsible for the conduct of any minors who may access the Service under customer account, whether authorized under this Agreement or not. Wadsworth Electric and Communications does not endorse nor is responsible for any statement, opinion, and advice given or made on the Service by anyone other than authorized Wadsworth Electric and Communications spokespersons.

Except where and when specifically permitted, customer may not upload or post:

- Any files, text or data anonymously or under a false name
- Any files, text or data that would violate the property rights of others, including unauthorized copyrighted text, images or programs, trade secrets or other confidential proprietary information, defamatory material and/or trademarks or service marks used in an infringing fashion
- Any files which contain viruses, worms, "Trojan horses" or any other contaminating or destructive properties.

While Wadsworth Electric and Communications supplies access to the Internet, it is not the publisher of any information provided by others through the Internet. Wadsworth Electric and Communications does not review, censor, or monitor and is not in any manner responsible for any programs or content sent or accessed over the Internet or made available by any individual, user, information provider, on-line service, or content provider. Such content or programs may include, but are not limited to, programs or content of an infringing, inaccurate, abusive, profane, or sexually offensive nature.

Customer Use: Customer agrees not to use the Service or any equipment or software provided by Wadsworth Electric and Communications:

- For any illegal purposes
- To achieve unauthorized access to any computer systems
- To achieve unauthorized access or distribution with regard to any software, data, or material protected by copyright, patent, trademark, or trade secret law
- To copy, distribute or sublicense any software provided by Wadsworth Electric and Communications, except that customer may make one copy of each software program for back-up or archival purposes only
- For excessive data transfer which interferes with the experience of other users
- To interfere with access to the Internet by other customers or disrupt the network used by Wadsworth Electric and Communications
- To harass, threaten, embarrass or cause distress, unwanted attention or discomfort upon another user
- To post or transmit any unsolicited advertising, promotional materials or other form of solicitation to other customers, except in those areas that are designated for such a purpose
- To post or transmit any sexually explicit, hateful, vulgar, threatening, abusive, harassing, defamatory, or racially, ethnically or otherwise objectionable material that is not constitutionally protected free speech

In the event of customer violation of any of the above, Wadsworth Electric and Communications reserves the right, in its sole discretion, to take any one or more of the following actions:

- Remove those materials that violate these policies
- Hold customer liable for any damages resulting from the violation of these policies
- Terminate Internet Service.

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## **Fees and Charges**

The Customer shall pay Wadsworth Electric & Communications the full monthly service charge applicable to the service rendered, which amount shall be due as shown on the billing statement from the City of Wadsworth each month.

Monthly service charges shall be determined as per the schedule of rates applicable to the services for which the Customer has applied and received, and is subject to change.

Monthly charges are due upon receipt of customer bill. A late fee, collection charge and other cost associated with collection activity may be assessed for any delinquent account. Wadsworth Electric and Communications may terminate service on delinquent accounts in excess of two billing periods unless other arrangements have been worked out between Customer and Wadsworth Electric and Communications. Should service be reinstated, a reconnection charge will apply. Customer will be responsible for all expenses (including reasonable attorney's fees) incurred by Wadsworth Electric and Communications in collecting any unpaid amounts due in accordance with this Agreement.

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## **Severable Provisions**

If any part of these Rules and Regulations are contrary to or prohibited by or deemed invalid under applicable laws and regulations of any applicable jurisdiction, the remaining provisions and parts thereof shall remain and be construed in full force and effect to the extent permitted by law.

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## **Termination**

Services to Customer may be discontinued at any time by Wadsworth Electric and Communications upon failure of Customer to pay any charges due for these services, or, immediately, whenever, in the sole discretion and determination of Internet Access, such discontinuance is in the best interest of other customers, such as interference with the system of Wadsworth Electric & Communications caused by the condition or operation of Customer facilities or system. Upon termination of services hereunder, for whatever reason, and by whomever, Customer shall promptly deliver back to Wadsworth Electric & Communications any property leased or rented by it from Wadsworth Electric & Communications. Wadsworth Electric and Communications does not visit customer home upon termination to restore or reconfigure customer home computer.

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## **Assignment**

Neither this Agreement nor any of customer rights or obligations hereunder shall be assigned by customer, in whole or in part or by operation of law or otherwise, without the prior written consent of Wadsworth Electric and Communications. Any attempt to sublicense, assign or transfer this Agreement or any rights of customer herein, by any means or in any form, without the prior written consent of Wadsworth Electric and

Communications shall be null and void. Wadsworth Electric and Communications may assign this Agreement to any party controlling, controlled by or under common control with Wadsworth Electric and Communications.

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