

# Subscriber Agreement

## Introduction

This Agreement (the "Agreement") sets forth the terms and conditions under which Waverly Hall Communications, agrees to provide the Waverly Hall Communications Internet service (hereinafter the "Service") to you. By completing the registration and using the Service, you (i) agree to abide by, and require others using the Service through your account to abide by the terms of this Agreement, and (ii) represent and warrant that you are at least 18 years of age. If you do not agree with the foregoing, you may not use the Service and must return any installation software, equipment, and all associated materials to Waverly Hall Communications. This Agreement takes effect on the date on which you accept this Agreement, and continues until your subscription is terminated.

Waverly Hall Communications reserves the right to modify the terms of this Agreement or prices for the Service and may discontinue or revise any or all other aspects of the Service in its sole discretion at any time by posting changes online. Your continued use of the Service after changes are posted constitutes your acceptance of this Agreement as modified by the posted changes. The updated, online version of this Agreement shall supersede any prior version of this Agreement that may have been included in any software or related materials provided by Waverly Hall Communications. This Agreement should be read in conjunction with our Acceptable Use Policy, ("AUP"), Privacy Policy, and other applicable policies.

**IF YOU DO NOT AGREE TO BE BOUND BY THESE TERMS, YOU SHOULD IMMEDIATELY STOP THE USE OF THE SERVICE AND NOTIFY THE WAVERLY HALL COMMUNICATIONS CUSTOMER SERVICE DEPARTMENT SO THAT YOUR ACCOUNT CAN BE CLOSED.**

## 1. Your Subscription

Your subscription entitles you to use the Service. You agree not to assign, transfer, resell or sublicense your rights as a subscriber unless specifically allowed by this Agreement. You agree that you are solely responsible and liable for any and all breaches of the terms and conditions of this Agreement, whether such breach results from your use of the Service or by another person who uses your computer. You agree to contact the local Waverly Hall Communications office identified on your monthly invoice immediately upon the occurrence of any change in the status of your account (e.g., change in individuals authorized to use your account) for the purpose of updating your account information.

## 2. Payment Terms

You agree to be responsible for any and all charges, damages and costs that you or anyone using your Waverly Hall Communications account. You agree to pay all monthly fees and installation charges including, but not limited to, applicable taxes, customer service fees, late fees and collection fees. Monthly fees will be billed one month in advance. If payment is not received by

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the due date, late fees and/or collection charges may be assessed and the Service may be terminated. You may incur charges including, without limitation, charges relating to the purchase of "premium" services, such as additional web space, business class services, or access to certain gaming sites in addition to those billed by Waverly Hall Communications. All such charges, including all applicable taxes, are your sole responsibility. You may be required to pay a reconnect fee and/or a security deposit in addition to all past due charges before the Service is reconnected.

### **3. Software License**

To the extent applicable, Waverly Hall Communications grants to you a limited, nonexclusive, nontransferable and non-assignable license to install and use Waverly Hall Communications access software (including software from third party vendors that Waverly Hall Communications distributes, hereinafter referred to as the "Licensed Software"), in order to access and use the Service. Waverly Hall Communications may modify the Licensed Software at any time, for any reason, and without providing notice of such modification to you. The Licensed Software constitutes confidential and proprietary information of Waverly Hall Communications and Waverly Hall Communications licensors and contains trade secrets and intellectual property protected under United States copyright laws, international treaty provisions, and other laws. All right, title, and interest in and to the Licensed Software, including associated intellectual property rights, are and shall remain with Waverly Hall Communications and its licensors. You agree to comply with the terms and conditions of all end user software license agreements accompanying any software or plug-ins to such software distributed by Waverly Hall Communications in connection with the Service. Your right to use the Licensed Software terminates upon termination of this Agreement.

### **4. Computer and Equipment Requirements**

At the time of initial installation of the Service, your computer equipment must comply with Waverly Hall Communications current minimum computer requirements which are: Pentium III (or equivalent) 600 MHz Processor, 256 MB RAM, 50 MB available space on hard disk, physical connection necessary for the Service (Ethernet card or dial up modem) and your computer must be free of viruses. The foregoing computer requirements are minimums, and may be changed by Waverly Hall Communications from time to time. Waverly Hall Communications will make reasonable efforts to support previously acceptable configurations; however, Waverly Hall Communications is not obligated to continue to provide such support. You agree to only connect Waverly Hall Communications approved equipment to the Waverly Hall Communications network. You will not remove any equipment owned by Waverly Hall Communications (the "Equipment") from the Premises.

### **5. Installation**

You authorize Waverly Hall Communications personnel and/or its agents to enter your premises (the "Premises") at mutually agreed upon times in order to install, maintain, inspect, repair and remove the Service. If you are not the owner of the Premises at which the Service is to be installed, you represent that you have obtained the consent of the owner of the Premises for

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Waverly Hall Communications personnel and/or its agents to enter the Premises for the purposes described above. You shall indemnify and hold Waverly Hall Communications harmless from and against any claims of the owner of the Premises arising out of the performance of this Agreement. You agree that installation of the Service (including the Licensed Software) may require Waverly Hall Communications personnel and/or its agents to open your computer. You further acknowledge and agree that installation and/or use of the Service (including the Licensed Software) may result in the modification of your computer's systems files and that Waverly Hall Communications may periodically update the software in order to provide the Service. Waverly Hall Communications neither represents, warrants, nor covenants that such modifications will not disrupt the normal operations of your computer. Waverly Hall Communications shall have no liability whatsoever for any damage resulting from the installation and/or use of the Licensed Software or file modifications. Waverly Hall Communications is not responsible for returning your computer to its original configuration prior to installation. Waverly Hall Communications or its agents will supply and install certain software and, if required, hardware for a fee determined by Waverly Hall Communications. Waverly Hall Communications will also provide a "getting started guide" and online instructions on how to use the Service. Waverly Hall Communications shall use reasonable efforts to install the Service to full operational status, provided that your computer fulfills the minimum computer requirements set forth herein.

## **6. Acceptable Use Policy**

You agree to use the Services strictly in accordance with the Acceptable Use Policy located at [www.wavetel.us/acceptableuse.pdf](http://www.wavetel.us/acceptableuse.pdf) which may be modified by Waverly Hall Communications from time to time, and which is incorporated herein by reference and made a part of this Agreement.

## **7. Posting to Waverly Hall Communications Website**

You are solely responsible and liable for all material that you upload, post, email, transmit or otherwise make available via the Service, including, without limitation, material that you post to any Waverly Hall Communications Website or the Web site of a Waverly Hall Communications affiliate, or any third party vendor's service (e.g., newsgroups) that is used by Waverly Hall Communications. Waverly Hall Communications does not claim ownership of material you submit or make available for inclusion on the Service. However, with respect to material you submit or make available for inclusion on publicly accessible areas of the Service, you grant Waverly Hall Communications a world-wide, royalty free and non-exclusive license(s) to: use your material in connection with Waverly Hall Communications businesses including, but not limited to, the rights to copy, distribute, publicly perform, publicly display, transmit, publish your name in connection with the material, and to prepare derivative works. No compensation will be paid with respect to the use of your material.

## **8. Links to Third Party Web Sites**

In your use of the Service and/or Waverly Hall Communications Websites, you may encounter various types of links that enable you to visit Websites operated or owned by third parties ("Third Party Site(s)"). These links are provided to you as a convenience and are not under the

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control or ownership of Waverly Hall Communications. The inclusion of any link to a Third Party Site is not (i) an endorsement by Waverly Hall Communications of the Third Party Site, (ii) an acknowledgement of any affiliation with its operators or owners, or (iii) a warranty of any type regarding any information or offer on the Third Party Site. Your use of any Third Party Site is governed by the various legal agreements and policies posted at that Web site.

## **9. Monitoring and Removal of Content**

Waverly Hall Communications is under no obligation to monitor the Service. However, Waverly Hall Communications reserves the right at all times and without notice to remove, restrict access to, or make unavailable, any content on its servers that it considers, in its sole discretion, to be obscene, lewd, lascivious, excessively violent, harassing, or otherwise objectionable, and to monitor, review, retain and/or disclose any content or other information in Waverly Hall Communications possession about or related to you, your use of the Services or otherwise as Waverly Hall Communications deems necessary to satisfy any applicable law, regulation, legal process, or governmental request. Waverly Hall Communications also retains the right to purge your email account or accounts in the event that any such account has not been accessed for at least three (3) months.

## **10. Privacy**

You authorize Waverly Hall Communications to make inquiries and to receive information about your credit history from others and to utilize such information in its decision regarding its provision of the Service to you. You agree that Waverly Hall Communications may collect and disclose information concerning you and your use of the Service in the manner and for the purposes set forth herein and in Waverly Hall Communications Online Privacy Policy.

[www.wavetel.us/privacypolicy.pdf](http://www.wavetel.us/privacypolicy.pdf)

## **11. No Spam or Other Unsolicited Bulk Email**

Waverly Hall Communications may immediately terminate any subscriber account that it determines, in its sole discretion, is transmitting or is otherwise connected with any "spam" or other unsolicited bulk email. You agree to pay Waverly Hall Communications damages for "spam" or unsolicited bulk email transmitted from or otherwise connected with your account. Waverly Hall Communications reserves the right to block, reject or remove what it considers in its sole discretion to be "spam" or other unsolicited bulk email from the Service and Waverly Hall Communications shall have no liability for blocking any email considered to be "spam."

## **12. Termination and Surviving Obligations**

Either party may terminate this Agreement at any time without cause by providing the other party with no less than twenty-four (24) hours written notice of such termination. In the event of termination by you, you must notify Waverly Hall Communications by telephone or by a non-electronic written submission. Email submissions shall not constitute effective notice. Waverly Hall Communications may notify you of termination by electronic or other means. You

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expressly agree that upon termination of this Agreement: (i) You will pay Waverly Hall Communications in full for your use of any Equipment and Service up to the later of the effective date of termination of this Agreement or the date on which the Service and any Equipment have been disconnected and returned to Waverly Hall Communications; (ii) You will permit Waverly Hall Communications to access the Premises at a reasonable time to remove any Equipment and other material provided by Waverly Hall Communications; (iii) You will ensure the immediate return of any Equipment to Waverly Hall Communications and you will return or destroy all copies of any software provided to you pursuant to this Agreement; and (iv) Waverly Hall Communications is authorized to delete any files, programs, data and email messages associated with such account.

### **13. Disclaimer of Warranties and Limitation of Liability**

You expressly agree that Waverly Hall Communications is not responsible or liable for any content, act or omission of any third party including, without limitation, any threatening, defamatory, obscene, offensive, or illegal conduct, or any infringement of another's rights including, without limitation, privacy and intellectual property rights, and you hereby release Waverly Hall Communications for any such claims based on the activities of third parties. THE SERVICE IS PROVIDED TO YOU "AS IS" WITHOUT WARRANTY OF ANY KIND. NEITHER WAVERLY HALL COMMUNICATIONS, NOR ITS AFFILIATES OR ANY OF ITS SUPPLIERS OR LICENSORS, EMPLOYEES OR AGENTS WARRANT THE SERVICE WILL BE UNINTERRUPTED OR ERROR FREE OR FREE FROM VIRUSES OR OTHER HARMFUL MALICIOUS AGENTS EVEN IF ANTI-VIRUS MECHANISMS ARE DEPLOYED. WAVERLY HALL COMMUNICATIONS DOES NOT WARRANT THAT ANY DATA OR ANY FILES SENT BY OR TO YOU WILL BE TRANSMITTED IN UNCORRUPTED FORM OR WITHIN A REASONABLE PERIOD OF TIME. ALL REPRESENTATIONS AND WARRANTIES OF ANY KIND, EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, ANY WARRANTIES OF TITLE, NONINFRINGEMENT, FITNESS FOR A PARTICULAR PURPOSE AND MERCHANTABILITY ARE HEREBY EXCLUDED AND DISCLAIMED. WAVERLY HALL COMMUNICATIONS AND ITS EMPLOYEES, REPRESENTATIVES AND AGENTS ARE NOT LIABLE FOR ANY COSTS OR DAMAGES, ARISING DIRECTLY OR INDIRECTLY, FROM THE INSTALLATION OR USE OF, THE LICENSED SOFTWARE, THE SERVICE (INCLUDING E-MAIL), EQUIPMENT FURNISHED BY WAVERLY HALL COMMUNICATIONS, OR WAVERLY HALL COMMUNICATIONS'S PROVISION OF TECHNICAL SERVICE AND SUPPORT FOR THE SERVICE; EVEN IF SUCH DAMAGE RESULTS FROM THE NEGLIGENCE OR GROSS NEGLIGENCE OF A WAVERLY HALL COMMUNICATIONS INSTALLER, TECHNICIAN, OR CUSTOMER SERVICE REPRESENTATIVE, INCLUDING ANY INDIRECT, INCIDENTAL, EXEMPLARY, SPECIAL, PUNITIVE OR DAMAGES, REGARDLESS OF WHETHER OR NOT WAVERLY HALL COMMUNICATIONS HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. IN ANY EVENT, WAVERLY HALL COMMUNICATIONS'S CUMULATIVE LIABILITY TO YOU FOR ANY AND ALL CLAIMS RELATING TO THE USE OF THE SERVICE SHALL NOT EXCEED THE TOTAL AMOUNT OF SERVICE FEES PAID DURING THE IMMEDIATELY PRECEDING TWELVE MONTH PERIOD. YOU HEREBY RELEASE WAVERLY HALL COMMUNICATIONS FROM ANY AND ALL

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OBLIGATIONS, LIABILITIES, AND CLAIMS IN EXCESS OF THIS LIMITATION. WAVERLY HALL COMMUNICATIONS IS ALSO NOT LIABLE FOR ANY COSTS OR DAMAGES ARISING FROM OR RELATED TO YOUR BREACH OF THIS AGREEMENT. Your sole and exclusive remedies under this Agreement are as expressly set forth herein. Some states do not allow the exclusion or limitation of implied warranties, so the above exclusions or limitations may not apply to you.

#### **14. Indemnification**

You agree to indemnify and hold Waverly Hall Communications, its parents, subsidiaries, members, affiliates, officers and employees, harmless from any claim, demand, or damage, including costs and reasonable attorneys' fees, asserted by any third party due to or arising out of your use of or conduct on the Service. Waverly Hall Communications will notify you within a reasonable period of time of any third party claim for which Waverly Hall Communications seeks indemnification and will afford you the opportunity to participate in the defense of such claim, provided that your participation will not be conducted in a manner prejudicial to Waverly Hall Communications interests, as reasonably determined by Waverly Hall Communications.

#### **15. Management of Network, Maintenance**

Waverly Hall Communications reserves the right to manage its network for the greatest benefit of the greatest number of subscribers including, without limitation, the following: rate limiting, rejection or removal of "spam" or otherwise unsolicited bulk email, anti-virus mechanisms, traffic prioritization, and protocol filtering. You expressly accept that such action on the part of Waverly Hall Communications may affect the performance of the Service. Waverly Hall Communications reserves the right to enforce limits on specific features of the Service including, without limitation, email storage (including deletion of dormant or unchecked email) and web hosting maximums. Waverly Hall Communications will endeavor to perform planned service-affecting maintenance between 11:00 p.m. and 4:00 a.m. However, if exigent circumstances require maintenance at other time, Waverly Hall Communications reserves the right to perform maintenance at such time as may be necessary.

#### **16. Damage to and Encumbrances on Equipment, Computer, Software**

All Equipment will at all times remain the property of Waverly Hall Communications. You may not sell, transfer, lease, encumber or assign all or part of the Equipment to any third party. You agree to pay the full retail cost for the repair or replacement of any lost, stolen, unreturned, damaged, sold, transferred, leased, encumbered or assigned Equipment or part thereof, together with any costs incurred by Waverly Hall Communications in obtaining or attempting to obtain possession of any such Equipment.

#### **17. Copyright and Trademark Notices**

Materials available on Waverly Hall Communications Websites are or may be protected by copyright law. All other trademarks and service marks are the property of their respective owners.

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## **18. Intellectual Property Infringement Claims**

Waverly Hall Communications is registered under the Digital Millennium Copyright Act of 1998. In accordance with Title 17, United States Code, Section 512(c)(3), if you believe that a Web page hosted by Waverly Hall Communications is violating your rights under U.S. copyright law, you may file a complaint of such claimed infringement with Waverly Hall Communications designated agent. [www.wavetel.us/copyrightinfringement.pdf](http://www.wavetel.us/copyrightinfringement.pdf)

## **19. Governing Law and Jurisdiction**

This Agreement shall be exclusively governed by, and construed in accordance with, the laws of the State of Georgia, without regard to its conflict of laws provisions. All disputes arising out of or related to this Agreement and the Service must be brought in a federal or state court located in the state of Georgia. You consent to the personal jurisdiction of such courts located therein. You waive all rights to bring any claim, suit or proceeding more than one (1) year after the date the cause of action arose.

## **20. Miscellaneous**

This Agreement constitutes the entire agreement and understanding between the parties with respect to its subject matter and supersedes and replaces any and all prior written or oral agreements. In the event that any portion of this Agreement is held to be unenforceable, the unenforceable portion shall be construed in accordance with applicable law as nearly as possible to reflect the original intentions of the parties and the remainder of its provisions shall remain in full force and effect. Nothing contained in this Agreement shall be construed to limit Waverly Hall Communications rights and remedies available at law or in equity. Waverly Hall Communications failure to insist upon or enforce strict performance of any provision of this Agreement shall not be construed as a waiver of any provision or right. Neither the course of conduct between the parties nor trade practice shall act to modify any provision of this Agreement. This Agreement may not be assigned or transferred by you. This Agreement is freely assignable by Waverly Hall Communications to third parties.

## **21. How to Contact Us**

For any questions regarding this Subscriber Agreement, billing or other, please contact Waverly Hall Communications at one of the following:

Email: [customerserv@wavetel.us](mailto:customerserv@wavetel.us)

Phone: 706.582.3333

U.S. Mail: PO Box 100

Waverly Hall, GA 31831

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