

GILROYWIRELESS DISCLAIMER OF WARRANTIES, LIMITATION OF LIABILITY AND INDEMNIFICATION

SECURITY WARNING AND DISCLAIMER

WARNING: The GilroyWireless is an open network provided by the City of Gilroy for your convenience, and you use it at your own risk. It is available to the general public, and is NOT INHERENTLY SECURE. The GilroyWireless cannot and does not guarantee the privacy of your data and communication while using the service.

There are potentially serious security issues with any computer connected to the Internet without the appropriate protection, ranging from viruses, worms and other programs that can damage the user's computer, to attacks on the computer by unauthorized or unwanted third parties. By using the GilroyWireless, you acknowledge and knowingly accept the potentially serious risks of accessing the Internet over an unsecured network. It is recommended that users take steps to protect their own computer system, such as installing current anti-virus software and maintaining appropriate firewall protection. For further information on how to protect you on this open network, consult a security professional.

By using this GilroyWireless, you acknowledge and agree that YOUR USE OF THIS SERVICE IS SOLELY AT YOUR OWN RISK. By using the GilroyWireless, you also agree to all terms set forth in the following Disclaimer of Warranties, Limitation of Liability and Indemnification and the [GilroyWireless Network Acceptable Use Policy \(AUP\)](#).

DISCLAIMER OF WARRANTIES

The City of Gilroy disclaims any and all responsibility or liability for the accuracy, content, completeness, legality, reliability, or operability or availability of information or material displayed in or accessible through the GilroyWireless network. The City of Gilroy disclaims any responsibility for the deletion, failure to store, misdelivery, or untimely delivery of any information or material. The City of Gilroy disclaims any responsibility for any harm resulting from downloading or accessing any information or material on the Internet through the Gilroy Wireless service.

THE GILROYWIRELESS SERVICE, AND ALL MATERIALS, INFORMATION, PRODUCTS AND SERVICES INCLUDED IN THE GILROYWIRELESS SERVICE ARE PROVIDED "AS IS," WITH NO WARRANTIES WHATSOEVER. THE CITY OF GILROY, ITS SUPPLIERS AND ITS LICENSORS EXPRESSLY DISCLAIM TO THE FULLEST EXTENT PERMITTED BY LAW ALL EXPRESS, IMPLIED, AND STATUTORY WARRANTIES, INCLUDING, WITHOUT LIMITATION, THE WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND NON-INFRINGEMENT OF PROPRIETARY RIGHTS. THE CITY OF GILROY, ITS SUPPLIERS AND ITS LICENSORS DISCLAIM ANY WARRANTIES REGARDING THE SECURITY, RELIABILITY, TIMELINESS, AND PERFORMANCE OF THE GILROYWIRELESS SERVICE. THE CITY OF GILROY, ITS SUPPLIERS AND ITS LICENSORS DISCLAIM ANY WARRANTIES FOR ANY INFORMATION OR ADVICE OBTAINED THROUGH THE GILROYWIRELESS SERVICE. THE CITY OF GILROY, ITS SUPPLIERS AND ITS LICENSORS DISCLAIM ANY WARRANTIES FOR SERVICES OR GOODS RECEIVED THROUGH OR ADVERTISED ON THE GILROYWIRELESS SERVICE OR RECEIVED THROUGH ANY LINKS PROVIDED BY THE GILROYWIRELESS SERVICE, AS WELL AS FOR ANY INFORMATION OR ADVICE RECEIVED THROUGH ANY LINKS PROVIDED IN THE GILROYWIRELESS SERVICE.

YOU UNDERSTAND AND AGREE THAT (A) THE GILROYWIRELESS SERVICE WILL NOT BE UNINTERRUPTED OR ERROR-FREE, (B) THERE IS NO WARRANTY OR GUARANTEE THAT THE GILROYWIRELESS SERVICE WILL OPERATE AT ANY MINIMUM DATA TRANSFER SPEED, (C) THE CITY OF GILROY HAS NO CONTROL OVER THIRD PARTY NETWORKS OR SITES YOU MAY ACCESS IN THE COURSE OF YOUR USE OF THE GILROYWIRELESS SERVICE, AND (D) YOU

DOWNLOAD OR OTHERWISE OBTAIN MATERIAL OR DATA THROUGH THE USE OF THE GILROYWIRELESS SERVICE AT YOUR OWN DISCRETION AND RISK AND THAT YOU WILL BE SOLELY RESPONSIBLE FOR ANY DAMAGES TO YOUR COMPUTER SYSTEM OR LOSS OF DATA THAT RESULTS FROM THE DOWNLOAD OF SUCH MATERIAL OR DATA.

LIMITATION OF LIABILITY

UNDER NO CIRCUMSTANCES SHALL THE CITY OF GILROY, ITS SUPPLIERS OR ITS LICENSORS BE LIABLE TO YOU, ANY USER, OR ANY THIRD PARTY ON ACCOUNT OF YOUR OR THAT PARTY'S USE OR MISUSE OF OR RELIANCE ON THE GILROYWIRELESS SERVICE ARISING FROM ANY CLAIM RELATING TO THE SUBJECT MATTER HEREOF. SUCH LIMITATION OF LIABILITY SHALL APPLY TO PREVENT RECOVERY OF DIRECT, INDIRECT, INCIDENTAL, CONSEQUENTIAL, SPECIAL, EXEMPLARY, AND PUNITIVE DAMAGES WHETHER SUCH CLAIM IS BASED ON WARRANTY, CONTRACT, TORT (INCLUDING NEGLIGENCE), OR OTHERWISE, (EVEN IF THE CITY OF GILROY, ITS SUPPLIERS OR ITS LICENSORS HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES). SUCH LIMITATION OF LIABILITY SHALL APPLY WHETHER THE DAMAGES ARISE FROM USE OR MISUSE OF AND RELIANCE ON THE GILROYWIRELESS SERVICE, FROM INABILITY TO USE THE GILROYWIRELESS SERVICE, OR FROM THE INTERRUPTION, SUSPENSION, OR TERMINATION OF THE GILROYWIRELESS SERVICE (INCLUDING SUCH DAMAGES INCURRED BY THIRD PARTIES). THIS LIMITATION SHALL ALSO APPLY WITH RESPECT TO DAMAGES INCURRED BY REASON OF OTHER SERVICES OR GOODS RECEIVED THROUGH OR ADVERTISED ON THE GILROYWIRELESS SERVICE OR RECEIVED THROUGH ANY LINKS PROVIDED IN THE GILROYWIRELESS SERVICE, AS WELL AS BY REASON OF ANY INFORMATION OR ADVICE RECEIVED THROUGH OR ADVERTISED ON THE GILROYWIRELESS SERVICE OR RECEIVED THROUGH ANY LINKS PROVIDED IN THE GILROYWIRELESS SERVICE. THIS LIMITATION SHALL ALSO APPLY, WITHOUT LIMITATION, TO THE COSTS OF PROCUREMENT OF SUBSTITUTE GOODS OR SERVICES, LOST PROFITS, OR LOST DATA. SUCH LIMITATION SHALL FURTHER APPLY WITH RESPECT TO THE PERFORMANCE OR NON-PERFORMANCE OF THE GILROYWIRELESS SERVICE OR ANY INFORMATION OR MERCHANDISE THAT APPEARS ON, OR IS LINKED OR RELATED IN ANY WAY TO, THE GILROYWIRELESS SERVICE. SUCH LIMITATION SHALL APPLY NOTWITHSTANDING ANY FAILURE OF ESSENTIAL PURPOSE OF ANY LIMITED REMEDY AND TO THE FULLEST EXTENT PERMITTED BY LAW.

WITHOUT LIMITING THE FOREGOING, UNDER NO CIRCUMSTANCES SHALL THE CITY OF GILROY, ITS SUPPLIERS OR ITS LICENSORS BE HELD LIABLE FOR ANY DELAY OR FAILURE IN PERFORMANCE RESULTING DIRECTLY OR INDIRECTLY FROM ACTS OF NATURE, FORCES, OR CAUSES BEYOND ITS REASONABLE CONTROL, INCLUDING, WITHOUT LIMITATION, INTERNET FAILURES, COMPUTER EQUIPMENT FAILURES, TELECOMMUNICATION EQUIPMENT FAILURES, OTHER EQUIPMENT FAILURES, ELECTRICAL POWER FAILURES, STRIKES, LABOR DISPUTES, RIOTS, INSURRECTIONS, CIVIL DISTURBANCES, SHORTAGES OF LABOR OR MATERIALS, FIRES, FLOODS, STORMS, EXPLOSIONS, ACTS OF GOD, WAR, GOVERNMENTAL ACTIONS, ORDERS OF DOMESTIC OR FOREIGN COURTS OR TRIBUNALS, NON-PERFORMANCE OF THIRD PARTIES, OR LOSS OF OR FLUCTUATIONS IN HEAT, LIGHT, OR AIR CONDITIONING.

INDEMNIFICATION

YOU AGREE TO HOLD HARMLESS AND INDEMNIFY THE CITY OF GILROY, ITS SUPPLIERS AND LICENSORS FROM AND AGAINST ANY THIRD PARTY CLAIM ARISING FROM OR IN ANY WAY RELATED TO YOUR USE OF THE GILROYWIRELESS SERVICE, INCLUDING ANY LIABILITY OR EXPENSE ARISING FROM ALL CLAIMS, LOSSES, DAMAGES (ACTUAL AND CONSEQUENTIAL), SUITS, JUDGMENTS, LITIGATION COSTS AND ATTORNEYS' FEES, OF EVERY KIND AND NATURE. IN SUCH A CASE, THE CITY OF GILROY WILL PROVIDE YOU WITH WRITTEN NOTICE OF SUCH CLAIM, SUIT OR ACTION.

UNDER NO CIRCUMSTANCES SHALL THE CITY OF GILROY BE LIABLE FOR ANY DIRECT, INDIRECT, INCIDENTAL, SPECIAL, PUNITIVE OR CONSEQUENTIAL DAMAGES THAT RESULT IN ANY WAY FROM YOUR USE OF OR INABILITY TO USE THE GILROYWIRELESS SERVICE OR TO ACCESS THE INTERNET OR ANY PART THEREOF, OR YOUR RELIANCE ON OR USE OF INFORMATION, SERVICES OR MERCHANDISE PROVIDED ON OR THROUGH THE GILROYWIRELESS, OR THAT RESULT FROM MISTAKES, OMISSIONS, INTERRUPTIONS, DELETION OF FILES, ERRORS, DEFECTS, DELAYS IN OPERATION, OR TRANSMISSION, OR ANY FAILURE OF PERFORMANCE. YOU AGREE TO INDEMNIFY AND HOLD HARMLESS THE CITY OF GILROY, INCLUDING ITS AFFILIATES, AGENTS, AND CONTRACTORS, FROM ANY CLAIM, LIABILITY, LOSS, DAMAGE, COST, OR EXPENSE (INCLUDING, WITHOUT LIMITATION, REASONABLE ATTORNEYS' FEES AND COSTS) ARISING OUT OF OR RELATED TO YOUR USE OF THE GILROYWIRELESS, ANY MATERIALS DOWNLOADED OR UPLOADED THROUGH THE GILROYWIRELESS, ANY ACTIONS TAKEN BY YOU IN CONNECTION WITH YOUR USE OF THE GILROYWIRELESS, ANY VIOLATION OF ANY THIRD PARTY'S RIGHTS OR ANY VIOLATION OF LAW OR REGULATION, OR ANY BREACH OF THE FOREGOING.

THE FOREGOING WILL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF CALIFORNIA, WITHOUT GIVING EFFECT TO ITS CONFLICT OF LAWS PROVISION. IF FOR ANY REASON A COURT OF COMPETENT JURISDICTION FINDS ANY PROVISION OR PORTION OF THE FOREGOING TO BE UNENFORCEABLE, THE REMAINDER OF THE FOREGOING WILL CONTINUE IN FULL FORCE AND EFFECT.