

Waverley Council Terms of Use

Date of Last Revision: 12 January 2016

1. Terms of Use

1.1 These Waverley Council Terms of Use ("**Terms**") govern all use of the publicly available service known as "Waverley Council Free Wi-Fi" ("**Service**").

1.2 A reference in these terms to "**Waverley Council**", "**we**", "**our**", "**us**" means Waverley Council (ABN 12 502 583 608). A reference to "**you**" or "**your**" means the person who registers any wireless communications device to use the Service.

1.3 The Service provides a unified network of wireless access points, that allow a single wireless device to access connections to the internet once the wireless device has been registered with the Service. Connections to the internet available through the Service are provided by a range of businesses and organisations ("**Providers**").

1.4 By using the Service you will be deemed to have accepted these Terms. If you do not accept any of these Terms, you must immediately stop using the Service.

1.5 We may change these Terms at any time. As you will be bound by any amendment to these Terms, you should review these Terms from time to time. By continuing to use the Service after any amendment to these Terms, you will be deemed to have accepted the amended Terms.

2. Using the Service

2.1 Before using the Service, you must register some of your details with us, using an online facility that we provide. Once you have registered, your wireless device will be automatically recognised by the Service, and you will be able to access the internet at any location from which the Service is available. If you have multiple wireless devices, you must register each device individually.

2.2 To use the Service, you must have a wireless device that is capable of accessing a Wi-Fi network. You must not use the Service with any device that you do not own, except if you have the explicit permission of the owner of the device.

2.3 You acknowledge and agree that each time you connect to the Service, and at such other times as we consider appropriate, we may direct your wireless device to a website or other location for the display of promotional or advertising material in any form, including video, and that you may be prevented from use, or further use, of the internet for any duration that we consider appropriate for the display of that advertising or promotional material.

2.4 You acknowledge and agree that we may limit or restrict your access to the Service from time to time at our discretion, including by controlling the rate at which your wireless device sends and receives data over the Service, by restricting the time a wireless device may be connected to the Service, and by filtering or blocking access to certain websites or other internet accessible material through the Service.

3. Consent to receive messages

3.1 You agree to provide to us a valid email address or other electronic contact method that we specify from time to time, and to receive communication ("**Messages**") from us via that email address or other contact method. We may refuse or suspend your access to the Service if we determine that the email address or other contact method you have provided is not (or ceases to be) valid.

3.2 Examples of the content of Messages you may receive from any Permitted Sender include:

- a. material for promotional and marketing purposes, which may relate to products and services offered by us;
- b. material for survey and research purposes; and
- c. material for any other purpose that we consider to be appropriate from time to time.

3.3 You acknowledge that Messages a Permitted Sender may send may constitute Commercial Electronic Messages for the purposes of the Spam Act 2003 (Cth), and you give your consent to the receipt of all such Messages.

3.4 Should you wish to withdraw your consent to the receipt of Messages, you may do so at any time by either notifying us by email at the address: xxxxxxxx@xxxxxx.xxx or using the unsubscribe facility that we provide with each Message.

3.5 You acknowledge that if you withdraw your consent to receive messages, you will not be able to use the Service. You may use the Service again at any time by re-registering, which means you will again be consenting to receive Messages.

3.6 Messages may incorporate promotions, advertisements and offers by other people companies or organisations ("**Third Party Promotions**"). Third Party Promotions are not endorsed or recommended by Waverley Council or its related corporations, directors, officers, employees or agents. Any dealings you may have with third parties arising from Third Party Promotions, including the delivery of and the payment for goods and services, and any other terms, conditions, warranties or representations associated with such dealings or promotions, are solely between you and the third party. You acknowledge and agree that Waverley Council will not be responsible or liable in any way arising from Third Party Promotions, including any loss you may suffer arising from any act or omission of any third party associated with Third Party Promotions.

3.7 Some Third Party Promotions may allow or require you to provide an email address or other electronic contact method independently of Waverley Council. You acknowledge that we will have no knowledge or control of you providing such contact information, and you must communicate directly with the person or organisation to which you have provided that contact information in respect of any material sent to you by them, including if you wish to stop the receipt of further material.

4. Collection and use of data

4.1 When registering to use the Service, you will be required to provide certain information, some of which may be personal information for the purposes of the Privacy Act 1988. If you do not provide that information, we may refuse to give you access to the Service.

4.2 In addition to information you provide to us directly, we may also collect information automatically, including about your wireless devices when they communicate with wireless access points (whether or not you are actively accessing the internet), and about your use of the Service (including how and for what purposes you access the internet).

4.3 Subject to clause 4.4, you explicitly consent to use by us, or any third person acting on our behalf, of any information we collect about you, or about any device associated with you, for any lawful purpose, such as:

- a. providing advertising and marketing material to you, which may relate to products or services offered by any person or organisation;
- b. assembling, analysing and providing statistical information to any person or organisation about your use of the Service;
- c. assembling, analysing and providing statistical information to any person or organisation about the movement of people (including you) and communications devices (including your communications devices); and
- d. analysis by us of usage of the internet (including your usage).

4.4 We will handle all information we collect about you in accordance with relevant law, including the Privacy Act 1988 (Cth) and our Wi-Fi Service Privacy Policy which can be found at <http://www.skyfii.com/privacy.html>.

4.5 Subject to clause 4.4, information collected may be used at any time, including after you stop using the Service.

4.6 You confirm that all of the information you provide to us, including any personal details, will be complete, true and correct.

5. Linked Sites

5.1 We may provide links to third parties' websites, or may divert your wireless device to third party websites from time to time ("**Linked Sites**"). Unless otherwise noted on the Linked Site, Linked Sites are not reviewed, controlled or examined by us in any way. Providing links to you does not mean we endorse or have any association with the Linked Sites.

5.2 You acknowledge and agree that we are not responsible for the content, availability, advertising, products or other materials of any Linked Sites, or any additional links contained on Linked Sites, or the conduct of any person associated with a Linked Site.

5.3 Linked Sites may be subject to their own terms and conditions of use. You acknowledge that it is your sole responsibility to review and comply with those terms and conditions, and we have no responsibility for your actions when using a Linked Site.

6. Unacceptable Usage

6.1 You must only use the Service in a reasonable manner, consistent with ordinary community standards of behaviour and decency. Under no circumstances may the Service be used for any illegal purpose, or in a manner likely to cause offence to a reasonable person.

6.2 You must not exceed the daily usage allowance, as varied by us from time to time in our absolute discretion. Without limiting our discretion, we consider transmission of more than 200 megabytes of data in a day to be excessive transmission of data.

6.3 You must not use the Service for any purpose which we or any Provider consider to be unacceptable. Examples of unacceptable behaviour include use of the Service that:

- a. would cause you, us or any Provider to be in breach of any law, code, or regulation;
- b. places any unreasonable impost, burden or strain on the technical resources of the Service, including without limitation the excessive transmission of data;
- c. depicts or promotes offensive or illegal behaviour;
- d. is offensive or promotes racism, bigotry, hatred or physical harm;
- e. would harass or threaten any other person;
- f. exploits people in a sexual or violent manner;
- g. contains nudity, violent or offensive subject matter;
- h. promotes an illegal or unauthorised copy of copyright material;
- i. promotes criminal activity or enterprise;
- j. could cause us or any Provider to incur a liability to any third party or entity;
- k. violates the privacy or confidentiality of any person;
- l. involves compromising the security of any computer system or data storage system;
- m. contains, provides or creates computer viruses or deliberately corrupts systems, facilities or data;
- n. involves the sending of junk mail or unauthorised commercial electronic messages;
- o. alters or modifies the operation of the Service in any way; or
- p. involves the resale or resupply of the Service to any person without our written permission.

6.4 You acknowledge and agree that we may immediately suspend or terminate your access to the Service if you breach these Terms, or we or any Provider suspect on reasonable grounds that you have used the Service for any unacceptable purpose.

7. Liability

7.1 You acknowledge that the internet is an inherently insecure communication medium, and you use the Service at your own risk. You agree that we have no responsibility for any use, misuse, loss, corruption, interception or delay of information or data uploaded, downloaded or otherwise communicated via the Service and you are responsible for keeping all usernames, passwords and other security-based information secure and private at all times.

7.2 Without limiting any other provisions of these Terms, we will not in any way be liable to you for any kind of loss or damage incurred as a result of your use of the Service including but not limited to any viruses or other malicious software that may affect you while using the Service.

7.3 Without limiting any other clause of these Terms, we make no warranties or representations as to the accessibility, security, stability or reliability of the Service and we explicitly disclaim any liability or responsibility for any faults, failures or interruptions or the accuracy, timeliness, completeness, security or reliability of any communications (including, without limitation, any transactions) made using the Service.

7.4 You acknowledge and agree that we have no control over any part of the Service owned by a Provider, and you must resolve any interruption, delay or failure caused by any part of the Service owned or operated by a Provider directly with the Provider. We have no obligation to assist you in resolving such interruption, delay or failure.

7.5 Other than express terms of these Terms and warranties, conditions, rights or guarantees implied by relevant legislation, including the Competition and Consumer Act 2010 (Cth), the exclusion of which from an agreement would contravene a statute or cause part or all of these Terms to be void ("**Non-excludable Rights**"), you agree that we exclude all liability arising from any implied or express representations, terms, conditions or warranties that would otherwise apply to your use of the Service.

7.6 Except for liability in relation to breach of any Non-excludable Rights and liability under clause 7.7, our maximum aggregate liability to you in contract, including for one or more breaches of any express term or terms of these Terms, tort (including negligence), statute or otherwise, is limited to an amount equal to the total amount paid by you to us under these Terms during the 12 months before the first event giving rise to a liability occurred, or one dollar, whichever is higher.

7.7 For breach of any Non-excludable Rights (other than where by law liability for breach of Non-excludable Rights cannot be limited), our liability is limited, at our option to, where the breach relates to goods, the repair or replacement of the goods or paying the cost of having the goods repaired or replaced, or where the breach relates to services, supplying those services again, or paying the cost of having those services supplied again.

7.8 You indemnify us and each Provider, our related bodies corporate, directors, officers, employees and agents from and against all actions, claims, suits, demands,

damages, liabilities, costs or expenses, including reasonable legal fees, arising out of, or in any way connected to your use of the Service or information or content available by means of the Service, or the use of the Service by anyone using your wireless device.

8. Termination

8.1 You may end your access to the Service at any time by notifying us by email at the address: contactux@xxxxxx.xxx or using the unsubscribe facility that we provide in any Message.

8.2 We may terminate your access to the Service without notice or cause for any reason. Reasons we may terminate your access to the Service include:

- a. your breach of any of these Terms; or
- b. we consider that you have done something that is detrimental to our business interests or reputation or those of any Provider.

8.3 You acknowledge that none of Waverley Council, any Provider or any other person will have any liability to you for any reason whatsoever arising from any termination of your access to the Service.

9. General

9.1 These Terms are governed by the laws in force in New South Wales, Australia and the parties agree to be bound by the non-exclusive jurisdiction of the Courts of New South Wales, Australia.

9.2 If any provision in these Terms is void or unenforceable, that provision will be read down to the extent necessary to make it valid and enforceable and to the extent that it cannot be so read down, will be severed from these Terms.