

TERMS AND CONDITIONS

for the provision of Wireless Internet Access Hotspots

1. Interpretation

- 1.1. In these terms, the following words and phrases shall have the following meanings:
- 1.1.1. **Contract:** these terms, Customer's order and WiFISPARK's Order Acknowledgement.
- 1.1.2. **Communications Supplier:** a supplier of communications services including fixed line and cable telecommunication companies and ISPs;
- 1.1.3. **Customer:** the person, firm or company who purchases Equipment or Services from WiFISPARK.
- 1.1.4. **End User:** any person who connects to a wireless hotspot provided at the Location by WiFISPARK.
- 1.1.5. **Equipment:** such servers, network components, access points, modems, firewalls and routers to be provided to the Customer by WiFISPARK as are set out in the Order Acknowledgement.
- 1.1.6. **EULA:** the End User Terms set out at Schedule 1.
- 1.1.7. **Exclusivity Period:** the period commencing the date of the Contract and expiring on the date of termination,
- 1.1.8. **Intellectual Property Rights:** all patents, rights to inventions, copyright and related rights, trade marks, business and domain names, rights in goodwill or to sue for passing off, rights in designs, rights in computer software, database rights (including without limitation know-how and trade secrets), rights in confidential information and any other intellectual property rights, in each case whether registered or unregistered and including all applications for and renewals or extensions of such rights, and all similar or equivalent rights or forms of protection in any part of the world.
- 1.1.9. **Location:** each of the premises where the Equipment is to be installed or the Service supplied as specified in the Order Acknowledgement, or, if none, the Customer's address on the Order Acknowledgement.
- 1.1.10. **Order Acknowledgement:** the written acknowledgement of order produced by WiFISPARK.
- 1.1.11. **Revenue:** the total of all payments made to WiFISPARK by End Users net of all credit card or bank charges and VAT.
- 1.1.12. **Services:** the provision of a wireless internet access hotspot at the Location by means of the Equipment, and its maintenance in accordance with Schedule 2, together with and other services WiFISPARK provides, or agrees to provide, to the Customer.
- 1.1.13. **Support Hours:** 8:00 am to 6:00 pm seven days a week.
- 1.1.14. **VAT:** value added tax chargeable under English law for the time being and any similar additional tax.
- 1.1.15. **WIFISPARK:** WIFISPARK Limited.
- 1.2. The headings do not affect the interpretation of the Contract.
- 1.3. Any reference to a party's employees includes its agents and sub-contractors.
- 1.4. The schedules for part of the contract.
- 1.5. Any obligation in the Contract on a person not to do something includes, without limitation, an obligation not to agree, allow, permit or acquiesce in that thing being done.

2. Application of terms

- 2.1. These terms and conditions shall:
- 2.1.1. apply to and be incorporated in the Contract;
- 2.1.2. apply to all dealings between WiFISPARK and the Customer; and
- 2.1.3. prevail over any inconsistent terms or conditions contained in or referred to in the Customer's purchase order, confirmation of order, or specification, or implied by law, trade custom, practice or course of dealing.
- 2.2. No addition to, variation of, exclusion or attempted exclusion of any term of the Contract shall be binding on WiFISPARK unless in writing and signed by a duly authorised representative of WiFISPARK.
- 2.3. Quotations are given by WiFISPARK on the basis that no Contract shall come into existence in accordance with condition 3.2. Any quotation is valid for a period of 21 days from its date, provided that WiFISPARK has not previously withdrawn it.

3. Basis of provision of Services

- 3.1. Each order or acceptance of a quotation for Equipment by the Customer shall be deemed to be an offer by the Customer subject to these conditions.
- 3.2. A binding contract shall not come into existence between WiFISPARK and the Customer unless and until WiFISPARK issues an Order Acknowledgement to the Customer (and if a Deposit is required, it is paid), or, if earlier, when WiFISPARK begins to install the Equipment at the Location.
- 3.3. Each installation at each Location shall be treated, for the purposes of termination, as a separate contract.
- 3.4. No Contract may be cancelled by the Customer, except with the prior agreement in writing of WiFISPARK and provided that the Customer indemnifies WiFISPARK in full against all loss (including loss of profit), costs (including the cost of all labour and materials used), damages, charges and expenses incurred by WiFISPARK as a result of the cancellation.
- 3.5. The Customer acknowledges that all use of the Services by End Users will be subject to WiFISPARK's EULA.

4. Order details

- 4.1. The Equipment shall be as set out in WiFISPARK's Order Acknowledgement or (if there is no Order Acknowledgement) quotation.
- 4.2. Any typographical, clerical or other error or omission in any sales literature, quotation, price list, Order Acknowledgement, invoice or other document or information issued by WiFISPARK shall be subject to correction without any liability on the part of WiFISPARK.
- 4.3. WiFISPARK's employees are not authorised to make any contractually binding representations concerning the Equipment. In entering into the Contract, the Customer acknowledges that it does not rely on, and waives any claim for breach of, any such representations which have not been confirmed in writing by an authorised officer of WiFISPARK.

- 4.4. Any advice or recommendation given by WiFISPARK or its employees to the Customer or its employees about the storage, application or use of the Equipment which is not confirmed in writing by an authorised officer of WiFISPARK is followed or acted on entirely at the Customer's own risk.

5. Prices and Revenue Share

- 5.1. All charges shall be as stated in WiFISPARK's Order Acknowledgement and are exclusive of VAT, which shall be added at the appropriate rate.
- 5.2. WiFISPARK reserves the right, by notice to the Customer, to increase the price to reflect any increase in the cost to WiFISPARK due to any delay caused by the Customer or an increase in the charges of any Communication Supplier above those prevailing at the date of WiFISPARK's Order Acknowledgement.
- 5.3. The Revenue arising from the use by End Users of the Service shall be shared as set out on the Order Acknowledgement. If no shares are specified then all Revenue shall be retained by WiFISPARK.

6. Payment

- 6.1. The monthly fee shall be paid monthly in advance. All other Invoices shall be paid, in full and in cleared funds, within 30 days of their date to a bank account nominated by WiFISPARK and time for payment of WiFISPARK's invoices shall be of the essence of the Contract.
- 6.2. If the Customer fails to make payment in full on the due date, the whole of the balance of the price of the Services then outstanding shall become immediately due and payable and, without prejudice to any other right or remedy available to WiFISPARK, WiFISPARK may:
- 6.2.1. appropriate any payment made by the Customer or share of Revenue due to the Customer to any outstanding sum;
- 6.2.2. charge interest on the amount outstanding from the due date to the date of receipt by WiFISPARK (whether or not after judgment), at the annual rate of 4% above the then current base lending rate of Lloyds Bank plc, accruing daily and compounded quarterly. WiFISPARK may claim interest under the Late Payment of Commercial Debts (Interest) Act 1998; and
- 6.2.3. suspend all further provision of Services (in each case whether ordered under these Terms and Conditions or not) until payment has been made in full.
- 6.3. All sums payable to the Supplier under the Contract shall become due immediately on its termination, despite any other provision. This condition 6.3 is without prejudice to any right to claim for interest under the law, or any such right under the Contract.
- 6.4. WiFISPARK shall account to the Customer for its share of Revenue at the end of each month following that in which it was earned.

7. Delivery, & Installation of the Equipment

- 7.1. WiFISPARK shall use all reasonable endeavours to deliver and install the Equipment and provide the Services on the date specified in WiFISPARK's Order Acknowledgement at the Location.
- 7.2. If the Equipment is to be installed by WiFISPARK then Delivery and installation shall be made during normal business hours. WiFISPARK may levy additional charges for any deliveries made outside such hours at the Customer's request.
- 7.3. The Customer is responsible for providing at its cost suitable mains power supplies to remain connected and live at all times.
- 7.4. The Customer shall be responsible (at the Customer's cost) preparing the Location for the delivery and installation of the Equipment.
- 7.5. The Customer shall ensure that all equipment, systems, cabling or facilities provided by the Customer for use in connection with the Services are in good working order and are suitable for the purpose for which it is used and conforms to all relevant United Kingdom standards or requirements.
- 7.6. Upon the request of WiFISPARK, the Customer will appoint a manager with authority to bind the Customer and through whom all communication will be passed.

8. Acceptance

- 8.1. Where WiFISPARK is not installing the Equipment WiFISPARK shall be responsible for any damage, shortage or loss in transit, provided that the Customer notifies WiFISPARK within 3 working days of delivery and give WiFISPARK a chance to inspect the Equipment, or the proposed delivery date of the Equipment and the Customer shall be deemed to have accepted the Equipment when the Customer has had 7 working days to inspect it after delivery or, if earlier, when the Customer or an End User uses the Equipment other than for test purposes.
- 8.2. If WiFISPARK are installing then WiFISPARK shall demonstrate the Equipment to the Customer and the Equipment shall then be deemed accepted by the Customer. If at any time the Customer or any End User makes use of the Equipment other than for training or test purposes then the Equipment will be deemed to be accepted.

9. Risk and property

- 9.1. Ownership of the Equipment shall pass to the Customer on the later of completion of delivery and installation, or when WiFISPARK has received in full in cleared funds all sums due to it due to WiFISPARK from the Customer on any account.
- 9.2. Until ownership of the Equipment has passed to the Customer under this condition, the Customer shall:
- 9.2.1. hold the Equipment on a fiduciary basis as WiFISPARK's bailee;
- 9.2.2. not destroy, deface or obscure any identifying mark or packaging on or relating to the Equipment; and
- 9.2.3. keep the Equipment insured on WiFISPARK's behalf for its full price against all risks to the reasonable satisfaction of WiFISPARK, and hold the proceeds of such insurance on trust for WiFISPARK and not mix them with any other money, nor pay the proceeds into an overdrawn bank account.

10. Use of the Equipment

- 10.1. WiFISPARK shall be responsible for setting up and maintaining a portal page for the wireless access provided at each Location and shall be entitled to add and remove facilities and links and to populate that page as it thinks fit.
- 10.2. WiFISPARK shall be solely responsible for setting and altering its tariffs to End Users in accordance with market conditions. WiFISPARK may, at its discretion, permit or refuse the availability of 'roaming' of End Users between the Customer and other customers.

10.3. The Customer acknowledges that WiFiSPARK has no control over the content on the internet that may be accessed by End Users but that, if it requires the same, it may enter into an agreement with a content filtering organisation providing such services.

11. Warranties

11.1. WiFiSPARK warrants to the Customer that the Services will be carried out with reasonable care and attention.

11.2. WiFiSPARK undertakes to provide the maintenance Services set out in Schedule 2 (subject to the remainder of this condition 11), at its option, to repair or replace Equipment which is found to be defective at the Location unless:

11.2.1. the defect arises because the Customer failed to follow WiFiSPARK's or manufacturer's instructions for the Equipment;

11.2.2. the defect arises as a result of misuse of the Equipment by either the Customer or its employee or a failure to provide uninterrupted mains supply; or

11.2.3. the Customer alters or repairs the relevant Equipment without the written consent of WiFiSPARK.

11.3. During the Exclusivity Period the Customer warrants to WiFiSPARK that:

11.3.1. so far as possible it will procure that no new wireless access hotspots are accessible at the Location; and

11.3.2. the installation of the same will not be made during the Exclusivity Period; and

11.3.3. it shall terminate all discussions or other contact with third parties relation to the provision of wireless internet access. In particular, the Customer will ensure that neither itself or its employees, tenants, licensees or any one acting under its control will engage the services of a third party provider of wireless internet access.

11.4. In the event of breach by the Customer of condition 11.3 WiFiSPARK shall be entitled to terminate the Contract by written notice in accordance with clause 17. If WiFiSPARK suffers loss as a result of the breach it shall be entitled to damages arising out of the breach.

12. Limitation of liability

12.1. The following provisions set out the entire liability of WiFiSPARK (including any liability for the acts or omissions of its employees) to the Customer in respect of any breach of the Contract and any representation, statement or tortious act or omission (including negligence) arising out of or in connection with the Contract.

12.2. All warranties, conditions and other terms implied by statute or common law are excluded from the Contract to the fullest extent permitted by law.

12.3. The Customer acknowledges that the supply of the Services is partly dependant on Communication Suppliers over whom WiFiSPARK has no control. Accordingly the Customer accepts that WiFiSPARK shall have no liability to the Customer exceeding any claim that WiFiSPARK may have against that Communication Supplier in respect of any failure to provide the Service caused by a Communications Supplier.

12.4. Nothing in these conditions excludes or limits the liability of WiFiSPARK for death or personal injury caused by WiFiSPARK's negligence, fraud or fraudulent misrepresentation.

12.5. Subject to condition 12.4:

12.5.1. WiFiSPARK shall not be liable for any loss of profits, loss of business, depletion of goodwill or similar losses or pure economic loss or for any special, indirect or consequential loss, costs, damages, charges or expenses howsoever arising; and

12.5.2. WiFiSPARK's total liability in contract, tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise, arising in connection with the performance or contemplated performance of the Contract shall be limited to £10,000 or twice the annual value of the contract whichever is the lower.

13. Intellectual Property Rights

13.1. If WiFiSPARK incorporates data or other information at the request of the Customer, the Customer shall indemnify and keep indemnified WiFiSPARK against all losses, damages, costs, claims and expenses incurred by WiFiSPARK in connection with any claim for infringement of any third party Intellectual Property Rights which results from that request.

13.2. The Customer acknowledges that the software and all other Intellectual Property Rights used in the provision of the Service is owned by WiFiSPARK and will not attempt to access or copy the same other than in accordance with the facilities provided by WiFiSPARK.

14. Assignment

14.1. The Customer may not assign this contract without the consent of WiFiSPARK, such consent not to be unreasonably withheld or delayed.

15. Confidentiality

15.1. Each party shall keep in strict confidence all technical or commercial know-how, specifications, inventions, processes or initiatives which are of a confidential nature and have been disclosed by one party to the other. Each party shall restrict disclosure of such confidential material to such of its employees as need to know the same for the purpose of discharging its obligations under the Contract and shall ensure that such employees are subject to corresponding obligations of confidentiality.

15.2. This condition 15 shall survive termination of the Contract, however caused.

16. Termination without Cause

16.1. Either party may terminate this agreement upon giving 90 days notice in writing to the other expiring on or after the third anniversary of the first use of the Equipment at the Location.

17. Termination for Cause

17.1. Either party may terminate this agreement forthwith on giving notice in writing to the other if that other ceases to carry on business or commits any serious breach of any term of this Agreement and (in the case of a breach capable of being remedied) shall have failed, within 7 days after the receipt of the request in writing from the other to do so, to remedy the breach.

17.2. WiFiSPARK may terminate this Contract if the Customer fails to pay any sum due under the terms of this Contract and such sum remains unpaid for 14 days after written notice from WiFiSPARK that such sum has not been paid

17.3. Termination of the Contract, however arising, shall not affect or prejudice the accrued rights of the parties as at termination or the continuation of any provision expressly stated to survive or implicitly surviving termination.

18. Dispute Resolution Procedure

18.1. If any dispute arises in connection with this agreement, directors or other senior representatives of the parties with authority to settle the dispute will, within 7 days of a written request from one party to the other, meet promptly in good faith to resolve the dispute.

18.2. If the dispute is not resolved in accordance with condition 18.1, the dispute shall be referred to mediation and the mediator shall be appointed by the Centre for Dispute Resolution.

18.3. If no mediation takes place within 28 days of the request under condition 18.1 then the matter shall be referred to an expert, to be appointed, in default of agreement, on the request of either party to the President of the British Computer Society. He or she shall act as an independent expert and not as an arbitrator and his or her decision (including as to costs) shall, except in the case of manifest error, be final and binding upon WiFiSPARK and the Customer.

19. Data Protection Act

19.1. If any Personal Data (as defined by the Data Protection Act 1998) is passed to WiFiSPARK under this Contract then the parties agree that Customer is the Data Controller (as defined by the Data Protection Act 1998) and that WiFiSPARK is the Data Processor (as defined by the Data Protection Act 1998).

19.2. WiFiSPARK shall:

19.2.1. process the Personal Data only in accordance with instructions from Customer;

19.2.2. process the Personal Data only to the extent, and in such manner, as is necessary for the provision of the Services or as is required by law or any regulatory body;

19.2.3. implement appropriate technical and organisational measures to protect the Personal Data against unauthorised or unlawful processing or loss, destruction, damage, alteration or disclosure.;

19.2.4. take reasonable steps to ensure the reliability and confidentiality of any of WiFiSPARK's personnel who have access to the Personal Data.

20. Force Majeure

20.1. WiFiSPARK reserves the right to defer the date of delivery and installation, or to cancel the Contract or reduce or suspend the Service, if it is prevented from or delayed in carrying on its business by acts, events, omissions or accidents beyond its reasonable control (Force Majeure Event).

20.2. WiFiSPARK shall have no liability to the Customer under the Contract if it prevented from, is delayed in performing, its obligations under the Contract or from carrying on its business by a Force Majeure Event.

21. Waiver

21.1. A waiver of any right under the Contract is only effective if it is in writing and signed by or on behalf of the waiving party, and it applies only to the party to whom the waiver is addressed and the circumstances for which it is given.

22. Entire Agreement

22.1. This Contract constitutes the whole agreement between the parties and supersedes all previous agreements between the parties relating to its subject matter.

22.2. Each party acknowledges that, in entering into this Contract, it has not relied on, and shall have no right or remedy (other than for breach of contract) in respect of, any statement, representation, assurance or warranty (whether made negligently or innocently) other than as expressly set out in this agreement.

23. Third party rights

23.1. The Contract is made for the benefit of the parties to it and (where applicable) their successors and permitted assigns, and is not intended to benefit, or be enforceable by, anyone else.

24. Notices

24.1. Any notice required to be given pursuant to this agreement shall be in writing and shall be delivered by hand or sent by pre-paid first-class post or recorded delivery post to the address of the party as set out in these conditions, or in the case of WiFiSPARK, by email to notices@wifispark.com or such other address as may be notified by one party to the other.

24.2. A notice delivered by hand is deemed to have been received when delivered (or, if delivery is not in business hours, 9.00 am on the first business day following delivery). A correctly addressed notice sent by pre-paid first-class post or recorded delivery post shall be deemed to have been received at the time at which it would have been delivered in the normal course of post. An e-mail shall be deemed to have been delivered within 24 hours from the time of being sent, provided that no "non-deliverable" notice is received by the sender.

25. Governing law and jurisdiction

25.1. The Contract and any disputes or claims arising out of or in connection with its subject matter are governed by and construed in accordance with the law of England and Wales and the courts of England and Wales shall have exclusive jurisdiction.

Schedule 1

These are the terms of use of WiFiSPARK's internet access service provided to you, the Customer. WiFiSPARK is a Limited company (WiFiSPARK Limited) Registered in England no 4948862 with its registered office at Bush & Co Barnfield Crescent Exeter EX1 1QT and its trading address at Teignbridge Business Centre, Cavalier Road Newton Abbot TQ12 6TZ. .

By using the WiFiSPARK service you:

- Understand that you are responsible for your security - WiFiSPARK does not provide any security services - only a connection to the internet.
- Appreciate that WiFiSPARK does not provide any virus, spam, spyware or other malware checking.
- Agree you will keep your password confidential and not disclose it to anyone. You agree to be responsible for any costs incurred by any user of your account and any other loss as a consequence of your failure to comply with this.
- Agree not to use the connection for any illegal purpose including peer to peer file sharing of copyright material, obscene material, defamatory or for the sending of spam.
- Agree to pay the published fees.
- Agree not to use the network for any purpose other than email, instant messaging browsing the internet and accessing corporate networks. Sustained high volume transfer, server hosting, attempts to access other users accounts are not permitted.

In the event of breach of these terms WiFiSPARK will terminate your right to use the service and claim damages from you.

While WiFISPARK does its best to maintain a continuous service, the service is provided 'as is' and may at times be unavailable due to power failure or maintenance or circumstances outside WiFISPARK's control. Due to the reliance on 3rd party providers no guarantee can be given as to availability or bandwidth. If you cannot gain access to the system please contact WiFISPARK's customer service on 0845 838 5340. Refunds will be made for credits that have not been used due to unavailability of the service.

WiFISPARK accepts no liability, except as required by law, in respect of your use of the service or the failure to provide the service other than to provide refunds as set out above.

Schedule 2
Maintenance Services

Hotline Support Services

For an urgent problem, the Customer can telephone or email the Supplier's Hotline which is available during the Support Hours. An urgent problem is where the Hotspot is either not accepting wireless connections or not connecting to the internet. Problems which do not delay or inhibit system operation will be handled by emailed reports. WiFISPARK will use all reasonable endeavours to restore the Services as quickly as possible.

Remote Support

The Supplier shall carry out online problem resolution in relation to the Equipment during the Support Hours using a remote connection.

Maintenance Support Services

The Maintenance Services includes all regularly scheduled error corrections, and software. Support for additional features developed by the Supplier, as requested by the Customer, may be purchased separately at the Supplier's then current rates.

The Supplier shall maintain the Equipment and update the software when it considers necessary. Should the Customer determine that the Equipment or software is not functioning correctly, the Customer may at any time file error reports. The Supplier shall use reasonable endeavors to avoid unscheduled downtime for Equipment or Software maintenance.

If Equipment needs repair then the Customer may be required to remove the same and return it to WiFISPARK. WiFISPARK shall refund all carriage charges but the Equipment shall be at the Customer's risk until it arrives at WiFISPARK's premises. Accordingly it should be sent, insured, with a reputable carrier and proof of dispatch should be retained.