

Membership Contract for Ottawa-Gatineau WiFi

This agreement is between Ottawa-Gatineau WiFi, Inc. (hereinafter referred to as “ogWiFi”), a not for profit organization, and

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(hereinafter referred to as the “HotSpot Service Provider” or “HSP”).

Preamble.

The objective of this agreement is to register the HSP as a HotSpot provider and member of the ogWiFi network. The HSP will provide ogWiFi members with the HSP Services, as defined in this Agreement. ogWiFi will provide the HSP with the ogWiFi Services, as defined in this Agreement. This is not a technical support agreement.

NOW THEREFORE in consideration of the premises and the mutual covenants, terms, conditions and agreements contained herein, and other good and valuable consideration, the sufficiency of which is hereby acknowledged, the Parties hereto agree as follows:

1. Definitions.

(1) “ogWiFi Installation and Configuration Services” means any services provided by ogWiFi pursuant to Section 5 of this Agreement;

(2) “ogWiFi User Management Services” means any services provided by ogWiFi pursuant to Section 7 of this Agreement;

(3) “ogWiFi Maintenance and Repair Services” means any services provided by ogWiFi pursuant to Section 9 of this Agreement;

(4) “ogWiFi Services” means the ogWiFi Installation and Configuration Services, ogWiFi User Management Services and the ogWiFi Maintenance and Repair Services; and

(5) “HSP Services” means any services provided by HSP pursuant to Section 6 of this Agreement.

2. Membership Fees.

(1) An annual non-refundable membership fee of \$50 CDN shall be paid by the HSP to ogWiFi to cover ogWiFi administrative and promotion costs. Membership fees are to be paid every 12 months, with the first fees payable upon the successful

connection of the HSP to the ogWiFi network. (2) ogWiFi reserves the right to change this yearly fee, and will notify the HSP of any change on or before the date of the HSP's next payment.

3. Equipment.

(1) All costs associated with acquiring equipment for the purpose of accessing the ogWiFi network shall be paid by the HSP.

(2) This equipment shall remain the property of the HSP.

(3) The equipment may be supplied by the HSP or by ogWiFi. If supplied by the HSP, the equipment shall adhere to the specifications supplied by ogWiFi

4. Internet Connection.

(1) The HSP shall be entirely responsible for supplying and maintaining a high-speed internet connection.

(2) The HSP shall cover all costs associated with the internet connection including, but not limited to, installation, annual and monthly charges. The HSP shall also cover any supplemental ISP charges caused by ogWiFi user traffic.

(3) The HSP's contract with the ISP must allow the HSP to share its internet connection.

5. Installation and equipment configuration.

(1) ogWiFi shall be responsible for the initial configuration of necessary wireless equipment.

(2) The initial configuration will be done by ogWiFi personnel.

(3) Physical installation of the equipment at the HSP establishment will be done by ogWiFi personnel/volunteers.

(4) Should the HSP be unable to allow ogWiFi to conduct the installation for insurance or other reasons, the HSP shall either perform the installation itself or hire someone to do so in accordance with ogWiFi's specifications.

(5) The manufacturer's and/or retailer's warranty of the router or other equipment owned by the HSP may be voided by the customizations done by ogWiFi. ogWiFi has no responsibility for any voiding of these, or any other, warranties.

(6) ogWiFi does not generally charge any installation costs. However, if the installation involves work that is not common to a typical installation, such as

drilling holes in walls or performing an outdoor installation, any extra costs will be negotiated between ogWiFi and the HSP before this contract is signed. Such costs will appear in a schedule to this contract.

(7) The HSP agrees to not make any configuration or other changes to the router or other equipment without the express consent of ogWiFi.

6. Wireless Service Access to Users.

(1) ogWiFi shall ensure that all internet access obtained via its network of HotSpots remains free to ogWiFi members. This access is controlled through the use of an ogWiFi membership account, and the acquiring or maintaining an account shall remain free.

(2) The HSP shall offer the HSP Services to ogWiFi members free of charge.

(3) The HSP may manage its establishment as it sees fit, and impose conditions upon their clients as it wishes (e.g. cover charges, the requirement that a client makes a purchase, maximum time at a particular seat, etc.). However, the HSP shall not apply these conditions exclusively to users of the HSP Services while not enforcing these conditions against other clients.

7. Portal.

ogWiFi manages access to its system via a captive portal page system. This is an integral component of the ogWiFi Services and is a community developed tool that is necessary to establish the network. ogWiFi may make a number of tools available to the HSP to deliver local content to its clients. The HSP may use its section of the portal for publicity, subject to the conditions below:

(1) The HSP cannot, under any circumstance, sell all or any portion of their portal space.

(2) All publicity or commercial links, other than for community cultural or social events, tied to a third party must be limited to:

(a) a product or service sold by the HSP; or

(b) a sponsor to an event hosted by the HSP.

(3) For greater certainty, ogWiFi considers community cultural or social events to include non-profit concerts, poetry readings and other community artistic events.

(4) The portal must remain active for the entire duration of this contract.

8. Promotion and Marketing.

(1) ogWiFi reserves the right to advertise the name of the HSP and its location during any of ogWiFi's promotional campaigns, media interviews and on its website.

(2) ogWiFi shall supply the HSP with promotional material to indicate that a free wireless access point is located on site.

(a) The posting and use of this promotional material within the HSP's establishment is left entirely to the discretion of the HSP.

(b) However, at a minimum, the HSP shall post a sticker on its window or door advertising ogWiFi's network.

(3) The HSP may use its ogWiFi membership for promotional purposes. During such promotions, if the ogWiFi logo is used, then:

(a) the logo must not be modified, amended or altered in any way whatsoever; and

(b) the logo must not be associated, either directly or indirectly, with any other logo.

9. Maintenance and Repair.

(1) ogWiFi shall maintain the equipment associated with the ogWiFi network and repair any problems with the equipment.

(2) ogWiFi shall not charge the HSP for any labour.

(3) All costs associated with equipment replacement and repair shall be assumed by the HSP. In some cases, warranties may save the HSP a portion of the costs.

(4) Since support is provided by a core of volunteers, ogWiFi cannot promise a specific time for repairs. However, ogWiFi will make a good faith attempt to act on the matter with minimal delay, typically in less than 48 hours from the time the problem with the equipment is reported.

(5) The HSP shall ensure that ogWiFi volunteers have physical access to equipment for repairs and general maintenance.

(6) The HSP shall endeavour to advise ogWiFi as soon as possible of any changes that may affect the performance of the equipment or the HSP's provision of the HSP Services. This includes temporarily disconnecting the equipment, ISP changes,

moving equipment, adding a router, network changes undertaken by a third party, etc.

(7) The HSP shall report problems with the equipment via ogWiFi's support email address. For greater certainty, at the time of this Agreement, the email address is as follows: hotspots@ogwifi.ca

10. Disclaimer of Warranties.

(1) ogWiFi provides ogWiFi Services on an "as is" and "as available" basis. ogWiFi provides no assurances of service levels. ogWiFi, its officers, directors, employees, members and agents make no representations or warranties of any kind, express or implied, as to:

(a) the performance or quality of ogWiFi Services, including that there will be no service outages or down time, or that the HSP or its customers will not from time to time encounter blocked ports;

(b) the use of the ogWiFi Services providing specific results;

(c) the security of the contents, information, services or products available on or through ogWiFi Services, including that any files or other data provided by or through the ogWiFi Services will be free of viruses or contamination or destructive features, or that ogWiFi Services will protect the HSP or its customers from malicious third parties engaging in destructive or illegal conduct (such as password sniffing, security hacking, etc.); and

(d) that the ogWiFi Services will work for or suit the particular needs of the HSP; and to the fullest extent permissible by applicable law, disclaims all such warranties, express or implied, including, but not limited to, warranties of accuracy, non-infringement, merchantability or fitness for a particular purpose.

(2) This disclaimer does not apply to any product warranty offered by the manufacturer of equipment.

(3) This disclaimer constitutes an essential part of this Agreement.

11. Limitation of Liability.

(1) Under no circumstances and under no theory of law or equity, including negligence, shall ogWiFi, its officers, directors, employees, members or agents (the "Releasees"), be liable to the HSP, its customers, or to any other person, for any direct, indirect, special, consequential, exemplary, aggravated or punitive damages of any nature arising out of or in connection with the interruption, delay, performance or non-performance of ogWiFi Services, HSP Services, or any services offered by the HSP to its customers or the public, including, without limitation,

compensation for lost profits, anticipated revenue, savings or goodwill, economic loss, the loss or compromise of data or security, work stoppage, accuracy or results, intellectual property right infringement, or equipment failure or malfunction, even if an authorized representative of ogWiFi has been advised of or should have known of the possibility thereof.

(2) If, notwithstanding the other provisions of this Agreement, the Releasees (or any of them) are found to be liable for any damage or loss which arises out of or is in any way connected with ogWiFi Services, HSP Services or other services the HSP offers the public or its customers, the maximum aggregate collective liability of the Releasees for any claim against any of them shall not exceed the fees paid by the HSP to ogWiFi during the 12 months preceding the date of the claim against the Releasees.

12. Indemnification.

The HSP shall defend, indemnify and hold harmless ogWiFi, its officers, directors, employees, members and agents from and against any and all claims, damages, costs and expenses, including attorney's fees, arising from or related to the use, by the HSP or its customers, of equipment provided by ogWiFi, the performance or non-performance of ogWiFi Services, or the performance or non-performance of HSP Services or other services the HSP offers its own customers or the general public, including but not limited to claims brought by any users of the system, the HSP's ISP, or any other individual who claims to have suffered losses due to the use, or inability to use, such services.

13. Membership Renewal.

(1) The duration of this agreement is 12 months.

(2) Membership is automatically renewed for a further 12 months unless stated otherwise by either party.

14. End of the Agreement.

(1) Both parties can at any time and for any reason end this agreement without penalty simply by advising the other party in writing.

(2) ogWiFi will leave all equipment in the HSP's establishment but will modify the equipment's parameters to revoke access to the ogWiFi network.

(3) Upon termination, ogWiFi will, if required by the HSP, make reasonable attempts to return the router to its original settings within a reasonable time. However, ogWiFi will not be responsible for any damages or losses that may result from the inability to do so.

(4) All other equipment that is the property of ogWiFi shall be returned at once by the HSP.

(5) Once the agreement is terminated, the HSP loses all rights to claim association with ogWiFi.

(6) Membership fees are not refundable.

15. Dispute Resolution.

Both Parties agree to make a good faith attempt to resolve any disputes under this contract without resorting to litigation. Both Parties further agree to a 60 day “cooling off” period that must pass between the date of the incident and the date that an action or application is brought against the other Party.

16. Miscellaneous Provisions.

(1) This contract will be governed exclusively by the laws and regulations of Ontario.

(2) If any provision in this agreement is declared to be illegal or in conflict with any such law or regulation, that provision may be deleted or modified, without affecting the validity of the other provisions.

(3) The Parties agree that each provision of this agreement shall be construed as separable and divisible from every other provision and that the enforceability of any one provision, or portion thereof, shall not limit the enforceability, in whole or in part, of any other provision hereof.

(4) It is the express wish of the parties that this agreement be written in English, and that only the English version of this agreement binds the Parties. Any translation of this Agreement into French is for informational purposes only. C'est le souhait des parties que cet accord soit écrit en anglais, et que seulement la version anglaise de cet accord lie les parties. N'importe quelle traduction française de cet accord est pour but informatif seulement.

(5) This agreement shall not bind the parties unless and until a representative of OgWifi certifies, in the space provided below, that HSP's physical facilities meet the requirements of OgWifi for the provision of OgWifi Services.

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed in a legally binding manner.

Ottawa-Gatineau WiFi, Inc.

By: _____
Name: _____
Date: _____

By: _____
Name: _____
Date: _____

"I certify that HSP's physical facilities meet the requirements of OgWifi for the provision of OgWifi Services."

By: _____
Name: _____
Date: _____