

## **Whitsunday Apartments Hamilton Island ("WAHI")**

### **Guest WIFI - PRIVACY & TERMS AND CONDITION OF USE**

This document describes the terms and conditions governing the use of WAHI Internet Services Internet access. You are the end user hereinto referred to as ("User"). By signing up for the service, you accept all of the terms and conditions ("Terms and Conditions") set forth below, and in any addenda to this agreement, and authorize us to provide the Services (as defined below) for a period agreed to of your stay with WAHI.

PLEASE CAREFULLY READ AND REVIEW THE TERMS AND CONDITIONS BEFORE USING THE EQUIPMENT OR THE SERVICE. BY USING THE SERVICES, YOU ARE BECOMING A PARTY TO AND AGREE TO BE BOUND BY THIS AGREEMENT. YOU FURTHERMORE ACKNOWLEDGE THAT YOU HAVE READ AND UNDERSTAND THE TERMS AND CONDITIONS AND AGREE TO BE BOUND BY THE TERMS AND CONDITIONS IN EFFECT AND AS UPDATED BY US FROM TIME TO TIME.

IF YOU DO NOT AGREE TO BE BOUND BY THE TERMS AND CONDITIONS, YOU MAY NOT USE THE SERVICES. IF YOU DO NOT AGREE TO BE BOUND BY THE TERMS AND CONDITIONS, WE WILL BE UNDER NO OBLIGATION TO PROVIDE YOU WITH THE SERVICES.

THE TERMS AND CONDITIONS ARE SUBJECT TO REVISION FROM TIME TO TIME.

IMPORTANT! THE WAHI WIRELESS SYSTEM YOU ARE USING IS AN **UNSECURED** NETWORK. YOU SHOULD USE APPROPRIATE SECURITY MEASURES SUCH AS A VPN CONNECTION, PERSONAL FIREWALL, KEEP YOUR OPERATING SYSTEM UP-TO-DATE WITH SECURITY PATCHES, ETC.

#### **Equipment Provided**

We, or our agent or contractor may provide User with an access code or password (collectively the "Equipment"). We may also provide a user manual that contains instructions for setting up and using the Equipment. The Equipment provided by us, if installed and used properly, allows the User to access and use the Services.

#### **Services**

Services provided by us are for the sole use of the User and not for resale of any kind without the prior written consent from us, which may be given at its sole discretion. In the event the User attempts to resell the Services, we may, at our sole discretion, increase the fees associated with the Services, or terminate the Services.

#### **Intended Use of the Services**

User acknowledges and agrees that the Services are for personal use and agrees not to use the Services in a manner prohibited by any Australian Federal or State law or regulation. Transmission of any material in violation of federal or state law or regulation, including, but not limited to any copyrighted material, material protected by a trade secret or material or messages that are unlawful, harassing, libellous, abusive, threatening, harmful, vulgar, obscene or otherwise objectionable in any manner or nature or that encourages conduct that could constitute a criminal offense, give rise to civil liability or otherwise violate any applicable local, state, national or international law or regulation, is prohibited.

User acknowledges that there is content on the Internet or otherwise available through the Services which may be offensive, or which may not be in compliance with all local laws, regulations and other rules. We assume no responsibility for and exercises no control over the content contained on the

Internet or is otherwise available through the Services. All content accessed or received by the User is used by the User at his or her own risk, and we and our employees shall have no liability resulting from the access or use of such content by the User.

### **System and Network Security**

Users may not attempt to circumvent user authentication or security of any host, network, or account (also known as "cracking"). This includes, but is not limited to, accessing data not intended for the User, logging into a server or account the User is not expressly authorized to access, or probing the security of other networks.

Users may not attempt to interfere with service to any user, host, or network ("denial of service attacks"). This includes, but is not limited to, "flooding" of networks, deliberate attempts to overload a service, and attempts to "crash" a host.

Users may not use any kind of program/script/command, or send messages of any kind, designed to interfere with a user's terminal session, via any means, locally or by the Internet.

Users who violate systems or network security may incur criminal or civil liability. We will cooperate fully with investigations of violations of systems or network security at other sites, including cooperating with law enforcement authorities in the investigation of suspected criminal violations.

Users understand that there are certain security risks by utilizing wireless 802.11x networks. We are committed to maintaining a public network for ease of use and make no guarantees or representations regarding the security of our network. We recommend the use of personal firewall software and a VPN client to attach to private networks. As an option, we support routable IP addresses to all connection types to support a corporate VPN.

### **Privacy: Monitoring the Services**

We are under no obligation to monitor the services, but we may do so from time to time and we may disclose information regarding User's use of the Services for any reason and at our sole discretion in order to satisfy applicable laws, regulations, governmental requests, or in order to operate and deliver the Services in an effective manner, or to otherwise protect us and our Users. We agree to comply with the terms of our Privacy Policy as set forth on our FAQ website, as it may be amended from time to time.

### **IP Addresses**

IP addresses are normally assigned on a dynamic basis and there is little or no assurance that the User will be assigned the same (or even similar) IP address between sessions.

### **Restrictions**

Users agree not to run any servers in conjunction with the Services, including but not limited to, electronic mail, NAT, DHCP and DNS servers. In the event any User attempts to utilize a server on the network, we may, at our sole discretion, increase the fees associated with the Services, or terminate the Services.

### **Reconnect Fee**

If the Services are terminated due to non-payment and/or breach of the Terms and Conditions or ACCEPTABLE USE POLICY, User agrees to pay a reconnection fee, if Services are reactivated.

### **Disclaimer of Liability**

THE SERVICES PROVIDED BY US ARE PROVIDED "AS IS." WE MAKE NO WARRANTY OF ANY KIND, EXPRESSED OR IMPLIED, INCLUDING, BUT NOT LIMITED TO ANY WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR NON-INFRINGEMENT, OR ANY WARRANTY REGARDING THE RELIABILITY OR SUITABILITY FOR A PARTICULAR PURPOSE OF ITS SERVICES. USER UNDERSTANDS AND ACKNOWLEDGES THAT WE EXERCISE NO CONTROL OVER THE NATURE, CONTENT OR RELIABILITY OF THE INFORMATION AND/OR DATA PASSING THROUGH OUR NETWORK. NO ORAL OR WRITTEN INFORMATION OR ADVICE GIVEN BY US, ITS DEALERS, AGENTS OR EMPLOYEES SHALL CREATE A WARRANTY AND USER MAY NOT RELY ON ANY SUCH INFORMATION OR ADVICE. WE MAKES NO WARRANTY OF ANY KIND, EITHER EXPRESSED OR IMPLIED, REGARDING THE QUALITY, ACCURACY OR VALIDITY OF THE INFORMATION AND/OR DATA RESIDING ON OR PASSING THROUGH ANY NETWORK. USE OF ANY INFORMATION AND/OR DATA OBTAINED FROM OR THROUGH SERVICES PROVIDED BY US WILL BE AT USER'S OWN RISK. USER ACKNOWLEDGES THAT WE ARE NOT LIABLE FOR ANY ERRORS OR INTERRUPTION IN THE INSTALLATION PROCESS OR IN PROVIDING THE SERVICES, WHETHER WITHIN OR OUTSIDE THE CONTROL OF US. UNDER NO CIRCUMSTANCES SHALL THE USER HOLD US OR ANY OF OUR AGENTS, CONTRACTORS OR REPRESENTATIVES RESPONSIBLE FOR ANY FORM OF DAMAGES OR LOSSES (INCLUDING WITHOUT LIMITATION ANY DIRECT, INDIRECT, CONSEQUENTIAL OR INCIDENTAL DAMAGES OR LOSSES) SUFFERED FROM, BUT NOT LIMITED TO ERRORS, DELAYS, LOSS OF INFORMATION, DELAYS IN THE INSTALLATION OR PROVISIONING PROCESS, OR INTERRUPTIONS IN THE SERVICES CAUSED BY THE USER, US OR A THIRD PARTY'S NEGLIGENCE, FAULT, MISCONDUCT OR FAILURE TO PERFORM. USER UNDERSTANDS THAT TELECOMMUNICATION AND/OR NETWORK ACCESS SERVICES MAY BE TEMPORARILY UNAVAILABLE FOR SCHEDULED OR UNSCHEDULED MAINTENANCE AND FOR OTHER REASONS WITHIN AND OUTSIDE OF THE DIRECT CONTROL OF US. UNDER NO CIRCUMSTANCES DO ANY SUCH ERRORS, DELAYS, INTERRUPTIONS IN SERVICES OR LOSS OF INFORMATION NULLIFY OR MODIFY THESE TERMS AND CONDITIONS. WE RESERVE THE RIGHT TO REFUSE OR TERMINATE SERVICES TO A USER AT ANY TIME WITHOUT CAUSE. THE INTERNET CONTAINS UNEDITED MATERIALS, WHICH MAY BE SEXUALLY EXPLICIT, OR MAY BE OFFENSIVE TO YOU OR OTHERS ACCESSING THE SERVICES. WE HAVE NO CONTROL OVER SUCH MATERIALS AND ACCEPT NO RESPONSIBILITY FOR SUCH MATERIALS.

### **User Complaint Resolution**

In order to resolve a complaint regarding the Services or to receive further information regarding the use of the Services, User should contact us at the address and phone number listed on our website.

### **Additional Terms and Conditions**

We may, from time to time, send e-mail messages or other forms of communication to User containing advertisements, promotions, etc. which may be offered by third parties. We make no representation or warranty with respect to the content of any such third-party communications or goods or services which may be obtained in response to such communications and User agrees that we shall not have any liability with respect thereto, nor shall any such messages amend the Terms and Conditions unless specifically agreed to in writing by us. Additionally, our web site may contain links to Web sites operated by parties other than us. Such links are provided for your convenience only. We do not control such Web sites and is not responsible for their contents. Our inclusion of

links to such Web sites does not imply any endorsement of the material on such Web sites or any association with their operators.

### **Entire Agreement**

The Services Order Confirmation and Acknowledgement Terms and Conditions, the Terms and Conditions, the Acceptable Use Policy and the Privacy Policy contain the entire agreement and understanding concerning the Services and supersede all prior negotiations, proposed agreements, and all other agreements, whether electronic, written or oral. The Terms and Conditions may be modified at any time by us and the latest version of the Terms and Conditions may be found on our FAQ website. A printed version of these Terms and Conditions and of any notice given in electronic form shall be admissible in judicial or administrative hearings based upon or relating to the Terms and Conditions to the same extent and subject to the same conditions as other business documents and records originally generated and maintained in printed form.

### **Assignment and Successors in Interest**

All of the Terms and Conditions shall be binding upon, inure to the benefit of, and be enforceable by the respective successors and permitted assigns of User. Except as specifically stated herein, neither these Terms and Conditions nor any of the rights, interests or obligations of User or us shall be assigned or delegated without the prior written consent of us. Any unauthorized assignment or delegation shall be null and void. Notwithstanding the foregoing, we may assign or otherwise transfer its rights and obligations to any affiliate (whether by purchase of stock or assets, merger, operation of law, or otherwise) of that portion of its business related to the subject matter hereof.

### **Venue/Choice of Law**

These Terms and Conditions shall be construed in accordance with the laws of the State of Queensland (excluding rules regarding conflicts of law) and Commonwealth of Australia. In the event of any dispute, the parties submit to the personal jurisdiction of and venue Brisbane, Queensland, Australia.

### **Severability**

In the event that it is determined by a court of competent jurisdiction as a part of a final non-appealable judgment that any provision of these Terms and Conditions (or part thereof) is invalid, illegal, or otherwise unenforceable, such provision will be enforced as nearly as possible in accordance with the stated intention of the parties, while the remainder of the Terms and Conditions will remain in full force and effect.

### **Indemnification**

User shall indemnify and hold us harmless against any and all claims, losses, damages and liabilities sustained by User resulting from, arising out of, or connected with any breach of, or non-fulfillment of any representation, warranty, covenant or agreement made by or other obligation of User contained in these Terms and Conditions.