

End User License Agreement

Please take time to read our End User License Agreement. Please read carefully before joining the WiFi service from this website

This end-user licence agreement (EULA) is a legal agreement between you (**End-user** or **You**), Proximity Futures Limited t/a ElephantWiFi of 22 Greenfields Business Park, Wheatfield Way, Hinckley, Leicestershire LE10 1BB (**ElephantWiFi**) and BID Leamington, Park Court Street, Leamington Spa, CV32 4QN (**Us** or **We**) for use of the wireless internet access service via the ElephantWiFi WiFi service (the “**Service**”).

Important notice:

- By joining and using the Service from this website You agree to the terms of this licence which will bind You. The terms of this licence include, in particular, the privacy policy defined in condition 1.d , limitations on liability at condition 5, and you are consenting to processing of your data by the Data Processors listed in Schedule A (if applicable).
- If You do not agree to the terms of this licence and our privacy policy we will not permit access to the Service and You must stop the joining process now. In this case the joining process will terminate.

Agreed terms

1. Acknowledgements
 - a. The terms of this EULA apply to your use of the Service including any updates to the Service.
 - b. We may change these terms at any time and all changes will be provided to You through a link on the Service log-in page. The new terms may be displayed on-screen and You may be required to read and accept them to continue your use of the Service.
 - c. You will be assumed to have obtained permission from the owners of the computer, mobile telephone or device/s (Device) that are controlled, but not owned by You, to use the Service. You and they may be charged by your/their service providers for internet access on the Device/s. You accept responsibility in accordance with the terms of this EULA for the use of any Service on or in relation to any Device, whether or not it is owned by You.
 - d. The terms of our privacy policy from time to time, available through a link on the log in page (Privacy Notice/End User Privacy Policy), are incorporated into this EULA by reference and apply to the Service. Additionally, by using the Service, you acknowledge and agree that internet transmissions are never completely private or secure. You understand that any message or information you send using the Service could be intercepted and/or read by other parties (possibly with malicious intent), even if there is a special notice that a particular transmission is encrypted.
 - e. By using the Service You consent to ElephantWiFi collecting and using technical information about the Device (such as the manufacturer, model, browser type) in order to improve our products and provide our Service to You, and for the purposes stated in a Privacy Policy. This information is also be shared with the BID Leamington.

- f. The Service will make use of location data sent from the Device/s. If You use the Service, You consent to the transmission, collection, maintenance, processing and use of your location data and queries by ElephantWiFi to provide and improve location-based products and services.
 - g. The Service may contain links to other independent third-party websites (Third-party Sites). Third-party Sites are not under our control, and we are not responsible for and do not endorse their content or their privacy policies (if any). You will need to make your own independent judgement regarding your interaction with any Third-party Sites, including the purchase and use of any products or services accessible through them.
- 2. Grant and scope of license
 - a. In consideration of you agreeing to abide by the terms of this EULA, We grant You the right to use the Services, subject to these terms and the Privacy Policy, incorporated into this EULA by reference. We reserve all other rights.
 - b. You may continue to use the Service free of charge provided that you accept these terms.
 - c. You may stop using the Service at any time.
 - d. We may cease provision of the Services at any time.
- 3. Acceptable use restrictions

You must not:

 - a. use the Service in any unlawful manner, for any unlawful purpose, or in any manner inconsistent with this EULA, or act fraudulently or maliciously, (for example by inserting malicious code or harmful data into the Service);
 - b. infringe our intellectual property rights or those of any third party in relation to your use of the Service, (including but not limited to system and/or interface design);
 - c. transmit any material that is defamatory, offensive or otherwise objectionable in relation to your use of the Service;
 - d. use the Service in a way that could damage, disable, overburden, impair or compromise our systems or security or interfere with other users;
 - e. collect or harvest any information or data from any Service or our systems or attempt to decipher any transmissions to or from the servers running any Service;
 - f. send, receive, publish, post, distribute, disseminate, encourage or solicit receipt of, upload, download or use any material which is offensive, abusive, defamatory, indecent, obscene, unlawful, harassing, menacing or a breach of copyright or other intellectual property right or any other right of any person;
 - g. use the Service for commercial purposes;
 - h. use the Service to send unsolicited emails;
 - i. use the Service to transmit, store, publish or upload any electronic material which is known or is likely to cause, damage or destroy or limit the functionality of any computer software, hardware or telecommunications equipment.
 - j. invade the privacy of another person, cause annoyance, inconvenience or needless anxiety to another person.
- 4. Intellectual property rights
 - a. You acknowledge that all intellectual property rights in the Services and the underlying technology belong to ElephantWiFi or our licensors, and that you have no rights in, or to, the Service other than the right to use it in accordance with the terms of this EULA.
- 5. Limitation of liability

- a. The Service is provided to you on an “as is” basis and therefore all warranties, conditions and other terms implied by statute or common law are, to the fullest extent permitted by law, excluded from this agreement
- b. Except as stated at Clause 5.e below the BID Leamington or ElephantWiFi shall not be liable to you in respect of any losses caused by failures, errors, delays or interruptions relating to the Service, including any failure to supply the Service due to events which are beyond our reasonable control.
- c. The BID Leamington or ElephantWiFi shall not be liable to you if any third party:
 - i. gains access to your connection to the Service or your Device;
 - ii. destroys or damages any data or information held by you or information about you which is held by us unless proven to be as a result of negligence on the part of ElephantWiFi
- d. The BID Leamington or ElephantWiFi shall have no liability in respect of indirect or consequential loss, such as loss of profits, business, costs, expenses, or any other form of economic loss.
- e. Nothing in this EULA shall limit or exclude our liability for:
 - i. death or personal injury resulting from our negligence;
 - ii. fraud or fraudulent misrepresentation; and
 - iii. any other liability that cannot be excluded or limited by English law.

6. Termination

- a. We may terminate this EULA immediately without notice to you:
 - i. If you commit a material or persistent breach of this EULA;
 - ii. If you breach any of the Acceptable Use Restrictions.
- b. On termination for any reason:
 - i. all rights granted to you under this EULA shall cease;
 - ii. you must immediately cease all activities authorised by this EULA, including your use of any Services;
 - iii. we will cease providing you with access to the Service;
 - iv. we will remove from our systems any data that may be used to uniquely identify you.
- c. Termination of this EULA shall be without prejudice to the rights or remedies or either party accrued prior to the date of termination.

7. Events outside our control

- a. The BID Leamington or ElephantWiFi will not be liable or responsible for any failure to perform, or delay in performance of, any of our obligations under this EULA that is caused by any act or event beyond our reasonable control, including failure of public or private telecommunications networks or interruptions in third party services (Event Outside Our Control).
- b. If an Event Outside Our Control takes place that affects the performance of our obligations under this EULA:
 - i. our obligations under this EULA will be suspended and the time for performance of our obligations will be extended for the duration of the Event Outside Our Control; and
 - ii. the BID Leamington or ElephantWiFi will use all reasonable endeavours to find a solution by which our obligations under this EULA may be performed despite the Event Outside Our Control.

8. Other important terms

- a. The BID Leamington or ElephantWiFi may transfer our rights and obligations under this EULA to another organisation, but this will not affect your rights or our obligations under this EULA
- b. You may only transfer your rights or obligations under this EULA to another person if we agree in writing.
- c. If we fail to insist that you perform any of your obligations under this EULA, or if we do not enforce our rights against you, or if we delay in doing so, that will not mean that we have waived our rights against you and will not mean that you do not have to comply with those obligations. If we do waive a default by you, we will only do so in writing, and that will not mean that we will automatically waive any later default by you.
- d. Each of the conditions of this EULA operates separately. If any court or competent authority decides that any of them are unlawful or unenforceable, the remaining conditions will remain in full force and effect.

Schedule A

Under the GDPR, ElephantWiFi are considered to be the Data Controller. We provide the service on behalf of the District Council, who under the GDPR should be considered a Third Party Processor.

In the interest of full disclosure, the following describes third party processors used by The BID Leamington who may have access to the data you have submitted.

The District Council's BID

The District Council has established a Business Improvement District. ElephantWiFi's contract is with the District Council (ElephantWiFi's third party processor), and as such, technically the BID is the District Council's third party processor.

BID employees are responsible for managing email marketing communications to the WiFi users. As such, if you have selected to receive marketing information by email, BID employees will be able to export the following information about you from our database:

- Email address
- First name
- Surname,
- Gender
- Age