

LIBRARY POLICY:           A-02          

EFFECTIVE DATE: September 10, 2007      (This policy supersedes \_\_\_\_\_)

SUBJECT:    City of Sunnyvale Wireless Network Acceptable Use Policy

POLICY:

In order to provide the users with free Internet access, the City of Sunnyvale has adopted an Acceptable Use Policy (AUP) for the Sunnyvale Library Wireless network. Please read this policy prior to accessing the Sunnyvale Library Wireless network. The word "user" refers to any person, entity or business that accesses the Sunnyvale Library Wireless network. By using the service the user agrees to the terms of this AUP.

Applies to: Users of the Sunnyvale Library Wireless network in and around Sunnyvale, California.

**Summary:** The City of Sunnyvale through Sunnyvale Library Wireless provides a public wireless network for the purpose of enabling users to access the Internet. Use of the Sunnyvale Library Wireless network is governed by all applicable local, state, and federal laws, and this wireless network AUP, and is subject to the "Sunnyvale Library Wireless Disclaimer of Warranties, Limitation of Liability and Indemnification". The City of Sunnyvale offers the Sunnyvale Library Wireless network as a free service and does not provide technical support for users. For instructions on how to connect to the network, please refer to the document, "Guidelines to Access the Sunnyvale Library Wireless Network".

**Contacts:** Sunnyvale Library Wireless does not provide technical support. Information regarding network access can be found in the document, "Guidelines to Access the Sunnyvale Library Wireless Network".

**Authority:** The City of Sunnyvale reserves the right to cooperate with legal authorities and/or injured third parties in the investigation of any suspected crime or civil wrong in compliance with applicable laws and regulations. Such cooperation may include, but shall not be limited to, providing account or user information or email as well as the monitoring of the Sunnyvale Library Wireless network in compliance with applicable law. The City of Sunnyvale through Sunnyvale Library Wireless does not guarantee any level of quality of service and may restrict access to the network, limit the bandwidth available to any user or group of users and restrict usage time at any time.

**Privileges of Network Users:** The primary purpose of the Sunnyvale Library Wireless network is to provide a convenient wireless means of Internet access for the user. Sunnyvale Library Wireless users will be granted non-exclusive limited access to this wireless network in the designated areas as technology and

network capacities allow and as restricted by this AUP. Users may not resell the service or provide the service to third parties in exchange for any form of compensation.

### **Responsibilities of Network Users:**

1. Users are responsible for ensuring they have the appropriate compliant wireless card (802.11) and are running up-to-date antivirus software on their wireless device.
2. Users must respect all copyrights. Commercial software licensed to Sunnyvale Library Wireless may only be installed on devices expressly covered by the licenses. The downloading or sharing of copyrighted materials in violation of law is strictly prohibited.
3. The running of programs by a single user, or group of users, that may substantially degrade network performance or accessibility will not be allowed. Electronic chain letters, unsolicited messages or materials, bulk email, or other forms of solicitation ("spamming"), mail bombs, and excessive recreational use of the network are prohibited. Any action which promotes or furthers pornographic or inappropriate usage is prohibited including use to further any illegal purposes. Connecting to "Peer to Peer" file sharing networks or downloading large files, such as CD ISO images, is also not allowed.
4. Wireless Internet access is inherently not secure, and users should adopt appropriate security measures when using the Sunnyvale Library Wireless network. Users must be aware that as they connect their devices through the wireless network they expose their devices to: worms, viruses, trojan horses, denial-of-service attacks, intrusions, packet-sniffing and other abuses by third-parties. Sunnyvale Library Wireless highly discourages the conducting of confidential transactions (such as online banking or credit card usage) over any wireless network, including this one. Users are responsible for providing security measures that are suited for the User's intended use of the Sunnyvale Library Wireless network. Users shall take full responsibility for taking adequate measures to safeguard data from loss.
5. Users are responsible for all devices they connect through the Sunnyvale Wireless network.
6. Users are responsible for securing their own wireless equipped devices prior to making connections to the Sunnyvale Library Wireless network.
7. Please know that wireless technology is a shared resource, therefore, speeds will be directly affected by the number of simultaneous users.

8. Users will not use Sunnyvale Library Wireless to violate any applicable federal, state, local or international laws. Some examples include but are not limited to:

User will not transmit any material that threatens or encourages bodily harm or destruction of property or which harasses, abuses, defames or invades the privacy of any other person or entity.

User will not use the Sunnyvale Library Wireless network to commit any crime, act of terrorism, or fraud, or to plan, encourage or help others to commit any crime or fraud, including, but not limited to, acts of terrorism, engaging in a pyramid or ponzi scheme, or sending chain letters.

User will not use the Sunnyvale Library Wireless network to send or receive any information which infringes the patents, trademarks, copyrights, trade secrets or proprietary rights of others.

User will not use the Sunnyvale Library Wireless network to send pornographic, obscene or profane materials.

9. User will not disrupt the Sunnyvale Library Wireless network. Examples include but not limited to: User will not access the accounts of others or attempt to penetrate the security measures of the Sunnyvale Library Wireless network or other computer systems ("hacking") or to cause a disruption of the Sunnyvale Library Wireless network's availability to other online users. User will not use tools designed for compromising network security, such as password-guessing programs, cracking tools, packet sniffers or network probing tools.

**Limitations of Wireless Network Access:**

1. The user hereby agrees to be bound by the terms of the "Sunnyvale Library Wireless Disclaimer of Warranties, Limitation of Liability and Indemnification"
2. The City of Sunnyvale is in no way liable for any damage, undesired resource usage or detrimental effects that may occur to the user's device and software while the user has his/her device connected to the Sunnyvale Library Wireless network.
3. The user is responsible for any actions taken from his/her device, whether intentional or unintentional, that causes damages or otherwise affects other devices or users of the Sunnyvale Library Wireless network.
4. The user hereby releases the City of Sunnyvale from liability for any loss, damage, security infringement or injury which the user may sustain as a

result of being allowed access to the Sunnyvale Library Wireless network. The user agrees to be solely responsible for any such loss, infringement, damage, or injury.

**Violations and Sanctions:**

Reporting Violations: Any knowledge or evidence of violations of this AUP should be reported to Sunnyvale Library webmaster: [library@ci.sunnyvale.ca.us](mailto:library@ci.sunnyvale.ca.us)

**Penalties:** Users who violate this AUP may be subject to the range of sanctions including, but not limited to, termination of network privileges. The City of Sunnyvale through Sunnyvale Library Wireless has the authority to temporarily revoke network access or take other appropriate action in order to maintain network security and reliability.

**Revisions/Termination:** The City of Sunnyvale reserves the right to revise or terminate the Sunnyvale Library Wireless network and this AUP at any time, for any reason, and without notice, including the right to terminate with or without notice, without liability to any user, any user or any third party. Usage of the Sunnyvale Library Wireless network indicates that you understand and agree to the terms and conditions listed herein and to any revisions.

## **SUNNYVALE LIBRARY WIRELESS DISCLAIMER OF WARRANTIES, LIMITATION OF LIABILITY AND INDEMNIFICATION**

### **SECURITY WARNING AND DISCLAIMER**

WARNING: The Sunnyvale Library Wireless is an open network provided by the City of Sunnyvale for your convenience, and you use it at your own risk. It is available to the general public, and is NOT INHERENTLY SECURE. The Sunnyvale Library Wireless cannot and does not guarantee the privacy of your data and communication while using the service.

There are potentially serious security issues with any computer connected to the Internet without the appropriate protection, ranging from viruses, worms and other programs that can damage the user's computer, to attacks on the computer by unauthorized or unwanted third parties. By using the Sunnyvale Library Wireless, you acknowledge and knowingly accept the potentially serious risks of accessing the Internet over an unsecured network. It is recommended that users take steps to protect their own computer system, such as installing current anti-virus software and maintaining appropriate firewall protection. For further information on how to protect you on this open network, consult a security professional.

By using this Sunnyvale Library Wireless, you acknowledge and agree that YOUR USE OF THIS SERVICE IS SOLELY AT YOUR OWN RISK. By using the Sunnyvale Library Wireless, you also agree to all terms set forth in the following Disclaimer of Warranties, Limitation of Liability and Indemnification and the Sunnyvale Library Wireless Network Acceptable Use Policy (AUP).

### **DISCLAIMER OF WARRANTIES**

The City of Sunnyvale disclaims any and all responsibility or liability for the accuracy, content, completeness, legality, reliability, or operability or availability of information or material displayed in or accessible through the Sunnyvale Library Wireless network. The City of Sunnyvale disclaims any responsibility for the deletion, failure to store, misdelivery, or untimely delivery of any information or material. The City of Sunnyvale disclaims any responsibility for any harm resulting from downloading or accessing any information or material on the Internet through the Sunnyvale Library Wireless service.

THE SUNNYVALE LIBRARY WIRELESS SERVICE, AND ALL MATERIALS, INFORMATION, PRODUCTS AND SERVICES INCLUDED IN THE SUNNYVALE LIBRARY WIRELESS SERVICE ARE PROVIDED "AS IS," WITH NO WARRANTIES WHATSOEVER. THE CITY OF SUNNYVALE, ITS SUPPLIERS AND ITS LICENSORS EXPRESSLY DISCLAIM TO THE FULLEST EXTENT PERMITTED BY LAW ALL EXPRESS, IMPLIED, AND STATUTORY WARRANTIES, INCLUDING, WITHOUT LIMITATION, THE WARRANTIES OF

MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND NON-INFRINGEMENT OF PROPRIETARY RIGHTS. THE CITY OF SUNNYVALE, ITS SUPPLIERS AND ITS LICENSORS DISCLAIM ANY WARRANTIES REGARDING THE SECURITY, RELIABILITY, TIMELINESS, AND PERFORMANCE OF THE SUNNYVALE LIBRARY WIRELESS SERVICE. THE CITY OF SUNNYVALE, ITS SUPPLIERS AND ITS LICENSORS DISCLAIM ANY WARRANTIES FOR ANY INFORMATION OR ADVICE OBTAINED THROUGH THE SUNNYVALE LIBRARY WIRELESS SERVICE. THE CITY OF SUNNYVALE, ITS SUPPLIERS AND ITS LICENSORS DISCLAIM ANY WARRANTIES FOR SERVICES OR GOODS RECEIVED THROUGH OR ADVERTISED ON THE SUNNYVALE WIRELESS SERVICE OR RECEIVED THROUGH ANY LINKS PROVIDED BY THE SUNNYVALE LIBRARY WIRELESS SERVICE, AS WELL AS FOR ANY INFORMATION OR ADVICE RECEIVED THROUGH ANY LINKS PROVIDED IN THE SUNNYVALE WIRELESS SERVICE.

YOU UNDERSTAND AND AGREE THAT (A) THE SUNNYVALE LIBRARY WIRELESS SERVICE WILL NOT BE UNINTERRUPTED OR ERROR-FREE, (B) THERE IS NO WARRANTY OR GUARANTEE THAT THE SUNNYVALE WIRELESS SERVICE WILL OPERATE AT ANY MINIMUM DATA TRANSFER SPEED, (C) THE CITY OF SUNNYVALE HAS NO CONTROL OVER THIRD PARTY NETWORKS OR SITES YOU MAY ACCESS IN THE COURSE OF YOUR USE OF THE SUNNYVALE LIBRARY WIRELESS SERVICE, AND (D) YOU DOWNLOAD OR OTHERWISE OBTAIN MATERIAL OR DATA THROUGH THE USE OF THE SUNNYVALE LIBRARY WIRELESS SERVICE AT YOUR OWN DISCRETION AND RISK AND THAT YOU WILL BE SOLELY RESPONSIBLE FOR ANY DAMAGES TO YOUR COMPUTER SYSTEM OR LOSS OF DATA THAT RESULTS FROM THE DOWNLOAD OF SUCH MATERIAL OR DATA.

#### LIMITATION OF LIABILITY

UNDER NO CIRCUMSTANCES SHALL THE CITY OF SUNNYVALE, ITS SUPPLIERS OR ITS LICENSORS BE LIABLE TO YOU, ANY USER, OR ANY THIRD PARTY ON ACCOUNT OF YOUR OR THAT PARTY'S USE OR MISUSE OF OR RELIANCE ON THE SUNNYVALE LIBRARY WIRELESS SERVICE ARISING FROM ANY CLAIM RELATING TO THE SUBJECT MATTER HEREOF. SUCH LIMITATION OF LIABILITY SHALL APPLY TO PREVENT RECOVERY OF DIRECT, INDIRECT, INCIDENTAL, CONSEQUENTIAL, SPECIAL, EXEMPLARY, AND PUNITIVE DAMAGES WHETHER SUCH CLAIM IS BASED ON WARRANTY, CONTRACT, TORT (INCLUDING NEGLIGENCE), OR OTHERWISE, (EVEN IF THE CITY OF SUNNYVALE, ITS SUPPLIERS OR ITS LICENSORS HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES). SUCH LIMITATION OF LIABILITY SHALL APPLY WHETHER THE DAMAGES ARISE FROM USE OR MISUSE OF AND RELIANCE ON THE SUNNYVALE LIBRARY WIRELESS SERVICE, FROM INABILITY TO USE THE

SUNNYVALE LIBRARY WIRELESS SERVICE, OR FROM THE INTERRUPTION, SUSPENSION, OR TERMINATION OF THE SUNNYVALE LIBRARY WIRELESS SERVICE (INCLUDING SUCH DAMAGES INCURRED BY THIRD PARTIES). THIS LIMITATION SHALL ALSO APPLY WITH RESPECT TO DAMAGES INCURRED BY REASON OF OTHER SERVICES OR GOODS RECEIVED THROUGH OR ADVERTISED ON THE SUNNYVALE LIBRARY WIRELESS SERVICE OR RECEIVED THROUGH ANY LINKS PROVIDED IN THE SUNNYVALE WIRELESS SERVICE, AS WELL AS BY REASON OF ANY INFORMATION OR ADVICE RECEIVED THROUGH OR ADVERTISED ON THE SUNNYVALE LIBRARY WIRELESS SERVICE. THIS LIMITATION SHALL ALSO APPLY, WITHOUT LIMITATION, TO THE COSTS OF PROCUREMENT OF SUBSTITUTE GOODS OR SERVICES, LOST PROFITS, OR LOST DATA. SUCH LIMITATION SHALL FURTHER APPLY WITH RESPECT TO THE PERFORMANCE OR NONPERFORMANCE OF THE SUNNYVALE LIBRARY WIRELESS SERVICE OR ANY INFORMATION OR MERCHANDISE THAT APPEARS ON, OR IS LINKED OR RELATED IN ANY WAY TO, THE SUNNYVALE LIBRARY WIRELESS SERVICE. SUCH LIMITATION SHALL APPLY NOTWITHSTANDING ANY FAILURE OF ESSENTIAL PURPOSE OF ANY LIMITED REMEDY AND TO THE FULLEST EXTENT PERMITTED BY LAW.

WITHOUT LIMITING THE FOREGOING, UNDER NO CIRCUMSTANCES SHALL THE CITY OF SUNNYVALE, ITS SUPPLIERS OR ITS LICENSORS, BE HELD LIABLE FOR ANY DELAY OR FAILURE IN PERFORMANCE RESULTING DIRECTLY OR INDIRECTLY FROM ACTS OF NATURE, FORCES OR CAUSES BEYOND ITS REASONABLE CONTROL, INCLUDING, WITHOUT LIMITATION, INTERNET FAILURES, COMPUTER EQUIPMENT FAILURES, TELECOMMUNICATION EQUIPMENT FAILURES, OTHER EQUIPMENT FAILURES, ELECTRICAL POWER FAILURES, STRIKES, LABOR DISPUTES, RIOTS, INSURRECTIONS, CIVIL DISTURBANCES, SHORTAGES OF LABOR OR MATERIALS, FIRES, FLOODS, STORMS, EXPLOSIONS, ACTS OF GOD, WAR, GOVERNMENTAL ACTIONS, ORDERS OF DOMESTIC OR FOREIGN COURTS OR TRIBUNALS, NON-PERFORMANCE OF THIRD PARTIES, OR LOSS OF OR FLUCTUATIONS IN HEAT, LIGHT, OR AIR CONDITIONING.

#### INDEMNIFICATION


YOU AGREE TO HOLD HARMLESS AND INDEMNIFY THE CITY OF SUNNYVALE, ITS SUPPLIERS AND LICENSORS FROM AND AGAINST ANY THIRD PARTY CLAIM ARISING FROM OR IN ANY WAY RELATED TO YOUR USE OF THE SUNNYVALE LIBRARY WIRELESS SERVICE, INCLUDING ANY LIABILITY OR EXPENSE ARISING FROM ALL CLAIMS, LOSSES, DAMAGES (ACTUAL AND CONSEQUENTIAL), SUITS, JUDGMENTS, LITIGATION COSTS AND ATTORNEYS' FEES, OF EVERY KIND AND NATURE. IN SUCH A CASE, THE CITY OF SUNNYVALE WILL PROVIDE YOU WITH WRITTEN NOTICE OF

SUCH CLAIM, SUIT OR ACTION. UNDER NO CIRCUMSTANCES SHALL THE CITY OF SUNNYVALE BE LIABLE FOR ANY DIRECT, INDIRECT, INCIDENTAL, SPECIAL, PUNITIVE OR CONSEQUENTIAL DAMAGES THAT RESULT IN ANY WAY FROM YOUR USE OF OR INABILITY TO USE THE SUNNYVALE LIBRARY WIRELESS SERVICE OR TO ACCESS THE INTERNET OR ANY PART THEREOF, OR YOUR RELIANCE ON OR USE OF INFORMATION, SERVICES OR MERCHANDISE PROVIDED ON OR THROUGH THE SUNNYVALE LIBRARY WIRELESS, OR THAT RESULT FROM MISTAKES, OMISSIONS, INTERRUPTIONS, DELETION OF FILES, ERRORS, DEFECTS, DELAYS IN OPERATION, OR TRANSMISSION, OR ANY FAILURE OF PERFORMANCE. YOU AGREE TO INDEMNIFY AND HOLD HARMLESS THE CITY OF SUNNYVALE, INCLUDING ITS AFFILIATES, AGENTS, AND CONTRACTORS, FROM ANY CLAIM, LIABILITY, LOSS, DAMAGE, COST, OR EXPENSE (INCLUDING, WITHOUT LIMITATION, REASONABLE ATTORNEYS' FEES AND COSTS) ARISING OUT OF OR RELATED TO YOUR USE OF THE SUNNYVALE LIBRARY WIRELESS, ANY MATERIALS DOWNLOADED OR UPLOADED THROUGH THE SUNNYVALE LIBRARY WIRELESS, ANY ACTIONS TAKEN BY YOU IN CONNECTION WITH YOUR USE OF THE SUNNYVALE LIBRARY WIRELESS, ANY VIOLATION OF ANY THIRD PARTY'S RIGHTS OR ANY VIOLATION OF LAW OR REGULATION, OR ANY BREACH OF THE FOREGOING.

THE FOREGOING WILL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF CALIFORNIA, WITHOUT GIVING EFFECT TO ITS CONFLICT OF LAWS PROVISION. IF FOR ANY REASON A COURT OF COMPETENT JURISDICTION FINDS ANY PROVISION OR PORTION OF THE FOREGOING TO BE UNENFORCEABLE, THE REMAINDER OF THE FOREGOING WILL CONTINUE IN FULL FORCE AND EFFECT.

PREPARED BY: Susan Denniston August 16, 2007  
Date

This policy was approved on September 10, 2007 and is to be included in the Library Policy Manual.

  
Deborah L. Barrow  
Director of Libraries