

## STANDARD TERMS AND CONDITIONS OF BUSINESS

### 1 DEFINITIONS AND INTERPRETATION

1.1 In these terms and conditions (the "**Conditions**") the following words shall have the following meanings (unless the context otherwise requires):

**"Acceptable Use Policy"** means Urban Wimax's acceptable use policy in respect of the Services as set out in Schedule 1.

**"BSA"** means the Business Service Agreement form to be completed by the Customer in respect of an Order for services and is the Original BSA or the Revised BSA, as applicable.

**"Business Day"** means any day excluding Saturday, Sunday, bank and public holidays in the UK.

**"Charges"** means the Service Charge, the Usage Charges, One Off Charges and any other charges as set out in the Contract.

**"Contract"** means, together, the BSA, these Conditions, the Acceptable Use Policy, the applicable SLA and the relevant sections of the Price List.

**"Customer"** means the person to whom Urban Wimax provides the Services as stated in the BSA.

**"Customer Nominated Contact"** means the Customer's nominee as stated in the BSA who will be Urban Wimax's point of contact for all matters relating to the Services.

**"Customer Services"** means the Urban Wimax team responsible for receiving calls from the Customer to log faults and respond to queries about the Services.

**"Downtime"** means the time between the Customer registering a Trouble Ticket with Customer Services and the Services being restored.

**"Equipment"** means the equipment installed or provided by Urban Wimax and/or a third party fibre supplier at the Site, which forms part of the Services (including but not limited to antenna, cabling, power supply and router or physical telecommunications connections) and any equipment that is purchased by the Customer pursuant to a separate agreement with Urban Wimax and/or a third party fibre supplier.

**"Force Majeure"** means any cause beyond the reasonable control of either Party including without limitation, any of the following: construction of third party buildings, any third party construction (whether temporary or permanent); or maintenance works, of act of God; war, insurrection, riot, civil disturbance, acts of terrorism; fire, explosion, flood, storm; theft or malicious damage; strike, lock-out, or other industrial dispute (whether involving the workforce of Urban Wimax or any other party), third party injunction; national defence requirements, acts or regulations of national or local governments; or inability to obtain essential power.

**"Installation"** means the physical work required to deliver the Service including (without limitation) installing the Equipment at the Site.

**"Installation and Planning Guidance"** means the installation and planning guidance issued by Urban Wimax to the Customer in respect of installing the Equipment.

**"Installation Date"** means the date on which Urban Wimax or a third party fibre supplier performs the Installation.

**"Minimum Period"** means the minimum period specified in the BSA starting from the Ready for Service date or, if more than one service is being provisioned (for example a wireless and fibre service or other service) , starting from the most recent Ready for Service date, or if no such period is specified, the first 12 months starting from the Ready for Service Date, or if there is no Installation, the minimum period specified in the BSA from the date of Urban Wimax's signature to the BSA.

**"One Off Charges"** means any charges in respect of site visits, Installation, Site installation, the upkeep, depreciation and/or amortisation of the Equipment supplied to the Customer, support, configuration and de-installation.

**"Original BSA"** means the completed BSA signed by the Customer and Urban Wimax in respect of the Services.

**"Price List"** means the list of Urban Wimax's charges that apply to the Services as amended and updated from time to time.

**"Ready for Service Date"** means the date on which Customer Services hand over the Services to the Customer for use by the customer. Billing commences from this date, and this date would normally be the date on which the Customer signs the Installation Sign-off Document or the date Urban Wimax advise you in writing that the Service is ready for use.

**"Revised BSA"** means an update of the Original BSA signed by the Customer and Urban Wimax for additional costs in respect of the Services following inspection of the Site.

**"Services"** means the services supplied by Urban Wimax to the Customer as set out in the BSA, including but not limited to installation and de-installation.

**"Service Charge"** means the standing charge (normally monthly in advance) in respect of the Services.

**"Site"** means a Customer location at which Urban Wimax agrees to provide the Services as stated in the BSA.

**"SLA"** means the Service Level Agreement, specifying particular standards to which the Services will be delivered.

**"Term"** means the term of the Contract between the parties as set out in the BSA.

**"Trouble Ticket"** means a mechanism used by Urban WiMAX to track the detection, reporting, and resolution of Customer Service issues. A Trouble Ticket is raised when Customer reports a Service issue via telephone or the Urban Wimax Website.

**"Urban Wimax"** means Urban Wimax Limited (registration no. 5467333) whose registered office is at Thames House, Portsmouth Road, Esher, Surrey, KT10 9AD, and whose trading address is 22 Southampton Place, London WC1A 2BP.

**"Urban Wimax Network"** means Urban Wimax's telecommunications network.

**"Urban Wimax Website"** means the website located at URL <http://www.urbanwimax.co.uk> or such other website or URL as Urban Wimax may notify the Customer from time to time.

**"Usage Charges"** means any charges in respect of the Customer's use of the Services where those services are measured for the quantum of their use in a period such as voice calls and volumes of data backed up.

## **2 SERVICES**

- 2.1 In consideration of the payment by the Customer to Urban Wimax of the Charges, Urban Wimax shall provide the following Services to the Customer in accordance with and subject to the terms and conditions of the Contract and in accordance with the SLA:
- (a) the provision and installation of the Equipment and Services in accordance with clause 3;
  - (b) the provision of the Services from the Ready for Service Date.
- 2.2 Urban Wimax warrants that the Services will be provided with reasonable care and skill and in accordance with good industry practice and the SLA.
- 2.3 Urban Wimax expressly excludes any warranty or undertaking (express or implied) subject to the terms and conditions of the Contract and in accordance with the SLA, that:
- (a) the Services or Equipment (or any software provided to Customer as part of the Services) will interoperate successfully with any third party software or device;
  - (b) the Customer will be able to access or use the Services at times or locations of its choosing, or that there will be sufficient capacity for the Services as a whole, for any specific product or service or in any specific geographical area. Due to the nature of the Services, Urban Wimax depends upon third parties over which it may have no control for the delivery of the Services (for example, delivery of emails to internet addresses); and
  - (c) any software or content available through the Services and that originates from the Internet will be free from any virus, malware, spyware, worm, trojan horse or other program or device that is apparently intended to access and modify, delete or damage data file(s) or computer program(s).
- 2.4 Without prejudice to the specific disclaimers set out in clause 2.3 above and save as expressly set out in this Contract and the SLA, Urban Wimax makes no warranty or representation in relation to the Services or the Equipment (or any software provided as part thereof) and hereby excludes all warranties, representations and guarantees relating thereto which may be implied by statute, common law, course of dealing or otherwise to the fullest extent permitted by law.
- 2.5 IP Addresses and Domain names: In the event that Urban Wimax licenses to the Customer an IP address as part of the provision of Services, such IP address shall (upon the request of Urban Wimax and to the extent permitted by law) revert to Urban Wimax after termination of a Contract for any reason whatsoever, and the Customer shall cease thereafter to use such address in any way whatsoever. At any time after such termination, Urban Wimax may re-assign such address to another user.

### 3 CONDITIONS PRECEDENT TO THE PROVISION OF THE SERVICES

- 3.1 Urban Wimax shall, prior to the Installation Date, confirm in writing as far as is reasonably possible:
- (a) the Services to be provided;
  - (b) that the Services may be provided at the Site and how and whether provided through a third party fibre supplier;
  - (c) whether access to any third party property will be required to install the Equipment at the Site;
  - (d) that, following an inspection of the Site, the Equipment can physically be deployed to the required standard and presented in a manner approved by the Customer (such approval not to be unreasonably withheld or delayed).
- 3.2 Prior to the Installation Date, Urban Wimax will provide documentation including copies of photographs, diagrams, technical descriptions and official documents in order to facilitate the Customer acquiring planning consents and wayleaves, including any licences and/or consents required from Customer's landlord or any other third party to install the Equipment at the Site (each a "**Consent**"). Urban Wimax makes no warranties that the documentation provided will be sufficient to obtain the Consents and notwithstanding any assistance that Urban Wimax may provide to the Customer, the Customer shall remain solely responsible for obtaining the Consents.
- 3.3 Prior to the Installation Date, the Customer shall confirm in writing:
- (a) that the Customer has obtained the necessary Consents where required from third parties if Urban Wimax and / or a 3<sup>rd</sup> party supplier fibre has to cross their land or place Equipment on their premises;
  - (b) that the Customer has obtained all necessary planning Consents where it is considered by the Customer that planning consent is necessary;
  - (c) that the Customer consents to Urban Wimax and / or 3<sup>rd</sup> party fibre supplier installing the Equipment including, without limitation, mounting any Equipment necessary to receive the Service on the exterior of the Site (and Urban Wimax shall, where this does not interfere with provision of the Service, mount such Equipment in such a manner to minimise visual impact and physical restoration and in accordance with any instructions from the Consents); and
  - (d) that the Customer accepts responsibility for all subsequent issues related to property arising from the installation and continued operation of the Equipment but excluding any damage that is proven to be due to the negligence of Urban Wimax, its employees or subcontractors.
- 3.4 If the Charges and/or the Services (or any part of them) require amendment following inspection of the Site (whether performed by Urban Wimax or a third party fibre supplier), Urban Wimax shall issue to the Customer a Revised BSA detailing the additional charges and/or amended Service specifications. If the Customer does not sign and return the Revised BSA to Urban Wimax within a period of five (5) working days of issue of the Revised BSA, Urban Wimax shall be under no obligation to provide the Services detailed in either the Original BSA or the Revised BSA. The Customer shall promptly pay for all Site inspection costs incurred and/or committed to by Urban Wimax but shall be under no further obligation to pay any other charges and the Original BSA shall be deemed cancelled.
- 3.5 If the Customer is unable to secure any or all of the confirmations above and the Customer shall provide a copy of any written refusal to Urban Wimax, then the Customer shall promptly inform Urban

Wimax and Urban Wimax shall be under no obligation to provide the Services. The Customer shall promptly pay for all Site inspection costs incurred and/or committed to by Urban Wimax but shall be under no further obligation to pay any other charges and the BSA shall be deemed cancelled.

- 3.6 In respect to provision of Wireless services, where the Customer provides written evidence from the landlord and/or third parties that the Customer will incur a cost greater than an amount of £2,000 plus the amount of any offer to the Customer as shown on the BSA, both exclusive of VAT, to obtain the Customer's Landlord's Consent in respect of the Wireless services at a single Site, then unless Urban Wimax has confirmed in writing within seven days of receiving such written evidence from Customer that Urban Wimax is prepared to meet the risk of incurring the charges from the Landlord less the amount of any offer to the Customer as shown on the BSA, in respect of such Site, either party shall thereafter be entitled to terminate the BSA without penalty, save as to re-imbursing Urban Wimax for any reasonable survey and administrative costs incurred by Urban Wimax, subject to prior written notice to the other party.
- 3.7 The Customer shall reimburse Urban Wimax for all charges incurred and/or committed to by Urban Wimax as a result of Urban Wimax or its nominated third party not being permitted access to the Site or any third party premises on the dates and times agreed with the Customer. Urban Wimax shall provide reasonable documentary evidence of such charges being incurred and/or committed to.
- 3.8 Urban Wimax shall comply with such reasonable safety and security requirements in relation to the Site as notified to Urban Wimax by the Customer in writing at least three days prior to Urban Wimax's attendance at the Site.

## 4 INSTALLATION

- 4.1 Following the satisfaction of the conditions precedent set out in clauses 3.1, 3.2 and 3.2, Urban Wimax shall or shall procure that a third party shall:
- (a) install the Equipment at the Site; and
  - (b) carry out an activation and quality check of the Services at the Site;
- at such time as shall be mutually agreed between the Customer and Urban Wimax.
- 4.2 The Customer shall be responsible for clearing and preparing the Site in readiness for the installation of the Equipment, including providing connections to stable electrical power and the Customer shall, at its own expense, comply with Urban Wimax's reasonable instructions regarding preparation of the Site for delivery and installation of the Equipment.
- 4.3 Installation shall be deemed completed when Urban Wimax notifies the Customer that Installation has been successfully completed and that the connection is ready for use.
- 4.4 Urban Wimax undertakes to take all reasonable care to minimise the impact of the Installation, however, following Installation of the Equipment, the Customer will be responsible for putting back any items moved and any redecoration which may be required.
- 4.5 In the event that Urban Wimax cannot provide the Services requested because:
- (a) the location of the Site will not support the required SLA; and/or

- (b) the installation and/or checks cannot be successfully completed

Urban Wimax will notify the Customer as soon as possible, which will normally be prior to completion of the inspection of the Site as referred to in clause 3.1(d).

- 4.6 If a different level of Services can be provided, the parties shall discuss whether to adjust the SLA requirement for some or all of the Sites.
- 4.7 The Service will be provided and charged for from the Ready For Service Date. The Ready For Service Date will be the date on which all of the following activities have been completed:
  - (a) the Equipment has been installed and tested;
  - (b) the Equipment has been configured and functional testing has been completed;
  - (c) the Installation Sign-Off Document has been signed and dated by the Customer; and/or
  - (d) in the case of a 3<sup>rd</sup> party fibre installation at the Customer Site, the Customer is advised that the Service is ready for use. In this case, the Customer has the right to reject the Service as being ready for use by notice in writing or by email within 5 working days of the Ready For Service Date. If the Customer (a) does not reject the Service as being ready for use within that time; or (b) uses the Service other than for testing purposes, the Service will be deemed accepted.

## **5 CUSTOMER OBLIGATIONS**

- 5.1 During the Term, the Customer shall, in addition to the obligations set out elsewhere in the Contract, make reasonable and timely endeavours to:
  - (a) Customer shall be under an obligation to continue working in good faith to obtain the Consents subject to the provisions of the Clause "3 CONDITIONS PRECEDENT TO THE PROVISION OF THE SERVICES".
  - (b) comply with the Customer's obligations under the Contract, including (without limitation) in respect of use of the Equipment (clause 6);
  - (c) only use the Services and the Equipment in accordance with the Acceptable Use Policy and Urban Wimax's instructions and those of its officers, employees, agents or representatives;
  - (d) provide Urban Wimax with such assistance, information and facilities as Urban Wimax may reasonably request to enable it to perform its obligations under this Contract, including but not limited to providing access to the Site and procuring any necessary access to any third party premises where required;
  - (e) supply on an ongoing basis, all space, power supply access points, cables, trunking, electricity and air-conditioning as are required to receive the Services at the Site;
  - (f) respond to all requests for approval and within any deadline reasonably stipulated by Urban Wimax. Urban Wimax shall be entitled to rely upon any act, decision or approval of the Customer Nominated Contact and the Customer shall be bound by any such act, decision or approval of the Customer Nominated Contact;
  - (g) keep to appointments to install, that are confirmed by Urban Wimax with the Customer 48 hours before the Installation Date. In the event that the Customer subsequently cancels or does not

keep the appointment, Urban Wimax reserves the right to make a charge in accordance with the Price List.

- (h) respond to all requests by Customer Services in respect of resolving any reported fault. In the event that the Customer Nominated Contact is not available, Urban Wimax shall rely on the Customer delegating an appropriate alternate contact to work with Customer Services in resolving the fault;
- (i) inform Urban Wimax if any Customer information set out in the BSA changes;
- (j) extend the timelines applicable to the performance of the Services as stated in the SLA by an equivalent period where the Customer fails to comply with clauses in 5.1 above and this impacts upon the Services and Urban Wimax's ability to meet the Installation Date or any other timelines agreed between the parties,;
- (k) comply with all other reasonable requests of Urban Wimax and ensure that its own employees, agents and sub-contractors comply with the obligations of the Customer as set out in this Contract.

5.2 The Customer shall indemnify and hold harmless Urban Wimax from and against any and all liability, costs (including legal costs), claims, expenses, actions, proceedings or damages incurred or suffered by Urban Wimax or any of its employees, agents or contractors as a result of any breach or alleged breach of the Customer's warranties, obligations and undertakings. The liability of the Customer under this clause shall be limited to the amount that would have been payable, by the Customer to Urban Wimax, under the Minimum Period.

5.3 If content or software is provided as part of the Service, the Customer agrees to comply with the terms of use for the content or software.

## **6 EQUIPMENT**

6.1 The Equipment is and shall remain at all times the property of Urban Wimax or its relevant third party fibre supplier notwithstanding that the Equipment has become incorporated in or affixed to the Site or otherwise and the Customer shall have no right, title to nor interest in the Equipment, and shall possess the Equipment as bailee only unless otherwise expressly agreed in writing such that the ownership in the Equipment is transferred to the Customer.

6.2 Urban Wimax has the right to recover any and all Equipment at any time including, without limitation, in the event that the Services are suspended or a Contract is terminated.

6.3 The Customer shall ensure that any Landlord to the Customer waives any rights they may otherwise enjoy over the Equipment.

6.4 In the event that:

- (a) the Equipment fails, unless due to the default or negligence of Customer or its agents, Urban Wimax will correct the problem at its own cost;
- (b) the Equipment fails due to the default or negligence of Customer or its agents, Urban Wimax will correct any such failure and charge the Customer for the work done in accordance with the Price List;

- (c) the cabling between Equipments fails, Urban Wimax will correct any such failure and charge the Customer for the work done in accordance with the Price List, unless the failure is due to insufficient specification of the cable, in which case Urban Wimax will correct the problem at its own cost;
  - (d) other equipment sold to the Customer fails, the Customer shall be responsible for and bear the costs of replacing such equipment.
- 6.5 The Customer shall promptly notify Urban Wimax in the event that any part of the Equipment fails, is stolen or damaged. The Customer shall be responsible for, and shall indemnify Urban Wimax for all costs in connection with, any loss of or damage to the Equipment howsoever caused, save for any such loss or damage caused by the negligence of Urban Wimax, or directly by an Act of God.
- 6.6 Any costs incurred by Urban Wimax in investigating alleged faults or failures of the Equipment notified by the Customer which are later found not to exist shall be charged to the Customer in accordance with the current standard Price List.
- 6.7 The Customer shall:
- (a) take reasonable care of the Equipment. If the Customer fails to prevent damage to the Equipment, the Customer shall be held solely responsible for the costs of repair or replacement save for any such loss or damage caused by the negligence of Urban Wimax;
  - (b) not tamper, interfere with, alter, damage, obscure (so as to prevent normal operation or access) or attempt to repair the Equipment or request that a third party do so without Urban Wimax's prior written consent, nor remove the Equipment from the Site.
- 6.8 If the Customer connects alternative or additional equipment to the Urban Wimax Network other than by the specified connection, then:
- (a) Urban Wimax shall not be responsible for and shall have no liability to the Customer for any detriment to the Services that may occur as a result of connecting such equipment.
  - (b) such alternative equipment must be technically compatible with the Services and not cause harm to the Urban Wimax Network or any other customer's equipment;
  - (c) such alternative equipment must at all times follow Urban Wimax recommendations and not breach any standards or laws in force; and
  - (d) the Customer must immediately and permanently disconnect the alternative or additional equipment if instructed to do so by Urban Wimax.

## **7 CHARGES**

- 7.1 The Customer shall pay to Urban Wimax the Usage Charges, Services Charges, and other One-off Charges as may apply from time to time including (without limitation) in connection with the Installation of the Equipment and provision of the Services.
- 7.2 The Charges will be calculated in accordance with the Price List, the BSA and any applicable offers available or made available to the Customer. Urban Wimax will begin charging the Service Charge from the Ready for Service Date.
- 7.3 Subject to clause 7.4, Urban Wimax shall invoice normally monthly for:

- (a) the Service Charge in advance for the month and, where applicable, pro rata for the initial period prior to the beginning of that month;
- (b) Usage Charges measured for the last month in arrears;
- (c) One off Charges.

**7.4 In the event that:-**

- (a) the Services to be provided are of a duration of 3 months or less, then the Customer is required to pay in advance, before the provision of the Services, the total forecast Charges to be invoiced for the Services including the vat thereon. Urban Wimax may retain the advance payment to the extent that payment has not otherwise been received for the Services,
- (b) Urban Wimax shall or is likely to incur significant cost in providing the Services or if Urban Wimax otherwise requires, it may request that the Customer pay a deposit as guarantee of payment in relation to future Charges. Urban Wimax may retain the deposit, to the extent that payment has not otherwise been received for the Services, or if the Equipment has been lost or damaged.
- (c) Urban Wimax incur additional cost because of any delay or failure by the Customer to perform the Customer's obligations or responsibilities under the BSA, Urban Wimax is entitled to be compensated by the Customer for such additional costs.
- (d) Logged faults are ultimately diagnosed as being the responsibility of the Customer, or caused by the Customer breaching any of their obligations or failing to perform their responsibilities, Urban Wimax is entitled to charge the Customer for the additional costs including any repair costs.

**7.5 (e) Where Site visits in respect of installations and fault repairs are aborted by the Customer, Urban Wimax is entitled to charge the Customer for additional costs. The Customer shall pay the invoice together with any VAT due thereon, within 14 days of the date of the relevant invoice. The Customer shall authorise a Direct Debit mandate to pay to Urban Wimax the amount(s) invoiced in accordance with this Contract. In the event that a Direct Debit mandate is not authorised, then for the period there is no authorised mandate, Urban Wimax reserves the right to charge an additional fee no greater than 10% of the contracted monthly charges. In the event that the Direct Debit is subsequently returned unpaid, Urban Wimax reserves the right to charge the Customer a sum of up to £40 plus Vat for each occurrence as a contribution towards the additional administration costs associated with collecting the Charges.**

**7.6 Where any sums are outstanding, Urban Wimax shall be entitled to:**

- (a) suspend provision of the Services if payment is not made within 7 days of notice requiring the Customer to pay; and/or
- (b) charge interest on all overdue payments at the rate of 4% per annum above the London Interbank base rate from time to time from the due date for payment until actual payment, whether before or after judgment, calculated on a daily basis, and without prejudice to any of its other rights contained in this Contract or to any existing claim.

**7.7 Urban Wimax reserves the right to revise the Charges (or part thereof) upwards or downwards in response to market conditions, legal or regulatory changes, third party supplier increases and/or service related changes subject to written notification to the Customer, including by way of a notice in Customer's invoice. A notice of decrease in Charges will take immediate effect. Subject to the remainder of this clause, a notice of increase in Charges will take effect no sooner than fifteen days**

after the date of the notification except that where the Customer does not agree with the increase, the Customer shall have 10 days from the date of the notice of increase within which (a) to seek an explanation of the increase and, if not satisfied with the explanation (b) to give notice to Urban Wimax in writing of termination of the affected Services. Upon expiry of the ten day period, the Customer shall be deemed to have accepted the relevant increase in Charges. Where Customer has given a valid notice of termination in accordance with the terms of the preceding sentence, the relevant increase in Charges shall only take effect in relation to such a Customer 30 days after the date of issue by the Customer of Customer's notice of termination. .

## **8 TERM AND TERMINATION**

8.1 This Contract shall commence on the date that the BSA is signed by Urban Wimax and, subject to earlier termination, shall continue for the Minimum Period and thereafter unless either party gives to the other at least 3 calendar months' written notice to terminate, such notice not to expire before the end of the Minimum Period.

8.2 Urban Wimax may, at its discretion, suspend the Services and/or terminate the Contract without liability for such termination:

(a) immediately in the event that:

- (i) the Customer is in material or persistent breach of any of its obligations under this Contract and fails to remedy such breach (if capable of remedy) within two (2) days after notice in writing to the Customer from Urban Wimax; or
- (ii) Urban Wimax has sufficient reason to believe that the Customer is using the Services in breach of clause 5.1b and the Customer fails to remedy such breach within two (2) days after notice in writing to the Customer from Urban Wimax;
- (iii) the Customer's Landlord requires the removal of Equipment under the terms of a wayleave agreement between the Customer's Landlord and the Customer.

(b) immediately by notice to the Customer if:

- (i) the Customer enters into any composition or arrangement with its creditors generally or is unable to pay its debts within the meaning of Section 123(1) of the Insolvency Act 1986; or
- (ii) an encumbrancer lawfully takes possession or an administrative receiver is validly appointed over the whole or any part of the undertaking, property or assets of the Customer; or
- (iii) an order is made or a resolution is passed or a notice is issued concerning a meeting for the purpose of passing a resolution or any analogous proceedings are taken for the appointment of an administrator of or the winding up of the Customer; or
- (iv) Urban Wimax is required by law or any relevant authority to cease providing the relevant Services.

8.3 The Customer may terminate the Contract on written notice to Urban Wimax in the event that Urban Wimax is in material or persistent breach of any of its obligations under this Contract and fails to remedy such breach (if capable of remedy) within 28 days after notice in writing from Customer.

- 8.4 Termination of this Contract for any reason whatsoever shall be without prejudice to any rights and remedies of the parties accrued prior to such termination.
- 8.5 In the event of termination for whatever reason, Urban Wimax may enter the Site to remove the Equipment at a mutually agreed time not to be unreasonably refused or delayed.
- 8.6 In the event that Urban Wimax terminates the Contract pursuant to clause 8.2, or the Customer terminates a Service without giving notice in compliance with the terms of clause 8.1, then, without prejudice to any other right or remedy to which it is entitled by law, Urban Wimax shall be entitled to charge Customer (a) the balance of any unpaid Charges up to the date of effective termination; together with (b) the full balance of the unpaid Service Charges for the terminated Service due up until the end of the Minimum Period. The Customer shall make the Equipment available for collection by Urban Wimax at any time during standard UK office hours. To the extent that the Equipment is unavailable for collection by Urban Wimax when it arrives at the Site, then Urban Wimax shall additionally be entitled to charge the Customer for its subsequent out of pocket costs of recovering such Equipment.
- 8.7 In the event that the Customer terminates the Contract without giving notice in compliance with the terms of clause 8.1 and there has been no Installation, then Urban Wimax shall be entitled to charge the Customer the full balance of the unpaid Service Charges for the terminated Service due up until the end of the Minimum Period where the Minimum Period starts from the date of signing of the BSA.
- 8.8 Where the Service or a part of the Service is ordered from and provided by a 3<sup>rd</sup> party fibre supplier, in the event that the Customer terminates the Contract without giving notice in compliance with the terms of clause 8.1 and there has been no Installation, or there has been a significant modification (for example a change of the Site) Urban Wimax shall be entitled, without prejudice to any other right or remedy to which it is entitled by law, to charge the Customer the charges for Installation that Urban Wimax has incurred and/or committed to with a 15% uplift to cover related administration costs of Urban Wimax.

## 9 LIABILITY

- 9.1 Nothing in this Contract shall limit either party's liability for death or personal injury caused by its negligence, or for fraudulent misrepresentation.
- 9.2 Subject to clause 9.1, Urban Wimax limits its liability under this Contract, whether such liability arises in contract, tort (including without limitation negligence), under any indemnity or otherwise, as follows:
- (a) the maximum liability of Urban Wimax for damage to or loss of physical property of the Customer shall be limited to £100,000 for each claim or series of related claims and shall not in aggregate exceed £1 million;
  - (b) except for liabilities under sub-clause (a) above, the maximum liability of Urban Wimax for all claims under this Contract shall be limited to lower of (a) the aggregate of the Charges paid in each 12 month-period (calculated from the Commencement Date); or (b) £100,000; and
  - (c) Urban Wimax shall not be liable for loss of business, use, profit, anticipated profit, contracts, revenues, goodwill or anticipated savings, loss of data or loss of use of data, or consequential, special or indirect loss or damage, howsoever caused and whether or not Urban Wimax was warned of the possibility.
- 9.3 Urban Wimax does not endorse/warrant any goods or services offered through the Services by a third party and does not monitor any transaction between the Customer and such a third party.

9.4 The Services allow access to the Internet. The Internet is separate from the Services and use of the Internet is at the Customer's own risk and subject to any applicable laws. Urban Wimax has no responsibility for any goods, services, information, software, or other materials the Customer obtains when using the Internet (including email). The Customer is responsible for ensuring any computer is adequately protected against viruses.

## **10 FORCE MAJEURE**

10.1 If either Party is prevented or delayed in the performance of any of its obligations under this Contract by Force Majeure, that party shall have no liability in respect of the performance of such of its obligations as are prevented by the Force Majeure events during the continuation of such events.

10.2 In the event of:

(a) Urban Wimax being prevented from supplying the Service by a refusal or delay by a third party to supply services, equipment or rights, and where there is no alternative service available at reasonable cost; or

(b) Urban Wimax being prevented by restrictions of a legal or regulatory nature from supplying the Service.

Urban Wimax will have no liability to the Customer for failure to supply the Service.

10.3 If any of the events detailed in clauses 10.1 and 10.2 continue for more than thirty (30) days, either Party may serve notice on the other terminating the affected part of the Service, without liability to the other Party

## **11 COMPLAINTS PROCEDURE**

11.1 If any dispute arises out of the Contract, the parties shall attempt to settle it by negotiation for a period of at least 14 days. To this end they shall use their respective reasonable endeavours to consult or negotiate with each other in good faith, and recognising their mutual interests, attempt to reach a just and equitable settlement satisfactory to both parties. Negotiations shall be conducted between the respective senior executives of the parties who have authority to settle disputes.

11.2

## **12 APPLICATION OF TERMS**

12.1 This Contract shall govern the provision of the Services by Urban Wimax to the Customer. By submitting a BSA signed by the Customer, the Customer is deemed to have made an offer for the Services and Urban Wimax is not bound by the BSA until the BSA is accepted by the signature of Urban Wimax on the BSA. By submitting a BSA, the Customer is deemed to have accepted the terms of this Contract in their entirety. No other terms and conditions shall apply relating to the supply of the Services to the Customer including, without limitation, the Customer's terms and conditions (if any, howsoever provided, and whether supplied previously or at any time in the future), unless agreed in writing or by email between both parties.

12.2 The terms of this Contract are complete and exhaustive and shall be in substitution for any oral arrangements made between Urban Wimax and the Customer. Should there be any inconsistency between the terms of the documents forming the Contract, the documents shall rank in the following order to establish which terms prevail: the BSA; these Conditions; the Acceptable Use Policy; the Price List; and the SLA.

- 12.3 No addition or amendment to or exclusion or substitution of the terms of this Contract by the Customer will be accepted by Urban Wimax unless signed by an authorised signatory of Urban Wimax or notified to Customer in accordance with the provisions of clause 12.4 below.
- 12.4 Urban Wimax reserves the right to change these Conditions from time to time, and the Customer's continued use of the Service/s without raising any objection within 10 days of notification to such change shall be deemed to be the Customer's acceptance of the change. Urban Wimax will publish any changes to its the Conditions on the Urban Wimax Website.

### **13 GENERAL**

- 13.1 Rights and obligations under the Contract may not be assigned by either party without the written consent of the other provided that Urban Wimax shall be entitled to assign the benefit of the Contract in its discretion and without consent to a purchaser of substantially all of its assets or to any of its subsidiary or associated companies.
- 13.2 No waiver by Urban Wimax of any breach of any term of the Contract by the Customer shall be considered as a waiver of any subsequent breach of the same or any other provision.
- 13.3 If any provision of the Contract is held by any competent authority to be invalid or unenforceable in whole or in part the validity of the other provisions of the Contract and the remainder of the provision in question shall not be affected thereby.
- 13.4 A person who is not a party to the Contract may not have the right under the Contracts (Rights of Third Parties) Act 1999 to rely upon or enforce any term of the Contract.

### **14 NOTICES**

- 14.1 Any notices to be served by either party on the other shall be:
- (a) in the case of Urban Wimax sending notice, by post or email to the address for the Customer set out in Section 1 of the BSA and marked for the attention of the Customer Nominated Contact.
  - (b) in the case of the Customer sending notice, by post to the address shown on Urban Wimax's invoice or any alternative address provided by Urban Wimax; or by email to [Customer.services@Urbanwimax.co.uk](mailto:Customer.services@Urbanwimax.co.uk)
- 14.2 Such notice shall be deemed to have been received by the addressee within 72 (seventy two) hours of posting or 24 (twenty four) hours (excluding non business days) if sent by email where sent to the correct address or email address of the addressee and where applicable evidence of posting and/or transmission is retained.

### **15 GOVERNING LAW AND JURISDICTION**

- 15.1 The Contract shall be interpreted in all respects in accordance with English law and the parties submit to the non-exclusive jurisdiction of the English courts in all matters pertaining thereto.

## SCHEDULE 1

### ACCEPTABLE USE POLICY

#### Introduction

Urban Wimax's relationships with its clients, other networks, and ultimately its connectivity to the rest of the internet, require its clients to behave responsibly. Accordingly, Urban Wimax cannot permit irresponsible behaviour by its clients, which could damage these relationships, Urban Wimax's network or the use of the internet by others. Compliance with this Acceptable Use Policy is a contractual requirement. If you fail to do so, your service may be suspended or terminated.

#### Illegal Activities

You must not, by using the service, possess or transmit illegal material. You should be aware that as the internet is a global network, some activities/material which may be legal in the UK, may be illegal elsewhere in the world and vice versa. When you visit a website, a copy of the visited pages is stored on your pc in the web browsers' cache files. Storage of illegal material in this way may well be a criminal offence, as well as contravening this Acceptable Use Policy. If you are in any doubt as to the legality of anything, don't do it and take independent legal advice before proceeding. You must not gain or attempt to gain unauthorised access to any computer systems for any purpose, including accessing the internet. As well as being in breach of your contract for the particular service, such hacking or attempted hacking is a criminal offence.

#### Forging Addresses

You must not send data via the internet which has forged addresses or which is deliberately constructed to adversely affect remote machines. You must not configure your pc as an open relay system.

#### Port Scanning

You must not run "port scanning" software which accesses remote machines or networks, except with the explicit prior permission of the administrator or owner of such remote machines or networks. This includes using applications capable of scanning the ports of other internet users. If you intend to run a port scanning application, you must provide Urban Wimax with a copy of the written consent received from the target of the scan authorising the activity. This must be supplied to Urban Wimax prior to the application being run.

#### Spam or Unsolicited Email

You must not participate in the sending of unsolicited bulk email or any other form of email or Usenet "abuse". This applies to material which originates on your system as well as third party material which passes through your system.

#### Internet Connection Sharing

If you share the resources of your internet connection over a Private Network on your premises, you must make sure that your network is secure, and that any internet Connection Sharing software that you are using does not permit access from outside of your network. This is especially important if running an "Open Proxy Server". This is because an "Open Proxy Server" will allow other users of the internet to exploit your internet connection, and use it as if it were their own. For example, an external user could access your local network or send unsolicited e-mail(s) that would appear to come from you.

**What action will Urban Wimax Take?**

Compliance with this Acceptable Use Policy is a contractual requirement. If you fail to do so, your service may be suspended or terminated. Urban Wimax may operate systems to ensure compliance with this AUP, including without limitation port scanning and testing of open servers and mail relays. Clients who engage in abusive behaviour will be notified that their behaviour is unacceptable and may have their accounts suspended or terminated.

**Account Restoration**

A suspended account may be restored at Urban Wimax's discretion, upon receipt of a written undertaking by the abuser not to commit any future "abuse". All cases are, however, considered by Urban Wimax on their individual merits.