



# SUPPORT AGREEMENT

**Mimomax Wireless Incorporated**

**And**

**County of Monterey**

Date: 14 February 2023



## CONTACT INFORMATION

### Mimomax Wireless Incorporated

Mimomax Wireless Incorporated  
4630 East Elwood Street, Suite 4  
Phoenix, Arizona  
USA

For office address and telephone numbers, refer to <http://www.mimomax.com>

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All trade names referenced are the service mark, trademark, or registered trademark of the respective manufacturers.



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## SUPPORT AGREEMENT

THIS Support Agreement is made on the 30<sup>th</sup> day of November 2022 "Agreement".

**BETWEEN "MIMOMAX"**      Mimomax Wireless Incorporated  
*[choose one]*                      4630 East Elwood Street, Suite 4  
   Phoenix, AZ, 85040  
   USA

**AND "Client"**                      County of Monterey – IT Department  
   855 East Laurel Drive, Bldg., D  
   Salinas, CA 93905  
   USA

### BACKGROUND:

1. Mimomax has supplied Point to Point Radio Equipment, Accessories and Antennas to the Client under the "Mimomax Terms of Supply".
2. Mimomax has agreed to provide, and Client has agreed to purchase certain Support Services in accordance with the terms of this Agreement.
3. This Agreement defines the principal activities and responsibilities of all parties for the support of the Solution.
4. Variations to this Support Agreement are subject to mutual agreement between Mimomax and Client and will be addressed in accordance with Section E clause 14.2.

### AGREEMENT OVERVIEW

This Agreement consists of this front cover and the following Sections:

Section A	Agreement Details
Section B	Roles, Responsibilities, Escalation Points
Section C	Support Agreement
Section D	Additional Charges
Section E	General Terms and Conditions
Section F	Glossary of Terms
Appendix A	Critical Spares
Appendix B	Equipment covered



In case of any conflict between the Sections the earlier listed shall take precedence.

The Parties have entered into and signed this Support Agreement this 30<sup>th</sup> day of November 2022 on their behalf by duly authorized officers:

DocuSigned by:  
*Paul Reid*  
08A784FBE2224BF...

1/30/2023 | 3:00 PM EST

Signed for Mimomax:

Date

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Name Paul Reid

Signed for the Client:

---

Name Eric A. Chatham

Date

DocuSigned by:  
*Samuel Beiderwell*  
61542069561440E...  
Samuel Beiderwell,  
Deputy County Counsel

1/30/2023 | 1:19 PM PST



## SECTION A – AGREEMENT DETAILS

### AGREEMENT DETAILS

1	<b>Client</b>	County of Monterey – IT Department
2	<b>Client Address for Notices</b>	INFORMATION TECHNOLOGY 1590 MOFFETT ST SALINAS CA 93905
3	<b>Client Support Manager</b>	Steve Paxton
4	<b>Client Solution and Products including licensed Software</b>	<p><b>Products</b></p> <p>MWL-TORNADO-BCBA - Radio Tornado (LRU-T), QAM64 / 240kbps – (8)</p> <p>INT-NIB-4WA-000-0000 - Tornado 6 x 4Wire E+M – (6)</p> <p>INT-TMC-X21-000-0000 - Tornado Media Converter X21/RS422/RS530 – (6)</p> <p>ACC-CBL-DC-0200 - Tornado / Pyxis DC Connector &amp; Lead – (6)</p> <p>ANT-440-470-009-PD0H - UHF MIMO Panel, Low Profile, 440-470MHz, 9dBi, 2x N-Female, HD Mtg – (4)</p> <p>ANT-440-470-012-PD01 - Dual Vertical Stacked UHF Panel BoM Antennas 12dBi – (2)</p> <p>ACC-MNT-RMT-001-0000 - Tornado / Pyxis/4WA 1RU 19" Rack Mount – (6)</p> <p>ACC-MNT-RMT-004-0000 - Tornado 1RU 19" Rack Mount, incl Media Conv Tray – (6)</p> <p><b>SFE</b></p> <p>SFE-TORNADO-MCAM - Tornado - Adaptive Modulation (6)</p>



		Products (the "Solution") are offered as per Terms and Conditions outlined in NASPO Agreement #00318 and CA Addendum #7-22-70-49-12
5	<b>Commencement Date</b>	Radio Equipment Shipment Date
6	<b>Term of Agreement</b>	12 Months
7	<b>Support Fee</b>	Support - \$3,452.93 (excl. tax) Extended Warranty - \$1,810.00 (excl. tax)
8	<b>Review of Support Fee and Additional Charges</b>	Support Fees will be reviewed as Products are added or removed from the network, on the expiry of the agreement.  Mimomax may increase the Support Fee and the rates for Additional Charges annually on each anniversary of the Commencement Date to take into consideration movements in the Consumer Price Index United States for the published period immediately prior to the renewal date.
9	<b>Renewal of Agreement</b>	If Client wishes to renew this Agreement at the end of the Term of this Agreement, contact should be made with the Mimomax Account Manager or Client Services Manager.



## SECTION B – ROLES, RESPONSIBILITIES, ESCALATION CONTACTS

	Mimomax	Client
Role Under This Agreement	Mimomax is responsible for providing the Support Services described in Section C	The Client is responsible for providing First Level Support described in Clause 4 of Section E (General Terms and Conditions).
	Service Desk to log/action all support tickets (Incidents and Service Requests). All support queries, requests and issues should be sent via email or submitted via the online portal, and any Priority 1 or 2 Incidents also via phone.	Status updates, queries or completion notices regarding service tickets raised with the Mimomax Support team, will be directed to the Client's contact who raised the ticket with the Support team unless requested otherwise.
Key Contacts		
	<b>Support Team</b> Email <a href="mailto:support@mimomax.com">support@mimomax.com</a> Phone +1-833-406-9051 Online <a href="https://desk.zoho.com/portal/mimomaxwireless">https://desk.zoho.com/portal/mimomaxwireless</a>	<b>Client Contact Centre</b> Jeff Ackerman <a href="mailto:ackermanj@co.monterey.ca.us">ackermanj@co.monterey.ca.us</a> 831-796-1328
	<b>GM Client Services</b> Fabian Deelen Email <a href="mailto:fabian.deelen@mimomax.com">fabian.deelen@mimomax.com</a> Phone +1 480 494 1750 / +64 21 245 4995	<b>Client Support Manager</b> Steven Paxton <a href="mailto:paxtons@co.monterey.ca.us">paxtons@co.monterey.ca.us</a> 831-796-1463
	<b>Account Manager</b> Dennis Sullivan Regional Sales Manager Email <a href="mailto:Dennis.Sullivan@mimomax.com">Dennis.Sullivan@mimomax.com</a> Phone +1 425 466 9500	<b>Client Representative</b> Steven Paxton Radio Manager <a href="mailto:paxtons@co.monterey.ca.us">paxtons@co.monterey.ca.us</a> 831-796-1463
	The parties shall endeavour to cooperatively resolve any disputes arising in connection with this Agreement and the Support Services. If a dispute or	





	difference cannot be resolved within the normal course of business, then either party may refer the dispute to the nominated escalation points below. Clause 14.6 shall apply.	
<b>Escalation Points</b>	<b>CEO</b> Paul Reid  Email <a href="mailto:paul.reid@mimomax.com">paul.reid@mimomax.com</a>  Phone +1 832 387 3349	<b>Client Escalation Point</b> Steven Paxton Radio Manager <a href="mailto:paxtons@co.monterey.ca.us">paxtons@co.monterey.ca.us</a> 831-796-1463



## SECTION C – SUPPORT SERVICES

### Mimomax Support Plans

Client has selected the Mimomax Support Agreement plan set out below. Elements are described in the remainder of this Section C.

Optional support services (being services not covered by the plan below) are not included in the price for the Services contracted under this Agreement. Optional support services may be purchased for an additional cost and subject to Mimomax agreement.

	<b>Support Agreement</b>
Service Desk	24 x 7
Return for Repair	Defects Only
Software Maintenance*	Included
Onsite Dispatch/Restoration	Option

\*Software Maintenance includes software releases within your licensed feature set for covered Products.



## Mimomax Support Agreement

The Support Agreement includes the following services as explained below: Mimomax Service Desk: 24 x 7 Technical Support, Technical Resources, and Software Maintenance.

### 1. MIMOMAX SERVICE DESK: 24 X 7 TECHNICAL SUPPORT

Included	Yes	<input checked="" type="checkbox"/>	No	<input type="checkbox"/>
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- 1.1 Mimomax will provide a Service Desk solution to the Client that includes:
  - a. Single point of contact for all support related matters for Products covered by this Agreement including Partner Products.
  - b. 24 x 7 Response in accordance with the times set out in Table 1.6.
  - c. Telephone access to Mimomax Engineering personnel to log / identify / troubleshoot faults and issues with the Solution and Products covered under this Agreement.
  - d. Remote diagnostics and restoration where possible.
  - e. Access to repair and warranty information.
  - f. Access to Technical, Product and Solution information.
  - g. General support queries, configuration queries, requests for quotations for enhancements.
- 1.2 The Service Desk serves as the single point of contact regarding Client support and the reporting of Incidents.
- 1.3 The Service Desk will provide email, online and telephone support.
- 1.4 Client must ship or return the Product to the service depot located in Phoenix, Arizona.
- 1.5 Mimomax shall repair or replace returned Products (or arrange for the repair / replacement of Partner Products) and dispatch to the Client, subject to the applicable warranty terms of this Agreement and the Mimomax Terms of Supply.

#### 1.6 Target Response and Target Restoration Times

Response Time is defined as the time from when Client reports an Incident to the Service Desk and ends when a suitably qualified Mimomax Support Engineer contacts Client.

Restoration Time is defined as the time from when Client reports an Incident to the Service Desk and ends when the Product or Solution is re-stabilized and carrying normal traffic levels which may be via a workaround or replacement Product(s) as applicable. Where replacement Products are required, it is assumed that the Client will carry spare equipment and have staff to deploy these in a suitable timeframe, to cater for Solution outages. Below mentioned restoration timeframes do not apply to RMA requests and are set on a case-by-case basis.



Table 2.6

Incident (type)	Response (Hours)	Restoration (Target*** - Hours)
Priority 1*	0.5	4
Priority 2*	1	8
Priority 3**	8	48
Priority 4**	8	168

\*Priority 1 and 2 incidents will be responded to and managed continuously 24 hours a day, 365 days a year.

\*\*Priority 3 and 4 incidents will be responded to and managed during Mimomax Service Desk's local Business Hours. Software and firmware changes for these levels of Incidents are excluded from the restoration target and delivery expectations specified above. Appropriate targets and expectations will be set on a case-by-case basis.

\*\*\*Stated Restoration Times are targets only. Mimomax shall use reasonable commercial efforts to restore or resolve Incidents within the stated Restorations Times, but Mimomax does not warrant, guarantee or undertake that it will be able to do so.



## 2. SOFTWARE MAINTENANCE

Included	Yes	<input checked="" type="checkbox"/>	No	<input type="checkbox"/>
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- 2.1 Client is entitled to receive Software and firmware releases relevant to and within the licensed feature set of the Products purchased by the Client (see Section A-4)
- 2.2 Any Mimomax Services or hardware required for the implementation of a Software release may be purchased from Mimomax at an additional charge (unless stated otherwise in this Agreement).
- 2.3 Mimomax will provide Technical Support (described in Section C-2) for the current and up to two previous market releases of Software and firmware. Technical Support for previous Software releases is at Mimomax's discretion and may be subject to Additional Charges,
- 2.4 Mimomax shall maintain (i.e. provide bug fixes, modifications and improvements) only the current Software release for any Product. If Client has a Problem with a non-current release of Software, Client may be required to install the most current version of Software in order to remedy such Problem.
- 2.5 This Section and the Support Fees do not include the provision of Client requested enhancements, modifications, or developments. Any such enhancement, modification or development may be requested by Client via the Mimomax Service Desk. Mimomax at its option may (a) provide the Client with a quotation for undertaking the request; and / or (b) endeavour to include the request in a future Software release; or (c) where not feasible for commercial, technical or other reasons, decline the request.

### Optional Elements

The following optional Services elements are not included in the price of Support Agreement, but can be added for an additional cost in conjunction with Mimomax's agreement:

- Managed Services
- Network Health Monitoring
- Commissioning
- Testing (Lab, Field, Acceptance)
- Training
- Documentation
- Project Management
- Project Engineering
- Integration services
- RF Engineering (design/planning/analysis)
- Warehousing and Logistics Management



### 3. EXTENDED WARRANTY

Included	Yes	<input checked="" type="checkbox"/>	No	<input type="checkbox"/>
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- 3.1 Client is entitled to Mimomax Warranty on Products (hardware) as described in the Mimomax Terms of Supply on Products purchased from Mimomax for the standard Warranty Period of 15 months plus any agreed extension period outlined below.
- 3.2 Extended Warranty extends Client’s warranty rights and obligations (under the same terms as the Mimomax Terms of Supply referred to above) for the additional period specified below.
- 3.3 Client shall contact Mimomax for Warranty Services via the Mimomax Service Desk.
- 3.4 Client shall contact the Mimomax Account Manager or Client Services Manager if it would like to extend the warranty of any purchased Mimomax Products, beyond below mentioned extension period covered by this Agreement.

Agreed Extension Period	12 Months (from the moment factory warranty expires)
Custom Elements	



#### 4. ONSITE DISPATCH/RESTORATION

Included	Yes	<input type="checkbox"/>	No	<input checked="" type="checkbox"/>
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- 4.1 When Mimomax is unable to return the Client's Solution to normal operation through remote technical support, Mimomax will dispatch a technician/engineer to attend site to diagnose and restore the Client's radio network, by the end of the next Business Day.
- 4.2 Onsite dispatch/restoration is a chargeable service, see section D for applicable rates. The rates for Onsite dispatch include standard travel expenses to locations with regular commercial air service and readily accessible sites. Special rates apply to networks without commercial air service or readily accessible sites.

<b>Client Specific Notes</b>	N/A	
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## SECTION D – Additional Charges

Standard labour rate and involved travel expenses for on-site support are not covered by this Agreement. Check with the Mimomax Account Manager for more services and pricing.





## SECTION E – General Terms & Conditions

### 1. Term

- 1.1 The Term of this Agreement shall be the term specified in Section A commencing on the Commencement Date, provided that the parties may mutually agree in writing to extend this Agreement on terms and conditions to be mutually agreed between the parties prior to the expiry of the then current Term.

### 2. Mimomax Support

- 2.1 During the Term Mimomax shall provide the Services in consideration of payment by Client of the Support Fees.
- 2.2 Services shall be supplied for the Products at the Sites and unless agreed otherwise in writing, Mimomax shall not be obligated to provide the Services for the Products located at any other site(s). Any products and/or systems not listed in the Agreement (“Additional Products”) shall only be covered by the Agreement where agreed in writing by the Parties.
- 2.3 Except in response to warranty claims during the warranty period for any Product, Mimomax may supply new, second-hand or reconditioned replacement parts in the performance of Services or Excepted Services (as defined in clause 2.5).
- 2.4 Only the Services described in Section C as being in scope for this Agreement shall be provided. Mimomax shall not provide the Excepted Services, unless it expressly agrees to otherwise in writing.

#### Excepted Services

- 2.5 The Services shall not include the following services (the “Excepted Services”):
- a) provision of the support or other services products or a solution not set out in Section A-4 of this Agreement;
  - b) provision of the Services at a location other than the Site(s);
  - c) correction of faults due to Client’s failure to meet its First Line Support obligations (see clause 4);
  - d) correction of faults due to Client’s modification, neglect or misuse of the Products, failure to maintain a suitable environment for the operation and maintenance of the Products (including without limitation power supply, air conditioning or humidity control) in accordance with normal industry practices and as set out in the published data sheets, manuals or other written instructions for the Products;
  - e) correction of damage caused by any accident or disaster, fire, flood, water, wind, lightning, vandalism or theft;
  - f) correction of faults in any attachments or associated equipment or third-party interference (whether or not supplied by Mimomax) which do not form part of the Products;



- g) painting or refinishing of the Products or any other unapproved product modification;
  - h) the relocation or transportation of Products, or the rectification of any faults caused by such relocation or transportation, (save where performed by Mimomax);
  - i) the provision of any software release designed to provide new or enhanced functionality unless this is incidental to the Services or provided for under section C-2 (Software Maintenance) above;
  - j) services required to implement changes to the Solution or configurations which were not a requirement of the specifications under the supply contract/-s for the Products listed in this Agreement or otherwise committed to by Mimomax in writing;
  - k) correction of any fault which would be remedied by a software release or other repair which meets the original specifications for the Products and which has been refused by Client.
- 2.6 If Client requests Mimomax to provide any Excepted Services, Mimomax shall be entitled to charge for the same at rates to be agreed in advance between the parties or failing such advance agreement Mimomax standard Additional Charges for the relevant services. If requested, Mimomax shall provide a written quotation and estimated completion date for provision by Mimomax of any Excepted Services.

### **3. Support Fees and other payments**

- 3.1 Support Fees and any applicable Additional Charges will be invoiced by Mimomax and paid in advance by Client. All Invoices including invoices for Additional Charges are payable by the 20<sup>th</sup> of the month following of the date of invoice.
- 3.2 All fees and charges referred to in the Agreement are exclusive of sales, use, value added or goods and services taxes. Where appropriate such taxes will be added to the invoice and paid by Client unless Client provides Mimomax with evidence of payment or certificate of exemption. Support Fees are also exclusive of any customs, import or export duties, and should any such duties arise, these shall be payable by Client.
- 3.3 To the fullest extent permissible by law, Client's right of set-off is excluded. No payment shall be deemed to have been received until Mimomax has received cleared funds.
- 3.4 If Client is overdue with any payment, then, without prejudice to any other right or remedy available to Mimomax: (i) Mimomax may suspend performance of the Services and/or exercise a lien over Products returned for repair or replacement Products until Client has made such overdue payment in full.
- 3.5 Mimomax may increase the Support Fee and the rates for Additional Charges from each anniversary of the Commencement Date (each a "Price Review Date") by written notice to the



Client. The amount of such increase will not exceed the corresponding percentage increase in the Consumer Price Index over the 12-month period covered by the Consumer Price Index figures which are, as at the applicable Price Review Date, the most recently published. Mimomax shall also be entitled to vary the Support Fee if Client requests an increased level of Services, Services for products in addition to the Products, if Products are upgraded or new products are introduced during the Term, or if there is any other variation requested by Client with respect to this Agreement. Such variation shall be agreed in accordance with Clause 14.2 of this Agreement. In absence of such agreement, Mimomax shall not be required to provide the applicable increased level of Services, or Services in relation to such additional products or upgraded Products.

#### **4. Obligations of the Client**

- 4.1 The Client shall undertake the following First-Line Support actions and acknowledges that the commitments and pricing provided by Mimomax under this Agreement are dependent on the prompt and proper performance of those First-Line Support obligations:
- 4.1.1 utilise the Services by contacting the Service Desk as set out in Section B of this Agreement;
  - 4.1.2 immediately after making a request for Mimomax support, provide Mimomax where possible with an example of the relevant defect or error;
  - 4.1.3 have personnel with sufficient Product related training, qualifications and/or experience to be able to (i) carry out basic operating system housekeeping, (ii) work through initial troubleshooting with the end customer, (iii) gather all log files requested by Mimomax, and (iv) work through complex procedures with remote guidance provided by Mimomax;
  - 4.1.4 carry out procedures for the rectification of errors or malfunctions within a reasonable time after such procedures have been received from Mimomax;
  - 4.1.5 provide a mutually agreed form of communications link for remote diagnostics and promptly granting access rights to Mimomax and its partners when required;
  - 4.1.6 replace defective Products with a Critical Spare where required and promptly shipping the defective Products to Mimomax's designated service centre in accordance with Mimomax reasonable directions;
  - 4.1.7 maintain and make available the required type and number of Client owned and managed Critical Spares in accordance with clause 5.4 of this Agreement; and
  - 4.1.8 provide Mimomax with all reasonable co-operation to facilitate the efficient discharge of its obligations under this Agreement including, without limitation, (i) granting reasonable access to the Site(s) and the Products, (ii) ensuring the Site(s) comply with all relevant health and safety codes, and (iii) providing on request, a suitably qualified or



informed representative, agent or employee to accompany Mimomax personnel and to advise Mimomax on access or on any other matter within the Client's knowledge or control which will assist Mimomax in complying with its obligations under the Agreement.

- 4.2 It is the Client's responsibility to ensure systems backups (including all programs and data) are kept up to date.
- 4.3 The Client agrees that it is responsible for primary power source, PABX and PSTN connections or lines, RF (Radio Frequency) coverage performance subsequent to Coverage Verification Test or any other test acceptance, the provision of suitable inter-site and inter node links, and further installation of the equipment at the Sites.
- 4.4 The Client shall provide secure and adequate facilities adjacent to or in reasonable proximity to the Products for the storage by Mimomax of tools and other items necessary for the proper maintenance of the Products and the Client shall permit Mimomax to have access to such storage facilities at all reasonable times.
- 4.5 The Client is responsible for maintaining the confidentiality of any logon(s) and password(s) required to access Services. Access to Mimomax Client Service Portal is only permitted for current Client employees or contractors. The Client must manage and remove access rights for departing employees and contractors (for example by changing passwords). Mimomax shall not be liable for any loss or damage incurred by the Client due to Client's failure to comply with this clause.

## **5. Replacement and spare parts**

- 5.1 Where parts of the Products have been replaced and provided by Mimomax, title to the parts replaced will pass to Mimomax upon removal of those parts from the Solution.
- 5.2 Subject to clause 5.1, title in all replacement parts for the Products provided by Mimomax in performing the Services (except for Software) will pass to the Client upon installation.
- 5.3 In the case of products and services for which an Additional Charge is payable by the Client, title in such replacement parts shall pass to the Client on full payment of the Additional Charge.
- 5.4 Mimomax requires Client to purchase and store at the Site (or other location agreed in writing between the Parties) the Critical Spares set out in Appendix A. From time-to-time Mimomax may additionally require the Client to purchase and store at the Site such spare parts, as Mimomax considers necessary for the provision of effective Services. Typically, this may equate to 2-5% of Products purchased.
- 5.5 Mimomax will not be liable for any failure or delay in providing the Services where such failure or delay is the direct or indirect result of the failure of the Client to comply with the previous clause.



**6. Health and Safety**

- 6.1 Each Party shall comply with all relevant Health and Safety laws and regulations in all respects in relation to its obligations under the Agreement (including without limitation by ensuring a safe working environment and methods of working) and shall indemnify the other Party in respect of all costs, liabilities, damages or expenses incurred as a result of any failure to do so.

**7. Exclusivity**

- 7.1 The Client shall only permit maintenance, repairs or adjustments to Products by a third party with the prior written consent of Mimomax.
- 7.2 In the event the Client effects repairs additions or alterations to the Products, the Client represents, warrants and agrees to use only Mimomax approved parts and procedures as directed by Mimomax for the operation of the Products.

**8. Software and Intellectual Property Rights**

- 8.1 All patents, trademarks, service marks or business names, registered designs, copyrights, design rights, utility models, topography rights, applications to register any of the aforementioned rights, trade secrets, knowhow and rights of confidence and any other intellectual or industrial property rights of any nature whatsoever in any part of the world ("IPR") arising under the Agreement, shall, except to the extent that they comprise or incorporate IPR supplied by Client, vest in and be owned by Mimomax absolutely and Client shall acquire no right, title or interest therein.
- 8.2 Any computer program, firmware or other software forming part of the Products or supplied by Mimomax to Client pursuant to this Agreement and/or IPR provided to Client under this Agreement shall remain the exclusive property of Mimomax (or its partners) and unless otherwise agreed in writing, be licensed to Client under the license terms applicable to the Products which they replace or to which they relate.
- 8.3 Unless otherwise indicated, as in paragraph 4.2 above, information provided to the Client via the Online Client Service Portal is copyrighted by and proprietary to Mimomax Limited (Mimomax) and may not be copied, reproduced, transmitted, displayed, performed, distributed, sublicensed, altered, stored for subsequent use or otherwise used in whole or in part in any manner without Mimomax' s prior written consent.

**9. Support Services Warranty**

- 9.1 Mimomax warrants that it shall perform the Services in a professional and workmanlike manner. If Mimomax breach this warranty, the client must notify Mimomax within 90 days of provision of



the relevant Services. Mimomax will then re-perform the applicable Services. Client's sole and exclusive remedy and Mimomax's entire liability for such breach of this warranty or any claim related to the Services shall be re-performance of the Services in accordance with this clause.

- 9.2 Warranties given in this Clause 9 are unique to and may not be assigned or transferred in whole or in part by, Client.
- 9.3 THE WARRANTIES SET FORTH HEREIN ARE EXCLUSIVE AND IN LIEU OF ALL OTHER WARRANTIES, REPRESENTATIONS, GUARANTEES AND CONDITIONS, WHETHER EXPRESS, IMPLIED OR STATUTORY, INCLUDING WITHOUT LIMITATION THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, NON-INFRINGEMENT, AND QUALITY OF SERVICE.
- 9.4 The Client acknowledges that while Mimomax may be called upon to give consultative advice under this Agreement and while Mimomax will use its reasonable endeavours to give the best advice it can to the Client, Mimomax advice is dependent upon inter alia the information supplied to Mimomax by the Client and third parties and accordingly the Client may make no claim against Mimomax or its personnel for the appropriateness of such advice.

## **10. Limitation of Liability**

- 10.1 NEITHER PARTY WILL BE LIABLE FOR ANY (I) LOSS OF PROFITS; (II) LOSS OF TURNOVER; (III) LOSS OF OR DAMAGE TO REPUTATION; (IV) LOSS OF, OR LOSS OF THE USE OF ANY SOFTWARE OR DATA; (V) LOSSES OR LIABILITIES IN RELATION TO ANY OTHER CONTRACT; OR (VI) INDIRECT, INCIDENTAL, SPECIAL OR CONSEQUENTIAL LOSS OR DAMAGE INDIRECT, PUNITIVE, SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGE IN CONNECTION WITH OR ARISING OUT OF THIS AGREEMENT HOWEVER IT ARISES, WHETHER FOR BREACH OR IN TORT, UNDER AN INDEMNITY, EQUITY OR OTHERWISE, EVEN IF THAT PARTY HAS BEEN PREVIOUSLY ADVISED OF THE POSSIBILITY OF SUCH DAMAGE.
- 10.2 Each party's aggregate liability (other than the Client's obligation to pay Support Fees, Additional Charges and penalty interest) to the other for all claims relating to this Agreement, whether for breach or in tort under an indemnity, equity or otherwise, shall be limited to the amount paid by the Client for Services under this Agreement in the 12 month period preceding such claim notified by either party to the other in accordance with clause 14.6.
- 10.3 Notwithstanding anything in this Agreement Mimomax will not be liable for any claim by the Client in relation to this Agreement unless the claim is received in writing by Mimomax within 90 days of the date of when the alleged claim ought reasonably to have come to the attention of the Client.
- 10.4 The Client agrees that it shall take such reasonable precautions (relative to the importance to the Client of the Products), including without limitation backing up software and data at reasonable intervals, implementing back-up systems or redundancy and maintaining suitable numbers of spare units at suitable locations (at a minimum to Mimomax recommended spares



levels). Mimomax shall have no liability for any losses suffered by Client to the extent that the loss concerned would have been prevented by the taking of such reasonable precautions.

- 10.5 The provisions of this Clause 10 have been considered by the Parties in the light of the availability of insurance and the relative positions, risks and responsibilities of the Parties and both Parties agree that they are fair and reasonable.

## **11. Force Majeure**

- 11.1 Neither Party ("Affected Party") shall be liable for any loss or damage suffered or incurred by the other arising from the Affected Party's delay or failure to fulfil or otherwise discharge any of its obligations (except obligations to pay money) under the Agreement to the extent that such delay or failure is caused by any event, cause or circumstance beyond its reasonable control including but not limited to any act of God, governmental act, withholding, delay or revocation of export or import control approval or other license, war, terrorist activity, fire, flood, earthquake, tsunami, explosion, civil commotion, industrial dispute (other than industrial disputes related solely to the employees of the Party claiming force majeure), or the unavailability or failure of any public telecommunications network ("Force Majeure").
- 11.2 Subject to the Affected Party promptly notifying the other Party in writing of the Force Majeure and likely duration of the Force Majeure, the performance of the Affected Party's obligations, to the extent affected by the Force Majeure, shall be suspended during the period that the Force Majeure or its effects persists. Each party shall use all reasonable efforts to overcome and mitigate the effect of any Force Majeure.
- 11.3 If Mimomax is unable to perform its material obligations for a period of 90 consecutive days after the commencement of the Force Majeure, the Client or Mimomax may terminate this Agreement by notice in writing.

## **12. Confidentiality**

- 12.1 All pricing, Software and technical information provided by Mimomax under or in relation to this Agreement shall be deemed to be the confidential information of Mimomax and subject to clause 12.2.
- 12.2 Each Party undertakes not to (and to procure that its employees and contractors shall not) divulge the terms of this Agreement or any information of a confidential nature disclosed to it by the other, whether oral or written, and shall not use such information except as contemplated by this Agreement. This obligation shall cease to apply to information which:
- 12.2.1 is or becomes part of the public domain without violation of the Agreement;
- 12.2.2 is known and on record at the receiving party prior to disclosure by the disclosing party;



#### 14. General Terms

- 14.1 **Assignment and Subcontracting.** Neither party may assign its rights nor obligations under this Agreement without the prior written consent of the other party. Mimomax may subcontract its obligations under this Agreement to a third party, provided that Mimomax will remain responsible for the actions of such third party and advise the Client in writing prior to such subcontracting.
- 14.2 **Variations.** Any amendment or variation to the Services or to this Agreement shall, in order to be effective, be in writing and signed by duly authorized representatives of both parties.
- 14.3 **Severability.** In the event that any part or parts of this Agreement are held illegal, invalid or unenforceable by any Court or administrative body of competent jurisdiction, such determination shall not affect the legality, validity or enforceability of the remaining parts of this Agreement which shall remain in full force and effect. Where relevant, the Parties shall use commercially reasonable efforts to find a new provision which resembles, to the extent possible, the commercial effect of the invalid provision.
- 14.4 **Waiver.** The failure of either Party to enforce any term of this Agreement does not constitute a waiver of it and shall in no way affect the right later to enforce the terms.
- 14.5 **Independent Contractor.** Nothing herein contained shall be construed to constitute the parties hereto as partners or joint ventures or the agent of the other Party in any sense of these terms whatsoever, and no party may act for or bind another party in any dealings with a third party.
- 14.6 **Disputes.** In the event of any dispute arising under or in relation to or in connection with this Agreement or its subject matter, a party may give written notice of the dispute to the other party, in which case the parties shall attempt to resolve the dispute in good faith. If good faith negotiations between the parties fail to resolve the dispute, then, prior to issuing court proceedings, the parties shall give due consideration to the use of mediation or alternative dispute resolution techniques and reference to independent experts. Neither party may issue any court proceedings (other than for urgent interlocutory relief) in relation to a dispute unless that party has first taken all reasonable steps to comply with the preceding provisions of this clause.
- 14.7 **Jurisdiction.** The construction, validity and performance of this Agreement shall be governed by the laws of Arizona. Notwithstanding the foregoing the Parties shall attempt to resolve in good faith any disputes arising and shall give due consideration to the use of mediation or alternative dispute resolution techniques and reference to independent experts prior to the issue of court proceedings.
- 14.8 **Entire Agreement.** This Agreement and the other agreements referred to in it shall constitute the entire agreement between the Parties in relation to its subject-matter and shall supersede all previous undertakings, agreements, representations or commitments, whether express or implied, written or oral between the parties.





14.9 **Counterparts.** This Agreement may be signed in any number of counterpart copies which, read together, will constitute one and the same document.

14.10 **Copies.** Any facsimile copy of this Agreement, or copy of this Agreement sent via email in PDF format, (including any facsimile copy, or copy sent via email in PDF format, of any document evidencing either party's signature of this Agreement) may be relied on by the other party as though it were an original copy. This Agreement may be entered into on the basis of an exchange of such facsimile or PDF copies.



## SECTION F – Glossary of Terms

Additional Charges	Mimomax's charges for the provision of any services or products outside the scope of this Agreement, calculated at the rate specified in Section D (as that rate may be adjusted from time to time in accordance with this Agreement).
Business Days	Monday to Friday, excluding Public Holidays where the local Service Desk is located which is servicing the Client (in this case, Phoenix, Arizona).
Business Hours	8.00am – 4.30pm on Business Days (Phoenix, Arizona)
Commencement Date	The commencement date for the Services set out in Section A of this Agreement.
Consumer Price Index	The Consumer Price Index for All Urban Consumers, as published by the United States Bureau of Labor Statistics (or, if that index ceases to be published or otherwise ceases to be available to the parties, means such other index as measures, in a manner which most closely resembles the manner in which the Consumer Price Index for All Urban Consumers measures, inflation or deflation in the United States immediately prior to becoming unavailable to the parties or ceasing to be published.
Critical Spares	The required critical spares for the Solution set out in Appendix A – Critical Spares Inventory.
Enhancement	Any product change or upgrade that increases software or hardware capabilities beyond original specifications.
Enhancement Request	Request by the customer for an enhancement of the Mimomax solution. An enhancement request is, case depending, either delivered free of charge or as a chargeable feature.
First Line Support	The first level of support group involved in the resolution of Incidents. Client First Line Support obligations are described in 4.1 of Section E of this Agreement.
Incident	An incident is any event which is not part of the standard operation of the Solution and which causes, or may cause, an interruption or a reduction of the quality of the service provided by the Solution.
Partner Product	Product sourced by Mimomax from a third party and sold by Mimomax as part of the Solution
Priority	Category used to identify the relative importance of an Incident, Problem or change requested by the Client pursuant to this Agreement. Priority is based on impact and urgency and is used to identify required times for actions to be taken.



Priority 1	Priority 1 – Critical: In relation to the network provided by the Solution, conditions exist that <u>severely</u> affect service, capacity/traffic capability and require immediate corrective action regardless of time of day or day of week as viewed by the Client.
Priority 2	Priority 2 - Major: In relation to the network provided by the Solution, conditions exist that <u>seriously</u> affect Solution operation maintenance and administration of the System and require immediate attention as viewed by the Client. The urgency is less than in critical situations because of a lower immediate or impending effect on System performance, Clients and the Client operations and revenue.
Priority 3	Priority 3 - Minor: In relation to the network provided by the Solution conditions exist that do not significantly impair the functions of the Solution and do not significantly affect service to Clients. These Problems or Incidents are not traffic impairing.  A Priority 1 or Priority 2 issue may be reclassified as Priority 3 if there is a Workaround in place resulting in a Priority 3 classification.
Priority 4	Priority 4 – Advisory: There is a minor issue or an opportunity for product improvement, a general query, request for repair or request to enable software features. If related to an issue, it does not affect the data capability on the network provided by the Solution.  There is a minor inconvenience to the user, but the Product and feature / functionality still operates within specification. Client requests more information or an explanation.
Problem	A condition often identified as a result of multiple Incidents that exhibit common symptoms. Problems can also be identified from a single significant Incident, for which the cause is unknown, but which significantly impacts service or Product availability.
Products	The products described in Section A of this Agreement.
Response or Respond	Means a suitably qualified Mimomax Client Support Engineer contacting Client in relation to a reported Incident.
Response Time	Commences when Client reports an Incident to the Service Desk and ends when Mimomax Responds.
Restoration or Resolution	Means providing a fix, Workaround or replacement Product which re-stabilizes the System or Product (as applicable) and allows normal traffic levels or functionality to resume.



Restoration Time	Commences when Client reports an Incident to the Service Desk and ends when the Product or Solution is re-stabilized and carrying normal traffic levels which may be via a workaround or replacement Product(s) as applicable.
Service Desk	The single point of contact service desk between the Mimomax and the Client.
Service Request	A request from a Client for information or advice, or for a Standard change to the scope of the Support Services.
Software	Means any computer program, firmware or other software included in a Product
Supply Agreement	The agreement defined as such in the Background section of this Agreement.
Support Fee	The support fee set out in Section A of this Agreement, as that fee may be adjusted from time to time in accordance with this Agreement.
Services	The services selected by Client and which are described in Section C of this Agreement.
Solution	The solution described in the Background section of this Agreement.
Term	The term of this Agreement as described in clause 1.1 of Section E.
Warranty	Means the warranty provided by Mimomax to the Client in relation to the Products under the Supply Agreement.
Workaround	Reducing or eliminating the impact of an Incident or Problem for which a full Resolution is not yet available. For example, by restarting a failed configuration item.



