

**MiMOMax Wireless Ltd**  
540 Wairakei Rd  
Christchurch 8053  
New Zealand



Federal Communications Commission

25<sup>th</sup> May 2016

To whom it may concern

**CONFIDENTIALITY REQUEST**

Reference rule sections 0.457 (d) (ii) and pursuant to rule section 0.459 (a) and KDB726920 D01 v01r01, confidentiality is requested as follows.

**Specific Information: Product Manual for the 700MHz Tornado Radio Unit**

This information contains trade secret and security sensitive information which is not routinely made available to the public or to our competitors.

This information is proprietary and is not made available unless the equipment is purchased by a user or released under NDA, see appendix 2, to professional technicians or engineers. When equipment is purchased by a user, the user is bound by NDA as per our Terms and Conditions of Purchase, section 12. The terms and conditions of purchase have been appended to this letter, see appendix 1.

Uncontrolled disclosure of this information could result in an unfair advantage to our competitors and undermine the security of the communications network that the equipment is intended to be implemented.

The equipment for which confidentiality is sought is not available for public access as it is either mounted high on a tower or pole, or locked in a secure communications room. Due to the nature of our customers, being large electricity, water and gas utilities, security is of paramount importance. This is regulated by standards set by the North American Electric Reliability Corporation (NERC) who are responsible for 'Cyber Security Standards' for Critical Infrastructure Protection' see standard CIP-002 through CIP-009. As such our equipment is heavily secured and only accessible to professional designated technicians or engineers.

This manual should be treated with the upmost confidentiality for the duration of the Grant of Equipment Authorisation.

Yours sincerely

A handwritten signature in blue ink that appears to read "Doug McConnell".  
Doug McConnell  
MiMOMax Wireless Limited

## **Appendix 1 - MiMOMax Terms of Supply**

### **General Terms and Conditions of Supply**

These terms apply between MiMOMax Wireless (MMX) and where appropriate its subsidiary and the Customer (Customer) who orders products and software (Equipment) from MMX.

#### **1. Effect**

These terms, with any special conditions specified by MMX, shall prevail over all others proposed by the Customer. MMX's failure to object to other terms and conditions shall not be regarded as a waiver of this requirement. No modification of these terms will be binding on MMX unless made in writing and signed by an authorised officer of MMX. All customer orders are subject to written acceptance by MMX.

#### **2. Prices**

Unless otherwise stated, prices quoted are for delivery Free Carrier (FCA) Christchurch International Airport (or FOB Lyttelton if sea freight is required) as defined in these conditions in accordance with the current edition of the rules for the interpretation of trade terms of the International Chamber of Commerce -INCOTERMS.

2.1 Prices for Equipment and Services are exclusive of any taxes, charges or duties (if any) chargeable within or outside New Zealand. The Customer agrees to reimburse MMX where MMX pays the same or is responsible for payment of any such taxes including penalties. Prices are inclusive of packing to full normal export standards.

2.2 If the Customer asks MMX to vary quantities, delivery dates or Equipment specifications from those against which prices were quoted MMX shall have the right to adjust the quoted price.

#### **3. Payment**

3.1 Unless other payment terms have been agreed full payment of the Contract Prices shall be due on delivery or deemed delivery in accordance with clause 4.3, in accordance with the payment arrangements agreed between MMX and the Customer for the Contract.

3.2 Separate invoice(s) may be submitted in respect of any installation, commissioning, service or supervision charges for payment at the end of the calendar month in which the invoice is dated.

3.3 No payment may be withheld by the Customer by way of set off (legal equitable or otherwise), counterclaim or otherwise against any sums that may become due to the Customer.

3.4 Any sums payable to MMX that are ten days or more overdue shall bear penalty interest on a day to day basis of 2% per month from the due date until the date of payment and monies received by MMX may be applied by MMX at its option against such interest prior to application against other monies due from the Customer.

#### **4. Delivery**

4.1 Quoted delivery periods are calculated from the last to occur of:

- (a) MMX's acceptance of the Customer's order; or
- (b) Provision by the Customer to MMX of all engineering and configuration details and Customer supplied parts and materials necessary to enable MMX to manufacture and supply the Equipment; or
- (c) Receipt of any necessary letter of credit, in the agreed form or a form acceptable to MMX, and other required documentation (including any confirmation or guarantee); or
- (d) Approval by the relevant authorities and confirmation of the availability of export licences should these be required; or
- (e) Approval by the competent Authorities in the Customer's country (and the country of installation of the Equipment if different) that all necessary import licences, permits and foreign exchange approvals have been obtained and will remain valid throughout the performance of the Contract.

4.2 MMX will endeavour to deliver Equipment and complete installation and commissioning within quoted target dates but (and without prejudice to MMX's rights for breach) quoted dates for delivery, installation and commissioning may be automatically extended by MMX if the Customer delays in meeting its obligations or the Customer requires and MMX accepts a change in quantities or specification of the Equipment.

4.3 The Customer shall indemnify MMX for all losses and costs incurred by MMX if the Customer refuses or fails to accept delivery of the Equipment including storage charges incurred by MMX with any third party warehouse. In those circumstances delivery to a warehouse shall be deemed to be completed delivery by MMX.

#### **5. Equipment Specification and Quality**

5.1 MMX reserves the right to amend details of the technical specification for the Equipment in the Contract to improve the facilities or performance of the Equipment supplied or to substitute items of equivalent performance where items referred to in a quotation are no longer available.

5.2 All specifications, particulars and descriptions set out in catalogues, brochures and similar documents, shipping specifications and particulars of weight and dimension are approximate and being intended for general guidance and shall not be binding. The Customer accepts responsibility for the Equipment achieving the Customer's intended results and for the selection of results obtained from any other Equipment or software with which the Equipment supplied is to be used.

## **6. Inspection and Testing**

6.1 The Equipment will be submitted to MMX's standard tests before dispatch. If the Customer wishes to attend these tests he shall inform MMX at the time the Equipment is ordered. In the event of delay on the Customer's part in attending beyond seven days from written notice given by MMX that MMX is ready, MMX will proceed with the tests in the Customer's absence and the tests shall be deemed to have been made in his presence.

6.2 Any additional tests of the Equipment, which may be required by the Customer, must be agreed separately in writing and these tests may then be the subject of extra charges and extra time for performance of such tests.

## **7. Risk and Title**

7.1 Risk of damage to or loss of the Equipment shall pass to the Customer on delivery to the Customer's nominated carrier.

7.2 Title of hardware shall pass once MMX has received full payment for the relevant hardware and all other equipment supplied by MMX to the Customer; however title to software, and the media on which it is embodied, together with copyright and other intellectual and industrial property rights in the software and in all data and information embodied in the hardware, shall at all times remain with MMX or its licensors. The rights of the Customer in software not produced by MMX but included in the Equipment may be subject to the Customer accepting conditions of sub-licence required by the owner of such software.

7.3 Until all moneys due to MMX are paid, MMX holds a security interest in the Equipment and for payment of those moneys and The Customer shall act as a fiduciary of MMX and shall:

- (a) Not sell, charge or part with possession of the Equipment, otherwise than for its full value in the ordinary course of business;
- (b) Store the Equipment in such manner that it is clearly identifiable as MMX property and keep separate records of the Equipment;
- (c) Hold the proceeds of the resale of the Equipment in trust for MMX, in a separate and identifiable manner.

7.4 At MMX's request, the Customer shall promptly deliver, execute or do (or cause to be executed, delivered or done) any documents, contracts, agreements, deeds or other action that MMX may require from time to time to give effect to this paragraph, including without

limitation doing all such things as MMX may require to ensure that the security interest created under this paragraph constitutes a perfected Security Interest over the Equipment. This includes, but is not limited to, providing any information MMX request to complete a financing statement or a financing change statement for the Personal Property Securities Register.

7.5 The Customer hereby waives any right to receive a verification statement under the Personal Property Securities Act 1999 ("PPSA").

7.6 Nothing in sections 114(1)(a), 117(1), 133 and 134 of the PPSA shall apply to this Agreement. The Customer's rights as a debtor in sections 116, 119, 120(2), 121, 125-127, 129 and 132 of the PPSA shall not apply to this Agreement.

7.7 No claim for shortage or damage in respect of Equipment delivered will be considered unless received in writing by MMX within thirty days from the date of delivery of the Equipment to the Customer (or to a third party on the Customer's behalf, whichever first occurs).

## **8. Customer's Obligations**

8.1 The Customer shall when required, supply MMX with such information and documents that are reasonably required to enable MMX to proceed with and complete the any order of Equipment without delay or interruption and shall indemnify MMX for any additional costs or expenses incurred by MMX as a result of delay or interruption caused through a failure of the Customer to supply all such information and documents in a timely manner.

8.2 Subject to the terms of MMX's Support Agreement (if entered into by the Customer) the Customer will be responsible for the installation, operation and maintenance of the Equipment.

8.3 From and after installation the Customer agrees that it is responsible for primary power source, any data and or network, PABX and PSTN connections or lines, RF (Radio Frequency) coverage performance, and where applicable the provision of suitable inter-site links, suitable antennae, external multiplexing Equipment, and further installation of the Equipment at the Sites to which the Equipment is to be used.

## **9. Warranty**

9.1 MMX undertakes to replace or (at its option) repair any hardware items proved to its reasonable satisfaction to have failed within twelve months of delivery by reason of faulty design, materials or workmanship Provided that:

9.2 The warranty shall not extend to any failure not reported to MMX within 30 days of delivery by MMX where such failure ought reasonably to have been discovered within said 30 days or where the Customer does not promptly inform MMX on discovery of the alleged failures and thereafter promptly returns the hardware items carriage paid with a full written report on the defects;

9.3 The Customer shall refund to MMX the cost to MMX of any replacement, repair or redelivery of the hardware items effected by MMX where the failure is not within the terms of this warranty.

9.4 The warranty shall not extend to any failure where the Equipment has not been stored, installed, maintained and used properly having regard in particular to MMX and (if any) other agreed applicable specifications and instructions; or where the Equipment has not been used in accordance with interference-free power, suitable environment (including but not limited to free from electronic or radio interference and pests) and correct maintenance of the Products; or where the Customer has not installed engineering changes or enhancements to the Equipment on MMX's advice; or where the Customer has breached the terms of this agreement.

9.5 The warranty does not cover fair wear and tear, abuse, correction or repairs or modifications made other than by MMX or any repairs required due to events beyond the control of MMX;

9.6 In cases where MMX authorises the Customer to undertake warranty repairs, MMX will replace faulty components free of charge. No reimbursement will be made in respect of labour.

## **10. Limitation of MMX liability (Important: Please Read Carefully)**

10.1 To the maximum extent permitted by law, all terms, warranties or representations whether statutory or otherwise and whether express or implied, oral or written as to the state, merchantability, description quality, or fitness for a specific purpose of the Equipment are hereby expressly excluded.

10.2 The Customer acknowledges that the Equipment is not of a kind ordinarily acquired for personal, domestic or household use or consumption and that it uses the Equipment for business purposes and accordingly it is agreed that, to the maximum extent permitted by law, the provisions of Consumer Guarantees Act 1993, or any other relevant consumer protection legislation, do not apply to this Agreement.

10.3 The Customer warrants that it has not relied on any representation made by MMX which has not been stated expressly in this Agreement or upon any catalogues or publicity material produced by MMX and no statement made or agreed and no liability undertaken orally shall be binding upon MMX unless confirmed by MMX in writing.

10.4 The Equipment is not designed or intended for use in on-line control of aircraft, air traffic, aircraft navigation or aircraft communications; intrinsically safe environments or in the design, construction, operation or maintenance of any nuclear facility. MMX disclaims any express or implied warranty of fitness for such uses. The Customer will not use or resell Equipment for such purposes.

10.5 The Customer acknowledges that any software supplied cannot be tested in every possible permutation and accordingly MMX does not warrant that software supplied will be free of all defects or that its use will be uninterrupted.

10.6 MMX will not be liable to the Customer for any claim for breach of Statute or breach of duty in Tort (including negligence) or for any claim in Equity or otherwise at law for any losses or damages whether general, exemplary, punitive, direct, indirect or consequential (including loss of business, revenue, profits, use, data or other economic advantage) however caused which may be suffered or incurred by the Customer or any third person, or which may arise directly or indirectly out of or in respect of this agreement or the Products or by reason of any act or omission on the part of the MMX to comply with its obligations under this Agreement even if MMX has been previously advised of the possibility of such damage.

10.7 Notwithstanding anything herein, and subject only to the express warranties given by MMX, the Customer's sole remedy against MMX will be limited to liability in contract and only in respect of Equipment which is within its 12 month warranty period and MMX's sole and total liability for any such claim shall be limited, at the option of MMX to any one or more of the following:

- (a) the repayment of the amount paid by Customer for the Equipment;
- (b) the replacement of the Equipment or the supply of equivalent products;
- (c) the repair of the Equipment;
- (d) the payment of the cost of replacing the Equipment or of acquiring equivalent equipment; or
- (e) the payment of the cost of having the Equipment repaired.

10.8 Notwithstanding anything in this Agreement MMX will not be liable for any claim by the Customer against MMX unless the claim is received in writing by MMX within the first 14 months after the date of supply of the relevant Equipment.

10.9 Notwithstanding anything herein no employee, agent or director of MMX will be liable to the Customer for breach of any duty of care in contract, tort, equity or otherwise in relation to the performance of obligations under this Agreement or in relation to the subject matter of this Agreement.

## **11. Intellectual Property Warranty**

11.1 Because of the complexity of manufacturing techniques for electronic components and of the intellectual property rights pertaining thereto, MMX is unable to declare that the Equipment does not infringe the intellectual property rights of third parties. In the event that a third party makes a claim alleging that the Equipment infringes such third party's intellectual property rights MMX undertakes at its option and expense to defend the claim or seek a compromise. If an unfavourable judgement is rendered against MMX, MMX shall at its option take out a license from the said third party or shall modify the Equipment in such way as to avoid infringement or replace the components or software with components or software of equivalent quality, functionality and performance. If such solution shall be impractical for economic and / or technical reasons MMX shall accept the return of the Equipment and refund to the Customer the Customer's net book value for the Equipment deemed to infringe.

11.2 MMX's obligations under clause 11.1 shall only apply if the Customer promptly notifies MMX, permits MMX through its counsel to defend and if appropriate settle the claim at MMX's expense gives MMX all available information, assistance and authority to enable MMX to defend or settle the claim at MMX's expense and has not settled or compromised such claim.

11.3 MMX's obligations under clause 11.1 shall not apply if MMX has followed a design or instruction furnished or given by the Customer or the Equipment has been modified without MMX's approval or used in a manner or for a purpose or in a country not specified by or disclosed to MMX prior to the Contract Date or the Equipment has been used in association with software or equipment not supplied or approved by MMX.

11.4 Clause 11 states the entire liability of MMX and the exclusive remedies for the Customer for claims of infringement of third party intellectual property rights.

## **12. Copyright Intellectual Property and Confidentiality**

12.1 Copyright in all MMX documents (including drawings and software) furnished to the Customer for the purposes of the Contract shall at all times remain vested in MMX or its licensors and neither the documents nor their contents shall be copied, reproduced or used for any purpose other than that for which they are furnished.

12.2 Data and information embodied in such documents, drawings and software or in firmware shall be held in confidence by the Customer and shall not be disclosed to third parties nor used for any purpose other than operation and maintenance of the Equipment.

12.3 The Customer shall take all reasonable measures to protect confidentiality and will not cause or permit anything which may damage or endanger MMX's goodwill, trade marks and intellectual property in the Equipment.

12.4 The Customer acknowledges that MMX's intellectual property in the Equipment is unique and extraordinary and the Customer hereby agrees that the loss thereof cannot adequately be compensated by damages and that without limiting MMX's remedies MMX shall be entitled to injunctive relief to enforce the provisions applicable to this Agreement.

### **13. Software**

13.1 Subject to the Customer entering into a Support Agreement, MMX hereby grants at no additional charge to the Customer a limited non transferable and non-exclusive multi-site licence to:

- (a) use any software (excluding source code) incorporated into the Equipment (whether embedded or installed in the Equipment) solely in conjunction with the Equipment during the useful life of such Equipment, as they may be repaired or modified, from time to time.
- (b) modify the Software only with the approval of MMX provided that all such modifications shall remain the property of MMX subject to the provisions of this Agreement.

13.2 The Customer undertakes throughout the term of this Agreement and after termination of this Agreement to not copy, (other than for back up or purposes authorised by MMX) alter, reverse engineer, modify, enhance, compile, disassemble, licence, sub-licence, lease, sell, assign or reproduce any software, (whether in whole or in part) supplied under this Agreement and to not write or develop any derivative software or any other software programs based upon the Software.

### **14. Territorial Restrictions**

14.1 The Customer shall not without the express written approval of MMX (which shall not be unreasonably withheld) export or use the Equipment, or sell or hire it to a person who to his knowledge intends to export or use it, outside the country of intended use as declared to MMX. The customer undertakes to comply with United States re-export control restrictions where applicable.

14.2 If export or import restrictions are imposed or export or import licences are cancelled, withdrawn or not renewed, then the Customer shall pay for all goods and services already delivered at the contract rate and payments already made may be used by MMX in respect of claims or demands made or losses incurred under or in connection with the Contract.

### **15. Survival**

The provisions of this clause 10, 12, 13 & 14 shall survive termination of the Contract and extend to all media in which data and information may be stored or displayed.

## **16. Force Majeure**

MMX shall not be liable for any delay, failure or non-performance of any of its obligations under this contract resulting from war, armed conflict, civil disturbance, Act of God, fire, explosion, accident, industrial dispute or any regulation, rule or act of any Government or Governmental agency, failure of third party suppliers to deliver parts and components, or any other cause beyond MMX's reasonable control.

## **17. Default and Termination**

If the Customer breaks any provision of this or any other contract with MMX, (and such breach is not remedied within 30 days of notice of the breach by MMX to the Customer) or suffers distress or execution on the equipment, or commits an act of bankruptcy, makes arrangements with creditors or goes into liquidation or receivership (except for amalgamation or reconstruction), ceases or threatens to cease trading, MMX may (without affecting any other claim or remedy) suspend performance or terminate this or any other contract between MMX and the Customer by written notice and shall be entitled to be paid for goods already delivered, and work-in-progress (including software generated but not supplied), at a rate reasonably based on the Contract Price.

## **18. General Terms**

18.1 The Contract shall be governed by New Zealand Law and subject to the exclusive jurisdiction of the New Zealand Courts provided MMX may enforce this agreement in the Customer's jurisdiction or in any other jurisdiction the Customer breaches these terms and conditions in and in either such case, MMX may elect to enforce this agreement in accordance with the law of that jurisdiction.

18.2 **Severability.** In the event that any part or parts of this Agreement shall be held illegal or null and void by any Court or administrative body of competent jurisdiction, such determination shall not affect the remaining parts of this Agreement which shall remain in full force and effect as if such part or parts held to be illegal or void had not been included in this Agreement.

18.3 No waiver by MMX, whether expressed or implied, of any provision of these terms and conditions or of any breach or default thereof by the Customer shall constitute a continuing waiver of such provision or waiver of any term nor shall acceptance of payments by MMX be deemed a waiver of any breach by the Customer.

18.4 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 an other Party in any dealings with a third party.

## Appendix 2- Mutual Confidentiality Agreement (NDA)

### PARTIES

1. MiMOMax Wireless Limited of Unit 2, 540 Wairakei Rd, Christchurch, NEW ZEALAND.
2. COMPANY A of [insert address]

### BACKGROUND

- A. The parties are about to exchange or provide one to the other, certain confidential and commercially sensitive information.
- B. This Agreement sets out the terms and conditions on which the parties will disclose and agree to use such information.

### TERMS

#### 1. Definitions and Interpretation

- 1.1 **Definitions:** In this Agreement the following terms shall have the meanings specified:  
“Confidential Information” means all information disclosed by one party to the other for or incidental to the Purpose and includes but is not limited to all Intellectual Property of either party and any information:
  - (a) Relating directly or indirectly to research or development by, accounting for, or the science, business affairs or financial, commercial or professional arrangements of either party, its customers, suppliers or business partners,
  - (b) Disclosed by either party to the other party on the express basis that the Information is confidential.

“Intellectual Property” means all intellectual property as that term is generally understood, whether registered or unregistered and includes but is not limited to any trademarks, trade secrets, copyright, designs, rights in computer software, databases and lists, rights in any inventions, technology, experimental methods and results (including physical, mechanical, chemical and engineering data), processes, systems, concepts, protocols, techniques, ideas and know-how of any nature (including, without limitation, all patents and patent applications), data in any format (including any raw data), drawings, assays, descriptions, business strategies and financial information, business and scientific plans, records, depictions, laboratory notebooks, computer

programs and software, reports, and any other written, printed or electronically stored material.

“Purpose” means the Purpose defined in the Schedule to this Agreement.

- 1.2 **Interpretation:** In the interpretation of this Agreement, unless the context otherwise requires:
- 1.2.1 References to the parties include their respective successors and permitted assigns;
  - 1.2.2 References to any person include any individual, company, corporation, firm, partnership, joint venture, association, trust, state or agency of state, government department or local or municipal authority in each case whether or not having a separate legal personality;
  - 1.2.3 Words in the singular shall include the plural and vice versa;
  - 1.2.4 Any obligation not to do anything includes an obligation not to suffer, permit or cause that thing to be done;
  - 1.2.5 Headings have been inserted for convenience only and shall not affect the construction of this Agreement;
  - 1.2.6 References to clauses and schedules shall be construed as references to the same in this Agreement.

## **2. Prohibition on Disclosure**

- 2.1 Each party shall maintain as confidential and shall not at any time, directly or indirectly:
- 2.1.1 Disclose, or permit to be disclosed to any person;
  - 2.1.2 Copy; or
  - 2.1.3 Use for itself or for the benefit of any person other than the other party; or
  - 2.1.4 Use to the detriment of the other party, any Confidential Information, except:
  - 2.1.5 Subject to clause 2.5, as required by law;
  - 2.1.6 As is already or becomes public knowledge, otherwise than as a result of a breach by the party disclosing or using that Confidential Information of any provision of this Agreement, or as the result of a breach by any other person of any similar confidentiality obligation it owes to the other party;
  - 2.1.7 As authorised in writing by the other party and then only on the terms, if any, specified in such written authority;
  - 2.1.8 Subject to clause 2.2, to the extent reasonably required in order to give effect to the Purpose.

- 2.2 Each party may disclose Confidential Information strictly on a "need to know" basis to such of its officers, employees, affiliates, consultants or professional advisers as is reasonably necessary in order to give effect to the Purpose, provided that:
  - 2.2.1 Has first advised such officer, employee, affiliate, consultant or professional adviser of the confidential nature of the Confidential Information; and
  - 2.2.2 Ensures such officer, employee, affiliate, consultant or professional adviser is subject to confidentiality obligations in respect of that Confidential Information that are no less onerous than the obligations set out in this Agreement.
- 2.3 Each party acknowledges that any subsequent unauthorised disclosure or use of any Confidential Information by its employees, affiliates, consultants or advisers shall be deemed to be a disclosure or use by it in breach of this Agreement.
- 2.4 Each party shall:
  - 2.4.1 Take all necessary and reasonable steps to prevent any Confidential Information from being disclosed to any person not authorised to receive it under this Agreement.
  - 2.4.2 Immediately inform the other party, and provide all reasonable assistance in relation thereto, if it becomes aware of the possession, use or knowledge of any Confidential Information by any person not authorised to possess, use or have knowledge of that Confidential Information under this Agreement.
- 2.5 If either party (the First Party) is required by law to disclose any Confidential Information, the First Party will immediately notify the other party that such requirement to disclose has arisen. The First Party will where permitted, allow the other party a reasonable opportunity, on the First Party's behalf and at the other party's cost (unless the disclosure is required as a result of the First Party breaching its obligations under this Agreement), to take any lawful action intended to restrict or prevent the disclosure of that Confidential Information. If the other party's attempt to prevent disclosure is unsuccessful, the First Party shall:
  - 2.5.1 Only furnish that portion of the Confidential Information which it is advised by written opinion of counsel is legally required to be disclosed; and
  - 2.5.2 Exercise its best efforts to co-operate with the other party in obtaining assurances that confidential treatment will be accorded to that portion of the Confidential Information required to be disclosed.

- 2.6 Nothing in this agreement shall require any party to maintain confidentiality in respect of Confidential Information which is the property of that party.
- 2.7 Neither party will make, have made, use, or sell for any purpose any products, concepts, systems, or techniques, or other items using, incorporating or derived from any Confidential Information of the other party, unless otherwise agreed to in writing and signed by the duly authorised representatives of both parties. Notwithstanding the above, nothing in this Agreement will be construed to preclude either party from developing, purchasing, using, marketing, licensing, or selling any independently developed product, concept, system, or technique, or other item that is similar or related to such Confidential Information without violation of the terms of this Agreement.

### **3. Breach and Indemnity**

- 3.1 Each party agrees that monetary damages will not be a sufficient remedy for any breach of this Agreement and, in addition to all other remedies, each party shall be entitled to specific performance, injunctive or other equitable relief.
- 3.2 Each party shall hold harmless and indemnify the other party from and against any and all claims, liabilities, losses, proceedings, costs and expenses resulting from, arising out of or in connection with any breach of this Agreement by the First Party.

### **4. Rights to Confidential Information**

- 4.1 Each party reserves all rights in its Confidential Information and no rights or obligations other than those expressly referred to, are granted or to be implied from this Agreement. Without limiting the foregoing, the disclosure by a party of any Confidential Information shall not amount to, or imply, the grant to the other party of:
  - 4.1.1 A licence to that Confidential Information for any purpose other than the Purpose; or
  - 4.1.2 Any right, title or interest in or to any intellectual property rights or proprietary rights of the first party in the Confidential Information.
- 4.2 Each party shall, as soon as reasonably possible upon receipt of written notice from the other party, and to the extent requested by the other party in that notice cease to use, and either return to the other party or destroy all written material or other storage media containing, referring to or arising out of any Confidential Information belonging to that other party supplied under this Agreement.

### **5. General**

- 5.1 The failure or delay of a party to insist in any one or more instances upon a strict performance of any of the terms of this Agreement, or the waiver by a party of any term

or right under this Agreement or of any default of the other party, shall not be deemed or construed as a permanent waiver thereof or of any other term, right or default or operate to bar the enforcement or exercise of any term or right in any other instance at any time or times thereafter.

- 5.2 This Agreement may be executed in any number of counterparts (including facsimile copies or other electronic means) all of which, when taken together, shall constitute one and the same instrument. A party may enter into this Agreement by executing any counterpart. The parties acknowledge that this Agreement may be executed on the basis of an exchange of facsimile copies or other electronic means and confirm that their respective execution of this Agreement by such means shall be a valid and sufficient execution.
- 5.3 Confidential Information is delivered "As Is", and all representations and warranties, express or implied, including fitness for a particular purpose and merchantability, are hereby disclaimed.
- 5.4 This Agreement is governed by the laws of New Zealand and the parties submit to the exclusive jurisdiction of the New Zealand courts in respect of all matters relating to this Agreement.
- 5.5 This Agreement shall terminate five (5) years from the date of the execution of this Agreement by both parties unless sooner terminated by either party on thirty (30) days advance written notice to the other party. Termination of this agreement shall not prejudice the Intellectual Property Rights of either party in the Confidential Information.
- 5.6 No modification or waiver of this Agreement shall bind either party, unless it is in writing and signed and accepted by the parties.
- 5.7 This Agreement shall not be assignable by either party without the prior written permission of the other party, whose permission will not be unreasonably withheld.
- 5.8 Nothing herein contained shall be construed to place the parties in the relationship of principal and agent, licensor and licensee, partners, or joint venturers.
- 5.9 If any provisions of this Agreement are invalid under any applicable statute or rule of law, they are, to that extent, omitted, but the remainder of this Agreement shall continue to be binding upon the parties hereto

**MiMOMax Wireless Ltd**  
540 Wairakei Rd  
Christchurch 8053  
New Zealand



## SCHEDULE

**THE PURPOSE** for which the parties have agreed to exchange or provide Confidential Information pursuant to this agreement is to [INSERT PURPOSE HERE]. In connection with this opportunity, each Party may disclose or have already disclosed to the other certain confidential technical and business information which the Discloser desires the Recipient to treat as confidential.

**EXECUTED** by the parties as an Agreement

**SIGNED** on behalf of **MIMOMAX WIRELESS LIMITED** by:

Signature: \_\_\_\_\_ Witness: \_\_\_\_\_

Name/Title: \_\_\_\_\_ Name: \_\_\_\_\_

Date: \_\_\_\_\_ Address: \_\_\_\_\_

**SIGNED** on behalf of **COMPANY A** [INSERT DETAILS] by:

Signature: \_\_\_\_\_ Witness: \_\_\_\_\_

Name/Title: \_\_\_\_\_ Name: \_\_\_\_\_

Date: \_\_\_\_\_ Address: \_\_\_\_\_