

## Mako Networks Services Agreement

This Agreement (“Agreement”) is entered into by and between Customer (as listed on the preceding sign-up form) and Mako Networks, Inc. Any capitalized terms not previously defined shall assume the meanings ascribed to them in the section titled “Definitions.” In acknowledgment of the mutual terms, conditions, and covenants stipulated herein, both Mako and Customer hereby agree:

### General Terms

**Mako System Access, Use & Mako Services Supply:** Mako agrees to grant Customer access to the Mako System and to provide the Mako Services to Customer in accordance with the provisions of this Agreement, in return for payment of the Charges (defined below) by Customer and the performance of Customer’s other obligations as outlined in this Agreement.

**Device and Service Charges:** Charges for Customer’s access to the Mako System and Customer’s use of the Mako Services and the supply of Mako Equipment are detailed in **Exhibit A** and the preceding sign-up form (collectively, the “Charges”). The monthly fee shall apply for the Service Term (as defined below) and shall include advance replacement services and 24x7 technical support (under the terms and conditions specified below) for the duration of the Service Term. This Agreement cannot be canceled during the Service Term, even if the Mako Services is suspended or terminated. Mako will not provide any refunds. Charges do not include any taxes, duties, or other items that any government authority validly imposes and requires Mako to charge Customer as a result of this agreement and expedited shipping and/or air freight charges. Any such taxes, duties, approved expedited shipping and/or air freight charges, or other such items shall be added to Charges.

**Installation Charges:** Charges for installing and activating a new Mako System are detailed in Exhibit A. Customer may choose between two installation options on a per-site basis: Self-Installation or Professional Installation (defined below).

- “Self-Installation” is an installation where the customer or a customer-provided qualified partner performs the physical installation of the Mako Equipment, and the configuration is performed remotely by Mako. The Self-Installation option includes pre-configuration of the Mako Equipment by Mako prior to shipping based on the information provided in the Pre-Installation Questionnaire, device activation, cellular setup, remote installation support, and priority remote assistance for up to 1 hour per installation.
- “Professional Installation” is an installation where a Mako technician or Mako-authorized and sourced third party performs the physical installation and configuration of the Mako Equipment at the customer’s site. Professional installation includes up to 2 hours on-site labor.
- The time commitments for Self-Installation (1 hour remote) and Professional Installation (2 hours onsite) constitute the “Standard Installation Period.”

- For each installation, Customer must complete and submit a Pre-Installation Questionnaire (if requested) and provide Unrestricted Broadband Access at the site prior to the time of installation. Customer shall be responsible for any additional costs incurred by Mako due to inaccurate or incomplete information provided by Customer in the Pre-Installation Questionnaire. These installation Charges do not apply if Customer renews the existing service without changes to the configuration.

**Installation Surcharges:** If Mako is unable to perform an installation for any of the following reasons: (1) a Pre-Installation Questionnaire has not been accurately completed and received by Mako prior to the installation, and/or (2) Unrestricted Broadband Access of adequate quality is not available at the time of installation, (3) anything required for Order Finalization (defined below) is not completed or is still out of scope when the installer arrives, and/or (4) Customer has refused to either permit the installer necessary access to Customer's premises to conduct the installation or refused scheduled delivery of any required hardware component required for the installation, a rescheduling fee shall apply and the installation shall be rescheduled ("Rescheduling Fee"). If Mako's designated installer must remain on-site in excess of the Standard Installation Period, a charge detailed in Exhibit A per hour or part thereof will be charged upon completion of the work ("Non-Standard Work Charge"). Mako reserves the right to charge the Non-Standard Work Charge without providing a quote or obtaining authorization from Customer if the installation exceeds the Standard Installation Period due to reasons attributable to Customer.

**Out of Scope:** The following "out of scope" services are not included in the standard installation services and fees:

Non-standard installation templates, additional devices outside the original scope, labelling or identifying cabling at the site or anything outside the approved installation SOW.

Mako reserves the right to charge for any additional costs incurred due to out-of-scope installation services or excess on-site time without providing a quote or obtaining authorization from Customer.

**Wireless Access Failover Plan Charge:** The Mako Services includes 1 GB per month per site for a Mako 6600 device of wireless cellular failover while a monthly service plan is in effect. Should Customer use more than the total pooled data available in a given month, Customer will be charged the "Wireless Access Overage Fee" detailed in Exhibit A for data used above the initial plan limits. If Customer elects to activate wireless failover functionality services through another cellular provider, payment for such services is Customer's responsibility. Any such wireless access services must run on a compatible 3G/4G/LTE network as determined by Mako with adequate bandwidth and speeds to support the Mako Service.

**Service Transferability:** Customer may transfer services in this Agreement from one site to a new site supplied by Customer prior to the expiration of this Agreement. If Customer elects to transfer this Agreement to another site during the Service Term, Mako reserves the right to charge a transfer fee as detailed in **Exhibit A** ("Site Transfer Fee") plus any applicable Installation Charges. The transferee shall be responsible under this Agreement for the remainder of the Service Term of the Agreement. Mako reserves the right to require a credit check, additional deposit or other assurances before consenting to a transfer.

**Device Ownership:** Under the Mako Equipment rental option, Mako or its designee retains ownership of the Mako Equipment. Under the Mako Equipment purchase option, Customer obtains ownership of the Mako Equipment upon acceptance of full payment of the Charges due. Until full payment is received, Mako retains a security interest in the Mako Equipment.

**Support:** If Customer requires technical support at any time, Customer must contact Mako's customer service team at support@makonetworks.com or 855-268-9310. Customer's use of Mako's support services for issues covered under the terms of this Agreement is already included in the monthly fee for Mako Services. However, support that falls outside the scope of support as described below is billable at the Non-Standard Work Charge.

### **Installation Requirements**

**Pre-Installation Questionnaire:** Mako may provide Customer with a Pre-Installation Questionnaire asking Customer to identify Customer's Internet access provider, physical access requirements, and existing internet-connected network equipment, among other site-readiness information required to determine if Customer's site is ready for installation. Customer shall complete and submit the Pre-Installation Questionnaire to Mako prior to the installation date. Failure to complete and submit the Pre-Installation Questionnaire may result in delays or additional charges, for which Mako shall not be liable.

**Unrestricted Broadband Access:** Before installation, Customer must ensure that Unrestricted Broadband Access meeting Mako's specifications is available to the Mako Equipment. When the Mako Equipment is installed behind another router/modem, the following technical specifications apply:

1. The site router/modem must provide an RJ45 100Mbps or 1Gbps Full Duplex Ethernet interface configured for auto-negotiate mode;
2. The site router/modem must use DHCP for IP allocation to the Mako Equipment;
3. The IP Network provided must be IPv4 (Internet Protocol version 4); and
4. The minimum ISP requirements for Mako Services are 1.5 Mbps download and 384 kbps upload speeds.

Customer shall be solely responsible for ensuring that the Unrestricted Broadband Access meets the above requirements, and Mako shall have no liability for any failure or degradation of the Mako Services resulting from inadequate Unrestricted Broadband Access.

**Acceptance:** Acceptance will be deemed to have occurred when the Mako System is successfully installed and connected to Mako's Central Management System (CMS) from Customer's designated installation site. Mako reserves the right to deem the Mako System accepted upon successful installation and connection to the CMS, regardless of whether Customer has confirmed or signed off on the connection.

**Third-Party Broadband:** Customer shall be responsible for all costs and obligations related to Customer's selected broadband provider for the acquisition and continued use of Unrestricted Broadband Access. This includes ensuring compatibility and adherence to Mako's required specifications for optimal performance of the Mako System. Mako shall have no liability for any failure or degradation of the Mako Services resulting from Customer's use of a third-party broadband provider.

### **Agreement Term**

**Duration:** This is a binding agreement that commences on the earliest of (a) when the Mako System is first activated and connected to Mako's Central Management System (CMS) via the Mako Equipment at Customer's site, or (b) sixty (60) days following the shipment of Mako Equipment to Customer, and, except as provided elsewhere herein, shall continue for a period of three (3) years (the "Initial Service Term"). Following the expiration of the initial three (3) year Term, this Agreement will automatically renew for consecutive one (1) year terms (each a "Renewal Service Term") until either party provides the other party with no less than three (3) month's written notice to terminate. (The Initial Service Term and Renewal Service Term(s) are collectively the "Service Term.")

### **Access to Mako System and Provision of Mako Services**

#### **Mako's Obligations:**

1. Mako will grant Customer access to the Mako System, supply the Mako Services to Customer, and perform Mako's other obligations as expressly stated in this Agreement, all in accordance with, and subject to, the provisions of this Agreement.
2. Customer's access to the Mako System and/or the Mako Services may be amended or limited by further agreement in writing between Mako and Customer, depending on Customer's requirements for the Mako Services.
3. Mako will use commercially reasonable efforts to try to ensure that Customer's access to the Mako System and the provision of the Mako Services is continuous and as fault-free as reasonably possible. However, Mako does not guarantee or warrant that this will be so for reasons including without limitation, those outlined in clause 4 of the section titled "Customer's Obligations." In no event shall Mako be liable for any interruption, delay, or failure in the provision of the Mako System or Mako Services.

**Customer's Obligations:** Without limiting Customer's other obligations as stated elsewhere in this Agreement:

1. Customer is solely and exclusively responsible for compliance under the Payment Card Industry Data Security Standards ("PCI-DSS") and expressly agrees without limitation that Mako has no responsibility for ensuring Customer's compliance thereunder; however, the Mako Services are PCI DSS compliant as described below;

2. Customer will abide by the provisions of Mako Networks Documentation (defined below) as displayed on the Website (<https://docs.makonetworks.com/>) from time to time, and Customer acknowledges that Customer has read and accepted the contents of those documents;
3. Customer will comply with any other reasonable directions that Mako may provide from time to time regarding Customer's access to the Mako System or use of the Mako Services;
4. Customer acknowledges and accepts that access to the Mako System and provision of the Mako Services is dependent at all times on external factors such as (without limitation) third-party networks, network congestion, Customer's systems and equipment, radio interference, atmospheric conditions, and network or Mako System maintenance or upgrade activities (whether scheduled or urgent), and that any one or more of such factors, or other factors, could cause loss or degradation of the Mako Services or Customer's access to and use of the Mako System at any time and Mako shall not be liable for any such loss or degradation;
5. Customer will use the Mako Equipment, the Mako System, and the Mako Services only for the purposes as promoted by Mako, and not for any other purpose, and in particular, not for any abusive, fraudulent, illegal, or inappropriate purpose. Any such use shall be grounds for immediate termination of this Agreement by Mako;
6. Customer will ensure that each of Customer's executives, employees, agents, or contractors who use the Mako Services or have access to the Mako System abide by these terms at all times – Customer is responsible for anyone who accesses the Mako System or uses the Mako Services from Customer's Mako Equipment or from any of Customer's contact details, regardless of whether or not authorized by Customer;
7. Customer must keep all passwords and other access codes Mako issues to Customer confidential and secure at all times, free from unauthorized third-party access. Customer shall be solely responsible for any unauthorized access resulting from Customer's failure to maintain the confidentiality and security of such passwords and access codes;
8. Customer must inform Mako immediately if any of Customer's passwords, access codes, or Customer's Mako Equipment has been lost, stolen, or accessed by unauthorized means, as Customer will continue to be liable until Mako receives Customer's notification and Mako reconfigures Customer's access to the Mako System and Mako Services (which Mako may do at Customer's cost);
9. Customer must not resell or sub-license the use of the Mako Equipment, the Mako System, or the Mako Services at any time;
10. Customer must always keep Mako informed of all changes to Customer's contact

details.

### **Warranty**

Mako agrees to provide Customer with Warranty coverage under the following terms and conditions:

**Scope of Warranty:** This warranty extends only to Customer and will not extend to, nor may it be assigned to, any subsequent or third-party user, purchaser, or end user. However, the parties acknowledge that any sale, assignment, or transfer among Customer's other sites shall not be considered a third party. Mako reserves the right to void the warranty if the Mako Equipment is transferred or assigned to any third party without Mako's prior written consent.

**Mako Equipment Warranty:** Mako warrants that Mako Equipment delivered to a Customer under this Agreement: (a) shall be delivered and/or provided in good operating order, in conformity with Mako's specifications and descriptions; and (b) shall be free of material defects in workmanship and material for the duration of the warranty period subject to limitations set forth herein. During the warranty period, if Customer notifies Mako that Mako Equipment is not performing per its specifications, Mako has the option to replace or repair the Mako Equipment that fails to function according to Mako Equipment's specifications. Mako warrants that it is passing good title to Customer for the Mako Equipment, free and clear of all liens and encumbrances other than liens formed with Customer during the sign-up period related to financing obligations. Mako warrants that any Mako Equipment sold as new (excluding spare parts) will be in new condition, provided that the Mako Equipment replaced under warranty may include refurbished components that are warranted to function to the equivalent of new condition. Demonstration units identified as such and sold to Customer at an additional discount are excluded.

- (a) If Mako determines that Mako Equipment under the current Warranty must be replaced due to a problem with the Mako Equipment, Mako will ship a replacement device no later than the next Business Day. The cutoff time for requests for the shipment of a replacement device is 3:00 PM CST.

**Software Warranty:** Mako warrants that Software and Mako Services delivered to Customer under this Agreement: (a) will be delivered and/or provided in good operating order, in conformity with Mako's Software specifications and descriptions (including, but not limited to, the service levels); and, (b) will be free of material defects for the duration of a valid Agreement between Mako and Customer subject to limitations set forth herein. This Software warranty shall be continuous and extends for the duration of the Agreement between Mako and Customer, subject to limitations set forth herein. Mako may provide Customer with maintenance releases or feature releases for the Software. Customer's sole and exclusive remedy and the entire liability of Mako, its suppliers, and affiliates under this warranty is to correct the reported material defect through Software updates and Software upgrades. Mako makes no other warranty with respect to the Software and expressly disclaims any warranty that the Software is error-free or that Customer will be able to operate the Software without problems or interruptions. Customer may be able to access and execute potentially hazardous files from the Internet, and Mako disclaims all liability resulting from Customer's access and execution of such files. If Customer allows maintenance and support service

to lapse, this Software warranty will be nullified.

**Mako Equipment Warranty Period Under the Purchase Option:** If Customer purchases the Mako Equipment, Mako's warranty against defects in workmanship and material shall begin on the date the Mako Equipment is installed at Customer's site and continue for thirty-six (36) months.

**Mako Equipment Warranty Under the Rental Option:** If Mako provides Customer the Mako Equipment through a rental option, Mako's warranty against defects in workmanship and material shall be coterminous with the Service Term, and the cost of such warranty shall be included in the Charges.

**Warranty Limitations:** Mako shall not be liable under this warranty if (1) testing and examination by Mako discloses that the Mako Equipment has been modified or altered in any manner by any party other than Mako or its agents after the Mako Equipment was installed and activated by Mako, or (2) testing and examination by Mako discloses that the alleged defect in the Mako Equipment does not exist or was caused by Customer or any third person's misuse, neglect, improper installation or testing, unauthorized attempts to repair or by any other cause outside the scope of normal use, or by accident, fire or other hazards, or has been subjected to abnormal physical, thermal, or electrical stress, misuse, negligence or accident. Technical specifications for Mako Equipment are available on the Website. Mako shall not be liable under any warranty under this Agreement with respect to any Mako Equipment that is not returned in its original shipping container or a functionally equivalent container. Customer may return the Mako Equipment in the container used by Mako to ship the replacement item to Customer, or Customer may use any other functionally equivalent container. If Mako's testing and examination does not disclose a material defect warranted under this Agreement, Mako will advise Customer and dispose of such Mako Equipment per Customer's instructions on behalf of Customer and at Customer's cost. All Software embedded in the Mako Equipment purchased hereunder is warranted against material defects under normal authorized use consistent with instructions provided with each shipped Mako Equipment purchased by a Customer.

**Warranty Exclusions:** Mako Equipment is not designed or intended for use in (i) the design, construction, operation, or maintenance of any nuclear facility, (ii) navigating or operating aircraft, or (iii) operating life-support or life-critical medical equipment, and Mako disclaims any express or implied warranty of fitness for such uses. Mako shall not be responsible for Customer's or any third party's software, firmware, information, or memory data contained in, sorted on, or integrated with any Mako Equipment returned to Mako, whether under warranty or not. Customer is responsible for backing up its programs and data to protect against loss or corruption. Mako shall not be liable for any loss or damage to such software, firmware, information, or memory data.

**Mako Equipment Return Procedures:** If Mako's online or phone assistance concludes that Mako Equipment must be repaired or replaced due to any defect with the Mako Equipment within the warranty term, the following Mako Equipment return procedures shall apply: provided Customer is in good standing, Mako will provide an advance replacement at Mako's cost and provide Customer with a Return Material Authorization ("RMA") number and the location to which Customer must return the defective Mako Equipment within the time period specified below. Mako reserves the



right to charge Customer for any advance replacement if the defective Mako Equipment is not returned within the specified time period.

**Shipment & Packaging:** Customer is responsible for proper packaging of Mako Equipment returned to Mako, including a description of the failure, shipment to Mako's designated location, and return of Mako Equipment within thirty (30) days after receipt of the RMA number. In no event will Mako accept any returned Mako Equipment that does not have a valid RMA number on the return shipment packaging. Customer's failure to return the Mako Equipment within thirty (30) days of receiving an RMA may result in the cancellation of the RMA and a charge for any advance replacement units shipped by Mako to Customer. If a warranty claim is invalid for any reason, Customer will be charged at Mako's then-current rates for services performed and will be charged for all expenses incurred by Mako. Mako's determination on the validity of any warranty claim shall be final and binding on Customer.

### Support

Mako will provide Customer with the following support services as part of the monthly fee for Mako Services:

1. 24x7 access to Mako's technical support team via email at support@makonetworks.com or by phone at 855-268-9310.
2. Remote support and diagnostics, troubleshooting, and problem resolution related to the Mako System, Mako Services, and Mako Equipment.
3. Software maintenance updates, patches, and fixes associated with the Mako Software.
4. Remote monitoring of alarms and traffic analysis.
5. Repair or replacement of defective Mako Equipment, subject to the warranty provisions of this Agreement. Mako will assist Customer with remotely setting up or installing the replacement Mako Equipment.

Mako's support services do not include any on-site activities, such as on-site parts replacement, on-site fault resolution, or the presence of field technicians at Customer's premises for any reason. Mako reserves the right to charge Customer additional fees at Mako's then-current rates for any support services requested by Customer that are not expressly included in this Agreement. Customer shall be responsible for any costs incurred by Mako in providing such additional support services.

**Exclusions:** Notwithstanding anything to the contrary in this Agreement, Mako shall have no obligation to provide Support Services under this Agreement in any of the following circumstances:

1. Issues caused by Customer's use of the Mako System in a manner inconsistent with Mako's documentation and instructions, or for any purpose not expressly permitted by this



Agreement.

2. Problems resulting from unauthorized modifications, alterations, or repairs to the Mako System by Customer or any related third party.
3. Failures or defects in the Mako System caused by Customer's negligence, abuse, misuse, misapplication, accidental damage, fire, flood, or other hazards external to the Mako System.
4. Issues arising from Customer's use of the Mako System in combination with hardware, software, or services not provided or approved by Mako, or in a manner not recommended or specified by Mako.
5. Problems caused by third-party devices, software, services, or infrastructure, such as Customer's network, Internet service provider, or wireless carrier.
6. Support for any Mako Equipment that has reached end-of-life or end-of-support status, as determined by Mako in its sole discretion.
7. Assistance with tasks that are the responsibility of Customer under this Agreement, such as maintaining proper security policies, managing user access and permissions, and protecting sensitive data.
8. Any on-site activities, such as on-site parts replacement, on-site fault resolution, or the presence of field technicians at Customer's premises for any reason.
9. Support or troubleshooting for any issues that Mako, in its reasonable discretion, determines to be outside the scope of the support services contemplated by this Agreement.

Customer acknowledges and agrees that any support services provided by Mako in connection with the above excluded circumstances, or any support services requested by Customer that are not expressly included in this Agreement, shall be subject to the Non-Standard Work Charge. Customer shall be solely responsible for any costs or expenses incurred by Mako in providing such additional support services.

### **Charges, Billing, and Payment Terms**

**Invoices:** The first month's Mako Services fee and installation fee (if applicable) are due upon initial signup for the Mako Service. After that, all remaining fees shall be billed in advance at the beginning of the month the Mako Services are provided. Prior to the shipment of the Mako Equipment, Mako requires Customer to authorize an Automated Clearing House (ACH) payment for automatic payment of the Charges as they become due via a valid checking account. Mako will send Customer billing statements detailing Charges without set-off, counterclaim, or any deduction whatsoever. Customer will be charged the amount indicated on the billing statement for each billing period. A receipt will be emailed to Customer, and each charge will appear on Customer's statement.

Customer agrees that no other notification will be provided.

**Payment Terms:** Payment from Customer shall be due upon automatic debit or credit of Customer's account set up with Mako. Mako will provide Customer with the first notification of late payment within one (1) day of Customer's invoice due date or scheduled automatic payment date. Mako will provide Customer with the second notification of late payment five (5) days after Customer's invoice due date or scheduled automatic payment date. Mako will provide Customer with the final notification of late payment ten (10) days after Customer's invoice due date or scheduled automatic payment date. Mako may suspend services provided to Customer if payment is not received within thirty (30) days after Customer's invoice due date or scheduled automatic payment date. Mako reserves the right to terminate this Agreement and all Mako Services provided hereunder if payment is not received within thirty (30) days after Customer's invoice due date or scheduled automatic payment date.

It is Customer's responsibility to:

1. Ensure sufficient funds and/or credit limits are available in Customer's account to meet each withdrawal on the due date.
2. If there are insufficient funds in Customer's account or Customer exceeds Customer's credit limit, Customer's issuing financial institution may charge Customer a fee and/or interest. Customer shall be responsible for any such fees or interest, and Mako shall have no liability therefor.
3. Customer is solely responsible for paying any fee and/or interest charged by Customer's issuing financial institution.
4. Check Customer's account statement to verify that the amounts debited from Customer's account are correct. Any discrepancies must be reported to Mako within thirty (30) days of the debit date, or Customer waives any claim with respect to such discrepancy.
5. Advise Mako if the payment account has been transferred or closed or if the account details have changed.
6. Arrange an alternate payment method if Customer cancels the scheduled withdrawal.

**Billing Adjustments:** If Mako makes a billing adjustment to the account, Mako will cancel the withdrawal and establish a new withdrawal for the amount and due date as indicated on the revised bill.

**Insufficient Funds or Credit Limits:** Customer must update Customer's banking information to ensure ACH payments can be completed on the due date. If the account Mako withdraws from does not contain sufficient funds or exceeds a credit limit on the account, Customer will be charged a \$25 non-sufficient funds charge by Mako. Customer's account may also be subject to

additional charges by Customer's financial institution if Customer's payment is rejected, reversed, or refused. If Customer's financial institution refuses the transaction for any reason, including insufficient funds, closed account, or unauthorized account, Mako will not be able to process Customer's payment, and Customer's service may be interrupted.

**Default Interest:** If Customer fails to pay in full to Mako directly as may be required under this Agreement, Mako may impose interest at the Default Rate from when the amount was due until it is paid in full. Mako may also require Customer to pay all reasonable recovery costs associated with the non-payment of Customer's Charges, including Mako's debt recovery and legal costs. Mako reserves the right to report any default by Customer to credit reporting agencies.

**Security:** Mako may at any time:

1. Require Customer to pay Mako a reasonable security deposit to mitigate against the effect of any non-payment by Customer (if that occurs). Mako may apply the deposit to any outstanding Charges or other amounts owed by Customer at any time. Holding that security deposit does not limit any other rights or remedies Mako may have.
2. Impose a credit limit on Customer's account along with any related restriction on the Mako Services that Customer may receive, and Customer must adhere to those restrictions, provided Customer will remain liable for any Charges incurred in excess of that credit limit if that occurs. Mako may modify the credit limit at any time without notice to Customer.
3. Apply any credit balance Customer may have with Mako to pay any sums Customer may owe Mako. Mako may do so at any time without notice to Customer.

**Credit Checks:** By requesting access to the Mako System or Mako Services, Customer authorizes Mako to conduct such credit checks on Customer as Mako believes are reasonably necessary for this Agreement. Mako can decline Customer's application for Mako Services for any reason, including if Mako is not satisfied with any credit report Mako receives about Customer.

**Disputes:** If Customer wishes to dispute any Charges, Customer must send a written notice to Mako detailing that dispute within 30 days from the earlier of the debit of the amount or the date Mako sends the account statement reflecting the charge (see subsection Disputes below). Failure to provide timely notice of any dispute shall constitute a waiver of Customer's right to dispute such Charges. Mako's determination on the validity of any dispute shall be final and binding on Customer.

### **Mako Equipment and Other Hardware**

**Approved Devices:** Customer must only use Mako Equipment that is approved for use by Mako. Customer's purchase or rental of the Mako Equipment from Mako is subject to this agreement.

**Title and Risk of Loss:** Title shall remain with Mako, and risk of loss of Mako Equipment shall pass

upon receipt of the Mako Equipment by Customer at the place of destination specified in Customer's order. At the time of delivery, Mako warrants good and merchantable title, free and clear of any and all taxes, liens, or encumbrances of any nature. Until risk of loss passes to Customer, Mako will have the sole risk of loss to the Mako Equipment and will retain responsibility for all labor, material, equipment, loss, damage, or work with respect to the Mako Equipment except as otherwise agreed in writing.

**Risk:** The Mako Equipment and any other hardware that Mako may have supplied is held and used by Customer at Customer's risk.

**Other Hardware:** If Customer requires other hardware, software, or services to enable Customer to access the Mako System and use the Mako Services per this Agreement, then that is Customer's responsibility and cost. Mako makes no representations or warranties regarding the compatibility or functionality of any such other hardware, software, or services, and shall have no liability for any failure thereof.

### **Use of Data**

**Policy:** Mako's receipt, storage, and use of any personal information relating to Customer or any personnel within Customer's organization are governed by the terms of Mako's privacy policy, which is published on the Website. Customer agrees that Customer has read and accepted those policy terms, including any variation to those terms. Customer confirms that Customer either has checked or will check its privacy or data protection policy and related terms, which may differ from ours in respect to its business. The Customer is solely responsible for ensuring their privacy and data protection practices align with their specific business requirements. Mako reserves the right to modify its privacy policy at any time with notice to Customer.

**Customer's Network:** Customer accepts that to improve Mako Services, Mako's System can monitor Customer's network and related systems and store information from them to the extent supplied. Customer warrants that Customer has all required consents to enable Mako to do this lawfully.

### **Intellectual Property**

**Ownership:** All Intellectual Property forming part of or relating to the Software, the Mako System, the Mako Equipment, the Mako Services, any documentation (whether electronic or otherwise), or any other product or service Mako supplies to Customer is and remains owned by Mako or Mako's licensors (as the case may be) at all times. At no time will Customer gain any ownership or proprietary right or interest in any Intellectual Property. Customer is only granted the limited License (defined below) to access and use the Intellectual Property as set forth below. Customer must not use any Intellectual Property in any way other than as expressly permitted by the License.

**License:** Mako hereby grants Customer a limited, non-exclusive, non-assignable (except as permitted under subsection Service Transferability above) and non-sublicensable license ("License") to access the Mako System and to use the Software for the sole purpose of using the Mako Services for the benefit of Customer's business only, as promoted by Mako, and in accordance

with the provisions of this Agreement. This License does not extend to any other items of Mako's Intellectual Property. Mako reserves the right to revoke the License at any time if Customer breaches any provision of this Agreement. Upon termination or expiration of this Agreement, the License shall automatically terminate, and Customer shall immediately cease all use of the Intellectual Property.

**Obligations:** Customer must not at any time attempt to copy, reverse engineer, decompile, or damage the Software, Mako System, or the Mako Equipment in any way, or copy, modify, reverse engineer, create derivative works of, or otherwise use any of the Intellectual Property, other than as expressly permitted in this Agreement.

### **Suspension and Termination**

**Suspension:** If Mako has reasonable grounds to terminate this Agreement under the Termination provision herein, at Mako's sole discretion, Mako may instead elect to suspend Customer's access to the Mako System or the Mako Services immediately, indefinitely, and without prior notice. Customer will continue to pay the Charges during the period of any suspension. Mako will inform Customer when the suspension has been lifted, subject to Mako's rights under Termination and Further Election.

**Termination:** If Customer breaches this Agreement at any time, Mako will be entitled to terminate this agreement by giving Customer fourteen (14) days advance written notice of termination. If Customer has not remedied any notified breach (if remediable) within that fourteen (14) day period to Mako's reasonable satisfaction, then termination will occur on the expiration of that fourteen (14) day period. This Agreement shall terminate immediately, without notice upon (i) the institution by or against Customer of insolvency, receivership, or bankruptcy proceedings or any other proceedings for the settlement of Customer's debts that, in the case of involuntary proceedings, are not dismissed within thirty (30) days of the institution, (ii) Customer's making an assignment for the benefit of creditors, or (iii) Customer's dissolution or ceasing to do business.

**Further Election:** If Mako elects to suspend for valid reasons as set forth herein, Mako may still at any time issue notice and terminate hereunder if Mako wishes (provided the grounds for termination remain).

**Consequences:** Upon termination for any reason, Customer must immediately pay all outstanding Charges and any other Charges due as at termination and immediately cease accessing the Mako System, the Mako Services, and the Intellectual Property. Customer must, at Customer's cost, also return all property belonging to Mako immediately. Customer shall be responsible for any costs incurred by Mako in enforcing this provision, including but not limited to reasonable attorneys' fees and court costs.

**Surviving Terms:** The terms of this Agreement continue after termination to the extent required for Mako to enforce those terms at termination.

**Changes to the Mako Services or Customer's access to the Mako System:** Mako may suspend, alter, vary, or limit the Mako Services or Customer's access to the Mako System to perform

maintenance or upgrade work or for other commercially reasonable business reasons at Mako's sole discretion. If any changes under this clause require Customer to upgrade or change Customer's Mako Equipment then Customer will be required to do so at Customer's own cost.

### **Limitation of Liability**

NEITHER PARTY SHALL HAVE LIABILITY TO THE OTHER PARTY OR ANY THIRD PARTY WITH RESPECT TO ITS OBLIGATIONS UNDER THIS AGREEMENT FOR ANY LOSS OF USE, INTERRUPTION OF BUSINESS, LOST PROFITS, OR LOST DATA, OR INDIRECT, SPECIAL, INCIDENTAL, OR CONSEQUENTIAL DAMAGES, OF ANY KIND REGARDLESS OF THE FORM OF ACTION, WHETHER IN CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY OR OTHERWISE, EVEN IF SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGE, AND WHETHER OR NOT ANY REMEDY PROVIDED SHOULD FAIL OF ITS ESSENTIAL PURPOSE. MAKO SHALL NOT BE LIABLE FOR ANY DAMAGES ASSOCIATED WITH THE INTERRUPTION OR LOSS OF USE OF MAKO SERVICES, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

THE TOTAL LIABILITY OF MAKO TO CUSTOMER IN RESPECT ALL CLAIMS, WHETHER IN CONTRACT, TORT, EQUITY, OR ON ANY BASIS, IS AT ALL TIMES LIMITED TO USD \$500 PER THE NUMBER OF SITES UNDER THE AGREEMENT. MAKO IS NOT LIABLE, WHETHER IN TORT (INCLUDING FOR NEGLIGENCE, GROSS NEGLIGENCE, OR BREACH OF STATUTORY DUTY), CONTRACT, MISREPRESENTATION, RESTITUTION, OR OTHERWISE, FOR ANY LOSS OF PROFITS, LOSS OF BUSINESS, DEPLETION OF GOODWILL, AND/OR SIMILAR LOSSES OR LOSS OR CORRUPTION OF DATA OR INFORMATION, OR PURE ECONOMIC LOSS, OR LOSS OF REVENUE OR PROFITS, OR FOR ANY SPECIAL, INDIRECT OR CONSEQUENTIAL LOSS, COSTS, DAMAGES, CHARGES OR EXPENSES HOWEVER ARISING, UNDER THIS AGREEMENT.

ANY WARRANTIES OR OTHER TERMS THAT MIGHT OTHERWISE BE IMPLIED INTO THIS AGREEMENT BY LAW FOR CUSTOMER'S BENEFIT ARE EXCLUDED TO THE FULLEST EXTENT PERMITTED BY LAW, INCLUDING ANY WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. IN PARTICULAR, MAKO DOES NOT WARRANT THAT THE MAKO SYSTEM, MAKO SERVICES, OR THE MAKO EQUIPMENT WILL BE ERROR-FREE OR WILL ACHIEVE ANY PARTICULAR OUTCOME CUSTOMER MIGHT DESIRE.

Customer acknowledges that Customer's use of the Mako System and the Mako Services is solely for Customer's business purposes, and as a result, if any applicable law entitles Mako to exclude or limit Mako's liability to Customer because Customer is entering into this Agreement solely for business purposes, then Customer accepts that Mako excludes (or if not possible then limit) Mako's liability to Customer to the fullest extent permitted by that law. Customer agrees to fully defend, indemnify, and hold Mako harmless for any loss, damage, claim, cost, or expense Mako incurs as a result of any breach of this Agreement by Customer or any of the third parties described in these terms.

**Exceptions:** Nothing in this Liability section is intended in any way to negate or limit any rights that Customer may have by law, which Mako is not legally permitted to exclude or limit. Customer retains those rights to the extent Mako is not permitted by law to exclude or limit those rights.

Nothing in this Agreement is intended to limit Mako's liability for death or personal injury caused by Mako's gross negligence or for fraud or fraudulent misrepresentations.

**Force Majeure:** Mako will not be liable for any breach or loss caused by any event beyond Mako's reasonable control, including without limitation third-party network outage or disruption, Acts of God, riots, strikes, shortage of material, equipment, or energy.

### **Transferring Responsibilities**

**By Mako:** Mako may transfer or assign the whole or any part of this Agreement, or any interest in the Mako System, Mako Services, or any Intellectual Property, to any third party for any reason at any time.

**By Customer:** Subject to the Service Transferability provisions of this Agreement, Customer's interests in this Agreement are personal to Customer, and Customer may not transfer any of Customer's rights or obligations to any other party without Mako's prior written consent, which may be withheld in Mako's sole discretion.

**Subcontracting:** Mako may subcontract the whole or any part of Mako's obligations under this Agreement to any other party.

**Network Operators:** Mako has certain obligations towards other Network Operators and Mako's suppliers. Those persons (and their officers, employees, contractors, and agents) will not be liable to Customer or anyone else for any claims, costs, damages, losses, or other liabilities of any kind whatsoever from the Mako Services Mako provide or from Customer's use of those Mako Services or Mako's network, including (without limitation) Customer's access to use of any Network Operator's networks. This paragraph creates an obligation that other Network Operators and/or suppliers can enforce against Customer, whether as a defense or otherwise.

### **Variations**

These terms and conditions may be amended only in a signed writing executed by the parties, provided that Mako may amend the Charges for a subsequent Renewal Service Term by sending Customer advance notice of the new Charges at least thirty (30) days prior to Customer's deadline to cancel the automatic Renewal Service Term.

### **General**

**Notices:** Mako will send any general service notices to Customer by either sending them to Customer or by publishing them on the Website. Notice will be deemed to be given once sent or published in this manner. Legal notices, including notices regarding late payments, shall be provided in writing (including email) to Customer. Customer must send any notices related to cancellations, billing inquiries, or billing disputes exclusively to [accounting@makonetworks.com](mailto:accounting@makonetworks.com). Notices sent to any other email address or through any other means of communication shall be deemed invalid and will not be acted upon by Mako. Failure by Customer to direct such notices to the correct email address nullifies the communication, and Mako shall have no obligation to



respond to or take any action based on improperly directed notices.

**Entire Agreement:** This Agreement constitutes the entire agreement between Mako and supersedes all prior agreements, arrangements, understandings, or representations between Customer and Mako. There are no representations, warranties, covenants, or agreements between the parties except as set forth in this Agreement.

**Confidentiality:** Customer acknowledges that during the course of this Agreement, it may have access to confidential information belonging to Mako, including but not limited to trade secrets, technical data, business plans, pricing information, maintenance releases, features, and other product, service or business information (collectively, "Confidential Information"). The Customer agrees that, during and after the term of this Agreement, Customer will not use or disclose to any third party any Confidential Information without the prior written consent of Mako, and Customer will use reasonable efforts to protect the confidentiality of such Confidential Information. The Customer may disclose the Confidential Information only to its employees, agents, or contractors who have a need to know such information for the purposes for which such information was disclosed to Customer; provided that each such employee, agent, or contractor is under a written obligation of nondisclosure which protects the Confidential Information under terms substantially similar to those herein. Notwithstanding the foregoing, Confidential Information shall not include information that: (a) is or becomes publicly available without breach of this Agreement; (b) is received from a third party without restriction and without breach of an obligation of confidentiality; (c) was known to Customer prior to its disclosure by Mako; or (d) is independently developed by Customer without use of or reference to the Confidential Information. In the event that Customer is required by law, regulation, or court order to disclose any Confidential Information, Customer shall promptly notify Mako in writing and cooperate with Mako in seeking a protective order or other appropriate remedy. If such protective order or remedy is not obtained, Customer shall disclose only that portion of the Confidential Information that is legally required and shall use its best efforts to obtain reliable assurance that confidential treatment will be accorded to the Confidential Information. The confidentiality obligations set forth in this section shall survive the termination or expiration of this Agreement for a period of two (2) years. In the event of a breach or threatened breach of this section, Mako shall be entitled to seek injunctive relief in addition to any other remedies available at law or in equity. Mako may process and store Customer data in the United States or any other country in which Mako or its agents work or maintain facilities. Customer will take reasonable steps not to disclose to Mako any personally identifiable, confidential, or sensitive data, and Customer hereby consents to Mako's processing and storage of Customer data, acknowledging and agreeing that Mako is merely a data processor.

**Disputes:** Customer must refer any dispute in the first instance to Mako's customer service team at [support@makonetworks.com](mailto:support@makonetworks.com). If the dispute cannot be resolved between both parties within ten (10) Business Days, it may then be referred to mediation by either party and if unresolved after that, it must be referred to arbitration by a single arbitrator whose decision will be final and binding. Any mediation or arbitration will be pursuant to the Commercial Arbitration Rules of the American Arbitration Association and will be conducted in Chicago, Illinois, and in English. Each party will bear its own costs as well as a half share of the mediation or arbitration-specific costs. Neither party will commence any other form of legal proceedings in relation to this Agreement unless for

seeking urgent interlocutory relief or for the recovery of any Charges due to Mako.

**Waiver:** No failure or delay by Mako in exercising Mako's rights under this agreement will amount to a waiver of Mako's rights. Any waiver by Mako must be in writing and signed by Mako.

**Governing Law and Forum** This Agreement shall be governed by and construed in accordance with the laws of the State of Illinois, without giving effect to any choice or conflict of law provision or rule (whether of the State of Illinois or any other jurisdiction) that would cause the application of the laws of any jurisdiction other than the State of Illinois. The forum jurisdiction for the resolution of any disputes will be Illinois, and all disputes will be governed by the exclusive jurisdiction of the Illinois courts, subject to the clause entitled Disputes. The parties hereby irrevocably submit to the personal jurisdiction of such courts and waive any defense of forum non conveniens.

**Severability:** If any provision of this Agreement is found by a court of competent jurisdiction to be invalid, illegal, or unenforceable, such provision shall be modified to the minimum extent necessary to make it valid, legal, and enforceable. If such modification is not possible, the provision shall be severed from this Agreement, and the remaining provisions shall remain in full force and effect. The invalidity, illegality, or unenforceability of any provision shall not affect the validity, legality, or enforceability of any other provision of this Agreement.

**Future Functionality:** Customer acknowledges that its purchase and use of the Mako System, Mako Services, or Mako Equipment are not contingent on the delivery of any future functionality or features, nor are they dependent on any oral or written public comments made by Mako regarding future functionality or features. Mako reserves the right to modify, update, or enhance its products and services at its sole discretion, and Customer agrees that such modifications, updates, or enhancements shall not constitute a breach of this Agreement.

**Relationship of the Parties:** The parties to this Agreement are independent contractors. This Agreement does not create a partnership, franchise, joint venture, agency, fiduciary, or employment relationship between Mako and Customer. Neither party shall have the authority to bind the other party or incur any obligations on behalf of the other party without the other party's prior written consent. Each party shall be solely responsible for its own acts and omissions and the acts and omissions of its employees, agents, and representatives.

**Export Compliance:** The Mako System, Mako Services, Mako Equipment, and associated products may be subject to U.S. export control laws and regulations, including but not limited to the Export Administration Regulations (EAR) maintained by the U.S. Department of Commerce, the sanctions programs administered by the U.S. Department of Treasury's Office of Foreign Assets Control (OFAC), and any other applicable laws, regulations, or orders. Customer agrees to comply with all applicable export control laws and regulations and shall not permit any Customer employee, agent, or representative to access or use the Mako System, Mako Services, or Mako Equipment in violation of such laws and regulations. Customer shall not, directly or indirectly, export, re-export, transfer, or release the Mako System, Mako Services, Mako Equipment, or any related technology, software, or technical data to any destination, entity, or person prohibited or restricted under U.S. export control laws and regulations, including but not limited to any country subject to comprehensive U.S. economic sanctions, any person or entity on the Specially Designated Nationals and Blocked

Persons List or the Denied Persons List, or any end-user engaged in activities related to weapons of mass destruction, without first obtaining any required export license or other governmental approval. Customer shall indemnify, defend, and hold harmless Mako and its affiliates, officers, directors, employees, and agents from and against any claims, damages, losses, liabilities, costs, and expenses (including reasonable attorneys' fees) arising out of or in connection with Customer's failure to comply with this section.

### Definitions

In this agreement, unless the context otherwise requires, the following terms have the following meanings:

"Business Day" means any day, other than a Saturday, Sunday, or the specified holidays of New Year's Day, Memorial Day, July 4th, Labor Day, Thanksgiving Day, the day after Thanksgiving Day, or Christmas Day, as well as any other holidays observed by package carriers such as FedEx and UPS. . If any of these holidays fall on a weekend, the holiday will be observed on either the preceding Friday or the following Monday, as applicable.

"Customer" means the person or other legal entity accessing the Mako System, being a person or other legal entity contractually engaged by Mako.

"Customer's Data" means any data relating to Customer's consumers, customers, Customer, employees, or systems that is provided by Customer or collected directly by Mako from such customer, employee, or system. Customer's Data includes Personal Data.

"Default Rate" means the lesser of (i) one and a half percent (1.5%) per month calculated daily, calculated on the full balance due and payable to Mako or (ii) the maximum rate allowed by law;

"Intellectual Property" means all intellectual property anywhere in the world relating to the Mako System, the Mako Services, the Software, or any other aspect of Mako's business, and includes without limitation all patents, patents pending, trademarks, copyright, design rights, database rights, trade secrets, know how, confidential information and any other intellectual property whatsoever, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world;

"Mako" means Mako Networks, Inc., a Delaware corporation based in Elgin, Illinois, and Mako Networks Sales & Marketing, LLC, a Delaware limited liability company based in Elgin, Illinois and their respective affiliates, successors, and assigns;

"Mako Equipment" means the hardware device (or devices) supplied to Customer by Mako and which enables Customer to access the Mako System and the Mako Services, including any Software installed on such devices;

"Mako Services" means the network, applications, reporting, support, or other services Customer

has requested to use under License from Mako and which Mako agrees to supply via the Mako Equipment and the Mako System and any other means Mako makes available to enable the provision of those services to Customer;

“Mako System” means the Mako Equipment and network infrastructure and Software applications developed or otherwise used by Mako to deliver the Mako Services to Customer;

“Network Operators” means any third-party telecommunications operators with whom Customer and/or Mako have entered into a connection agreement;

“Order Finalization” means that (a) Mako acknowledges Customer’s order for Mako Services at a site, (b) any due upfront payments have been received from Customer, (c) all contractual obligations of the signup process have been completed, including completion of the Pre-Installation Questionnaire and any required remediation, (d) the site has been deemed ready for installation of Mako Equipment, and (e) an order date has been accepted by Customer.

“Personal Data” means any information relating to an identifiable individual that Mako handles as a result of, or in connection with, the provision of the Mako Services; an identifiable individual can be identified or authenticated, directly or indirectly, in particular by but not limited to a name, address, telephone number, email address or other unique identifier, passwords, answers to security questions, or other personal identifiers.

“Pre-Installation Questionnaire” means a form asking Customer to identify Customer’s Internet access provider, physical access requirements, and existing Internet-connected network equipment, among other site-readiness information required to determine if Customer’s site is ready for installation.

“Software” means any software which is comprised within the Mako System or is embedded in the Mako Equipment;

“Mako Networks Documentation” means the manual(s) prepared by Mako’s technical personnel which details the technical environment Customer need to have in place in order to be able to effectively use the Mako Services, and also describes those technical and other requirements which Customer is required to abide by at all times during the Service Term of this agreement, and includes any installation manual(s);

“Unrestricted Broadband Access” means an Internet broadband connection to the public Internet with no traffic shaping, content filtering, or bandwidth restrictions in effect between the Mako Equipment and the public Internet; and

“Website” means Mako’s website at [www.makonetworks.com](http://www.makonetworks.com) or any other website as lawfully promoted by Mako which enables Customer to gain access to the Mako System or Mako Services.

## EXHIBIT A

Type of Fee	Amount (USD)	Frequency
Professional Installation (2 hours) (1 Mako 6600 & 1 Mako Switch)	\$499	One-Time
Self-Installation (1 Mako 6600 & 1 Mako Switch)	\$149	One-Time
Rescheduling Fee	\$250	One-Time
Non-Standard Work Charge	\$125 per hour	One-Time
Wireless Access Overage Fee	\$15 per 1 GB	One-Time
Mako Equipment Pickup Fee	Charged at local pickup rate	One-Time
Lost/Non-Returned Equipment Fee	MSRP For Device	One-Time
Site Transfer Fee	\$250	One-time