

SUPPORT AGREEMENT

Tait North America, Inc.

And

City of Riverside Fire Department

CONTACT INFORMATION

TAIT Communications Corporate Head Office

Tait International Limited
P.O. Box 1645
Christchurch
New Zealand

For regional offices address and telephone numbers, refer to <http://www.taitradio.com>.

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

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SUPPORT AGREEMENT

THIS Support Agreement ("Agreement") is made on the Commencement Date stated in Section A Clause 5 of this Agreement.

BETWEEN "TAIT"

Tait North America Inc.
15354 Park Row Drive
Houston, Texas 77084, U.S.A.

AND "Client"

City of Riverside
Address: 3401 University Ave., Riverside, CA
92501, U.S.A.

BACKGROUND:

1. Tait has supplied a Tait QS2 Simulcast System radio to the Client under Tait Project Number 50-904854.
2. Tait has agreed to provide and Client has agreed to purchase certain Support Services in accordance with the terms of this Support Agreement.
3. This Support Agreement defines the principal activities and responsibilities of all parties for the support of the Client Communications Solution.
4. Variations to this Support Agreement are subject to mutual agreement between Tait and Client and will be addressed in accordance with Section E clause 14.2 (Variations).

AGREEMENT OVERVIEW

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

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

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

AGREED and Signed by Tait North America Inc:



Name: NICHOLAS PENNINOS

Title: PRESIDENT

Date: 1/21/2020

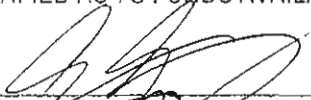
AGREED and signed by the Client: City of Riverside

Name:

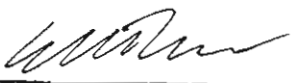
Title:

Date:

CERTIFIED AS TO FUNDS AVAILABILITY:

BY: 
Chief Financial Officer/ City Treasurer

Approved as to Form:

By: 
Elliot H. Min
Deputy City Attorney

SECTION A – AGREEMENT DETAILS

AGREEMENT DETAILS

1	Client	City of Riverside
2	Client Address for Notices	3401 University Ave. Riverside, CA 92501
3	Client Support Manager	La Wayne Hearn lhearn@riversideca.gov Main: (951) 826-5321 Direct: (951) 826-5414
4	Client Solution and Products including licensed Software	Tait-provided infrastructure products (excludes terminals and accessories) in QS2 Simulcast System deployed under Tait Project Number 50-904854.
5	Commencement Date	November 1, 2019
6	Term of Agreement	Five years
7	Support Fee	Total Contract Value: \$162,000.00 \$32,000.00 to be paid annually at least 30 days in advance of Commencement anniversary.
8	Review of Support Fee and Additional Charges	Support Fees will be reviewed as Products are added or removed from the network upon each anniversary of the Commencement Date. During the term of this agreement if City of Riverside fully migrates their QS2 system to a Tait ASIP system, the value of this contract will be adjusted down to \$17,400.00 per year for the remaining years, provided the City of Riverside elects to cancel the Preventative Maintenance visits being provided two times per year under the terms of this agreement.

SECTION B – ROLES, RESPONSIBILITIES, ESCALATION CONTACTS

	Tait	Client
Role Under This Agreement	Tait is responsible for providing the Support Services described in Section C	The Client is responsible for providing First Level Support described in clause 4 of Section E (General Terms and Conditions).
	Account Manager Ben Pearce Channel Enablement Manager Mobile: (832) 627-8566 ben.pearce@tairadio.com	Client Representative La Wayne Hearn, M.P.A City of Riverside Fire, Administration Main: (951) 826-5321 Direct: (951) 826-5414 LHearn@riversideca.gov
	TAIT 24x7x365 Support Desk 1-844-491-9818 serviceadvantage@tairadio.com (low priority email address)	Operational Manager La Wayne Hearn, M.P.A City of Riverside Fire, Administration Main: (951) 826-5321 Direct: (951) 826-5414 LHearn@riversideca.gov
	The parties shall endeavour to cooperatively resolve any disputes arising in connection with this Agreement and the Support Services. If a dispute or difference cannot be resolved within the normal course of business then either party may refer the dispute to the nominated escalation points below. Section E, Clause 14.6 (Disputes) shall apply.	
Escalation Points	VP, Field Services and Operations Alan Gutsell 281-600-8257 alan.gutsell@tairadio.com	La Wayne Hearn, M.P.A City of Riverside Fire, Administration Main: (951) 826-5321 Direct: (951) 826-5414 LHearn@riversideca.gov

SECTION C – SUPPORT SERVICES

Tait Support Plans

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

Optional support services are not included in the price of Extended Warranty or Service Advantage. Optional support services require purchase of Service Advantage.

	Manufacturer's Warranty	Service Advantage
Service Desk	Business Hours	24 x 7
Return for Repair	Defects Only	Defects Only
Online Client Service Portal		Included
Software Maintenance		Included
		Optional Elements of Service Advantage – Not included unless explicitly marked as "Included"
Extended Warranty		Included
Annual System Audit		Optional
Preventative Maintenance		Included
Onsite Dispatch/Restoration		Included

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

SERVICE ADVANTAGE

Service Advantage includes the following services as explained below: Tait Service Desk: 24 x 7 Technical Support, Online Client Service Portal and Technical Resources, and Software Maintenance.

1. Tait Service Desk: 24 x 7 Technical Support

1.1 Tait will provide a Service Desk solution to the Client that includes:

- a. Single point of contact for all support related matters for Products covered by this Support Agreement including Partner Products.
- b. 24 x 7 Response in accordance with the times set out in Table 1.6.
- c. Telephone access to Tait Engineering personnel to log / identify / troubleshoot faults and issues with the Solution and Products covered under this Agreement.
- d. Remote diagnostics and restoral where possible.
- e. Access to repair and warranty information.
- f. Access to technical, Product and Solution information.
- g. General support queries, configuration queries, requests for quotations for enhancements.

1.2 The Service Desk serves as the single point of contact regarding Client support and the reporting of Incidents.

1.3 The Service Desk will provide email and telephone support in troubleshooting failed Products, and will arrange for a Return Material Authorization (RMA) for any Product that has failed under Warranty or Extended Warranty.

1.4 Client must ship or return the Product to the service depot nominated by the Service Desk.

1.5 Tait shall repair or replace returned Products (or arrange for the repair / replacement of Partner Products) and dispatch to the Client, subject to the terms of this Agreement.

1.6 Target Response and Target Restoration Times

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

Restoration Time is defined as the time from when Client reports an Incident to the Service Desk and ends when the Product or Radio Solution is re-stabilized and carrying normal traffic levels which may be via a workaround or replacement Product(s) as applicable. Where replacement products are required it is assumed that the Client will carry spare equipment to cater for network outages.

Table 1.6

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

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

**Priority 3 and 4 incidents will be responded to and managed during Business Hours.

2. Online Client Service Portal and Technical Resources

2.1 Tait will provide access to the Online Client Service Portal and Technical Resource web site.

2.2 Tait will issue the Client applicable login(s) and password(s).

2.3 The Client will be able to access the following information, Software, firmware, applications and case management updates via the Online Client Service Portal and Technical Resource sites:

- Documentation: Accessories, Installation, Integration, Product Specifications, Standard User, Service
- Frequently Asked Questions and Search Facility
- Programming and Calibration Application (Downloadable)
- Service Kit (Downloadable)
- Service Case: Creation, History, Status Updates
- Technical and Software Release Notes

3. Software Maintenance

3.1 Client is entitled to receive: Software and firmware releases relevant to and within the licensed feature set of the Tait-Branded Products purchased by the Client (see Section A-4: Client Solution and Products including licensed Software).

3.2 Access to the Software releases referred to in section C-3.1 shall be requested through the Online Client Service Portal or via email serviceadvantage@taitradio.com.

3.3 Any Tait Services or Hardware required for the implementation of a Software release may be purchased from Tait at an additional charge (unless stated otherwise in this Agreement).

3.4 Tait will provide Technical Support (described in Section C-2: Online Client Service Portal and Technical Resources) for the current and up to three previous releases of Software and firmware.

Technical Support for previous Software releases is at Tait's discretion and may be subject to Additional Charges.

- 3.5 Tait shall maintain (i.e. provide bug fixes, modifications and improvements) only the current Software release for any Product. If Client has a Problem with a non-current release of Software, Client may be required to install the most current version of Software in order to remedy such Problem. Client acknowledges that software updates will not be provided for any product which has already been announced End of Software Support and that bugfix releases will be limited to a best-effort basis, and only where deemed practical by Tait at its sole discretion.
- 3.6 This Section and the Support Fees do not include the provision of Client requested enhancements, modifications, or developments. Any such enhancement, modification or development may be requested by Client via the Tait Service Desk. Tait at its option may (a) provide the Client with a quotation for undertaking the request; and / or (b) endeavor to include the request in a future Software release; or (c) where not feasible for commercial, technical or other reasons, decline the request

Optional Elements

The following optional support elements are not included in the price of Extended Warranty or Service Advantage, but can be added for an additional cost:

4. Extended Warranty

Included	Yes	<input checked="" type="checkbox"/>	No	<input type="checkbox"/>
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4.1. Client is entitled to Tait Warranty as described in Section E-9 (Warranty) on each of the following products purchased from Tait for the Warranty Period indicated in Section A-6 (Term of Agreement):

- 4.1.1. Tait Branded Infrastructure
- 4.1.2. Tait provided third-party products

4.2. Extended Warranty extends Client's warranty rights and obligations under the same terms outlined in the Tait Warranty.

4.3. Client shall contact Tait for Warranty Services via the Tait Service Desk.

Notes

Extended warranty is provided on a best effort basis for any products which have been announced End of Life. For these products, software updates, including bugfixes, may not be available and hardware are constrained by available components.

5. Annual System Audit

Included	Yes	<input type="checkbox"/>	No	<input checked="" type="checkbox"/>
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5.1 Tait will provide a Field Service Engineer for one (1) week, comprised of two (2) travel days, and three (3) working days on site with the Client under this agreement.

5.2 Tait shall provide one (1) of the following services:

- 5.2.1 The Field Service Engineer will perform a Tait HealthCheck high level system audit per the scope in Appendix B.
- 5.2.2 The Field Service Engineer will be available to the client to assist in general maintenance or support activities; the duration is not to exceed three (3) days.

5.3 Following the visit, Tait shall provide to the Client a report detailing the tests performed and the findings with any recommendations will be presented to the Client.

- 5.4 This Service is available to the Client once per year of the Agreement and must be arranged in advance by calling the Service Desk with a six (6) week notice of the preferred date(s) for undertaking the Annual System Audit.

Notes
N/A

6. Preventative Maintenance

Optional	Yes	<input checked="" type="checkbox"/>	No	<input type="checkbox"/>
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- 6.1 Two preventative maintenance visits per year will be conducted for each site within the Client communication system, the duration to be defined based on the size of the customer system.

- 6.2 The following test measurements shall be logged annually

- 6.2.1 Power out measurement from each transmitter shall be taken at the antenna connector on the back of each radio, prior to the combining equipment.
- 6.2.2 The Power out measurement from each transmitter shall be taken at the output of the combining system.
- 6.2.3 The Reflected Power measurement shall be taken at the output of the combining system. This measurement may be taken with any one of the transmitters keyed. It is not necessary to record all transmitters.
- 6.2.4 Frequency error measurement shall be taken on each transmitter. This measurement may be taken off the air.
- 6.2.5 Transmit Deviation measurement of each transmitter shall be taken. This measurement may be taken off the air. (Modulation fidelity for P25, FSK Error for DMR)
- 6.2.6 CTCSS Deviation measurement of each transmitter shall be taken. This measurement may be taken off the air. (Not applicable to P25 or DMR channels)
- 6.2.7 Receiver sensitivity measurement at 12db SINAD shall be taken. The Signal shall be injected at the antenna connector on the back of each receiver. (5% BER for P25 and DMR)
- 6.2.8 The Battery voltage shall be taken while the batteries are under load. The charger to the batteries shall be shut off and the battery voltage monitored and recorded every 5 minutes for a period of 30 minutes. The charger shall be turned back on and the charging voltage recorded. The charging current shall be read from the charger and recorded.

- 6.3 If Tait finds or confirms any problems with equipment covered under this Agreement, then Tait will attempt to adjust and reconfigure such equipment as necessary to bring it into its specification conditions and / or replace equipment with available spares, provided that maintenance can be performed within the quoted duration allotted for the corresponding Preventative Maintenance visit. Tait will determine whether the equipment will be repaired or replaced, and it will also coordinate return and repair of defective equipment.

- 6.4 Following the Preventative Maintenance, Tait shall provide to the Client a report detailing the tests performed, adjustments made, and the findings with any recommendations will be presented to the Client.
- 6.5 This Service is available to the Client on a yearly basis for the duration of the Agreement and must be arranged in advance by calling the Service Desk with a six (6) week notice of the preferred date(s) for undertaking the Preventative Maintenance.

Notes

One of the two preventative maintenance visits will be conducted by Tait, and the other preventative maintenance will be conducted by a Tait subcontractor. Vision Communications has been subcontracted by Tait to assist with the Preventative Maintenance visits.

7. Onsite Dispatch/Restoration

Included	Yes	<input checked="" type="checkbox"/>	No	<input type="checkbox"/>
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- 7.1 When Tait is unable to return the Client's Solution to normal operation through remote technical support, Tait will dispatch a technician/engineer to attend site to diagnose and restore the Client's radio network.
- 7.2 The rates for Onsite dispatch include standard travel expenses to locations with regular commercial air service and readily accessible sites. Special rates apply to networks without commercial air service or readily accessible sites.

Notes

Tait will dispatch a technical support engineer supplied by Vision Communications. Fees for local support provided by Vision Communications are included in this Agreement. Emergency, Critical, Non-Critical on-site technical support at customer locations shall not exceed twelve (12) hours annually in addition to the 2 Preventative Maintenance visits per year. On-site support beyond the twelve (12) hours shall be billed at the rates in Section D below.

SECTION D – ADDITIONAL CHARGES

Standard labor rate for on-site support not covered by this Agreement is \$1,600 USD per day plus travel and living expenses with 15% administrative fee applied to these expenses.

SECTION E – GENERAL TERMS & CONDITIONS

1. Term

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

2. Tait Support

- 2.1 During the Term Tait shall provide the Support Services set out in Section C of this Agreement (Support Services) in consideration of payment by Client of the Support Fees.
- 2.2 Services shall be supplied for the Products at the Sites and unless agreed otherwise in writing, Tait shall not be obligated to provide the Services for the Products located at any other site(s). Any products and/or systems not listed in the Agreement ("Additional Products") shall only be covered by the Agreement where agreed in writing by the Parties. Each of the expressions "Term", "Products", "Sites" and "Support Fees" shall mean the term, products, sites and support fees identified in Section A of this Agreement (Agreement Details).
- 2.3 Except in response to warranty claims during the warranty period for any Product, Tait may supply new, second-hand or reconditioned replacement parts in the performance of Services or Excepted Services.
- 2.4 Only the Services described in Section C (Support Services) as being in scope for this Agreement shall be provided. Tait shall not provide the Excepted Services.

Excepted Services

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

- g) painting or refinishing of the Products;
- h) the relocation or transportation of Products, or the rectification of any faults caused by such relocation or transportation, (save where performed by Tait);
- i) the provision of any software release designed to provide new or enhanced functionality unless this is incidental to the Support Services or provided for under Section C-3 (Software Maintenance) above;
- j) services required to implement changes to the Solution or configurations which were not a requirement of the specifications under the supply contract/s for the Products listed in this Agreement or otherwise committed to by Tait in writing;
- k) correction of any fault which would be remedied by a software release or other repair which meets the original specifications for the Products and which has been refused by Client.

2.6 If Client requests Tait to provide any Excepted Services, Tait shall be entitled to charge for the same at rates to be agreed in advance between the parties, or failing such advance agreement Tait standard Additional Charges for the relevant services. If requested, Tait shall provide a written quotation and estimated completion date for provision by Tait of any Excepted Services.

3. Support Fees and other payments

- 3.1 Support Fees will be invoiced by Tait and paid by Client. All Invoices including invoices for Additional Charges are payable within 30 days of the date of invoice.
- 3.2 All fees and charges referred to in the Agreement are exclusive of sales, use, value added or goods and services taxes. Where appropriate such taxes will be added to the invoice and paid by Client unless Client provides Tait with evidence of payment or certificate of exemption. Support Fees are also exclusive of any customs, import or export duties, and should any such duties arise, these shall be payable by Client.
- 3.3 To the fullest extent permissible by law, Client's right of set-off is excluded. No payment shall be deemed to have been received until Tait has received cleared funds.
- 3.4 If Client is overdue with any payment then, without prejudice to any other right or remedy available to Tait: (i) Client shall be liable to pay interest on the overdue amount at the rate of one per cent per complete month until Tait has received payment of the overdue amount together with interest that has accrued; and (ii) Tait reserves the right to suspend contractual performance and/or exercise a lien over Products returned for repair or replacement Products until Client has made such overdue payment in full.
- 3.5 Tait may increase the Support Fee and the rates for Additional Charges from each anniversary of the Commencement Date by written notice to the Client. The amount of such increase will not exceed the increase in the Consumer Price Index or its equivalent in the country the Support Services are provided. Tait shall also be entitled to vary the Support Fee if Client requests an increased level of Support Services, Support Services for Additional Products, if Products are upgraded during the Term or if there is any other variation requested by Client with respect to this Agreement. Such variation shall be agreed in accordance with Section E, clause 14.2 of this Agreement (Variations).

- 3.6 If Client requests Tait to provide any Excepted Services, Tait shall be entitled to charge for the same at rates to be agreed in advance between the parties, or failing such advance agreement Tait standard Additional Charges for the relevant services. If requested, Tait shall provide a written quotation and estimated completion date for provision by Tait of any Excepted Services.

4. Obligations of the Client

- 4.1 First-Line Support - the Client shall undertake the following First Line Support actions and acknowledges that the commitments and pricing provided by Tait under this Agreement are dependent on the prompt and proper performance of those First Line Support obligations:
- 4.1.1 engage the Services by contacting the Service Desk as set out in Section B of this Agreement;
 - 4.1.2 immediately after making a request for Tait support, provide Tait where possible with an example of the relevant defect or error;
 - 4.1.3 keep Tait fully informed with up to date product, site and configuration details for the Products, including without limitation product serial numbers, locations, contact information, and site personnel qualified to submit service incident requests;
 - 4.1.4 have personnel with sufficient Product related training to be able to (i) carry out basic operating system housekeeping, and (ii) work through complex procedures with remote guidance provided by Tait;
 - 4.1.5 carry out procedures for the rectification of errors or malfunctions within a reasonable time after such procedures have been received from Tait;
 - 4.1.6 provide a mutually agreed form of communications link for remote diagnostics and promptly granting access rights to Tait and its partners when required;
 - 4.1.7 replace defective Products with a Critical Spare where required and promptly shipping the defective Products to Tait designated service centre in accordance with Tait reasonable directions;
 - 4.1.8 maintain and make available the required type and number of Client owned and managed Critical Spares in accordance with clause 5.4 of this Agreement;
 - 4.1.9 ensure that the personnel responsible for carrying out First Level Support obligations are suitably qualified, trained and/or experienced; and
 - 4.1.10 provide Tait with all reasonable co-operation to facilitate the efficient discharge of its obligations under this Agreement including, without limitation, (i) granting reasonable access to the Site(s) and the Products, (ii) ensuring the Site(s) comply with all relevant health and safety codes, and (iii) providing on request, a suitably qualified or informed representative, agent or employee to accompany Tait personnel and to advise Tait on access or on any other matter within the Client's knowledge or control which will assist Tait in complying with its obligations under the Agreement.
- 4.2 System Backup. It is the Client's responsibility to ensure systems backups (including all programs and data) are kept up to date.

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- 4.3 The Client agrees that it is responsible for primary power source, PABX and PSTN connections or lines, RF (Radio Frequency) coverage performance subsequent to Coverage Verification Test acceptance, the provision of suitable inter-site and inter node links, and further installation of the equipment at the Sites.
- 4.4 The Client shall provide secure and adequate facilities adjacent to or in reasonable proximity to the Products for the storage by Tait of tools and other items necessary for the proper maintenance of the Products and the Client shall permit Tait to have access to such storage facilities at all reasonable times.
- 4.5 The Client is responsible for maintaining the confidentiality of any logon(s) and password(s) required to access Services. Access to Tait Client Service Portal is only permitted for current Client employees or contractors. The Client must manage and remove access rights for departing employees (for example by changing passwords) and Tait shall not be liable for any loss or damage incurred by the Client due to Client's failure to comply with this clause.
- 5. Replacement and spare parts**
- 5.1 Where parts of the Products have been replaced and provided by Tait, title in the parts replaced will pass to Tait upon removal of those parts from the Client system.
- 5.2 Subject to clause 5.1, title in all replacement parts for the Products provided by Tait in performing the Services (except for Software) will pass to the Client upon installation.
- 5.3 In the case of products and services for which an Additional Charge is payable by the Client, title in such replacement parts shall pass to the Client on full payment of the Additional Charge.
- 5.4 Tait requires Client to purchase and store at the Site (or other location agreed in writing between the Parties) the Critical Spares set out in Appendix A. From time to time Tait may additionally require the Client to purchase and store at the Site such spare parts, as Tait considers necessary for the provision of effective Support Services. Typically, this may equate to 2% of Products purchased.
- 5.5 Tait will not be liable for any failure or delay in providing the Services where such failure or delay is the direct or indirect result of the failure of the Client to comply with the previous clause.
- 6. Health and Safety**
- 6.1 Each Party shall comply with all relevant Health and Safety laws and regulations in all respects in relation to its obligations under the Agreement (including without limitation a safe working environment and methods of working), and shall indemnify the other Party in respect of all costs, liabilities, damages or expenses incurred as a result of any failure to do so.
- 7. Exclusivity**
- 7.1 The Client shall only permit maintenance, repairs or adjustments to Products by a third party with the prior written consent of Tait.

- 7.2 In the event the Client effects repairs, additions or alterations to the Products, the Client represents, warrants and agrees to use only Tait approved parts and procedures as directed by Tait for the operation of the equipment.

8. Software and Intellectual Property Rights

- 8.1 All patents, trademarks, service marks or business names, registered designs, copyrights, design rights, utility models, topography rights, applications to register any of the aforementioned rights, trade secrets, knowhow and rights of confidence and any other intellectual or industrial property rights of any nature whatsoever in any part of the world ("IPR") arising under the Agreement, except to the extent that they comprise or incorporate IPR supplied by Client, shall vest in and be owned by Tait absolutely and Client shall acquire no right, title or interest therein.
- 8.2 Any computer program, firmware or other software forming part of the Products or supplied by Tait to Client pursuant to the Agreement ("Software") and/or IPR provided to Client under the Agreement shall remain the exclusive property of Tait (or its partners) and such Software and IPR shall, unless otherwise agreed in writing, be licensed to Client under the license terms applicable to the products, equipment, software or systems which they replace or to which they relate.
- 8.3 Unless otherwise indicated, as in paragraph 4.2 above, information provided to the Client via the Online Client Service Portal (see Section C-2) is copyrighted by and proprietary to Tait International Ltd (Tait) and may not be copied, reproduced, transmitted, displayed, performed, distributed, sublicensed, altered, stored for subsequent use or otherwise used in whole or in part in any manner without Tait's prior written consent.

9. Warranty

- 9.1 Tait warrants that it shall perform the Services in a professional and workmanlike manner, subject to a claim against this warranty being notified to Tait within 90 days of provision of the relevant Support Services. Client's sole and exclusive remedy and Tait's entire liability for such breach of the above warranty or any claim related to the Support Services shall be re-performance of the Support Services.
- 9.2 Warranties given in this Clause 9 are unique to, and may not be assigned or transferred in whole or in part by, Client.
- 9.3 THE WARRANTIES SET FORTH HEREIN ARE EXCLUSIVE AND IN LIEU OF ALL OTHER WARRANTIES, WHETHER EXPRESS, IMPLIED OR STATUTORY, INCLUDING WITHOUT LIMITATION THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, NON-INFRINGEMENT, AND QUALITY OF SERVICE.
- 9.4 The Client acknowledges that while Tait may be called upon to give consultative advice under this Agreement and while Tait will use its reasonable endeavours to give the best advice it can to the Client, Tait advice is dependent upon inter alia the information supplied to Tait by the Client and third parties and accordingly the Client may make no claim against Tait or its personnel for the appropriateness of such advice.

10. Limitation of Liability

- 10.1 NEITHER PARTY WILL BE LIABLE FOR ANY (I) LOSS OF PROFITS; (II) LOSS OF TURNOVER; (III) LOSS OF OR DAMAGE TO REPUTATION; (IV) LOSS OF, OR LOSS OF THE USE OF ANY SOFTWARE OR DATA; (V) LOSSES OR LIABILITIES IN RELATION TO ANY OTHER CONTRACT; OR (VI) INDIRECT, INCIDENTAL, SPECIAL OR CONSEQUENTIAL LOSS OR DAMAGE INDIRECT, PUNITIVE, SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGE IN CONNECTION WITH OR ARISING OUT OF THIS AGREEMENT HOWEVER IT ARISES, WHETHER FOR BREACH OR IN TORT, UNDER AN INDEMNITY, EQUITY OR OTHERWISE, EVEN IF THAT PARTY HAS BEEN PREVIOUSLY ADVISED OF THE POSSIBILITY OF SUCH DAMAGE.
- 10.2 Each party's aggregate liability (other than the Client's obligation to pay Support Fees, Additional Charges and penalty interest) to the other for claims relating to this Support Agreement, whether for breach or in tort under an indemnity, equity or otherwise, shall be limited to the amount paid by the Client for Services under this Agreement in the 12 month period preceding such claim.
- 10.3 Notwithstanding anything in this Agreement Tait will not be liable for any claim by the Client in relation to this Agreement unless the claim is received in writing by Tait within 3 months of the date of when the alleged claim ought reasonably to have come to the attention of the Client.
- 10.4 Client agrees that it shall take such reasonable precautions (relative to the importance to Client of the Products), including without limitation backing up software and data at reasonable intervals, implementing back-up systems or redundancy and maintaining suitable numbers of spare units at suitable locations (at a minimum to Tait recommended spares levels). Tait shall have no liability for any losses suffered by Client to the extent that the loss concerned would have been prevented by the taking of such reasonable precautions.
- 10.5 The provisions of this Clause 10 have been considered by the Parties in the light of the availability of insurance and the relative positions, risks and responsibilities of the Parties and both Parties agree that they are fair and reasonable.

11. Force Majeure

- 11.1 Neither Party shall be liable for any loss or damage suffered or incurred by the other arising from the first Party's delay or failure to fulfil or otherwise discharge any of its obligations (except obligations to pay money) under the Agreement to the extent that such delay or failure is caused by any cause or circumstance beyond its reasonable control including but not limited to act of God, governmental act, withholding, delay or revocation of export or import control approval or other license, war, terrorist activity, fire, flood, earthquake, tsunami, explosion, civil commotion, industrial dispute (other than industrial disputes related solely to the employees of the Party claiming force majeure), or the unavailability or failure of any public telecommunications network ("Force Majeure").
- 11.2 Subject to the delaying Party promptly notifying the other Party in writing of the reason for and likely duration of the delay, the performance of the delaying Party's obligations, to the extent affected by the delay, shall be suspended during the period that the cause persists provided that each Party shall use all reasonable efforts to avoid the effect of that cause provided that if performance is not resumed within 90 days of that notice the non-delaying Party may at any time thereafter but in any

event prior to resumption of obligations by the delaying Party by notice in writing terminate the affected portion of the Agreement.

- 11.3 If Tait is unable to perform its obligations within 60 Working Days after the commencement of the Force Majeure event, the Client or Tait may terminate this Agreement by notice in writing.

12. Confidentiality

- 12.1 Nothing in this Agreement shall affect any related non-disclosure agreement between the Parties, which shall continue in full force and effect and shall apply to the subject matter of the Agreement. All pricing, Software and technical information provided by Tait under or in relation to the Agreement shall be the confidential information of Tait and shall not be disclosed to any third party by Client.
- 12.2 Each Party undertakes not to (and to procure that its employees and contractors shall not) divulge the terms of this Agreement or any information of a confidential nature disclosed to it by the other, whether oral or written, and shall not use such information except as contemplated by the Agreement. This obligation shall cease to apply to information which:
- 12.2.1 is or becomes part of the public domain without violation of the Agreement;
 - 12.2.2 is known and on record at the receiving party prior to disclosure by the disclosing party;
 - 12.2.3 is lawfully obtained by the receiving party from a third party without similar restrictions to those herein contained;
 - 12.2.4 is developed by the receiving party completely independently of any such disclosure by the disclosing party;
 - 12.2.5 is required to be disclosed by competent government or regulatory agencies, court or stock exchange provided, however, that the receiving party shall notify the disclosing party as soon as lawfully and practically possible of the requirement to make such a disclosure.

13. Termination and Suspension

- 13.1 Either Party may terminate the Agreement immediately at any time by written notice to the other:
- 13.1.1 in accordance with Clause 11 (Force Majeure) above; or
 - 13.1.2 if the other Party commits a material breach of the Agreement which it fails to remedy within 30 days of receiving written notice requiring it to do so; or
 - 13.1.3 if the other Party becomes insolvent, has an administrator, receiver or manager appointed of the whole or any part of its assets or business, makes any composition or arrangement with its creditors, takes or suffers any similar action in consequence of debt or an order or resolution is made for its winding-up dissolution or liquidation (other than for the purpose of solvent amalgamation or reconstruction) or any event occurs in a foreign jurisdiction analogous to, or comparable with any of the above.
- 13.2 Except as expressly stated elsewhere in the Agreement, any termination of the Agreement (howsoever occasioned) shall not affect any accrued rights or liabilities of either Party nor shall it affect the coming into force or the continuance in force of any provision which is expressly or by implication intended to come into force or continue in force on or after that termination.

Notwithstanding the foregoing, the Parties agree that the equitable remedy of specific performance of either Party is hereby expressly excluded.

- 13.3 Tait shall be entitled to suspend contractual performance under the Agreement (with Services beginning as soon as reasonably practicable after rectification of the ground(s) for suspension) (i) pursuant to Clause 3.4(ii); or (ii) where Client is in default in respect of any of its obligations pursuant to Clause 4 (Obligations of the Client).

13.4 Consequences of Termination

Upon termination of the Agreement Tait shall cease the provision of the Services and Client shall have no further access to the Online Client Service Portal, Software Maintenance or 24x7 Service Desk. The Client may contact the Tait Service Desk during business hours and will receive a quotation for any service it wishes to access. Note that in order to resume Support Services after a period of termination Client may be required to pay a service resumption fee.

14. General Terms

- 14.1 **Assignment.** Neither party may assign its rights nor obligations under this Agreement without the prior written consent of the other party except that Tait may subcontract its support obligations to a third party, provided that Tait will remain responsible for the actions of such third party and advise the Client in writing prior to the assignment.
- 14.2 **Variations.** Any amendment or variation to the Services or to this Agreement shall be in writing and signed by duly authorized representatives of both parties.
- 14.3 **Severability.** In the event that any part or parts of this Agreement are held illegal, invalid or unenforceable by any Court or administrative body of competent jurisdiction, such determination shall not affect the legality, validity or enforceability of the remaining parts of this Agreement which shall remain in full force and effect. Where relevant, the Parties shall use commercially reasonable efforts to find a new stipulation resembling the invalid one in its commercial consequence as much as possible
- 14.4 **Waiver.** The failure of either Party to enforce any term of this Agreement does not constitute a waiver of it and shall in no way affect the right later to enforce the terms.
- 14.5 **Independent Contractor.** Nothing herein contained shall be construed to constitute the parties hereto as partners or joint ventures or the agent of the other Party in any sense of these terms whatsoever, and no party may act for or bind another party in any dealings with a third party.
- 14.6 **Disputes.** The Parties shall attempt to resolve in good faith any disputes arising under or in relation to or in connection with this Agreement or its subject matter. If good faith negotiations between the parties fail to resolve the dispute then, prior to issuing court proceedings, the parties shall give due consideration to the use of mediation or alternative dispute resolution techniques and reference to independent experts.
- 14.7 **Jurisdiction.** The construction, validity and performance of this Agreement shall be governed by the laws of the State of New York, without giving effect to principles of conflicts of law. The parties irrevocably consent to the jurisdiction and venue of the state and federal courts located in the County of New York, City of New York, NY. Notwithstanding the foregoing the Parties shall attempt to resolve in good faith any disputes arising and shall give due consideration to the use of mediation

or alternative dispute resolution techniques and reference to independent experts prior to the issue of court proceedings.

- 14.8 **Entire Agreement.** This Agreement shall constitute the entire agreement between the Parties in relation to its subject-matter and shall supersede all previous undertakings, agreements, representations or commitments, whether express or implied, written or oral and is intended as a final expression of this Agreement between the Parties.

[END OF DOCUMENT]

SECTION F – GLOSSARY OF TERMS

Beneficial use	“Beneficial Use” means when Customer first uses the System or a Subsystem for operational purposes (excluding training or testing or by written permission from System Integrator).
Business Hours	Under this Agreement, Business Hours means 8.30am-5pm Monday to Friday, excluding Public Holidays where the service desk is located which is servicing the Client. Tait service desks are located in Brisbane and Melbourne servicing Australian Clients. Christchurch servicing New Zealand Clients. Houston (Texas) servicing North and South American Clients. Huntingdon (UK) servicing U.K, Europe, Middle East and African Clients.
Client Specific Development	System component which is not a standard product but has been developed to the specification of the Client
Commencement Date	The commencement date for the Support Services set out in Section A of this Agreement.
Critical Spares	The required critical spares for the System set out in Appendix A – Critical Spares Inventory.
Emergency	An emergency is an unforeseen Incident at Priority Level 1 or 2 which prevents critical communications Products being usable by or available to the Client.
Enhancement Request	A request from a Client for a change to existing Product functionality.
First Line Support	The first level of support group involved in the resolution of Incidents. Client First Line Support obligations are described in Section D of this Agreement.
Hardware	Means any equipment and tangible Product described in Section A of this Agreement.
Incident	An incident is any event which is not part of the standard operation of the System and which causes, or may cause, an interruption or a reduction of the quality of the service provided by the System.
Online Client Service Portal	A web based application for the Client to interact and receive information from Tait.
Partner Product or Third-Party Product	Product sourced by Tait from a third party and sold by Tait as part of the Solution
Priority	Category used to identify the relative importance of an Incident, Problem or change requested by the Client pursuant to the Supply Agreement. Priority is based on impact and urgency, and is used to identify required times for actions to be taken.

Priority 1	<p>Priority 1 – Critical: In relation to the network provided by the System, conditions exist that <u>severely</u> affect service, capacity/traffic capability and require immediate corrective action regardless of time of day or day of week as viewed by the Client. For Terminals, it means a defect that is likely to result in hazardous or unsafe conditions, where the user's life may be at risk.</p>
Priority 2	<p>Priority 2 - Major: In relation to the network provided by the System, conditions exist that <u>seriously</u> affect System operation maintenance and administration of the System and require immediate attention as viewed by the Client. The urgency is less than in critical situations because of a lower immediate or impending effect on System performance, Clients and the Client operations and revenue.</p> <p>For Terminal Products, it means a defect that is likely to result in failure of the essential performance, critical functionality or usability of the Product.</p>
Priority 3	<p>Priority 3 - Minor: In relation to the network provided by the System conditions exist that do not significantly impair the functions of the System and do not significantly affect service to Clients. These Problems or Incidents are not traffic impairing. For Terminals, it means a defect that is not likely to substantially reduce the essential performance, critical functionality or usability of the Product.</p> <p>A Priority 1 or Priority 2 issue may be reclassified as Priority 3 if there is a workaround in place resulting in a Priority 3 classification.</p>
Priority 4	<p>Priority 4 – Advisory: There is a minor issue or an opportunity for product improvement. This issue does not affect the making of calls on the network provided by the System.</p> <p>There is a minor inconvenience to the user, but the Product and feature / functionality still operates within specification. Client requests more information or an explanation.</p>
Problem	<p>A condition often identified as a result of multiple Incidents that exhibit common symptoms. Problems can also be identified from a single significant Incident, for which the cause is unknown, but which significantly impacts service or Product availability.</p>
Products	<p>The products (which consist of Hardware and Software) described in Section A of this Agreement.</p>
Release	<p>A new version of previously released standard software made available for use by Clients</p>
Response Time	<p>Commences when Client reports an Incident to the Service Desk and ends when a suitably qualified Tait Client Support Engineer contacts Client.</p>

Restoration or Resolution	Means providing a fix, Workaround or replacement Product which re-stabilizes the System or Product (as applicable) and allows normal traffic levels or functionality to resume.
Restoration Time	Commences when Client reports an Incident to the Service Desk and ends when the Product or System is re-stabilized and carrying normal traffic levels which may be via a workaround or replacement Product(s) as applicable.
Second and Third Line Support	The Support Services provided by Tait following the notification of an Incident or Problem by Client in accordance with its First Line Support obligations.
Service Desk	The single point of contact service desk between the Tait and the Client.
Service Request	A request from a Client for information or advice, or for a Standard change to the scope of the Support Services.
Site	Means the sites set out in Section A of this Agreement.
Software	Means any computer program, firmware or other software included in a Product
Supply Agreement	The agreement between Tait and the Client specifying the terms and conditions for the supply of the Products and / or System.
Support Fee	The support fee set out in Section A of this Agreement.
Services	The combination of Support and Options selected by Client and which are described in Section C of this Agreement.
Solution	The combination of Products described in Section A of this Agreement forming a radio communications solution.
Term	The term of this Agreement as specified in Section A.
Terminal	Means a Product which is either a portable radio or a mobile radio supplied by Tait under the Supply Agreement also known as a 'subscriber unit' in the communications industry.
Warranty	Means the warranty provided by Tait to the Client in relation to the Products under the Supply Agreement.
Workaround	Reducing or eliminating the impact of an Incident or Problem for which a full Resolution is not yet available. For example, by restarting a failed configuration item.

