

## **ExtendaCare Standard Agreement**

The following terms and conditions shall govern the conduct of Extenda Communications Corp. (“Extenda”) and the undersigned party (“Customer”).

### **1. General Provisions**

- 1.1. This Agreement, related Appendices and Exhibits constitutes the entire contractual agreement between Extenda and Customer regarding the ExtendaCare Standard Managed Services Agreement. No other representation which is not contained in the Agreement, Appendices or Exhibits shall be considered binding or valid as regards this product.
- 1.2. This Agreement can only be modified or amended upon mutual written consent between Extenda and Customer, with the following two exceptions detailed below:
  - 1.2.1. Extenda reserves the right to change the stated labor costs and impose fuel surcharges based on market conditions at its sole discretion with 30 days’ written notice.
  - 1.2.2. Extenda reserves the right to change future annual Agreement costs and re-enrollment fees based on additional hardware and software purchases, market conditions and manufacturer price changes at its sole discretion with 30 days’ notice before the start of the new term.
- 1.3. To the extent that any term or condition in this Agreement conflicts with an applicable California or United States law or regulation, such Agreement term is void and unenforceable. If any such term or condition is found invalid, unenforceable or illegal, the remainder of the contract shall remain valid and in full force and effect.
- 1.4. Extenda may assign the Agreement in part or whole to a subsidiary, parent company, or authorized Mitel partner or affiliate to satisfy the terms of this Agreement. Any other assignment of this Agreement, in part or in whole, to a third party shall require the written consent of the other party.
- 1.5. The laws of the State of California shall govern this Agreement.

### **2. Term**

- 2.1. This Agreement shall be for the term specified in Appendix A.

### **3. Services Provided Under This Agreement**

- 3.1. Extenda will provide remote support to Customer at no additional charge under the terms of this Agreement between the hours of 8:00am and 5:00pm, Pacific Standard Time, Monday through Friday, excluding Federal holidays. Remote support consists of telephone, email and web-based support services consisting of, but not limited to, programming changes, patch installations, system backups or customer-requested reconfigurations.
- 3.2. Extenda is including a parts warranty with this Agreement that provides the following:
  - 3.2.1. Free replacement parts for equipment malfunctioning due to manufacturer’s defect or age, or free off-site repair if such repair will not impair the ability of Customer to conduct business.
  - 3.2.2. For onsite service calls, the first hour of service is at no charge when troubleshooting, repairing and/or replacing defective equipment;

- 3.2.3. In some situations, we will be able to remotely troubleshoot the problem and will advance replace a defective piece of equipment by shipping the replacement part free of charge to the Customer. We require Customer to ship the defective equipment to Extenda at their expense for repair or disposal.
- 3.3. Extenda will enroll Customer in the appropriate Manufacturer service or software plan.
- 3.3.1. Mitel Customers in Mitel Standard Software Assurance free of charge, allowing Extenda personnel to receive any technical support needed from Mitel in responding to a Customer problem, for the term of this Agreement.
- 3.3.2. Extenda will provide Customer with free software upgrades to the most current software that is covered by this Agreement in Exhibit B, including patches, minor and major revision releases, as provided for in 3.3.1.
- 3.4. Extenda will provide fixed, discounted pricing for onsite labor for the term of this Agreement. Onsite labor is billable in quarter hour increments with a one hour minimum.
- 3.5. Extenda will provide fixed, discounted pricing for remote support performed outside of our standard hours of operation. After-hours remote support is billable in quarter hour increments with a half hour minimum.
- 3.6. Extenda is providing a 6% discount on hardware and software purchased by Customer while enrolled in this Agreement. This discount is applied net of any additional discounts or promotions.
- 3.7. Extenda is providing priority response to enrolled ExtendaCare customers' requests over cash customers. Cash customers do not have a Service Level Agreement with Extenda; responses to cash customer requests are on a best effort basis.
- 4. Service Level Agreement**
- 4.1. In the event of an inability to make or receive telephone calls, defined as a major outage, Extenda will be onsite or logged into Customer's system remotely within three (3) hours of receiving the request via telephone. We cannot guarantee a three hour response if the service request is emailed, faxed or sent via other electronic media.
- 4.2. For any other type of disruption or outage, defined as a minor outage, we will respond by the next business day with either onsite or remote support as deemed appropriate to restore the Customer's system to working order.
- 4.3. For moves, additions, changes or system configuration changes to covered equipment, defined as a service request, we will respond within two (2) business days with either onsite or remote support as deemed appropriate to fulfill the Customer's request(s).
- 4.4. Extenda will deploy software upgrades to covered Customer equipment, both minor and major, once Extenda has established to its satisfaction that said updates are stable after testing in-house and at the Customer's convenience as a reboot may be required.
- 4.5. Extenda will attempt to remotely troubleshoot issues and advance replace malfunctioning components covered under this Agreement wherever possible to quickly restore service.
- 5. Costs**
- 5.1. The ExtendaCare Standard Agreement's costs are described in Exhibit A.

5.2. If Customer purchases equipment during the lease term from Extenda, the new equipment will not increase the price of this Agreement during the current term. However, the cost of covering the additional equipment may be reflected in the renewal rate at Extenda's discretion.

## **6. Third Party Product Exclusions**

- 6.1. Equipment not listed in Schedule B is not covered under the terms of this Agreement.
- 6.2. If Customer purchases equipment to interface with their system during the term of this Agreement through a vendor other than Extenda, that equipment is not covered by this Agreement. Work required of Extenda to repair, make functional or otherwise assist in the installation of said equipment is considered billable as a separate project.
- 6.3. If equipment purchased through a vendor other than Extenda causes previously functioning, covered equipment to malfunction once installed, repair work required to restore equipment covered by this Agreement to working order is billable as a separate project and can void warranty coverage of the impaired equipment at Extenda's discretion.
- 6.4. In the event that Customer has purchased a product from Extenda that includes a service agreement direct with the manufacturer, Extenda will require that the service agreement is active in order to provide Agreement coverage for that component. While Extenda will make a best effort to repair and maintain all equipment included in Schedule B, the Customer acknowledges that lapsed service contracts with manufacturers will impair Extenda's ability to fulfill the terms of this Agreement for that specific equipment.

## **7. Network & Computer Requirements**

- 7.1. If equipment provided and/or covered by Extenda is hosted on a Customer-provided computer, Extenda will require that the computer be provided with security protection such as anti-virus software and sufficiently strong administrator passwords in line with industry best practices and manufacturer of the relevant Schedule B equipment's approval. Extenda also requires that all software provided for that computer by the customer is properly licensed. Work performed to repair, reinstall, or otherwise restore previously working software to working order on improperly protected computers is billable and considered outside of this Agreement.
- 7.2. Extenda asks that upgrades and patches to third party software on Customer-provided computers, including but not limited to Operating Systems, not be executed without prior approval from Extenda technical personnel. The sole exception to this is anti-virus and security software definition updates which may be updated without prior consent. Failure to get approval from Extenda technical personnel before upgrading software on a computer that software listed in Schedule B is loaded on will result in any work troubleshooting and correcting subsequent problems being treated as billable events outside of this Agreement.
- 7.3. To qualify for this Agreement, Customer network must have a supported, current firewall between Customer's network and the internet.
- 7.4. Extenda and Customer recognize that industry best practice is to put voice traffic and devices on a separate VLAN or physical network from data traffic. Failure to do so can

cause sporadic or intermittent telephony problems in a converged voice and data environment. This logical or physical network separation requirement is considered outside the scope of work of the initial project and this Agreement unless Extenda was explicitly contracted to perform your network configuration.

- 7.5. The Customer understands that telephone calls made using Voice over Internet Protocol (VoIP) are subject to a number of limiting factors outside the control of Extenda, including, but not limited to, the Internet Service Provider's (ISP) status, general internet traffic conditions, the Internet Telephony Service Provider's (ITSP) status, or routing and switching equipment on site. Extenda will make a best effort to troubleshoot these issues but Customer acknowledges that Extenda will not be held accountable for repairing Customer-provided network equipment or the service quality of 3<sup>rd</sup> party providers.

## **8. Force Majeure**

- 8.1. Neither party shall be held liable for any delay or failure in performance of all or a portion of the services or any part of this Agreement from any cause beyond its reasonable control and without its fault or negligence, including, but not limited to, acts of God, acts of civil or military authority, government regulations, epidemics, war, terrorist acts, riots, insurrections, fires, explosions, earthquakes, nuclear accidents floods, power blackouts, unusually severe weather conditions or acts or omissions of transportation common carriers.

## **9. Extenda Liability**

- 9.1. Extenda's liability under this Agreement is limited to the actual direct damages incurred by Customer and shall in no event exceed the amount paid for services rendered in this Agreement. In no event shall Extenda be liable for any incidental, consequential, special, indirect, punitive, or third party damages or claims, including but not limited to lost profits, lost savings, lost productivity, loss of data, and loss from interruption of business, even if previously advised of their possibility and regardless of whether the form of action is in contract, tort or otherwise.

## **10. Invoices and Payments**

- 10.1. Payments are due before the start of the term specified in Schedule A. Late payments can increase the cost of items such as Mitel Software Assurance Enrollment or other direct service contracts with manufacturers; additional fees may apply.
- 10.2. If during a lapse in coverage due to non-payment, Customer experiences problems with their covered equipment, purchases additional hardware or software, or requests support from Extenda, Customer will be charged at cash customer rates and discount schedules. Extenda will not backdate future re-enrollments to cover services rendered during lapses in coverage due to non-payment of invoices.
- 10.3. Customer understands that orders and services requested outside of the services explicitly described in this Agreement are considered separate transactions from this Agreement and individually billable.

## **11. Limitations of Warranty Coverage**

- 11.1. Unless such services were provisioned through Extenda or its partner Telco Providers, work performed on behalf of Customer's voice or data carrier is considered billable under this Agreement.
- 11.2. Warranty coverage is strictly limited to components damaged during normal use or rendered inoperable through a manufacturer's defect. Damage or loss from causes including, but not limited to, theft, natural disasters, war, power surges, extreme weather, or other catastrophic events are not covered by this warranty.
- 11.3. The Service Level Agreement can only be fulfilled if the Customer maintains proper access for Extenda technical staff to administer or otherwise control the system on demand. Extenda will not be held responsible for delays due to an inability to access covered equipment including, but not limited to, situations such as Customer security policies preventing remote access, Customer personnel inaccessibility, physically inaccessible equipment, Customer network outages, or Customer non-payment of bills to other service providers, carriers or utilities.

## **12. Termination**

- 12.1. The Customer may terminate the Agreement upon sixty (60) days written notice if the following conditions are met:
  - 12.1.1. Extenda fails to fulfill in any material respect its obligations under this Agreement and does not cure such failure within thirty (30) days of receipt of such written notice.
  - 12.1.2. Extenda breaches any material term or condition of this Agreement and fails to remedy such breach within thirty (30) days of receipt of such written notice.
  - 12.1.3. Extenda terminates or suspends its business operations unless succeeded by a permitted assignee as described in this Agreement.
- 12.2. Extenda may terminate this Agreement upon sixty (60) days written notice to the Customer.
- 12.3. In the event of cancellation of this Agreement by either party, Extenda shall refund the prorated balance of funds to the Customer based upon the time remaining in the Agreement.
- 12.4. Extenda will assist the Customer in the orderly termination of service and timely transfer of the services to another designated provider. Customer agrees to pay any associated transfer costs incurred by Extenda, including, but not limited to, fees billed by the manufacturer for reassignment of the license, administration fees charged by the manufacturer, or other related fees charged to Extenda to process the request.

## **13. Confidentiality**

- 13.1. Extenda and Customer agree not to disclose information about their counterparty to this transaction or the information in this Agreement and will protect all such information against unauthorized use.
- 13.2. Extenda will only disclose Customer system information when necessary for fulfilling the requirements in this Agreement.

**14. Acceptance of Service Agreement**

14.1. The undersigned accepts the terms of this Agreement on behalf of the Customer organization listed below. The undersigned is a duly authorized signatory for the Customer organization listed below.

X \_\_\_\_\_  
Signature Date

\_\_\_\_\_  
Print Name Title

\_\_\_\_\_  
Customer: Organization / Company Name (Print Name if Not Applicable)



## Exhibit A – Term and Pricing for This Agreement

Term:

Start Date: December 1, 2011

End Date: December 31, 2012

Annual Cost: \$

### Labor Costs

Onsite Labor: Between the hours of 8:00am and 5:00pm, Pacific Standard Time, Monday through Friday, excluding Federal holidays, labor rates will be \$124.00 per hour. Onsite labor outside of these hours will be billable at \$248.00 per hour.

After-Hours Remote Support: The after-hours remote support rate is \$112.00 per hour.



Extenda

**Exhibit B –Equipment Covered Under This Agreement**

