



ATTACHMENT 11

EXPAND Expansion Appliance Terms, Conditions and Agreement:

This Agreement is entered into between E&E ENTERPRISES GLOBAL, INC. ("we" or "us" or "our"), having its principal place of business at 20 Basil Sawyer Dr. Hampton, VA 23666 and the Customer ("you" or "your"), wherein E&E Enterprises Global, Inc. and Customer agrees to furnish, install, service, and/or replace parts and license software as required on data communication equipment ("Equipment") within the USA or anywhere else, in accordance with the following terms and conditions:

1. TERM OF AGREEMENT

This Agreement and each Attachment selected by you shall commence on (the "Commencement Date") and continue in effect for a period of one (1) year. After the initial Term, this Agreement will be automatically renewed each year on the anniversary of the Commencement Date for additional 1 year period(s) under the same terms and conditions unless either one of us provides written notice of cancellation to the other ninety (90) days prior to the anniversary date. Pursuant to Paragraph 12, if this Agreement is cancelled during the Term, the penalty for cancellation will be the number of remaining months of the Term times (1.5) the current standard monthly billing rate in effect prior to cancellation, unless otherwise noted in this Agreement.

2. SERVICES SUPPLIED

We shall provide service to you as defined in following service descriptions:

A. 24x7 TELEPHONE SUPPORT

We will supply 24x7 technical support via our Technical Assistance Team, excluding holidays. Our U.S. observed holidays are: New Years Day, Good Friday, Memorial Day, Fourth of July, Labor Day, Thanksgiving, the day after Thanksgiving, Christmas Eve and Christmas Day. When New Years Day, Fourth of July and Christmas Day fall on a weekend day, we will observe the holiday on a weekday. A technical support call placed on a holiday will be dealt with the following business day. Technical support request will be sent to: techsupport@eeenterprisesinc.com or Fax 757-265-9750 or by calling On Call Support 757-848-3012 or the Tech Support Manager 757-771-1755 or 757-325-2940.

- i. **Priority 1 – Critical:** Production network is down, causing critical impact to business operations if service is not restored quickly. No workaround is available. Calls that are defined as responding to your on-site service personnel inquiries while in a troubleshooting mode and that require a call back within thirty (30) minutes during work hours and one hour after work hours.
Note: Opening a P1 case requires notification by phone to E&E Technical Support (TAC) Call center. 757-826-9532 or 757-325-2940 or techsupport@eeenterprisesinc.com.
- ii. **Priority 2 – Major:** Network performance is degraded. Network functionality is noticeably impaired, but most business operations continue. Calls, which are defined as responding to your configuration questions during normal network operation and that require a call back within two (2) hours during work hours and four (4) hours after work hours.
Note: Opening a P2 case requires notification by phone to E&E Technical Support (TAC) Call center. 757-826-9532 or 757-325-2940 or techsupport@eeenterprisesinc.com.
- iii. **Priority 3 – Minor:** Errors that neither significantly impair the system functioning nor significantly affect service to customers. These Errors are tolerable during system use. E&E Enterprises Global, Inc. Technical Support will contact customer within one (1) business day.
- iv. **Priority 4 – Information:** Calls that are defined as responding to your general technical questions and that require a call back two (2) business days maximum.
 - All after working hours, Tech Support must be prescreened by our "Help Desk" Manager prior to calling for assistance. Only a Priority 1 or 2 calls will be handled by us during after working hours.

Condition to commence for non-previously covered equipment

The successful inspection for maintainability of your Covered Equipment. All network faults must be corrected at standard Time and Material rates prior to commencement of this Agreement.

B. SOFTWARE MAINTENANCE

During the term of the Agreement, our representatives or we shall provide copies of software maintenance revisions, workarounds, patches and software revision notes at no charge to you when released by us. You agree to use the latest revision(s) of software if required by us. As part of the ENSP agreement, E&E Enterprises Global, Inc. will provide bug fixes for the last 2 (two) software versions (namely: The current GA version and the previous version). Customers running older software versions may upgrade to Expand's current version at no cost. Support for previous versions may be available, at E&E's sole discretion, and may require additional support fees.

i. **Eligibility for Software Maintenance**

- All software supplied by our affiliated corporations which has not been modified by you shall be eligible for inclusion under this Agreement immediately upon delivery to you.
- All pre-installed software proposed by you to be included under this Agreement shall be subject to inspection by us prior to its coverage hereunder. If any such software varies from the standard version thereof and such deviation does not result from our action, you shall pay all charges incurred to restore the software to a state consistent with the standard system, at our rates and terms then in effect. We shall not be obligated to support any software requiring restoration unless you agree to such.

ii. **License**

Manufacturer's Standard Software License including the definitions contained therein shall govern all licenses of software maintained under this Agreement with and through E&E Enterprises Global, Inc.

C. ADVANCED REPLACEMENT (For Premium Maintenance only)

Our E&E Enterprises Global, Inc. Advanced Replacement Maintenance Service provides advanced replacement Exchange Service on request Monday through Friday (our Holidays excluded) during the hours of 8:00 a.m. - 4:00 p.m. (EST). We will endeavor to respond to calls for service from you by shipping replacement equipment to you the same day if the call is received by 4:00 p.m. (EST). All shipping charges will be borne by us.

i. **Title**

We shall transfer title to replacement equipment to you without encumbrances upon shipment FOB E&E Enterprises Global, Inc. You represent, warrant and covenant that, you have and will have unencumbered title and shall transfer said title on replaced equipment to us upon receipt of replaced equipment by us.

3. SERVICE EXCLUSIONS

Our maintenance service provided hereunder does not include:

- A. Electrical work external to E&E Enterprises Global, Inc. manufactured Equipment.
- B. Repair of damage resulting from accident, transportation, neglect misuse, failure of electrical power, air conditioning, and humidity control, causes other than ordinary use, or failure of the telephone facilities or operation of the Equipment outside the manufacturer's environmental specification.
- C. Furnishing supplies or accessories, painting, or refinishing the Equipment or furnishing material therefore, making specification changes or performing services connected with relocation of machines, or adding or removing accessories, attachments or other devices.
- D. Such service which is impractical for our representatives to render because of alterations to the Equipment, or its connection by mechanical or electrical means to other devices, or alterations to operating system.
- E. System engineering services, programming and upgrades to most current revision level other than for safety reasons as specified by the equipment manufacturer.

4. SPECIAL EXCLUSIONS

A. Maintenance service is contingent upon the proper use of all software. We shall be under no obligation to furnish maintenance service (preventive or remedial) if without our prior written approval the software is maintained or modified by third parties or if attempts to modify or service the software are made by other than our personnel. If maintenance service is required as a result of the above causes, such repairs will, at our option, be made at our applicable labor rates and terms then in effect.

B. Our Software maintenance service provided under this Agreement does not include:

- i. On-site maintenance and/or remedial support except when such service is deemed necessary by our technical support staff.
- ii. Using software for applications that are not configurable by E&E Enterprises Global, Inc.
- iii. Support of software or equipment not supplied or recommended by us, or software not covered by us.
- iv. Responsibility for compatibility of upgraded versions to your existing hardware and/or equipment configuration.
- v. Upgrade of hardware to be compatible with installed software.

5. SERVICE WARRANTY

A. On Products Used for Corrective Action

We warrant that any replacement Equipment provided hereunder or under any Attachment shall be free of defects in material and workmanship under normal and proper use for ninety (90) days following provision of the Equipment or expiration of coverage hereunder, whichever is longer.

B. On Services Performed

We warrant that the Service we provide shall be performed in a competent manner by qualified, trained maintenance personnel and shall be free from defects in workmanship for thirty (30) days following its provision. E&E Enterprises Global, Inc. reserves the right, in its sole discretion, to use contractors or third party employees to perform the Service. Such a substitution in personnel will not affect your rights under this warranty.

C. On Extended Warranty /Product Repair Agreements

We warrant that all repairs or replacements made to any Equipment under Extended Warranty or Product Repair Agreements shall be free from defects in material and/or workmanship and will substantially conform to the specifications for the period of ninety (90) days from their respective delivery or until expiration of their respective coverage under this Agreement, whichever is longer.

D. Exclusions

We do not warrant uninterrupted or error-free operation of Equipment or software. We shall have no obligation whatsoever under these warranty provisions with respect to defects relating, but not limited to, any of the following:

- i. Incomplete, inaccurate or inappropriate data supplied by you or your agent;
 - ii. Assembly by a person or entity other than us or our authorized representative;
 - iii. Installation, wiring, repair or use other than as specified and authorized by manufacturer or us;
 - iv. Use of the Equipment or software with other equipment or software not supplied or authorized by us;
 - v. Modification of the Equipment, software use, or possession without the prior written consent of manufacturer or us;
 - vi. Subjecting the Equipment or software to environmental, power or operating conditions other than as specified and authorized by manufacturer or us;
 - vii. Subjecting the Equipment or software to misuse, abuse, neglect, negligence, accident, unusual hazard or disasters, including without limitation, fire, flood, water, wind, lightning or other acts of God;
 - viii. Use of replacement parts not supplied by manufacturer or us; In no event shall we be liable for incidental, indirect, special, or consequential damages arising out of or related to this warranty or any breach thereof.
- THE WARRANTIES STATED HEREIN SHALL BE THE ONLY WARRANTIES WITH RESPECT TO THE SUBJECT MATTER HEREOF AND SHALL BE IN LIEU OF ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.**

6. VENDOR RESPONSIBILITIES

E&E Technical Service personnel will provide all first level maintenance on the Covered Equipment located at its designated sites. Priority 3 and 4 Maintenance is defined as:

- A. Receiving and handling all your end-user trouble calls via our "Help Desk."
- B. All technical trouble-shooting and fault isolation upon receipt of a trouble call from your end-user.
- C. Responding to your end-user technical questions.
- D. Restoring service to your network by performing appropriate corrective action, including board swaps on Covered Equipment, utilizing your E&E Enterprises Global, Inc. approved spares.

- E. Performing local tests or end-to-end tests of Covered Equipment and Telco circuits, using appropriate test equipment.
- F. Prompt return of all faulty boards directly to our repair facility. Shipping charges are to be borne by you.
- G. Provisioning of your field engineers with appropriate data communications test equipment to perform network testing onsite. Recommended test equipment list will be provided by our Regional Service Manager.
- H. Every P1 and P2 case that will be opened with E&E's Technical Support will require a technical contact person who will work with E&E's technical personnel as much as needed in order to resolve the technical problem as soon as possible.
- I. Provide access to all relevant products

7. CUSTOMER RESPONSIBILITIES

- A. You agree to perform all installations of Covered Equipment, which shall include:
 - i. All unpacking, testing, assembly and trouble-shooting of delivered Covered Equipment.
 - ii. All site work to include electrical, environmental preparation in accordance with E&E Enterprises Global, Inc. specifications as provided.
 - iii. Immediate return of all DOA equipment identified as supported by us during system turn-up.
 - iv. Revision level upgrades as deemed necessary by us.
 - v. Notification of all locations or changes in locations by using a Maintenance Activator Form.
 - vi. Obtain all necessary licenses and permits as required by local, state or federal laws, codes or regulations.
- B. You acknowledge and agree that this Agreement applies only to Covered Equipment owned and used by you and does not cover your provisioning of service to any other person or entity or customer of E&E Enterprises Global, Inc. either solicited or not solicited by you. You further agree all work will only be performed by your technical staff trained or approved by our Educational Services department
- C. If software maintenance requires interruption of your system, it shall be performed by you during the period of standard coverage at a time mutually agreeable to you and us. Such maintenance may be scheduled outside of the period of standard coverage based on agreement between both of us.
- D. Use the latest revision of software, as required
- E. You are responsible for all fault isolation and requests for exchange replacement.
- F. You shall be liable for any repairs or replacements to equipment caused by, required by or resulting from your fault, misuse, or negligence if returned equipment is not serviceable. This work will be completed and billed at our service and part rates then in effect.

8. PAYMENT TERMS

- A. The price of such service(s) will be at our standard published Maintenance and Installation rates, available on our GSA schedule or special custom quote. Service requested by you outside the scope of this Agreement shall be chargeable at our standard Time & Material rates. If you desire any Time and Material service, which is after hours or specifically from warranty coverage, we require your written authorization, to proceed.
- B. Contractual Charges for Equipment will begin:
 - i. For previously installed and accepted Equipment or Software on the initial Commencement Date of this Agreement.
 - ii. For new Equipment or Software installed by us or our designated agent, on the first day of the month following installation.
- C. Maintenance charges, including Extended Coverage adders provided for in this Agreement, shall be payable in advance on an annual basis unless otherwise provided in this Agreement. The initial payment will be due and payable within thirty (30) days from the date of invoice. Maintenance charges for Time and Material services shall be invoiced separately. All charges hereunder will be due and payable within thirty (30) days from the date of invoice.
- D. In addition to other remedies available to us, overdue invoices may bear a late payment charge at the rate of one and one-half percent (1-1/2%) per month commencing on the 31st day, but in no event in excess of the lawful maximum. In the event an invoice is more than 60 days past due, we may withhold performance hereunder until such invoice is paid.

9. ADDITIONAL CHARGES

Listed below are additional charges that are not included in the maintenance coverage but are billed separately:

- A. Our replacement of any part determined by us to be faulty due to your abuse, neglect, or misuse requires upgrading.
- B. Any non-emergency or Level 1 on-site service that is dispatched directly by you without our concurrence will be billed at our current Time and Material charges.
- C. On-site installation support by our field engineer.
- D. Non-serviceable returned equipment will be replaced at our most current list price for replacement.
- E. Service requested by you which results in a "no trouble found" in equipment covered under this Agreement will be billed to you at a rate equal to fifty (50) percent of the published repair rate as approved by GSA for GSA schedule contract users.
- F. Defective equipment must be shipped by you within 24 hours from date of receipt of replacement equipment. If not shipped to us within 72 hours, you shall be deemed to have purchased the replacement equipment supplied by us. You will be liable for the purchase price for such equipment. This Agreement may be terminated by us in such event by written notice to you.

- G. You will be billed for all extraordinary expenses incurred by us in the support of software. Such expenses include, but are not limited to, software installation charges when not covered under an enhanced contract charge, expedited shipping charges, upgrade charges to bring down-rev software to current revision status prior to acceptance under this Agreement and any part requiring upgrade for compatibility with upgraded software.

10. CHANGES IN RATES

The Maintenance Contract charges included in this Agreement shall, unless otherwise provided, remain fixed for a period of one year from the Commencement Date. Thereafter, the net contract prices may be increased not more frequently than once a year by an amount not exceeding ten percent (10%) of the prior year's price. If charges increase, you may, upon receipt of such notice, terminate this Agreement in full or in part upon furnishing us with thirty (30) days written notice prior to the effective date of the increase of the new charge. In the absence of such a termination notice to us, the new charges will become effective on the date specified by us. Time and Material charges are not fixed and can be changed with thirty (30) days written notice.

11. TAXES

There shall be added to the charges due hereunder amounts equal to any taxes, however designated, including VAT levied or based on such charges or on this Agreement and any Attachment, or on the services rendered or parts supplied pursuant hereto, including state and local privilege or excise taxes based on gross revenue, and any taxes or amounts in lieu thereof paid or payable by us in respect of the foregoing, exclusive, however, of taxes based on our net income. Customer must provide a tax exemption certificate if claiming tax exemption.

12. TERMINATION

We may terminate this Agreement and any attachments hereto and our obligations thereunder prior to the expiration of the Agreement by giving notice to you at any time after the occurrence of any of the following events:

- A. all or substantial part of your assets are sold or otherwise transferred to any person;
- B. you are merged or consolidated with any other person;
- C. a receiver, trustee, or liquidator is appointed for any of your properties or assets;
- D. you admit in writing your inability to pay your debts as they mature;
- E. you make a general assignment for the benefit of creditors;
- F. you are adjudicated bankrupt or insolvent;
- G. a petition for your reorganization or any arrangement with your creditors or readjustment of your debt or its dissolution or liquidation is filed; or
- H. you breach this Agreement or fail to perform any of your obligations hereunder including, but not limited to, payment for the Equipment, parts or services. In the event of such termination, we may exercise any or all of our remedies available at law or equity, including, but not limited to, the right to declare any and all payments to be immediately due and payable. Other than as described herein, this Agreement shall not be subject to termination, except as may be mutually agreed in writing between both of us, or as otherwise provided in Paragraph 1.

13. LIMITATION OF LIABILITY

Our liability with respect to any claim or damage whatsoever arising out of or related to the subject matter hereof shall in no event exceed the contract price with respect to that subject matter. In no event shall we be liable for any loss of data or collateral consequential, incidental, special or indirect damages, costs, lost profits, or claims of any nature whatsoever arising out of or related to the subject matter hereof, even if we are informed of the possibility thereof. In the event of a dispute arising under this Agreement, neither party may bring an action, regardless of form, more than one (1) year after the cause of action has arisen.

14. INDEPENDENT CONTRACTOR

We shall at all times be deemed to be performing as an independent contractor and not as your agent or employee and the acts and omissions of your employees, agents and subcontractors shall be deemed to be your acts and omissions. To the extent not precluded by law, you shall indemnify and hold harmless us and our directors, officers, employees, representatives, agents, assigns and subcontractors from and against any and all liability, damages, losses, claims, demands, judgments, costs and expenses of every nature and kind by reason of injury to or death of any person or damage to or destruction of property, arising out of or incidental to or in any way resulting from the acts or omissions, whether negligent or otherwise, of your employees, subcontractors, or agents in performance of this Agreement. You shall not be responsible for any such losses, liabilities, claims, judgments, costs, demands and expenses as are caused by the sole negligence or willful misconduct of us, our directors, officers, employees, representatives, agents, assigns and subcontractors. In the event a claim is made against us for which you are to be responsible hereunder, we shall promptly notify you of such claim. You shall likewise notify us of any claims for which we are to be responsible hereunder.

15. FORCE MAJEURE

Any delay or failure in performance of any obligation hereunder by us arising out of or related to any force majeure, including, but not limited to, acts of God, your acts or omissions, acts of civil or military authority, priorities, fires, strikes, other labor disturbances, floods, epidemics, war, sabotage, terrorist acts, riot, delays in transportation, inability to obtain necessary materials or components or any other cause beyond our reasonable control, shall not be a breach hereunder.

16. CHANGES

Either party may request changes to this Agreement regarding Equipment covered, its location or regarding any other provision of the Agreement or appropriate Attachment. Such changes shall become part of this Agreement only as may be mutually agreed in writing between both of us. On a per unit basis, contractual charges will cease ninety (90) days following notification by you to us, in writing, to terminate such unit coverage prior to the end of the term, unless otherwise agreed to by both of us.

17. CONFIDENTIALITY

In the event that either party to this Agreement receives properly marked proprietary or confidential information relating to products, services, technology, processes, secrets, or ideas, ("Information"), of the other party, the party receiving such information shall maintain the Information, in whole or in part, as proprietary and confidential during the Term or any Extension of this Agreement, and for a period of two (2) years after the expiration or termination of this Agreement, protecting the Information from disclosure or copying except as may be expressly authorized herein or agreed upon by the parties in writing.

18. NON-SOLICITATION

During the term of this Agreement and for one (1) year thereafter, Customer shall not, without the prior written consent of E&E Enterprises Global, Inc. Networks, directly or indirectly solicit, recruit, hire or use the services of any E&E Enterprises Global, Inc. employee whose identity is learned hereunder so long as such employee is employed by E&E Enterprises Global, Inc. and for sixty (60) days thereafter. In the event of breach of this obligation Customer shall promptly pay to E&E Enterprises Global, Inc. Networks, as liquidated damages and not as penalty, an amount equal to the greater of three (3) times such employee's total annual compensation determined as of the date of the breach. You shall pay to us all reasonable costs and expenses, including all reasonable attorneys' fees, incurred by us in pursuing or exercising any of our rights or remedies hereunder or enforcing any of the terms, conditions or provisions hereof. You shall not assign or remarket any of your rights nor delegate any of your obligations under this Agreement or any Agreement and any such assignment without our consent shall be void. We may assign our rights under this Agreement or any Agreement upon written notice thereof to you to the extent that our obligations to you are not affected. The terms and conditions hereof shall not be modified except by an Agreement, Equipment schedule, or other writing signed by both of us. You shall comply with all applicable laws and regulations with respect to the use of the Equipment and services provided hereunder. This Agreement, together with its attachments, constitutes the entire agreement between both of us with respect to the subject matter hereof.

19. SEVERABILITY

If any provision of this Contract is held unenforceable, then such provision will be modified to reflect the parties' intention. All remaining provisions of this Contract shall remain in full force and effect.

20. GENERAL

Any failure or delay by us with respect to the exercise of any of our rights under this Agreement shall not be deemed a waiver by us of any such rights. There are no agreements, understandings, representations or warranties not expressly incorporated. This Agreement supersedes all proposals, all previous negotiations and all other communications, oral or written, not expressly incorporated. All equipment, parts and materials exchanged due to equipment warranty, installation, upgrade or maintenance service are our property at no charge. You warrant that as of the date of exchange, you are the lawful owner of the exchanged equipment, parts and materials and you transfer all right, title and interest therein to us free and clear of all liens and encumbrances.

21. ARBITRATION

Any dispute, claim or controversy arising out of or relating to this Agreement or the breach, termination, enforcement, interpretation or validity thereof, including the determination of the scope or applicability of this agreement to arbitrate, shall be determined by arbitration in (insert the desired place of arbitration), before (one) (three) arbitrator(s). The arbitration shall be administered by JAMS pursuant to its (Comprehensive Arbitration Rules and Procedures) (Streamlined Arbitration Rules and Procedures). Judgment on the Award may be entered in any court having jurisdiction. This clause shall not preclude parties from seeking provisional remedies in aid of arbitration from a court of appropriate jurisdiction.

22. APPLICABLE LAW

The laws of the State of Virginia shall govern this Agreement.

NOTES: For questions, comments or clarification please contact E&E Enterprises Global, Inc. at 757-826-9532