

**APPENDIX D
SUPPORT AGREEMENT
DIR-TSO-4355**

Mitel Business Systems, Inc. ("Mitel")	("Customer")
Principal Place of Business (Address): 1146 North Alma School Road Mesa, Arizona, 85201	Principal Place of Business (Address):
Signature:	Signature:
Name:	Name:
Title:	Title:
Date:	Date:

Mitel and Customer agree to the terms and conditions below and have caused this Agreement to be executed by their respective duly authorized representatives:

1. SUPPORT SERVICES.

(a) This Agreement is effective as of the date first appearing above ("Effective Date"). The initial term of this Agreement is twelve (12) months from the Effective Date. Thereafter, this Agreement will renew for additional twelve-(12) month periods (each a "Renewal Term") upon mutual agreement between Vendor and Customer.. Termination shall be in accordance with the Appendix A, Section 11.B of the DIR contract DIR-TSO-4355

(b) Customer will receive support services ("Support Services") as set forth in a Support Plan referencing this Agreement. Each Support Plan may be renewed for additional twelve (12)-month periods unless either party provides written notice thirty (30) days prior to expiration. No renewal shall be effective unless Customer has installed the current release version of the embedded software minus 2 and (if applicable) Customer maintains application software at release levels currently supported by Mitel. Customer may increase the level of Support Services at the beginning of a month. Prices for the additional services will be pro-rated in accordance with Appendix C, Pricing Index of the DIR Contract, DIR-TSO-4355. Any decrease in the level of services must be made at the beginning of a Renewal Term. The prices for the Support Services may be adjusted to reflect changes to the System. Mitel will provide notice of any change in prices forty-five (45) days prior to any Renewal Term. All Support Services are limited to the Site listed in the Support Plan.

(c) Standard of Performance. Support Services will be performed in a good and workmanlike manner consistent with standard communications industry practice. Mitel may subcontract work required under this Agreement in accordance with Appendix A, Section 10.F of the DIR Contract, DIR-TSO-4355, but will remain responsible for the work performed. Mitel may utilize remanufactured / certified parts that meet factory specifications, and any removed parts shall become the property of Mitel.

(d) Definition of Major and Minor Failures.

(i) A Major System Failure for a PBX or ICP is defined as a complete system failure, tie-line group out of service, major system alarm, failure of an entire trunk group, more than twenty percent (20%) of stations totally inoperative, attendant position failure, inability to receive incoming calls, inability to call outside of the facility, or system failure that substantially interferes with the Customer's normal use of the System. A Major System Failure for voice processing System is defined as an inability to access system through the system manager terminal or through at least seventy-five percent (75%) of all telephone ports, inability to access one or more disk drives that store messages or data, loss of system integration, continual system restarts, unscheduled total system outage, reboot failure, inability of system

to collect CDR data (if applicable). All other failures shall be deemed a Minor System Failure.

(ii). A Major Application Failure for an application software is defined as a complete inability to use the application software, application crash or loss of data that significantly interferes with Customer's access to or use of the application software. All other failures shall be deemed a Minor Application Failure.

(e) Application Software Support. Support for applications software listed in the Support Plan includes remote or onsite diagnosis and troubleshooting of Major and Minor Application Failures. Mitel will use commercially reasonable efforts to restore the application software to substantial compliance with applicable manufacturer specifications, including the following: developing work-around directions; updating application software documentation; and updating software, which includes maintenance fixes. Mitel will replace any software media or documentation that is defective in material or workmanship. Support for application software does not include (i) remedies for cosmetic software bugs that do not cause material deviation from the manufacturer's specifications or (ii) application software upgrades (which include additional application enhancements and functionality beyond software updates or maintenance fixes) unless Mitel determines that an upgrade is necessary to resolve the Application Failure.

(f) Proactive Remote Monitoring and Remote Support. Customer must provide the proper connection (when applicable) to a Mitel Proactive Remote Monitoring Unit to receive remote support and/or proactive remote monitoring (if specified in the attached Support Plan) and if the System is capable of supporting such capabilities. Remote Monitoring and Access Service ("RMAS") Maintenance Coverage includes 24 x 7 remote access and/or remote monitoring. Remote monitoring requires the purchase of optional license(s). System passwords, user names and access codes are also required.

As an alternative, Customer may provide Mitel with remote access (VPN) to diagnose Customer reported incident(s) on the installed solution. System passwords, user name and access codes are also required.

Mitel shall not be responsible for proactive remote monitoring or remote support in the event that Customer disconnects the remote access (VPN), remote monitoring, or remote support or that the licensing to either access and/or remote monitoring have expired.

(g) Supplemental Services. All supplemental services will be performed under a Work Authorization subject to the DIR Contract, DIR-TSO_4355 and this Agreement, which shall take precedence over any purchase order or work authorization. If any

supplemental work / service are subsequently added to the Support Plan, the price will be adjusted accordingly subject to Appendix C, Pricing Index of the DIR Contract, DIR-TSO_4355. Any product or material provided in connection with the Support Services is provided "as is" and subject to all terms and conditions applicable for the product or material. The following are supplemental services that will be provided in accordance with Appendix C, Pricing Index of the DIR Contract, DIR-TSO-4355, including the following:

- (i) communicating and cooperating with communications service provider(s) ("Liaison Service") to correct any problem that was not caused by the System;
- (ii) technician on-site service (including travel to and from the Site) to re-establish remote access that was disconnected or disabled by anyone other than Mitel or its authorized agent.
- (iii) installing software upgrades;
- (iv) moves, adds and changes (MAC);
- (v) consulting on application capabilities, administration, configuration, proper usage of application software, custom programming, documentation, training or other services that are not related to resolving a Major or Minor Application Failure;
- (vi) any other work not specifically provided for in the Support Plan.

(h). **Exclusions.** Mitel shall have no responsibility for troubleshooting or correcting any problems arising from the following: (i) Customer failure to maintain the embedded software at not less than the current release minus 2; (ii) power surges or dirty power not caused by Mitel; (iii) accidents, negligence or misconduct not caused by Mitel; (iv) work not performed or authorized by Mitel; (v) Customer data entry or Customer database backup; (vi) hardware or software not supplied by Mitel; (vii) Customer failure to maintain the environmental or electrical conditions according to manufacturer's specifications; (viii) host systems; and (ix) the LAN/WAN. Mitel's sole obligation or support of application software that is based on software code or features or functionality or for repair or replacement of System parts that have been manufacturer discontinued is to work in good faith with the manufacturer to obtain repairs, replacement parts, or devise custom software fixes, patches or work-arounds for which Customer shall be responsible to pay.

2. PAYMENT TERMS. Payment will be handled in accordance with Appendix a, Section 8.J of the DIR Contract, DIR-TSO-4355.

3. TERM / TERMINATION. Termination will be handled in accordance with Appendix A, Section 11.B of the DIR Contract, DIR-TSO-4355.

4. ASSIGNMENT. Assignment will be handled in accordance with Appendix A, Section 4.D of the DIR Contract, DIR-TSO-4355.

5. CONFIDENTIALITY. Confidentiality will be handled in accordance with Appendix A, Section 10.H of the DIR Contract, DIR-TSO-4355.

6. LIMITATION OF LIABILITY. Limitation of Liability will be handled in accordance with Appendix A, Section 10.K of the DIR Contract, DIR-TSO-4355.

7. DISCLAIMERS. MITEL DISCLAIMS ANY EXPRESS OR IMPLIED WARRANTY OR CONDITION THAT THE SUPPORT SERVICES PREVENT TOLL FRAUD, UNAUTHORIZED ACCESS, LOSS OR THEFT OF ELECTRONIC DATA, OR INVASION OF PRIVACY (COLLECTIVELY, "FRAUDULENT ACTIVITY"). MITEL SHALL HAVE NO LIABILITY TO CUSTOMER IN THE EVENT OF SUCH FRAUDULENT ACTIVITY. CUSTOMER IS ADVISED THAT THE OPERATION OF E-911 REQUIRE ACCURATE INFORMATION CONTAINED IN CUSTOMER'S DATABASE, WHICH CUSTOMER IS SOLELY RESPONSIBLE FOR CREATING AND MANAGING.

8. NON-SOLICITATION. Both parties agree not to solicit, or make offers of employment to, or enter into business relationships with, any of the other party's employees involved, directly or indirectly, in the performance of the Services performed as a result of this Agreement for one (1) year after the date such employee ceases to perform any of the Services provided hereunder. However, either party may hire any employee who responds to a general hiring program conducted in the ordinary course of business and not specifically directed to either of the party's employees.

9. FORCE MAJEURE. Force Majeure will be in accordance with Appendix A, Section 11.C of the DIR Contract, DIR-TSO-4355.

10. SEVERABILITY. In the event that any of the provisions contained herein is for any reason be held to be unenforceable, such unenforceability shall not affect the validity of any other provision of this Agreement, and this Agreement shall then be construed as if such unenforceable provision had never been contained herein. The parties agree to work in good faith to substitute the invalid provision with a provision that best achieves the effect intended by the parties. The right of either party at any time to require strict performance shall not be affected by any previous waiver or course of dealing.

11. APPLICABLE LAW. This Agreement shall be interpreted under the laws of the State of Texas, exclusive of its conflict of laws provisions.

12. ENTIRE AGREEMENT. The Entire Agreement will be handled in accordance with Appendix A, Section 4.A. of the DIR Contract, DIR-TSO-4355.

13. NOTICES. Notices will be handled in accordance with Appendix A, Section 12.A. of the DIR Contract, DIR-TSO-4355.