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## EXTENSION OF AGREEMENT & GUIDE

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## 1. Overview

Well after a contract has been signed, parties may find that a change in events makes it impossible to complete their obligations within the agreed-on time period. Alternatively, an increase in the parties' needs can move the parties to extend their relationship beyond its original parameters. If the parties agree to the change and sign additional documents, the term of an existing agreement can be extended.

You can use an extension to expand time frames that seemed reasonable when drafted, but have since become unworkable. Rather than leave parties shackled to a dated or impractical agreement, extensions allow contracts to reflect the changing capacities of the parties that signed it. Perhaps a business arrangement is working perfectly for all parties, but expires naturally before the parties wish to end it: this agreement can be extended to allow the companies to develop their understanding.

This package contains everything you'll need to extend your agreement. A written contract minimizes confusion, misunderstanding, and error, and sets forth the parties' expectations and fulfillment obligations. If obligations can't be completed in a timely fashion, or if the parties want to continue a thriving and successful arrangement, an extension can help the parties achieve their goals. In every way, this promotes a successful and profitable business arrangement.

## 2. Dos & Don'ts Checklist

- Before sitting down to write, decide exactly what your goals are for the extension. Try to capture the revisions without invalidating or confusing the original agreement. Will the extension have a set term? Will it continue indefinitely? Are there other changes to the contract that will need to be made? Clarify these terms before writing them down.
- Allow each party to spend time reviewing both the original agreement and the extension. This will reduce the likelihood, or at least the efficacy, of a claim that a party did not understand any new terms or how those might affect the agreement as a whole.
- Both parties should review the extension carefully to ensure that **all relevant deal points** have been included. It is better to be over-inclusive than under-inclusive. Do not assume that certain expectations or terms are agreed to if they are not stated expressly on the document.
- The terms of your original agreement are still in effect, so make sure both parties continue to perform their obligations under that agreement until the extension is completed and signed.
- Sign two copies of the extension, one for you and one for the other party.
- Keep your copy of the signed extension with the original agreement it modified. Once the extension is drafted and signed, it is part of the original agreement and should be treated accordingly.
- Depending on the nature of its terms, you may decide to have your extension witnessed or notarized. This will limit later challenges to the validity of a party's signature.

- If your agreement is complicated, do not use the enclosed form. Contact an attorney to help you draft a document that will meet your specific needs.

### 3. Extension of Agreement Instructions

The following provision-by-provision instructions will help you understand the terms of your extension.

The numbers below (e.g., Section 1, Section 2, etc.) correspond to the provisions in the extension. Please review the entire document before starting your step-by-step process.

- **Introduction.** Identifies the document as an extension of an existing agreement. Write in the date on which the original agreement was signed. Identify the parties and the date of the extension. The parties must be the same as those who signed the original agreement (unless one of the new signers is an agent of the same company that originally signed) and should have the same designations as well (i.e., Party One is still Party One, Party Two is still Party Two).
- **Recitals.** Identifies the document as an extension of an existing agreement and explains what is being changed. Put in the effective date of the original agreement and the date on which the current term ends. You can usually find this date in this section titled "Term." Note that the recitals require that you attach a signed copy of the original agreement as an exhibit to the document.
- **Section 1: Purpose of the Extension.** Write "First" in the initial blank if this is the first extension of the agreement, "Second" if it is the second, and so on. Use this section to explain what you hope to accomplish with your extension, and why you feel it is necessary.
- **Section 2: Extension of Agreement.** There are two options provided in this section, and you should select the one that best suits your arrangement.

*Option 1:* This option allows you to extend the term of the original agreement to a new specific date. You can make this as long or as short as you want: it does not have to be the same length as the term of the original agreement. Write in the length of the new term and the date on which that term will end.

*Option 2:* This option does not provide a new end date for the agreement. Rather, the agreement will continue indefinitely, until the parties terminate it or it terminates on its own under state or local regulations.

Once you have selected your option, delete the option that you did not select and any instructional language.

- **Section 3: Inconsistency.** Notes if there is a conflict between extension language and the language of the original agreement, the original agreement's language will be the final word on the question. If you would rather that the extension language have priority, replace "Agreement" with "Extension" in the clause "the terms of the Agreement shall govern."
- **Section 4: Continuation of Agreement.** This serves as an "affirmation" of the original agreement. In other words, the only thing that changes in the original agreement is the term: all of the other terms of that agreement remain effective.

- **Section 5: Entire Agreement.** The parties' agreement that the document they're signing (when taken together with the original agreement) is "the agreement" about the issues involved. Unfortunately, the inclusion of this provision will not prevent a party from arguing that other enforceable promises exist, but it will provide you some protection from these claims.
- **Section 6: Modification.** Indicates that any changes to the extension will be in writing and signed by both parties.
- **Section 7: Severability.** Protects the terms of the extension as a whole, even if one part is later invalidated.
- **Section 8: Counterparts/Electronic Signatures.** The title of this provision sounds complicated, but it is simple to explain: it says that even if the parties sign the extension in different locations, or use electronic devices to transmit signatures (e.g., fax machines or computers), all of the separate pieces will be considered part of the same agreement. In a modern world where signing parties are often not in the same city - much less the same room - this provision ensures that business can be transacted efficiently, without sacrificing the validity of the agreement as a whole.

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## Form Sample

### EXTENSION OF \_\_\_\_\_

This extension of \_\_\_\_\_ Agreement (the "Extension") is entered into as of \_\_\_\_\_, 20\_\_\_\_, by and between \_\_\_\_\_ ("Party One") and \_\_\_\_\_ ("Party Two," and together with Party One, the "Parties").

#### RECITALS

**WHEREAS**, Party One and Party Two are parties to that certain agreement dated as of \_\_\_\_\_, 20\_\_\_\_ regarding \_\_\_\_\_ for a term ending on \_\_\_\_\_, 20\_\_\_\_ (the "Agreement"), a copy of which is attached to this Extension as Exhibit A; and

**WHEREAS**, the Parties wish to extend the term of the Agreement;

**NOW THEREFORE**, in consideration of the above recitals and the mutual promises and benefits contained herein, the Parties hereby agree as follows:

#### 1. PURPOSE OF EXTENSION.

This Extension shall constitute the \_\_\_\_\_ extension of the Agreement. The purpose of this extension is to:

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