

EMBARQ CENTURIONSM MAINTENANCE SERVICE ANNEX

This Embarq Centurion Maintenance Service Annex, together with the applicable cover agreement and the equipment list, (collectively, the “Agreement”), will govern Embarq’s provision and Customer’s use of Embarq’s equipment maintenance services. The Embarq Standard Terms and Conditions for Communications Services will also apply to the extent incorporated by the applicable cover agreement.

1. DEFINITIONS.

- 1.1. **Business Hours** means 8:00 a.m. to 5:00 p.m., local time, Monday through Friday, excluding Embarq-observed holidays.
- 1.2. **Covered Hours for Repairs.**
 - A. For the Standard Plan, “Covered Hours” means Business Hours.
 - B. For the Extended Plan and Best Value Plan, “Covered Hours” means 24 hours a day, 365 days a year. The Best Value Plan is not available for all Equipment and must be purchased in connection with the separate purchase and installation of new Equipment from Embarq.
- 1.3. **End of Life (“EOL”)** means, among other possible EOL causes, that the Equipment or Software has been discontinued by the original equipment manufacturer or that Embarq is unable to obtain spare parts, any kind of manufacturing, design, engineering, or technical support in the ordinary course of business from the original equipment manufacturer, any inherent Equipment or Software design defects will remain unresolved, no further Software patches or firmware updates are available, or replacement Software media is discontinued.
- 1.4. **Equipment** refers to Embarq-serviced hardware and software to be covered by this Agreement as identified in the Equipment List attached to this Agreement, excluding any items identified by Embarq as “Vendor Serviced Equipment.”
 - A. **Voice Equipment** includes traditional TDM-based equipment, the voice components of converged voice and data solutions, voice mail systems, and call center / call distribution applications. If the Agreement specifies “switch only,” Voice Equipment will only include devices within Customer’s designated equipment room and will exclude devices and wiring from the surface jack to the desktop.
 - B. **Data Equipment** includes all equipment not classified as Voice Equipment, including but not limited to switches, hubs, routers, CSU/DSUs, and the data components of converged voice and data solutions.
- 1.5. **Maintenance Release** means an incremental release of Software that provides maintenance fixes and may provide additional Software features.
- 1.6. **Major Release** means a release of Software that provides additional Software features and/or functions, commonly referred to as upgrades.
- 1.7. **Major Outage** means a malfunction consisting of one or more of the following conditions:
 - A. For all equipment:
 - (1) Complete failure of the system or network, meaning no incoming or outgoing communications or connectivity to or from Customer's premise;
 - (2) No internal communications or functionality within the system;
 - (3) Severe loss of network operation or severely impaired network performance for a sustained period of time;
 - B. For Voice Equipment:
 - (1) Inoperative attendant console;

- (2) Inoperative applications server, such as a voice messaging system or automatic call distribution (ACD) system;
- (3) 20% of all telephones out of service; or
- (4) 20% of all trunk circuits out of service.

C. For Data Equipment:

- (1) 20% of LAN ports out of service; or
- (2) 20% of all network connectivity out of service.

1.8. Manufacturer Discontinued (“MD”) means that the Equipment or Software has been designated by the vendor as no longer supportable by manufacturing, design, and related processes. Equipment designated as MD is no longer available for sale. Software designated as MD may no longer be available for upgrades or expansion, depending on the current state of the software.

1.9. Minor Outage means any malfunction other than a Major Outage.

1.10. Remote Work means activities performed without an Embarq employee or Embarq contractor on Customer's site.

1.11. Response Time means the time interval between when a trouble call is made to Embarq's National Business Operations Center (by the designated Customer personnel or by an automatic notification system) and the time Embarq service personnel begin analyzing the system in search of the cause of the trouble (remotely or on-site).

1.12. Service means the services provided by Embarq to Customer under this Agreement.

1.13. Software means the machine-readable object code software programs licensed or sublicensed to Customer by Embarq under separate agreements for use with Embarq-provided equipment.

1.14. Vendor Serviced Equipment means devices identified accordingly by Embarq on the Equipment List that are serviced directly by the Equipment manufacturer or other manufacturer-approved third party and that is subject to limited coverage from Embarq under this Agreement.

2. TERM.

2.1. The Term for Services will have the duration (“Order Term”) specified in the applicable cover agreement or in a subsequent Order. The Term for Services will commence on the last of:

- A. the date that the Equipment is installed and deemed accepted;
- B. the date the Equipment warranty period (if applicable) expires; or
- C. the date this Agreement is signed by Customer and accepted by Embarq.

2.2. UPON EXPIRATION OF THE INITIAL TERM, THIS AGREEMENT WILL AUTOMATICALLY EXTEND FOR SUCCESSIVE 12-MONTH PERIODS AT EMBARQ'S THEN-CURRENT LIST RATES UNLESS EITHER CUSTOMER OR EMBARQ PROVIDES WRITTEN NOTICE TO THE OTHER NOT TO RENEW AT LEAST 90 DAYS BEFORE THE EXPIRATION OF THE THEN-CURRENT TERM.

2.3. For Equipment identified as End of Life by Embarq, Customer may not extend the Term under any circumstances.

3. SCOPE OF SERVICE.

3.1. Embarq Responsibilities. Embarq will use commercially reasonable efforts to provide all of the following:

A. All Equipment:

- (1) Two-hour Response Time, remote or on-site, for Major Outages reported during Covered Hours.
- (2) Next-business-day Response Time, remote or on-site, for Major Outages reported outside Covered Hours and for all Minor Outages if both the call and

determination that service is required has been made before 4:00 p.m. local time the prior day.

- (3) Parts, labor, and material required to maintain Equipment in compliance with manufacturer's service specifications. Embarq will support all active software provided by the Equipment manufacturer. Replacement parts will be, at Embarq's sole discretion, either new or of like-new quality. If Customer purchases an option for enhanced delivery for replacement parts, Embarq will supply the parts according to manufacturer guidelines regarding availability in that geographical area.
- (4) Installation and configuration of all mandatory manufacturer-supplied, manufacturer-supported Maintenance Releases associated with the Equipment to correct a reported outage or service issue.
- (5) Equipment configuration and troubleshooting support by telephone, facsimile, or electronic mail.
- (6) Work-around solutions to reported Software problems.
- (7) If, in responding to a Major or Minor Outage, Embarq identifies a malfunction in Vendor Serviced Equipment, Embarq will promptly pass the service issue to the Equipment manufacturer or other manufacturer-approved third party for resolution.
- (8) Optional Services, as identified by a separate pricing entry in the Agreement:
 - (a) **Nortel Software Release Subscription Service.** Embarq will provide software upgrades to Customer's Nortel Equipment, as further specified in the *Software Release Subscription Service Annex*.
 - (b) **Major Releases Support.** Embarq will provide Tier 1 and 2 remote Software applications support for the Major Release as provided by the manufacturer, exclusive of labor to install the upgrade.
 - (c) **Monitoring Service.** Embarq will provide proactive monitoring of Customer equipment as further specified in the *Embarq Centurion Monitoring Service Product Annex*.
 - (d) **Lightning Coverage** (where available). Embarq will pay Customer's proven insurance deductible associated with either repairing lightning damage to the Equipment or replacing Equipment that is damaged by lightning, not to exceed \$25,000 in any contract year. Lightning Coverage will not apply if:
 - i. Customer breaches the Agreement and the breach contributes to the damage caused by the lightning; or
 - ii. The Equipment or any electrical or other attachments to the Equipment are repaired or attempted to be repaired by anyone other than Embarq or its authorized contractors.

B. Voice Equipment.

- (1) For Voice Equipment, Embarq will provide one preventive maintenance service per Customer site and two hours of end-user training per year upon Customer request.
 - (a) For traditional TDM-based equipment, preventive maintenance will be provided by Embarq onsite.

- (b) For server-based Voice Equipment, preventive maintenance will be provided by Embarq remotely. Customer must provide either a dedicated management link or some other out of band method. Embarq will provide on-site service inspections for server-based Voice Equipment as a Billable Service.
 - (c) Embarq will provide all Voice Equipment end-user training remotely unless otherwise provided in the Agreement.
 - (2) Preventive maintenance and training on traditional key systems is available only as a Billable Service.
 - (3) Subject to the availability of resources, Embarq will allow up to two 15-minute remote assistance calls per month during Business Hours for each 500 stations maintained by Embarq, related to the functionality or operation of the Equipment.
- C. **Data Equipment.** Subject to the availability of resources, Embarq will allow up to two 15-minute remote assistance calls per month during Business Hours for each device maintained by Embarq, related to the functionality or operation of the Equipment.
- D. **EOL and MD Equipment and Software.**
 - (1) **Limitation.** Embarq is not responsible for any delay or inability to provide Services for Equipment or Software designated as EOL or MD. Embarq will make reasonable efforts to repair EOL or MD Equipment or Software. Embarq will bill Customer separately for any hardware, replacement parts or software that is not commercially available to support EOL or MD Equipment or Software. Embarq will invoice Customer for vendor costs incurred in support of EOL or MD Equipment or Software. Embarq is not responsible for any enhancements, additions, changes, modifications or new features that are needed to maintain Customer's EOL or MD Equipment or Software in its existing state.
 - (2) **Resolution.** Embarq will provide reasonable efforts to resolve EOL or MD Equipment and Software failure issues by utilizing vendor and internal resources. Embarq will invoice Customer for all costs incurred to resolve Customer's issues resulting from designated EOL or MD Equipment or Software. If resolution of an issue is not possible or not available under circumstances described in the Agreement or this Annex, Customer acknowledges that a system upgrade or complete replacement (if available) may be required to retain functionality. A system upgrade or replacement is not covered under the Agreement or any order to the Agreement, and will result in additional charges for all labor and materials.

3.2. Customer Responsibilities.

A. Reporting.

- (1) Customer will identify each outage report as either a Major or Minor Outage based on the definitions described above.
- (2) Customer will provide reasonable access to the Equipment through the Internet or via modem so that problems may be diagnosed and corrected remotely. This may include providing a dedicated local telephone line or direct network access through a dedicated management link at Customer's expense.
- (3) Customer will give Embarq employees and subcontractors full and free access to the Equipment to perform the obligations under this Agreement, subject to Customer's reasonable internal security requirements.

- (4) Customer must provide Embarq with accurate information in connection with the Equipment. If Customer discovers any material error or omission in information provided to Embarq, Customer must promptly correct the information. Embarq reserves the right to either bill Customer for time and materials as Billable Services to fix any problem created by materially inaccurate or omitted information supplied by Customer or its agents, or to terminate this Agreement without liability.

B. Software.

- (1) **Software Levels.** Customer will use and maintain a level of Software supported by the manufacturer or as may be required to correct a Customer-reported Software problem. Customer, at its expense, will maintain current licenses or sublicenses for the Software and will comply with all applicable licensing terms and conditions.
- (2) **Backups.** Customer is solely responsible for the comprehensive back up of magnetically or electronically stored data for its Equipment. If required to resolve service issues, Customer agrees to provide to Embarq service personnel with its backup copies of Software configurations. Embarq can assist Customer in developing a backup schedule and policies for backup media retention and rotation.
- (3) **Antivirus Software.** Customer is responsible for the separate purchase and installation of manufacturer-approved third party anti-virus software and all associated licenses.
- (4) **PC Operating System or Server.** If Customer's Equipment includes a personal computer or server, Customer is responsible for all Maintenance Releases to the operating system of that computer.
- (5) **Administrative Tools.**
 - (a) For Voice Equipment, Customer's use of an administrative tool purchased from Embarq and used in strict accordance with manufacturer's specifications to make moves, adds, or changes to PBX software will not result in a termination for cause under this Agreement.
 - (b) For Data Equipment, Customer's use of an administrative tool purchased from Embarq and used in strict accordance with manufacturer's specifications to establish routing tables and other standard operating configurations will not result in a termination for cause under this Agreement.
 - (c) If Customer's use of an administrative tool damages any Equipment covered under this Agreement, Embarq will bill Customer for the replacement cost or time and materials as Billable Services, or terminate this Agreement without liability.

C. Physical Premise Requirements.

- (1) Customer will maintain environmental conditions at the site according to the specifications established by the Equipment manufacturer. At a minimum, the premises should be clean, dust-free, and well ventilated with a temperature range of 55 degrees - 90 degrees Fahrenheit and 30% - 50% relative humidity.
- (2) Customer will provide all electric work necessary to support the Equipment, including but not limited to, providing electric current, outlets and ground wire connections to premises, and installation of communication facilities or connections, such as the local telephone extension (or toll free domestic and

international access to Embarq) adjacent to the Equipment for the use of service personnel.

- (3) Customer will provide necessary openings and ducts for cable and conductors in floors and walls, and floor plans and/or prints showing the location of such openings and ducts. The floor plan and/or prints will also show the locations and types of equipment installed.
- (4) Unless otherwise agreed to in writing, Customer must obtain any necessary consents, approvals, licenses, and permits for Service of the Equipment on the premises where the Equipment is installed.

D. EOL and MD Equipment and Software.

- (1) **Acknowledgement.** Customer acknowledges that some Equipment and Software covered under the Agreement have been, or soon will be, declared either MD or EOL by the relevant manufacturer.
- (2) **Required Upgrades.**
 - (a) Customer acknowledges that vendors may develop products and services that do not consider or support EOL or MD Equipment or Software. These vendors may sell or mandate equipment or software upgrades to supported system which could cause service problems for EOL or MD Equipment or Software residing on Customer's network. In these cases, vendors will support neither the EOL or MD Equipment or Software nor provide patches to correct issues resulting from these additions or changes.
 - (b) Customer agrees to upgrade any EOL or MD Equipment or Software within the timelines required by Embarq, in its sole discretion. Customer will pay all additional maintenance charges resulting from or associated with these upgrades, or any other upgrades required by Embarq or any vendor. These charges may include, but are not limited to, service charges and installation charges. Embarq, in its sole discretion, may terminate the Agreement if Customer fails to make required upgrades by the Embarq-required deadlines.

3.3. Billable Services.

- A. The following Billable Services may be performed by Embarq for an additional charge upon Customer's request:
 - (1) Performing Customer-specified moves, adds, and changes to Equipment, including, but not limited to adding or removing accessories, attachments or other devices, or moving or relocating the Equipment (with all purchases under this section subject to the *Equipment Sales Product Annex*);
 - (2) Troubleshooting Software or hardware issues caused by products, provided by parties other than Embarq, that are attached to or otherwise integrated into the Equipment and are not otherwise covered by this Agreement, including resolving voice over data issues resulting from variation of network traffic patterns following initial installation or the addition of non-Embarq approved voice over data design equipment by Customer to its network;
 - (3) Performing Customer-requested Software changes such as scripting or other customized application development;

- (4) Installing any hardware upgrade or Software Major Release, including any hardware upgrade required to run upgraded Software;
- (5) Repairing or replacing parts or materials associated with Equipment and consumed in the ordinary course of business;
- (6) Repairing or replacing parts, materials, or software lost, stolen, or damaged through circumstances outside Embarq's control, including but not limited to accident, negligence, abuse, misuse, and failure of electrical power, air conditioning or humidity control, riot or other civil disturbance, strike or other labor trouble, sabotage, fire, flood, lightning or electrical storms, or other act of God, Customer or persons other than Embarq or its authorized contractors;
- (7) Dispatches to Customer's site for incomplete service calls through no fault of Embarq including, but not limited to, Customer's failure to provide access to the Embarq representative. Customer will be charged a Service Charge plus one hour of labor at Embarq's then-current Centurion labor rates;
- (8) Performing other maintenance except as provided in this Agreement; or
- (9) Changes to the configuration of the covered Equipment that provide new functionality, usability or appearance to the Equipment.

B. The following rate elements may apply to Billable Services:

- (1) Billable Services will be billed at Embarq's then-current labor rates;
- (2) Overtime Rate. Calls performed outside of business hours will be billed at Embarq's then-current overtime labor rates;
- (3) Service Charge. A service charge to cover Embarq's travel time will be applied to each Billable Service call. The charge will be at Embarq's then-current Centurion service charge rates;
- (4) Expedite Fees. An expedite fee will be applied whenever Customer requests that Embarq expedite Billable Services beyond normal response times. The charge will be at the then-current Centurion Expedite Fee Rates;
- (5) Billable Services are billed in 15 minute increments, with a minimum of one hour billed for work performed during Business Hours. Work performed outside of Business Hours is billed at overtime rates with a minimum of two hours.

4. ADDITIONAL EQUIPMENT. Subject to Embarq's right to inspect such equipment to determine whether it is in acceptable condition and can be properly and/or economically maintained, Customer may, for an additional fee, add Embarq or Customer-provided equipment for coverage under this Agreement. Embarq will identify any repairs, adjustments or upgrades necessary to bring Customer's equipment to a condition acceptable to Embarq. Customer is responsible for making such repairs, adjustments or upgrades at its expense before it will be added through a mutually agreeable written amendment to this Agreement. The additional fee associated for added equipment will be invoiced to Customer no later than the next anniversary date of the Agreement.

5. LIMITATIONS.

5.1. Service Availability. Service is subject to availability for Customer locations that are more than 125 miles from an Embarq Service Center.

5.2. Hazardous Materials. Services under this Agreement performed by Embarq employees and subcontractors will be accomplished only in a safe working environment that complies with state and federal regulations and law. Embarq has not included any charges or any expenses associated with handling, dealing with, removing or disposing of any hazardous materials at the site. If hazardous materials are encountered in the performance of this Agreement, Embarq will cease performance of Services that would necessitate exposure to such hazardous materials until the hazardous materials are removed and immediately notify Customer of the existence of such

hazardous materials. Embarq's performance of this Agreement will be excused until the hazardous materials are safely removed.

5.3. Vendor Serviced Equipment. Embarq's responsibilities for Vendor Serviced Equipment are limited to the identification of the service issue and transfer of the issue to the manufacturer or other third party approved by the manufacturer for resolution. Embarq has fulfilled its obligations with respect to Vendor Serviced Equipment once the service issue has been transferred. Resolution of a service issues in Vendor Serviced Equipment are governed by the terms and conditions of the applicable vendor support program.

5.4. EOL and MD Equipment and Software.

A. In addition to the limitation of liability provisions in the Agreement, Embarq will not be liable for any liabilities or damages, including any consequential damages, caused by or resulting from Customer's use of EOL or MD Equipment or Software after Customer fails to replace the EOL or MD Equipment or Software, Customer's failure to upgrade the EOL or MD Equipment or Software, or Customer's failure to follow any procedures or requirements set forth in the Agreement and this Annex related to EOL or MD Equipment or Software.

B. In addition to the indemnification provisions in the Agreement, Customer will indemnify and defend Embarq, its directors, officers, employees, agents, and their successors from and against all third party claims for damages, losses, or liabilities, including reasonable attorney's fees, arising from any personal injury, death, or any other damages that are alleged to be related to, in whole or in part, any EOL or MD Equipment or Software, or Customer's failure, for any reason, to upgrade the EOL or MD Equipment or Software or follow any procedures or requirements set forth in the Agreement and this Annex.

6. MONITORING EQUIPMENT.

6.1. Purpose. Customer acknowledges that Embarq, at its sole discretion, may install a data collection device at Customer's location to be used only to support remote diagnostic services and delivery of the Services. This monitoring equipment may be either Embarq or Customer property depending on the nature of the Equipment.

6.2. Embarq-Owned. This monitoring equipment will remain the property of Embarq. At the expiration or termination of this Agreement, Embarq will be entitled to enter Customer's premises to remove all Embarq monitoring equipment.

6.3. Customer-Owned. Embarq provides the monitoring equipment to Customer under the *Embarq Standard Terms and Conditions* and the *Equipment Sales Product Annex*. Embarq will maintain the monitoring equipment at no additional cost to Customer during the Term. Embarq will include the specified charges for monitoring equipment as a line item on Customer's first invoice for Service.

7. SUBCONTRACTING. Embarq may, at its option, subcontract Services provided to Customer. Such subcontract will not release Embarq from any of its obligations. Non-union employees may be utilized by Embarq, subject to applicable bargaining agreements.

8. DISASTER RECOVERY.

8.1. Customer recognizes that the use of computer products entails a substantial risk of loss of magnetically or electronically stored data, and that industry standards dictate the systematic use of products that provide comprehensive backup of data so as to prevent such loss. Accordingly, Embarq does not assume any risk of loss of Customer's magnetically or electronically stored data in any way related to or resulting from the Services, products, Equipment, or systems provided by Embarq or any handling of magnetically or electronically stored data by Embarq. Customer hereby releases Embarq from any liability for loss of magnetically or electronically stored data from any and all causes.

- 8.2.** Customer recognizes that industry standards dictate the development of a disaster recovery plan for all mission critical business operations. In the telecommunications industry this includes, but is not limited to, data backup, power backup, power/surge protection, spare system parts, system redundancy, site redundancy, escalation procedures, emergency support agreements with hardware and software vendors, public network based call forwarding to alternate locations, and documented recovery policies and procedures. Customer understands that developing and testing a disaster recovery plan is Customer's responsibility and is not included in this Agreement.

9. LIMITED WARRANTY.

- 9.1.** Embarq warrants to Customer that any and all Services provided by Embarq under this Agreement will be performed in a good workmanlike manner, and in accordance with recognized industry standards.
- 9.2.** If Embarq breaches this warranty and Customer notifies Embarq in writing of the breach, Embarq's sole obligation and Customer's exclusive remedy will be for Embarq to correct the portion of the work that does not conform to the warranty. If Embarq is unable to correct the Services, Embarq will refund the compensation received by Embarq for the non-conforming Services.
- 9.3.** The warranty in Section 9.1 above does not apply if:
- A.** Customer breaches the terms of this Agreement,
 - B.** the non-conformity was caused by Customer's (including Customer's employees, agents or contractors) abuse, misuse, damage, improper operation or use of the Equipment, such as abuse, misuse, damage, misappropriation or use in a manner other than intended, or
 - C.** the damage is created by any cause not attributable to Embarq including without limitation, power irregularities, fire, earthquakes or acts of God or nature. Embarq makes no warranty for any Equipment or software that is provided by third parties.
- 9.4.** FOR END OF LIFE EQUIPMENT, EMBARQ DISCLAIMS ALL WARRANTIES, EXPRESS OR IMPLIED, FOR ITS PROVISION OF SERVICE.

- 10. ASSIGNMENT.** In addition to any other rights under this Agreement, Embarq may assign the Agreement at any time, in part or in whole, to its corporate parent, subsidiary, or affiliate under common control.

11. TERMINATION.

- 11.1.** In addition to other rights of the parties to terminate under this Agreement, Embarq may terminate this Agreement "for cause" if Customer fails to cure such "cause" within 30 days after receipt of written notice detailing the failure. For purposes of this Annex, the term "for cause" includes, but, is not limited to:
- A.** Customer's improper wiring, failure to maintain proper environmental conditions for the Equipment, and any removal, relocation, repair, additions to, or maintenance of the Equipment by persons other than Embarq authorized personnel. But, upon Customer's prior written request, Embarq, in its sole discretion, may permit Customer or Customer's designated agent to conduct the activities described in this subsection by providing Customer with written approval.
 - B.** If, in Embarq's reasonable determination, Customer is misusing or abusing Services for purposes other than those intended or is using Services for an unlawful or unsafe purpose.
- 11.2.** Embarq may terminate this Agreement with 30 days notice if Embarq cannot obtain maintenance support from the Equipment manufacturer.