



# Embarq Communications, Inc. TERMS & CONDITIONS OF SERVICE

Effective April 24, 2006

## 1. AGREEMENT

**1.1. General Application.** These Terms and Conditions of Service (“Terms and Conditions”), together with the current rates and provisions applicable to your calling plan (“Rates” or “Rate Schedules”), constitute your agreement (“Agreement”) with Embarq Communications, Inc., for any services (other than wireless Embarq Communications, Inc., services) that you purchase from Embarq Communications, Inc. (“Services”). The Rate Schedules are incorporated into this Agreement by reference and are a part of this Agreement. You may also obtain information on Rate Schedules or a copy of the current Terms and Conditions in any of the following ways: by calling the Embarq Communications, Inc., Customer Service number printed on your invoice; by writing to Embarq Communications, Inc., Customer Service, P.O. Box 8188, London, KY 40742, or by visiting [EMBARQ.com](http://EMBARQ.com). **Your enrollment in, use of or payment for the services covered by the Agreement constitutes your acceptance of the Agreement. Contact Embarq Communications, Inc., immediately to cancel the services if you do not agree to any part of the Agreement.**

**1.2. Changes to the Agreement.** Embarq Communications, Inc., reserves the right to change the terms of the Agreement at any time. You will be provided notice of material changes to

Rates and the Terms and Conditions consistent with Section 12.3, which includes posting on the Embarq Communications, Inc., website. It is your responsibility to ensure that you have the most up-to-date Rate Schedules and Terms and Conditions. **Your continued use of the services after any change constitutes your acceptance of the revised Agreement.**

**1.3. Scope.** This Agreement applies to state-to-state and international long-distance calls. State regulations and requirements, including tariffs filed with the State Public Service Commissions, apply to your intrastate telecommunications services. This Agreement also applies to all calls made on the Embarq Communications, Inc., network by Casual Callers (these rates may be considerably higher than Embarq Communications, Inc.'s basic rates or calling plan rates), and by callers using a calling card issued by a Local Telephone Company (the company providing you with traditional local phone service).

## **2. SERVICES**

**2.1. Acceptance.** In its sole discretion, Embarq Communications, Inc., may accept or reject your order for Services for any lawful reason. Before activation of any Service, Embarq Communications, Inc., may check your credit, verify your identity, charge a deposit, prepayment or other fee to establish or maintain Services, or require that you execute any authorizations and verifications it deems necessary. You must have and maintain satisfactory credit to receive and continue to receive Services. For any number of reasons, Services may not be activated immediately.

**2.2. Subscribing Through Local Telephone Company.** If you select Services through your Local Telephone Company and you do not select a specific calling plan, you will automatically be put on the Embarq Communications, Inc., Standard Weekend calling plan. You may contact Embarq Communications, Inc., to select another calling plan.

**2.3. Embarq Communications, Inc., Services.** If Embarq Communications, Inc., has sent you this Agreement, Embarq Communications, Inc., is your carrier for long-distance service (including calls within your state, from your state to another state and international calling) and/or local-toll service as set forth in the other provided documents. You may switch services back to your previous carrier

or select a new carrier by calling your previous carrier or the carrier you wish to switch to.

**3. TAXES.** In addition to any applicable Rates, Embarq Communications, Inc., will invoice you for taxes, fees and other charges as may be required by any federal, state, local or foreign government.

#### **4. SURCHARGES**

**4.1. Types of Surcharges.** In addition to any applicable Rates, Embarq Communications, Inc., may invoice you the following additional Surcharges which are not taxes or otherwise required by the government: (A) Carrier Universal Service Charge, which is subject to change quarterly; (B) Carrier Cost Recovery Charge that helps defray Embarq Communications, Inc.'s overall costs of providing long-distance service to residential consumers; (C) Single Bill Fee if you choose to receive your Embarq Communications, Inc., charges on your Local Telephone Company's bill; (D) a Payphone Surcharge for calls originating from a Public or Semi-Public Payphone; (E) a per-minute International Mobile Termination Surcharge for calls made to a foreign mobile phone—see [EMBARQ.com/tariffs](http://EMBARQ.com/tariffs) for details; (F) In-State Access Charges; and (G) other Surcharges to recover amounts Embarq Communications, Inc., pays or has paid in support of statutory or regulatory programs (including, but not limited to, state-specific universal service funds, lifeline charges, mandated user fees, telecommunications and deaf relay charges, and other federal and state miscellaneous charges), as well as excise, sales, use, gross receipts or other similar taxes levied by a governing body on Embarq Communications, Inc.

**4.2. Additional Information.** For additional information, including the current amount of most of the Surcharges described above, please see your invoice and go to [EMBARQ.com/tariffs](http://EMBARQ.com/tariffs).

**4.3. Notice of Changes.** You will receive notice of changes to most Surcharges described above via posting at the web location referenced in Section 4.2. Depending on the circumstances, we may provide additional notice of changes consistent with Section 12.3. While Embarq Communications, Inc., will endeavor to provide advance notice of changes, in certain instances it may not be possible. Additional notice, if any, for changes to usage based Surcharges (e.g., Payphone Surcharge, International Mobile Termination Surcharge,

etc.) will generally be limited to those that have been assessed the particular Surcharge within 3 months of the change. In most instances, you will not receive additional notice of changes if the Surcharge amount is set by or based on a formula provided by the government or another entity (including the Carrier Universal Service Charge, taxes and similar fees and charges), and may not receive additional notice if you do not receive an invoice from Embarq Communications, Inc.

## 5. PAYMENT OF CHARGES

**5.1. Billing.** (A) Unless you are told otherwise, Embarq Communications, Inc., will bill you for Services on a monthly basis based on the usage charges in effect when the call is placed and the monthly recurring charges (MRCs) in effect on the last day of your billing cycle. MRCs begin accruing when the Service is available for your use; (B) You may be invoiced a prorated portion of your MRC in the initial month of service. MRCs may be billed in arrears or in advance, depending on the Service, while monthly usage charges are generally billed in arrears; (C) Unless the applicable Rates provide otherwise, Embarq Communications, Inc., will bill you in whole-minute increments with partial minutes of use rounded up to the next whole minute. You will not be charged for calls that are not answered; (D) If the total for all computed domestic interstate or international call charges includes a fraction of a cent, the fraction will be rounded down to the next whole cent; (E) If your monthly charges net to \$0, you may not be mailed a paper invoice—invoice information will remain available in your account section at [EMBARQ.com](http://EMBARQ.com); and (F) A fee of up to \$3 may apply for invoice reprints.

**5.2. Payment Terms.** You agree to pay the Rates applicable to your Services, in addition to any applicable taxes, fees and surcharges. You must pay all undisputed charges in U.S. currency within 30 days of the invoice date. Embarq Communications, Inc., may charge you interest on those charges equal to the lesser of 1.5% per month or the maximum rate allowed by law for all late payments. The interest will be applied to the entire unpaid balance. If you choose to be billed for Services by your Local Telephone Company, you are subject to your Local Telephone Company's payment policies, including applicable late payment charges. Embarq Communications, Inc., may charge you a Returned Check Fee, up to the

maximum rate allowed by law, if your check, bank draft or electronic funds transfer is returned for insufficient funds. This fee varies by state and may be set forth in Embarq Communications, Inc.'s, in-state tariffs.

**5.3. Disputed Charges.** Disputes concerning any charges invoiced must be raised within 60 days of the date of the invoice. You may also request an adjustment for wrong number calls. You accept all charges not disputed within 60 days. To dispute a charge on your invoice, you must follow the procedures in Section 10.

**6. USE OF SERVICES.** You agree: (A) to ensure compliance with this Agreement by anyone whom you authorize to use the Services, including any specific terms associated with the use of your Services; (B) to comply with any limitations or restrictions imposed by the foreign carriers or agencies when placing international calls; (C) to pay all charges for Services provided under this Agreement including, but not limited to, unauthorized charges incurred on calls placed from your premises or using a calling card or authorization code that Embarq Communications, Inc., has issued to you; (D) to ensure that your actions and equipment do not directly or indirectly interfere with Embarq Communications, Inc.'s ability to provide Services to others; (E) to comply with all applicable laws and regulations when using our Services and that you will not use our Services in an unlawful, fraudulent or abusive manner, or allow others to do so; (F) to not sell, resell, lease or otherwise distribute our calling card Services to anyone without Embarq Communications, Inc.'s prior written consent; and (G) that, **in its sole discretion and without liability to you, Embarq Communications, Inc., may place restrictions on use of your Services, and immediately (even during a call) disrupt, suspend or terminate your Services without notice for violations, suspected violations or to prevent violations of these terms.**

## **7. TERMINATION OF SERVICES**

**7.1. By You.** For any reason, you may cancel Services at any time by telling your Local Exchange Carrier that you wish to change your long-distance service to another carrier.

**7.2. By Embarq Communications, Inc.,** Embarq Communications, Inc., may discontinue your Services with or without notice, depending on

the circumstances, for any reason including but not limited to nonpayment of any amount owed to Embarq Communications, Inc., or billed by Embarq Communications, Inc., on behalf of others, including disputed amounts that Embarq Communications, Inc., determines were validly invoiced.

**7.3. Termination & Payment.** Unless Embarq Communications, Inc., tells you otherwise, it may take up to 30 days to disconnect your Services; you must pay all charges incurred until disconnection. You will be charged the full MRC for your Services for the month in which your Services terminate. Promotional credits may not be provided on your final invoice.

**8. DISCLAIMER OF WARRANTIES.** EMBARQ COMMUNICATIONS, INC., MAKES NO REPRESENTATIONS OF WARRANTIES, EXPRESS OR IMPLIED, ABOUT THE SERVICES OBTAINED THROUGH EMBARQ COMMUNICATIONS, INC., INCLUDING (TO THE EXTENT ALLOWED BY LAW) ANY IMPLIED WARRANTY OF NON-INFRINGEMENT, MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE CONCERNING YOUR SERVICES OR WIRELESS DEVICE. EMBARQ COMMUNICATIONS, INC., DOES NOT PROMISE UNINTERRUPTED OR ERROR-FREE SERVICES AND YOU AGREE TO HOLD EMBARQ COMMUNICATIONS, INC., HARMLESS FOR ALL SUCH PROBLEMS.

## **9. LIMITATION OF LIABILITY**

**9.1.** Neither Embarq Communications, Inc., nor its vendors, suppliers or licensors are liable for any damages arising out of or in connection with any: (A) act or omission by you, or another person or company; (B) providing or failing to provide Services, including deficiencies or problems with any equipment, the network or Services (e.g., blocked calls, transmission failures, interruptions in Service, etc.); (C) content or information accessed while using our Services, such as through the Internet; (D) interruption or failure in accessing or attempting to access emergency services, including through 911, E911 or otherwise; or (E) events due to factors beyond our control, including acts of God (including, without limitation, weather-related phenomena, fire or earthquake), war, terrorist attacks, riot, strike or orders of governmental authority.

**9.2.** IF FOR WHATEVER REASON EMBARQ COMMUNICATIONS, INC., IS FOUND TO BE RESPONSIBLE TO YOU FOR MONETARY DAMAGES RELATING TO ANY SERVICES OBTAINED THROUGH EMBARQ COMMUNICATIONS, INC., YOU AGREE THAT ANY SUCH DAMAGES WILL NOT EXCEED THE AMOUNTS YOU ARE CHARGED FOR THE SERVICES DURING THE AFFECTED PERIOD OR IF APPLICABLE, THE COST OF THE EQUIPMENT.

**9.3. No Consequential or Other Damages.** UNDER NO CIRCUMSTANCES IS EMBARQ COMMUNICATIONS, INC., LIABLE FOR ANY INCIDENTAL, CONSEQUENTIAL, PUNITIVE OR SPECIAL DAMAGES OF ANY NATURE WHATSOEVER ARISING OUT OF OR IN CONNECTION WITH PROVIDING OR FAILING TO PROVIDE SERVICES, PHONES OR OTHER EQUIPMENT USED IN CONNECTION WITH THE SERVICES, INCLUDING, WITHOUT LIMITATION, LOST PROFITS, LOSS OF BUSINESS OR COST OF REPLACEMENT PRODUCTS AND SERVICES.

## **10. DISPUTE RESOLUTION**

**10.1. Dispute Process.** If you have a dispute with Embarq Communications, Inc., relating to any matter, you agree to first notify Embarq Communications, Inc.'s Customer Service department at the number listed on your invoice or to write Embarq Communications, Inc., Correspondence, P.O. Box 8188, London, KY 40742, in an attempt to resolve your dispute. You must describe your dispute and provide Embarq Communications, Inc., with any supporting documentation. If Embarq Communications, Inc., has a dispute with you, it will notify you by letter sent to your billing address in an attempt to resolve the dispute. If after following this process either party is unable to resolve its dispute within 60 days of notifying the other party, either party may take the dispute to small claims court if appropriate under the court's rules. Alternatively, either party may pursue the dispute only as set forth below.

**10.2. Mandatory Arbitration of Disputes.** (A) INSTEAD OF SUING IN COURT, YOU AND EMBARQ COMMUNICATIONS, INC., AGREE TO ARBITRATE ANY AND ALL CLAIMS, CONTROVERSIES OR DISPUTES

AGAINST EACH OTHER ARISING OUT OF OR RELATING TO THIS AGREEMENT INCLUDING, WITHOUT LIMITATION, THE SERVICES ANY PHONES/EQUIPMENT, OR ADVERTISING, EVEN IF IT ARISES AFTER YOUR SERVICES HAVE TERMINATED, AND INCLUDING CLAIMS YOU MAY BRING AGAINST EMBARQ COMMUNICATIONS, INC.'S EMPLOYEES, AGENTS, AFFILIATES OR OTHER REPRESENTATIVES, OR THAT EMBARQ COMMUNICATIONS, INC., MAY BRING AGAINST YOU ("CLAIMS"). THE FEDERAL ARBITRATION ACT APPLIES TO THIS AGREEMENT AND ITS PROVISIONS, NOT STATE LAW, AND GOVERNS ALL QUESTIONS OF WHETHER A CLAIM IS SUBJECT TO ARBITRATION. THIS PROVISION DOES NOT PREVENT EITHER YOU OR EMBARQ COMMUNICATIONS, INC., FROM BRINGING APPROPRIATE CLAIMS IN SMALL CLAIMS COURT, BEFORE THE FEDERAL COMMUNICATIONS COMMISSION OR A STATE PUBLIC UTILITIES COMMISSION; AND (B) YOU AND EMBARQ COMMUNICATIONS, INC., FURTHER AGREE THAT NEITHER EMBARQ COMMUNICATIONS, INC., NOR YOU WILL JOIN ANY CLAIM WITH THE CLAIM OF ANY OTHER PERSON OR ENTITY IN A LAWSUIT, ARBITRATION OR OTHER PROCEEDING; THAT NO CLAIM EITHER EMBARQ COMMUNICATIONS, INC., OR YOU HAS AGAINST THE OTHER SHALL BE RESOLVED ON A CLASS-WIDE BASIS; AND THAT NEITHER EMBARQ COMMUNICATIONS, INC., NOR YOU WILL ASSERT A CLAIM IN A REPRESENTATIVE CAPACITY ON BEHALF OF ANYONE ELSE.

**10.3. Arbitration Process.** (A) A single arbitrator engaged in the practice of law will conduct the arbitration. The arbitration will be filed with and the arbitrator will be selected according to the rules of either the American Arbitration Association ("AAA"), JAMS or the National Arbitration Forum ("NAF"), or, alternatively, as we may mutually agree. We agree to act in good faith in selecting an arbitrator. The arbitration will be conducted by and under the then-applicable rules of AAA, JAMS or NAF, wherever the arbitration is filed or, if the arbitrator is chosen by mutual agreement of the parties, the then-applicable rules of AAA will apply unless the parties agree otherwise. All expedited procedures prescribed by the applicable

rules will apply. However, you and Embarq Communications, Inc., agree that in no event will an arbitration proceeding be filed, conducted or maintained before any entity or under any entity's rules (including AAA, JAMS, or NAF), if that entity has any policy or rule that is inconsistent with or prevents the enforcement of Section 10.2(B). If the parties are unable to agree on an acceptable arbitrator or the rules under which the arbitration will be conducted, either may petition a court for appointment of an arbitrator who will act consistent with this Dispute Resolution section. We agree to pay our respective arbitration costs, except as otherwise required by rules of AAA, JAMS or NAF, as applicable, but the arbitrator can apportion these costs as appropriate based on any reasonable factors (including the burden of the costs on you). The arbitrator's decision and award is final and binding, and judgment on the award may be entered in any court with jurisdiction; and (B) if any party files a judicial or administrative action asserting a claim that is subject to arbitration and another party successfully stays such action or compels arbitration, the party filing that action must pay the other party's costs and expenses incurred in seeking such stay or compelling arbitration, including attorneys' fees.

**10.4. Severability of Terms and Waiver of Trial by Jury.** If any portion of this Dispute Resolution Section is determined to be invalid or unenforceable, the remainder of the Section remains in full force and effect; provided, however, that Section 10.2(B) is not severable from the remainder of Section 10. If for any reason Section 10.2(B) is determined to be invalid or unenforceable, all claims will be brought in court, and not resolved through arbitration. YOU AND EMBARQ COMMUNICATIONS, INC., AGREE TO WAIVE ALL TRIAL BY JURY FOR ANY CLAIMS BROUGHT AGAINST THE OTHER.

## **11. PRIVACY**

**11.1. Information Obtained Online.** Embarq Communications, Inc.'s privacy policy governing information about you that Embarq Communications, Inc., obtains over the Internet can be found at [EMBARQ.com](http://EMBARQ.com).

**11.2. Customer Proprietary Network Information.** (A) As Embarq Communications, Inc., provides

Services to you, Embarq Communications, Inc., develops information about the quantity, technical configuration, type, destination and amount of Services you use, and other information found on your bill ("Customer Information"). Under federal law, you have a right, and Embarq Communications, Inc., has a duty, to protect the confidentiality of your Customer Information. In order to serve you in the most effective and efficient manner, Embarq Communications, Inc., may use or share your Customer Information with others in the Embarq Communications, Inc., Family of Companies for purposes of determining and offering other Embarq Communications, Inc., products and services that may interest you. The Embarq Communications, Inc., Family of Companies includes the local, long-distance and wireless operations of any Embarq Communications, Inc., affiliate and joint-venture partners providing communications-related services. Embarq Communications, Inc., may also disclose, share or permit access to your Customer Information on a limited, as-needed basis with agents and contractors that assist Embarq Communications, Inc., in providing you with communications-related services. Agents, contractors and joint-venture partners share Embarq Communications, Inc.'s duty to protect your Customer Information. Embarq Communications, Inc., will not disclose or sell Customer Information to third parties, unless otherwise required to do so by operation of law;

(B) Before using your Customer Information for the first time, Embarq Communications, Inc., will notify you by mail and you will have 30 days from the receipt of the notice (this document serves as Embarq Communications, Inc.'s notice) to tell us that you do not want Embarq Communications, Inc., using or sharing with others in the Embarq Communications, Inc., Family of Companies your Customer Information to offer products and services that are unrelated to the Services you currently receive from Embarq Communications, Inc.;

(C) If you would prefer that Embarq Communications, Inc., not use your Customer Information for this purpose, you may opt-out by calling 1-888-635-3733. (TTY users who are deaf or hard of hearing need to dial 711 to reach their State Relay service. The State Relay operator should then be instructed to connect to Embarq Communications, Inc., at 1-888-635-3733);

(D) Embarq Communications, Inc., will allow at

least 33 days from the mailing of this notice before your approval is assumed; and (E) Your decision to opt-out will not have any impact on your current Embarq Communications, Inc., services. Also, your decision on whether or not to opt-out is valid until you decide to change it. As such you may, at any time, opt-out or revoke your previous decision to opt-out by calling the number listed in this paragraph.

## **12. MISCELLANEOUS**

**12.1. Performance/Interpretation.** (A) If either you or Embarq Communications, Inc., waives or fails to enforce any requirement under this Agreement in any one instance, that does not waive that party's right to later enforce that requirement; (B) If any part of this Agreement is held invalid or unenforceable, the rest of this Agreement remains in full force and effect; (C) Section headings are for descriptive, non-interpretive purposes only; (D) You may not assign this Agreement to any other person or entity without Embarq Communications, Inc.'s prior written approval, but nothing restricts Embarq Communications, Inc.'s ability to assign this Agreement; and (E) This Agreement (including any referenced Rate Schedules, documents and attachments) makes up the entire agreement between you and Embarq Communications, Inc., and replaces all prior written or spoken agreements.

**12.2. Governing Law.** This Agreement and all claims relating to the relationship between the parties are governed by federal law and, except for California residents, the laws of the State of Kansas without regard to choice of law principles.

**12.3. Notices.** Embarq Communications, Inc., may provide you notice as required under this Agreement in at least one of the following ways: postcard or letter mailed to the most recent address on your account, bill message, bill insert, e-mail to an address provided by you, recorded announcement, posting on the Embarq Communications, Inc., website at least 15 days prior to the effective date of the change, call to your billed telephone number and speaking to you or leaving a message, or newspaper advertisement.

## **13. ADDITIONAL LOCAL INFORMATION**

**13.1. Local Notices.** (A) **Florida Residents**—If you believe you were switched to Embarq

Communications, Inc., in error, please call 1-800-795-1149; (B) **Indiana Residents**—You have a right to file a complaint to the Consumer Affairs Division at Indiana Government Center South, 302 West Washington Street, E-306, Indianapolis, Indiana 46204, or by calling 1-800-851-4268; (C) **Minnesota Residents**—Interstate directory assistance is \$2.49 per call; (D) **Missouri Residents**—Upon request and depending on your Service, we may be able to restrict 900 calls, long-distance calls without a passcode, and calls to correctional facilities; and (E) **New Jersey Residents**—Questions or comments may be directed to New Jersey Board of Public Utilities, Division of Customer Relations, Two Gateway Center, Newark, New Jersey 01102, 1-800-624-0241, and the New Jersey Division of Consumer Affairs, Consumer Service Center, 124 Halsey Street, 7th Fl., P.O. Box 45027, Newark, New Jersey 07102, (973) 504-6200.

### 13. INFORMACIÓN LOCAL ADICIONAL

**13.1. Avisos Locales.** (A) **Residentes de Florida**—Si usted cree usted ha sido conectado a Embarq Communications, Inc., por error, por favor llame al 1-800-795-1149; (B) **Residentes de Indiana**—Usted tiene derecho de hacer un reclamo a la División de Asuntos del Cliente Indiana Government Center South, 302 West Washington Street, E-306, Indianapolis, Indiana 46204 o llamando 1-800-851-4268; (C) **Residentes de Minnesota**—La asistencia del directorio inter-estadal cuesta \$2.49 por llamada; (D) **Residentes de Missouri**—Bajo solicitud y dependiendo de su servicio, nosotros podemos restringir las llamadas al 900, llamadas de larga distancia sin una contraseña y llamadas a instalaciones correccionales; y (E) **Residentes de New Jersey**—Preguntas o comentarios deben ser dirigidos al Comité de Servicios Públicos de New Jersey, Division de Relaciones con el Cliente, Two Gateway Center, Newark, New Jersey 01102, 1-800-624-0241, y a la División de Asuntos del Cliente de New Jersey, Centro de Servicios al Cliente, 124 Halsey Street, 7th Fl., P.O. Box 45027, Newark, New Jersey 07102, (973) 504-6200.