

## EMBARQ CENTURION<sup>SM</sup> TECHNICAL ASSISTANCE SERVICE ANNEX

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

1. **DEFINITIONS.** For Embarq Centurion TAC services, the following definitions apply:
  - 1.1. **Business Hours** mean 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 TAC Plan, “Covered Hours” means Business Hours.
    - B. For the Extended TAC Plan, “Covered Hours” means 24 hours a day, 365 days a year.
  - 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. **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.
  - 1.8. **Response Time** means the time interval between when a support request is made to the Embarq TAC by the designated Customer technicians and the time Embarq TAC service personnel begin analyzing the system.
  - 1.9. **Service** means the services provided by Embarq to Customer under this Agreement.
  - 1.10. **Severity Levels.** Embarq defines the following levels of outage:
    - A. Level 1 – Requires Customer to perform various responsibilities, such as collection of relevant information, problem identification and analysis, initial diagnosis, trouble shooting and possible resolution.

- B. Level 2 – Requires a higher level of product knowledge and skill sets beyond Level 1 to conduct increasingly sophisticated trouble shooting practices and problem resolution until exhausted.
- C. Level 3 – Requires Customer to exhaust all internal escalation procedures to resolve the problem. Contact with the Embarq TAC, if required, will be initiated by the designated Customer technicians.

1.11. **Software** means the machine-readable object code software programs licensed or sublicensed to Customer.

1.12. **Vendor Serviced Equipment** means devices identified by Embarq on the covered equipment list that will be 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. Two-hour Response Time for a Level 3 Outage during Covered Hours reported by Customer to the Embarq Advance Technical Assistance Center or through a remote notification device.
- B. Access to the Embarq TAC by phone during Covered Hours.
- C. Embarq TAC services in accordance with recognized industry and/or manufacturer standards.
- D. Work-around solutions to reported Software problems as the result of Level 3 outages using generally accepted industry practices.
- E. Provision of necessary parts, if Customer has selected a service plan that covers parts.

### F. 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. Level 1 and Level 2 Outages.** Customer will be responsible for Level 1 and Level 2 support of service interruptions of the Equipment.
- B. Level 3 Outages.**
- (1) All communications with the Embarq TAC will be done by phone through designated Customer technicians who are vendor trained and certified on the covered Equipment. All Customer technicians who initiate contact with Embarq for Level 3 service must be vendor certified.
  - (2) Customer will provide Embarq with the names of all designated Customer technicians. Embarq reserves the right to deny access to any technician whose name was not previously provided by Customer to Embarq.
  - (3) Customer's technicians will be required by the Embarq TAC to perform some or all of the following:
    - (a) Recreate the reported problem and describe previously attempted resolutions;
    - (b) Provide on-site trouble shooting;
    - (c) Provide historical feedback on trouble since first encountered by Customer's technicians;
    - (d) Perform network traces and provide a network diagram upon request;
    - (e) Confirm that all circuits are currently working; and
    - (f) Provide remote network access to Customer's switches.
  - (4) 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.
  - (5) Customer will give Embarq employees and subcontractors full and free access to the Equipment to perform the obligations under this Agreement, if an on-site technician is dispatched by Embarq, subject to Customer's reasonable internal security requirements.
  - (6) Customer must provide Embarq with accurate information in connection with the Services covered under this Agreement. 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.

**C. 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. If required to resolve service issues, Customer agrees to provide to Embarq service personnel with all 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.

**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 (1) hour labor at Embarq's then-current time and materials 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 time and materials rates;
- (2) Overtime Rate. Calls performed outside of Business Hours will be billed at Embarq's then-current time and materials overtime 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.** On-site 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 sole responsibilities with respect to 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 service issues in Vendor Serviced Equipment is governed by the terms and conditions of the applicable vendor's 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.** If Customer purchases a remote monitoring option as a Billable Service, 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, product, 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 and deliverables 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.
- C.** Communications with the Embarq TAC by parties other than Embarq-approved designated Customer technicians.

- 11.2.** Embarq may terminate this Agreement with 30 days notice if Embarq cannot obtain maintenance support from the Equipment manufacturer.