

EMBARQ MANAGED NETWORK SERVICES ANNEX

The following terms and conditions, together with the applicable EMBARQ cover agreement and EMBARQ Standard Terms and Conditions for Communications Services (collectively, the "Agreement") govern EMBARQ's provision of EMBARQ Managed Network Services ("Services") to Customer as specified in the purchase order, service order, Scope of Work or other EMBARQ ordering document, as applicable, ("Order"). Services include the services described in this annex, but do not include any transport services that will be used with the Services. When attached to the applicable cover agreement, this annex supersedes the version posted at www.embarq.com/ratesandconditions/.

1. **TERM.** The initial Order term for Services ("Initial Order Term") will be stated on the Order. The minimum Initial Order Term is 1 year. AFTER THE INITIAL ORDER TERM EXPIRES, IT WILL AUTOMATICALLY EXTEND FOR SUCCESSIVE 1-YEAR PERIODS, UNLESS 60 DAYS BEFORE THE END OF THE INITIAL ORDER TERM OR EACH EXTENSION: (A) CUSTOMER OR EMBARQ PROVIDES WRITTEN NOTICE TO THE OTHER PARTY CANCELING THE EXTENSION; OR (B) CUSTOMER SIGNS A NEW ORDER FOR SERVICES THAT HAS A TERM OF AT LEAST 1 YEAR.
2. **MANAGED NETWORK SERVICES OFFERINGS.** Customer may select the Monitoring Services Package or the Comprehensive Managed Services Package, plus any of the Optional Services described below.
3. **MONITORING SERVICES PACKAGE.**
 - 3.1 **Monitoring and Fault Management.**
 - A. **Data (Router, Switch, and Hub) Equipment.** EMBARQ will monitor the overall integrity of Customer's network by collecting status information to verify that devices are communicating with other devices in the network on a 24 hours per day, 7 days per week ("24 x 7") basis.
 - B. **Links.** EMBARQ will monitor the link between end-station devices (router, switch, etc.) on a 24 x 7 basis.
 - 3.2 **Notification.** If a failure occurs, EMBARQ will use commercially reasonable efforts to notify Customer within 30 minutes of the event and initiate corrective maintenance processes.
 - 3.3 **Customer Contact.** EMBARQ will establish Customer contact procedures during the implementation of the Services. EMBARQ will include the procedures in EMBARQ's individual site records for managed devices.
4. **COMPREHENSIVE MANAGED SERVICES PACKAGE.** In addition to all of the services in the Monitoring Services Package described above, EMBARQ will provide to customers who purchase the Comprehensive Managed Services package the following:
 - 4.1 **Software Update/ New Release Level Service.**
 - A. Customer must purchase any software licenses and prerequisite hardware required by the manufacturer before EMBARQ will perform any upgrades.
 - B. EMBARQ will track and test software releases provided by the manufacturer of devices covered by this annex and upgrade the devices to the new software revision levels.
 - C. As part of the Services, EMBARQ will provide one major release level installation upgrade per year. If two or more major releases per year are available from the manufacturer, EMBARQ will implement additional releases at Customer's request as a

Billable Service or in accordance with a separate contract for services. EMBARQ defines a major release as a release of software that provides additional software features and/or functions, commonly referred to as upgrades.

- D. Software upgrades may be requested in writing by Customer or may be recommended by EMBARQ to keep Customer's software at vendor supported version levels. All required fixes to address known problems in Customer's IP telephony network will be provided by EMBARQ as required.
- E. If EMBARQ and Customer cannot agree as to whether an update or patch is necessary to correct an issue, the parties will follow the manufacturer's recommendation.
- F. EMBARQ will charge Customer as a Billable Service to perform other services required to resolve a service related issue.

4.2 Configuration Management Services.

A. Data Equipment (Router, Switch and Hub).

- (1) At Customer's request, EMBARQ will provide configuration changes to support tuning, optimization, normal growth and upgrades to the network.
- (2) Change requests should be submitted to EMBARQ in writing at least 7 calendar days before the due date. Emergency change requests will be handled on a case-by-case basis. EMBARQ's work ticket will serve as the official record of change requests if not initiated in writing by Customer.
- (3) Network wide configuration changes or changes associated with the addition of network devices not provided to Customer by EMBARQ are not included as part of the Configuration Management Services. Examples of network wide configuration changes include the addition of a LAN protocol to the network, network wide addressing changes, or changes of routing protocol types. Such network wide configuration changes may be performed as a Billable Service or under a separate contract for services following a mutually agreed Scope of Work.
- (4) EMBARQ will collect and maintain electronic back-up copies of all node configurations in the EMBARQ data center. Certain limitations may apply based on equipment type or Customer's business requirements.

B. Named Engineer. EMBARQ will assign to customers receiving the Comprehensive Managed Services package a named engineer and a backup engineer to serve as the primary contact for technical issues related to the Services provided. The named engineer is responsible for performing network audits that ensure optimal performance. The named engineer also makes recommendations related to hardware and/or software updates and the overall health of the network. The EMBARQ Customer Data Services Operations Center serves as the primary contact for alarms and normal service activation activities. However, the named engineer may be engaged, as required, for Tier III technical escalations or general consulting assistance. The named engineer will also participate in scheduled service performance meetings.

5. **MONTHLY FAULT MANAGEMENT REPORTS.** For both the Monitoring Services package and the Comprehensive Managed Services package, EMBARQ will provide the following reports:

5.1 All Equipment.

- A. EMBARQ will provide performance and fault reports to assess the overall operational performance of the network. The reports are available by logging into a server managed by EMBARQ through a web-based interface (browser application).
- B. EMBARQ will provide a monthly report detailing the alarms received during the report period. The report will include alarm date and time, customer notification date and time, and clearing details (date, time, trouble disposition). EMBARQ will send reports to Customer's designated representatives in electronic format.

5.2 Data Equipment (Routers, Switch and Hub). EMBARQ will provide the following reports:

- A. Traffic Statistics for Wide Area Network (WAN) interfaces; and
- B. Device memory utilization.

5.3 Dedicated IP. EMBARQ will provide performance and fault reports to assess the overall operational performance of the network. The reports are available by logging into a secure server managed by EMBARQ through a Web-based interface (browser application).

5.4 Statistics. EMBARQ will provide statistics in a variety of reporting ranges including WAN Link bandwidth utilization reports, Bits In/Out, Bytes In/Out, Latency, Peak Usage Availability, BECN – BECN In %, Bandwidth In/Out and FECN.

6. BILLABLE SERVICES.

6.1 The following Billable Services may be performed by EMBARQ for an additional charge upon Customer's request:

- A. Moves, adds, and changes, including the addition of equipment or options, the relocation of components or systems, and changes to system software or hardware configurations.
- B. Network Change Requests (NCRs)
- C. Software updates to address security vulnerabilities or feature defects.
- D. Configuration changes requested after Managed IP Telephony implementation is completed.
- E. Performing other services except as provided in the Agreement.

6.2 The following rate elements may apply to Billable Services:

- A. Billable Services will be billed at EMBARQ's then-current labor rates;
- B. **Overtime Rate.** Calls performed outside of business hours will be billed at EMBARQ's then-current overtime labor rates;
- C. **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 service charge rates;

- D. **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 expedite fee rates;
- E. 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.

7. CUSTOMER RESPONSIBILITIES.

- 7.1 **Dedicated Management Link (“DML”).** Customer will provide at Customer’s own expense a 56kbs Dedicated Management Link DML to enable access to the network by EMBARQ’s MNS service center. If requested, Customer will supply a router (for each DML), per EMBARQ specifications, to perform the required protocol translation. The Wide Area Interface is typically Frame Relay.
- 7.2 **PBX/ IP Telephony PBX.** Customer will enable access to the network by EMBARQ’s MNS service center via Internet VPN tunneling with Customer’s data CPE or provide at Customer’s own expense dedicated 56 Kbps private line circuit or have a standard measured business telephone line installed with a site event buffer for out-of-band management of the Equipment at each site.
- 7.3 **Out-of-Band Access for Comprehensive Managed Services Package Customers.** Customer will provide at Customer’s own expense, a standard measured business telephone line installed with modem for out-of-band management of the equipment at each site. This dedicated measured business line must remain in service for as long as EMBARQ manages the Equipment; and provide full and free access to any equipment necessary to provide the Services.

8. SERVICE LEVEL OBJECTIVES.

- 8.1 For both packages, EMBARQ’s service level objective is to perform trouble identification within 4 hours at least 80% of the time and repair the trouble at least 90% of the time within 8 hours on all Critical/Major Alarms. A Critical/Major Alarm is a malfunction consisting of a complete failure of the system, i.e. no incoming or outgoing communications to or from Customer’s premise.
- 8.2 This Service Level Objective does not supersede service level objectives applicable to other EMBARQ services purchased by Customer.

9. DELIVERY.

- 9.1 **Delivery Date.** All delivery dates are approximate and are based on current lead-times. EMBARQ will use commercially reasonable efforts to deliver, or cause to be delivered, the Services by the delivery date specified in the Order.
- 9.2 **Customer-Requested Delay.**
 - A. Customer may request 1 delay in the delivery date of the Services set forth in the Order (“Original Delivery Date”) if: (1) the delay does not exceed 30 calendar days from the Original Delivery Date; (2) EMBARQ receives Customer’s written request for the delay at least 10 days before the Original Delivery Date; and (3) Customer pays any additional charges resulting from the delay.
 - B. If Customer delays delivery more than 30 calendar days from the Original Delivery Date, EMBARQ will invoice Customer for Services charges beginning 30 days from the Original Delivery Date.

- C. If EMBARQ receives Customer's written notice to cancel the affected Services on or before the 30th calendar day from the Original Delivery Date, Customer will pay EMBARQ any applicable cancellation charges.
- D. If Customer delays or interrupts an installation after EMBARQ has arrived to perform a scheduled installation, EMBARQ may charge Customer a rework charge for each rescheduled installation call in accordance with EMBARQ's then-current list pricing.

10. OTHER SERVICES.

- 10.1 **Single Point of Contact.** EMBARQ's MNS service center provides a single point of contact for troubles associated with the Services on a 24 x 7 basis.
- 10.2 **Trouble Ticket Handling.** A trouble ticket number from EMBARQ's automated ticketing system will be provided to Customer's help desk that reports the trouble. For each trouble report, we will maintain information about the trouble, the steps taken to resolve the trouble, and the final disposition of the trouble report. EMBARQ will not close a trouble ticket until the problem has been corrected.
- 10.3 **Backup Dial-in Network Management Access.** If EMBARQ's network management system cannot access a device via the in-band portion of Customer's transport link, a technician will dial in to the modem port of the affected device. The technician will then be able to check the device and its ports for trouble. EMBARQ will provide a modem to each device managed by EMBARQ. Customer will provide a telephone line for the backup, dial-in network management access as specified in Section 7.
- 10.4 **Network Support.** Telephone support for network outages is available through EMBARQ's MNS service center on a 24 x 7 basis.
- 10.5 **Dial-in Diagnostics.** Dial-in diagnostics are available on a 24 x 7 basis. A technician from EMBARQ's MNS service center can dial in to Customer's network to help diagnose and correct problems.

11. OPTIONAL SERVICES. The following optional services may be provided by EMBARQ for an additional.

- 11.1 **Third Party Coordination.** EMBARQ's MNS service center provides a single point of contact for troubles associated with the Services on a 24 x 7 basis. Upon receipt of a Customer-signed Letter of Agency, EMBARQ will prepare a "Methods of Engagement" prior to implementation of the Services to outline mutual understandings between EMBARQ and Customer's designated representative.
- 11.2 **Traffic Reporting.**
 - A. Traffic Studies reporting provides Customer with reports on trunk utilization, grade of service and required trunking. Customer may choose Standard or Advanced Traffic Reporting:
 - (1) Standard Traffic Reporting traffic studies for all PBX's based on trunk route traffic and for Cisco Call Manager based on Call Maintenance Records ("CMR").

- (2) Advanced Traffic Reporting is only for the Nortel Meridian 1 and provides trunk route traffic, attendant console statistics and CPU usage as well as many other detailed statistics provided by Nortel.

B. Reporting information is available on a 24 x 7 basis.

11.3 Custom Help Desk Option. EMBARQ's Custom Help Desk option provides Customer with Level I support. Services can be customized following the creation of a mutually agreed to Scope of Work. EMBARQ's Help Desk will generate weekly and monthly reports and distribute to Customer's contacts. The reports will categorize problems by type and resolution and/or provide information on other statistics as specified by Customer.

12. ENGINEERING CHANGES. EMBARQ will manage and install all engineering changes on the Equipment as required by EMBARQ.

13. MONITORING EQUIPMENT.

13.1 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.

13.2 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.

13.3 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.

14. 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.

15. DISASTER RECOVERY.

15.1 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.

15.2 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.

16. LIMITED WARRANTY.

- 16.1** 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.
- 16.2** 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.
- 16.3** The warranty in Section 16.1 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.

17. TERMINATION.

- 17.1** 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.
- 17.2** EMBARQ may terminate this Agreement with 30 days notice if EMBARQ cannot obtain maintenance support from the Equipment manufacturer.