

## EMBARQ™ Local Terms of Service For Residential Customers

### 1. AGREEMENT.

**1.1 General Application.** These Local Terms of Service (“Terms and Conditions”) constitute your agreement (“Agreement”) with the EMBARQ local operating company serving your location and any affiliate of EMBARQ, to the extent such affiliate provides services to you under this Agreement (collectively, “EMBARQ”), for any EMBARQ™ residential Services (defined in Section 1.2 below) to which you subscribe. The effective date of this Agreement is January 1, 2008 for customers already subscribing to Services, or the date customers subscribe to Services on or after January 1, 2008 (“Effective Date”). Prior to the Effective Date, the existing EMBARQ™ tariffs govern the Services. This Agreement supersedes any previous agreement or terms related to the Services. This Agreement also incorporates by reference the EMBARQ Guidebook for your state, defined in Section 1.2 below, posted to <http://www.embarq.com/ratesandconditions> (“Website”).

**Your subscription to, use of, or payment for Services constitutes your acceptance of this Agreement. Contact EMBARQ at the toll free number listed on your invoice, your welcome package, or listed at <http://www.embarq.com> immediately to cancel Services if you do not agree to any part of this Agreement. If you cancel Services, you will be responsible for all usage charges and the pro-rata portion of all monthly recurring charges incurred prior to cancellation. You should carefully read all terms in this Agreement, including a Mandatory Arbitration of disputes provision.**

### 1.2 Definitions.

- A. “EMBARQ,” “Company,” “we,” “our,” and “us” means the EMBARQ local operating company in your location providing the Services, and any affiliate of EMBARQ to the extent such affiliate provides Services to you under this Agreement.
- B. “EMBARQ™ Guidebook” means the Service-specific terms and descriptions, charges, or other terms applicable to Services in your state in addition to the terms described here, incorporated by reference into this Agreement as posted to the Website at <http://www.embarq.com/ratesandconditions> or by requesting a copy from EMBARQ by calling the toll free number listed on your invoice, your welcome package, or listed at <http://www.embarq.com>. In the event of conflict between the terms and conditions of this document and the EMBARQ™ Guidebook for your state, the terms and conditions of this document govern. **You agree that it is impractical to list in this document all of the Service descriptions, charges, and other terms applicable to all Services governed by this Agreement and that providing this information on the Website is a reasonable method of providing you with notice of those terms.**
- C. “Service” means all residential telecommunications service offered by EMBARQ to you, except stand-alone, residential telephone service when such service is not (a) part of a package of services, (b) sold in a promotion, (c) purchased under a separate written contract, or (d) otherwise offered at a discount, and Lifeline services.

**1.3 Changes to this Agreement.** EMBARQ reserves the right to change the terms and prices of the Services at any time, including this Agreement and the EMBARQ™ Guidebook for your state. You will be provided written notice of pricing increases and changes to the terms and conditions in this Agreement as described in this section and Section 8, which may include bill messages, bill inserts, separate mailings to you, email notification, recorded announcement, posting on the Website, or any other reasonable method of notice at our sole discretion. We will not provide notice of changes to applicable taxes or surcharges, unless required by law or regulation, but we may post such changes to the EMBARQ™ Guidebook for your state at the Website. The change will become effective on the date described in the notice. We will not provide notice to you regarding price decreases or the expiration of promotional pricing, offers, and terms. **Your continued use of the Services after any change constitutes your acceptance of any such changes in prices, terms, or conditions, and the revised Agreement. Your sole remedy for any changes made by us is your right to cancel the affected Service or terminate this Agreement.**

## **2. SERVICE USAGE**

**2.1 Acceptance.** In its sole discretion, EMBARQ may accept or reject your order for Services for any lawful reason. Before activation of any Service, EMBARQ 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.

**2.2 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) not to use the Services for business purposes rather than residential use; (C) to pay all charges for Services provided under this Agreement including, but not limited to, unauthorized charges incurred on calls placed from your residence; (D) to ensure that your actions and equipment do not directly or indirectly interfere with EMBARQ's ability to provide Services to others, or the quality of such Services; (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, destructive, or abusive manner, or allow others to do so, (F) not to use Services in such a manner that causes interference with EMBARQ's or another's use of EMBARQ's network, and (G) that, **in our sole discretion and without liability to you, EMBARQ 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.**

**2.3 Acceptable Use Policy.** If you purchase Services that connect to or flow over the Internet, you must conform to the EMBARQ acceptable use policy posted at <http://www.embarq.com>.

**2.4 Failure to Comply.** If you fail to comply with any provision of this Section 2, you release EMBARQ from all liabilities or obligations in connection with the affected Service, and you will indemnify EMBARQ for all costs or damages that EMBARQ incurs as a result of your noncompliance as described in Section 6.

## **3. CHARGES AND PAYMENT**

- 3.1 Charges.** EMBARQ will bill you for Services on a monthly basis based on the prices and charges listed in the EMBARQ™ Guidebook for your state, posted to the Website, and listed in any written information sent to you by EMBARQ. You agree to pay these charges and also, if applicable, any connection charges, usage charges, monthly fees, monthly minimums, other fees, surcharges, taxes and federal, state and local government or quasi-government imposed or permitted charges, including, but not limited to, charges related to E-911, state and federal Universal Service, Telephone Relay Service, payphone providers, Interexchange Carrier Charges and Federal Subscriber Line Charge. Taxes and government surcharges will be in the amounts that federal, state, and local authorities require or permit us to bill you. You agree to pay all taxes, surcharges, assessments, and other fees that are related to the Services and included on your invoice or bill, unless you are exempt from these payments and can provide documentary evidence of such exemption to EMBARQ.
- 3.2 Billing.** Monthly recurring charges (“MRCs”) for your Service begin accruing when the Service is available for your use. You may be invoiced a prorated portion of any MRCs 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. If your monthly charges net to \$0, you may not be mailed a paper invoice. Invoice information will remain available in your account information located at <http://www.embarq.com> or by calling us at the EMBARQ™ customer service number listed on your invoice, and an additional fee may be charged for invoice reprints.
- 3.3 Payment.** You must pay all charges applicable to your Services, including all applicable taxes, fees, and surcharges, in U.S. currency within 30 days of the invoice date. EMBARQ may charge you late payment fees or interest on those charges equal to the greater of 1.5% per month or the maximum rate allowed by law for all late payments (for Nevada residential customers, the late payment charges will equal the greater of 2% per month or \$5 per month). The interest will be applied to the entire unpaid balance. If we don’t receive your payment before the next billing cycle, you agree to pay any costs and expenses associated with our collections efforts, including attorneys’ fees. EMBARQ may charge you an insufficient funds or returned check fee, up to the maximum rate allowed by law, if your check, bank draft, electronic funds transfer, or other order for payment is dishonored or returned for insufficient funds or any other reason. EMBARQ’s acceptance of late or partial payment (even those marked, “PAID IN FULL”) and late payment charges will not constitute waiver of any of our rights to collect the full amount due under this Agreement.
- 3.4 Disputed Charges.** Except as otherwise provided by applicable law, disputes concerning any charges invoiced must be raised within 60 days of the date of the invoice. You accept all charges not disputed within 60 days. EMBARQ and its customers waive all rights of subrogation against each other in connection with Services. To dispute a charge on your invoice, you must follow the procedures in Section 7 of this Agreement.
- 3.5 Credit Check; Deposits; Credit Limits.** Our provision of Service to you is subject to our approval of your credit. You give EMBARQ permission to check and verify your credit as needed in EMBARQ’s sole discretion. If we determine you are a credit risk at any time during your Service period with EMBARQ, we may require that you submit a deposit or make an advance payment to us in a reasonable amount that we determine. If you fail to pay for Services when due, we may, without providing notice to you, apply

your deposit or advance payment to the amount owed. If you refuse to make a deposit or advance payment or otherwise establish credit as provided by applicable state law, we reserve the right to refuse to provide you Service. As we determine in our sole discretion and to the extent permitted by applicable law, we may set a credit limit on your account at any time. We may restrict the Services to which you have access if you exceed this credit limit. This restriction, if applicable, will not affect your access to, or use of, 911 emergency services.

#### **4. TERMINATION OF SERVICE**

**4.1 Termination of Service By You.** You may cancel Services at any time by placing a disconnection notice with us by calling the toll free number on your bill. Your continued subscription to, use of, or payment for Services will continue this Agreement for those Services. It is your responsibility to contact us to cancel any Service. If you cancel a Service prior to the completed installation of that Service, but after transmission of your order, you agree to pay all reasonable costs incurred by us in implementation of the Service, as if the implementation of the order had been completed.

**4.2. Termination or Suspension of Service By EMBARQ.** To the extent permitted by applicable law or regulation, EMBARQ may terminate or suspend your Service with or without notice, depending on the circumstances, for any reason including for nonpayment of any amount owed to EMBARQ, including late payment fees or disputed amounts that EMBARQ determines were validly invoiced, and your violation of any limitation listed in Section 2 of this Agreement.

**4.3. Termination and Payment.** It may take up to 30 days to disconnect your Services. Regardless of the reason for disconnection, you must pay all charges incurred until EMBARQ's disconnection of your Service. You will be charged the full MRC for your Services for the month in which your Services terminate. Promotional credits or discounts may not be provided on your final invoice. If you reinstate Services following cancellation or termination, we may require you to pay a deposit.

**4.4 Force Majeure.** EMBARQ will not be responsible for any delay, interruption, or other failure to perform under the Agreement due to acts beyond our control. Force majeure events include, but are not limited to: natural disasters (e.g. lightning, earthquakes, hurricanes, floods); wars, riots, terrorist activities, and civil commotions; inability to obtain parts or equipment from third party suppliers; cable cuts by third parties, a local exchange carrier's activities, and other acts of third parties; explosions and fires; embargoes, strikes, and labor disputes; and governmental decrees and any other cause beyond our reasonable control.

**5. DISCLAIMER OF WARRANTIES.** EMBARQ PROVIDES ALL SERVICES "AS IS" AND DISCLAIMS ALL EXPRESS AND IMPLIED WARRANTIES RELATED TO THE SERVICES, INCLUDING ANY IMPLIED WARRANTY OF NON-INFRINGEMENT, MERCHANTABILITY, OR FITNESS FOR A PARTICULAR PURPOSE. EMBARQ DOES NOT PROMISE UNINTERRUPTED OR ERROR-FREE SERVICE AND YOU AGREE TO HOLD EMBARQ HARMLESS FOR ALL SUCH PROBLEMS.

#### **6. LIMITATION OF LIABILITY**

**6.1 Direct Damages.** EMBARQ is not liable for any damages arising out of or in connection with any: (A) act or omission by you, or another person or company; (B) provision or failure to provide Services, including deficiencies or problems with any equipment used in connection with the Services, the network or Services (for example, 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 or otherwise, or (E) errors or omissions in directory listings, including listings we provide to public safety answering points. IF, FOR ANY REASON, EMBARQ IS FOUND TO BE RESPONSIBLE TO YOU FOR MONETARY DAMAGES RELATING TO ANY SERVICES OBTAINED THROUGH EMBARQ AND IF THIS LIMITATION IS FOUND TO BE UNENFORCEABLE FOR ANY REASON, YOU AGREE THAT ANY SUCH DAMAGES WILL NOT EXCEED THE PRO-RATED MONTHLY RECURRING CHARGES FOR THE AFFECTED SERVICES DURING THE AFFECTED PERIOD.

**6.2 NO CONSEQUENTIAL OR OTHER DAMAGES.** UNDER NO CIRCUMSTANCES IS EMBARQ LIABLE FOR ANY INCIDENTAL, CONSEQUENTIAL, INDIRECT, PUNITIVE OR SPECIAL DAMAGES OF ANY NATURE WHATSOEVER ARISING OUT OF OR IN CONNECTION WITH PROVIDING OR FAILING TO PROVIDE SERVICES OR ANY EQUIPMENT USED IN CONNECTION WITH THE SERVICES, WHETHER IN CONTRACT, TORT, STRICT LIABILITY, OR OTHERWISE, INCLUDING, WITHOUT LIMITATION, LOST PROFITS OR REVENUE, LOSS OF OPPORTUNITY, OR COST OF REPLACEMENT SERVICES.

**6.3 Indemnification.** You will indemnify and defend EMBARQ, its directors, officers, employees, affiliates, subsidiaries, agents, and their successors and assigns from and against all claims, damages, losses, or liabilities, including reasonable attorneys' fees, arising from or relating to any Service, or any act or omission by you related to any Service or any person you authorize or permit to use any Service, including incorrect or misleading information, libel, slander, invasion of privacy, identity theft, intellectual property infringement, and any defective Service.

**6.4 Survival.** All provisions of this Section 6 will survive and continue to apply after this Agreement is canceled or terminates.

## **7. DISPUTE RESOLUTION**

**7.1 Dispute Process.** If you have a dispute with EMBARQ relating to any matter, you agree to first notify EMBARQ™ Customer Service at the number listed on your invoice or to write EMBARQ at 5454 W. 110<sup>th</sup> Street, Overland Park, KS 66211 Attn: Vice President, Commercial Law, in an attempt to resolve your dispute. You must describe your dispute with specificity and provide EMBARQ with any supporting documentation. If EMBARQ has a dispute with you, it will notify you in writing 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 applicable state or local rules or laws. Alternatively, either party may pursue the dispute only as set forth below. In addition for Nevada residential customers, depending on the nature of the Services you receive, you

may have a right to file a complaint with the Division of Consumer Relations of the Public Utilities Commission of Nevada.

**7.2 MANDATORY ARBITRATION OF DISPUTES.** INSTEAD OF SUING IN COURT, YOU AND EMBARQ AGREE TO ARBITRATE ANY AND ALL CLAIMS, CONTROVERSIES OR DISPUTES OF ANY KIND (“CLAIMS”) AGAINST EACH OTHER. THIS INCLUDES BUT IS NOT LIMITED TO CLAIMS ARISING OUT OF OR RELATING TO THIS AGREEMENT, AS WELL AS CLAIMS ARISING OUT OF OR RELATING TO EMBARQ’S SERVICES, BILLING OR ADVERTISING, OR ARISING OUT OF OR RELATING TO EQUIPMENT YOU OR EMBARQ MAY USE IN CONNECTION WITH EMBARQ’S SERVICES. THE REQUIREMENT TO ARBITRATE APPLIES EVEN IF A CLAIM ARISES AFTER YOUR SERVICES HAVE TERMINATED; APPLIES TO ALL CLAIMS YOU MAY BRING AGAINST EMBARQ 'S EMPLOYEES, AGENTS, AFFILIATES OR OTHER REPRESENTATIVES; AND APPLIES TO ALL CLAIMS THAT EMBARQ MAY BRING AGAINST YOU. THE FEDERAL ARBITRATION ACT, NOT STATE LAW, APPLIES TO THIS AGREEMENT AND ITS PROVISIONS AND, GOVERNS ALL QUESTIONS OF WHETHER A CLAIM IS SUBJECT TO ARBITRATION. THIS PROVISION DOES NOT PREVENT EITHER YOU OR EMBARQ FROM BRINGING APPROPRIATE CLAIMS IN A SMALL CLAIMS COURT HAVING VALID JURISDICTION, OR BEFORE THE FEDERAL COMMUNICATIONS COMMISSION OR A STATE PUBLIC UTILITIES COMMISSION.

YOU AND EMBARQ FURTHER AGREE THAT NEITHER EMBARQ NOR YOU WILL JOIN ANY CLAIM WITH A CLAIM OR CLAIMS OF ANY OTHER PERSON(S) OR ENTITY(IES), WHETHER IN A LAWSUIT, ARBITRATION, OR ANY OTHER PROCEEDING. YOU AND EMBARQ AGREE THAT NO CLAIMS WILL BE ASSERTED IN ANY REPRESENTATIVE CAPACITY ON BEHALF OF ANYONE ELSE, THAT NO CLAIMS WILL BE RESOLVED ON A CLASS-WIDE OR COLLECTIVE BASIS, THAT NO ARBITRATOR OR ARBITRATION FORUM WILL HAVE JURISDICTION TO ACCEPT OR DETERMINE ANY CLAIMS ON A CLASS-WIDE OR COLLECTIVE BASIS, AND THAT NO RULES FOR CLASS-WIDE OR COLLECTIVE ARBITRATION WILL APPLY. THIS PARAGRAPH AND EACH OF ITS PROVISIONS ARE INTEGRAL TO, AND NOT SEVERABLE FROM, THIS SECTION ON MANDATORY ARBITRATION OF DISPUTES.

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 Judicial Arbitration and Mediation Services (“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. Except as expressly provided in the preceding paragraph, the arbitration will be conducted by and under the then-applicable rules of 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 JAMS will apply unless the parties agree otherwise. All expedited procedures prescribed by the applicable rules will apply. We agree to pay our respective arbitration costs, except as otherwise required by rules of JAMS or NAF, as applicable, but the arbitrator can apportion these costs as appropriate. The arbitrator's decision and award is final and binding, and judgment on the award may be entered in any court with jurisdiction.

IF FOR ANY REASON, THE ABOVE PROVISIONS ON ARBITRATION ARE HELD UNENFORCEABLE OR ARE FOUND NOT TO APPLY TO A CLAIM, YOU AND EMBARQ AGREE TO WAIVE TRIAL BY JURY. 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.

**Except as expressly provided above, if any portion of this Mandatory Arbitration of Disputes section is determined to be invalid or unenforceable, the remainder of the section remains in full force and effect.**

## **8. MISCELLANEOUS**

- 8.1 Notices.** As required under this Agreement, you must provide notice to EMBARQ as described in the applicable sections of this Agreement. When we receive notice from you via telephone, such notice will be effective on the date we received your call, as shown by our records. EMBARQ 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 messages, bill inserts, email notification to an address provided by you, recorded announcement, posting on the Website, call to your billed telephone number and speaking to you or leaving a message, or any other reasonable method of notice.
- 8.2 Privacy.** You agree to the terms of our Privacy Policy, posted to <http://www.embarq.com>, when you use a Service. Among other things, the policy includes important information on what information we collect about you, how we use that information, and with whom we share that information (for example, to provide you certain Services, to protect our rights and interests, to respond to legal process, to facilitate a merger, etc.). To ensure the quality of our Services and for other lawful purposes, we may also monitor or record calls between us (for example, your conversations with our customer service or sales departments). If you do not agree with the terms of our Privacy Policy, do not purchase or use our Services.
- 8.3 Installation.** If required, you will provide reasonable cooperation to enable EMBARQ or its agents to install or repair the Services. Customer is responsible for damage to EMBARQ-owned equipment and Services located on Customer premises, excluding reasonable wear and tear or damage caused by EMBARQ.
- 8.4 No Waiver of Rights.** If either you or EMBARQ fails to enforce or waives any requirement under this Agreement that does not waive that party's right to later enforce that requirement in the future.
- 8.5 Limitation on Third Party Beneficiaries.** The Agreement's benefits do not extend to any third party.
- 8.6 Severability.** If any provision of the Agreement is found to be unenforceable, the Agreement's unaffected provisions will remain in effect and the parties will negotiate a mutually acceptable replacement provision consistent with the parties' original intent.

- 8.7 Assignment.** You may not assign this Agreement to any other person or entity without EMBARQ's prior written approval, but nothing restricts EMBARQ's ability to assign this Agreement.
- 8.8 Governing Law.** This Agreement will be governed by the laws of the state where Services are provided, without regard to its choice of law principle, except for the provisions of Section 7, which are governed by the laws described in that section.
- 8.9 Survivability.** The terms and conditions of this Agreement that by their sense and context are intended to survive the expiration of this Agreement will survive.
- 8.10 Conflicts.** If a conflict exists between or among provisions within this Agreement, including all referenced documents and the EMBARQ™ Guidebook for your state at the Website, specific terms will control over general provisions.
- 8.11 Monitoring.** You understand that it may be possible for unauthorized third parties to monitor data traffic. If you wish to secure your usage in connection with any Services, you have the obligation to obtain, at your own cost, encryption software or other transmission security protections. You assume full responsibility for the establishment of appropriate security measures to control or limit access to your information.
- 8.12 Entire Agreement.** This Agreement, including all referenced documents and the EMBARQ™ Guidebook for your state at the Website, constitutes the entire agreement and understanding between the parties and supersedes all prior or contemporaneous negotiations or agreements, whether oral or written, relating to its subject matter. No written or oral statement, advertisement, or Service description not expressly contained or referenced and incorporated into this Agreement will be allowed to contradict, vary, explain, or supplement this Agreement.