

LAW OFFICES
BRYDON, SWEARENGEN & ENGLAND
PROFESSIONAL CORPORATION

DAVID V.G. BRYDON
JAMES C. SWEARENGEN
WILLIAM R. ENGLAND, III
JOHNNY K. RICHARDSON
GARY W. DUFFY
PAUL A. BOUDREAU
SONDRA B. MORGAN
CHARLES E. SMARR

312 EAST CAPITOL AVENUE
P. O. BOX 456
JEFFERSON CITY, MISSOURI 65102-0456
TELEPHONE (573) 635-7166
FACSIMILE (573) 635-3847
E-MAIL: DUFFY@BRYDONLAW.COM

DEAN L. COOPER
MARK G. ANDERSON
TIMOTHY T. STEWART
GREGORY C. MITCHELL
BRIAN T. MCCARTNEY
DALE T. SMITH
BRIAN K. BOGARD

OF COUNSEL
RICHARD T. CIOTTONE

August 23, 2001

FILED

AUG 23 2001

Mr. Dale Hardy Roberts
Executive Secretary
Public Service Commission
Governor State Office Building
Jefferson City, Missouri

Missouri Public
Service Commission

HAND DELIVERED

RE: The Empire District Electric Company
Application concerning transfer of Centurion software

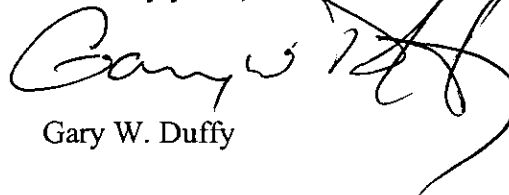
EE-2002-120

Dear Mr. Roberts:

Enclosed for filing in the above-referenced proceeding please find an original and eight copies of an Application by The Empire District Electric Company.

If you have any questions, please give me a call.

Sincerely yours,


Gary W. Duffy

Enclosures
cc w/encl:

Office of Public Counsel
Office of the General Counsel

EDCenturtransappcov/gdmydocswpw

BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

FILED

AUG 23 2001

Missouri Public
Service Commission

In the Matter of the Application of The Empire)
District Electric Company For Permission to)
Transfer its Centurion Software to a Subsidiary)
Corporation Pursuant to Certain Conditions)
And for a Variance from 4 CSR 240-20.015)
for the Transaction.)

Case No. EE-2002-120

APPLICATION

Comes now The Empire District Electric Company ("Empire"), by and through its counsel, pursuant to § 393.190 RSMo 2000, 4 CSR 240-20.015(10)(A) and 4 CSR 240-2.060(1), (7) and (14) and respectfully states as follows:

1. Empire is a Kansas corporation with its principal office and place of business at 602 Joplin Street, Joplin, Missouri 64801. Empire is engaged in the business of providing electrical and water utility services in Missouri to customers in its service areas and has a certificate of service authority to provide certain telecommunications services. Empire is an "electrical corporation," a "water corporation," a "telecommunications company" and a "public utility" as those terms are defined in § 386.020 RSMo. 2000, and is subject to the jurisdiction and supervision of the Commission as provided by law. Other than its pending rate case before the Commission, Empire has no pending or final unsatisfied judgments or decisions against it from any state or federal agency or court which involve inadequate customer service or which involve challenges to its rates, which have occurred within the three years immediately preceding the filing of this application. Empire has no overdue Missouri

Public Service Commission ("Commission") annual reports or assessment fees.

Empire's documents of incorporation have been previously filed with the Commission in Case No. EF-94-39 and said documents are incorporated herein by reference in accordance with 4 CSR 240-2.060(1)(G). A Certificate of Authority from the Missouri Secretary of State to the effect that Empire, a foreign corporation, is duly authorized to do business in the State of Missouri was filed with the Commission in Case No. EM-2000-369 and is incorporated herein by reference.

2. Correspondence, communications, orders and decisions regarding this matter are to be sent Empire's undersigned legal counsel, and to:

Ronald F. Gatz
Vice President - Non-Regulated Services
The Empire District Electric Company
602 Joplin Street
P.O. Box 127
Joplin, Missouri 64802
Telephone: 417 625-5103
Facsimile: 417 625-5153
Email: rgatz@empiredistrict.com

3. The general purpose of this application is to seek Commission approval of the proposed transfer by Empire of a development version of a customer information system (computer software) to an unregulated subsidiary (affiliate) of Empire in return for certain considerations such as Empire's continued use of the system and the receipt of a completed version of the software. Empire also seeks a variance from the Affiliate Transactions rule of the Commission for the transaction described herein.

Centurion Software System

4. Empire is currently using Centurion, a proprietary customer information

system ("CIS") software. This software was put into use in late 1999 as part of the effort to deal with the world-wide concerns over expected computer failures or malfunctions on January 1, 2000. Empire employees did the original development, installation, and modification of this software. Empire considers Centurion as a necessary and "used and useful" portion of its operations since it generates timely and accurate customer bills and supports customer service activities 24 hours a day and seven days a week. Centurion has not been installed at any other site. Operation and stability of the system are largely dependent upon the development staff.

5. Empire believes that Centurion represents a good value to Empire and its customers. Market analysis indicates that utilities similar to Empire can expect to spend approximately \$50 per customer to engage an outside vendor to license, integrate, and install a CIS. For Empire, this would approximate a total project cost for an alternative to Centurion of approximately \$7,500,000, with \$750,000 allocated to the license and \$6,750,000 projected to be incurred to convert systems, train personnel, integrate, and install the CIS. Empire currently has a capitalized cost basis in the Centurion installation of approximately \$1,900,000, excluding the hardware.

6. Centurion is currently used as the primary billing and customer service database software by Empire. It is considered a "development" version operated primarily by developers and programmers. Centurion does not currently have configuration stability which is expected in similar software available on the market. Training and operating documentation for Centurion have not been completed. Some functionality aspects, such as World Wide Web access for customer service, has not been stress-tested for stability and scalability. Primary interfaces with other software,

such as accounting, have not been completed. Core reports in the system need to be expanded. Only the experienced software developers are able to create special reports. An independent firm recently conducted a software completion review on Centurion. Preliminary reports indicates a six to nine month time requirement and up to a \$1,000,000 cost to configure, document, and complete Centurion in order for it to become a stable and core operating system with documentation and functionality comparable to market-accepted alternatives. In other words, Centurion, while currently fulfilling a critical role for Empire, is still a "work in progress" which needs substantial additional investment in time and capital so that future operating risks to Empire from Centurion can be minimized.

7. Centurion is not marketable in its current form. Though functioning, Centurion could be more accurately described as in beta testing. Because of this unfinished status, some entity will have to take the risks inherent in completing Centurion to make the software marketable. Nevertheless, Empire believes that Centurion, as it currently exists, represents a great value to Empire and its customers when the capitalized cost is compared to market alternatives. Empire also believes that Centurion represents some aspects of risk for Empire as a public utility unless Centurion is completed and documented. Nearly the same resources must be committed to completion of Centurion for Empire's long-term benefit as would be required to make Centurion ready to enter the competitive market. The CIS software market is highly competitive. TMG Consulting, the recognized leader in CIS selection and consulting, lists more than 70 companies offering such systems on their web site at cisworld.com. Empire believes that particular business presents a higher risk than

would normally be expected of a public utility and its customers. Therefore, Empire believes that Centurion should be finished and taken to market with outside capital willing to accept the higher risk, while at the same time, Empire's investment and its customers are protected to a reasonable extent.

Summary of Proposed Transfer of Centurion

8. With the Commission's approval, Empire proposes to transfer the intellectual property of Centurion to a non-regulated subsidiary of Empire. Present plans are for this subsidiary to be created only after approval for this transaction is received from the Commission. Once transferred, equity capital will be solicited by the new subsidiary to fund the tasks of completion and documentation of Centurion, and market-entry costs, in exchange for an ownership interest in the subsidiary.

9. Empire will receive the following as consideration for the transfer:

A. A software license would be issued to Empire by the subsidiary at no cost. The market value of a similar license from a competitive supplier is estimated to cost approximately \$750,000. A copy of the original source code for Centurion would be retained by Empire and the license agreement would require the issuance of future versions of the source code to Empire for its exclusive use in order to protect Empire in the event of failure or divestiture of the subsidiary.

B. Annual software maintenance agreements would be provided to Empire for the first seven (7) years at no cost to Empire. The current annual market pricing for this type of maintenance agreement is \$150,000. In addition, the agreement would provide that the cost of annual maintenance agreements after the seventh year would not exceed the per customer cost of the lowest price paid by any other user of

the software.

C. The agreement will provide that Empire will receive the completed and documented version of Centurion at no cost to Empire.

D. The agreement will ensure that the subsidiary will not obtain customer-specific information from Empire.

10. As a result of this proposed transfer, Empire believes that it will have avoided having to spend up to \$1,000,000 in completion costs on Centurion while receiving the benefit of the continued use of a product which is expected to become more valuable as it is completed. The expected result is that Empire will have a state-of-the-art CIS system installed at a cost approximately one-fourth that of purchasing the equivalent on the open market. The software will be complete, Empire will have avoided approximately \$2,000,000 in future development and maintenance costs, and Empire's customers will have avoided utility rates reflecting the inclusion of that investment and expenses.

11. For purposes of future Missouri rate cases, Empire will guarantee that its retail customers will be held harmless from a ratemaking standpoint if the transfer of the Centurion intellectual property to the subsidiary as described herein results in a higher revenue requirement for Empire than if the transfer had not occurred. Empire reserves the right to present evidence and arguments in any situation where it is alleged that there is a higher revenue requirement as a result of the transfer.

Response to Commission Rule Requirements

12. For purposes of 4 CSR 240-2.060(7)(B) which requires a copy of the contract or agreement, Empire attaches as **Appendix A** a draft of the agreement

between Empire and the new subsidiary.

13. For purposes of 4 CSR 240-2.060(7)(D) which requires a statement of the reasons why the proposed sale of assets is not detrimental to the public interest, Empire states that the previous discussion demonstrates that Empire and its ratepayers should both benefit from this proposed transfer. In brief, Empire will benefit from the completion of the software, Empire's customers will have the assurance of continued support and development of the CIS, Empire will avoid approximately \$2,000,000 in future development costs for the software, and the customers will avoid the impact of the inclusion of that investment and expenses in Empire's electricity and water¹ rates and the higher risk expected from a market-entry venture.

14. For purposes of 4 CSR 240-2.060(7)(E) which requires a balance sheet and income statement with adjustments showing the effect of the proposed transfer on the recipient if it is subject to the jurisdiction of the Commission, Empire states that the proposed transferee will not be subject to the jurisdiction of the Commission because it will not be a public utility.

15. For purposes of 4 CSR 240-2.060(7)(F), which requires a statement of the impact, if any, the transfer will have on the tax revenues of the political subdivisions in which any structures, facilities or equipment of the companies involved in the sale are located, Empire states its belief that the transfer will have either no effect or a negligible effect on the tax revenues now being received by those political subdivisions given

¹ Empire has been holding discussions with the communities it serves with water regarding their potential purchase of the Empire water system. Those communities have retained consulting engineers to advise them. Empire will file an application with the Commission for permission to sell the water system if the negotiations progress.

Empire's other on-going operations (such as the recent completion of the State Line Combined Cycle power plant) and the intangible nature of the property to be transferred.

Request for Variance from 4 CSR 240-20.015

16. Empire believes it is subject to the provisions of 4 CSR 240-20.015

Affiliate Transactions ("the rule"). Although the lawfulness of the rule is the subject of a pending judicial review, the rule became effective, according to the **Code of State Regulations**, on February 29, 2000. The rule purports to prevent regulated utilities such as Empire from "subsidizing their non-regulated operations." The rule essentially requires calculations of "fair market price" and "fully distributed cost" in order to assess whether a transaction violates the rule. In particular, section (3) of the rule would require Empire to "either obtain competitive bids" for the type of service it expects to receive from its subsidiary regarding Centurion "or demonstrate why competitive bids were neither necessary nor appropriate." There is also a requirement in section (5) of the rule that the electric utility "ensure that its parent and any other affiliated entities maintain books and records that include" documentation of the costs of affiliated transactions.

17. Since Empire believes that this proposed transfer requires prior Commission approval because of § 393.190 RSMo 2000, and the test of "not detrimental to the public interest" must be met by Empire for such Commission approval, Empire believes that Commission approval of the transfer should eliminate the need for Empire to also meet the one-time and on-going tests and requirements in the rule, which would be largely a duplication.

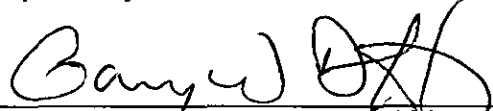
18. For purposes of 4 CSR 240-2.060(14)(A), which requires specific indication of the rule from which the variance or waiver is sought, Empire states that it seeks a variance from sections (2), (3), (4), and (5) of 4 CSR 240-20.015, only with regard to the subject matter of the Centurion transaction described herein, and only for so long as the Centurion system is used by Empire under the terms of the agreement with its affiliate.

19. For purposes of 4 CSR 240-2.060(14)(B), which requires the reasons for the proposed variance and a complete justification of the good cause for granting same, Empire reiterates its previous statement of the benefits of the proposed transaction.

20. For purposes of 4 CSR 240-2.060(14)(C), which requires the name of any public utility affected by the variance, Empire states that the name of the affected public utility is The Empire District Electric Company.

WHEREFORE, Empire requests that the Commission issue an order which approves the proposed transfer of the Centurion software pursuant to the proposal contained herein, and grants a variance to Empire from the provisions of sections (2), (3), (4), and (5) of 4 CSR 240-20.015, with regard to the subject matter of the Centurion transaction described herein, for so long as the Centurion system is used by Empire under the terms of the agreement with its affiliate.

Respectfully submitted,



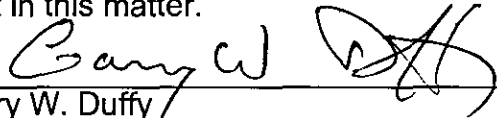
Gary W. Duffy #24905

Brydon, Swearengen & England, P.C.
P.O. Box 456
312 East Capitol Avenue
Jefferson City, MO 65102
Telephone: 573 635-7166
Facsimile: 573 635-3847
Email: Duffy@Brydonlaw.com

VERIFICATION

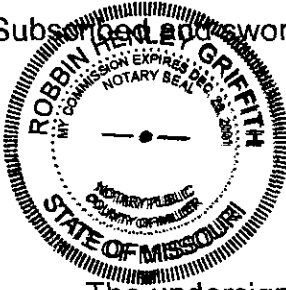
STATE OF MISSOURI)
)ss
COUNTY OF COLE)

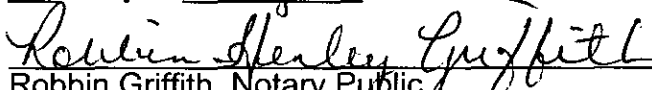
Being first duly sworn, Gary W. Duffy states as follows: that he has read the foregoing application and the facts and allegations contained therein are true and correct to the best of his knowledge, information and belief and that the law firm of Brydon, Swearengen & England P.C. is authorized by The Empire District Electric Company to make this filing and represent it in this matter.



Gary W. Duffy

Subscribed and sworn to before me this 23rd day of August, 2001.





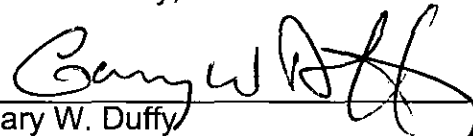
Robbin Griffith, Notary Public

Certificate of Service

The undersigned certifies that a true and correct copy of the foregoing was hand delivered this 23rd day of August, 2001, to the following counsel:

General Counsel's Office
Missouri Public Service Commission
Governor State Office Building
Jefferson City, Missouri

Office of the Public Counsel
Governor State Office Building
Jefferson City, Missouri



Gary W. Duffy

CONTRIBUTION OF TECHNOLOGY
AND
SOFTWARE LICENSING AND MAINTENANCE AGREEMENT

This Contribution of Technology and Software Licensing and Maintenance Agreement (the "**Agreement**") is made by and among THE EMPIRE DISTRICT ELECTRIC COMPANY ("**Parent**") a Kansas corporation with its principal office and place of business at 602 Joplin Street, Joplin, Missouri, and NEWCO ("**Company**"), a [STATE] corporation, with its principal office and place of business at [ADDRESS]. This Agreement shall be effective as of the ____ day of ____, 2001 (the "**Effective Date**").

WHEREAS, Company will initially be organized as an unregulated wholly-owned subsidiary of Parent; and

WHEREAS, Parent has developed a beta version of proprietary customer information system software, which requires further development and documentation prior to commercialization, hereinafter referred to as "**Centurion**"; and

WHEREAS, Parent intends to contribute such software, the related goodwill and all other associated rights, including all copyrights, patent rights and trademarks, and all rights to enhanced, modified and updated versions and derivative works related thereto, to Company; and

WHEREAS, Parent wishes to retain access to the source code to Centurion, receive the completed and documented version of Centurion, and enter into software license and maintenance agreements with Company.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

ARTICLE I

TRANSFER

1.1 Transfer of Centurion. In exchange for the consideration to be provided to Parent as set forth in Article III of this Agreement, Parent hereby contributes, assigns and transfers all of its right, title and interest in Centurion to Company. In addition, Parent hereby contributes, assigns and transfers to Company all of its right, title and interest to all copyrights, patents and trademarks in, together with all knowledge, know how, trade secrets and all other intellectual property of Parent for use with or otherwise relating to, Centurion and Centurion applications, products and services, and all goodwill associated with any of the foregoing (collectively referred to as the "**Intellectual Property**"). The conveyance of Centurion shall include, but is not limited to, the Centurion software in

APPENDIX A

source code and object code versions, and all documentation of Centurion and of the development of Centurion.

1.2 Delivery. Centurion source code, object code and documentation shall be delivered to Company upon the execution of this Agreement. Parent agrees that it shall from time to time, but without further consideration, execute and deliver such instruments or documents and take such other action which Company may reasonably request in order to more effectively carry out this Agreement and to vest in Company all rights and title to Centurion and the Intellectual Property.

ARTICLE II

REPRESENTATIONS AND WARRANTIES OF THE PARTIES

Parent represents, warrants and covenants as follows:

2.1 Title and Infringement. Parent is the sole owner of all right, title and interest in and to Centurion and the Intellectual Property. Parent has good and marketable title to Centurion, and has all necessary rights to enter into this Agreement without violating any other agreement or commitment of any sort. Parent does not have any outstanding agreements or understandings, written or oral, concerning Centurion. Centurion will not be subject to any lien, encumbrance, mortgage or security interest of any kind at the time Parent conveys Centurion to Company. Centurion and the Intellectual Property do not infringe any trademark, patent, copyright, trade secret, or other similar rights of any third party. Parent agrees to indemnify and hold Company, its affiliates and licensees harmless against any action, suit, expense (including reasonable attorneys' fees), claim, loss, liability or damage arising from or connected with any breach of the foregoing representations or warranties, provided that Company provides Parent with prompt written notice (by certified mail) of such breach and provides all necessary and required information and reasonable assistance. Parent shall not be responsible for any settlement accepted without Parent's consent. Parent will have no obligation under this section 2.1 if such claim or action arises from changes made to Centurion or the Intellectual Property by Company.

2.2 Authority Relative to this Agreement. This Agreement is a legal, valid and binding obligation of Parent. The execution and delivery of this Agreement by Parent and the performance of and compliance by Parent with the terms and conditions of this Agreement will not result in the imposition of any lien or other encumbrance on Centurion or the Intellectual Property, and will not conflict with or result in a breach by Parent of any of the terms, conditions or provisions of any order, injunction, judgment, decree, statute, rule or regulation applicable to Parent, Centurion, or any note, indenture or other agreement, contract, license or instrument by which Centurion or the Intellectual Property may be bound or affected. No consent or approval by any Person (as defined hereafter in section 3.2.2) other than that which may be required by public utility regulatory commissions having jurisdiction over the Company (the "Commissions"), is

required in connection with the execution, delivery or performance of this Agreement by Parent.

Company represents, warrants and covenants as follows:

2.3 Indemnification. Company shall indemnify and hold Parent and its affiliates harmless against any action, suit, expense (including reasonable attorneys' fees), claim, loss, liability or damage based on claims arising out of: (i) the sale, licensing, marketing, or maintenance of Centurion following the Effective Date; and (ii) claims, arising from changes made to Centurion or the Intellectual Property by Company, that Centurion infringes any trademark, patent, copyright, trade secret, or other similar rights of any third party. Company shall not be responsible for any settlement accepted without Company's consent.

2.4 Authority Relative to this Agreement. This Agreement is a legal, valid and binding obligation of Company. The execution and delivery of this Agreement by Company and the performance of and compliance by Company with the terms and conditions of this Agreement will not conflict with or result in a breach by Company of any of the terms, conditions or provisions of any order, injunction judgment, decree, statute, rule or regulation applicable to Company. No consent or approval by any Person or public authority, other than the Commissions, is required in connection with the execution, delivery or performance of this Agreement by Company.

ARTICLE III

CONSIDERATION

In consideration of the conveyance of Centurion and the Intellectual Property to Company and the covenants, representations and warranties of Parent as set forth in Article II of this Agreement, Company hereby agrees as follows:

3.1 Equity Interest in Company. Simultaneously with the execution of this Agreement, Company hereby agrees to issue to Parent, or Parent's designated affiliate, [] shares of common stock of Company, representing one hundred percent (100%) of the issued and outstanding stock of Company as of the Effective Date. Parent acknowledges and agrees that such equity interest in Company will be diluted following the execution of this Agreement as equity capital is solicited by Company to fund the completion and documentation of Centurion, and for other business purposes.

3.2 Perpetual License Agreement.

3.2.1 Grant of Perpetual License. Simultaneously with the execution of this Agreement, Company hereby grants Parent a perpetual, irrevocable, non-exclusive, non-transferable, royalty-free right and license to use Centurion, any Centurion source code, and associated documentation, solely for Parent's use in managing the records of its customers. Company shall provide Parent with all

future versions of Centurion source code within a reasonable time following the completion of each new version. Company shall also provide Parent with a completed and fully documented executable version of Centurion at no cost to Parent.

3.2.2 Restrictions on Use. Parent shall not use Centurion for the benefit of any third parties other than customers of Parent, or permit any use of Centurion by any third parties. Parent agrees that Centurion shall be used only by Parent's employees and only in the United States. Parent shall not transfer, sell, assign, or sublicense Centurion to any "**Person**" (defined as any natural person, corporation, partnership, association, sole proprietorship, trust, joint venture, limited liability company, general partnership, limited partnership, trust association or other business entity, or any municipality, political subdivision, cooperative organization, or governmental agency or unit). Parent shall not disclose Centurion or any part of Centurion code or documentation to any other Person. Parent may not copy Centurion, except that Parent may make one (1) copy of Centurion in executable form (but not the user documentation) for backup or archival purposes. Parent may not remove any Company or product identification, copyright, trademark, patent or other notices or proprietary restrictions from Centurion or the backup copy.

3.2.3 Confidentiality. Parent acknowledges that all versions and forms of Centurion, including the original and future versions of Centurion source code, are confidential, proprietary information of Company that Parent will retain or, after the Effective Date, receive in confidence. Parent will not at any time in any manner or form disclose, provide or otherwise make available, in whole or in part, Centurion or the original or future versions of Centurion source code, to any third parties except for Parent's employees and consultants who are bound by appropriate non-disclosure agreements, and except as required by law. Information about Centurion will not be considered confidential if the information: (a) is publicly available (through no wrongful act of Parent) at the time of disclosure; (b) is independently developed by Parent; or (c) is disclosed to Parent by a third party with written approval of Company.

3.3 Software Maintenance Agreement.

3.3.1 Services. Company shall, for a period of seven (7) years from the Effective Date, at no cost to Parent, provide Parent with not less than the most favorable maintenance and support services for Centurion that Company provides to other users of Centurion. During such seven-year period, any customization of Centurion or other special services provided to Parent by Company will be provided to Parent at cost. Following such seven year period, Company will charge Parent for software maintenance, customization and other special services, but no more than the lowest price paid for such services on a per customer basis by any other comparable user of Centurion. Company may require Parent to execute a standard Company agreement for maintenance. Parent understands that

the services described in this paragraph may not be available on a regular basis until Company begins marketing Centurion. Until that time, Company will assist Parent with Centurion issues on a case-by-case basis, for no fee.

3.3.2 Warranties. Company warrants that all services and maintenance provided pursuant to this Agreement will be performed in a professional manner. Parent agrees that it shall provide Company, in a timely manner, with any and all information that Company requires to perform services and maintenance pursuant to this Agreement, and Company may rely on the accuracy and completeness of such information.

ARTICLE IV

OTHER PROVISIONS

4.1 Confidentiality. Company acknowledges and agrees that all of Parent's customer-specific information is confidential. Company shall ensure that all of Parent's customer-specific information that comes into possession of Company by reason of work performed under this Agreement will be used solely for maintenance of Centurion and will remain confidential, unless it is required by law to be disclosed. Company agrees to use the same standard of care, and will bind its employees, agents and representatives to such standard, to prevent disclosure of such confidential information as Parent uses to protect its own confidential information. Upon the request of Parent, any and all customer-specific information in the possession of Company obtained as a result of work performed under this Agreement shall be returned to Parent or destroyed. Information received by Company under this Agreement will not be considered confidential if the information: (a) is publicly available (through no wrongful act of Company) at the time of disclosure; (b) is independently developed by Company; or (c) is disclosed to Company by a third party with written approval of Parent.

4.2 Limitation of Liability. THE LIMITED EXPRESS WARRANTIES SET FORTH IN THIS AGREEMENT ARE IN LIEU OF ALL OTHER WARRANTIES, WHETHER EXPRESS OR IMPLIED. EACH PARTY SPECIFICALLY DISCLAIMS ANY AND ALL IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. OTHER THAN FOR CLAIMS THAT CENTURION OR THE INTELLECTUAL PROPERTY INFRINGE ON INTELLECTUAL PROPERTY RIGHTS OF THIRD PARTIES, NEITHER PARTY SHALL BE LIABLE FOR ANY INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL OR PUNITIVE DAMAGES SUSTAINED OR INCURRED IN CONNECTION WITH THE OTHER'S USE OF OR INABILITY TO USE CENTURION OR IN CONNECTION WITH THE SERVICES RENDERED BY COMPANY OR IN ANY MANNER ARISING OUT OF OR CONNECTED WITH THIS AGREEMENT, WHETHER BASED ON A THEORY OF CONTRACT, TORT, STRICT LIABILITY OR OTHERWISE, WHETHER OR NOT SUCH DAMAGES WERE FORESEEN OR UNFORESEEN AND WHETHER OR NOT SUCH PARTY HAS ADVANCE NOTICE OF THE POSSIBILITY OF SUCH DAMAGES. Company

is not responsible for any obsolescence of Centurion that may result from changes in Parent's requirements. Company assumes no responsibility for the use of, or for providing services relating to, outdated or uncorrected versions of Centurion. Company makes no representation or warranty that Centurion's functionality will at all times meet Parent's requirements.

4.2.1 Parent acknowledges its responsibility to (i) regularly back up data maintained on any computer using Centurion, and (ii) adequately test prior to deployment of each version of Centurion in a configuration which reasonably simulates Parent's customer information system environment.

4.2.2 COMPANY'S MAXIMUM LIABILITY FOR DAMAGES, IF ANY, ARISING OUT OF OR RELATING TO THIS AGREEMENT SHALL NOT EXCEED THE FAIR MARKET VALUE OF ONE YEAR OF MAINTENANCE AND SUPPORT SERVICES.

4.3 Governing Law. This Agreement shall be construed and enforced in accordance with the laws of the State of Missouri.

4.4 Assignment. This Agreement shall be binding upon and inure to the benefit of the parties named herein and their successors, which shall include any Person who succeeds to the business of Parent or Company whether by merger, acquisition of equity interests, operation of law, acquisition of all or substantially all assets, assignment or otherwise.

4.5 Arbitration of Claims/Remedies.

4.5.1 Resolution of Claims. Except as provided below in section 4.5.2, any claim or dispute arising from or relating to this Agreement shall be resolved as follows. In the event any claim is not resolved by an informal negotiation between the parties hereto, within thirty (30) days after the party against whom a claim is asserted receives written notice that a claim exists, the matter will be submitted to an informal, nonbinding mediation, in Joplin, Missouri, consisting of one or more conferences between the parties in which a mediator will seek to guide the parties to a resolution of the claims. The parties will select a mutually acceptable neutral mediator. In the event the parties cannot agree on a mediator, each party shall select a mediator and the mediators selected by the parties shall select one mediator who shall conduct the mediation. The mediation process will continue until the earliest to occur of the following: (i) the mediators selected by both parties are unable to agree upon a mediator; (ii) the claims are resolved; (iii) the mediator makes a finding that there is no possibility of resolution through mediation; or (iv) ninety (90) days have elapsed since the claim was first scheduled for mediation.

If any claims remain after the mediation process, each party shall submit to binding arbitration in Joplin, Missouri by a single arbitrator pursuant to the

then-current commercial arbitration rules of the American Arbitration Association and judgment on the arbitration award may be entered in any court of competent jurisdiction. The parties to the dispute shall share equally the arbitrator's fees and any administrative fee, but shall otherwise bear their own expenses.

Any mediators or arbitrator (collectively the "**Impartial Parties**") shall be familiar with contracts of the type represented by this Agreement. The Impartial Parties shall limit discovery to those items that in the judgment of the Impartial Parties are essential to the determination of the matters in dispute. Except for any stenographer and the Impartial Parties, attendance at the mediation or arbitration shall be limited to the parties and their counsel and witnesses.

Except as necessary for purposes of an action to enforce, modify or vacate the arbitration award, all documents and other information submitted to the Impartial Parties, including any transcript of proceedings, and the mediator's or arbitrator's award, shall be confidential and shall not be disclosed to anyone other than the parties and their counsel and financial advisors.

4.5.2 **Exceptions.** Section 4.5.1 shall not apply to disputes arising from or relating to the provisions of section 3.2.2, section 3.2.3, and section 4.1 of this Agreement. Each party acknowledges that any breach of its obligations under section 3.2.2, 3.2.3, or 4.1 may give rise to irreparable injury to the other, inadequately compensable in damages. Accordingly, the injured party may seek and obtain injunctive relief against the breach or threatened breach, in addition to any other legal remedies which may be available.

4.6 **Entire Agreement.** This Agreement contains the entire understanding of the parties, and supersedes any and all other agreements presently existing or previously made, written or oral, between Company and Parent concerning its subject matter. This Agreement may not be modified except by a writing signed by both parties.

4.7 **Severability.** If any provision of this Agreement is declared by a court of competent jurisdiction to be invalid, void or unenforceable, the remaining provisions of this Agreement nevertheless will continue in full force and effect without being impaired or invalidated in any way.

4.8 **Notices.** All notices, requests, demands, and other communications hereunder shall be deemed to have been duly given if delivered or mailed, certified or registered mail, postage prepaid, or sent by a nationally recognized overnight delivery service:

If to Company:

Newco
Address

with a copy to:

Hill & Barlow, P.C.
One International Place
Boston, MA 02110
Attn: Peter Katz, Esq.

If to Parent:

Empire District Electric Company
602 Joplin Street
Joplin, MO 64801
Attn: Clifford A. Stark

with a copy to:

Cahill, Gordon & Reindel
80 Pine Street
New York, NY 10005
Attn: Michael A. Sherman

[the remainder of page intentionally left blank]

THIS CONTRACT CONTAINS A BINDING ARBITRATION PROVISION
WHICH MAY BE ENFORCED BY THE PARTIES.

IN WITNESS WHEREOF, the parties hereto have duly executed and delivered
this Agreement as of the ____ day of _____, 2001.

NEWCO

By:

The Empire District Electric Company

By:

By: _____

By: _____

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