



## MSx Services Addendum

This Addendum amends and modifies the Telecommunications Account Agreement (TAA) or Master Service Agreement (MSA) ("Agreement") between U.S. TelePacific Corp. d/b/a TPx Communications and/or its affiliated companies (collectively "TPx") and Customer.

1. SCOPE OF ADDENDUM. This Addendum applies to Customer's purchases from TPx, or any of its Affiliates, of services ("Services"), as well as licenses for software, hardware, support and maintenance services, and/or subscription services (collectively, "Product"). For purposes of this Addendum, "Affiliate" means any entity that, directly or indirectly through one or more intermediaries, controls or is controlled by or under common control with TPx, as the case may be. The Services to be rendered to Customer must be further described in one or more Service Agreements ("SAs"), Addendums or Scopes of Work ("SOWs"), which upon the signature by both parties is deemed incorporated into this Addendum,

2. TERM AND TERMINATION.

2.1 The Term of this Addendum will begin on the Effective Date of the Agreement and will continue until each SA, Addendum or SOW term expires or is terminated. TPx may: (a) terminate a specific SA if Customer fails to pay any applicable fees due within thirty (30) days after receipt of written notice from TPx of non-payment; and/or (b) terminate this Addendum or the Agreement if Customer commits any other material breach of this Addendum and fails to cure such breach within thirty (30) days after receipt of written notice from TPx.

2.2 If Customer terminates this Addendum or the Agreement or any SA or SOW thereunder prior to completion of the Term, Customer may be liable for a termination charge. Notwithstanding any provision to the contrary in the Agreement, Customer's particular SA, Addendum or SOW may provide a different termination charge calculation. Upon any termination of the right to use a Product, Customer will immediately uninstall (if the Product is software) and cease to use the terminated Product and, upon TPx' written request, immediately return such Product to TPx, together with all related documentation, and copies thereof. Upon written request of TPx, Customer will promptly certify in writing to TPx that all copies of the Product have been returned, and that any copies not returned have been destroyed. If a SOW is terminated, Customer will promptly pay TPx for Services rendered, and expenses incurred through the termination date. TPx may terminate any license granted for a Deliverable (as defined below) if (i) Customer does not pay TPx for that Deliverable in accordance with this Addendum, or (ii) if Customer materially breaches any part of this Addendum.

2.3 At the end of the Initial Term or subsequent renewal Term if Customer elects to discontinue Services, TPx will work in good faith to transition Services and provide Customer with all systems and data assets owned by Customer provided that Customer has provided the required thirty (30) day written notice. Any transition services provided by TPx will be billable at negotiated rates. Support during transition period is best effort.

3. PAYMENT AND DELIVERY OF SERVICES PROVIDED TO CUSTOMER PURUANT TO A SOW. Customer will pay TPx all fees due upon receipt of an invoice specifying the amounts due ("Fees"). All Fees payable under this Addendum are exclusive of sales, use, VAT, customs duties, excise, and any other applicable transaction taxes, which Customer will pay (excluding taxes based upon the net income of TPx). All Product is FOB shipping point. All Fees will be detailed in a SA or SOW. Unless otherwise stated in a SOW, Customer agrees to pay or reimburse TPx for all actual, necessary, and reasonable expenses incurred by TPx in performance of such SOW. TPx will submit invoices to Customer for such fees and expenses either upon completion of the Services, or at stated intervals, in accordance with the applicable SOW.



#### 4. PROPRIETARY RIGHTS AND CONFIDENTIALITY.

4.1. Proprietary Rights. TPx, or its Affiliates or licensors, retains all right, title and interest in any and all intellectual property, informational, industrial property and moral rights in the Product, and copies thereof. TPx neither grants nor otherwise transfers any rights of ownership in the Product to Customer. The Product is protected by applicable copyright and trade secrets laws, and other forms of intellectual property, informational and industrial property protection.

4.2. Product. Customer may only use Product in accordance with the terms of this Addendum and applicable Addenda. TPx reserves all rights in and to the Product not expressly granted in this Addendum. Customer may not disassemble or reverse engineer any software Product, or decompile or otherwise attempt to derive any software Product's source code from executable code, except to the extent expressly permitted by applicable law despite this limitation, or provide a third party with the results of any functional evaluation, or benchmarking or performance tests on the Products, without TPx prior written approval. Except as expressly authorized in this Addendum or an Addendum, Customer may not (a) distribute the Product to any third party (whether by rental, lease, sublicense or other transfer), or (b) operate the Product in an outsourcing or service provider business to process the data of third parties. Additional usage restrictions may apply to certain third-party files or programs embedded in the Product (applicable installation instructions or release notes will contain the relevant details).

#### 4.3. Services Deliverables Licensed Under This Addendum.

(a) License. Subject to the terms of this Addendum, TPx grants Customer a perpetual, non-exclusive, non-transferable license to use and modify all programming, documentation, reports, and any other deliverables provided as part of the Services ("Deliverables") solely for its own internal use.

(b) Third Party Software. Any software product provided to Customer by TPx as a reseller for a third party, which is licensed to Customer under a separate software license ("Third Party License") with such third party, will continue to be governed by the Third Party License. The fulfillment of the Services will not relieve or alter the obligations or responsibilities of either party or of any third party in regard to the third party licensed software product.

(c) Ownership. TPx owns all right, title and interest in the Deliverables, including all intellectual property rights embodied therein. Nothing in this Addendum is intended to or will have the effect of vesting in or transferring to Customer rights in TPx or its affiliates' or its or their suppliers' software, methods, know-how or other intellectual property, regardless of whether such intellectual property was created, used or first reduced to practice or tangible form in the course of performance of the Services, whether solely by TPx or jointly with Customer.

4.4 Mutual Confidentiality. This Section sets out the terms for identification of information which is considered confidential and proprietary by a party (the "Discloser"), and restrictions against use and disclosure of such Confidential Information after disclosure to the other party (the "Recipient").

(a) Definition. The term "Confidential Information" means all proprietary or confidential information that is disclosed to the Recipient by the Discloser, and includes, among other things (i) any and all information relating to products or services provided by a Discloser, its customer-related and financial information, source and executable code, flow charts, drawings, techniques, specifications, development and marketing plans, strategies, forecasts, and sales and marketing materials; (ii) the Product; and (iii) the terms of this Addendum. Confidential Information does not include information that Recipient can show: (A) was rightfully in Recipient's possession without any obligation of confidentiality before receipt from the Discloser; (B) is or becomes a matter of public knowledge through no fault of Recipient; (C) is rightfully received by Recipient from a third party without violation of a duty of confidentiality; or (D) is or was independently developed by or for Recipient.



(b) Disclosure Restrictions. Recipient may not disclose Confidential Information of Discloser to any third party without the prior written consent of Discloser.

(c) Proprietary Legends. Recipient may not remove, obscure, or alter any proprietary legend relating to the Discloser's rights on or from any form of Confidential Information of the Discloser, without the prior written consent of the Discloser, except as expressly authorized in an Addendum.

## 5. WARRANTY; INDEMNIFICATION.

5.1. All Necessary Rights. If, as part of TPx performance of Services, TPx is required to use, copy or modify any third party system (hardware, software or other technology) provided or licensed to Customer, then prior to TPx performance of such Services, Customer will acquire all rights necessary for TPx to perform such Services.

5.2. Limited Warranty for MSx Managed Services. TPx warrants that the Services performed will be of a quality conforming to generally accepted practices that are standard within the software and IT services industry for a period of thirty (30) days from completion of the Services under the applicable SOW. Customer's exclusive remedy and TPx entire liability under this warranty will be for TPx to re-perform any non-conforming portion of the Services within a reasonable period of time, or if TPx cannot remedy the breach during such time period then refund the portion of the fee attributable to such non-conforming portion of the Services. This warranty will not apply to the extent Customer, its contractors or agents have modified any Deliverable, unless otherwise authorized by TPx in writing. THIS WARRANTY AND CONDITION IS IN LIEU OF ALL OTHER WARRANTIES AND CONDITIONS. THERE ARE NO OTHER EXPRESS OR IMPLIED WARRANTIES OR CONDITIONS, INCLUDING THE IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE

### 5.3. Intellectual Property Indemnity

(a) Infringement Claims. If a third party asserts a claim against Customer asserting that the Deliverables and/or TPx performance of the Services in accordance with the terms of this Addendum violates a patent, trade secret or copyright (an "Intellectual Property Right") owned by that third party ("Infringement Claim"), then TPx will, at its own expense: (a) defend or settle the Infringement Claim; and (b) indemnify Customer for any damages finally awarded against Customer, but only if Customer promptly notifies TPx of any Infringement Claim, TPx retains sole control of the defense of any Infringement Claim and all negotiations for its settlement or compromise, and Customer provides all reasonable assistance requested by TPx. TPx will not be liable for any expenses or settlements incurred by Customer without TPx prior written consent.

(b) Remedies. If an injunction or order is obtained against TPx performing the Services for Customer and/or Customer using the Deliverables by reason of the allegations of infringement, or if in TPx opinion the Services and/or Deliverables may violate a third party's proprietary rights, then TPx will, at its expense: (a) procure for Customer the right to continue to receive the Services and/or use the Deliverables; (b) modify or replace the Services and/or Deliverables with a compatible, functionally equivalent substitute; or (c) if neither (a) nor (b) are commercially practical, terminate this Addendum and release Customer from its obligation to make future payments for the Services and/or Deliverables. Sections 5.1 and 5.2 contain Customer's exclusive remedies and TPx sole liability for claims of infringement.

## 6. Insurance.

TPx will provide and maintain during its rendition of the Services, but only for losses arising out of TPx IC work for Customer: (a) Worker's Compensation and related insurance as prescribed by the law of the state applicable to the employees performing such Services; (b) employer's liability insurance with limits of at least one million dollars (\$1,000,000) for each occurrence; (c) comprehensive/commercial general liability insurance including products liability with one million dollars (\$1,000,000) per occurrence combined single limit and two million dollars (\$2,000,000) general aggregate, including coverage for the use of



subcontractors, products liability and completed operations, and not containing an exclusion for explosion, collapse and underground coverage; (d) comprehensive motor vehicle liability insurance, including coverage for owned, hired, leased, rented and non-owned vehicles of at least one million dollars (\$1,000,000) for combined single limit for bodily injury, including death, and/or property damage; and (e) professional liability insurance covering the effects of errors and omissions in the performance of professional duties in the amount of one million dollars (\$1,000,000) for each occurrence and in the aggregate associated with Services.

7. Independent Contractor. Nothing in this Addendum will be construed to make either party an employer, employee, agent or partner of the other, and this Addendum will not be construed to create rights, express or implied, on behalf of or for the use of any party other than TPx and Customer. All of the Services performed by TPx will be performed as an independent contractor. TPx will perform such Services under the general direction of Customer, but TPx will have sole discretion to determine the manner, method and means of performing such Services subject to the provisions of this Addendum and applicable Statement of Work (SOW). Neither party will have any authority to make any contract in the name of or otherwise to bind the other party. TPx will be responsible for and will pay all unemployment, social security and other payroll taxes, and all worker's compensation claims, worker's compensation insurance premiums and other insurance premiums, with respect to TPx and TPx employees.

8. Mutual Non-Solicitation. During the term of this Addendum, and for a period of six (6) months thereafter, neither party will solicit for employment any employees of the other party or its affiliates who, within six (6) months prior to such solicitation: (a) directly performed under this Addendum, (b) had substantial contact with the hiring party in relation to this Addendum, or (c) the hiring party became aware of due to, or derived from information learned through the performance of, this Addendum. For this purpose, "solicitation" does not include contact resulting from indirect means such as public advertisement, placement firm searches or similar means not directed specifically at the employee to which the employee responds on his or her own initiative. Notwithstanding the foregoing, either party may at any time, directly or indirectly, solicit and hire any employee of the other party if such employee did not resign but was terminated by the other party. The parties acknowledge and agree that a breach of this "Non-Solicitation" clause will not give rise to a right of termination of this Addendum; the party not in breach will only have the right to seek and recover direct damages from the breaching party.

## 9. MISCELLANEOUS PROVISIONS.

9.1. Verification. Upon TPx written request, Customer will provide TPx with a certification signed by an officer of Customer verifying that Product is being used pursuant to the terms of this Addendum, including without limitation the licensed capacity of the Product. TPx may, at its expense, audit Customer's use of Product to confirm Customer's compliance with this Addendum. Any such audit will be conducted during regular business hours at Customer's facilities and will not unreasonably interfere with Customer's business activities. If an audit reveals that Customer has underpaid Fees to TPx, Customer will pay such underpaid Fees. If the underpaid Fees exceed five percent (5%) of the Fees paid, then Customer will also pay TPx reasonable costs

9.2. Export Controls. Customer will cooperate with TPx as reasonably necessary to permit TPx to comply with the laws and regulations of the United States and all other relevant countries, relating to the control of exports ("Export Laws"). Customer may not import, nor export or re-export directly or indirectly, including via remote access, any part of the Product into or to any country for which a validated license is required for such import, export or re-export under applicable Export Laws, without first obtaining such a validated license.

9.3. Referencing. Customer agrees that TPx and its Affiliates may refer to Customer as a customer of TPx, both internally and in externally published media. Customer also agrees to instruct appropriate personnel within its organization that Customer has agreed to receive and participate in calls, from time to time, with potential customers of TPx who wish to evaluate the technical specifications of Product.



9.4. Survival. Sections 2, 4, 5, 6 and 7 will survive the termination or expiration of this Addendum. The prevailing party in any litigation or arbitration proceeding is entitled to recover, from the other party, its reasonable attorneys' fees and necessary costs incurred in such proceeding.

#### 10. MSX SUPPORT SERVICES.

TPx support specialists and engineering teams are available 4am to 6pm Pacific Time Monday through Friday ("Normal Business Hours"), with after-hours and holiday issue escalation available 24/7 to on-call product specialists for platform outage level events. Weekend and Holidays support services may be available for Priority 1 levels which support may incur time and materials charges based on best efforts. TPx will respond to change requests from Customer within four (4) hours during Normal Business Hours, and will be scheduled with the next available resource. Change requests that are incomplete or require further clarification or authorization workflows will be processed once full details are provided and/or authorizations received and confirmed. Change requests that violate standard best practices and/or security best practices will be escalated to the Security Department for review and subject to Security Operations Center ("SOC") evaluation and approval. Outages, emergencies, or time sensitive requests that are received via phone calls to TPx Support will be assigned immediately and work begun within thirty (30) minutes with status update provided every two (2) hours until resolved. Emergency is defined as affecting the majority of users and their ability to perform primary duties. This priority can only be initiated via a phone call and carries with it a fifteen (15) minute response from the time the call is received by a technical resource. Diagnostics and troubleshooting procedures will begin immediately upon acknowledgement of the issue. DASH Tickets, emails, and voicemails are not accepted until the content of the request is received and acknowledged by a technical resource within the support department.

#### 11. ONBOARDING SERVICE.

Onboarding Service is a one-time project that allows TPx and Customer to understand the current state of Customer's network/systems and what is required to stabilize existing issues prior to establishing ongoing MSx Term Services. It also includes the start-up activities necessary to help ensure that the ongoing MSx Term Services meet Customer's requirements.

11.1 Onboarding Service includes the following deliverables:

- a. Create customer "Run Book" of relevant IT/Network/Resource information.
- b. Establish Maintenance Windows for planned system downtime.
- c. Review communication and escalation procedures.
- d. Install and test system monitoring and support tools.
- e. Discover and document covered system inventories, core network information, manufacturers support contracts and contacts.
- f. Assess health of existing supported environment and deliver a report that includes results and a prioritized list of recommended actions to resolve existing issues.
- g. Optional: Resolve issues uncovered in the assessment. (Subject to additional onboarding charges).

11.2. Start date for MSx Term Services and related monthly billing will begin upon completion of Onboarding Service (as defined on SA or SOW). Onboarding Service will be provided on a best effort basis and at standard hourly rates.

11.3 One-time Onboarding Service charges are invoiced as they are incurred. Charges for ongoing MSx Term Services are invoiced monthly in advance for each upcoming service month.

11.4 The standard one-time Onboarding Service charges are fixed and include the activities detailed in the SA or SOW. Additional Onboarding Service charges may be required to implement MSx Term Service properly and bring Customer's IT technologies up to a supportable state. These Onboarding Services may include, but are not limited to, uninstalling existing anti-virus software, cabling



repair/replacement, virus cleanup, server and network equipment reconfiguration, and server and desktop patching as well as additional equipment.

11.5 Any recommended or required additional Onboarding Services and equipment will be proposed prior to initiation of the Service Term for MSx Term Services. Customer has the right to refuse additional services without penalty. Likewise, TPx has the right to terminate the support contract if Customer does not elect to enact Onboarding start up services that are recommended or required. Onboarding Service charges are non-refundable.

11.6 Parts costs, replacement equipment, and shipping are not included in Onboarding Service and will be invoiced separately.

11.7 TPx reserves the right to bill Customer under separate hourly rate for any services provided that are deemed to be non-covered services, including, but not limited to:

- a. Remediation of server or desktop issues due to client or third-party installation of non-standard or unsupported hardware, software, or peripherals.
- b. Remediation of viruses.
- c. Remediation of issues caused by Customer or third-party such as changing configurations.
- d. Remediation of issues associated with non-covered applications.
- e. Any request for service that is outside the scope of the managed services provided to Customer.
- f. Any work deemed to be out of scope will require an executed change order.

11.8 After hours support is best effort unless the parties agree to a specific Service Level Addendum.

12. This Addendum is effective only upon execution of the TAA or MSA by Customer. Each party hereto warrants and represents that this Addendum constitutes the legal, valid and binding obligation of such party.