Terms and Conditions to the Agreement

IMPORTANT: SECTION 8 OF THESE TERMS AND CONDITIONS INCLUDES A PROVISION REGARDING BINDING ARBITRATION AND A WAIVER OF CUSTOMER'S RIGHT TO JURY TRIALS AND CLASS ACTIONS.

1. General

(a) Incorporation of TAA, MSA or Service Agreement. These Terms and Conditions (these "Terms and Conditions") to the Telecommunications Account Agreement ("TAA"), Master Service Agreement ("MSA") or Service Agreement (referred to herein, as so amended and modified, as the "Agreement") are part of the Agreement between Customer and U.S. TelePacific Corp. All capitalized terms used but not defined herein will have the meanings given to such terms in the TAA or MSA (as applicable). "TPx" as used in the Agreement means the TPx entity executing the TAA, MSA or Service Agreement and/or its Affiliates.

(b) Services. Services are offered to Customer by TPx either under tariffs (i.e., documents which list services, prices and other terms and conditions, referred to herein as "Tariffs") filed with the Federal Communications Commission and state regulatory agencies having jurisdiction over the Services ("Tariffed Services"), or on a non-Tariffed basis ("Non-Tariffed Services"). Tariffs are available online at www.tpx.com/tariffs. All services provided under the Agreement are collectively referred to as the "Services." In the event that the rates and terms in the Agreement conflict at any time with those set forth in TPx's federal and/or state Tariffs applicable to the Services, the rates and terms of the Tariffs will control. The rates and terms of Tariffed Services may change, subject to the approval of the applicable regulatory agency. If the Tariffs for any Services are cancelled as a result of regulatory action during the term of this Agreement, TPx will publish a revised price list and related terms and conditions for such Services on its website (www.tpx.com/rates) which will become part of the Agreement. In the event that any agreement between the parties is terminated and Tariffed Services are still provided by TPx, applicable Tariff rates and terms will apply to the Tariffed Services provided to Customer.

(c) Pass Through of Price Increases. TPx may increase the rates for non-Tariffed Services to pass through any price increases imposed on it or its Affiliate by the providers of the underlying facilities used to provide the Services or, in the case of long distance services, by wholesale providers of such services. "Affiliate" means any entity that, directly or indirectly through one or more intermediaries, controls or is controlled by or under common control with a party, and where the term "control" (including the terms "controlled by" and "under common control with") means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of an entity, whether through the ownership of voting securities, by contract or otherwise.

(d) Revisions. TPx may change the rates and terms applicable to Non-Tariffed Services ("Revisions") by giving Customer at least thirty (30) days prior written notice. Customer will receive notice of the Revisions at least thirty (30) days prior to the effective date of any change. Such notice will generally be provided in Customer's monthly invoice.

(i) With regard to any such Revisions that are changes to the terms and conditions, Customer will then have thirty (30) days from the date of the invoice to provide TPx with written notice that the Revisions to the changed terms or conditions will have a material adverse effect on Customer's use of the Service(s). If TPx is able to verify such adverse effect and eliminate the adverse effect, TPx will provide Customer with a written addendum to the Agreement to confirm Customer's assent to the elimination of the adverse effect on the Services(s). However, if TPx is unable, after making a commercially reasonable effort, to eliminate the Revision's impact on such Service(s), TPx will notify Customer and Customer may terminate the impacted Service(s) without further obligation to TPx beyond the termination date, including termination charges, if any. If Customer does not notify TPx in writing of Customer's election to terminate the affected Service(s) for changed terms or conditions within five (5) business days after receipt of written notice of TPx's inability to eliminate the Revision's impact, Customer will be deemed to have consented to the Revisions and to a continuation of the Service(s), subject to the Revisions.

(ii) With regard to any such Revisions that materially increase the rates applicable to any of the Non-tariffed Services, except for pass-through rate increases, Customer may terminate the affected Service(s)

without further obligation beyond the termination date, including termination charges, if any, provided Customer notifies TPx in writing of its election to so terminate the affected Service(s) for such rate increase at least five (5) business days before the effective date of the rate increase. If Customer does not notify TPx in writing of Customer's election to terminate the affected Service(s) for increase in rates prior at least five (5) business days prior to the effective date of the rate increase, Customer will be deemed to have consented to the Revisions and to a continuation of the Service(s) subject to the Revisions.

(iii) If Customer terminates Services pursuant to this Section 1(d), Customer exercising such termination right will be its sole and exclusive remedy for TPx's failure to provide the terminated Services.

(e) Expedite Fee. Under certain conditions, Customer may request that installation of Services be expedited by agreeing to pay a fee (the "Expedite Fee"). No projected date for expedited installation is guaranteed. Payment of the Expedite Fee only earns an advanced priority for installation process and installation is not entirely in TPx's control. No credit or refund of the Expedite Fee will be made for delay of the installation date beyond the projected or requested date. A list of Expedite Fees is available at: www.tpx.com/rates.

(f) Additional Increase in Charges. In addition to rate increases associated with Revisions as set forth above, a change in the manner in which TPx delivers Services to Customer may result in an increase in rates for those Services. Also, if a portion of the Services requires third party construction or other infrastructure, additional third party charges may apply. If TPx cannot deliver Services to Customer at the rates it has agreed to pay because of the cost of the technology used or additional third party costs required to deliver the Services, including an acceptable profit margin, TPx will notify Customer in writing before any change in the technology is used and seek Customer's consent to a change in the rates or additional charge of the affected Service. TPx may delay the installation of any change in technology until Customer has responded to the increased rate or additional charge. If Customer does not notify TPx in writing of Customer's refusal to consent to the increased rate within five (5) business days after receipt of notice from TPx of such increase, Customer will be deemed to have consented to the increase in rate or additional charge. If Customer objects to such increase or charge within five (5) business days, either party may terminate the affected Service on written notice without further obligation beyond the date of termination, including for termination charges. Customer's right to terminate will be its sole and exclusive remedy for TPx's failure to provide the terminated Services.

2. Term, Billing, and Payment

(a) Agreement Effective Date. The Agreement is effective when the TSA,MSA or Service Agreement has been signed by Customer and accepted by TPx (the "Agreement Effective Date"), either by execution on behalf of TPx or by TPx commencing the Services delivery process. Thereafter, TPx will begin as soon as practicable the installation, connection and testing of the circuits and/or equipment necessary to provide the initial Services.

(b) Agreement Term. The Agreement including these Terms and Conditions will expire immediately upon the expiration or termination of the last Agreement pursuant to which Services are provided under this Agreement; provided, however, that any amounts due under any related equipment addendum (each, an "Equipment Addendum") shall remain due and payable by Customer irrespective of any such expiration or termination.

(c) Service Term. The initial term of the Services (the "Initial Service Term") provided under each Agreement thereunder (each, a "Agreement") will begin the date TPx provides notice to Customer that the Services are available for its use, unless otherwise provided in the Agreement. After the Initial Service Term, unless otherwise set forth in an Agreement, the applicable Agreement will automatically renew for successive periods of one year each at the rates then in effect for Customer's Services unless either party notifies the other in writing of non-renewal not less than ninety (90) days before the date of expiration of the then-current Service Term of non-renewal (each a "Service Renewal Term" and together with the Initial Service Term, the "Service Term"). However, the termination of Services will not occur until the later of the end of the then-current Service Term or thirty (30) days after receipt of that notification. If Customer continues to use Service(s) after such date, it will receive and pay for Service(s) under the applicable Agreement on a month-to-month basis.

(d) Non-Automatic Renewal Term. Customer may renew Services under an Agreement for a Service Renewal Term prior to the completion of the Initial Service Term (a "Non-Automatic Renewal Term"). The beginning of this Non-Automatic Renewal Term is the date of the first invoice after the renewal of the Service for the Non-Automatic Renewal Term is entered into TPx's billing system. Customer may order additional Services at Customer's existing service location(s) under the applicable Agreement. The additional Service(s) will have a Service Term coterminous with the Service Term or Renewal Term of the existing Service(s) at said service location, subject to TPx's acceptance. Services for additional service locations may also be ordered, subject to TPx's acceptance, under the applicable Agreement. The Service Term for additional Services ordered for additional service locations will begin the date TPx provides notice to Customer that the Services are available for Customer's use, will continue in effect for the entire Service Term specified in the Agreement for the additional Services and will automatically renew for successive periods of one (1) year each after the end of the Service Term of the additional Services (each successive period being a Renewal Term for those additional Services), unless terminated as provided in these Terms and Conditions.

(e) Billing.

(i) TPx will begin invoicing Customer for the Services and other charges after TPx gives Customer notice that the Services are installed and available for Customer's use and will continue invoicing on a monthly basis until the applicable Services are no longer provided. TPx will bill monthly recurring charges in advance and usage charges after the usage occurs. Customer is responsible for all other charges and government fees and taxes which will be separately listed on each invoice. Notwithstanding the foregoing, each party will be responsible for its own income taxes and employment taxes. The parties will cooperate in good faith to minimize taxes to the extent legally permissible. Each party will provide to the other party any resale exemption, multiple points of use certificates, treaty certification and other exemption information reasonably requested by the other party. TPx may require, in its discretion, that Customer provide a deposit or other assurance of payment before the Services are provided and/or thereafter. Any required deposit will not bear interest unless required by law. If Customer delays acceptance of the Services after receiving notice that Services are available, TPx may, in its sole discretion, begin invoicing Customer for the ordered Services. If Customer continues to delay acceptance of the Services for more than sixty (60) days after the date the Services are available, Customer will have materially breached this Agreement, and TPx will be entitled to terminate this Agreement without further notice and to pursue the remedies in Section 4 of these Terms and Conditions.

(ii) TPx will invoice Customer for any equipment purchased or rented by TPx, whether by installment purchase option or otherwise, pursuant to the terms of the related Equipment Addendum. Payments for equipment are separate and independent of any payments owing by Customer for Services.

(f) Back-billing. TPx will endeavor to bill Customer for charges on a timely basis. However, unless proscribed by state regulation, Customer will nevertheless be liable for all charges irrespective of any delay in billing, whether due to error, lack of necessary data, negligence or any other reason. No such delay will constitute a basis for a claim of waiver, estoppel or other excuse of Customer's obligation to pay TPx's charges, irrespective of the length of the delay. Nothing herein will toll the running of any statute of limitations applicable to such obligations.

(g) Payment. Invoices are due and payable upon presentation, and become past due after the Pay By Date printed on the invoice. If Customer has a bona fide dispute with any of the amounts on the invoice ("Disputed Amount"), it will pay all amounts not in dispute by the Pay By Date and provide TPx with a written request for a billing adjustment, together with all supporting documentation, within forty-five (45) days after Customer's receipt of the invoice or Customer's right to any billing adjustment will be waived. If TPx agrees to adjust all or a portion of the Disputed Amount, Customer will not be obligated to pay a late payment charge on the adjusted amount. If Customer fails to pay all non-Disputed Amounts on an invoice by the Pay By Date, TPx may impose a late payment charge of 1.5% per month or the maximum rate allowed by law, whichever is less, on the unpaid balance until the amount is paid. TPx may also suspend Customer's services until all delinquent amounts, including late payment charges, are paid in full. An additional charge will apply to each returned check. Payment must be made in U.S. Dollars.

(h) Match Period. If the Service Term for the Services initially to be provided under an applicable Agreement when it is first entered into by the parties is for sixty (60) months or more and the initial Services have been installed for at least twenty-four (24) months, Customer may provide TPx at retention@tpx.com with a bona fide, written quote of a lower monthly charge for a term at least equivalent to the remaining months in the Service Term from a competitive carrier for substantially the same initial Services with the same terms as provided pursuant to the Agreement and all Addenda, and TPx will have thirty (30) days (the "Match Period") after receipt of the bona fide written quote to match or beat the competitive provider's offer. If TPx fails to provide the initial Services at the lower rate, Customer may terminate the initial Services without liability for early termination in a notice provided to TPx not less than thirty (30) days after the expiration of the Match Period. Notwithstanding the foregoing, Customer may provide only one such quote under the Agreement. For this Section 2(h) to apply, the quote from the competitive carrier must be for the same service location as initially set forth in the applicable Agreement and for the same initial configuration of Services.

3. Customer's Obligations

(a) Building Access. Customer will obtain all necessary approvals, applicable permits and/or use fees to be attained, if any, for full access by TPx and its subcontractors prior to installation of the Service(s) and while the Service(s) is (are) provided.

(b) Responsibility for Message Content. Customer is solely responsible for all content that it makes available on or through the Services. Customer represents and warrants that all such content will not infringe on, or contain any content that infringes on, or otherwise violates any copyright, patent or any other right held by a third-party and that all such content will not violate any applicable law, rule, regulation or industry standard.

(c) Use of Services. Customer will not use the Services for any illegal, unlawful, abusive or fraudulent purpose and will use the Services in such a manner as to prevent damage to TPx's network. Customer's proper use of the Services includes conforming to all Acceptable Use Policies ("AUP") that are available on request and are displayed at TPx's web site at www.tpx.com/acceptable-use-policy. The AUP may be amended from time to time. If TPx materially changes the AUP, it will provide the same right to notification and cancellation as provided in Section 1(d) of these Terms and Conditions. Resale and distribution of all or any portion of the Services is prohibited.

(d) Third-Party Obligations. Customer is responsible to pay any third-party vendor charges for third party vendors retained by Customer, such as retaining a vendor for installation of necessary inside wiring. Also, Customer is responsible to arrange for disconnection and payment of charges related to the disconnection of any related services with Customer's current provder(s). Disconnection of such services may not be delegated to TPx.

(e) Customer Local Area Network Responsibilities. Customer agrees to comply with TPx-provided Local Area Network (LAN) guidelines posted at www.tpx.com/support/ and acknowledges that all network configurations as well as hardware and software located at Customer's physical location(s) conforms to the specifications outlined by TPx based on the contracted TPx services.

(f) Network Security. Customer is responsible for taking whatever actions it deems necessary to make Customer's computer and voice network and circuits adequately secure from unauthorized access. Customer acknowledges that TPx only provides telecommunications services and certain equipment to Customer and that TPx is not responsible for the security of Customer's network and circuits from third parties, or for any damages that may result from any unauthorized access to Customer's network. Customer will follow the Fraud Guidelines provided at www.tpx.com/fraud-guidelines. Failure to follow the steps provided may result in a greater likelihood that Customer's network will be exposed to fraud. Customer acknowledges that TPx has recommended that Customer seek independent advice with respect to products, equipment (including configurations) and services available to make Customer's computer network and circuits more secure from third parties.

CUSTOMER FURTHER ACKNOWLEDGES THAT NONE OF TPx'S EMPLOYEES, AGENTS, REPRESENTATIVES OR SUBCONTRACTORS HAS MADE, AND THEY DO NOT HAVE THE AUTHORITY TO MAKE, ANY REPRESENTATIONS CONCERNING THE SECURITY OF CUSTOMER'S NETWORK OR THE

SERVICES, INCLUDING ANY REPRESENTATIONS THAT ARE INCONSISTENT WITH THE STATEMENTS CONTAINED IN THIS SECTION 3(f).

(g) Access to Customer Premises, Systems and Data. As required for the performance of the Services, Customer will provide a secure space, network, wiring, electrical power, and environmental conditions suitable for and compatible with TPx's provision of Service(s). Customer agrees to provide TPx reasonable access (on-site and remote) to existing systems such that monitoring agents and other management tools can be installed as part of the Service(s). Customer will assume insurance responsibility for the cost of its repair or replacement should the equipment be damaged due to negligence, misuse, external forces, power surges, or servicing by non-TPx designated service personnel. Customer consents to TPX accessing and processing all data provided by or on behalf of Customer in connection with the Agreement (including data from customers of Customer) and represents that it has obtained any consents required for such access and processing.

(h) Customer's Compliance with Laws. Customer is responsible for the compliance with all laws and regulations applicable to the business of Customer and its Affiliates. Customer will be responsible for (1) identifying such laws and regulations and notifying TPx of any associated impact on TPx or the delivery of the Services; (2) obtaining the consent or approval of any governmental entity required for the parties' compliance with any such laws and regulations; and (3) obtaining the consent of any individual required for the parties' compliance with any such laws and regulations, including any required consent related to the transfer, processing and storage of such individual's personal data under laws applicable to such individual or the personal data. If requested by Customer, TPx will work in good faith with the Customer to enter into an amendment to this Agreement or modify the provision of the Services to Customer as required to comply with such laws and regulations, in each case at the expense of Customer. In no event will TPx be required to provide Services in violation of any applicable law or regulation.

(i) Receipt of Services. Customer will defend, indemnify and hold TPx harmless (including TPx's officers, directors, employees, agents, and contractors) from any claims, liabilities, losses, damages and expenses (including reasonable attorneys' fees and costs) arising out of or relating to Customer's receipt or use of the Services. This indemnity will not be available if the damage or loss is due to TPx's willful or reckless acts or omissions.

4. Termination Rights and Remedies

(a) Termination by Customer Before Installation. If Customer elects to terminate the Agreement or any orders for Services before Services are installed and available for Customer's use, it must do so in writing, and will pay to TPx as a pre-installation charge an amount equal to: (1) the non-recurring charges applicable to the Services, even if initially waived, unless those charges have already been paid, (2) such amount that, if the Services require a third party that TPx contracts with to provide some or all of the underlying services, a charge from the third party, which as a result of Customer's cancellation, TPx becomes obligated to pay, and (3) if the Agreement is for a Term of one year, an amount equal to three times the one month recurring charges, or, if the Agreement is for a Term of more than one year, an amount equal to six times the one month recurring charges. Customer agrees that such a termination charge is not a penalty and is a reasonable amount because, among other reasons, it would be difficult or impossible to calculate the exact amount of damages suffered by TPx if Customer terminates the Agreement or any orders for Services.

(b) Termination for Cause. Either party may terminate the Agreement upon thirty (30) days notice if the other party materially breaches the terms and conditions of the Agreement and the other party fails to cure the default within the 30-day period, including, but not limited to, Customer's failure to pay TPx's invoices for the Services when due. If Customer terminates the Agreement after TPx's material breach, then Customer will be responsible for (i) charges for the period before the date of termination and (ii) all remaining installment payments for the equipment that Customer purchased from TPx via an installment payment purchase as provided in the related Equipment Addendum.

(c) Early Termination Fee. If TPx terminates the Agreement or any Service as a result of Customer's material breach, or Customer terminates the Agreement or any Services for any reason other than TPx's material breach, Customer will pay to TPx an early termination fee as set forth in this Section 4(c) (the "ETF"). The ETF shall include a charge determined in accordance with Table 1 below (an "MRC ETF") based on:

(i) the number of months of the Initial Term provided in the Agreement if the termination occurs during the Initial Term or the number of months of the Renewal Term if the termination occurs during a Renewal Term (as applicable, the "Applicable Term");

(ii) the month of the Applicable Term during which the termination occurs (the "Termination Month");

(iii) the number of months remaining in the Applicable Term after the Termination Month (the "ETF Calculation Period"); and

(iv) the monthly recurring charge for the terminated Service as set forth in the Agreement or otherwise agreed by the parties (the "MRC").

The MRC ETF is the sum of the calculations within the MRC ETF Calculation Period as set forth on Table 1 for the Applicable Term.

Table 1

Applicable Term	MRC ETF Calculation Period (based on when termination occurs)				
	1-12 Months ("1st Service Year")	13-24 Months ("2nd Service Year")	25-36 Months ("3rd Service Year")	37-48 Months ("4th Service Year")	49-60 Months ("5th Contract Year")
12 Months	50% of MRC x Months remaining in term	N/A	N/A	N/A	N/A
24 Months	100% of MRC x Months remaining in term	50% of MRC x Months remaining in term	N/A	N/A	N/A
36 Months	100% of MRC x Months remaining in term	75% of MRC x Months remaining in term	50% of MRC x Months remaining in term	N/A	N/A
48 Months	100% of MRC x Months remaining in term	80% of MRC x Months remaining in term	75% of MRC x Months remaining in term	50% of MRC x Months remaining in term	N/A
60 Months	100% of MRC x Months remaining in term	80% of MRC x Months remaining in term	75% of MRC x Months remaining in term	50% of MRC x Months remaining in term	25% x Months remaining in term

In addition to the MRC ETF, Customer will pay TPx as part of the ETF: (1) the non-recurring charges for the terminated Services, even if those charges had been initially waived; (2) any promotional credits provided to Customer; and (3) if some or all of the terminated Services were provided by a third party, an amount equal to any charge from the third party that TPx becomes obligated to pay as a result of the termination, including any charges TPx may incur from third party providers of any underlying services as a result of the early termination of the Agreement or any Service.

For end user-oriented services (e.g., work stations/endpoints, end user subscriptions/licenses), Customer may downsize the quantity of such services by no more than ten percent (10%) below the greater of (i) the quantity of end-user-oriented services for which Customer contracted at the commencement of this Agreement, or (ii) the quantity of end-user-oriented services provided to Customer in any one of the then-preceding three (3) months, without incurring an ETF.

The ETF is due and payable immediately on the effective date of termination, and is in addition to any monthly recurring charges, usage charges and other charges due as of effective date of termination and any liability of

Customer for breach of the Agreement. Customer agrees that each of the above termination charges is a reasonable amount to compensate TPx for lost monthly recurring charges and usage charges following termination because, among other reasons, it would be difficult or impossible to calculate the exact amount of such damages suffered by TPx if Customer terminates the Agreement or any orders for Services.

(d) Effective Date of Termination by Customer. If Customer terminates the Agreement or any Services provided to it for any reason other than TPx's material breach, Customer will provide TPx with written notice to retention@tpx.com ninety (90) days in advance, and the effective date of the termination will be the end of that thirty (30) day notice period for purposes of determining the remaining time over which the termination charge will be calculated. If Customer does not give TPx that notice, then the effective date of termination will be the date TPx terminates the Agreement. For partial months, remaining monthly recurring charges will be determined on a prorated basis based on the number of days in such month during which Services were to be provided.

(e) Move Charge. If Customer requests that TPx move the Services from Customer's current service location to a different service location, Customer may incur a non-recurring charge ("Move Charge"). The Move Charge may include (i) a termination charge which, as a result of Customer's termination, TPx becomes obligated to pay to a third party provider of the underlying facilities, and (ii) installation charge at the new service location. Also, a new Term may apply to any Services moved to a new service location.

(f) Delinquent Account. In addition to any other recoveries TPx is entitled to receive, TPx will be entitled to recover from Customer for payment delinquencies all of the costs TPx incurs (including court costs and reasonable attorneys' fees) to collect any delinquent charges owed by Customer along with all other damages TPx incurs as a result of Customer's breach or other termination of the Agreement, including termination charges, past due recurring and usage charges, any damage to TPx's equipment, any promotional credits provided to Customer and any amounts TPx has to pay to third parties because of violations by Customer of TPx's AUP.

(g) Notwithstanding the foregoing, Customer may terminate the applicable Agreement without any further obligation with respect to Services (but subject to Customer's obligation to pay amounts owing for equipment purchased from TPx under an installment payment option pursuant to the terms of an Equipment Addendum, without offset or recoupment) if the Services TPx provides thereunder are not provided substantially in accordance with the requirements of such Agreement during the first ninety (90) days the Services are available for Customer's use. If Customer elects to terminate the Agreement pursuant to this Section 4(g), TPx will reimburse Customer for the reasonable costs Customer incurred to re-establish service with another service provider not to exceed the amount that Customer paid to TPx for installation of the Services. This Section 4(g) only applies if: (i) the cause of the Service deficiency was within TPx's reasonable control; (ii) Customer ordered at least the amount of Services that TPx recommended to meet Customer's traffic volumes; (iii) Customer gives TPx written notice of the deficiency within the first ninety (90) days after TPx notified Customer the Services are available for Customer's use, and (iv) TPx fails to correct the Service deficiency within fifteen (15) days after receiving written notice from Customer of the deficiency.

5. Credit Allowance, Warranty Disclaimer, Limitation of Liability and Indemnity

(a) Credit Allowances for Interruption of Service. If an interruption or failure of Service is caused solely by TPx and not by Customer or any third party agent, carrier, vendor, employee, or representative of Customer or other causes beyond TPx's reasonable control, Customer may be entitled to a credit allowance not to exceed an amount equivalent to the proportionate charge to Customer for the affected Service for the time period from the time of Customer's report to TPx of the Service interruption to the time Service is restored, not to exceed in any month, the total monthly recurring charge owed by Customer for the affected Service in that month. The specific service levels, related credits and steps Customer must take to apply for credits are available on TPx's website at www.tpx.com/sla. TPx will not be liable for any act or omission of any other entity furnishing Customer with facilities or equipment used with the Services, nor will TPx be liable for any damages or losses due in whole or in part to Customer's fault or negligence or due in whole or in part to the failure of equipment or facilities that Customer provides. For the avoidance of doubt, any credit allowances or adjustments permitted under the Agreement shall only relate to payments for Services and shall not be applied as an offset, credit, adjustment or recoupment against any payments owing by Customer for equipment purchased from TPx pursuant to an Equipment Addendum.

(b) WARRANTY DISCLAIMER. EXCEPT AS EXPRESSLY SET FORTH IN THE "WARRANTY" SECTION OF A SERVICE ADDENDUM, TPx MAKES NO WARRANTIES, EXPRESS OR IMPLIED, AS TO ANY SERVICE OR DELIVERABLES. TPx SPECIFICALLY DISCLAIMS ANY AND ALL IMPLIED WARRANTIES, INCLUDING WITHOUT LIMITATION, ANY IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR TITLE OR NON-INFRINGEMENT OF THIRD PARTY RIGHTS.

(c) EXCLUSIONS. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, NEITHER CUSTOMER NOR TPX WILL BE ENTITLED TO RECEIVE PUNITIVE, INCIDENTAL, EXEMPLARY, INDIRECT, CONSEQUENTIAL, RELIANCE OR SPECIAL DAMAGES (INCLUDING DAMAGES FOR LOST BUSINESS, REVENUE, PROFITS OR GOODWILL) IN AN ACTION OR CLAIM OF ANY KIND OR NATURE, INCLUDING BREACH OF CONTRACT, BREACH OF WARRANTY, NEGLIGENCE, STRICT LIABILITY, MISREPRESENTATION AND OTHER TORTS.

(d) LIMITATION OF LIABILITY. NOTWITHSTANDING ANYTHING TO THE CONTRARY IN THIS AGREEMENT, TPX'S TOTAL LIABILITY FOR ALL CLAIMS IN ANY MANNER ARISING OUT OF THE AGREEMENT WILL IN NO EVENT EXCEED THE LESSER OF (1) CUSTOMER'S PROVEN DIRECT DAMAGES, (2) THE AMOUNTS CUSTOMER PAID TO TPX FOR THE SERVICES GIVING RISE TO LIABILITY UNDER THE APPLICABLE AGREEMENT DURING THE SIX (6) MONTH PERIOD IN WHICH ANY SERVICE-RELATED PROBLEMS WERE EXPERIENCED, OR (3) THE CREDITS AVAILABLE TO CUSTOMER UNDER TPX'S TARIFFED LIMITATION OF LIABILITY. FOR CLARITY, THE FOREGOING LIMITATIONS APPLY TO ALL DISPUTES, CAUSES OF ACTION AND CLAIMS OF ANY KIND OR NATURE, INCLUDING BREACH OF CONTRACT, BREACH OF WARRANTY, NEGLIGENCE, STRICT LIABILITY, MISREPRESENTATION AND OTHER TORTS.

(e) Indemnification.

(i) TPx Infringement Indemnity and Remedy.

(A) TPx Infringement Indemnity. If a third party that is not an Affiliate of Customer asserts a claim against Customer asserting that TPx's proprietary materials used or provided with the Services infringes a U.S. patent existing as of the effective date of the Agreement pursuant to which the Service is provided or a trade secret or copyright owned by that third party (a "TPx Infringement Claim"), then TPx will, at its own expense defend or settle the TPx Infringement Claim; and pay the damages finally awarded against Customer. However, TPx shall have no obligation for any such claim or other obligation for infringement to the extent resulting or alleged to result from: (1) modifications made other than by TPx, (2) use of the Services or any work product of TPx in combination with any equipment, software or materials not provided by TPx, (3) compliance with the instructions, designs or specifications provided by or on behalf of Customer, or (4) Customer's continuing any allegedly infringing activity after being notified thereof or after being informed and provided with modifications that would have avoided the alleged infringement.

(B) Infringement Remedy. If an injunction or order is obtained against TPx performing the Services for Customer by reason of the allegations of infringement of TPx's proprietary materials, or if in TPx's opinion such proprietary materials used or provided with the Services may violate a third party's proprietary rights, then TPx will, at its expense and option: (1) procure for Customer the right to continue to receive the Services; (2) modify the allegedly infringing item to make it non-infringing without substantially reducing functionally or procure a non-infringing replacement; or (3) if neither (1) nor (2) are commercially practical, terminate the Agreement and release Customer from its obligation to make future payments for the Services.

(C) Exclusive Remedy. This Section 5(e)(i) contains Customer's exclusive remedies and TPx sole liability for claims of infringement.

(ii) Customer Indemnity. If a third party that is not an Affiliate of TPx asserts a claim against TPx that materials provided by or on behalf of Customer to TPx in connection with the Services infringes a U.S. patent existing as of the effective date of the Agreement pursuant to which the Service is provided or a trade secret or copyright owned by that third party (a "Customer Infringement Claim"), then the Customer will, at its own expense defend or settle the Customer Infringement Claim and indemnify TPx for any damages finally awarded against TPx. However,

Customer shall have no obligation for any such claim or other obligation for infringement to the extent resulting or alleged to result from: (1) modifications made by TPx, (2) compliance with the instructions, designs or specifications provided by or on behalf of TPx, or (3) TPx's continuing any allegedly infringing activity after being notified thereof or after being informed and provided with modifications that would have avoided the alleged infringement.

(iii) Indemnification Procedures. Upon the commencement of any claim, action, suit or proceeding for which a party wishes to seek indemnification under this Section 5(e) (each, a "Third Party Claim"), the party seeking indemnification (the "Indemnified Party") will provide prompt notice to the other party (the "Indemnifying Party") so that the Indemnifying Party has reasonably sufficient time to file, answer and defend such Third Party Claim, provided however, that no delay on the part of the Indemnified Party in providing such notice will relieve the Indemnifying Party from its indemnification obligations except to the extent the Indemnifying Party is prejudiced by such delay. After receiving such notice, the Indemnifying Party will immediately take control of the defense, settlement and investigation of the Third Party Claim, and employ and engage attorneys reasonably acceptable to the Indemnified Party to handle and defend the same, at the Indemnifying Party's sole cost and expense. The Indemnified Party will, at the expense of the Indemnifying Party, reasonably cooperate with the Indemnifying Party and its attorneys in the investigation, trial and defense of the Third Party Claim and any appeal arising therefrom. The Indemnifying Party may settle a Third Party Claim without the prior consent of the Indemnified Party only if the Third Party Claim involves only the payment of money by the Indemnifying Party without any admission of guilt or fault and a full and complete release from continuing and further obligation or liability on the part of the Indemnified Parties is executed by Parties involved in the settlement and delivered to the Indemnified Party. If the Indemnifying Party does not assume full control over the defense of a Third Party Claim subject to such defense as provided in this Section 5(e), the Indemnified Party will have the right to defend the Third Party Claim in such manner as it may deem appropriate, at the cost and expense of the Indemnifying Party.

6. Confidentiality

(a) 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").

(b) Definition of Confidential Information. "Confidential Information" as used in the Agreement means all proprietary or confidential information that is disclosed to the Recipient by the Discloser, and includes: (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) any products or services made available by a party; and (iii) the terms of this Agreement. 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.

(c) Obligations of Confidentiality.

(i) As necessary to accomplish the purposes and objectives of this Agreement, Recipient may disclose Discloser's Confidential Information to any Recipient employee, officer, director, subcontractor, agent or representative who has a legitimate need to know the information for the purposes of this Agreement and who is bound to Recipient to protect the confidentiality of the information in a manner at least as stringent as that required of Recipient under this Agreement. Recipient may also disclose Discloser's Confidential Information to Recipient's attorneys if they are made aware of Recipient's obligations of confidentiality under this Agreement.

(ii) Recipient will not use or reproduce Discloser's Confidential Information except as reasonably required to accomplish the purposes and objectives of this Agreement or as specifically permitted by this Agreement or approved in writing by Discloser. Recipient will protect Discloser's Confidential Information from unauthorized use or disclosure by using at least the same degree of care as Recipient employs to avoid unauthorized use or disclosure of its own Confidential Information of a similar nature, but in no event less than reasonable care.

(iii) Recipient will promptly notify Discloser if Recipient becomes aware of any material unauthorized use, disclosure, loss of, or inability to account for any Confidential Information of Discloser. If such use, disclosure, loss or inability to account resulted from Recipient's breach of this Agreement then, without limiting Discloser's remedies for such breach, Recipient will cooperate with Discloser and, at Discloser's request, undertake commercially reasonable efforts to assist Discloser in investigating and preventing a reoccurrence thereof.

(iv) Recipient shall be responsible for any breach of the confidentiality provisions of this Agreement by any party to whom it discloses or makes available Discloser's Confidential Information as if such party were bound by the terms hereof and as if such breach were committed by Recipient.

(d) No Implied Rights. As between Discloser and Recipient, Discloser's Confidential Information will remain the property of Discloser. Nothing contained in the Agreement will be construed as obligating a Party to disclose its Confidential Information to the other Party, or as granting to or conferring on a Party, expressly or by implication, any rights or licenses to the Confidential Information of the other Party. Any such obligation or grant will only be as provided pursuant to other provisions of the Agreement.

(e) Compelled Disclosure. If Recipient becomes legally compelled to disclose any Confidential Information of Discloser in a manner not otherwise permitted by this Agreement, Recipient will provide Discloser with prompt written notice of the request (unless legally precluded from doing so) so that Discloser may seek a protective order or other appropriate remedy. Recipient will reasonably cooperate with such efforts by Discloser. If a protective order or similar order is not obtained by the date by which Recipient must comply with the request, Recipient may furnish that portion of the Confidential Information it is legally required to furnish provided that it (i) discloses only such Confidential Information as is legally required, and (ii) uses commercially reasonable efforts to obtain confidential treatment for any Confidential Information so disclosed.

(f) Return or Destruction.

(i) As requested by Discloser during the Term, Recipient will return, destroy, or provide Discloser a copy of any designated Confidential Information of Discloser, provided that TPx will not be liable for any failure or delay in its performance of Services to the extent resulting from its obligation to return, erase, or destroy Confidential Information of Customer in its possession prior to the completion of the Services. Upon expiration or termination of this Agreement, Recipient will return or destroy all materials in any medium that contain Confidential Information of Discloser. At Discloser's request, Recipient will certify in writing that it has returned or destroyed all copies of Discloser's Confidential Information in the possession or control of Recipient, any of Recipient's Affiliates or subcontractors, or any other party to whom any of them provided or permitted access to Confidential Information of Discloser.

(ii) Recipient shall have no obligation to return or destroy any Confidential Information of Discloser that is subject to a claim, dispute, lawsuit, or subpoena or in any other circumstances in which Recipient reasonably believes that destruction would be unethical or unlawful.

(iii) Any Confidential Information of Discloser retained by Recipient under this Section 6(f) shall remain subject to the confidentiality obligations under this Section 6.

(g) 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 Agreement.

(h) Survival. This Section 6 shall survive any termination or expiration of this Agreement.

7. Mutual Non-Solicitation. During the term of this Agreement, and for a period of six (6) months thereafter, neither party will, directly or indirectly, solicit, negotiate, engage, employ, or offer employment to, the personnel or contractor of the other party involved with providing Services hereunder.

8. Resolution of Disputes: Binding Arbitration (Jury Trial Waiver), No Class or Representative Actions or Arbitrations

(a) Binding Arbitration of Any and All Disputes. By entering into the Agreement, Customer and TPx waive any right to a jury trial, or the right to have any Dispute resolved in any court, and instead accept the use of binding arbitration. "Dispute" as used in this Section 8 means any cause of action, claim, case, and/or controversy of any kind arising out of or in any way related to the Agreement (including any amendments, addendums or attachments to the Agreement or documents incorporated by reference into the Agreement), and/or the subject matter of the Agreement.

(b) No Class or Representative Actions or Arbitrations. **Customer and TPx expressly agree that any Dispute is personal to such parties, and any such Dispute will only be resolved by an individual arbitration and Customer will not bring or be a member in a class arbitration, a class action, or any other representative arbitration or judicial proceeding unless such agreement is prohibited by law.**

(c) The Federal Arbitration Act Applies. The Agreement affects interstate commerce and the enforceability of this Section 8 will be governed by, construed, and enforced, both procedurally and substantively, by the Federal Arbitration Act ("FAA") to the maximum extent permitted by applicable law.

(d) Confidentiality. Except as may be required by law or otherwise agreed by the parties, the arbitrator, AAA (defined below), and the parties will maintain the confidentiality of any proceedings, including the existence of the proceedings and any and all information gathered, prepared, and presented for purposes of the arbitration or related to the Dispute(s) therein. The arbitrator will have the authority to make appropriate rulings to safeguard that confidentiality, unless the law provides to the contrary.

(e) Arbitration Procedures. If Customer and TPx cannot resolve between themselves any Dispute, Customer and TPx will promptly submit the Dispute to binding arbitration at the office of the American Arbitration Association ("AAA") located in Los Angeles County, California. Either party may initiate arbitration by providing written demand for arbitration (with a copy to the other party), a copy of the Agreement and the administrative fee required by the commercial arbitration rules of the AAA ("AAA Rules") to the AAA. Any party paying the administrative fee may recover the fee if awarded by the arbitrator. The arbitration will be held in accordance with the AAA Rules as modified by this Agreement. The AAA Rules, and other information about the AAA and arbitration, are readily available at www.adr.org, by calling 1-800-778-7879, or by mail at 120 Broadway, Floor 21, New York, NY 10271. By entering into the Agreement, Customer either (1) acknowledges that it has read and understands the AAA Rules or (2) waives reading the AAA Rules and waives any claim that the current AAA Rules are unfair in any way. Customer and TPx agree that the AAA Rules will be subject to the terms of the Agreement, changes in procedures that the AAA may make from time to time in its AAA Rules or successor rules to its AAA Rules, and the following modifications:

(i) As limited by the FAA, the terms of the Agreement, and the applicable AAA Rules, the arbitrator will have the exclusive power and jurisdiction to make all procedural and substantive decisions concerning the Dispute; provided, however, that this power will not include: (a) the power to determine the question of arbitrability, which power Customer and TPx agree will be vested solely in a court of competent jurisdiction; or (b) the power to conduct a class or representative action or arbitration, which is prohibited by the terms of the Agreement as stated above (Section 8(b)).

(ii) To the maximum extent permitted by applicable law, each party will bear the cost of preparing and presenting its case in an arbitration unless the arbitration award provides otherwise. Notwithstanding the foregoing, the prevailing party shall be entitled to recover reasonable attorney's fees and court costs.

(iii) One arbitrator will be appointed in accordance with the AAA rules within 30 calendar days of the submission of the demand for arbitration. The arbitrator will designate the time and place for hearings as soon as practicable after the arbitrator is appointed.

(iv) The arbitrator's authority to grant relief will be subject to the provisions of the Agreement, TPx's applicable tariffs, if any, and any other applicable law. The arbitration award will state the reasons upon which it is based and will be in writing. Any award rendered by the arbitrator will be final, binding and non-appealable. Judgement on the award rendered by the arbitrator may be entered in any court having jurisdiction thereof. In making any award, the arbitrator will be restricted by the Limitation of Liability provisions in this Agreement (Section 5(d)), and will not be entitled to award, nor will either party be entitled to receive, punitive, incidental, exemplary, consequential, reliance or special damages, including damages for lost profits; provided, however, that if the enforceability of any of these restrictions is limited by the applicable substantive law, that restriction will only be enforced to the extent permitted by such law.

(v) Notwithstanding the foregoing, each party retains the right to apply to any court of competent jurisdiction for interim or provisional relief in aid of arbitration, including injunctive relief in aid of arbitration, and any such request will not be deemed incompatible with the agreement to arbitrate or a waiver of the right to arbitrate. However, once the arbitrator is appointed, he or she will have exclusive jurisdiction to hear applications for such relief. Any interim measures or provisional relief ordered by the arbitrator may be immediately and specifically enforced by a court of competent jurisdiction. Nothing herein will preclude a party from seeking emergency measures of protection under the provisions of the AAA Rules.

9. Enhanced 911 ("E911") for Customers with Voice over Internet Protocol ("VOIP") Based Services Notice

(a) If the Services offered to Customer hereunder utilize VoIP technology to provide 911 and E911, this notice provides information about 911 and E911 capabilities and limitations on such voice services. The FCC requires that all telecommunications service providers utilizing VoIP notify their subscribers of the differences between the 911 and E911 access capability provided using VoIP technology and the 911 and E911 access capability using traditional telephone service. Further details about the FCC's requirements can be found at www.fcc.gov/cgb/consumerfacts/voip911.pdf.

(b) Differences in VOIP 911 Capabilities. 911/E911 access capabilities that use VoIP technology differ from 911/E911 access capabilities using traditional telephone service. The following list outlines some of the key differences, along with steps that Customer can take to mitigate those differences.

(i) Service Location Information. Customer must provide TPx with the correct service address of the location where Services will be used. If Customer does not provide correct service address information, or if Customer move Customer's VoIP access device (including an integrated access device, IP phone, or analog terminal adapter) to another location without updating service location information, calls to 911 will route to emergency personnel who may not be able to assist Customer, or may cause delays in receiving emergency services.

(ii) Power Outage. A power outage will render Customer's VoIP access devices unable to make or receive any calls, including calls to 911. Providing backup electrical power to VoIP access devices will mitigate this limitation.

(iii) Broadband Service Disruption. Disruptions to Customer's broadband service will prevent calls to 911 from completing. A failover connection to the public Internet over a broadband connection will reduce the likelihood of a service disruption.

(iv) Service Suspension. If Customer's service is terminated or suspended for any reason, 911 will not be available.

(c) Geolocation Registration. For calls to 911, TPx overrides any outbound calling line identification telephone number sent by the customer's phone system with a telephone number that is registered for the specific physical location of the service, also known as a geolocation. This enables 911 calls to route to the correct Public Safety Answering Point (PSAP), and that emergency personnel are sent to the correct location. Customer must provide accurate and timely information about Customer's geolocation. There is a $125 charge per 911 call from telephone numbers with either incorrect or missing geolocation information.

(d) Alternate Means of Contacting 911. Customer should maintain alternate means of contacting 911, such as analog phone lines. Customer is also responsible for notifying users of these alternate means of contacting 911. **UCx clients on a mobile phone will route 911 calls through the mobile network provider by default.**

(e) Notification of Users. Customer is responsible for notifying any users, including staff, residents, guests, or other persons who may be present at any location where Customer utilizes TPx VoIP service about the limitations of 911 dialing on VoIP as compared with 911 dialing on traditional voice services. Customer will receive stickers concerning the limitations of 911 dialing on Customer's TPx VoIP service. It is Customer's responsibility to place the 911 sticker on or near each device that Customer uses with the Services. If Customer did not receive a 911 sticker with Customer's device, or Customer requires additional 911 stickers, please call 877-344-7441.

10. Miscellaneous Provisions

(a) FUSF Exemption. Telecommunication carriers that provide interstate telecommunications services must file FCC Form 499-A with the Federal Communications Commission ("FCC"). Customer must provide TPx a copy of the first page of the Universal Service Worksheet (FCC Form 499-A, with Filer 499 ID Number). If Customer is not required to file Form 499-A under applicable laws and regulations, Certificate B must be completed and returned to TPx. TPx assesses its customers the Federal Universal Service Fund ("FUSF") fee based on end user revenues. TPx exempts from this charge certain customers who contribute directly to the Universal Service Fund ("USF"). In such case, TPx has established a Certificate of Exemption from TPx's FUSF assessment. To be exempt from FUSF charges, Customer must certify the following:

(i) Customer is an interstate provider of telecommunications services and has a Filer 499 ID Number;

(ii) Customer will purchase Services under the applicable Agreement exclusively for purposes of reselling those services to end users; and,

(iii) Customer (or its end users) is directly contributing to the FUSF on all services provided by TPx.

To claim an exemption from TPx's assessment of FUSF charges, Customer must return certificate with the first page of the Universal Service Worksheet (FCC Form 499-A, with Filer 499 ID Number).

(b) Independent Contractors. The parties hereto are acting as independent contractors and under no circumstances will any of the employees of one party be deemed the employees of the other as a result of the Agreement for any purpose. 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 Agreement, including selecting the software and other technology and any subcontractors utilized by TPx in the performance of the Services. 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's employees. This Agreement does not create a partnership or joint venture between the parties.

(c) Insurance. TPx will provide and maintain during its rendition of the Services, but only for losses arising out of TPx independent contractor 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.

(d) 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 Services 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.

(e) Assignment and Succession. Customer may not assign or transfer the Agreement without TPx's prior written consent, which will not be unreasonably withheld. Any unauthorized assignment or transfer by Customer will be null and void. Subject to the foregoing, the Agreement will be binding upon and inure to the benefit of the parties and their respective heirs, executors, administrators, legal representatives, successor and authorized assigns. The right to payments under any Equipment Addendum are assignable by TPx without consent as provided in such Equipment Addendum.

(f) Governing Law. With the exception that the enforceability of Section 8 is governed both procedurally and substantively by the FAA (as stated above), the Agreement will be construed pursuant to the laws of the State of California without regard to the conflicts of law provisions thereof.

(g) Force Majeure. TPx will not be liable for any failure of performance of the Services due to causes beyond TPx's control, including fire, flood, electric power interruptions, national emergencies, civil disorder, acts of terrorists, network attacks, riots, strikes, lockouts, work stoppages, Acts of God, or any law, regulation, directive, or order of the United States government, any other governmental agency, including state and local governments having jurisdiction over TPx or the Services provided hereunder, or the actions and failures to act of Customer or any third party.

(h) Entire Agreement and Modifications. The Agreement and all other documents specifically referred to in the Agreement (including each applicable Equipment Addendum) constitute the entire and final agreement and understanding between Customer and TPx with respect to the subject matter of the Agreement and supersede all prior agreements relating to such subject matter, which are of no further force or effect. Any and all exhibits referred to in the Agreement are integral parts of the Agreement and are made a part of the Agreement. The Agreement, including each applicable Equipment Addendum, may only be modified or supplemented by an instrument in writing executed by both Customer's and TPx's duly authorized representatives or by a written notice of change pursuant to Section 1(d) hereof. Each Equipment Addendum relating to the Agreement is considered a separate and independent obligation of Customer to pay TPx for equipment purchased thereunder and the Agreement, as it relates to the equipment and amounts payable in connection with any installment purchase option, is subject to the terms of such Equipment Addendum.

(i) Severability. If any provision of the Agreement is held to be invalid or unenforceable by a court or administrative agency with jurisdiction over the Services, such provision will be deemed amended to the minimum extent necessary to render it enforceable.

(j) Order of Precedence. If there is any conflict within the Agreement between the TAA,MSA or Service Agreement (as applicable), these Terms and Conditions and an Agreement and any document incorporated by reference into an Agreement or an Addenda, the parties will attempt to read any such conflicting provisions consistently; however, in the event such a consistent reading cannot be accomplished, the order of precedence will be as follows (i) with regard to Tariffed Services, Section 1(b) of these Terms and Conditions; (ii) amendments to the Agreement entered into following the effective date of the Agreement; (iii) the TAA, MSA or Service Agreement (as applicable); (iv) these Terms and Conditions, except to the extent that an Agreement expressly references a provision of these Terms and Conditions and then, only with respect to such Agreement, the Agreement will control with regard to the referenced provision; (v) the Agreement; and (vi) other documents incorporated by reference into an Agreement.

(k) Grant of License to Use Customer's Name and Trademark. Customer agrees to grant and does hereby grant to TPx a non-exclusive, non-transferable, non-sublicensable, and royalty-free license to use and reproduce Customer's name, logos, and trademarks on the TPx's sales and marketing materials, advertising and website at any time during the term of this Agreement.

(l) Interpretation of Agreement. The word "including" will be construed to mean "including, without limitation". The word "or" will mean "and/or" unless the context requires otherwise. The words "day," "month," and "year" mean, respectively, calendar day, calendar month and calendar year. The Agreement will be fairly interpreted in accordance with its terms and without strict construction in favor of or against either party based on the identity of the drafter of the Agreement or any term or provision thereof.

(m) No Third Party Beneficiaries. Notwithstanding anything to the contrary, the Agreement is intended for the sole and exclusive benefit of the signatories and is not intended to benefit any third party or deemed to provide third parties with any remedy, claim, right of action, or other right.

(n) Survival. Sections 4 - 9 and Section 11 of the Agreement, inclusive of sub-sections, will survive any termination or expiration of the Agreement and will continue in full force and effect until they are satisfied in full or by their nature expire.

(o) Headings. The headings used in the Agreement are for convenience only and do not in any way limit or otherwise affect the meaning of any of the terms.

(p) Waiver. Under no circumstances will either party's failure to enforce any provision of the Agreement in any particular instance be construed as a waiver of that provision.

(q) Notices. All notices from Customer to TPx must be in writing and delivered by certified mail, return receipt requested or by Federal Express or other similar expedited delivery service to: U.S. TelePacific Corp., Attn. General Counsel, 515 S. Flower Street, 45th Floor, Los Angeles, CA 90071-2201. If Customer notifies TPx that it does not wish to renew Services, Customer's written notice may be by a letter delivered in that manner or by an email to: retention@tpx.com.

(r) Limitation on Actions. Any legal action (including but not limited to arbitration) arising in connection with this Agreement must be commenced within two (2) years after the cause of action arises.

(s) UCx Services. Customer agrees that its use of UCx Services provided by Webex for Broadworks is subject to the following: (a) the Cisco Universal Cloud Terms found at https://cisco.com/c/en/us/about/legal/cloud-and-software/universal-cloud-agreement.html , (b) the Cisco Privacy Data Sheets for Webex Meetings and Webex Teams found at https://trustportal.cisco.com/c/r/ctp/trust-portal.html#/customer_transparency, and (c) the Cisco End User License Agreement for the Cisco client software installed by Customer found at www.cisco.com/go/eula.

11. Service Guarantee

Notwithstanding anything to the contrary contained in this Agreement, you may terminate this Agreement without any further obligation if the Services we provide are not substantially performing up to industry standards during the first ninety (90) days the Services are available for your use. If you elect to terminate the Agreement pursuant to this guarantee, we will reimburse you for all reasonable costs you incurred to re-establish service with another service provider not to exceed the amount that you paid to us for installation of the Services. This Service Guarantee only applies if: (a) the cause of the Service deficiency was within our reasonable control; (b) you ordered at least the amount of Services that we recommended to meet your traffic volumes; (c) you give us written notice of the deficiency within the first ninety (90) days after we notified you the Services are available for your use, and (d) we fail to correct the Service deficiency within fifteen (15) days after receiving written notice from you of the deficiency.