

IMPORTANT: THIS CONTRACT INCLUDES A PROVISION REGARDING BINDING ARBITRATION. SEE SECTION 6 BELOW. THIS CONTRACT REQUIRES THE BINDING ARBITRATION OF ANY AND ALL DISPUTES, AND WAIVES CERTAIN RIGHTS TO JURY TRIALS AND/OR CLASS ACTIONS, AS STATED IN THE "RESOLUTION OF DISPUTES" PROVISION (SECTION 6 BELOW), WHICH YOU SHOULD READ IN ITS ENTIRETY. YOU UNDERSTAND THAT THIS IS A LEGALLY BINDING INSTRUMENT AND AGREE TO ABIDE BY ITS TERMS.

## 1. General

(a) These Terms and Conditions are part of the Telecommunications Account Agreement (referred to as "Agreement") between Customer (referred to as "you" and "your") and U.S. TelePacific Corp. and/or its affiliated companies (collectively referred to as "we", "us" and "our"). Services are offered to you by us either under Tariffs (documents which list services, prices and other terms and conditions) filed with the Federal Communications Commission (FCC) and state regulatory agencies having jurisdiction over the Services ("Tariffed Services"), or on a non-Tariffed basis. Tariffs are available online at [www.tpx.com/tariffs](http://www.tpx.com/tariffs). All services provided under this Agreement are collectively referred to as the "Services." In the event that the rates, terms and conditions in this Agreement conflict at any time with those set forth in our federal and/or state Tariffs applicable to the Services, the rates, terms and conditions of the Tariffs shall control. The rates, terms and conditions 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, we will publish a Price List and related terms and conditions on our website ([www.tpx.com/rates](http://www.tpx.com/rates)) which will become part of this Agreement.

(b) We may increase the rates in this Agreement for non-Tariffed Services to pass through any price increases imposed on us by the providers of the underlying facilities used to provide the Services or, in the case of long distance services, by our wholesale providers of such services. We may also change the rates, terms and conditions applicable to non-Tariffed Services ("Revisions") by giving you at least thirty (30) days prior written notice and posting such Revisions to our website at [www.tpx.com/notices](http://www.tpx.com/notices). You will receive notice of the Revisions in your monthly invoice at least thirty (30) days prior to the effective date of any change. You shall then have thirty (30) calendar days from the date of the aforementioned invoice to provide us with written notice that the Revisions to changed terms or conditions adversely affect your use of the Service(s). If after said notice, we are able to verify such adverse effect and are able to eliminate said adverse effect, we shall provide you with a written addendum to this Agreement to confirm your assent to our elimination of the adverse effect on your Services(s). However, if we are unable reasonably to eliminate the Revision's impact on such Service(s), we will send you written notice of our inability to reasonably eliminate the Revision's impact, and then you may terminate the impacted Service(s) without further obligation to us beyond the termination date, including termination charges, if any. This shall be your sole and exclusive remedy for changed terms or conditions. If you do not notify us in writing of your election to terminate the affected Service(s) for changed terms or conditions within five (5) business days after receipt of written notice of our inability to reasonably eliminate the Revision's impact, you will be deemed to have consented to the changes and to a continuation of the Service(s), subject to the Revisions. If we materially increase the rates applicable to any of our non-tariffed Services, except for pass-through rate increases, you may terminate the affected Service(s) without further obligation beyond the termination date, including termination charges, if any, provided you notify us in writing before the effective date of the rate increase. If you do not notify us in writing of your election to terminate the affected Service(s) for increase in rates prior to the effective date of the rate increase, you will be deemed to have consented to the changes and to a continuation of the Service(s) subject to the Revisions.

(c) Under certain conditions, you may request that installation of Services be expedited by agreeing to pay an Expedite Fee. No projected date for expedited installation is guaranteed. Payment of the Expedite Fee only earns an advanced priority for your installation process and installation is not entirely in

our 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 and other charges for Changes to Services ordered are available at: [www.tpx.com/rates](http://www.tpx.com/rates).

(d) A change in the manner in which we deliver Services to you may result in an increase in rates for those Services. Also, if a portion of your Services require a third party vendor, an additional charge for special construction may apply. If we cannot deliver Services to you at the rates you have agreed to pay because of the cost of the technology used or construction required to deliver the Services, including an acceptable profit margin, we will notify you in writing of that fact before any change in the technology used and seek your consent to a change in the rates or additional charge under this Agreement. If you do not provide us with written notice of your refusal to consent to the increased rate within five (5) business days after receipt of such notice, during which time we may delay the installation of any change in technology, we may consider your lack of objection to the increase in rate or additional charge to be your consent to the increased rate or additional charge for the Services under this Agreement. If you object to such increase or charge within the period provided, you or we may terminate the Agreement on written notice without further obligation beyond the date of termination, including for termination charges.

## 2. Term, Billing, and Payment

(a) **Effective Date.** This Agreement is effective when it has been signed by you and accepted by TPx Communications either by execution on behalf of TPx Communications or by TPx Communications commencing the Services delivery process. Upon approval, we will begin as soon as practicable the installation, connection and testing of the circuits and/or equipment necessary to provide the Services.

(b) **Term.** The initial term of this Agreement ("Initial Term") will begin the date we provide notice to you that the Services are available for your use. This Agreement will continue in effect for the entire Term chosen on the Service Agreement and for any subsequent Renewal Term. The Initial Term or Renewal Term (also referred to herein and on the Service Agreement as "Service Term") will automatically renew for successive Renewal Terms ("Automatic Renewal Term") of one (1) year each thereafter, unless terminated as provided in Section 4 of this Agreement. However, you may renew Services for a Renewal Term prior to the completion of the Initial Term. The beginning of this Non-Automatic Renewal Term is the date of the first invoice after the Service Renewal is entered into our billing system. You may order additional services at your existing Service Location(s) under this Agreement for which Service(s) shall have an Initial Term coterminous with the Initial or Renewal Term of the existing Service(s) at said Service Location, subject to our acceptance. Services for additional Service Locations may also be ordered, subject to our acceptance, under this Agreement. The Initial Term for additional Services ordered for additional Service Locations will begin the date we provide notice to you that the services are available for your use, will continue in effect for the entire Term specified on the Service Agreement for the additional Services and shall automatically renew for successive periods of one (1) year each after the end of the Initial Term of the additional Services (each successive period being a Renewal Term for those additional Services), unless terminated as provided in Section 4 of this Agreement. The Terms and Conditions of this Agreement shall extend automatically, following termination, to cover the remaining Term of any Services provided. See Section 4 of this Agreement for additional terms and conditions applicable to terminations and Renewal Terms, including the rates during Renewal Terms.

(c) **Billing.** We will begin invoicing you for the Services and other charges after we give you notice that the Services are installed and available for your use and will continue invoicing you on a monthly basis until the Agreement is terminated. We will bill monthly recurring charges in advance and usage charges after the usage occurs. You are responsible for all Other Charges and Government Fees and Taxes which will be separately listed on each invoice. We may require, in our sole discretion, that you provide a deposit or other assurance of payment before the Services are provided and/or thereafter. Any required deposit shall not bear interest unless required by law. If you delay acceptance of the Services after

receiving notice that Services are available, we may, in our sole discretion, begin invoicing you for the ordered Services. If you continue to delay acceptance of the Services for more than sixty (60) days after the date the Services are available, you will have materially breached this Agreement, and we will be entitled to terminate this Agreement without further notice and to pursue the remedies in Section 4 of this Agreement.

(d) Back-billing. We will endeavor to bill you for charges on a timely basis. However, unless proscribed by state regulation, you shall 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 shall constitute a basis for a claim of waiver, estoppel or other excuse of your obligation to pay our charges, irrespective of the length of the delay. Nothing herein shall toll the running of any statute of limitations applicable to such obligations.

(e) Payment. Invoices are due and payable upon presentation, and become past due after the Pay By Date printed on the invoice. If you have a bona fide dispute with any of the amounts on the invoice ("Disputed Amount"), you shall pay all amounts not in dispute by the Pay By Date and provide us with a written request for a billing adjustment, together with all supporting documentation, within forty-five (45) days after the Pay By Date or your right to any billing adjustment shall be waived. If we agree to adjust all or a portion of the Disputed Amount, you will not be obligated to pay a late payment charge on the adjusted amount. If you fail to pay all non-Disputed charges on our invoice by the Pay By Date, we 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. We may also suspend your 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.

(f) If the Initial Term is for sixty (60) months or more and Services have been installed for at least twenty-four (24) months, Customer may provide TPx Communications at [retention@tpx.com](mailto: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 Initial Term from a competitive carrier for the identical Services with the same terms as provided pursuant to this Agreement and all Addendums, one time, and TPx Communications shall have thirty (30) calendar days after receipt of the bona fide written quote to match or beat the competitive carrier's offer. "Identical," as used herein, is to be narrowly construed to mean the Services and all terms and conditions must be the same in all material respects. If for any reason TPx Communications fails to provide the Services at the lower rate, Customer may terminate the Services without liability for early termination.

### 3. Your Obligations

(a) Our Property. Any equipment installed at your premises by us or shipped to you by TPx Communications or our authorized third party vendor remains our personal property, and nothing contained in this Agreement shall give or convey to you any right, title or interest in such equipment. You agree not to interfere with or damage the equipment and you agree to reimburse us for any loss or damage that is caused by your intentional or negligent acts or by the intentional or negligent acts of your agents, employees, authorized users or representatives. You will allow us to remove the equipment from your premises or you will promptly return the equipment to us upon termination of the Services for which the equipment was used.

(b) Building Access. You shall obtain all necessary approvals, applicable permits and/or use fees to be attained, if any, for full access by us prior to installation of Service and while Service is provided.

(c) Responsibility for Message Content. You are solely responsible for all content that you make available on or through our Services. You guarantee 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.

- (d) Use of Services. You 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 our network. Your proper use of the Services includes conforming to all Acceptable Use Policies (“AUP”) that are available on request and are displayed at our web site at [www.tpx.com/acceptable-use-policy](http://www.tpx.com/acceptable-use-policy). The AUP may be amended from time to time. If we materially change the AUP, you shall be provided the same right to notification and cancellation provided in Section 1(b) of this Agreement.
- (e) Third-Party Obligations. You are responsible to pay any third-party vendor charges for third party vendors you retain such as retaining a vendor for installation of necessary inside wiring. Also, you are responsible to arrange for disconnection and payment of charges related to the disconnection of any related services with your current carrier(s). Disconnection of such services may not be delegated to us.
- (f) Network Security. You acknowledge that it is your responsibility to take whatever actions you deem necessary to make your computer and voice network and circuits adequately secure from unauthorized access. You further acknowledge that we only provide telecommunications services and certain equipment to you and that we are not responsible for the security of your network and circuits from third parties, or for any damages that may result from any unauthorized access to your network. Read and follow the Fraud Guidelines provided at [www.tpx.com/fraud-guidelines](http://www.tpx.com/fraud-guidelines). Failure to follow the steps provided may result in a greater likelihood that your network will be exposed to fraud. Also, we urge you to seek independent advice with respect to products, equipment (including configurations), and services available to make your computer network and circuits more secure from third parties.

YOU FURTHER ACKNOWLEDGE THAT NONE OF OUR EMPLOYEES, AGENTS, REPRESENTATIVES OR SUBCONTRACTORS HAS MADE, AND THEY DO NOT HAVE THE AUTHORITY TO MAKE, ANY REPRESENTATIONS CONCERNING THE SECURITY OF YOUR NETWORK OR THE SERVICES WE PROVIDE THAT ARE INCONSISTENT WITH THE STATEMENTS CONTAINED IN THIS SECTION 3(f).

#### 4. Automatic Renewals; Terminations; Rights and Remedies

- (a) This Agreement and any orders for Services submitted under it shall remain in effect until terminated as stated in this Section 4. After the Initial Term, this Agreement will automatically renew for successive periods of one year each at our rates then in effect for your Services unless either party notifies the other in writing within the last sixty (60) days of the then-current Term of the intent not to allow this Agreement to renew for a successive Term. However, after providing such notice, if you continue to use Service(s), by your continued use, you are agreeing to continue to receive and pay for Service(s) under this Agreement on a month-to-month basis. However, even after termination of this Agreement for Services ordered for the original Service Location(s) or additional Service Location(s) covered by this Agreement, the Terms and Conditions of this Agreement will automatically extend to cover any remaining Terms or Service Agreements for any additional Services to additional Service Locations which have not expired. The Term of any such additional Service Agreements shall be subject to the same automatic renewal and termination notice provisions as are contained in this Agreement. If either party gives the other party the required notice of a decision not to allow the Agreement or the Term of any additional Services to additional Service Locations to renew at the expiration of a Term, actual termination of Services will not occur until the later of the end of the then-current Term or thirty (30) days after receipt of that notification. If you elect to terminate the Agreement or any orders for Services before Services are installed and available for your use, you must do so in writing, and you shall pay to TPx Communications as a pre-installation charge (“Cancellation 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) if your Services require a third party that we contract with to provide some or all of the underlying services, a charge from the third party, which as a result of your cancellation, we become obligated to pay, and (3), if this Agreement is for a Term of one year, an amount equal to three times the one month recurring charges, or, if this Agreement is for a Term of more than one year, an amount equal to six times the one month

recurring charges. You agree that such a termination charge is a reasonable amount because, among other reasons, it would be difficult or impossible to calculate the exact amount of damages suffered by us if you terminate this Agreement or any orders for Services.

(b) Either party may terminate this Agreement upon thirty (30) day notice if the other party materially breaches the terms and conditions of this Agreement and the other party fails to cure the default within the 30-day period, including, but not limited to, your failure to pay our invoices for the Services by the Pay By Date. If you terminate this Agreement after our material breach, then you will be responsible only for charges for the period before the date of termination. If, however, we terminate this Agreement as a result of your material breach, or you terminate this Agreement or any Services provided to you for any reason other than our material breach, you shall pay to us a termination charge as follows:

(i) If Service Term is equal to or less than thirty-six (36) months:

(A) If the effective date of the termination occurs before the last year of the Initial or Renewal Term, we will determine the termination charge (also referred to herein as "ETF") as though you had elected an Initial Term ending within the Term year in which you terminate ("Revised Alternate Term"). For example, if you terminate in the 13th month of a three year Term, the Revised Alternate Term would be two years. We will also determine the monthly recurring charge ("MRC") that would have applied if you had chosen the Revised Alternate Term when you first selected a Term ("Default MRC"). You will then pay us a termination charge equal to: (1) the non-recurring charges for the terminated Services, even if those charges had been initially waived (only applies during Initial Term); (2) the difference between the monthly recurring charges you actually paid for the terminated Services through the effective date of termination and the Default MRCs that would have applied under a Revised Alternate Term; and (3) fifty percent (50%) of the Default MRCs for the period starting with the effective date of termination and ending on the expiration of the Revised Alternate Term. If your Services require a third party to provide some or all of the underlying services, in addition to the termination charge calculation stated above, you shall pay a charge from the third party, which as a result of your termination we become obligated to pay for the portion of your Service provided by a third party .

(B) If the effective date of the termination occurs during the last year of the Initial or Renewal Term, you will pay us a termination charge equal to: (1) The non-recurring charges for the terminated Services, even if those charges had been initially waived (only applies during Initial Term); and (2) 50% of the monthly recurring charges for the period starting with the effective date of termination and ending on the expiration of the Initial or Renewal Term.

(ii) If Service Term is greater than thirty-six (36) months, the ETF will be calculated as specified in section 4, paragraph (b) subparagraph (i) above for a termination within the first thirty-six (36) months. Thereafter, for terminations after the thirty-sixth (36<sup>th</sup>) month, the ETF will be twenty-five percent (25%) of the remaining months of MRCs.

If you terminate this Agreement or any Services provided to you for any reason other than our material breach, you shall provide us with written notice to [retention@tpx.com](mailto:retention@tpx.com) thirty (30) 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 you do not give us that notice, then the effective date of termination shall be the date we terminate this Agreement. For partial months, remaining monthly recurring charges will be determined on a prorated basis.

(c) If you request that we move your Services from your current Service Location to a different Service Location, you may incur a non-recurring charge ("Move Charge"). The Move Charge may include (i) a termination charge which, as a result of your termination, we become 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.

All termination charges are due and payable immediately on the effective date of termination (including the 50% of remaining monthly recurring charges), and are in addition to any monthly recurring charges, usage charges and other charges due as of effective date of termination.

You agree that each of the above termination charges is a reasonable amount to compensate us for lost MRCs and usage charges following termination. You agree because, among other reasons, it would be difficult or impossible to calculate the exact amount of such damages suffered by us if you terminate this Agreement or any orders for Services.

(d) In addition to any other recoveries we are entitled to, we shall be entitled to recover from you for undisputed payment delinquencies all of the costs we incur (including court costs and reasonable attorneys' fees) to collect any delinquent charges owed by you along with all other damages we incur as a result of your breach or other termination of this Agreement, including without limitation termination charges, past due recurring and usage charges, any damage to our equipment, any promotional credits provided to you and any amounts we have to pay to third parties because of violations by you of our AUP. Notwithstanding the foregoing, if you are determined to be the prevailing party, you shall be entitled to recover reasonable attorneys' fees and court costs.

(e) Sections 4–6 of this Agreement, inclusive of sub-sections, shall survive any termination or expiration of this Agreement.

## 5. Warranty Disclaimer, Limitation of Liability and Indemnity

(a) WARRANTY DISCLAIMER. WITHOUT LIMITING ANY EXPRESS FINANCIAL OR LIABILITY PROVISIONS PROVIDED FOR IN THIS AGREEMENT, NEITHER PARTY SHALL BE LIABLE TO THE OTHER FOR ANY INDIRECT, CONSEQUENTIAL, EXEMPLARY, SPECIAL, INCIDENTAL OR PUNITIVE DAMAGES (INCLUDING, WITHOUT LIMITATION, LOST BUSINESS, REVENUE, PROFITS, OR GOODWILL) ARISING IN CONNECTION WITH THIS AGREEMENT OR THE PROVISION OF SERVICES UNDER THIS AGREEMENT (INCLUDING ANY SERVICE IMPLEMENTATION DELAYS/FAILURES), UNDER ANY THEORY INCLUDING WITHOUT LIMITATION TORT, CONTRACT, WARRANTY, STATUTE, STRICT LIABILITY OR NEGLIGENCE, EVEN IF THE PARTY HAS BEEN ADVISED, KNEW OR SHOULD HAVE KNOWN OF THE POSSIBILITY OF SUCH DAMAGES. WE MAKE NO WARRANTIES, EXPRESS OR IMPLIED, AS TO ANY SERVICE PROVIDED. WE SPECIFICALLY DISCLAIM 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.

(b) Credit Allowances for Interruption of Service. If an interruption or failure of Service is caused solely by us and not by you or any third party agent, carrier, vendor, employee, or representative of yours or other causes beyond our reasonable control, you may be entitled to a credit allowance not to exceed an amount equivalent to the proportionate charge to you for the affected Service for the time period from the time of your report to us of the Service interruption to the time Service is restored, not to exceed in any month, the total monthly recurring charge owed by you for the affected Service in that month. The specific service levels, related credits and steps you must take to apply for credits are available on our website at [www.tpx.com/sla](http://www.tpx.com/sla). We shall not be liable for any act or omission of any other entity furnishing you with facilities or equipment used with the Services, nor shall we be liable for any damages or losses due in whole or in part to your fault or negligence or due in whole or in part to the failure of equipment or facilities that you provide.

(c) LIMITATION OF LIABILITY. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, NEITHER YOU NOR WE SHALL BE ENTITLED TO RECEIVE PUNITIVE, INCIDENTAL, EXEMPLARY, CONSEQUENTIAL, RELIANCE OR SPECIAL DAMAGES (INCLUDING DAMAGES FOR LOST PROFITS). ACCORDINGLY, NOTWITHSTANDING THE PROVISIONS OF SUB-SECTION (a) OF THIS

SECTION 5, OUR TOTAL LIABILITY UNDER THIS AGREEMENT SHALL IN NO EVENT EXCEED THE LESSER OF (1) YOUR PROVEN DIRECT DAMAGES, (2) THE AMOUNTS YOU PAID TO US FOR THE SERVICES DURING THE PERIOD IN WHICH ANY SERVICE-RELATED PROBLEMS WERE EXPERIENCED, OR (3) THE CREDITS AVAILABLE TO YOU UNDER OUR TARIFFED LIMITATION OF LIABILITY. THE FOREGOING LIMITATIONS APPLY TO ALL DISPUTES, CAUSES OF ACTION AND CLAIMS, INCLUDING WITHOUT LIMITATION BREACH OF CONTRACT, BREACH OF WARRANTY, NEGLIGENCE, STRICT LIABILITY, MISREPRESENTATION AND OTHER TORTS.

(d) Indemnification. You will defend, indemnify and hold us harmless (including our 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 your use of the Services. This indemnity will not be available if the damage or loss is due to our willful or reckless acts or omissions. Subject to the limitation of liability set forth in sub-section (c) of this Section, we will defend, indemnify and hold you harmless (including your officers, directors, employees, agents, licensees or contractors) from any claims, liabilities, losses, damages and expenses (including reasonable attorneys' fees and court costs), arising out of or relating to our delivery of the Services to you. This indemnity will not be available if the damage or loss is due to your willful or reckless acts or omissions.

#### **6. 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 this Agreement, you and we 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.** As used in this Agreement, "dispute" means any cause of action, claim, case, and/or controversy of any kind arising out of or in any way related to this Agreement, any amendments or addenda to this Agreement, and/or the subject matter of this Agreement.

(b) No Class or Representative Actions or Arbitrations. **You and we expressly agree that any dispute is personal to us, and any such dispute shall only be resolved by an individual arbitration and shall not be brought as a class arbitration, a class action, or any other representative proceeding unless such agreement is not consistent with applicable state law. Neither party agrees to class arbitration, or an arbitration where a person brings a dispute as a representative of any other person or persons except where not permitted by applicable state law. Neither you nor we agree that a dispute can be brought as a class or representative action whether inside or outside of arbitration, or on behalf of any other person or persons.**

(c) The Federal Arbitration Act Applies. This Agreement affects interstate commerce and the enforceability of Section 6 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. The arbitrator and the parties shall maintain the confidentiality of any proceedings, including but not limited to, any and all information gathered, prepared, and presented for purposes of the arbitration or related to the dispute(s) therein. The arbitrator shall have the authority to make appropriate rulings to safeguard that confidentiality, unless the law provides to the contrary.

(e) Arbitration Procedures. If you and we cannot resolve between ourselves any dispute, you and we shall promptly submit the dispute to binding arbitration at the office of the American Arbitration Association ("AAA") located in the City or County of the state where the services are provided, or, if there is no AAA office at that location, then at the AAA office closest to where the services are provided. Either party may initiate arbitration by providing written demand for arbitration (with a copy to the other party), a copy of this 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](http://www.adr.org), by calling 1-800-778-7879, or by mail at 120 Broadway, Floor 21, New York, NY 10271. By entering into this Agreement, you either (1) acknowledge that you have read and understand the AAA Rules or (2) waive reading the AAA Rules and waive any claim that the current AAA Rules are unfair in any way. You and we agree that the AAA Rules shall be subject to the terms of this 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 this 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 shall not include: (a) the power to determine the question of arbitrability, which power you and we agree shall 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 this Agreement as stated above (Section 6(b)).
- (ii) To the maximum extent permitted by applicable law, each party shall bear the cost of preparing and presenting its case in an arbitration unless the arbitration award provides otherwise.
- (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 shall be subject to the provisions of this Agreement, our applicable tariffs, if any, and any other applicable law. In making any award, the arbitrator will be restricted by the Limitation of Liability provisions in this Agreement (Section 5(c)), and will not be entitled to award, nor shall 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 or by the AAA Rules, that restriction will only be enforced to the extent permitted by such law or rules.

## 7. Miscellaneous Provisions

- (a) **Assignment and Succession.** You may not assign or transfer this Agreement without our prior written consent, which shall not be unreasonably withheld. Any unauthorized assignment or transfer shall be null and void. Subject to the foregoing, this Agreement shall be binding upon and inure to the benefit of the parties and their respective heirs, executors, administrators, legal representatives, successor and authorized assigns.
- (b) **Governing Law.** With the exception that the enforceability of Section 6 is governed both procedurally and substantively by the FAA (as stated above), this Agreement shall be construed pursuant to the laws of the state where (i) the preponderance of services are provided (as determined by MRCs) and (ii) we are certificated to provide telecommunication services without regard to the conflicts of law provisions thereof.
- (c) **Force Majeure.** We shall not be liable for any failure of performance of the Services due to causes beyond our control, including, but not limited to, 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, or any other governmental agency, including state and local governments having jurisdiction over us or the Services provided hereunder.
- (d) **Entire Agreement and Modifications.** This Agreement and all other documents specifically referred to in this Agreement constitute the entire and final agreement and understanding between you and us



with respect to the subject matter of this 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 this Agreement are integral parts of this Agreement and are made a part of this Agreement. This Agreement may only be modified or supplemented by an instrument in writing executed by both your and our duly authorized representatives or by a written notice of change pursuant to Section 1(b) hereof.

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

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

(g) **Waiver.** Under no circumstances shall either party's failure to enforce any provision of this Agreement in any particular instance be construed as a waiver of that provision.

(h) **Notices.** All notices from you to us 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, 47th Floor, Los Angeles, CA 90071-2201. If you are notifying us that you do not wish to renew Services, your written notice may be by a letter delivered in that manner or by an email to: [retention@tpx.com](mailto:retention@tpx.com).

(i) **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.

## **8. 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.