

**IMPORTANT: THESE GENERAL TERMS AND CONDITIONS APPLY TO THE USE OF ALL TPX SERVICES AND EQUIPMENT AND INCLUDE A WAIVER OF CUSTOMER'S RIGHT TO CLASS ACTIONS.**

These general terms and conditions (the "**General Terms and Conditions**" or "**GTCs**") are incorporated into each Service Order, and collectively with the Service Order and any applicable Service Specific Terms, form the "**Agreement**" between the parties. The Agreement is effective as of the Service Order Effective Date and shall continue in full force and effect through the expiration of the last Service Term, as defined in Article I(C) (the "**Agreement Term**") unless terminated earlier in accordance with these GTCs. "**TPx**" and "**Customer**" as used herein shall mean the respective TPx and Customer entities that entered into the Service Order.

**I. Services; Service Term**

- A. Services; Third-Party Products; Entitlements. TPx will provide Customer with the services and equipment identified and itemized in an applicable Service Order, in accordance with the Agreement, and any applicable Service Specific Terms (the "**Services**"). The Services may include certain products and/or services that are proprietary to a third-party and are either integrated into the Services or are resold by TPx as a part of the Services ("**Third-Party Products**"). Services may include a specific number of users or a set of features ("**Entitlements**") in the Service Order, and any changes to Entitlements may be subject to additional charges as set forth in Article II, Section D.
- B. Professional Services. In addition to any standard installation services offered as a part of the Services, TPx may agree to separately provide Customer with certain professional services as further described in an applicable statement of work ("**Professional Services**"). Except for standard installation services, the scope of Professional Services, along with the applicable term length, renewal terms and fees shall be as set forth in the applicable statement of work, which together with these GTCs shall form the Agreement for the applicable Professional Services. Notwithstanding Article V, no changes to a statement of work can be made without a formal change order mutually executed by the parties.
- C. Service Term; Service Commencement; Renewals. The Initial Service Term is set forth in the Service Order and, except where otherwise expressly set forth in the applicable Service Specific Terms, shall commence on the date that TPx provides notice to Customer that the applicable Services have been initiated for the Service Location(s), with any applicable Third-Party Products purchased and assigned to Customer ("**Service Commencement**"). Customer understands that Service Commencement precedes the full delivery of the Service, where the configured Service is fully available for Customer's use ("**Service Delivery**"). TPx will send Customer a notice of Service Delivery and Customer has five (5) days after receiving the notice of Service Delivery to reject the delivery of the Services for a material non-conformity or the Services are deemed to have been accepted. Upon curing the material non-conformity, TPx will issue a new notice of Service Delivery. Unless otherwise agreed to in a Service Order or as otherwise expressly set forth in the applicable Service Specific Terms, upon expiration of the Initial Term, the Services automatically renew for successive one (1) year periods at TPx's then current list rates (each, a "**Renewal Service Term**"). Either party may opt out of an automatic renewal by providing ninety (90) days' written notice prior to the expiration of the then current Service Term ("**Notice of Non-Renewal**"). The Initial Service Term, together with and any applicable Renewal Service Term(s) shall collectively form the "**Service Term.**"

**II. Service Charges**

- A. Service Charges. Customer is responsible for the payment of all (i) Non-Recurring Charges ("**NRC**") and Monthly Recurring Charges ("**MRC**") set forth in the Service Order, and (ii) all other applicable charges set forth in this Article II (collectively, "**Service Charges**").
- B. Usage & Other Charges. In addition to the NRC and MRC charges in the Service Order, certain Services are subject to usage and/or other charges as listed at <https://www.tpx.com/terms/rates-fees/> ("**Usage and Other Charges**").
- C. Taxes & Other Government Fees and Surcharges. Customer is responsible for the payment of all federal, state and local sales and use taxes and other government fees and surcharges identified in the invoice and otherwise listed at <https://www.tpx.com/terms/rates-fees/>. TPx is responsible for its own income taxes. Any tax-exempt status must be proved through a certificate of exemption.
- D. Moves, Additions, Changes to the Services. Customer acknowledges that the NRC and MRC in the Service Order are based solely on the original Services, Locations and Entitlements, and that no moves, additions, or changes to the Services, Locations or Entitlements are included in those charges. If Customer requests any change to Services, Locations or Entitlements, Customer shall pay all applicable change fees and labor charges listed at <https://www.tpx.com/terms/rates-fees/> and early termination fees incurred by TPx from the providers of Third-Party Products that TPx cannot reasonably avoid or mitigate. Additional

- E. Expedite Fee. Customer may request expedited Service Commencement and Delivery of certain Services by paying an additional fee (the "**Expedite Fee**") as set forth at [www.tpx.com/terms/rates-fees](http://www.tpx.com/terms/rates-fees). In exchange for the Expedite Fee, TPx will prioritize the Service Commencement and Delivery of the applicable Services to the extent within TPx's reasonable control. TPx does not guarantee any Service Commencement or Delivery date and no credit or refund of the Expedite Fee is available.

### III. Equipment; Equipment Charges

- A. Equipment. Customer premises equipment may be obtained through TPx on either a rental or a purchase basis (in either case, "**Equipment**"). All Equipment is provided by TPx as Third-Party Products and, except where expressly agreed to by TPx in the Agreement, any Customer premises equipment obtained through other providers will be considered Excluded Products (as defined in Article VI (C)).
- B. Equipment Rental. The commencement and length of the rental period for Equipment shall be equivalent to the Service Term as set forth in the applicable Service Order, unless terminated earlier in accordance with the Agreement (the "**Rental Period**").
  - 1) *Permitted Use*. Customer shall only use the rented Equipment consistent with its intended purpose, and in connection with the receipt and use of applicable TPx Services. Customer will follow all TPx instructions regarding the use and maintenance of the rented Equipment. Customer shall not move the rented Equipment from its applicable Service Location or sublease or sublicense use of the Equipment to another party without TPx prior written consent.
  - 2) *Title and Risk of Loss*. Title to Equipment rented by Customer shall at all times be retained by TPx, and Customer shall not acquire any right, title, or interest in the rented Equipment. Customer shall not encumber the Equipment in any way. Customer shall bear all risk of loss, damage, destruction, or theft to or of the rented Equipment from any cause whatsoever, except to the extent caused directly by TPx's willful misconduct or negligence. Risk of loss shall not transfer back to TPx until the rented Equipment has been returned to TPx.
  - 3) *Return; Condition*. Customer shall return the rented Equipment to TPx in accordance with this subsection no later than thirty (30) days after the expiration or earlier termination of the Rental Period, or as requested by TPx in accordance with subsection 4 below. Customer, at its own risk and expense, shall properly pack the rented Equipment and have the rented Equipment returned, freight pre-paid, to TPx's designated facility by delivering the rented Equipment on board such carrier as specified by TPx. All rented Equipment shall be returned to TPx (i) free and clear of all liens, and (ii) in the same condition as when delivered to Customer (ordinary wear and tear excepted). Rented Equipment shall be considered returned only when all aspects of this subsection are satisfied.
  - 4) *Support & Replacement*. TPx will provide, so long as Customer is not in breach of the Agreement, commercially reasonable maintenance and support for rented Equipment, including software updates, patches, and replacements where the need arises from manufacturer defects, recalls, or ordinary wear or tear. TPx may also, at its sole discretion, replace rental Equipment as reasonably required to stay current with manufacturer support or TPx Service requirements. TPx may utilize new or used Equipment, provided they offer equivalent functionality. For avoidance of doubt, TPx is under no obligation to repair or replace rented Equipment that is lost, stolen, or damaged by non-ordinary wear and tear or where Customer otherwise uses the rented Equipment in violation of this Section B.
  - 5) *Rental Charges; Reimbursement Charges*. Customer will pay all rental charges (in the form of MRC) as established in the applicable Service Order and in accordance with the Agreement. Customer agrees to pay TPx, in addition to any rental charges, an Equipment reimbursement charge where Customer fails to return the equipment in accordance with this Section B or where TPx replaces Equipment that is lost, stolen or damaged by non-ordinary wear and tear. The Equipment reimbursement charge will cover the pass-through expenses of TPx's purchase of replacement Equipment along with any shipping and other incidental costs. Where Customer returns the rented Equipment prior to the expiration of the Rental Period for any reason other than TPx's material breach, or in accordance with Section 4, Customer shall pay a \$25 per unit restock fee in addition to any other Early Termination Fees in accordance with Article VIII as may be applicable.

- C. Equipment Purchase. The provisions of this Agreement, including this section shall control over any purchase order submitted to TPx, which shall be for administrative purposes only. Except as otherwise expressly provided for herein, all sales of Equipment are final and Customer has no right of return.
- 1) *Shipping Terms; Title and Risk of Loss*. Equipment is sold CPT Customer's Service Location (INCOTERMS 2020®), and title to the Equipment shall pass simultaneously with the risk of loss in accordance therewith. Equipment will be delivered by TPx within a reasonable time after the execution of the applicable Service Order, and otherwise as agreed to between the parties in writing.
  - 2) *Equipment Warranties; Maintenance & Support*. TPx shall pass through or otherwise assign any warranty made available from the original equipment manufacturer. TPx will provide maintenance and support for the Equipment as a part of the applicable Service for so long as (i) Customer remains under contract with TPx for the applicable Services, (ii) is current on its payment obligations, and (iii) the Equipment remains within the manufacturer's warranty period. TPx may, but shall have no obligation to provide maintenance and support for Equipment beyond the manufacturer's warranty period. TPx will provide return material authorization (RMA) support for the return of Equipment in accordance with the manufacturers designated RMA process.
  - 3) *Equipment Purchase Charges*. Except where Customer elects to purchase the Equipment under an Installment Payment plan, charges for purchased Equipment will include the Equipment price set forth in the applicable Service Order, along with shipping and handling charges and taxes, as may be applicable. Equipment purchases will be invoiced at the time of delivery for aggregate Equipment purchases under \$3000. On aggregate Equipment purchases that are \$3000 or more, TPx requires a 50% down payment, invoiced upon signature of the applicable Service Order. Equipment will not be shipped, and any related Services will not be provisioned until the 50% down payment is received.
  - 4) *Security Interest*. Customer hereby grants to TPx a security interest in all Equipment purchased pursuant to this Agreement, whether through an Installment Payment plan or otherwise, to secure Customer's payment obligations for the Equipment hereunder. Customer acknowledges that the security interest granted herein is a purchase money security interest under the laws of the applicable state where the Equipment is delivered. TPx may file a financing statement for such security interest, and Customer shall execute such statements as necessary to perfect TPx security interest in the Equipment.
- D. Acceptance; Inspection Obligation. All Equipment provided by TPx, whether rented or purchased must be inspected by Customer promptly upon its receipt (and in no event more than two (2) days thereafter) (the "**Equipment Inspection Period**"). Customer will be deemed to have accepted the Equipment unless it notifies TPx in writing within two (2) days of receipt of the Equipment of its rejection for a material non-conformity. If Customer timely rejects the Equipment for a material non-conformity, TPx will replace the non-conforming Equipment within a commercially reasonable time, taking into account, without limitation, manufacturer lead times. Customer shall ship, at its own expense, the non-conforming Equipment to the location directed by TPx. Customer acknowledges that TPx's obligation to replace the Equipment as set forth in this Section D is the sole and exclusive remedy for the delivery of materially non-conforming Equipment.

#### IV. Invoicing & Payment

- A. Invoicing. TPx will begin invoicing Customer for the Service Charges after Service Commencement of the applicable Services. All MRC will be invoiced monthly in advance and all Usage Charges will be invoiced the month after the usage occurs.
- B. Back-Billing. TPx will endeavor to bill Customer for charges on a timely basis. However, Customer will be liable for all charges irrespective of any billing delays due to error, incomplete data, negligence, or any other reason. No such billing delay shall be considered a 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.
- C. Payment; Payment Disputes. Invoices are due and payable in U.S. Dollars upon presentation and become past due after the Pay by Date on the invoice. If Customer has a bona fide dispute with any invoiced amounts ("**Payment Dispute**"), it will pay all non-disputed amounts by the Pay by Date and provide TPx with a written notice that clearly identifies the scope and value of the Payment Dispute with supporting documentation. Payment Dispute notices must be received by TPx within forty-five (45) days after Customer's receipt of the invoice or Customer's right to dispute the invoiced charges will be waived. If the parties cannot promptly agree to a resolution of the Payment Dispute, the parties shall resolve it in accordance with the dispute resolution process established in Article VII. No late fees shall apply to any amounts subject to a good faith Payment Dispute. If Customer fails to pay all non-disputed amounts on an invoice by the Pay by Date, TPx may charge a late fee 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.

- D. Adequate Assurances. TPx may require that Customer provide a deposit or other assurance of payment (i) before any Services are added or changed, (ii) at any time where Customer fails to remain current on its payment obligations, or (iii) at any time where TPx has reasonable grounds for insecurity with respect to Customer's obligation to make payments. Any required deposit will not bear interest unless required by law.
- E. No Setoff or Credit Allowances for Equipment or Installment Payments. Customer shall not, and acknowledges that it will have no right, under this Agreement, or any other agreement or law, to withhold, offset, recoup or debit any amounts owed (or to become due and owing) to TPx associated with Equipment or Installment Payments, whether under this Agreement or otherwise, against any other amount owed (or to become due and owing) to it by TPx, whether related to TPx's breach or non-performance of this Agreement or any other agreement between Customer and TPx. Customer also acknowledges that no flex checks, service credits or any other credit offered by TPx may be applied against Equipment or Installment Payments.
- F. Installment Payment Plans. TPx may offer to convert certain NRC or Equipment purchase charges into an interest-bearing installment payment plan. Where agreed to in the applicable Service Order, such installment payments will be charged monthly at the rates, and inclusive of the interest rates, set forth therein ("**Installment Payments**"). Unless agreed to otherwise within the applicable Service Order, the Installment Payments will be paid for the duration of the Initial Service Term and do not include taxes or shipping and handling fees, as may be applicable.
  - 1) *Separate & Independent Transaction; Right to Accelerate Payment*. Customer acknowledges and understands that the Installment Payments are separate and independent from Customer's obligation to make payments for the Services, and that, in accordance with Article IV, Section C, Customer has no right to setoff payments or apply credits against Installment Payments. Customer's obligation to make Installment Payments shall survive termination of the Agreement for any reason, and where the Agreement is terminated early by Customer, or where Customer otherwise defaults under this Agreement (including its failure to make timely payments when due), TPx may declare any remaining Installment Payments immediately due and payable and invoice the remaining Installment Payments upon termination.

#### V. Updates to Services & Service Charges

- A. Service Updates. TPx may, in its sole discretion, change the Services and/or Service Specific Terms in order to remain current with industry and technological trends and practices or to adopt updated or upgraded Third-Party Products ("**Service Updates**"). Service Updates are effective immediately upon implementation except as expressly set forth in this Section A. Except for situations where TPx makes such Service Updates to maintain business continuity or security, TPx will publish advance notice of any material Service Updates on its website or the Customer Portal in accordance with TPx's standard product release schedule. Provided that the Service Updates do not materially degrade the quality or security of the Services or increase the Service Charges, Customer agrees to such Service Updates. Except as set forth in subsections (1) and (2) below, if Customer shows that the quality or security of the Services is materially degraded as a result of the Service Updates or if TPx increases the Service Charges, Customer may reject the Service Updates by giving TPx written Notice of its rejection not more than thirty (30) days after such Service Update's implementation. TPx and Customer will negotiate in good faith a resolution to the rejected Service Updates.
  - 1) *Service Sunsetting*. Certain Services or components thereof may be scheduled by TPx or its Third-Party Product providers to be discontinued ("**Service Sunsetting**"). Notwithstanding subsection A above, where a Service Sunset is scheduled within the Service Term, TPx will provide Customer with at least ninety (90) days' advance notice, and Customer shall either (a) accept the replaced or upgraded Service or service component(s) ("**Successor Service**") and, where applicable, accept any Service Charge Revision for the Successor Service, or (b) terminate the impacted Service when sunsetted, without any early termination liability.
  - 2) *Unforeseen Conditions*. If TPx encounters unforeseen conditions in a Customer's Service Location or network environment after executing the Service Order that preclude or materially impact TPx's installation or provision of Services, TPx will notify Customer and indicate (i) the required changes in technology, construction or infrastructure needed to enable TPx's Services, and (ii) any increases in Service Charges associated with the changes. Notwithstanding subsection 1 above, Customer will have five (5) business days after TPx provides notice to accept or reject the changes in writing. If no rejection is received within five (5) business days, Customer is deemed to have accepted the changes detailed in the notice. TPx may suspend or otherwise delay installation or provisioning while awaiting Customer's response. Where Customer rejects the requirements in the notice, either party may terminate the impacted Services without any further liability to the other party. Customer's right to terminate under this subsection is Customer's sole and exclusive remedy, and TPx shall have no liability to Customer (damages or otherwise) for Customer's exercise of this remedy.

- B. Service Charge Revisions. TPx may increase the Service Charges during the Service Term as set forth below:
- 1) *Change in Entitlements*. If Customer requests a change in its Entitlements, Customer agrees to pay additional MRC associated with the change in Entitlements and other NRC amounts that may be charged under the Agreement.
  - 2) *Third-Party Product Costs*. Where TPx incurs increased charges from its Third-Party Product providers, TPx may pass through, and Customer shall pay, for the increased charges.
  - 3) *Service Sunsetting*. Where TPx, as a result of Service Sunsetting, offers a Successor Service, Customer, in accordance with Subsection A (1) above, shall pay the additional costs associated with the Successor Service.
  - 4) *Other*. TPx may increase the Service Charges for reasons other than those set forth in subsections 1-3 provided that TPx gives Customer thirty (30) days' prior written notice. Where TPx increases the total Service Charges under the invoice by more than 5% in any one year pursuant to this subsection (4), Customer may reject the Service Charge Revision by giving TPx written notice of its rejection not more than five (5) business days after TPx's notice of the Service Charge Revision. TPx and Customer will negotiate in good faith a resolution to the rejected Service Charge Revision, and if no resolution is made thirty (30) days into negotiations, Customer may terminate the impacted Services without further liability to TPx. Customer's right to terminate under this subsection 4 is Customer's sole and exclusive remedy, and TPx shall have no liability to Customer (damages or otherwise) for Customer's exercise of this remedy. For avoidance of doubt, Customer's right to reject does not apply to any Service Charge Revisions resulting from subsections 1-3.

## VI. Customer's Obligations

- A. Installation & Provisioning. After a Service Order is executed or TPx approves changes to Customer Entitlements, Customer shall promptly coordinate with and support TPx in the installation and/or provisioning of the Services and Entitlements. Where onsite installation is required, Customer will provide the space, network, wiring, electrical power, and environmental conditions suitable for, and compatible with, the applicable Service. Customer's failure to timely provide coordination and support that is reasonably requested by TPx shall constitute a material breach by Customer. Where Customer fails to provide specific details, Customer agrees that TPx may configure the Services or otherwise provide the Entitlements based upon (i) prior written communications prepared by or for Customer, (ii) industry knowledge, or (iii) any other available information.
- 1) *Approvals, Consents & Permits*. Customer shall obtain all necessary approvals, consents, applicable permits and/or use fees, if any, necessary for TPx or its subcontractors to install, provision and otherwise provide the Services by the Service Commencement Date.
- B. Use of Services; Acceptable Use Policy; No Resale. Customer will not use the Services for any unlawful, abusive or fraudulent purpose and will use the Services consistent with this Agreement, the TPx Acceptable Use Policy ("AUP") at [www.tpx.com/policies/acceptable-use-policy](http://www.tpx.com/policies/acceptable-use-policy), and all applicable terms and conditions for Third-Party Products ("**Third-Party Terms**"). Resale, distribution or sublicensing of all or any portion of the Services is prohibited, and Customer's use shall be for its internal business purposes only. Customer's violation of this section or its subsections shall constitute a material breach and, without limiting any other available remedies, TPx may immediately suspend the Services.
- 1) *Customer Data*. Except as expressly set forth in this Agreement or an applicable data processing agreement between the parties, as between TPx and Customer, Customer is solely responsible for the information it makes available, stores or transmits through the Services ("**Customer Data**"), and Customer represents and warrants that the Customer Data will not (a) violate any terms of this Agreement or any Third-Party Terms, or (b) infringe upon or otherwise violate any copyright, patent, or other intellectual property rights of a third party. Customer hereby consents to the access and processing of the Customer Data as reasonably required by TPx to perform the Services and represents and warrants that it has obtained any and all necessary consents, licenses or other applicable authorizations from its employees, customers, or other third parties required for TPx to lawfully process the Customer Data and any Personal Data contained therein. Customer also agrees that it will not store, transmit, or otherwise process Sensitive Categories of Personal Data (as defined by applicable privacy laws) in its use of the Services, except as expressly agreed to in a data processing agreement that specifies the Sensitive Categories of Personal Data being processed.
  - 2) *Usage Data*. TPx may collect and analyze data and other information relating to the provision, use and performance of the Services in order to improve and enhance the Services ("**Usage Data**"). TPx may disclose Usage Data to other customers and third parties provided that the Usage Data is anonymized and aggregated such that it will not identify the Customer or its users.
  - 3) *Customer-Specific Laws*. Customer is and shall remain responsible for compliance with any statute, law, ordinance, regulation, rule, code, order, or any other requirement of any federal, state, local government, or political subdivision

thereof ("**Applicable Law**") including those that relate to Customer's business and operations ("**Customer-Specific Laws**"). TPx will comply with Customer-Specific Laws only to the extent such Customer-Specific Laws are expressly identified in the Agreement or to the extent generally applicable to TPx's Services and operations.

- C. **Service Dependencies; Excluded Products.** TPx Services may be dependent on certain networks, equipment, or other services ("**Service Dependencies**") acquired by Customer either from TPx (either as Services or Equipment), or a provider other than TPx ("**Excluded Products**"). Customer must adhere to all TPx instructions with regard to the use of TPx Services and Equipment, and except where expressly provided by TPx as a part of an Agreement, Customer must ensure that any Excluded Products and its facilities (including, without limitation, adequate power supplies) which TPx Services are dependent upon are acquired, configured, and maintained by Customer as necessary for TPx to provide the Services, at Customer's sole cost. Customer will provide reasonable access as necessary for TPx to perform the Services (whether onsite or remote). TPX DISCLAIMS ANY AND ALL LIABILITY FOR SERVICE INTERRUPTIONS, IMPAIRMENTS, OR ANY OTHER LOSSES CAUSED BY EXCLUDED PRODUCTS OR BY CUSTOMER'S FAILURE TO ADHERE TO THIS SECTION.
- D. **Third-Party Products.** Customer must allow TPx to maintain Third-Party Products to be current in their updates and patches and remain under effective support terms with their respective licensor or manufacturer. TPx will manage the updates as further detailed in the applicable Service Specific Terms for all Third-Party Products. For avoidance of doubt, the preceding requirement may in turn require Customer to purchase new Equipment. Except where expressly agreed to in the Agreement, Customer is SOLELY RESPONSIBLE for ensuring all Excluded Products remain current in their updates and patches as necessary for TPx to provide the Services, and otherwise remain under effective support terms with their respective licensor or manufacturer. Customer's violation of this section will constitute a material breach, and without limiting any other available remedies, TPx may immediately suspend or terminate the impacted Services.
- E. **Customer Control and Security.** Except as expressly set forth in this Agreement, and in addition to Customer's responsibilities in Section (B)(1) of this Article VI, Customer has and will retain sole responsibility for (a) Customer's information technology infrastructure, including, without limitation, computers, software, databases, electronic systems, and networks to the extent not expressly provided by TPx as a part of the Services ("Customer Systems"), and (b) the security and use of any Customer user access credentials provided as a part of the Services and the resulting access to Customer Systems, with or without Customer's knowledge or consent. Customer shall employ all physical, administrative, and technical controls, screening, and security procedures and other safeguards necessary to: (i) securely administer access to the Services in strict accordance with the Agreement and protect against any unauthorized access to or use of the Services; and, (ii) control the content and use of Customer Data. CUSTOMER ACKNOWLEDGES THAT TPX (ITS EMPLOYEES, AGENTS, REPRESENTATIVES, AND SUBCONTRACTORS) DOES NOT MAKE ANY REPRESENTATIONS OR WARRANTIES CONCERNING THE SECURITY OF CUSTOMER'S SYSTEMS OR THE SERVICES. TPX EXPRESSLY DISCLAIMS ANY WARRANTIES RELATING TO THE SECURITY OF CUSTOMER'S SYSTEMS OR THE SERVICES.

## VII. Confidentiality

- A. **Confidential Information.** "**Confidential Information**" means any business or technical information disclosed by one party to the other party, including Customer Data, which is identified as confidential at disclosure or that under the circumstances, a person exercising reasonable business judgment would understand it to be confidential or proprietary.
- B. **Use and Nondisclosure.** A receiving party will not use the disclosing party's Confidential Information except as necessary under this Agreement and will not disclose Confidential Information to any third party except to those of its employees, agents and contractors who have a business need to know such Confidential Information; provided that each such employee, agent and contractor is bound to confidentiality restrictions at least as restrictive as the terms set forth herein. Each receiving party will protect the disclosing party's Confidential Information from unauthorized use and disclosure using efforts equivalent to the efforts that the receiving party uses with respect to its own confidential information and in no event less than a reasonable standard of care. The provisions of this article will remain in effect during the Service Term and for a period of two (2) years after the expiration or termination thereof, except with regard to trade secrets of the disclosing party, which will be held in confidence for as long as such information remains a trade secret.
- C. **Exclusions.** The obligations and restrictions set forth in this article will not apply to information that: (i) is or becomes generally known to the public through no fault of or breach of this Agreement by the receiving party; (ii) is rightfully known by the receiving party at the time of disclosure; (iii) is independently developed by the receiving party without access to the disclosing party's Confidential Information; or (iv) the receiving party rightfully obtains from a third party who has the right to disclose such information without breach of any confidentiality obligation to the disclosing party.

- D. Permitted Disclosures. The provisions of this article will not restrict either party from disclosing the other party's Confidential Information: (i) pursuant to the order or requirement of a court, administrative agency, or other governmental body; provided that to the extent legally permitted, the party required to make such a disclosure gives reasonable notice to the other party to enable it to contest such order or requirement or limit the scope of such request; (ii) on a confidential basis to its legal or professional financial advisors.
- E. Injunctive Relief. The receiving party acknowledges that disclosure of Confidential Information could cause substantial harm for which damages alone may not be a sufficient remedy, and that upon any breach of this Article, the disclosing party will be entitled to seek appropriate equitable relief in addition to whatever other remedies it might have at law.

### VIII. Exclusive Dispute Resolution Mechanism; Termination Rights and Remedies

- A. Exclusive Dispute Resolution Mechanism. The parties shall resolve any dispute, controversy or claim arising out of or relating to this Agreement, including any breach or termination hereof (each, a "**Dispute**") consistent with the procedures below, which shall serve as the exclusive mechanism for resolving any Dispute:
  - 1) *Negotiations*. A party shall send written notice to the other party of any Dispute ("**Dispute Notice**"). The parties shall first attempt in good faith to resolve the dispute through informal negotiations between themselves; and, where the informal negotiations do not resolve the Dispute within thirty (30) days, either party may, by written notice ("**Dispute Escalation Notice**"), refer such Dispute to the senior management (Vice President level or higher) of both parties. Any Dispute Escalation Notice must be sent consistent with the Notice requirements set forth in Article XI, Section O. If senior management cannot reach a resolution within thirty (30) days after receipt of the Dispute Escalation Notice, then either party may initiate mediation, as set forth below ("**Dispute Mediation Notice**").
  - 2) *Mediation*. The parties shall, promptly after receipt of a Dispute Mediation Notice, mutually agree to a selected mediation service and submit a joint request for mediation. The parties shall cooperate with one another in selecting a mediation service and a neutral mediator, and in scheduling the mediation proceedings. The parties agree that they will use good faith efforts to resolve the dispute during the mediation and that the mediator's fees and expenses and the costs incidental to the mediation will be shared equally between the parties. The parties further agree that all offers and statements, whether oral or written, made in the course of the mediation by any of the parties are confidential, privileged, and inadmissible for any purpose in any litigation or other proceeding involving the parties, provided that evidence that is otherwise admissible or discoverable shall not be rendered inadmissible or non-discoverable as a result of its use in the mediation.
  - 3) *Litigation as a Final Resort*. If the parties cannot resolve a Dispute for any reason after pursuing negotiations and mediation in good faith, then either party may file suit in a court of competent jurisdiction in accordance with the provisions of Article XI Section E. Additionally, if the party refuses to enter into mediation as set forth in Section 2 above after 30 days have passed since their receipt of the Dispute Mediation Notice, then the party requesting mediation may file suit in accordance with this Section.
    - a) a party shall be entitled to reimbursement of its reasonable attorneys fees and other legal expenses that it incurs as a result of having to enforce its rights under this Agreement through litigation due to the other party's failure to adhere to this Article VIII, Section A, including failure to use good faith efforts to resolve the Dispute through negotiations and mediation.
- B. Termination for Convenience; Early Termination Fees. If Customer elects to terminate the Agreement, an underlying Service Order, or any portion of Services contained therein for any reason other than TPx's material uncured breach ("**Termination for Convenience**"), it must do so in writing, and will pay to TPx as liquidated damages (and not as a penalty) early termination fees in an amount equal to one hundred percent (100%) of the MRC for the terminated Service(s) multiplied by the number of months remaining in the applicable Service Term ("**Early Termination Fees**"). TPx will invoice Customer for the Early Termination Fees in addition to any other applicable Service Charges incurred prior to the date of termination. Customer will pay the amounts in the invoice in accordance with Article IV. **THE PARTIES INTEND THAT THE EARLY TERMINATION FEES CONSTITUTE COMPENSATION, AND NOT A PENALTY. THE PARTIES ACKNOWLEDGE AND AGREE THAT THE DAMAGES CAUSED BY CUSTOMER'S TERMINATION FOR CONVENIENCE WOULD BE IMPOSSIBLE OR VERY DIFFICULT TO ACCURATELY ESTIMATE AT THE TIME OF CONTRACT, AND THAT THE EARLY TERMINATION FEES ARE A REASONABLE ESTIMATE OF THE ANTICIPATED OR ACTUAL DAMAGES THAT ARE LIKELY TO ARISE FROM CUSTOMER'S TERMINATION FOR CONVENIENCE. THE CUSTOMER'S PAYMENT OF THE EARLY TERMINATION FEES IS THE CUSTOMER'S SOLE LIABILITY AND ENTIRE OBLIGATION AND TPX'S EXCLUSIVE REMEDY FOR CUSTOMER'S TERMINATION FOR CONVENIENCE.**
- C. Termination for Cause. Either party may terminate the Agreement or an applicable Service Order upon thirty (30) days' notice if the other party materially breaches the terms and conditions of the Agreement (including, without limitation, Customer's obligation to make payments when due) and the other party fails to cure the default within the 30-day

period.

**IX. Warranty and Disclaimer; Service Credits; Limitation of Liability and Indemnity**

- A. **LIMITED WARRANTY.** TPx warrants that it shall perform the Services: (i) in accordance with the Agreement, (ii) using personnel with the requisite skill, experience, and qualifications, and (iii) in a timely, workmanlike and professional manner in accordance with generally recognized industry standards for similar managed and professional services.
- 1) **Exclusive Remedy.** Except for Service Credits as established in Section C, TPx's sole and exclusive liability, and Customer's sole and exclusive remedy for a breach of this warranty shall be TPx's re-performance of the non-conforming aspects of the Services at no additional charge to Customer, within a commercially reasonable time. For avoidance of doubt, outages, impairments, or other errors arising from Third-Party Products are not within the scope of this Limited Warranty, except that TPx will use commercially reasonable efforts to engage with and support the resolution of the issue with the applicable Third-Party Product provider on Customer's behalf.
- B. **WARRANTY DISCLAIMER.** EXCEPT AS EXPRESSLY SET FORTH IN THE AGREEMENT, TPx PROVIDES THE SERVICES "AS IS" AND 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. TPx DOES NOT WARRANT THAT THE USE OF THE EQUIPMENT, PRODUCTS OR SERVICES FURNISHED BY IT WILL BE UNINTERRUPTED, ERROR-FREE, SECURE, OR THAT THE PRODUCTS OR SERVICES ARE FREE FROM VIRUSES OR OTHER MALICIOUS CODE. TPx MAKES NO WARRANTIES, EXPRESS OR IMPLIED, REGARDING ANY THIRD-PARTY PRODUCTS ACQUIRED HEREUNDER.
- C. **SERVICE CREDITS; EXCLUSIVE REMEDY.** If a Service outage or a material interruption of the Service (such that Customer cannot reasonably make use of the Service) is caused solely by TPx and not by circumstances outside of TPx's reasonable control or by a Third-Party Product provider, Customer will be entitled to a service credit in an amount equal to the charges associated with the affected Service from the time Customer submits the service ticket to TPx until such time the Service is restored ("**Service Credit(s)**"). Where an outage or material interruption of the Service is caused by a Third-Party Product provider, then TPx shall use commercially reasonable efforts to obtain and pass through to the Customer, any service credits or comparable remedies that are contractually available to TPx by its Third-Party Product provider ("**Pass-Through Service Credits**"). Service Credits and Pass-Through Service Credits are not available where the interruption or failure of the Service is caused, in whole or in part, by (i) Excluded Products, or (ii) Customer's or a third party's acts or omissions. THE SERVICE CREDITS AND PASS-THROUGH SERVICE CREDITS ARE THE SOLE AND EXCLUSIVE REMEDY AVAILABLE TO CUSTOMER FOR AN APPLICABLE INTERRUPTION OR FAILURE OF SERVICE.
- D. **WAIVER OF DAMAGES.** 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 DATA, 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.
- E. **LIMITATION OF LIABILITY.** NOTWITHSTANDING ANYTHING TO THE CONTRARY IN THIS AGREEMENT, TPX'S TOTAL AGGREGATE LIABILITY FOR ALL CLAIMS IN ANY MANNER ARISING OUT OF THE AGREEMENT WILL IN NO EVENT EXCEED THE AMOUNTS CUSTOMER PAID TO TPX FOR THE SERVICES OR EQUIPMENT GIVING RISE TO THE CLAIM DURING THE SIX (6) MONTH PERIOD PRECEDING THE EVENT GIVING RISE TO THE CLAIM. 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.
- F. **INDEMNIFICATION.**
- 1) **General Indemnity.** Each party (as the "**Indemnifying Party**") shall defend the other party and its managers, officers, directors, employees, agents, affiliates, successors and permitted assigns (each an "**Indemnitee**" and collectively, the "**Indemnified Party**") against any and all claims, actions, causes of action, demands, lawsuits, arbitrations, inquiries, audits, notices of violation, proceedings, litigation, citations, summons, subpoenas or investigations of any nature ("**Action(s)**") brought by a non-affiliated third party, and indemnify and hold harmless the Indemnified Party from any and all losses, damages, liabilities, deficiencies, judgments, settlements, interest, awards, penalties, fines, costs, or expenses of whatever kind, including reasonable attorneys' fees, that are incurred by the Indemnified Party (collectively, "**Losses**") arising out of any third party Action alleging bodily injury, death of any person, or damage to real or tangible personal property caused by the negligent or more culpable acts or omissions of the Indemnifying Party.



- 2) **Customer Indemnity.** Customer shall defend, indemnify and hold harmless TPx and its Indemnitees from and against any and all Losses incurred by TPx and its Indemnitees resulting from any Action by an unaffiliated third party that arise out of or result from: (a) Customer Data, including, without limitation, any processing of Customer Data by or on behalf of TPx in accordance with this Agreement or any alleged infringement or violation of law associated with the Customer Data; (b) Excluded Products; and (c) any allegation of facts that, if true, would constitute Customer's breach of any of its representations, warranties, covenants or obligations under this Agreement (including, without limitation any violation of Third Party Terms). The indemnification obligations of Customer under this paragraph are not applicable to the extent that such Action arising out of or results from TPx's (i) breach of this Agreement, (ii) negligence or willful misconduct, or (iii) violation of law (subject to Article VI(B)(2)).
- 3) **Indemnification Procedures.** Each party shall promptly notify the other party in writing of any Action for which it believes it is entitled to indemnification under Subsections 1 and 2 above. The Indemnified Party shall offer control over the defense of the Action to the Indemnifying Party and provide reasonable cooperation in the same. The Indemnified Party may observe and participate in the defense at its sole cost and expense. The Indemnifying Party may not settle any Action without the Indemnified Party's prior written consent (which shall not be unreasonably withheld, conditioned, or delayed). The Indemnified Party's failure to perform its obligations under this Subsection 3 will not relieve the Indemnifying Party from its obligations under this Section E except to the extent the Indemnifying Party can demonstrate that it has been materially prejudiced as a result of such failure.

**X. 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 or attempt to solicit for employment any of the employees or contractors of the other party who are engaged through the provision of the Services hereunder. Notwithstanding the foregoing, nothing in this Article shall restrict either party from hiring an employee or contractor of the other party who, without targeted solicitation, responds to advertisements or solicitations aimed at the general public.

#### **XI. Miscellaneous Provisions**

- A. **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.
- B. **Insurance.** TPx will maintain during the Term of the Agreement, the following insurance covering only those losses arising out of TPx's performance of Services hereunder: (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 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 one million dollars (\$1,000,000) for combined single limit for bodily injury, including death, and/or property damage; and (e) cyber/professional liability insurance covering the effects of technical errors and omissions in the performance of Services in the amount of one million dollars (\$1,000,000) for each occurrence and in the aggregate.
- C. **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 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.
- D. **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.

- E. Governing Law; Venue; Waiver of Jury Trial & Class Actions. The Agreement will be construed pursuant to the laws of the State of Texas without regard to the conflicts of law provisions thereof. The exclusive venue for any dispute arising from or related to this Agreement shall be in the courts of the state of Texas sitting in Travis County, Texas. **Customer and TPx expressly agree that any Action brought by one party against the other hereunder is personal to the parties, and that neither party will bring or be a member in any class Action, or any other representative arbitration or judicial proceeding unless such agreement is prohibited by law.**
- F. Force Majeure. Except for Customer's obligation to make payments when due, neither party will be liable for any failure of performance of under this Agreement due to causes beyond its reasonable control, including fire, flood, electric power interruptions, national emergencies, pandemics, 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 the party or the Services provided hereunder, or the actions of any non-affiliated third party.
- G. Counterparts. This Agreement may be executed in counterparts, each of which is deemed an original, but all of which together are deemed to be one and the same agreement.
- H. Entire Agreement; Modifications. The Agreement and all other documents specifically referred to in the Agreement 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 or attachments (if any), or other Service Specific Terms referred to in the Agreement are integral parts of the Agreement and are made a part of the Agreement. The Agreement except as otherwise expressly set forth herein, may only be modified or supplemented by an instrument in writing executed by both Customer's and TPX's duly authorized representatives.
- 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 these GTCs, the Service Specific Terms or the Service Order, the conflict will be resolved in accordance with the following order of precedence: (1) the Service Specific Terms (only as they relate to the applicable Service), (2) the GTCs, (3) an applicable Service Order.
- K. No Third-Party Beneficiaries. Notwithstanding anything to the contrary, and except for any pass-through Third-Party Terms, 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.
- L. Survival. Articles VII, VIII, IX, and X of the Agreement, along with any other provision that by its nature should survive expiration or early termination, will survive any such termination or expiration of the Agreement.
- M. 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.
- N. 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.
- O. Notices. Except as expressly set forth below or as otherwise established in the Agreement, all notices must be in writing and delivered by certified mail, return receipt requested, or by Federal Express or other similar expedited delivery service to TPx at: U.S. TelePacific Corp., Attn. General Counsel, 303 Colorado St, Suite 2075, Austin, TX 78701, and to Customer at the address identified in the Service Order.
  - 1) Customer must provide written notice of non-renewal or early termination (without TPx cause) by completing and submitting the form found at [https://www.tpx.com/terms/notice\\_of\\_termination\\_form](https://www.tpx.com/terms/notice_of_termination_form).