

**CITY MANAGER'S REPORT
JULY 8, 2019 CITY COUNCIL REGULAR MEETING**

ITEM: TPX COMMUNICATIONS SERVICES AGREEMENT

RECOMMENDATION: Adopt a Resolution Authorizing a Service Agreement with TPX Communications for Data, Fax, and Telephone Services at City Facilities

SUMMARY:

TPX Communications, formerly Telepacific, provides data, fax, and telephone services at three City facilities; City Hall, Lathrop Police Services, and the Corporation Yard. Within the next two years, TPX Communications will transition from copper wiring to fiber. The speed of the fiber circuits is anticipated to be four times greater than the current copper wiring. Due to this upcoming change, technology will change and a new agreement is required.

Therefore, staff is recommending a new three (3) year term agreement with TPX Communications with no rate change. The proposed agreement provides a fixed reoccurring monthly charge of \$2,681, plus taxes.

BACKGROUND:

TPX Communications, formerly Telepacific, provides data, fax, and telephone services at three City facilities; City Hall, Lathrop Police Services, and the Corporation Yard. TPX Communications is currently using copper wiring and will transition to fiber connection/s within the next two years. Due to this requirement, telephone services technology will change and a new agreement is required. Staff has negotiated rates for a three (3) year term, which provides a fixed reoccurring monthly charge of \$2,681, plus taxes, which is unchanged from the City's current pricing.

TPX Communications is a redundant service with AT&T Internet services and no other carrier will provide the class C IP subnet which provides redundancy for disaster recover purposes.

REASON FOR RECOMMENDATION:

TPX Communications currently uses copper wiring and is required to transition to fiber connection/s within the next two (2) years. Due to this requirement, telephone services technology will change and a new agreement is necessary.

FISCAL IMPACT:

Telephone service fees are included in the budget. The proposed rates are for a three (3) year term, which provides a fixed reoccurring monthly charge of \$2,681, plus taxes, which is unchanged from the City's current pricing.



Service Agreement

CITY OF LATHROP

TPx Communications will provide Customer with the specified type and amount of Services at the rates, and terms and conditions listed below and on the Rate Schedule(s) that follow, and Customer shall accept and pay for Services under the Terms and Conditions to which Customer agreed on the Telecommunications Account Agreement (TAA)/Master Service Agreement (MSA) and any related Addendums that follow that govern this Service Agreement. For any Access, MSx, and/or UCx Service listed below that is being added to Services currently provided to Customer at the below referenced Service Location, a new Service Term (as provided in the Term Length below) shall apply to any such Service.

Federal, State and Local Taxes and Other Charges will be applied in accordance with the definitions stated at www.tpx.com/rates.

The term for service(s) being ordered is 36 months. ("Term")

RS ID	Title	Address	Non-Recurring	Recurring
472860	390 Towne Centre Dr, Lathrop CA	390 Towne Centre Dr, Lathrop, CA 95330-9358	\$0.00	\$1,340.53
472859	2112 E Louise Ave, Lathrop CA	2112 E Louise Ave, Lathrop, CA 95330-9607	\$0.00	\$1,340.53
Totals			\$0.00	\$2,681.06

Agreed by: Customer Signature

Date

Customer Name (Print)

Title

Josephine Catalay

0999458421

Sales Representative Name

Phone

[Signature]

6/20/19

Agreed by: Authorized TPx Representative Signature

Date



Rate Schedule #472860
390 Towne Centre Dr, Lathrop CA

Quote ID: 254349
6/20/2019

CITY OF LATHROP

Good through: 7/17/2019

Address: 390 Towne Centre Dr, Lathrop, CA 95330-9358

The term for Service(s) being ordered is 36 months ("Term").

TPx Data Only Service (Install)	Description	Qty	Each	Usage	Type	NRC	MRC
BGP		1	\$0.00	-	xNet	-	\$0.00
Data Only Service		1	\$0.00	-	xNet	-	\$0.00
20M Port		1	\$527.50	-	xNet	-	\$527.50
Solution Discount		1	(\$234.50)	-	xNet	-	(\$234.50)
20M Tier 1 Access (ICB Code: DD_CD)		1	\$793.85	-	xNet	-	\$793.85
Solution Discount		1	(\$433.23)	-	xNet	-	(\$433.23)
Non-Standard Discount		1	(\$182.62)	-	xNet	-	(\$182.62)
Internet		1	\$100.00	-	xNet	-	\$100.00
IPv4 - IP Address - 4 (Included)		1	\$0.00	-	xNet	-	\$0.00
Data Only Service - Setup Charge		1	\$500.00	-	xNet	\$500.00	-
Solution Discount		1	(\$500.00)	-	xNet	(\$500.00)	-
						\$0.00	\$571.00
TPx Fax Central (Install)	Description	Qty	Each	Usage	Type	NRC	MRC
Fax Central Service		1	\$0.00	-	xNet	-	\$0.00
Fax Central		3	\$4.95	-	xNet	-	\$14.85
Non-Standard Discount		3	(\$4.95)	-	xNet	-	(\$14.85)
Fax Central - Setup Charge		3	\$4.99	-	xNet	\$14.97	-
Solution Discount		3	(\$4.99)	-	xNet	(\$14.97)	-
						\$0.00	\$0.00
TPx Conference Central (Install)	Description	Qty	Each	Usage	Type	NRC	MRC
Conference Central Service		1	\$0.00	-	xNet	-	\$0.00
Conference Central Basic		1	\$0.00	-	xNet	-	\$0.00
						\$0.00	\$0.00
UCx SmartVoice (Install)	Description	Qty	Each	Usage	Type	NRC	MRC
1000 T-Pack Minute Bundle		5	\$40.00	-	xNet	-	\$200.00
Non-Standard Discount		5	(\$40.00)	-	xNet	-	(\$200.00)
2,500 Minute Bundle -		1	\$0.00	-	xNet	-	\$0.00

Included							
Abbreviated Dialing	1	\$0.00	-	xNet	-	\$0.00	
Call Paths - SmartVoice	69	\$12.00	-	xNet	-	\$828.00	
Non-Standard Discount	69	(\$8.00)	-	xNet	-	(\$552.00)	
SIP SmartVoice	1	\$0.00	-	xNet	-	\$0.00	
TPx Voice & Data Circuit	1	\$0.00	-	xNet	-	\$0.00	
Tier Z Equipment	1	\$0.00	-	xNet	-	\$0.00	
Caller ID (Inbound - Name & Number)	1	\$0.00	-	xNet	-	\$0.00	
Calling Line ID Delivery Blocking or Un-Blocking per Call	1	\$0.00	-	xNet	-	\$0.00	
DIDs	100	\$0.15	-	xNet	-	\$15.00	
DIDs - Setup Fee	100	\$1.00	-	xNet	\$100.00	-	
Non-Standard Discount	100	(\$1.00)	-	xNet	(\$100.00)	-	
End User Connection Charge (EUCC)	69	\$2.37	-	xNet	-	\$163.53	
Free Directory Assistance Listing	1	\$0.00	-	xNet	-	\$0.00	
G.711 Codec	1	\$0.00	-	xNet	-	\$0.00	
LD Usage	1	\$0.0290	\$0.0290	-	-	-	
Outbound Calling Line ID (Name & Number)	1	\$0.00	-	xNet	-	\$0.00	
Trunk Group Call Forwarding to PSTN	1	\$25.00	-	xNet	-	\$25.00	
Non-Standard Discount	1	(\$10.00)	-	xNet	-	(\$10.00)	
Trunk Group Call Forwarding to PSTN - Setup Charge	1	\$40.00	-	xNet	\$40.00	-	
Non-Standard Discount	1	(\$40.00)	-	xNet	(\$40.00)	-	
UCx Client	100	\$3.00	-	xNet	-	\$300.00	
UCx Client - Setup Fee	100	\$3.00	-	xNet	\$300.00	-	
Non-Standard Discount	100	(\$3.00)	-	xNet	(\$300.00)	-	
						\$0.00	\$769.53



Rate Schedule #472859
2112 E Louise Ave, Lathrop CA

Quote ID: 254349
6/20/2019

CITY OF LATHROP

Good through: 7/17/2019

Address: 2112 E Louise Ave, Lathrop, CA 95330-9607

The term for Service(s) being ordered is 36 months ("Term").

TPx Data Only Service (Install)	Description	Qty	Each	Usage	Type	NRC	MRC
BGP		1	\$0.00	-	xNet	-	\$0.00
Data Only Service		1	\$0.00	-	xNet	-	\$0.00
20M Port		1	\$527.50	-	xNet	-	\$527.50
Solution Discount		1	(\$202.49)	-	xNet	-	(\$202.49)
Non-Standard Discount		1	(\$125.00)	-	xNet	-	(\$125.00)
20M Tier 1 Access (ICB Code: DD_CD)		1	\$793.85	-	xNet	-	\$793.85
Solution Discount		1	(\$433.23)	-	xNet	-	(\$433.23)
Non-Standard Discount		1	(\$89.63)	-	xNet	-	(\$89.63)
Internet		1	\$100.00	-	xNet	-	\$100.00
IPv4 - IP Address - 4 (Included)		1	\$0.00	-	xNet	-	\$0.00
Data Only Service - Setup Charge		1	\$500.00	-	xNet	\$500.00	-
Solution Discount		1	(\$500.00)	-	xNet	(\$500.00)	-
						\$0.00	\$571.00
TPx Fax Central (Install)	Description	Qty	Each	Usage	Type	NRC	MRC
Fax Central Service		1	\$0.00	-	xNet	-	\$0.00
Fax Central		3	\$4.95	-	xNet	-	\$14.85
Non-Standard Discount		3	(\$4.95)	-	xNet	-	(\$14.85)
Fax Central - Setup Charge		3	\$4.99	-	xNet	\$14.97	-
Solution Discount		3	(\$4.99)	-	xNet	(\$14.97)	-
						\$0.00	\$0.00
UCx SmartVoice (Install)	Description	Qty	Each	Usage	Type	NRC	MRC
1000 T-Pack Minute Bundle		15	\$40.00	-	xNet	-	\$600.00
Non-Standard Discount		15	(\$40.00)	-	xNet	-	(\$600.00)
2,500 Minute Bundle - Included		1	\$0.00	-	xNet	-	\$0.00
5 WorldPac Region		1	\$17.99	-	xNet	-	\$17.99
Non-Standard Discount		1	(\$17.99)	-	xNet	-	(\$17.99)

AfricaPAC	1	\$0.00	-	xNet	-	\$0.00
AmeriPAC	1	\$0.00	-	xNet	-	\$0.00
AsiaPAC	1	\$0.00	-	xNet	-	\$0.00
EuroPAC	1	\$0.00	-	xNet	-	\$0.00
OceaniaPAC	1	\$0.00	-	xNet	-	\$0.00
Abbreviated Dialing	1	\$0.00	-	xNet	-	\$0.00
Call Paths - SmartVoice	69	\$12.00	-	xNet	-	\$828.00
Non-Standard Discount	69	(\$8.00)	-	xNet	-	(\$552.00)
SIP SmartVoice	1	\$0.00	-	xNet	-	\$0.00
TPx Voice & Data Circuit	1	\$0.00	-	xNet	-	\$0.00
Tier Z Equipment	1	\$0.00	-	xNet	-	\$0.00
Caller ID (Inbound - Name & Number)	1	\$0.00	-	xNet	-	\$0.00
Calling Line ID Delivery Blocking or Un-Blocking per Call	1	\$0.00	-	xNet	-	\$0.00
DIDs	100	\$0.15	-	xNet	-	\$15.00
DIDs - Setup Fee	100	\$1.00	-	xNet	\$100.00	-
Non-Standard Discount	100	(\$1.00)	-	xNet	(\$100.00)	-
End User Connection Charge (EUCC)	69	\$2.37	-	xNet	-	\$163.53
Free Directory Assistance Listing	1	\$0.00	-	xNet	-	\$0.00
G.711 Codec	1	\$0.00	-	xNet	-	\$0.00
LD Usage	1	\$0.0290	\$0.0290	-	-	-
Outbound Calling Line ID (Name & Number)	1	\$0.00	-	xNet	-	\$0.00
Trunk Group Call Forwarding to PSTN	1	\$25.00	-	xNet	-	\$25.00
Non-Standard Discount	1	(\$10.00)	-	xNet	-	(\$10.00)
Trunk Group Call Forwarding to PSTN - Setup Charge	1	\$40.00	-	xNet	\$40.00	-
Non-Standard Discount	1	(\$40.00)	-	xNet	(\$40.00)	-
UCx Client	100	\$3.00	-	xNet	-	\$300.00
UCx Client - Setup Fee	100	\$3.00	-	xNet	\$300.00	-
Non-Standard Discount	100	(\$3.00)	-	xNet	(\$300.00)	-
					\$0.00	\$769.53



Master Service Agreement

Must include Service Agreement

This Master Service Agreement (referred to as "Agreement" or "MSA") is made by and between U.S. TelePacific Corp. and/or its affiliated companies ("TPx Communications", also referred to as "our, us, we"), and the Customer described below ("Customer" also referred to as "you, I"), pursuant to the TPx Terms and Conditions, to which you agree and which are included in summary herein (available in full at www.tpx.com/terms).

CITY OF LATHROP

Company Legal Name (Individual if Sole Proprietorship)

Doing Business As (DBA) _____

Legal Composition: [] Corporation [] General Partnership [] LLP [] LLC [] Sole Proprietorship

State Organized _____

390 Towne Centre Dr Lathrop, CA

95330

Billing Address

Section 2 Terms and Conditions Summary

This Agreement you are signing with TPx includes the Terms and Conditions set forth on our website at www.tpx.com/terms, which are incorporated by this reference into the Agreement. Please refer to our website for the full statement of the Terms and Conditions to which you are agreeing. The summary below is only a reference guide and is not meant to change any of the Terms and Conditions.

- 1. General** – This section defines the Services for which you are contracting, how the prices for those Services are determined, special conditions for rates and fees, such as expedite fees, how the rates, terms and conditions may be changed during the contract Term and any rights you have if those changes occur.
- 2. Term, Billing and Payment** – This section covers when the Agreement becomes effective, when the Term starts and renews, how additional Services, if any, are handled, how billing will occur and what is included, how a deposit may be required, what happens if you delay acceptance of the Services, when payment of Invoices is due, how Invoice disputes are handled, late payment fees, actions that may result from late payment or non-payment and the charge for returned checks.
- 3. Customer Obligations** – This section covers equipment for use with our Service and your message content, for compliance with our Acceptable Use Policy (which may change during the Term), for securing your own network against unauthorized use and access and that you have no right to rely on any oral or written statements of our employees contrary to the Customer Obligations Terms and Conditions. Also included is your responsibility to pay any 3rd party vendor charges and to arrange for disconnection and payment of charges related to the disconnection of any related services with your current carrier(s).
- 4. Termination** – This section states the rights and duties related to termination of Services or the Agreement, the renewal of the Term, the fees charged for cancellation of an order for Services before the commencement of a Term, how a "material breach" of the Agreement is handled, and whether a fee is incurred for termination of Services or the Agreement before the end of a Term and how it is calculated.
- 5. Warranty, Disclaimer, Limitation of Liability and Indemnity** – This section limits your rights to impose liability for certain damages on us, disclaims certain implied representations and warranties, provides credit allowances under certain conditions for interruptions of Service and outages that you may claim, and defines your obligations, and ours, with regard to indemnity and defense of certain claims.
- 6. Resolution of Disputes** – This section REQUIRES THE BINDING ARBITRATION OF ANY AND ALL DISPUTES AND WAIVES CERTAIN RIGHTS TO JURY TRIALS AND/OR CLASS ACTIONS.
- 7. Miscellaneous Provisions** – This section controls assignment and transfer of the Agreement and Services under it, the law applicable to the Agreement, the exclusion of any understanding or other agreements from what is contained in the Agreement and its exhibits, and any changes not signed by both you and us, what happens if any provision of the Agreement is found to be invalid or unenforceable, whether the headings of the sections and paragraphs are part of the Agreement, the effect of non-enforcement of any provision of the Agreement, how we will give notice under the Agreement to each other, and a time limitation for the bringing of an action under the Agreement.
- 8. Service Guarantee** – This section provides you with an alternative to continuing with our Services under the Agreement under certain conditions.

Section 3 Acceptance

BY PLACING YOUR INITIALS IN THE SPACE(S) PROVIDED, YOU ACKNOWLEDGE THAT YOU HAVE REVIEWED AND AGREED TO THE FOLLOWING ON THE DATE ENTERED BY YOU BELOW

<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	FULL TERMS AND CONDITIONS SET FORTH AT www.tpx.com/terms
<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	911 FOR SMART VOICE ADDENDUM SET FORTH AT www.tpx.com/911-for-smart-voice-addendum.pdf
	Initial	E911 FOR VoIP SERVICES ADDENDUM SET FORTH AT www.tpx.com/E911-VOIP-Addendum.pdf
	Initial	EQUIPMENT ADDENDUM SET FORTH AT www.tpx.com/Equipment-Addendum.pdf
	Initial	MSx BACKUPS ADDENDUM SET FORTH AT www.tpx.com/MSx-Backups.pdf
	Initial	MSx ENDPOINTS ADDENDUM SET FORTH AT www.tpx.com/MSx-EndPoints.pdf
	Initial	MSx FIREWALL ADDENDUM SET FORTH AT www.tpx.com/MSx-Firewall.pdf
	Initial	MSx OFFICE 365 ADDENDUM SET FORTH AT www.tpx.com/MSx-Office-365-Addendum.pdf
	Initial	MSx SERVICES ADDENDUM SET FORTH AT www.tpx.com/MSx-Services.pdf
	Initial	MSx WAN ADDENDUM SET FORTH AT www.tpx.com/MSx-WAN.pdf
	Initial	UCx ADDENDUM SET FORTH AT www.tpx.com/UCx-Addendum.pdf
	Initial	VIRTUAL CPE ADDENDUM SET FORTH AT www.tpx.com/Virtual-CPE-Addendum
<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	SERVICE LEVEL AGREEMENTS (SLA) SET FORTH AT www.tpx.com/sla

By signing below, the person signing on behalf of Customer personally represents and warrants to TPx that he or she has the authority and power to sign on behalf of Customer and bind Customer to this Agreement (and the Terms and Conditions incorporated by reference). TPx agrees to provide, and the Customer agrees to receive and pay for, those services at locations set forth on the Service Agreement (attached), including any services on subsequent Service Agreements and subsequent changes as long as those changes meet TPx's minimum requirements. THIS AGREEMENT INCLUDES AN ARBITRATION PROVISION WHICH REQUIRES THE BINDING ARBITRATION OF ANY AND ALL DISPUTES AND WAIVES CERTAIN RIGHTS TO JURY TRIALS AND/OR CLASS ACTIONS. This Agreement shall become a binding contract upon execution by Customer and acceptance by TPx.

 Agreed by: Customer Signature

 Date

 Customer Name (Print)
 Josephine Catalay

 Title
 9099458421

Sales Representative Name

Phone



Customer Contact Authority

TPx Communications has an obligation, and Customer has a right, under federal or state law to protect the confidentiality of your Customer Proprietary Network Information (CPNI). CPNI includes information relating to the quantity, technical configuration, type, destination, location and amount of use of the services Customer purchases from TPx. You can help prevent unauthorized access to that information by indicating below the parties authorized to access that information.

Authority Levels:

R/W/A: (Read/Write/All) Grants full authority to request information and place orders. Includes access to usage and network configuration. Also known as a Super User.

R/W/B: (Read/Write/Bill) Grants authority to ask questions about billing issues and request bill related changes. Also known as Account Restricted.

R/W/O: (Read/Write/Orders) Allows access to information about the network configuration and is authorized to place orders including reconfigures, moves, adds, changes, new locations, etc.

R/T: (Read/Trouble) Can report trouble on accounts and receive network configuration information.

PRIMARY ACCOUNT AUTHORITY/ AUTHORIZED SIGNED			<input type="checkbox"/> Do not send marketing emails		
Name		Title			
Phone		Cell	Email		
Authority Level: <input type="checkbox"/> RWA <input type="checkbox"/> RWB <input type="checkbox"/> RWO <input type="checkbox"/> RT					
ALTERNATE PRIMARY ACCOUNT AUTHORITY			<input type="checkbox"/> Do not send marketing emails		
Name		Title			
Phone		Cell	Email		
Authority Level: <input type="checkbox"/> RWA <input type="checkbox"/> RWB <input type="checkbox"/> RWO <input type="checkbox"/> RT					
AGENT CONTACT			COMPANY NAME		
Name		Title			
Phone		Cell	Email		
Duration: <input type="checkbox"/> This installation only <input type="checkbox"/> Term of contract					
Authority Level: <input type="checkbox"/> RWA <input type="checkbox"/> RWB <input type="checkbox"/> RWO <input type="checkbox"/> RT					
VOICE VENDOR			COMPANY NAME		
Name		Title			
Phone		Cell	Email		
Duration: <input type="checkbox"/> This installation only <input type="checkbox"/> Term of contract					
Authority Level: <input type="checkbox"/> RWA <input type="checkbox"/> RWB <input type="checkbox"/> RWO <input type="checkbox"/> RT					
DATA VENDOR			COMPANY NAME		
Name		Title			
Phone		Cell	Email		
Duration: <input type="checkbox"/> This installation only <input type="checkbox"/> Term of contract					
Authority Level: <input type="checkbox"/> RWA <input type="checkbox"/> RWB <input type="checkbox"/> RWO <input type="checkbox"/> RT					

"I grant permission to TPx to provide access to CPNI to the authorized account contacts listed above subject to the designated authority level."

CITY OF LATHROP
Company Legal Name

Authorized Signature _____ **Date** _____

Printed Name _____ **Title** _____

v040117



Addendums

Quote: 254349

Name of Customer: CITY OF LATHROP

In addition to the Terms and Conditions to which Customer has agreed on the Telecommunications Account Agreement (TAA) or Master Service Agreement (MSA), Customer and TPx Communications agree to amend and modify the Terms and Conditions of the TAA or MSA as follows:

Downsize Services Without Incurring Early Termination Fees :

With forty-five (45) days written notice to TPx Communications, you may terminate Services that are not needed and pay an amount equal to the tariffed Non-Recurring Charges for installation of Services and any third-party vendor charges associated with the disconnection of services at your current location. All other termination charges will not apply, provided the total Monthly Recurring Charges covered by this Agreement at any time are not reduced by more than twenty percent (20%) below the greater of the total Monthly Recurring Charges applicable to the Services installed at the commencement of this Agreement, or the total Monthly Recurring Charges applicable to the Services provided to you in any one of the past three (3) months. If the total Monthly Recurring Charges for Services falls below the eighty percent (80%) level, you will pay the termination charges as explained in Section 4 of the Terms and Conditions. You may not port or transfer any of the terminated Services to a different service provider without paying the termination charges explained in Section 4 of the Terms and Conditions.

Month-to-Month Renewal After Current Term :

Notwithstanding any other provisions to the contrary in Paragraphs 2(b) and 4(a) of the Terms and Conditions of the Agreement, you agree that, at the end of the current Term, the Term of this Agreement will renew on a month-to-month basis unless either you or TPx Communications notifies the other in writing at least thirty (30) days prior to the end of the then-current Term of the intent not to allow the Agreement to renew.

Month-to-Month Renewal After Initial Term :

Notwithstanding any other provisions to the contrary in Paragraphs 2(b) and 4(a) of the Terms and Conditions of the Agreement, you agree that, at the end of the initial Term, the Term of this Agreement will renew on a month-to-month basis unless either you or TPx Communications notifies the other in writing at least thirty (30) days prior to the end of the then-current Term of the intent not to allow the Agreement to renew.

Waiver of Move Charges

During the Initial Term of the Agreement, when you provide TPx a minimum forty-five (45) days advance written notice, you may request that TPx move Services from your current Service Location to a different address served by TPx one (1) time without incurring any non-recurring charges normally billed in connection with moving Services. Services will be moved within a standard service interval. If you need your Services moved on an expedited basis, you may request an expedited move and an expedite charge will apply. In addition, you are responsible to pay any third-party vendor charges associated with the disconnection of services at your current location.

v040117



**FlexCheck Coupon**Expiration Date: 90 days after Statement / Date printed on 1st invoice

Pay to the order of: CITY OF LATHROP

Rebate amount: \$1200

Credits paid in 4 equal installments

Service location: 390 Towne Centre Dr, Lathrop, CA 95330-9358

Customer signature: _____

Date: _____

Coupon ID: 254349-472860

Redemption Instructions

1. The FlexCheck Coupon must be submitted on or before the expiration date. Late submission is not accepted.
2. Customer must sign and date the Flexcheck Coupon.
3. Customer can mail the Flexcheck Coupon or send it in electronically.
Flexcheck Processing Center
3300 N. Cimarron Road or Fax 866-891-2088 or CustomerCare@TPx.com
Las Vegas, NV 89129
4. Processing center is not authorized to change the program terms. Flexcheck is credited in four (4) installments. No exception is accepted

Important notes

Rebate amount will be applied to the next four invoices (25% on each invoice) after the date a properly completed Flexcheck Coupon signed by the Customer is received by TPx before expiration.

Rebate coupons shall have no value except for redemption value in the Program and may not be redeemed for cash.

v090717

**FlexCheck Coupon**Expiration Date: 90 days after Statement / Date printed on 1st invoice

Pay to the order of: CITY OF LATHROP

Rebate amount: \$1200

Credits paid in 4 equal installments

Service location: 2112 E Louise Ave, Lathrop, CA 95330-9607

Customer signature

Date

Coupon ID: 254349-472859

Redemption Instructions

1. The FlexCheck Coupon must be submitted on or before the expiration date. Late submission is not accepted.
2. Customer must sign and date the Flexcheck Coupon.
3. Customer can mail the Flexcheck Coupon or send it in electronically.
Flexcheck Processing Center
3300 N. Cimarron Road or Fax 866-891-2088 or CustomerCare@TPx.com
Las Vegas, NV 89129
4. Processing center is not authorized to change the program terms. Flexcheck is credited in four (4) installments. No exception is accepted

Important notes

Rebate amount will be applied to the next four invoices (25% on each invoice) after the date a properly completed Flexcheck Coupon signed by the Customer is received by TPx before expiration.

Rebate coupons shall have no value except for redemption value in the Program and may not be redeemed for cash.

v090717



911 for SmartVoice Addendum

It is essential that SmartVoice customers be aware of what is required for their 911 calls to go to the correct Public Safety Answering Point (PSAP) so that emergency personnel respond to the location from which the call was actually made.

If you do not provide TPx Communications with accurate phone number and location information for each telephony device, the 9-1-1 operator may send emergency responders to the location where the main telephone system is located (such as headquarters or a main building) rather than to the exact location from which the 9-1-1 call was placed, posing a major risk to employees and customers. Additional information at www.tpx.com/user-guides

1) Accurate Location / Address and Caller ID Information

Accurate location/address and Caller ID information is needed for each telephony device, especially if you use a Private Network or MPLS services to extend your telecommunications services to other physical locations. Therefore, any time a telephony device is unplugged from one location and moved to a distant location, you need to notify TPx and request a change in your telephone number location records.

2) Power Outages

Unlike traditional voice services, VoIP and data services may not function during a power outage, causing you to be unable to make 911 calls. For VoIP services, including 911, to function in power outages, a back-up power supply, such as back-up batteries or a generator, is required. TPx does not supply such sources of back-up power.

Disclaimer of Liability and Indemnification.

We do not have any control over the answering and response to 911 calls. We disclaim all responsibility for the conduct of any emergency response centers. We rely on third parties to assist us in routing 911 calls to emergency response centers. We disclaim any and all liability or responsibility in the event such third party call routing is incorrect or yields an erroneous result. NEITHER TPX NOR ITS OFFICERS, DIRECTORS, EMPLOYEES, AFFILIATES, OR AGENTS MAY BE HELD LIABLE FOR ANY CLAIM, DAMAGE, OR LOSS, AND YOU HEREBY WAIVE ANY AND ALL SUCH CLAIMS OR CAUSES OF ACTION, ARISING FROM OR RELATING TO OUR 911 DIALING SERVICE UNLESS SUCH CLAIMS OR CAUSES OF ACTION AROSE FROM OUR GROSS NEGLIGENCE, RECKLESSNESS OR WILLFUL MISCONDUCT. You shall defend, indemnify, and hold harmless TPx; its officers, directors, employees, affiliates and agents and any other service provider who furnishes services to you in connection with the Service, from any and all claims, losses, damages, fines, penalties, costs and expenses (including, without limitation, attorneys' fees) by, or on behalf of, you or any third party relating to the absence, failure or outage of the Service, including 911 Dialing, incorrectly routed 911 Dialing calls, and/or the inability of any user of the Service to be able to use 911 Dialing or access emergency service personnel.

YOU ARE RESPONSIBLE FOR NOTIFYING TPX OF ANY CHANGES TO THE SERVICE LOCATION AND CONTACT INFORMATION PROVIDED TO ALLOW THEM TO MAINTAIN ACCURATE RECORDS AT ALL TIMES. NOT FOLLOWING THESE REQUIREMENTS MAY RESULT IN AN ADDITIONAL \$125.00 FEE ASSESSED FOR EACH 911 CALL PLACED FROM A LOCATION NOT PROPERLY DOCUMENTED IN THE DATABASE.

FINALLY, USE OF THIS SERVICE AT A NON-REGISTERED LOCATION OR FAILURE TO PROVIDE UPDATED INFORMATION TO TPX THAT RESULTS IN INACCURATE DATABASE RECORDS CAN CAUSE 911 CALLS TO BE ROUTED TO AN INCORRECT PSAP THAT CANNOT PROVIDE EMERGENCY SUPPORT TO YOUR LOCATION.



**TPx Communications Service Level Agreement (SLA)
Packet-Based Services**

Core Network Availability	
Time Interval Measurement	Calendar Month
Remedy	1/30 th MRC for each .001% below 100%

Core Network Latency	West Central or East Regional Networks	Inter-Regional Networks (West to Central or East to Central)	National Network (Between West and East Regional Networks)
Latency (Round Trip, in milliseconds)	30 ms	50 ms	90 ms
Time Interval Measurement	Calendar Month	Calendar Month	Calendar Month
Remedy	1/30 th MRC for each 1 ms above 30 ms average	1/30 th MRC for each 1 ms above 50 ms average	1/30 th MRC for each 1 ms above 90 ms average

Core Network Packet Delivery Availability	99.9%	99.9%	99.9%
Time Interval Measurement	Calendar Month	Calendar Month	Calendar Month
Remedy	1/30 th MRC for each full 1% below 99.9%	1/30 th MRC for each full 1% below 99.9%	1/30 th MRC for each full 1% below 99.9%

Core Network Packet Delay Variation/Jitter (One way, in milliseconds)	①Net IP-VPN, MPLS, IP VPN, VPLS and EPL services only COS 1 <=5 ms COS 2 <=7 ms	①Net IP-VPN, MPLS, IP VPN, VPLS and EPL services only COS 1 <=5 ms COS 2 <=7 ms	①Net IP-VPN, MPLS, IP VPN, VPLS and EPL services only COS 1 <=7 ms COS 2 <=14 ms
Time Interval Measurement	Calendar Month	Calendar Month	Calendar Month
Remedy	1/30 th MRC for each 2 ms above SLA for one Class of Service	1/30 th MRC for each 2 ms above SLA for one Class of Service	1/30 th MRC for each 2 ms above SLA for one Class of Service

UCx Voice Availability			
Time Interval Measurement	Calendar Month	Calendar Month	Calendar Month
Remedy	1/30 th MRC for each full hour of unavailability	1/30 th MRC for each full hour of unavailability	1/30 th MRC for each full hour of unavailability

SmartVoice Voice Availability			
Time Interval Measurement	Calendar Month	Calendar Month	Calendar Month
Remedy	1/30 th MRC for each full hour of unavailability	1/30 th MRC for each full hour of unavailability	1/30 th MRC for each full hour of unavailability



TPx Communications Service Level Agreement (SLA) Packet-Based Services

1. General

- a. TPx Communications is committed to providing its customers with the highest quality communications services. As a result, TPx will provide network service level remedies for the following categories, if applicable, for the listed services and features below purchased by the Customer:
 - Network Availability
 - Time to Repair
 - Service Response Time
 - Latency
 - High Availability Network and CPE
 - Packet Delivery
 - Packet Delay Variation
 - UCx Availability
 - SmartVoice Availability
 - Single Availability Network and CPE
- b. These guarantees apply to those services that use TPx's Local Access Circuit and Core Network for the delivery of its voice and/or data services, as well as TPx services delivered over customer-provided local access transport if TPx provides Customer Premises Equipment (CPE) and other equipment for those specific TPx services. Local Access Circuit and services provided directly to the customer by an independent local access transport service provider, such as Internet or other services, are not covered by this SLA. TPx-provided cellular network access is covered under this SLA only if sufficient real-time signal strength and bandwidth are available from the cellular provider to support the TPx services that will access it. These services are described in Section 3 below. For integrated services over the same access circuit, the SLA will only apply to the service affected by the impairment.
- c. TPx service is interrupted or impaired when it falls below the performance specifications of this SLA due to failure of the TPx network, equipment, or facility component used to provide service under this SLA. An interruption or impairment period begins when the customer reports an inoperative service to TPx, or when TPx notifies the customer of such interruption or impairment and the service is made available by the customer to TPx for testing and repair. The interruption ends when TPx notifies the customer that the service is operative.

2. Service Credit Claim Procedure and Limitations

- a. The customer must initiate the service credit claim within 45 business days after the end of the calendar month during which the event occurred. TPx will take all measures it deems appropriate to investigate reported failures. In no event shall the combined credits for the guarantees listed above, separately or combined with any other service credit claims against TPx, exceed in any month the total Monthly Recurring Charge (MRC) owed by the customer for the affected service(s) and associated local access in that calendar month. No more than one service credit allowance shall be provided to a customer for an outage or interruption in service from a single or the same occurrence.
- b. TPx will not provide any credit allowance for service interruptions or impairments that are:
 1. Caused by the negligence of the customer or any third party not associated with TPx.
 2. Due to the failure of communications and network services, equipment, local access or systems provided by the customer or any third party not associated with TPx.
 3. During any period in which TPx does not have access to the premises where the service is located.
 4. Released to TPx for maintenance purposes, to make rearrangements or reconfigurations, or to implement an order for a change in the service during the time period that was negotiated with the customer prior to the release of that service.
 5. During planned or emergency/unplanned network maintenance activities. Planned maintenance activities are scheduled from 12 midnight to 6 AM local time, seven days per week. Unplanned, emergency network maintenance activities may occur at any time. Both of these activities could result in a customer service interruption or impairment. TPx will make every reasonable effort to minimize any customer service interruption or impairment during these activities. TPx will use reasonable efforts to notify Customer in advance of a planned or emergency maintenance that may cause an extended impairment or interruption to their services.
 6. Caused when the customer elects not to release the service for testing and/or repair and continues to use it on an impaired basis.



TPx Communications Service Level Agreement (SLA) Packet-Based Services

7. Caused by or related to labor difficulties, governmental orders, civil commotions, acts of terrorism, any third party not associated with TPx, criminal actions taken against TPx, acts of God, and other circumstances beyond TPx's reasonable control.
8. During periods of temporary discontinuance of service as specified in TPx's applicable tariffs, Fraud Guidelines, Acceptable Use Policy (AUP), Customer's TPx Account Agreement (TAA) and Customer Addendums.

3. SLA definitions and other relevant information

- a. **Month** is measured over any thirty (30) period.
- b. **Cellular 4G network availability** is dependent upon the cellular network provider's network bandwidth and signal strength at any point in time after the 4G service connection is placed at the customer premises by TPx or the customer. TPx will make reasonable efforts for 4G equipment placement to ensure maximum bandwidth and signal strength access according to the customer's placement requirements. After installation, TPx is not responsible under this SLA if the 4G network's performance including, but not limited to, bandwidth availability and signal strength, is not capable at any point in time to support TPx services.
- c. **Core Network** is defined as being where the Customer's Local Access Circuit is terminated to the TPx Core Network edge equipment's ingress demarcation, across our Core Network to the far end TPx Core Network edge egress demarcation. The far end is then terminated to another customer Local Access Circuit, an Internet peering point, an interconnection to the Public Switched Telephone Network, other public voice termination network, or other circuit or service that is not part of TPx's Core Network. TPx Core Network Availability Objective is TPx's calendar month goal for availability of our core network. It is calculated as the percentage of time that the core network is capable of accepting and delivering customer communications to the total time in the measurement period.
- d. **Local Access Circuit** is defined as being provided to the Customer directly by TPx and not by an independent and unaffiliated third party.
- e. **Customer local access latency** or other Customer network destination latency outside TPx's Core Network, whether on TPx- or customer-provided or another network end point, is not covered by this SLA, although TPx-provided Local Access availability is covered under Time to Repair for Network Availability. Local Access (whether provided by TPx or the Customer) and other non-TPx destination network latency varies greatly by a number of factors for each location. For further information, TPx has a latency application note available for Customer review that further addresses these factors regarding their application latency requirements.
- f. **Customer MRCs (Monthly Recurring Charges)** covered by this SLA may include Access, Port, Service, Feature and CPE according to the impact of a service outage or interruption.
- g. **Customer-provided Local Access Circuit** is defined as any Local Access Circuit at the Customer's premises that is not provided by TPx. Customer-Provided Local Access Circuits are not covered by TPx SLAs for Local Access Circuit availability. However, the services TPx provides over that circuit are covered in this SLA if: (1) the service is managed by a TPx-provided CPE, (2) the Customer-Provided Local Access Circuit is the bandwidth and quality recommended by TPx for all TPx-provided services and non-TPx bound traffic, (3) the Customer-Provided Local Access Circuit is operating within the service provider's SLA, and (4) the customer provides such SLA to TPx prior to installation of TPx services, as well as at any subsequent updates in the future, and upon our request.
- h. **High Availability CPE** is defined as multiple instances of TPx-provided equipment configured in a High Availability design. Remedies are available when all instances of TPx-provided High Availability CPE are out of service.
- i. **High Availability Local Access Network** is defined as a combination of two or more independent TPx-provided Local Access Circuits, High-Speed Internet Access (HSIA) services, and/or Customer-provided local access services terminated into TPx-provided High Availability equipment at the Customer's premises, as defined below. Remedies are available when the Customer is completely out of service. Customer-provided Local Access Circuits may be included in a High Availability Local Access Network and



TPx Communications Service Level Agreement (SLA) Packet-Based Services

- this SLA, but their monthly recurring charges are not covered by this SLA's remedies for any interruption or impairment of those services or a High Availability Local access outage.
- j. **HSIA** is defined as high-speed Internet access provided by a TPx-authorized vendor. TPx services that are delivered over a fully operational HSIA service and managed by TPx-provided CPE are treated according to their respective service SLAs.
- k. **Latency** is how much time it takes for a packet of data to get from one designated Core Network PE demarcation point to another Core Network PE demarcation point as defined above, and the packet's return to its origination point across TPx's Core Network.
- l. **Measured throughput** for services at any point in time is the actual available bandwidth for Customer data which can vary from the subscribed bandwidth due to service port speed, network and application protocol overhead (such as IP, Ethernet and application headers, transmissions, retransmissions and application protocol acknowledgments, error correction and time stamps), types of traffic contending for bandwidth and their prioritization plus other factors associated with communication services and the technologies used. Measured throughput rate is also determined by the slowest link between you and the endpoint you are communicating with especially over the Internet.
- m. **Packet Availability** is the difference between the number of packets transmitted at ingress to TPx's Core Network and the total number of packets received at egress from TPx's Core Network.
- n. **Packet Delay Variation (Jitter)** is the variation in the time between individual packets arriving. Jitter is measured one-way across TPx's Core Network. SmartVoice and UCx services are covered under the Network Availability SLA Objective when the customer reports Packet Delay Variation or Jitter.
- o. **Service Response Time** is the time between when a service ticket is opened (by either TPx or the Customer), and the time when TPx begins performance of remedial services, either in person or remotely.
- p. **Single CPE** is defined as a single instance of TPx-provided CPE.
- q. **Single Local Access Circuit** is defined as a TPx-provided Local Access Circuit from the Customer's premises terminated to the TPx Core Network edge equipment's ingress demarcation and may include a TPx-provided network terminating unit. Customer-provided Local Access Circuit and CPE are not included in this definition.
- r. **SmartVoice Voice Availability** – SmartVoice objective is to be available and capable of transmitting inbound and/or outbound calls 100% of the time. The TPx voice platform includes the TPx voice switching platforms and trunking connections to the public switched telephone network (PSTN) or other public voice termination networks. Voice platform downtime shall exist when a Customer location's voice service is unable to transmit inbound and/or outbound voice calls on at least 25% of its SmartVoice subscribed call paths. Voice platform downtime is measured based on the total outage time incurred by the Customer.
- s. **Time to Repair** is the time between when the Customer first reports a service outage to TPx, or TPx notifies the customer that a trouble ticket has been opened on their behalf and the customer releases the service for repair, and when TPx notifies the customer that it is back in service.
- t. **UCx Voice Availability** – UCx's objective is to be available and capable of transmitting inbound and/or outbound calls 100% of the time. The TPx voice platform includes the TPx voice switching platforms and trunking connections to the public switched telephone network (PSTN) or other public voice termination networks. Voice platform downtime shall exist when a particular Customer location's voice service is unable to transmit inbound and/or outbound voice calls on at least 25% of its UCx subscribed seats or 25% of incoming/outgoing subscribed call path capacity. Voice platform downtime is measured based on the total outage time incurred by the Customer.
- u. TPx Service acronym definitions
- UCx – Hosted Unified Communications
 - SmartVoice/SIP Trunking – Session Initiation Protocol Trunking Services using Voice over Internet Protocols for delivery of SIP, Primary Rate interface and Channel Associated Signaling trunking or Business Lines
 - MSR IP VPN – Managed Services Router using Internet Protocol Virtual Private Network
 - VPLS – Virtual Private Local Area Network
 - EPL – Ethernet Private Line
 - Internet/Direct Internet Access (DIA)
 - HSIA – High Speed Internet Access



TPx Communications Service Level Agreement (SLA) Packet-Based Services

- OneNet IP-VPN/MPLS – Internet Protocol Virtual Private Network using Multi-Protocol Label Switching

4. TPx SLA for Services and Networks

- a. TPx's objective for all packet-based services is 100% availability.
- b. Time to Repair (TTR) commences once the Customer or TPx opens a repair ticket, and the Customer makes the service available to TPx for repair.
- c. Services covered:
 - UCx
 - VPLS
 - SmartVoice/SIP Trunking
 - EPL
 - OneNet IP-VPN/MPLS
 - TPx Internet/DIA
 - IP VPN
 - HSIA

Service Response Time	
Time Interval Measurement	<=1 hour for all Services to begin remedial activities
Remedy	1/30 th MRC for each hour exceeding 1 hour

Core Network Availability	
TTR	<=4 hours
Remedy	>4 hours: 1/30 th MRC for each hour exceeding 4 hours

High Availability Service with a combination of Two or More TPx-Provided Local Access Circuits, HSIA's or Customer-Provided Circuits and TPx High Availability CPE	
TTR	<=4 hours
Remedy	>4 hours: 1/30 th MRC for each hour exceeding 4 hours

High Availability CPE	
TTR	<=4 hours
Remedy	>4 hours: 1/30 th MRC for each hour exceeding 4 hours

Single Local Access Circuit provided by TPx (except HSIA)	
TTR	<=4 hours
Remedy	>4 hours: 1/30 th MRC for each hour exceeding 4 hours

Single HSIA	
TTR	<=24 hours
Remedy	>24 hours: 1/30 th MRC for each 4 hours exceeding 24 hours

Single CPE	
TTR	<=24 hours
Remedy	>24 hours: 1/30 th MRC for each 4 hours exceeding 24 hours

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 Master Service 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. 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) 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. 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 Service(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.

(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 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) **Equipment.** Devices used in conjunction with any of TPx's Service (referred to herein as "Equipment") may be: (1) purchased by Customer from TPx via a single payment, (2) purchased by Customer from TPx via Installment Purchase, (3) rented by Customer from TPx, or (4) provided by Customer for use with the TPx Services. Terms and conditions relating to Equipment are provided in the Equipment Addendum to this Agreement www.tpx.com/Equipment-Addendum.pdf.

(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. 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. 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 for (a) service charges for the period before the date of termination and (b) all remaining installment payments for the Equipment that you purchased from us via your Installment Payment Purchase as provided in the Equipment Addendum. 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 (36th) 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 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.

(b) 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.

(c) 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.

(d) 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. 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, 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, 45th 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.

(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.



TPx Communications Service Level Agreement (SLA) for Time Division Multiplexed (TDM) Voice and Data Services

1. General

TPx Communications is committed to providing its customers with the highest quality communications services. As a result, TPx will guarantee network service levels for the following categories, if applicable to TDM Voice and Data services and features purchased: Network Availability, Time to Repair, Latency, and Packet Delivery Guarantees. These guarantees apply to those services that utilize TPx's local access and core network for the delivery of its voice and/or data services as described in Section 3 below. For integrated services over the same access circuit, the SLA will only apply to the service affected by the impairment.

TPx service is interrupted when it becomes impaired to the extent that a Customer's service falls below the performance specifications of this SLA because of the failure of the TPx network, equipment or facility component used to provide service under this agreement. An interruption period begins when an inoperative service is reported by the customer to TPx and the service is released for testing and repair and ends when the customer is notified that the service is operative.

2. Service Credit Claim Procedure and Limitations

The customer must initiate the service credit claim within 45 business days after the end of the calendar month during or for which the event occurred. TPx will take all measures it deems appropriate to investigate reported failures. In no event shall the combined credits for the guarantees listed above, separately or combined with any other service credit claims against TPx, exceed in any month the total monthly recurring charge (MRC) owed by the customer for the affected service(s) and associated local access in that calendar month. No more than one service credit allowance shall be provided to a customer for an outage or interruption in service from a single or the same occurrence.

No credit allowance for service interruptions will be made under the following circumstances:

- Interruptions or impairments caused by the negligence of the customer or any third party not associated with TPx.
- Interruptions or impairments of a service due to the failure of communications and network services, equipment, local access or systems provided by the customer or any third party not associated with TPx.
- Interruptions or impairments of a service during any period in which TPx does not have access to the premises where the service is located.
- Interruptions or impairments of a service when the customer has released the service to TPx for maintenance purposes, to make rearrangements, reconfigurations or for the implementation of an order for a change in the service during the time period that was negotiated with the customer prior to the release of that service.
- Interruptions or impairments of services that are during planned or emergency, unplanned network maintenance activities. Planned maintenance activities are from 12 midnight to 6 AM local time seven days per week. Unplanned, emergency network maintenance activities may occur at any time. Both of these activities may or may not include a customer service interruption or impairment. TPx will undertake every reasonable effort to minimize any customer service interruption or impairment during these activities and any service interruption or impairment is not covered under this SLA.
- Interruptions of service when the customer elects not to release the service for testing and/or repair and continues to use it on an impaired basis.
- Interruptions or impairments caused by or related to labor difficulties, governmental orders, civil commotions, acts of terrorism, any third party not associated with TPx, criminal actions taken against TPx, acts of God and other circumstances beyond TPx's reasonable control.
- Interruptions or impairments of service during periods of temporary discontinuance of service as specified in TPx's applicable tariffs, Acceptable Use Policy (AUP) and Customer's TPx Account Agreement (TAA) and Customer Addendums.



TPx Communications Service Level Agreement (SLA) for Time Division Multiplexed (TDM) Voice and Data Services

Section 3 SLAs for Services

TPx TDM Voice Services Subject to SLAs	
<ul style="list-style-type: none"> • Business Lines • PRI • SuperTrunk/CAS • OnePac • Flex • Mpower Office 	

Network Availability SLA Objective	99.999% for both TPx Core Network and TPx Provided Customer Local Access Circuit
Time Interval Measurement	Calendar Month
Time to Repair (TTR)	4 hours for both Core Network and Local Access Circuit
Remedy	<4 hours: \$0 >=4 hours: 1/30 th MRC for each hour exceeding 4 hours

TPx Core Network SLA Objectives	California and Nevada Regional Network	California, Nevada and Texas Inter-Regional, Intra-Texas and Northeast Inter-Regional Networks	National Network (Alaska, Hawaii and International require an SLA Addendum)
Latency (Round Trip in milliseconds)	30 ms	50 ms	90 ms
Time Interval Measurement	Calendar Month	Calendar Month	Calendar Month
Remedy	1/30 th MRC for each 1 ms above 30 ms average	1/30 th MRC for each 1 ms above 50 ms average	1/30 th MRC for each 1 ms above 90 ms average

Voice Availability	100%	100%	100%
Time Interval Measurement	One hour increments	One hour increments	One hour increments
Remedy	1/30 th MRC for each full hour of unavailability	1/30 th MRC for each full hour of unavailability	1/30 th MRC for each full hour of unavailability

Definitions:

1. TPx Core Network is defined as being from our Provider Edges where TPx connects to the customer's local access circuit and to the far end TPx Provider Edge connecting to an Internet peering point or an interconnection to the Public Switched Telephone Network.
2. Customer Local Access Circuit is defined as being from TPx-provided equipment and/or local access circuit at the Customer premises to the interconnection point to TPx's Provider Edge network.
3. Calendar Month is a period from a specified day in one month to the day numerically corresponding to that day in the following month, less one.
4. Network Availability Objective is the calendar month availability of services to the customer. It is calculated as the percentage of time that the network is capable of accepting and delivering customer communications to the total time in the measurement period. Availability is defined as the customer having use of the service(s) even while another SLA parameter may be subject to repair and remedy.
5. Time to Repair is the period of time when the Customer first reports a service outage to TPx and releases the service for repair and when TPx notifies the customer that it is back in service.



TPx Communications Service Level Agreement (SLA) for Time Division Multiplexed (TDM) Voice and Data Services

6. Latency is how much time it takes for a packet of data to get from one designated point to another and return to its origination point.
7. Packet Availability is the difference between the number of packets transmitted at ingress to TPX's Core Network and the total number of packets received at egress from TPX's Core Network.
8. Measured throughput for services at any point in time can vary plus or minus Ten Percent (10%) less than the Committed Information Rate (CIR) due to service port speed, type of customer traffic and its prioritization plus other factors associated with service delivery and the technology used.
9. Customer MRCs or recurring billing elements that are covered by this SLA may include Access, Port, Service, Feature and CPE according to the impact of a service outage or interruption.

**PAGE LEFT
INTENTIONALLY
BLANK**