

1. General

(a) These Terms and Conditions are part of the Telecommunications Account Agreement (referred to as "Agreement") between Customer (referred to as "you" and "your") and U.S. TelePacific Corp. and/or its affiliated companies (collectively referred to as "we", "us" and "our"). Services are offered to you by us either under Tariffs (documents which list services, prices and other terms and conditions) filed with the Federal Communications Commission (FCC) and state regulatory agencies having jurisdiction over the Services ("Tariffed Services"), or on a non-Tariffed basis. Tariffs are available online at www.telepacific.com. 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.telepacific.com) 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 by giving you at least 30 days prior written notice. If we materially change the rates, terms and conditions applicable to any of our non-Tariffed Services except for pass-through rate increases, you may cancel the affected Services provided you notify us in writing before the effective date of the changes. If you cancel any of the Services due to such material changes, you will only be liable for the charges for those cancelled Service(s) incurred up to and including the date of termination. If you do not cancel the affected Service(s) before the effective date of the changes, you will be deemed to have consented to the changes and to a continuation of the Services.

(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.

(d) We reserve the right to provide Services to you via our choice of technology and to change the manner in which we deliver Services at any time in our sole discretion provided the functionality of the Service provided remains substantially unaffected by the change.

2. Term, Billing, and Payment

(a) Effective Date. This Agreement is effective when it has been signed by both parties and your credit application is approved. Upon approval, we will begin as soon as practicable the installation, connection and testing of the lines and/or equipment necessary to provide the Services. If you have renewed Services ("Service Renewal") for a new term, ("Renewal Term"), the Effective Date of the Renewal Term is the date of the first invoice after the Service Renewal is entered into our billing system.

(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 chosen term will automatically renew for successive Renewal Terms 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. You may order additional services at the existing service location, subject to our acceptance, under this Agreement. 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 additional 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 after giving you notice that the Services are 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 sales, gross receipts, use, excise, and other federal, state and local taxes, charges and assessments based on your use of the Services, which will be separately listed on each invoice along with any fees or surcharges applicable to the Services. 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 charging you for the ordered Services. If you continue to delay acceptance of the Services for more than 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) **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 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.

3. Your Obligations

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

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

(c) **Responsibility for Message Content.** You are solely responsible for all content that you make available on or through our Services. You guarantee that all such content will not infringe on, or contain any content that infringes on, or otherwise violates any copyright, patent or any other right held by a third-party and that all such content will not violate any applicable law, rule, regulation or industry standard.

(d) **Use of Services.** You will not use the Services for any illegal, unlawful, abusive or fraudulent purpose and will use the Services in such a manner as to prevent damage to our network. Your proper use of the Services includes conforming to all Acceptable Use Policies ("AUP") that are available on request and are displayed at our web site at www.telepacific.com. 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 and to arrange for disconnection and payment of charges related to the disconnection of any related services with your current carrier(s).

(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. 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(e).

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, even after termination of this Agreement for Services ordered for the original 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 the installation of the Services, you must do so in writing, and you shall pay to TelePacific as a termination 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, and (2), 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 30 days notice if the other party materially breaches the terms and conditions of this Agreement and the other party fails to cure the default within the 30-day period, including, but not limited to, your failure to pay our invoices for the Services by the Pay By Date. If you terminate this Agreement after our material breach, then you will be responsible only for charges for the period before the date of termination. If, however, we terminate this Agreement as a result of your material breach, or you terminate this Agreement or any Services provided to you for any reason other than our material breach, you shall pay to us a termination charge as follows:

(i) If the effective date of the termination occurs before the last year of the Initial or Renewal Term, we will determine the termination charge 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 ("Default MRC") that would have applied if you had chosen the Revised Alternate Term

when you first selected a Term. 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) 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.

(ii) 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.

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 30 days in advance, and the effective date of the termination will be the end of that 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.

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 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 of this Agreement, including without limitation termination charges, past due recurring and usage charges, any damage to our equipment and any amounts we have to pay to third parties because of violations by you of our AUP.

(d) Sections 4 and 5 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 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 during which the interruption occurred. The steps you must take to apply for credits are available on our website at www.telepacific.com. 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.** 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 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. 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.** This Agreement shall be deemed to have been made in the State of California, and shall be construed pursuant to the laws of the State of California 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, 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) **Arbitration.** If you and we cannot resolve between ourselves any dispute arising under this Agreement, 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 ("Arbitration Site"). The arbitration will be held in accordance with the commercial arbitration rules of the AAA. 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 AAA rules to the AAA office serving the Arbitration Site. The remaining cost of the arbitration shall be shared equally by the parties unless the arbitration award provides otherwise. Each party shall bear the cost of preparing and presenting its case. You and we agree to undertake all reasonable steps to expedite the arbitration process. 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 the Arbitration within 30 days of appointment. The parties agree that 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. The arbitrator shall 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. The arbitrator's decision shall follow the plain meaning of this Agreement and shall be final, binding and enforceable in a court of competent jurisdiction.

(e) 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.

(f) 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.

(g) 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.

(h) Waiver. Under no circumstances shall our failure to enforce any provision of this Agreement in any particular instance be construed as a waiver of that provision.

(i) Notices. All notices from you to us must be in writing and delivered by certified mail, return receipt requested or by Federal Express or other similar expedited delivery service to: U.S. TelePacific Corp., Attn. General Counsel, 515 S. Flower Street, 47th Floor, Los Angeles, CA 90071-2201. If you are notifying us that you do not wish to renew Services, your written notice may be by a letter delivered in that manner or by an email to: retention@telepacific.com.

(j.) Limitation on Actions. Any legal action arising in connection with this Agreement must begin within two (2) years after the cause of action arises.

7. 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 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 your previous 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 90 days after we notified you the Services are available for your use, and (d) we fail to correct the Service deficiency within 15 days after receiving written notice from you of the deficiency.