

## Time Warner Telecom VersiPak Bundle Terms and Conditions

These Time Warner Telecom ("TWTC") VersiPak Bundle Terms and Conditions shall apply to all VersiPak Bundle Agreements by and between Time Warner Telecom (TWTC) and Customers purchasing a TWTC VersiPak Bundle ("Customer"). Together the VersiPak Bundle Terms and Conditions and VersiPak Bundle Agreement shall be referred to herein as "Agreement". The services described in Agreement ("Service" or "Services") are provided subject to the terms and conditions set forth in TWTC's applicable tariff or price list on file with the appropriate public utilities commission or similar regulatory body and in Agreement. Customer also will be billed for applicable taxes, fees and surcharges.

Customer agrees to the Preferred Carrier Freeze Letter of Agency, incorporated by this reference. Upon signing the VersiPak Bundle Agreement, Customer understands and agrees that Customer has selected TWTC as its preferred carrier for the Services provided herein. This means that all Customer Internet Services, 1+ long distance and local Service ("dial tone") covered by this Agreement will be carried by TWTC.

Additionally, Customer understands and agrees that TWTC automatically will place a freeze on Customer's selection of TWTC as Customer's preferred carrier for such Services. This freeze can be lifted upon Customer's written or oral authorization at any time. However, Customer understands and agrees that, in addition to any other termination charges that may apply, should Customer lift this preferred carrier freeze on any or all of the Services provided hereunder during the term of Agreement, or should the Customer terminate any one of the Services, Customer's rates for all Services listed herein automatically will cease, and Customer will be charged TWTC's then prevailing standard rates for the remaining Services provided by TWTC to Customer hereunder.

TWTC will require a Letter of Authorization ("LOA")/Carrier Facility Assignment ("CFA") when Customer intends to connect to facilities that it does not own and acknowledges that it is responsible for maintaining a current LOA/CFA. In the event Customer fails to maintain any necessary LOA/CFA for a Service ordered hereunder, TWTC may terminate such Service with prior written notice to Customer and Customer must pay immediately to TWTC all Monthly Recurring Charges ("MRC") associated with the terminated Service(s) for the balance of the term specified in the Service Order(s).

Customer represents and warrants that all Services purchased hereunder are for retail purposes only. TWTC does not support Customer's resale of Services to any other end user, including but not limited to, providing individual end user support for E911 addressing, local number portability, calling name delivery, end user billing, and directory listings. Furthermore, Customer agrees that all Services purchased hereunder will be subject to taxes, fees, and assessments based on Customer's use of the Services as a retail end user. Please refer to the TWTC Internet site located at [www.twtelecom.com](http://www.twtelecom.com) for additional terms and conditions relating to Customer's resale of TWTC's Services.

Switched Service(s) is intended for end user applications with local usage not to exceed 200,000 minutes per DS1 per month. Terms and conditions, rates and charges for applications exceeding 200,000 minutes of local usage per month will be determined on an individual case basis (ICB). If the Customer's actual usage exceeds 200,000 minutes of local usage per DS1 per month, the Company may, upon 30 days' written notice, re-calculate and adjust the monthly recurring rates to be charged to the Customer. If the Customer does not accept the adjusted rates, upon written notice to the Company, the Customer may terminate the Service with the Company without incurring termination liability.

Customer represents and warrants that Customer shall not use the Services ordered hereunder to provide any voice content related services including, without limitation, chat lines. Voice Content Related Services noted above refers specifically to chat lines where Caller ID must be able to be blocked. TWTC can not block Caller ID and therefore can not provide services for such applications. Any breach of this representation and warranty will constitute a material breach of this Agreement and may be in violation of regulatory orders and TWTC may terminate this Agreement or suspend any or all Services ordered hereunder immediately and collect any applicable termination charges. Customer agrees to notify TWTC immediately in the event this representation and warranty should be inaccurate or otherwise change at any time during the term of this Agreement. In addition, should Customer breach this representation and warranty, Customer will be solely liable for and will indemnify, defend and hold TWTC harmless from all claims, demands, costs, damages, losses, liabilities and expenses of any nature arising from such breach, including indirect, special, incidental, consequential, punitive or reliance damages AND ANY COSTS INCLUDING ATTORNEYS' FEES ASSOCIATED WITH ENFORCING THIS PROVISION.

TWTC will send only the Customer's Billing Telephone Number (BTN) to the E911 Selective Router for transfer to the appropriate Public Safety Answering Point (PSAP). Therefore, only the physical address listed for the BTN will be displayed at the PSAP. TWTC will not send the station Automatic Number Identification (ANI) of the telephone set

making the E911 call unless special arrangements are made. If the Customer wishes to identify the individual station from which a E911 call originates, the Customer may provide E911 service to its end users by utilizing a Private Switch/Automatic Location Identification (PS/ALI) software that interfaces with the host ALI database, or by utilizing a third party vendor to enter end user information into the host ALI database. In the circumstance where the Customer opts not to provide end user location information for individual stations, neither TWTC nor its affiliates has any liability whatsoever for the provision of end user information to the E911 system.

TWTC does not guarantee any specific data transmission rates for applications that traverse any portion of another carrier's network or for Customer's end-users who originate transmission or receive transmission from any point not located on TWTC's own network. In the event that Customer requests TWTC to isolate bandwidth or other telecommunications-affecting trouble that is subsequently determined to be located in another telecommunications provider's network, Customer may be responsible for reimbursing TWTC for all time and materials expense related to the trouble isolation activity. TWTC's Time and Materials Charges Policy is posted on its website at <http://www.twtelecom.com/Documents/Announcements/News/2005/TWTCTimeAndMaterialsPolicy.pdf>.

**Authorized Use:** Customer may use Services only for authorized and lawful purposes. TWTC offers all Services subject to availability; provided, however, if a Service Order has been accepted by TWTC, TWTC will provide Services for the term of such Service Order. TWTC has the right to limit the manner in which any portion of its network and facilities ("Network") is used to protect the technical integrity of the Network. TWTC does not undertake to transmit messages, but offers the use of its Service when available. TWTC is not liable or responsible for content, errors in transmission or failure to establish connections.

**Cancellation, Modification or Expedition of Orders** Cancellation, Modification and Expedite Charges referenced hereunder are posted to the TWTC Website ([http://www.twtelecom.com/Documents/Resources/PDF/Updated\\_Change\\_Order\\_Charges.pdf](http://www.twtelecom.com/Documents/Resources/PDF/Updated_Change_Order_Charges.pdf)) and are subject to modification from time to time by TWTC effective upon posting to the TWTC Website. (a) Customer may request to cancel any Service Order(s) if the request is received in writing by TWTC prior to the due date. Each such request shall result in the assessment by TWTC of a Cancellation Charge (a Service Order can only be cancelled one time; the execution of a new Service Order restarts the cancellation process). If the request to cancel is received at any time after installation has begun, Customer must pay full termination liability as set forth in the Termination Liability section below. (b) Customer may request the modification of any Service Order(s). Such requests must be made in writing. Each such request shall result in the assessment by TWTC of a Service Order Modification Charge. If TWTC receives a written modification request for delay of installation less than 3 days prior to the due date, Customer must pay, in addition to the Service Order Modification Charge, all recurring charges for the shorter of one billing month or the period from the original due date to the requested installation date. TWTC reserves the right to limit the number of requests to delay the due date. (c) At TWTC's discretion, TWTC may accommodate Customer requests for an expedited due date. If an expedited due date is accepted by TWTC, Customer shall pay an Expedite Charge. The Service Order Modification Charge shall be waived in those cases where the Expedite Charge is applicable. (d) In addition to any charges imposed under clauses (a), (b) or (c) above, TWTC reserves the right to assess Customer any third party charges incurred by TWTC to fulfill any request to cancel, modify, or expedite the Service Order(s).

**Access:** TWTC requires a Customer contact who can be reached 7x24. TWTC may require access to Customer's premises to install and maintain the Service and System Equipment necessary for the provision of Service. Customer must provide, or cause its end users to provide, at no cost to TWTC, reasonable access, space, power and environmental conditioning as applicable to the particular installation, and must use, and cause its end users to use, commercially reasonable efforts to obtain any necessary consents or rights of way from third parties.

**Installation:** Upon completing installation, TWTC will notify Customer that Service has been installed, tested by TWTC and is available for Customer's use ("Service Date"). Unless Customer notifies TWTC by fax or in writing by close of business on the Service Date that Service is not operational, the term of the Service Order will begin and billing will commence. If Customer so notifies TWTC, TWTC will work to correct any compliance issues. If TWTC does not find a defect in Service, TWTC will notify Customer, and the Service Date will remain unchanged.

#### **Charges, Billing, Taxes and Payment:**

(a) Provision of Service is subject to TWTC's approval of Customer's credit standing. TWTC may require a deposit prior to the provision of Service or as a condition to the continued provision of Service, if Customer's credit standing or payment record so indicates.

(b) Billing for Services begins on the Service Date and will not be delayed due to Customer premises equipment or Customer's readiness to accept or use Service. TWTC bills in advance for Service, except for usage-based charges. Any installation charges or other non-recurring charges, which are non-refundable, will appear on the first monthly invoice.

(c) Taxes, as defined below, are not included in TWTC's charges, and TWTC will bill each Tax to Customer and, whenever reasonably possible, bill each Tax as a separate item on the invoice. Customer must pay the billed amount of Tax to TWTC by the Due Date of the invoice, as defined below. For purposes of this Agreement, "Tax" and "Taxes" means any federal, state or local excise, gross receipts, value added, sales, use or other similar tax, fee, tax-like fee or surcharge of whatever nature and however designated imposed, or sought to be imposed, on or with respect to Services purchased by Customer under this Agreement or for TWTC's use of public streets or rights of way, which TWTC is required or permitted by law or a tariff to collect from Customer; *provided, however*, that the term "Tax" or "Taxes" will not include any tax on TWTC's corporate existence, status, or income.

Notwithstanding anything in Agreement to the contrary, Customer will be liable for and TWTC may collect Taxes which were assessed by or paid to an appropriate taxing authority within the statute of limitations period but not included on an invoice within the period allowable under applicable federal or state law or regulation. If Customer fails to pay any Taxes properly billed, then, as between the TWTC and Customer, Customer will be solely responsible for payment of the Taxes, penalty and interest.

If either party is audited by a taxing authority or other governmental authority, the other party agrees to reasonably cooperate with the party being audited in order to respond to any audit inquiries in a proper and timely manner so that the audit and/or any resulting controversy may be resolved expeditiously.

To the extent a Service purchased hereunder is claimed to be for resale or otherwise exempt from tax, Customer will furnish TWTC a proper tax exemption certificate as authorized or required by statute or regulation of the jurisdiction providing said tax exemption. No tax exemption shall be available to Customer for any period prior to the date that the Customer provides TWTC with a valid tax exemption certificate. Please refer to the TWTC Internet site located at [http://www.twtelecom.com/Documents/CompanyInfo/Customers/Resale\\_Terms\\_Conditions.pdf](http://www.twtelecom.com/Documents/CompanyInfo/Customers/Resale_Terms_Conditions.pdf) for additional terms and conditions relating to Customer's resale of TWTC's Services.

(d) All amounts billed are due by the next billing date ("Due Date"). Any payment or portion thereof not made by the Due Date is subject to a late charge on the unpaid amount at the lesser of 1.5% per month or the maximum rate permitted by law. Upon notice to Customer, TWTC may change rates offered pursuant to special arrangement or individual case basis pricing if the provision of Service at such rate(s) becomes economically infeasible.

**Claims and Disputes:** Objections to billed charges must be reported to the Company within 120 days of receipt of billing. Any claim not filed within this time period shall be deemed waived. Claims must include all supporting documentation and may be submitted online at <http://customers.twtelecom.com/disputes/> or by telephone at 1-800-565-8982. The Company shall make adjustments to Customer's invoice to the extent that circumstances existing which reasonably indicate that such changes are appropriate. Withheld disputed amounts determined in favor of TWTC and paid disputed amounts determined in favor of Customer will bear interest at the lesser of 1.5% per month or the maximum rate allowed by law from the Due Date for the payment or the date payment was made, as applicable, to the date payment was made or refunded, as applicable.

**Service Level Guarantee and Credits:** TWTC will issue credit allowances for Service outages as set forth below upon Customer's written request, which credit will appear on the next invoice following processing. A Service outage begins when Customer reports the outage to the appropriate TWTC number(s) to open a trouble ticket, and ends when the affected circuit is fully operational, as evidenced by the closing of the trouble ticket. No credits will be given for outages that are (a) caused by Customer or an end user; (b) due to failure of power or equipment provided by Customer or 3<sup>rd</sup> parties; (c) during any period in which TWTC is not given access to the Service premises; (d) part of a planned outage for maintenance; or (e) due to a force majeure event. Services provisioned entirely on TWTC's Network will be credited at 1/1440 of the monthly recurring charges per 30 minute outage up to and including a 24-hour period, or if an outage is greater than 24 hours, at 1/144 of the monthly recurring charges per 3 hour outage. If 2 or more trouble tickets have been opened for a particular Service in a 30-day period, and the cause of outage is determined to be in TWTC's Network or System Equipment, such Service will be deemed a Chronic Trouble Service. If a 3<sup>rd</sup> trouble ticket is opened on a Chronic Trouble Service within 30 days of the 2<sup>nd</sup> trouble ticket, Customer may disconnect the affected Service without incurring termination liability.

**Governmental Authorization, Regulatory Changes:** This Agreement is subject to all applicable federal, state and local laws, rules and regulations, and each party must comply with all applicable federal, state and local laws, rules, regulations and orders in performing its obligations hereunder. To the extent any provision of Agreement conflicts with any such applicable law, rule or regulation, such law, rule or regulation will supersede the conflicting provision. TWTC may discontinue, limit or impose additional requirements to the provision of Service, upon 15 days written notice, as required to meet regulatory requirements or when such requirements have a material, adverse impact on the economic feasibility of TWTC providing Service, as determined in TWTC's reasonable business judgment.

**Indemnification:** Each party ("Indemnitor") must indemnify, defend and hold harmless the other party ("Indemnitee") from all losses or damages arising from or related to personal injury or property damage caused by the negligence or willful misconduct of Indemnitor. Customer must indemnify, defend and hold harmless TWTC from all losses or damages arising from Customer's breach of Agreement, violation of any 3<sup>rd</sup> party intellectual property right, all claims of any kind by Customer's end users, or any act or omission of Customer in connection with any Service provided hereunder.

**Limitation of Liability:** TWTC is not liable for any indirect, incidental, consequential, special or punitive damages (including without limitation, lost profits or revenue) arising out of or related to the provision of Services hereunder, including any claims made by or through third parties. TWTC's liability to Customer may not exceed one month's calculation of monthly charges for the applicable Services. TWTC has no liability whatsoever for the content of information passing through its Network.

**Termination by TWTC:**

(a) TWTC may terminate Agreement or any Service Order hereunder or suspend Services, with prior written notice, upon: (i) Customer's failure to pay any amounts as provided herein; (ii) Customer's breach of any provision of Agreement or any law, rule or regulation governing the Services; (iii) any insolvency, bankruptcy assignment for the benefit of creditors, appointment of trustee or receiver or similar event with respect to Customer; or (iv) any governmental prohibition or required alteration of the Services.

(b) TWTC may terminate or suspend Services without notice if: (i) necessary to protect TWTC's Network; (ii) TWTC has reasonable evidence of Customer's fraudulent or illegal use of Services; or (iii) required by legal or regulatory authority. Any termination shall not relieve Customer of any liability incurred prior to such termination, or for payment of unaffected Services. All provisions of Agreement shall continue to apply to any Services not so terminated, regardless of the termination of Agreement. If the Service provided under any Service Order hereunder has been terminated by TWTC in accordance with this section, and Customer wants to restore such Service, Customer first must pay all past due charges, a non-recurring charge, reconnection charge and a deposit equal to 2 months' recurring charges. All requests for disconnection will be processed by TWTC in 30 days or less. Customer must pay for Services until such disconnection actually occurs.

**Termination Liability:** In the event Customer terminates Services ordered hereunder prior to the end of the term, as specified in the Agreement, for any reason other than TWTC's failure to perform a material term or condition that continues beyond a reasonable cure period after written notice, or if TWTC terminates this Agreement pursuant to the Section above (other than subsections a(iv) and/or b(iii)), Customer must pay to TWTC 100% of the Monthly Recurring Charges (MRC) for the remaining term or, in the case of early termination of Long Distance Services, Customer must pay to TWTC 100% of charges for the remaining term based on an average of all previous months' usage. Additionally, in the event Customer terminates a portion of the Services ordered hereunder, TWTC may increase the rates for any remaining Services effective upon notice to Customer. Customer's cash deposit, if any, will be applied towards any termination charges.

**Assignment:** Neither party may assign Agreement without the prior written consent of the other party, not to be unreasonably conditioned, withheld or delayed, except that TWTC may assign its rights and/or obligations hereunder (a) to any parent, affiliate or subsidiary of TWTC, (b) pursuant to any merger, acquisition, reorganization, sale or transfer of all or substantially all its assets, or (c) for purposes of financing.

**Entire Agreement:** Agreement, together with any Service Order(s), any attachments and all applicable tariffs incorporated herein by this reference, sets forth the entire agreement of the parties with respect to the subject matter hereof, and supersedes any prior agreements, promises, representations, understandings and negotiations between the parties. In the event of a conflict, the Service Order shall prevail over Agreement and any applicable tariff shall prevail

over both. Any modifications, amendments, supplements to or waivers of Agreement must be in writing and executed by authorized representatives of both parties.

**Force Majeure:** Neither party is liable for any failure of performance if such failure is due to any cause or causes beyond such party's reasonable control, including without limitation, acts of God, fire, explosion, vandalism, acts of terrorism, cable cut, adverse weather conditions, governmental action, labor difficulties and supplier failures. Either party's invocation of this clause shall not relieve Customer of its obligation to pay for any Services actually provided up to Customer's demarcation point. In the event such failure continues for 10 days, the other party may terminate the affected portion of the Services, upon no less than 30 days prior written notice.

**Headings:** The headings herein are for convenience only and are not intended to have any substantive significance in interpreting Agreement.

**Relationship of Parties:** The parties are independent contractors, and nothing herein creates or implies an agency relationship or a joint venture or partnership between the parties.

**Jurisdictional Reports:** Upon TWTC's request, Customer will provide TWTC with reports of its estimated percentage of interstate and intrastate use of TWTC's Services.

**Litigation:** If either party commences litigation under Agreement, the prevailing party is entitled to reimbursement of its costs and attorneys' fees from the other party.

**Non-Exclusivity:** Agreement is non-exclusive. Nothing herein prevents either party from entering into similar arrangements with other entities.

**No Waiver:** Either party's failure to enforce any provision or term of Agreement shall not be construed as a future or continuing waiver of such provision or term.

**Public Releases, Use of Name:** Neither party may issue a news release, public announcement, advertisement or other form of publicity concerning the existence of the Agreement or the Services provided hereunder without the prior written consent of the other party. Customer may not use TWTC's name, logo or service mark in marketing services to end users.

**Representations and Warranties:** Each party represents and warrants that it is fully authorized to enter into Agreement. TWTC represents and warrants to Customer that any Services provided hereunder will be performed in a professional manner by qualified and trained personnel. UNLESS SPECIFICALLY STATED HEREIN OR IN ANY SERVICE ORDER, TWTC MAKES NO WARRANTIES, REPRESENTATIONS OR AGREEMENTS, EXPRESS OR IMPLIED, EITHER IN FACT OR BY OPERATION OF LAW, STATUTORY OR OTHERWISE, INCLUDING WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

**Severability:** If any provision of Agreement is declared or held invalid, illegal or unenforceable, Agreement will be revised only to the extent necessary to make such provision(s) legal and enforceable, or if impossible, the unaffected portions of Agreement shall remain in full force and effect so long as Agreement remains consistent with the parties' original intent.

**Survival:** The terms and conditions of Agreement will survive the expiration or other termination of Agreement to the fullest extent necessary for their enforcement and for the realization of the benefit thereof by the party in whose favor they operate.

**Internet Service:** Customer agrees to adhere to the following:

- a) Usage: The Customer will not originate the transmission of or store material in violation of any Federal or state laws or regulations, including, but not limited to, obscenity, indecency, defamation or infringement of trademark or copyright. Customer has read and agrees to adhere to TWTC's web-based policies, as the same may be modified from time to time:
- b) Acceptable Use Policy ("AUP"), which is located at <http://info.twtelecom.net/info.php?id=2>
- c) IP policy at <http://info.twtelecom.net/info.php?id=26>
- d) Completion of Service Policy at <http://info.twtelecom.net/info.php?id=3>