

tw telecom VersiPak Bundle Terms and Conditions

These **tw telecom** ("TWTC") VersiPak Bundle Terms and Conditions shall apply to all VersiPak Bundle Contracts by and between tw telecom and Customers purchasing a TWTC VersiPak Bundle ("Customer"). Together the VersiPak Bundle Terms and Conditions and VersiPak Bundle Contract 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).

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 may not use the voice services as a substitute for carrier interconnection or switched access services and must immediately notify TWTC if it does so. If Customer is using service to support prepaid calling card calls, Customer acknowledges that any use of service for the transport of originating or terminating pre paid calling card traffic is subject to the requirements outlined in the order contained in FCC 06-79 (June 30, 2006). Customer agrees to remit any intrastate or interstate access charges directly to the appropriate carrier. TWTC may disconnect services if the violation is not cured within 10 days following written notice. Customer must indemnify, defend and hold TWTC harmless from all claims, demands, damages and expenses arising from or related to Customer's breach of this provision. TWTC does not support resale of switched services to end users including, but not limited to, support for E911 addressing, local number portability, calling name delivery, end user billing, and directory listings unless special

arrangements are agreed to in writing by TWTC.

Customer may not use the services to provide voice content related services including, without limitation, chat lines. If Customer breaches this provision, TWTC may immediately terminate or suspend the services ordered hereunder and collect any applicable termination charges. Customer agrees to notify TWTC immediately if it breaches this provision. Customer is 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, plus any costs and attorneys' fees incurred by TWTC in 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). Only the physical address listed for the BTN will be displayed at the PSAP. TWTC will not send the station number or location (the Automatic Number Identification or "ANI") of the telephone set making the E911 call unless special arrangements are made and agreed to in writing. If Customer wishes to identify the individual station from which an E911 call originates, it must utilize a Private Switch/Automatic Location Identification (PS/ALI) software that interfaces with the host ALI database or a third party vendor to enter end user information into the host ALI database. If Customer opts not to provide end user location information for individual stations, neither TWTC nor its affiliates are responsible for providing 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>.

VersiPak Bundle Contracts: The VersiPak Bundle Contract ("Service Order") describes the telecommunication and related Services that are available for purchase. 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. The Agreement can only be amended or modified in a written document that is signed by both Parties. 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.

Cancellation, Modification or Expedition of Orders: "Cancellation", "Modification" and "Expedite Charges" referenced hereunder are posted to the TWTC Website (www.twtelecom.com) and are subject to modification by TWTC effective upon posting to the TWTC Website.

(a) Cancellation. Customer may cancel a Service Order(s) if the request is received in writing by TWTC prior to the planned installation date, and TWTC shall have the right to assess 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 after installation has begun, Customer will be liable as set forth in the Termination Liability Section below.

(b) Modification. Customer may request in writing the modification of any Service Order(s). Such request shall result in a Modification Charge. If TWTC receives a written modification request for

delay of installation less than 3 days prior to the planned installation date, Customer must pay, in addition to the Modification Charge, the monthly recurring charge ("MRC") applicable to the delayed Service 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 planned installation date.

(c) Expedite. Customer may request an expedited installation date. If TWTC accepts the expedited installation date, Customer must pay an Expedite Charge.

(d) Third Party Charges. In addition to the charges set forth in (a), (b) and (c) above, TWTC may bill Customer for any third party charges it incurs in order to complete Customer's request to cancel, modify, or expedite the Service Order(s).

TWTC Network, Access and Interconnection:

(a) Responsibilities. TWTC will own and control the telecommunications equipment, cable and facilities installed and operated by TWTC for provision of the Services to Customer ("TWTC Network"). The TWTC Network will remain TWTC's personal property regardless of where located or attached. TWTC has the right to upgrade, replace or remove the TWTC Network in whole or in part, regardless of where located, so long as the Services continue to perform. TWTC has the right to limit the manner in which any portion of the TWTC Network is used to protect the technical integrity of the Network. Customer may not alter, move or disconnect any parts of the TWTC Network and is responsible for any damage to, or loss of, the TWTC Network caused by Customer's (or its end users') breach of this provision, negligence or willful misconduct. TWTC has no obligation to install, maintain or repair any equipment owned or provided by Customer, unless otherwise agreed to in a writing executed by the Parties. If Customer's equipment is incompatible with the Service, Customer is responsible for any special interface equipment or facilities necessary to achieve compatibility.

(b) Access. TWTC may require access to Customer's premises to install and maintain the Services and the TWTC Network. Customer must provide TWTC with a contact and/or help desk number that can be reached 24 hours per day/7 days per week. Customer also must provide reasonable access rights and/or rights of way from third parties, space, power and environmental conditioning as may be required for the installation and maintenance of the TWTC Network at Customer's premises.

(c) Letter of Authorization / Carrier Facility Assignment. If Customer intends to connect the Services to facilities that neither it nor TWTC owns, it must provide TWTC with and maintain (for the Service Term) a current letter of authorization and carrier facility assignment, as applicable.

Installation and Maintenance:

(a) Installation. TWTC will notify Customer when the Service has been successfully installed and is available for Customer's use ("Service Date"). Unless Customer notifies TWTC by the close of business on the Service Date that the Service is not operational, the Service Term will commence. If Customer so notifies TWTC, the Service Date will occur and the Service Term will commence when the Service is operational. The Service Date will not be delayed or postponed due to problems with Customer's equipment or Customer's lack of readiness to accept or use Service.

(b) Maintenance:

(i) Scheduled Maintenance. TWTC will monitor TWTC's Network 24 hours per day, 7 days per week. Scheduled Maintenance will be performed between the hours of midnight and 6:00 a.m. (local time where the maintenance is being performed) unless another time is agreed to by the Parties for the particular circumstance. TWTC will endeavor to provide Customer with at least

five business days notice before performing Scheduled Maintenance unless a shorter notice period is required under the circumstances.

(ii) Emergency Maintenance. If TWTC has to perform maintenance outside of the Scheduled Maintenance window set forth in (b)(i) above, then TWTC will provide as much prior notice to Customer as is practicable under the circumstances.

Charges, Billing, Taxes and Payment:

(a) Services are billed on a monthly basis commencing with the Service Date. Services are invoiced in advance, but usage charges are invoiced in arrears. Any installation or other non-recurring charges, which are non-refundable, will appear on the first monthly invoice.

(b) TWTC may require a deposit prior to the provision of any new Service. TWTC also may require a deposit as a condition to its obligation to continue to provide Service(s) if Customer has failed to timely pay for Service(s) on two occasions during any six month period.

(c) TWTC will invoice Customer for applicable Taxes (defined below) and, whenever possible, will identify such charges as a separate line item on the invoice. Customer will be liable for Taxes which were assessed by or paid to an appropriate taxing authority within the applicable statute of limitations period. If Customer fails to pay any Taxes properly billed, then as between TWTC and Customer, Customer will be solely responsible for payment of the Taxes, and penalty and interest.

“Tax” or “Taxes” mean 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 purchases by Customer from TWTC for consideration 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" will not include any tax on TWTC's corporate existence, status, income, corporate property or payroll taxes.

If either Party is audited by a taxing or other governmental authority, the other Party agrees to cooperate reasonably by responding to the audit inquiries in a proper, complete and timely manner. TWTC will cooperate, at Customer's expense, with reasonable requests of Customer in connection with any Tax contest or refund claim. The Customer will ensure that no lien is attached to or allowed to remain on any asset of TWTC as a result of any Tax contest. Customer will indemnify and hold TWTC harmless against any liabilities, damages, losses, costs or expenses arising out of such Tax proceedings, including without limitation any additional Taxes, interest, penalties and attorney's fees.

If Customer claims an exemption for any Taxes, Customer must provide TWTC with a proper tax exemption certificate as authorized by the appropriate taxing authority. Customer must pay the applicable Taxes to TWTC until it provides TWTC with a valid tax exemption certificate. If applicable law exempts a Service under this Agreement from a Tax, but does not also provide an exemption procedure, then TWTC will not collect such Tax if Customer provides TWTC with a letter signed by one of its officers: (i) claiming a right to the exemption; (ii) identifying the applicable law that allows such exemption and does not require an exemption certificate; and (iii) agreeing to indemnify and hold TWTC harmless from any tax, interest, penalties, loss, cost or expense asserted against TWTC as a result of its not collecting the Taxes from Customer.

(d) Payment for all undisputed amounts due under this Agreement must be received by TWTC on or before the due date specified on the bill (“Due Date”). Any payment or portion thereof not received 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.

Disputes: If Customer disputes any charges, it must log the dispute by completing and submitting a dispute form via TWTC's dispute website located at: <http://customers.twtelecom.com/disputes/>, or by contacting TWTC's dispute telephone line at 1-800-829-0420. All disputes must be submitted to TWTC in the manner specified above within 120 calendar days of the date of the invoice associated with the disputed charges, or the invoice shall be deemed correct and all rights to dispute such charges are waived. Withheld disputed amounts determined in favor of TWTC must be paid by Customer within five (5) business days following written, electronic or telephonic notice of the resolution, and will bear interest at the lesser of 1.5% per month or the maximum rate allowed by law from the Due Date until the date paid. Amounts that were disputed but paid by Customer will bear interest at the lesser of 1.5% per month or the maximum rate allowed by law from the date paid through the date of resolution if the resolution is determined in Customer's favor

Service Levels / Service Outage Credits:

(a) Service Level Agreement ("SLA"). The SLA for a particular Service, which specifies the applicable performance metrics and outage credit schedule, is contained in each Service Order. If no SLA is included with a Service Order, then credits for Service Outages (defined below) will be issued at 1/1440 of the applicable MRC per 30 minute outage for up to a 24-hour period, but if a Service Outage lasts greater than 24 hours, at 1/144 of the applicable MRC per 3 hour period. Credits issued during any calendar month will not exceed the MRC associated with the affected Service that experienced the Service Outage(s).

(b) Service Outage Definition. A "Service Outage" is defined as either: (a) material non-compliance with a specific performance metric in a service level agreement; or (b) a complete loss of transmission or reception capability for a Service caused by TWTC's Network.

(c) Reporting and Tracking of Service Outages.

If there is a Service Outage, Customer must contact TWTC's Customer Network Reliability Center ("CNRC") at 800-829-0420, and TWTC will open a trouble ticket and provide Customer with a trouble ticket number for tracking purposes.

(d) Duration of Service Outage and Application of Credits. For the purpose of calculating applicable credits, a Service Outage begins when Customer reports the Service Outage to TWTC's CNRC, and ends when the Service is restored. The duration of the Service Outage only includes outages that are caused by TWTC's Network and do not include outages caused by the equipment, acts or omissions of Customer, third parties, Force Majeure events, or outages occurring during scheduled or emergency maintenance. The duration of a Service Outage also does not include any time during which TWTC is not allowed access to the premises necessary to restore the Service. Credits for Service Outages are only issued if requested by Customer, and such requests must be submitted to TWTC within 120 days from the date Service is restored.

(e) Chronic Trouble Services. If two Service Outages have occurred on a particular Service during a 30-day period, and a third Service Outage occurs within thirty days following the second Service Outage, Customer may terminate the applicable Service without early termination liability provided that Customer supplies TWTC with a written termination notice no later than thirty days following the third Service Outage.

(f) Remedies. Notwithstanding anything to the contrary in this Agreement, the remedies set forth in the service level agreement and in subsections (a) and (e) above constitute Customer's sole and exclusive remedy for Service Outages.

(g) Service Outages Not Caused by TWTC's Network. If TWTC responds to a service call initiated by Customer, and TWTC reasonably determines that the cause of the problem is not due to TWTC's Network, but is due to Customer's equipment or facilities, or a third party, Customer must

compensate TWTC for the service call at TWTC's then prevailing rates.

Governmental Regulation - Changes:

(a) This Agreement is subject to all applicable federal, state and local laws, rules and regulations, and each Party must comply with them in performing its obligations hereunder. To the extent any provision herein conflicts with any applicable law, rule or regulation, such law, rule or regulation will supersede the conflicting provision.

(b) TWTC may discontinue or impose additional requirements to the provision of Service, upon 15 days written notice, if necessary to meet regulatory requirements or if such requirements have a material, adverse impact on the economic feasibility of TWTC providing the Service. Customer is not responsible for the termination liability set forth below if TWTC discontinues the Service under this subsection.

Indemnification: Each Party ("Indemnitor") shall indemnify, defend and hold harmless the other Party ("Indemnitee") from all losses or damages arising from or related to bodily injury or physical damage to tangible property caused by the negligence or willful misconduct of Indemnitor. Customer shall indemnify, defend and hold TWTC harmless from all losses or damages arising from Customer's violation of third party intellectual property rights, all claims of any kind by Customer's end users, or any act or omission of Customer associated with any Service.

Limitation of Liability: Except for the Parties' termination liabilities set forth herein, neither Party is liable to the other for indirect, consequential, special, incidental, or punitive damages of any kind or nature whatsoever (including without limitation lost profits, lost revenues, lost savings, lost opportunity or harm to business), whether or not foreseeable, whether or not the Party had or should have had any knowledge, actual or constructive, that such damages might be incurred, and regardless of the form of action, nature of the claim asserted or the frustration of either Party's purpose. Indirect damages include, but are not limited to, damages of the kinds specified in the preceding sentence that are incurred by a third party and are asserted against a Party (including attorneys' fees and expenses). TWTC's liability to Customer for direct damages may not exceed one month's calculation of the applicable MRCs regardless of the form of action, nature of the claim asserted or the frustration of either Party's purpose. TWTC has no liability for the content of information that Customer passes through TWTC's Network, Customer's transmission errors, or any failure to establish connections outside of the TWTC Network.

Termination by TWTC:

(a) Termination With Notice. TWTC may disconnect all Service(s) associated with a delinquent account upon ten (10) days written notice for Customer's failure to pay amounts due under this Agreement which remain uncured at the end of the notice period; or upon thirty (30) days written notice for: (i) Customer's breach of a non-economic, material provision of this Agreement or any law, rule or regulation governing the Services which remains uncured at the end of the notice period; (ii) Customer's insolvency, bankruptcy, assignment for benefit of creditors, appointment of trustee or receiver; and/or (iii) any governmental prohibition or required alteration of the Services.

(b) Termination Without Notice. TWTC may terminate or suspend Services without notice if: (i) necessary to protect TWTC's Network; (ii) TWTC has reasonable evidence of Customer's illegal, improper or unauthorized use of Services; or (iii) required by legal or regulatory authority.

(c) Post Termination. Any termination or disconnection shall not relieve Customer of any liability incurred prior to such termination or disconnection, or for payment of unaffected Services. TWTC retains the right to pursue all available legal remedies if it terminates this Agreement or disconnects Service(s) in accordance with this Section. All terms and conditions of this Agreement shall continue to apply to any Services not so terminated, regardless of the termination of this Agreement. If TWTC terminates Service in accordance with this section, and Customer wants to restore such Service, Customer first must pay all past due charges, a

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 by Customer: Customer may terminate this Agreement and/or any Service Order hereunder upon thirty (30) days prior written notice, without incurring termination liability, for TWTC's (i) breach of any material provision of this Agreement, or any law, rule or regulation that affects Customer's use of Service(s), which remains uncured at the end of the notice period and/or (ii) insolvency, bankruptcy, assignment for the benefit of creditors, appointment of trustee or receiver or similar event.

Termination Liability: If TWTC terminates this Agreement or any Service Order(s) pursuant to the Termination by TWTC Section above (other than subsections a(iii) and/or b(iii)), or if Customer terminates this Agreement or any Service Order(s) for any reason other than TWTC's material breach that remains uncured after written notice and a reasonable cure period, all MRCs associated with the terminated Service(s) for the balance of the applicable Service Term shall become immediately due and payable.

Assignment: Neither Party may assign this Agreement without the prior written consent of the other Party, not to be unreasonably conditioned, withheld or delayed, except that: (1) TWTC may assign its rights and/or obligations hereunder (a) to its parent, affiliates or subsidiaries, (b) pursuant to any merger, acquisition, reorganization, sale or transfer of all or substantially all its assets, or (c) for purposes of financing; and (2) Customer may assign its rights and/or obligations hereunder (a) to its parent, affiliates or subsidiaries, or (b) pursuant to any merger, acquisition, reorganization, sale or transfer of all or substantially all its assets, provided that any assignment by Customer pursuant to this exception is subject to the following conditions: (i) the proposed assignee satisfies TWTC's credit and deposit standards; (ii) Customer has fully paid for all Services through the date of assignment; and (iii) the proposed assignee agrees in writing to be bound by all provisions of this Agreement.

Entire Agreement: This Agreement, together with the Service Order(s) and applicable tariffs set forth the entire agreement with respect to the subject matter hereof, and supersede all prior agreements, promises, representations, and negotiations between the Parties. If there is a conflict, the Service Order shall prevail over this Agreement and any applicable tariff shall prevail over both. Modifications, amendments, supplements to or waivers of this Agreement must be in writing and executed by both Parties.

Force Majeure: Either Party shall be excused from performance if inability to perform is due to a cause or causes beyond such Party's reasonable control, including without limitation, acts of God, fire, explosion, vandalism, acts of terrorism, cable cuts caused by a third party, adverse weather conditions, labor strikes and governmental action ("Force Majeure"). If such inability to perform continues for sixty days or longer, the other Party may terminate the affected Services. Customer's invocation of this clause does not relieve Customer of its obligation to pay for Services actually received.

Litigation: If litigation is commenced to enforce this Agreement, the prevailing Party is entitled to reimbursement of its costs and attorneys' fees from the other Party.

Headings: Headings herein are for convenience only and are not intended to have substantive significance in interpreting this Agreement.

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

Public Releases, Use of Name: Neither Party may issue a news release, public announcement,

advertisement or other form of publicity regarding this 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 without TWTC's prior written consent. TWTC may use Customer's name and logo in materials presented to analysts and investors.

Representations and Warranties: Each Party represents and warrants that it, and the person signing on its behalf, is fully authorized to enter into this Agreement. TWTC represents and warrants that the Services will be performed by qualified and trained personnel. TWTC does not guarantee, represent or warrant that the Service(s) will be without interruption. TWTC MAKES NO OTHER REPRESENTATIONS OR WARRANTIES, EXPRESS OR IMPLIED, EITHER IN FACT OR BY OPERATION OF LAW, AND DISCLAIMS ANY AND ALL WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR OR ORDINARY PURPOSE.

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

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

Relationship of Parties; No Third Party Beneficiaries: The Parties are independent contractors, and nothing herein creates or implies an agency, joint venture or partnership relationship between the Parties. This Agreement shall bind and inure to the benefit of TWTC, Customer, and permitted successors and assigns. The Parties do not intend to create any rights for the benefit of any third parties.

Internet Service – Usage: Customer shall not transmit 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 IP policy at <http://info.twtelecom.net/info.php?id=26> and Acceptable Use Policy ("AUP") at <http://info.twtelecom.net/info.php?id=2>, which may be modified from time to time.