

# Wireless Business Advantage Program

## WIRELESS BUSINESS ADVANTAGE AGREEMENT

### GENERAL TERMS AND CONDITIONS

December 3, 2004

#### Version 1.4

#### 1. Service.

**1.1 AWS Markets.** Voice Service is available for purchase in the areas served by Affiliates under common control with AWS ("AWS Markets") and found at [http://www.attwireless.com/wba/aws\\_markets.shtml](http://www.attwireless.com/wba/aws_markets.shtml), the list of which may be modified by AWS from time to time. Wireless Data Service is available for purchase in select AWS Markets found at [http://www.attwireless.com/wba/wds\\_markets.shtml](http://www.attwireless.com/wba/wds_markets.shtml), the list of which may be modified by AWS from time to time.

**1.2 Availability/Interruption.** Service will be available only within the operating range of each Carrier's wireless system ("Service Area"). Subject to §6.3 below, AWS may from time to time add or delete Service Areas upon written notice to Customer. Service is subject to: (a) transmission limitation, reduction in transmission speed, or interruption caused by weather, your Equipment, terrain, obstructions such as trees or buildings, and other conditions; (b) temporary suspension due to governmental regulations or orders, system capacity limitations, system repairs or modifications, or in response to suspected fraud, abuse, misuse of the network, hacking or malicious viruses; (c) interruption for Customer's nonpayment of charges by Customer; and (d) call blocking for certain categories of numbers (e.g., 976, 900 and certain international destinations) or access to certain websites if, in AWS' sole discretion, AWS is experiencing excessive billing, collection, fraud problems or other misuse of the AT&T Wireless network.

**2. Plans and Sales Information.** Customer may choose from Voice Service and Wireless Data Service Plans found at a link at <http://www.attwireless.com/wba>, the list of which may be modified by AWS from time to time. The price, features and options of the Service depend upon the calling or data Plan, feature or promotion selected when Service is activated or changed, and are described in a separate Plan brochure, in feature or promotional materials, at [www.attwireless.com](http://www.attwireless.com), and/or in materials included with the Equipment (collectively, "Sales Information"). The Sales Information is incorporated herein by reference and is part of the Agreement, and Customer must comply with the corresponding terms and conditions of the Sales Information for the selected Plan, feature and/or promotion. Customer's corresponding End Users must qualify for the chosen Plan, feature and/or promotion. Terms and conditions of any Plan, feature or promotion are subject to change upon notice to Customer as required by law. If any such change (a) applies to a Plan, feature or promotion that Customer and its End Users are activated on, paying for, or receiving the benefit of under the Agreement and (b) results in a more restrictive term or condition, then Customer may terminate the

Agreement, subject to §6.4 below, by providing written notice to AWS within thirty (30) days of the effective date of the change; provided, however, that in the event of any such termination by Customer, Customer will not be required to pay the Termination Charge. If, however, Customer does not terminate the Agreement within thirty (30) days after the effective date of the change, Customer will be deemed to have agreed to the change. Any provisions of the terms and conditions governing the Plans that, by their terms, are to exist for a specified period of time will survive any termination or expiration of the Agreement.

### **3. Equipment.**

**3.1 Availability.** With respect to Numbers provisioned from AWS Markets, Customer may purchase available Equipment found at a link at <http://www.attwireless.com/wba>, the list of which may be modified by AWS from time to time. Specific models of Equipment are subject to availability limitations.

**3.2 General.** Equipment must be compatible with the Service and comply with federal standards. Customer is responsible for the purchase and maintenance of any additional hardware, software and/or Internet access from PCs required to use the Service. Equipment not purchased from AWS or its authorized distributors (a) may not provide some or all of the features included in the Service; (b) may not allow use of features and functions when off the AT&T Wireless network, including those that work while on the AT&T Wireless network; and (c) calls to 911 may not go through on any network. Call timers included in the Equipment are not an accurate representation of actual billed usage.

**3.3 Shipping, Title and Risk of Loss.** Subject to availability, and AWS' receipt of complete order information, AWS will ship Equipment ordered by Customer for use in AWS Markets within two (2) to five (5) business days of AWS' receipt of Customer's order. Title and risk of loss will pass to Customer upon delivery of the Equipment.

### **4. Activation and Other Processes.**

**4.1 Service and Equipment.** Customer will follow the processes established by AWS to activate, terminate, or otherwise modify Service or to purchase Equipment. Any order for Service and/or Equipment that Customer's authorized representative submits to AWS will be binding upon Customer pursuant to the terms and conditions of the Agreement. AWS may reasonably rely on the authority of any person who executes an order on Customer's behalf.

**4.2 Additional Products, Services, Equipment, and Programs.** From time to time, AWS may make additional products, services, equipment and/or programs available to Customer. To the extent Customer orders, pays for, or otherwise receives the benefit of any products, services, equipment and/or programs, Customer will be bound by their respective terms and conditions found at links at [http://www.attwireless.com/wba/additional\\_prod.shtml](http://www.attwireless.com/wba/additional_prod.shtml), and the terms and conditions are incorporated herein by reference. AWS reserves the right to modify these additional terms and conditions upon notice as required by law. In the event that any such modification (a) applies to a telecommunications service that Customer and its End Users are activated on, paying for, or receiving the benefit of under the Agreement and (b) results in a more restrictive term or condition, then Customer may terminate the Agreement, subject to §6.4 below.

by providing written notice to AWS within thirty (30) days of the effective date of the modification. If, however, Customer does not terminate the Agreement and instead orders, uses, or otherwise receives the benefit of the products, services, equipment and/or programs more than thirty (30) days after the effective date of the modification, Customer will be deemed to have agreed to the modified terms and conditions, which will be incorporated herein by reference. AWS' additional products, services, equipment and/or programs may incur charges in a different manner than set forth in the Agreement. AWS will advise Customer of any such differences in the corresponding terms and conditions, brochures and/or related printed materials.

**4.3 Identification and Password.** Before Customer may use certain AWS online activation, enrollment, configuration and/or support services, an authorized representative of Customer must register with AWS and create a login identification ("ID") and password. Use of this login ID and password will enable Customer and/or its employees and agents to make certain changes to Customer's and/or CRUs' account(s). Customer is solely responsible for maintaining adequate security and control of any and all IDs, passwords, or any other codes that are created by Customer, or issued to Customer by AWS, for purposes of giving Customer access to activation, enrollment, configuration and support services. AWS will be entitled to rely on information it receives from Customer or its agents and may assume that all such information was submitted by or on behalf of Customer.

## **5. Payment and Charges.**

**5.1 Payment.** Customer must pay all Service charges incurred in accordance with Plans, including, without limitation, charges for airtime, access, features, voice mail access, voice mail delivery, data usage, text and multi-media messages, downloadables, alerts, roaming, long distance, directory and operator assistance, Equipment, premium content, and charges for other goods and services that are charged through Customer's or CRUs' bill(s). Customer may be billed for multiple types of usage simultaneously. Customer must also pay Taxes and any Regulatory Programs Fee. For any termination (including when a Number is switched to another carrier), Customer will be responsible for payment of all fees and charges through the end of the billing cycle in which termination occurs. Payment is due upon receipt of the invoice.

**5.1.1 Taxes.** Taxes include any applicable sales, public utilities, gross receipts, or other taxes, surcharges, fees and assessments (e.g., universal connectivity charge) imposed by governments relating to the Service AWS provides to Customer, goods or services Customer purchases, and the wireless network and equipment used in providing the Service. AWS will determine, in AWS' reasonable discretion, the taxes and other assessments that Customer is responsible to pay and the amounts of such charges, which may vary. Customer is responsible for paying these Taxes, regardless of whether they are imposed on Customer, CRU, AWS or a Carrier.

**5.1.2 Regulatory Programs Fee.** In addition to other charges, AWS may assess a Regulatory Programs Fee, which is a monthly charge with respect to each CRU, that is created, assessed and collected by AWS to

help defray AWS' costs for compliance with various regulatory requirements that include, but are not limited to, the capability to provide wireless number portability, number pooling and 911 enhancements in the AT&T Wireless network. Some of these programs may not yet be available to Customer or End Users. The Regulatory Programs Fee is not a tax or government required charge.

## **5.2 Charges.**

**5.2.1 Generally.** If a selected Plan includes a predetermined allotment of services (for example, a predetermined amount of airtime, data, megabytes or text messages), any unused allotment of such services from one billing cycle will not carry over to any other billing cycle. Service may be billed in a subsequent month due to delayed reporting between Carriers and will be charged as if used in the month billed. Billing cycle end dates may change from time to time. When a billing cycle covers less than or more than a full month, AWS may make reasonable adjustments and prorations. AWS will charge 800, 866, 877, 888 and other "toll free" calls at domestic airtime or roaming rates. Puerto Rico residents will be billed for these calls based on the corresponding Plan, feature(s) and/or promotion. If an incoming call has been forwarded to another Number, Customer will be charged for the entire time that AT&T Wireless' switch handles the call. While on the AT&T Wireless network, there is no charge for busy or unanswered calls if the CRU ends the call within thirty (30) seconds. When a call is placed on the AT&T Wireless network in the End User's local area and it is dropped by AT&T Wireless' system, if the caller replaces the call within a reasonable period of time, AWS will automatically credit the account for one minute of airtime. When using the AT&T Wireless TDMA or analog networks the account will only be credited if the included minutes have been depleted. Service charges may differ by Service Area. AWS' additional products and services may incur charges in a different manner than set forth herein. AWS will advise Customer of any such differences in the corresponding Sales Information.

**5.2.2 Voice Service Charges.** On all AT&T Wireless networks, Voice Service on each call is billed in full minute increments, with partial minutes of use rounded up to the next full minute. When using the AT&T Wireless GSM™/GPRS, EDGE or UMTS networks, for all incoming and outgoing Voice Service, the length of the call will be measured during the time that the call is connected to AT&T Wireless' system, which is approximately from the time the CRU presses the button which initiates or answers a call until approximately the time the first party terminates the call. When using any other AT&T Wireless network for all incoming and outgoing Voice Service, the length of a call is measured during the time that the call is connected to AT&T Wireless' system, which is approximately from the time the CRU presses the button which initiates an outgoing call or approximately when the Equipment starts ringing for incoming calls, until approximately the time the CRU presses the button that terminates the call.

**5.2.3 Wireless Data Service Charges.** Wireless Data Service will be calculated and billed in kilobytes. One kilobyte equals 1024 bytes. One

megabyte equals 1024 kilobytes. Utilizing compression solutions may or may not impact the amount of kilobytes for which Customer is billed. Wireless Data Service usage for each billing record will be rounded up to the next kilobyte and the charge will be rounded up to the nearest cent. Customer is responsible for all Wireless Data Service usage sent through the AT&T Wireless network and associated with Equipment regardless of whether the Equipment actually receives the information. If Customer or a CRU chooses to connect Equipment to a PC for use as a wireless modem, standard Wireless Data Service charges will apply in accordance with the corresponding Plan. Wireless Data Service usage is compiled as often as once per hour or only once every 24 hours. AT&T Wireless' system will then create a billing record representing (a) the Wireless Data Service usage for each data gateway or service accessed (e.g., WAP, RIM) while on AT&T Wireless' network; (b) the usage for each Carrier's domestic network; and (c) the Wireless Data Service usage for each international network. In some situations, billing for Wireless Data Service usage may be delayed; any delayed usage will create additional billing records for the actual day of the usage.

**5.3 Disputed Charges.** Unless otherwise prohibited by law, in the event of a disputed invoice, Customer will pay the entire undisputed amount of the invoice and include with the payment sufficient written detail concerning the amount in dispute, and AWS, Customer and Carriers will use their good faith efforts to reconcile the dispute within sixty (60) days of the invoice date.

**5.4 Late Payment Fee.** Time is of the essence for payment. Therefore, Customer will pay AWS a late payment fee equal to the lesser of one and one-half percent (1.5%) per month (prorated daily) of any amount not paid within thirty (30) days of the due date, or the highest amount allowed by applicable state law or tariff; provided, however, that, with respect to amounts not paid by Customer in accordance with §5.3 above, AWS and Customer agree that the late payment fee will accrue on the unpaid disputed amount as set forth above during the dispute resolution process but that Customer will only be liable for the late payment fee to the extent the dispute is resolved in favor of AWS.

## **6. Termination and Remedies.**

**6.1 Default and Termination.** If Customer terminates this Agreement more than thirty (30) days after the Effective Date but before the end of the initial term, or if either party fails to perform or observe any material term or condition of the Agreement, then such party will be in default of the Agreement, and the non-defaulting party may terminate the Agreement in accordance with the terms and conditions of §6.2 and §6.4 below.

**6.2 Notice and Opportunity to Cure.** The party seeking to terminate the Agreement under §6.1 above must notify the defaulting party in writing at least thirty (30) days prior to the proposed termination date. Such written notice must specify the default(s) giving rise to the right to terminate the Agreement and must specify the proposed termination date. The defaulting party will have thirty (30) days in which to cure the default(s), unless such cure period is extended by agreement of the parties. If the default is not cured within this thirty (30) day cure period or any extension thereof, then the Agreement will automatically terminate at the close of business on the termination date specified in the written notice or

any agreed extension.

**6.3 Termination for Deletion of Service Area.** If the deletion of any Service Area materially reduces the Service provided to Customer hereunder, then Customer may terminate the Agreement, subject to §6.4 below, by providing AWS thirty (30) days prior written notice of such termination within thirty (30) days of the effective date of the Service Area deletion.

**6.4 Remedies.** Upon termination for any reason, the parties may seek any remedies available at law or in equity, and Customer will pay to AWS all charges and expenses incurred hereunder as of the termination date. Upon termination resulting from Customer's default under §6.1 above, Customer will also pay AWS the Termination Charge. Upon termination resulting from AWS' default under §6.1 above, or upon termination by Customer pursuant to §3 of the Program Description portion of the Agreement or §2, §4.2, or §6.3 herein, Customer will not be required to pay the Termination Charge.

**7. DISCLAIMER OF WARRANTIES.** AWS MAKES NO REPRESENTATIONS OR WARRANTIES THAT SERVICE WILL BE ERROR-FREE, VIRUS-FREE, UNINTERRUPTED, OR FREE FROM UNAUTHORIZED ACCESS (INCLUDING THIRD PARTY HACKERS OR DENIAL OF SERVICE ATTACKS). IN ADDITION, AWS MAKES NO REPRESENTATIONS OR WARRANTIES, EXPRESS OR IMPLIED, REGARDING EQUIPMENT OR SERVICE, INCLUDING ANY WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE OR USE OR NON-INFRINGEMENT. AWS DOES NOT AUTHORIZE ANYONE TO MAKE A WARRANTY OF ANY KIND ON ITS BEHALF, AND CUSTOMER SHOULD NOT RELY ON ANYONE MAKING SUCH STATEMENTS. AWS IS NOT THE MANUFACTURER OF EQUIPMENT PURCHASED BY OR PROVIDED TO CUSTOMER IN CONNECTION WITH USE OF THE SERVICE.

## **8. LIMITATIONS OF LIABILITY.**

**8.1 Service Failures.** AWS' LIABILITY FOR ANY SERVICE FAILURE GREATER THAN TWENTY-FOUR (24) HOURS SHALL IN NO EVENT EXCEED THE RECURRING SERVICE CHARGES DURING THE AFFECTED PERIOD. IN NO EVENT SHALL AWS BE LIABLE TO CUSTOMER FOR ANY DAMAGES OR REIMBURSEMENT FOR ANY SERVICE FAILURE LESS THAN TWENTY-FOUR (24) HOURS.

**8.2 Consequential Damages and Injuries to Persons or Property.** NEITHER AWS NOR CUSTOMER WILL BE LIABLE TO THE OTHER PARTY FOR (A) ANY SPECIAL, PUNITIVE, INDIRECT, INCIDENTAL OR CONSEQUENTIAL DAMAGES OR (B) INJURIES TO PERSONS OR PROPERTY ARISING FROM THE OTHER PARTY'S USE OF THE EQUIPMENT OR SERVICE. Nothing in this §8.2 will limit AWS' or Customer's obligation to fully indemnify the other party under §9.1 below for actions brought by third parties, even if such actions include claims by third parties for special, punitive, indirect, incidental or consequential damages.

**8.3 Other Factors Beyond AWS' Control.** AWS AND EACH CARRIER HAVE NO LIABILITY FOR DAMAGES OR DELAYS DUE TO FIRE, EXPLOSIONS, LIGHTNING, POWER SURGES OR FAILURES, STRIKES OR LABOR DISPUTES, WATER, ACTS OF GOD, THE ELEMENTS, WAR, RIOT, CIVIL

DISTURBANCE, ACTS OR ORDERS OF CIVIL OR MILITARY AUTHORITIES, ACTS OF THE PUBLIC ENEMY, INABILITY TO SECURE PRODUCTS OR TRANSPORTATION FACILITIES, FUEL OR ENERGY SHORTAGES, ACTS OR OMISSIONS OF COMMUNICATIONS CARRIERS OR SUPPLIERS, OR OTHER CAUSES BEYOND AWS' OR A CARRIER'S EXCLUSIVE CONTROL.

**8.4 Definitions.** For purposes of this §8, (a) "Customer" includes Customer and its employees (including, without limitation, CRUs and IRUs), officers, agents and contractors and (b) "third parties" means any person or entity other than AWS, Carriers, or Customer.

## **9. Indemnification.**

**9.1 Third Party Actions.** WITH RESPECT TO ACTIONS BROUGHT BY THIRD PARTIES, AWS AND CUSTOMER AGREE TO DEFEND, INDEMNIFY AND HOLD EACH OTHER HARMLESS FROM AND AGAINST ANY DAMAGES, LIABILITIES, CLAIMS, COSTS AND EXPENSES (INCLUDING REASONABLE ATTORNEYS' FEES) TO THE EXTENT CAUSED BY THE GROSS NEGLIGENCE OR WILLFUL MISCONDUCT OF THE INDEMNIFYING PARTY. IF THE INDEMNIFYING PARTY FAILS, WITHIN THIRTY (30) DAYS AFTER NOTICE, TO ACCEPT THE DEFENSE, THE PARTY SEEKING INDEMNIFICATION WILL HAVE THE RIGHT, BUT NOT THE OBLIGATION, TO UNDERTAKE THE DEFENSE OF, AND TO COMPROMISE OR SETTLE ANY CLAIMS ON BEHALF OF, FOR THE ACCOUNT OF, AND AT THE RISK OF THE INDEMNIFYING PARTY. IF THE CLAIMS CANNOT BY THEIR NATURE BE DEFENDED SOLELY BY ONE PARTY, THE OTHER PARTY SHALL MAKE AVAILABLE ALL INFORMATION AND ASSISTANCE THAT MAY REASONABLY BE REQUESTED, REGARDLESS OF ANY OBLIGATIONS TO INDEMNIFY HEREUNDER.

**9.2 Procedures.** The following procedures will apply to any indemnification obligation under this §9: (a) the party seeking indemnification will promptly notify the indemnifying party in writing of any claim or suit; (b) the indemnifying party will have sole control of the defense or settlement; provided, however, that the indemnifying party will not enter into any settlement that obligates the party seeking indemnification to make an admission of guilt or incur any expense for which the party seeking indemnification is not indemnified, without such party's prior written consent, which will not be unreasonably withheld; (c) the party seeking indemnification will have the right to be represented separately by counsel of its own choosing, at its own expense, in connection with any claim or suit; and (d) the party seeking indemnification will provide reasonable cooperation to the indemnifying party at the indemnifying party's expense.

**10. No Class Actions.** All claims between AWS and Customer related to the Agreement will be litigated individually, and Customer will not consolidate or seek class treatment for any claim unless previously agreed to in writing by AWS. Customer has the ability to take claims to the appropriate state or federal government agency.

**11. Customer Proprietary Network Information (CPNI) Consent.** Under Federal law, Customer has the right, and Carriers have a duty, to protect the confidentiality of information about Customer's telephone usage, the Service Customer buys, who Customer's CRUs call, and the location of Customer's and/or a CRU's device on the

AT&T Wireless network when a CRU makes a voice call. This information is sometimes referred to as “Customer Proprietary Network Information”, or “CPNI”. Carriers share CPNI with affiliates of SBC Communications and BellSouth Corporation (the parent companies of Cingular, formerly known as AT&T Wireless) that provide telecommunications services to which Customer also subscribes. Before sharing CPNI in any other way, the Carrier will first notify Customer of Customer’s rights under the law, describe how the Carrier intends to use the CPNI, and give Customer an opportunity to opt out of such usage (or, when required by law, to opt in). Declining consent will not affect Customer’s current Service or the provisions of §13 below.

## **12. Use of Service.**

**12.1 Changes to Numbers.** Except as otherwise provided by law, Customer has no property rights to any Number, and AWS may change any such Number.

**12.2 Fraud; Acceptable Use.** Customer and its respective CRUs and IRUs will not use or assist others to use the Service or Equipment for any unlawful, unauthorized, abusive or fraudulent purpose. Any Carrier may cancel Service to any Number if AWS or that Carrier believes the Number is being used in an unlawful, abusive or fraudulent manner. Before a Carrier cancels any Service under this paragraph, the Carrier will attempt to give Customer notice of its intent to cancel. In the event Customer instructs the Carrier to retain Service, Customer will be responsible for paying all charges, authorized, unauthorized or fraudulent, associated with such Number, including but not limited to charges incurred by any clone or duplication of that Number; provided, however, that Customer will not be liable for IRUs' charges under any circumstance. Additionally, Customer agrees to adopt, at no additional charge to Customer, any reasonable fraud prevention or fraud reduction processes or products recommended by AWS or, if not adopted by Customer, to be responsible for any unauthorized charges on Numbers which do not adopt such processes or products. Use of Service must comply with the Acceptable Use Policy found at a link at <http://www.attwireless.com>, which Customer should read carefully. The Acceptable Use Policy is incorporated by reference and is a part of the Agreement. The Acceptable Use Policy may be updated from time to time.

**12.3 Ownership.** AWS owns or leases the exclusive rights to the frequencies related to the Service, Numbers and transmission facilities used by AWS in the provision of Service to AWS customers. FCC regulations strictly forbid any party that is not a wireless communications licensee from altering, enhancing or maintaining cellular radio signals. FCC regulations require AWS to maintain control over any transmitting device that operates within AWS' assigned frequencies. Customer may not install any amplifier, enhancer, repeater or other device or system on AWS' network or frequencies without AWS' prior written approval.

**12.4 Content.** Customer is solely responsible for all content that it permits to be posted or transmitted onto or through the Service or any of AT&T Wireless' systems, including materials, code, data, text (whether or not perceptible by End Users), multimedia information (including, but not limited to, sound, data, audio, video, graphics, photographs or artwork), e-mail, chat room content, bulletin board postings, or any other items or materials accessible through the Service or any of AT&T Wireless' systems (“Content”). Customer has sole responsibility for



any losses resulting from Customer's or CRUs' downloading, access to, or use of any third-party Content, or from Customer's or CRUs' access to or use of the Service or the Internet, in any manner and for any purpose whatsoever. In providing Service, AWS may permit End Users to transmit, receive and host content over its network and the Internet and may act as a "services provider" as defined in the Digital Millennium Copyright Act. Customer should refer to the Site Access Agreement at a link at <http://www.attwireless.com> for additional information.

**13. Privacy/Consents; Limitation of Liability.** CUSTOMER AGREES THAT AWS AND CARRIERS ARE NOT LIABLE FOR ANY LACK OF PRIVACY OR SECURITY EXPERIENCED WHEN USING EQUIPMENT AND/OR WHILE SERVICE IS IN USE. Customer consents to AWS' release of information about Customer and Customer's use of Service when AWS believes release is appropriate to (a) comply with the law (e.g., a lawful subpoena, E911 information); (b) enforce or apply the Agreement; (c) initiate, render, bill and collect for Service; (d) protect AWS' or Carriers' rights or property, their end users, and other carriers from fraudulent, abusive or unlawful use of, or subscription to, such Service; or (e) facilitate or verify the appropriate calculation of taxes, fees or other obligations due to a local, state or federal government. AWS may also release information about Customer if AWS reasonably believes that an emergency involving immediate danger of death or serious physical injury to any person requires disclosure of communications or justifies disclosure of records without delay. Customer consents to AWS monitoring any communication to or from End Users or the Equipment to protect AWS or Carriers' rights or property or their customers, as well as for quality control and service-related purposes. In addition to the specific terms of the Agreement, Customer is encouraged to learn more about AWS' general privacy practices by reading the Privacy Policy found at <http://www.attwireless.com/privacy>.

**14. Resale and Other Prohibited Uses.** Customer and its respective CRUs are not permitted to resell, reproduce, retransmit, or disseminate Service or any other program components to third parties.

**15. Publicity and Advertising.** Neither party will publish or use any advertising, sales promotion, press release or other publicity that uses the other party's name, logo, trademarks or service marks without the prior written approval of the other party.

**16. Miscellaneous.**

**16.1 Defined Terms.** Unless specifically excepted, all defined terms, regardless of where defined, will have the same meaning in all documents comprising the Agreement including, without limitation, the Cover Page (if applicable), the Program Description, the General Terms and Conditions, and all other online terms, conditions and information. In addition to the terms defined elsewhere, these terms will have the following meanings in the Agreement:

**16.1.1 "Affiliate"** means and includes legal entities controlled by or under common control with Cingular, Cingular Wireless II, LLC (a Delaware Limited Liability Company), or New Cingular Wireless Services, Inc. (which is the entity formerly known as AT&T Wireless Services, Inc.).

**16.1.2 "AWS" or "party"** when it refers to AWS, includes AWS, its Affiliates, and their respective employees, officers, agents and subcontractors.

**16.1.3 "Equipment"** means the wireless receiving and transmitting equipment, SIM (Subscriber Identity Module) Card or any accessories that AWS has authorized to be programmed with a Number or Identifier.

**16.1.4 "Number" or "Identifier"** means any number, IP address, e-mail address or other identifier provisioned by Carriers, their agents or the Equipment manufacturer to be used with Service.

**16.1.5 "Plan"** means an AT&T Wireless Calling Plan, Service Plan or Rate Plan.

**16.2 Assignment.** The Agreement may not be assigned by either party without the prior written consent of the other and such consent will not be unreasonably withheld. However, either party may, without other party's consent, assign the Agreement to an Affiliate or to any entity that acquires substantially all of the party's business or stock, and AWS may assign its right to receive payments hereunder. Subject to the foregoing, the Agreement will be binding upon the assignees of the respective parties.

**16.3 Compliance with Laws.** AWS and Customer agree to comply with all applicable federal, state and local laws and regulations in the performance of their respective obligations under the Agreement.

**16.4 Entire Agreement.** Unless specifically set forth herein, the Agreement is the entire agreement between the parties with respect to the subject matter herein and supersedes all prior agreements, proposals, representations, statements, or understandings, whether written or oral. The Agreement and any change, modification or waiver of any of its terms will not be binding unless made in a writing manually signed by both parties. If the terms contained in the Agreement conflict or are inconsistent with the terms of any purchase order or other document provided by Customer, the terms of the Agreement will control.

**16.5 Governing Law.** The Agreement is subject to applicable federal laws, and, unless otherwise prohibited by law, the laws of the State of Washington. Where Service terms and conditions are regulated by a state agency or the FCC, the applicable regulations are available for inspection. If there is any inconsistency between the Agreement and those regulations, the Agreement will be deemed amended as necessary to conform to such regulations.

**16.6 Confidentiality and Non-Disclosure Agreement.** The Agreement is subject to any non-disclosure agreement executed between the parties, the terms and conditions of which are incorporated herein by reference. In addition, the terms and conditions of the Agreement are confidential and will not be disclosed by a party to any third party without the other party's prior written consent (except that each party may disclose the terms and conditions of the Agreement to its employees who have a direct need to know the terms and conditions of the Agreement.) Nothing herein will prevent AWS or Customer from supplying such information or making such statements or disclosures relating to the Agreement before any competent governmental authority, court or agency, or as such party may consider necessary in order to satisfy its obligations under applicable laws, regulations or generally accepted accounting principles (including, without limitation, statements or disclosures to such party's lawyers or accountants). Such party will furnish prior notice thereof to the other party prior to such disclosure.

**16.7 Customer's Notices to End Users.** Customer will advise all of its CRUs

and IRUs (collectively, "End Users") that they must read all collateral materials concerning Service and use of the Equipment, including, without limitation, the Welcome Guide, Plan brochures, coverage maps, and materials related to Equipment and accessories. AWS will make copies of such materials available to Customer upon request. Customer will also provide to End Users, and advise End Users to read, any additional printed materials and consumer information reasonably requested by AWS from time to time to be so provided. Similarly, for purposes of determining which jurisdiction's taxes and other assessments to collect, federal law requires AWS to obtain each End User's Place of Primary Use ("PPU"), which must be their residential or business street address and which must be within a Carrier's licensed Service Area. Customer agrees to provide its respective End Users' PPU when ordering Service on behalf of such person(s) and to inform its End Users that they must provide their proper PPU when ordering Service in connection with the Agreement.

**16.8 Notices.** All notices and communications required or permitted under the Agreement may be sent by first class mail (to Customer at the address indicated on the Cover Page (or, in the case of online versions of the Agreement, to Customer at the address confirmed during the online program registration and fulfillment process) and to AWS at the address indicated below), electronic messaging (to Customer at the email address indicated on the Cover Page (or, in the case of online versions of the Agreement, to Customer at the legal notice email address confirmed during the online program registration and fulfillment process)), bill inserts or other reasonable means. Notwithstanding the foregoing, any such notice or communication with respect to non-renewal, disputes, breach and/or termination under the Agreement must be in writing and will be deemed to have been duly made and received when personally served or when mailed by overnight delivery service or certified mail, postage prepaid, return receipt requested, to Customer at the address indicated on the Cover Page (or, in the case of online versions of the Agreement, to Customer at the address provided during the online program registration and fulfillment process) and to AWS at the address(es) indicated below:

To AWS: ATTN. NBO Research and Fulfillment Profile Supervisor 4300  
Market Pointe Road Ste. 400 Bloomington, MN 55435

With a copy to: Legal Department – Business Markets Group P.O. Box  
97061 Redmond, WA 98073-9761

**16.9 Severability.** If any portion of the Agreement is found to be unenforceable, the remaining portions will remain in effect and the parties will begin negotiations for a replacement of the invalid or unenforceable portion.

**16.10 Survival.** The terms and provisions of the Agreement which by their nature require performance by either party after the termination or expiration of the Agreement, including, but not limited to, limitations of liability, exclusions of damages, and indemnities, will be and remain enforceable notwithstanding such termination or expiration of the Agreement for any reason whatsoever.

**16.11 Third Party Beneficiaries.** Other than as expressly set forth herein, the Agreement will not be deemed to provide third parties with any remedy, claim, right of action, or other right.

**16.12 No Waivers.** Neither the acceptance by AWS of any payment, partial payment or any other performance by Customer, nor any act or failure of AWS to act or to exercise any rights, remedies or options in any one or more instances will be deemed a waiver of any such right, remedy or option or of any breach or

default by Customer then existing or thereafter arising. No claimed waiver by AWS of any rights, remedies or options will be binding unless the same is in a writing signed by AWS.

**16.13 No Agency.** Customer acknowledges and agrees that no third parties, including, without limitation, third parties providing telecommunication management, auditing and/or similar services are AWS' authorized agents, and that AWS neither endorses nor recommends the use of such third parties absent AWS' express authority.