

**WIRELESS AGREEMENT  
BY AND BETWEEN  
AMERITECH MOBILE COMMUNICATIONS, L. L. C.  
d/b/a/ CINGULAR WIRELESS AND  
THE DEPARTMENT OF ADMINISTRATIVE SERVICES  
OFFICE OF INFORMATION TECHNOLOGY  
ON BEHALF OF  
THE STATE OF OHIO**

**THIS MASTER SERVICE AGREEMENT (the "Agreement" or "MSA"), dated as of this 28th day of January, 2005, is by and between AMERITECH MOBILE SYSTEMS, LLC d/b/a CINGULAR WIRELESS, a Delaware limited liability Company ("Cingular"), having an address of 2000 W. Ameritech Center Drive, Hoffman Estates, IL60195-5000, and Ohio Department of Administrative Services (DAS) Office of Information Technology ("OIT") on behalf of the State of Ohio ("State Subscriber"), having its principal place of business at 2323 West Fifth Avenue, Columbus, Ohio 43204 (jointly referred hereto as the "Parties") and is effective as of the last signature date.**

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# **1 Definitions**

## **1.1 Subscribing Entities**

State agencies, boards and commissions, the Cooperative Purchasing members which are counties, townships, municipal corporations, regional transit authorities, regional airport authorities or port authorities and school districts, conservancy districts, township park districts and park districts and other authorities ("Cooperative Purchasing Members") may purchase services from Cingular pursuant to the terms and conditions of this Agreement so long as they have entered into a Cooperative Purchasing agreement with the Ohio Department of Administrative Services. "Customer", when context is so applicable, shall also mean agencies, boards, commissions and Cooperative Purchasing Members.

## **1.2 Service Area**

The home service area is defined as the geographic area of the State of Ohio. (Refer to Attachment 1 for additional information.) There will be no additional charges for all calls made or received within the home service area or continental United States.

## **1.3 Air Time Charges**

The subscribing entity shall pay for incoming and outgoing calls or messages to and from wireless Equipment activated under this Agreement. Airtime and other measured usage (chargeable time) is billed in full minute increments and actual airtime and usage is rounded up to the next full minute increment at the end of each call for billing purposes, e.g., CINGULAR charges a full minute of airtime usage for every fraction of the last minute of airtime used on each wireless call.

Chargeable time begins for outgoing calls when the end user presses SEND (or similar key) and for incoming calls when a signal connection from the caller is established with CINGULAR's facilities. Chargeable time ends after the end user presses END (or similar key), but not until the end user's wireless telephone's signal of call disconnect is received by CINGULAR's facilities and the call disconnect signal has been confirmed. All outgoing calls for which CINGULAR receives answer supervision shall incur a minimum of one-minute airtime charge. Answer supervision is generally received when a call is answered; however, answer supervision may also be generated by voice mail systems, private branch exchanges, and inter-exchange switching Equipment. Chargeable time may include time for CINGULAR to recognize that only one party has disconnected from the call, time to clear the channels in use, and ring time; however, there will be no charged time for unanswered incoming calls, and no charged time for outgoing calls for which answer supervision is not received if chargeable time, including ring time, is under thirty (30) seconds.

Calls using call waiting or three-way calling features will be billed for the duration of each connected call. Chargeable time may also occur from other uses of CINGULAR

facilities, including by way of example, voice mail deposits and retrievals, and call transfers. Calls that begin in one period and end in another period are billed at the rates for the period in which the call began.

International long-distance rates vary. Charges for calls made while outside the applicable home calling area or portions of the applicable home calling area served by other carriers may take longer to be processed, and billing for these calls may be delayed.

Display on the phone will not indicate whether roaming charges will be incurred.

Nights are 9:00 p.m. to 7:00 a.m. Weekends are 9:00 p.m. Friday to 7:00 a.m. Monday.

Included long distance applies to calls within the 50 United States.

Calls originated or received while outside of the applicable home calling area are subject to roaming charges.

Mobile to Mobile calling applies only to and from other local CINGULAR subscribers' phones. Mobile to Mobile calling options do not include calls placed outside the CINGULAR home Mobile to Mobile coverage area, directory assistance, or wireless voice mail.

#### **1.4 Affiliate**

Shall mean an entity that directly or indirectly, through one or more intermediaries, controls, is controlled by or is under common control with CINGULAR or COMPANY. Control shall be defined as (i) fifty percent (50%) or more ownership or beneficial interest of income and capital of such entity; (ii) ownership of at least fifty percent (50%) of the voting power of voting equity; or, (iii) the ability to otherwise direct or share management policies of such entity by contract or otherwise.

#### **1.5 Equipment**

Shall refer to wireless mobile telephones, accessories, Handhelds, cradles, cables and any other equipment or accessories provided to the SUBSCRIBING ENTITY pursuant to this Agreement. Equipment does not include Software.

#### **1.6 Handheld**

A wireless handheld messaging device, including the cradle and cable, if ordered, and including any software or firmware resident on the device, approved by CINGULAR for use with Cingular Service.

### **1.7 Service or Services**

The provision of Commercial Mobile Radio Services (“CMRS”), the Handheld Features selected by the SUBSCRIBING ENTITY, if any, and any and all other services provided to the SUBSCRIBING ENTITY pursuant this Agreement.

### **1.8 Documentation**

Is defined as the user manuals that accompany the Handhelds or the Software.

### **1.9 CHARGES**

The subscribing entity is responsible for paying all charges for or resulting from services provided to subscribing entity Accounts under this Agreement. Depending on the Services provided, charges may include, without limitation, airtime, the price of any purchased or rented Equipment, shipping and handling, recurring monthly service, and late payment charges, network surcharges, optional feature charges, toll, collect call and directory assistance charges, applicable taxes and governmental fees, whether assessed directly upon the subscribing entity or upon CINGULAR, CINGULAR’s Regulatory Cost Recovery Fee, and any other fee, charges or costs that arise out of this Agreement. Airtime and other service charges apply to all calls, including involuntarily terminated calls.

#### **Cost Recovery**

Cingular will establish a State of Ohio Cost Recovery Fee Account. A Cost Recovery Fee to be paid to DAS will be calculated by multiplying Two Percent (2%) times the grand total dollar amount invoices less late payment fees and adjustments.

On a quarterly basis, Cingular will provide the following data to the DAS in the form of a state level recap and a recap for each Subscribing Entity:

- Total dollar amount invoiced for services
- Number of active services at the end of the quarter
- Total dollar amount invoiced for usage
- Number of minutes invoiced for usage
- Total dollar amount invoiced for devices
- Total dollar amount invoiced for accessories
- Total dollar amount invoiced for additional services, recapped by service
- Total dollar amount of late payment fees
- Total dollar amount of invoice adjustments
- Grand total dollar amount invoiced
- Grand total dollar amount invoiced less late payment fees and adjustments (Note: Cost recovery amount will be based on this total.)

Required file format and reporting details will be as determined by DAS Information Technology Service Delivery (ITSD)

Cingular will remit to DAS the 2% Cost Recovery Fee by check to the State of Ohio, Department of Administrative Services. THE CHECK SHALL BE MADE OUT TO: TREASURER, STATE OF OHIO, FUND 133 and shall be sent to DAS at the following address:

Department of Administrative Services  
Office of Information Technology  
Service Delivery Division  
Attention: Contract Manager  
2323 West Fifth Avenue - Suite 140  
Columbus, Ohio 43204

To ensure that the payment is credited properly, Cingular will identify the check as State of Ohio Cost Recovery Fee and reference this Agreement between Cingular and The Department of Administrative Services on Behalf of the State of Ohio and reference the Quarterly Activity Reports supporting the check amount. The Cost Recovery Fee must be received by DAS within 30 days after the date of Subscribing Entity invoice for the third month of each calendar quarter. Remittance of the Cost Recovery Fee will begin in the month of execution of this Agreement.

The first payment will be calculated against all services rendered to the existing Subscribing Entities transferred to the Agreement in the month of effective date. Subsequent payments will be calculated against all Subscribing Entities as stated above

## **2 Orders for Service and Equipment**

Purchase Orders for a Participating State Entity shall be issued by an authorized representative of the State Entity. Purchase orders for a Cooperative Purchasing Entity must be determined by the purchasing process of that Cooperative Purchasing Entity. All orders to Cingular requesting products and services covered by this Agreement shall be placed via the State's Telephone Service Request (TSR) System. Participating Cooperative Purchasing Entities must also request service through the State's TSR ordering system. Cingular agrees that only telecommunication coordinators have the authority regarding procurement and termination of services. Cingular agrees to keep Customer's orders updated and current in the TSR System.

## **3 Customer Support**

Given the mission critical nature of many of the Subscribing Entities, Cingular will be required to provide notification whenever a network outage occurs in the home service area for the Ohio 1 Plan. The State will provide Cingular with a list of the Subscribing Entities and State staff to contact along with expectations for escalation.

## **4 Term**

The current General Assembly cannot commit a future General Assembly to any expenditures. Therefore, this Contract will automatically expire at the end of the current biennium, which is June 30, 2005. The State, however, may renew this Agreement in the

next biennium by issuing written notice to Cingular of the decision to do so. Renewals will be initiated by DAS in writing at least thirty days prior to the expiration of the then current term. This expiration and renewal procedure will also apply to the end of any subsequent biennium.

## **5 Termination**

If the State or Subscribing Entity terminates this Agreement or any portion of the Service prior to the conclusion of its Term or Cingular terminates this Agreement or any portion of the Service in accordance with this Section, subscribing entity shall pay for all accrued and unpaid charges for Service provided through the effective date of such cancellation.

### **5.1 Termination by the State**

For the State's convenience, the State may terminate this Agreement during the Initial or any Renewal Term with thirty (30) days advance written notice to Cingular. In addition, it is understood that the State's funds are contingent upon the availability of lawful appropriations by the Ohio General Assembly. If the General Assembly fails at any time to continue funding for the payments and other obligations due as part of this Agreement, the State's obligations under this Agreement are terminated as of the date that the funding expires without further obligation to the State.

### **5.2 Termination by Subscribing Entity**

The Subscribing Entity may terminate the Agreement for any reason without liability for any cancellation charges provided Subscribing Entity shall remain liable for charges accrued but unpaid as of the termination date.

### **5.3 Termination by Cingular**

If, during the Term, a Subscribing Entity no longer meets the definition of that term, Cingular may, at its option and upon prior written notice to Subscribing Entity, terminate this Agreement with respect to the Subscribing Entity and work with Subscribing Entity to migrate its services to a stand alone agreement.

CINGULAR may interrupt or terminate service to an individual subscribing entity Account without notice if CINGULAR has cause to believe that its Equipment is being used for a fraudulent purpose, or if Service is used in a way that may adversely affect CINGULAR's service or is used in violation of applicable governmental rules or regulations.

If the Subscribing Entity materially defaults in the performance of any of its duties or obligations under this Agreement, which default is not substantially cured within thirty (30) days after written notice is given to the Subscribing Entity specifying such default (except in the case of failure to pay fees or Charges not disputed in good faith, which must be cured within ten (10) days after receipt of written notice from Cingular) or, with respect to those defaults that cannot reasonably be cured within thirty (30) days, should the Subscribing Entity fail to proceed within thirty (30) days to commence curing the default and thereafter to proceed with reasonable diligence to substantially cure the default, Cingular may, by giving written notice thereof to the State, terminate this

Agreement as of the date of receipt by the Subscribing Entity of such notice or as of a future date specified in such notice of termination.

## **6 Billing**

Cingular shall issue invoices for devices and accessories purchased by and Service(s) provided to the participating Subscribing Entities, with all access, usage, device, and accessory charges billed in arrears.

Invoices must be submitted in three originals to the office designated in the purchase order as the "bill to address". A proper invoice must include the following information and/or attached documentation:

1. Name address of Cingular as designated in the Agreement or Amendment.
2. Federal Tax Identification number of Cingular as designated in this Agreement.
3. Invoice remittance address as designated in the Agreement.
4. The purchase order number authorizing the delivery of the deliverable(s)
5. Description of the Deliverable(s) actually delivered or rendered as specified in the purchase order.

The effective start date of a new or modified service will be set at the date Cingular closes out the TSR order. Any charges incurred between the activation date and the TSR close out date will not be invoiced.

### **6.1 DAS Recap**

Cingular shall provide the DAS with a recap of all subscribing entities charges and grand total as follows:

- Total dollar amount invoiced for services
- Total number of active services
- Total dollar amount invoiced for usage
- Total number of billable minutes, and break down:
  - Peak usage (Both in and out of home service area)
  - Mobile to mobile usage outside of home service area
  - Press to talk usage outside of home service area
- Total number of non-billable minutes, and breakdown:
  - Non-peak usage in home service area
  - Peak mobile to mobile usage in home service area
  - Non-peak mobile to mobile usage in home service area
  - Press to talk in service area
- Total dollar amount invoiced for devices
- Total dollar amount invoiced for accessories
- Total dollar amount invoiced for additional services, recapped by service
- Total dollar amount of late payment fees
- Total dollar amount of invoice adjustments
- Grand total dollar amount invoiced
- Grand total dollar amount invoiced less late payment fees and adjustments

## **6.2 Quarterly Inventory Report**

Cingular will provide the State with an inventory of lines for all subscribing entities. The report is to be as a soft copy in Microsoft Excel format. The following data will be required.

- Master Account Number
- Subscribing Entity Account Number
- Mobile Number
- Subscribing Entity Name
- User Name
- Begin Service Date
- End Service Date
- Equipment Product ID
- Equipment Description

## **7 Payment**

Payments under this Agreement will be due on the 30<sup>th</sup> calendar day after the later of:

1. The actual date of a proper invoice in the office designated to receive the invoice,  
or
2. The date the Deliverable(s) is/are accepted in accordance with the terms of this Agreement

The date of the warrant issued in payment will be considered the date the payment is made.

Without diminishing the foregoing rights and obligations, the payment will be overdue if it is not received by the 30th day after the later of:

1. The date of actual receipt of a proper invoice in the office designated to receive the invoice, or
2. The date the Deliverables is/are accepted in accordance with the terms of the Agreement.

If payment is overdue, then the interest will be paid under the provisions of Sections 126.30 of the Ohio Revised Code ("Code").

### **7.1 Invoice Dispute**

If an invoice contains a defect or impropriety or if notification of a price increase was not given as required by this Agreement, the Subscribing Entity will send Cingular written notice along with the proper invoice. The notice will contain a description of the problem(s) with the invoice and the information necessary to correct the problem(s). Disputed charges must be disputed to CINGULAR in writing within sixty (60) days after the date the charge appears on the invoice, or the right to dispute is waived. The parties shall use their best efforts to resolve all disputes within thirty (30) days of submission of the dispute to CINGULAR, and CINGULAR shall promptly refund any amount due upon dispute resolution.

If Cingular and the Subscribing Entity determine the charge to be proper, and if the Subscribing Entity does not then pay the amount in dispute, Cingular may exercise any remedies it may have under this Agreement for non-payment of charges.

## **7.2 Interrupted Service**

Service may be temporarily interrupted, delayed or otherwise limited for a variety of reasons, including but not limited to transmission limitations caused by atmospheric and other conditions, availability of radio frequency channels, system capacity limitations, coordination with other systems, Equipment modifications and repairs, problems associated with the facilities of interconnecting carriers and the negligence of CINGULAR. Gaps in Service occur within the service areas shown on coverage maps; therefore, CINGULAR does not guarantee the SUBSCRIBING ENTITY uninterrupted Service. Subject to the limitations below, if the SUBSCRIBING ENTITY's service is interrupted for twenty-four (24) continuous hours or more, CINGULAR will issue the SUBSCRIBING ENTITY, upon request, a credit equal to a pro-rata adjustment of the monthly service fee for the time period Service was unavailable, not to exceed the monthly access service fee. An interruption is measured from the time that the SUBSCRIBING ENTITY reports it to CINGULAR. CINGULAR may require that the SUBSCRIBING ENTITY request credit in writing. No credit will be given for a Service interruption if evidence of the Service interruption is, in CINGULAR's opinion, inconclusive or if the Service interruption was caused by: (a) The SUBSCRIBING ENTITY's negligent or willful actions, (b) the failure of Equipment or services not provided by CINGULAR or (c) causes beyond the control of CINGULAR. CINGULAR's liability to the SUBSCRIBING ENTITY for interruptions, delays and failures in transmission or service is limited solely to the credit set forth above, and such credit will satisfy all of the SUBSCRIBING ENTITY's claims against CINGULAR for interruption of Service. However, in no event shall the SUBSCRIBING ENTITY be entitled to credits, if any, in excess of an amount equivalent to charges payable by the SUBSCRIBING ENTITY to CINGULAR for Services under this Agreement for the period such failure, delay or nonperformance occur.

## **7.3 Certification of Funds**

None of the rights, duties, or obligations in this Agreement will be binding on the State, and Cingular will not begin its performance, until all the following conditions have been met: (a) all statutory provisions under the Code, including Section 126.07, have been met; (b) all necessary funds are made available by the appropriate state agencies; (c) if required, approval of this Agreement is given by the Controlling Board of Ohio; and (d) if the State is relying on Federal or third-party funds for this Agreement, the State gives Cingular written notice that such funds have been made available.

## **8 Conversion Plan**

All existing Subscribing Entities will be incorporated into the Ohio 1 Plan on the effective date of this Agreement. Any subscribing entities not converted to the Ohio 1 Plan in error, will be receive a credited back to the effective date of the agreement. In addition, Cingular must ensure that all corrections be reflected in the Cost Recovery calculations and payments.

## **9 Limitation of Liability**

Cingular will be responsible for any liability, claims, losses and damages arising out of the performance of this Agreement providing such liability, claim, loss, or damage is due to the willful conduct or negligence of Cingular, its employees, agent or subcontractors. NOTWITHSTANDING THE PREVIOUS SENTENCE AND EXCEPT AS EXPRESSLY PROVIDED IN THIS AGREEMENT, NEITHER PARTY, ITS AFFILIATES OR CONTRACTORS SHALL BE LIABLE FOR ANY INDIRECT, INCIDENTAL, SPECIAL, RELIANCE, PUNITIVE, EXEMPLARY, OR CONSEQUENTIAL DAMAGES, INCLUDING LOST OR IMPUTED PROFITS OR REVENUES OR LOST DATA, REGARDLESS OF THE LEGAL THEORY UNDER WHICH SUCH LIABILITY IS ASSERTED AND EVEN IF THE PARTY KNEW OR SHOULD HAVE KNOWN OF THE POSSIBILITY OF SUCH DAMAGES. NOTWITHSTANDING THE FOREGOING, THE LIMITATION OF LIABILITY IN THIS SECTION SHALL NOT APPLY TO CUSTOMER'S PAYMENT AND INDEMNIFICATION OBLIGATIONS.

In no event shall CINGULAR be liable, and the SUBSCRIBING ENTITY hereby releases CINGULAR from liability for damages caused by failures or delays in the provision of, or making calls to, 911 or any other emergency service, where such service is available.

## **10 Standard Clauses**

### **10.1 Excusable Delay**

Neither party will be liable for any delay in its performance that arises from causes beyond its control and without its negligence or fault. The delayed party will notify the other promptly of any material delay in performance and will specify in writing the proposed revised performance date or dates as soon as practicable after notice of delay. In the event of any such excusable delay, the dates of performance or of delivery affected by the delay will be extended for a period equal to the time lost by reason of the excusable delay. The delayed party must also describe the cause of the delay and what steps it is taking to remove the cause. The delayed party may not rely on a claim of excusable delay to avoid liability for a delay if the delayed party has not taken commercially reasonable steps to mitigate or avoid the delay. Things that are controllable by Cingular's subcontractors will be considered controllable by the Cingular, except for third-party manufacturers supplying commercial items and over whom Cingular has no legal control.

### **10.2 Employment Taxes**

Each party will be solely responsible for reporting, withholding and/or paying all employment related taxes, payments and/or withholdings for its own personnel, including, but not limited to, Federal, state and local income taxes, social security, unemployment or disability deductions, withholdings, and/or payments (together with any interest and penalties not disputed with the appropriate taxing authority).

### **10.3 Sales, Use, Excise, and Property Taxes**

The State is exempt from any sales, use, excise, and property tax. To the extent sales, use, excise, or any similar tax is imposed on Cingular in connection with the Project, such will be the sole and exclusive responsibility of Cingular, and Cingular will pay such taxes (together with any interest and penalties not disputed with the appropriate taxing authority) whether they are imposed at the time the services are rendered or a later time.

### **10.4 Equal Employment Opportunity**

During the Project, Cingular will not discriminate against any employee or applicant for employment because of race, religion, color, sex, national origin, disability, age, or Vietnam-era veteran status ("Protected Status"). Cingular will ensure that applicants for employment and employees are treated without regard to their Protected Status.

Cingular agrees to post notices with the provisions of this section in conspicuous places that are available to employees and applicants and to state in all solicitations and advertisements for employees that it is an equal opportunity employer.

### **10.5 Compliance with Law**

Cingular agrees to comply with all applicable Federal, state, and local laws in the conduct of the work hereunder.

### **10.6 Drug-Free Workplace**

Cingular will comply with all applicable state and Federal laws regarding keeping a drug-free workplace. Cingular will make a good faith effort to ensure that all Cingular employees, while working on state property, will not have or be under the influence of illegal drugs or alcohol or abuse prescription drugs in any way.

### **10.7 Conflicts of Interest**

No Personnel of Cingular may voluntarily acquire any personal interest that conflicts with their responsibilities under this Agreement. Additionally, Cingular will not knowingly permit any public official or public employee who has any responsibilities related to this Contract or the Project to acquire an interest in anything or any entity under Cingular's control if such an interest would conflict with that official's or employee's duties. Cingular will disclose to the State knowledge of any such person who acquires an incompatible or conflicting personal interest related to this Contract. Cingular will take all legal steps to ensure that such a person does not participate in any action affecting the work under this Contract, unless the State has determined that, in the light of the personal interest disclosed, that person's participation in any such action would not be contrary to the public interest.

### **10.8 Ohio Ethics and Elections Law**

Cingular certifies that it is currently in compliance and will continue to adhere to the requirements of the Ohio ethics law, O.R.C. §102.03 AND 102.04. Cingular affirms that, as applicable to Cingular, no party listed in Division (I) or (J) of Section 3517.13 of the Ohio Revised Code or spouse of such party has made, as an individual, within the two

previous calendar years, one or more contributions totaling in excess of \$1,000.00 to the Governor or to his campaign committees.

### **10.9 Assignment**

Cingular may not assign this Contract or any of its rights or obligations under this Contract without the prior, written consent of the State.

### **10.10 Governing Law**

This Contract will be governed by the laws of Ohio, and venue for any disputes will lie with the appropriate court in Franklin County, Ohio.

### **10.11 Finding for Recovery**

Contractor warrants that it is not subject to an unresolved finding for recovery under Ohio Revised Code Section 9.24. If the warranty was false on the date the parties signed this Contract, the Contract is void ab initio.

## **11 Miscellaneous**

### **11.1 BINDING NATURE, ASSIGNMENT, AND SUBCONTRACTING**

This MSA shall be binding on the parties and their respective successors in interest and assigns. This MSA may be assigned by Cingular to any of its affiliates or to any entity which acquires all or substantially all of Cingular's assets in the applicable Service Area. The SUBSCRIBING ENTITY shall not assign this MSA in whole or in part without the prior written consent of Cingular.

### **11.2 Entire Agreement**

This Agreement constitutes the entire and exclusive statement of the agreement between the parties with respect to its subject matter and there are no oral or written representations, understandings or agreements.

### **11.3 Services Provided**

CINGULAR shall provide Service, Equipment and Software to the SUBSCRIBING ENTITY on the terms and conditions specified herein. Service is generally available to wireless Equipment that is equipped for the Service when within the range of radio base station sites located in the service area.

### **11.4 Wireless Service Agreements**

In lieu of the SUBSCRIBING ENTITY requiring its SUBSCRIBING ENTITY billed and guaranteed authorized users ("Subscribing Entity Accounts") to execute individual wireless service agreements ("Individual WSA") which set forth the terms and conditions of the provision of CINGULAR's Service in its Market Areas, the SUBSCRIBING ENTITY is executing this Agreement which sets forth the terms and conditions of the provision of CINGULAR's Service in its Market Areas. End users of non-SUBSCRIBING ENTITY billed and guaranteed lines ("Employee Accounts") will be required to sign an Individual WSA.

### **11.5 No Right to User Name**

CINGULAR will assign a user name for Handhelds activated under this Agreement. Neither the SUBSCRIBING ENTITY nor its employees own the user names assigned under this Agreement. CINGULAR may reassign or change such user names when, in its sole opinion, it is necessary in the conduct of its business. The SUBSCRIBING ENTITY has no property rights in the assigned user names and cannot acquire such rights through usage, publication or otherwise. CINGULAR may change this user name or assign it to another user in its discretion.

### **11.6 No Resell of Services.**

The SUBSCRIBING ENTITY may not resell Service. Reselling means providing any re-offer of any part or all of the Services to any third party.

### **11.7 Use of Services**

Use of the Service as it relates solely to the Handheld Features is subject to compliance with the following requirements. If any account is used in violation of these requirements, then CINGULAR shall have the right, without notice to the SUBSCRIBING ENTITY, to terminate Service to the offending account.

- The SUBSCRIBING ENTITY shall not transmit obscene, indecent, harassing, profane, abusive, false, illegal or deceptive messages.
- The SUBSCRIBING ENTITY shall not i) activate radio modems which are not approved by CINGULAR, ii) activate unregistered radio modems, iii) use or permit the operation of radio modems in a way other than as the radio modem was designed or configured to operate at the time of approval, iv) transmit excessive retry messages or v) permit the radio modem to consume network capacity that exceeds that reasonably anticipated based on the radio modem and software application design or based on the use intended and disclosed by the SUBSCRIBING ENTITY to Cingular.
- The SUBSCRIBING ENTITY shall use the Services primarily for business purposes.
- The SUBSCRIBING ENTITY shall not use the Services to send to third parties unsolicited commercial e-mail or unsolicited commercial IM PLUS messages (commonly known as "spam").

### **11.8 Modifications to Service**

Cingular reserves the right in its discretion and without notice to the SUBSCRIBING ENTITY, from time to time, to make changes in the Service, rules of operation, accessibility periods, subscription identification procedures, type and location of Equipment, allocation and quantity of resources utilized, programming languages, administrative and operational algorithms billing systems and methodology, packet size, character distribution within and among packets and designation of the control center serving an account at any particular address.

## **11.9 LIMITED WARRANTY**

**Disclaimer of Warranties - Service.** CINGULAR MAKES NO WARRANTY, EXPRESS OR IMPLIED, OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, SUITABILITY, NON-INFRINGEMENT OR PERFORMANCE WITH REGARD TO THE SERVICES PROVIDED HEREUNDER.

**Disclaimer of Warranties - Equipment and Software.** EQUIPMENT AND SOFTWARE COMES WITH A SEPARATE WARRANTY. EXCEPT AS MAY BE SET FORTH IN ANY EQUIPMENT OR SOFTWARE WARRANTY, CINGULAR DISCLAIMS ALL OTHER WARRANTIES, WHETHER EXPRESS OR IMPLIED OF MERCHANTABILITY, FITNESS FOR PARTICULAR PURPOSE, SUITABILITY, NON-INFRINGEMENT, MISAPPROPRIATION OF TRADE SECRETS, OR PERFORMANCE WITH REGARD TO THE SOFTWARE OR EQUIPMENT.

### **11.10 Release of Information**

The subscribing entity hereby authorizes the disclosure of account information to or from other providers of wireless service solely for the provision of Service pursuant to this Agreement.

## **12 Notices**

Except as otherwise provided in this Agreement, all notices required or permitted to be given hereunder shall be in writing and shall be valid and sufficient if dispatched by a) registered or certified mail, postage prepaid, in any post office in the United States; b) hand delivery; c) overnight courier; d) facsimile transmission or e) email upon confirmation of receipt.

If to DAS:

Ohio Department of Administrative Services  
Office of Information Technology  
Services Delivery Division  
2323 West Fifth Avenue, Suite 140  
Columbus, OH 43204  
Attn: Contract Management

If to Cingular:

Cingular Wireless LLC  
Vice President-Business Sales  
5565 Glenridge Connector  
Atlanta, Georgia 30342-4756

**With a copy to:**

Cingular Wireless LLC  
General Counsel  
5565 Glenridge Connector  
Atlanta, Georgia 30342-4756

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the Effective Date.

STATE

Name: Mary Carroll

Title: State CIO

Date: 3-7-05

CINGULAR WIRELESS

Name: Christopher K. Hill

Title: VP Government Solutions Grp

Date: January 28, 2005