

ENTERPRISE AGREEMENT FOR EQUIPMENT AND SERVICES

This Agreement is made this 17th day of Feb, 2005 (hereinafter referred to as the "Effective Date"), by and between the **Georgia Technology Authority** (hereinafter referred to as "GTA"), and **New Cingular Wireless National Accounts, LLC**, whose principal place of business is located at 8645 154th Avenue NE, Redmond, Washington 89052 (hereinafter referred to as "Contractor").

1. Services. Contractor agrees to provide to procuring Agencies the "Equipment" and the "Services" as described in the Request for Proposal No. GTA000187, soliciting proposals for Wireless Communications Devices and Services ("RFP") and the Contractor's Proposal in response thereto. As referred to in this Agreement, "Agencies" shall include any and all State of Georgia entities, including but not limited to, departments, agencies, authorities, commissions, boards, colleges and universities, counties, cities, townships and other political subdivisions of the State. The contractual relationship between Contractor, GTA and Agencies shall be governed by the following order of precedence: (i) the provisions of this Agreement, including all exhibits attached hereto and incorporated into this Agreement; (ii) if applicable, the governing Request for Proposal or other solicitation document ("RFP"); (iii) the Contractor's Proposal; and (iv) the Rules of the GTA, which are incorporated herein by reference. Agencies will be required to execute an Agency Agreement of a form acceptable to GTA and Contractor before Services and Equipment may be provided under this Agreement. A sample of such an Agency Agreement is attached to this Agreement.
2. Term and Renewal. The "Term" of this Agreement shall begin on the Effective Date and end as of the end of the then current fiscal year (July 1 - June 30). Thereafter, the Agreement may be renewed upon mutual agreement by Contractor and GTA on a year-to-year basis for up to Five (5) fiscal year periods. The terms and conditions of this Agreement shall apply during any renewals of the Term. The term of the Equipment and Services ordered by Agencies hereunder shall begin on receipt of a Purchase Order from each procuring Agency and end upon the completion of the then current fiscal year.
3. Pricing. Pricing and procedures for billing and payment for Services and Equipment shall be as specified in the RFP and the Proposal.
4. Payment. Each Agency agrees to pay Contractor for all undisputed amounts within thirty (30) days of receipt of invoice, provided that Equipment and Services have been accepted by the Agency as hereinafter provided.
5. Acceptance of Equipment and Services. Contractor shall deliver any Equipment and/or perform any Services in accordance with the schedule set forth in this Agreement or the time specified in a Purchase Order issued by the Agency (whichever is later). Unless otherwise agreed to by Contractor and the Agency, Contractor shall provide written notification of delivery of any Equipment, or performance of Services, to the Agency ("Delivery Notice"). The Agency shall have thirty (30) days from the date of receipt of the Delivery Notice to provide Contractor with written notification of acceptance or rejection due to unsatisfactory performance. Acceptance by the Agency may only be accomplished by an affirmative act on the part of the Agency pursuant to this Section and the failure of the Agency to issue an acceptance notice shall not be deemed an acceptance of the Equipment or Services or any portion thereof; however, lack of notice of acceptance or rejection by the Agency within sixty (60) days from the receipt of the Delivery Notice shall constitute acceptance of the Equipment or Service. In the event the Agency issues a rejection notice, Contractor shall, as quickly as is practicable, correct at its expense all deficiencies caused by Contractor.
6. Warranty. Contractor warrants that in providing the Equipment and performing the Services during the Term:
 - a. Contractor will strictly comply with the descriptions and representations as to the Equipment and Services (including performance, capabilities, accuracy, completeness, characteristics, specifications, configurations, standards, functions and requirements) which appear herein and Contractor will perform the Services on time;
 - b. In addition to any express and implied warranties provided under law or given under other provisions of this Agreement, Contractor hereby expressly warrants that the Services to be performed hereunder will be performed in a workmanlike manner, subject to the supervision and instructions provided by the Agency, and that all work assigned will be performed in a manner consistent with that level of care and skill ordinarily exercised by other providers of similar services under similar circumstances at the time Services are provided;
 - c. Contractor's Equipment and other products, if any, will conform to generally applicable standards in the industry and Contractor shall use only new standard parts/materials or parts/materials equal in performance to new parts/materials unless otherwise agreed to in writing by the Agency;
 - d. The Equipment and Services will not be in violation of any applicable law, rule or regulation, and Contractor will

obtain all permits and licenses required to comply with such laws and regulations;

- e. The Equipment and Services will not violate or in any way infringe upon the rights of third parties, including proprietary information and non-disclosure rights, or any Intellectual Property rights. As used herein, "Intellectual Property" shall mean any and all know-how, inventions, patents, copyrights, models, designs, trademarks, trade dress, trade secrets, discoveries, regulatory filings, or other information (whether or not patentable and whether or not in tangible or intangible form), and any other industrial or proprietary rights, and any documentation relating thereto, and any and all applications for any of the forgoing, whether or not registered as of the Effective Date or at any later date;
- f. Contractor is the lawful owner or licensee of all software, hardware, methods, methodologies and any pre-existing Intellectual Property used in the performance of the Services contemplated hereunder and Contractor has the right to permit the Agency access to or use of such software, hardware, methods, methodologies and Intellectual Property;
- g. Contractor shall assign to the Agency the manufacturers' warranties for material furnished to the Agency;
- h. All software present in the Equipment and any update or revision to any of such software will be free from defects and will meet all specifications set forth in this Agreement and any documents referenced therein. Contractor will, without charge to the Agency, correct any defects and make any fixes, additions, modifications or adjustments to any of such software or any update or revision to such software as may be necessary to keep the software in operating order in accordance with specifications at all times during the applicable warranty period.

7. Confidential Information.

- a. The parties acknowledge that in order to perform the Services called for in this Agreement, it may be necessary to disclose to each other certain confidential information ("Confidential Information"). Each party agrees that it shall not disclose, transfer, use, copy, or allow access to any such Confidential Information to any employees or to any third parties excepting those who have a need to know such Confidential Information in order to allow Contractor to perform the Services, and who have executed a nondisclosure agreement consistent with the provisions hereof.
- b. Neither party shall have any obligation of confidentiality with respect to any information which: (i) is or becomes (through no improper action or inaction of the receiving party or any of its affiliates, agents, consultants or employees) generally available to the public; (ii) can be demonstrated by the receiving party to have been in its possession or known by it prior to the receipt under this Agreement; (iii) is rightfully disclosed to the receiving party by a third party without restriction; (iv) is disclosed by the receiving party with the written approval of the disclosing party; (v) is developed independently by the receiving party; or (vi) is obligated to be disclosed by order of a court of competent jurisdiction.
- c. Notwithstanding the foregoing, GTA's and the Agencies' obligations hereunder shall be subject to the provisions of the Georgia Open Records Act (O.C.G.A. §50-18-70 *et seq.*), as it may be amended from time to time.

8. License and Ownership.

- a. License. Contractor hereby grants to the Agency an irrevocable, nonexclusive, worldwide, fully paid up, royalty-free license and/or sublicense to use, execute, maintain, reproduce, modify, display, and perform copies of Intellectual Property and derivative works thereof and to prepare derivative works based upon such Intellectual Property. The Agency may copy the software provided hereunder as necessary to efficiently utilize such software. Without limiting the generality of the foregoing, such rights shall include copying rights granted to "owners of copies" under federal copyright laws of the United States, plus copying: (i) for backup, archive or emergency restart purposes; (ii) for disaster recovery and disaster recovery testing purposes; (iii) to migrate the software for use on other computers and/or hardware; and (v) to store the software at any off premise location which the Agency uses for storage purposes.
- b. Exclusions. Except as expressly permitted by this Agreement, the Agency agrees that it will not: (i) lease, loan, resell, sublicense, or otherwise distribute the software to parties who are not State of Georgia government entities; (ii) permit third-party access to, or use of, the software, except as permitted in this Agreement; (iii) create derivative works based on the software; (v) reverse engineer, disassemble, or decompile the software; (vi) remove any identification or notices contained on the software. The Agency will notify Contractor if the Agency becomes aware of any unauthorized third party access to, or use of, the software.
- c. Ownership. Title to the Equipment and other deliverables shall remain with the Contractor until they are accepted by the Agency in accordance with Section 5 above, provided that Contractor shall retain all right, title and interest in the software and any accompanying documentation.

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9. Works Made for Hire. If, as a result of or in the course of Services rendered to the Agency by Contractor or any employee or employees of Contractor during the term of this Agreement, Contractor produces or develops any tangible and/or intangible output or Intellectual Property, then any and all such output and Intellectual Property shall be deemed to be "works made for hire" and shall be the property of the Agency (whether or not the Services were rendered at the Agency's site; made, conceived or devised solely by Contractor or jointly with others; and/or completed or uncompleted). Contractor herewith assigns to the Agency all rights in such works made for hire and all Intellectual Property in and to the works made for hire. Further,

Contractor shall (and will ensure that Contractor's employees and subcontractors shall) supply all assistance reasonably requested in securing for the Agency's benefit any patent, copyright, trademark, service mark, license, right or other evidence of ownership of any such works made for hire and any such Intellectual Property, and will provide full information and cooperation regarding any such item and execute all appropriate documentation prepared by the Agency in applying or otherwise registering, in the Agency's name all rights to any such item without any further consideration. The Agency does not grant any licenses to Contractor to use any works made for hire or Intellectual Property developed under this Agreement. Contractor agrees that it will not provide to its other clients and customers, nor use in any way in the course of later engagements, the works made for hire and Intellectual Property created for and delivered to the Agency pursuant to this Agreement.

10. Indemnification.

- a. Contractor hereby agrees to indemnify, protect and save harmless the State of Georgia, GTA, each procuring Agency and their officers and employees (hereinafter collectively referred to as "Indemnitees"), of and from any and all claims, demands, liabilities, losses, costs or expenses, including attorneys' fees, for any loss or damage for bodily injury, property damage and attorney's fees related thereto to the extent caused by the gross negligence or willful misconduct of Contractor, its agents, employees, subcontractors, or others working at the direction or on behalf of Contractor. This indemnification applies notwithstanding the fact that third parties or any of the Indemnitees may be partially responsible for the events giving rise to the claim; or the claim results in a monetary obligation that exceeds any contractual commitment. However, if any of the Indemnitees or third parties are partially responsible for the events giving rise to the claim, Contractor's indemnification hereunder shall apply only to the extent provided in this Section. Contractor hereby waives, releases, relinquishes, discharges and agrees to indemnify, protect and save harmless the Indemnitees, of and from any and all claims, demands, liabilities, losses, costs or expenses, including attorneys' fees, made by any third party alleging that any Equipment or Services as provided by Contractor infringes a third party's Intellectual Property rights. Contractor shall be under no obligation to defend or indemnify the Indemnitees as set forth in this Section to the extent that such third party claim, suit, or other demand arises out of or relates to: (i) Contractor's compliance with the Agency's specifications; (ii) a combination of the Equipment and/or Services with products or services not provided by Contractor; (iii) a modification of the Equipment or Services that is inconsistent with the terms of this Agreement; or (v) information, data, or other content not provided by Contractor. With respect to any pending or threatened claim, suit or other demand as to which Contractor is the indemnifying party, Contractor shall obtain for the Agency the right to continue using the Equipment and/or Services or alternatively replace or modify the Equipment and Services so that they are functionally equivalent but non-infringing.
- b. If and to the extent such damage or loss as covered by this Indemnification provision is covered by the State of Georgia Tort Claims Fund (the "Fund"), Contractor agrees to reimburse the Fund. To the full extent permitted by the Constitutions and the laws of the State of Georgia and the terms of the Fund, Contractor and its insured waive any right of subrogation against the State of Georgia, the Indemnitees and the Fund and insurers participating hereunder, to the full extent of this indemnification.
- c. Contractor shall, at its expense, be entitled to and shall have the duty to participate in the defense of any suit against the Indemnitees. No settlement or compromise of any claim, loss or damage entered into by Indemnitees shall be binding upon Contractor unless approved in writing by Contractor. No settlement or compromise of any claim, loss or damage entered into by Contractor shall be binding upon Indemnitees unless approved in writing by Indemnitees.
- d. Contractor's obligation to indemnify any Indemnitee will survive the expiration or termination of this Agreement by either party for any reason.

11. Personnel.

- a. All of Contractor's or a subcontractor's personnel shall comply with the Agency's reasonable confidentiality and security requirements while on the Agency's premises. In the event that any of Contractor's or a subcontractor's personnel do not comply with such confidentiality and security requirements, the Agency, in its sole reasonable discretion, may have the personnel removed from the premises.
- b. If the Agency believes that the performance or conduct of any person employed or retained by Contractor to perform any Services hereunder is unsatisfactory for any reason or is not in compliance with the provisions of this Agreement, The Agency shall so notify Contractor in writing and Contractor shall promptly address the performance or conduct of such person, or, at the Agency's reasonable request, immediately replace such person with another person acceptable to the Agency and with sufficient knowledge and expertise to perform the Services in accordance with this Agreement. Any decision to remove such person will not be based on disability, age, sex, religion, national origin, race, color or veteran status, or otherwise in violation of federal, state or local law.
- c. Contractor warrants that all persons assigned by it to the performance of this Agreement shall be employees or authorized subcontractors of Contractor and shall be fully qualified to work under this Agreement. Contractor shall ensure that an adequate number of appropriately qualified personnel are employed and available to provide the

Deliverables and Services in accordance with the schedule and maintenance requirements set forth in the RFP and this Agreement.

- d. With respect to any Contractor personnel designated as "Key Personnel," the assignment of such Key Personnel to perform the Services will be continuous throughout the term of the Agreement, except as approved by GTA or in the case of the termination of employment of any such Key Personnel. Designation of Key Personnel and maintenance of Key Personnel status are by mutual agreement of Contractor and GTA. The parties agree that such Key Personnel are essential to the Services offered pursuant to this Agreement. The parties further agree that should any such Key Personnel no longer be employed by Contractor during the term of this Agreement, for whatever reason, GTA shall have the right to approve their replacements or terminate this Agreement on thirty (30) days written notice. Any decision to remove Key Personnel will not be based on disability, age, sex, religion, national origin, race, color or veteran status, or otherwise in violation of federal, state or local law.

12. Termination.

- a. Each party has the right to terminate this Agreement if the other party breaches or is in default of any material obligation, which default is incapable of cure, or which, being capable of cure, has not been cured within ten (10) days after receipt of notice of such default (or such additional cure period as the non-defaulting party may authorize). Notwithstanding the foregoing, if such default may not be reasonably expected to be cured within ten (10) days, the parties will agree to a mutually satisfactory alternate cure period.
- b. GTA may terminate this Agreement, in whole or in part, by written notice to Contractor and may regard Contractor in default of this Agreement if Contractor becomes insolvent, makes a general assignment for the benefit of creditors, files a voluntary petition of bankruptcy, suffers or permits the appointment of a receiver for its business or assets, or becomes subject to any proceeding under any bankruptcy or insolvency law, whether domestic or foreign, or has wound up or liquidated, voluntarily or otherwise.
- c. GTA may terminate this Agreement, in whole or in part, immediately, without notice, if: (i) GTA deems that such termination is necessary to prevent or protect against fraud or otherwise protect GTA's personnel, facilities or services, or (ii) Contractor is debarred or suspended from performing services on any public contracts.
- d. GTA may terminate this Agreement, in whole or in part, for convenience or without cause upon thirty (30) days prior written notice to Contractor.
- e. Should there be any protest of the RFP or the award of this Agreement to Contractor which continues past the Effective Date and which is ultimately determined adversely to GTA's RFP or award of this Agreement, then GTA may terminate this Agreement by written notice to Contractor specifying the termination date.
- f. Upon the termination or expiration of this Agreement, Contractor promptly shall return to each Agency all papers, materials and other property of the Agency then in its possession, including but not limited to all work in progress as is appropriate in its then-existing form (in object code and source code to the extent such work is comprised of software, and in machine readable and printed formats to the extent such work is comprised of documentation) to the Agency.

13. Funding. The parties acknowledge that institutions of the State of Georgia are prohibited from pledging the credit of the State. If the source of payment for the charges payable hereunder no longer exist or are determined to be insufficient, this Agreement shall terminate without further obligation of the GTA or any Agency as of that moment. The determination of GTA or applicable Agency as to the occurrence of the events stated herein shall be conclusive.

14. Taxes. All fees payable to Contractor hereunder shall be net of any and all taxes that the Contractor may be required by law to collect in connection with the provision of the Equipment and Services hereunder. Contractor shall be solely responsible for the payment of any and all taxes lawfully imposed upon it, including but not limited to taxes on property owned, leased or used by Contractor; franchise or privilege taxes on Contractor's business; gross receipts taxes to which Contractor is subject; and income taxes. By this paragraph, GTA makes no representation whatsoever as to the liability or exemption from liability of Contractor to any tax imposed by any governmental entity. Upon request, GTA will provide a certificate of tax exemptions which apply to this Agreement. Prices noted in applicable pricing documents are normally specified as pre-tax amounts; applicable taxes and fees are in addition to these prices. GTA or Agencies will provide documentation of tax-exempt status, otherwise, Contractor will assess appropriate taxes and fees.

15. Disclaimer of Certain Damages. NEITHER PARTY SHALL BE LIABLE TO THE OTHER FOR ANY INDIRECT, CONSEQUENTIAL, EXEMPLARY, SPECIAL, INCIDENTAL OR PUNITIVE DAMAGES, INCLUDING WITHOUT LIMITATION LOSS OF USE OR LOST BUSINESS, REVENUE, PROFITS, OR GOODWILL, ARISING IN CONNECTION WITH THIS AGREEMENT, UNDER ANY THEORY OF TORT, CONTRACT, WARRANTY, STRICT LIABILITY OR NEGLIGENCE, EVEN IF THE PARTY KNEW OR SHOULD HAVE KNOWN OF THE POSSIBILITY OF SUCH DAMAGES. THE PROVISIONS OF THIS PARAGRAPH SHALL NOT APPLY TO LICENSOR'S OBLIGATIONS TO INDEMNIFY ANY INDEMNITEE.

16. Assignment and Delegation. Contractor shall not assign any of its rights or delegate the performance of any of its duties under this Agreement without GTA's prior written consent. Any purported assignment or delegation shall be null and void.

17. Insurance.

a. Contractor shall procure and maintain insurance which shall protect the Contractor and the State of Georgia from any claims for bodily injury, property damage, or personal injury which may arise out of operations under this Agreement. Contractor shall procure the insurance policies at the Contractor's own expense and shall furnish to GTA an insurance certificate listing the State of Georgia as certificate holder. The insurance certificate must document that the liability insurance coverage purchased by the Contractor includes contractual liability coverage to protect the State. In addition, the insurance certificate must provide the following information:

- (1) Name and address of authorized agent;
- (2) Name and address of insured;
- (3) Name of insurance company (licensed to operate in Georgia);
- (4) Description of coverage in standard terminology;
- (5) Policy period;
- (6) Policy Number;
- (7) Limits of liability;
- (8) Name and address of certificate holder;
- (9) Acknowledgment of notice of cancellation to the State;
- (10) Signature of authorized agent;
- (11) Telephone number of authorized agent; and
- (12) Details of policy exclusions in comments section of Insurance Certificate.

b. Contractor is required to maintain the following insurance coverages during the Term of this Agreement:

- (1) Workers Compensation Insurance (Occurrence) in the amounts of the statutory limits established by the General Assembly of the State of Georgia (A self-insurer must submit a certificate from the Georgia Board of Workers Compensation stating that Contractor qualifies to pay its own workers compensation claims.) In addition, Contractor shall require all subcontractors occupying the premises or performing work under this Contract to obtain an insurance certificate showing proof of Workers Compensation Coverage.
- (2) Commercial General Liability Policy (Occurrence), to include contractual liability. The Commercial General Liability Policy shall have dollar limits sufficient to insure that there is no gap in coverage between this policy and the Commercial Umbrella Policy described below.
- (3) Business Auto Policy (Occurrence) to include but not be limited to liability coverage on any owned, non-owned and hired vehicle used by Contractor or Contractor's personnel in the performance of this Agreement. The Business Automobile Policy shall have dollar limits sufficient to insure that there is no gap in coverage between this policy and the Commercial Umbrella Policy required under this Agreement.
- (4) Commercial Umbrella Policy (Occurrence), which must provide the same or broader coverages than those provided for in the above Commercial General Liability and Business Auto Policies. Policy limits for the Commercial Umbrella Policy shall have an annual aggregate limit of \$3,000,000.

c. The foregoing policies shall contain a provision that coverage afforded under the policies will not be canceled, or not renewed or allowed to lapse for any reason until at least sixty (60) days prior written notice has been given to GTA. Certificates of Insurance showing such coverage to be in force shall be filed with GTA prior to commencement of any work under this Agreement. The foregoing policies shall be obtained from insurance companies licensed to do business in Georgia and shall be with companies acceptable to GTA. All such coverage shall remain in full force and effect during the Term and any renewal or extension thereof.

18. Cooperation and Transition of Services.

- a. In the event that GTA has entered into or enters into agreements with other contractors or government institutions for additional work related to the Services provided hereunder, Contractor agrees to cooperate fully with such other parties.
- b. Upon expiration or earlier termination of this Agreement or any Services provided hereunder, Contractor shall accomplish a complete transition of the Services from Contractor to GTA, or to any replacement provider designated by GTA, without any interruption of or adverse impact on the Services or any other services provided by third parties. Contractor shall cooperate fully with GTA or such replacement provider and promptly take all steps required to assist in effecting a complete transition. All services related to such transition shall be performed at no additional cost beyond what would be paid for the Services hereunder.
- c. Contractor shall not commit any act which will interfere with the work performed by any third party as set forth herein.

19. Independent Contractor. In its relationship with GTA and the State of Georgia, and for purposes of performing any services assigned under this Agreement, Contractor warrants that it is an independent contractor. Contractor shall therefore be responsible for compliance with all laws, rules and regulations involving its employees and any subcontractor(s), including but not limited to employment of labor, hours of labor, health and safety, working conditions, workers' compensation insurance, and payment of wages. Contractor warrants that all persons assigned to perform services under this Agreement are employees of Contractor or employees of a subcontractor approved by GTA as specified in this Agreement. Neither Contractor nor any of its agents, servants, employees, subcontractor or suppliers shall become or be deemed to become agents, servants, or employees of GTA or the State of Georgia. This Agreement shall not be construed so as to create a partnership or joint venture between Contractor and the State of Georgia.
20. Record Retention and Audit Rights. Contractor shall, and shall cause each of its subcontractors to, maintain accurate books, records, documents and other evidence concerning Contractor's financial status, costs, expenses, provision of Equipment and performance of Services under this Agreement (collectively, "Records") for the latter of: (a) five (5) years after the final payment under this Agreement, (b) for such period (if any) as is required by applicable statute, or (c) for such period (if any) as is set forth in the RFP. Contractor's accounting procedures and practices shall conform to generally accepted accounting principles ("GAAP") and the costs properly applicable to this Agreement shall be readily ascertainable therefrom. The State of Georgia, by and through the GTA or State Auditor, shall have the right, exercisable at any reasonable time during normal business hours, to inspect and audit any Records. Upon request, Contractor shall deliver the required documentation and records on the date and at the location specified by GTA or State Auditor or other duly authorized officer of the State of Georgia.
21. Waiver and Severability. The waiver by either party of any breach of any provision contained in this Agreement shall not be deemed to be a waiver of such provision on any subsequent breach of the same or any other provision contained in this Agreement. Any such waiver must be in writing in order to be effective, and no such waiver or waivers shall serve to establish a course of performance between the parties contradictory to the terms hereof. All provisions of this Agreement are severable, and the unenforceability or invalidity of any of the provisions will not affect the validity or enforceability of the remaining provisions. The remaining provisions will be construed in such a manner as to carry out the full intention of the parties. Section titles or references used in this Agreement have no substantive meaning or content and are not a part of this Agreement.
22. Notices. All notices, requests, or other communications (excluding invoices) hereunder shall be in writing and either transmitted via overnight courier, fax, electronic mail, hand delivery or certified or registered mail, postage prepaid and return receipt requested to the parties at the following addresses. Notices will be deemed to have been given when received.

To GTA	To Contractor
Georgia Technology Authority	New Cingular Wireless National Accounts, LLC
100 Peachtree Street, Suite 2300	8645 154 th Avenue, NE
Atlanta, GA 30303	Redmond, WA 98052
Attn: Procurement Director	Attn: Offer Development and Negotiation
Fax: 404-651-5333	Fax: 425-580-8662
E-mail: procurement mailbox@gtga.ga.gov	

23. Applicable Law and Venue. This Agreement shall be governed by and interpreted in accordance with the laws of the State of Georgia, U.S.A, without regard to its conflict of laws principles. Any lawsuit or other action based on a claim arising from this Agreement shall be brought in a court or other forum of competent jurisdiction within Fulton County, Georgia.
24. Drug Free Work Place.
- If Contractor is an individual, he or she hereby certifies that he or she will not engage in the unlawful sale, distribution, dispensation, possession, or use of a controlled substance or marijuana during the performance of this Agreement.
 - If Contractor is an entity other than an individual, it hereby certifies that:
 - ~~A drug free work place will be provided for the Contractor's employees during the Term of this Agreement; and~~
 - It will secure from any subcontractor hired to work in a drug free work place the following written certification: "As part of the subcontracting agreement with (Contractor's Name), (Subcontractor's Name), certifies to Contractor that a drug free work place will be provided for subcontractor's employees during the performance of this Agreement pursuant to paragraph 7 of subsection B of Official Code of Georgia Annotated Section 50-24-3."
 - Contractor may be suspended, terminated, or debarred if it is determined that:

- c. Contractor has made false certification hereinabove.
- d. Contractor has violated such certification by failure to carry out the requirements of Official Code of Georgia Annotated Section 50-24-3.

25. Compliance with Laws and Agency Policies.

- a. Contractor shall perform its obligations hereunder in accordance with all applicable federal, state and local laws, rules and regulations. Contractor also shall comply, and shall require its employees to comply, with all applicable State and Agency policies and standards in effect during the performance of this Agreement, including but not limited to, the Agencies' policies and standards relating to personnel conduct, security, safety, confidentiality and ethics.
- b. Certain equipment, software and technical data which may be provided hereunder may be subject to export and re-export controls under the U.S. Export Administration Regulations and/or similar regulations of the U.S. or any other country. Contractor shall be responsible for complying with all export and re-export laws and regulations including without limitation: (i) local license or permit requirements, (ii) export, import and customs laws and regulations (such as the export and re-export controls under US Export Administration Regulations and/or similar regulations of the US or any other country) which may apply to certain equipment, software and technical data provided hereunder, and (iii) all applicable foreign corrupt practices acts.
- c. Contractor shall obtain and maintain, and shall cause its subcontractors to obtain and maintain all approvals, permissions, permits, licenses, and other documentation required to comply with all applicable laws, rules or regulations.
- d. Contractor agrees that any failure by Contractor or Contractor's employees to comply with any of the obligations of this Section may be treated by GTA as a material breach of this Agreement by Contractor.

26. Risk of Loss. Risk of loss for the Equipment and other deliverables shall remain with the Contractor until they are accepted by the Agency. Insurance during shipment and all risk of loss or damage to the Equipment and other deliverables, until accepted by the Agency in accordance with Section 5 above, including risk of transit, shall be Contractor's.

27. Publicity. Contractor shall not release without GTA's prior written approval any publicity regarding the program or Services provided herein, including but not limited to, notices, information, pamphlets, press releases, research, reports, signs and similar public notices prepared by or for the Contractor, identifying the State of Georgia, the GTA or any Agency receiving goods or services under this Agreement; however, Contractor may reference this Agreement in proposals for other contracts without GTA approval.

28. Non-exclusivity. This Agreement is entered into solely for the convenience of the State of Georgia, and in no way precludes GTA, the State or any Agencies from obtaining like goods from other suppliers upon prior approval of the GTA. Such approval shall be made at the sole discretion of the GTA, and shall be conclusive. Such approval shall only be granted when it is deemed to be in the best interest of the State to do so.

29. Vendor Lobbyist Certification. Contractor hereby certifies that, as of the Effective Date of this Agreement, any lobbyist employed by Contractor has registered with the Georgia State Ethics Commission and complied with the requirements of the Executive Order dated October 1, 2003 ("Providing for the Registration and Disclosure of Lobbyists Employed or Retained by Vendors to State Agencies"). This Agreement may be declared void at GTA's sole discretion, if it is determined that Contractor has made false certification hereinabove or has violated such certification by failure to carry out the requirements of such Executive Order.

30. Entire Agreement. This Agreement, including all Exhibits and documents incorporated hereunder, constitutes the entire agreement between the parties with respect to the subject matter and supersedes any and all other prior and contemporaneous agreements and understandings between the parties, whether oral or written. No amendment to this Agreement shall be valid unless made in a writing of equal dignity and signed by both parties. No representation, request, instruction, directive or order, made or given by any official of GTA or of any Agency of the State of Georgia, whether verbal or written, shall be effective to amend this Agreement or excuse or modify performance hereunder unless reduced to a formal amendment and executed as set forth above. Contractor shall not be entitled to rely on any such representation, request, instruction, directive or order and shall not, under any circumstances whatsoever, be entitled to additional compensation, delay in performance, or other benefit claimed for relying upon or responding to any such representation, request, instruction, directive or order.

IN WITNESS WHEREOF the parties have executed this Agreement on the date first written above.

GEORGIA TECHNOLOGY AUTHORITY

By: Tom Ward

CONTRACTOR

By: William J. Evans

Name: Tom Wade
Title: Executive Dir & State CIO
Date: 2/17/05

Name: William L. Evans
Title: Sr. Director O&A
Date: 2/15/05

**AGENCY AGREEMENT
UNDER
ENTERPRISE AGREEMENT FOR EQUIPMENT AND SERVICES
BETWEEN
GEORGIA TECHNOLOGY AUTHORITY
AND
NEW CINGULAR WIRELESS NATIONAL ACCOUNTS, LLC**

This Agency Agreement (hereinafter the "Agreement") is entered into this _____ day of _____, 20____ (hereinafter the "Effective Date") by and between New Cingular Wireless National Accounts, LLC, whose principal place of business is located at 8645 154th Avenue NE, Redmond, Washington (hereinafter referred to as "Contractor"), and _____, with an office at _____ (hereinafter the "Agency"), under the Georgia Technology Authority's ("GTA") Enterprise Agreement for Equipment and Services No.GTA000187 dated _____, 2005 (hereinafter the "State Contract") to provide commercially available national, digital wireless telecommunications equipment (the "Equipment") and services (the "Services") to any and all State of Georgia entities, including but not limited to, departments, agencies, authorities, commissions, boards, colleges and universities, counties, cities, townships and other political subdivisions of the State of Georgia. Agency and Contractor are sometimes referred herein individually as a "Party" or collectively as the "Parties."

1. Authority to Purchase. By signing below, the Agency represents and warrants that it is eligible and authorized to purchase Equipment and Services from the State Contract. Agency agrees upon Contractor's request to furnish Contractor with documentation to demonstrate the Agency is authorized to purchase from the State Contract.
2. Equipment and Services. The Agency acknowledges and agrees that all purchase orders for Equipment and Service issued by the Agency pursuant tot this Agreement are subject to the terms and conditions of the State Contract. Any terms and conditions contained in a purchase order or in any acknowledgement or acceptance of a purchase order that are inconsistent with, or in addition to (except as required by law) the terms and conditions of this Agreement shall be null and void. In the event of a conflict between this Agreement and the State Contract, the terms and conditions of the State Contract shall have precedence.
3. Incorporation by Reference. The State Contract as may be amended from time to time, including all Attachments, is hereby incorporated by reference into this Agreement with the same force and effect as if it were given in full text.
4. GTA Not Liable for Agency Purchases. The Agency acknowledges and agrees that it shall be solely liable for all Equipment and Services ordered or purchased under this Agreement or any purchase order issued by the Agency pursuant to this Agreement.
5. Notices. All notices, requests, or other communications (excluding invoices) hereunder shall be in writing and either transmitted via overnight courier, facsimile with correct answerback, hand delivery or certified or registered mail, postage prepaid and return receipt requested to the Parties at the following addresses. Notices will be deemed to have been given when received.

Agency:

Contractor:

New Cingular Wireless National Accounts, LLC
8645 154th Avenue NE
Redmond, Washington 98052
Attn: Offer Development and Negotiation

6. Entire Agreement. This Agreement (and any Attachments and other documents incorporated herein, by reference or otherwise) constitutes the entire agreement between the Parties with respect to its subject matter and supersedes all other representations, understandings or agreements that are not expressed herein,

whether oral or written. Except as otherwise set forth herein, no amendments to this Agreement shall be valid unless in writing and signed by both Parties.

IN WITNESS WHEREOF, the duly authorized representatives of the Parties hereto have executed this Agreement as of the Effective Date.

Agency: New Cingular Wireless National Accounts, LLC

By: _____ By: _____

Name: _____ Name: _____

Title: _____ Title: _____

Date: _____ Date: _____

 Clear Form


STATE OF GEORGIA
DEPARTMENT OF REVENUE
SALES AND USE TAX CERTIFICATE OF EXEMPTION
GEORGIA PURCHASER OR DEALER
EFFECTIVE JULY 1, 2000

To: Cingular Communications
(SUPPLIER)

(MM/DD/YY)

01/10/05
(DATE)

(ADDRESS)

THE UNDERSIGNED HEREBY CERTIFIES that all tangible personal property purchased or leased after this date will be for the purpose indicated below, unless otherwise specified on a particular order, and that this certificate shall remain in effect until revoked in writing. Any tangible personal property obtained under this certificate of exemption is subject to the sales and use tax if it is used or consumed by the purchaser in any manner other than indicated on this certificate. (Check proper box.)

- ☐ 1. Resale, rental or leased only, including but not limited to the purchase for resale of gasoline and other motor fuels.
- ☐ 2. Materials for further processing, manufacture or conversion into articles of tangible personal property for resale which will become a component part of the property for sale, or be coated upon or impregnated into the product at any stage of its processing, manufacture or conversion and nonreturnable materials used for packaging tangible personal property for shipment or sale. Containers or other packaging materials purchased for reuse are not exempt.
- ☐ 3. Machinery used directly in the manufacture of tangible personal property for sale purchased as additional, replacement or upgrade machinery to be placed into an existing plant in this State.
- ☐ 4. Direct Pay Permit authorized under Regulation 560-12-1-.16. The holder of a Direct Pay Permit must pay the 3% Second Motor Fuel Tax to suppliers on purchases of gasoline.
- ☒ 5. For use by Federal Government, State Government, any county, municipality or public school system of this State, when supported by official purchase orders or for use by Hospital Authorities created by Article 4, Chapter 7, of Title 7, and County or City Housing Authorities created by Article 1, Chapter 3 of Title 8. The State of Georgia, counties, municipalities, public schools, Hospital and Housing Authorities of Georgia must pay the 3% Second Motor Fuel Tax to suppliers.
A Georgia Sales and Use Tax Certificate of Registration Number is not required for this exemption.
- ☐ 6. Aircraft, watercraft, motor vehicles and other transportation equipment manufactured or assembled, sold and delivered by the manufacturer or assembler for use exclusively outside this State, or delivery of the crafts is for the sole purpose of removing same under its own power when it does not lend itself more reasonably to removal by other means.
A Georgia Sales and Use Tax Certificate of Registration Number is not required for this exemption.
- ☐ 7. Aircraft, watercraft, railroad locomotives and rolling stock, motor vehicles and major components of each, which will be used principally to cross the borders of this State in the service of transporting passengers or cargo by common carriers and by carriers who hold common carrier and contract carrier authority in interstate or foreign commerce under authority granted by the United States government. Replacement parts installed by carriers in such craft or vehicles which become an integral part of the craft or vehicle are likewise exempt. Private and contract carriers are not exempt.

State of Georgia Government

(TYPE OF BUSINESS ENGAGED IN BY THE PURCHASER)

(COMMODITY CODE)

I declare, under penalties of false swearing, that this certificate has been examined by me and to the best of my knowledge and belief is true and correct, made in good faith, pursuant to the sales and use tax laws of the State of Georgia.

Georgia Technology Authority on behalf of authorized state of GA users of this agreement 56700047K

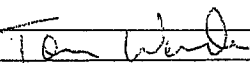
(PURCHASER'S FIRM NAME)

(CERTIFICATE OF REGISTRATION NO.)

100 Peachtree Street, Suite 2300, Atlanta, GA 30303

(ADDRESS)

By



(SIGNATURE)

Title CIO, State of Georgia

(OWNER, PARTNER, OFFICIAL)

A supplier is required to have only one certificate of exemption form on file from each purchaser buying tax exempt. The supplier must exercise ordinary care to determine that the tangible personal property obtained under this certificate is for the purpose indicated. Suppliers failing to exercise such care will be held liable for the sales tax due on such purchases. For example, a supplier cannot accept a Certificate of Registration number bearing a "214" prefix since these are issued to a Contractor which has been deemed to be the consumer and is required to pay the tax at the time of purchase.