

**WIRELESS INTERCONNECTION AGREEMENT**

**BETWEEN**

**VENUS TELEPHONE CORPORATION**

**AND**

**CINGULAR WIRELESS LLC**

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## **ARTICLE I**

### **1. INTRODUCTION**

This Interconnection/Compensation Agreement ("Agreement") is by and between Venus Telephone Corporation, ("VENUS"), with offices at 1698 County Line Road, Venus, PA 16364 and Cingular Wireless LLC ("CINGULAR") on behalf of itself and its wireless operating affiliates as identified in Appendix B hereto with offices at 5565 Glenridge Connector, Atlanta, GA 30342. Venus and CINGULAR individually shall be referred to as "Party" and collectively as "Parties."

### **2. RECITALS**

WHEREAS, VENUS is an Incumbent Local Exchange Carrier in the Commonwealth of Pennsylvania;

WHEREAS, CINGULAR is a telecommunications carrier utilizing the Commercial Mobile Radio Service licenses assigned to CINGULAR within the Commonwealth of Pennsylvania;

WHEREAS, the Parties wish to put in place a voluntary arrangement for the exchange of, and compensation for, certain telecommunications traffic.

NOW, THEREFORE, in consideration of the mutual provisions contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, VENUS and CINGULAR hereby agree as follows:

## **ARTICLE II**

### **1. DEFINITIONS**

Special meanings are given to common words in the telecommunications industry, and coined words and acronyms are common in the custom and usage in the industry. Words used in this contract are to be understood according to the custom and usage in the telecommunications industry, as an exception to the general rule of contract interpretation that words are to be understood in their ordinary and popular sense. In addition to this rule of interpretation, the following terms used in this Agreement shall have the meanings as specified below:

1.1 "Act" or "Telecommunications Act" means the Communications Act of 1934, as amended, and the Telecommunications Act of 1996.

1.1.1 "Affiliate" means a person that (directly or indirectly) owns or controls, is owned or controlled by, or is under common ownership or control with, another person. For purposes of this paragraph, the term "own" means to own an equity interest (or the equivalent thereof) of more than ten (10) percent, however, that for the purposes of this Agreement, neither SBC Communications, Inc., BellSouth Corporation

nor any of their operating companies shall be considered an "Affiliate" of CINGULAR.

- 1.2 "Agreement" means this Wireline-To-Wireless Interconnection and Traffic Exchange Agreement, including all Exhibits, attachments or subsequently executed amendments.
- 1.3 "As defined in the Act," means as specifically defined by the Act.
- 1.4 "As described in the Act" means as described in or required by the Act.
- 1.5 "Central Office Switch" means a switch used to provide Telecommunications Services, including, but not limited to:
  - (a) "End Office Switch" is a switch in which the subscriber station loops are terminated for connection to trunks. The subscriber receives terminating, switching, signaling, transmission, and related functions for a defined geographic area by means of an end office switch.
  - (b) "Remote End Office Switch" is a switch in which the subscriber station loops are terminated. The control equipment providing terminating, switching, signaling, transmission, and related functions would reside in a host office. Local switching capabilities may be resident in a remote end office switch.
  - (c) "Host Office Switch" is a switch with centralized control over the functions of one or more remote end office switches. A host office switch can serve as an end office as well as providing services to other remote end offices requiring terminating, signaling, transmission, and related functions including local switching.
  - (d) "Tandem Office Switch" is a switching system that establishes trunk-to-trunk connections. Local tandems switch calls from one (1) end office to another within the same geographic area, and access tandems switch traffic from hosts or end offices to and from an interexchange carrier. A tandem office switch can provide host office or end office switching functions as well as the tandem functions.
  - (e) "Mobile Switching Center" or "MSC" means a CMRS Provider's facilities and related equipment used to route, transport and switch commercial mobile radio service traffic to and from and among its end users and other telecommunications carriers.

A Central Office Switch may also be employed as a combination End Office/Tandem Office Switch.

- 1.6 "Commercial Mobile Radio Services" or "CMRS" means Commercial Mobile Radio Services as defined in 47 CFR Part 20.

- 1.7 “Commission” means the Pennsylvania Public Utility Commission.
- 1.8 “EAS Service Area” means a group of two (2) or more exchanges, as defined in VENUS' then current General Subscriber Service Tariff, among which a VENUS customer may make landline-to-landline calls without incurring a toll charge. EAS Service does not include Optional EAS Service Areas.
- 1.9 “FCC” means the Federal Communications Commission.
- 1.10 “Incumbent Local Exchange Carrier” or “Incumbent LEC” are as defined in the Act.
- 1.11 “Interconnection” for purposes of this Agreement is the linking of VENUS and CINGULAR networks, either directly or indirectly, for the exchange of telecommunications traffic described in this Agreement.
- 1.12 “Interconnection Point” or “POI” means the physical location(s) on the network of VENUS at which the Parties' networks meet for the purpose of establishing interconnection.
- 1.13 “Interexchange Carrier” or “IXC” means a carrier that is providing interexchange service.”
- 1.14 “Internet Traffic” is any traffic that is transmitted to or returned from the Internet at any point during the duration of the transmission.
- 1.15 “Inter-MTA Traffic” means all traffic that, at the beginning of the call, originates in one MTA and terminates in another MTA.
- 1.16 “Local Exchange Carrier” or “LEC” means any entity that is engaged in the provision of telephone exchange service or exchange access. Such term does not include an entity insofar as such entity is engaged in the provision of a commercial mobile service under section 332(c) of the Act, except to the extent that the Federal Communications Commission finds that such service should be included in the definition of such term.
- 1.17 “LATA” means Local Access and Transport Area as defined in the Act.
- 1.18 “Major Trading Area” or “MTA” has the meaning given to the term in 47 CFR Section 24.202(A).
- 1.19 “Mobile service” is as defined by the FCC.
- 1.20 “NPA” or the “Number Plan Area” also referred to as an “area code” refers to the three-digit code which precedes the NXX in a dialing sequence and identifies the general calling area within the North American Numbering Plan scope to which a call is to be routed (i.e., NPA/NXX-XXXX).

- 1.21 "NXX" means the three-digit code, which appears as the first three digits of a seven-digit telephone number within a valid NPA or area code.
- 1.22 "Party" means either VENUS or CINGULAR, and "Parties" mean VENUS and CINGULAR
- 1.23 "Subject Traffic" is defined for all purposes under this Agreement as Telecommunications Traffic that (a) is originated by a retail customer of one Party on that Party's network, (b) terminates to a retail customer of the other Party on the other Party's network within the same Major Trading Area (MTA), and (c) may be handled pursuant to an agreement between either Party and another carrier that performs only a transiting function in lieu of a direct Interconnection between the Parties. For landline-originated traffic, Subject Traffic is limited to calls to NPA/NXXs within VENUS customers local or EAS calling scope. For purposes of determining originating and terminating points of a call on the CINGULAR network under this Agreement, the originating or terminating cell site locations at the beginning of a call will be used as the point of call origination and termination, respectively. Subject Traffic does not include interexchange traffic, nor does it include any traffic that is transmitted to or returned from the Internet at any point during the duration of the transmission. One-way CMRS traffic is similarly excluded.
- 1.24 "Switched Access Traffic" means traffic which, pursuant to applicable law and regulation, is subject to rates, terms, and conditions defined in each Party's effective intrastate or interstate access tariffs or comparable contractual instruments, and is limited to: (i) calling traffic placed from a VENUS-provided Local Exchange Service to a CINGULAR-provided CMRS Service, where the NPA-NXX designations of the two services are associated with rate centers which are not located within the Local or EAS calling areas of the VENUS-provided service, as defined by VENUS' local exchange tariff(s) in effect at the time the call is placed; and (ii) calling traffic placed from a CINGULAR-provided CMRS Service to a VENUS-provided Local Exchange Service, where at the beginning of the call, the CMRS service is not located in the same MTA as the rate center associated with the NPA-NXX of the Local Exchange Service.
- 1.25 "Telecommunications Traffic" means the transmission, between or among points specified by the user, of information of the user's choosing, without change in the form or content of the information as sent and received. 47 U.S.C. §153(43).
- 1.26 "Telecommunications Carrier" means any provider of telecommunications services, except that such term does not include aggregators of telecommunications services (as defined in 47 U.S.C. §226(a)(2)). A telecommunications carrier shall be treated as a common carrier only to the extent that it is engaged in providing telecommunications services, except that the Federal Communications Commission shall determine whether the

provision of fixed and mobile satellite service shall be treated as common carriage.

- 1.27 "Termination" means the completion of Subject Traffic at the terminating carrier's end office switch, or equivalent facility, and delivery of such traffic to the called party's premises.
- 1.28 "Transport" means the transmission and any necessary tandem switching of Subject Traffic from the interconnection point between two (2) carriers to the terminating carrier's end office switch that directly serves the called party, or equivalent facility provided by a carrier other than an incumbent LEC.

## **2. INTERPRETATION AND CONSTRUCTION**

All references to Sections, Exhibits, Appendices and Schedules shall be deemed to be references to Sections of, and Exhibits, Appendices and Schedules to, this Agreement unless the context shall otherwise require. The headings of the Sections and the terms are inserted for convenience of reference only and are not intended to be a part of or to affect the meaning of this Agreement. Unless the context shall otherwise require, any reference to any agreement, other instrument or other third party offering, guide or practice, statute, regulation, rule or tariff is for convenience of reference only and is not intended to be a part of or to affect the meaning of a rule or tariff as amended and supplemented from time-to-time (and, in the case of a statute, regulation, rule or tariff, to any successor provision).

## **3. SCOPE**

3.1 This Agreement applies to all Subject Traffic originated by one Party and sent to the other Party that is delivered over facilities owned or controlled by the Parties that directly or indirectly interconnect the Parties. Only the compensation charges contained in Appendix A of this Agreement apply to Subject Traffic. This Agreement also applies to traffic exchanged via a third party provider pursuant to the terms of Section 4.4. This Agreement is intended to describe and enable specific interconnection compensation arrangements between the Parties. This Agreement does not obligate either Party to provide arrangements not specifically provided for herein. This Agreement relates to exchange of traffic between VENUS and CINGULAR. VENUS' NXXs are listed in telcordia's Local Exchange Routing Guide ("LERG") for Operating Company Number(s) ("OCN(s)") 0210. CINGULAR's NXXs are listed in the LERG for its OCNs 6010 (Blue License Holding) and 6667 (New Cingular Wireless PCS, LLC) in the Commonwealth of Pennsylvania.

3.2 This Agreement does not cover the exchange of traffic for one-way mobile services such as paging, if provided by CINGULAR. Should CINGULAR desire to establish an interconnection agreement with VENUS for such services, VENUS will engage in bona fide negotiations with CINGULAR to establish an interconnection and compensation agreement for said one-way mobile services. This Agreement does not cover the delivery to VENUS by CINGULAR of any traffic that does not originate on the network of CINGULAR. The transmission by CINGULAR to VENUS of any such traffic that does not

originate on the network of CINGULAR shall be deemed a material breach of this Agreement by CINGULAR.

#### **4. SERVICE AGREEMENT**

This Section describes the network architecture with which the Parties to this Agreement may interconnect their respective networks for exchange of Subject Traffic where the type of interconnection requested is reasonably available.

4.1 Interconnection Facilities. The Parties agree to the following interconnection options when direct interconnection is utilized for exchange of Subject Traffic.

4.1.1 Direct interconnection facilities provide a trunk side connection between VENUS' End Office Switch and CINGULAR's POI within the wire center boundary of VENUS' network, with the POI designated as the VENUS' End Office Switch identified in Appendix B.

4.1.2 In a direct interconnection, the Parties shall provide each other with a non binding forecast of projected mobile to land or land to mobile usage for each POI when significant changes in traffic patterns are anticipated. The Parties agree to work cooperatively to determine the number of trunks needed to handle the estimated traffic. Recurring charges billed by VENUS to CINGULAR will be shared by the Parties on a proportional percentage basis as specified in Appendix A of this Agreement. The Parties agreement to the sharing of facilities and the rates in Appendix A carries with it the precondition that the term of this Agreement is as specified in Section 8. As such and as stated in Section 10, all issues in this Agreement have been negotiated as one interrelated term containing specific rates and conditions which are non-separable for purposes of 47 CFR § 252(i).

#### **4.2 Facility Locations**

4.2.1 Technical Feasibility: CINGULAR may interconnect with VENUS' network at a technically feasible point within VENUS' network as mutually agreed upon by the Parties. The Parties acknowledge for purposes of this requirement that the location(s) will be VENUS' host end office switch for the delivery of traffic between the Parties.

4.2.2 The Parties acknowledge that the terms and conditions specified in this Agreement do not apply to the provision of services or facilities by VENUS in those areas where VENUS is not the Incumbent LEC.

4.2.3 Each Party will provide the services in this Agreement to the other Party at a standard at least equal in quality and performance to that which the Party provides itself and others. Either Party may request, and the other Party will provide, to the extent technically feasible, services that are superior or higher in quality than the providing Party provides to itself, provided, however, that such services shall be considered special requests, and will be handled on a case-by-case basis.

#### **4.3 Transmission and Routing of Traffic**



4.3.1 Each Party shall be responsible for the delivery of Subject Traffic from its network to the POI established between the Parties. Where technically feasible, the Party originating the traffic will identify the true calling party number for 99.5% of their calls and populate the Jurisdictional Information Parameter (JIP) field on the call record detail.

4.3.2 If CINGULAR chooses to use VENUS' services or facilities not otherwise covered under this Agreement, then appropriate tariff rates will apply.

#### 4.4 Traffic Indirectly Connected via a Third Party Provider

4.4.1 Alternatively, either Party may choose to indirectly connect to the other party's network and route Subject Traffic via the facilities of a third party that performs an intermediary transit function.

4.4.2 The Parties agree that the exchange of traffic indirectly connected via a third party provider pursuant to this Section 4.4 may be used only until the total Mobile-Land plus Land-Mobile minutes of use exceed five hundred thousand (500,000) minutes per month for three (3) consecutive months or a threshold set by the third party provider has been met. Once the combined minutes of use exceed the threshold, CINGULAR shall establish a direct connection with VENUS according to the terms for direct interconnection as set forth in this Agreement.

### 5. COMPENSATION

5.1 Traffic Subject to Compensation. Compensation applies to the Transport and Termination of one Party's Subject Traffic by another Party over the interconnection arrangement(s) as described in Section 4.0. The rates for direct and indirect interconnection compensation are listed in Appendix A to this Agreement. The Parties' agreement to the sharing of facilities and the Direct Interconnection and Indirect Interconnection rates in Appendix A carries with it the precondition that the term of this Agreement is as set forth in Section 8. As such and also stated in Section 10, all issues have been negotiated as one interrelated term containing specific rates and conditions that are non-separable for purposes of 47 CFR §252(i).

5.2 Direct Billing. The Parties shall pay each other for all charges in accordance with the rates set forth in Appendix A of this Agreement. Such payments are to be received within forty-five (45) days from the date of the billing statement. With respect to this matter and any other subsequent dispute regarding billing, the Parties agree that disputed and undisputed amounts due under this Agreement shall be handled as follows:

5.2.1 If any portion of an amount due to a Party (the "Billing Party") under this Agreement is subject to a bona fide dispute between the Parties, the Party billed (the "Non-Paying Party") shall, within forty-five (45) days from the date of the billing statement, give written notice to the Billing Party of the amounts it disputes ("Disputed Amounts") and include in such notice the specific details and reasons for disputing each item. Specific details must be provided; disputing the entire billed amount without providing detailed reasons is not considered a bona fide dispute. The Non-Paying Party shall pay when due all undisputed amounts to the Billing Party. The Parties will work together in good faith to

resolve issues relating to the disputed amounts. If the dispute is resolved such that payment is required, the Non-paying Party shall pay the disputed amounts with interest at the lesser of (i) one and one-half percent (1-1/2%) per month or (ii) the highest rate of interest that may be charged under Pennsylvania's applicable law. In addition, the Billing Party may cease terminating traffic for the Non-paying Party after undisputed amounts not paid become more than ninety (90) days past due, provided the Billing Party gives an additional thirty (30) days' notice and opportunity to cure the default.

5.2.2 Any undisputed amounts not paid when due within the forty-five (45)-day period shall accrue interest from the date such amounts were due at the lesser of (i) one and one-half percent (1-1/2%) per month or (ii) the highest rate of interest that may be charged under applicable law in the Commonwealth of Pennsylvania. Each Party shall pay the other Party the reasonable amount of the collecting Party's expenses related to collection of overdue bills, such amounts to include reasonable attorney fees.

### 5.3 Calculation of Payments and Billing

5.3.1 Each Party will compensate the other Party for Subject Traffic terminated on Party's network at the rates set forth in Appendix A.

5.3.2 VENUS shall prepare a monthly billing statement to CINGULAR for CMRS-LEC traffic terminating on the ABC network which will separately reflect the calculation of compensation due ABC. Actual terminating usage recorded by ABC or applicable third-party tandem provider will be used for billing CINGULAR for this terminating traffic. CINGULAR shall prepare a monthly billing statement for compensation to ABC. CINGULAR shall calculate usage billed to ABC based on ABC's compensation usage billed to CINGULAR and the application of the Traffic Factors in Appendix A, Section 1.0.

5.3.3 Each party may, upon at least thirty (30) days' written notice, request to audit and inspect, during normal business hours, the records that are the basis for any monthly bill issued by the other Party and to request copies thereof, provided that the requested records do not exceed twenty-four (24) months in age from the date the monthly bill containing said record information was issued. Only one (1) request may be granted within a twelve (12) -month period. The audit shall be accomplished during normal business hours at an office designated by the Party being audited and shall be subject to scope and duration limitations reasonable under the circumstances. Audits shall be performed by a mutually acceptable independent auditor paid for by the Party requesting the audit.

5.3.4 Each Party may also retroactively bill the other Party for traffic exchanged via a third party provider from April 29, 2005, to the effective date of this agreement.

## 6. NOTICE OF CHANGES

6.1 Nothing in this Agreement limits either Party's ability or right to modify its network, including, without limitation, the incorporation of new equipment, new software, or otherwise, provided neither Party shall modify its network to the extent such modification

will disrupt or degrade the other Party's use of the network. Each Party will provide the other Party reasonable written notice, of any such modifications to its network, which will materially impact the other Party's service. Each Party will be solely responsible, at its own expense, for the overall design of its telecommunications services and for any redesigning or rearrangement of its telecommunications services which may be required as a consequence of this Agreement, including, without limitation, changes in facilities, operations or procedures, minimum network protection criteria, or operating or maintenance characteristics of facilities.

6.2 If a Party contemplates a change in its network, which it believes will materially affect the inter-operability of its network with the other Party, the Party making the change shall provide at least ninety (90) days' advance written notice of such change to the other Party.

## **7. GENERAL RESPONSIBILITIES OF THE PARTIES**

7.1 Each Party is individually responsible to provide facilities within its network which are necessary for routing, transporting and, consistent with Section 5, measuring and billing traffic from the other Party's network and for delivering such traffic to the other Party's network in a mutually acceptable format, and to terminate the traffic it receives in that mutually acceptable format to the proper address on its network. The Parties are each solely responsible for participation in and compliance with national network plans, including The National Network Security Plan and The Emergency Preparedness Plan, but agree to work cooperatively on matters that require joint implementation. Neither Party shall use any service related to or use any of the Services provided in this Agreement in any manner that prevents other persons from using their service or destroys the normal quality of service to other carriers or to either Party's customers, and subject to notice and a reasonable opportunity of the offending Party to cure any violation, either Party may discontinue or refuse service if the other Party violates this provision.

7.2 Each Party is solely responsible for the services it provides to its customers and to other Telecommunications Carriers.

7.3 Each Party is responsible for administering NXX codes assigned to it.

7.4 Each Party is responsible for obtaining Local Exchange Routing Guide ("LERG") listings of the Common Language Location Identifier(s) ("CLLI(s)") assigned to its switches.

7.5 Orders for trunk groups or for routing changes or any other requests between the Parties shall be pursuant to the industry standard Access Service Request (ASR) process as defined by the Ordering and Billing Forum ("OBF").

## **8. TERM AND TERMINATION**

8.1 This Agreement will become effective upon approval of this Agreement by the Commission, or if the Commission does not act to approve or reject this Agreement within 90 days after the Parties submit this Agreement to the Commission, then the submitted

Agreement shall be deemed approved on the ninety-first (91) day after the date the Agreement is submitted to the Commission. With respect to traffic indirectly exchanged via a third party provider, the rates for direct and indirect interconnection compensation shall be applied effective April 29, 2005.

8.2 Subject to the termination provisions contained in this Agreement, the initial term of this Agreement shall be two (2) years from the effective date. This Agreement shall continue in force and effect for consecutive one (1) year terms thereafter, unless on a date no less than three (3) months prior to the expiration of the initial term or any subsequent term, either Party requests the termination of this Agreement. The termination provisions in this section do not at any time affect either Party's rights under Section 252(i) of the Act.

8.3 Post-Termination Arrangements. For service arrangements made available under this Agreement and existing at the time of termination, those arrangements will continue without interruption following the date of termination or until a replacement agreement has been executed by the Parties either (a) under a new agreement voluntarily executed by the Parties; (b) under a new agreement negotiated pursuant to the provisions of Section 252 of the Act; or c) under any agreement available according to the provisions of Section 252(i) of the Act; however, in no case will those arrangements continue for more than twelve (12) months following the date of termination.

8.4 Termination. Either Party may terminate this Agreement for cause upon thirty (30) days prior written notice if (a) the other Party materially breaches this Agreement or defaults on its obligations and fails to cure such breach or default during such thirty (30) day period, (b) the other Party's authority to provide the services provided herein is revoked or terminated, or (c) the other Party is insolvent, or files for bankruptcy (or other protection from creditors generally) and such bankruptcy petition is not dismissed within sixty (60) days. Termination of this Agreement for any cause shall not release either Party from any liability which at the time of the termination had already accrued to the other Party or which thereafter accrues in any respect for any act or omission occurring prior to the termination relating to an obligation which is expressly stated in this Agreement.

8.5 Survival of Obligations. The terms and conditions contained herein that by their context are intended to survive (or to be performed after) the termination of this Agreement, shall survive the termination hereof. Unless otherwise mutually agreed to between the Parties, if this Agreement is terminated for any reason and the Parties continue to terminate traffic for the other Party, then the terms and conditions contained herein shall continue to apply to such termination of traffic until a new arrangement is in place between the Parties; however, the Parties hereby agree that they shall not perform services as defined herein for a period of longer than twelve (12) months without negotiation and execution of a new agreement.

## **9. CANCELLATION CHARGES**

Except as provided herein, no cancellation charges shall apply.

## **10. NON-SEVERABILITY**

10.1 The services, arrangements, terms and conditions of this Agreement were mutually negotiated by the Parties as a total arrangement and are intended to be non-severable.

10.2 Nothing in this Agreement shall be construed as requiring or permitting either Party to contravene any mandatory requirement of federal or state law, or any regulations or orders adopted pursuant to such law.

## **11. INDEMNIFICATION**

11.1 Each Party (the "Indemnifying Party") shall indemnify and hold harmless the other Party ("Indemnified Party") from and against loss, cost, claim liability, damage, and expense (including reasonable attorney's fees) to customers and other third parties for:

(a) damage to tangible personal property or for personal injury proximately caused by the negligence or willful misconduct of the Indemnifying Party, its employees, agents or contractors;

(b) claims for libel, slander, or infringement of copyright arising from the material transmitted over the Indemnified Party's facilities arising from the Indemnifying Party's own communications or the communications of such Indemnifying Party's customers; and

(c) claims for infringement of patents arising from combining the Indemnified Party's facilities or services with, or the using of the Indemnified Party's services or facilities in connection with, facilities of the Indemnifying Party.

Notwithstanding this indemnification provision or any other provision in the Agreement, neither Party, nor its parent, subsidiaries, affiliates, agents, servants, or employees, shall be liable to the other for Consequential Damages (as defined in Section 12.3).

11.2 The Indemnified Party will notify the Indemnifying Party promptly in writing of any claims, lawsuits, or demands by customers or other third parties for which the Indemnified Party alleges that the Indemnifying Party is responsible under this Section, and, if requested by the Indemnifying Party, will tender the defense of such claim, lawsuit or demand.

(a) In the event the Indemnifying Party does not promptly assume or diligently pursue the defense of the tendered action, then the Indemnified Party may proceed to defend or settle said action and the Indemnifying Party shall hold harmless the Indemnified Party from any loss, cost liability, damage and expense.

(b) In the event the Party otherwise entitled to indemnification from the other elects to decline such indemnification, then the Party making such an election may, at its own expense, assume defense and settlement of the claim, lawsuit or demand.

(c) The Parties will cooperate in every reasonable manner with the defense or settlement of any claim, demand, or lawsuit.

## **12. LIMITATION OF LIABILITY**

12.1 No liability shall attach to either Party, its parents, subsidiaries, affiliates, agents, servants, employees, officers, directors, or partners for damages arising from errors, mistakes, omissions, interruptions, or delays in the course of establishing, furnishing, rearranging, moving, terminating, changing, or providing or failing to provide services or facilities (including the obtaining or furnishing of information with respect thereof or with respect to users of the services or facilities) in the absence of gross negligence or willful misconduct.

12.2 Except as otherwise provided in Section 12.0, no Party shall be liable to the other Party for any loss, defect or equipment failure caused by the conduct of the first Party, its agents, servants, contractors or others acting in aid or concert with that Party, except in the case of gross negligence or willful misconduct.

12.3 In no event shall either Party have any liability whatsoever to the other Party for any indirect, special, consequential, incidental or punitive damages, including but not limited to loss of anticipated profits or revenue or other economic loss in connection with or arising from anything said, omitted or done hereunder (collectively, "Consequential Damages"), even if the other Party has been advised of the possibility of such damages, except in the case of gross negligence or willful misconduct.

## **13. REGULATORY APPROVAL**

13. The Parties understand and agree that this Agreement will be filed with the Commission. Each Party covenants and agrees to fully support approval of this Agreement by the Commission without modification. The Parties, however, reserve the right to seek regulatory relief and otherwise seek redress from each other regarding performance and implementation of this Agreement. In the event the Commission rejects this Agreement in whole or in part, the Parties agree to meet and negotiate in good faith to arrive at a mutually acceptable modification of the rejected portion(s). Further, this Agreement is subject to change, modification, or cancellation as may be required by a regulatory authority or court in the exercise of its lawful jurisdiction.

13.2 The Parties agree that their entrance into this Agreement is without prejudice to any positions they may have taken previously, or may take in the future, in any legislative, regulatory, judicial or other public forum addressing any matters, including matters related to the same types of arrangements covered in this Agreement.

## **14. PENDING JUDICIAL APPEALS AND REGULATORY RECONSIDERATION**

14.1 In the event of any amendment to the Act, any effective legislative action or any effective regulatory or judicial order, rule, regulation, arbitration award, dispute resolution procedures under this Agreement or other legal action purporting to apply the provisions of the Act to the Parties or in which the FCC or the Commission makes a generic determination that is generally applicable which revises, modifies or reverses any applicable law ("Change of Law"), either Party may, by providing written notice to the other

party, require that the affected provisions of this Agreement be renegotiated in good faith and this Agreement shall be amended accordingly to reflect the pricing, terms and conditions of each such Change of Law relating to any of the provisions in this Agreement.

14.2 Nothing in is this Agreement shall be construed to suggest the agreement by either Party that the services or arrangements set forth in this Agreement are actually required of either Party under the Act. Nothing in this Agreement shall be construed to suggest that any of the provisions in this Agreement would be subject to arbitration under Section 252 of the Act. Nothing in this Agreement is intended to expand on either Party's rights or obligations under the Act.

14.3 Notwithstanding any other provision of the Agreement, VENUS shall not be obligated to offer or provide any service, facility, or interconnection arrangement that is not required by the Act or under controlling regulatory requirements. This Section 14.3 is intended to limit any obligation VENUS might otherwise have to provide to CINGULAR any service, facility, or interconnection arrangement that is not required by the Act or under controlling regulatory requirements. Notwithstanding anything contained in this Agreement, but without limiting any other right VENUS may have under this Agreement, VENUS may cease providing a service, facility, or interconnection arrangement that is not required by the Act or under controlling regulatory requirements. To the extent that some service, facility, or interconnection arrangement provided by VENUS to CINGULAR under this Agreement is determined not to be required under the Act or under controlling regulatory requirements, then VENUS upon ninety (90) days' written notice to CINGULAR may discontinue the provision of such discontinued service, facility, or interconnection arrangement. To the extent the discontinued service or interconnection arrangement is available to CINGULAR under prevailing tariffs, then CINGULAR, may, at its option, obtain such services, facilities, or interconnection arrangements pursuant to the terms of such tariffs.

## **15. MISCELLANEOUS**

### **15.1 Authorization**

15.1.1 VENUS is a corporation duly organized, validly existing and in good standing under the laws of the Commonwealth of Pennsylvania and has full power and authority to execute and deliver this Agreement and to perform its obligations hereunder, subject to any necessary regulatory approval.

15.1.2 CINGULAR is a limited liability company duly organized, validly existing and in good standing under the laws of the State of Delaware and has full power and authority to execute and deliver this Agreement and to perform its obligations hereunder in the Commonwealth of Pennsylvania, subject to any necessary regulatory approval.

15.2 Compliance. Each Party shall comply with all applicable federal, state, and local laws, rules, and regulations applicable to its performance under this Agreement.

15.3 Independent Contractors. Neither this Agreement, nor any actions taken by CINGULAR or VENUS in compliance with this Agreement, shall be deemed to create an

agency or joint venture relationship between CINGULAR and VENUS, or any relationship other than that of purchaser and seller of services. Neither this Agreement, nor any actions taken by CINGULAR or VENUS in compliance with this Agreement, shall create a contractual, agency, or any other type of relationship or third party liability between CINGULAR and VENUS end users or others.

15.4 Force Majeure. Neither Party shall be liable for any delay or failure in performance of any part of this Agreement from any cause beyond its control and without its fault or negligence including, without limitation, acts of God nature, acts of civil or military authority, government regulations, embargoes, epidemics, terrorist acts, riots, insurrections, fires, explosions, earthquakes, nuclear accidents, floods, power blackouts, volcanic action, other major environmental disturbances, unusually severe weather conditions, inability to secure products or services of other persons or transportation facilities or acts or omissions of transportation carriers (collectively, a "Force Majeure Event"). If any Force Majeure condition occurs, the Party delayed or unable to perform shall give immediate notice to the other Party and shall take all reasonable steps to correct the Force Majeure condition. During the pendency of the Force Majeure, the duties of the Parties under this Agreement affected by the Force Majeure condition shall be abated and shall resume without liability thereafter.

## 15.5 Confidentiality

15.5.1 Any information such as specifications, drawings, sketches, business information, forecasts, models, samples, data, computer programs and other software and documentation of one Party (a Disclosing Party) that is furnished or made available or otherwise disclosed to the other Party or any of its employees, contractors, or agents (its "Representatives" and with a Party, a "Receiving Party") pursuant to this Agreement ("Proprietary Information") shall be deemed the property of the Disclosing Party. Unless Proprietary Information was previously known by the Receiving Party free of any obligation to keep it confidential, or has been or is subsequently made public by an act not attributable to the Receiving Party, or is explicitly agreed in writing not to be regarded as confidential, such information: (i) shall be held in confidence by each Receiving Party; (ii) shall be disclosed to only those persons who have a need for it in connection with the provision of services required to fulfill this Agreement and shall be used by those persons only for such purposes; and (iii) may be used for other purposes only upon such terms and conditions as may be mutually agreed to in advance of such use in writing by the Parties. Notwithstanding the foregoing sentence, a Receiving Party shall be entitled to disclose or provide Proprietary Information as required by any governmental authority or applicable law, upon advice of counsel, only in accordance with Section 15.5.2 of this Agreement.

15.5.2 If any Receiving Party is required by any governmental authority or by applicable law to disclose any Proprietary Information, then such Receiving Party shall provide the Disclosing Party with written notice of such requirement as soon as possible and prior to such disclosure. The Disclosing Party may then seek appropriate protective relief from all or part of such requirement. The Receiving Party shall use all commercially reasonable efforts to cooperate with the Disclosing Party in attempting to obtain any protective relief that such Disclosing Party chooses to obtain.



15.5.3 In the event of the expiration or termination of this Agreement for any reason whatsoever, each Party shall return to the other Party or destroy all Proprietary Information and other documents, work papers and other material (including all copies thereof) obtained from the other Party in connection with this Agreement and shall use all reasonable efforts, including instructing its employees and others who have had access to such information to keep confidential and not to use any such information, unless such information is now, or is hereafter disclosed, through no act, omission or fault of such Party, in any manner making it available to the general public.

15.6 Governing Law. For all claims under this Agreement that are based upon issues within the jurisdiction (primary or otherwise) of the FCC, the exclusive jurisdiction and remedy for all such claims shall be as provided for by the FCC and the Act. For all claims under this Agreement that are based upon issues within the jurisdiction (primary or otherwise) of the Commission, the exclusive jurisdiction for all such claims shall be with the Commission, and the exclusive remedy for such claims shall be as provided for by such Commission. In all other respects, this Agreement shall be governed by the domestic laws of the Commonwealth of Pennsylvania without reference to conflict of law provisions.

15.7 Taxes. Each Party purchasing services hereunder shall pay or otherwise be responsible for all federal, state, or local sales, use, excise, gross receipts, transaction or similar taxes, fees or surcharges levied against or upon such purchasing Party (or the providing Party when such providing Party is permitted to pass along to the purchasing Party such taxes, fees or surcharges), except for any tax on either Party's corporate existence, status or income. Whenever possible, these amounts shall be billed as a separate item on the invoice. To the extent a sale is claimed to be for resale tax exemption, the purchasing Party shall furnish the providing Party a proper resale tax exemption certificate as authorized or required by statute or regulation by the jurisdiction providing said resale tax exemption. Failure to timely provide such sale for resale tax exemption certificate will result in no exemption being available to the purchasing Party.

15.8 Assignment. This Agreement shall be binding upon the Parties and shall continue to be binding upon all such entities regardless of any subsequent change in their ownership. Each Party covenants that, if it sells or otherwise transfers to a third party, unless the Party which is not the subject of the sale or transfer reasonably determines that the legal structure of the transfer vitiates any such need, it will require as a condition of such transfer that the transferee agree to be bound by this Agreement with respect to services provided over the transferred facilities. Except as provided in this paragraph, neither Party may assign or transfer (whether by operation of law or otherwise) this Agreement (or any rights or obligations hereunder) to a third party without the prior written consent of the other Party which consent will not be unreasonably withheld; provided that either Party may assign this Agreement to a corporate Affiliate or an entity acquiring all or substantially all of its assets or equity by providing prior written notice to the other Party of such assignment or transfer. Any attempted assignment or transfer that is not permitted is void *ab initio*. Without limiting the generality of the foregoing, this Agreement shall be binding upon and shall inure to the benefit of the Parties' respective successors and assigns.

15.9 Non-Waiver. Failure of either Party to insist on performance of any term or condition of this Agreement or to exercise any right or privilege hereunder shall not be construed as a continuing or future waiver of such term, condition, right or privilege.

15.10 Notices. Notices given by one Party to the other Party under this Agreement shall be in writing and shall be: (i) delivered personally; (ii) delivered by express delivery service; (iii) mailed, certified mail, return receipt requested; or (iv) delivered by telecopy to the following addresses of the Parties:

**To: CINGULAR**

Cingular Wireless  
5565 Glenridge Connector, Suite 1520  
Atlanta, GA 30342  
Attn: Sr. Interconnection Mgr.

With a copy to:

Cingular Wireless  
Legal Dept.  
P.O. Box 97061  
Redmond, WA 98073-9761  
Attn: Sr. Network Counsel  
For delivery:  
8645 154<sup>th</sup> Ave NE  
Redmond, WA 98052

**To: VENUS TELEPHONE CORPORATION**

Venus Telephone Corporation  
Attn: John Keister  
1698 County Line Road  
Venus, PA 16364  
814-354-6123

With a copy to:

Thomas Thomas Armstrong & Niesen  
Attn: D. Mark Thomas, Esq.  
P.O. Box 9500  
Harrisburg, PA 17108-9500

or to such other address as either Party shall designate by proper notice. Notices will be deemed given as of the earlier of: (i) the date of actual receipt; (ii) the next business day when notice is sent via express mail or personal delivery; (iii) three (3) days after mailing in the case of certified U.S. mail; or (iv) on the date set forth on the confirmation in the case of telecopy.

15.11 Publicity and Use of Trademarks or Service Marks. Neither Party nor its subcontractors or agents shall use the other Party's trademarks, service marks, logos or other proprietary trade dress in any advertising, press releases, publicity matters or other promotional materials without such Party's prior written consent.

15.12 Joint Work Product. This Agreement is the joint work product of the Parties and has been negotiated by the Parties and their respective counsel and shall be fairly interpreted in accordance with its terms. In the event of any ambiguities, no inferences shall be drawn against either Party.

15.13 No Third Party Beneficiaries; Disclaimer of Agency. This Agreement is for the sole benefit of the Parties and their permitted assigns, and nothing herein expressed or implied shall create or be construed to create any third-party beneficiary rights hereunder. Except for provisions herein expressly authorizing a Party to act for another, nothing in this Agreement shall constitute a party as a legal representative or agent of the other Party; nor shall a Party have the right or authority to assume, create or incur any liability or any obligation of any kind, express or implied, against, in the name of, or on behalf of the other Party, unless otherwise expressly permitted by such other Party. Except as otherwise expressly provided in this Agreement, no party undertakes to perform any obligation of the other Party, whether regulatory or contractual, or to assume any responsibility for the management of the other Party's business.

15.14 No License. No license under patents, copyrights, or any other intellectual property right (other than the limited license to use consistent with the terms, conditions and restrictions of this Agreement) is granted by either Party, or shall be implied or arise by estoppel with respect to any transactions contemplated under this Agreement.

15.15 Entire Agreement. The terms contained in this Agreement and any Schedules, Appendices, Exhibits, tariffs and other documents or instruments referred to herein are hereby incorporated into this Agreement by reference as if set forth fully herein, and constitute the entire agreement between the Parties with respect to the subject matter hereof, superseding all prior understandings, proposals and other communications, oral or written. Neither Party shall be bound by any preprinted terms additional to or different from those in this Agreement that may appear subsequently in the other Party's form documents, purchase orders, quotations, acknowledgments, invoices or other communications. This Agreement may only be modified by a writing signed by an officer of each Party.

#### 15.16 DISCLAIMER OF REPRESENTATIONS AND WARRANTIES

EXCEPT AS EXPRESSLY PROVIDED UNDER THE AGREEMENT, NEITHER PARTY MAKES ANY WARRANTY, EXPRESS OR IMPLIED, WITH RESPECT TO THE SERVICES, FUNCTIONS AND PRODUCTS IT PROVIDES UNDER OR CONTEMPLATED BY THIS AGREEMENT AND THE PARTIES DISCLAIM THE IMPLIED WARRANTIES OF MERCHANTABILITY OR OF FITNESS FOR A PARTICULAR PURPOSE.

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed as of this \_\_\_\_\_ day of \_\_\_\_\_, 2006.

**Venus Telephone Corporation**

**By:** \_\_\_\_\_

**Name: John Keister**

**Title: Vice President**

**Date:** \_\_\_\_\_

**Cingular Wireless LLC**

**By:** \_\_\_\_\_

**Name: Michael F. Van Weelden**

**Title: Director SCM- Network**

**Date:** \_\_\_\_\_

## Appendix A

### 1. Traffic Factors

Where direct interconnection facilities are used for two way traffic exchanged between the Parties, the recurring charges for such facilities provided and billed for by VENUS for traffic delivered by CINGULAR to VENUS, shall be reduced by an agreed upon percentage representing the estimated traffic exchanged between the Parties over such facilities that originates on VENUS' network by VENUS' customers. This percentage is referred to as the Traffic Factor and shall be applied only in accordance with the circumstances set forth in Section 5.3 of this Agreement. The Parties agree that the Traffic Factor shall remain in effect for the term of this Agreement.

- a. Wireless to Landline: 70%
- b. Landline to Wireless: 30%

In addition, where CINGULAR cannot measure, CINGULAR shall use the percentages above to determine that portion of compensation usage that represents VENUS to CINGULAR usage for billing Item 2 charges below, to VENUS.

### 2. Traffic Subject to Compensation

Compensation applies to the Transport and Termination of one Party's Subject Traffic by the other Party over interconnection arrangement(s) as described in Section 4.0 of this Agreement. The rates for compensation are:

\$ 0.017 PER MINUTE	Direct Interconnection
\$ 0.017 PER MINUTE	Indirect Interconnection

### 3. Rate for Interconnection Facilities

The charges for direct interconnection facilities will be as provided for in applicable tariffs.

4. For purposes of this Agreement, the Parties agree to a zero (0) percent Inter-MTA Traffic factor for traffic where the actual jurisdiction of the calls cannot be identified.

## Appendix B

### Legal Entities- Cingular:

- Cingular Pennsylvania, LLC
- Cingular Wireless LLC
- McCaw Communications of Johnstown, LLC
- New Cingular Wireless PCS of Philadelphia, LLC
- New Cingular Wireless PCS, LLC
- New Cingular Wireless Services, Inc.
- Pittsburgh Cellular Telephone Company
- Vanguard Cellular Pennsylvania, L.P.
- Vanguard Communications of Pennsylvania, LLC

### Billing Addresses- Separate Invoices per OCN

<b>Carrier</b>	<b>OCN</b>	<b>Billing Address</b>
Cingular	6667/6010	Cingular Wireless Facility Analyst (PA) 200 North Warner Rd. King of Prussia, PA 19406
Venus	0210	Venus Telephone Corporation 1698 County Line Road Venus, PA 16364

### **Points of Interconnection:**

Point of Interconnection at VENSPAXVDS0 to/from OCN 0210