

# AT&T Wireless Franchise Advantage Program

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Effective as of

General Terms and Conditions

December 3, 2001 to July 16,  
2002

Version 1.2

## 1. Service.

**1.1 AWS Markets.** Voice Service is available for purchase in the areas served by Affiliates under common control with AWS ("[AWS Markets](#)"), as may be modified by AWS from time to time. Wireless Data Service is available for purchase in select [AWS Markets](#), as may be modified by AWS from time to time.

**1.2 Availability/Interruption.** Service will be available only within the operating range of each Carrier's wireless system ("Service Area"). AWS may from time to time add or delete Service Areas upon written notice to Customer. Service is subject to: (a) transmission limitation, reduction in transmission speed, or interruption caused by weather, your Equipment, terrain, obstructions such as trees or buildings, and other conditions; (b) temporary suspension due to governmental regulations or orders, system capacity limitations, system repairs or modifications, or AWS' efforts to combat potential fraud; (c) interruption for nonpayment of charges by Customer; and (d) call blocking for certain categories of numbers (e.g., 976, 900 and certain international destinations) or access to certain websites if, in AWS' sole discretion, AWS is experiencing excessive billing, collection or fraud problems with access to those numbers or sites.

**2. Rate Plans.** Customer may choose from specific [Voice Service rate plans](#), as may be modified by AWS from time to time, and specific [Wireless Data Service rate plans](#), as may be modified by AWS from time to time. Customer may also choose from any other generally available Voice Service and Wireless Data Service rate plans within each AWS Market provided Customer qualifies. Customer must comply with all of the terms and conditions related to such rate plan, all of which are incorporated into this Agreement. All rate plans available in AWS Markets require long distance services provided by AT&T Wireless. Rates, terms and conditions of any rate plan are subject to change. Any provisions of the service agreements governing the rate plans which, by their terms, are to exist for a specified period of time will survive any termination or expiration of this Agreement, including terms related to early cancellation fees.

## 3. Equipment.

**3.1 General.** Any Equipment used by Customer must be compatible with the Service and comply with FCC regulations and state laws. Customer acknowledges and agrees that tampering with the Equipment's Electronic Serial Number ("ESN"), Equipment Identifier ("EID"), or mobile station ISDN number ("MSISDN"), or assigning the same ESN, EID or MSISDN to more than one piece of Equipment, violates FCC regulations and federal law. Customer will not program the Number into any other piece of Equipment other than the one authorized by AWS.

**3.2 Availability.** With respect to Numbers provisioned from AWS Markets, Customer may purchase available [Equipment](#), the list of which may be modified by AWS from time to time. Specific models of Equipment are subject to availability limitations.

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

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

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

#### **4.2 Additional Products, Services, Equipment, and Programs.**

From time to time, AWS may make [additional products, services, equipment and/or programs](#) available to Customer. To the extent Customer orders, pays for, or otherwise receives the benefit of such products, services, equipment and/or programs, Customer will be bound by their respective terms and conditions, as may be modified by AWS from time to time, all of which are incorporated herein by reference.

#### **5. Payment.**

**5.1 Charges.** Customer will pay: (a) Service charges for all calls processed through Numbers and all actual kilobytes transmitted through the Equipment (even if the connection is dropped or the data is not actually received) including, without limitation, local airtime charges, long distance charges, features charges, and roaming charges; (b) Equipment charges; and (c) any applicable federal, state and local

sales, public utilities, gross receipts, or other taxes, surcharges, assessments, recoveries or fees imposed upon Customer, AWS, or a Carrier as a result of the purchase or use of Equipment or Service under this Agreement, except taxes based on AWS' or the Carrier's net income. Specific charges may differ by Service Area. AWS will charge 800, 866, 877, 888 and other "toll free" calls at domestic airtime or roaming rates. Customer may receive a separate bill for some long distance charges. Due to delayed reporting between Carriers, Service usage may be billed in a subsequent month and this usage will be charged as if used in the month billed. Billing cycle end dates may change from time to time. For rate plans where a billing cycle covers less than or more than a full month, AWS may make reasonable adjustments and prorations. Payment for Equipment, Service or any other charges will be due upon receipt of the invoice.

**5.1.1 Voice Service.** The length of a call is measured during the time that the Corporate Responsibility User is connected to the wireless system, which is approximately from the time the Corporate Responsibility User presses "Send" or another appropriate key to initiate or answer a call until approximately the time the Corporate Responsibility User presses "End" or another appropriate key to terminate the call. Airtime usage on each call is billed in full minute increments, with partial minutes of use rounded up to the next, and charged as a, full minute. If an incoming call has been forwarded to another phone number, Customer will be charged for the entire time that the switch handles the call. For calls made from or received in the Corporate Responsibility User's local area, Customer will not be charged for busy or unconnected calls if the Corporate Responsibility User presses "End" or "No" within a reasonable time. If Equipment is used as a pager, Customer will be charged for messages as described in the selected rate plan. If a selected calling plan or rate plan includes a predetermined allotment of services (for example, a predetermined amount of airtime, data, or text messages), unused allotment of such services from one billing cycle will not carry over to any other billing cycle.

**5.1.2 Wireless Data Service.** Unless the selected Wireless Data Service rate plan provides otherwise, Wireless Data Service usage is aggregated over a billing cycle, with any partial kilobyte of data used in that billing cycle being rounded up to a full kilobyte.

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

**5.3 Late Payment Fee.** Customer will pay AWS a late payment fee equal to the lesser of one and one-half percent (1.5%) per month (prorated daily) of any amount not paid within thirty (30) days of the due date, or the highest amount allowed by applicable state law or tariff; provided, however, that, with respect to amounts not paid by Customer in accordance with §5.2 above, AWS and Customer agree that the late payment fee will accrue on the unpaid disputed amount as set forth above during the dispute resolution process but that Customer will only be liable for the late payment fee to the extent the dispute is resolved in favor of AWS. The late payment fee will not be compounded monthly.

## **6. Default, Termination, Cure and Remedies.**

**6.1 Default and Termination.** If either party fails to perform or observe, or to commence and diligently prosecute activities that will result in performance or observance of any material term or condition of this Agreement, then such party will be in default of the Agreement, and the non-defaulting party may terminate the Agreement in accordance with the terms and conditions of §6.2 below.

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

**6.3 Termination for Deletion of Service Area.** If the deletion of any Service Area materially reduces the Service provided to Customer hereunder, then Customer may terminate the Agreement. If Customer seeks to terminate the Agreement under this §6.3, then Customer, within thirty (30) days of the effective date of the Service Area deletion, must notify AWS in writing of its intent to terminate. Such written notice must specify the material Service Area deletion and must specify a

proposed termination date no earlier than thirty (30) days from the date of the notice.

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

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

**8. Limitation of Liability.**

**8.1 Service Failures.** AWS' liability for any Service failure greater than twenty-four (24) hours shall in no event exceed the recurring Service charges during the affected period. In no event shall AWS be liable to Customer for any damages or reimbursement for any Service failure less than twenty-four (24) hours. AWS' liability in the event any Number is connected to a long distance company not chosen by Customer shall be limited to correcting the long distance company connected at no charge to Customer.

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

third parties for special, punitive, indirect, incidental or consequential damages.

**8.3 Service Discount Calculation and Application.** AWS will have no liability for any damages resulting from any failure by AWS or its billing vendors to properly calculate and apply the Service Discount. AWS and Customer will reconcile any miscalculation on the following month's invoice.

**8.4 Other Factors Beyond AWS' Control.** AWS and each Carrier will have no liability for damages or delays due to factors beyond AWS' or a Carrier's exclusive control, including without limitation, acts of God, weather-related phenomena, fire, earthquake, war, riot, strikes or labor disputes, acts or orders of governmental authorities, acts or omissions of other communications carriers or suppliers, power surge or failures, or other causes beyond AWS' or a Carrier's exclusive control whether or not similar to the foregoing.

**8.5 Definitions.** For purposes of this §8 only, (a) "Customer" includes Customer, its Affiliates, and their respective employees (including, without limitation, all Corporate Responsibility Users and Individual Responsibility Users), officers, agents and contractors and (b) "third parties" means any person or entity other than AWS, Carrier, or Customer.

## **9. Indemnification.**

**9.1 Third Party Actions.** AWS and Customer agree to defend, indemnify and hold each other harmless from and against any damages, liabilities, claims, costs and expenses (including reasonable attorneys' fees) to the extent caused by the gross negligence or willful misconduct of the indemnifying party. If the indemnifying party fails, within thirty (30) days after notice, to accept the defense, the party seeking indemnification will have the right, but not the obligation, to undertake the defense of, and to compromise or settle any claims on behalf of, for the account of, and at the risk of the indemnifying party. If the claims cannot by their nature be defended solely by one party, the other party shall make available all information and assistance that may reasonably be requested, regardless of any obligations to indemnify hereunder.

### **9.2. Intellectual Property Indemnification.**

**9.2.1 AWS Obligations.** AWS will indemnify and defend Customer against any claim or suit against Customer alleging that AWS' or Customer's use of the Service (including WIN Advantage and any other

software provided to Customer by AWS) as contemplated by this Agreement, infringes any issued United States patent, any trademark registered in the United States, any registered United States copyright or any trade secret (a "Claim"). The foregoing obligation will not apply where the Claim arises out of or results from: (a) content that Customer or Corporate Responsibility User uses in connection with the Service (including, without limitation, Customer's or Corporate Responsibility User's transmission of data using the short messaging service or transmission of copyrighted or proprietary information); (b) modifications to the Service made by other than AWS; (c) the combination of the Service with non-AWS services or products; (d) AWS' adherence to Customer's written instructions or specifications; or (e) Customer's or Corporate Responsibility User's use of the Service in violation of this Agreement.

**9.2.2 AWS Options.** If AWS becomes, or in AWS' opinion is likely to become, the subject of a Claim, AWS will, at its option: (a) procure for Customer the right to continue using the Service; (b) modify the Service so it becomes non-infringing and performs in a substantially similar manner; (c) replace the Service with a non-infringing service or product substantially complying with AWS specifications; or (d) if none of the foregoing alternatives is available on terms that are reasonable in AWS' judgment, terminate this Agreement, upon written notice to Customer. Upon any such termination, Customer will have no financial obligations to AWS, except for charges incurred as of the date of termination.

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

party at the indemnifying party's expense.

**10. No Class Actions.** All claims between AWS and Customer related to this Agreement will be litigated individually, and such parties will not consolidate or seek class treatment for any claim unless previously agreed to in writing by them.

**11. CPNI.** Under Federal law, Customer has the right, and AWS has the duty, to protect the confidentiality of information about the amount, type and destination of Customer's wireless voice usage ("CPNI"). Customer consents to AWS sharing such CPNI with AT&T Corp., AWS and their Affiliates and contractors, to develop or bring to Customer's attention any products and services. This consent survives the termination of Customer's Service and is valid until removed by Customer. To remove this consent at any time, Customer will notify AWS in writing at AT&T Wireless, Attn.: CPNI, P.O. Box 97061, Redmond, WA 98073-9761, providing a contact name, address, business telephone number, and Service account number.

**12. Use of Service.**

**12.1 Changes to Numbers.** Customer acknowledges and agrees that Customer has no ownership rights to any Number, Internet protocol address or e-mail address provisioned by AWS to be used with Service, and that Customer may be required to change such Numbers, Internet protocol addresses, or e-mail addresses from time to time.

**12.2 Fraud; Service Cancellation.** Customer and its respective Corporate Responsibility Users and Individual Responsibility Users (if applicable) will not use or assist others to use the Service or Equipment for any unlawful, unauthorized, abusive or fraudulent purpose. Any Carrier may cancel Service to any Number if AWS or that Carrier believes the Number is being used in an unlawful, abusive or fraudulent manner. Before a Carrier cancels any Service under this paragraph, the Carrier will attempt to give Customer notice of its intent to cancel. In the event Customer instructs the Carrier to retain Service, Customer will be responsible for paying all charges, authorized, unauthorized or fraudulent, associated with such Number, including but not limited to charges incurred by any clone or duplication of that Number; provided, however, that Customer will not be liable for Individual Responsibility Users' charges under any such circumstance. Additionally, Customer agrees to adopt, at no additional charge to Customer, any reasonable fraud prevention or fraud reduction processes or products recommended by AWS or, if not adopted by Customer, to be responsible for any unauthorized charges on Numbers which do not adopt such processes or products.

**12.3 Ownership.** AWS owns the exclusive rights to the frequencies related to the Service, Numbers and transmission facilities used by AWS

in the provision of Service to AWS customers. FCC regulations strictly forbid any party that is not a wireless communications licensee from altering, enhancing or maintaining cellular radio signals. FCC regulations require AWS to maintain control over any transmitting device that operates within AWS' assigned frequencies. Neither Customer nor any of its Affiliates may install any amplifier, enhancer, repeater or other device or system on AWS' network or frequencies without AWS' prior written approval.

**13. Privacy.** Although the law generally prohibits third parties from listening to wireless calls, AWS and Carriers cannot guarantee privacy. Customer agrees that AWS and Carriers will not be liable for any lack of privacy or security experienced when using Equipment and/or while Service is in use. Customer authorizes Carrier's monitoring and recording of calls to Carrier concerning Customer's account or Service. To the extent permitted by law, Carriers have the right to intercept and disclose any calls sent over their facilities in order to protect their rights or property.

**14. Resale and Other Prohibited Uses.** Customer, its Affiliates (if applicable) and their respective Corporate Responsibility Users are not permitted to resell, reproduce, retransmit, or disseminate Service or any other program components to third parties.

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

**16. Miscellaneous.**

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

**16.1.1 "Affiliate"** means an entity controlling or controlled by or under common control with a party, where control is defined as (a) the ownership of at least thirty five percent (35%) of the equity or beneficial interest of such entity; or (b) the right to vote for or appoint a majority of the board of directors or other governing body of such entity.

**16.1.2 "AWS" or "party"** when it refers to AWS, includes AWS, its Affiliates, and their respective

employees, officers, agents and subcontractors.

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

**16.1.4 "Equipment"** means the wireless receiving and transmitting equipment and related equipment programmed with a Number.

**16.1.5 "Number"** means a ten-digit telephone number, Wireless Data Service Network Entity Identifier, data and or messaging number(s) activated with Service or transferred under this Agreement.

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

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

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

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

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

**16.7 Customer's Notices to End Users.** Customer will advise all of its Corporate Responsibility Users and Individual Responsibility Users (collectively, "End Users") that they must read all collateral materials concerning Service and use of the Equipment, including, without limitation, the Welcome Guide, rate plan brochures, coverage maps, and materials related to Equipment and accessories. AWS will make copies of such materials available to Customer upon request. Customer will also provide to End Users, and advise End Users to read, any additional printed materials and consumer information reasonably requested by AWS from time to time to be so provided.

**16.8 Notices.** All notices, requests, demands and other communications required or permitted under the Agreement will be in writing (unless otherwise specified in the Agreement) and will be deemed to have been duly made and received when personally served or delivered by facsimile with a confirmation report, or when mailed by overnight delivery service or certified mail, postage prepaid, return receipt requested, to Customer at the address indicated on the Cover Page and to AWS at the address indicated below:

(If via certified mail)  
AWS National Accounts, LLC  
P.O. Box 97061  
Redmond, WA 98073  
Attn: Offer, Development & Negotiation  
Facsimile Number: 425-580-5640

(If via overnight delivery)  
AWS National Accounts, LLC

8645 - 154<sup>th</sup> Avenue, NE  
Redmond, WA 98052  
Attn: Offer, Development & Negotiation

With a copy to AWS Legal  
Facsimile Number: 425-580-5944

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

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

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