

be imposed on T-Mobile or Purchaser (and excluding any imposition affecting the wireless telecommunications industry generally), and that would have a material adverse effect on, the operations of T-Mobile following the Closing (a “**Regulatory Closing Condition**”); provided that in the event that a Regulatory Closing Condition described in clause (ii) above is in effect at the time of Closing, T-Mobile shall, at Cingular’s election, be required to continue to Closing without regard to such Regulatory Closing Condition to the extent, such Regulatory Closing Condition can be cured or satisfied by a monetary payment, bond or other action to be taken by either T-Mobile and Purchaser, on the one hand, or Cingular and SBCW, on the other hand, following the Closing. Any Damages or Expenses incurred by the Parties as a result of satisfying or curing any Regulatory Closing Condition, shall be shared equally by Cingular and SBCW, on the one hand, and T-Mobile and Purchaser, on the other hand, and T-Mobile and Purchaser shall have a claim for indemnification from Cingular for recovery of Cingular’s share of such Damages and Expenses pursuant to the provisions of Article IX; provided that and the Parties’ indemnification obligations with respect to such claims will not be subject to the Threshold Amount or the Maximum Amount, and will not be taken into account for purposes of determining whether the Threshold Amount and Maximum Amount have been satisfied and provided, further, that if the recovery of Special Damages would be necessary to make T-Mobile and Purchaser whole, T-Mobile and Purchaser shall not be required to continue to the Closing without regard to such Regulatory Closing Condition unless Cingular and SBCW agree that T-Mobile and Purchaser, on the one hand, or Cingular and Seller, on the other hand, shall share equally all Damages or Expenses incurred by the Parties as a result of satisfying or curing any Regulatory Closing Condition without the application of Section 9.5 hereof..

7.2 Representations and Warranties of SBCW and Cingular. The representations and warranties of SBCW and Cingular shall be true and correct in all material respects as of the date of this Agreement and as of the Closing Date as though made on and as of the Closing Date (except as otherwise contemplated by this Agreement), except to the extent that any failure of any such representation or warranty to be true and correct would not have a Cingular Material Adverse Effect; provided that in the event at the Closing any failure of the representations and warranties of SBCW and Cingular to be true and correct in all material respects shall cause a Cingular Material Adverse Effect (a “**Representation Closing Claim**”), T-Mobile shall, at Cingular’s election, be required to continue to Closing without regard to such Representation Closing Claim to the extent such failure(s) can be cured or satisfied by a claim for damages by T-Mobile or Purchaser or other action to be reasonably taken by SBCW or Cingular following the Closing. Cingular and Seller’s indemnification obligation with respect to such Representation Closing Claim will be subject to the indemnification provisions of Article IX; provided, that Cingular’s and SBCW’s indemnification obligations with respect to any such Representation Closing Claims will not be subject to the Threshold Amount or the Maximum Amount, and will not be taken into account for purposes of determining whether the Threshold Amount and Maximum Amount have been satisfied and, provided, further, that in the event that the recovery of Special Damages would be necessary to make T-Mobile and Purchaser whole as a result of such failure of the representations and warranties of Cingular or SBCW to be true and correct as described above, T-Mobile and Purchaser shall not be required to continue to the Closing without regard to any such Representation Closing Claim unless Cingular and SBCW shall agree that their indemnification obligations shall not be subject to the provisions of Section 9.5. T-

Mobile and Purchaser shall have received a certificate of SBCW and Cingular signed by an officer of each of SBCW and Cingular to such effect on the Closing Date.

7.3 Approvals and Consents. SBCW and Cingular, as applicable, shall have made all filings with and notifications of any Governmental Body required to be made by them in connection with the execution and delivery of this Agreement and the Ancillary Agreements, as applicable, and the performance by them of the transactions contemplated hereby and thereby, except for those filings and notifications which, if not made, would have no Cingular Material Adverse Effect. SBCW and Cingular, as applicable, shall have obtained all required authorizations, waivers, consents and permits (including the expiration of any waiting period (or obtaining of any approval required) under the HSR Act) to permit the consummation of the transactions contemplated by this Agreement, from all Governmental Bodies, other than authorizations, waivers, consents and permits of which the failure to obtain would have no Cingular Material Adverse Effect.

7.4 Closing Deliveries. SBCW shall have made all of the deliveries set forth in Section 2.8(a).

7.5 AWE Merger. The AWE Merger shall have been consummated.

7.6 Cingular and SBCW Compliance with Covenants. Cingular and SBCW shall have duly performed in all material respects all of the covenants, agreements, and conditions contained in this Agreement to be performed by Cingular and SBCW on or prior to the Closing Date, except as would not have a Cingular Material Adverse Effect; provided that in the event at the Closing any failure to perform in all material respects all of the covenants, agreements and conditions contained in this Agreement shall cause a Cingular Material Adverse Effect (a "**Covenant Closing Claim**"), T-Mobile shall, at Cingular's election, be required to continue to Closing without regard to such Covenant Closing Claim to the extent such failure(s) can be cured or satisfied by a claim for damages by T-Mobile or Purchaser or other action to be reasonably taken by SBCW or Cingular following the Closing. Cingular and SBCW's indemnification obligation with respect to any such Covenant Closing Claim will be subject to the indemnification provisions of Article IX; provided, that Cingular's and SBCW's indemnification obligations with respect to any such Covenant Closing Claims will not be subject to the Threshold Amount or the Maximum Amount, and will not be taken into account for purposes of determining whether the Threshold Amount and Maximum Amount have been satisfied, but will otherwise be subject to the indemnification provisions of Article IX; provided, further, that in the event that the recovery of Special Damages would be necessary to make T-Mobile and Purchaser whole as a result of such failure of Cingular or SBCW to perform and comply with covenants and agreements as described above, T-Mobile and Purchaser shall not be required to continue to the Closing without regard to any such Covenant Closing Claim unless Cingular and SBCW shall agree that their indemnification obligations shall not be subject to the provisions of Section 9.5. T-Mobile and Purchaser shall have received a certificate of SBCW and Cingular signed by an officer of each of SBCW and Cingular to such effect on the Closing Date.

7.7 Lease Agreement. The closing conditions of T-Mobile set forth in the Long Term *De Facto* Transfer Lease Agreement shall have been satisfied or waived (other than any closing condition or condition to effectiveness tied to the Closing hereof).

ARTICLE VIII

CLOSING CONDITIONS OF CINGULAR AND SBCW

The obligations of Cingular and SBCW to consummate the transfer of the Transferred Newco Membership Interest shall be subject to compliance by Purchaser and T-Mobile, as applicable, with the following conditions, any or all of which may be waived by SBCW or Cingular.

8.1 Illegality. No Governmental Body of competent jurisdiction shall have enacted, issued, promulgated, enforced or entered any Law or Order (whether temporary, preliminary or permanent) or taken any other action that, in the reasonable opinion of SBCW based on the reasonable written opinion of its counsel, would prohibit, prevent, enjoin or make illegal consummation of the transactions contemplated herein or in any Ancillary Agreement.

8.2 Representations and Warranties of Purchaser and T-Mobile. The representations and warranties of Purchaser and T-Mobile shall be true and correct in all material respects as of the date of this Agreement and as of the Closing Date as though made on and as of the Closing Date (except as otherwise contemplated by this Agreement), except to the extent that any failure of any such representation or warranty to be true and correct would not have a material adverse effect on the consummation of the transactions contemplated hereunder. SBCW shall have received a certificate of Purchaser and T-Mobile signed by an officer of Purchaser and T-Mobile to such effect on the Closing Date.

8.3 Approvals and Consents. Purchaser and T-Mobile shall have made all filings with and notifications of governmental authorities, regulatory agencies and other entities required to be made by it in connection with the execution and delivery of this Agreement and the Ancillary Agreements, as applicable, and the performance by them of the transactions contemplated hereby and thereby, except for those filings and notifications which, if not made, would have no material adverse effect on the consummation of the transactions contemplated by this Agreement. T-Mobile and Purchaser, as applicable, shall have obtained all required authorizations, waivers, consents and permits (including the expiration of any waiting period (or obtaining of any approval required) under the HSR Act) to permit the consummation of the transactions contemplated by this Agreement, from all third parties, other than authorizations, waivers, consents and permits of which the failure to obtain would have no material adverse effect on the consummation of the transactions contemplated by this Agreement.

8.4 Closing Deliveries. Purchaser shall have made all deliveries set forth in Section 2.8(b).

8.5 Closing of AWE Merger; No Qualifying Divestiture. The AWE Merger shall have been consummated and in connection therewith no Qualifying Divestiture shall have occurred.

8.6 T-Mobile and Purchaser Compliance with Covenants. T-Mobile and Purchaser shall have duly performed in all material respects all of the covenants, agreements, and conditions contained in this Agreement to be performed by T-Mobile or Purchaser on or prior to

the Closing Date. SBCW shall have received a certificate of each of T-Mobile and Purchaser signed by an officer of T-Mobile and Purchaser to such effect on the Closing Date.

8.7 Lease Agreement. The closing conditions of Cingular or any Affiliate set forth in the Long Term *De Facto* Lease Agreement shall have been satisfied or waived (other than any closing condition or condition to effectiveness tied to the Closing hereof).

ARTICLE IX

INDEMNIFICATION

9.1 Indemnification by Cingular and SBCW. Cingular and SBCW, jointly and severally, shall indemnify, protect and hold harmless T-Mobile, Purchaser, and their Affiliates and their respective directors, officers, agents, and employees (collectively "**T-Mobile Indemnified Parties**") from and against any and all Damages and Expenses (including Third Party Claims (as defined in Section 9.4), whether in contract or in tort), whether or not litigation is commenced, imposed in any manner upon, incurred by or asserted against such T-Mobile Indemnified Parties to the extent such Damages or Expenses are in connection with or arising from:

- (i) any breach of any representation or warranty of Cingular or SBCW contained in this Agreement; provided that, for purposes of this provision, those representations and warranties (other than the representations and warranties contained in Section 3.9) that are qualified by reference as "material," "material adverse effect" or "**Cingular Material Adverse Effect**" or to the "Knowledge" of any Person shall be deemed not to include such qualifications; or
- (ii) any breach of any covenant or agreement of Cingular or SBCW contained in this Agreement; provided that, for purposes of this provision, those covenants or agreements that are qualified by reference to "material" compliance or "**Cingular Material Adverse Effect**" shall be deemed not to include such qualifications.

9.2 Indemnification by T-Mobile and Purchaser. T-Mobile and Purchaser, jointly and severally, shall indemnify, protect and hold harmless Cingular, SBCW, and their Affiliates, and their respective directors, officers, agents, and employees (collectively "**Cingular Indemnified Parties**") from and against any and all Damages and Expenses (including Third Party Claims, whether in contract or in tort), whether or not litigation is commenced, imposed in any manner upon, incurred by or asserted against such Cingular Indemnified Parties to the extent such Damages or Expenses are in connection with or arising from:

- (i) any breach of any representation or warranty of T-Mobile or Purchaser contained in this Agreement; provided that, for purposes of this provision, those representations and warranties (other than the representations and warranties contained in Section 5.7) that are qualified by reference as

“material” or “material adverse effect” or to the “Knowledge” of any Person shall be deemed not to include such qualifications; or

- (ii) any breach of any covenant or agreement of T-Mobile or Purchaser contained in this Agreement; provided that, for purposes of this provision, those covenants or agreements that are qualified by reference to “material” compliance or “material adverse effect” shall be deemed not to include such qualifications.

9.3 Notice of Claims; Calculation of Damages or Expense.

(a) Any Cingular Indemnified Party or T-Mobile Indemnified Party (the “**Indemnified Party**”) seeking indemnification under this Article IX shall give promptly to the Party (or Parties) obligated to provide indemnification to such Indemnified Party (the “**Indemnitor**”) a notice (a “**Claim Notice**”) describing in reasonable detail the facts giving rise to any claim for indemnification under this Article IX and shall include in such Claim Notice the amount (if then known) or an estimate thereof, and the method of computation of the amount of such claim, and a reference to the provision of this Agreement upon which such claim is based, and any other material and relevant written information the Indemnified Party may have regarding such claim.

(b) If the indemnification claim involves a Third Party Claim, the procedures set forth in Section 9.4 shall be observed by the Indemnified Party and the Indemnitor.

(c) If the indemnification claim involves a matter other than a Third Party Claim, the Indemnitor shall have thirty (30) Business Days from receipt of the Claim Notice to object to such indemnification claim by delivery of a written notice of such objection to the Indemnified Party specifying in reasonable detail the basis for such objection. Failure to timely so object shall constitute a final and binding acceptance of the indemnification claim by the Indemnitor and the indemnification claim shall be paid in accordance with Section 9.3(d). If an objection is timely interposed by the Indemnitor, then the Indemnified Party and the Indemnitor shall negotiate in good faith for a period of twenty (20) Business Days from the date (such period is hereinafter referred to as the “**Negotiation Period**”) the Indemnified Party receives such objection. After the Negotiation Period, if the Indemnitor and the Indemnified Party still cannot agree on an indemnification claim, the Indemnitor and Indemnified Party shall jointly submit the dispute concerning such indemnification claim for resolution as provided in Article XI below.

(d) Upon determination of the amount of an indemnification claim that is binding on both the Indemnitor and the Indemnified Party, the Indemnitor shall pay the amount of such indemnification claim by wire transfer to the Indemnified Party within ten (10) Business Days of the date such amount is determined.

9.4 Third Party Claims.

(a) In the event a claim, suit or proceeding by a third party that is not an Affiliate of a Party to this Agreement is made or filed against any Indemnified Party as to which

the Indemnified Party may seek indemnification hereunder (a “**Third Party Claim**”), such Indemnified Party shall promptly after the receipt of written notice of such Third Party Claim notify the Indemnitor in writing of such Third Party Claim and provide copies of all information provided by such claimant in connection therewith, and thereafter the Indemnified Party shall promptly deliver to the Indemnitor copies of all notices and documents (including court papers) received by the Indemnified Party relating to the Third Party Claim; provided, that the failure of the Indemnified Party to give timely notice of any such claim, suit or proceeding or to make timely delivery of any such notices or documents shall not relieve the Indemnitor of its indemnification obligations with respect to such claim, suit or proceeding except to the extent that such Indemnitor has been prejudiced thereby.

(b) In the event of the initiation of any legal proceeding, claim or demand against the Indemnified Party by a third party for which indemnification is sought under this Article IX, the Indemnitor shall have the sole and absolute right after the receipt of notice, pursuant to Section 9.4(a) at its option and at its own expense, to be represented by counsel of its choice and to control, defend against, negotiate, settle or otherwise deal with such proceeding, claim or demand (subject only to any limitation or condition set forth in this Section 9.4); provided, however, that the Indemnified Party may, at its election, participate in the defense of any such proceeding, claim or demand through counsel of its own choice, but the fees and expenses of such counsel shall be at the expense of the Indemnified Party, unless the Indemnified Party shall have been advised by such counsel that there may be one or more legal defenses available to it that are different from or in addition to those available to the Indemnitor (in which case, if the Indemnified Party notifies the Indemnitor in writing that it elects separate counsel at the expense of the Indemnitor with respect to such defenses (which different or additional defenses must be identified with specificity to the Indemnitor), the Indemnitor shall not have the right to assume the defense of such action on behalf of the Indemnified Party with respect to such defenses), further provided, however, that the Indemnitor has the right to object to such an election by the Indemnified Party and seek a determination pursuant to Article XI concerning that issue.

(i) The Parties hereto agree to cooperate fully with each other in connection with the defense, negotiation or settlement of any such legal proceeding, claim or demand.

(ii) To the extent the Indemnitor fails to assume the defense of a Third-Party Claim within ten (10) days of the Indemnitor’s receipt of notice of such claim by the Indemnified Party, and the Indemnified Party defends against or otherwise deals with any such proceeding, claim or demand, the Indemnified Party may retain counsel, at the expense of the Indemnitor, and control the defense of such proceeding, claim or demand, and any amount for which indemnification may be sought shall be governed by Section 9.3 hereof, subject to the rights of the Indemnitor to seek a determination pursuant to Article XI that it has no obligation of indemnification with respect to the Third Party Claim at issue. Either Party has the option to submit the dispute concerning the liability for indemnification for the Third Party Claim for resolution as provided in Article XI below, but such submission shall not delay or impede the Indemnified Party’s right to defend the Third Party Claim (or the Indemnitor’s right to defend such Third Party Claim pending resolution of any dispute concerning the liability for such Third Party Claim) so as not to prejudice the Indemnified Party.

(iii) No Indemnitor shall, without the prior written consent of the Indemnified Party (which shall not be unreasonably withheld), effect any settlement or compromise of, or consent to the entry of judgment with respect to, any pending or threatened action in respect of which the Indemnified Party is or could have been a party and indemnity may be or could have been sought under this Article IX by the Indemnified Party, unless such settlement, compromise or judgment (x) includes an unconditional release of the Indemnified Party from all liability on claims that are or could have been the subject matter of such action and (y) does not include a statement as to or an admission of fault, culpability or a failure to act, by or on behalf of the Indemnified Party.

(iv) Within thirty (30) days after (A) any final judgment or award shall have been rendered by a Governmental Body of competent jurisdiction and the time in which to appeal therefrom has expired, (B) a settlement shall have been consummated, or (C) the Indemnified Party and the Indemnitor shall arrive at a mutually binding agreement with respect to each separate matter alleged by the Indemnified Party to be indemnified, the Indemnified Party shall forward to the Indemnitor notice of any sums due and owing by the Indemnitor with respect to such matter, and the Indemnitor shall promptly pay all undisputed sums so owing to the Indemnified Party. The Indemnified Party shall (x) provide to the Indemnitor all information, assistance and authority reasonably requested including access to all properties, books, records, contracts or commitments and copies thereof (provided that the Indemnitor shall preserve the confidentiality of any information provided to the same extent it protects its own confidential information) and (y) cause its officers, directors, employees and agents (including legal counsel and accountants) to cooperate with the Indemnitor in order to evaluate any Third Party Claim, or effect any defense, compromise or settlement.

(c) The Indemnified Party shall have the burden of proof in establishing the amount of Damages and Expense suffered by it.

9.5 No Special Damages. Except as provided in this Section 9.5, the Parties will not be liable to each other for any indirect, incidental, consequential, reliance, or special damages (including lost revenues, lost savings, or lost profits suffered by such other Party) arising under or in connection with this Agreement, regardless of the form of action, whether in contract, warranty, strict liability, or tort, including negligence of any kind whether active or passive, and regardless of whether the Party knew of the possibility that such damages could result (collectively, "**Special Damages**"). The Parties hereby release each other, their Affiliates and their respective officers, directors, employees, and agents from any such claim. Nothing contained in this Section 9.5 will limit one Party's liability to the other Party for willful or intentional misconduct. In addition, nothing contained in this Section 9.5 will limit the Parties' indemnification obligations under this Article IX in the case of the indemnification of a Party for Special Damages awarded in connection with a Third Party Claim.

9.6 Limitations.

(a) The Indemnitor shall be obligated to indemnify the Indemnified Party only when the aggregate of all Damages and Expenses suffered or incurred by the Indemnified Party

as to which a right of indemnification is provided under this Article IX exceeds Five Million Dollars (\$5,000,000) (the “**Threshold Amount**”). After the aggregate of all Damages and Expenses suffered or incurred by the Indemnified Party exceeds the Threshold Amount, the Indemnitor shall be obligated to indemnify the Indemnified Party for all such Damages and Expenses without reduction by the Threshold Amount. In no event shall the aggregate liability of either T-Mobile and Purchaser, on the one hand, and Cingular and SBCW, on the other hand, under this Article IX exceed Two Hundred and Fifty Million Dollars (\$250,000,000) (the “**Maximum Amount**”), provided, however, that the aggregate liability of Cingular and SBCW, taken together, for any actions taken or amounts paid pursuant to Section 6.21, Section 7.1, 7.2, 7.6 or any other indemnification obligations contained in this Article IX, shall in no event, taken together, exceed the aggregate Purchase Price. Notwithstanding the above, neither the Threshold Amount nor the Maximum Amount will apply to one Party’s liability to any other Indemnified Parties for willful or intentional misconduct, provided that in no event will the liability of Cingular and SBCW, taken together, exceed the aggregate Purchase Price. For purposes of clarification, nothing contained in this Section 9.6 shall limit any Party’s specific obligation under this Agreement to pay or fund monetary amounts to any other Party hereto, including pursuant to Sections 2.2, 2.4, 2.5, 2.6 and 6.16 hereof. In addition, nothing contained in this Section will limit the Parties’ indemnification obligations under this Article IX in the case of consequential or other such damages awarded in connection with a Third Party Claim; provided that such claims shall be subject to the Threshold Amount, and provided further that in no event will the liability of Cingular and SBCW, taken together, exceed the aggregate Purchase Price.

(b) The Indemnitor shall not be liable for Damages and Expenses in excess of the actual Damages and Expenses suffered by the Indemnified Party as a result of the act, circumstance, or condition for which indemnification is sought net of any insurance proceeds received by the Indemnified Party and indemnification awards received by the Indemnified Party under an Ancillary Agreement or any Existing Ancillary Agreement as a result of the same act, circumstance or condition.

(c) No Indemnified Party shall be entitled to indemnification under this Article IX unless such Indemnified Party has delivered written notice of the indemnification claim or demand to the Indemnitor within eighteen (18) months of the Closing Date. The indemnification obligations for such claims or demands for which written notice is given within eighteen (18) months of the Closing Date shall continue until the final resolution of each such claim or demand.

9.7 Exclusive Remedy. The exclusive remedy available to an Indemnified Party in respect of the matters covered by Sections 9.1 or 9.2 hereof shall be to proceed in the manner and subject to the limitations contained in this Article IX. Notwithstanding anything herein to the contrary, the indemnification rights set forth in this Article IX shall in no way limit the indemnification rights of any Indemnified Party as set forth in the Existing Ancillary Agreements. Notwithstanding anything in this Article IX to the contrary, in the event of a breach of the representation set forth in the last sentence of Section 4.8 hereof, Cingular or an Affiliate shall grant to Purchaser an eighteen (18) month, royalty-free license on commercially reasonable terms to use with the Cingular Assets the software that has been developed by Cingular Sub,

Cingular or any Affiliate that is materially necessary to provide Wireless Services in substantially the same manner as provided to subscribers as of the Closing.

9.8 Pending Claims. Notwithstanding anything herein to the contrary, Cingular expressly assumes and retains all liabilities relating to all pending or threatened claims, including lawsuits and other proceedings relating to the Cingular Assets or Cingular Sub (as evidenced by written notice of such claim to Cingular prior to the Closing Date) and all matters described or set forth on Section 9.8 to the Cingular Disclosure Schedule (the “**Pending Claims**”). Cingular agrees to indemnify, protect and hold harmless, the T-Mobile Indemnified Parties from and against any and all Damages and Expenses (including Third Party Claims, whether in contract or in tort), whether or not litigation is commenced, imposed in any manner upon, incurred by or asserted against such T-Mobile Indemnified Parties to the extent such Damages or Expenses are in connection with or arising from the Pending Claims. Cingular’s indemnification obligation with respect to the Pending Claims will not be subject to the Threshold Amount or the Maximum Amount, and will not be taken into account for purposes of determining whether the Threshold Amount and Maximum Amount have been satisfied, but the other provisions of this Article IX shall apply to any claim for which indemnification is sought. Cingular agrees that it will (i) provide T-Mobile ten (10) Business Days notice of any settlement or other compromise that includes any equitable relief, including injunctive relief, that would affect the Cingular Assets after Closing, and (ii) will not agree to any settlement or other compromise without the consent of T-Mobile (not to be unreasonably withheld) that includes any equitable relief, including injunctive relief, which would have any material adverse affect on the Cingular Assets after Closing.

ARTICLE X

TERMINATION

10.1 Termination Events. (a) For purposes of this Article X, T-Mobile and Purchaser will be treated as a single Party and Cingular and SBCW will be treated as a single Party. This Agreement may be terminated by any Party (“**Terminating Party**”) hereto at any time prior to Closing, upon written notice to the other Party hereto (“**Other Party**”), upon the occurrence of any of the following events:

(i) the Bankruptcy of T-Mobile or any entity that, directly or indirectly Controls T-Mobile or Purchaser (in which case this Agreement may be terminated by Cingular or SBCW) or the Bankruptcy of Cingular or any entity that directly or indirectly Controls Cingular or SBCW (in which case this Agreement may be terminated by T-Mobile or Purchaser);

(ii) the Other Party shall materially breach any of its representations, warranties or covenants contained in this Agreement and (i) such breach shall not be capable of being remedied within sixty (60) days after the occurrence of such breach or (ii) a written notice specifying the nature of such breach and requesting that it be remedied is given by the Terminating Party to the Other Party and such breach shall not have been remedied within sixty (60) days after the occurrence of such breach, except

that T-Mobile shall have no right of termination with regard to such breach of Cingular's or SBCW's representations, warranties and covenants where such breach(es) can be cured or satisfied by a claim for damages or other action to be reasonably taken by SBCW or Cingular following the Closing, pursuant to Section 7.2 or 7.6 hereof;

(iii) any consent of any Governmental Body required for consummation of the transactions contemplated hereby shall have been denied by final action of such Governmental Body that is either nonappealable or which has not been appealed within the time limit for appeal;

(iv) any Law or Order permanently restraining, enjoining or otherwise prohibiting the consummation of the transactions contemplated by this Agreement or any of the Ancillary Agreements shall have become final and nonappealable; or

(v) the termination of the AWE Merger Agreement.

10.2 Effect of Termination. In the event that this Agreement shall be terminated pursuant to Section 10.1, this Agreement shall become void and have no effect, except that (a) Section 6.14, this Section 10.2, Section 6.4, Section 6.6, Article IX, Article XI and Article XII shall survive any such termination and (b) no such termination shall relieve the breaching Party, if any, from any liability resulting from any breach by that Party of this Agreement. In the event that Closing does not occur, Facilities shall not be dissolved pursuant to this Agreement and all existing agreements among the Parties relating to the ownership and operation of Facilities shall continue in full force and effect; provided, that if Closing does not occur as a result of a Qualifying Divestiture, the Tail Period shall be automatically extended for an additional twelve (12) months, such that the total Tail Period shall be thirty six (36) consecutive months commencing upon a dissolution of Facilities, as set forth in the Facilities LLC Agreement, and each of the California System Access and Services Agreement, the New York System Access and Services Agreement, and the Reciprocal Home Roaming Agreement shall be deemed to be amended to reflect such extension. Notwithstanding the foregoing sentence, in connection with such automatic extension and amendment, each Party shall and shall cause its Affiliates to, at the reasonable request of the other Party, execute and deliver any additional agreements, documents and instruments and perform any additional acts that may be reasonably necessary or appropriate to further evidence the foregoing extension and amendments.

ARTICLE XI

DISPUTE RESOLUTION

11.1 Hierarchy of Dispute Resolution Procedures. For purposes of this Article XI, Cingular and SBCW will be treated as a single Party and T-Mobile and Purchaser will be treated as a single Party. Except as otherwise expressly set forth in this Article XI or in any Ancillary Agreement, any dispute, controversy or claim, other than a dispute or controversy concerning whether the condition described in Section 8.5 has been satisfied (a "Dispute"), whether based on contract, tort, statute, fraud, misrepresentation or any other legal theory between a Party and/or any Affiliate thereof, on the one hand, and any other Party and/or any Affiliate thereof on

the other hand, that arises out of or relates to this Agreement or any Ancillary Agreement or any obligations or related services to be provided hereunder or thereunder shall be resolved in accordance with the procedures described in this Article XI. Except as provided in Section 11.3, in the case of a Dispute, the Parties agree to establish an internal hierarchy to facilitate resolution of any such Dispute as set forth below:

(a) Upon written request of any Party, each Party shall appoint a designated representative whose task it will be to meet for the purpose of endeavoring to resolve such Dispute. Such written request shall constitute notice to the other Party of the Dispute. The written notice shall include a description of the Dispute and shall be sent to the other Party via facsimile and first class mail. The designated representatives shall meet as often as the Parties reasonably deem necessary to discuss the Dispute in an effort to resolve the Dispute without the necessity of any formal proceeding. The Parties' designated representatives shall have their first meeting, pursuant to this subsection, within five (5) Business Days from receipt of the written request for such meeting.

(b) In the event that such representatives are unable to resolve the Dispute within twenty (20) Business Days after the Dispute is submitted to them, as described above in Section 11.1(a), or if after at least two (2) meetings and ten (10) Business Days following the submission either Party determines in good faith that such representatives are unlikely to be able to resolve such matter, the Dispute shall be immediately referred by written notice to an executive officer of each of such Parties for consideration. In the event that such executive officers are unable to resolve such Dispute within ten (10) Business Days after the Dispute is submitted to them, then the Dispute shall be submitted to the chief executive officer of Cingular and the chief executive officer of T-Mobile. If the chief executive officers are unable to resolve such Dispute within ten (10) Business Days after the Dispute is submitted to them, then the Dispute shall be submitted to arbitration in accordance with Section 11.2. Notwithstanding the ten (10) Business Day and twenty (20) Business Day periods specified above for attempts to resolve a Dispute by the applicable representatives or officers of the Parties at a particular level, if one Party at any time wishes to accelerate the interparty dispute resolution process by referring the Dispute to a higher level prior to the end of such stated time period, the other Party shall endeavor in good faith to accommodate such request so long as its interests are not materially prejudiced by such acceleration.

11.2 Arbitration.

(a) Except as set forth in Section 11.3, if the Parties are unable to resolve any Dispute as contemplated by Section 11.1, such Dispute shall be submitted to mandatory and binding arbitration at the election of either Party, for itself or its related Affiliate (the "**Disputing Party**"). Except as otherwise provided in this Section 11.2, the arbitration shall be conducted pursuant to the CPR Rules. The arbitration will be governed by the United States Arbitration Act, 9 U.S.C. Sections 1-16, and judgment upon the award rendered by the Arbitrators (as hereinafter defined) may be entered by any court having jurisdiction thereof.

(b) To initiate the arbitration, the Disputing Party shall notify the other Party(ies) in writing (the "**Arbitration Demand**"), which Arbitration Demand shall (i) describe

in reasonable detail the nature of the Dispute, (ii) state the amount of the claim, and (iii) specify the requested relief. Within fifteen (15) days after the other Party's receipt of the Arbitration Demand, such other Party shall file, and serve on the Disputing Party, a written statement (x) answering the claims set forth in the Arbitration Demand and setting forth any affirmative defenses of such Party, and (y) if the other Party elects to do so, asserting a counterclaim or counterclaims, which shall (A) describe in reasonable detail the nature of the Dispute relating to the counterclaim, (B) state the amount of the counterclaim, and (C) specify the requested relief. Within fifteen (15) days after the Disputing Party's receipt of the other Party's written statement, the Disputing Party shall file, and serve on the other Party, a written statement responding to the other Party's responses, counterclaim and affirmative defenses, if any.

(c) The arbitration will be heard by a panel of three (3) arbitrators chosen pursuant to the CPR Rules (the "**Arbitrators**"). The Arbitrators shall be impartial as evidenced, for example, by the fact that they shall not have been employed by or affiliated with any of the Parties or any of their respective Affiliates, and shall possess substantial accounting, legal, telecommunications, business or other professional experience relevant to the issues in dispute in the arbitration as stated in the Arbitration Demand. Within forty-five (45) days - except as modified by order of the Arbitrators after selection of all of the Arbitrators, a hearing shall be held on such date in Chicago, Illinois. In the event that the Parties cannot agree on a date or a location for the hearing, the Arbitrators shall make those choices. The Arbitrators shall rule on the Dispute within twenty (20) days after the hearing and shall prepare and distribute to the Parties by that deadline a writing setting forth the Arbitrators' finding of facts and conclusions of law relating to the Dispute, including the reasons for the giving or denial of any award. The findings and conclusions and the award, if any, shall be deemed to be information subject to the confidentiality provisions set forth in Section 6.6 of this Agreement. The Arbitrators shall have the authority and jurisdiction to decide any and all issues, including whether such issue falls within the ambit of this Article XI. The arbitration shall be governed by the CPR Rules, except as modified by agreement of the Parties in this Agreement or otherwise. The Parties consent and submit to the jurisdiction of the state and federal courts located in Delaware for enforcement of any arbitration award or other order/ruling by the Arbitrators.

(d) The arbitration proceedings and all evidence, testimony, filings, documents and information relating to or presented during the arbitration proceedings shall be deemed to be information subject to the confidentiality provisions set forth in Section 6.6 of this Agreement. The Arbitrators will have no power or authority, under the CPR Rules or otherwise, to relieve the Parties from their agreement hereunder to arbitrate or otherwise to amend or disregard any provision of this Agreement, including the provisions of this Article XI.

(e) The Arbitrators are instructed to schedule promptly all discovery and other procedural steps and otherwise to assume case management initiative and control to effect an efficient and expeditious resolution of the Dispute. The Arbitrators are authorized to issue monetary sanctions against either Party if, upon a showing of good cause, such Party is acting in bad faith and unreasonably delaying the proceeding.

(f) Any award rendered by the Arbitrators will be final, conclusive and binding upon the Parties and any judgment hereon may be entered and enforced in any court of competent jurisdiction.

(g) In connection with any arbitration pursuant to this Agreement or to confirm, vacate or enforce any award rendered by the Arbitrators, the prevailing Party in such a proceeding will be entitled to recover reasonable attorneys' fees and expenses incurred in connection with such proceeding in such amount as the Arbitrators deem equitable, in addition to any other relief to which it may be entitled.

11.3 Dispute Resolution Procedures Regarding Disputes under Sections 7.1, 7.2 and 7.6.

Any dispute between the parties regarding Sections 7.1, 7.2, or 7.6 shall be submitted to mandatory and binding arbitration as set forth in Section 11.2, except as otherwise provided in this Section 11.3. The time periods in Section 11.2 shall be accelerated as follows for disputes submitted to arbitration pursuant to this Section 11.3:

(i) The fifteen (15) days referenced in the second sentence of Section 11.2(b) shall be accelerated to ten (10) days. The fifteen (15) days referenced in the last sentence of Section 11.2(b) shall be accelerated to ten (10) days.

(ii) The forty-five (45) days referenced in the third sentence of Section 11.2(c) shall be accelerated to twenty (20) days. The twenty (20) days referenced in the fourth sentence of Section 11.2(c) shall be accelerated to ten (10) days.

11.4 Judicial Procedure. Nothing in Section 11.1, 11.2 or 11.3 shall be construed to prevent any Party from seeking from a court a temporary restraining order or other temporary or preliminary injunctive or other provisional relief pending final resolution of a Dispute pursuant to such Sections. In addition, nothing in this Article XI shall be construed to prevent a Party from instituting judicial proceedings at any time to avoid the expiration of any applicable limitations period or to preserve a superior position with respect to other creditors.

11.5 Obligation to Continue Performance Pending Resolution of a Dispute. Notwithstanding the foregoing provisions of this Article, the Parties agree to the extent reasonably practicable to continue performing, and to cause their respective Affiliates to continue performing, their respective obligations under this Agreement and the Ancillary Agreements to the extent reasonably practicable pending the resolution of any Dispute that is being resolved under this Article XI unless and until such obligations are terminated or expire in accordance with the provisions of this Agreement or such Ancillary Agreements, unless such continued performance shall be forbidden or restricted by a court, arbitrator or other tribunal.

ARTICLE XII

GENERAL

12.1 Amendments. This Agreement may be amended only in writing and in compliance with the following: (i) the only Persons authorized to sign any amendment or modifications on behalf of T-Mobile or Purchaser are the Chief Financial Officer or General Counsel of T-Mobile; (ii) the only Persons authorized to sign any amendment or modifications on behalf of Cingular or SBCW are the Chief Financial Officer, Senior Vice President – Corporate Development, or General Counsel of Cingular, and any signature by any other Person on behalf of T-Mobile or Cingular is null and void and of no force or effect whatsoever.

12.2 Governing Law. THIS AGREEMENT SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE INTERNAL LAWS OF THE STATE OF DELAWARE WITHOUT REGARD TO ITS CONFLICTS OF LAW DOCTRINE. THE PARTIES TO THIS AGREEMENT CONSENT AND SUBMIT TO THE EXCLUSIVE JURISDICTION OF THE STATE AND FEDERAL COURTS LOCATED IN DELAWARE FOR ANY ACTION OR PROCEEDING IN RESPECT OF ANY CLAIM ARISING OUT OF OR RELATED TO THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY, AND AGREE THAT SUCH COURTS SHALL BE AN APPROPRIATE FORUM WITH RESPECT TO ANY SUCH ACTION OR PROCEEDING.

12.3 Section Headings. The descriptive headings in this Agreement have been inserted for convenience only and shall not be deemed to limit or otherwise affect the construction of any provision thereof or hereof.

12.4 Counterparts. This Agreement may be executed simultaneously in any number of counterparts, each of which when so executed and delivered shall be taken to be an original, but such counterparts shall together constitute but one and the same document.

12.5 Notices and Demands. All notices or other communications required or permitted hereunder shall be in writing and shall be deemed given or delivered when delivered personally, by courier or facsimile transmission to the Parties at the addresses or facsimile numbers set forth below:

If to T-Mobile or Purchaser, to:

T-Mobile USA, Inc.
12920 SE 38th St.
Bellevue, WA 98006
Attention: General Counsel
Telephone Number: (425)-378-4000
Telecopy Number: (425) 378-6380

with a copy to (which shall not constitute notice):

Preston Gates & Ellis LLP
925 Fourth Avenue, Suite 2900
Seattle, WA 98104
Attention: Richard B. Dodd
Telephone Number: (206) 623-7580
Telecopy Number: (206) 623-7022

If to Cingular or SBCW, to:

Cingular Wireless LLC
5565 Glenridge Connector
Suite 2000
Atlanta, GA 30342
Attention: General Counsel
Telephone Number: (404) 236-6140
Telecopy Number: (404) 236-6145

With a copy to (which shall not constitute notice):

Alston & Bird LLP
1201 West Peachtree Street
Atlanta, GA 30309-3424
Attention: Pinney L. Allen
Janine Brown
Telephone Number: (404) 881-7000
Telecopy Number: (404) 881-4777

All such notices and other communications will (a) if delivered personally or by courier to the address provided in this Section 12.5, be deemed given upon delivery and (b) if delivered by facsimile transmission to the facsimile number provided in this Section 12.5, be deemed given when receipt of transmission has been orally confirmed by the receiving Party (in each case regardless of whether such notice, request or other communication is received by any other Person to whom a copy of such notice is to be delivered pursuant to this Section 12.5). Any notice of breach shall be prominently labeled as "Notice of Breach of Contract." Any Party from time to time may change its address, facsimile number or other information for the purpose of notices to that Party by giving notice specifying such change to the other Party.

12.6 Partial Invalidity. Wherever possible, each provision hereof shall be interpreted in such manner as to be effective and valid under applicable Law, but in case any one or more of the provisions contained herein shall, for any reason, be held to be invalid, illegal or unenforceable in any respect, such provision shall be ineffective to the extent, but only to the extent, of such invalidity, illegality or unenforceability without invalidating the remainder of such invalid, illegal or unenforceable provision or provisions or any other provisions hereof, unless such a construction would be unreasonable. If the Agreement or any portion thereof

cannot be reasonably saved by rendering the contested provision(s) or portions thereof ineffective, the Parties shall use their commercially reasonable efforts to negotiate and agree upon a cure to the problem if reasonably possible. Notwithstanding the foregoing, this Section 12.6 shall not apply to Section 8.5 (Closing of AWE Merger; No Qualifying Divestiture) or Section 10.1 (a)(iv) (Termination Events).

12.7 Waiver. Any term or provision of this Agreement may be waived, or the time for its performance may be extended, by the Party or Parties entitled to the benefit thereof. Any such waiver shall be validly and sufficiently authorized for the purposes of this Agreement if, as to any Party, it is authorized in writing by an authorized representative of such Party, it being agreed that the only Persons authorized to sign any waiver or extension on behalf of T-Mobile and Purchaser are the Chief Financial Officer or General Counsel of T-Mobile, and the only Persons authorized to sign any waiver or extension on behalf of Cingular and SBCW are the Chief Financial Officer, General Counsel or Senior Vice President – Corporate Development of Cingular and any signature by any other Person on behalf of such parties is null and void and of no force or effect whatsoever. The failure of any Party hereto to enforce at any time any provision of this Agreement shall not be construed to be a waiver of such provision, nor in any way to affect the validity of this Agreement or any part hereof or the right of any Party thereafter to enforce each and every such provision. No waiver of any breach of this Agreement shall be held to constitute a waiver of any other or subsequent breach.

12.8 Entire Agreement. This Agreement and the Ancillary Agreements and the Exhibits and Schedules hereto and thereto constitute the entire agreement among the Parties with respect to the subject matter hereof and thereof. This Agreement and the Ancillary Agreements and the Exhibits and Schedules hereto and thereto supersede any and all other agreements, either oral or written, between such Parties with respect to the subject matter hereof and thereof.

12.9 Interpretation. When a reference is made in this Agreement to Sections, Exhibits or Schedules, such reference shall be to a Section, Exhibit or Schedule to this Agreement unless otherwise indicated. The words “include,” “includes,” and “including” when used therein shall be deemed in each case to be followed by the words “without limitation.”

12.10 Assignment. Neither this Agreement nor any of the rights, interests or obligations hereunder shall be assigned by any of the Parties hereto without the prior written consent of the other Parties; provided, however, that Purchaser may assign its rights and obligations to one or more Affiliates without the consent of SBCW or Cingular. Subject to the preceding sentence, this Agreement shall be binding upon, inure to the benefit of, and be enforceable by, the Parties and their respective successors and assigns. Notwithstanding the foregoing at its option, SBCW may structure its disposition of the interest in Newco as a tax-deferred, like-kind exchange (“**Exchange**”) pursuant to Section 1031 of the Internal Revenue Code of 1986, as amended. If SBCW elects to undertake an Exchange, SBCW, at its option, may assign its right in, and delegate its duties (in part or in whole) under this Agreement, as well as the transfer of its interest in Newco, to an exchange accommodator (“**Accommodator**”) selected by SBCW (which Accommodator shall be reasonably acceptable to T-Mobile). In such event, T-Mobile and Purchaser agree to cooperate with Cingular and SBCW in connection with the Exchange, including the execution of documents (including, but not limited to, escrow instructions and amendments to escrow instructions) in connection therewith, provided that T-

Mobile shall in no way be obligated to pay any charges incurred with respect to SBCW's replacement property in the Exchange or to take title to SBCW's replacement property. T-Mobile and Purchaser shall not be required to make any representations or warranties, assume any obligations, spend any out-of-pocket sum, or acquire title to any other property in connection with the Exchange. All representations, warranties, covenants, and indemnification obligations of the parties to one another, whether set forth in this Agreement or otherwise, shall not be affected by the Exchange or the assignment to the Accommodator and Cingular and SBCW shall execute such documents as may be reasonably requested by T-Mobile to further evidence (but neither diminish or expand) such agreement in the first clause of this sentence. Cingular shall indemnify, protect, defend, and hold T-Mobile and Purchaser harmless from and against any and all causes of action, claims, demands, liabilities, costs, and expenses, including attorneys' fees and costs, incurred by T-Mobile and Purchaser in connection with any third-party claims that may arise as a result of, or in connection with, the Exchange.

12.11 No Third-Party Beneficiaries. Except as otherwise expressly contemplated by this Agreement, this Agreement is entered into solely for the benefit of the Parties hereto, and their permitted assigns, and shall not confer any rights upon any person or entity not a party to this Agreement.

12.12 Enforcement of Agreement. Notwithstanding anything herein to the contrary or in any other agreement between the Parties, the Parties expressly agree that this Section 12.12 shall apply to any breach of this Agreement. Each of the Parties acknowledges and agrees that the Transferred Newco Membership Interest is unique and that the breach of this Agreement by either Party will cause the non-breaching Party to suffer substantial and irreparable harm. The Parties further acknowledge and agree that the non-breaching Party could not be reasonably or adequately compensated in money damages in an action at law and that remedies other than injunctive relief or specific performance could not fully compensate the non-breaching Party in the event of a breach by the other Party in the performance of its obligations under this Agreement. Accordingly, the Parties agree that, in the event of any such breach, the non-breaching Party shall be entitled to injunctive relief to prevent such breach or to cure and compel cessation of a breach, among other forms of relief that the Parties acknowledge would be appropriate including a decree of specific performance pursuant to which the breaching Party is ordered to affirmatively carry out its obligations under this Agreement, subject to the conditions of this Agreement. The foregoing shall not be deemed to be or construed as a waiver or election of remedies by the non-breaching Party and the non-breaching Party expressly reserves any and all rights and remedies available to the non-breaching Party at law or in equity in the event of a breach or default by the breaching Party under this Agreement.

[SIGNATURE PAGE FOLLOWS]

SIGNATURE PAGE – INTEREST PURCHASE AGREEMENT

IN WITNESS WHEREOF, the undersigned have executed this Agreement as of the day and year first above written.

PURCHASER:
OMNIPOINT COMMUNICATIONS, INC.

SBCW:
SBC WIRELESS LLC

/s/ Robert P. Dotson

/s/ Stephen A. McGaw

Name: Robert P. Dotson

Name: Stephen A. McGaw

Title: President and Chief Executive Officer

Title: Senior Vice President

T-MOBILE:

CINGULAR:

T-MOBILE USA, INC.

CINGULAR WIRELESS LLC

/s/ Robert P. Dotson

/s/ Stephen A. McGaw

Name : Robert P. Dotson

Name: Stephen A. McGaw

Title: President and Chief Executive Officer

Title: Senior Vice President