## Kirk-Johnson, Kathy

**From:** Kirk-Johnson, Kathy
**Sent:** Thursday, October 09, 2008 3:51 PM
**To:** 'Curtis.HopkinsJr@VerizonWireless.com'
**Cc:** 'Downen, Wink'; 'Chris.Bastin@VerizonWireless.com'; 'Kenneth.J.Decourt@VerizonWireless.com'; 'Thomas.Green@VerizonWireless.com'; Davis, Clifton
**Subject:** FW: Shelby County UASI Contract (RFP 09-007-02)
**Attachments:** ShelbyCountyUASIContract.doc

Attached is the above-referenced contract with the County's proposed changes.

Thanks,

Kathy

Kathy K. Johnson
Contract Administrator
Assistant County Attorney
Shelby County Government
160 North Main Street, Suite 550
Memphis, Tennessee 38103
(901) 545-4362
kathy.kirk-johnson@shelbycountytn.gov

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**From:** Curtis.HopkinsJr@VerizonWireless.com [mailto:Curtis.HopkinsJr@VerizonWireless.com]
**Sent:** Friday, October 03, 2008 1:12 PM
**To:** Kirk-Johnson, Kathy
**Cc:** Downen, Wink ; Harvey, Lieutenant Jim; Chris.Bastin@VerizonWireless.com; Kenneth.J.Decourt@VerizonWireless.com; Thomas.Green@VerizonWireless.com; Davis, Clifton
**Subject:** Shelby County UASI Contract (RFP 09-007-02)

Ms. Johnson,

Please see proposed contract attached for your review for Personal Data Assistants and Wireless Data to serve the counties included in this UASI district. The RFP is referenced in the subject line, please do not hesitate to call or reply with any questions or concerns.

<<ShelbyCountyUASIContract.doc>>

Curtis Hopkins, Jr.
Verizon Wireless I Strategic Accounts
Business Sales Representative
C 901 233 4186
F 615 224 5746

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## Verizon Wireless Major Account Agreement

This Major Account Agreement ("Agreement") is made by and between Verizon Wireless Tennessee Partnership d/b/a Verizon Wireles By Cellco Partnership Its General Partner and Customer (identified below), (each a "Party" or jointly the "Parties").

| Customer | | | Verizon Wireless | |
|---|---|---|---|---|
| Company Name **SHELBY COUNTY GOVERNMENT** | | | TO: **Verizon Wireless**<br>**One Verizon Place**<br>**Alpharetta, Georgia 30004**<br>**Attn: Area General Counsel** | CC: **Verizon Wireless**<br>**700 Brookfield Pkwy**<br>**Greenville, SC 29607**<br>**Attn: Regional Sales Director Dean Antonilli** |
| Company Address<br>**160 N MAIN ST** | | | | |
| City **MEMPHIS** | State **TN** | ZIP **38103-1866** | **Customer's Authorized Contacts** | |
| State of Formation: | | | Name **AC WHARTON** | |
| Fed. Tax ID # # **626000841** | D&B # **A00122354** | | Address **160 N MAIN STREET MEMPHIS TN 38103** | |
| **Address for Legal Notices** (if different from above) | | | Title **County Mayor** | Phone **(901) 545-4360** |
| Name | | | E-mail **kathy.kirk-johnson@shelbycountytn.gov** | |
| Address | | | Name | |
| | | | Address | |
| | | | Title | Phone |
| City | State | ZIP | E-mail | |

## ATTAINMENT TIER AND DISCOUNTS

**Attainment Tier:** The range of Customer's total Corporate and Employee Subscriber voice and data lines (excluding telemetry lines service) active under this Agreement at a given time, which determines the applicable monthly access fee discount and other benefits this Agreement. The box checked below indicates Customer's initial Attainment Tier.

**Eligible Calling Plan:** Any generally available Verizon Wireless voice or data calling plan with a monthly access fee of $34.99 or higher that does not prohibit discounts.

**Corporate Equipment Pricing:** Reduced pricing on Equipment provided by Verizon Wireless based on Customer's Attainment Tier.

**Eligible Data Feature**: Any generally available Verizon Wireless data feature with a monthly access fee of $24.99 or higher, added to an Eligible Calling Plan, that does not prohibit discounts.

**Activation Fees:** Waived for Corporate Subscribers.

**Accessory Discount:** Corporate Subscribers are eligible to receive a 25% discount from the non-discounted, retail price of qualifyin accessories if Customer has an Attainment Tier of 100 or greater. Employee Subscribers are eligible to receive a 25% discount from th non-discounted, retail price of qualifying accessories if Customer has an Attainment Tier of 1,000 or greater and such Employe Subscribers make such accessory purchases via the online business sales channel.

## ATTAINMENT TIER

1,000 – 4,999

## SIGNATURES

Each Party represents and warrants to the other that: (a) it is in good standing under the laws of the state of its incorporation or formatio (b) the execution, delivery and performance of this Agreement have been duly authorized by all necessary company action to the exte applicable; and (c) the person signing this Agreement on its behalf is duly authorized to bind it to this Agreement. Customer furthe represents and warrants that it shall not sell or resell Verizon Wireless service to any third party unless it does so under a separat written agreement with Verizon Wireless. **CUSTOMER ACKNOWLEDGES THAT UPON ACTIVATION OR CHANGE OF WIRELES SERVICE OR EQUIPMENT, NOW OR IN THE FUTURE, THE CALLING PLAN, FEATURE, SERVICE AND EQUIPMENT TERMS CONDITIONS AND PRICING APPLICABLE AT THE TIME OF ACTIVATION OR CHANGE SHALL APPLY TO ANY SUC ACTIVATIONS OR CHANGES.**

| **CUSTOMER:** | | **Verizon Wireless Tennessee Partnership d/b/a Verizon Wireless By Cellco Partnership Its General Partner** | |
|---|---|---|---|
| Signature: | Date: | By: | Date: 12/1 |
| Name: | | Name: **James E. McGean** | |
| Title: | | Title: **Area President** | |

**ANY CHANGES TO THIS AGREEMENT MUST BE AGREED TO BY ALL PARTIES IN WRITING**

## VERIZON WIRELESS USE ONLY BELOW

| | | | | | |
|---|---|---|---|---|---|
| Sales Force ID | **EN212** | Master Account # | | Version # | **070417.NS-LB** |
| Sales Office ID | | ECPD Profile ID # | | Pricing Version # | **CMS** |
| Sales Rep.Name | **Ken Decourt** | Contract ID # | **450123** | | |



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## DEFINITIONS

**1. Definitions**

**1.1. Corporate Subscriber:** An employee of Customer utilizing Wireless Service under this Agreement whose account is set up in Customer's name and for which Customer bears responsibility.

**1.2. Employee Subscriber:** An employee of Customer utilizing Wireless Service whose account is registered under this Agreement and is set up in the employee's name and for which the employee bears responsibility. Verizon Wireless relationship with Employee Subscribers is governed by the Verizon Wireless retail Customer Agreement.

**1.3. Equipment:** Wireless telephones, data devices and similar devices and ancillary accessories used in conjunction with Wireless Service.

**1.4. Line:** An individual Corporate Subscriber's line of Wireless Service, whether such line utilizes voice service, data service or both. Each Line is associated with a single mobile telephone number.

**1.5. Wireless Service:** Each and every radio service provided directly or indirectly by Verizon Wireless.

## TERM OF AGREEMENT AND LINE TERM

**2. Term; Early Termination Fees:**

**2.1. Term of Agreement ("Term"):** Verizon Wireless shall provide Wireless Service to Customer for an initial term of 1 year, with three (3) additional one-year renewal options, from the date this Agreement is executed by both Parties ("Effective Date"), and thereafter on a month-to-month basis until terminated by either Party with at least 30 days Legal Notice, as set forth in the "Legal Notices" section below. After termination, Wireless Service will continue for any active Corporate and Employee Subscribers. Until such mobile telephone numbers are either terminated or incorporated under another agreement, Corporate Subscribers will be subject to the terms and conditions of this Agreement and Employee Subscribers will be subject to the terms and conditions of the retail Customer Agreement; however, Verizon Wireless may remove discounts and other benefits of this Agreement from any remaining active mobile telephone numbers.

**2.2. Term of Lines ("Line Term"):** The term for each Line begins on the date Wireless Service is activated for that Line and continues for the period required by the calling plan or Equipment selected for that Line (usually 1 or 2 years). Line Term extensions are required when Corporate Subscribers: (a) take advantage of promotions or services that require a Line Term extension; or (b) purchase or upgrade Equipment. When the Line Term expires, Wireless Service continues on a month-to-month basis.

**2.3. Early Termination Fees ("ETF"):** An ETF of $175.00 applies to each Line terminated or ported to another service provider prior to the expiration of the Line Term. For each Line activated or Line Term extended under this Agreement the ETF will be reduced by $5.00 for each full month of service completed toward such Line Term. ETFs are waived for Corporate/Government Subscribers.

## PRICING AND EQUIPMENT

**3. Rates and Charges:** The calling plan and any selected options and features, determine the applicable rates, charges, allowance of minutes and/or kilobytes or megabytes and Wireless Service coverage area for each Line. Corporate Subscribers activating new service or changing calling plans will receive the then-current calling plan rates, terms and conditions. Customer agrees to refer to www.verizonwireless.com/B2Bresources for current information about calling plans and their associated rates, terms conditions and features before activating new service or changing calling plans. The monthly access fees and non-promotional allowance of minutes and/or kilobytes or megabytes for each Line will not change during the Line Term as long as the calling plan is not changed on that Line. Other rates, charges and fees, including but not limited to options, feature charges and 411 Connect, may vary following 30 days written communication (which may be by mail, e-mail, and/or message with Customer's monthly bill). Verizon Wireless may change or discontinue generally available business or consumer calling plans for new Corporate Subscribers. Corporate discounts and pricing are available through the business sales channel and may not be available to purchases made through agents or at retail store locations.

**3.1. Attainment Tier and Monthly Access Fee Discount:** Provided Customer maintains a minimum of 5 Corporate Subscriber Lines on Eligible Calling Plans (defined on page 1), Corporate Subscribers shall receive the monthly access fee discount on Eligible Calling Plans based on Customer's Attainment Tier (defined on page 1). Verizon Wireless will convert Customer's existing Verizon Wireless mobile telephone numbers to this Agreement within 90 days from the Effective Date, after receiving all necessary information from Customer. Verizon Wireless is not responsible for any obligations Customer may have to other service providers. In order for the mobile telephone numbers of Customer's employees to count toward the Attainment Tier, the employee must follow the process set forth in the "Purchases by Employees" section below.

**3.2. Attainment Tier and Discount Changes:** If Customer does not achieve at least the lower end of its initial Attainment Tier within 180 days after the Effective Date ("Grace Period") or thereafter falls below the lower end of its Attainment Tier for 2 consecutive months, Verizon Wireless may adjust the monthly access fee discount for both Corporate and Employee Subscribers and other benefits under this Agreement, consistent with the applicable lower Attainment Tier. If Customer exceeds its Attainment Tier for at least 2 consecutive months, it may request in writing that Verizon Wireless adjust the Corporate and Employee Subscriber monthly access fee discount and other benefits under this Agreement



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consistent with the applicable higher Attainment Tier. Any such Attainment Tier adjustment may take one to two bill cycles to become effective and will not result in any retroactive discounts, credits, or charges.

**4. Equipment Provided by Verizon Wireless:** The following provisions apply to Equipment purchased directly from Verizon Wireless by Customer or Customer's agent pursuant to this Agreement:

**4.1. Corporate Equipment Pricing:** Corporate Equipment Pricing, based on Customer's Attainment Tier, is subject to periodic change and Equipment is subject to availability. Corporate Subscribers may purchase Equipment at either promotional retail pricing or Corporate Equipment Pricing when activating new service and no sooner than 2 months before the expiration of a 12 month Line Term or 4 months before the expiration of a 24 month Line Term. Corporate Subscribers may purchase Equipment at non-discounted full retail pricing at any time.

**4.2. Shipping, Risk of Loss and Acceptance:** Billing and shipping addresses must be in the Verizon Wireless licensed service area. Equipment will be shipped to the address designated on Customer's order. Title and risk of loss pass to Customer and acceptance occurs upon receipt of the Equipment by Customer or Customer's agent at the address designated on Customer's order. Verizon Wireless may charge Customer for shipping. Verizon Wireless will ship Equipment within 5 business days of receipt of Customer's order, subject to availability.

**4.3. Equipment Returns:** Customer shall have 30 days from acceptance, or a longer period if required by law, during which it may exchange Equipment or return it for a refund and terminate the Line without an ETF. Customer shall be responsible for all service-related charges incurred up to the time of termination.

**5. Equipment Not Provided by Verizon Wireless:** Customer may utilize Equipment procured from a third party, provided that such third-party Equipment is on Verizon Wireless' approved device list at the time of activation. Third-party Equipment providers (including those that sell Verizon Wireless-labeled Equipment) do not represent Verizon Wireless with respect to the sale of Equipment. Third-party Equipment providers establish their own terms and conditions for the sale of Equipment and Verizon Wireless has no control over such third parties' charges, terms of purchase or return policies. Verizon Wireless shall not be responsible for any claims or losses related to any Equipment provided by such third parties, or Customer's use thereof, including but not limited to loss, damage or replacement of such Equipment.

**6. Lost or Stolen Equipment:** If Customer's Equipment is lost or stolen, Customer may request that Verizon Wireless suspend service and billing to the affected Line for the lesser of 30 days or until the date of replacement or recovery of the Equipment, after which service and billing for such Line shall resume. The time of any suspension will not count toward satisfying the Line Term. Verizon Wireless may request reasonable documentation in support of such suspension. Until Verizon Wireless receives Customer's notification, Customer may be responsible for all charges associated with the Line.

**7. Equipment Modifications:** Absent specific prior written approval from Verizon Wireless, if Customer, either on its own or through a third party, adds, changes, integrates or uses hardware or software to or with the Equipment ("Modifications"), then Verizon Wireless shall not be responsible for defects, malfunctions, repair, replacement or claims resulting from such Modifications. Customer may be responsible for any increased usage and charges resulting from such Modifications. Customer shall defend, indemnify and hold harmless Verizon Wireless from and against any and all losses and damages claimed by a third party in any action or proceeding against Verizon Wireless arising from any Modifications or from Customer's illegal or unauthorized use of the Wireless Service or Equipment.

## PURCHASING

**8. Purchases by Customer (Authorized Contact(s)):** Customer shall identify representatives authorized to purchase Wireless Service and Equipment under this Agreement and to act on its behalf ("Authorized Contact(s)") by providing their name, telephone number, business address and e-mail address in writing to Verizon Wireless. An Authorized Contact shall have full authority to handle any and all matters contemplated by the Agreement or relating to Customer's account(s). Customer may elect to designate a third party as an Authorized Contact provided it complies with the requirements set forth in the "Customer's Use of Third Parties" section below.

**9. Purchases by Employees:** An employee of Customer (with proof of employment) may activate new or register existing lines of Wireless Service, not to exceed 5 lines per employee, and obtain the applicable monthly access fee discounts on Eligible Calling Plans available to individual consumers, accessory discounts and Corporate Equipment Pricing, if eligible, provided such employee first: (a) executes a Verizon Wireless retail customer agreement; and (b) qualifies under Verizon Wireless consumer credit criteria. Employee Subscriber activations or registrations of existing Verizon Wireless lines must be processed via the online business sales channel, if available to Customer. If online resources are unavailable, Employee Subscribers may activate via the business sales channel. Corporate discounts and pricing may not be available to purchases made through agents or at retail store locations. Upon request, Customer shall confirm the employment status of Employee Subscribers.

**10. Purchases by Parents and Affiliates:** Customer's qualifying parents and affiliates, following verification by Verizon Wireless, may purchase Wireless Service and Equipment under this Agreement, and the Corporate and Employee Subscribers of



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any participating parent or affiliate will count towards Customer's Attainment Tier, provided that: (a) Customer identifies in writing the name and address of such parents and affiliates; and (b) each such parent or affiliate executes a Verizon Wireless parent/affiliate agreement. Customer shall be responsible for payment of all charges due from parents and affiliates under this Agreement if they default on their payment obligations. Customer's qualifying parents are those entities that own at least 50% of the equity interest in Customer, and Customer's qualifying affiliates are those entities in which Customer or Customer's qualifying parent owns, directly or indirectly, at least a 25% equity interest. Customer shall use good faith efforts to notify Verizon Wireless in writing if a participating parent or affiliate no longer qualifies hereunder. Upon request, Customer shall confirm that any participating parent or affiliate still qualifies pursuant to this section. Either Party may disclose this Agreement in whole or in part to any qualifying parent or affiliate to facilitate participation.

**11. No Reselling:** This Agreement specifically contemplates the purchase of Wireless Service by Corporate and Employee Subscribers of Customer and Customer's qualifying parents and affiliates only. Third parties (including agents, contractors or contract employees, members or franchisees of Customer or Customer's qualifying parents and affiliates) are not eligible to purchase Wireless Service or Equipment under this Agreement. Customer may not resell the Wireless Service except upon specific written agreement between the Parties.

## BILLING AND PAYMENT

**12. Customer Billing and Payments**

**12.1. Monthly Bills:** Verizon Wireless bills on a monthly basis, and Customer is liable for all fees and charges, including any applicable Taxes and Surcharges, on Corporate Subscriber Lines. Monthly access fees and feature charges are generally billed in advance, while airtime overage and other usage rates or charges are billed in arrears. Monthly billing cycles vary and may not necessarily correspond to calendar months.

**12.2. Payment Terms:** Customer shall pay all charges within 30 days of the date of each bill. If payment by check or similar negotiable instrument is returned by a bank for any reason, Verizon Wireless will charge Customer a returned check fee. At any time during the Term, Verizon Wireless may require Customer to provide a deposit as a guarantee of payment based upon Customer's creditworthiness or payment history with Verizon Wireless. Any such deposit shall not relieve Customer of its obligation to pay any Verizon Wireless bills. Verizon Wireless shall pay any required interest on such deposit.

**12.3. Disputed Charges:** In the event of disputed charges, Customer must, as soon as practicable following identification of such dispute, notify Verizon Wireless in writing, including the date of the bill, disputed amounts, the reason for the dispute, and any supporting documentation. Customer has 180 days from the bill due date to dispute charges. Customer may withhold payment of a disputed charge, up to the amount of the dispute, only if it disputes such charge on or before the applicable bill due date; otherwise Verizon Wireless may take any action permitted for Customer's failure to pay in full. The Parties will use their good faith efforts to reconcile any disputed charges within 60 days of the date of notification, after which the Parties may invoke the process set forth in the "Dispute Resolution" section below.

**12.4. Failure to Pay:** Verizon Wireless may, upon prior communication to Customer (which may be by mail, e-mail, and/or message with Customer's monthly bill), suspend or terminate Wireless Service to some or all Corporate Subscribers or deny activation to new Corporate Subscribers due to Customer's failure to make payment or dispute charges in accordance with the foregoing provisions regardless of any deposit provided by Customer.

**12.5. Credits for Interrupted Service:** If an answered voice call in the calling plan rate and coverage area is disconnected by Verizon Wireless' network and the Corporate Subscriber redials the call within 5 minutes of being disconnected, Customer may receive a one-minute credit. If, due to the fault of Verizon Wireless, a Line is unable to receive Wireless Service while in the Verizon Wireless coverage area for more than 24 continuous hours, Customer may request a pro rata daily credit for the period without Wireless Service. Credits will not exceed the amount of the monthly access charge for the affected Corporate Subscriber. To receive any credits under this section, Customer or Corporate Subscriber must notify Verizon Wireless within 90 days after the call was disconnected or Wireless Service was unavailable by calling 800-VZW-4BIZ, an airtime-free and toll-free number.

**13. Taxes, Surcharges and Exemptions:** If any federal, state, local or foreign tax, fee, assessment or other charge is required by law to be collected by Verizon Wireless (each, a "Tax"), or a serving carrier charges Tax on a roaming call, then Verizon Wireless may bill such Tax to Customer, and Customer shall pay such Tax. If Verizon Wireless incurs a tax (other than a net income tax) or other expense to comply with legal or governmental requirements, or other expense to provide or improve service to its customers, and Verizon Wireless bills a surcharge to recover or offset the cost of such expense (a "Surcharge"), then Customer shall pay such Surcharge. Taxes and Surcharges may change from time to time. With respect to any Tax other than a Tax charged by a serving carrier on a roaming call, if Customer provides Verizon Wireless with an exemption certificate in the form provided by law, or with other evidence of exemption acceptable to Verizon Wireless, then that specific Tax will not be collected from Customer. If an exemption applied by Verizon Wireless at Customer's request is found not to apply, then Customer shall upon demand pay Verizon Wireless the uncollected Tax and all related interest, penalties and additions to the Tax. Verizon Wireless shall not issue credits for a Tax that is billed prior to Verizon Wireless' receipt of evidence of exemption.



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**14. Bankruptcy/Insolvency:** Either Party may terminate this Agreement upon Legal Notice, as set forth in the "Legal Notices" section below, if: (a) the other Party makes an assignment for the benefit of creditors, or admits in writing its inability to pay its debts as they mature; (b) a trustee or receiver of any substantial part of the other Party's assets is appointed by any court; or (c) a proceeding is instituted under any provision of the Federal Bankruptcy Laws by or against the other Party, and such proceeding is acquiesced in or is not dismissed within 60 days or results in an adjudication in bankruptcy. Notwithstanding the above, Customer's right to terminate pursuant to this section may only be invoked if Verizon Wireless is unable to provide Customer with Wireless Service and Equipment under this Agreement as a result of the foregoing. If Customer terminates the Agreement pursuant to this section, it shall not be relieved of its obligation to pay for any Wireless Service used and Equipment purchased.

## LIMITATIONS, WARRANTIES AND INDEMNIFICATIONS

**15. LIMITATION OF LIABILITY:** UNLESS DIRECTLY CAUSED BY THE WILLFUL MISCONDUCT OF VERIZON WIRELESS, VERIZON WIRELESS SHALL NOT BE LIABLE TO CUSTOMER, ITS EMPLOYEES, AGENTS OR ANY THIRD PARTY FOR INJURY TO PERSONS OR PROPERTY, LOSSES (INCLUDING ANY LOSS OF BUSINESS), DAMAGES, CLAIMS OR EXPENSES OF ANY KIND CAUSED DIRECTLY OR INDIRECTLY BY THE EQUIPMENT, USE OF THE EQUIPMENT BY CUSTOMER'S EMPLOYEES OR CUSTOMER'S AGENTS, THE MANUFACTURER OF THE EQUIPMENT, ANY REPAIR OR SERVICE OF THE EQUIPMENT BY CUSTOMER OR A THIRD PARTY, ANY MODIFICATIONS (AS DEFINED IN THIS AGREEMENT), OR BY ANY INTERRUPTION OF SERVICE OR LOSS OF USE OF THE EQUIPMENT. IN NO EVENT SHALL VERIZON WIRELESS OR ITS VENDORS BE LIABLE FOR LOSSES, DAMAGES, CLAIMS OR EXPENSES OF ANY KIND ARISING OUT OF THE USE, ATTEMPTED USE, OR INABILITY TO ACCESS LIFE SUPPORT OR MONITORING SYSTEMS OR DEVICES, 911 OR E911, OR OTHER EMERGENCY CALL OR SERVICE.

**16. LIMITATION OF DAMAGES:** NEITHER PARTY, NOR ITS AGENTS OR VENDORS, SHALL BE LIABLE TO THE OTHER PARTY, ITS EMPLOYEES, AGENTS OR ANY THIRD PARTY FOR ANY INDIRECT, SPECIAL, CONSEQUENTIAL, INCIDENTAL OR PUNITIVE DAMAGES.

**17. DISCLAIMER OF WARRANTIES:** VERIZON WIRELESS IS NOT THE MANUFACTURER OF THE EQUIPMENT AND MAKES NO REPRESENTATIONS OR WARRANTIES WHATSOEVER, DIRECTLY OR INDIRECTLY, EXPRESS OR IMPLIED, AS TO THE SUITABILITY, DURABILITY, FITNESS FOR USE, MERCHANTABILITY, CONDITION, QUALITY, PERFORMANCE OR NON-INFRINGEMENT OF THE EQUIPMENT. WITH RESPECT TO VERIZON WIRELESS, CUSTOMER PURCHASES THE EQUIPMENT "AS IS." EQUIPMENT SHALL BE SUBJECT TO ANY WARRANTIES PROVIDED TO CUSTOMER BY THE EQUIPMENT MANUFACTURER. MODIFICATIONS MAY VOID OR OTHERWISE LIMIT ANY WARRANTY APPLICABLE TO THE EQUIPMENT.

**18. Mutual Indemnification:** To the extent permitted by applicable law, each Party shall defend, indemnify, and hold harmless the other Party from any and all losses and damages claimed by a third party in any action or proceeding, against the indemnified Party alleging bodily injury (including death) or damage to property, caused by or alleged to have been caused by the negligence or other wrongful acts or omissions of the indemnifying Party, its employees and authorized agents, including any final monetary judgments, settlements, reasonable costs and reasonable attorneys' fees awarded therein. Notwithstanding the above, in no event shall Verizon Wireless indemnify Customer for any claims, suits or demands arising from the use, delay, failure, defect in or inability to use the Wireless Service or Equipment. Shelby County Government is a governmental entity as defined by Tennessee Code Annotated Section 29-20-101 et seq. and is self-insured for acts of negligence of its officers and employees. The County's liability shall be limited to the provisions of the Tennessee Governmental Tort Liability Act, Tennessee Code Annotated, sections 29-20-101 *et seq.* for causes sounding in tort, and shall not be responsible for any personal injury, property damage or other loss resulting from Verizon's own negligence in the performance of this Agreement.

**18.1. Notice and Defense:** The Party seeking indemnification shall: (a) provide the other Party with prompt Legal Notice, as set forth in the "Legal Notices" section below, of the claim; (b) allow the indemnifying Party to control the defense and settlement of the claim, provided, however, that the indemnifying Party shall not agree to any injunctive relief or settlement that obligates the indemnified Party to perform any obligation, make an admission of guilt, fault or culpability, or incur any expense, without such indemnified Party's prior written consent; (c) have the right to obtain its own counsel at its own expense; and (d) provide reasonable cooperation to the indemnifying Party.

## DISPUTE RESOLUTION

**19. Mandatory Mediation:** Should a dispute arise under this Agreement, the Parties shall meet within 30 days of Legal Notice as set forth in the "Legal Notices" section below, of such dispute to attempt to resolve the matter in good faith. Thereafter the parties agree to seek a resolution of the dispute through mediation. Such mediation shall be conducted by a mediator mutually agreed upon by both parties.



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## CONFIDENTIAL INFORMATION AND USE OF THIRD PARTIES

**20. Confidential Information:** Each Party shall hold in confidence information received from the other Party that is designated confidential or proprietary or that a reasonable person would treat as confidential based upon the nature of the information disclosed or the circumstances of the disclosure ("Confidential Information") for the Term and a period of 2 years thereafter. The Parties agree that Confidential Information shall include the pricing and terms and conditions of this Agreement, any proposals or requests for proposals, and information relating to the disclosing Party's technology, business affairs, and marketing or sales plans. Neither Party shall disclose Confidential Information to any third party or use Confidential Information for any purpose other than as specified in this Agreement. The Parties may disclose Confidential Information to their agents that have a need to know under this Agreement and are bound by non-disclosure obligations that are substantially similar to those set forth in this Agreement. Customer's agents are subject to the additional requirements set forth in the "Customer's Use of Third Parties" section below. Customer must obtain Verizon Wireless' written permission prior to disclosing any Verizon Wireless Confidential Information to any direct competitor of Verizon Wireless.

**20.1. General Exclusions:** The foregoing restrictions shall not apply to information that: (a) is or becomes publicly available through no act or omission of the receiving Party; (b) was already in the lawful possession of the receiving Party without an obligation of confidentiality; (c) is lawfully disclosed to the receiving Party by a third party without restriction; (d) is required to be disclosed by subpoena or other legal process, limited to the extent required by the terms of such subpoena or other legal process; (e) is approved in writing by the disclosing Party for further disclosure; (f) is independently developed without reference to the Confidential Information and is so documented by the receiving Party; or (g) is required to port telephone numbers.

**20.2. Permitted Usage and Disclosure of Confidential Information:** Nothing contained herein shall prevent: (a) either Party from using or disclosing Confidential Information for the purposes of soliciting Customer's employees to purchase Wireless Service and Equipment under this Agreement and to facilitate parent/affiliate participation under this Agreement; (b) Verizon Wireless from using or disclosing Customer usage information for the purpose of providing services under this Agreement; (c) Verizon Wireless from using or disclosing anonymous, aggregate customer information; or (d) Information requiring disclosure pursuant to the Tennessee Public Records Act.

**20.3. Transported Information:** Verizon Wireless shall not be deemed to have received Customer Confidential Information solely by virtue of the fact that: (a) Customer receives, transmits, obtains or otherwise exchanges such information through the use of the Wireless Service; or (b) Verizon Wireless' service to Customer involves the hosting, transport or other similar handling of such information.

**21. Customer's Use of Third Parties:** Customer may employ third parties to purchase Equipment, make Modifications, act as an Authorized Contact or perform other telecommunications management services under this Agreement subject to the following: (a) Customer must notify Verizon Wireless in writing prior to use of a third party and identify the scope of such third party's authority; (b) Customer grants Verizon Wireless permission to disclose to such third party any information relating to the Agreement or Customer's account(s); (c) such third party must be bound by confidentiality obligations that are substantially similar to those in this Agreement; (d) Verizon Wireless reserves the right to require such third party to enter into a non-disclosure agreement with Verizon Wireless; and (e) any right to terminate this Agreement shall remain solely with Customer. Consent by Verizon Wireless to employ a third party to make Modifications shall not constitute specific authorization of such Modifications.

## AVAILABILITY AND GENERAL PROVISIONS OF WIRELESS SERVICE

**22. Wireless Service Availability:** Wireless Service uses radio technologies and is subject to transmission and service area limitations, interruptions and dropped calls, caused by atmospheric, topographical or environmental conditions, cell site availability, Equipment or its installation, governmental regulations, system limitations, maintenance or other conditions or activities affecting Wireless Service operation. Wireless Service and/or features may not be available in all areas. Wireless Service is only available within each applicable calling plan rate and coverage area, within the operating range of the wireless systems, and with Equipment available to Verizon Wireless customers.

**23. Enhancement of Wireless Service:** Due to regulatory provisions regarding Verizon Wireless' network licenses, Customer shall obtain Verizon Wireless' prior approval and written agreement before it may install, deploy or use any regeneration equipment or similar mechanism (for example, a repeater) to originate, amplify, enhance, retransmit or regenerate Wireless Service. Verizon Wireless may terminate Lines and, upon Legal Notice as set forth in the "Legal Notices" section below, may terminate this Agreement and pursue any other available remedies if Customer violates this section.

**24. Use of Wireless Service and Equipment:** In order to protect the Verizon Wireless network, operations and other customers, Verizon Wireless may suspend or terminate service to affected Lines if the Corporate Subscriber uses the Wireless Service or Equipment: (a) in an illegal or unauthorized manner (including "spamming" or other abusive messaging); (b) in a manner prohibited by the applicable calling plan; or (c) in a manner that has an adverse impact on Verizon Wireless' network, operations or customers. If Customer continues using the Wireless Service in such a manner, Verizon Wireless may deny activation to new Lines or, upon Legal Notice as set forth in the "Legal Notices" section below, may terminate this Agreement.



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## MISCELLANEOUS

**25. Assignment:** Provided an assignee possesses the financial and operational capabilities to perform under this Agreement and agrees to assume and fully discharge all of the duties and obligations of the assignor arising under this Agreement, either Party may assign this Agreement in its entirety, without the other Party's consent, to either of the following: (a) any parent, subsidiary or affiliate entity; or (b) a successor in interest of all or substantially all of the assets, stock or businesses of the assigning Party. Neither Party may assign its rights or delegate its duties under this Agreement to any other entity without the prior written consent of the other Party, which shall not be unreasonably withheld, delayed or conditioned. Customer may not assign its rights or delegate its duties under this Agreement to any direct competitor of Verizon Wireless without the prior written consent of Verizon Wireless. Subject to the provisions of this section, this Agreement shall inure to the benefit of and be binding upon the respective successors and assigns, if any, of the Parties hereto.

**26. Service Programming Code:** Equipment provided by Verizon Wireless can be reprogrammed for use with another wireless carrier network, by entering a service programming code. The default service programming code on Verizon Wireless equipment is "000000". Verizon Wireless in no way guarantees that such Equipment will be capable of being reprogrammed for use with another wireless carrier network after the service programming code is entered, or that another wireless carrier will accept Equipment for use on its network. Default service programming codes are not applicable to pre-pay, GSM or data-only Equipment.

**27. Force Majeure:** Verizon Wireless' performance hereunder shall be excused if caused by failure of a third party wireless or telecommunications provider serving a particular area, power failure, national emergency, interference by any governmental agency, acts of God, strikes, other labor disturbance, severe weather conditions, fire, terrorism, riots, war, earthquakes, or any other causes beyond Verizon Wireless' reasonable control.

**28. Trial Products or Services:** The terms and conditions of this Agreement shall apply to any trial products or services that may be provided to Customer by Verizon Wireless, unless expressly superseded by a written agreement relating to such trial. Customer may be responsible for unreturned or damaged trial products.

**29. Governing Law, Venue and Jurisdiction:** The validity, construction and performance of this Agreement and any dispute resolution in accordance with the "Dispute Resolution" section above shall be governed and interpreted in accordance with the laws of the State of Tennessee, without reference to its conflict of laws or other rules that would require the application of the laws of another jurisdiction. Each Party submits to personal jurisdiction exclusively in Shelby County, Tennessee, and waives all objections to a Tennessee venue.

**30. Legal Notices:** Unless otherwise stated herein, Legal Notices required under this Agreement shall be in writing and shall be valid and sufficient if dispatched by: (a) registered or certified mail, postage prepaid, in any U.S. post office; (b) hand delivery; or (c) nationally recognized express courier. Such Legal Notice shall be deemed effective upon delivery to the address(es) designated on the cover page of this Agreement by each Party (as may be updated in writing from time to time). Legal Notice to Customer may be made to Customer's designated Authorized Contact(s). All other notices and communications may be made via mail, e-mail to the billing address on the account, and/or message with Customer's monthly bill.

**31. Counterparts and Admissibility of Copies:** This Agreement may be executed in counterparts each of which when executed by the requisite Parties shall be deemed to be a complete original Agreement. An electronic or facsimile copy of the executed Agreement or counterpart shall be deemed, and shall have the same legal force and effect as, an original document.

**32. No Waiver:** Any forbearance or delay on the part of either Party in enforcing any rights under this Agreement shall not be construed as a waiver of such rights. No terms of this Agreement shall be waived unless expressly waived in writing.

**33. Severability:** If any provision of this Agreement is held to be invalid, illegal or unenforceable by a court of competent jurisdiction, the remaining provisions of this Agreement shall remain in full force and effect.

**34. Survival:** Termination of this Agreement shall not affect either Party's accrued rights or obligations under this Agreement as they exist at the time of termination, or any rights or obligations that either expressly or by implication continue after this Agreement has ended.

**35. Entire Agreement:** This Agreement and any attachments, the terms and conditions of any calling plans, services or features (collectively "Calling Plans" for the purpose of this section only), or Equipment activated by Customer or its Corporate Subscribers, constitute the entire agreement between the Parties with respect to the subject matter. Customer agrees to refer to www.verizonwireless.com/B2Bresources for current information about Calling Plans and Equipment. The terms and conditions of this Agreement shall prevail over any conflicting terms and conditions of a Calling Plan. However, if such terms and



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conditions are specific to that Calling Plan, then those terms and conditions shall prevail for any Lines activated on that Callin Plan. Except for the activation of Calling Plans or Equipment, this Agreement shall not be amended or modified without specifi written agreement signed by both Parties. In no event shall any terms and conditions be added or modified by purchase orde This Agreement supersedes all prior agreements for the provision of Wireless Service and Equipment between Customer an Verizon Wireless.

## REGULATORY DISCLOSURES

**Customer Consent to Use CPNI:** Verizon Wireless and its affiliates (the "Verizon Companies") need Customer's permission t share among themselves information about Customer. The Federal Communications Commission ("FCC") and the State of Arizon require Verizon Wireless to protect certain information that is made available to it solely by virtue of Customer's relationship with i This information is known as Customer Proprietary Network Information ("CPNI"), and it includes information relating to th quantity, technical configuration, type, destination, location, and amount of use of Customer's telecommunications services purchase (including specific calls Customer makes and receives) and related local and toll billing information. CPNI does not includ subscriber lists or published information (listed or unlisted), such as Customer's name, telephone number and address; suc information is not subject to the CPNI rules' use limitations. Verizon Wireless acknowledges Customer has a right under federal an state law to protect the confidentiality of Customer's CPNI, and to direct the Verizon Companies not to use Customer's CPNI or t limit use, disclosure of and access to it, and the Verizon Companies have a duty to comply with the limitations Customer designates By its signature on this Agreement, Customer grants Verizon Wireless permission to use, to permit access to and to disclos Customer's CPNI to the Verizon Companies and to their agents, contractors, and partners, for the purpose of offering Customer an and all products and services available from the Verizon Companies, including those that differ from what Customer currently buy from the Verizon Companies. Customer has a right to disapprove of these uses of CPNI, and may withdraw or limit this consent a any time by notifying Verizon Wireless in writing, either by faxing Verizon Wireless at 866-745-4661 or by e-mailing Verizo Wireless at cpni-notices@verizonwireless.com. Customer's consent will remain valid until Verizon Wireless receives such a notic withdrawing consent. Customer's refusal or withdrawal of consent will not affect the provision of services to which Custome subscribes.



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