

**AGREEMENT**

**by and between**

**BUDGET PHONE, INC.**

**and**

**VERIZON SOUTH INC., F/K/A GTE SOUTH INCORPORATED**

**FOR THE COMMONWEALTH OF**

**KENTUCKY**

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# AGREEMENT

## PREFACE

This Agreement ("Agreement") is made by and between Budget Phone, Inc. (Budget Phone), a Corporation organized under the laws of the State of Louisiana, with offices at 6901 W. 70<sup>th</sup> Street, Shreveport, Louisiana 71129, and Verizon South Inc., f/k/a GTE South Incorporated ("Verizon"), a corporation organized under the laws of the Commonwealth of Virginia, with offices at 4100 Roxboro Road, Durham, North Carolina 27704-2166. (Budget Phone and Verizon may be referred to hereinafter, each individually, as a "Party," and, collectively, as the "Parties").

In consideration of the mutual promises contained in this Agreement, and intending to be legally bound, Verizon and Budget Phone hereby agree as follows:

### 1. The Agreement

- 1.1 This Agreement includes: (a) the Principal Document; (b) the Tariffs of each Party applicable to the Services that are offered for sale by it in the Principal Document (which Tariffs are incorporated and made a part hereof this Agreement by reference); and, (c) an Order by a Party that has been accepted by the other Party.
- 1.2 Conflicts among provisions in the Principal Document, Tariffs, and an Order by a Party which has been accepted by the other Party, shall be resolved in accordance with the following order of precedence, where the document identified in subsection "(a)" shall have the highest precedence: (a) the Principal Document; (b) the Tariffs; and, (c) an Order by a Party that has been accepted by the other Party. The fact that a provision appears in the Principal Document but not in a Tariff, or in a Tariff but not in the Principal Document, shall not be interpreted as, or deemed grounds for finding, a conflict for the purposes of this Section 1.2.
- 1.3 This Agreement constitutes the entire agreement between the Parties on the subject matter hereof, and supersedes any prior or contemporaneous agreement, understanding, or representation, on the subject matter hereof. Except as otherwise provisioned in the Principal Document, the Principal Document may not be waived or modified except by a written document that is signed by the Parties. Subject to the requirements of Applicable Law, a Party shall have the right to add, modify, or withdraw, its Tariff(s) at any time, without the consent of, or notice to, the other Party.

### 2. Term and Termination

- 2.1 This Agreement shall be effective as of the Effective Date and, unless cancelled or terminated earlier in accordance with the terms hereof, shall continue in effect until **May 7, 2003** (the "Initial Term"). Thereafter, this Agreement shall continue in force and effect unless and until cancelled or terminated as provided in this Agreement.
- 2.2 Either Budget Phone or Verizon may terminate this Agreement effective upon the expiration of the Initial Term or effective upon any date after expiration of the Initial Term by providing written notice of termination at least ninety (90) days in advance of the date of termination.
- 2.3 If either Budget Phone or Verizon provides notice of termination pursuant to Section 2.2 and on or before the proposed date of termination either Budget

Phone or Verizon has requested negotiation of a new interconnection agreement, unless this Agreement is cancelled or terminated earlier in accordance with the terms hereof (including, but not limited to, pursuant to Section 12), this Agreement shall remain in effect until the earlier of: (a) the effective date of a new interconnection agreement between Budget Phone and Verizon; or, (b) the date one (1) year after the proposed date of termination.

- 2.4 If either Budget Phone or Verizon provides notice of termination pursuant to Section 2.2 and by 11:59 PM Eastern Time on the proposed date of termination neither Budget Phone nor Verizon has requested negotiation of a new interconnection agreement, (a) this Agreement will terminate at 11:59 PM Eastern Time on the proposed date of termination, and (b) the Services being provided under this Agreement at the time of termination will be terminated, except to the extent that the Purchasing Party has requested that such Services continue to be provided pursuant to an applicable Tariff or SGAT.

### **3. Glossary and Attachments**

The Glossary and the following Attachments are a part of this Agreement:

Additional Services Attachment  
Resale Attachment  
Pricing Attachment

### **4. Applicable Law**

- 4.1 The construction, interpretation and performance of this Agreement shall be governed by (a) the laws of the United States of America and (b) the laws of the Commonwealth of Kentucky, without regard to its conflicts of laws rules. All disputes relating to this Agreement shall be resolved through the application of such laws.
- 4.2 Each Party shall remain in compliance with Applicable Law in the course of performing this Agreement.
- 4.3 Neither Party shall be liable for any delay or failure in performance by it that results from requirements of Applicable Law, or acts or failures to act of any governmental entity or official.
- 4.4 Each Party shall promptly notify the other Party in writing of any governmental action that limits, suspends, cancels, withdraws, or otherwise materially affects, the notifying Party's ability to perform its obligations under this Agreement.
- 4.5 If any provision of this Agreement shall be invalid or unenforceable under Applicable Law, such invalidity or unenforceability shall not invalidate or render unenforceable any other provision of this Agreement, and this Agreement shall be construed as if it did not contain such invalid or unenforceable provision; provided, that if the invalid or unenforceable provision is a material provision of this Agreement, or the invalidity or unenforceability materially affects the rights or obligations of a Party hereunder or the ability of a Party to perform any material provision of this Agreement, the Parties shall promptly renegotiate in good faith and amend in writing this Agreement in order to make such mutually acceptable revisions to this Agreement as may be required in order to conform the Agreement to Applicable Law.

- 4.6 If any legislative, regulatory, judicial or other governmental decision, order, determination or action, or any change in Applicable Law, materially affects any material provision of this Agreement, the rights or obligations of a Party hereunder, or the ability of a Party to perform any material provision of this Agreement, the Parties shall promptly renegotiate in good faith and amend in writing this Agreement in order to make such mutually acceptable revisions to this Agreement as may be required in order to conform the Agreement to Applicable Law.
- 4.7 Notwithstanding anything in this Agreement to the contrary, if, as a result of any legislative, judicial, regulatory or other governmental decision, order, determination or action, or any change in Applicable Law, Verizon is not required by Applicable Law to provide any Service, payment or benefit, otherwise required to be provided to Budget Phone hereunder, then Verizon may discontinue the provision of any such Service, payment or benefit, and Budget Phone shall reimburse Verizon for any payment previously made by Verizon to Budget Phone that was not required by Applicable Law. Verizon will provide thirty (30) days prior written notice to Budget Phone of any such discontinuance of a Service, unless a different notice period or different conditions are specified in this Agreement (including, but not limited to, in an applicable Tariff) or Applicable Law for termination of such Service in which event such specified period and/or conditions shall apply.

## **5. Assignment**

Neither Party may assign this Agreement or any right or interest under this Agreement, nor delegate any obligation under this Agreement, without the prior written consent of the other Party, which consent shall not be unreasonably withheld, conditioned or delayed. Any attempted assignment or delegation in violation of this Section 5 shall be void and ineffective and constitute default of this Agreement.

## **6. Assurance of Payment**

- 6.1 Upon request by Verizon, Budget Phone shall provide to Verizon adequate assurance of payment of amounts due (or to become due) to Verizon hereunder.
- 6.2 Assurance of payment of charges may be requested by Verizon if Budget Phone (a) in Verizon's reasonable judgment, at the Effective Date or at any time thereafter, does not have established credit with Verizon, (b) in Verizon's reasonable judgment, at the Effective Date or at any time thereafter, is unable to demonstrate that it is creditworthy, (c) fails to timely pay a bill rendered to Budget Phone by Verizon, or (d) admits its inability to pay its debts as such debts become due, has commenced a voluntary case (or has had a case commenced against it) under the U.S. Bankruptcy Code or any other law relating to bankruptcy, insolvency, reorganization, winding-up, composition or adjustment of debts or the like, has made an assignment for the benefit of creditors or is subject to a receivership or similar proceeding.
- 6.3 Unless otherwise agreed by the Parties, the assurance of payment shall, at Verizon's option, consist of (a) a cash security deposit in U.S. dollars held by Verizon or (b) an unconditional, irrevocable standby letter of credit naming Verizon as the beneficiary thereof and otherwise in form and substance satisfactory to Verizon from a financial institution acceptable to Verizon. The cash security deposit or letter of credit shall be in an amount equal to two (2) months anticipated charges (including, but not limited to, both recurring and non-

recurring charges), as reasonably determined by Verizon, for the Services to be provided by Verizon to Budget Phone in connection with this Agreement.

- 6.4 To the extent that Verizon elects to require a cash deposit, the Parties intend that the provision of such deposit shall constitute the grant of a security interest in the deposit pursuant to Article 9 of the Uniform Commercial Code as in effect in any relevant jurisdiction.
- 6.5 If payment of interest on a cash deposit is required by an applicable Verizon Tariff or by Applicable Law, interest will be paid on any such cash deposit held by Verizon at the higher of the interest rate stated in such Tariff or the interest rate required by Applicable Law.
- 6.6 Verizon may (but is not obligated to) draw on the letter of credit or cash deposit, as applicable, upon notice to Budget Phone in respect of any amounts to be paid by Budget Phone hereunder that are not paid within thirty (30) days of the date that payment of such amounts is required by this Agreement.
- 6.7 If Verizon draws on the letter of credit or cash deposit, upon request by Verizon, Budget Phone shall provide a replacement or supplemental letter of credit or cash deposit conforming to the requirements of Section 6.2.
- 6.8 Notwithstanding anything else set forth in this Agreement, if Verizon makes a request for assurance of payment in accordance with the terms of this Section, then Verizon shall have no obligation thereafter to perform under this Agreement until such time as Budget Phone has provided Verizon with such assurance of payment.
- 6.9 The fact that a deposit or a letter of credit is requested by Verizon hereunder shall in no way relieve Budget Phone from compliance with the requirements of this Agreement (including, but not limited to, any applicable Tariffs) as to advance payments and payment for Services, nor constitute a waiver or modification of the terms herein pertaining to the discontinuance of Services for nonpayment of any amounts payment of which is required by this Agreement.

## **7. Audits**

- 7.1 Except as may be otherwise specifically provided in this Agreement, either Party ("Auditing Party") may audit the other Party's ("Audited Party") books, records, documents, facilities and systems for the purpose of evaluating the accuracy of the Audited Party's bills. Such audits may be performed once in each Calendar Year; provided, however, that audits may be conducted more frequently (but no more frequently than once in each Calendar Quarter) if the immediately preceding audit found previously uncorrected net inaccuracies in billing in favor of the Audited Party having an aggregate value of at least \$1,000,000.
- 7.2 The audit shall be performed by independent certified public accountants selected and paid by the Auditing Party. The accountants shall be reasonably acceptable to the Audited Party. Prior to commencing the audit, the accountants shall execute an agreement with the Audited Party in a form reasonably acceptable to the Audited Party that protects the confidentiality of the information disclosed by the Audited Party to the accountants. The audit shall take place at a time and place agreed upon by the Parties; provided, that the Auditing Party may require that the audit commence no later than sixty (60) days after the Auditing Party has given notice of the audit to the Audited Party.



- 7.3 Each Party shall cooperate fully in any such audit, providing reasonable access to any and all employees, books, records, documents, facilities and systems, reasonably necessary to assess the accuracy of the Audited Party's bills.
- 7.4 Audits shall be performed at the Auditing Party's expense, provided that there shall be no charge for reasonable access to the Audited Party's employees, books, records, documents, facilities and systems necessary to assess the accuracy of the Audited Party's bills.

**8. Authorization**

- 8.1 Verizon represents and warrants that it is a corporation duly organized, validly existing and in good standing under the laws of the Commonwealth of Virginia and has full power and authority to execute and deliver this Agreement and to perform its obligations under this Agreement.
- 8.2 Budget Phone represents and warrants that it is a Corporation duly organized, validly existing and in good standing under the laws of the State of Louisiana, and has full power and authority to execute and deliver this Agreement and to perform its obligations under this Agreement.
- 8.3 Budget Phone Certification. Notwithstanding any other provision of this Agreement, Verizon shall have no obligation to perform under this Agreement until such time as Budget Phone has obtained such FCC and Commission authorization as may be required by Applicable Law for conducting business in Kentucky. Budget Phone shall not place any orders under this Agreement until it has obtained such authorization. Budget Phone shall provide proof of such authorization to Verizon upon request.

**9. Billing and Payment; Disputed Amounts**

- 9.1 Except as otherwise provided in this Agreement, each Party shall submit to the other Party on a monthly basis in an itemized form, statement(s) of charges incurred by the other Party under this Agreement.
- 9.2 Except as otherwise provided in this Agreement, payment of amounts billed for Services provided under this Agreement, whether billed on a monthly basis or as otherwise provided in this Agreement, shall be due, in immediately available U.S. funds, on the later of the following dates (the "Due Date"): (a) the due date specified on the billing Party's statement; or, (b) twenty (20) days after the date the statement is received by the billed Party. Payments shall be transmitted by electronic funds transfer.
- 9.3 If any portion of an amount billed by a Party under this Agreement is subject to a good faith dispute between the Parties, the billed Party shall give notice to the billing Party of the amounts it disputes ("Disputed Amounts") and include in such notice the specific details and reasons for disputing each item. A Party may also dispute prospectively with a single notice a class of charges that it disputes. Notice of a dispute may be given by a Party at any time, either before or after an amount is paid, and a Party's payment of an amount shall not constitute a waiver of such Party's right to subsequently dispute its obligation to pay such amount or to seek a refund of any amount paid. The billed Party shall pay by the Due Date all undisputed amounts. Billing disputes shall be subject to the terms of Section 14, Dispute Resolution.

- 9.4 Charges due to the billing Party that are not paid by the Due Date, shall be subject to a late payment charge. The late payment charge shall be in an amount specified by the billing Party which shall not exceed a rate of one-and-one-half percent (1.5%) of the overdue amount (including any unpaid previously billed late payment charges) per month.
- 9.5 Although it is the intent of both Parties to submit timely statements of charges, failure by either Party to present statements to the other Party in a timely manner shall not constitute a breach or default, or a waiver of the right to payment of the incurred charges, by the billing Party under this Agreement, and, except for assertion of a provision of Applicable Law that limits the period in which a suit or other proceeding can be brought before a court or other governmental entity of appropriate jurisdiction to collect amounts due, the billed Party shall not be entitled to dispute the billing Party's statement(s) based on the billing Party's failure to submit them in a timely fashion.

## **10. Confidentiality**

- 10.1 As used in this Section 10, "Confidential Information" means the following information that is disclosed by one Party ("Disclosing Party") to the other Party ("Receiving Party") in connection with, or anticipation of, this Agreement:
- 10.1.1 Books, records, documents and other information disclosed in an audit pursuant to Section 7;
- 10.1.2 Any forecasting information provided pursuant to this Agreement.
- 10.1.3 Customer Information (except to the extent that (a) the Customer information is published in a directory, (b) the Customer information is disclosed through or in the course of furnishing a Telecommunications Service, such as a Directory Assistance Service, Operator Service, Caller ID or similar service, or LIDB service, or, (c) the Customer to whom the Customer Information is related has authorized the Receiving Party to use and/or disclose the Customer Information);
- 10.1.3.1 information related to specific facilities or equipment (including, but not limited to, cable and pair information);
- 10.1.3.2 any information that is in written, graphic, electromagnetic, or other tangible form, and marked at the time of disclosure as "Confidential" or "Proprietary;" and
- 10.1.3.3 any information that is communicated orally or visually and declared to the Receiving Party at the time of disclosure, and by written notice with a statement of the information given to the Receiving Party within ten (10) days after disclosure, to be "Confidential or "Proprietary".

Notwithstanding any other provision of this Agreement, a Party shall have the right to refuse to accept receipt of information which the other Party has identified as Confidential Information pursuant to Sections 10.1.3.1 or 10.1.3.2 above.

- 10.2 Except as otherwise provided in this Agreement, the Receiving Party shall:
- 10.2.1 use the Confidential Information received from the Disclosing Party only

in performance of this Agreement; and,

- 10.2.2 using the same degree of care that it uses with similar confidential information of its own (but in no case a degree of care that is less than commercially reasonable), hold Confidential Information received from the Disclosing Party in confidence and restrict disclosure of the Confidential Information solely to those of the Receiving Party's Affiliates and the directors, officers, employees, Agents and contractors of the Receiving Party and the Receiving Party's Affiliates, that have a need to receive such Confidential Information in order to perform the Receiving Party's obligations under this Agreement. The Receiving Party's Affiliates and the directors, officers, employees, Agents and contractors of the Receiving Party and the Receiving Party's Affiliates, shall be required by the Receiving Party to comply with the provisions of this Section 10 in the same manner as the Receiving Party. The Receiving Party shall be liable for any failure of the Receiving Party's Affiliates or the directors, officers, employees, Agents or contractors of the Receiving Party or the Receiving Party's Affiliates, to comply with the provisions of this Section 10.
- 10.3 The Receiving Party shall return or destroy all Confidential Information received from the Disclosing Party, including any copies made by the Receiving Party, within thirty (30) days after a written request by the Disclosing Party is delivered to the Receiving Party, except for (a) Confidential Information that the Receiving Party reasonably requires to perform its obligations under this Agreement, and (b) one copy for archival purposes only.
- 10.4 Unless otherwise agreed, the obligations of Sections 10.2 and 10.3 do not apply to information that:
  - 10.4.1 was, at the time of receipt, already in the possession of or known to the Receiving Party free of any obligation of confidentiality and restriction on use;
  - 10.4.2 is or becomes publicly available or known through no wrongful act of the Receiving Party, the Receiving Party's Affiliates, or the directors, officers, employees, Agents or contractors of the Receiving Party or the Receiving Party's Affiliates;
  - 10.4.3 is rightfully received from a third person having no direct or indirect obligation of confidentiality or restriction on use to the Disclosing Party with respect to such information;
  - 10.4.4 is independently developed by the Receiving Party;
  - 10.4.5 is approved for disclosure or use by written authorization of the Disclosing Party (including, but not limited to, in this Agreement); or
  - 10.4.6 is required to be disclosed by the Receiving Party pursuant to Applicable Law, provided that the Receiving Party shall have made commercially reasonable efforts to give adequate notice of the requirement to the Disclosing Party in order to enable the Disclosing Party to seek protective arrangements.

- 10.5 Notwithstanding the provisions of Sections 10.1 through 10.4, the Receiving Party may use and disclose Confidential Information received from the Disclosing Party to the extent necessary to enforce the Receiving Party's rights under this Agreement or Applicable Law. In making any such disclosure, the Receiving Party shall make reasonable efforts to preserve the confidentiality and restrict the use of the Confidential Information while it is in the possession of any person to whom it is disclosed, including, but not limited to, by requesting any governmental entity to whom the Confidential Information is disclosed to treat it as confidential and restrict its use to purposes related to the proceeding pending before it.
- 10.6 The Disclosing Party shall retain all of the Disclosing Party's right, title and interest in any Confidential Information disclosed by the Disclosing Party to the Receiving Party. Except as otherwise expressly provided in this Agreement, no license is granted by this Agreement with respect to any Confidential Information (including, but not limited to, under any patent, trademark or copyright), nor is any such license to be implied solely by virtue of the disclosure of Confidential Information.
- 10.7 The provisions of this Section 10 shall be in addition to and not in derogation of any provisions of Applicable Law, including, but not limited to, 47 U.S.C. § 222, and are not intended to constitute a waiver by a Party of any right with regard to the use, or protection of the confidentiality of, CPNI provided by Applicable Law.
- 10.8 Each Party's obligations under this Section 10 shall survive expiration, cancellation or termination of this Agreement.

## **11. Counterparts**

This Agreement may be executed in two or more counterparts, each of which shall be deemed an original and all of which together shall constitute one and the same instrument.

## **12. Default**

If either Party ("Defaulting Party") fails to make a payment required by this Agreement (including, but not limited to, any payment required by Section 9.3 of undisputed amounts to the billing Party) or materially breaches any other material provision of this Agreement, and such failure or breach continues for thirty (30) days after written notice thereof from the other Party, the other Party may, by written notice to the Defaulting Party, (a) suspend the provision of any or all Services hereunder, or (b) cancel this Agreement and terminate the provision of all Services hereunder.

## **13. Discontinuance of Service by Budget Phone**

- 13.1 If Budget Phone proposes to discontinue, or actually discontinues, its provision of service to all or substantially all of its Customers, whether voluntarily, as a result of bankruptcy, or for any other reason, Budget Phone shall send written notice of such discontinuance to Verizon, the Commission, and each of Budget Phone's Customers. Budget Phone shall provide such notice such number of days in advance of discontinuance of its service as shall be required by Applicable Law. Unless the period for advance notice of discontinuance of service required by Applicable Law is more than thirty (30) days, to the extent commercially feasible, Budget Phone shall send such notice at least thirty (30) days prior to its discontinuance of service.

- 13.2 Such notice must advise each Budget Phone Customer that unless action is taken by the Budget Phone Customer to switch to a different carrier prior to Budget Phone's proposed discontinuance of service, the Budget Phone Customer will be without the service provided by Budget Phone to the Budget Phone Customer.
- 13.3 Should a Budget Phone Customer subsequently become a Verizon Customer, Budget Phone shall provide Verizon with all information necessary for Verizon to establish service for the Budget Phone Customer, including, but not limited to, the CLEC Customer's billed name, listed name, service address, and billing address, and the services being provided to the Budget Phone Customer.
- 13.4 Nothing in this Section 13 shall limit Verizon's right to cancel or terminate this Agreement or suspend provision of Services under this Agreement.

#### **14. Dispute Resolution**

- 14.1 Except as otherwise provided in this Agreement, any dispute between the Parties regarding the interpretation or enforcement of this Agreement or any of its terms shall be addressed by good faith negotiation between the Parties. To initiate such negotiation, a Party must provide to the other Party written notice of the dispute that includes both a detailed description of the dispute or alleged nonperformance and the name of an individual who will serve as the initiating Party's representative in the negotiation. The other Party shall have ten Business Days to designate its own representative in the negotiation. The Parties' representatives shall meet at least once within 45 days after the date of the initiating Party's written notice in an attempt to reach a good faith resolution of the dispute. Upon agreement, the Parties' representatives may utilize other alternative dispute resolution procedures such as private mediation to assist in the negotiations.
- 14.2 If the Parties have been unable to resolve the dispute within 45 days of the date of the initiating Party's written notice, either Party may pursue any remedies available to it under this Agreement, at law, in equity, or otherwise, including, but not limited to, instituting an appropriate proceeding before the Commission, the FCC, or a court of competent jurisdiction.

#### **15. Force Majeure**

- 15.1 Neither Party shall be responsible for any delay or failure in performance which results from causes beyond its reasonable control ("Force Majeure Events"), whether or not foreseeable by such Party. Such Force Majeure Events include, but are not limited to, adverse weather conditions, flood, fire, explosion, earthquake, volcanic action, power failure, embargo, boycott, war, revolution, civil commotion, act of public enemies, labor unrest (including, but not limited to, strikes, work stoppages, slowdowns, picketing or boycotts), inability to obtain equipment, parts, software or repairs thereof, acts or omissions of the other Party, and acts of God.
- 15.2 If a Force Majeure Event occurs, the non-performing Party shall give prompt notification of its inability to perform to the other Party. During the period that the non-performing Party is unable to perform, the other Party shall also be excused from performance of its obligations to the extent such obligations are reciprocal to, or depend upon, the performance of the non-performing Party that has been prevented by the Force Majeure Event. The non-performing Party shall use commercially reasonable efforts to avoid or remove the cause(s) of its non-

performance and both Parties shall proceed to perform once the cause(s) are removed or cease.

15.3 Notwithstanding the provisions of Sections 15.1 and 15.2, in no case shall a Force Majeure Event excuse either Party from an obligation to pay money as required by this Agreement.

15.4 Nothing in this Agreement shall require the non-performing Party to settle any labor dispute except as the non-performing Party, in its sole discretion, determines appropriate.

## **16. Forecasts**

In addition to any other forecasts required by this Agreement, upon request by Verizon, Budget Phone shall provide to Verizon forecasts regarding the Services that Budget Phone expects to purchase from Verizon, including, but not limited to, forecasts regarding the types and volumes of Services that Budget Phone expects to purchase and the locations where such Services will be purchased.

## **17. Fraud**

Budget Phone assumes responsibility for all fraud associated with its Customers and accounts. Verizon shall bear no responsibility for, nor is it required to investigate or make adjustments to Budget Phone's account in cases of, fraud by Budget Phone's Customers or other third parties.

## **18. Good Faith Performance**

The Parties shall act in good faith in their performance of this Agreement. Except as otherwise expressly stated in this Agreement (including, but not limited to, where consent, approval, agreement or a similar action is stated to be within a Party's sole discretion), where consent, approval, mutual agreement or a similar action is required by any provision of this Agreement, such action shall not be unreasonably withheld, conditioned or delayed.

## **19. Headings**

The headings used in the Principal Document are inserted for convenience of reference only and are not intended to be a part of or to affect the meaning of the Principal Document.

## **20. Indemnification**

20.1 Each Party ("Indemnifying Party") shall indemnify, defend and hold harmless the other Party ("Indemnified Party"), the Indemnified Party's Affiliates, and the directors, officers and employees of the Indemnified Party and the Indemnified Party's Affiliates, from and against any and all Claims that arise out of bodily injury to or death of any person, or damage to, or destruction or loss of, tangible real and/or personal property of any person, to the extent such injury, death, damage, destruction or loss, was proximately caused by the grossly negligent or intentionally wrongful acts or omissions of the Indemnifying Party, the Indemnifying Party's Affiliates, or the directors, officers, employees, agents or contractors of the Indemnifying Party or the Indemnifying Party's Affiliates, in connection with this Agreement.

20.2 Indemnification Process:

- 20.2.1 As used in this Section 20, "Indemnified Person" means a person whom an Indemnifying Party is obligated to indemnify, defend and/or hold harmless under Section 20.1.
- 20.2.2 An Indemnifying Party's obligations under Section 20.1 shall be conditioned upon the following:
- 20.2.3 The Indemnified Person: (a) shall give the Indemnifying Party notice of the Claim promptly after becoming aware thereof (including a statement of facts known to the Indemnified Person related to the Claim and an estimate of the amount thereof); (b) prior to taking any material action with respect to a Third Party Claim, shall consult with the Indemnifying Party as to the procedure to be followed in defending, settling, or compromising the Claim; (c) shall not consent to any settlement or compromise of a Third Party Claim without the written consent of the Indemnifying Party; (d) shall permit the Indemnifying Party to assume the defense of a Third Party Claim (including, except as provided below, the compromise or settlement thereof) at the Indemnifying Party's own cost and expense, provided, however, that the Indemnified Person shall have the right to approve the Indemnifying Party's choice of legal counsel.
- 20.2.4 If the Indemnified Person fails to comply with Section 20.2.1 with respect to a Claim, to the extent such failure shall have a material adverse effect upon the Indemnifying Party, the Indemnifying Party shall be relieved of its obligation to indemnify, defend and hold harmless the Indemnified Person with respect to such Claim under this Agreement.
- 20.2.5 Subject to 20.2.6 and 20.2.7, below, the Indemnifying Party shall have the authority to defend and settle any Third Party Claim.
- 20.2.6 With respect to any Third Party Claim, the Indemnified Person shall be entitled to participate with the Indemnifying Party in the defense of the Claim if the Claim requests equitable relief or other relief that could affect the rights of the Indemnified Person. In so participating, the Indemnified Person shall be entitled to employ separate counsel for the defense at the Indemnified Person's expense. The Indemnified Person shall also be entitled to participate, at its own expense, in the defense of any Claim, as to any portion of the Claim as to which it is not entitled to be indemnified, defended and held harmless by the Indemnifying Party.
- 20.2.7 In no event shall the Indemnifying Party settle a Third Party Claim or consent to any judgment with regard to a Third Party Claim without the prior written consent of the Indemnified Party, which shall not be unreasonably withheld, conditioned or delayed. In the event the settlement or judgment requires a contribution from or affects the rights of an Indemnified Person, the Indemnified Person shall have the right to refuse such settlement or judgment with respect to itself and, at its own cost and expense, take over the defense against the Third Party Claim, provided that in such event the Indemnifying Party shall not be responsible for, nor shall it be obligated to indemnify or hold harmless the Indemnified Person against, the Third Party Claim for any amount in excess of such refused settlement or judgment.
- 20.2.8 The Indemnified Person shall, in all cases, assert any and all provisions

in applicable Tariffs and Customer contracts that limit liability to third persons as a bar to, or limitation on, any recovery by a third-person claimant.

20.2.9 The Indemnifying Party and the Indemnified Person shall offer each other all reasonable cooperation and assistance in the defense of any Third Party Claim.

20.3 Each Party agrees that it will not implead or bring any action against the other Party, the other Party's Affiliates, or any of the directors, officers or employees of the other Party or the other Party's Affiliates, based on any claim by any person for personal injury or death that occurs in the course or scope of employment of such person by the other Party or the other Party's Affiliate and that arises out of performance of this Agreement.

20.4 Each Party's obligations under this Section 20 shall survive expiration, cancellation or termination of this Agreement.

## **21. Insurance**

21.1 Budget Phone shall maintain during the term of this Agreement and for a period of two years thereafter all insurance and/or bonds required to satisfy its obligations under this Agreement (including, but not limited to, its obligations set forth in Section 20 hereof) and all insurance and/or bonds required by Applicable Law. The insurance and/or bonds shall be obtained from an insurer having an A.M. Best insurance rating of at least A-, financial size category VII or greater. At a minimum and without limiting the foregoing undertaking, Budget Phone shall maintain the following insurance:

21.1.1 Commercial General Liability Insurance, on an occurrence basis, including but not limited to, premises-operations, broad form property damage, products/completed operations, contractual liability, independent contractors, and personal injury, with limits of at least \$2,000,000 combined single limit for each occurrence.

21.1.2 Motor Vehicle Liability, Comprehensive Form, covering all owned, hired and non-owned vehicles, with limits of at least \$2,000,000 combined single limit for each occurrence.

21.1.3 Excess Liability, in the umbrella form, with limits of at least \$10,000,000 combined single limit for each occurrence.

21.1.4 Worker's Compensation Insurance as required by Applicable Law and Employer's Liability Insurance with limits of not less than \$2,000,000 per occurrence.

21.1.5 All risk property insurance on a full replacement cost basis for all of Budget Phone's real and personal property located at any Collocation site or otherwise located on or in any Verizon premises (whether owned, leased or otherwise occupied by Verizon), facility, equipment or right-of-way.

21.2 Any deductibles, self-insured retentions or loss limits ("Retentions") for the foregoing insurance must be disclosed on the certificates of insurance to be provided to Verizon pursuant to Sections 21.4 and 21.5, and Verizon reserves



the right to reject any such Retentions in its reasonable discretion. All Retentions shall be the responsibility of Budget Phone.

- 21.3 Budget Phone shall name Verizon, Verizon's Affiliates and the directors, officers and employees of Verizon and Verizon's Affiliates, as additional insureds on the foregoing insurance.
- 21.4 Budget Phone shall, within two (2) weeks of the Effective Date hereof, on a semi-annual basis thereafter, and at such other times as Verizon may reasonably specify, furnish certificates or other proof of the foregoing insurance reasonably acceptable to Verizon. The certificates or other proof of the foregoing insurance shall be sent to: Director-Contract Performance & Administration, Verizon Wholesale Markets, 600 Hidden Ridge, Irving, TX 75038.
- 21.5 Budget Phone shall require its contractors, if any, that may enter upon the premises or access the facilities or equipment of Verizon or Verizon's affiliated companies to maintain insurance in accordance with Sections 21.1 through 21.3 and, if requested, to furnish Verizon certificates or other adequate proof of such insurance acceptable to Verizon in accordance with Section 21.4.
- 21.6 If Budget Phone or Budget Phone's contractors fail to maintain insurance as required in Sections 21.1 through 21.5, above, Verizon may purchase such insurance and Budget Phone shall reimburse Verizon for the cost of the insurance.
- 21.7 Certificates furnished by Budget Phone or Budget Phone's contractors shall contain a clause stating: "Verizon South Inc., f/k/a GTE South Incorporated shall be notified in writing at least thirty (30) days prior to cancellation of, or any material change in, the insurance."

## **22. Intellectual Property**

- 22.1 Except as expressly stated in this Agreement, this Agreement shall not be construed as granting a license with respect to any patent, copyright, trade name, trademark, service mark, trade secret or any other intellectual property, now or hereafter owned, controlled or licensable by either Party. Except as expressly stated in this Agreement, neither Party may use any patent, copyrightable materials, trademark, trade name, trade secret or other intellectual property right, of the other Party except in accordance with the terms of a separate license agreement between the Parties granting such rights.
- 22.2 Except as stated in Section 22.4, neither Party shall have any obligation to defend, indemnify or hold harmless, or acquire any license or right for the benefit of, or owe any other obligation or have any liability to, the other Party or its Affiliates or Customers based on or arising from any Third Party Claim alleging or asserting that the provision or use of any service, facility, arrangement, or software by either Party under this Agreement, or the performance of any service or method, either alone or in combination with the other Party, constitutes direct, vicarious or contributory infringement or inducement to infringe, or misuse or misappropriation of any patent, copyright, trademark, trade secret, or any other proprietary or intellectual property right of any Party or third person. Each Party, however, shall offer to the other reasonable cooperation and assistance in the defense of any such claim.

- 22.3 NOTWITHSTANDING ANY OTHER PROVISION OF THIS AGREEMENT, THE PARTIES AGREE THAT NEITHER PARTY HAS MADE, AND THAT THERE DOES NOT EXIST, ANY WARRANTY, EXPRESS OR IMPLIED, THAT THE USE BY EACH PARTY OF THE OTHER'S SERVICES PROVIDED UNDER THIS AGREEMENT SHALL NOT GIVE RISE TO A CLAIM OF INFRINGEMENT, MISUSE, OR MISAPPROPRIATION OF ANY INTELLECTUAL PROPERTY RIGHT.
- 22.4 Budget Phone agrees that the Services provided by Verizon hereunder shall be subject to the terms, conditions and restrictions contained in any applicable agreements (including, but not limited to software or other intellectual property license agreements) between Verizon and Verizon's vendors. Verizon agrees to advise Budget Phone, directly or through a third party, of any such terms, conditions or restrictions that may limit any Budget Phone use of a Service provided by Verizon that is otherwise permitted by this Agreement. At Budget Phone's written request, to the extent required by Applicable Law, Verizon will use Verizon's best efforts, as commercially practicable, to obtain intellectual property rights from Verizon's vendor to allow Budget Phone to use the Service in the same manner as Verizon that are coextensive with Verizon's intellectual property rights, on terms and conditions that are equal in quality to the terms and conditions under which Verizon has obtained Verizon's intellectual property rights. Budget Phone shall reimburse Verizon for the cost of obtaining such rights.

**23. Joint Work Product**

The Principal Document is the joint work product of the Parties, has been negotiated by the Parties, and shall be fairly interpreted in accordance with its terms. In the event of any ambiguities, no inferences shall be drawn against either Party.

**24. Law Enforcement.**

- 24.1 Each Party may cooperate with law enforcement authorities and national security authorities to the full extent required or permitted by Applicable Law in matters related to Services provided by it under this Agreement, including, but not limited to, the production of records, the establishment of new lines or the installation of new services on an existing line in order to support law enforcement and/or national security operations, and, the installation of wiretaps, trap-and-trace facilities and equipment, and dialed number recording facilities and equipment.
- 24.2 A Party shall not have the obligation to inform the other Party or the Customers of the other Party of actions taken in cooperating with law enforcement or national security authorities, except to the extent required by Applicable Law.
- 24.3 Where a law enforcement or national security request relates to the establishment of lines (including, but not limited to, lines established to support interception of communications on other lines), or the installation of other services, facilities or arrangements, a Party may act to prevent the other Party from obtaining access to information concerning such lines, services, facilities and arrangements, through operations support system interfaces.

**25. Liability**

- 25.1 As used in this Section 25, "Service Failure" means a failure to comply with a direction to install, restore or terminate Services under this Agreement, a failure

to provide Services under this Agreement, and failures, mistakes, omissions, interruptions, delays, errors, defects or the like, occurring in the course of the provision of any Services under this Agreement.

- 25.2 Except as otherwise stated in Section 25.5, the liability, if any, of a Party, a Party's Affiliates, and the directors, officers and employees of a Party and a Party's Affiliates, to the other Party, the other Party's Customers, and to any other person, for Claims arising out of a Service Failure shall not exceed an amount equal to the pro rata applicable monthly charge for the Services that are subject to the Service Failure for the period in which such Service Failure occurs.
- 25.3 Except as otherwise stated in Section 25.5, a Party, a Party's Affiliates, and the directors, officers and employees of a Party and a Party's Affiliates, shall not be liable to the other Party, the other Party's Customers, or to any other person, in connection with this Agreement (including, but not limited to, in connection with a Service Failure or any breach, delay or failure in performance, of this Agreement) for special, indirect, incidental, consequential, reliance, exemplary, punitive, or like damages, including, but not limited to, damages for lost revenues, profits or savings, or other commercial or economic loss, even if the person whose liability is excluded by this Section has been advised of the possibility of such damages.
- 25.4 The limitations and exclusions of liability stated in Sections 25.1 through 25.3 shall apply regardless of the form of a claim or action, whether statutory, in contract, warranty, strict liability, tort (including, but not limited to, negligence of a Party), or otherwise.
- 25.5 Nothing contained in Sections 25.1 through 25.4 shall exclude or limit liability:
- 25.5.1 under Sections 20 Indemnification or 41, Taxes.
  - 25.5.2 for any obligation to indemnify, defend and/or hold harmless that a Party may have under this Agreement.
  - 25.5.3 for damages arising out of or resulting from bodily injury to or death of any person, or damage to, or destruction or loss of, tangible real and/or personal property of any person, or Toxic or Hazardous Substances, to the extent such damages are otherwise recoverable under Applicable Law;
  - 25.5.4 for a claim for infringement of any patent, copyright, trade name, trade mark, service mark, or other intellectual property interest;
  - 25.5.5 under Section 258 of the Act or any order of FCC or the Commission implementing Section 258; or
  - 25.5.6 under the financial incentive or remedy provisions of any service quality plan required by the FCC or the Commission.
- 25.6 In the event that the liability of a Party, a Party's Affiliate, or a director, officer or employee of a Party or a Party's Affiliate, is limited and/or excluded under both this Section 25 and a provision of an applicable Tariff, the liability of the Party or other person shall be limited to the smaller of the amounts for which such Party or other person would be liable under this Section or the Tariff provision.

- 25.7 Each Party shall, in its tariffs and other contracts with its Customers, provide that in no case shall the other Party, the other Party's Affiliates, or the directors, officers or employees of the other Party or the other Party's Affiliates, be liable to such Customers or other third-persons for any special, indirect, incidental, consequential, reliance, exemplary, punitive or other damages, arising out of a Service Failure.

## **26. Network Management**

- 26.1 Cooperation. The Parties will work cooperatively in a commercially reasonable manner to install and maintain a reliable network. Budget Phone and Verizon will exchange appropriate information (e.g., network information, maintenance contact numbers, escalation procedures, and information required to comply with requirements of law enforcement and national security agencies) to achieve this desired reliability. In addition, the Parties will work cooperatively in a commercially reasonable manner to apply sound network management principles to alleviate or to prevent traffic congestion and to minimize fraud associated with third number billed calls, calling card calls, and other services related to this Agreement.
- 26.2 Responsibility for Following Standards. Each Party recognizes a responsibility to follow the standards that may be agreed to between the Parties and to employ characteristics and methods of operation that will not interfere with or impair the service, network or facilities of the other Party or any third parties connected with or involved directly in the network or facilities of the other.
- 26.3 Interference or Impairment. If a Party ("Impaired Party") reasonably determines that the services, network, facilities, or methods of operation, of the other Party ("Interfering Party") will or are likely to interfere with or impair the Impaired Party's provision of services or the operation of the Impaired Party's network or facilities, the Impaired Party may interrupt or suspend any Service provided to the Interfering Party to the extent necessary to prevent such interference or impairment, subject to the following:
- 26.3.1 Except in emergency situations (e.g., situations involving a risk of bodily injury to persons or damage to tangible property, or an interruption in Customer service) or as otherwise provided in this Agreement, the Impaired Party shall have given the Interfering Party at least ten (10) days' prior written notice of the interference or impairment or potential interference or impairment and the need to correct the condition within said time period; and,
- 26.3.2 Upon correction of the interference or impairment, the Impaired Party will promptly restore the interrupted or suspended Service. The Impaired Party shall not be obligated to provide an out-of-service credit allowance or other compensation to the Interfering Party in connection with the suspended Service.
- 26.4 Outage Repair Standard. In the event of an outage or trouble in any Service being provided by a Party hereunder, the Providing Party will follow Verizon's standard procedures for isolating and clearing the outage or trouble.

## **27. Non-Exclusive Remedies**

Except as otherwise expressly provided in this Agreement, each of the remedies provided under this Agreement is cumulative and is in addition to any other remedies that may be available under this Agreement or at law or in equity.

**28. Notice of Network Changes**

If a Party makes a change in the information necessary for the transmission and routing of services using that Party's facilities or network, or any other change in its facilities or network that will materially affect the interoperability of its facilities or network with the other Party's facilities or network, the Party making the change shall publish notice of the change at least ninety (90) days in advance of such change, and shall use reasonable efforts, as commercially practicable, to publish such notice at least one hundred eighty (180) days in advance of the change; provided, however, that if an earlier publication of notice of a change is required by Applicable Law (including, but not limited to, 47 CFR 51.325 through 51.335) notice shall be given at the time required by Applicable Law.

**29. Notices**

29.1 Except as otherwise provided in this Agreement, notices given by one Party to the other Party under this Agreement:

29.1.1 shall be in writing;

29.1.2 shall be delivered (a) personally, (b) by express delivery service with next Business Day delivery, (c) by First Class, certified or registered U.S. mail, postage prepaid, (d) by facsimile telecopy, with a copy delivered in accordance with (a), (b) or (c), preceding, or, (e) by electronic mail, with a copy delivered in accordance with (a), (b) or (c), preceding; and

29.1.3 shall be delivered to the following addresses of the Parties:

To Budget Phone:

Attention: Mr. Arthur L. Magee, Comptroller  
6901 W. 70<sup>th</sup> Street  
Shreveport, LA 71129  
Telephone Number: 318/671-7864  
Facsimile Number: 318/671-5024  
Internet Address: amagee@budgetphone.com

To Verizon:

Director-Contract Performance & Administration  
Verizon Wholesale Markets  
600 Hidden Ridge  
HQEWMNOTICES  
Irving, TX 75038  
Telephone Number: 972-718-5988  
Facsimile Number: 972-719-1519  
Internet Address: wmnotices@verizon.com

with a copy to:

Vice President and Associate General Counsel  
Verizon Wholesale Markets  
1320 N. Court House Road  
8th Floor  
Arlington, VA 22201  
Facsimile: 703/974-0744

or to such other address as either Party shall designate by proper notice.

Notices will be deemed given as of the earlier of (a) where there is personal delivery of the notice, the date of actual receipt, (b) where the notice is sent via express delivery service for next Business Day delivery, the next Business Day after the notice is sent, (c) where the notice is sent by First Class U.S. Mail, three (3) Business Days after mailing, (d) where notice is sent via certified or registered U.S. mail, the date of receipt shown on the Postal Service receipt, (e) where the notice is sent via facsimile telecopy, on the date set forth on the telecopy confirmation if sent before 5 PM in the time zone where it is received, or the next Business Day after the date set forth on the telecopy confirmation if sent after 5 PM in the time zone where it is received, and (f) where the notice is sent via electronic mail, on the date of transmission, if sent before 5 PM in the time zone where it is received, or the next Business Day after the date of transmission, if sent after 5 PM in the time zone where it is received.

### **30. Ordering and Maintenance**

Budget Phone shall use Verizon's electronic Operations Support System access platforms to submit Orders and requests for maintenance and repair of Services, and to engage in other pre-ordering, ordering, provisioning, maintenance and repair transactions. If Verizon has not yet deployed an electronic capability for Budget Phone to perform a pre-ordering, ordering, provisioning, maintenance or repair, transaction offered by Verizon, Budget Phone shall use such other processes as Verizon has made available for performing such transaction (including, but not limited, to submission of Orders by telephonic facsimile transmission and placing trouble reports by voice telephone transmission).

### **31. Performance Standards**

- 31.1 Verizon shall provide Services under this Agreement in accordance with the performance standards required by Applicable Law, including, but not limited to, Section 251(c) of the Act and 47 CFR §§ 51.305(a)(3), 51.311(a) and (b) and 51.603(b).
- 31.2 To the extent required by Appendix D, Section V, "Carrier-to-Carrier Performance Plan (Including Performance Measurements)," and Appendix D, Attachment A, "Carrier-to-Carrier Performance Assurance Plan," of the Merger Order, Verizon shall provide performance measurement results to Budget Phone.
- 31.3 Budget Phone shall provide Services under this Agreement in accordance with the performance standards required by Applicable Law.

### **32. Point of Contact for Budget Phone Customers**

- 32.1 Budget Phone shall establish telephone numbers and mailing addresses at which Budget Phone Customers may communicate with Budget Phone and shall advise Budget Phone Customers of these telephone numbers and mailing addresses.

- 32.2 Except as otherwise agreed to by Verizon, Verizon shall have no obligation, and may decline, to accept a communication from a Budget Phone customer, including, but not limited to, a Budget Phone Customer request for repair or maintenance of a Verizon Service provided to Budget Phone.

### **33. Predecessor Agreements**

- 33.1 Except as stated in Section 33.2 or as otherwise agreed in writing by the Parties:
- 33.2 any prior interconnection or resale agreement between the Parties for the Commonwealth of Kentucky pursuant to Section 252 of the Act and in effect immediately prior to the Effective Date is hereby terminated; and
- 33.2.1 any Services that were purchased by one Party from the other Party under a prior interconnection or resale agreement between the Parties for the Commonwealth of Kentucky pursuant to Section 252 of the Act and in effect immediately prior to the Effective Date, shall as of the Effective Date be subject to and purchased under this Agreement.
- 33.2.2 Except as otherwise agreed in writing by the Parties, if a Service purchased by a Party under a prior interconnection or resale agreement between the Parties pursuant to Section 252 of the Act was subject to a contractual commitment that it would be purchased for a period of longer than one month, and such period had not yet expired as of the Effective Date and the Service had not been terminated prior to the Effective Date, to the extent not inconsistent with this Agreement, such commitment shall remain in effect and the Service will be purchased under this Agreement; provided, that if this Agreement would materially alter the terms of the commitment, either Party make elect to cancel the commitment.
- 33.3 If either Party elects to cancel the commitment pursuant to the proviso in Section 33.2, the Purchasing Party shall not be liable for any termination charge that would otherwise have applied. However, if the commitment was cancelled by the Purchasing Party, the Providing Party shall be entitled to payment from the Purchasing Party of the difference between the price of the Service that was actually paid by the Purchasing Party under the commitment and the price of the Service that would have applied if the commitment had been to purchase the Service only until the time that the commitment was cancelled.

### **34. Publicity and Use of Trademarks or Service Marks**

- 34.1 A Party, its Affiliates, and their respective contractors and Agents, shall not use the other Party's trademarks, service marks, logos or other proprietary trade dress, in connection with the sale of products or services, or in any advertising, press releases, publicity matters or other promotional materials, unless the other Party has given its written consent for such use, which consent the other Party may grant or withhold in its sole discretion.
- 34.2 Neither Party may imply any direct or indirect affiliation with or sponsorship or endorsement of it or its services or products by the other Party.
- 34.3 Any violation of this Section 34 shall be considered a material breach of this Agreement.

### **35. References**

- 35.1 All references to Sections, Appendices and Exhibits shall be deemed to be references to Sections, Appendices and Exhibits of this Agreement unless the context shall otherwise require.
- 35.2 Unless the context shall otherwise require, any reference to a Tariff, agreement, technical or other document (including Verizon or third party guides, practices or handbooks), or provision of Applicable Law, is to such Tariff, agreement, document, or provision of Applicable Law, as amended and supplemented from time to time (and, in the case of a Tariff or provision of Applicable Law, to any successor Tariff or provision).

### **36. Relationship of the Parties**

- 36.1 The relationship of the Parties under this Agreement shall be that of independent contractors and nothing herein shall be construed as creating any other relationship between the Parties.
- 36.2 Nothing contained in this Agreement shall make either Party the employee of the other, create a partnership, joint venture, or other similar relationship between the Parties, or grant to either Party a franchise, distributorship or similar interest.
- 36.3 Except for provisions herein expressly authorizing a Party to act for another Party, nothing in this Agreement shall constitute a Party as a legal representative or Agent of the other Party, nor shall a Party have the right or authority to assume, create or incur any liability or any obligation of any kind, express or implied, against, in the name or on behalf of the other Party unless otherwise expressly permitted by such other Party in writing, which permission may be granted or withheld by the other Party in its sole discretion.
- 36.4 Each Party shall have sole authority and responsibility to hire, fire, compensate, supervise, and otherwise control its employees, Agents and contractors. Each Party shall be solely responsible for payment of any Social Security or other taxes that it is required by Applicable Law to pay in conjunction with its employees, Agents and contractors, and for withholding and remitting to the applicable taxing authorities any taxes that it is required by Applicable Law to collect from its employees.
- 36.5 Except as otherwise expressly provided in this Agreement, no Party undertakes to perform any obligation of the other Party, whether regulatory or contractual, or to assume any responsibility for the management of the other Party's business.
- 36.6 The relationship of the Parties under this Agreement is a non-exclusive relationship.

### **37. Reservation of Rights**

- 37.1 Notwithstanding anything to the contrary in this Agreement, neither Party waives, and each Party hereby expressly reserves, its rights: (a) to appeal or otherwise seek the reversal of and changes in any arbitration decision associated with this Agreement; (b) to challenge the lawfulness of this Agreement and any provision of this Agreement; (c) to seek changes in this Agreement (including, but not limited to, changes in rates, charges and the Services that must be offered) through changes in Applicable Law; and, (d) to challenge the lawfulness and



propriety of, and to seek to change, any Applicable Law, including, but not limited to any rule, regulation, order or decision of the Commission, the FCC, or a court of applicable jurisdiction. Nothing in this Agreement shall be deemed to limit or prejudice any position a Party has taken or may take before the Commission, the FCC, any other state or federal regulatory or legislative bodies, courts of applicable jurisdiction, or industry fora. The provisions of this Section shall survive the expiration, cancellation or termination of this Agreement.

37.2 Budget Phone acknowledges Budget Phone has been advised by Verizon that it is Verizon's position that:

37.2.1 This Agreement contains certain provisions which are intended to reflect Applicable Law and Commission and/or FCC arbitration decisions; and

37.2.2 For the purposes of Appendix D, Sections 31 and 32, of the Merger Order, such provisions shall not be deemed to have been voluntarily negotiated or agreed to by Verizon and shall not be available to carriers pursuant to Appendix D, Sections 31 and 32 of the Merger Order.

### **38. Subcontractors**

A Party may use a contractor of the Party (including, but not limited to, an Affiliate of the Party) to perform the Party's obligations under this Agreement; provided, that a Party's use of a contractor shall not release the Party from any duty or liability to fulfill the Party's obligations under this Agreement.

### **39. Successors and Assigns**

This Agreement shall be binding on and inure to the benefit of the Parties and their respective legal successors and permitted assigns.

### **40. Survival**

The rights, liabilities and obligations of a Party for acts or omissions occurring prior to the expiration, cancellation or termination of this Agreement, the rights, liabilities and obligations of a Party under any provision of this Agreement regarding confidential information (including but not limited to, Section 10, indemnification or defense (including, but not limited to, Section 20, or limitation or exclusion of liability (including, but not limited to, Section 25, and the rights, liabilities and obligations of a Party under any provision of this Agreement which by its terms or nature is intended to continue beyond or to be performed after the expiration, cancellation or termination of this Agreement, shall survive the expiration, cancellation or termination of this Agreement.

### **41. Taxes**

41.1 In General. With respect to any purchase hereunder of Services, if any federal, state or local tax, fee, surcharge or other tax-like charge (a "Tax") is required or permitted by Applicable Law or a Tariff to be collected from the purchasing Party by the providing Party, then (a) the providing Party shall properly bill the purchasing Party for such Tax, (b) the purchasing Party shall timely remit such Tax to the providing Party and (c) the providing Party shall timely remit such collected Tax to the applicable taxing authority.

41.2 Taxes Imposed on the Providing Party. With respect to any purchase hereunder of Services, if any federal, state or local Tax is imposed by Applicable Law on the

receipts of the providing Party, and such Applicable Law permits the providing Party to exclude certain receipts received from sales for resale to a public utility, distributor, telephone company, local exchange carrier, telecommunications company or other communications company ("Telecommunications Company"), such exclusion being based solely on the fact that the purchasing Party is also subject to a tax based upon receipts ("Receipts Tax"), then the purchasing Party (a) shall provide the providing Party with notice in writing in accordance with Section 41.6 of this Agreement of its intent to pay the Receipts Tax and (b) shall timely pay the Receipts Tax to the applicable tax authority.

- 41.3 Taxes Imposed on Customers. With respect to any purchase hereunder of Services that are resold to a third party, if any federal, state or local Tax is imposed by Applicable Law on the subscriber, end-user, Customer or ultimate consumer ("Subscriber") in connection with any such purchase, which a Telecommunications Company is required to impose and/or collect from a Subscriber, then the purchasing Party (a) shall be required to impose and/or collect such Tax from the Subscriber and (b) shall timely remit such Tax to the applicable taxing authority.
- 41.4 Liability for Uncollected Tax, Interest and Penalty. If the providing Party has not received an exemption certificate and fails to collect any Tax as required by Section 41.1, then, as between the providing Party and the purchasing Party, (a) the purchasing Party shall remain liable for such uncollected Tax and (b) the providing Party shall be liable for any interest assessed thereon and any penalty assessed with respect to such uncollected Tax by such authority. If the providing Party properly bills the purchasing Party for any Tax but the purchasing Party fails to remit such Tax to the providing Party as required by Section 41.1, then, as between the providing Party and the purchasing Party, the purchasing Party shall be liable for such uncollected Tax and any interest assessed thereon, as well as any penalty assessed with respect to such uncollected Tax by the applicable taxing authority. If the providing Party does not collect any Tax as required by Section 41.1 because the purchasing Party has provided such providing Party with an exemption certificate that is later found to be inadequate by a taxing authority, then, as between the providing Party and the purchasing Party, the purchasing Party shall be liable for such uncollected Tax and any interest assessed thereon, as well as any penalty assessed with respect to such uncollected Tax by the applicable taxing authority. If the purchasing Party fails to pay the Receipts Tax as required by Section 41.2, then, as between the providing Party and the purchasing Party, (x) the providing Party shall be liable for any Tax imposed on its receipts and (y) the purchasing Party shall be liable for any interest assessed thereon and any penalty assessed upon the providing Party with respect to such Tax by such authority. If the purchasing Party fails to impose and/or collect any Tax from Subscribers as required by Section 41.3, then, as between the providing Party and the purchasing Party, the purchasing Party shall remain liable for such uncollected Tax and any interest assessed thereon, as well as any penalty assessed with respect to such uncollected Tax by the applicable taxing authority. With respect to any Tax that the purchasing Party has agreed to pay, or is required to impose on and/or collect from Subscribers, the purchasing Party agrees to indemnify and hold the providing Party harmless on an after-tax basis for any costs incurred by the providing Party as a result of actions taken by the applicable taxing authority to recover the Tax from the providing Party due to the failure of the purchasing Party to timely pay, or collect and timely remit, such Tax to such authority. In the event either Party is audited by a taxing authority, the other Party agrees to cooperate fully with the Party being audited in order to respond to any audit inquiries in a proper and timely

manner so that the audit and/or any resulting controversy may be resolved expeditiously.

41.5 Tax exemptions and Exemption Certificates. If Applicable Law clearly exempts a purchase hereunder from a Tax, and if such Applicable Law also provides an exemption procedure, such as an exemption-certificate requirement, then, if the purchasing Party complies with such procedure, the providing Party shall not collect such Tax during the effective period of such exemption. Such exemption shall be effective upon receipt of the exemption certificate or affidavit in accordance with the terms set forth in Section 41.6. If Applicable Law clearly exempts a purchase hereunder from a Tax, but does not also provide an exemption procedure, then the providing Party shall not collect such Tax if the purchasing Party (a) furnishes the providing Party with a letter signed by an officer requesting such an exemption and citing the provision in the Applicable Law which clearly allows such exemption and (b) supplies the providing Party with an indemnification agreement, reasonably acceptable to the providing Party (e.g., an agreement commonly used in the industry), which holds the providing Party harmless on an after-tax basis with respect to its forbearing to collect such Tax.

41.6 All notices, affidavits, exemption-certificates or other communications required or permitted to be given by either Party to the other, for purposes of this Section 41, shall be made in writing and shall be delivered in person or sent by certified mail, return receipt requested, or registered mail, or a courier service providing proof of service, and sent to the addressees set forth in Section 29 as well as to the following:

To Verizon:

Tax Administration  
Verizon Communications  
1095 Avenue of the Americas  
Room 3109  
New York, NY 10036

To Budget Phone:

Attention: Ms. Linda Davidson  
6901 W. 70<sup>th</sup> Street  
Shreveport, LA 71129

Either Party may from time to time designate another address or other addressees by giving notice in accordance with the terms of this Section. Any notice or other communication shall be deemed to be given when received.

## 42. **Technology Upgrades**

Notwithstanding any other provision of this Agreement, Verizon shall have the right to deploy, upgrade, migrate and maintain its network at its discretion. The Parties acknowledge that Verizon, at its election, may deploy fiber throughout its network and that such fiber deployment may inhibit or facilitate Budget Phone's ability to provide service using certain technologies. Nothing in this Agreement shall limit Verizon's ability to modify its network through the incorporation of new equipment or software or otherwise. Budget Phone shall be solely responsible for the cost and activities associated with accommodating such changes in its own network.

#### **43. Territory**

- 43.1 This Agreement applies to the territory in which Verizon operates as an Incumbent Local Exchange Carrier in the Commonwealth of Kentucky.
- 43.2 Notwithstanding any other provision of this Agreement, Verizon may terminate this Agreement as to a specific operating territory or portion thereof if Verizon sells or otherwise transfers its operations in such territory or portion thereof to a third-person. Verizon shall provide Budget Phone with at least 90 calendar days prior written notice of such termination, which shall be effective upon the date specified in the notice. Verizon shall be obligated to provide Services under this Agreement only within this territory.

#### **44. Third Party Beneficiaries**

Except as expressly set forth in this Agreement, this Agreement is for the sole benefit of the Parties and their permitted assigns, and nothing herein shall create or be construed to provide any third-persons (including, but not limited to, Customers or contractors of a Party) with any rights (including, but not limited to, any third-party beneficiary rights) hereunder. Except as expressly set forth in this Agreement, a Party shall have no liability under this Agreement to the Customers of the other Party or to any other third person.

#### **45. 251 and 271 Requirements**

- 45.1 The Parties agree that the performance of the terms of this Agreement will satisfy Verizon's obligations under Section 251 of the Act, and the requirements of the Checklist under Section 271 of the Act.
- 45.2 The Parties understand and agree that this Agreement will be filed with the Commission and may thereafter be filed with the FCC as an integral part of an application by Verizon or an Affiliate of Verizon pursuant to Section 271(d) of the Act. In the event that any one or more of the provisions contained herein in Verizon's reasonable determination is likely to adversely affect the application pursuant to Section 271(d) of the Act, the Parties agree to make the revisions necessary to eliminate such adverse effect on the application.

#### **46. 252(i) Obligations**

- 46.1 To the extent required by Applicable Law, each Party shall comply with Section 252(i) of the Act and Appendix D, Sections 30 through 32, of the Merger Order ("Merger Order MFN Provisions").
- 46.2 To the extent that the exercise by Budget Phone of any rights it may have under Section 252(i) or the Merger Order MFN Provisions results in the rearrangement of Services by Verizon, Budget Phone shall be solely liable for all costs associated therewith, as well as for any termination charges associated with the termination of existing Verizon Services.

#### **47. Use of Service**

Each Party shall make commercially reasonable efforts to ensure that its Customers comply with the provisions of this Agreement (including, but not limited to the provisions of applicable Tariffs) applicable to the use of Services purchased by it under this Agreement.

**48. Waiver**

A failure or delay of either Party to enforce any of the provisions of this Agreement, or any right or remedy available under this Agreement or at law or in equity, or to require performance of any of the provisions of this Agreement, or to exercise any option which is provided under this Agreement, shall in no way be construed to be a waiver of such provisions, rights, remedies or options.

**49. Warranties**

EXCEPT AS EXPRESSLY STATED IN THIS AGREEMENT, NEITHER PARTY MAKES OR RECEIVES ANY WARRANTY, EXPRESS OR IMPLIED, WITH RESPECT TO THE SERVICES PROVIDED, OR TO BE PROVIDED, UNDER THIS AGREEMENT AND THE PARTIES DISCLAIM ANY OTHER WARRANTIES, INCLUDING BUT NOT LIMITED TO, **WARRANTIES OF MERCHANTABILITY, WARRANTIES OF FITNESS FOR A PARTICULAR PURPOSE** WARRANTIES AGAINST INFRINGEMENT, AND WARRANTIES ARISING BY TRADE CUSTOM, TRADE USAGE, COURSE OF DEALING OR PERFORMANCE, OR OTHERWISE.

**50. Withdrawal of Services**

50.1 Notwithstanding anything contained in this Agreement, except as otherwise required by Applicable Law, Verizon may terminate its offering and/or provision of any Service under this Agreement upon thirty (30) days prior written notice to Budget Phone.

50.2 Notwithstanding anything contained in this Agreement, except as otherwise required by Applicable Law, Verizon may with thirty (30) days prior written notice to Budget Phone terminate any provision of this Agreement that provides for the payment by Verizon to Budget Phone of compensation related to traffic, including, but not limited to, Reciprocal Compensation and other types of compensation for termination of traffic delivered by Verizon to Budget Phone. Following such termination, except as otherwise agreed in writing by the Parties, Verizon shall be obligated to provide compensation to Budget Phone related to traffic only to the extent required by Applicable Law. If Verizon exercises its right of termination under this Section, the Parties shall negotiate in good faith appropriate substitute provisions for compensation related to traffic; provided, however, that except as otherwise voluntarily agreed by Verizon in writing in its sole discretion, Verizon shall be obligated to provide compensation to Budget Phone related to traffic only to the extent required by Applicable Law. If within thirty (30) days after Verizon's notice of termination the Parties are unable to agree in writing upon mutually acceptable substitute provisions for compensation related to traffic, either Party may submit their disagreement to dispute resolution in accordance with Section 14 of this Agreement.

SIGNATURE PAGE

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed as of the Effective Date.

BUDGET PHONE, INC.

VERIZON SOUTH INC.

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

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

Printed: \_\_\_\_\_

Printed: Steven J. Pitterle

Title: \_\_\_\_\_

Title Director – Negotiations  
Network Services

## GLOSSARY

### 1. General Rule

- 1.1 The provisions of Sections 1.1 through 1.4 apply with regard to the Principal Document. Terms used in a Tariff shall have the meanings stated in the Tariff.
- 1.2 Unless the context clearly indicates otherwise, when used in the Principal Document the terms listed in this Glossary shall have the meanings stated in this Glossary. A defined term intended to convey the meaning stated in this Glossary is capitalized when used. Other terms that are capitalized, and not defined in this Glossary or elsewhere in the Principal Document, shall have the meaning stated in the Act. Additional definitions that are specific to the matters covered in a particular provision of the Principal Document may appear in that provision. To the extent that there may be any conflict between a definition set forth on this Glossary and any definition in a specific provision, the definition set forth in the specific provision shall control with respect to that provision.
- 1.3 Unless the context clearly indicates otherwise, any term defined in this Glossary that is defined or used in the singular shall include the plural, and any term defined in this Glossary which is defined or used in the plural shall include the singular.
- 1.4 The words "shall" and "will" are used interchangeably throughout the Principal Document and the use of either indicates a mandatory requirement. The use of one or the other shall not confer a different degree of right or obligation for either Party.

### 2. Definitions

- 2.1 Act.  
The Communications Act of 1934 (47 U.S.C. §151 et. seq.), as from time to time amended (including, without limitation by the Telecommunications Act of 1996, Public Law 104-104 of the 104th United States Congress effective February 8, 1996), and as further interpreted in the duly authorized and effective rules and regulations of the FCC or the Commission.
- 2.2 Affiliate.  
Shall have the meaning set forth in the Act.
- 2.3 Agent.  
An agent or servant.
- 2.4 Agreement.  
This Agreement, as defined in Section 1 of the General Terms and Conditions.
- 2.5 Automated Message Accounting (AMA).  
The structure inherent in switch technology that initially records telecommunication message information. AMA format is contained in the Automated Message Accounting document, published by Telcordia Technologies

as GR-1100-CORE that defines the industry standard for message recording.

2.6 Ancillary Traffic.

All traffic that is destined for ancillary services, or that may have special billing requirements, including but not limited to the following: Directory Assistance, 911/E911, Operator Services (IntraLATA call completion), IntraLATA third party, collect and calling card, 800/888 database query, LIDB, and information services requiring special billing.

2.7 Automatic Number Identification (ANI).

The signaling parameter that refers to the number transmitted through the network identifying the billing number of the calling Party.

2.8 Answer Supervision.

An off-hook supervisory signal.

2.9 Applicable Law.

All effective laws, government regulations and orders, applicable to each Party's performance of its obligations under this agreement.

2.10 Basic Local Exchange Service.

Voice grade access to the network that provides: the ability to place and receive calls; touch-tone service; access to operator services; access to directory assistance; access to emergency services (E911); access to telephone relay service (TRS); access to Interexchange Carriers of the Customer's choice; standard white pages directory listing; and toll blocking for low-income consumers participating in Lifeline (subject to technical feasibility).

2.11 Business Day.

Monday through Friday, except for holidays on which the U.S. mail is not delivered.

2.12 Calendar Quarter.

January through March, April through June, July through September, or October through December.

2.13 Calendar Year.

January through December.

2.14 CCS (Common Channel Signaling).

A method of transmitting call set-up and network control data over a digital signaling network separate from the public switched telephone network facilities that carry the actual voice or data content of the call.

2.15 Claims.



Any and all claims, demands, suits, actions, settlements, judgments, fines, penalties, liabilities, injuries, damages, losses, costs (including, but not limited to, court costs), and expenses (including, but not limited to, reasonable attorney's fees).

2.16 CLEC (Competitive Local Exchange Carrier).

Any corporation or other person legally able to provide Local Exchange Service in competition with an ILEC.

2.17 Centralized Message Distribution System (CMDS).

The billing record and clearing house transport system that ILECs use to efficiently exchange out collects and in collects as well as Carrier Access Billing System (CABS) records.

2.18 Commission.

Kentucky Public Service Commission.

2.19 Conversation Time.

The time that both Parties' equipment is used for a completed call measured from the receipt of Answer Supervision to the receipt of Disconnect Supervision.

2.20 Calling Party Number (CPN).

A CCS parameter that identifies the calling party's telephone number.

2.21 CPNI (Customer Proprietary Network Information).

Shall have the meaning set forth in Section 222 of the Act, 47 U.S.C. § 222.

2.22 Customer.

A third party residence or business end-user subscriber to Telephone Exchange Services provided by either of the Parties.

2.23 Effective Date.

**May 8, 2001.**

2.24 EMI (Exchange Message Interface).

Standard used for the interexchange of telecommunications message information between exchange carriers and interexchange carriers for billable, non-billable, sample, settlement and study data. Data is provided between companies via a unique record layout that contains Customer billing information, account summary and tracking analysis. EMI format is contained in document SR-320 published by the Alliance for Telecom Industry Solutions.

2.25 Exchange Access.

Shall have the meaning set forth in the Act.

- 2.26 FCC.  
The Federal Communications Commission.
- 2.27 FCC Regulations.  
The regulations duly and lawfully promulgated by the FCC, as in effect from time to time.
- 2.28 ILEC (Incumbent Local Exchange Carrier).  
Shall have the meaning stated in the Act.
- 2.29 Inside Wire or Inside Wiring.  
All wire, cable, terminals, hardware, and other equipment or materials on the customer's side of the Rate Demarcation Point.
- 2.30 Internet Traffic.  
Traffic that is transmitted to or returned from the Internet at any point during the duration of the transmission.
- 2.31 InterLATA Service.  
Shall have the meaning set forth in the Act.
- 2.32 IntraLATA.  
Telecommunications services that originate and terminate at a point within the same LATA.
- 2.33 IXC (Interexchange Carrier).  
A Telecommunications Carrier that provides, directly or indirectly, InterLATA or intraLATA Telephone Toll Services.
- 2.34 LATA (Local Access and Transport Area).  
Shall have the meaning set forth in the Act.
- 2.35 LEC (Local Exchange Carrier).  
Shall have the meaning set forth in the Act.
- 2.36 LERG (Local Exchange Routing Guide).  
The Telcordia Technologies reference customarily used to identify NPANXX routing and homing information, as well as network element and equipment designation.
- 2.37 LIDB (Line Information Data Base).  
One or all, as the context may require, of the Line Information databases owned individually by Verizon and other entities which provide, among other things,

calling card validation functionality for telephone line number cards issued by Verizon and other entities. A LIDB also contains validation data for collect and third number-billed calls; i.e., Billed Number Screening.

2.38 Local Traffic.

Traffic that is originated by a Customer of one Party on that Party's network and terminates to a Customer of the other Party on that other Party's network within Verizon's then current local calling area (including non-optional local calling scope arrangements) as defined in Verizon's effective Customer Tariffs. A non-optional local calling scope arrangement is an arrangement that provides Customers a local calling scope (Extended Area Service, "EAS"), beyond their basic exchange serving area. Local Traffic does not include optional local calling scope traffic (i.e., traffic that under an optional rate package chosen by the Customer terminates outside of the Customer's basic exchange serving area). IntraLATA calls originated on a 1+ presubscription basis, or on a casual dialed (10XXX/101XXXX) basis are not considered Local Traffic. Local Traffic does not include any Internet Traffic.

2.39 LSR (Local Service Request).

The industry standard form, which contains data elements and usage rules, used by the Parties to establish, add, change or disconnect resold services and Unbundled Network Elements for the purposes of competitive local services.

2.40 NANP (North American Numbering Plan).

The system of telephone numbering employed in the United States, Canada, Bermuda, Puerto Rico and certain Caribbean islands. The NANP format is a 10-digit number that consist of a 3-digit NPA Code (commonly referred to as area code), followed by a 3-digit NXX code and 4 digit line number.

2.41 NPA (Numbering Plan Area).

Also sometimes referred to as an area code, is the first three-digit indicator of each 10-digit telephone number within the NANP. Each NPA contains 800 possible NXX Codes. There are two general categories of NPA, "Geographic NPAs" and "Non-Geographic NPAs". A Geographic NPA is associated with a defined geographic area, and all telephone numbers bearing such NPA are associated with services provided within that geographic area. A Non-Geographic NPA, also known as a "Service Access Code" or "SAC Code" is typically associated with a specialized Telecommunications Service that may be provided across multiple geographic NPA areas. 500, 700, 800, 888 and 900 are examples of Non-Geographic NPAs.

2.42 NXX, NXX Code, Central Office Code or CO Code.

The three-digit switch entity indicator (i.e. the first three digits of a seven-digit telephone number).Each NXX Code contains 10,000 station numbers.

2.43 Order.

An order or application to provide, change or terminate a Service (including, but not limited to, a commitment to purchase a stated number or minimum number of lines or other Services for a stated period or minimum period of time).

2.44 Principal Document.

This document, including, but not limited to, the Title Page, the Table of Contents, the Preface, the General Terms and Conditions, the signature page, this Glossary, the Attachments, and the Appendices to the Attachments.

2.45 Providing Party.

A Party offering or providing a Service to the other Party under this Agreement.

2.46 Purchasing Party.

A Party requesting or receiving a Service from the other Party under this Agreement.

2.47 Rate Center Area or Exchange Area.

The geographic area that has been identified by a given LEC as being associated with a particular NPA-NXX code assigned to the LEC for its provision of Telephone Exchange Services. The Rate Center Area is the exclusive geographic area that the LEC has identified as the area within which it will provide Telephone Exchange Services bearing the particular NPA-NXX designation associated with the specific Rate Center Area.

2.48 Rate Center Point.

A specific geographic point, defined by a V&H coordinate, located within the Rate Center Area and used to measure distance for the purpose of billing customers for distance-sensitive Telephone Exchange Services and Toll Traffic.

2.49 Retail Prices.

The prices at which a Service is provided by Verizon at retail to subscribers who are not Telecommunications Carriers.

2.50 Service.

Any Interconnection arrangement, Network Element, Telecommunications Service, Collocation arrangement, or other service, facility or arrangement, offered for sale by a Party under this Agreement.

2.51 Subsidiary.

A corporation or other legal entity that is controlled by a Party.

2.52 Tariff.

2.52.1 Any applicable Federal or state tariff of a Party, as amended from time-to-time;

2.52.2 Any standard agreement or other document, as amended from time-to-time, that sets forth the generally available terms, conditions and prices under which a Party offers a Service.

The term "Tariff" does not include any Verizon statement of generally available

terms (SGAT) which has been approved or is pending approval by the Commission pursuant to Section 252(f) of the Act.

2.53 Telcordia Technologies.

Formerly known as Bell Communications Research, a wholly owned subsidiary of Science Applications International Corporation (SAIC). The organization conducts research and development projects for its owners, including development of new Telecommunications Services. Telcordia Technologies also provides generic requirements for the telecommunications industry for products, services and technologies.

2.54 Telecommunications Carrier.

Shall have the meaning set forth in the Act.

2.55 Telecommunications Services.

Shall have the meaning set forth in the Act.

2.56 Telephone Exchange Service.

Shall have the meaning set forth in the Act.

2.57 Third Party Claim.

A Claim where there is (a) a claim, demand, suit or action by a person who is not a Party, (b) a settlement with, judgment by, or liability to, a person who is not a Party, or (c) a fine or penalty imposed by a person who is not a Party.

2.58 Toll Traffic.

Traffic that is originated by a Customer of one Party on that Party's network and delivered to a Customer of the other Party on that Party's network and is not Local Traffic or Ancillary Traffic. Toll Traffic may be either "IntraLATA Toll Traffic" or "InterLATA Toll Traffic," depending on whether the originating and terminating points are within the same LATA.

2.59 V and H Coordinates Method.

A method of computing airline miles between two points by utilizing an established formula that is based on the vertical and horizontal coordinates of the two points.

2.60 Wire Center.

A building or portion thereof which serves as a Routing Point for Switched Exchange Access Service. The Wire Center serves as the premises for one or more Central Offices.

## ADDITIONAL SERVICES ATTACHMENT

### 1. Alternate Billed Calls

- 1.1 The Parties will engage in settlements of intraLATA intrastate alternate-billed calls (e.g., collect, calling card, and third-party billed calls) originated or authorized by their respective Customers in accordance with an arrangement mutually agreed to by the Parties.

### 2. Dialing Parity - Section 251(b)(3)

Each Party shall provide the other Party with nondiscriminatory access to such services and information as are necessary to allow the other Party to implement local Dialing Parity in accordance with the requirements of Section 251(b)(3) of the Act.

### 3. Directory Assistance (DA) and Operator Services

- 3.1 Either Party may request that the other Party provide the requesting Party with nondiscriminatory access to the other Party's directory assistance services (DA), IntraLATA operator call completion services (OS), and/or directory assistance listings database. If either Party makes such a request, the Parties shall enter into a mutually acceptable written agreement for such access.
- 3.2 Budget Phone shall arrange, at its own expense, the trunking and other facilities required to transport traffic to and from the designated DA and OS switch locations.

### 4. Directory Listing and Directory Distribution

To the extent required by Applicable Law, Verizon will provide directory services to Budget Phone. Such services will be provided in accordance with the terms set forth herein.

#### 4.1 Listing Information.

As used herein, "Listing Information" means a Budget Phone Customer's primary name, address (including city, state and zip code), telephone number(s), the delivery address and number of directories to be delivered, and, in the case of a business Customer, the primary business heading under which the business Customer desires to be placed, and any other information Verizon deems necessary for the publication and delivery of directories.

#### 4.2 Listing Information Supply.

Budget Phone shall provide to Verizon on a regularly scheduled basis, at no charge, and in a format required by Verizon or by a mutually agreed upon industry standard (e.g., Ordering and Billing Forum developed), all Listing Information and the service address for each Budget Phone Customer whose service address location falls within the geographic area covered by the relevant Verizon directory. Budget Phone shall also provide to Verizon on a daily basis, (a) information showing Budget Phone Customers who have disconnected or terminated their service with Budget Phone; and (b) delivery information for each non-listed or non-published Budget Phone Customer to enable Verizon to perform its directory distribution responsibilities. Verizon shall promptly provide

to Budget Phone, (normally within forty-eight (48) hours of receipt by Verizon, excluding non-Business Days), a query on any listing that is not acceptable.

4.3 Listing Inclusion and Distribution.

Verizon shall include each Budget Phone Customer's Primary Listing in the appropriate alphabetical directory and, for business Customers, in the appropriate classified (Yellow Pages) directory in accordance with the directory configuration, scope and schedules determined by Verizon in its sole discretion, and shall provide initial distribution of such directories to such Budget Phone Customers in the same manner it provides initial distribution of such directories to its own Customers. "Primary Listing" means a Customer's primary name, address, and telephone number. Listings of Budget Phone's Customers shall be interfiled with listings of Verizon's Customers and the Customers of other LECs included in the Verizon directories. Budget Phone shall pay Verizon's tariffed charges for additional and foreign alphabetical listings and other alphabetical services (e.g. caption arrangements) for Budget Phone's Customers.

4.4 Verizon Information.

Upon request by Budget Phone, Verizon shall make available to Budget Phone the following information to the extent that Verizon provides such information to its own business offices a directory list of relevant NXX codes, directory and "Customer Guide" close dates, publishing data, and Yellow Pages headings. Verizon also will make available to Budget Phone, upon written request, a copy of Verizon's alphabetical listings standards and specifications manual.

4.5 Confidentiality of Listing Information.

Verizon shall accord Budget Phone Listing Information the same level of confidentiality that Verizon accords its own listing information, and shall use such Listing Information solely for the purpose of providing directory-related services; provided, however, that should Verizon elect to do so, it may use or license Budget Phone Listing Information for directory publishing, direct marketing, or any other purpose for which Verizon uses or licenses its own listing information, so long as Budget Phone Customers are not separately identified as such; and provided further that Budget Phone may identify those of its Customers who request that their names not be sold for direct marketing purposes, and Verizon shall honor such requests to the same extent it does so for its own Customers. Verizon shall not be obligated to compensate Budget Phone for Verizon's use or licensing of Budget Phone Listing Information.

4.6 Accuracy.

Both Parties shall use commercially reasonable efforts to ensure the accurate publication of Budget Phone Customer listings. At Budget Phone's request, Verizon shall provide Budget Phone with a report of all Budget Phone Customer listings normally no more than ninety (90) days and no less than thirty (30) days prior to the service order close date for the applicable directory. Verizon shall process any corrections made by Budget Phone with respect to its listings, provided such corrections are received prior to the close date of the particular directory.

4.7 Indemnification.

Budget Phone shall adhere to all practices, standards, and ethical requirements established by Verizon with regard to listings. By providing Verizon with Listing Information, Budget Phone warrants to Verizon that Budget Phone has the right to provide such Listing Information to Verizon on behalf of its Customers. Budget Phone shall make commercially reasonable efforts to ensure that any business or person to be listed is authorized and has the right (a) to provide the product or service offered, and (b) to use any personal or corporate name, trade name, trademark, service mark or language used in the listing. Budget Phone agrees to release, defend, hold harmless and indemnify Verizon from and against any and all claims, losses, damages, suits, or other actions, or any liability whatsoever, suffered, made, instituted, or asserted by any person arising out of Verizon's publication or dissemination of the Listing Information as provided by Budget Phone hereunder.

4.8 Liability.

Verizon's liability to Budget Phone in the event of a Verizon error in or omission of a listing shall not exceed the lesser of the amount of charges actually paid by Budget Phone for such listing or the amount by which Verizon would be liable to its own customer for such error or omission. Budget Phone agrees to take all reasonable steps, including, but not limited to, entering into appropriate contractual provisions with its Customers, to ensure that its and Verizon's liability to Budget Phone's Customers in the event of a Verizon error in or omission of a listing shall be subject to the same limitations of liability applicable between Verizon and its own Customers.

4.9 Service Information Pages.

Verizon shall include all Budget Phone NXX codes associated with the geographic areas to which each directory pertains, to the extent it does so for Verizon's own NXX codes, in any lists of such codes that are contained in the general reference portion of each directory. Budget Phone's NXX codes shall appear in such lists in the same manner as Verizon's NXX information. In addition, when Budget Phone is authorized to, and is offering, local service to Customers located within the geographic area covered by a specific directory, at Budget Phone's request, Verizon shall include, at no charge, in the "Customer Guide" or comparable section of the applicable alphabetical directories, Budget Phone's critical contact information for Budget Phone's installation, repair and Customer service, as provided by Budget Phone, and such other essential local service oriented information as is agreed to in writing by the Parties. Such critical contact information shall appear alphabetically by local exchange carrier and in accordance with Verizon's generally applicable policies. Budget Phone shall be responsible for providing the necessary information to Verizon by the applicable close date for each affected directory.

4.10 Directory Publication.

Nothing in this Agreement shall require Verizon to publish a directory where it would not otherwise do so.

4.11 Other Directory Services.

Budget Phone acknowledges that if Budget Phone desires directory services in addition to those described herein, such additional services must be obtained under separate agreement with Verizon's directory publishing company.



## 5. Information Services Traffic

- 5.1 For purposes of this Section 5, Voice Information Services and Voice Information Services Traffic refer to switched voice traffic, delivered to information service providers who offer recorded voice announcement information or open vocal discussion programs to the general public. Voice Information Services Traffic does not include any form of Internet Traffic. Voice Information Services Traffic also does not include 555 traffic or similar traffic with AIN service interfaces, which traffic shall be subject to separate arrangements between the Parties.
- 5.2 If a Budget Phone Customer is served by resold Verizon Telecommunications Service, subject to any call blocking feature used by Budget Phone, to the extent reasonably feasible, Verizon will route Voice Information Services Traffic originating from such Service to the Voice Information Service platform. For such Voice Information Services Traffic, unless Budget Phone has entered into an arrangement with Verizon to bill and collect Voice Information Services provider charges from Budget Phone's Customers, Budget Phone shall pay to Verizon without discount the Voice Information Services provider charges. Budget Phone shall pay Verizon such charges in full regardless of whether or not it collects such charges from its own Customers.
- 5.3 Budget Phone shall have the option to route Voice Information Services Traffic that originates on its own network to the appropriate Voice Information Services platform(s) connected to Verizon's network. In the event Budget Phone exercises such option, Budget Phone will establish, at its own expense, a dedicated trunk group to the Verizon Voice Information Service serving switch. This trunk group will be utilized to allow Budget Phone to route Voice Information Services Traffic originated on its network to Verizon. For such Voice Information Services Traffic, unless Budget Phone has entered into an arrangement with Verizon to bill and collect Voice Information Services provider charges from Budget Phone's Customers, Budget Phone shall pay to Verizon without discount the Voice Information Services provider charges. Budget Phone shall pay Verizon such charges in full regardless of whether or not it collects such charges from its own Customers.
- 5.4 Budget Phone shall pay Verizon such charges in full regardless of whether or not it collects charges for such calls from its own Customers.
- 5.5 For variable rated Voice Information Services Traffic (e.g., NXX 550, 540, 976, 970, 940, as applicable) from Budget Phone Customers served by resold Verizon Telecommunications Services, Budget Phone shall either (a) pay to Verizon without discount the Voice Information Services provider charges, or (b) enter into an arrangement with Verizon to bill and collect Voice Information Services provider charges from Budget Phone's Customers.
- 5.6 Either Party may request the other Party provide the requesting Party with non discriminatory access to the other party's information services platform, where such platform exists. If either Party makes such a request, the Parties shall enter into a mutually acceptable written agreement for such access.
- 5.7 In the event Budget Phone exercises such option, Budget Phone will establish, at its own expense, a dedicated trunk group to the Verizon Information Service serving switch. This trunk group will be utilized to allow Budget Phone to route information services traffic originated on its network to Verizon.

## 6. Intercept and Referral Announcements

- 6.1 When a Customer changes its service provider from Verizon to Budget Phone, or from Budget Phone to Verizon, and does not retain its original telephone number, the Party formerly providing service to such Customer shall provide a referral announcement ("Referral Announcement") on the abandoned telephone number which provides the Customer's new number or other appropriate information, to the extent known to the Party formerly providing service. Notwithstanding the foregoing, a Party shall not be obligated under this Section to provide a Referral Announcement if the Customer owes the Party unpaid overdue amounts or the Customer requests that no Referral Announcement be provided.
- 6.2 Referral Announcements shall be provided, in the case of business Customers, for a period of not less than one hundred and twenty (120) days after the date the Customer changes its telephone number, and, in the case of residential Customers, not less than thirty (30) days after the date the Customer changes its telephone number; provided that if a longer time period is required by Applicable Law, such longer time period shall apply. Except as otherwise provided by Applicable Law, the period for a referral may be shortened by the Party formerly providing service if a number shortage condition requires reassignment of the telephone number.
- 6.3 This referral announcement will be provided by each Party at no charge to the other Party; provided that the Party formerly providing service may bill the Customer its standard Tariff charge, if any, for the referral announcement.

## 7. Originating Line Number Screening (OLNS)

Upon request, Verizon will update its database used to provide originating line number screening (the database of information which indicates to an operator the acceptable billing methods for calls originating from the calling number (e.g., penal institutions, COCOTS).

## 8. Operations Support Systems (OSS)

### 8.1 Definitions.

- 8.1.1 Verizon Operations Support Systems: Verizon systems for pre-ordering, ordering, provisioning, maintenance and repair, and billing.
- 8.1.2 Verizon OSS Services: Access to Verizon Operations Support Systems functions. The term "Verizon OSS Services" includes, but is not limited to: (a) Verizon's provision of Budget Phone Usage Information to Budget Phone pursuant to Section 8.1.3 below; and, (b) "Verizon OSS Information", as defined in Section 8.1.4 below.
- 8.1.3 Verizon OSS Facilities: Any gateways, interfaces, databases, facilities, equipment, software, or systems, used by Verizon to provide Verizon OSS Services to Budget Phone.
- 8.1.4 Verizon OSS Information: Any information accessed by, or disclosed or provided to, Budget Phone through or as a part of Verizon OSS Services. The term "Verizon OSS Information" includes, but is not limited to: (a) any Customer Information related to a Verizon Customer or a Budget Phone Customer accessed by, or disclosed or provided to,

Budget Phone through or as a part of Verizon OSS Services; and, (b) any Budget Phone Usage Information (as defined in Section 8.1.6 below) accessed by, or disclosed or provided to, Budget Phone.

- 8.1.5 Verizon Retail Telecommunications Service: Any Telecommunications Service that Verizon provides at retail to subscribers that are not Telecommunications Carriers. The term "Verizon Retail Telecommunications Service" does not include any Exchange Access service (as defined in Section 3(16) of the Act, 47 U.S.C. § 153(16)) provided by Verizon.
  - 8.1.6 Budget Phone Usage Information: The usage information for a Verizon Retail Telecommunications Service purchased by Budget Phone under this Agreement that Verizon would record if Verizon was furnishing such Verizon Retail Telecommunications Service to a Verizon end-user retail Customer.
  - 8.1.7 Customer Information: CPNI of a Customer and any other non-public, individually identifiable information about a Customer or the purchase by a Customer of the services or products of a Party.
- 8.2 Verizon OSS Services.
- 8.2.1 Upon request by Budget Phone, Verizon shall provide to Budget Phone, pursuant to Section 251(c)(3) of the Act, 47 U.S.C. § 251(c)(3), Verizon OSS Services.
  - 8.2.2 Subject to the requirements of Applicable Law, Verizon Operations Support Systems, Verizon Operations Support Systems functions, Verizon OSS Facilities, Verizon OSS Information, and the Verizon OSS Services that will be offered by Verizon, shall be as determined by Verizon. Subject to the requirements of Applicable Law, Verizon shall have the right to change Verizon Operations Support Systems, Verizon Operations Support Systems functions, Verizon OSS Facilities, Verizon OSS Information, and the Verizon OSS Services, from time-to-time, without the consent of Budget Phone.
- 8.3 Budget Phone Usage Information.
- 8.3.1 Upon request by \*\* CLEC, Verizon shall provide to Budget Phone, pursuant to Section 251(c)(3) of the Act, 47 U.S.C. § 251(c)(3), Budget Phone Usage Information.
  - 8.3.2 Budget Phone Usage Information will be available to Budget Phone through the following:
    - 8.3.2.1 Daily Usage File on Data Tape.
    - 8.3.2.2 Daily Usage File through Network Data Mover (NDM).
    - 8.3.2.3 Daily Usage File through Centralized Message Distribution System (CMDS) (Former Bell Atlantic service areas only).
    - 8.3.2.4 Budget Phone Usage Information will be provided in a Bellcore Exchange Message Records (EMI) format.

- 8.3.2.5 Daily Usage File Data Tapes provided pursuant to Section 8.3.2.1 above will be issued each day, Monday through Friday, except holidays observed by Verizon.
- 8.3.3 Except as stated in this Section 8.3, subject to the requirements of Applicable Law, the manner in which, and the frequency with which, Budget Phone Usage Information will be provided to Budget Phone shall be determined by Verizon.
- 8.4 Access to and Use of Verizon OSS Facilities.
  - 8.4.1 Verizon OSS Facilities may be accessed and used by Budget Phone only to the extent necessary for Budget Phone's access to and use of Verizon OSS Services pursuant to the Agreement.
  - 8.4.2 Verizon OSS Facilities may be accessed and used by Budget Phone only to provide Telecommunications Services to Budget Phone Customers.
  - 8.4.3 Budget Phone shall restrict access to and use of Verizon OSS Facilities to Budget Phone. This Section 8 does not grant to Budget Phone any right or license to grant sublicenses to other persons, or permission to other persons (except Budget Phone's employees, agents and contractors, in accordance with Section 8.4.7 below), to access or use Verizon OSS Facilities.
  - 8.4.4 Budget Phone shall not (a) alter, modify or damage the Verizon OSS Facilities (including, but not limited to, Verizon software), (b) copy, remove, derive, reverse engineer, or decompile, software from the Verizon OSS Facilities, or (c) obtain access through Verizon OSS Facilities to Verizon databases, facilities, equipment, software, or systems, which are not offered for Budget Phone's use under this Section 8.
  - 8.4.5 Budget Phone shall comply with all practices and procedures established by Verizon for access to and use of Verizon OSS Facilities (including, but not limited to, Verizon practices and procedures with regard to security and use of access and user identification codes).
  - 8.4.6 All practices and procedures for access to and use of Verizon OSS Facilities, and all access and user identification codes for Verizon OSS Facilities: (a) shall remain the property of Verizon; (b) shall be used by Budget Phone only in connection with Budget Phone's use of Verizon OSS Facilities permitted by this Section 8; (c) shall be treated by Budget Phone as Confidential Information of Verizon pursuant to Section 10 of the Agreement; and, (d) shall be destroyed or returned by Budget Phone to Verizon upon the earlier of request by Verizon or the expiration or termination of the Agreement.
  - 8.4.7 Budget Phone's employees, agents and contractors may access and use Verizon OSS Facilities only to the extent necessary for Budget Phone's access to and use of the Verizon OSS Facilities permitted by this Agreement. Any access to or use of Verizon OSS Facilities by Budget Phone's employees, agents, or contractors, shall be subject to the provisions of the Agreement, including, but not limited to, Section 10 of

the Agreement and Section 8.5.2.3 of this Attachment.

8.5 Verizon OSS Information.

- 8.5.1 Subject to the provisions of this Section 8 and Applicable Law, Verizon grants to Budget Phone a non-exclusive license to use Verizon OSS Information.
- 8.5.2 All Verizon OSS Information shall at all times remain the property of Verizon. Except as expressly stated in this Section 8, Budget Phone shall acquire no rights in or to any Verizon OSS Information.
  - 8.5.2.1 The provisions of this Section 8.5.2 shall apply to all Verizon OSS Information, except (a) Budget Phone Usage Information, (b) CPNI of Budget Phone, and (c) CPNI of a Verizon Customer or a Budget Phone Customer, to the extent the Customer has authorized Budget Phone to use the Customer Information.
  - 8.5.2.2 Verizon OSS Information may be accessed and used by Budget Phone only to provide Telecommunications Services to Budget Phone Customers.
  - 8.5.2.3 Budget Phone shall treat Verizon OSS Information that is designated by Verizon, through written or electronic notice (including, but not limited to, through the Verizon OSS Services), as "Confidential" or "Proprietary" as Confidential Information of Verizon pursuant to Section 10 of the Agreement.
  - 8.5.2.4 Except as expressly stated in this Section 8, this Agreement does not grant to Budget Phone any right or license to grant sublicenses to other persons, or permission to other persons (except Budget Phone's employees, agents or contractors, in accordance with Section 8.5.2.5 below, to access, use or disclose Verizon OSS Information.
  - 8.5.2.5 Budget Phone's employees, agents and contractors may access, use and disclose Verizon OSS Information only to the extent necessary for Budget Phone's access to, and use and disclosure of, Verizon OSS Information permitted by this Section 8. Any access to, or use or disclosure of, Verizon OSS Information by Budget Phone's employees, agents or contractors, shall be subject to the provisions of this Agreement, including, but not limited to, Section 10 of the Agreement and Section 8.5.2.3 above.
  - 8.5.2.6 Budget Phone's license to use Verizon OSS Information shall expire upon the earliest of: (a) the time when the Verizon OSS Information is no longer needed by Budget Phone to provide Telecommunications Services to Budget Phone Customers; (b) termination of the license in accordance with this Section 8; or (c) expiration or termination of the Agreement.
  - 8.5.2.7 All Verizon OSS Information received by Budget Phone shall

be destroyed or returned by Budget Phone to Verizon, upon expiration, suspension or termination of the license to use such Verizon OSS Information.

8.5.3 Unless sooner terminated or suspended in accordance with the Agreement or this Section 8 (including, but not limited to, Section 2.2 of the Agreement and Section 8.6.1 below), Budget Phone's access to Verizon OSS Information through Verizon OSS Services shall terminate upon the expiration or termination of the Agreement.

8.5.3.1 Verizon shall have the right (but not the obligation) to audit Budget Phone to ascertain whether Budget Phone is complying with the requirements of Applicable Law and this Agreement with regard to Budget Phone's access to, and use and disclosure of, Verizon OSS Information.

8.5.3.2 Without in any way limiting any other rights Verizon may have under the Agreement or Applicable Law, Verizon shall have the right (but not the obligation) to monitor Budget Phone's access to and use of Verizon OSS Information which is made available by Verizon to Budget Phone pursuant to this Agreement, to ascertain whether Budget Phone is complying with the requirements of Applicable Law and this Agreement, with regard to Budget Phone's access to, and use and disclosure of, such Verizon OSS Information. The foregoing right shall include, but not be limited to, the right (but not the obligation) to electronically monitor Budget Phone's access to and use of Verizon OSS Information which is made available by Verizon to Budget Phone through Verizon OSS Facilities.

8.5.3.3 Information obtained by Verizon pursuant to this Section 8.5.3.3 shall be treated by Verizon as Confidential Information of Budget Phone pursuant to Section 10 of the Agreement; provided that, Verizon shall have the right (but not the obligation) to use and disclose information obtained by Verizon pursuant to this Section 8.5.3.3 to enforce Verizon's rights under the Agreement or Applicable Law.

## 8.6 Liabilities and Remedies.

8.6.1 Any breach by Budget Phone, or Budget Phone's employees, agents or contractors, of the provisions of Sections 8.4 or 8.5 above shall be deemed a material breach of the Agreement. In addition, if Budget Phone or an employee, agent or contractor of Budget Phone at any time breaches a provision of Sections 8.4 or 8.5 above and such breach continues for more than ten (10) days after written notice thereof from Verizon, then, except as otherwise required by Applicable Law, Verizon shall have the right, upon notice to Budget Phone, to suspend the license to use Verizon OSS Information granted by Section 8.5.1 above and/or the provision of Verizon OSS Services, in whole or in part.

8.6.2 Budget Phone agrees that Verizon would be irreparably injured by a breach of Sections 8.4 or 8.5 above by Budget Phone or the employees, agents or contractors of Budget Phone, and that Verizon shall be entitled to seek equitable relief, including injunctive relief and specific performance, in the event of any such breach. Such remedies shall not

be deemed to be the exclusive remedies for any such breach, but shall be in addition to any other remedies available under this Agreement or at law or in equity.

8.7 Relation to Applicable Law.

The provisions of Sections 8.4, 8.5 and 8.6 above shall be in addition to and not in derogation of any provisions of Applicable Law, including, but not limited to, 47 U.S.C. § 222, and are not intended to constitute a waiver by Verizon of any right with regard to protection of the confidentiality of the information of Verizon or Verizon Customers provided by Applicable Law.

8.8 Cooperation.

Budget Phone, at Budget Phone's expense, shall reasonably cooperate with Verizon in using Verizon OSS Services. Such cooperation shall include, but not be limited to, the following:

8.8.1 Upon request by Verizon, Budget Phone shall by no later than the fifteenth (15th) day of each calendar month submit to Verizon reasonable, good faith estimates (by central office or other Verizon office or geographic area designated by Verizon) of the volume of each Verizon Retail Telecommunications Service for which Budget Phone anticipates submitting orders in each week of the next calendar month.

8.8.2 Budget Phone shall reasonably cooperate with Verizon in submitting orders for Verizon Retail Telecommunications Services and otherwise using the Verizon OSS Services, in order to avoid exceeding the capacity or capabilities of such Verizon OSS Services.

8.8.3 Budget Phone shall participate in cooperative testing of Verizon OSS Services and shall provide assistance to Verizon in identifying and correcting mistakes, omissions, interruptions, delays, errors, defects, faults, failures, or other deficiencies, in Verizon OSS Services.

8.9 Verizon Access to Information Related to Budget Phone Customers.

8.9.1 Verizon shall have the right to access, use and disclose information related to Budget Phone Customers that is in Verizon's possession (including, but not limited to, in Verizon OSS Facilities) to the extent such access, use and/or disclosure has been authorized by the Budget Phone Customer in the manner required by Applicable Law.

8.9.2 Upon request by Verizon, Budget Phone shall negotiate in good faith and enter into a contract with Verizon, pursuant to which Verizon may obtain access to Budget Phone's operations support systems (including, systems for pre-ordering, ordering, provisioning, maintenance and repair, and billing) and information contained in such systems, to permit Verizon to obtain information related to Budget Phone Customers (as authorized by the applicable Budget Phone Customer), to permit Customers to transfer service from one Telecommunications Carrier to another, and for such other purposes as may be permitted by Applicable Law.

8.10 Verizon Pre-OSS Services.

- 8.10.1 As used in this Section 8, "Verizon Pre-OSS Service" means a service which allows the performance of an activity which is comparable to an activity to be performed through a Verizon OSS Service and which Verizon offers to provide to Budget Phone prior to, or in lieu of, Verizon's provision of the Verizon OSS Service to Budget Phone. The term "Verizon Pre-OSS Service" includes, but is not limited to, the activity of placing orders for Verizon Retail Telecommunications Services through a telephone facsimile communication.
- 8.10.2 Subject to the requirements of Applicable Law, the Verizon Pre-OSS Services that will be offered by Verizon shall be as determined by Verizon and Verizon shall have the right to change Verizon Pre-OSS Services, from time-to-time, without the consent of Budget Phone.
- 8.10.3 Subject to the requirements of Applicable Law, the prices for Verizon Pre-OSS Services shall be as determined by Verizon and shall be subject to change by Verizon from time-to-time.
- 8.10.4 The provisions of Sections 8.4 through 8.8 above shall also apply to Verizon Pre-OSS Services. For the purposes of this Section 8.10: (a) references in Sections 8.4 through 8.8 above to Verizon OSS Services shall be deemed to include Verizon Pre-OSS Services; and, (b) references in Sections 8.4 through 8.8 above to Verizon OSS Information shall be deemed to include information made available to Budget Phone through Verizon Pre-OSS Services.
- 8.10.5 Budget Phone acknowledges that the Verizon OSS Information, by its nature, is updated and corrected on a continuous basis by Verizon, and therefore that Verizon OSS Information is subject to change from time to time.
- 8.11 Cancellations.

Verizon may cancel orders for service which have had no activity within thirty-one (31) consecutive calendar days after the original service date. (Certain complex UNEs and UNEs requiring facility build-outs that may take longer than thirty-one (31) days to provision will be excluded from this provision).

## **9. Poles, Ducts, Conduits and Rights-of-Way**

To the extent required by Applicable Law (including, but not limited to, Sections 224, 251(b)(4) and 271(c)(2)(B)(iii) of the Act), each Party ("Providing Party") shall afford the other Party non-discriminatory access to poles, ducts, conduits and rights-of-way owned or controlled by the Providing Party. Such access shall be provided in accordance with Applicable Law pursuant to the Providing Party's applicable Tariffs, or, in the absence of an applicable Providing Party Tariff, the Providing Party's generally offered form of license agreement, or, in the absence of such a Tariff and license agreement, a mutually acceptable agreement to be negotiated by the Parties.

## **10. Telephone Numbers**

- 10.1 This Section 10 applies in connection with Budget Phone Customers served by Telecommunications Services provided by Verizon to Budget Phone for resale.



- 10.2 Budget Phone's use of telephone numbers shall be subject to Applicable Law the rules of the North American Numbering Council and the North American Numbering Plan Administrator, the applicable provisions of this Agreement (including, but not limited to, this Section 10), and Verizon's practices and procedures for use and assignment of telephone numbers, as amended from time-to-time.
- 10.3 Subject to Sections 10.2 and 10.4, if a Customer of either Verizon or Budget Phone who is served by a Verizon Telecommunications Service ("VTS") changes the LEC that serves the Customer using such VTS (including a change from Verizon to Budget Phone, from Budget Phone to Verizon, or from Budget Phone to a LEC other than Verizon), after such change, the Customer may continue to use with such VTS the telephone numbers that were assigned to the VTS for the use of such Customer by Verizon immediately prior to the change.
- 10.4 Verizon shall have the right to change the telephone numbers used by a Customer if at any time: (a) the Customer requests service at a new location, that is not served by the Verizon switch and the Verizon rate center from which the Customer previously had service; (b) continued use of the telephone numbers is not technically feasible; or, (c) in the case of Telecommunications Service provided by Verizon to Budget Phone for resale, the type or class of service subscribed to by the Customer changes.
- 10.5 If service on a VTS provided by Verizon to Budget Phone under this Agreement is terminated and the telephone numbers associated with such VTS have not been ported to a Budget Phone switch, the telephone numbers shall be available for reassignment by Verizon to any person to whom Verizon elects to assign the telephone numbers, including, but not limited to, Verizon, Verizon Customers, Budget Phone, or Telecommunications Carriers other than Verizon and Budget Phone.
- 10.6 Budget Phone may reserve telephone numbers only to the extent Verizon's Customers may reserve telephone numbers.

## RESALE ATTACHMENT

### 1. General

Verizon shall provide to Budget Phone, in accordance with this Agreement (including, but not limited to, Verizon's applicable Tariffs) and the requirements of Applicable Law (including, but not limited to, Sections 251(b)(1), 251(c)(4) and 271(c)(2)(B)(xiv) of the Act), Verizon's Telecommunications Services for resale by Budget Phone; provided, that notwithstanding any other provision of this Agreement, Verizon shall be obligated to provide Telecommunications Services to Budget Phone only to the extent required by Applicable Law and may decline to provide a Telecommunications Service to Budget Phone to the extent that provision of such Telecommunications Service is not required by Applicable Law.

### 2. Use of Verizon Telecommunications Services

2.1 Verizon Telecommunications Services may be purchased by Budget Phone under this Resale Attachment only for the purpose of resale by Budget Phone as a Telecommunications Carrier. Verizon Telecommunications Services to be purchased by Budget Phone for other purposes (including, but not limited to, Budget Phone's own use) must be purchased by Budget Phone pursuant to other applicable Attachments to this Agreement (if any), or separate written agreements, including, but not limited to, applicable Verizon Tariffs.

2.2 Budget Phone shall not resell:

2.2.1 Residential service to persons not eligible to subscribe to such service from Verizon (including, but not limited to, business or other nonresidential Customers);

2.2.2 Lifeline, Link Up America, or other means-tested service offerings, to persons not eligible to subscribe to such service offerings from Verizon;

2.2.3 Grandfathered or discontinued service offerings to persons not eligible to subscribe to such service offerings from Verizon; or

2.2.4 Any other Verizon service in violation of a restriction stated in this Agreement (including, but not limited to, a Verizon Tariff) that is not prohibited by Applicable Law.

2.2.5 In addition to any other actions taken by Budget Phone to comply with this Section 2.2, Budget Phone shall take those actions required by Applicable Law to determine the eligibility of Budget Phone Customers to purchase a service, including, but not limited to, obtaining any proof or certification of eligibility to purchase Lifeline, Link Up America, or other means-tested services, required by Applicable Law. Budget Phone shall indemnify Verizon from any Claims resulting from Budget Phone's failure to take such actions required by Applicable Law.

2.2.6 Verizon may perform audits to confirm Budget Phone's conformity to the provisions of this Section 2.2. Such audits may be performed twice per calendar year and shall be performed in accordance with Sections 4.4.2 through 4.4.4 of the General Terms and Conditions.

- 2.3 Budget Phone shall be subject to the same limitations that Verizon's Customers are subject to with respect to any Telecommunications Service that Verizon grandfathers or discontinues offering. Without limiting the foregoing, except to the extent that Verizon follows a different practice for Verizon Customers in regard to a grandfathered Telecommunications Service, such grandfathered Telecommunications Service: (a) shall be available only to a Customer that already has such Telecommunications Service; (b) may not be moved to a new service location; and, (c) will be furnished only to the extent that facilities continue to be available to provide such Telecommunications Service.
- 2.4 Budget Phone shall not be eligible to participate in any Verizon plan or program under which Verizon Customers may obtain products or services which are not Verizon Telecommunications Services, in return for trying, agreeing to purchase, purchasing, or using, Verizon Telecommunications Services.
- 2.5 In accordance with 47 CFR § 51.617(b), Verizon shall be entitled to all charges for Verizon Exchange Access services used by interexchange carriers to provide service to Budget Phone Customers.

### **3. Availability of Verizon Telecommunications Services**

- 3.1 Verizon will provide a Verizon Telecommunications Service to Budget Phone for resale pursuant to this Attachment where and to the same extent, but only where and to the same extent, that such Verizon Telecommunications Service is provided to Verizon's Customers.
- 3.2 Except as otherwise required by Applicable Law, subject to Section 3.1, Verizon shall have the right to add, modify, grandfather, discontinue or withdraw, Verizon Telecommunications Services at any time, without the consent of Budget Phone.
- 3.3 To the extent required by Applicable Law, the Verizon Telecommunications Services to be provided to Budget Phone for resale pursuant to this Attachment will include a Verizon Telecommunications Service customer-specific contract service arrangement ("CSA") (such as a customer specific pricing arrangement or individual case based pricing arrangement) that Verizon is providing to a Verizon Customer at the time the CSA is requested by Budget Phone.

### **4. Responsibility for Charges**

Budget Phone shall be responsible for and pay all charges for any Verizon Telecommunications Services provided by Verizon pursuant to this Resale Attachment.

### **5. Operations Matters**

- 5.1 Facilities.
  - 5.1.1 Verizon and its suppliers shall retain all of their right, title and interest in all facilities, equipment, software, information, and wiring, used to provide Verizon Telecommunications Services.
  - 5.1.2 Verizon shall have access at all reasonable times to Budget Phone Customer locations for the purpose of installing, inspecting, maintaining, repairing, and removing, facilities, equipment, software, and wiring, used to provide the Verizon Telecommunications Services. Budget Phone shall, at Budget Phone's expense, obtain any rights and authorizations

necessary for such access.

- 5.1.3 Except as otherwise agreed to in writing by Verizon, Verizon shall not be responsible for the installation, inspection, repair, maintenance, or removal, of facilities, equipment, software, or wiring, provided by Budget Phone or Budget Phone Customers for use with Verizon Telecommunications Services.

## 5.2 Branding.

- 5.2.1 Except as stated in Section 5.2.2, in providing Verizon Telecommunications Services to Budget Phone, Bell Atlantic shall have the right (but not the obligation) to identify the Verizon Telecommunications Services with Verizon's trade names, trademarks and service marks ("Verizon Marks"), to the same extent that these Services are identified with Verizon's Marks when they are provided to Verizon's Customers. Any such identification of Verizon's Telecommunications Services shall not constitute the grant of a license or other right to Budget Phone to use Verizon's Marks.
- 5.2.2 To the extent required by Applicable Law, upon request by Budget Phone and at prices, terms and conditions to be negotiated by Budget Phone and Verizon, Verizon shall provide Verizon Telecommunications Services for resale that are identified by Budget Phone's trade name, or that are not identified by trade name, trademark or service mark.
- 5.2.3 If Verizon uses a third-party contractor to provide Verizon Operator Services or Verizon Directory Assistance Services, Budget Phone will be responsible for entering into a direct contractual arrangement with the third-party contractor at Budget Phone's expense (a) to obtain identification of Verizon Operator Services or Verizon Directory Assistance Services purchased by Budget Phone for resale with Budget Phone's trade name, or (b) to obtain removal of trade name, trademark or service mark identification from Verizon Operator Services or Verizon Directory Assistance Services purchased by Budget Phone for resale.

## PRICING ATTACHMENT

### 1. General

- 1.1 As used in this Attachment, the term "Charges" means the rates, fees, charges and prices for a Service.
- 1.2 Except as stated in Section 2 or Section 3, below, Charges for Services shall be as stated in this Section 1.
- 1.3 The Charges for a Service shall be the Charges for the Service stated in the Providing Party's applicable Tariff.
- 1.4 In the absence of Charges for a Service established pursuant to Section 1.3, the Charges shall be as stated in Appendix A of this Pricing Attachment.
- 1.5 The Charges stated in Appendix A of this Pricing Attachment shall be automatically superseded by any applicable Tariff Charges. The Charges stated in Appendix A of this Pricing Attachment also shall be automatically superseded by any new Charge(s) when such new Charge(s) are required by any order of the Commission or the FCC, approved by the Commission or the FCC, or otherwise allowed to go into effect by the Commission or the FCC (including, but not limited to, in a Tariff that has been filed with the Commission or the FCC), provided such new Charge(s) are not subject to a stay issued by any court of competent jurisdiction.
- 1.6 In the absence of Charges for a Service established pursuant to Sections 1.3 through 1.5, if Charges for a Service are otherwise expressly provided for in this Agreement, such Charges shall apply.
- 1.7 In the absence of Charges for a Service established pursuant to Sections 1.3 through 1.6, the Charges for the Service shall be the Providing Party's FCC or Commission approved Charges.
- 1.8 In the absence of Charges for a Service established pursuant to Sections 1.3 through 1.7, the Charges for the Service shall be mutually agreed to by the Parties in writing.

### 2. Verizon Telecommunications Services Provided to Budget Phone for Resale Pursuant to the Resale Attachment

- 2.1 Verizon Telecommunications Services for which Verizon is Required to Provide a Wholesale Discount Pursuant to Section 251(c)(4) of the Act.
  - 2.1.1 The Charges for a Verizon Telecommunications Service purchased by Budget Phone for resale for which Verizon is required to provide a wholesale discount pursuant to Section 251(c)(4) of the Act shall be the Retail Price for such Service set forth in Verizon's applicable Tariffs (or, if there is no Tariff Retail Price for such Service, Verizon's Retail Price for the Service that is generally offered to Verizon's Customers), less, to the extent required by Applicable Law: (a) the applicable wholesale discount stated in Verizon's Tariffs for Verizon Telecommunications Services purchased for resale pursuant to Section 251(c)(4) of the Act; or, (b) in the absence of an applicable Verizon Tariff wholesale discount for Verizon Telecommunications Services purchased for resale pursuant to

Section 251(c)(4) of the Act, the applicable wholesale discount stated in Appendix A for Verizon Telecommunications Services purchased for resale pursuant to Section 251(c)(4) of the Act.

- 2.1.2 The Charges for a Verizon Telecommunications Service Customer Specific Arrangement (“CSA”) purchased by Budget Phone for resale pursuant to Section 3.3 of the Resale Attachment for which Verizon is required to provide a wholesale discount pursuant to Section 251(c)(4) of the Act, shall be the Retail Price for the CSA, less, to the extent required by Applicable Law: (a) the applicable wholesale discount stated in Verizon’s Tariffs for Verizon Telecommunications Services purchased for resale pursuant to Section 251(c)(4) of the Act; or, (b) in the absence of an applicable Verizon Tariff wholesale discount for Verizon Telecommunications Services purchased for resale pursuant to Section 251(c)(4) of the Act, the applicable discount stated in Appendix A for Verizon Telecommunications Services purchased for resale pursuant to Section 251(c)(4) of the Act. Notwithstanding the foregoing, in accordance with, and to the extent permitted by Applicable Law, Verizon may establish a wholesale discount for a CSA that differs from the wholesale discount that is generally applicable to Telecommunications Services provided to Budget Phone for resale pursuant to Section 251(c)(4) of the Act.
- 2.1.3 Notwithstanding Sections 2.1 and 2.2, in accordance with, and to the extent permitted by Applicable Law, Verizon may at any time establish a wholesale discount for a Telecommunications Service (including, but not limited to, a CSA) that differs from the wholesale discount that is generally applicable to Telecommunications Services provided to Budget Phone for resale pursuant to Section 251(c)(4) of the Act.
- 2.1.4 The wholesale discount stated in Appendix A shall be automatically superseded by any new wholesale discount when such new wholesale discount is required by any order of the Commission or the FCC, approved by the Commission or the FCC, or otherwise allowed to go into effect by the Commission or the FCC, provided such new wholesale discount is not subject to a stay issued by any court of competent jurisdiction.
- 2.1.5 The wholesale discount provided for in Sections 2.1.1 through 2.1.3 shall not be applied to:
  - 2.1.5.1 Short term promotions as defined in 47 CFR § 51.613;
  - 2.1.5.2 Except as otherwise provided by Applicable Law, Exchange Access services;
  - 2.1.5.3 Subscriber Line Charges, Federal Line Cost Charges, end user common line Charges, taxes, and government Charges and assessment (including, but not limited to, 9-1-1 Charges and Dual Party Relay Service Charges).
  - 2.1.5.4 Any other service or Charge that the Commission, the FCC, or other governmental entity of appropriate jurisdiction determines is not subject to a wholesale rate discount under Section 251(c)(4) of the Act.

- 2.2 Verizon Telecommunications Services for which Verizon is Not Required to Provide a Wholesale Discount Pursuant to Section 251(c)(4) of the Act.
- 2.2.1 The Charges for a Verizon Telecommunications Service for which Verizon is not required to provide a wholesale discount pursuant to Section 251(c)(4) of the Act shall be the Charges stated in Verizon's Tariffs for such Verizon Telecommunications Service (or, if there are no Verizon Tariff Charges for such Service, Verizon's Charges for the Service that are generally offered by Verizon).
- 2.2.2 The Charges for a Verizon Telecommunications Service customer specific contract service arrangement ("CSA") purchased by Budget Phone pursuant to Section 3.3 of the Resale Attachment for which Verizon is not required to provide a wholesale discount pursuant to Section 251(c)(4) of the Act shall be the Charges provided for in the CSA and any other Charges that Verizon could bill the person to whom the CSA was originally provided (including, but not limited to, applicable Verizon Tariff Charges).
- 2.3 Other Charges.
- 2.3.1 Budget Phone shall pay, or collect and remit to Verizon, without discount, all Subscriber Line Charges, Federal Line Cost Charges, and end user common line Charges, associated with Verizon Telecommunications Services provided by Verizon to Budget Phone.

### **3. Budget Phone Prices**

Notwithstanding any other provision of this Agreement, the Charges that Budget Phone bills Verizon for Budget Phone's Services shall not exceed the Charges for Verizon's comparable Services, except to the extent the Budget Phone has demonstrated to Verizon, or, at Verizon's request, to the Commission or the FCC, that Budget Phone's cost to provide such Budget Phone Services to Verizon exceeds the Charges for Verizon's comparable Services.

### **4. Section 271**

If Verizon is a Bell Operating Company (as defined in the Act) and in order to comply with Section 271(c)(2)(B) of the Act provides a Service under this Agreement that Verizon is not required to provide by Section 251 of the Act, Verizon shall have the right to establish Charges for such Service in a manner that differs from the manner in which under Applicable Law (including, but not limited to, Section 252(d) of the Act) Charges must be set for Services provided under Section 251.

### **5. Regulatory Review of Prices**

Notwithstanding any other provision of this Agreement, each Party reserves its respective rights to institute an appropriate proceeding with the FCC, the Commission or other governmental body of appropriate jurisdiction: (a) with regard to the Charges for its Services (including, but not limited to, a proceeding to change the Charges for its services, whether provided for in any of its Tariffs, in Appendix A, or otherwise); and (b) with regard to the Charges of the other Party (including, but not limited to, a proceeding to obtain a reduction in such Charges and a refund of any amounts paid in excess of any Charges that are reduced).

## APPENDIX A TO THE PRICING ATTACHMENT

### I. Services Available for Resale

The avoided cost discount for all services, excluding OS/DA, is 15.95%<sup>1</sup>.

#### Non-Recurring Charges (NRCs) for Resale Services

##### Pre-ordering

CLEC Account Establishment Per CLEC	\$273.09
Customer Record Search Per Account	\$ 11.69

##### Ordering and Provisioning

Engineered Initial Service Order (ISO) - New Service	\$311.98
Engineered Initial Service Order - As Specified	\$123.84
Engineered Subsequent Service Order	\$ 59.61
Non-Engineered Initial Service Order - New Service	\$ 42.50
Non-Engineered Initial Service Order - Changeover	\$ 21.62
Non-Engineered Initial Service Order - As Specified	\$ 82.13
Non-Engineered Subsequent Service Order	\$ 19.55

Central Office Connect \$ 12.21

Outside Facility Connect \$ 68.30

Manual Ordering Charge \$ 12.17

##### Product Specific:

NRCs, other than those for Pre-ordering, Ordering and Provisioning, and Custom Handling as listed in this Appendix, will be charged from the appropriate retail tariff. No discount applies to such NRCs.

##### Custom Handling:

###### Service Order Expedite:

Engineered	\$ 35.48
Non-Engineered	\$ 12.59

###### Coordinated Conversions:

ISO	\$ 17.76
Central Office Connection	\$ 10.71
Outside Facility Connection	\$ 9.59

###### Hot Coordinated Conversion First Hour:

ISO	\$ 30.55
Central Office Connection	\$ 42.83
Outside Facility Connection	\$ 38.34

###### Hot Coordinated Conversion per Additional Quarter Hour:

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<sup>1</sup> In compliance with the FCC Order approving the Merger of GTE Corporation and Bell Atlantic (CC Docket No. 98-1840), Verizon will offer limited duration promotional discounts on resold residential exchange access lines. The terms and conditions on which these promotional discounts are being made available can be found on Verizon's web site, at <http://www.gte.com/wise> for former GTE service areas and <http://www.bell-atl.com/wholesale/html/resources.htm> for former Bell Atlantic service areas.



ISO	\$ 4.88
Central Office Connection	\$ 9.43
Outside Facility Connection	\$ 8.37

## **Application of NRCs**

### Pre-ordering:

CLEC Account Establishment is a one-time charge applied the first time that Budget Phone orders any service from this Agreement.

Customer Record Search applies when Budget Phone requests a summary of the services currently subscribed to by the end-user.

### Ordering and Provisioning:

Engineered Initial Service Order - New Service applies per Local Service Request (LSR) when engineering work activity is required to complete the order, e.g. digital loops.

Non-Engineered Initial Service Order - New Service applies per LSR when no engineering work activity is required to complete the order, e.g. analog loops.

Initial Service Order - As Specified (Engineered or Non-Engineered) applies only to Complex Services for services migrating from Verizon to Budget Phone. Complex Services are services that require a data gathering form or has special instructions.

Non-Engineered Initial Service Order - Changeover applies only to Basic Services for services migrating from Verizon to Budget Phone. End-user service may remain the same or change.

Central Office Connect applies in addition to the ISO when physical installation is required at the central office.

Outside Facility Connect applies in addition to the ISO when incremental field work is required.

Manual Ordering Charge applies to orders that require Verizon to manually enter Budget Phone's order into Verizon's Secure Integrated Gateway System (SIGS), e.g. faxed orders and orders sent via physical or electronic mail.

### Custom Handling (These NRCs are in addition to any Preordering or Ordering and Provisioning NRCs):

Service Order Expedite (Engineered or Non-Engineered) applies if Budget Phone requests service prior to the standard due date intervals.

Coordinated Conversion applies if Budget Phone requests notification and coordination of service cut over prior to the service becoming effective.

Hot Coordinated Conversion First Hour applies if Budget Phone requests real-time coordination of a service cut-over that takes one hour or less.

Hot Coordinated Conversion Per Additional Quarter Hour applies, in addition to the Hot Coordinated Conversion First Hour, for every 15-minute segment of real-time coordination of a service cut-over that takes more than one hour.