

TELEPHONE SERVICES AGREEMENT

This Agreement (“**Agreement**”) is entered into as of _____, 200__ by and between the UNIVERSITY OF MARYLAND, BALTIMORE (“**UMB**”) and _____ (“**Customer**”).

BACKGROUND

Customer desires to receive, and UMB has agreed to provide, telephone services (the “**Services**”) for Customer’s facility in the UMB BioPark, on the terms and conditions set forth herein.

NOW, THEREFORE, in consideration of the mutual understandings set forth herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. Scope of Services.

(a) UMB shall furnish equipment, facilities, and services required to provide the telephone voice services set forth on **Exhibit A** attached hereto (“**Services**”) to Customer. This Agreement and the Services shall be subject to the Terms and Conditions set forth on **Exhibit B.**

(b) UMB will use commercially reasonable efforts to make the Services (including installation and testing) available on or before the requested Services date. UMB’s liability for timely installation, proper testing, and operation of interexchange Services of local access is limited, as stated below. Customer’s liability for charges under this Agreement shall not be reduced by untimely installation or non-operation of facilities and equipment.

(c) UMB services do not include long distance services (“LDS”), which Customer may secure from a vendor of its choice. UMB can make recommendations of LDS vendors, but will take no responsibility for LDS beyond working with Customer and its vendor to resolve service issues, if possible.

2. Customer’s Obligations. Customer shall be responsible: (a) to provide adequate space and environment, including but not limited to 60°-80° Fahrenheit (15°-26° Celsius) temperature, (b) to provide electrical power necessary to operate equipment on premises, (c) to provide a route suitable for UMB’s cable access to Customer’s telephone room, (d) to pay UMB for any damages caused to its equipment by Customer’s negligence or willful acts or by fire, electrical, lightning surges, or any other cause except UMB’s equipment malfunction, (e) to make components and equipment available for maintenance in a timely manner, and (f) to pay all of UMB’s charges for time and material resulting from diagnosing problems caused by Customer’s failure to comply with this Agreement.

3. Payment.

(a) Customer agrees to pay for the Services at the rates set forth on **Exhibit A**. Such rates may be changed by UMB from time to time on 60 days notice. If Customer does not accept a changed rate, Customer may terminate this Agreement as of the end of the 60 days notice period. Invoices will be sent to you by the UMB Center for Information Technology Services (CITS). Invoices are payable immediately upon receipt. Any invoice not paid in full within thirty (30) days of its date shall be subject to interest at the rate of 1.5% per month. Payment must be sent to the address indicated on each invoice, and NOT to CITS.

(b) If UMB does not receive payment of any invoice within thirty (30) days of its date, the Customer shall owe a late fee of \$50.00, and UMB shall have the right upon ten (10) days' notice to suspend all Services to Customer until Customer has paid in full all amounts due, including any interest or late fees.

(c) Payment received shall be applied first to any outstanding interest, then to late fees, then to current fees. Unpaid charges more than sixty (60) days overdue will be referred to the State of Maryland Central Collection Agency.

(d) Customer shall pay any applicable federal, state, or local use, excise, sales, license fees, taxes, duties, or similar liabilities, charged to or against UMB or Customer because of Services, facilities, or equipment furnished by UMB, in addition to other charges under this Agreement.

4. **Term.** The term of this Agreement shall begin on or about the requested service date or at the time the Services first become available, whichever is later. Unless sooner terminated as provided in this Agreement, the initial term of this Agreement shall terminate one (1) year thereafter. This Agreement will be automatically renewed from year to year unless either party gives written notice to the other of its intent to terminate at least ninety (90) days prior to the annual renewal date of this Agreement.

5. **Termination.** Notwithstanding the foregoing, a party may terminate this Agreement upon the occurrence of any of the following:

(a) If UMB is prohibited from furnishing the Services by law or by the terms of State or University telephone services agreements, or if any material rate or term contained in this Agreement is substantially changed by the Federal Communications Commission (FCC), the Maryland Public Services Commission (PSC), or any other government body, board, or commission of competent jurisdiction, or by order of any court;

(b) Breach or failure by the other party to observe or perform any covenant, agreement, duty, condition, or undertaking in this Agreement (including failure to pay any amount due and payable), if the non-defaulting party delivers written notice of such failure to the defaulting party and such failure is not cured within thirty (30) days after receipt of such notice;

(c) If Customer (i) is or becomes insolvent (as defined in Section 101(31) of the United States Bankruptcy Code) or unable to pay its debts as they mature; (ii) makes a general assignment for the benefit of creditors; (iii) commences a case under or otherwise seeks to take advantage of any bankruptcy, reorganization, insolvency, readjustment of debt, dissolution, or liquidation law, statute, or proceeding; (iv) by any act indicates its consent to, approval of, or acquiescence in any such proceeding or the appointment of a receiver of or trustee for it or a substantial part of its property, or suffers any such receivership, trusteeship, or proceeding to continue undismissed for a period of thirty (30) days; or (v) becomes a debtor in any case under any chapter of the United States Bankruptcy Code.

6. Effect of Termination. After termination by either party for any reason, UMB shall retain the right to recover all accrued charges due and owing by Customer to UMB, and Customer agrees that it waives any right it may have against UMB to offset fees payable by Customer to UMB. Upon termination of this Agreement by either party for any reason, Customer shall promptly return any and all of UMB's property and equipment in its possession. Customer's indemnification obligations under this Agreement shall survive any expiration or earlier termination of this Agreement.

7. Liability of Customer. Customer shall take all reasonable precautions in locating, constructing, maintaining, and operating its activities, facilities, and equipment to protect against hazard or injury and to avoid interfering with equipment, facilities, or Services provided by UMB. Customer is liable to UMB, and shall defend, indemnify, and hold UMB and its employees harmless, for all of UMB's costs, expenses, damages, fees, or penalties, including but not limited to actual attorneys' fees and expenses, related to any damages, mistakes, accidents, omissions, interruptions, defects in transmission of Services, delay, error, or other problems that are caused wholly or partly, directly or indirectly, by any act or omission of Customer or its agents, employees, representatives, invitees, licenses, contractors, successors, or assigns, or that arise from or are caused by the use of facilities or equipment provided by Customer or anyone else other than UMB.

8. Tariff Application. With respect to the Services or any other matters described in or related to this Agreement which are or later become subject to any tariffs filed with, or regulations of, the FCC, the PSC, or any other government body, board, or commission of competent jurisdiction, the provisions of such tariffs or regulations shall take precedence over any conflicting provisions of this Agreement.

9. Point of Contact. Customer shall keep a technical point of contact and billing point of contact on file with UMB. The initial points of contact are set forth below.

10. General Provisions.

(a) No term or provision hereof shall be deemed waived and no breach excused unless such waiver or consent shall be in writing and signed by the party claimed to have waived or consented. Failure of UMB to give notice of default or to enforce any

term or condition of this Agreement, or waiver of any term or condition of this Agreement, shall not constitute permanent or general waiver of that term or provision.

(b) The provision of the Services will not create a partnership or joint venture between the parties nor result in joint communications Services offerings to the business customers of either UMB or the Customer.

(c) If UMB seeks to enforce any term or condition of this Agreement or any obligation arising out of or related to this Agreement, then UMB shall be entitled to recover, in addition to any other remedies, a reasonable actual attorney's fee, court costs, costs of investigation, and any other related costs or expenses.

(d) This Agreement is the entire agreement between the parties regarding the Services, superseding all prior or other agreements.

(e) This Agreement shall not be changed or supplemented except in a writing signed by both parties.

(f) Customer shall not assign or transfer any or all of its rights or obligations under this Agreement without UMB's prior written consent. This Agreement shall inure to the benefit of and be binding upon each party's heirs, successors and/or permitted assigns.

(g) If any term or condition of this Agreement is to any extent held invalid or unenforceable in any respect, then the remainder of this Agreement shall not be affected, and each term or condition of this Agreement shall be valid and enforceable to the fullest extent permitted by law.

(h) This Agreement, and all matters arising out of or related to it, shall be governed by the laws of the State of Maryland, without regard to Maryland's conflicts of law rules. Each Party consents to the jurisdiction and venue of the courts of Baltimore City or Baltimore County, Maryland and the United States District Court for the District of Maryland in Baltimore, Maryland in any action or judicial proceeding brought to enforce, construe or interpret this Agreement.

(i) Descriptive headings used herein shall not affect the construction or interpretation of the Agreement.

(j) Notices under this Agreement shall be in writing and delivered to the persons whose names and business addresses appear on the signature page. The effective date of any notice under this Agreement shall be the date of delivery of such notice.

(k) The parties knowingly and expressly consent to the foregoing terms and conditions. Each party warrants to the other that the signatory of this Agreement is authorized to do so, on behalf of its respective party.

(l) None of the provisions of this Agreement are or shall be construed as for the benefit of or enforceable by any person other than the parties hereto, including without limitation any creditor of any of the parties hereto, except UMB employees who claim the benefit of indemnification by Customer.

(m) All remedies available to either party for breach of this Agreement are cumulative and may be exercised concurrently or separately and the exercise of one

remedy shall not be deemed an election of such remedy to the exclusion of other remedies.

The parties have caused this Agreement to be executed by their duly authorized representatives on the dates indicated below.

Customer Name

UNIVERSITY OF MARYLAND, BALTIMORE

By: _____
Title: _____
Date: _____

By: _____
Title: _____
Date: _____

Address:

University of Maryland, Baltimore
Center for Information Technology Services
601 W. Lombard Street, Room 201
Baltimore, Maryland 21201
Attn: Chief Information Officer

Point of Contact	Address	Phone	Email
<i>Technical</i>			
<i>Billing</i>			

Exhibit A

<u>Services</u>	<u>Monthly Cost</u>
Voice Line Services (See features included below)	\$20.00
Single Line Phone Set (Speaker phone)	\$7.25
Two Line Phone Set (Speaker phone)	\$8.25
Multi-Line Phone Set (Speaker phone)	\$11.25

Customer must rent phone sets from UMB. UMB does not permit Customer to provide its own phone sets. Maintenance of the phone line and phone sets is included in the monthly cost. Phone accessories (e.g., headphones, message waiting indicators) must be purchased or rented from UMB.

Technician labor rate and materials cost

Hourly technician rate (Minimum charge is 1 hour)	\$50/hr.
Overtime and weekend rate (service time and travel time are charged)	\$75/hr.

Materials will be charged
at cost + 7% administrative fee

Installation of quad jack (2 voice & 2 data)	\$555 per jack
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Labor rate charges will be assessed for initial installation of lines and equipment for Services, and subsequent adds, moves or changes to Services and/or equipment. All installation and relocation of lines must be done by UMB and/or its contractors.

Itemized costs

Message Unit Cost	.09 per call
Long Distance Toll	<i>Not included in UMB services</i>
International Toll	<i>Not included in UMB services</i>

Features included in the Monthly Line Cost:

Call forward busy, Call forward no answer, Call forward variable, 5 digit calling to 706, 328 and 605 exchanges; 3-way conferencing; Voice mail box with notification.

Basic Caller ID is available for \$2.00/month per line.

EXHIBIT B TERMS AND CONDITIONS

1. eServices and LDS over UMB phone lines and equipment must be used for lawful purposes. Customer shall neither use, nor permit use of, the Services and LDS in violation of any applicable federal, state or local statute, law, ordinance, regulation or rule, all of which are hereafter collectively referred to as "Governmental Rule". Customer agrees that UMB has the right to do electronic monitoring and disclose information where required to do so by any Governmental Rule, to facilitate operation of the UMB telephone system, to safeguard itself or other Customers, or as allowed or required by UMB policy.

2. UMB may temporarily suspend all Services for the purpose of repair, maintenance or improvement of any of UMB's telephone system or Customer's lines and equipment. However, UMB will provide prior notice where it is reasonably practicable under the circumstances, and UMB will restore Services as soon as practicable. CUSTOMER SHALL NOT BE ENTITLED TO ANY SETOFF, DISCOUNT, REFUND, OTHER CREDIT, OR DAMAGES OR COMPENSATION, IN CASE OF ANY SERVICES OR LDS OUTAGE OR INTERRUPTION. Customer will provide UMB or its agents with access to Customer's premises, at reasonable times, if necessary for the repair and/or maintenance of UMB's equipment located therein.

3. Customer acknowledges and agrees that UMB is under no duty to provide any upgrades, updates, enhancements, improvements, additions, replacements, or modifications to UMB's system or equipment.

4. THE GOODS AND SERVICES PROVIDED BY UMB ARE PROVIDED ON AN "AS IS" AND "AS AVAILABLE" BASIS WITHOUT WARRANTY OF ANY KIND TO CUSTOMER OR ANY THIRD PARTY, INCLUDING, BUT NOT LIMITED TO, ANY EXPRESS OR IMPLIED WARRANTIES OF: 1) MERCHANTABILITY; 2) FITNESS FOR A PARTICULAR PURPOSE; 3) EFFORT TO ACHIEVE PURPOSE; 4) QUALITY; 5) ACCURACY; 6) NON-INFRINGEMENT; 7) QUIET ENJOYMENT; AND 8) TITLE. CUSTOMER AGREES THAT ANY EFFORTS BY UMB TO MODIFY ITS GOODS OR SERVICES SHALL NOT BE DEEMED A WAIVER OF THESE LIMITATIONS. MODIFICATIONS MADE TO ANY EQUIPMENT OR PRODUCTS PROVIDED BY UMB BY CUSTOMER OR ANY THIRD PARTY VOID ANY REMAINING EXPRESS OR IMPLIED WARRANTIES. IF CUSTOMER IS DISSATISFIED WITH UMB SERVICES, CUSTOMER'S SOLE REMEDY IS TO TERMINATE THIS AGREEMENT.

5. NO ADVICE OR INFORMATION GIVEN BY UMB OR ITS CONTRACTORS OR THEIR RESPECTIVE EMPLOYEES SHALL CREATE A WARRANTY. UMB DOES NOT WARRANT THAT THE SERVICES WILL BE UNINTERRUPTED OR ERROR FREE, OR THAT CUSTOMER'S LDS OVER UMB LINES AND EQUIPMENT WILL BE UNINTERRUPTED OR ERROR FREE.

6. UNDER NO CIRCUMSTANCES SHALL UMB, ITS EMPLOYEES, OR CONTRACTORS BE LIABLE FOR ANY DIRECT, INDIRECT, INCIDENTAL, SPECIAL, PUNITIVE OR CONSEQUENTIAL DAMAGES THAT RESULT IN ANY WAY FROM CUSTOMER'S (OR ITS CUSTOMERS' OR AUTHORIZED USERS') USE OF OR INABILITY TO USE THE SERVICES OR THE CUSTOMER'S LDS, OR CUSTOMER'S (OR ITS CUSTOMERS' OR AUTHORIZED USERS') RELIANCE ON OR USE OF INFORMATION, SERVICES OR MERCHANDISE PROVIDED ON OR THROUGH THE SERVICES OR LDS, OR THAT RESULT FROM MISTAKES, OMISSIONS, INTERRUPTIONS, ERRORS, DEFECTS, DELAYS IN OPERATION OR TRANSMISSION, OR ANY FAILURE OF PERFORMANCE.

7. UMB shall not be liable for delays or defaults in furnishing goods or services hereunder, if such delays or defaults on the part of UMB are due to:

- Acts of God or of a public enemy;
- Acts of the United States or any state or political subdivision thereof;
- Fires, severe weather, floods, earthquakes, natural disasters, explosions or other catastrophes;
- Embargoes, epidemics or quarantine restrictions;
- Terrorism;
- Shortage of goods, labor strikes, slowdowns, differences with workmen or labor stoppages of any kind;

- Delays of supplier or delay of transportation for any reason;
- Delays beyond the control of UMB in furnishing items or services including, but not limited to, breakdown or failure of machinery or equipment, or termination or suspension of State or UMB telephone services contracts;
- Delay in Customer reporting problems or furnishing information or materials;

Acceptance of delivery of goods or services shall constitute a waiver and release of UMB by Customer for any claim for damages, setoff, discount or other liability on account of delay.

9. Nothing contained in this policy shall be construed to limit UMB's actions or remedies in any way with respect to any of the foregoing activities, and UMB reserves the right to take any and all additional actions it may deem appropriate with respect to such activities, including without limitation taking action to recover the costs and expenses of identifying offenders and removing them from the UMB Services, and levying cancellation charges to cover UMB's costs in the event of disconnection of dedicated access for the causes outlined above.

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