



FLORIDA STATE UNIVERSITY DEPARTMENTAL WIRELESS SERVICES CONTRACTUAL AGREEMENT

THIS AGREEMENT (“Agreement”) is made and entered into between **The Florida State University** (the University or Office of Telecommunications or "OTC") for and on **Behalf of The Florida State University Board of Trustees**, its Successors and Assigns, with an address of Suite 214, Westcott, Florida State University, Tallahassee, Florida 32312 hereinafter referred to as the University, and **Vendor Communications, Inc.**, One Vendor Drive, Vendor, USA 12345 on behalf of itself and it’s “Affiliates” as that term is herein defined, a corporation authorized to do business in the state of Florida, hereinafter referred to as, “Vendor”.

WHEREAS, the University desires to establish a cellular program at FSU for all of its Departmental customers on the, Florida State University (FSU Campus), Tallahassee, Florida, 32306, in the City of Tallahassee, in Leon County, State of Florida.

WHEREAS, Vendor desires to, in cooperation with the University, to establish a non-exclusive cellular service program at the University for all of its Departmental customers on the, Florida State University (FSU Campus), Tallahassee, Florida, 32306, in the City of Tallahassee, in Leon County, State of Florida and expressing its desire in a response to ITN# K-1234-5 and subsequent clarifications and submittals.

NOW, THEREFORE, in consideration of the mutual covenants, terms and conditions contained herein and other good and valuable consideration, the receipt of which is hereby acknowledged from one party to the other, the University and Vendor hereby agree as follows:

DEFINED TERMS. Whenever used in this Agreement, the following terms shall have the meanings respectively assigned to them, unless otherwise stated:

“*Affiliates*” shall mean, with respect to any person, entity, or enterprise, any other person, entity, or enterprise that, directly or indirectly through one or more intermediaries, Controls, is Controlled by, or is under common Control with such person, entity, or enterprise. “Control” (including the correlative terms “Controls”, “Controlled by”, and “under common Control with”) shall mean, with respect to any person, entity, or enterprise, the power, directly or indirectly, either to (i) vote a majority of the voting shares or other voting interests in such person, entity, or enterprise for the election of directors or other governing body of such person, entity, or enterprise or (ii) direct or cause the direction of the management and policies of such person,

entity, or enterprise, whether through the ownership of voting securities, by contract, or otherwise.

“*Service*” shall mean that service as defined in 47 CFR Part 22, Section 22.99 and governed by 47 CFR Part 22, Subpart H as such section and subpart made be subsequently amended or clarified by the Federal Communications Commission.

“*Cellular Service Provider*” shall mean a carrier who provides Cellular Service in any one or more of the MSAs or RSAs using cellular radio technology in conjunction with the use of cellular telephones.

“*Customer*” shall mean the FSU OTC, who will be using the Service purchased herein.

“*Equipment*” shall mean any wireless handset device or accessory purchased from or provided by Vendor for use in connection with the Service.

“*Handset*” shall mean any wireless device required to access Vendor wireless voice and wireless data services.

“*Gross Monthly Bill*” shall mean the grand total of all revenues billed by Vendor to FSU less government fees, taxes, tariffs, and equipment.

I. Term and Terminations

1. The initial term of this Agreement shall commence on the date of the last signature of this Agreement and continue through _____, unless sooner terminated in accordance with this Agreement (hereinafter referred to as the “Initial Term”).
2. First Renewal Term. By mutual written agreement at any time prior to the expiration of the initial term, the parties may extend the term of this Agreement for an additional 12-month period (“First Renewal Term”).
3. Second Renewal Term. By mutual written agreement at any time prior to the expiration of the First Renewal Term, the parties may extend the term of this Agreement for a further additional 12-month period (“Second Renewal Term”).
4. Termination. This Agreement may be terminated during the Initial Term or either Renewal Term by mutual agreement of the parties upon thirty (30) days written notice without penalty.
5. Either party shall have the right to terminate this Agreement immediately for cause. For purposes of this Agreement, “cause” shall mean the happening of an Event of Default (as defined herein) by the other party. Such termination shall be effective upon written notice to the defaulting party, identifying the Event of Default upon which termination is based.

5.1 The following events shall each constitute an “Event of Default” hereunder:

- a) FSU OTC fails to remit payments(s) to Vendor in compliance with the Florida Prompt Payment Act and such failure to remit payments is not corrected within 30 days.
- b) Any covenant or agreement of either party contained herein or in any other agreement between Vendor and FSU OTC is not performed and such failure or breach, if capable of being remedied, is not remedied within thirty (30) days after the defaulting party has been notified of such failure or breach; or
- c) Any bankruptcy, insolvency, reorganization, arrangement, liquidation, dissolution or similar proceeding, domestic or foreign, is instituted by or against either party; or
- d) Either party shall become insolvent, generally shall fail or be unable to pay its debts as they mature, shall admit in writing its inability to pay its debts as they mature, shall make a general assignment for the benefit of its creditors, shall enter into any composition or similar agreement, or shall suspend the transaction of all or a substantial portion of its usual business.

6. Upon expiration of the Second Renewal Term of this Agreement, without mutual written agreement to renew the term, this Agreement shall continue from month-to-month until terminated by either party upon thirty (30) days written notice to the other party. However such a month-to-month extension will not exceed twelve (12) months.

7. FSU OTC may cancel this Agreement in the event Vendor refuses reasonable public access to all documents, papers, letters, or other material made or received by Vendor in conjunction with this Agreement, unless the records are exempt from Section 24(a) of Article I of the Florida Constitution or Florida Statutes, Section 119.07(1).

8. All services derived from this contract will be co-terminus upon the expiration or termination of this Agreement.

II. Primary Duties and Responsibilities

1. Vendor will provide Service pursuant to this Agreement, under the terms and conditions of agreements made in Invitation to Negotiate ITN# K1234-5. This shall include but not limited to the following:

- a) Cellular Service Rate Plans
- b) Wireless Data Rate Plans
- c) Accessories
- d) Features
- e) Future Wireless Data and Voice Products and Services Offerings
- f) Marketing Support
- g) Monthly Electronic Billing

- h) Equipment (Handsets, Wireless Data Cards and Blackberry Devices)
 - i) Training
 - j) Dedicated Account Representative and Accounting Support
2. The University will use its best efforts to support Vendor, to enable Vendor to provide Services to University Departments. The parties shall perform their respective obligations contained herein.
3. FSU OTC may purchase Services at any time during the term of this Agreement. FSU OTC will have the same or equivalent selection of rate plans (except prepaid plans) offered and publicized by Vendor to the general public at published rates. The pricing and standard discounts for such rate plans are in Section IX.
4. All prices for services and equipment may only be changed by a reduction in price.
5. Vendor will notify FSU OTC of all new rates, plans, equipment, accessories and promotional offers via e-mail or in writing. No changes to FSU customer accounts will be made without FSU OTC written approval.
6. Vendor will provide, at **no cost** to FSU OTC, a “Star number” that will allow customers to call the OTC.
7. Vendor has committed to FSU to have less than 1% RF resource blocking and to bring added network capacity to the FSU campus as a result of this ITN. To that end, within 30 days of the date this Agreement is fully executed, and annually thereafter, Vendor will perform a campus wide in and out of building RF (radio frequency) study to identify coverage deficiencies. On an on-going basis Vendor will reinforce coverage on campus to provide for increased usage due to this contract. Areas to be reinforced with exterior or interior repeaters/antenna will be mutually agreed upon.

III. Features

1. Vendor will provide the following features on all plans at no cost to FSU OTC subscribers:
- a) Basic Voicemail (___ Messages/ ___ Minute/ ___ Day Storage)
 - b) Call Forwarding
 - c) Call Waiting
 - d) Caller ID
 - e) 3-Way Calling
 - f) Detailed Billing
 - g) Text Messaging (___ Incoming and ___ Outgoing Only/Month)
 - h) Access Downloads ___ ea. / Activation (Tone/Screen Saver)
2. Vendor shall activate features on lines only when requested by FSU OTC other than those listed in Section III Subsection 1 of this agreement.

IV. Billing / Reports

1. Vendor will provide FSU OTC with billing in an electronic format such as CD-ROM or FTP file for each billing period. As a minimum, the Vendor billing system shall provide an electronic bill in ASCII format prior to the first (1st) of each month for the billing period. Any and all changes in format and/or media must be approved by the OTC, which shall not be unreasonably withheld. Hard copy (paper bills) and reports shall also be provided or access on line to such documents shall be provided to FSU OTC. Vendor will provide this electronic billing at no cost to the University.
2. If Equipment is lost or stolen, FSU OTC shall be responsible for all charges incurred until the loss, theft or absences is reported by FSU OTC to Vendor. Vendor will use commercially reasonable efforts to deactivate the account within two (2) business hours following notice.
3. Vendor will assign a Key Account Representative on-site at the FSU OTC at least two days per week for up to ___ hours per day to assist the FSU OTC staff in billing research, submission of corrections and billing resolutions. Vendor local management and FSU OTC management will establish a mutually agreed schedule for the assigned Key Account Representative to be present at the FSU OTC location.
4. At such time as Vendor's web-based billing system, that will be replacing Bill Partner becomes available, Vendor and FSU OTC will work together to move FSU OTC's billing to this new on-line system.
5. Vendor will provide to FSU OTC all retroactive billing credits when applicable. Such retroactive credits will be processed through Vendor's on-site Key Account Representative.
6. Vendor will provide a quarterly analysis of FSU OTC accounts at no cost to the University to ensure that Customers are in the most advantageous plan.
7. Other Monthly and Quarterly reports will be identified and agreed to by both parties in writing and within 60 days of contract execution.
8. FSU shall pay Vendor for the provision of Services in accordance with the terms and conditions of this Agreement and the Florida Prompt Payment Act (Florida Statutes, Section 218.73 et al.). Notwithstanding disputed charges, in the event FSU OTC fails to pay Vendor in accordance with the foregoing, and Vendor elects to terminate this Agreement for such violation, all Service provided hereunder shall be terminated.
9. Vendor will identify all FSU cell account as "VIP" and as such will not deactivate accounts during billing disputes and/or unanticipated payment of bills.

V. Equipment

1. Vendor will provide the following accessories at no cost to FSU OTC with each new handset purchased by FSU OTC: Wall Charger and one (1) battery.

2. Vendor will offer Equipment to FSU OTC at two-year contract pricing, as published on www.Vendor.com, with discounts applied as outlined in Section IX. In addition, Vendor will offer FSU OTC at least two (2) different publicly available models of handsets at a cost of _____ or less.

3. Vendor will give FSU OTC _____ days notice via e-mail or in writing of any discontinued equipment or services. Future handsets and service plans will be offered to FSU OTC at the same discounts as outlined in Section IX.

4. Vendor will pass through to FSU OTC the one (1) year manufacturer's warranty for Equipment from the date of initial activation. The warranty that is passed through by Vendor from the Equipment manufacturer will be facilitated by the assigned Key Account Representative.

5. On-hand Inventory/Spares

a) Vendor will provide at no cost to FSU OTC a stock of handsets equal to _____ % of active accounts or a minimum of _____ handsets at FSU OTC strictly for the purposes of in-house activation and visual demonstration ("Inventory"). The mix of handsets in stock shall be reached by mutual agreement of FSU OTC and Vendor and may be changed from time to time, as both parties deem appropriate.

b) All stocked inventory shall be supplied at **no cost** to the University; provided, however, that upon termination of this Agreement, FSU OTC shall return all inventory within thirty (30) days after termination. If the FSU OTC does not return all such Inventory, FSU OTC shall pay Vendor the non-contract retail price, minus discount, for all Inventory not returned to Vendor. Both FSU OTC and Vendor will mutually determine what types/models of phones to include in the On-Hand Inventory via recommendations as well as analysis of equipment sales trends.

c) Upon sale of Equipment in Inventory, FSU OTC will notify their Vendor Key Account Representative for 3 day replenishment.

d) FSU OTC acknowledges and agrees that the Inventory shall be maintained on its premise for the use of onsite activation and visual demonstration. The Inventory shall remain Vendor property until such time as the Inventory is sold by FSU OTC to a Customer or until FSU OTC purchases the Inventory. Notwithstanding the foregoing, at all times during each term of this Agreement, FSU OTC shall retain all risk of loss for the Inventory. In the event Inventory is lost or stolen, FSU OTC shall pay Vendor for such lost or stolen Inventory at the non-contract retail price less discounts outlined in Section IX. At the discretion of FSU OTC, lost or stolen Equipment from Inventory may be replaced by FSU OTC as part of the _____ % Equipment Upgrade allocation detailed in Section V, Subsection 10 of this agreement.

e) The parties agree to reconcile the Inventory on a monthly basis.

6. Demonstration Equipment - Vendor will provide FSU OTC the Equipment and Services identified in this Section 6, or their equivalent replacements for use by FSU OTC. In addition, FSU OTC will be able to replace existing demonstration handsets yearly, as new ones are offered by Vendor at no cost to FSU OTC on the Equipment and Services identified in this Section 6. Vendor will provide access to the Service in accordance with each Service plan identified below, at no charge to FSU OTC. FSU OTC shall be liable for payment to Vendor for any overage and usage charges not included in the Service plans. FSU OTC shall be responsible for any loss or theft of Demonstration Equipment and shall pay Vendor for any loss, damage or theft of Demonstration Equipment beyond the annual replacements.

* _____ handsets with _____ Minutes, _____ Off-peak Minutes, & _____ Mobile to Mobile Minutes each at no cost to FSU OTC.

* _____ BlackBerry Handsets, or equivalent data handset, with _____ Total Freedom Minutes, _____ Off-peak Minutes, _____ Mobile to Mobile Minutes, & Unlimited Data each at no cost to FSU OTC.

* _____ Data Cards with Unlimited Data Service at no cost to FSU OTC.

7. Special Event Handsets and Service:

a) Vendor will provide at no cost to FSU OTC, an active pool of twenty (20) handsets for use by FSU OTC on an "as needed" basis for special events. Such handsets will not be assigned a service plan and FSU OTC will pay Vendor twenty-five cents per minute of usage for such handsets, unless and until FSU OTC requests that Vendor change the Service plan for any such handset due to a Special Event.

b) FSU OTC will contact their Vendor Key Account Representative with requests. Vendor will assign the handset a service plan in accordance with an FSU OTC request. The assigned service plan will be offered at the discounts outlined in Section IX.

c) At the discretion of FSU OTC, prorated Service Plans with prorated minutes will be offered for short term special events. FSU OTC will advise the Key Account Representative of the requested Special Event timeframe.

d) Once the special event is complete, Vendor will change the service plan on each handset back to the zero access, \$ _____ per minute rate to end all applicable billings associated with those numbers.

8. Vendor will provide FSU OTC _____ BlackBerry handsets at no cost.

9. As part of this agreement, Vendor will provide FSU OTC service using _____ technology.

10. Handset Upgrades - Vendor will offer FSU OTC replacement handsets (Including Data Cards and Data Handsets) in accordance with the discounts provided in this agreement, not to exceed a number of handsets equivalent to _____ % of the current Customer accounts. The calculation for eligibility for handset replacements shall be reset to zero (0%) upon expiration of the Initial Term, First Renewal Term, and Second Renewal Term. A tracking mechanism will be determined by mutual agreement of FSU OTC and Vendor and may be changed from time to time, as both parties deem appropriate.

VI. Customer Service / Activation

1. Vendor will provide activation of new Service or Rate Plan changes at **no cost** to FSU OTC. Specifically the following fees will be waived on FSU OTC orders

- a) Activation
- b) Rate Plan Changes
- c) Restock
- d) Installation
- e) Port-In
- f) Port-Out
- g) Feature Changes
- h) Upgrade
- i) Shipping and Handling (unless next day \$ _____)

NOTE: Unless specifically outlined in this agreement no other fees will apply.

2. Vendor will provide the following Customer Service Timeframes:

- a) Activation - _____ Business Day(s)
- b) Disconnect - _____ Day(s)
- c) ESN Change - _____ Day(s)
- d) Rate Plan Change - _____ Billing Cycle
- e) Equipment Order - _____ Day(s) (from On-hand Inventory)
- f) Equipment Order - _____ Business Days (if not in On-hand Inventory)
- g) Feature Add/Delete - _____ Day(s)
- h) Account Inquiry - _____ Day(s)

3. Vendor will facilitate all service and warranty service through the assigned Vendor Key Account Representative

4. Any additional operational procedures and timelines will be developed by FSU OTC and Vendor and will be based on mutual agreement.

5. _____ Day Satisfaction Guarantee Program:

- a) Vendor utilizes this program in their retail stores to allow their customers to “demo” or “trial” their wireless services.

- b) If a Customer is not completely satisfied with the service within the first _____ consecutive days, FSU OTC can end that Customer's Service, return the Equipment, and pay only for the Service that Customer used.
- c) The _____ Day Satisfaction Guarantee applies to all Vendor postpaid plans activated through Vendor and FSU OTC. Guarantee does not apply to prepaid calling plans.
- d) FSU OTC is responsible for returning the undamaged Equipment to the original point of purchase in its original packaging with a copy of the order within _____ consecutive days to receive purchase refund.
- e) Refund is for the Equipment purchase price FSU OTC must pay for Services used by the Customer.
- f) This program benefits FSU OTC by allowing FSU OTC to pay for the Customer's trial. If customer likes the service, the Customer keeps the Equipment and continues use. No additional action is required by FSU OTC.
- g) Should the Customer decide to return the Equipment, FSU OTC notifies their Vendor Key Account Representative for same day disconnection of Service. The prorated Service amounts would reflect on the billing period following the disconnection of Service for billing to the Customer. FSU OTC will notify their Vendor Key Account Representative within 24 hours of the return to request disconnection of service.
- h) FSU OTC also recovers the Equipment for resale.

VII. Marketing / Training / Logos

1. All on-campus marketing must have prior approval by the FSU OTC. The University shall assist and cooperate with Vendor in the marketing and promotion of the services to faculty and staff. Such assistance shall include but not be limited to providing access to high traffic areas for booth and tent promotions, bill stuffers, university faculty and staff functions and other activities. The University shall provide Vendor with the marketing name it desires to use to describe the marketing campaign for the services provided herein. The University hereby warrants that the University has the full right, power and authority to use such name and consents to Vendor's use of such name and such other of the University's logo, trademarks and service marks as may be required for the purposes of marketing and providing the services to Customers hereunder.
2. Other than as provided herein neither party grants the other any right in, or license to use, in any form of communication to any third party or to the public generally, any trademarks, trade names, service marks insignia, symbols, decorative designs, or other proprietary names or marks (herein the "Marks") belonging to it except as previously authorized in writing.

3. Vendor grants to FSU OTC the non-exclusive, revocable right to use Vendor Marks solely to identify Vendor Services, and FSU OTC acknowledges that no rights are granted to FSU OTC to use the Marks of Vendor or its Affiliates except for this limited purpose for the duration of this Agreement. FSU OTC agrees to abide by all of Vendor's rules and regulations, as they currently exist or may from time to time be modified, pertaining to the use of Vendor Marks. FSU OTC acknowledges and agrees that all usage of Vendor Marks by FSU OTC and any goodwill established thereby shall inure to the exclusive benefit of Vendor and this Agreement does not confer any goodwill or other interests in the Vendor Marks upon FSU OTC. FSU OTC must obtain Vendor's prior approval to use the Vendor Marks. Vendor will provide marketing collateral, brochures and table top displays at no cost to FSU OTC.

4. Vendor for the duration of this contact will not actively market to any FSU Department without the express written consent of the FSU OTC.

5. Marketing and promotions will be jointly coordinated by FSU OTC and Vendor. FSU OTC can apply up to _____ % of discounts to FSU by Vendor pursuant to Section IX toward marketing FSU OTC services. Nothing contained herein shall be construed as requiring Vendor to pay any costs associated with marketing FSU OTC services or in any way provide marketing services to FSU OTC.

6. Vendor will provide training and training materials for individuals, groups and FSU OTC staff (train the trainer) on all Services and Equipment sold, at no cost to the FSU OTC. Training procedures and timelines will be developed by FSU OTC and Vendor and will be based on mutual agreement.

7. In addition to the Key Account Representative outlined in Section IV Billing/Reports, Vendor will have a dedicated Business Solutions Representative to service the FSU OTC account. Vendor will not utilize indirect agents to support or service the FSU OTC account.

VIII. Government Fees

1. All rates outlined in this contract are exclusive of all taxes; tax-like charges; tax-related surcharges; and other tariff charges, including without limitation and Universal Service Fund charges. Governmental Fees that were specifically outlined and agreed upon in this contract are as follows:

- a) Regulatory Cost Recovery Fee \$_____
- b) Telecom Connectivity Fee \$_____
- c) 911 Service Fee \$_____
- d) USF Fee _____% of Wireless Access and Airtime.

2. Unless specifically outlined in this agreement no other discretionary Vendor fees will apply. Vendor reserves the right, with proper notice, to charge FSU OTC other fees as mandated by applicable laws and regulations.

IX. Discounts

1. Vendor will provide FSU OTC a discount on all voice and data services as outlined below. The discount percentage will be based upon the total revenue of FSU OTC's Gross Monthly Bill. The gross monthly bill will be defined as the Grand Total of the entire monthly bill for the FSU OTC less government fees and equipment purchases. The discount percentages will be set by the Gross Monthly Billing and will apply to the following voice and data services:

- a) All publicly offered voice rate plans (Except Prepaid Rate Plans)
- b) Data service
- c) Text messaging packs
- d) Mobile web service
- e) BlackBerry services
- f) All future publicly offered data features and rate plans

2. The following discounts will apply to the voice and data Services detailed above in this section. The revenue thresholds below include all combined billable revenues, including but not limited to both voice and data services, which make up the Gross Monthly Bill.

Gross Monthly Bill Thresholds:

\$0 to \$10,000	_____ %	Discount
\$10,000.01 to \$25,000.....	_____ %	Discount
\$25,000.01 to \$50,000.....	_____ %	Discount
\$50,000.01 +	_____ %	Discount

4. Vendor shall apply these discounts to any existing, FSU OTC Vendor accounts upon commencement of this contract.

5. In addition, Vendor will provide FSU OTC a _____ discount off the internet published two-year contract pricing on all Handset and Handset Accessory purchases made pursuant to this agreement.

6. Vendor will supply FSU OTC a data card at \$_____ for each activation of Vendor Service. Data cards are also available for replacement under Article I, Section V, Subsection 10 of this agreement.

X. Governing Law and Venue

This Agreement is governed by the laws of the State of Florida and any provisions herein, in conflict therewith, shall be void and of no effect. Venue is in Leon County, Florida.

XI. Entire Agreement / Attachments / Priority

The entire understanding of the parties shall consist only of the terms and conditions contained and/or specifically incorporated in this Agreement. This Agreement supersedes any prior proposals, commitments or representations of any kind, whether oral or written.

XII. Severability

In the event that any provision of this Agreement shall be held invalid or unenforceable, such holding or such unenforceability or invalidity shall not render any other term or provision hereof invalid or unenforceable, and all other terms and provisions shall be enforceable and valid.

XIII. Captions

The paragraph headings and captions contained herein are for reference only, and shall not be considered as substantive parts of this Agreement. The use of the singular or plural form shall include the other form, and the use of the masculine, feminine, or neutral gender shall include the other genders.

XIV. Force Majeure

Neither party shall be responsible or liable for any failure to perform hereunder if such failure is caused by Acts of God, acts of government, strikes or labor disputes, failures of transportation, fire, flood, or other casualty, failure of subcontractors or suppliers, acts of terrorism, or any other cause (whether or not similar in nature or any specified herein) beyond either parties' reasonable control.

XV. Waiver

Failure of either party to enforce any provision of this Agreement shall not be considered a waiver of that party's right to enforce said provision or any other provision included herein.

XVI. Notices

Any notice or other communication hereunder shall be in writing, shall be sent via registered or certified mail, overnight courier, or confirmed facsimile transmission and shall be deemed given when sent or when deposited, postage prepaid, in the United States mail, addressed as set forth below, or to such other address as either of the parties shall advise the others in writing.

Notices to the University shall be addressed as follows:

Original:

Office of Telecommunications
Florida State University
Attention: Assistant Director, Fiscal Operations
644 West Call St.
Rod K. Shaw Building, MC 1120
Tallahassee, FL 32306-1120
Telephone: (850) 645-4279
Facsimile: (850) 644-4554

Copy To:

Office of Telecommunications Florida State University
Attention: Office Manager
644 West Call St.
Rod K. Shaw Building, MC 1120
Tallahassee, FL 32306-1120
Telephone: (850) 644-9195
Facsimile: (850) 644-4554

Notices to Vendor shall be addressed as follows:

Original:

Vendor Communications, Inc

Copy To:

Vendor Communications, Inc

If either party wishes to alter the recipient or address to which communications to it are sent, it may do so by providing the name of the new recipient or a new address, in writing, to the other party. All notices, requests or other communications addressed in accordance with this Agreement shall be effective when received if delivered by mail or if personally delivered, the date on which delivery is made.

XVII. Single Point of Contact

Vendor will provide a single point of contact for telecommunications services at the University and will make every effort to coordinate all telecommunications services and activities with the OTC. Vendor will not proactively contact or have contact with any segment of the University other than the OTC regarding their services and activities and will make every effort to refer contacts by University affiliated departments to the OTC. The OTC will also be notified when such contacts are made by University personnel other than OTC.

XVIII. Modification

No modification of any part or provision of this Agreement shall be valid or binding unless in writing and executed by both parties hereto.

XIX. Assignability

The University shall not assign this Agreement, in whole or in part, without prior written consent of Vendor. In the event Vendor assigns its rights or delegates its duties herein, the parties agree that any assignee or delegate shall be subject to all terms and conditions of this Agreement and any Amendment(s).

XX. Article and Section Headings

The Article and Section headings contained herein are for purposes of convenience only and shall not be deemed to constitute a part of this Agreement or to affect the meaning or interpretation of this Agreement in any way.

XXI. Independent Contractors

The relationship between the parties shall not be that of independent contractors, and not a partnership, agency or joint venture. Nothing contained in this Agreement shall be deemed to constitute a partnership or agency agreement between them.

XXII. Limited Representation, Limitation of Liability and Disclaimer of Warranties

Both parties represent and warrant they have the full right, power and authority to enter into this Agreement and to perform their obligations hereunder.

NEITHER VENDOR AND ITS AFFILIATES, AND EACH OF THEIR RESPECTIVE OFFICERS, DIRECTORS AND EMPLOYEES, ON THE ONE HAND, NOR FSU OTC, ON THE OTHER HAND, SHALL BE LIABLE TO THE OTHER(S): (i) FOR ANY PUNITIVE, SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES OF ANY KIND; OR (ii) FOR ANY LOST BUSINESS, REVENUES OR PROFITS, OR (iii) FOR ANY CLAIM ALLEGING THAT THE EQUIPMENT OR ANY COMMUNICATIONS SERVICES SOLD OR DISTRIBUTED TO ANY CUSTOMER CAUSED ANY INJURY OR ECONOMIC LOSS, INCLUDING, WITHOUT LIMITATION, DEATH OR BODILY INJURY TO ANY PERSON ALLEGEDLY RESULTING FROM THE SALE, DISTRIBUTION OR USE OF ANY COMMUNICATIONS SERVICES OR EQUIPMENT. THESE LIMITATIONS ON LIABILITY SHALL APPLY WITHOUT REGARD TO WHETHER THE CLAIM IS BASED UPON BREACH OF WARRANTY, BREACH OF CONTRACT, NEGLIGENCE, TORT, STRICT LIABILITY, STATUTE, REGULATION, OR ANY OTHER LEGAL THEORY OR LAW, WHETHER OR NOT SUCH PARTIES ARE AWARE OF OR HAVE BEEN ADVISED OF THE POTENTIAL FOR OR POSSIBILITY OF SUCH DAMAGES. THIS SECTION SHALL SURVIVE THE EXPIRATION OR EARLIER TERMINATION OF THIS AGREEMENT.

Neither Vendor nor its vendors, suppliers or licensors are liable for any damages arising out of or in connection with any: (a) act or omission by FSU or another person or entity; (b) temporary failure, deficiencies, or problems with the Equipment, our network coverage, or Services (e.g., dropped, blocked, interrupted calls/messages, etc.); (c) traffic or other accidents, or any health-related claims allegedly arising from the use of Services or Equipment; (d) content or information accessed while using the Services, such as through the internet; or, (e) interruption or failure in accessing or attempting to access emergency services from the Equipment, including through 911, E911 or otherwise. Nothing in this Agreement shall be construed as a grant by Vendor of any software license. Vendor does not produce Equipment or software and the only warranties or representations with respect to Equipment or software are those provided by the manufacturer, with respect to which VENDOR has no liability whatsoever. VENDOR MAKES NO REPRESENTATIONS OR WARRANTIES, EXPRESS OR IMPLIED,

INCLUDING (TO THE EXTENT ALLOWED BY LAW) ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE CONCERNING YOUR SERVICES OR WIRELESS DEVICES. VENDOR DOES NOT PROMISE UNINTERRUPTED OR ERROR-FREE SERVICES AND FSU AGREES VENDOR IS NOT LIABLE IN ANY MANNER FOR ANY AND ALL SUCH PROBLEMS.

XXIII. Sexual Harassment

Vendor acknowledges that as a party to the contract, including officers, agents and employees, agrees to abide by and comply with all provisions of the FSU Sexual Harassment Policy, dated July 1, 1998. Any violations of the provisions of the FSU Sexual Harassment Policy by Vendor, including officers, agents, and employees, shall be grounds for unilateral termination of this Agreement, for cause, by the University.

XXIV. Litigation

In the event of litigation between the parties hereto, each party agrees to be liable and responsible for its own costs, expenses and legal fees, including attorney fees and costs.

XXV. Indemnification and Liability

Subject to Section XXIII, each Party hereby assumes any and all risks of personal injury and property damage attributable to the acts or omissions of that Party and/or the officers, employees, or agents thereof. The Parties acknowledge that the State of Florida, its agencies and political subdivisions cannot be sued unless sovereign immunity is waived; that the power to waive sovereign immunity is vested exclusively in the Legislature; and that consent to be sued may only be effectuated by legislative act. Therefore the Parties agree that nothing contained in this Agreement shall be construed or interpreted as a consent on the part of the State of Florida to be sued nor as a waiver of sovereign immunity beyond the waiver provided in Section 768.28, Florida Statutes, or as denying to either Party any remedy or defense available to such Party under the laws of Florida.

XXVI. Consents, Approvals and Requests

Except as specifically set forth in this Agreement, all consents, requests and approvals to be given by either party under this Agreement shall be in writing and not be unreasonably withheld. Each party shall make only reasonable requests under this Agreement.

XXVII. Good Standing

Vendor must maintain good standing as a Florida profit or non-profit corporation; partnership, limited liability company, or other recognized business entity authorized to transact business pursuant to the laws of Florida and any other applicable law. Furthermore, upon request of FSU, Vendor shall submit a certified copy of a Certificate of Status from the Secretary of State, Division of Corporations, to FSU.

XXVIII. Lobbying

The parties are prohibited from using funds provided under this Agreement for the purpose of lobbying the Florida Legislature or any official, officer, commission, board, authority, council, committee, or department of the executive or judicial branch of state government.

XXIX. Insurance

Vendor shall obtain and maintain statutory coverage for worker's compensation insurance and commercial general liability insurance, in amounts no less than one million dollars (\$1,000,000) per occurrence and other terms as designated by Vendor; and shall name the University as an additional insured under such policies and shall provide the University with certificates of insurance evidencing this coverage.

XXX. Confidential Information

a) Each party shall not disclose to any third party, without the express, prior, written approval of the other party, any personally identifiable information about any either party, and their respective officers, employee, agents or in the case of the University, student, faculty, or staff member, except as set forth in this Agreement or where permitted by Florida and Federal law, which includes but is not limited to the Family Educational Rights and Privacy Act, 20 U.S.C. Section 1232g, the Gramm-Leach-Bliley Act, 15 U.S.C. 6801, implemented by 16 CFR Part 314 and the United States of America Federal Trade Commission (FTC) Rule on "Standards for Safeguarding Customer Information" and Section 1002.22, Florida Statutes.

b) In connection with this Agreement, each of the University and Vendor may be exposed to and shall be furnished with certain information, relating to the other's plans for certain productions and services, which are confidential. Each of University and Vendor shall keep confidential and not reveal or disclose any of said information, material or data or the terms of this Agreement, or any agreement University enters into pursuant to this Agreement, during the Term or thereafter to any third party. Neither University nor Vendor shall disclose or make known to any third party, directly or indirectly, the interest of the other in this Agreement. The provisions of this XXXI(B) shall not apply to information which is (i) or becomes publicly available, (ii) information which is required to be disclosed pursuant to a court order or applicable law, rules or regulations or (iii) independently developed by the disclosing party.

XXXI. No Third Party Beneficiary

With the exception of the parties to this Agreement (and their permitted successors and assigns), the parties do not intend to confer, and there shall not exist, any right on the part of any person, entity or enterprise to claim any right, remedy or benefit under this Agreement.

XXXII. Counterparts

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

XXXIII. Survival of Obligations

Termination of this Agreement for any cause shall not release either party from any liability which, at the time of termination, has already accrued to the other party or which thereafter may accrue in respect to any act or omission prior to termination or from any obligation, which is expressly stated herein to survive termination.

XXXIV. Successors and Assigns

This Agreement shall, upon execution by the parties, become binding upon and inure to the benefit of the parties and their respective successors and assigns. Purchaser may not transfer or assign any of its rights under this Agreement without express written consent of Vendor.

EXAMPLE

IN WITNESS WHEREOF, the parties have set their hand and seal on the dates written below.

THE FLORIDA STATE UNIVERSITY,

For and on behalf of the Florida State University Board of Trustees

BY: _____
JOHN R. CARNAGHI Date
Vice President for Finance and Administration

Attest: _____
Date

Reviewed for content and form by **FSU General Counsel**

Name: _____ Date: _____

Reviewed for content and form by **FSU Purchasing**

Name: _____ Date: _____

VENDOR,

BY: _____

Name: _____ Date: _____

Title: _____

Attest: _____ Date: _____