

AN AGREEMENT
BY AND BETWEEN
THE TEXAS A&M UNIVERSITY SYSTEM OFFICES
AND VISIONALITY

This Master Agreement ("Agreement") is entered into and effective February 6, 2020 (the "Effective Date"), by and between The Texas A&M University System (hereafter referred to as "A&M System"), an agency of the state of Texas, and Designs that Compute dba Visionality (hereafter referred to as "PROVIDER"). A&M System and PROVIDER are sometimes hereafter referred to as "Party" individually or "Parties" collectively.

A&M System and PROVIDER hereby agree as follows:

1. SCOPE OF SERVICES

PROVIDER will work with A&M System if assigned a project to provide Audio Video ("AV") integrator services to include but not limited to consulting, design, procurement and installation. Refer to Exhibit A, attached hereto for a more complete scope of services ("Services").

Note that this Agreement is part of a pool of integrators ("Pool") established from Request for Qualifications ("RFQ") #RFQ01 FPC-19-030. Individual projects will be assigned as stated within Exhibit A. There is no guarantee of work as a result of this Agreement.

2. TERM OF THE AGREEMENT

The initial term of this Agreement shall begin as of the Effective Date and will extend for three (3) years. This Agreement can be extended for an additional two (2) year term upon written agreement of both parties. Any extensions shall be at the same terms and conditions plus any approved changes to be determined by A&M System and negotiated in writing with the PROVIDER.

3. PAYMENT TERMS

- A. The A&M System shall compensate the PROVIDER for the scope, costs, rates and fees negotiated at the time a specific project is assigned. No additional expenses will be paid by the A&M System unless approved prior to commencement. PROVIDER shall invoice for amounts due consistent with the payment schedule outlined in the purchase order for that specific project. Payment will be made to PROVIDER upon approval of such invoice by the appropriate A&M System personnel.
- B. It is the policy of the state of Texas to make payment on a properly prepared and submitted invoice within thirty (30) days of the latter of any final acceptance of performance or the receipt of a properly submitted invoice, in conformance with the Texas Prompt Payment law. Generally, payment will be made on the 30th day unless a discount or other payment terms have been arranged for more immediate payment.
- C. All payments shall be made by electronic direct deposit. PROVIDER is required to complete and submit to A&M System a Vendor Direct Deposit Authorization form prior to the first payment request. The form can be accessed at;

<https://www.tamus.edu/business/budgets-and-accounting/accounting/general/>

- D. All invoices must reference the purchase order number issued for a specific project and include a description of services provided as well as time, deliverables, and activities associated with that invoice.

4. DEFAULT AND TERMINATION

- A. In the event of substantial failure by PROVIDER to perform in accordance with the terms hereof, A&M System may terminate this Agreement upon fifteen (15) days written notice of termination setting forth the nature of the failure (the termination shall not be effective if the failure is fully cured prior to the end of the fifteen-day period), provided that said failure is through no fault of A&M System.
- B. A&M System may terminate this Agreement at any time upon thirty (30) days prior notice to PROVIDER.

5. PUBLIC INFORMATION

- A. PROVIDER acknowledges that A&M System is obligated to strictly comply with the Public Information Act, Chapter 552, Texas Government Code, in responding to any request for public information pertaining to this Agreement, as well as any other disclosure of information required by applicable Texas law.
- B. Upon A&M System's written request, PROVIDER will promptly provide specified contracting information exchanged or created under this Agreement for or on behalf of A&M System.
- C. PROVIDER acknowledges that A&M System may be required to post a copy of the fully executed Agreement on its Internet website in compliance with Section 2261.253(a)(1), Texas Government Code.
- D. The requirements of Subchapter J, Chapter 552, Texas Government Code, may apply to this Agreement and the PROVIDER agrees that the Agreement can be terminated if the PROVIDER knowingly or intentionally fails to comply with a requirement of that subchapter.

6. DISPUTE RESOLUTION

The dispute resolution process provided in Chapter 2260, *Texas Government Code*, and the related rules adopted by the Texas Attorney General pursuant to Chapter 2260, shall be used by A&M System and PROVIDER to attempt to resolve any claim for breach of contract made by PROVIDER that cannot be resolved in the ordinary course of business. PROVIDER shall submit written notice of a claim of breach of contract under this Chapter to Billy Hamilton, Deputy Chancellor and Chief Financial Officer for A&M System, who shall examine PROVIDER's claim and any counterclaim and negotiate with PROVIDER in an effort to resolve the claim.

7. INSURANCE

PROVIDER shall obtain and maintain, for the duration of this Agreement or longer if a specific project assignment extends beyond the term of this Agreement, the minimum insurance

coverage set forth in Exhibit B, attached hereto.

8. HUB SUBCONTRACTING PLAN

If awarded a project as a result of this Agreement, the PROVIDER must complete a HUB Subcontracting Plan ("HSP") in full per the instructions below within thirty days from the notice to proceed for that specific project.

- a. Complete Section 1
- b. Complete Section 2a through d.
- c. Complete Section 4
- d. Complete Method A or B as applicable depending on your response to questions in Section 2c-d. Below are the instructions for each Method;

Method A: Provide Method A (Attachment A) for each opportunity identified in Section 2b of the HSP and complete all sections. Section A-2 shall include all subconsultants selected for that opportunity, both HUBs and non-HUBs.

Method B: Provide Method B (Attachment B) for each opportunity identified in Section 2b. Reminder that all supporting documentation listed in Section B-3 shall be provided as part of this attachment. The following are additional items of note as part of the good faith effort required:

- The respondent shall provide potential HUB subcontractors reasonable time to respond to the respondent's notice. "Reasonable time to respond" in this context is no less than seven (7) working days from receipt of notice, unless circumstances require a different time period and it is approved by A&M System in writing.
- The respondent shall use the State of Texas Centralized Master Bidders List (CMBL), HUB Directory, internet resources, and/or other directories as identified by the State of Texas or the A&M System HUB Program Office when searching for HUB subcontractors. **A complete list of all State of Texas certified HUBs may be electronically accessed at;**
<https://mycpa.cpa.state.tx.us/tpasscmbllsearch/index.jsp>
- The respondent shall provide the notice described in this section to **three (3) or more** HUBs for **each** subcontracting opportunity as stated in Section B3a. The A&M System encourages respondents to seek and find a "Diverse Group" of Historically Underutilized Businesses in each category in which a subcontract of services is solicited.
- The respondent shall provide notice to minority and women business trade organizations or development centers that assist in identifying HUBs by disseminating opportunities to their membership/participants. A list of possible organizations/centers can be found at the following site;
<https://comptroller.texas.gov/purchasing/vendor/hub/resources.php>
- The respondent shall negotiate in good faith with qualified HUBs, not rejecting qualified HUBs who were also the best value responsive bidder.
- Provide written justification of the selection process if a non-HUB subcontractor is selected in Section B-4c.

9. MISCELLANEOUS

- A. **Indemnification. PROVIDER agrees to indemnify and hold harmless A&M System from any claim, damage, liability, expense or loss to the extent arising out of PROVIDER's negligent or willful errors or omissions under this Agreement.**
- B. **Independent Contractor.** PROVIDER is an independent contractor, and neither PROVIDER nor any employee of PROVIDER shall be deemed to be an agent or employee of A&M System. A&M System will have no responsibility to provide transportation, insurance or other fringe benefits normally associated with employee status. PROVIDER shall observe and abide by all applicable laws and regulations, policies and procedures, including but not limited to those of A&M System relative to conduct on its premises.
- C. **Delinquent Child Support Obligations.** A child support obligor who is more than 30 days delinquent in paying child support and a business entity in which the obligor is a sole proprietor, partner, shareholder, or owner with an ownership interest of at least 25 percent is not eligible to receive payments from state funds under an agreement to provide property, materials, or services until all arrearages have been paid or the obligor is in compliance with a written repayment agreement or court order as to any existing delinquency. The *Texas Family Code* requires the following statement: "Under Section 231.006, *Texas Family Code*, the vendor or applicant certifies that the individual or business entity named in this contract, bid, or application is not ineligible to receive the specified grant, loan, or payment and acknowledges that this contract may be terminated and payment may be withheld if this certification is inaccurate."
- D. **Payment of Debt or Delinquency to the State.** Pursuant to Section 2252.903, *Texas Government Code*, PROVIDER agrees that any payments owing to PROVIDER under this Agreement may be applied directly toward certain debts or delinquencies that PROVIDER owes the State of Texas or any agency of the State of Texas regardless of when they arise, until such debts or delinquencies are paid in full.
- E. **Previous Employment.** PROVIDER acknowledges and understands that Section 2252.901, *Texas Government Code*, prohibits A&M System from using state appropriated funds to enter into any employment contract, consulting contract, or professional services contract with any individual who has been previously employed, as an employee, by the agency within the past twelve (12) months. If PROVIDER is an individual, by signing this Agreement, PROVIDER certifies that Section 2252.901, *Texas Government Code*, does not prohibit the use of state appropriated funds for satisfying the payment obligations herein.
- F. **Franchise Tax Certification.** If PROVIDER is a taxable entity subject to the Texas Franchise Tax (Chapter 171, *Texas Tax Code*), then PROVIDER certifies that it is not currently delinquent in the payment of any franchise (margin) taxes or that PROVIDER is exempt from the payment of franchise (margin) taxes.
- G. **State Auditor's Office.** PROVIDER understands that acceptance of funds under this Agreement constitutes acceptance of the authority of the Texas State Auditor's Office, or any successor agency (collectively, "Auditor"), to conduct an audit or investigation in connection with those funds pursuant to Section 51.9335(c), *Texas Education Code*. PROVIDER agrees to cooperate with the Auditor in the conduct of the audit or

investigation, including without limitation, providing all records requested. PROVIDER will include this provision in all contracts with permitted subcontractors.

- H. **Entire Agreement.** This Agreement constitutes the sole agreement of the parties and supersedes any other oral or written understanding or agreement pertaining to the subject matter of this Agreement. This Agreement may not be amended or otherwise altered except upon the written agreement of both parties.
- I. **Severability.** If any provisions of this Agreement are rendered or declared illegal for any reason, or shall be invalid or unenforceable, such provision shall be modified or deleted in such manner so as to afford the Party for whose benefit it was intended the fullest benefit commensurate with making this Agreement, as modified, enforceable, and the remainder of this Agreement and the application of such provision to other persons or circumstances shall not be affected thereby, but shall be enforced to the greatest extent permitted by applicable law.
- J. **Headings.** Headings appear solely for convenience of reference. Such headings are not part of this Agreement and shall not be used to construe it.
- K. **Non-Assignment.** PROVIDER shall neither assign its rights nor delegate its duties under this Agreement without the prior written consent of A&M System.
- L. **Force Majeure.** Neither party is required to perform any term, condition, or covenant of this Agreement, if performance is prevented or delayed by a natural occurrence, a fire, an act of God, an act of terrorism, or other similar occurrence, the cause of which is not reasonably within the control of such party and which by due diligence it is unable to prevent or overcome.
- M. **Loss of Funding.** Performance by A&M System under this Agreement may be dependent upon the appropriation and allotment of funds by the Texas State Legislature (the "Legislature"). If the Legislature fails to appropriate or allot the necessary funds, A&M System will issue written notice to PROVIDER and A&M System may terminate this Agreement without further duty or obligation hereunder. PROVIDER acknowledges that appropriation of funds is beyond the control of A&M System.
- N. **Governing Law.** The validity of this Agreement and all matters pertaining to this Agreement, including but not limited to, matters of performance, non-performance, breach, remedies, procedures, rights, duties, and interpretation or construction, shall be governed and determined by the Constitution and the laws of the State of Texas.
- O. **Venue.** Pursuant to Section 85.18, *Texas Education Code*, venue for any suit filed against A&M System shall be in the county in which the primary office of the chief executive officer of A&M System is located, which is Brazos County, Texas.
- P. **Non-Waiver.** PROVIDER expressly acknowledges that A&M System is an agency of the State of Texas and nothing in this Agreement will be construed as a waiver or relinquishment by A&M System of its right to claim such exemptions, privileges, and immunities as may be provided by law.
- Q. **Survivability.** The PROVIDER'S duties under this Agreement and a specific project, which impose an obligation after expiration or termination of this Agreement, will survive unless otherwise stated within the project specific purchase order.

- R. **Conflict of Interest.** By executing this Agreement, PROVIDER and each person signing on behalf of PROVIDER certifies, and in the case of a sole proprietorship, partnership or corporation, each party thereto certifies as to its own organization, that to the best of their knowledge and belief, no member of The A&M System or The A&M System Board of Regents, nor any employee, or person, whose salary is payable in whole or in part by The A&M System, has direct or indirect financial interest in the award of this Agreement, or in the services to which this Agreement relates, or in any of the profits, real or potential, thereof.
- S. **Prohibition on Contracts with Companies Boycotting Israel.** To the extent that Texas Government Code, Chapter 2271 applies to this Agreement, PROVIDER certifies that (a) it does not currently boycott Israel; and (b) it will not boycott Israel during the term of this Agreement. PROVIDER acknowledges this Agreement may be terminated and payment withheld if this certification is inaccurate.
- T. **Certification Regarding Business with Certain Countries and Organizations.** Pursuant to Subchapter F, Chapter 2252, Texas Government Code, PROVIDER certifies it is not engaged in business with Iran, Sudan, or a foreign terrorist organization. PROVIDER acknowledges this Agreement may be terminated if this certification is or becomes inaccurate.
- U. **Prohibition on Contracts Related to Persons Involved in Human Trafficking.** Under Section 2155.0061, Government Code, the vendor certifies that the individual or business entity named in this Agreement is not ineligible to receive the specified Agreement and acknowledges that this Agreement may be terminated and payment withheld if this certification is inaccurate.
- V. **Records Retention.** PROVIDER will preserve all contracting information, as defined under Texas Government Code, Section 552.003 (7), related to the Agreement for the duration of the Agreement and for seven years after the conclusion of the Agreement.
- W. **Notices.** Any notice required or permitted under this Agreement must be in writing, and shall be deemed to be delivered (whether actually received or not) when deposited with the United States Postal Service, postage prepaid, certified mail, return receipt requested, and addressed to the intended recipient at the address set out below. Notice may also be given by regular mail, personal delivery, courier delivery, facsimile transmission, email or other commercially reasonable means and will be effective when actually received. A&M System and PROVIDER can change their respective notice address by sending to the other party a notice of the new address. Notices should be addressed as follows:

A&M System: The Texas A&M University System
301 Tarrow St., Suite 273
College Station, Texas 77840
Attention: Jeff Zimmermann
Phone: (979) 458-6410
E-mail: jjimmermann@tamus.edu

PROVIDER: Visionality
1778 N. Plano Rd.
Richardson, TX 75081

Attention: Rose Ellen Erwin
Phone: (214) 276-0124
Email: rose@visionality.com

IN WITNESS WHEREOF, intending to be bound, the Parties have entered into this Agreement as of the Effective Date.

The Texas A&M University System

DocuSigned by:
By Jeff Zimmermann
JEZ75E3821E885475
Jeff Zimmermann
Director, Procurement & Business Services

2/20/2020 | 09:41:59 CST

Date

Visionality

DocuSigned by:
By Rose Ellen Erwin
56388095877449
Rose Ellen Erwin
Technical Consultant

2/20/2020 | 07:38:49 PST

Date

EXHIBIT A

SCOPE OF SERVICES

The required audio visual integrator services ("Services") shall consist of working with Owner representatives, A/E design teams and contractors to assist in designing an AV system and then procure and install the AV system for A&M System building construction projects.

I. Services:

PROVIDER will be responsible for providing all necessary equipment including but not limited to computer, software, digital camera and cell phone as part of their overhead and without separate reimbursement. Activities for which audio visual integrator services may be requested include but are not limited to any or all of the following:

a. Pre-construction Phase

- Assist in the development of AV requirements and cost for a Program of Requirements.
- Participate in the design phase of a project to establish AV systems and infrastructure requirements.
- Review design documents, drawings and specifications for compatibility with AV system requirements and provide comments.
- Attend design review meetings as necessary.
- Provide AV device and infrastructure design to Architect for integration into the construction documents.
- Maintain a list of AV equipment by room along with estimated cost throughout design.
- Maintain a schedule for procuring AV equipment and installation during construction.

b. Procurement Phase

- Prepare a final list of AV equipment by room for approval by owner prior to procurement.
- Provide quotes for purchase order(s), including itemized equipment pricing with MSRP and applicable discounts as well as quantities and rates for pre-installation and installation labor.

c. Construction Phase

- Coordinate with design team and contractor during installation of all AV infrastructure items.
- Coordinate with owner's representative, design team and contractor on need for AV equipment support.
- Attend weekly Owner, Architect & Contractor (OAC) coordination meetings during construction as necessary.
- Coordinate with owner and contractor on delivery, storage and installation of all AV equipment.
- Coordinate the completion of AV installation with facility substantial completion and owner occupancy.
- Provide owner training in the use of all AV systems.
- Provide warranties and operating and maintenance manuals for all installed equipment.

The A&M System reserves the right on each project assignment to authorize all or any part of the above subject areas and/or work tasks as the A&M System deems necessary for the individual project. The scope to be performed will be set forth in each project purchase order.

II. Project Assignments:

Services will be assigned for each individual project from the Pool. Note that inclusion in the pool is not a guarantee of work or project assignments for any of the integrators. Below describes the process typically used by the A&M System office regarding assignment of projects.

- Request sent to one or more integrators from the Pool to address questions and/or submit qualifications for a specific project.
- A&M System project team reviews information submitted based on scope, availability, location to the project, and any other factor deemed relevant to make a selection.
- Upon approval of selection, the awarded integrator will be issued a notice to proceed along with the required scope for the specific project assigned. Refer to Exhibit C for the sample Project Scope of Services and Terms document. This exhibit will be revised for each project depending on the scope and requirements specifically needed.
- Depending on the scope and cost of the project, the selected integrator may be required to provide performance and payment bonds and a HUB subcontracting plan.

EXHIBIT B INSURANCE REQUIREMENTS

PROVIDER shall obtain and maintain, for the duration of this Agreement or longer if a specific project assignment extends beyond the term of this Agreement, the minimum insurance coverage set forth below. With the exception of Professional Liability (E&O), all coverage shall be written on an occurrence basis. All coverage shall be underwritten by companies authorized to do business in the State of Texas or eligible surplus lines insurers operating in accordance with the Texas Insurance Code and have a financial strength rating of A- or better and a financial strength rating of VII or better as measured by A.M. Best Company or otherwise acceptable to A&M System. By requiring such minimum insurance, the Owner shall not be deemed or construed to have assessed the risk that may be applicable to PROVIDER under this Agreement. PROVIDER shall assess its own risks and if it deems appropriate and/or prudent, maintain higher limits and/or broader coverage. PROVIDER is not relieved of any liability or other obligations assumed pursuant to this Agreement by reason of its failure to obtain or maintain insurance in sufficient amounts, duration, or types. No policy will be canceled without unconditional written notice to A&M System at least ten days before the effective date of the cancellation.

Insurance:

<u>Coverage</u>	<u>Limit</u>
A. <u>Worker's Compensation</u>	
Statutory Benefits (Coverage A)	Statutory
Employers Liability (Coverage B)	\$1,000,000 Each Accident
	\$1,000,000 Disease/Employee
	\$1,000,000 Disease/Policy Limit

Workers' Compensation policy must include under Item 3.A. on the information page of the workers' compensation policy the state in which work is to be performed for A&M System. Workers' compensation insurance is required, and no "alternative" forms of insurance will be permitted.

B. Automobile Liability

Business Auto Liability Insurance covering all owned, non-owned or hired automobiles, with limits of not less than \$1,000,000 Single Limit of liability per accident for Bodily Injury and Property Damage;

If a separate Business Auto Liability policy is not available, coverage for hired and non-owned auto liability may be endorsed on the Commercial General Liability policy.

C. Commercial General Liability

Each Occurrence Limit	\$1,000,000
General Aggregate Limit	\$2,000,000
Products / Completed Operations	\$1,000,000
Personal / Advertising Injury	\$1,000,000
Damage to rented Premises	\$300,000
Medical Payments	\$5,000

The required commercial general liability policy will be issued on a form that insures PROVIDER's or its subcontractors' liability for bodily injury (including death), property damage, personal and advertising injury assumed under the terms of this Agreement.

D. Additional Endorsements

The Auto and Commercial General Liability Policies shall name the Texas A&M University System Board of Regents for and on behalf of The Texas A&M University System as additional insured's.

E. Professional Liability (Errors & Omissions)

Insurance with limits of not less than \$1,000,000 each occurrence, \$2,000,000 aggregate. Such insurance will cover all professional services rendered by or on behalf of PROVIDER and its subcontractors under this Agreement. Renewal policies written on a claims-made basis will maintain the same retroactive date as in effect at the inception of this Agreement. If coverage is written on a claims-made basis, PROVIDER agrees to purchase an Extended Reporting Period Endorsement, effective for two (2) full years after the expiration or cancellation of the policy. No professional liability policy written on an occurrence form will include a sunset or similar clause that limits coverage unless such clause provides coverage for at least three (2) years after the expiration of cancellation of this Agreement.

F. PROVIDER will deliver to A&M System:

Evidence of insurance on a Texas Department of Insurance approved certificate form verifying the existence and actual limits of all insurance after the execution and delivery of this Agreement and prior to the performance of any services by PROVIDER under this Agreement. Additional evidence of insurance will be provided on a Texas Department of Insurance approved certificate form verifying the continued existence of all required insurance no later than thirty (30) days after each annual insurance policy renewal.

All insurance policies, with the exception of worker's compensation, employer's liability and professional liability will be endorsed and name The Board of Regents for and on behalf of The Texas A&M University System and The Texas A&M University System as Additional Insureds up to the actual liability limits of the policies maintained by PROVIDER. Commercial General Liability and Business Auto Liability will be endorsed to provide primary and non-contributory coverage. The Commercial General Liability Additional Insured endorsement will include on-going and completed operations and will be submitted with the Certificates of Insurance.

All insurance policies will be endorsed to provide a waiver of subrogation in favor of The Board of Regents of The Texas A&M University System and The Texas A&M University System. No policy will be canceled without unconditional written notice to A&M System at least ten days before the effective date of the cancellation. **All insurance policies** will be endorsed to require the insurance carrier providing coverage to send notice to A&M System ten (10) days prior to the effective date of cancellation, material change, or non-renewal relating to any insurance policy required in this Exhibit B.

Any deductible or self-insured retention must be declared to and approved by A&M System prior to the performance of any services by PROVIDER under this Agreement. PROVIDER is responsible to pay any deductible or self-insured retention for any loss. All deductibles and self-insured retentions will be shown on the Certificates of Insurance.

Certificates of Insurance and Additional Insured Endorsements as required by this Agreement will be emailed to the following A&M System contact in SOProcurement@tamus.edu.

The insurance coverage required by this Agreement will be kept in force until all services have been fully performed and accepted by A&M System in writing, except as may be noted.

EXHIBIT C
PROJECT SCOPE OF SERVICES

Sample document to be provided at a later date.