

AN AGREEMENT
BY AND BETWEEN
THE TEXAS A&M UNIVERSITY SYSTEM
AND CROSSWIND COMMUNICATIONS, LLC

This Master Services Agreement (hereafter referred to as “Agreement”) is entered into and effective upon final execution (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 Crosswind Communications, LLC (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 to provide various marketing and communications services as needed and requested by the A&M System Office of Marketing and Communications.

This Agreement is not a contract to perform specific work but is intended to provide the A&M System with the ability to utilize the Provider at their option and discretion for the services outlined in Exhibit A, attached hereto.

The universities and agencies of the A&M System (hereafter referred to as “Member” or “Members”) may also chose to utilize the services within this Agreement as needed and at their option. There are no guarantees of utilization by the A&M System or a Member as a result of this Agreement.

Any engagement of services as a result of this Agreement will be documented individually by execution of a statement of work, issuance of a purchase order, or other documentation agreed upon by the A&M System or applicable Member.

2. AGREEMENT TERM

The initial term of this Agreement shall begin upon final execution and will extend through August 31, 2024. This Agreement can be extended up to two (2) additional two-year terms 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. A&M System shall not pay any costs or fees as a direct result of this Agreement. For the services rendered under this Agreement, A&M System or a Member utilizing services shall pay PROVIDER based on pricing and terms as outlined within Exhibit A, or as negotiated for a specific engagement.

B. As applicable and allowed within a specific engagement, business-related travel, lodging and/or meal expenses will be reimbursed by A&M System according to the State of Texas rates, rules, and regulations on the below link.

<https://fmx.cpa.texas.gov/fmx/travel/texttravel/rates/current.php>

PROVIDER is required to submit all travel receipts when requesting reimbursement. Under no circumstance will the PROVIDER be reimbursed for alcohol purchases. State travel rates are subject to change without notice and will be adjusted accordingly. Mileage rates will be calculated from point-to-point (PROVIDER’s place of business to job site) using the State of Texas mileage.

- C. All payments shall be made by electronic direct deposit. PROVIDER is required to complete and submit to A&M System or Member 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 A&M System or Member purchase order number (if applicable) and include a description of services provided for that specific engagement and any other information necessary to demonstrate work accomplished such as time, deliverables, and activities performed.

4. DEFAULT AND TERMINATION

- A. Default of Respondent – A&M System shall have the right to terminate this Agreement without penalty after a 15-day written notice of termination in the event:
 - a. PROVIDER disregards or violates material provisions of this Agreement or A&M System instructions; or fails to execute the work of a specific engagement according to the agreed upon schedule of completion and/or time of completion specified, including extensions thereof, or fails to reach agreed upon performance results.
 - b. PROVIDER declares bankruptcy, become insolvent, or assign company assets for the benefit of creditors.
- B. For Convenience – A&M System shall have the right to terminate this Agreement at any time upon thirty (30) days prior notice to PROVIDER.
- C. Termination of this Agreement for either of the reasons stated above shall not terminate any A&M System or Member specific engagement or purchase order. Refer to Section 9.G for survivability of terms beyond termination of this Agreement.

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 to A&M System in a non-proprietary format acceptable to Texas A&M that is accessible by the public.
- 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

To the extent that Chapter 2260, Texas Government Code, is applicable to this Agreement, the dispute resolution process provided in Chapter 2260, 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 the Deputy

Chancellor and Chief Financial Officer of A&M System, who shall examine PROVIDER's claim and any counterclaim and negotiate with PROVIDER in an effort to resolve the claim. This provision and nothing in this Agreement waives A&M System's sovereign immunity to suit or liability and A&M System has not waived its right to seek redress in the courts.

7. INSURANCE

Insurance requirements as stated within Exhibit B, attached hereto.

8. INTELLECTUAL PROPERTY

PROVIDER shall retain all rights, title, and interest in and to the Services. PROVIDER represents and warrants that: (1) it has the full right, power, and authority to grant the rights and licenses to A&M SYSTEM hereunder; (2) the Services do not infringe upon or violate any copyright, patent, trademark, or other proprietary or intellectual property rights of any third party; (3) the Services will perform substantially in accordance with PROVIDER's marketing materials and documentation, including without limitation, any user guides, technical specifications, training materials, instructions, documented policies or other written materials regarding the Services that are posted, delivered or otherwise made available by PROVIDER to A&M SYSTEM; and (4) PROVIDER and each of its employees, subcontractors, or agents who will perform the Services has the necessary knowledge, skill, experience, and qualifications to provide and perform the Services in accordance with this Agreement, and the Services will be performed for and delivered to PROVIDER in a diligent, professional, workmanlike manner in accordance with industry standards.

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. **Ownership of Documents** Upon completion or termination of any contract agreement, all documents prepared by the PROVIDER for the benefit of the A&M System shall become the property of the A&M System. At the A&M System's option, such documents will be delivered to the A&M System Procurement Office. The A&M System acknowledges that the documents are prepared only for the contracted services specified. Prior to completion of the contracted services, the A&M System shall have a recognized proprietary interest in the work product of the PROVIDER.
- C. **Independent Contractor.** Notwithstanding any provision of this Agreement to the contrary, the Parties hereto are independent contractors. No employer-employee, partnership, agency, or joint venture relationship is created by this Agreement or by PROVIDER's service to A&M System. As an independent contractor, PROVIDER is solely responsible for all taxes, withholdings, and other statutory or contractual obligations of any sort, including but not limited to workers' compensation insurance. Except as specifically required under the terms of this Agreement, PROVIDER (and its representatives, agents, employees and subcontractors) will not represent themselves to be an agent or representative of the A&M System.
- D. **Representations & Warranties.** If PROVIDER is a business entity, PROVIDER warrants, represents, covenants, and agrees that it is duly organized, validly existing and in good standing under the laws of the state of its incorporation or organization and is duly authorized and in good standing to conduct business in the State of Texas, that it has all necessary power and has received all necessary approvals to execute and deliver this Agreement, and the individual executing this Agreement on behalf of PROVIDER has been duly authorized to act for and bind Vendor.
- E. **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."

- F. **Payment of Debt or Delinquency to the State.** Pursuant to Sections 2107.008 and 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.
- G. **Survivability.** The Provider's duties under this Agreement, Member specific agreement and/or purchase order, which impose an obligation after expiration or termination of this Agreement, will survive unless otherwise stated within the Member specific agreement and/or purchase order.
- H. **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.
- I. **Not Eligible for Rehire.** PROVIDER is responsible for ensuring that its employees involved in any work being performed for A&M System under this Agreement have not been designated as "Not Eligible for Rehire" as defined in System policy 32.02, Discipline and Dismissal of Employees, Section 4 ("NEFR Employee"). In the event A&M System becomes aware that PROVIDER has a NEFR Employee involved in any work being performed under this Agreement, A&M System will have the sole right to demand removal of such NEFR Employee from work being performed under this Agreement. Non-conformance to this requirement may be grounds for termination of this Agreement by A&M System.
- J. **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.
- K. **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.
- L. **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.

- M. **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.
- N. **Headings.** Headings appear solely for convenience of reference. Such headings are not part of this Agreement and shall not be used to construe it.
- O. **Non-Assignment.** PROVIDER shall neither assign its rights nor delegate its duties under this Agreement without the prior written consent of A&M System.
- P. **HUB Requirements.** It is the policy of the State of Texas and the A&M System to encourage the use of Historically Underutilized Businesses (HUBs) both directly and indirectly in our prime contracts. The goal of the HUB Program is to promote equal access and equal opportunity in A&M System contracting and purchasing.

If awarded a specific engagement as a result of this Agreement, the PROVIDER may be required to complete a HUB Subcontracting Plan (HSP) in full to identify the subcontractors needed (if any) for specific assigned projects and the applicable scope.

For assistance with HUB requirements for A&M System engagements, please contact Porschia Tolbert, A&M System HUB Program Director, at (979) 458-3265 or so-hubprogram@tamus.edu. For other Member engagements, please contact the applicable Member HUB Program personnel.

- Q. **Force Majeure.** Neither Party shall be held liable or responsible to the other Party nor be deemed to have defaulted under or breached this Agreement for failure or delay in fulfilling or performing any obligation under this Agreement if and to the extent such failure or delay is caused by or results from causes beyond the affected Party's reasonable control, including, but not limited to, acts of God, strikes, riots, flood, fire, epidemics, natural disaster, embargoes, war, insurrection, terrorist acts or any other circumstances of like character; provided, however, that the affected Party has not caused such force majeure event(s), shall use reasonable commercial efforts to avoid or remove such causes of nonperformance, and shall continue performance hereunder with reasonable dispatch whenever such causes are removed. Either Party shall provide the other Party with prompt written notice of any delay or failure to perform that occurs by reason of force majeure, including describing the force majeure event(s) and the actions taken to minimize the impact of such event(s).
- R. **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. In the event of a termination or cancellation under this Section, Texas A&M will not be liable to Vendor for any damages that are caused or associated with such termination or cancellation.
- S. **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.

- T. **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.
- U. **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.
- V. **Conflict of Interest.** PROVIDER certifies, to the best of their knowledge and belief, that no member of the A&M System Board of Regents, or any officer of the A&M System, has a direct or indirect financial interest in PROVIDER or in the transaction that is the subject of the Agreement.
- W. **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.
- X. **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 Purchase Order may be terminated if this certification is or becomes inaccurate.
- Y. **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 contract is not ineligible to receive the specified contract and acknowledges that this contract may be terminated and payment withheld if this certification is inaccurate.
- Z. **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.
- AA. **Firearm Entities and Trade Associations Discrimination.** To the extent applicable, PROVIDER verifies that: (1) it does not, and will not for the duration of the Agreement, have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association or (2) the verification required by Section 2274.002 of the Texas Government Code does not apply to the Agreement. If circumstances relevant to this provision change during the course of the contract, PROVIDER shall promptly notify A&M System.
- BB. **Energy Company Boycotts.** To the extent applicable, PROVIDER represents and warrants that: (1) it does not, and will not for the duration of the contract, boycott energy companies or (2) the verification required by Section 2274.002 of the Texas Government Code does not apply to the contract. If circumstances relevant to this provision change during the course of the contract, Respondent shall promptly notify Agency.
- CC. **Notices.** Any notices required or permitted under this Agreement must be in writing and will be deemed given: (a) three (3) business days after it is deposited and post-marked with the United States Postal Service, postage prepaid, certified mail, return receipt requested, (b) the next business day after it is sent by overnight carrier, (c) on the date sent by email transmission with electronic confirmation of receipt by the party being notified, or (d) on the date of delivery if delivered personally. The Parties may 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: jzimmermann@tamus.edu

PROVIDER: Crosswind Communications, LLC
501 Congress Ave., Suite 150
Austin, TX 78701
P.O. Box 264
Austin, Texas 78767

Attention: April Dang or Thomas Graham
Phone: (512) 537-1414
Email: adang@crosswindpr.com
Email: admin@crosswindpr.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 
E2BE2924E69547F...
Jeff Zimmermann
Executive Director, Procurement

4/27/2023
Date

Crosswind Communications, LLC


By _____
THOMAS GRAHAM
CEO, President
Crosswind Communications

April 20, 2023
Date

EXHIBIT A – SCOPE OF SERVICES

- I. **Services.** The description within the areas of services listed below may have content specific to the A&M System. Other needs within these areas may be requested by the A&M System or its Members throughout the term of this Agreement for a specific engagement. The scope and terms shall be defined within each specific engagement.

Marketing Strategy and Execution

Services for marketing strategy and execution for RELIS Academic Alliance, RELIS Campus, The Texas A&M University System and the show *Around Texas with Chancellor John Sharp*. This may include but is not limited to, social media marketing, traditional marketing efforts, and brand awareness campaigns.

Video Production

Shoot, edit, and finalize video content for RELIS Academic Alliance, RELIS Campus, and The Texas A&M University System, or other productions needs of the A&M System or its Members to be defined within a specific engagement.

- II. **Costs.**

PRICING & FEES

Typically, members of the assigned Crosswind team will meet with key client representatives to discuss and estimate a monthly amount of hours to be dedicated to their specific account.

Upon review of the information, Crosswind will propose a monthly management fee to cover, meetings, phone/online conferences, project coordination as well as daily, weekly & monthly management of processes and communications.

Monthly hours are evaluated every six months to determine if any necessary adjustments are needed.

Note: if Texas A&M prefers working on a per project/time-specific invoicing basis, we are flexible.

Beyond the monthly account service fee, Crosswind estimates individual projects and/or campaigns on a per-project basis with consideration given to whether the project is tier 1, 2 or 3 – pricing is adjusted accordingly.

Depending on the scope of work and expertise required, graphic design

- Tier 1 pricing ranges from \$80 hourly - \$ 120 hourly
- Tier 2 pricing ranges from \$60 hourly - \$100 hourly

Note: if a budget has been set for a project or campaign (graphics or video) Crosswind will tailor our work within that budget.

Marketing, strategy & execution consultation and execution \$150 hourly

Video production - tiers 1 - 3 pricing are typically estimated based on completion of a creative brief.

- Comprehensive creative briefs starts at \$2000

Creative briefs for video are developed through a client needs analysis meeting, Creative concept & strategy session and pre-production session.

All pricing/estimates are agreed to and signed by each party prior to work beginning.

EXHIBIT B – INSURANCE

PROVIDER shall obtain and maintain, for the duration of this Agreement or longer, 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

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 insureds.

D. 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 SOProurement@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.