

MASTER SERVICES AGREEMENT  
BY AND BETWEEN  
THE TEXAS A&M UNIVERSITY SYSTEM  
AND ELECTRO ACOUSTICS & VIDEO, INC.

This Master Services Agreement (“Agreement”) is entered into as of September 1, 2023 (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 Electro Acoustics & Video, Inc., a Corporation in the State of Texas (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 WORK**

PROVIDER will work with the A&M System Office of Facilities Planning & Construction (“FP&C”) to provide audio visual (AV) integrator services on an as needed basis. The services included (but not limited to) in the scope of this Agreement are to assist in the design of an AV system, and then procurement and installation of the AV system. Refer to Exhibit A, attached hereto for more detail on the full scope of services (“Services”).

A&M System universities and agencies (collectively referred to as “Members”) may also utilize the services within this Agreement as needed. Individual projects will be assigned as stated within Exhibit A. There is no guarantee of work as a result of this Agreement.

**2. PROVIDER OBLIGATIONS**

- A. PROVIDER will perform the Services in accordance with the standards of care, skill, and diligence expected of a qualified, competent and experienced professional in the provision of the type of services required under this Agreement.
- B. PROVIDER will obtain, maintain in effect, and pay the cost for all licenses, permits, or certifications that may be necessary for PROVIDER’s performance of this Agreement.
- C. PROVIDER represents and warrants that there are no obligations, commitments, third party rights, or impediments of any kind that will limit or prevent PROVIDER’s performance of the Services.

**3. TERM OF THE AGREEMENT**

The initial term of this Agreement shall begin September 1, 2023 and will extend through August 31, 2026. This Agreement can be extended for two (2) additional one-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.

**4. 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 Member shall pay PROVIDER for the scope, costs, rates and fees negotiated at the time a specific project is assigned. Negotiated pricing shall include an discounts as noted in Exhibit B, attached hereto.

- B. PROVIDER will submit invoices to A&M System or Member for the amounts due consistent with the payment schedule as negotiated per project. Each invoice must reference the applicable A&M System or Member project purchase order number and include a description of services provided to include but not limited to time, deliverables, and activities along with documentation that A&M System or Member may reasonably request to support the invoice amount. The A&M System or Member will make payment on a properly prepared and submitted invoice in accordance with Chapter 2251, Texas Government Code (the "Texas Prompt Payment Act"), which shall govern remittance of payment and remedies for late payment and non-payment.
- C. For reasonable business-related travel, lodging and/or meal expenses validly incurred directly and solely in support of the Services and approved by A&M System or Member in advance for a specific project, PROVIDER will be reimbursed by A&M System or Member according to the State of Texas rates, rules, and regulations (<https://fmx.cpa.texas.gov/fmx/travel/texttravel/rates/current.php>). When requesting such reimbursement, PROVIDER will submit to A&M System or Member receipts, invoices and other documentation as required by A&M System or Member. Under no circumstances will 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. Should the Agreement be renewed for an additional term, travel reimbursement amounts will be renegotiated at that time.
- D. All payments will 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/> .
- E. Invoices for FP&C projects are to be sent to e-Builder with the appropriate link provided in the purchase order for each specific project. The invoices must include a summary of services performed.

## 5. 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.
- C. Termination of this Agreement for either of the reasons stated above shall not terminate any Member specific agreement or purchase order. Refer to Section 10.N for survivability of terms beyond termination of this Agreement.

## 6. CONFIDENTIALITY

- A. The Parties anticipate that under this Agreement it may be necessary for a Party (the "Disclosing Party") to transfer information of a confidential nature ("Confidential

Information”) to the other Party (the “Receiving Party”). The Disclosing Party shall clearly identify Confidential Information at the time of disclosure by (a) appropriate stamp or markings on the document exchanged, or (b) written notice, with attached listings of all material, copies of all documents, and complete summaries of all oral disclosures (under prior assertion of the confidential nature of the same) to which each notice relates, delivered within thirty (30) days of the disclosure to the other party. “Confidential Information” does not include information that: (a) is or becomes publicly known or available other than as a result of a breach of this Agreement by the Receiving Party; (b) was already in the possession of the Receiving Party as the result of disclosure by an individual or entity that was not then obligated to keep that information confidential; (c) the Disclosing Party had disclosed or discloses to an individual or entity without confidentiality restrictions; or (d) the Receiving Party had developed or develops independently before or after the Disclosing Party discloses equivalent information to the Receiving Party.

- B. The Receiving Party shall use the same reasonable efforts to protect the Disclosing Party’s Confidential Information as it uses to protect its own confidential information of a similar nature. The Receiving Party may only disclose Confidential Information to its personnel having a need to know the Confidential Information to fulfill the Receiving Party’s obligations under this Agreement. The Receiving Party may not reproduce, disclose, or use Confidential Information except in performing its obligations under this Agreement. If the Receiving Party is legally required to disclose Confidential Information, the Receiving Party shall, to the extent allowed by law, promptly give the Disclosing Party written notice of the requirement so as to provide the Disclosing Party a reasonable opportunity to pursue appropriate process to prevent or limit the disclosure. If the Receiving Party complies with the terms of this Section, disclosure of that portion of the Confidential Information, which the Receiving Party is legally required to disclose, will not constitute a breach of this Agreement.
- C. The Receiving Party shall, upon request of the Disclosing Party, promptly return or destroy all materials embodying Confidential Information other than materials in electronic backup systems or otherwise not reasonably capable of being readily located and segregated without undue burden or expense, except that the Receiving Party may securely retain one (1) copy in its files solely for record purposes. The Receiving Party’s obligations as to Confidential Information will survive the termination or expiration of this Agreement for a period of three (3) years.

**7. INSURANCE**

Insurance requirements as stated within Exhibit C, attached hereto.

**8. PERFORMANCE AND PAYMENT BONDS**

PROVIDER may be required to obtain payment and performance bonds in a penal sum equal to the sum of the original purchase order issued for a specific project. The performance bond shall guarantee the faithful performance of the work in accordance with the construction contract documents, and shall include as beneficiaries The Texas A&M University System and the applicable Member with each specific project. The payment bond shall be solely for the protection and use of payment bond beneficiaries who have a direct contractual relationship with the general contractor or a subcontractor. The bonds shall be executed by a corporate surety or

sureties authorized to do business in the state of Texas and in compliance with the relevant provisions of the Texas Insurance Code. Sureties shall be listed on the US Department of the Treasury's Listing of approved Sureties stating companies holding Certificates of Authority as acceptable sureties on Federal Bonds and acceptable reinsuring companies (Department Circular 570) and have a rating of A- or better with A.M. Best Company. Refer to Attachment B, Article 5 for additional information on bonding requirements.

## 9. INDEMNIFICATION

PROVIDER shall indemnify and hold harmless A&M System, and their regents, employees and agents (collectively, the "A&M System Indemnitees") from and against any third-party claims, damages, liabilities, expense or loss asserted against A&M System Indemnities arising out of any acts or omissions of PROVIDER or its employees or agents pertaining to the activities and obligations under this Agreement, except to the extent such liability, loss or damage arises from an A&M System Indemnitee's acts or omissions including (without limitation) negligence, gross negligence, or willful misconduct.

## 10. MISCELLANEOUS

- A. **Authority to Contract, 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 PROVIDER.
- B. **Use of Name.** Each Party acknowledges that all rights in any trademarks, service marks, slogans, logos, designs, and other similar means of distinction associated with that Party (its "Marks"), including all goodwill pertaining to the Marks, are the sole property of that Party. Neither Party may use the Marks of the other without the advance written consent of that Party, except that each Party may use the name of the other Party in factual statements that, in context, are not misleading. The Parties will mutually agree in advance upon any public announcements, or communications to the media regarding this Agreement or the services to be provided pursuant to this Agreement.
- C. **Public Information.** 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. 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 A&M System that is accessible by the public. 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. The requirements of Subchapter J, Chapter 552, Texas Government Code, may apply to this Agreement and PROVIDER agrees that this Agreement can be terminated if PROVIDER knowingly or intentionally fails to comply with a requirement of that subchapter.

- D. **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 University Contracts 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.
- E. **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. 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 A&M System or 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. PROVIDER and its employees shall observe and abide by all applicable A&M System policies, regulations, rules and procedures, including those applicable to conduct on its premises.
- F. **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. Under Section 231.006, *Texas Family Code*, PROVIDER certifies that it is not ineligible to receive the payments under this Agreement and acknowledges that this Agreement may be terminated and payment may be withheld if this certification is inaccurate.
- G. **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.
- H. **Prior Employment.** PROVIDER acknowledges that Section 2252.901, Texas Government Code, prohibits A&M System from using state appropriated funds to enter into an employment contract, a professional services contract under Chapter 2254, or a consulting services contract under Chapter 2254 with individual who has been previously employed by A&M System during the twelve (12) month period immediately prior to the effective date of the Agreement. If PROVIDER is an individual, by signing this Agreement, PROVIDER represents and warrants that it is not a former or retired employee of A&M System that was employed by A&M System during the twelve (12) month period immediately prior to the effective date of the Agreement.

- 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 entire and only agreement between the Parties hereto and supersedes any prior understanding, written or oral agreements between the Parties, or “side deals” which are not described in this Agreement. This Agreement may be amended only by a subsequent written agreement signed by authorized representatives of both parties.
- M. **Severability.** In case any one or more of the provisions contained in this Agreement shall, for any reason, be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provisions hereof, and this Agreement shall be construed as if such invalid, illegal, and unenforceable provision had never been contained herein. The Parties agree that any alterations, additions, or deletions to the provisions of the Agreement that are required by changes in federal or state law or regulations are automatically incorporated into the Agreement without written amendment hereto and shall become effective on the date designated by such law or by regulation.
- N. **Survival.** Any provision of this Agreement that may reasonably be interpreted as being intended by the Parties to survive the termination or expiration of this Agreement will survive the termination or expiration of this Agreement.  
  
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.
- O. **Headings.** Headings appear solely for convenience of reference. Such headings are not part of this Agreement and shall not be used to construe it.
- P. **Non-Assignment.** PROVIDER shall neither assign its rights nor delegate its duties under this Agreement without the prior written consent of A&M System.

- Q. **HUB Subcontracting Plan.** It is the policy of the state of Texas and A&M System to encourage the use of Historically Underutilized Businesses (“HUB”) in our contracts, purchasing transactions and through subcontracting opportunities. The goal of the HUB program is to promote equal access and equal opportunity to HUB vendors in A&M System contracting and purchasing.
- If PROVIDER is awarded a project in connection with this Agreement, PROVIDER may be required to complete a separate, project-specific HSP form which identifies the subcontracting opportunities anticipated for the scope of work defined in that project and subcontractors anticipated to perform each subcontracting opportunity. If required, these will be due prior to beginning performance on the scope of work.
- For A&M System FP&C projects, refer to Attachment B, Article 4 for additional requirements.
- R. **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).
- S. **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, A&M System will not be liable to PROVIDER for any damages that are caused or associated with such termination or cancellation.
- T. **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.
- U. **Venue.** Pursuant to Section 85.18(b), *Texas Education Code*, mandatory venue for all legal proceedings against the A&M System is to be in the county in which the principal office of A&M System’s governing officer is located. At the date of this RFQ, such county is Brazos County, Texas.
- V. **Non-Waiver.** A&M System is an agency of the state of Texas and under the Constitution and the laws of the state of Texas possesses certain rights and privileges, is subject to certain limitations and restrictions, and only has authority as is granted to it under the

Constitution and the laws of the state of Texas. 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, remedies, privileges, and immunities as may be provided by law, including the sovereign immunity of A&M System.

- W. **Conflict of Interest.** PROVIDER certifies, to the best of their knowledge and belief, that no member of the A&M System Board of Regents, nor any employee of A&M System, has a direct or indirect financial interest in PROVIDER or in the transaction that is the subject of the Agreement.
- X. **Prohibition on Contracts with Companies Boycotting Israel.** To the extent that Chapter 2271, *Texas Government Code*, is applicable 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.
- Y. **Certification Regarding Business with Certain Countries and Organizations.** PROVIDER represents and warrants that it is not engaged in business with Iran, Sudan, or a foreign terrorist organization, as prohibited by Section 2252.152, *Texas Government Code*. PROVIDER acknowledges this Agreement may be terminated immediately 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. **Verification Regarding Discrimination Against Firearm Entities and Trade Associations.** To the extent that Chapter 2274, *Texas Government Code*, is applicable to this Agreement, PROVIDER verifies that (1) it does not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association, and (2) will not discriminate during the term of this Agreement against a firearm entity or firearm trade association.
- BB. **Verification Regarding Boycotting Energy Companies.** To the extent that Chapter 2274, *Texas Government Code*, is applicable to this Agreement, PROVIDER verifies that (1) it does not boycott energy companies, and (2) it will not boycott energy companies during the term of this Agreement. PROVIDER acknowledges this Agreement may be terminated and payment withheld if this verification is inaccurate.
- CC. **Compliance with Laws.** PROVIDER shall comply with all federal, state, and local laws, rules, and regulations applicable to the performance of its obligations under this Agreement.
- DD. **Notices.** Any notice required or permitted under this Agreement must be in writing, and shall 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. 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: [zimmermann@tamus.edu](mailto:zimmermann@tamus.edu)

PROVIDER: Electro Acoustics & Video, Inc.  
685 John B. Sias Memorial Parkway, Suite 705  
Fort Worth, TX 76134  
Attention: Luke Jordan  
Phone: 817-924-2756  
Email: [ljordan@eavi.com](mailto:ljordan@eavi.com)

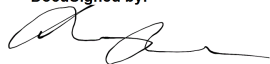
IN WITNESS WHEREOF, the Parties have entered into this Agreement as of the Effective Date.

**The Texas A&M University System**

DocuSigned by:  
  
BY \_\_\_\_\_  
E2BE2924E69547F...  
Jeff Zimmermann  
Executive Director, Procurement

10/13/2023  
\_\_\_\_\_  
Date

**Electro Acoustics & Video, Inc.**

DocuSigned by:  
  
BY \_\_\_\_\_  
BE158DF6945A494...  
Luke Jordan  
CEO

10/13/2023  
\_\_\_\_\_  
Date

## Exhibit A – Scope of Work and Pricing Process

### 1. Services Required

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. AV Scope types include Classroom, Office, Meeting Spaces; Research Laboratory Recording; Performing Arts Buildings; Arenas, Stadiums, and Sports Facilities; Security and Intercom Systems; Recording/Broadcast Studios; Large Format Video Walls; and Sensitive Compartmented Information Facilities (SCIFs).

Activities for which audio-visual integrator support may be requested include 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 infrastructure design documents for bidding by contractor (if not a part of design team responsibilities).
- 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

- Prior to procurement of AV equipment prepare a list of equipment by room for approval by owner.
- Provide quotes for purchase order(s).

#### 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 work request.

Note: e-Builder is the project management software utilized by A&M System for FP&C managed construction projects and the selected Respondent(s) may be expected to fully utilize this program. Training in College Station will be provided at no additional cost.

## **2. Project Assignments**

AV integrator services will be assigned for each individual project from the pool of vendors. 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.

- A. Request sent to 1 or more Integrators from our pool to submit qualifications for a specific project.
- B. A&M System project team reviews qualifications based on scope, availability, location to the project, anticipated HUB participation, and any other factor deemed relevant to make a selection.
- C. Upon approval of selection, the awarded Integrator will be issued a notice to proceed and purchase order. The purchase order will include attachments to define the specific project scope as well as additional terms and conditions that apply. See Attachment A and B.
- D. Depending on the scope and cost of the project, the awarded Integrator may be required to provide insurance, bonding, and a HUB Subcontracting Plan (HSP). Refer to Attachment B for additional information and requirements.

## **3. Pricing Process**

- A. EA develops project pricing based on material costs plus mark-up and estimated labor. Our labor estimates are based on measured time standards we have developed for each activity. Our proposal generation system saves the activity-based time to each product used and automatically calculates labor as we add products into a project design.
- B. For instance, if a ceiling speaker is selected for a room, and that speaker has 1.3 hours of installation time associated with that product. This time includes removal from the project shelf, to the van, to the room, unboxing, setting up a ladder, installation, and clean-up. If the project consisted only of installing 10 of these speakers, the labor price would be based on 13 installation hours. Travel, project management, design, and commissioning are calculated and listed separately.

## Exhibit B – Discounts

### Pricing Schedule for 2023:

Mark up on Equipment from Invoice 25%  
 Mark Up on Shipping 0%  
 Mark Up on Subcontractors/Services 15%  
 Per Diem \$125/day per technician  
 Travel (Billed at Hourly Rate Below)

Per Hour – Standard Labor Rates for 2023 (overtime billed at 1.5x standard rate)

The following rates reflect our labor pricing as of July 28th, 2023. Every quarter, we reassess what our labor costs are (looking at current pay rates and who has earned raises or what market adjustments we have had to implement) and adjust our labor prices to maintain our consistent historical margin.

Systems Designer \$143.00  
 Install Technicians \$ 92.75  
 Shop Technicians \$104.00  
 Service technicians \$132.75  
 Project Managers \$118.75  
 Programmers \$153.00

### Manufacturer/Vendor List

Electro Acoustics has over 600 vendors. There are hardly any AV products we do not have access to—either direct from the manufacturer or through a distributor network. We also have direct access to many premium products that are very limited in their distribution. I have listed a few of these below.

### Premium Speaker Systems

L'Acoustics, d&b audiotechnik, Meyer, JBL, Electro Voice, Renkus Heinz

### Video/Control

Panasonic, Sony, AJA, Black Magic, Absen, Samsung, LG, Crestron, AMX, QSC

Manufacturer	Discounts
Absen	46% off List
AKG	5% off Dealer Price
Altman	5% off Dealer Price
AMX	5% off Dealer Price
Atlas	100K Level
Bag End	45% off List
Bosch	Gold Level
BSS	5% off Dealer Price
Crestron	
Crown	5% off Dealer Price
d&b Audiotechnik	30% off List
Hall Research	Partner Level
JBL	5% off Dealer Price

Manufacturer	Discounts
L-Acoustics	List less 37%
Legrand	Preferred Dealer
Meyer	40% off List
Panasonic	
Pathway Connectivity	30% off List
QSC	
Sennheiser	10% off Dealer Price
Shure	5% off Dealer Price
Strand	42.5% off List
Symetrix	Preferred Dealer
Visionary Solutions	5% off Dealer Price
West Penn Wire	Level 3 Dealer Pricing
Whirlwind	End Column, no matter qty

### Exhibit C – Insurance

A. PROVIDER shall obtain and maintain, for the duration of this Agreement or longer, the minimum insurance coverage set forth below. 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 MEMBER. By requiring such minimum insurance, MEMBER 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 MEMBER at least ten days before the effective date of the cancellation.

1. **Worker's Compensation**

Worker's compensation insurance with the following minimum limits of coverage:

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 MEMBER. Workers' compensation insurance is required, and no "alternative" forms of insurance will be permitted.

2. **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;

3. **Commercial General Liability**

Commercial general liability insurance with the following minimum limits of coverage:

Each Occurrence Limit	\$1,000,000
General Aggregate Limit	\$2,000,000
Products / Completed Operations	\$1,000,000
Personal / Advertising Injury	\$1,000,000

The required commercial general liability policy must 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.

4. **Umbrella Liability Insurance** \$3,000,000

B. PROVIDER shall deliver to MEMBER evidence of insurance on a Texas Department of Insurance approved certificate form verifying the existence and actual limits of all insurance prior to the

execution and delivery of this Agreement and prior to the performance of any services by PROVIDER under this Agreement. PROVIDER shall provide additional evidence of insurance 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.

- C. Commercial General Liability and Auto Liability policies must be endorsed to name The Texas A&M University System Board of Regents (“Board of Regents”), The Texas A&M University System (“A&M System”) and MEMBER as additional insureds up to the actual liability limits of the policies maintained by PROVIDER. The commercial general liability additional insured endorsements must include on-going and completed operations afforded by CG 20 10 (10 01 Edition or equivalent) and CG 20 37 (10 01 Edition or equivalent). Commercial general liability and business auto liability policies must be written on a primary and non-contributory basis. Copies of each endorsement must be submitted with the certificate of insurance. The Umbrella policy, at minimum, must follow form.
- D. All insurance policies must be endorsed to provide a waiver of subrogation in favor of the Board of Regents, A&M System and MEMBER.
- E. All insurance policies will be endorsed to require the insurance carrier providing coverage to send notice to MEMBER ten (10) days prior to the effective date of cancellation, material change, or non-renewal relating to any insurance policy.
- F. Any deductible or self-insured retention must be declared to and approved by MEMBER prior to the performance of any services by PROVIDER under this Agreement. PROVIDER shall pay any deductible or self-insured retention for any loss. All deductibles and self-insured retentions must be shown on the certificates of insurance.
- G. Certificates of Insurance and Additional Insured Endorsements as required by this Agreement will be forwarded to: [SOProurement@tamus.edu](mailto:SOProurement@tamus.edu)
- H. The insurance coverage required by this Agreement must be kept in force until all services have been fully performed and accepted by MEMBER in writing.

**ATTACHMENT A**  
**AV INTEGRATOR SCOPE OF SERVICES**  
**A&M SYSTEM FPC PROJECT: [XX-XXXX and project name]**  
**[Location], TEXAS**

- I. Contact Information *[list all relevant contacts for this project]:*
  1. FPC/Owner's Representative: *Name, email address, phone number*
  2. Contractor's Project Manager: *Name, email address, phone number*
  3. Architect's Project Manager: *Name, email address, phone number*
  4. AV Designer: *Name, email address, phone number*
  
- II. Preconstruction Phase Services *[list all required tasks for this project, delete those not included]*
  1. *Review the AV requirements and budget outlined in the project's Program of Requirements and provide feedback.*
  2. *Participate in the design phase of a project to establish AV systems and infrastructure requirements, including the following tasks:*
    - a. *Attend design review meetings as necessary.*
    - b. *Review design documents, drawings and specifications for compatibility with AV system requirements and provide comments at the following milestones [100% SD, 50% DD, 100% DD, 50% CD, and 100% CD].*
    - c. *Provide AV system design details, including selected devices, required infrastructure, pathway details, and specifications to Architect for integration into the Design Development and Construction Document packages.*
    - d. *Maintain a list of AV equipment by room along with estimated cost throughout design.*
    - e. *Maintain a schedule for procuring AV equipment and installation during construction.*
  
- III. Procurement Phase Services *[list all required tasks for this project, delete those not included]*
  1. *Prepare a final list of AV equipment by room for approval by owner prior to procurement.*
  2. *Provide quotes for purchase order(s), including itemized pricing with MSRP and applicable discounts as well as quantities and rates for pre-installation and installation labor.*
  
- IV. Construction Phase Services *[list all required tasks for this project, delete those not included]*
  1. *Coordinate with design team and contractor during installation of all AV infrastructure items.*
  2. *Coordinate with owner's representative, design team and contractor on need for AV equipment support.*
  3. *Attend weekly Owner, Architect & Contractor (OAC) coordination meetings as well as subcontractor coordination meetings during construction as necessary.*
  4. *Coordinate with owner and contractor on delivery, storage and installation of all AV equipment.*
  5. *Coordinate the completion of AV installation with facility substantial completion and owner occupancy.*
  6. *Provide owner training in the use of all AV system along with video documentation of the training for future reference.*
  7. *Provide final list per room of all equipment, with product models, serial numbers, installed firmware versions, and all usernames and passwords, including administration accounts.*
  8. *Provide as-built drawings, warranties, and O&M manuals for the completed AV scope of work.*
  9. *Provide individual final setup files where applicable for all equipment, labeled to provide description of each device.*

**ATTACHMENT B**  
**TERMS AND CONDITIONS FOR AUDIO-VISUAL INTEGRATORS**

**Article 1. Definitions**

1.1 *Architect/Engineer (A/E)* means a person registered as an architect pursuant to Tex. Occ. Code Ann., Chapter 1051, as a landscape architect pursuant to Tex. Occ. Code Ann., Chapter 1052, a person licensed as a professional engineer pursuant to Tex. Occ. Code Ann., Chapter 1001 and/or a firm employed by Owner or a design-build contractor to provide professional architectural or engineering services and to exercise overall responsibility for the design of a Project or a significant portion thereof, and to perform the contract administration responsibilities set forth in the A/E Contract.

1.2 *Audio-Visual (AV) Work* means the administration, procurement, materials, equipment, construction and all services necessary for the Provider to fulfill its obligations under the purchase order. Audio-Visual Work and Work have the same meaning in this document.

1.3 *AV Close-out documents* means the product brochures, product/equipment maintenance and operations instructions, manuals, and other documents/warranties, record documents, affidavit of payment, release of lien and claim, and as may be further defined, identified, and required by the purchase order. AV Close-Out Documents and Close-Out Documents have the same meaning in this document.

1.4 *AV Completion Inspection* means the date determined by the Provider, A/E and Owner when the Audio-Visual Work or a designated portion thereof is sufficiently complete, in accordance with the Purchase Order, so as to be operational and fit for the use intended.

1.5 *AV Contract Documents* means those documents identified as a component of the purchase order between the Owner and the Provider. These may include, but are not limited to, Drawings, Specifications, these Terms and Conditions, the Purchase Order and Purchase Order Changes. AV Contract Documents and Contract Documents have the same meaning in this document.

1.6 *Contractor* means the individual, corporation, company, partnership, firm or other entity contracted to perform the construction work, regardless of the type of construction contract used, so that the term as used herein includes a Construction Manager-at-Risk or a Design-Build firm as well as General or Prime Contractor.

1.7 *Owner* means the Board of Regents of The Texas A&M University System, acting through the responsible entity of The Texas A&M University System, identified in the Purchase Order as the Owner.

1.8 *Owner's Designated Representative (ODR)* means the individual assigned by the Owner to act on its behalf, and to undertake certain activities as specifically outlined in the Contract. The ODR is the only party authorized to direct changes to the scope, cost, or time of the Contract.

1.9 *Project* means all activities necessary for realization of the Work as defined and approved by the Owner. This includes design, contract award(s), construction by the Contractor, additional related activities by the Owner and its consultants and vendors including the Provider, and fulfillment of all contract and warranty obligations.



1.10 *Provider* means the individual, corporation, company, partnership, firm or other entity contracted to perform the Audio-Visual Work

1.11 *Purchase Order* means the entire agreement between the Owner and the Provider, including all of the Contract Documents. Purchase Order and Contract have the same meaning in this document

1.12 *Purchase Order Change* means a written modification of the purchase order between the Owner and Provider, signed by the Owner.

## **Article 2. Laws Governing Construction**

2.1 Environmental Regulations. The Provider shall conduct activities in compliance with applicable laws and regulations and other requirements of the Contract relating to the environment and its protection at all times. Provider is responsible for all items it brings to the Site, including hazardous materials, and all such items brought to the Site by its Subcontractors and suppliers, or by other entities subject to direction of the Provider. The Provider shall not incorporate hazardous materials into the Work without prior approval of Owner, and shall provide an affidavit attesting to such in association with the request for the AV Substantial Completion Inspection

2.2 Venue for Suits. The venue for any suit arising from the Contract will be in a court of competent jurisdiction in Brazos County, Texas.

2.3 Licensing of Trades. The Provider shall comply with all applicable provisions of state law related to license requirements for skilled tradesmen, contractors, suppliers and/or laborers, as necessary to accomplish the Work. In the event the Provider, or one of its Subcontractors, loses its license during the term of performance of the Contract, the Provider shall promptly hire or contract with a licensed provider of the service at no additional cost to the Owner.

2.4 Royalties, Patents & Copyrights. The Provider shall pay all royalties and license fees, defend all suits or claims for infringement of any patent rights, and shall save the Owner harmless from loss on account thereof.

2.5 State Sales and Use Taxes. The Owner qualifies for exemption from certain State and Local Sales and Use Taxes pursuant to the provisions of Tex. Tax Code, Chapter 151. The Provider may claim exemption from payment of applicable State taxes by complying with such procedures as prescribed by the State Comptroller of Public Accounts. Provider shall not be entitled to reimbursement for taxes paid on items that are exempt from taxation.

## **Article 3. General Responsibilities of Owner and Provider**

3.1 Owner's General Responsibilities. The Owner is the entity identified as such in the Contract and referred to throughout the Contract Documents as if singular in number.

3.1.1 Preconstruction Conference. Prior to, or concurrent with, the Provider starting the Work, a conference will be convened for attendance by the Owner, Provider, A/E and Contractor. The purpose of the conference is to establish a working understanding among the parties as to the Work, the operational conditions at the Project Site, and general administration of the Project. Topics include communications, schedules, procedures for handling Shop Drawings and other

submittals, processing Applications for Payment, maintaining required records and all other matters of importance to the administration of the Project and effective communications between the project team members.

3.1.2 Owner's Designated Representative. Prior to the start of the Work, Owner will identify the Owner's Designated Representative (ODR), who has the express authority to act and bind the Owner to the extent and for the purposes described in the Contract, including responsibilities for general administration of the Contract.

3.1.2.1 Unless otherwise specifically defined elsewhere in the Contract Documents, the ODR is the single point of contact between the Owner and Provider. Notice to the ODR, unless otherwise noted, constitutes notice to the Owner under the Contract

3.1.2.2 All directives on behalf of the Owner will be conveyed to the Provider by the ODR in writing.

3.1.3 The Owner will not supervise, direct, control or have authority over or be responsible for Provider's means, methods, technologies, sequences or procedures of installation or the safety precautions and programs incident thereto. The Owner is not responsible for any failure of Provider to comply with laws and regulations applicable to the Work. The Owner is not responsible for the failure of Provider to perform or furnish the Work in accordance with the Contract Documents. Owner is not responsible for the acts or omissions of Provider, or any of its Subcontractors, suppliers or of any other person or organization performing or furnishing any of the Work on behalf of the Provider.

3.2 Provider's General Responsibilities. The Provider is solely responsible for implementing the Work in full compliance with all applicable laws and the Contract Documents and shall supervise and direct the Work using the best skill and attention to assure that each element of the Work conforms to the Contract requirements. The Provider is solely responsible for all construction means, methods, techniques, safety, sequences, coordination and procedures.

3.2.1 Provider acknowledges that its Work may coincide with construction activities of the Contractor and shall cooperate with Contractor at all times.

3.2.2 Provider must coordinate with the Contractor and Owner for any required on-site storage between delivery and installation of AV equipment. Provider is responsible for any required offsite storage and associated costs and for insurance and liability of the equipment until accepted by the A&M System.

3.2.3 The Provider shall have access to the site for the purpose of acquainting himself with the conditions affecting delivery and installation. He shall cooperate with other contractors/vendors or A&M System and member personnel who may currently be working on the Project, integrating its work with that of others, all to the best interest of the total Project and its orderly completion. Normal delivery and installation to be Monday through Friday, 8 a.m. – 5 p.m. However, due to special circumstances, additional access to facilities may be requested. If approved, coordination will be requested through one of the individuals listed above.

3.2.4 Project Administration. The Provider shall provide project administration for all its subcontractors, vendors, suppliers, and others involved in implementing the Work and shall coordinate administration efforts with those of the Contractor, A/E and ODR including integration with the A&M System's project management and building information modeling systems as outlined in the Pre-construction Conference.

3.2.5 Services, Materials, and Equipment. Unless otherwise specified, the Provider shall provide and assume full responsibility for all services, materials, equipment, labor, transportation, construction equipment and machinery, tools, appliances, fuel, power, light, heat, telephone, water, sanitary facilities, temporary facilities, and all other facilities, incidentals, and services necessary for the construction, performance, testing, start-up, inspection and completion of the Work.

3.2.6 The Provider shall complete the installation scope as coordinated during preconstruction and procurement phases, as well as receiving, unpacking, configuration, installation, and functional verification of AV devices at point of use. The Provider shall provide roll-on/roll-off trash disposal, sweep, dust, and clean up all trash, rubbish, and other waste scattered throughout the building caused by the installation of AV equipment under this contract. Any containers or other trash that constitute a fire hazard or an obstacle to the work of others shall be removed daily. The Provider shall ensure containers are emptied daily and located away from the traffic flow. The containers shall not be overfilled or unsightly. At the final inspection upon completion of the installation of all items covered by the purchase order, the general contractor or applicable project representative shall determine if the final cleanup is acceptable. Facility dumpsters may not be used for disposal unless authorized by Owner.

3.2.7 The Provider shall have on hand all necessary tools, equipment, and hardware to complete the installation, including appropriate means to protect or restore ingress, egress, and all finished surfaces, furniture or equipment affected during their installation. Usual equipment may include: stain removal kits, cardboard, brown paper, plastic mats, vacuums, touch up finish kits and minor repair kits to resolve any damage as it occurs whenever possible.

3.2.8 All Provider employees must be identifiable i.e., name tags, shirts with company logo or other identification.

3.2.9 Elevator access will be coordinated by the Contractor and Owner for use during the delivery and installation.

3.2.10 Non-Compliant Work. Should the A/E and/or the ODR identify Work as non-compliant with the Contract Documents, the ODR will communicate the finding to the Provider and the Provider will correct such Work at its expense. The approval of Work by either the A/E or ODR does not relieve the Provider from the obligation to comply with all requirements of the Contract Documents.

3.2.11 Subcontractors. The Provider shall not employ any Subcontractor, supplier or other person or organization, whether initially or as a substitute, against whom the Owner may have reasonable objection. The Owner will communicate such objections in writing. The Provider is not required to employ any Subcontractor, supplier or other person or organization to furnish any of

the work to whom the Provider has reasonable objection. The Provider will not substitute Subcontractors without the acceptance of the Owner.

3.2.11.1 All Subcontracts and supply contracts shall be consistent with and bound to the terms and conditions of the Contract Documents including provisions of the agreement between the Provider and the Owner as well as the approved HUB Subcontracting Plan.

3.2.11.2 The Provider shall be solely responsible for scheduling and coordinating the Work of Subcontractors, suppliers and other persons and organizations performing or furnishing any of the Work under a direct or indirect contract with the Provider. The Provider shall require all Subcontractors, suppliers and such other persons and organizations performing or furnishing any of the Work to communicate with Owner only through the Provider.

3.2.12 Continuing the Work. The Provider shall carry on the Work and adhere to the progress schedule during all disputes, disagreements or alternative resolution processes with the Owner. The Provider shall not delay or postpone any Work because of the pending resolution of any disputes, disagreements or processes, except as the Owner and the Provider may agree in writing.

3.2.13 Acts and Omissions of Provider, its Subcontractors and Employees. The Provider is responsible for acts and omissions of its employees and all its Subcontractors, their agents and employees. The Owner may, in writing, require the Provider to remove from the Project any of Provider's or its Subcontractor's employees that the ODR finds to be careless, incompetent, or otherwise objectionable.

3.2.13.1 The Provider shall take care not to damage the premises or the property of others, and in case such damage occurs as the result of operations under the purchase order, shall make prompt, complete restitution.

3.2.13.2 Protection of property and liability: The Provider shall be responsible for all damage of property of any character occurring during the performance of the work resulting from any act, omission, neglect, or misconduct on his part or on the part of any of his employees, in the manner of method of executing the work; or from his failure to execute the work properly; until all claims have been settled and suitable evidence to that effect furnished to The Texas A&M University System. If the Provider fails to pay for damage, the damages may be deducted from any remaining balance due to the Provider or may be processed as a breach of contract to the full extent the law allows.

3.2.14 Indemnification of Owner. See paragraph 9. Indemnification in Master Services Agreement. 3.2.14.1 The provisions of this indemnification are solely for the benefit of the parties hereto and not intended to create or grant any rights, contractual or otherwise, to any other person or entity.

3.2.14.2 The Provider shall promptly advise the Owner in writing of any claim or demand against the Owner or the Provider known to the Provider related to or arising out of the Provider's activities under this Contract.

3.2.15 Ancillary Areas. The Provider shall operate and maintain operations and associated storage areas at the Site of the Work in accordance with the following:

3.2.15.1 The Provider shall confine all Provider operations, including storage of materials and employee parking upon the Site of the Work, to areas designated by the Owner.

3.2.15.2 The Provider may erect, at its own expense, temporary buildings that will remain its property. The Provider shall remove such buildings and associated utility service lines upon completion of the Work, unless the Provider requests and the Owner provides written consent that it may abandon such buildings and utilities in place.

3.2.15.3 The Provider shall use only established roadways or construct and use such temporary roadways as may be authorized by the Owner. The Provider shall not allow load limits of vehicles to exceed the limits prescribed by appropriate regulations or law. The Provider shall provide protection to road surfaces, curbs, sidewalks, trees, shrubbery, sprinkler systems, drainage structures and other like existing improvements to prevent damage, and shall repair any damage, thereto at the expense of the Provider. The Owner may restrict the Provider's entry to the Site to specifically assigned entrances and routes.

3.2.16 Separate Contracts. Additional Provider responsibilities when the Owner awards separate contracts:

3.2.16.1 The Owner reserves the right to award other contracts in connection with other portions of the Project under these or similar contract conditions.

3.2.16.2 The Owner reserves the right to perform operations related to the Project with the Owner's own forces.

3.2.16.3 Under a system of separate contracts, the conditions described herein continue to apply except as may be amended by Change Order.

3.2.16.4 The Provider shall cooperate with other contractors employed on the Project by the Owner, including providing access to the Site and project information as requested.

#### **Article 4. Historically Underutilized Business (HUB) Subcontracting Plan**

4.1 If applicable and referenced in the purchase order, Provider shall complete and submit a HUB Subcontracting Plan (HSP) according to the instructions listed within the purchase order. The HSP shall be part of the terms of the purchase order.

4.2 If subcontracting, Provider shall maintain business records documenting its compliance with the approved HSP and will submit a Progress Assessment Report (PAR) to the A&M System HUB Program office with each pay application until all Work has been completed. TAC 20.14 (d). All PARs shall be sent via e-mail to the following address: [so-hubprogram@tamus.edu](mailto:so-hubprogram@tamus.edu). Payment requests submitted will not be processed without prior approval of the PAR.

4.3 Changes may not be made to the HSP without prior review and approval from the A&M SYSTEM HUB Program. Provider shall submit to the A&M System HUB Program point of contact a revised HSP for each subcontracting opportunity to be modified.

## **Article 5. Bonds and Insurance**

(If applicable and referenced in the purchase order, Provider shall obtain and provide performance and payment bonds using the [A&M System forms \(C-6 and C-7\)](#).)

5.1 Construction Bonds. The Contractor is required to tender to Owner, prior to commencing the Work, performance and payment bonds, as required by Tex. Gov't Code, Chapter 2253.

5.1.1 Performance Bond. A Performance Bond is required if the Contract Sum is in excess of \$100,000. The Performance Bond is solely for the protection of the Owner. The Performance Bond is to be for the Contract Sum to guarantee the faithful performance of the Work in accordance with the Contract Documents. The form of the bond shall be approved by the Attorney General of Texas. The Performance Bond shall be effective through the Contractor's warranty period.

5.1.2 Payment Bond. A Payment Bond is required if the Contract Sum is in excess of \$25,000. The Payment Bond is to be for the Contract Sum and is payable to the Owner solely for the protection and use of payment bond beneficiaries who have a direct contractual relationship with the Contractor or a Subcontractor. The form of the bond shall be approved by the Attorney General of Texas.

5.1.3 Payment and performance bonds are due within ten (10) days of Provider's receipt of a purchase order.

5.1.4 Bond Requirements. Each bond shall be executed by a corporate surety or sureties authorized to do business in the State of Texas and acceptable to the Owner, on the Owner's form, and in compliance with the relevant provisions of the Texas Insurance Code. If any bond is for more than 10 percent of the surety's capital and surplus, the Owner may require certification that the company has reinsured the excess portion with one or more reinsurers authorized to do business in the State. A reinsurer may not reinsure for more than 10 percent of its capital and surplus. If a surety upon a bond loses its authority to do business in the State, the Contractor shall, within thirty (30) days after such loss, furnish a replacement bond at no added cost to the Owner.

5.1.5 Power of Attorney. Each bond shall be accompanied by a valid power-of-attorney issued by the surety company, attached to the bond, and signed and sealed with the corporate embossed seal, authorizing the attorney in fact who signs the bond to commit the surety to the terms of the bond, and stating any limit in the amount for which the attorney can issue a single bond.

5.1.6 Bond Indemnification. The process of requiring and accepting bonds and making claims thereunder shall be conducted in compliance with Tex. Gov't Code, Chapter 2253. IF FOR ANY REASON A STATUTORY PAYMENT OR PERFORMANCE BOND IS NOT HONORED BY THE SURETY, THE CONTRACTOR SHALL FULLY INDEMNIFY AND HOLD THE OWNER HARMLESS OF AND FROM ANY COSTS, LOSSES, OBLIGATIONS OR LIABILITIES IT INCURS AS A RESULT.

5.1.7 Furnishing Bond Information. Owner shall furnish certified copies of the Payment Bond and the related Contract to any qualified person seeking copies who complies with Tex. Gov't Code, § 2253.026.

5.1.8 Claims on Payment Bonds. Claims on Payment Bonds must be sent directly to the Contractor and his surety in accordance with Tex. Gov't Code § 2253.041. All Payment Bond claimants are cautioned that no lien exists on the funds unpaid to the Contractor on such Contract, and that reliance on notices sent to the Owner may result in loss of their rights against the Contractor and/or his surety. The Owner is not responsible in any manner to a claimant for collection of unpaid bills, and accepts no such responsibility because of any representation by any agent or employee.

5.1.9 Payment Claims when Payment Bond not Required. The rights of Subcontractors regarding payment are governed by Tex. Prop. Code, §§53.231 – 53.239 when the value of the Contract between the Owner and the Contractor is less than \$25,000.00. These provisions set out the requirements for filing a valid lien on funds unpaid to the Contractor as of the time of filing the claim, actions necessary to release the lien and satisfaction of such claim.

5.1.10 Sureties. Sureties shall be listed on the US Department of the Treasury's Listing of Approved Sureties maintained by the Bureau of Financial Management Service (FMS), [www.fms.treas.gov/c570](http://www.fms.treas.gov/c570), stating companies holding Certificates of Authority as acceptable sureties on Federal Bonds and acceptable reinsuring companies (FMS Circular 570)

5.2 Insurance Requirements. The Provider shall carry insurance in the types and amounts indicated in this Article for the duration of the Purchase Order. The insurance shall be evidenced by delivery to the Owner of certificates of insurance executed by the insurer or its authorized agent stating coverages, limits, expiration dates and compliance with all applicable required provisions. Certificates of Insurance and Additional Insured Endorsements as required by this Agreement emailed to the following A&M System contact [SOProurement@tamus.edu](mailto:SOProurement@tamus.edu). Upon request, the Owner, and/or its agents, shall be entitled to receive without expense, copies of the policies and all endorsements. The Provider shall update all expired policies prior to submission for payment. Failure to update policies shall be reason for withholding of payment until renewal is provided to the Owner.

5.2.1 The Provider, consistent with its status as an independent contractor, shall provide and maintain the insurance coverage with the minimum amounts described below until the end of the warranty period. Failure to maintain insurance coverage, as required, is grounds for Suspension of Work for Cause pursuant to Article 14.

5.2.2 Coverage shall be written on an occurrence basis by companies authorized and admitted 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 Owner, and shall include:

5.2.3 Insurance Coverage Required

5.2.3.1 Workers' Compensation Insurance with limits as required by the Texas Workers' Compensation Act, with the policy endorsed to provide a waiver of subrogation as to the Owner, and Employer's Liability insurance of not less than:

Coverage	Limit
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

Policies must include (a) Other States Endorsement to include TEXAS if business is domiciled outside of the state of Texas, and (b) a waiver of all rights of subrogation in favor of Owner. 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 the Owner. No 'alternative' form of insurance will be permitted

Workers' Compensation Insurance Coverage must meet the statutory requirements of Tex. Lab. Code, §401.011(44), and those specific to construction projects for public entities as required by Tex. Lab. Code, §406.096.

5.2.3.2 Commercial General Liability Insurance, including Independent Contractor's liability, Products and Completed Operations and Contractual Liability, covering, but not limited to, the liability assumed under the indemnification provisions of this Purchase Order, fully insuring Provider's (or Subcontractors) liability for bodily injury and property damage with a combined bodily injury (including death) and property damage minimum limit of:

\$1,000,000	per occurrence
\$2,000,000	general aggregate
\$1,000,000	products and completed operations
\$1,000,000	personal/advertising injury

Coverage shall be on an "occurrence" basis.

The policy shall include coverage extended to apply to completed operations and explosion, collapse, and underground hazards. The policy shall include endorsement CG2503 Amendment-Aggregate Limits of Insurance (Per Project) or its equivalent.

5.2.3.3 Business Automobile Liability Insurance, covering owned, hired, and non-owned vehicles, with a minimum combined bodily injury (including death) and property damage minimum limit of \$1,000,000 per occurrence. No aggregate shall be permitted for this type of coverage.

Such insurance is to include coverage for loading and unloading hazards.

5.2.3.4 Umbrella Liability Insurance with limits of not less than \$4,000,000 aggregate.

**Article 6. Contract Documents**



6.1 Provider's Duty to Review Construction Contract Documents. In order to facilitate its responsibilities for completion of the Work in accordance with and as reasonably inferable from the Contract Documents, prior to pricing or commencing the Work, the Provider shall examine and compare the Construction Contract Documents, information furnished by the Owner, relevant field measurements made by the Provider and any visible or reasonably anticipated conditions at the Site affecting the Work. This duty extends throughout the construction phase prior to commencing each particular work activity and/or system installation.

6.2 Requirements for Record Documents.

The Provider shall maintain a copy of all drawings, wiring diagrams, schematics, specifications, addenda, approved submittals, operating and maintenance manuals, warranties, contract modifications, and all Project correspondence. The Provider shall keep current and maintain documents in good order with postings and markings to record actual conditions of Work and show and reference all changes made during installation. The Provider shall provide Owner access to these documents and deliver a complete two digital set of these documents to the owner prior to final payment for the Work. The Provider shall provide training to Owner's personnel on the operation of the systems installed and record the training in MP4 format and provide the Owner two copies of all training videos.

## **Article 7. Safety**

7.1 General. It is the duty and responsibility of the Contractor and all of its Subcontractors to be familiar with, enforce and comply with all requirements of Public Law 91-596, 29 U.S.C. §§651 *et. seq.*, the Occupational Safety and Health Act of 1970 (OSHA), and all amendments thereto. The Contractor shall prepare a Safety Plan specific to the Project and submit it to the ODR and A/E prior to commencing Work. In addition, the Contractor and all of its Subcontractors shall comply with all applicable laws and regulations of any public body having jurisdiction for safety of persons or property to protect them from damage, injury or loss, and erect and maintain all necessary safeguards for such safety and protection.

7.1.1 Provider shall comply with Contractor's Safety Plan at all time while on site.

7.2 Emergencies. In any emergency affecting the safety of persons or property, the Provider working under the Contractor's safety plan shall act to minimize, mitigate, and prevent threatened damage, injury or loss.

7.2.1 Have authorized agents of Provider respond immediately upon call at any time of day or night when circumstances warrant the presence of Provider to protect the Work or adjacent property from damage or to take such action pertaining to the Work as may be necessary to provide for the safety of the public.

7.2.2 Give the ODR, Contractor and A/E prompt notice of all such events.

7.2.3 If Provider believes that any changes in the Work or variations from Contract Documents have been caused by its emergency response, promptly notify the Owner and Contractor within 72 hours of the emergency response event.

7.2.4 Should Provider fail to respond; Contractor and Owner is authorized to direct other forces to take action as necessary and Owner may deduct any cost of remedial action from funds otherwise due the Provider

7.3 Injuries. In the event of an incident or accident involving outside medical care for an individual on or near the Work, Provider shall notify the ODR and other parties as may be directed within 24 hours of the event.

7.3.1 Record the location of the event and the circumstances surrounding it, by using photography or other means, and gather witness statements and other documentation which describes the event.

7.3.2 Supply the ODR and A/E with an incident report no later than 36 hours after the occurrence of the event. In the event of a catastrophic incident (one fatality or three workers hospitalized), barricade and leave intact the scene of the incident until all investigations are complete. A full set of incident investigation documents, including facts, finding of cause, and remedial plans shall be provided by Provider to Owner within one week after occurrence, unless otherwise directed by Owner's legal counsel. Provider shall provide the ODR with written notification within one week of such catastrophic event if legal counsel delays submission of a full report.

## **Article 8. Quality Control**

8.1 Materials & Workmanship. All Devices and material shall only used in the manner intended. All devices and materials shall be a quality intended for commercial or industrial applications as appropriate. The Provider shall execute Work in a good and workmanlike manner and in accordance with the Contract Documents and manufacturers requirements. The Provider shall provide and meet the Quality Control Plan specific to this Project and acceptable by the Owner. Where Contract Documents do not specify a Quality Standard, (either in materials or workmanship) the Provider shall comply with generally accepted construction industry standards. Unless otherwise specified, the Provider shall incorporate all new materials and equipment into the Work under the Purchase Order.

8.2 Provider Testing. The Provider is responsible for coordinating and paying for all routine and special tests required to confirm compliance with quality and performance requirements of the Contract Documents. This "quality control" testing shall include any particular testing required to verify a complete working system:

8.2.1 Routine, preliminary, start-up, pre-functional and operational testing of building equipment and systems as necessary to confirm operational compliance with requirements of the Contract Documents.

8.2.2 All subsequent tests on original or replaced materials conducted as a result of prior testing failure.

8.3 Owner Testing. The Owner reserves the right to subject materials, equipment and systems incorporated into the Project to routine tests as may be specified or as deemed necessary by the ODR or the A/E to insure compliance with the quality and/or performance requirements of the Contract Documents and/or with laws, ordinances, rules, regulations and/or orders of any public authority having

jurisdiction. The results of such “quality assurance” testing will be provided to the Provider and, to the extent provided, the Provider may rely on findings.

8.3.1 All testing shall be performed in accordance with standard test procedures by an accredited laboratory, or special consultant as appropriate, acceptable to the Owner. Results of all tests shall be provided promptly to the ODR, A/E and the Provider.

8.4 Non-Compliance (Test Results). Should any of the tests indicate that a material, equipment and/or system does not comply with the contract requirements, the burden of proving compliance remains with the Provider. The tests are subject to the following conditions:

8.4.1 The method, quality and nature of the tests must be acceptable to the Owner.

8.4.2 All tests must be taken in the presence of the A/E and/or ODR, or their representatives.

8.4.3 If tests confirm that the material/equipment/systems comply with Contract Documents, the Owner will pay the cost of the test.

8.4.4 If tests reveal noncompliance, the Provider will pay the laboratory fees and costs of that particular test and all future tests of that failing Work, necessary to eventually confirm compliance with Contract Documents.

8.4.5 Proof of noncompliance with the Contract Documents will make the Provider liable for any corrective action which the ODR determines appropriate, including complete removal and replacement of non-compliant work or material.

8.5 Notice of Testing. The Provider shall give the ODR and the A/E timely notice of its readiness and the date arranged so the ODR and A/E may observe such inspection, testing or approval.

8.6 Test Samples. The Provider is responsible for providing materials of sufficient size for test purposes.

8.7 Inspection During Construction.

8.7.1 The Provider shall provide sufficient, safe, and proper facilities, including equipment, as necessary for safe access at all reasonable times for observation and/or inspection of the Work by the Owner and its agents.

8.7.2 The Provider shall not cover up any work with finishing materials or other building components prior to providing the Owner and its agents an opportunity to perform an inspection of the Work.

8.7.3 Should corrections of the Work be required for approval; the Provider shall not cover up corrected Work until the Owner indicates approval.

8.7.4 The Provider shall provide notification of at least five (5) working days or otherwise as mutually agreed, to the ODR of the anticipated need for a cover-up inspection. Should the ODR fail to make the necessary inspection within the agreed period, the Provider may proceed with

cover up Work, but is not relieved of responsibility for Work to comply with requirements of the Contract Documents.

## **Article 9. Schedules**

9.1 Provider shall be required to coordinate its schedule of Work with the Contractor's schedule of Work. Contractor's schedule shall take precedence over the Provider's schedule.

## **Article 10. Payments**

10.1 Progress Payments. The Provider will receive periodic progress payments for Work performed, materials in place, suitably stored on site, or as otherwise agreed to by the Owner and the Provider. Payment is not due until receipt by the ODR or his designee of a correct and complete invoice in electronic format. Progress payments are made provisionally and do not constitute acceptance of Work not in accordance with the Contract Documents. The Owner will not process progress payment applications for Purchase Order Change work until all parties execute the Purchase Order Change.

10.2 Progress payments to the Provider do not release the Provider or its surety from any obligations under the Contract.

10.2.1 The Provider shall provide copies of bills of lading, invoices, delivery receipts or other evidence of the location and value of such materials in requesting payment for materials.

10.2.2 For purposes of Tex. Gov't Code § 2251.021(a)(2), the date the performance of service is complete is the date when the Owner's representative approves the application for payment.

10.3 Owner's Duty to Pay. The Owner has no duty to pay the Provider except on receipt by the ODR of a complete Invoice.

10.3.1 Payment for stored materials and/or equipment confirmed by the Owner and A/E to be on-site or otherwise properly stored is limited to 85 percent of the invoice price or 85 percent of the scheduled value for the materials or equipment, whichever is less.

10.4 Price Reduction to Cover Loss. The Owner may reduce any Periodic Invoice, or application for Progress Payment, prior to payment to the extent necessary to protect the Owner from loss on account of actions of the Provider including, but not limited to:

10.4.1 Defective or incomplete Work not remedied.

10.4.2 Damage to Work of a separate Contractor.

10.4.3 Persistent failure to carry out the Work in accordance with the Contract Documents.

10.4.4 Reasonable evidence that the Work cannot be completed for the unpaid portion of the Contract Sum.

10.5 Title to all material and Work covered by progress payments transfers to the Owner upon payment.

10.5.1 Transfer of title to Owner does not relieve the Provider of the sole responsibility for the care and protection of materials and Work upon which payments have been made until final acceptance of the entire Work, or the restoration of any damaged Work, or waive the right of the Owner to require the fulfillment of all the terms of the Contract.

10.6 Off-Site Storage. With prior approval by the Owner and in the event Provider elects to store materials at an off-site location, abide by the following conditions, unless otherwise agreed to in writing by the Owner.

10.6.1 Store materials in a Bonded Commercial Warehouse.

10.6.2 Provide separate Insurance Coverage adequate not only to cover materials while in storage, but also in transit from the off-site storage areas to the Project Site. Copies of duly authenticated certificates of insurance, made out to insure the Owner must be filed with the Owner's representative.

10.6.3 Inspection by Owner's representative is allowed at any time. The Owner's Inspectors must be satisfied with the security, control, maintenance, and preservation measures.

10.6.4 Materials for this Project are physically separated and marked for the Project in a sectioned-off area. Only materials which have been approved through the submittal process are to be considered for payment.

10.6.5 Owner reserves the right to reject materials at any time prior to final acceptance of the complete Project if they do not meet Contract requirements regardless of any previous progress payment made.

10.6.6 With each monthly payment estimate, submit a report to the ODR, A/E, and Inspector listing the quantities of materials already paid for and still stored in the off-site location.

10.6.7 Make warehouse records, receipts and invoices available to Owner's representatives, upon request, to verify the quantities and their disposition.

10.6.8 In the event of Contract termination or default by Provider, the items in storage off-site, upon which payment has been made, will be promptly turned over to Owner or Owner's agents at a location near the jobsite as directed by the ODR. The full provisions of performance and payment bonds on this Project cover the materials off-site in every respect as though they were stored on the Project Site.

## **Article 11. Changes**

11.1 Purchase Order Change. A Purchase Order Change issued after execution of the Purchase Order is a written order to the Provider, signed by the Owner authorizing a change in the Work or an adjustment in the Contract Sum or the Contract Time. The Contract Sum and the Contract Time can only be changed by Change Order. A Change Order signed by the Provider indicates his agreement therewith, including the adjustment in the Contract Sum and/or the Contract Time. The ODR may issue written authorization for the Provider to proceed with work of a Change Order in advance of final execution by all parties.

11.1.1 The Owner, without invalidating the Contract, and without prior approval of the surety, may order changes in the Work within the general scope of the Contract consisting of additions, deletions or other revisions, and the Contract Sum and the Contract Time will be adjusted accordingly. All such changes in the Work shall be authorized by Change Order, and shall be performed under the applicable conditions of the Contract Documents. If such changes cause an increase or decrease in the Provider's cost of, or time required for, performance of the Contract, an equitable adjustment shall be made and confirmed in writing in a Change Order.

11.1.2 Except as provided above, no order, oral statement, or direction of the Owner or his duly appointed representative shall be treated as a change under this article or entitle the Provider to an adjustment.

## **Article 12. Project Completion and Acceptance**

12.1 Inspection. When the Provider considers the entire Work or part thereof complete, it shall notify the ODR in writing the Work will be ready for an inspection and operational demonstration on a specified date. The Provider shall include with this notice documentation that it has previously inspected and tested the Work associated with the request, has corrected items where possible and include all items scheduled for completion or correction prior to the inspection. If any of the items on the list prevents the Work from being used as intended the Provider shall not request an inspection. The Owner and its representatives will review the list of items and schedule the requested inspection, or inform the Provider in writing that such an inspection is premature because the Work is not sufficiently advanced or conditions are not as represented on the Provider's list.

12.1.1 Prior to the inspection, the Provider shall furnish a copy of its marked-up Record Drawings and a preliminary copy of each instructional manual, maintenance and operating manual, parts catalog, wiring diagrams, spare parts, specified written warranties and like publications or parts for all installed equipment, systems and like items. Delivery of these items is a prerequisite for requesting the inspection.

12.1.2 On the date requested by Provider, or as mutually agreed upon pending the status of the open items list, the A/E, ODR, the Provider and other Owner representatives as determined by the Owner, will jointly attend the inspection, which shall be conducted by the ODR or their delegate. The ODR or their delegate will provide a list of punchlist items for completion prior to final inspection. This list may include items in addition to those on the Provider's punchlist, which the inspection team deems necessary to correct or complete prior to final inspection. If the Owner has occupied the facility, the Provider shall complete all corrective Work at the convenience of the Owner, without disruption to Owner's use of the facility for its intended purposes.

12.2 The Provider must correct or complete all items on the Punchlist and complete all Owner training before requesting Final Payment. Unless otherwise agreed to in writing by the parties, complete this work within seven (7) days of receiving the Final Punchlist. Upon completion of the Final Punchlist, the Provider shall notify the A/E and ODR in writing stating the disposition of each Final Punchlist item. The A/E, Owner and Provider shall promptly inspect the completed items. Completion of all Work is a condition precedent to the Provider's right to receive Final Payment.

## **Article 13. Warranty**

13.1 Provider's General Warranty and Guarantee. Provider warrants to the Owner that all Work is executed in accordance with the Contract, complete in all parts and in accordance with approved practices and customs, and of the best finish and workmanship. The Provider further warrants that unless otherwise specified, all materials and equipment incorporated in the Work under the Contract are new. The Owner may, at its option, agree in writing to waive any failure of the Work to conform to the Contract, and to accept a reduction in the Contract Sum for the cost of repair or diminution in value of the Work by reason of such defect. Absent such a written agreement, the Provider's obligation to perform and complete the Work in accordance with the Contract Documents is absolute and is not waived by any inspection or observation by the Owner, A/E or others, by making any progress payment or final payment, by the use or occupancy of the Work or any portion thereof by the Owner, at any time, or by any repair or correction of such defect made by the Owner.

13.2 Warranty Period. Except as may be otherwise specified or agreed, the Provider shall repair all defects in materials, equipment, or workmanship appearing within one year from the date of the completion inspection described in Article 12. If the completion inspection occurs by phase, then the warranty period for that particular Work begins on the date of such occurrence, or as otherwise stipulated during the completion inspection.

13.3 Limits on Warranty. Provider's warranty and guarantee hereunder excludes defects or damage caused by:

13.3.1 Modification or improper maintenance or operation by persons other than Provider, Subcontractors, or any other individual or entity for whom Provider is responsible, unless Owner is compelled to undertake maintenance or operation due to the neglect of the Provider.

13.3.2 Normal wear and tear under normal usage after acceptance of the Work by the Owner.

13.4 Events Not Affecting Warranty. Provider's obligation to perform and complete the Work in a good and workmanlike manner in accordance with the Contract Documents is absolute. None of the following will constitute an acceptance of Work that is not in accordance with the Contract Documents or a release of Provider's obligation to perform the Work in accordance with the Contract Documents:

13.4.1 Observations by Owner and/or A/E;

13.4.2 Recommendation to pay any progress or final payment by A/E;

13.4.3 The holding of a completion inspection or any payment by Owner to Provider under the Contract Documents;

13.4.4 Use or occupancy of the Work or any part thereof by Owner;

13.4.5 Any acceptance by Owner or any failure to do so;

13.4.6 Any review of a Shop Drawing or Sample submittal; or

13.4.7 Any inspection, test or approval by others.

13.5 Separate Warranties. If a particular piece of equipment or component of the Work for which the Contract requires a separate warranty is placed in continuous service before the completion inspection, the Warranty Period for that equipment or component will not begin until the completion inspection, regardless of any warranty agreements in place between suppliers and/or Subcontractors and the Provider. The ODR will certify the date of service commencement during the completion inspection.

13.5.1 In addition to the Provider's warranty and duty to repair, the Provider expressly assumes all warranty obligations required under the Contract for specific building components, systems and equipment.

13.5.2 The Provider may satisfy any such obligation by obtaining and assigning to the Owner a complying warranty from a manufacturer, supplier, or Subcontractor. Where an assigned warranty is tendered and accepted by the Owner which does not fully comply with the requirements of the Contract, the Provider remains liable to the Owner on all elements of the required warranty not provided by the assigned warranty.

13.6 Correction of Defects. Upon receipt of written notice from the Owner, or any agent of the Owner designated as responsible for management of the Warranty Period, of the discovery of a defect, the Provider shall promptly remedy the defect(s), and provide written notice to the Owner and designated agent indicating action taken. In case of emergency where delay would cause serious risk of loss or damage to the Owner, or if the Provider fails to remedy within 30 days, or within another period agreed to in writing, the Owner may correct the defect and be reimbursed the cost of remedying the defect from the Provider or its Surety.

#### **Article 14. Suspension and Termination**

14.1 Suspension of Work for Cause. The Owner may, at any time without prior notice, suspend all or any part of the Work, if after reasonable observation and/or investigation, the Owner determines it is necessary to do so to prevent or correct any condition of the Work, which constitutes an immediate safety hazard, or which may reasonably be expected to impair the integrity, usefulness or longevity of the Work when completed.

14.1.1 The Owner will give the Provider a written notice of suspension for cause, setting forth the reason for the suspension and identifying the Work suspended. Upon receipt of such notice, the Provider shall immediately stop the Work so identified. As soon as practicable following the issuance of such a notice, the Owner will initiate and complete a further investigation of the circumstances giving rise to the suspension, and issue a written determination of the findings.

14.1.2 If it is confirmed that the cause was within the control of the Provider, the Provider will not be entitled to an extension of time or any compensation for delay resulting from the suspension. If the cause is determined not to have been within the control of the Provider, and the suspension has prevented the Provider from completing the Work within the Contract Time, the suspension is an Excusable Delay and a Time Extension will be granted through a Change Order.

14.1.3 Suspension of work under this provision will be no longer than is reasonably necessary to remedy the conditions giving rise to the suspension.



14.2 Suspension of Work for Owner's Convenience. Upon seven (7) calendar days written notice to the Provider, the Owner may at any time without breach of the Contract suspend all or any portion of the Work for a period of up to thirty days for its own convenience. The Owner will give the Provider a written notice of suspension for convenience, which sets forth the number of suspension days for which the Work, or any portion of it, will be suspended and the date on which the suspension of Work will cease. When a suspension prevents the Provider from completing the Work within the Contract Time, it is an Excusable Delay. A notice of suspension for convenience may be modified by the Owner at any time on seven (7) calendar days written notice to the Provider. If the Owner suspends the Work for its convenience for more than sixty (60) consecutive calendar days, the Provider may elect to terminate the Contract pursuant to the provisions of the Contract.

14.3 Termination by Owner for Cause. The Owner may, without prejudice to any right or remedy, terminate the employment of the Provider and take possession of the Site and of all materials, equipment, tools, construction equipment and machinery thereon owned by the Provider, under any of the following circumstances:

14.3.1 Persistent or repeated failure or refusal, except during complete or partial suspensions of work authorized under the Contract, to supply enough properly skilled workmen or proper materials; and/or

14.3.2 Persistent disregard of laws, ordinances, rules, regulations or orders of any public authority having jurisdiction, including the ODR; and/or

14.3.3 Persistent failure to prosecute the Work in accordance with the Contract, and to insure its completion within the time, or any approved extension thereof, specified in this Contract; and/or

14.3.4 Failure to remedy defective work condemned by the ODR; and/or

14.3.5 Failure to pay Subcontractors, laborers, and material suppliers pursuant to Tex. Gov't Code Chapter 2251; and/or

14.3.6 Persistent endangerment to the safety of laborers or of the Work; and/or

14.3.7 Failure to supply or maintain statutory bonds or to maintain required insurance, pursuant to the Contract; and/or

14.3.8 Any material breach of the Contract; and/or

14.3.9 The Provider's insolvency, bankruptcy, or demonstrated financial inability to perform the Work.

14.4 Failure by the Owner to exercise the right to terminate in any instance is not a waiver of the right to do so in any other instance.

14.5 Should the Owner decide to terminate the employment of the Provider under the provisions of Article 14.3, it will provide to the Provider and its Surety thirty (30) days prior written notice.

14.6 Should the Provider or its Surety, after having received notice of termination, remedy to the satisfaction of the Owner the condition(s) upon which the notice of termination was based, the notice of termination shall be rescinded in writing by the Owner. If so rescinded, the Work may continue without an extension of time.

14.7 If the Provider or its Surety fails to remedy the condition(s) to the satisfaction of the Owner within thirty (30) days following receipt of notice, the Owner may ***immediately terminate the Contract, make arrangements*** for completion of the Work, and deduct the cost of completion from the unpaid Contract Sum.

14.7.1 Cost of completion includes additional Owner costs such as A/E services, the cost of other consultants, and contract administration.

14.7.2 The Owner will make no further payment to the Provider or its Surety until all costs of completing the Work are paid. If the unpaid balance of the Contract Sum exceeds the costs of administering and finishing the Work, the Provider will receive the excess funds. If such costs exceed the unpaid balance, the Provider or its Surety will pay the difference to the Owner.

14.7.3 This obligation for payment survives the termination of the Contract.

14.7.4 The Owner reserves the right in termination for cause to take assignment of all contracts between the Provider and its Subcontractors, vendors and suppliers. The ODR will promptly notify the Provider of the contracts the Owner elects to assume. Upon receipt of such notice, the Provider shall promptly take all steps necessary to effect such assignment.

14.8 Termination for Convenience of Owner. The Owner reserves the right, without breach, to terminate the Contract prior to, or during the performance of the Work, for any reason. Upon such an occurrence, the following shall apply:

14.8.1 The Owner will immediately notify the Provider and the A/E in writing, specifying the reason for and the effective date of contract termination. Such notice may also contain instructions necessary for the protection, storage or decommissioning of incomplete work or systems, and for safety.

14.8.2 Upon receipt of the notice of termination, the Provider shall immediately proceed with the following obligations, regardless of any delay in determining or adjusting any amounts due at that point in the Contract:

14.8.2.1 Stop all work.

14.8.2.2 Place no further subcontracts or orders for materials or service.

14.5.2.3 Terminate all subcontracts.

14.8.2.4 Cancel all materials and equipment orders as applicable.

14.8.2.5 Take action that is necessary to protect and preserve all property related to this Contract which is in the possession of the Provider.

14.8.3 When the Contract is terminated for the Owner's convenience, the Provider may recover from the Owner payment for all Work executed before the notice of termination along with the actual and reasonable cost of any additional work required to secure the Project and property related to the Contract following the notice of termination. Reasonable costs also include actual expenses including, but not limited to, return fees, restock fees, packaging, and freight to return supplies and equipment ordered and/or received prior to the termination notice (but not installed). Special orders and custom equipment ordered prior to notice of termination is non-returnable and shall be billed to Project. The Provider will not be entitled to recover any other costs or damages arising from the termination for convenience of the Owner including, but not limited to, claims for lost business opportunities.