

**AGREEMENT FOR
VIDEO STREAMING SERVICES**

**ECTOR COUNTY INDEPENDENT SCHOOL DISTRICT
and
SWAGIT PRODUCTIONS, LLC**

This Agreement for Video Streaming Services ("Agreement") is made by and between the Ector County Independent School District, Texas ("ISD"), with offices at 802 N. Sam Houston, Odessa, Texas 79761, and Swagit Productions, LLC, ("Provider") a Texas Limited Liability Company, with offices at 850 Central Parkway E., Suite 100, Plano, Texas 75074, effective as of the date written below.

RECITALS

- A. The ISD desires to enter into this Agreement in order to obtain video streaming services for scheduled Board meetings as outlined in the Scope of Services attached as Exhibit "A"; and
- B. Provider has available and offers to provide the personnel necessary to provide said services in accordance with the Scope of Services included in this Agreement (see Exhibit A attached hereto and incorporated herein); and
- C. Provider is in the business of providing video streaming services for businesses and governmental entities, and represents and warrants that it has the skills, qualifications, expertise and experience necessary to perform the work and services to provide and implement video streaming services as described herein in an efficient, cost-effective manner with a high degree of quality and responsiveness and has performed and continues to perform the same and similar services for other buyers; and
- D. On the basis of and in reliance upon such representations by Provider and others made herein and in Provider's proposal, the ISD desires to engage Provider to provide the work and services described herein under the terms and conditions of this Agreement.

For the reasons recited above, and in consideration of the mutual covenants contained in this Agreement, and other valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the ISD and Provider agree as follows:

1. SERVICES TO BE PERFORMED BY PROVIDER

Provider agrees to perform the following services:

- 1.1 Provider agrees to provide the work and services as set forth in detail in Exhibit "A" (entitled "Scope of Services" and so called herein) attached hereto and hereby incorporated as part of this Agreement. All of the terms and conditions set forth

and pertaining to the services in Exhibit "A" shall be incorporated in this Agreement as if fully set forth herein.

2. COMPENSATION OF PROVIDER

2.1 Provider agrees to provide all of the services and Equipment set forth in Exhibit "A" and as described herein for the following amounts:

(a) A one-time charge not to exceed:

Four Thousand Six Hundred Nineteen and No/100 Dollars (\$4,619.00) for Swagit EASE hardware/software and other related (including, without limitation, Remote Installation and Design) costs (as identified and detailed on the attached Exhibit "A", page 3, "*Streaming Video Hardware*"); and

(b) Following the Installation of all Equipment by Provider and the acceptance thereof by the ISD, the ISD shall pay to provider a monthly fee in the amount of **Five Hundred Ninety-Five and No/100 Dollars** (\$595.00) thereafter for on-demand and live video streaming (as identified and described on the attached Exhibit "A", page 3, "*Streaming Video Monthly Managed Services*").

2.2 Except as set forth herein, payments will be processed on a monthly basis with payment available within 30 days after receipt of an invoice for the previous month's service. All payments pursuant to this Agreement shall be made promptly and without undue delay, and in no circumstance beyond 60 days from the due date.

2.3 Payments pursuant to this Agreement shall be paid in accordance with the Texas Prompt Payment Act, Texas Gov't Code Chapter 2251. Should the ISD fail to pay any invoice that is outstanding more than 60 days, a 5% service fee will be applied to the total amount of that invoice, not including any shipping or sales tax.

3. RIGHTS AND OBLIGATIONS OF PROVIDER

Independent Contractor. The parties agree that Provider performs specialized services and that Provider enters into this Agreement with the ISD as an independent contractor. Nothing in this Agreement shall be construed to constitute Provider or any of Provider's agents or employees as an agent, employee or representative of the ISD. As an independent contractor, Provider is solely responsible for all labor and expenses in connection with this Agreement and for any and all damages arising out of Provider's performance under this Agreement.

Provider's Control of Work. All services to be provided by Provider shall be performed as determined by the ISD in accordance with the Scope of Services set forth in Exhibit "A." Provider shall furnish the qualified personnel, materials, equipment and other items necessary to carry out the terms of this Agreement. Provider shall be responsible for and in full control of the work of all such personnel.

Reports to the ISD. Although Provider is responsible for control and supervision of work performed under this Agreement, the services provided shall be acceptable to the ISD and shall be subject to a general right of inspection and supervision to ensure satisfactory completion. This right of inspection and supervision shall include, but not be limited to, all reports to be provided by Provider to the ISD and the rights of the ISD, as set forth in the Scope of Services, and the right of the ISD to audit Provider's records.

Compliance with All Laws. Provider shall comply with all applicable laws, ordinances, rules, regulations and executive orders of the federal, state and local government, which may affect the performance of this Agreement. Any provision required by laws, ordinances, rules, regulations, or executive orders to be inserted in this Agreement shall be deemed inserted, whether or not such provisions appear in this Agreement.

Organization and Authorization. Provider warrants and represents that: (i) it is a limited liability company duly organized, validly existing and in good standing under the laws of the State of Texas, and which shall remain in good standing throughout the term of this Agreement; (ii) it has the requisite power and authority to carry on its business as it is now being conducted; (iii) it has the legal capacity to enter into this Agreement; (iv) the execution, delivery and performance of this Agreement and the consummation of the transactions contemplated by this Agreement have been authorized and approved by all action required on the part of Provider; (v) it has the right and authority to sell the software to the ISD; (vi) all software shall be in good working order; and, (vii) all licenses and warranties regarding the software and hardware shall be conveyed to the ISD.

Warranty. Provider warrants that: (i) any streaming server hardware provided by Swagit (as identified and described in the Scope of Services, page 3, "*Streaming Video Hardware*") not in good working order and used under normal operating conditions, will be fully replaced for a period of three (3) years; (ii) thereafter, all costs of streaming server hardware replacement due to any failure or caused by normal wear and tear, shall be at the ISD's expense; (iii) all operating and proprietary software for any streaming server shall be fully replaced or upgraded, at no cost to the ISD, for the life of the contract; and (iv) in the event of a complete hardware failure within the warranty period, Provider shall overnight replacement parts and/or a new server at its sole expense.

4. NOTICE PROVISIONS

Notice. Any notice concerning this Agreement shall be in writing and (i) sent by certified or registered mail, return receipt requested, postage prepaid, (ii) delivered personally, or (iii) placed in the custody of Federal Express Corporation or other nationally recognized carrier to be delivered overnight; and addresses for such notice are as follows:

To the ISD's Authorized Representative: To Provider:

Rebecca Mull
Purchasing Director
Ector County ISD
802 N. Sam Houston
Odessa, Texas 79761
432/456-9719

David Owusu
Director of Streaming
Swagit Productions, LLC
850 Central Parkway East, Suite 100
Plano, Texas 75074
800/573-3160

5. INDEMNIFICATION

Provider (hereinafter referred to as "Indemnitor") agrees to indemnify, save and hold harmless the ISD, any jurisdiction or agency issuing permits for any work under this Agreement, and their respective directors, officers, officials, agents, employees and volunteers (hereinafter referred to as "Indemnitee") from and against any and all liabilities, damages, losses, or expenses (including court costs, attorney's fees, and costs of claim processing, investigation and litigation) (hereinafter collectively referred to as "Claims") for personal injury (including death) or property damage to the extent caused by the negligent act, omission, negligence or misconduct of the Indemnitor, or any of Indemnitor's directors, officers, agents, employees or volunteers. This indemnity includes any claim or amount arising or recovered under the Workers' Compensation Law or arising out of the failure of Provider to conform to any federal, state or local law, statute, ordinance, rule, regulation or court decree in effect at the time services are rendered. Provider shall be responsible for defense, and judgment costs where this indemnification is applicable.

6. INSURANCE

Provider and subcontractors shall procure and maintain until all of their obligations have been discharged, including any warranty periods under this Agreement are satisfied, insurance against claims for injury to persons or damage to property which may arise from or in connection with the performance of the work hereunder by Provider, its agents, representatives, employees or subcontractors.

The insurance requirements herein are minimum requirements for this Agreement and in no way limit the indemnity covenants contained in this Agreement. The ISD in no way warrants that the minimum limits contained herein are sufficient to protect Provider from liabilities that may arise out of the performance of the work under this Agreement by Provider, its agents, representatives, employees or subcontractors and Provider is free to purchase additional insurance as may be determined necessary.

A. Minimum Scope and Limits of Insurance. Provider shall provide coverage at least as broad and with limits of liability not less than those stated below.

1. Commercial General Liability - Occurrence Form
(Form CG 0001, ed. 10/93 or any replacements thereof)

General Aggregate	\$2,000,000
Products-Completed Operations Aggregate	\$1,000,000
Personal & Advertising Injury	\$1,000,000
Each Occurrence	\$1,000,000
Fire Damage (Any one fire)	\$ 50,000
Medical Expense (Any one person)	Optional

2. Workers' Compensation and Employer's Liability

Workers' Compensation	Statutory
Employer's Liability: Each Accident	\$ 500,000
Disease-Each Employee	\$ 500,000
Disease-Policy Limit	\$ 500,000
3. Professional Liability \$1,000,000

B. SELF-INSURED RETENTIONS/DEDUCTIBLES: Any self-insured retentions and deductibles must be declared to and approved by the ISD. If not approved, the ISD may require that the insurer reduce or eliminate such self-insured retentions with respect to the ISD, its officers, agents, employees, and volunteers.

C. OTHER INSURANCE REQUIREMENTS: The policies are to contain, or be endorsed to contain, the following provisions:

1. Commercial General Liability Coverages:

- a. The Ector County Independent School District, its officers, officials, agents, and employees are additional insured with respect to liability arising out of activities performed by, or on behalf of, the Provider; products and completed operations of the Provider, and automobiles owned, leased, hired or borrowed by the Provider.
- b. The Provider's insurance shall contain broad form contractual liability coverage.
- c. The ISD, its, officers, officials, agents, employees and volunteers shall be additional insured to the full limits of liability purchased by the Provider even if those limits of liability are in excess of those required by this Agreement.
- d. The Provider's insurance coverage shall be primary insurance with respect to the ISD, its, officers, officials, agents, and employees. Any insurance or self-insurance maintained by the ISD, its officers, officials, agents, employees, or volunteers shall be in excess to the coverage of the Provider's insurance and shall not contribute to it.
- e. The Provider's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.
- f. Coverage provided by the Provider shall not be limited to the liability assumed under the indemnification provisions of this Agreement.
- g. The policies shall contain a waiver of subrogation against the ISD, its officers, officials, agents, and employees for losses arising from work performed by the Provider for the ISD.

2. **Workers' Compensation and Employer's Liability Coverage:** The insurer shall agree to waive all rights of subrogation against the ISD, its officers, officials, agents, employees and volunteers for losses arising from work performed by the Provider for the ISD.

- 6.1 **Notice of Cancellation.** Each insurance policy required by the insurance provisions of this Agreement shall provide the required coverage and shall not be amended, suspended, voided or canceled except after sixty (60) days prior written notice has been given to the ISD, except when cancellation is for non-payment of premium, then at least ten (10) days prior notice shall be given to the ISD. Such notice shall be sent directly to:

**Rebecca Mull
Purchasing Director
Ector County Independent School District
802 N. Sam Houston
Odessa, Texas 79761**

- 6.2 **Acceptability of Insurers.** Insurance shall be placed with insurers duly licensed or authorized to do business in the State of Texas and with an "A.M. Best" rating of not less than A- VII, or receiving prior approval by the ISD. The ISD in no way warrants that the above-required minimum insurer rating is sufficient to protect Provider from potential insurer insolvency.
- 6.3 **Verification of Coverage.** Prior to commencing work or services, Provider shall furnish the ISD with certificates of insurance (ACORD form or equivalent approved by the ISD) as required by this Agreement. The certificates for each insurance policy shall be signed by a person authorized by that insurer to bind coverage on its behalf.

All certificates and any required endorsements shall be received and approved by the ISD before work commences. Each insurance policy required by this Agreement shall be in effect at or prior to commencement of work under this Agreement and remain in effect for the duration of this Agreement. Failure to maintain the insurance policies as required by this Agreement or to provide evidence of renewal shall constitute a material breach of contract.

All certificates required by this Agreement shall be sent directly to **Rebecca Mull, Purchasing Director, Ector County Independent School District, 802 N. Sam Houston, Odessa, TX 79761**. The ISD project/contract number and project description shall be noted on the certificate of insurance. The ISD reserves the right to request and receive within ten (10) days, complete, certified copies of all insurance policies required by this Agreement at any time. The ISD shall not be obligated, however, to review same or to advise Provider of any deficiencies in such policies and endorsements, and such receipt shall not relieve Provider from, or be deemed a waiver of the ISD's right to insist on, strict fulfillment of Provider's obligations under this Agreement.

- 6.4 Subcontractors. Providers' certificate(s) shall include all subcontractors as additional insured under its policies **or** Provider shall furnish to the ISD separate certificates and endorsements for each subcontractor. All coverages for subcontractors shall be subject to the minimum requirements identified above.
- 6.5 Approval. Any modification or variation from the insurance requirements in this Agreement shall be made by the ISD Attorney's office, whose decision shall be final. Such action shall not require a formal amendment to this Agreement, but may be made by administrative action.

7. DEFAULT AND TERMINATION

Events of Default Defined. The following shall be Events of Default under this Agreement:

7.1.1 Any material misrepresentation made by Provider to the ISD;

7.1.2 Any failure by Provider to perform its obligations under this Agreement including, but not limited to, the following:

7.1.2.1 Failure to commence work at the time(s) specified in this Agreement due to a reason or circumstance within Provider's reasonable control;

7.1.2.2 Failure to perform the work with sufficient personnel and equipment or with sufficient equipment to ensure completion of the work within the specified time due to a reason or circumstance within Provider's reasonable control;

7.1.2.3 Failure to perform the work in a manner reasonably satisfactory to the ISD;

7.1.2.4 Failure to promptly correct or re-perform within a reasonable time work that was rejected by the ISD as unsatisfactory or erroneous;

7.1.2.5 Discontinuance of the work for reasons not beyond Provider's reasonable control;

7.1.2.6 Failure to comply with a material term of this Agreement, including, but not limited to, the provision of insurance; and

7.1.2.7 Any other acts specifically stated in this Agreement as constituting a default or a breach of this Agreement.

7.2 Remedies. The following shall be remedies under this agreement.

7.2.1 Upon the occurrence of any Event of Default, the ISD may declare Provider in default under this Agreement. The ISD shall provide written notification of the Event of Default and any intention of the ISD to terminate this Agreement. Upon the giving of notice, the ISD may invoke any or all of the following remedies:

7.2.1.1 The right to cancel this Agreement as to any or all of the services yet to be performed;

7.2.1.2 The right of specific performance, an injunction or any other appropriate equitable remedy;

7.2.1.3 The right to monetary damages;

7.2.1.4 The right to withhold all or any part of Provider's compensation under this Agreement;

7.2.1.5 The right to deem Provider non-responsive in future contracts to be awarded by the ISD; and

7.2.1.6 The right to seek recoupment of public funds spent for impermissible purposes.

7.2.2 The ISD may elect not to declare an Event of Default or default under this Agreement or to terminate this Agreement upon the occurrence of an Event of Default. The parties acknowledge that this provision is solely for the benefit of the ISD, and that if the ISD allows Provider to continue to provide the Services despite the occurrence of one or more Events of Default, Provider shall in no way be relieved of any of its responsibilities or obligations under this Agreement, nor shall the ISD be deemed to waive or relinquish any of its rights under this Agreement.

7.3 Right to Offset. Any excess costs incurred by the ISD in the event of termination of this Agreement for default, or in the event the ISD exercises any of the remedies available to it under this Agreement, may be offset by use of any payment due for services completed before termination of this Agreement for default or the exercise of any remedies. If the offset amount is insufficient to cover excess costs, Provider shall be liable for and shall remit promptly to the ISD the balance upon written demand from the ISD.

8. GENERAL PROVISIONS

8.1 Headings. The section and subsection headings contained herein are for convenience only and shall not be used in interpretation of this Agreement and are not intended to define or limit the scope of any provision of this Agreement.

8.2 Governing Law and Venue. This Agreement shall be governed by and administered and interpreted under the laws of the State of Texas, without regard to any conflict of laws provisions. Venue for any action, cause or action or proceeding under this Agreement lies exclusively in the State District Court of Ector County, Texas, and the parties agree to submit to the personal and subject matter jurisdiction of said court.

8.3 Attorney's Fees. If suit or action is initiated in connection with any controversy arising out of this Agreement, the prevailing party shall be entitled to recover in addition to costs such sum as the court may adjudge reasonable as attorney fees, or in event of appeal as allowed by the appellate court.

8.4 Severability. The sections, paragraphs, sentences, phrases, words, and all other provisions of this Agreement are severable, and if any part of this Agreement is determined by a court of competent jurisdiction to be illegal, unlawful, unconstitutional, or void for any reason, the parties intend that the remaining provisions of this Agreement shall remain in full force and effect unless the stricken provision leaves the remaining Agreement unenforceable.

8.5 Assignment. This Agreement is binding on the heirs, successors and assigns of the parties hereto. This Agreement may not be sold, assigned, pledged, subcontracted, transferred or otherwise conveyed by any means whatsoever by either the ISD or Provider without prior written consent of the other, and any sale, assignment, pledge, subcontract, transfer or other conveyance by either party without the other party's prior written consent shall be null and void.

8.6 Conflict of Interest. Provider covenants that Provider presently has no interest and shall not acquire any interest, direct or indirect, that would conflict in any manner or degree with the performance of the work and services required to be performed under this Agreement. Provider further covenants that in the performance of this Agreement, Provider shall not engage any employee or apprentice having any such interest.

8.7 Authority to Contract. The undersigned officers and/or representatives of the parties hereto are the properly authorized persons and have the necessary authority to execute this Agreement on behalf of the parties hereto, and each party hereby certifies to the other that it has taken all actions necessary to authorize entering into this Agreement.

8.8 Integration; Modification. This Agreement represents the entire understanding of ISD and Provider as to those matters contained in this Agreement, and no prior oral or written understanding shall be of any force or effect with respect to those matters. This Agreement may not be modified or altered except in writing signed by duly authorized representatives of the parties.

8.9 Non-appropriation. If the ISD Board does not appropriate funds to continue this Contract and pay for charges hereunder, the ISD may terminate this Agreement at the end of the then current fiscal year, or at the time that funds are no longer available to meet the ISD's payment obligations hereunder. The ISD agrees to give written notice of termination to the Provider at least sixty (60) days prior to any termination for non-appropriation of funds and will pay the Provider in accordance with this Agreement through the date of termination of this Agreement.

8.10 Subcontractors. This Agreement or any portion hereof shall not be sub-contracted without the prior approval of the ISD. No subcontractor shall, under any circumstances, relieve Provider of its liability and obligation under this Agreement. The ISD shall deal

through Provider and any subcontractor shall be dealt with as a worker and representative of Provider. Provider assumes responsibility to the ISD for the proper performance of the work and service of all subcontractors and any acts and omissions in connection with such performance. Nothing in this Agreement shall, or is intended or deemed to, create any legal, contractual or other relationship between the ISD and any subcontractor or sub-subcontractor.

8.11 No Waiver. The failure by the ISD to exercise any right, power, or option given to it by this Agreement, or to insist upon strict compliance with the terms of this Agreement, shall not constitute a waiver of the terms and conditions of this Agreement for any reason whatsoever, including with respect to any such right, power or option or to such compliance or to any other or subsequent default or breach hereof, nor a waiver by the ISD of its rights at any time to exercise any such right, power or option or to require exact and strict compliance with all the terms hereof. Any rights and remedies the ISD may have arising out of this Agreement shall survive the cancellation, expiration or termination of this Agreement.

8.12 No Third Party Beneficiaries. This Agreement and all of its provisions are solely for the benefit of Provider and the ISD and are not intended to and shall not create or grant any rights, contractual or otherwise, to any third person or entity.

8.13 "Includes". For purposes of this Agreement, "includes" and "including" are terms of enlargement and not of limitation or exclusive enumeration, and use of the terms does not create a presumption that components not expressed are excluded.

9. DISCLOSURE OF AGREEMENT; INTERLOCAL ARRANGEMENTS.

9.1 Disclosure of Agreement Terms. The terms and conditions of this Agreement may be disclosed by either party to other public agencies for the purpose of such other agencies purchasing services under this Agreement pursuant to an interlocal or cooperative arrangement with the ISD. In addition, Provider may disclose the terms and conditions of this Agreement in an effort to show that the terms offered to another public agency are fair and reasonable or to determine the best value. It is understood that the Provider shall not be precluded from disclosing the terms and conditions of its form of Service Agreement to any other third party at Swagit's sole discretion and for any reason.

9.2 Included Parties; Interlocal Agreement. Pursuant to any interlocal, intergovernmental, or other such cooperative agreement with the ISD, Provider will accept orders from, and will furnish the Provider's Software, Hardware, Professional Services, and Managed Services as outlined in the Proposal to any governmental agency or other public entity authorized by the ISD to use the Proposal, based upon substantially the same terms and conditions of this Agreement, with the exception of price schedules.

9.3 Political Subdivision Participation. The Provider agrees to supply, sell, and contract separately with other similar or related political subdivisions (i.e., colleges,

school districts, counties, cities, etc.) of the ISD, based upon substantially the same terms and conditions of this Agreement, with the exception of price schedules, in an effort to establish the terms and conditions as fair and reasonable.

10. DURATION

This Agreement shall become effective on the last day of execution by the parties, and shall continue in force for an initial term of twelve (12) months, unless sooner terminated as provided above. All pricing is to remain firm during the contract period. This Agreement Contract will automatically renew for additional one-year terms unless this Agreement is terminated by either party providing written notice of its intent to terminate the Agreement to the other party not less than sixty (60) days prior to the end of the then current term.

11. SURVIVAL OF COVENANTS

Any of the representations, warranties, covenants, and obligations of the parties, as well as any rights and benefits of the parties, pertaining to a period of time following the termination of this Agreement shall survive termination.

12. COUNTERPARTS

This Agreement may be executed in counterparts. Each of the counterparts shall be deemed an original instrument, but all of the counterparts shall constitute one and the same instrument.

**Ector County Independent School
District**

Swagit Productions, LLC

Hector Mendez, Superintendent

Bryan R. Halley, President

Attest:

Board of Trustees, President

Approved as to form:

Attorney

Date of Execution:

EXHIBIT A

SCOPE OF SERVICES