

## **ABS STANDARD TERMS AND CONDITIONS**

### **DESIGN – applies if called for in the Scope of Work of the Agreement**

Acceptance of Design: Customer agrees that their written approval of Design Drawings signifies formal technical acceptance of said designs, pursuant to which ABS shall carry out its obligations under this agreement. Customer agrees that delays in approvals may result in an overall delay in the completion of the Scope of Work. Customer agrees to make its technical representative(s) available to ABS from time to time during the execution of this Scope of Work, at any manufacturer facility, build or installation site for consultation and review of design or OEM merchandise suitability for applications specified. Customer shall have seven business days to review submission for acceptance or request modification. The submissions will be scheduled into the Gantt chart. Delays in review of submissions will directly affect the timeline / Gantt chart. ABS will notify customer the effect of delay. After seven business days if a written request for modification or acceptance is not received the submission will be deemed accepted.

### **INSTALLATION - applies if called for in the Scope of Work of the Agreement**

Installation Site Conditions: Customer acknowledges and agrees that site conditions at customer site must be acceptable to ABS as stated below for site installation. All construction in the rooms in which equipment shall be installed shall be complete before equipment installation begins: walls shall be painted, papered or otherwise coated; ceilings and floor coverings shall be properly and appropriately installed; permanent electrical power and lighting shall be properly and appropriately installed and fully operational. Without limiting the generality of the foregoing, minimum site environmental conditions shall be as follows: (1) HVAC (heating, ventilation and air conditioning) capable of maintaining a temperature of between 68 and 75 degrees Fahrenheit and a relative humidity of 60% to 75%; (2) relatively dust free; and (3) impervious to external weather.

Warranty: ABS warrants that installation will be implemented according to Customer-approved Design Drawings.

Other Equipment: Customer agrees that ABS is not responsible for the condition of or proper operation of any 'other' equipment, which Customer or other vendors are supplying to the system, which is not supplied through ABS. When such 'other' equipment is to be integrated into system at the ABS facility or installation site, the responsibility for shipment, insurance, and the on-time arrival of such equipment at the ABS facility, or to the installation site, is that of the Customer. Delays in arrival of 'other'

equipment for integration may result in overall delay in completion of the Scope of Work and increases in the cost to the Customer of the execution of this Agreement.

**EQUIPMENT - applies if called for in the Scope of Work of the Agreement**

OEM Merchandise: ABS agrees to sell, and the customer agrees to buy, the required Original Equipment Manufacturer (OEM) merchandise as specified in Customer-approved Design Drawings. ABS will provide written pricing proposal(s) for said equipment. Customer shall be bound to purchase said equipment upon receipt of a written purchase order and necessary deposits by ABS. ABS will order no equipment other than installation supplies as defined in this Agreement, without written purchase order (or signed ABS Sales Agreement by an authorized agent of customer, if Customer does not typically issue purchase orders in the normal course of business) and necessary deposits (original document or facsimile constitutes "written" as referenced in this clause only). Prices for said merchandise will be F.O.B. ABS Kent, Washington facility or U.S. point-of-shipment if drop shipped for expedited handling, exclusive of present and future taxes, duties, or assessments of any kind applicable to the relevant taxing authorities.

Customer acknowledges and agrees that it will review the Equipment List and shall satisfy itself that the OEM merchandise listed is suitable for the purpose that the Customer intends at the time this Agreement is made and is suitable for the application(s) specified in customer-approved Design Drawings. Issuance of any implement of purchase, including but not limited to, Purchase Order, Letter of Intent or down payment for any OEM merchandise shall be considered proof of Customer satisfaction and suitability. If (a) Customer's requirements change from those which were understood at the time this Agreement was made or Design Drawings are approved or (b) Original Equipment Manufacturer's changes in any Equipment result in unsuitability or fitness for the intended purpose at a time subsequent to the execution of this Agreement or Customer purchase, or (c) Customer selects other than ABS-recommended OEM merchandise without consultation with or against the recommendation of ABS, ABS shall not be responsible for any consequences resulting from any such change. In the event that Customer purchases equipment directly from another source other than ABS to be integrated under this agreement, as provided by the Equipment List or other written proposal, ABS will levy Customer a 5% surcharge against the published list price of said equipment for the purposes of managing, integration and handling.

ABS is not liable for equipment delivery delays due to OEM or delays in issuance of purchase orders by Customer. ABS further declares that it will strive to meet or better all estimated equipment delivery dates, however such dates are only estimates. Any delay in acceptance of this Agreement or in payment for OEM merchandise (including but not limited to down payment) may result in delays in Scope of Work completion.

Equipment Specification: Customer understands and agrees that specifications and design of products is subject to change by manufacturer prior to delivery in order to improve performance or reliability, or because of material unavailability. Customer shall have no right of prior approval of such modifications unless such changes affect the form, fit or function of the merchandise.

Shipment Terms: It is understood and agreed by and between Customer and ABS that shipment of all OEM merchandise and installation materials shall be F.O.B. manufacturer by surface transport (unless otherwise agreed in writing by both parties). It is further understood that Customer shall be responsible for freight charges and insurance costs from manufacturer to ABS and from ABS to Customer (which shall be prepaid by ABS and billed to Customer), due and payable by Customer within 10 days after delivery (as required by tariff). Subject to the security interest of ABS in the OEM merchandise and installation materials, risk of loss or damage to the Equipment shall pass from ABS to the Customer when Equipment is shipped from ABS' facility or from the U.S. point-of-shipment if dropped shipped for expedited delivery.

Equipment Returns: ABS will accept merchandise returns under the following conditions:

- a. Customer received incorrect hardware due to an error on the part of ABS.
- b. Equipment arrived at customer site in inoperable condition either due to manufacturing defects or damage in shipment.
- c. Customer elects to return equipment for any reason other than specified in (a) and (b) of this section.

In the event that Customer elects to return merchandise under part "c" of this section ABS will charge the customer a restocking fee to be determined by the manufacturer and ABS, including shipping.

In any event, returns require a Return Materials Authorization memo from ABS to Customer containing charges (if any) and shipping information.

## ACCEPTANCE

It is understood that final completion of this project is defined as the date that the Customer generated post installation punch list is completed by ABS or its assigns, and is signed by the Customer, or in the case of studies and reports final completion is defined as the date of delivery of the documentation as stated in the contract. All monies agreed to under this contract are due and payable immediately after the post installation punch list is signed off by the Customer or documentation is delivered per the contract. In all cases when thirty days have passed from the date that ABS requests the Customer deliver a final punch list to ABS, the project will be considered accepted by the Customer and all monies are due and payable. Final drawing set, if included in this

agreement will be delivered to the Customer within the time period agreed to in this contract, after final payment is received by ABS.

## ADDITIONAL

Proprietary Rights: Title to and ownership of all processes, methods, designs, specifications, memoranda, drawings, reports, trade secrets, know-how, technical materials, software (whether in machine-readable or printed form), inventions, discoveries, patentable and copyrightable work product and other intellectual property rights used, produced or developed by Advanced Broadcast Solutions ("ABS") in the performance of its obligations under this Agreement, and including without limitation derivative works, compilations, or collective works thereof and all related technical know-how and all rights therein (the "ABS Proprietary Property") are and shall remain the property of ABS or its suppliers. The foregoing notwithstanding, all Design Drawings and other documents produced in the execution of this Agreement shall be the property of Customer and are not part of the ABS Proprietary Property. Except for the rights expressly granted to Customer hereunder, ABS retains and reserves for itself all other rights in and to the ABS Proprietary Property. Customer shall not take any action to jeopardize, limit or interfere in any manner with ABS's ownership of or rights with respect to the ABS Proprietary Property. Further, Customer shall not remove or alter any trademark, copyright or other proprietary notices, legends, symbols, or labels appearing on the materials and documentation delivered to Customer and Customer shall reproduce such notices on all copies of such materials and documentation to the extent that such notices appear on the ABS Proprietary Property.

Indemnity: ABS shall have no obligation or liability for, and Customer shall defend, indemnify and hold ABS harmless and, at ABS's request, defend ABS and/or its suppliers from and against any and all claims, liabilities, losses, damages, expenses and costs (including attorneys' fees and costs) based upon: (A) any change in Customer's requirements from those which were specified at the time this Agreement was made, or manufacturer's changes in any Equipment resulting in unsuitability or fitness for the intended purpose at a time subsequent to the execution of this Agreement; (B) use, operation or combination of Equipment in a manner that is inconsistent with the manner of usage or operation expressly prescribed by ABS or the manufacturer of such Equipment; (C) any modifications of the OEM merchandise or Materials installation not specifically authorized in writing by ABS or performed by ABS.

Limitation of Liability: (a) to the extent allowed by applicable law, in no event shall ABS or its suppliers be liable for any loss of profits, loss of use or data, interruption of business, or for indirect, special, incidental or consequential damages of any kind, (b) in no event will ABS or its suppliers be liable for any claim against Customer by any third party, (c) in no event shall ABS or its suppliers be liable for (i) any representation or warranty made to any third party by Customer; (ii) failure of the equipment to perform;

or (iii) the results produced or information obtained by or through the equipment, (d) notwithstanding anything in this agreement to the contrary and except for death or personal injury caused by the negligence of ABS, ABS' entire liability to customer for damages concerning performance or nonperformance by ABS or in any way related to the subject matter of this agreement, and regardless of whether the claim for such damages is based in contract or in tort, shall not exceed the amount received by ABS from customer hereunder.

Confidentiality: "Confidential Information" shall mean this Agreement and all information a party discloses to the other which has been either (i) characterized in writing as confidential at the time of its disclosure or (ii) orally characterized as confidential at the time of disclosure and reduced to writing and designated "Confidential" subsequent to such disclosure, except for information which the receiving party can demonstrate: (a) is previously rightfully known to the receiving party without restriction on disclosure; (b) is or becomes, from no act or failure to act on the part of the receiving party, generally known in the relevant industry or public domain; (c) is disclosed to the receiving party by a third party as a matter of right and without restriction on disclosure; or (d) is independently developed by the receiving party without access to the Confidential Information. Each receiving party shall at all times, both during the term hereof and for a period of at least 3 years after termination, keep in confidence all the disclosing party's Confidential Information using a standard of care the receiving party uses with its own information of this nature, but in no event less than reasonable care. The receiving party shall not use the disclosing party's Confidential Information other than in the course of its duties hereunder. Without the prior written consent of the disclosing party, the receiving party shall not reveal the disclosing party's Confidential Information except on a "need to know" basis to an employee or contractor (including, without limitation, attorneys, architects and other professionals providing services to Customer in connection with the development of the Facility) and shall notify such parties of the confidential nature of such information. If a receiving party is legally compelled to disclose any of the disclosing party's Confidential Information, then, prior to such disclosure, the receiving party will (x) assert the confidential nature of the Confidential Information and (y) cooperate fully with the disclosing party in protecting against any such disclosure and/or obtaining a protective order narrowing the scope of such disclosure and/or use of the Confidential Information. In the event such protection is not obtained, the receiving party shall disclose the Confidential Information only to the extent necessary to comply with applicable the legal requirements.

Warranty: ABS warrants that it will perform its services under this Agreement in a professional manner and that the Design Drawings and other documentation delivered to Customer will be of a quality consistent with such materials produced by other competent professional organizations engaged in the business in which ABS is engaged. The express warranties set forth in this agreement constitute the only warranties made

by ABS. ABS makes no other representation or warranty of any kind, whether express or implied (either in fact or by operation of law). ABS expressly disclaims all implied warranties or conditions including those of title, merchantability, non-infringement and fitness for a particular purpose. The above limitations shall apply to the extent allowed by applicable law.

Warranty Term: ABS warrants its services and work product for one full year from the date of customer written acceptance of ABS installed systems, or from the date of receipt of final payment from customer, whichever is first. ABS installed hardware is warranted by the manufacturer and ABS provides no other warranty for said equipment either expressed or implied.

Extended Services: ABS offers extended services to its customers at extra cost. Extended services provide service support beyond the limits of the ABS warranty. Extended Services are not included as part of this agreement unless fully executed Extended Services agreement is attached to this document.

Extended services include:

- RMA assistance for system equipment failures that occur during the term of manufacturer's warranty.
- System maintenance consulting via telephone for installed components that are beyond the scope of the ABS and manufacturers warranties.
- On site troubleshooting, travel and living at customer's expense, for system failures that occur beyond the scope of the standard ABS warranty.

Payment Default: If the Customer shall default in the payment of any indebtedness to ABS when and as the same shall become due and payable and if such default shall continue for a period of ten (10) days after written notice of such default shall have been given to the Customer by e-mail, registered or certified mail, then, all of the liabilities and obligations of the Customer to ABS whether then due or not, shall, at the option of ABS and without further notice to the Customer, become due and payable. Customer shall be charged cumulative interest of one percent (1.5%) per month on all amounts past due.

Miscellaneous: (a) This Agreement may be amended only by writing, signed by both parties. (b) Neither this Agreement or any right or obligation shall be assigned, either in whole or in part, by either ABS or Customer by operation of law or otherwise without the prior written consent of the other. Any purported assignment or transfer contrary to the foregoing shall be null and void and of no force or effect. (c) This Agreement shall be governed by and construed under the laws of the State of Washington, U.S.A., without reference to its conflicts of law provisions. (d) Any dispute regarding this Agreement

shall be subject to the exclusive jurisdiction of the applicable court in the State of Washington, and the parties agree to submit to the personal and exclusive jurisdiction and venue thereof (e) This Agreement will not be governed by the United Nations Convention of Contracts for the International Sale of Goods. (f) This Agreement creates no agency, partnership, joint venture, or employment relationship and neither Customer nor ABS nor their respective agents have any authority to bind the other party in any respect whatsoever. (g) The section headings herein are used for convenience only and shall have no substantive meaning. (h) If the application of any provision hereof to any particular facts shall be held to be illegal, invalid or unenforceable by any competent court, then (i) the legality, validity and enforceability of such provision as applied to any other facts and the legality, validity and enforceability of other provisions hereof shall not be affected and (j) such provision shall be reformed without further action by the parties hereto only to the extent necessary to make such provision valid and enforceable when applied to the particular facts. (k) Each party shall be excused from any delay or failure in performance hereunder, except the payment of monies by Customer to ABS, caused by reason of any occurrence or contingency beyond its reasonable control, including acts of God (e.g., earthquakes, floods, mudslides and inclement weather) or the public enemy, expropriation or confiscation, changes in law, acts of war, rebellion or sabotage or damage resulting there from, fires, explosions, accidents, riots, strikes and other labor unrest or concerted acts of workers, or delays or other unforeseen actions by Original Equipment Manufacturers. The obligations and rights of the party so excused shall be extended on a day-to-day basis for the period of time equal to that of the underlying cause of the delay. (l) This Agreement constitutes the entire agreement between the parties concerning the subject matter hereof and supersedes all proposals or prior agreements whether oral or written, and all communications between the parties relating to the subject matter of this Agreement and all past courses of dealing or industry custom. The terms and conditions of this Agreement shall prevail over any conflicting purchase order or other written instrument submitted by Customer. (m) This Agreement is written in the English language only, which language shall be controlling in all respects. (n) This Agreement may be executed in any number of counterparts or by facsimile, each of which when so executed shall be deemed an original and all of which taken together shall constitute one and the same agreement. (o) If any dispute arises under this Agreement, the prevailing party shall be reimbursed by the other party for any and all legal fees and costs associated therewith.

Notices: Notices required or permitted to be given under this Agreement shall be sent by nationally recognized overnight courier service or by facsimile to the address or facsimile number of the relevant party below and shall be effective when received.

ABS notice address:

Mark D. Siegel LLC

811 South 192<sup>nd</sup> St.

SeaTac, WA 98148

Fax: (206) 299-9990

Attn: Mark D. Siegel