



Purchasing Department
 4400 University Drive, Mailstop 3C5
 Fairfax, VA 22030
 Voice: 703.993.2580 | Fax: 703.993.2589
<http://fiscal.gmu.edu/purchasing/>



**REQUEST FOR PROPOSALS
 GMU-1657-20**

ISSUE DATE: June 10, 2020
TITLE: Trademark Licensing Services
PRIMARY PROCUREMENT OFFICER: Erin Rauch, Assistant Director, erauch@gmu.edu
SECONDARY PROCUREMENT OFFICER: James F. Russell, Director, jrussell@gmu.edu

QUESTIONS/INQUIRIES: E-mail all inquiries to both Procurement Officers listed above, no later than 4:00 PM EST on June 26, 2020. **All questions must be submitted in writing.** Responses to questions will be posted on the [Mason Purchasing Website](#) by 5:00 PM EST on July 10, 2020. Note: Questions must be submitted in WORD format. Also see section III. COMMUNICATION, herein.

PROPOSAL DUE DATE AND TIME: August 12, 2020 @ 2:00 PM EST. IMPORTANT! SEE SECTION XVIII.B.4 FOR DETAILS ON ELECTRONIC PROPOSAL SUBMISSION.

In Compliance With This Request For Proposal And To All The Conditions Imposed Therein And Hereby Incorporated By Reference, The Undersigned Offers And Agrees To Furnish The Goods/Services In Accordance With The Attached Signed Proposal Or As Mutually Agreed Upon By Subsequent Negotiations.

Name and Address of Firm:

Legal Name: _____ Date: _____
 DBA: _____
 Address: _____

 By: _____
 Signature
 FEI/FIN No. _____ Name: _____
 Fax No. _____ Title: _____
 Email: _____ Telephone No. _____

SWaM Certified: Yes: _____ No: _____ (See Section VII. SWaM CERTIFICATION for complete details).

SWaM Certification Number: _____

This public body does not discriminate against faith-based organizations in accordance with the *Governing Rules*, § 36 or against a Bidder/Offeror because of race, religion, color, sex, national origin, age, disability, or any other prohibited by state law relating to discrimination in employment.

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- I. **PURPOSE:** The purpose of this Request for Proposal (RFP) is to solicit sealed proposals to establish a contract through competitive negotiations with one or more qualified vendors to provide trademark licensing services for George Mason University (herein after referred to as “Mason,” or “University”). George Mason University is an educational institution and agency of the Commonwealth of Virginia.
- II. **PURCHASING MANUAL/GOVERNING RULES:** This solicitation and any resulting contract shall be subject to the provisions of the Commonwealth of Virginia *Purchasing Manual for Institutions of Higher Education and their Vendor's*, and any revisions thereto, and the *Governing Rules*, which are hereby incorporated into this contract in their entirety. A copy of both documents is available for review at: <https://vascupp.org>
- III. **COMMUNICATION:** Communications regarding the Request For Proposals shall be formal from the date of issuance until a contract has been awarded. Unless otherwise instructed offerors are to communicate with only the Procurement Officers listed on the cover page. Offerors are not to communicate with any other employees of Mason.
- IV. **FINAL CONTRACT:** ATTACHMENT B to this solicitation is Mason’s standard two-party contract. It is the intent of this solicitation to base the final contractual documents off of Mason’s standard two-party contract and Mason’s General Terms and Conditions. Any exceptions to our standard contract and General Terms and Conditions should be denoted in your RFP response. Other documents may be incorporated into the final contract, either by way of attachment or by reference, but in all cases this contract document and Mason’s General Terms and Conditions shall jointly take precedence over all other documents and will govern the terms and conditions of the contract.
- V. **ADDITIONAL USERS:** It is the intent of this solicitation and resulting contract to allow for cooperative procurement. Accordingly, any public body, public or private health or educational institutions, or affiliated corporations may access any resulting contract if authorized by the contractor.

Participation in this cooperative procurement is strictly voluntary. If authorized by the Contractor(s), the resultant contract(s) will be extended to the entities indicated above to purchase goods and services in accordance with contract terms. As a separate contractual relationship, the participating entity will place its own orders directly with the Contractor(s) and shall fully and independently administer its use of the contract(s) to include contractual disputes, invoicing and payments without direct administration from the University. No modification of this contract or execution of a separate agreement is required to participate; however, the participating entity and the Contractor may modify the terms and conditions of the contract to accommodate specific governing laws, regulations, policies, and business goals required by the participating entity. Any such modification will apply solely between the participating entity and the contractor.

The University may require the Contractor provide semi-annual usage reports for all entities accessing the contract. The University shall not be held liable for any costs or damages incurred by any other participating entity as a result of any authorization by the Contractor to extend the contract. It is understood and agreed that the University is not responsible for the acts or omissions of any entity and will not be considered in default of the contract no matter the circumstances.

Use of this contract(s) does not preclude any participating entity from using other contracts or competitive processes as needed.

- VI. **eVA BUSINESS-TO-GOVERNMENT VENDOR REGISTRATION:** The eVA Internet electronic procurement solution, website portal www.eVA.virginia.gov, streamlines and automates government purchasing activities in the Commonwealth. The eVA portal is the gateway for vendors to conduct business with state agencies and public bodies. All vendors desiring to provide goods and/or services to the Commonwealth shall participate in the eVA Internet eProcurement solution by completing the free eVA Vendor Registration. All bidders or offerors agree to self-register in eVA and pay the Vendor Transaction Fees prior to being awarded a contract. Registration instructions and transaction fees may be viewed at: <https://eva.virginia.gov/>
- VII. **SWaM CERTIFICATION:** Vendor agrees to fully support the Commonwealth of Virginia and Mason’s efforts related to SWaM goals. Upon contract execution, eligible vendors (as determined by Mason and the Virginia Department of Small Business and Supplier Diversity) shall submit all required documents necessary to achieve SWaM certification to the Department of Small Business and Supplier Diversity within 90 days. Vendors currently SWaM certified agree to maintain their certification for the duration of the contract and shall submit all required renewal documentation at least 30 days prior to existing SWaM expiration. <https://www.sbsd.virginia.gov/>
- VIII. **SMALL BUSINESS SUBCONTRACTING PLAN:** In accordance with Executive Order 35 it is the goal of the Commonwealth that over 42% of its purchases be made from small businesses. All potential offerors are required to fill out and submit Attachments A with their proposal.

IX. PERIOD OF PERFORMANCE: Five (5) years from date of award with one (1) successive five-year renewal option (or as negotiated).

X. BACKGROUND: George Mason University's short history is one of an enterprising and innovative pioneer, creating a major teaching and research university from a small, one-room schoolhouse in just 50 years. George Mason University is recognized as an innovative, entrepreneurial institution with global distinction in a range of academic fields. With strong undergraduate and graduate degree programs in engineering and information technology, dance, organizational psychology and health care, Mason students are routinely recognized with national and international scholarships. Enrollment is more than 38,000, with students studying in 198 degree programs at the undergraduate, masters, doctoral, and professional levels. Additionally, Mason has more than 200,000 living alumni with 60% residing in the Washington Metropolitan Area.

Mason has campuses in Fairfax, Arlington, and Prince William counties. In addition to these three campuses, George Mason University operates a site in Woodbridge, VA and has partnered with the Smithsonian Institution to create the Smithsonian-University School of Conservation in Front Royal, Virginia. Approximately 6,000 employees are distributed at these locations. Mason also offers programs online and at the Center for Innovative Technology in Herndon. Each location has a distinctive academic focus that plays a critical role in the economy of its region.

XI. STATEMENT OF NEEDS: George Mason University seeks proposals to work with the Business Services Trademark Licensing Office to protect the University's trademarks, promote the image of the University, and increase the royalties derived from trademark licensing agreements. Mason will enter into a contract with a company to market and license the University's logos, marks, and verbiage (Trademarks). The successful contractor will act as the University's exclusive agent to license the use of the University's trademarks in the marketing of various articles of merchandise and the associated marketing of the University through licensed products. The successful contractor will also act as the University's exclusive agent to license the use of trademarks in such a manner as to preserve the integrity, character, and dignity, as well as maintain and protect the reputation, of the University.

Contractor will act as the University's exclusive agent to license the use of one or more of said marks and logos in connection with the marketing of various articles of merchandise within the approval of the University. The University invites prospective contractors to submit proposals clearly addressing the following objectives:

- Create a relationship to improve and increase net revenues by maximizing the availability of products and developing creative strategies which will benefit the University as well as the successful contractor.
- Actively be engaged, beyond the contract, in enhancing student life and access to higher education.
- Protect the image and branding of the University while enforcing the licensed usage of the University's trademarks.
- Increase awareness and image of the University by increasing the number and availability of logoed merchandise both on and off campus in local and national retail locations.

XII. SCOPE OF WORK: The requirements of the successful contractor are listed below and will be the focus of the contract that results from this solicitation. Proposal responses must address each of the below requirements and provide sufficient evidence that the contractor can meet all of the University's needs in the respective areas.

- A. Assign one qualified representative as the lead contact for the University. Please indicate the amount of time this representative will dedicate to this account per year for the entire length of the contract term. Please indicate how many other accounts this representative will service.
- B. Provide information on the number of full-time staff members committed to the area of contract compliance, enforcement, and legal counsel. The awarded contractor must have full-time attorneys and legal assistants on staff and available to the University for consulting at no additional cost.
- C. Consolidate and summarize Fair Labor Association (FLA) reports and findings quarterly, highlighting any changes that may affect any licensee's ability to maintain good standing with the FLA.
- D. Attend and provide representation at the major conferences and shows concerning collegiate licensing. (Please provide a list of all licensing industry trade shows where the contractor has booth space to promote its clients.)
- E. Provide an overview of the contractor's capabilities to expand the presence of the University's merchandise through e-commerce channels, including any consumer and/or wholesale distribution networks.

- F. Describe the contractor's trademark protection and enforcement program at the local, regional, and national level. Include any information about the contractor's enforcement alliances. Provide a timeline for when and how often, per year, searches and enforcement for unlicensed merchandise in University market areas including the Internet are conducted.
- G. Provide information about the contractor's auditing program including results. Include total number of audits done on a yearly basis, amount of audit collections in the most recent fiscal year, and average audit collections made during the prior fiscal year by the contractor for institutions similar in size and scope to the University. Please share the number of yearly audits of Mason licensed vendor records and facilities are expected. Audit findings should be reported quarterly, including any recovered or unpaid royalties.
- H. Provide 24-hour internet access to files of licensee names, addresses, telephone numbers, and sales and royalty data.
- I. Require each licensee to have product liability insurance covering any licensed product that will indemnify and hold harmless the University from any product liability action. The successful contractor shall also provide, following notice of award and prior to actual commencement of the contract, a certificate of insurance that indemnifies the University. The contractor must also provide this proof of insurance on an annual basis thereafter.
- J. Provide camera-ready art to include digital files to be transmitted electronically to licensees.
- K. At minimum, be available by phone and email during the University's business hours of 8:30 AM to 5:00 PM EST.
- L. Communicate to licensees and retailers the University's retirement or discontinuation of a mark or logo and implement a program to flush discontinued merchandise from the market.
- M. Provide a web-based and mobile application artwork approval system. The proposal response must provide a specific overview, including sample images, of the successful contractor's system for submitting products/designs to the University via a web-based and mobile application platform for approval/disapproval. In addition, the system should allow for approval/disapproval of licensee requests, renewal of licenses, and provide analytics on royalties, licensees, retailers, etc. Please provide contact information for at least five licensees that have used the system. Please provide a demonstration version or demonstration access.
- N. Provide a list of multiple types of licenses to support the wide-ranging needs of licensees. Include steps to obtain each type of license and costs involved.
- O. Provide experienced staff dedicated to performing retail marketing and promotional licensing services on behalf of the University. Describe the background and qualifications of these individuals and these services, including the development of retail programs designed to drive the sale of licensed product.
- P. Provide a marketing plan once per year that outlines goals and objectives for the upcoming fiscal year. This plan will have the goal of increasing the presence of University product in the local, regional, national, and on-line markets through the development of retail and promotional programs and relationships.
- Q. Engage in the business of providing trademark licensing contractor services and provide evidence of such through references. Contractors must provide three (3) references that demonstrate their success in delivering services that are similar in size and scope to those being requested in this RFP. Reference information must include client name, contact name, telephone number, and email address.
- R. Provide specific information on what resources the successful contractor can provide for the University in the area of external communication, including newsletters, trade shows, media coverage, websites, or other tools that can help to promote the University's brand. Indicate how many full time staff members are wholly focused on corporate and external communications.
- S. Provide a summary of contractor's strategic alliances and/or strategic partnerships that might be useful to the University in managing its licensing program.
- T. Describe the contractor's game-day and post-season enforcement programs and how those services would benefit the University, especially at events against traditional athletic rivals and post-season tournaments.

- U. Describe any in-house design capabilities it has to complement a client’s trademark portfolio, and provide signage and design support for marketing activities.

Other Related Information

- A. The University reserves the right to exempt any user from royalty payment if circumstances warrant that it would be in the best interests of the University. The University’s own continued use of the logos, seal, and other insignia shall be permitted at no cost to the University.
- B. No item shall be licensed which is in violation of existing NCAA rules or regulations or such rules and regulations as may be adopted prospectively by the NCAA.
- C. The contractor shall make all reasonable attempts to ensure that the manufacturing of any product for George Mason University shall not be made under “sweat-shop” conditions.
- D. The contractor shall assist the University in registering and protecting its name, designs, trademarks, trade names, service marks, logo graphics, symbols, etc., when requested.
- E. The contractor shall promote the name of George Mason University through established national vendors and other marketing channels.
- F. The contractor shall perform licensing services at no cost to the University. Contractor shall, on a quarterly basis, pay the University a fixed rate and/or percentage of royalties.
- G. The contractor shall receive its compensation from licensees authorized by the contractor to sell merchandise bearing the University’s logos, seal, or other insignia.
- H. The contractor shall, prior to authorizing potential licensees to sell merchandise bearing the University’s logos, seal, or other insignia, obtain electronic approval from the University via the contractor’s web and/or mobile platform. The contractor shall have no authority to make any representation on behalf of the University without prior written authorization from the University.
- I. The contractor shall, at no cost to the University, submit for University approval specifications of merchandise, photographs, sample swatches, samples, etc. from potential licensees desiring to sell items bearing the University’s logos, seal, or other insignia as may be deemed necessary for approval processing.

XIII. FINANCIAL CONSIDERATIONS AND ADMINISTRATION: The licensing gross royalties for the past five years were as follows below. Mason’s sideline vendor is currently Adidas and Barnes and Noble operates the campus bookstore.

<u>Fiscal Year</u>	<u>Licensing Royalties</u>
2018-2019	\$232,317
2017-2018	\$204,158
2016-2015	\$181,623
2015-2014	\$175,883
2014-2015	\$158,943

- A. The contractor shall have complete responsibility for the financial administration of the licensing program. Such responsibilities include, but are not limited to, billings and collections from third parties, processing payments for all goods, acceptance and deposit of all fees and royalties, reconciliation of accounts, preparation of annual financial reports and all other such activities that may apply. Any licensing program changes or modifications require review and/or approval of the Contract Administrator.
- B. The contractor shall supply its most current, certified year-end balance sheet and income statement and any other documentation necessary to demonstrate its capability to perform the agreement resulting from this solicitation without assistance from any outside source(s).

- C. The contractor shall pay to Mason a **royalty share on licensee reported gross royalties**. The contractor shall specify this royalty share in its proposal for each contract year. Adjustments for the full length of the contract period should be made, as appropriate. Royalties are paid based on gross royalties received from licensees. Mason's current standard royalty rate is 12% and its royalty share is 80% on gross royalties up to \$250,000, 82% on next \$250,000, and 84% on all gross royalties above \$500,000.
- D. The contractor should show a schedule of projected gross royalties for each contract year, and corresponding royalty share to Mason.
- E. The contractor should guarantee access to a **program advancement fund** to be administered by the contract administrator, held by the contractor, to be used for marketing/promotional/industry travel geared towards driving brand awareness and sales. Contractor should work cooperatively with Mason to execute marketing initiatives as needed. Mason maintains final decisions on the use of funds. A minimum annual expectation is \$11,000 with at least 40% to be used for industry travel. Any travel expenses will be covered by the fund, including any travel associated with university licensing personnel to attend licensing seminars, conferences, conventions, meetings to stay abreast of industry trends and agency programs and services. Travel expenses will be within state guidelines and the parameters of the industry seminar, conference, convention or meeting.
- F. The contractor shall propose marketing and product promotions programs that would contribute to program and revenue growth. At least five (5) viable promotions must be proposed annually, at least forty-five (45) days prior to implementation.
- G. The contractor shall advise Mason in advance of senior management changes and changes in staff that have direct contact with Mason within five (5) days of action. Mason also retains the right to require the reassignment of any management personnel or employee for any justifiable reason such as abuse of position, failure to abide by Mason's policies or failure to abide by terms of contract.
- H. Contractor shall meet with the Contract Administrator on a regularly basis or when requested to review licensing program, discuss industry matters, and plan marketing and/or new product opportunities. The partnership representative, at minimum, is expected to report at Mason's licensing advisory committee meetings at least twice annually on the licensing program's progress compared to benchmark schools.
- I. Contractor shall conduct an in-person 6-month and annual year-end review of prior year performance to include, but not be limited to a review of key financial data, product categories, product line performance, a recap of marketing efforts and upcoming events and/or licensing trends with the Contract Administrator and designated team no later than February 15 for the 6-month review and August 15 following each contract year.
- J. In the event of a transition, the existing and new contractor shall mutually transition program information and data associated with Mason. The transaction should occur and be completed within thirty (60) working days prior to the transition date.
- K. Contractor shall collect royalties from licensees on a regular basis, providing accurate quarterly royalty reports to the Contractor Administrator. Detailed reports and analyses of quarterly royalties shall be due within thirty (30) calendar days of the end of each quarter.
- L. Records of royalties for each licensee and a quarterly report shall be submitted to Mason. The quarterly report shall contain the following minimum information:
1. List all information by reporting period
 2. Licensee name
 3. Royalties per Licensee by Quarter and YTD
 4. Contractor administrative fee per Quarter and YTD
 5. University royalty share per Quarter and YTD
 6. Total royalties per Quarter and YTD
- M. Contractor shall provide quarterly sales reports in both PDF and EXCEL Spreadsheet format (.xlsx or .xls) to allow for easy migration of data into Mason's contract management system. The fiscal year is defined as July 1-June 30.

- N. Contractor shall keep accurate records of financial or working processes and any records relative to the performance of this contract. Contractor further agrees that such books and records shall be subject to inspection and audit by any person designated by Mason at all reasonable times during business hours.
- O. Contractor shall retain all books, records and other documents concerning performance of this RFP for at least five (5) years after termination of this RFP or final payment under it. Contractor shall upon request allow Mason to have full access to, and the right to examine, any such documents during such period and the period the contract is in effect.
- P. Royalty checks shall be payable by the contractor to George Mason University no later than the 30th of each month following the end of each quarter (July 1-September 30, October 1-December 31, January 1-March 31, April 1-June 30). Each royalty check shall be accompanied by a detailed royalty report submitted by email to the contract administrator.
- Q. The contractor will maintain the program advancement fund and will dispense for Mason as expenses or requests occur. Expenditures to be submitted to contractor by June 30 of each contract year. Any reimbursement submissions must be processed and received within ten (10) days.
- R. The contractor will make proper sales tax returns and payments to the appropriate entities. Contractor is responsible for all taxes, licenses and fees.
- S. Contractor shall make all payments payable to **George Mason University** in the form of a check and sent to the following address or via ACH Payment established by Mason. Repeated failure to make payments on a timely basis may result in the termination of the contract.

George Mason University
3200 Merten Hall
4400 University Drive, MSN 4A1
Fairfax, VA 22030
Attn: David C. Atkins
Executive Director of Licensing, Marketing and Administration

XIV. PROPOSAL PREPARATION AND SUBMISSION REQUIREMENTS:

A. GENERAL REQUIREMENTS:

1. RFP Response. In order to be considered, Offerors must submit a complete response to Mason's Purchasing Office prior to the due date and time stated in this RFP. Offerors are required to submit **one (1)** signed original hardcopy (paper) of the entire proposal including all attachments and proprietary information and **four (4)** extra hardcopies (paper) including all attachments and proprietary information. In addition, the Offeror shall submit one (1) complete signed copy of the original proposal including all attachments and proprietary information, on CD, thumb drive or other electronic device. If proposal contains proprietary information, then submit two (2) CD's, thumb drive or other electronic device; one (1) with proprietary information included and one (1) with proprietary information removed (see also Item 2e below for further details). The Offeror shall make no other distribution of the proposals.
 - a. At the conclusion of the RFP process proposals with proprietary information removed (redacted versions) shall be provided to requestors in accordance with Virginia's Freedom of Information Act. Offerors will not be notified of the release of this information.
2. Proposal Presentation:
 - a. Proposals shall be signed by an authorized representative of the Offeror. All information requested must be submitted. Failure to submit all information requested may result in your proposal being scored low.
 - b. Proposals should be prepared simply and economically, providing a straightforward, concise description of capabilities to satisfy the requirement of the RFP. Emphasis should be on completeness and clarity of content.

- c. Each hardcopy of the proposal should be bound in a single volume where practical. The original hard copy proposal must be clearly marked on the outside of the proposal. All documentation submitted with the proposal should be bound in that single volume.
- d. Proposals should be organized in the order in which the requirements are presented in the RFP. All pages of the proposal should be numbered. Each paragraph in the proposal should reference the paragraph number corresponding section of the RFP. It is also helpful to cite the paragraph number, sub letter and repeat the text of the requirement as it appears in the RFP. The proposal should contain a table of contents which cross references the RFP requirements. Information which the Offeror desires to present that does not fall within any of the requirement of the RFP should be inserted at the appropriate place or be attached at the end of the proposal and designated as additional material.

A WORD version of this RFP will be provided upon request.

- e. Except as provided, once an award is announced, all proposals submitted in response to this RFP will be open to inspection by any citizen, or interested person, firm or corporation, in accordance with the Virginia Freedom of Information Act. Trade secrets or proprietary information submitted by a firm prior to or as part of its proposal will not be subject to public disclosure under the Virginia Freedom of Information Act only under the following circumstances: (1) the appropriate information is clearly identified by some distinct method such as highlighting or underlining; (2) only the specific words, figures, or paragraphs that constitute trade secrets or proprietary information are identified; and (3) a summary page is supplied immediately following the proposal title page that includes (a) the information to be protected, (b) the section(s)/page number(s) where this information is found in the proposal, and (c) a statement why protection is necessary for each section listed. The firm must also provide a separate electronic copy of the proposal (CD, etc.) with the trade secrets and/or proprietary information redacted. *If all of these requirements are not met, then the firm's entire proposal will be available for public inspection.*

IMPORTANT: A firm may not request that its entire proposal be treated as a trade secret or proprietary information, nor may a firm request that its pricing/fees be treated as a trade secret or proprietary information, or otherwise be deemed confidential. If after given a reasonable time, the Offeror refuses to withdraw the aforementioned designation, the proposal will be rejected.

- 3. Oral Presentation: Offerors who submit a proposal in response to this RFP **may be** required to give an oral presentation/demonstration of their proposal/product to Mason. This will provide an opportunity for the Offeror to clarify or elaborate on their proposal. Performance during oral presentations may affect the final award decision. If required, oral presentations are tentatively scheduled for **September 15th or 16th, 2020. These dates are critical and alternative dates may not be available, so please allow for proper scheduling.**

Mason will expect that the person or persons who will be working on the project to make the presentation so experience of the contractor's staff can be evaluated prior to making selection. Oral presentations are an option of Mason and may or may not be conducted; therefore, it is imperative all proposals should be complete

- B. SPECIFIC REQUIREMENTS: Proposals should be as thorough and detailed as possible to allow Mason to properly evaluate the Offeror's capabilities and approach toward providing the required services. Offerors are required to submit the following items as a complete proposal.

- 1. Procedural information:

- a. Return signed cover page and all addenda, if any, signed and completed as required.
- b. Return Attachment A - Small Business Subcontracting Plan.
- c. State your payment preference in your proposal response. (See section XVII.)

- 2. References: No fewer than three (3), preferably from other comparable higher education institutions to which your firm is/has provided trademark licensing services which are similar in size and scope to that which has been described herein, that demonstrate the offeror's qualifications.

- 3. A written narrative describing the offeror's approach toward fulfilling the objectives and providing

services sought by Mason. In addition, offeror shall identify the terms of any quality guarantee(s) offered. Address points outlined in section XII, Scope of Work.

4. A written narrative describing the offeror’s experience and qualifications in providing trademark licensing services as outlined in section XII, Scope of Work. In addition, offeror shall include brief biographical and experience information on the management team and any staff that will be responsible for servicing this contract (include an organizational chart).
5. Provide a specific plan for implementation and transition of services from date of award forward.
6. Sample Reports: offeror shall include the following sample reports in their proposal:
 - a. Sample quarterly sales report.
7. Provide proposed financial offer/considerations, including service pricing for licensees (retail and internal).

XV. INITIAL EVALUATION CRITERIA AND SUBSEQUENT AWARD:

A. INITIAL EVALUATION CRITERIA: Proposals shall be initially evaluated and ranked using the following criteria:

<u>Description of Criteria</u>	<u>Maximum Point Value</u>
1. Quality of proposal including specific plans to perform the services.	35
2. Experience and qualifications including personnel assigned to perform the services.	10
3. References of similar size and scope.	10
4. Projected gross royalties, royalty share to Mason, marketing fund, licensee prices offered.	40
5. Vendor is certified as a small, minority, or women-owned business (SWaM) with Virginia SBSD at the proposal due date & time.	5
Total Points Available:	100

B. **AWARD**: **Following the initial scoring by the evaluation committee**, at least two or more top ranked offerors may be contacted for oral presentations/demonstrations or advanced directly to the negotiations stage. ***If oral presentations are conducted Mason will then determine, in its sole discretion, which vendors will advance to the negotiations phase.*** Negotiations shall then be conducted with each of the offerors so selected. Price shall be considered, but need not be the sole determining factor. After negotiations have been conducted with each offeror so selected, Mason shall select the offeror which, in its sole discretion has made the best proposal, and shall award the contract to that offeror. When the terms and conditions of multiple awards are so provided in the Request for Proposal, awards may be made to more than one offeror. Should Mason determine in writing and in its sole discretion that only one offeror has made the best proposal, a contract may be negotiated and awarded to that offeror. Mason is not required to furnish a statement of the reasons why a particular proposal was not deemed to be the most advantageous (*Governing Rules §49.D.*).

XVI. CONTRACT ADMINISTRATION: Upon award of the contract, Mason shall designate, in writing, the name of the Contract Administrator who shall work with the contractor in formulating mutually acceptable plans and standards for the operations of this service. The Contract Administrator shall use all powers under the contract to enforce its faithful performance. The Contract Administrator shall determine the amount, quality and acceptability of work and shall decide all other questions in connection with the work. All direction and order from Mason shall be transmitted through the Contract Administrator, or their designee(s) however, the Contract Administrator shall have no authority to approve changes which shall alter the concept or scope of the work or change the basis for compensation to the contractor.

XVII. PAYMENT TERMS / METHOD OF PAYMENT:

PLEASE NOTE: THE VENDOR MUST REFERENCE THE PURCHASE ORDER NUMBER ON ALL INVOICES SUBMITTED FOR PAYMENT.

Option #1- Payment to be mailed in 10 days-Mason will make payment to the vendor under 2%/10 Net 30 payment terms. Invoices should be submitted via email to the designated Accounts Payable email address which is acctpay@gmu.edu.

The 10 day payment period begins the first business day after receipt of proper invoice or receipt of goods, whichever occurs last. A paper check will be mailed on or before the 10th day.

Option #2- To be paid in 20 days. The vendor may opt to be paid through our Virtual Payables credit card program. The vendor shall submit an invoice and will be paid via credit card on the 20th day from receipt of a valid invoice. The vendor will incur standard credit card interchange fees through their processor. All invoices should be sent to:

George Mason University
Accounts Payable Department
4400 University Drive, Mailstop 3C1
Fairfax, Va. 22030
Voice: 703.993.2580 | Fax: 703.993.2589
e-mail: AcctPay@gmu.edu

Option#3- Net 30 Payment Terms. Vendor will enroll in Paymode-X where all payments will be made electronically to the vendor's bank account. For additional information or to sign up for electronic payments, go to <http://www.paymode.com/gmu>. There is no charge to the vendor for enrolling in this service.

Please state your payment preference in your proposal response.

XVIII. SOLICITATION TERMS AND CONDITIONS:

- A. GENERAL TERMS AND CONDITIONS – GEORGE MASON UNIVERSITY: <http://fiscal.gmu.edu/purchasing/do-business-with-mason/view-current-solicitation-opportunities/>
- B. SPECIAL TERMS AND CONDITIONS – GMU-1657-20. (Also see ATTACHMENT B – SAMPLE CONTRACT which contains terms and conditions that will govern any resulting award).
 - 1. BEST AND FINAL OFFER (BAFO): At the conclusion of negotiations, the Offeror(s) may be asked to submit in writing, a best and final offer (BAFO). After the BAFO is submitted, no further negotiations shall be conducted with the Offeror(s).
 - 2. COMPLIANCE WITH LAW: (If Applicable): All goods and services provided to George Mason University shall be done so in accordance with any and all local, state and federal laws, regulations and/or requirements. This includes any applicable provisions of FERPA or the "Government Data Collection and Dissemination Practices Act" of the Commonwealth of Virginia.
 - 3. CONFLICT OF INTEREST: By submitting a proposal the contractor warrants that he/she has fully complied with the Virginia Conflict of Interest Act; furthermore certifying that he/she is not currently an employee of the Commonwealth of Virginia.
 - 4. ELECTRONIC PROPOSAL SUBMISSION: **Due to the Coronavirus/COVID-19 outbreak, at this time, and until further notice, Mason will be accepting electronic proposal submissions for all current Request For Proposals and Invitation For Bids.**

The following shall apply:

- a. You must submit your bid/proposal, and it must be received prior to the submission deadline, at both the primary and secondary procurement officer's email address as specified in the Bid/RFP.

- b. The subject line of your email submission should read, “RFP GMU-1657-20” If you are sending multiple emails, please state so in the subject line with the wording, “This is email # _ of _ total”
 - c. The offeror must ensure the proposals are delivered to the procurement officers’ email inboxes, sufficiently in advance of the proposal deadline. **Plan Ahead: It is the offeror’s responsibility to ensure that electronic proposal submissions have sufficient time to make its way through any filters or email traffic. Mason recommends you submit your proposal the day prior to the due date.**
 - d. If your proposal contains proprietary information you must submit two proposals; one full proposal and one with proprietary information redacted.
 - e. While you may send your proposal in multiple emails, each email itself may only have one PDF attachment containing all supplemental information and attachments.
 - f. Each email may not be larger than 20MB.
 - g. All solicitation schedules are subject to change.
 - h. Go to Mason’s Purchasing website for all updates and schedule changes. <https://fiscal.gmu.edu/purchasing/do-business-with-mason/view-current-solicitation-opportunities/>
5. **OBLIGATION OF OFFEROR:** It is the responsibility of each Offeror to inquire about and clarify any requirements of this solicitation that is not understood. Mason will not be bound by oral explanations as to the meaning of specifications or language contained in this solicitation. Therefore, all inquiries must be in writing and submitted as instructed on page 1 of this solicitation. By submitting a proposal, the Offeror covenants and agrees that they have satisfied themselves, from their own investigation of the conditions to be met, that they fully understand their obligation and that they will not make any claim for, or have right to cancellation or relief from this contract because of any misunderstanding or lack of information.
6. **RFP DEBRIEFING:** In accordance with §49 of the *Governing Rules* Mason is not required to furnish a statement of the reasons why a particular proposal was not deemed to be the most advantageous. However, upon request we will provide a scoring/ranking summary and the award justification memo from the evaluation committee. Formal debriefings are generally not offered.
7. **SUBCONTRACTS:** **No portion of the work shall be subcontracted without prior written consent from Mason.** In the event that the contractor desires to subcontract some part of the work specified herein, the contractor shall furnish Mason the names, qualifications, criminal background checks and experience of their proposed subcontractors. The Contractor shall, however, remain fully liable and responsible for the work to be done by its subcontractor(s) and shall assure compliance with all requirements of the contract.

XIX. RFP SCHEDULE (Subject to Change):

- Issue in eVA: 6/10/20
- Advertise in Washington Post: 6/11/20
- Vendors submit questions by: 6/26/20 by 4:00 PM EST
- Post Question Responses: 7/10/20 by 5:00 PM EST
- Proposals Due: 8/12/20 @ 2:00 PM EST
- Proposals to Committee: 8/14/20
- Review and Score Proposals: 8/17/20 – 8/28/20
- Scores to Purchasing: 8/31/20
- Oral presentations (if necessary): 9/15/20 – 9/16/20
- Negotiations/BAFO: Start week of 9/21/20
- Award: 10/20/20
- Contract Start Date: 7/1/21

**ATTACHMENT A
SMALL BUSINESS SUBCONTRACTING PLAN
TO BE COMPLETED BY OFFEROR**

It is the goal of the Commonwealth that over 42% of its purchases be made from small businesses. All potential offerors are required to return this document with their response.

Small Business: "Small business (including micro)" means a business which holds a certification as such by the Virginia Department of Small Business and Supplier Diversity (DSBSD) on the due date for proposals. This shall also include DSBSD-certified women- owned and minority-owned businesses and businesses with DSBSD service disabled veteran owned status when they also hold a DSBSD certification as a small business on the proposal due date. Currently, DSBSD offers small business certification and micro business designation to firms that qualify.

Certification applications are available through DSBSD online at www.SBSD.virginia.gov (Customer Service).

Offeror Name: _____

Preparer Name: _____ **Date:** _____

Instructions

- A. If you are certified by the DSBSD as a micro/small business, complete only Section A of this form.
- B. If you are not a DSBSD-certified small business, complete Section B of this form.

Section A:

If your firm is certified by the DSBSD provide your certification number and the date of certification.

Certification Number: _____ Certification Date: _____

Section B

Populate the table below to show your firm's plans for utilization of DSBSD-certified small businesses in the performance of this contract for the initial contract period in relation to the offeror's total price for the initial contract period. Certified small businesses include but are not limited to DSBSD-certified women-owned and minority-owned businesses and businesses with DSBSD service disabled veteran-owned status that have also received the DSBSD small business certification. Include plans to utilize small businesses as part of joint ventures, partnerships, subcontractors, suppliers, etc. It is important to note that these proposed participation will be incorporated into the subsequent contract and will be a requirement of the contract. Failure to obtain the proposed participation percentages may result in breach of the contract.

Micro/Small Business Name & Address DSBSD Certificate #	Status if Micro/Small Business is also: Women (W), Minority (M), or DSBSD Service Disabled Veteran- Owned	Contact Person, Telephone & Email	Type of Goods and/or Services	Planned Involvement During Initial Period of the Contract	Planned Contract Dollars During Initial Period of the Contract (\$ or %)
Totals \$					

Add a separate page for Section B if necessary.



Purchasing Department
 4400 University Drive, Mailstop 3C5
 Fairfax, VA 22030
 Voice: 703.993.2580 | Fax: 703.993.2589
<http://fiscal.gmu.edu/purchasing/>

**ATTACHMENT B – SAMPLE CONTRACT
 GMU-1657-20**

Note: Other documents may be incorporated into this document, either by way of attachment or by reference, but in all cases this contract document shall take precedence over all other documents and will govern the terms and conditions of the contract.

This Contract entered on this ____ day of _____ by _____ hereinafter called “Contractor” (located at _____) and George Mason University hereinafter called “Mason,” “University”.

- I. **WITNESSETH** that the Contractor and Mason, in consideration of the mutual covenants, promises and agreement herein contained, agree as follows:
- II. **SCOPE OF CONTRACT:** The Contractor shall provide _____ for the _____ of George Mason University as set forth in the Contract documents.
- III. **PERIOD OF CONTRACT:** As negotiated
- IV. **PRICE SCHEDULE:** As negotiated
- V. **CONTRACT ADMINISTRATION:** _____ shall serve as Contract Administrator for this Contract and shall use all powers under the Contract to enforce its faithful performance. The Contract Administrators shall determine the amount, quality and acceptability of work and shall decide all other questions in connection with the work. All direction and order from Mason shall be transmitted through the Contract Administrator, however, the Contract Administrator shall have no authority to approve changes which shall alter the concept or scope or change the basis for compensation.
- VI. **METHOD OF PAYMENT:** As negotiated
- VII. **THE CONTRACT DOCUMENTS SHALL CONSIST OF (In order of precedence):**
 - A. This signed form;
 - B. RFP No. GMU-XXXX-XX, in its entirety (incorporated herein by reference);
 - C. Contractor’s proposal dated XXXXXX (incorporated herein by reference);
 - D. Negotiation Responses dated XXXXXX (incorporated herein by reference).
- VIII. **GOVERNING RULES:** This Contract is governed by the provisions of the Restructured Higher Education Financial and Administrative Operations Act, Chapter 10 (§ [23.1-1000](#) et seq.) of Title 23.1 of the Code of Virginia, and in particular § [23.1-1003](#) of the Restructuring Act (“Memoranda of Understanding”), and the “*Governing Rules*” and the *Purchasing Manual for Institutions of Higher Education and their Vendors*. Documents may be viewed at: <https://vascupp.org>.
- IX. **CONTRACT PARTICIPATION:** As negotiated. It is the intent of this Contract to allow for cooperative procurement. Accordingly, any public body, public or private health or educational institutions, or affiliated corporations may access this Contract if authorized by the Contractor.

Participation in this Contract is strictly voluntary. If authorized by the Contractor, the contract will be extended to the entities indicated above to purchase goods and services in accordance with contract terms. As a separate contractual relationship, the participating entity will place its own orders directly with the Contractor(s) and shall fully and independently administer its use of the contract(s) to include contractual disputes, invoicing and payments without direct administration from the University. No modification of this Contract or execution of a separate agreement is required to participate; however, the participating entity and the Contractor may modify the terms and conditions of the contract

to accommodate specific governing laws, regulations, policies, and business goals required by the participating entity. Any such modification will apply solely between the participating entity and the Contractor.

The University may request the Contractor provide semi-annual usage reports for all entities accessing the Contract. The University shall not be held liable for any costs or damages incurred by any other participating entity as a result of any authorization by the Contractor to extend the Contract. It is understood and agreed that the University is not responsible for the acts or omissions of any entity and will not be considered in default of the contract no matter the circumstances.

Use of this Contract does not preclude any participating entity from using other contracts or competitive processes as needed.

X. STANDARD TERMS AND CONDITIONS:

- A. APPLICABLE LAW AND CHOICE OF FORUM: This Contract shall be construed, governed, and interpreted pursuant to the laws of the Commonwealth of Virginia. All disputes arising under this Contract shall be brought before an appropriate court in the Commonwealth of Virginia.
- B. ANTI-DISCRIMINATION: By entering into this Contract Contractor certifies to the Commonwealth that they will conform to the provisions of the Federal Civil Rights Act of 1964, as amended, as well as the Virginia Fair Employment Contracting Act of 1975, as amended, where applicable, the Virginians With Disabilities Act, the Americans With Disabilities Act and §§ 9&10 of the *Governing Rules*. If Contractor is a faith-based organization, the organization shall not discriminate against any recipient of goods, services, or disbursements made pursuant to the Contract on the basis of the recipient's religion, religious belief, refusal to participate in a religious practice, or on the basis of race, age, color, gender or national origin and shall be subject to the same rules as other organizations that contract with public bodies to account for the use of the funds provided; however, if the faith-based organization segregates public funds into separate accounts, only the accounts and programs funded with public funds shall be subject to audit by the public body. (*Governing Rules*, § 36).

In every contract over \$10,000 the provisions in 1. and 2. below apply:

1. During the performance of this Contract, the Contractor agrees as follows:
 - a. The Contractor will not discriminate against any employee or applicant for employment because of race, religion, color, sex, national origin, age, disability, or any other basis prohibited by state law relating to discrimination in employment, except where there is a bona fide occupational qualification reasonably necessary to the normal operation of the Contractor. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause.
 - b. The Contractor, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, will state that such Contractor is an equal opportunity employer.
 - c. Notices, advertisements and solicitations placed in accordance with federal law, rule or regulation shall be deemed sufficient for the purpose of meeting these requirements.
 2. The Contractor will include the provisions of 1. above in every subcontract or purchase order over \$10,000, so that the provisions will be binding upon each subcontractor or Contractor.
- C. ANTITRUST: By entering into a contract, the Contractor conveys, sells, assigns, and transfers to the Commonwealth of Virginia all rights, title and interest in and to all causes of action it may now have or hereafter acquire under the antitrust laws of the United States and the Commonwealth of Virginia, relating to the particular goods or services purchased or acquired by the Commonwealth of Virginia under said contract.
- D. ASSIGNMENT: Neither party will assign or otherwise transfer its rights or obligations under this Contract without both parties' prior written consent. Any attempted assignment, transfer, or delegation without such consent is void.
- E. AUDIT: The Contractor shall retain all books, records, and other documents relative to this Contract for five (5) years after final payment, or until audited by the Commonwealth of Virginia, whichever is sooner. The

agency, its authorized agents, and/or state auditors shall have full access to and the right to examine any of said materials during said period.

- F. AVAILABILITY OF FUNDS: It is understood and agreed between the parties herein that the agency shall be bound hereunder only to the extent of the funds available or which may hereafter become available for the purpose of this agreement.
- G. AUTHORIZED SIGNATURES: The signatory for each Party certifies that he or she is an authorized agent to sign on behalf such Party.
- H. BACKGROUND CHECKS: Contractor's employees (including subcontractors) performing services on any Mason campus must have successfully completed a criminal background check prior to the start of their work assignment/service. As stated in [Administrative Policy Number 2221 – Background Investigations](#), the criminal background investigation will normally include a review of the individual's records to include Social Security Number Search, Credit Report (if related to potential job duties), Criminal Records Search (any misdemeanor convictions and/or felony convictions are reported) in all states in which the employee has lived or worked over the past seven years, and the National Sex Offender Registry. In addition, the Global Watch list (maintained by the Office of Foreign Assets Control of The US Department of Treasury) should be reviewed. Signature on this contract confirms your compliance with this requirement.
- I. CANCELLATION OF CONTRACT: Mason reserves the right to cancel this Contract, in part or in whole, without penalty, for any reason, upon 60 days written notice to the Contractor. Upon written notice of cancellation from Mason, Mason shall be fully released from any further obligation under the Contract and Contractor agrees to directly refund all payments, for services not already performed, to Mason, including any pre-paid deposits, within 14 days. In the event the initial Contract period is for more than 12 months, the resulting Contract may be terminated by either party, without penalty, after the initial 12 months of the Contract period upon 60 days written notice to the other party. Any contract cancellation notice shall not relieve the Contractor of the obligation to deliver and/or perform on all outstanding orders issued prior to the effective date of cancellation.
- J. CHANGES TO THE CONTRACT: Changes can be made to the Contract in any of the following ways:
1. The parties may agree in writing to modify the scope of the Contract. An increase or decrease in the price of the Contract resulting from such modification shall be agreed to by the parties as a part of their written agreement to modify the scope of the Contract.
 2. George Mason University may order changes within the general scope of the Contract at any time by written notice to the Contractor. Changes within the scope of the Contract include, but are not limited to, things such as services to be performed, the method of packing or shipment, and the place of delivery or installation. The Contractor shall comply with the notice upon receipt. The Contractor shall be compensated for any additional costs incurred as the result of such order and shall give George Mason University a credit for any savings. Said compensation shall be determined by one of the following methods:
 - a. By mutual agreement between the parties in writing; or
 - b. By agreeing upon a unit price or using a unit price set forth in the Contract, if the work to be done can be expressed in units, and the contractor accounts for the number of units of work performed, subject to the George Mason University's right to audit the Contractor's records and/or to determine the correct number of units independently; or
 - c. By ordering the contractor to proceed with the work and keep a record of all costs incurred and savings realized. A markup for overhead and profit may be allowed if provided by the Contract. The same markup shall be used for determining a decrease in price as the result of savings realized. The contractor shall present George Mason University with all vouchers and records of expenses incurred and savings realized. George Mason University shall have the right to audit the records of the Contractor as it deems necessary to determine costs or savings. Any claim for an adjustment in price under this provision must be asserted by written notice to George Mason University within thirty (30) days from the date of receipt of the written order from George Mason University. If the parties fail to agree on an amount of adjustment, the question of an increase or decrease in the Contract price or time for

performance shall be resolved in accordance with the procedures for resolving disputes provided by the Disputes Clause of this contract or, if there is none, in accordance with the disputes provisions of the Commonwealth of Virginia Purchasing Manual for Institutions of Higher Education and Their Contractors. Neither the existence of a claim nor a dispute resolution process, litigation or any other provision of this Contract shall excuse the Contractor from promptly complying with the changes ordered by George Mason University or with the performance of the contract generally.

- K. CLAIMS: Contractual claims, whether for money or other relief, shall be submitted in writing no later than 60 days after final payment. However, written notice of the Contractor's intention to file a claim shall be given at the time of the occurrence or beginning of the work upon which the claim is based. Nothing herein shall preclude a contract from requiring submission of an invoice for final payment within a certain time after completion and acceptance of the work or acceptance of the goods. Pendency of claims shall not delay payment of amounts agreed due in the final payment.
1. The firm must submit written claim to:
Chief Procurement Officer
George Mason University
4400 University Drive, MSN 3C5
Fairfax, VA 22030
 2. The firm must submit any unresolved claim in writing no later than 60 days after final payment to the Chief Procurement Officer.
 3. Upon receiving the written claim, the Chief Procurement Officer will review the written materials relating to the claim and will mail his or her decision to the firm within 60 days after receipt of the claim.
 4. The firm may appeal the Chief Procurement Officer's decision in accordance with § 55 of the *Governing Rules*.
- L. COLLECTION AND ATTORNEY'S FEES: The Contractor shall pay to Mason any reasonable attorney's fees or collection fees, at the maximum allowable rate permitted under Virginia law, incurred in enforcing this Contract or pursuing and collecting past-due amounts under this Contract.
- M. COMPLIANCE: All goods and services provided to Mason shall be done so in accordance with any and all applicable local, state, federal, and international laws, regulations and/or requirements and any industry standards, including but not limited to: the Family Educational Rights and Privacy Act (FERPA), Health Insurance Portability and Accountability Act (HIPAA) and Health Information Technology for Economic and Clinical Health Act (HITECH), Government Data Collection and Dissemination Practices Act, Gramm-Leach-Bliley Financial Modernization Act (GLB), Payment Card Industry Data Security Standards (PCI-DSS), Americans with Disabilities Act (ADA), and Federal Export Administration Regulations. Any Contractor personnel visiting Mason facilities will comply with all applicable Mason policies regarding access to, use of, and conduct within such facilities. Mason's policies can be found at <https://universitypolicy.gmu.edu/all-policies/> and any facility specific policies can be obtained from the facility manager.
- N. CONFIDENTIALITY OF PERSONALLY IDENTIFIABLE INFORMATION: The Contractor shall ensure that personally identifiable information ("PII") which is defined as any information that by itself or when combined with other information can be connected to a specific person and may include but is not limited to personal identifiers such as name, address, phone, date of birth, Social Security number, student or personal identification numbers, driver's license numbers, state or federal identification numbers, biometric information, religious or political affiliation, non-directory information, and any other information protected by state or federal privacy laws, will be collected and held confidential and in accordance with this agreement, during and following the term of this Contract, and will not be divulged without the individual's and Mason's written consent and only in accordance with federal law or the Code of Virginia.
- O. CONFLICT OF INTEREST: Contractor represents to Mason that its entering into this Contract with Mason and its performance through its agents, officers and employees does not and will not involve, contribute to nor create a conflict of interest prohibited by Virginia State and Local Government Conflict of Interests Act (Va. Code 2.2-3100 *et seq*), the Virginia Ethics in Public Contracting Act (§57 of the *Governing Rules*), the Virginia

Governmental Frauds Act (Va. Code 18.2 – 498.1 *et seq*) or any other applicable law or regulation.

- P. **DEBARMENT STATUS:** As of the effective date, the Contractor certifies that it is not currently debarred by the Commonwealth of Virginia from submitting bids or proposals on contracts for the type of services covered by this Contract, nor is the Contractor an agent of any person or entity that is currently so debarred.
- Q. **DEFAULT:** In the case of failure to deliver goods or services in accordance with any resulting contract terms and conditions, George Mason University, after due oral or written notice, may procure them from other sources and hold the contractor responsible for any resulting additional purchase and administrative costs. This remedy shall be in addition to any other remedies which George Mason University may have.
- R. **DRUG-FREE WORKPLACE:** During the performance of this Contract, the Contractor agrees to (i) provide a drug-free workplace for the Contractor's employees; (ii) post in conspicuous places, available to employees and applicants for employment, a statement notifying employees that the unlawful manufacture, sale, distribution, dispensation, possession, or use of a controlled substance or marijuana is prohibited in the contractor's workplace and specifying the actions that will be taken against employees for violations of such prohibition; (iii) state in all solicitations or advertisements for employees placed by or on behalf of the Contractor that the Contractor maintains a drug-free workplace; and (iv) include the provisions of the foregoing clauses in every subcontract or purchase order of over \$10,000, so that the provisions will be binding upon each subcontractor or Contractor.

For the purposes of this section, “*drug-free workplace*” means a site for the performance of work done in connection with a specific contract awarded to a contractor, the employees of whom are prohibited from engaging in the unlawful manufacture, sale, distribution, dispensation, possession or use of any controlled substance or marijuana during the performance of this Contract.

- S. **ENTIRE CONTRACT:** This Contract constitutes the entire understanding of the Parties with respect to the subject matter herein and supersedes all prior oral or written contracts with respect to the subject matter herein. This Contract can be modified or amended only by a writing signed by all of the Parties.

T. **EXPORT CONTROL:**

1. **Munitions Items:** If the Contractor is providing any items, data or services under this order that are controlled by the Department of State, Directorate of Defense Trade Controls, International Traffic in Arms Regulations (“ITAR”), or any items, technology or software controlled under the “600 series” classifications of the Bureau of Industry and Security’s Commerce Control List (“CCL”) (collectively, “Munitions Items”), prior to delivery, Contractor must:

A. notify Mason (by sending an email to export@gmu.edu), and

B. receive written authorization for shipment from Mason’s Director of Export Controls.

The notification provided by the Contractor must include the name of the Mason point of contact, identify and describe each ITAR or CCL-controlled commodity, provide the associated U.S. Munitions List (USML) category number(s) or Export Control Classification Number, and indicate whether or not the determination was reached as a result of a commodity jurisdiction determination, or self-classification process. The Contractor promises that if it fails to obtain the required written pre-authorization approval for shipment to Mason of any Munitions Item, it will reimburse Mason for any fines, legal costs and other fees imposed for any violation of export controls regarding the Munition Item that are reasonably related to the Contractor’s failure to provide notice or obtain Mason’s written pre-authorization.

2. **Dual-Use Items:** If the Contractor is providing any dual-use items, technology or software under this order that are listed on the CCL in a series other than a “600 series”, Contractor must (i) include the Export Control Classification Number (ECCN) on the packing or other transmittal documentation traveling with the item(s) and, (ii) send a description of the item, its ECCN, and the name of the Mason point of contact to: export@gmu.edu .

- U. **FORCE MAJEURE:** Mason shall be excused from any and all liability for failure or delay in performance of any obligation under this Contract resulting from any cause not within the reasonable control of Mason, which includes but is not limited to acts of God, fire, flood, explosion, earthquake, or other natural forces, war, civil

unrest, accident, any strike or labor disturbance, travel restrictions, acts of government, disease, pandemic, or contagion, whether such cause is similar or dissimilar to any of the foregoing. Upon written notification from Mason that such cause has occurred, Contractor agrees to directly refund all payments to Mason, for services not yet performed, including any pre-paid deposits within 14 days.

- V. FUTURE GOODS AND SERVICES: Mason reserves the right to have contractor provide additional goods and/or services that may be required by Mason during the term of this contract. Any such goods and/or services will be provided by the contractor under the same pricing, terms and conditions of this contract. Such additional goods and/or services may include other products, components, accessories, subsystems or related services that are newly introduced during the term of the contract. Such newly introduced additional goods and/or services will be provided to Mason at Favored Customer pricing, terms and conditions.
- W. IMMIGRATION REFORM AND CONTROL ACT OF 1986: By entering into this Contract Contractor certifies that they do not and will not during the performance of this Contract employ illegal alien workers or otherwise violate the provisions of the federal Immigration Reform and Control Act of 1986.
- X. INDEMNIFICATION: Contractor agrees to indemnify, defend and hold harmless George Mason University the Commonwealth of Virginia, its officers, agents, and employees from any claims, damages and actions of any kind or nature, whether at law or in equity, arising from or caused by the use of any materials, goods, or equipment of any kind or nature furnished by the Contractor/any services of any kind or nature furnished by the Contractor, provided that such liability is not attributable to the sole negligence of Mason or to the failure of Mason to use the materials, goods, or equipment in the manner already and permanently described by the Contractor on the materials, goods or equipment delivered.
- Y. INDEPENDENT CONTRACTOR: The Contractor is not an employee of Mason, but is engaged as an independent contractor. The Contractor shall indemnify and hold harmless the Commonwealth of Virginia, Mason, and its employees and agents, with respect to all withholding, Social Security, unemployment compensation and all other taxes or amounts of any kind relating to the Contractor's performance of this Contract. Nothing in this Contract shall be construed as authority for the Contractor to make commitments which will bind Mason or to otherwise act on behalf of Mason, except as Mason may expressly authorize in writing.
- Z. INFORMATION TECHNOLOGY ACCESS ACT: Computer and network security is of paramount concern at George Mason University. The University wants to ensure that computer/network hardware and software does not compromise the security of its IT environment. Contractor agrees to use commercially reasonable measures in connection with any offering your company makes to avoid any known threat to the security of the IT environment at George Mason University.

All e-learning and information technology developed, purchased, upgraded or renewed by or for the use of George Mason University shall comply with all applicable University policies, Federal and State laws and regulations including but not limited to Section 508 of the Rehabilitation Act (29 U.S.C. 794d), the Information Technology Access Act, §§2.2-3500 through 2.2-3504 of the Code of Virginia, as amended, and all other regulations promulgated under Title II of The Americans with Disabilities Act which are applicable to all benefits, services, programs, and activities provided by or on behalf of the University. The Contractor shall also comply with the Web Content Accessibility Guidelines (WCAG) 2.0. For more information please visit <http://ati.gmu.edu>, under Policies and Procedures.

- AA. INSURANCE: The Contractor shall maintain all insurance necessary with respect to the services provided to Mason. The Contractor further certifies that they will maintain the insurance coverage during the entire term of the Contract and that all insurance is to be placed with insurers with a current reasonable A.M. Best's rating authorized to sell insurance in the Commonwealth of Virginia by the Virginia State Corporation Commission. The Commonwealth of Virginia and Mason shall be named as an additional insured.
 - 1. Commercial General Liability Insurance in an amount not less than \$1,000,000 per occurrence for bodily injury or property damage, personal injury and advertising injury, products and completed operations coverage;
 - 2. Workers Compensation Insurance in an amount not less than that prescribed by statutory limits; and, as applicable;
 - 3. Commercial Automobile Liability Insurance applicable to bodily injury and property damage,

covering owned, non-owned, leased, and hired vehicles in an amount not less than \$1,000,000 per occurrence; and

4. An umbrella/excess policy in an amount not less than five million dollars (\$5,000,000) to apply over and above Commercial General Liability, Employer's Liability, Workers' Compensation, and Commercial Automobile Liability Insurance.
- BB. **INTELLECTUAL PROPERTY:** Contractor warrants and represents that it will not violate or infringe any intellectual property right or any other personal or proprietary right and shall indemnify and hold harmless Mason against any claim of infringement of intellectual property rights which may arise under this Contract.
1. Unless expressly agreed to the contrary in writing, all goods, products, materials, documents, reports, writings, video images, photographs or papers of any nature including software or computer images prepared or provided by Contractor (or its subcontractors) for Mason will not be disclosed to any other person or entity without the written permission of Mason.
 2. Work Made for Hire. Contractor warrants to Mason that Mason will own all rights, title and interest in any and all intellectual property rights created in the performance or otherwise arising from the Contract and will have full ownership and beneficial use thereof, free and clear of claims of any nature by any third party including, without limitation, copyright or patent infringement claims. Contractor agrees to assign and hereby assigns all rights, title, and interest in any and all intellectual property created in the performance or otherwise arising from the Contract, and will execute any future assignments or other documents needed for Mason to document, register, or otherwise perfect such rights. Notwithstanding the foregoing, for research collaboration pursuant to subcontracts under sponsored research Contracts administered by the University's Office of Sponsored Programs, intellectual property rights will be governed by the terms of the grant or contract to Mason to the extent such grant or contract requires intellectual property terms to apply to subcontractors.
- CC. **NON-DISCRIMINATION:** All parties to this Contract agree to not discriminate on the basis of race, color, religion, national origin, sex, pregnancy, childbirth or related medical conditions, age (except where sex or age is a bona fide occupational qualification, marital status or disability).
- DD. **PUBLICITY:** The Contractor shall not use, in its external advertising, marketing programs or promotional efforts, any data, pictures, trademarks or other representation of Mason except on the specific written authorization in advance by Mason's designated representative.
- EE. **REMEDIES:** If the Contractor breaches this Contract, in addition to any other rights or remedies, Mason may terminate this Contract without prior notice.
- FF. **RENEWAL OF CONTRACT:** This Contract may be renewed by Mason for two (2) successive five-year renewal options under the terms and conditions of this Contract except as stated in 1. and 2. below. Price increases may be negotiated only at the time of renewal. Written notice of the University's intention to renew shall be given approximately 90 days prior to the expiration date of each contract period.
1. If the University elects to exercise the option to renew the Contract for an additional one-year period, the Contract price(s) for the additional one year shall not exceed the Contract price(s) of the original Contract increased/decreased by more than the percentage increase/decrease of the "other goods and services" category of the CPI-U section of the Consumer Price Index of the United States Bureau of Labor Statistics for the latest twelve months for which statistics are available.
 2. If during any subsequent renewal periods, the University elects to exercise the option to renew the Contract, the Contract price(s) for the subsequent renewal period shall not exceed the Contract price(s) of the previous renewal period increased/decreased by more than the percentage increase/decrease of the "other goods and services" category of the CPI-U section of the Consumer Price Index of the United States bureau of Labor Statistics for the latest twelve months for which statistics are available.
- GG. **REPORTING OF CRIMES, ACCIDENTS, FIRES AND OTHER EMERGENCIES:** Any Mason Employee, including contracted service providers, who is not a staff member in Counseling and Psychological Services (CAPS) or a pastoral counselor, functioning within the scope of that recognition, is considered a "Campus Security Authority (CSA)." CSAs must promptly report all crimes and other emergencies occurring on or near property owned or controlled by Mason to the Department of Police & Public Safety or local police and fire

authorities by dialing 9-1-1. At the request of a victim or survivor, identifying information may be excluded from a report (e.g., names, initials, contact information, etc.). Please visit the following website for more information and training: <http://police.gmu.edu/clery-act-reporting/campus-security-authority-csa/>.”

HH. RESPONSE TO LEGAL ORDERS, DEMANDS, OR REQUESTS FOR DATA: Except as otherwise expressly prohibited by law, Contractor will: i) immediately notify Mason of any subpoenas, warrants, or other legal orders, demands or requests received by Contractor seeking University Data; ii) consult with Mason regarding its response; iii) cooperate with Mason’s reasonable requests in connection with efforts by Mason to intervene and quash or modify the legal order, demand or request; and iv) upon Mason’s request, provide Mason with a copy of its response.

If Mason receives a subpoena, warrant, or other legal order, demand (including request pursuant to the Virginia Freedom of Information Act) or request seeking University Data maintained by Contractor, Mason will promptly provide a copy to Contractor. Contractor will promptly supply Mason with copies of data required for Mason to respond, and will cooperate with Mason’s reasonable requests in connection with its response.

II. SEVERABILITY: Should any portion of this Contract be declared invalid or unenforceable for any reason, such portion is deemed severable from the Contract and the remainder of this Contract shall remain fully valid and enforceable.

JJ. SOVEREIGN IMMUNITY: Nothing in this Contract shall be deemed a waiver of the sovereign immunity of the Commonwealth of Virginia and of Mason.

KK. SUBCONTRACTS: No portion of the work shall be subcontracted without prior written consent from Mason. In the event that the Contractor desires to subcontract some part of the work specified herein, the Contractor shall furnish Mason the names, qualifications and experience of their proposed subcontractors. The Contractor shall, however, remain fully liable and responsible for the work to be done by its subcontractor(s) and shall assure compliance with all requirements of this Contract. This paragraph applies to, but is not limited to, subcontractor(s) who process University Data.

LL. UNIVERSITY DATA: University Data includes all Mason owned, controlled, or collected PII and any other information that is not intentionally made available by Mason on public websites, including but not limited to business, administrative and financial data, intellectual property, and patient, student and personnel data. Contractor agrees to the following regarding University Data it may collect or process as part of this Contract:

1. Contractor will use University Data only for the purpose of fulfilling its duties under the Contract and will not share such data with or disclose it to any third party without the prior written consent of Mason, except as required by the Contract or as otherwise required by law. University Data will only be processed by Contractor to the extent necessary to fulfill its responsibilities under the Contract or as otherwise directed by Mason.
2. University Data, including any back-ups, will not be accessed, stored, or transferred outside the United States without prior written consent from Mason. Contractor will provide access to University Data only to its employees and subcontractors who need to access the data to fulfill Contractor’s obligations under the Contract. Contractor will ensure that employees who perform work under the Contract have read, understood, and received appropriate instruction as to how to comply with the data protection provisions of the Contract and to maintain the confidentiality of the University Data.
3. The parties agree that as between them, all rights including all intellectual property rights in and to University Data shall remain the exclusive property of Mason, and Contractor has a limited, nonexclusive license to use the University Data as provided in the Contract solely for the purpose of performing its obligations under the Contract. The Contract does not give a party any rights, implied or otherwise, to the other party’s data, content, or intellectual property, except as expressly stated in the Contract.
4. Contractor will take reasonable measures, including audit trails, to protect University Data against deterioration or degradation of data quality and authenticity. Contractor shall be responsible for ensuring that University Data, per the Virginia Public Records Act, is preserved, maintained, and accessible throughout their lifecycle, including converting and migrating electronic data as often as necessary so that information is not lost due to hardware, software, or media obsolescence or deterioration.

5. Contractor shall notify Mason within three business days if it receives a request from an individual under any applicable law regarding PII about the individual, including but not limited to a request to view, access, delete, correct, or amend the information. Contractor shall not take any action regarding such a request except as directed by Mason.
6. If Contractor will have access to University Data that includes “education records” as defined under the Family Educational Rights and Privacy Act (FERPA), the Contractor acknowledges that for the purposes of the Contract it will be designated as a “school official” with “legitimate educational interests” in the University education records, as those terms have been defined under FERPA and its implementing regulations, and the Contractor agrees to abide by the limitations and requirements imposed on school officials. Contractor will use the education records only for the purpose of fulfilling its duties under the Contract for Mason’s and its end user’s benefit, and will not share such data with or disclose it to any third party except as provided for in the Contract, required by law, or authorized in writing by the University.
7. Mason may require that Mason and Contractor complete a Data Processing Addendum (“DPA”). If a DPA is completed, Contractor agrees that the information in the DPA is accurate. Contractor will only collect or process University Data that is identified in the DPA and will only handle that data (e.g., type of processing activities, storage, security, disclosure) as described in the DPA. If Contractor intends to do anything regarding University Data that is not reflected in the DPA, Contractor must request an amendment to the DPA and may not take the intended action until the amendment is approved and documented by Mason.

MM. UNIVERSITY DATA SECURITY: Data security is of paramount concern to Mason. Contractor will utilize, store and process University Data in a secure environment in accordance with commercial best practices, including appropriate administrative, physical, and technical safeguards, to secure such data from unauthorized access, disclosure, alteration, and use. Such measures will be no less protective than those used to secure Contractor’s own data of a similar type, and in no event less than reasonable in view of the type and nature of the data involved. At a minimum, Contractor shall use industry-standard and up-to-date security tools and technologies such as anti-virus protections and intrusion detection methods to protect University Data.

1. Immediately upon becoming aware of circumstances that could have resulted in unauthorized access to or disclosure or use of University Data, Contractor will notify Mason, fully investigate the incident, and cooperate fully with Mason’s investigation of and response to and remediation of the incident. Except as otherwise required by law, Contractor will not provide notice of the incident directly to individuals who’s PII was involved, regulatory agencies, or other entities, without prior written permission from Mason.
2. Mason reserves the right in its sole discretion to perform audits of Contractor, at Mason’s expense, to ensure compliance with all obligations regarding University Data. Contractor shall reasonably cooperate in the performance of such audits. Contractor will make available to Mason all information necessary to demonstrate compliance with its data processing obligations. Failure to adequately protect University Data or comply with the terms of this Contract with regard to University Data may be grounds to terminate this Contract.

NN. UNIVERSITY DATA UPON TERMINATION OR EXPIRATION: Upon termination or expiration of the Contract, Contractor will ensure that all University Data are securely returned or destroyed as directed by Mason in its sole discretion within 180 days of the request being made. Transfer to Mason or a third party designated by Mason shall occur within a reasonable period of time, and without significant interruption in service. Contractor shall ensure that such transfer/migration uses facilities and methods that are compatible with the relevant systems of Mason or its transferee, and to the extent technologically feasible, that Mason will have reasonable access to University Data during the transition. In the event that Mason requests destruction of its data, Contractor agrees to destroy all data in its possession and in the possession of any subcontractors or agents to which the Contractor might have transferred University Data. Contractor agrees to provide documentation of data destruction to the University.

Contractor will notify the University of any impending cessation of its business and any contingency plans. This includes immediate transfer of any previously escrowed assets and University Data and providing Mason access to Contractor’s facilities to remove and destroy Mason-owned assets and University Data. Contractor shall implement its exit plan and take all necessary actions to ensure a smooth transition of service with minimal

disruption to Mason. Contractor will also provide a full inventory and configuration of servers, routers, other hardware, and software involved in service delivery along with supporting documentation, indicating which if any of these are owned by or dedicated to Mason. Contractor will work closely with its successor to ensure a successful transition to the new equipment, with minimal downtime and effect on Mason, all such work to be coordinated and performed in advance of the formal, final transition date.

- OO. UNIVERSITY REVIEW/APPROVAL: All goods, services, products, design, etc. produced by the Contractor for or on behalf of Mason are subject to Mason’s review and approval.
- PP. WAIVER: The failure of a party to enforce any provision in this Contract shall not be deemed to be a waiver of such right.

Contractor Name

George Mason University

Signature

Signature

Name: _____

Name: _____

Title: _____

Title: _____

Date: _____

Date: _____