



Purchasing Department
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 Fairfax, Va. 22030
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<http://fiscal.gmu.edu/purchasing>

STANDARD CONTRACT GMU-1833-23-01

This Contract entered on this 30th day of November, 2022 (Effective Date) by Diversified Fall Protection hereinafter called "Contractor" (located at 350 Green Oaks Parkway, Holly Springs, NC 27540) and George Mason University hereinafter called "Mason," or "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 fall protection equipment and perform routine inspections of fall protection equipment as mandated by the manufacturer's specification for the Environmental Health and Safety Office of George Mason University as set forth in the Contract documents.
- III. **PERIOD OF CONTRACT:** One year from the Effective Date with four (4) successive one-year renewal options.
- IV. **PRICE SCHEDULE:** See Attached Pricing Schedule (Negotiations/BAFO Pricing dated November 9, 2022)
- V. **CONTRACT ADMINISTRATION:** Douglass O'Neill, Assistant Director, Occupational Safety and Health, shall serve as Contract Administrator for this Contract and 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, 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:** Paymode-X, Net30. <http://www.paymode.com/gmu>. Contractor shall submit invoices directly to acctpay@gmu.edu with a copy to the Contract Administrator. Invoices will be paid Net 30 after goods received, services rendered, or receipt in Mason's Accounts Payable email box, whichever is later. Invoices must reference a Purchase Order number to be considered valid.
- VII. **THE CONTRACT DOCUMENTS SHALL CONSIST OF (In order of precedence):**
 - A. This signed Contract;
 - B. Negotiation Responses dated November 9, 2022 (incorporated herein by reference);
 - C. RFP No. GMU-1833-23, in its entirety (incorporated herein by reference);
 - D. Contractor's proposal dated October 3, 2022 (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 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:** 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 the award is made to 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 this 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 this 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 University, 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 University shall be bound hereunder only to the extent of the funds available or which may hereafter become available for the purpose of this Contract.
- 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 this Contract in any of the following ways:
1. The parties may agree in writing to modify the scope of this 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 this Contract.
 2. Mason may order changes within the general scope of Contract at any time by written notice to Contractor. Changes within the scope of this 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. Contractor shall comply with the notice upon receipt. Contractor shall be compensated for any additional costs incurred as the result of such order and shall give Mason 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 Mason's right to audit Contractor's records and/or to determine the correct number of units independently; or
 - c. By ordering 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 Contract. The same markup shall be used for determining a decrease in price as the result of savings realized. Contractor shall present Mason with all vouchers and records of expenses incurred and savings realized. Mason shall have the right to audit the records of 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 Mason within thirty (30) days from the date of receipt of the written order from Mason. 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 Mason or with the performance of this 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. CONTINUITY OF SERVICES:

1. The Contractor recognizes that the services under this Contract are vital to Mason and must be continued without interruption and that, upon contract expiration, a successor, either Mason or another contractor, may continue them. The Contractor agrees:
 - a. To exercise its best efforts and cooperation to affect an orderly and efficient transition to a successor;
 - b. To make all Mason owned facilities, equipment, and data available to any successor at an appropriate time prior to the expiration of the contract to facilitate transition to successor; and
 - c. That the University Procurement Officer shall have final authority to resolve disputes related to the transition of the contract from the Contractor to its successor.
 2. The Contractor shall, upon written notice from the Procurement Officer, furnish phase-in/phase-out services for up to ninety (90) days after this Contract expires and shall negotiate in good faith a plan with the successor to execute the phase-in/phase-out services. This plan shall be subject to the Procurement Officer's approval.
 3. The Contractor shall be reimbursed for all reasonable, pre-approved phase-in/phase-out costs (i.e., costs incurred within the agreed period after contract expiration that result from phase-in, phase-out operations). All phase-in/phase-out work fees must be approved by the Procurement Officer in writing prior to commencement of said work.
- Q. 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.
- R. DEFAULT: In the case of failure to deliver goods or services in accordance with Contract terms and conditions, Mason, after due oral or written notice, may procure them from other sources and hold Contractor responsible for any resulting additional purchase and administrative costs. This remedy shall be in addition to any other remedies which Mason may have.
- S. DRUG-FREE WORKPLACE: Contractor has, and shall have in place during the performance of this Contract, a drug-free workplace policy (DFWP), which it provides in writing to all its employees, vendors, and subcontractors, and which specifically prohibits the following on company premises, during work-related activities, or while conducting company business: the sale, purchase, manufacture, dispensation, distribution possession, or use of any illegal drug under federal law (including marijuana). For purposes of this section, "drug-free workplace" covers all sites at which work is done by Contractor in connection with this Contract.
- T. 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.
- U. 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@gmw.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.
- V. **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.
- W. **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.
- X. **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.
- Y. **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.
- Z. **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.
- AA. **INFORMATION TECHNOLOGY ACCESS ACT:** Computer and network security is of paramount concern at Mason. Mason 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 Mason.
- All e-learning and information technology developed, purchased, upgraded or renewed by or for the use of Mason 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.
- BB. **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. By requiring such minimum insurance, Mason shall not be deemed or construed to have assessed the risk that may be applicable to the Contractor. The Contractor shall assess

its own risks and, if it deems appropriate and/or prudent, maintain higher limits and/or broader coverage. The Contractor is not relieved of any liability or other obligations assumed or pursuant to this Contract by reason of its failure to obtain or maintain insurance in sufficient amounts, duration, or types.

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, and Commercial Automobile Liability Insurance.

CC. 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.

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.

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.

DD. 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).

EE. PAYMENT TO SUBCONTRACTORS: The Contractor shall take the following actions upon receiving payment from Mason: (1) pay the subcontractor within seven days for the proportionate share of the total payment received from Mason attributable to the work performed by the subcontractor under that Contract; or (2) notify Mason and subcontractor within seven days, in writing, of its intention to withhold all or a part of the subcontractor's payment with the reason for nonpayment. b. If an individual contractor, provide social security number in order to receive payment. c. If a proprietorship, partnership or corporation provide Federal employer identification number. d. Pay interest to subcontractors on all amounts owed by the Contractor that remain unpaid after seven days following receipt by the Contractor of payment from the Institution for work performed by the subcontractor under that Contract, except for amounts withheld as allowed by prior notification. e. Accrue interest at no more than the rate of one percent per month. f. Include in each of its subcontracts a provision requiring each subcontractor to include or otherwise be subject to the same payment and interest requirements with respect to each lower-tier subcontractor.

FF. 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.

GG. REMEDIES: If the Contractor breaches this Contract, in addition to any other rights or remedies, Mason may terminate this Contract without prior notice.

- HH. RENEWAL OF CONTRACT: This Contract may be renewed by Mason for four (4) successive one-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 lesser of 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, or 2%.
 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 lesser of 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, or 2%.
- II. 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/>."
- JJ. 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.
- KK. 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.
- LL. SOVEREIGN IMMUNITY: Nothing in this Contract shall be deemed a waiver of the sovereign immunity of the Commonwealth of Virginia and of Mason.
- MM. 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.
- NN. SWaM CERTIFICATION: Contractor agrees to fully support the Commonwealth of Virginia and Mason's efforts related to SWaM goals. Upon contract execution, Contractor, if eligible, shall submit all required documents necessary to achieve SWaM certification to the Department of Small Business and Supplier Diversity within 90 days. If Contractor is currently SWaM certified, Contractor agrees to maintain their certification for the duration of this Contract and shall submit all required renewal documentation at least 30 days prior to existing SWaM expiration at <https://www.sbsd.virginia.gov/>.

OO. 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.

PP. 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.

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.

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.


QQ. 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.

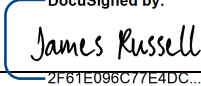
RR. UNIVERSITY REVIEW/APPROVAL: All goods, services, products, design, etc. produced by the Contractor for or on behalf of Mason are subject to Mason's review and approval.

SS. WAIVER: The failure of a party to enforce any provision in this Contract shall not be deemed to be a waiver of such right.

Diversified Fall Protection

DocuSigned by:

 Signature _____
 92EF35288D25426...
 Name: Ben Copeland
 Title: Vice President - East
 Date: 12/8/2022

George Mason University

DocuSigned by:

 Signature _____
 2F61E096C77E4DC...
 Name: James Russell
 Title: Purchasing Director
 Date: 12/9/2022

George Mason University
RFP GMU-1833-23 Fall Protection Assessment and Equipment
Round 1 Negotiation Memorandum

The evaluation committee has completed the evaluation and scoring of all proposals received for RFP GMU-1833-23 and have identified your firm as one of the finalists. We are prepared to move to Round One (1) Negotiations. We have a few items that we would like to negotiate and that we need additional clarification regarding. Please respond to the points below your earliest convenience but no later than noon on Wednesday, November 9th, 2022.

Please provide detailed answers and additional documentation if necessary, in order to thoroughly answer the questions below. Information provided during negotiations may impact the committee's award choices:

Pricing:

- a. Mason is requesting that you review your labor rates and the discount off of list prices and provide your best available pricing. Please include all direct and indirect costs and provide details. **Updated pricing sheet attached with relationship accommodations.**
- b. In your proposal, you stated the pricing sheet do not include mobilization expenses. You did mention a starting point for discussions:
 - i. Mobilization cost (to and from) site assessment, inspections, training: \$1,200
 - ii. Mobilization cost (to and from) installation (per 2-man crew): \$2,000
 - iii. Daily cost (per day on site, per person): \$250

If travel reimbursement of travel fees/costs/expense are to be billed, your organization must agree to accept to be reimbursed in accordance with Mason's Per diem policies/requirements (GSA per diem rates). **This is agreed and understood.**

- c. If there are any other labor rates, categories, equipment charges, fees, etc. that Mason needs to be aware of, that were not included or mentioned in your proposal, please provide a list of them at this time.
 - i. **Travel time, if utilizing GSA per diem rates for lodging, meals and incidentals, suggested to be billed at 80% of submitted labor rates for on-site labor.**
 - ii. **Mileage, if utilizing GSA per diem rates for lodging, meals and incidentals, suggested to be billed at GSA mileage rate of 58.5 cents per mile per vehicle utilized (adjust to 2023 rates once available).**
 - iii. **Subcontractors and subcontracted equipment, to include lift rentals, when required and carried directly, suggested to be marked up cost plus 15% for O&P.**

Thank you for considering the items above. You may respond to these items either in this word document or by submitting an email that addresses each of these points. Please note that responses to these Negotiation Items will become part of the resulting contract.

If you have any questions about the negotiation items above, please contact the Sr. Buyer as soon as possible to obtain clarification.

Thank you,
Regina Bazile
Senior Buyer, George Mason University
Phone: 703-993-6880
Email: rbazile@gmu.edu

RFP GMU-1833-23**Fall Protection Assessment and Equipment
Diversified Fall Protection**

	BAFO	
Labor Rates	Regular Time	Overtime Rate
Building Assessments	\$110.00	\$165.00
Inspections	\$110.00	\$165.00
Installations (per technician)	\$90.00	\$135.00
Repairs (per technician)	\$90.00	\$135.00
Training	\$110.00	\$165.00
Professional engineering services (for all protection only)	\$155.00	\$232.50

	Product Type/Category Type	BAFO
Manufacturer		
Diversified Fall Protection	Single Point Anchors	15%
Diversified Fall Protection	Roof Hatch Rail	8%
Diversified Fall Protection	Structure Mounted Guardrail	14%
Diversified Fall Protection	Dual Lanyard Horizontal Lifeline	15%
Diversified Fall Protection	Continuous Travel Horizontal Lifeline	15%
Diversified Fall Protection	Fixed Ladders	8%
3M or MSA	Roofsafe Horizontal Lifeline	5%
3M or MSA	Harness, Lanyard, End User Equipment	5%
Diversified Fall Protection	Working Platforms	8%
Diversified Fall Protection	Ballasted Guardrail	15%
3M	Ballasted Anchor	5%
Diversified Fall Protection	Ladderguard Guardrail System	14%
Diversified Fall Protection	Warning Line	14%
3M or MSA	Ladder Climbing Safety	5%
PS Doors	Safety Gates	5%
Gorbel	Overheard Track Systems	5%
Diversified Fall Protection	Overheard Monorail Systems	10%
Diversified Fall Protection	Skylight Screens	5%



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-1833-23**

ISSUE DATE: August 10, 2022

TITLE: Fall Protection Assessment and Equipment

PRIMARY PROCUREMENT OFFICER: Regina Bazile, Sr. Buyer, rbazile@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 Eastern Time (ET) on August 17, 2022. **All questions must be submitted in writing.** Responses to questions will be posted on the [Mason Purchasing Website](#) by 5:00 PM ET on August 24, 2022. Note: Questions must be submitted in WORD format. Also see section III. COMMUNICATION, herein.

PROPOSAL DUE DATE AND TIME: September 8, 2022 @ 2:00 PM ET. **SEE SECTION XIII.A.1 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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GMU-1833-23

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- I. **PURPOSE:** The purpose of this Request for Proposal (RFP) is to solicit proposals to provide fall protection equipment on behalf of the university, install fall protection equipment selected by the university, and perform routine inspections of fall protection equipment as mandated by the manufacture's specifications. George Mason University (herein after referred to as "Mason," or "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.

As a public institution of higher education in Virginia Mason cannot agree to any of the following terms in any documents:

- A. An express or implied waiver of sovereign immunity.
- B. An agreement to indemnify, defend or hold harmless any entity.
- C. An agreement to maintain insurance.
- D. An agreement providing for binding arbitration.
- E. An agreement providing for the payment of attorneys' fees or liquidated damages.
- F. Waiver of jury trial.
- G. Choice of law or venue other than the Commonwealth of Virginia.

Contracts will only be issued to the FEI/FIN Number and Firm listed on the signed cover page submitted in your RFP response. Joint proposals will not be accepted.

- V. **ADDITIONAL USERS:** It is the intent of this solicitation and resulting contract(s) 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 the resulting 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:** All potential offerors are required to fill out and submit Attachments A with their proposal.

Note: Invoices shall only be submitted to Mason by the entity awarded a contract. Subcontractors cannot submit invoices to Mason under any resulting contract.

- IX. PERIOD OF PERFORMANCE:** One (1) year from Effective Date of contract with four (4) successive one-year renewal options. (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 degrees 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 is seeking a contractor(s) to provide a wide variety of goods and services that may include, but not limited to, fall protection building assessments, inspections, recommendations, installations, repair, training and sale of equipment.

The Contractor shall provide all materials, labor, tools, equipment, transportation, and all incidentals required and/ or implied for the complete and satisfactory performance of fall protections building assessments, inspections, recommendations, installations, and trainings.

The Contactor shall provide and keep up to date a list of all personnel performing work under this contract. Written evidence of the personnel's qualifications must be submitted to Mason in advance of commencement of service.

A. Service Requirements - Contractor must meet the following minimum requirements:

1. Building Assessments

- a. Provide an hourly rate to conduct assessments of building roofs to determine appropriate fall protection strategies.
- b. Provide a written report for each building that:
 - i. Identifies all areas that require fall protection (i.e., hazardous area)
 - ii. Recommends fall protection equipment for each hazardous area based on anticipated work activities.
 - iii. Provides multiple fall protection equipment options for each hazardous area where feasible.

2. Fall Protection Equipment

- a. Provide itemized pricing for fall protection equipment. A variety of options should be included for each type of fall protection equipment.
 - i. Guardrails:
 - 1. Permanent
 - a. Fixed
 - b. Collapsible
 - 2. Temporary
 - a. Fixed
 - b. Collapsible
 - ii. Fall Arrest
 - iii. Fall Restraint
 - iv. Provide additional fall protection equipment options as deemed appropriate, i.e., vertical or horizontal lifelines, relocatable anchor points, etc.
 - v. Provide warranty information for all equipment included in the contract.

3. Fall Protection Equipment Installation

- a. Provide a per unit price to install fall protection equipment listed in Attachment C.
- b. Provide estimates to purchase and install equipment identified in building assessments for an entire building at the request of the university.
- c. Provide documentation detailing methods to maintain existing roofing material effectiveness.

4. Fall Protection Inspection Costs.

- a. Provide pricing to conduct routine inspections of fall protection equipment installed.

5. Vendor Qualifications

- a. Vendors will provide the following information:
 - i. A brief background of the company to include professional services rendered, years in business, vendor assets that support this proposal.
 - ii. Qualifications and certifications for individual(s) performing building assessments
 - iii. List of three references of similar size or complexity
 - iv. Certificate of insurance naming the university as additionally insured
 - v. Warranty information for all work performed by the vendor.
 - vi. Engineering expertise (on staff or on retainer) needed to assess the feasibility and engineering requirements for installing fall permanent fall protection equipment.

6. Consulting and Training

- a. Vendors will provide per hour or per count pricing to conduct fall protection training that satisfies OSHA fall protection training regulations.
- b. Vendors will provide per hour or per head pricing for fall protection 'Competent Person Training'
- c. Vendor will provide consultation services on an hourly basis.

B. Other Requirements:

- 1. The Contractor will clearly show list price, discount percentage, and the final cost on all quotes, proposals, and invoices.
- 2. Vendor will be required to provide semi-annual reports showing list prices and prices paid which will reflect the cost savings to Mason.
- 3. A thorough understanding of the current Occupational Safety and Health Administration's 5 (OSHA) laws and regulations as well as the standards of the American National Standards Institute (ANSI) and the Canadian Standards Association (CSA).

XII. COST OF SERVICES: Please provide costs as described in the above statement of needs as outlined in Section XIII.B.5 below.

XIII. 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 copy of the entire proposal including all attachments and proprietary information. If the proposal contains proprietary information, then submit two (2) proposals must be submitted; one (1) with proprietary information included and one (1) with proprietary information removed (see also Item 2d below for further details). The Offeror shall make no other distribution of the proposals.

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.

ELECTRONIC PROPOSAL SUBMISSION: Due to the Coronavirus/COVID-19 outbreak, at this time, and until further notice, Mason will only 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-1833-23**" 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 (See 2d below).
 - 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/>
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. 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.

- d. 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 attachment of the proposal 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 will be scheduled at the appropriate time.

Mason will expect that the person or persons who will be working on the project to make the presentation so experience of the Offeror'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 goods/services. Offerors should 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 XVI.)
2. Qualifications and Experience: Describe your experience, qualifications and success in providing the services described in the Statement of Needs to include the following:
 - a. Background and brief history of your company.
 - b. Names, qualifications and experience of personnel to be assigned to work with Mason.
3. Specific Plan (Methodology): Explain your specific plans for providing the proposed services outlined in the Statement of Needs including:
 - a. Your approach to providing the services described herein.
 - b. What, when and how services will be performed.
 - c. It is the responsibility of the vendor to provide engineering evaluation as necessary regarding

installation of temporary and permanent fall protection systems. The university will provide schematics and drawings when available.

4. References:

- a. Provide a list of three (3) references that demonstrates the Offeror's qualifications, preferably from other comparable higher education institutions your company is/has provided services with and that are similar in size and scope to that which has been described herein. Include a contact name, contact title, phone number, and email address for each reference and indicate the length of service

5. Proposed Pricing: Provide a price schedule for each serve as outlined in Attachment C "Pricing Schedule".

- a. The cost of compiling information and generating reports should be include in the per hour rate for conducting building assessments.
- b. Specific fall protection, restraint, and arrest equipment will be recommended by the vendor based on the assessment conducted by the vendor.
- c. The vendor is responsible for providing recommendations as to the nature and installation of fall protection equipment based on building assessments.
- d. The scope of work will be provided in advance of any on site appointments to include approximate number of buildings and roof top dimensions.

6. In your proposal response please address the following:

- a. Are you and/or your subcontractor currently involved in litigation with any party?
- b. Please list any investigation or action from any state, local, federal or other regulatory body (OSHA, IRS, DOL, etc.) related to your firm or any subcontractor in the last three years.
- c. Please list all lawsuits that involved your firm or any subcontractor in the last three years.
- d. In the past ten (10) years has your firm's name changed? If so, please provide a reason for the change.

XIV. 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.	Qualifications and experience of offeror in providing the goods/services	20
2.	Specific plans or methodology to be used to provide the services	20
3.	References	20
4.	Proposed Pricing	30
5.	Offeror is certified as a small, minority, or women-owned business (SWaM) with Virginia SBSD at the proposal due date & time.	10

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 offerors 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.*).

- XV. 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.

XVI. 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.

XVII. 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 (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. 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.
5. 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.

XVIII. RFP SCHEDULE (Subject to Change):

- Issue in eVA: 8/10/22
- Vendors submit questions by: 8/17/22 by 4:00 PM ET
- Post Question Responses: 8/24/22 by 5:00 PM ET
- Proposals Due: 9/8/22 @ 2:00 PM ET
- Proposals to Committee: 9/12/22
- Review and Score Proposals: 9/12/22 – 9/16/22
- Scores to Purchasing: 9/16/22
- Oral presentations (if necessary): 9/19/22 – 9/23/22
- Negotiations/BAFO: Start week of 9/26/22
- Award: 10/12/22
- Contract Start Date: 10/19/22

ATTACHMENT A
SMALL BUSINESS SUBCONTRACTING PLAN
TO BE COMPLETED BY OFFEROR

Offerors must advise any portion of this contract that will be subcontracted. All potential offerors are required to include this document with their proposal in order to be considered responsive.

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 and time 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:** _____

Who will be doing the work: ☐ I plan to use subcontractors ☐ I plan to complete all work

Instructions

- A. If you are certified by the DSBSD as a micro/small business, complete Section A of this form.
- B. If the "I plan to use subcontractors" box is checked, complete Section B of this form. For the proposal to be considered and the offeror to be declared responsive, the offeror shall identify the portions of the contract that will be subcontracted to any subcontractor, to include DSBSD certified small business for the initial contract period in relation to the offeror's total price for the initial contract period in Section B.

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

If the "I plan to use subcontractors" box is checked, populate the requested information below, per subcontractor to show your firm's plans for utilization of any subcontractor, to include 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 dollar value or percentages may result in breach of the contract.

Plans for Utilization of Any subcontractor, to include DSBSD-Certified Small Businesses, for this Procurement

Subcontract #1

Company Name: _____ SBSD Cert #: _____
 Contact Name: _____ SBSD Certification: _____
 Contact Phone: _____ Contact Email: _____
 Value % or \$ (Initial Term): _____ Contact Address: _____
 Description of Work: _____

Subcontract #2

Company Name: _____ SBSD Cert #: _____
 Contact Name: _____ SBSD Certification: _____
 Contact Phone: _____ Contact Email: _____
 Value % or \$ (Initial Term): _____ Contact Address: _____
 Description of Work: _____

Subcontract #3

Company Name: _____ SBSD Cert #: _____
Contact Name: _____ SBSD Certification: _____
Contact Phone: _____ Contact Email: _____
Value % or \$ (Initial Term): _____ Contact Address: _____
Description of Work: _____

Subcontract #4

Company Name: _____ SBSD Cert #: _____
Contact Name: _____ SBSD Certification: _____
Contact Phone: _____ Contact Email: _____
Value % or \$ (Initial Term): _____ Contact Address: _____
Description of Work: _____

Subcontract #5

Company Name: _____ SBSD Cert #: _____
Contact Name: _____ SBSD Certification: _____
Contact Phone: _____ Contact Email: _____
Value % or \$ (Initial Term): _____ Contact Address: _____
Description of Work: _____



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-1833-23

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 _____, 2022 (Effective Date) 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:** One year from the Effective Date with four (4) successive one-year renewal options. (or 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 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, 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. Negotiation Responses dated XXXXX (incorporated herein by reference);
 - C. RFP No. GMU-1833-23, in its entirety (incorporated herein by reference);
 - D. Contractor’s proposal 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 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 and shall fully and independently administer its use of the contract 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 this 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 this 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. Mason,

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 Mason shall be bound hereunder only to the extent of the funds available or which may hereafter become available for the purpose of this Contract.
- 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 this Contract in any of the following ways:
 - 1. The parties may agree in writing to modify the scope of this 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 this Contract.
 - 2. Mason may order changes within the general scope of Contract at any time by written notice to Contractor. Changes within the scope of this 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. Contractor shall comply with the notice upon receipt. Contractor shall be compensated for any additional costs incurred as the result of such order and shall give Mason 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 Mason's right to audit Contractor's records and/or to determine the correct number of units independently; or
 - c. By ordering 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. Contractor shall present Mason with all vouchers and records of expenses incurred and savings realized. Mason shall have the right to audit the records of 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 Mason within thirty (30) days from the date of receipt of the written order from Mason. 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 Mason 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 Contract, 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. CONTINUITY OF SERVICES:

1. The Contractor recognizes that the services under this Contract are vital to Mason and must be continued without interruption and that, upon contract expiration, a successor, either Mason or another contractor, may continue them. The Contractor agrees:
 - a. To exercise its best efforts and cooperation to affect an orderly and efficient transition to a successor;
 - b. To make all Mason owned facilities, equipment, and data available to any successor at an appropriate time prior to the expiration of the contract to facilitate transition to successor; and
 - c. That the University Procurement Officer shall have final authority to resolve disputes related to the transition of the contract from the Contractor to its successor.
2. The Contractor shall, upon written notice from the Procurement Officer, furnish phase-in/phase-out services for up to ninety (90) days after this Contract expires and shall negotiate in good faith a plan with the successor to execute the phase-in/phase-out services. This plan shall be subject to the Procurement Officer's approval.
3. The Contractor shall be reimbursed for all reasonable, pre-approved phase-in/phase-out costs (i.e., costs incurred within the agreed period after contract expiration that result from phase-in, phase-out operations). All phase-in/phase-out work fees must be approved by the Procurement Officer in writing prior to commencement of said work.

Q. 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.

R. DEFAULT: In the case of failure to deliver goods or services in accordance with this Contract, Mason, after due oral or written notice, may procure them from other sources and hold Contractor responsible for any resulting additional purchase and administrative costs. This remedy shall be in addition to any other remedies which Mason may have.

S. DRUG-FREE WORKPLACE: Contractor has, and shall have in place during the performance of this Contract, a drug-free workplace policy (DFWP), which it provides in writing to all its employees, vendors, and subcontractors, and which specifically prohibits the following on company premises, during work-related activities, or while conducting company business: the sale, purchase, manufacture, dispensation, distribution possession, or use of any illegal drug under federal law (including marijuana). For purposes of this section, "drug-free workplace" covers all sites at which work is done by Contractor in connection with this Contract.

T. 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.

U. 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.
- V. **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.
- W. **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.
- X. **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.
- Y. **INDEMNIFICATION:** Contractor agrees to indemnify, defend and hold harmless Mason, 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.
- Z. **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.
- AA. **INFORMATION TECHNOLOGY ACCESS ACT:** Computer and network security is of paramount concern at Mason. Mason 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 Mason.

All e-learning and information technology developed, purchased, upgraded or renewed by or for the use of Mason 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.

- BB. 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, and Commercial Automobile Liability Insurance.
- CC. 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.
- DD. 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).
- EE. PAYMENT TO SUBCONTRACTORS: The Contractor shall take the following actions upon receiving payment from Mason: (1) pay the subcontractor within seven days for the proportionate share of the total payment received from Mason attributable to the work performed by the subcontractor under that Contract; or (2) notify Mason and subcontractor within seven days, in writing, of its intention to withhold all or a part of the subcontractor's payment with the reason for nonpayment. b. If an individual contractor, provide social security number in order to receive payment. c. If a proprietorship, partnership or corporation provide Federal employer identification number. d. Pay interest to subcontractors on all amounts owed by the Contractor that remain unpaid after seven days following receipt by the Contractor of payment from the Institution for work performed by the subcontractor under that Contract, except for amounts withheld as allowed by prior notification. e. Accrue interest at no more than the rate of one percent per month. f. Include in each of its subcontracts a provision requiring each subcontractor to include or otherwise be subject to the same payment and interest requirements with respect to each lower-tier subcontractor.
- FF. 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.

GG. REMEDIES: If the Contractor breaches this Contract, in addition to any other rights or remedies, Mason may terminate this Contract without prior notice.

HH. RENEWAL OF CONTRACT: This Contract may be renewed by Mason for four (4) successive one-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 "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 "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.

II. 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/>.

JJ. 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.

KK. 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.

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

MM. 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.

NN. SWaM CERTIFICATION: Contractor agrees to fully support the Commonwealth of Virginia and Mason's efforts related to SWaM goals. Upon contract execution, Contractor (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. If Contractor is currently SWaM certified, Contractor agrees 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 at <https://www.sbsd.virginia.gov/>.

OO. **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.

PP. 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 Contactor, 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.

QQ. 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.

RR. 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.

SS. 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: _____

ATTACHMENT C
PRICING SCHEDULE

PART I: Labor Rates			
Enter hourly rates for services as defined in Section VII. Paragraph A. Labor rates shall be paid on the basis of time of the jobs site. Labor rates should account for the labor associated with installation and repair of fall protection systems on a per hourly basis.			
Labor Rates			
1.	Building Assessments	HR	\$ _____
2.	Inspections	HR	\$ _____
3.	Installations	HR	\$ _____
4.	Repairs	HR	\$ _____
5.	Training	HR	\$ _____
6.	Professional engineering services	HR	\$ _____
PART 2: Fall Protection Equipment			
Enter percent discount off of list prices. Using the format below, provide any additional products that have not been specified in this solicitation. <u>Include list prices with proposal submission.</u>			
Fall Protection Equipment: Percent discount off of list prices			
	Manufacturer	Product Type/ Category Type	Discount Off List
1.			%
2.			%
3.			%
4.			%
5.			%

6.			%
7.			%
8.			%
9.			%
10.			%
11.			%
12.			%
13.			%
14.			%
15.			%
16.			%
17.			%
18.			%
19.			%
20.			%
21.			%
22.			%
23.			%
24.			%
25.			%



350 Green Oaks Pkwy | Holly Springs, NC 27540
Phone: (866) 387-9965 | Fax: (919) 387-9914
www.FallProtect.com
info@FallProtect.com

10/3/2022

Regina Bazile
George Mason University
4400 University Drive, Mailstop 3C5 ·
Fairfax, VA 22030

RE: GMU-1833-23 Fall Protection Assessment and Equipment

Ms. Bazile,

In response to GMU RFP 1833-23, our proposal is attached for fall protection assessments, inspections, recommendations, installations, repair, training, and safety of equipment at George Mason University in Fairfax, VA.

Diversified Fall Protection specializes in the design, engineering, fabrication, installation, and certification of complete fall protection safety systems that keep workers safe while working at heights. Our service-oriented team of safety professionals is responsible for thousands of fall protection installation projects across the United States. We appreciate the invitation to be of service on this project. Per the RFP guidelines, our proposal includes hourly rates and unit pricing for various fall protection services and products as requested by George Mason University.

I appreciate your consideration of this proposal. Please feel free to call me if you have questions or need any additional information. We look forward to hearing from you!

Sincerely,

A handwritten signature in black ink, appearing to be "BC", followed by a long horizontal line extending to the right.

Ben Copeland, PE
Director – East
Diversified Fall Protection
M: 919-609-4509
bcopeland@fallprotect.com

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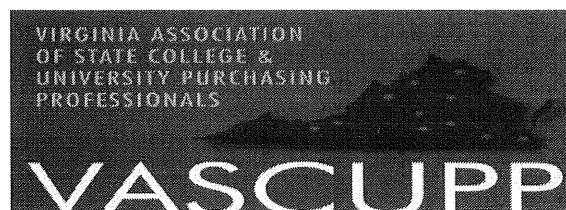
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Purchasing Department
4400 University Drive, Mailstop 3C5
Fairfax, VA 22030
Voice: 703.993.2580 | Fax: 703.993.2589
<http://fiscal.gmu.edu/purchasing/>



REQUEST FOR PROPOSALS GMU-1833-23

ISSUE DATE: August 10, 2022

TITLE: Fall Protection Assessment and Equipment

PRIMARY PROCUREMENT OFFICER: Regina Bazile, Sr. Buyer, rbazile@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 Eastern Time (ET) on August 17, 2022. **All questions must be submitted in writing.** Responses to questions will be posted on the Mason Purchasing Website by 5:00 PM ET on August 24, 2022. Note: Questions must be submitted in WORD format. Also see section III. COMMUNICATION, herein.

PROPOSAL DUE DATE AND TIME: September 8, 2022 @ 2:00 PM ET. SEE SECTION XIII.A.1 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.

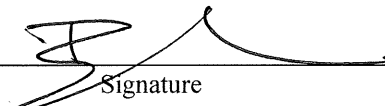
Name and Address of Firm:

Legal Name: Diversified Acquisition Corp.

Date: 10/3/2022

DBA: Diversified Fall Protection

Address: 350 Green Oaks Parkway

By: 
Signature

Holly Springs, NC 27540

FEI/FIN No. 83-4483965

Name: Ben Copeland

Fax No. 919-387-9914

Title: Director - East

Email: bcopeland@fallprotect.com

Telephone No. 919-387-9965 x 119

SWaM Certified: Yes: _____ No: X (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.



Purchasing Department
Mailing Address: 4400 University Drive, Mailstop 3C5
Street Address: 4441 George Mason Boulevard, 4th Floor, Suite 4200
Fairfax, Va. 22030
Voice: 703.993.2580 | Fax: 703.993.2589

August 25, 2022

RFP ADDENDUM #1

Request for Proposal:
Title:

GMU-1833-23
Fall Protection Assessment and
Equipment
August 10, 2022
George Mason University

RFP Dated:
For Delivery To:

The following changes are hereby incorporated into the aforementioned RFP:

Please make sure to sign and include this addendum and all other addendums issued under this RFP with your offer/proposal.

- **Answers to Questions submitted by the Question Submission Deadline on August 17, 2022:**

Answers to these questions shall be considered part of the RFP requirements and the offeror should include any changes that result from this addendum into their offer. Failure to consider the information provided below may result in your offer being scored lower:

- 1. Question: Will this work take place at the main campus (Fairfax) only, or the entirety of campuses?**

Answer: The work will be on all Mason Campuses and respective buildings where Fall Protection services are currently installed or potential projects.

- 2. Question: Is there an approximate total award amount per year?**

Answer: There is not an approximate award amount per year.

- 3. Question: Is this a multi-year contract with escalation?**

Answer: Per Section X. HH of the RFP: The contract will be for one (1) year from effective date of contract with four (4) successive one-year renewal option. If Mason 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.



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

RFP ADDENDUM NO. 3:

Date: September 20, 2022
Reference: RFP #GMU-1833-23
Title: Fall Protection Assessment and Equipment
RFP Issued: August 10, 2022
Proposal Due Date: September 8, 2022 @ 2:00 PM EST

The following changes are hereby incorporated into the aforementioned RFP:

- 1. In an effort to achieve maximum competition, proposals will now be accepted until October 4, 2022 @ 2:00 PM EST.**

All other terms and conditions remain unchanged.

A handwritten signature in black ink, appearing to read "Regina Bazile".

Regina Bazile, Senior Buyer

Please sign and include this addendum as part of your offer.

In Compliance With this RFP And To All The Conditions Imposed Therein And Hereby Incorporated By Reference, The Undersigned Offers And Agrees To Furnish The Goods/Services required by this RFP at the prices indicated in the pricing schedule, and the undersigned hereby certifies that all information provided below and in any schedule hereto is true, correct, and complete.

Name and Address of Firm:

Diversified Fall Protection

350 Green Oaks Parkway

Holly Springs, NC 27540

Fed ID No: 83-4483965

Email: bcopeland@fallprotect.com

Date:

10/3/2022

By:

Ben Copeland

Title:

Director East

Signature:

A handwritten signature in black ink, appearing to read "Ben Copeland".

Phone:

919-387-9405 x119

Sincerely,
Regina Bazile
Senior Buyer
rbazile@gmu.edu

Purchasing Department
George Mason University



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


RFP ADDENDUM NO. 3:

Date: September 20, 2022
Reference: RFP #GMU-1833-23
Title: Fall Protection Assessment and Equipment
RFP Issued: August 10, 2022
Proposal Due Date: September 8, 2022 @ 2:00 PM EST

The following changes are hereby incorporated into the aforementioned RFP:

- 1. In an effort to achieve maximum competition, proposals will now be accepted until October 4, 2022 @ 2:00 PM EST.**

All other terms and conditions remain unchanged.


Regina Bazile, Senior Buyer

Please sign and include this addendum as part of your offer.

In Compliance With this RFP And To All The Conditions Imposed Therein And Hereby Incorporated By Reference, The Undersigned Offers And Agrees To Furnish The Goods/Services required by this RFP at the prices indicated in the pricing schedule, and the undersigned hereby certifies that all information provided below and in any schedule hereto is true, correct, and complete.

Name and Address of Firm:
Diversified Fall Protection

350 Green Oaks Parkway

Holly Springs, NC 27540

Fed ID No: 83-4483965

Email: bcopeland@fallprotect.com

Date: 10/3/2022

By: Ben Copeland

Title: Director - East

Signature: 

Phone: 419-608-4508

Sincerely,
Regina Bazile
Senior Buyer
rbazile@gmu.edu

Purchasing Department
George Mason University

ATTACHMENT A
SMALL BUSINESS SUBCONTRACTING PLAN
TO BE COMPLETED BY OFFEROR

Offerors must advise any portion of this contract that will be subcontracted. All potential offerors are required to include this document with their proposal in order to be considered responsive.

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 and time 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: Diversified Fall Protection

Preparer Name: Ben Copeland **Date:** 10/3/2022

Who will be doing the work: ☐ I plan to use subcontractors ☒ I plan to complete all work

Instructions

- A. If you are certified by the DSBSD as a micro/small business, complete Section A of this form.
- B. If the "I plan to use subcontractors" box is checked, complete Section B of this form. For the proposal to be considered and the offeror to be declared responsive, the offeror shall identify the portions of the contract that will be subcontracted to any subcontractor, to include DSBSD certified small business for the initial contract period in relation to the offeror's total price for the initial contract period in Section B.

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

If the "I plan to use subcontractors" box is checked, populate the requested information below, per subcontractor to show your firm's plans for utilization of any subcontractor, to include 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 dollar value or percentages may result in breach of the contract.

Plans for Utilization of Any subcontractor, to include DSBSD-Certified Small Businesses, for this Procurement

Subcontract #1

Company Name: _____ SBSD Cert #: _____
 Contact Name: _____ SBSD Certification: _____
 Contact Phone: _____ Contact Email: _____
 Value % or \$ (Initial Term): _____ Contact Address: _____
 Description of Work: _____

Subcontract #2

Company Name: _____ SBSD Cert #: _____
 Contact Name: _____ SBSD Certification: _____
 Contact Phone: _____ Contact Email: _____
 Value % or \$ (Initial Term): _____ Contact Address: _____
 Description of Work: _____

XIII.B.2: Qualifications and Experience

a. Background and brief history of your company.

Peak Fall Protection (Peak) was created in partnership with a specialty engineering firm in 2004. Peak originally focused on design and turnkey installation of anchorage systems to support suspended maintenance operations. In 2010, new product lines were implemented to address other rooftop fall protection needs. In 2011, Peak merged with a specialty steel fabricator which allowed further flexibility of product offerings as well as quality and service controls. Since 2010, Peak grew strategically each year, careful not to outpace the ability to service their dedicated customer base but eager to expand our quality service. In 2019, Peak Fall Protection was acquired by and joined forces with Diversified Fall Protection (Diversified), a portfolio company, headquartered in Cleveland, OH. Diversified Fall Protection (formerly Peak Fall Protection) located in Raleigh, NC includes the same expertise and a team of dedicated safety professionals that will directly service George Mason University as we have successfully for several years.

Since 1994, Diversified Fall Protection's team of experts have established a comprehensive system for delivering OSHA-compliant fall protection solutions and educating clients. We provide exceptional value and service through the systems we engineer and the industry-leading expertise we bring to every partnership. Our trained professionals provide full turnkey service to include hazard analysis, training, and yearly inspections to ensure that our equipment never fails when you need it most. We're involved in every step of the process from beginning to end. Some of our more widely used products include roof anchors, guardrails, access platforms, and horizontal lifelines. We work diligently with our clients to ensure that our products are exactly what they need for their specific project.

b. Names, qualifications and experience of personnel to be assigned to work with Mason.

The members of our team all have extensive experience and training in the fall protection industry to include general construction, welding, structural design and practical use of the systems we offer. The fall protection industry constantly evolves to meet market demands and in response to updated fall protection standards, specifically the ANSI Z359 Fall Protection Code and OSHA 1910 Subpart D.

Diversified is evolving with the industry through strategic partnerships and membership with pertinent organizations, as well as through acquisitions of additional qualified partners. We bring the top names in fall protection all under one roof: Peak Fall Protection, Fall Protection Systems (St. Louis, MO), Rooftop Anchor (Salt Lake City, UT), and Versatile Systems (Valencia, CA). At Diversified, it's our goal to elevate fall protection safety standards to new heights. This evolution allows us to provide our clients with the most effective, compliant solutions as we expand our knowledge on new technologies, updated protocols and industry development. Our Raleigh, NC office does not fully subcontract installation services, and can therefore better control consistency and quality control as components are installed and tested by our qualified technicians.

Key members of our operations team include our corporate Vice President of Engineering, East Director, Engineering Manager, Field Engineer, Installation Supervisor, Technical Sales Specialist, and Corporate Safety Manager:

- Corporate Vice President of Engineering, Travis Nelson, is a registered Professional Engineer (PE), to include VA, and a Certified Safety Professional (CSP). He holds (17) years of construction experience and (11) years of Fall Protection Design and Engineering experience.
- Director - East, Ben Copeland, is a registered professional Engineer (PE), to include VA. He operates the Diversified East Business unit to include project management, manufacturing, and installation. Ben has (8) years of experience in the Fall Protection and Construction industry.
- Field Engineer, Andrew Woodward, is a registered Engineering Intern (EIT) with four years of Fall Protection and Construction Experience and a BS in Civil Engineering. Andrew works closely with our inspections and hazard assessment teams for system design and compliance review.
- Installation Supervisor, Shea Geyer, holds (7) years of experience in Construction and Fall Protection Installation. He is OSHA 30 certified, CPR, First Aid and Lift certified, and is a Certified Fall Protection Installer. Shea is responsible for managing our in-house team in the proper installation and certification of fall protection systems.
- Technical Sales Specialist, Brandon Nelson, holds (4) years of experience in the inspection, certification, and design of Fall Protection Systems. Brandon works with customers directly to evaluate fall protection hazards and determine cost-effective solutions to meet their needs.
- Corporate Safety Manager, Travis Walsh, is a Graduate Safety Practitioner (GSP) and has over (3) years' experience in manufacturing and construction environments, all of which included a focus on fall protection safety. Travis works with all locations to facilitate safety workplace practices as well as collaborates with operational leaders on project-specific safety applications.

In addition to internal product lines and custom design and fabrication capabilities, Diversified is also partnered as an approved distributor/installer with other international fall protection manufacturers such as 3M (Capital Safety/DBI SALA), MSA (Latchways), Gorbel, Saferack / ErectaStep, and Precision Ladders, among others.

Analysis and modification of fixed ladders is not typically a service offered by fall protection contractors since there often is not opportunity to sell new product. However, Diversified also identifies fixed ladders as a significant fall hazard when built or installed improperly and has made simple retrofit adjustments to hundreds of ladders over the past two years. The 2017 update to OSHA 1910 Subpart D included updates to fixed ladder standards and requirements. Our dedication to custom design applications and strong partnerships in the industry means that we can offer a solution to our customer that best suits the hazard.

XIII.B.3: Specific Plan (Methodology)

a. Your approach to providing the services described herein.

Because each building is unique, there is not a “one-size-fits-all” solution and our process is designed to maximize available efficiencies at each building. Proper implementation of a fall protection program requires hazard analysis to include a thorough review of the building and maintenance activities with focus on several key variables, to include:

- The frequency, duration, and occurrence of maintenance tasks where the user is subjected to fall hazards, related to rooftops, ladders, and interior applications.
- The severity of the fall, obstructions in the fall path, and environmental conditions. Diversified Fall Protection carefully reviews architectural elements to confirm compatibility of the proposed remedial actions, to include hazard elimination when applicable.
- Other workers/contractors in the immediate area, access to the task/structure, and the history of accidents or incidents related to the task or structure.

For a campus or group of buildings, it’s important to review an adequate sample of the buildings. This is critical because it allows Diversified and the owner to identify priority areas, based on the severity of hazard and budget for remediation. Also, review of a representative sample allows opportunity to identify recurring hazards so that when practical, a universal solution can be applied to a universal hazard. The benefit to this approach is that the system user can then be trained to approach a hazard using the same methodology without need for significant deviation from location to location. This is better accomplished by assessing hazards first by building, then as a general overview of the campus so that adjustments can be made to best suit the overall program (although some case sensitive modifications are to be expected).

Diversified is experienced and well suited to assist in this process, which is a partnership with the owner’s representatives that can provide valuable insight to typical maintenance needs that may not be fully apparent. Also critical is the review of existing building structure as sometimes the most viable fall protection solutions require coordination with building structure that can support fall protection loads. Diversified employs Registered Engineers in-house that can identify the most efficient means for connection to structure or identify ballasted or alternative options when connection to structure would require significant bracing to sustain loads. The hazard analysis process is sometimes iterative as Diversified makes recommendations to the owner which may require modification to suit architectural and budget constraints.

b. What, when, and how services will be performed.

Diversified Fall Protection understands that historical buildings hold a special significance in the minds of the clients, and we recognize that many historical buildings stand on university property. At George Mason University, Diversified will be sensitive to architectural needs, while at the same time, preparing for the building’s future use.

The process begins with collaboration and interview of university representatives followed by a site visit and hazard analysis of a representative sample of buildings. Diversified will then provide feedback

through drawings and reports, presented in a format that will be easy to follow as the information is distributed through various university channels for review and comment. After initial review, Diversified typically provides budgetary information to determine that the proposed approach is not only viable from a user perspective, but also from a budget perspective. Adjustments are made as required until a final concept design is approved.

Once approved, the Diversified design team creates shop drawings using CAD and 3D modeling programs to represent project details. It is important that details are not only easy for purpose of installation, but also for the system user for future reference. Our details are represented in both sectional and isometric views to ensure that the intended installation and use are apparent to all parties. Lead time for material fabrication varies from a few days to a few weeks, depending on the level of customization for any specialty applications. Regarding installation, Diversified is sensitive to work on campus to include work during summer and holiday breaks, or after hours.

Diversified Fall Protection anchorage products are proof tested in place once installed to comply with industry standards and as confirmation of anchorage capacity prior to placing the anchorage system into service. Diversified provides a system logbook for each installation to include a sealed as-built drawing to indicate layout and details, user instructions, inspection requirements, test reports, typical photos, and a certification letter. A system is not complete without thorough user training, which Diversified personnel complete in a classroom setting and/or by a demonstration of the system. The turnkey process that Diversified provides is designed to prevent scope gaps, and to ensure that the finished system is safe and effective for its intended use.

c. It is the responsibility of the vendor to provide engineering evaluation as necessary regarding installation of temporary and permanent fall protection systems. The university will provide schematics and drawings when available.

Diversified Fall Protection as described above is capable and responsible for providing structural review for the design and engineering of fall protection systems to be installed to supporting structure. Diversified has the expertise required to determine suitable structure for attachment and to design the attachment method, which is verified by proof load testing and then certified for use. Depending on the scope of work and availability of structural drawings, Diversified may defer structural review to a qualified engineering partner as recommended by Diversified and/or directed by GMU. Diversified maintains partnerships with several local and national firms to easily facilitate special structural engineering requests.

4. References

a. *Provide a list of three (3) references that demonstrates the Officer's qualifications, preferably from other comparable higher education institutions your company is/has provided services with and that are similar in size and scope to that which has been described herein. Include a contact name, contact title, phone number, and email address for each reference and indicate the length of service.*

Errol Simon, University of North Carolina at Chapel Hill

Construction Manager

(919) 903-6169

errol@fac.unc.edu

Length of Service: 12 years

Lynn Swank, North Carolina State University

Project Manager

(919) 513-4637

ldswank@ncsu.edu

Length of Service: 10 years

Zachary Brackett, University of Virginia

Construction Administration Manager

(434) 243-2505

Zb5x@virginia.edu

Length of Service: 8 years

ATTACHMENT C
PRICING SCHEDULE

PART I: Labor Rates			
Enter hourly rates for services as defined in Section VII. Paragraph A. Labor rates shall be paid on the basis of time on the job site. Labor rates should account for the labor associated with installation and repair of fall protection systems on a per hourly basis.			
Labor Rates			
1.	Building Assessments	HR	\$ <u>115.00</u>
2.	Inspections	HR	\$ <u>115.00</u>
3.	Installations (per technician)	HR	\$ <u>95.00</u>
4.	Repairs (per technician)	HR	\$ <u>95.00</u>
5.	Training	HR	\$ <u>115.00</u>
6.	Professional engineering services (for fall protection only)	HR	\$ <u>170.00</u>
PART 2: Fall Protection Equipment			
Enter percent discount off of list prices. Using the format below, provide any additional products that have not been specified in this solicitation. <u>Include list prices with proposal submission.</u>			
Fall Protection Equipment: Percent discount off of list prices			
	Manufacturer	Product Type/ Category Type	Discount Off List
1.	Diversified Fall Protection	Single Point Anchors	12%
2.	Diversified Fall Protection	Roof Hatch Rail	7%
3.	Diversified Fall Protection	Structure Mounted Guardrail	12%
4.	Diversified Fall Protection	Dual Lanyard Horizontal Lifeline	12%
5.	Diversified Fall Protection	Continuous Travel Horizontal Lifeline	12%

6.	Diversified Fall Protection	Fixed Ladders	7%
7.	3M or MSA	Roofsafe Horizontal Lifeline	5%
8.	3M or MSA	Harness, Lanyard, End User Equipment	5%
9.	Diversified Fall Protection	Working Platforms	7%
10.	Diversified Fall Protection	Ballasted Guardrail	12%
11.	3M	Ballasted Anchor	5%
12.	Diversified Fall Protection	Ladderguard Guardrail System	12%
13.	Diversified Fall Protection	Warning Line	12%
14.	3M or MSA	Ladder Climbing Safety	5%
15.	PS Doors	Safety Gates	5%
16.	Gorbel	Overhead Track Systems	5%
17.	Diversified Fall Protection	Overhead Monorail Systems	8%
18.	Diversified Fall Protection	Skylight Screens	5%
19.			%
20.			%
21.			%
22.			%
23.			%
24.			%
25.			%

XIII.B.6: Other Information & Addendum 1 Response

- a. *Are you and/or your subcontractor currently involved in litigation with any party?* No
- b. *Please list any investigation or action from any states, local, federal or other regulatory body (OSHA, IRS, DOL, etc.) related to your firm or any subcontractor in the last three years.* None
- c. *Please list all lawsuits that involved your firm or any subcontractor in the last three years?*
Former entity named in a no-fault lawsuit from 2016, case closed 2019.
- d. *In the past ten (10) years has your firm's name changed? If so, please provide a reason for the change.* Yes – Peak Fall Protection Inc. was acquired by Diversified Acquisition Corp. dba Diversified Fall Protection in October of 2019.
- e. Peak Fall Protection prefers to pay via Payment Option #3: Net 30 Payment Terms.
- f. Addendum 1 Question 4 Response:
 - a. Installation teams will travel from the Raleigh, NC office in most instances.
 - b. Mobilization costs to and from Raleigh will need to be factored separately. The rates listed on the Pricing Sheet do not include mobilization expenses. Diversified is open to negotiation to ensure this is manageable and equitable for both parties, but suggest the below as starting point for discussions for mobilization to and from George Mason University from Raleigh, NC:
 - i. Mobilization cost (to and from) site assessment, inspections, training: \$1,200
 - ii. Mobilization cost (to and from) installation (per 2-man crew): \$2,000
 - iii. Daily cost (per day on site, per person): \$250
 - c. To ensure quality of service and competency, Diversified will remain cost competitive using internal resources from our closest office in Raleigh, NC instead of utilizing local third-party firms or contractors.



CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

10/6/2021

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must have ADDITIONAL INSURED provisions or be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER Arthur J. Gallagher Risk Management Services Inc. 3700 Embassy Parkway Suite 160 Akron OH 44333	CONTACT NAME: Marilyn Snodgrass PHONE (A/C, No, Ext): 330-665-7955 E-MAIL ADDRESS: Marilyn_Snodgrass@ajg.com FAX (A/C, No): 330-665-7979												
INSURER(S) AFFORDING COVERAGE													
INSURED Peak Fall Protection LLC, LLC, Adlor, LLC Lorad, LLC, DFP Holdings, LLC Diversified Fall Protection, 24400 Sperry Dr Westlake OH 44145	<table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 80%;">INSURER A : Cincinnati Insurance Company</td> <td style="width: 20%;">NAIC # 10677</td> </tr> <tr> <td>INSURER B : Twin City Fire Insurance Company</td> <td>29459</td> </tr> <tr> <td>INSURER C : RSUI Indemnity Company</td> <td>22314</td> </tr> <tr> <td>INSURER D : Evanston Insurance Company</td> <td>35378</td> </tr> <tr> <td>INSURER E : Underwriters at Lloyd's, London</td> <td>11230</td> </tr> <tr> <td>INSURER F : Cincinnati Casualty Company</td> <td>28665</td> </tr> </table>	INSURER A : Cincinnati Insurance Company	NAIC # 10677	INSURER B : Twin City Fire Insurance Company	29459	INSURER C : RSUI Indemnity Company	22314	INSURER D : Evanston Insurance Company	35378	INSURER E : Underwriters at Lloyd's, London	11230	INSURER F : Cincinnati Casualty Company	28665
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COVERAGES**CERTIFICATE NUMBER: 493558511****REVISION NUMBER:**

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
B	<input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR <input checked="" type="checkbox"/> INCLUDES X C U GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input checked="" type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC OTHER:	Y		45EC50F8671	10/4/2021	10/4/2022	EACH OCCURRENCE \$ 1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 300,000 MED EXP (Any one person) \$ PERSONAL & ADV INJURY \$ 1,000,000 GENERAL AGGREGATE \$ 5,000,000 PRODUCTS - COMP/OP AGG \$ 2,000,000 \$
A	AUTOMOBILE LIABILITY <input checked="" type="checkbox"/> ANY AUTO <input type="checkbox"/> OWNED AUTOS ONLY <input type="checkbox"/> SCHEDULED AUTOS <input checked="" type="checkbox"/> HIRED AUTOS ONLY <input checked="" type="checkbox"/> NON-OWNED AUTOS ONLY	Y		ENP 0591885	10/4/2021	10/4/2022	COMBINED SINGLE LIMIT (Ea accident) \$ 1,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$ \$
D	<input checked="" type="checkbox"/> UMBRELLA LIAB <input checked="" type="checkbox"/> OCCUR <input type="checkbox"/> EXCESS LIAB <input type="checkbox"/> CLAIMS-MADE DED RETENTION \$	Y		MKLV1EUL103069	10/4/2021	10/4/2022	EACH OCCURRENCE \$ 5,000,000 AGGREGATE \$ 5,000,000 \$
F	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below	Y/N N	N/A	EWC 0591886	10/4/2021	10/4/2022	<input checked="" type="checkbox"/> PER STATUTE <input type="checkbox"/> OTH-ER E.L. EACH ACCIDENT \$ 1,000,000 E.L. DISEASE - EA EMPLOYEE \$ 1,000,000 E.L. DISEASE - POLICY LIMIT \$ 1,000,000
C E A	Excess Liability Professional Liability/Pollution Leased & Rented Equip			NHA095690 B0621PDIVE002121 ENP 0591885	10/4/2021 2/5/2021 10/4/2021	10/4/2022 8/5/2022 10/4/2022	Occurrence/Aggregate \$5,000,000 Occurrence/Aggregate \$3,000,000 Leased & Rented Equip \$300,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)

NAIC for Certain Underwriters at Lloyd's London is AA1122000. When required by written contract or agreement, the following forms will apply:
 Automobile - AA288 (01/16) which provides Blanket Additional Insured, Blanket Waiver of Subrogation, Primary and Non-Contributory General Liability - EH0002 (06/05) which provides Blanket Additional Insured, Blanket Waiver of Subrogation - General Liability - EH2403 (08/09) which provides Primary and Non-Contributory - Work Comp - WC000313 provides Blanket Waiver of Subrogation for all states except CA, KY, NH, NJ, and TX-Work Comp - WC040306 provides Blanket Waiver of Subrogation for California - Work Comp - WC420304B provides Blanket Waiver of Subrogation for Texas. Installation floater \$100,000 limit is provided under policy #ENP 0591885. DFP Acquisition Corp. and Adlor, LLC, are included as named insureds on all listed policies. STOP GAP OH, WA, WY ND STOP GAP coverage provided under policy #45EC50F8671 \$1,000,000/\$1,000,000/\$1,000,000 limit

See Attached...

CERTIFICATE HOLDER**CANCELLATION**

George Mason University
 4400 University Drive, MSN: 3C5
 Fairfax VA 22030
 USA

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

AUTHORIZED REPRESENTATIVE

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ADDITIONAL REMARKS SCHEDULE

AGENCY Arthur J. Gallagher Risk Management Services Inc.		NAMED INSURED Peak Fall Protection LLC, LLC, Adlor, LLC Lorad, LLC, DFP Holdings, LLC Diversified Fall Protection, 24400 Sperry Dr Westlake OH 44145
POLICY NUMBER		
CARRIER	NAIC CODE	EFFECTIVE DATE:

ADDITIONAL REMARKS

THIS ADDITIONAL REMARKS FORM IS A SCHEDULE TO ACORD FORM,
FORM NUMBER: 25 FORM TITLE: CERTIFICATE OF LIABILITY INSURANCE

The Commonwealth of Virginia and George Mason University are included as Additional Insureds with respect to the General liability as per written contract and Automobile Liability, Umbrella/Excess Liability.

WORKERS COMPENSATION AND EMPLOYERS LIABILITY INSURANCE POLICY**WAIVER OF OUR RIGHT TO RECOVER FROM OTHERS
ENDORSEMENT - CALIFORNIA**

We have the right to recover our payments from anyone liable for an injury covered by this policy. We will not enforce our right against the person or organization named in the Schedule. (This agreement applies only to the extent that you perform work under a written contract that requires you to obtain this agreement from us.)

You must maintain payroll records accurately segregating the remuneration of your employees while engaged in the work described in the Schedule.

The additional premium for this endorsement shall be 0 % of the California workers' compensation premium otherwise due on such remuneration.

Schedule

Person or Organization**Job Description**

Blanket Waiver of Subrogation

If you are required by a written contract or agreement, which is executed before a loss, to waive your rights of recovery from others, we agree to waive our rights of recovery.

This waiver of rights applies to any person or organization for whom the Named Insured has agreed by written contract to furnish this waiver, but shall not be construed to be a waiver with respect to any other operations in which the Insured has no contractual interest.

This endorsement changes the policy to which it is attached and is effective on the date issued unless otherwise stated.

(The information below is required only when this endorsement is issued subsequent to preparation of the policy.)

Endorsement Effective 10-04-2020 Policy No. EWC 059 18 86-00 Endorsement No.

Insured DFP HOLDINGS LLC

Insurance Company THE CINCINNATI CASUALTY COMPANY

Premium \$INCL

Countersigned by _____

WORKERS COMPENSATION AND EMPLOYERS LIABILITY INSURANCE POLICY

**TEXAS WAIVER OF OUR RIGHT TO RECOVER
FROM OTHERS ENDORSEMENT**

This endorsement applies only to the insurance provided by the policy because Texas is shown in Item 3.A. of the Information Page.

We have the right to recover our payments from anyone liable for an injury covered by this policy. We will not enforce our right against the person or organization named in the Schedule, but this waiver applies only with respect to bodily injury arising out of the operations described in the Schedule where you are required by a written contract to obtain this waiver from us.

This endorsement shall not operate directly or indirectly to benefit anyone not named in the Schedule.

The premium for this endorsement is shown in the Schedule.

Schedule

1. ☐ Specific Waiver

Name of person or organization

☒ Blanket Waiver

Any person or organization for whom the Named Insured has agreed by written contract to furnish this waiver.

2. Operations: **ALL TEXAS OPERATIONS**

3. Premium: **INCL**

The premium charge for this endorsement shall be 2 percent of the premium developed on payroll in connection with work performed for the above person(s) or organization(s) arising out of the operations described.

4. Advance Premium: **INCL**

This endorsement changes the policy to which it is attached and is effective on the date issued unless otherwise stated.

(The information below is required only when this endorsement is issued subsequent to preparation of the policy.)

Endorsement Effective **10-04-2020** Policy No. **EWC 059 18 86-00** Endorsement No.

Insured **DFP HOLDINGS LLC**

Insurance Company **THE CINCINNATI CASUALTY COMPANY**

Premium **\$INCL**

Countersigned by _____

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

CinciPlus®
BUSINESS AUTO XC+®
(EXPANDED COVERAGE PLUS)
ENDORSEMENT

This endorsement modifies insurance provided by the following:

BUSINESS AUTO COVERAGE FORM

With respect to the coverage provided by this endorsement, the provisions of the Coverage Form apply unless modified by this endorsement.

A. Blanket Waiver of Subrogation

SECTION IV - BUSINESS AUTO CONDITIONS, A. Loss Conditions, 5. Transfer of Rights of Recovery Against Others to Us is amended by the addition of the following:

We waive any right of recovery we may have against any person or organization because of payments we make for "bodily injury" or "property damage" arising out of the operation of a covered "auto" when you have assumed liability for such "bodily injury" or "property damage" under an "insured contract", provided the "bodily injury" or "property damage" occurs subsequent to the execution or the "insured contract".

B. Noncontributory Insurance

SECTION IV - BUSINESS AUTO CONDITIONS, B. General Conditions, 5. Other Insurance c. is replaced by the following:

- c. Regardless of the provisions of Paragraph a. above, this Coverage Form's Liability Coverage is primary and we will not seek contribution from any other insurance for any liability assumed under an "insured contract" that requires liability to be assumed on a primary noncontributory basis.

C. Additional Insured by Contract

SECTION II - LIABILITY COVERAGE, A. Coverage, I. Who is an Insured is amended to include as an insured any person or organization with which you have agreed in a valid written contract to provide insurance as is afforded by this policy.

This provision is limited to the scope of the valid written contract.

This provision does not apply unless the valid written contract has been:

1. Executed prior to the accident causing "bodily injury" or "property damage"; and
2. Is still in force at the time of the "accident" causing "bodily injury" or "property damage".

D. Employee Hired Auto

1. Changes in Liability Coverage

The following is added to the **Section II - Liability Coverage, A. Coverage, 1. Who is an Insured**:

An "employee" of yours is an "insured" while operating an "auto" hired or rented under a contract or agreement in that "employee's" name, with your permission, while performing duties related to the conduct of your business.

2. Changes in General Conditions

SECTION IV - BUSINESS AUTO CONDITIONS, B. General Conditions, 5. Other Insurance is amended by replacing Paragraph 5.b. with the following:

- b. For Hired Auto Physical Damage Coverage the following are deemed to be covered "autos" you own:
 - (1) Any covered "auto" you lease, hire, rent or borrow; and
 - (2) Any covered "auto" hired or rented by your "employee" under a contract in that individual "employee's" name, with your permission, while performing duties related to the conduct of your business.

However, any "auto" that is leased, hired, rented or borrowed with a driver is not a covered "auto".

E. Audio, Visual and Data Electronic Equipment

SECTION III - PHYSICAL DAMAGE COVERAGE, C. Limit of Insurance is amended by adding the following:

4. The most we will pay for all "loss" to audio, visual or data electronic equipment and any accessories used with this equipment as a result of any one "accident" is the lesser of:
 - a. The actual cash value of the damaged or stolen property as of the time of the "accident";
 - b. The cost of repairing or replacing the damaged or stolen property with other property of like kind and quality; or
 - c. \$2,500.

Provided the equipment, at the time of the "loss" is:

- a. Permanently installed in or upon the covered "auto" in a housing, opening or other location that is not normally used by the "auto" manufacturer for the installation of such equipment;
- b. Removable from a permanently installed housing unit as described in Paragraph 2.a. above; or
- c. An integral part of such equipment.

F. Who is an Insured - Amended

SECTION II - LIABILITY COVERAGE, A. Coverage, 1. Who is an Insured is amended by adding the following:

The following are "insureds":

1. Any subsidiary which is a legally incorporated entity of which you own a financial interest of more than 50% of the voting stock on the effective date of this coverage form.

However, the insurance afforded by this provision does not apply to any subsidiary that is an "insured" under any other automobile liability policy, or would be an "insured" under such policy but for termination of such policy or the exhaustion of such policy's limits of insurance.

2. Any organization that is newly acquired or formed by you and over which you maintain majority ownership. The insurance provided by this provision:

- a. Is effective on the date of acquisition or formation, and is afforded for 180 days after such date;
 - b. Does not apply to "bodily injury" or "property damage" resulting from an "accident" that occurred before you acquired or formed the organization;
 - c. Does not apply to any newly acquired or formed organization that is a joint venture or partnership; and
 - d. Does not apply to an insured under any other automobile liability policy, or would be an insured under such a policy but for the termination of such policy or the exhaustion of such policy's limits of insurance.
3. Any of your "employees" while using a covered "auto" in your business or your personal affairs, provided you do not own, hire or borrow that "auto".

G. Liability Coverage Extensions - Supplementary Payments - Higher Limits

SECTION II - LIABILITY COVERAGE, A. Coverage, 2. Coverage Extensions, a. Supplementary Payments is amended by:

1. Replacing the \$2,000 Limit of Insurance for bail bonds with \$4,000 in (2); and
2. Replacing the \$250 Limit of Insurance for reasonable expenses with \$500 in (4).

H. Amended Fellow Employee Exclusion

SECTION II - LIABILITY COVERAGE, B. Exclusions, 5. Fellow Employee is modified as follows:

Exclusion 5. **Fellow Employee** is deleted.

I. Hired Auto - Physical Damage

If hired "autos" are covered "autos" for Liability Coverage, then Comprehensive and Collision Physical Damage Coverages as provided under **SECTION III - PHYSICAL DAMAGE COVERAGE** of this Coverage Part are extended to "autos" you hire, subject to the following:

1. The most we will pay for "loss" to any hired "auto" is \$50,000 or the actual cash value or cost to repair or replace, whichever is the least, minus a deductible.
2. The deductible will be equal to the largest deductible applicable to any owned "auto" for that coverage, or \$1,000, whichever is less.
3. Hired Auto - Physical Damage coverage is excess over any other collectible insurance.

4. Subject to the above limit, deductible, and excess provisions we will provide coverage equal to the broadest coverage applicable to any covered "auto" you own insured under this policy.

Coverage includes loss of use of that hired auto, provided it results from an "accident" for which you are legally liable and as a result of which a monetary loss is sustained by the leasing or rental concern. The most we will pay for any one "accident" is \$3,000.

If a limit for Hired Auto - Physical Damage is shown in the Schedule, then that limit replaces, and is not added to, the \$50,000 limit indicated above.

J. Rental Reimbursement

SECTION III - PHYSICAL DAMAGE is amended by adding the following:

1. We will pay for rental reimbursement expenses incurred by you for the rental of an "auto" because of a "loss" to a covered "auto". Payment applies in addition to the otherwise applicable amount of each coverage you have on a covered "auto". No deductible applies to this coverage.
2. We will pay only for those expenses incurred during the policy period beginning 24 hours after the "loss" and ending, regardless of the policy's expiration, with the lesser of the following number of days:
 - a. The number of days reasonably required to repair the covered "auto". If "loss" is caused by theft, this number of days is added to the number of days it takes to locate the covered "auto" and return it to you; or
 - b. 30 days.
3. Our payment is limited to the lesser of the following amounts:
 - a. Necessary and actual expenses incurred; or
 - b. \$50 per day.
4. This coverage does not apply while there are spare or reserve "autos" available to you for your operations.
5. We will pay under this coverage only that amount of your rental reimbursement expenses which is not already provided for under **SECTION III - PHYSICAL DAMAGE COVERAGE, A. Coverage, 4. Coverage Extensions**.

K. Transportation Expense - Higher Limits

SECTION III - PHYSICAL DAMAGE COVERAGE, A. Coverage, 4. Coverage Extensions is amended by replacing \$20 per day with \$50 per day, and \$600 maximum with \$1,500 maximum in **Extension a. Transportation Expenses**.

L. Airbag Coverage

SECTION III - PHYSICAL DAMAGE COVERAGE, B. Exclusions, 3.a. is amended by adding the following:

However, the mechanical and electrical breakdown portion of this exclusion does not apply to the accidental discharge of an airbag. This coverage for airbags is excess over any other collectible insurance or warranty.

M. Loan or Lease Gap Coverage

1. **SECTION III - PHYSICAL DAMAGE COVERAGE, C. Limit of Insurance** is deleted in its entirety and replaced by the following, but only for private passenger type "autos" with an original loan or lease, and only in the event of a "total loss" to such a private passenger type "auto":
 - a. The most we will pay for "loss" in any one "accident" is the greater of:
 - (1) The amount due under the terms of the lease or loan to which your covered private passenger type "auto" is subject, but will not include:
 - (a) Overdue lease or loan payments;
 - (b) Financial penalties imposed under the lease due to high mileage, excessive use or abnormal wear and tear;
 - (c) Security deposits not refunded by the lessor;
 - (d) Costs for extended warranties, Credit Life Insurance, Health, Accident or Disability Insurance purchased with the loan or lease; and
 - (e) Carry-over balances from previous loans or leases, or
 - (2) Actual cash value of the stolen or damaged property.
 - b. An adjustment for depreciation and physical condition will be made in determining actual cash value at the time of "loss".

2. **SECTION V - DEFINITIONS** is amended by adding the following, but only for the purposes of this **Loan or Lease Gap Coverage**:

"Total loss" means a "loss" in which the cost of repairs plus the salvage value exceeds the actual cash value.

N. Glass Repair - Waiver of Deductible

SECTION III - PHYSICAL DAMAGE COVERAGE, D. Deductible is amended by adding the following:

No deductible applies to glass damage if the glass is repaired in a manner acceptable to us rather than replaced.

O. Duties in the Event of an Accident, Claim, Suit or Loss - Amended

SECTION IV - BUSINESS AUTO CONDITIONS, A. Loss Conditions, 2. Duties in the Event of Accident, Claim, Suit or Loss, a. is amended by adding the following:

This condition applies only when the "accident" or "loss" is known to:

1. You, if you are an individual;
2. A partner, if you are a partnership;
3. An executive officer or insurance manager, if you are a corporation; or
4. A member or manager, if you are a limited liability company.

P. Unintentional Failure to Disclose Hazards

SECTION IV - BUSINESS AUTO CONDITIONS, B. General Conditions, 2. Concealment, Misrepresentation or Fraud is amended by adding the following:

However, if you unintentionally fail to disclose any hazards existing on the effective date of this Coverage Form, we will not deny coverage under this Coverage Form because of such failure.

Q. Mental Anguish Resulting from Bodily Injury

SECTION V - DEFINITIONS, C. "Bodily injury" is deleted in its entirety and replaced by the following:

"Bodily injury" means bodily injury, sickness or disease sustained by a person, including mental anguish and death sustained by the same person that results from such bodily injury, sickness or disease. "Bodily injury" does not include mental anguish or death that does not result from bodily injury, sickness or disease.

R. Coverage for Certain Operations in Connection with Railroads

With respect to the use of a covered "auto" in operations for or affecting a railroad:

1. **Section V - Definitions, H. "Insured contract", 1.c.** is amended to read:
 - c. An easement or license agreement;
2. **Section V - Definitions, H. "Insured contract", 2.a.** is deleted.



COMMERCIAL GENERAL LIABILITY COVERAGE FORM (EXCESS - BROAD FORM)

Various provisions in this policy restrict coverage. Read the entire policy carefully to determine rights, duties and what is and what is not covered.

Throughout this policy the words "you" and "your" refer to the Named Insured in the Declarations, and any other person or organization qualifying as a Named Insured under this policy. The words "we", "us" and "our" refer to the stock insurance company member of The Hartford providing this insurance.

The word "insured" means any person or organization qualifying as such under Section II Who Is An Insured.

Other words and phrases that appear in quotation marks have a special meaning. Refer to Section V – Definitions.

SECTION I – COVERAGES

COVERAGE A BODILY INJURY AND PROPERTY DAMAGE LIABILITY

1. Insuring Agreement

- a. We will pay those sums that you or any insured becomes legally obligated to pay as damages because of "bodily injury" or "property damage" to which this insurance applies; but only to the extent that such "bodily injury" or "property damage" is in excess of the "self-insured retention" that has been exhausted solely by your payment of "claim expenses" and that portion of judgments or settlements to which this insurance would have applied in the absence of the "self-insured retention".
- b. You are responsible for payment of expenses for any defense counsel selected by or on behalf of you or any insured, including "claim expenses", until the "self-insured retention" has been exhausted solely by your payment of "claim expenses" and that portion of judgments or settlements to which this insurance would have applied in the absence of the "self-insured retention".

If we make a payment relating to the defense counsel or defense of any claim against you or any insured within the "self-insured retention", it will be on your behalf, and you must reimburse us within seven business days of the date you receive notice that such payments have been made.

"Claim expenses" and other defense expenses incurred subsequent to the exhaustion of the "self-insured retention" are payable by us, as provided in Supplementary Payments.

- c. If the claim is within the amount of the "self-insured retention", then subject to subsection d. below, you shall have the duty to defend any "suit" brought against you or any insured seeking damages because of "bodily injury" or "property damage" to which this insurance applies. Such duty shall continue until the "self-insured retention" has been exhausted solely by your payment of "claim expenses" and that portion of judgments or settlements to which this insurance would have applied in the absence of the "self-insured retention".

If, however, the amount you have paid on your behalf or on behalf of any insured, for "claim expenses" or judgments and settlements for a claim exceeds the amount of the "self-insured retention", then we shall have the right and duty to defend you or such insured against such claim. Our right and duty to defend ends when we have used up the Limits of Insurance in the payment of judgments or settlements to which this Coverage Part applies.

- d. If the amount you have paid, on your behalf or on behalf of any insured, for "claim expenses" and judgments or settlements for a claim does not exceed the amount of the "self-insured retention", we shall not be obligated to assume charge of, participate in, or pay for the investigation or defense of any claim or "suit".

However, if such claim or "suit", in our opinion, involves or is reasonably likely to involve payment by us under this Coverage Part, we shall:

- (1) Require you or the insured against whom a claim is made or "suit" is brought, to obtain our written consent regarding the selection of any defense counsel;
- (2) At our own expense, have the right but not the duty to investigate and to assign counsel in addition to any defense

counsel assigned by or on behalf of you or the insured. Such additional counsel shall have the right to participate in the investigation, defense or settlement of any claim or "suit" on our behalf; and

- (3)** Have the right but not the duty to assume control of the defense, and we shall have that right even if we have not elected to assign additional defense counsel.

If we assume control of the defense:

- (a)** We shall have the right to select or dismiss defense counsel for the purpose of continuing the defense of any "suit"; and
- (b)** You shall continue to pay, or reimburse us for, any "claim expenses" pursuant to the defense of you or any insured until the "self-insured retention" is exhausted.

During the course of controlling the defense we shall have the right but not the duty to settle the claim or "suit" by paying all or part of the "self-insured retention" or Limits of Insurance. Such payment is on your behalf, and you are responsible for reimbursing us for payments of damages and "claim expenses" within the "self-insured retention" we have made, within seven business days of the date you receive notice that such payments have been made.

If we avail ourselves of the foregoing right(s), you and any other insured, your and any other insured's claim servicing agency and we shall cooperate in such investigation, defense or settlement.

Any right or opportunity we have exercised to participate in or control the defense ends at our discretion, but in all events ends when we have used up the limit of insurance in the payment of judgments or settlements to which this Coverage Part applies.

- e.** In no event shall:

- (1)** The "self-insured retention" be reduced by your or any insured's overhead, cost of investigation of claims by salaried "employees" or "employee" time; nor any expenses or appeals not incurred with our written consent pursuant to the Duties In The Event of Occurrence, Offense, Claim or Suit Condition in Section **IV** or the Appeals Condition in Section **IV**; or
- (2)** We have any obligation or liability to pay

sums or performs acts or services unless explicitly provided for under Supplementary Payments – Coverages **A** and **B**.

- f.** The amount we will pay for damages is limited as described in Section **III** – Limits Of Insurance. We have no other obligation to pay anything unless explicitly provided for under Supplementary Payments – Coverages **A** and **B**.

- g.** This insurance applies to "bodily injury" and "property damage" only if:

- (1)** The "bodily injury" or "property damage" is caused by an "occurrence" that takes place in the "coverage territory";
- (2)** The "bodily injury" or "property damage" occurs during the "policy period"; and
- (3)** Prior to the "policy period", no insured listed under Paragraph **1.** of Section **II** – Who Is An Insured and no "employee" authorized by you to give or receive notice of an "occurrence" or claim, knew that the "bodily injury" or "property damage" had occurred, in whole or in part. If such a listed insured or authorized "employee" knew, prior to the "policy period", that the "bodily injury" or "property damage" occurred, then any continuation, change or resumption of such "bodily injury" or "property damage" during or after the "policy period" will be deemed to have been known prior to the "policy period".

- h.** "Bodily injury" or "property damage" will be deemed to have been known to have occurred at the earliest time when any insured listed under Paragraph **1.** of Section **II** – Who Is An Insured or any "employee" authorized by you to give or receive notice of an "occurrence" or claim:

- (1)** Reports all, or any part, of the "bodily injury" or "property damage" to us or any other insurer;
- (2)** Receives a written or verbal demand or claim for damages because of the "bodily injury" or "property damage"; or
- (3)** Becomes aware by any other means that "bodily injury" or "property damage" has occurred or has begun to occur.

- i.** Damages because of "bodily injury" include damages claimed by any person or organization for care, loss of services or death resulting at any time from the "bodily injury".

j. Incidental Medical Malpractice

(1) "Bodily injury" arising out of the rendering of or failure to render professional health care services as a physician, dentist, nurse, emergency medical technician or paramedic shall be deemed to be caused by an "occurrence", but only if:

(a) The physician, dentist, nurse, emergency medical technician or paramedic is employed by you to provide such services; and

(b) You are not engaged in the business or occupation of providing such services.

(2) For the purposes of determining the limits of insurance for incidental medical malpractice, any act or omission together with all related acts or omissions in the furnishing of these services to any one person will be considered one "occurrence".

2. Exclusions

This insurance does not apply to:

a. Expected Or Intended Injury

"Bodily injury" or "property damage" expected or intended from the standpoint of the insured. This exclusion does not apply to "bodily injury" or "property damage" resulting from the use of reasonable force to protect persons or property.

b. Contractual Liability

"Bodily injury" or "property damage" for which the insured is obligated to pay damages by reason of the assumption of liability in a contract or agreement. This exclusion does not apply to liability for damages:

(1) That the insured would have in the absence of the contract or agreement; or

(2) Assumed in a contract or agreement that is an "insured contract", provided the "bodily injury" or "property damage" occurs subsequent to the execution of the contract or agreement. Solely for the purposes of liability assumed in an "insured contract", reasonable attorney fees and necessary litigation expenses incurred by or for a party other than an insured are deemed to be damages because of "bodily injury" or "property damage", provided:

(a) Liability to such party for, or for the cost of, that party's defense has also been assumed in the same "insured contract"; and

(b) Such attorney fees and litigation expenses are for defense of that party against a civil or alternative dispute resolution proceeding in which damages to which this policy applies are alleged.

c. Liquor Liability

"Bodily injury" or "property damage" for which any insured may be held liable by reason of:

(1) Causing or contributing to the intoxication of any person;

(2) The furnishing of alcoholic beverages to a person under the legal drinking age or under the influence of alcohol; or

(3) Any statute, ordinance or regulation relating to the sale, gift, distribution or use of alcoholic beverages.

This exclusion applies only if you are in the business of manufacturing, distributing, selling, serving or furnishing alcoholic beverages.

d. Workers' Compensation And Similar Laws

Any obligation of the insured under a workers' compensation, disability benefits or unemployment compensation law or any similar law.

e. Employer's Liability

"Bodily injury" to:

(1) An "employee" of the insured arising out of and in the course of:

(a) Employment by the insured; or

(b) Performing duties related to the conduct of the insured's business; or

(2) The spouse, child, parent, brother or sister of that "employee" as a consequence of Paragraph (1) above.

This exclusion applies:

(1) Whether the insured may be liable as an employer or in any other capacity; and

(2) To any obligation to share damages with or repay someone else who must pay damages because of the injury.

This exclusion does not apply to liability assumed by the insured under an "insured contract".

f. Pollution

(1) "Bodily injury" or "property damage" arising out of the actual, alleged or threatened discharge, dispersal, seepage, migration, release or escape of "pollutants":

- (a) At or from any premises, site or location which is or was at any time owned or occupied by, or rented or loaned to, any insured;
- (b) At or from any premises, site or location which is or was at any time used by or for any insured or others for the handling, storage, disposal, processing or treatment of waste;
- (c) Which are or were at any time transported, handled, stored, treated, disposed of, or processed as waste by or for:
 - (i) Any insured; or
 - (ii) Any person or organization for whom you may be legally responsible;
- (d) At or from any premises, site or location on which any insured or any contractors or subcontractors working directly or indirectly on any insured's behalf are performing operations; or
- (e) To the extent that any such injury or damage is included in the "products-completed operations hazard".

Solely to the extent "pollutants" are brought on or to the premises, site or location in connection with such operations by such insured, contractor or subcontractor; subparagraph (d) does not apply to "bodily injury" or "property damage" arising out of the escape of fuels, lubricants or other operating fluids which are needed to perform the normal electrical, hydraulic or mechanical functions necessary for the operation of "mobile equipment" or its parts, if such fuels, lubricants or other operating fluids escape from a vehicle part designed to hold, store or receive them. This exception does not apply if the "bodily injury" or "property damage" arises out of the intentional discharge, dispersal or release of the fuels, lubricants or other operating fluids, or if such fuels, lubricants or other operating fluids are brought on or to the premises, site or location with the intent that they be discharged, dispersed or released as part of the operations being performed by such insured, contractor or subcontractor. This exception also does not apply if the operations are to test for, monitor, clean up, remove, contain, treat, detoxify or neutralize, or in any way respond to, or access the effects of "pollutants".

- (2) Any loss, cost or expense arising out of any:

- (a) Request, demand, order or statutory or regulatory requirement that any insured or others test for, monitor, clean up, remove, contain, treat, detoxify or neutralize, or in any way respond to, or assess the effects of, "pollutants"; or
- (b) Claim or suit by or on behalf of a governmental authority for damages because of testing for, monitoring, cleaning up, removing, containing, treating, detoxifying or neutralizing, or in any way responding to, or assessing the effects of, "pollutants".

However, this paragraph does not apply to liability for damages because of "property damage" that the insured would have in the absence of such request, demand, order or statutory or regulatory requirement, or such claim or "suit" by or on behalf of a governmental authority.

g. Aircraft, Auto Or Watercraft

"Bodily injury" or "property damage" arising out of the ownership, maintenance, use or entrustment to others of any "aircraft", "auto" or watercraft owned or operated by or rented or loaned to any insured. Use includes operation and "loading or unloading".

This exclusion applies even if the claims against any insured allege negligence or other wrongdoing in the supervision, hiring, employment, training or monitoring of others by that insured, if the "occurrence" which caused the "bodily injury" or "property damage" involved the ownership, maintenance, use or entrustment to others of any "aircraft", "auto" or watercraft that is owned or operated by or rented or loaned to any insured.

This exclusion does not apply to:

- (1) A watercraft while ashore on premises you own or rent;
- (2) A watercraft you do not own that is:
 - (a) Less than 51 feet long; and
 - (b) Not being used to carry persons for a charge;
- (3) Parking an "auto" on, or on the ways next to, premises you own or rent, provided the "auto" is not owned by or rented or loaned to you or the insured;
- (4) Liability assumed under any "insured contract" for the ownership, maintenance or use of "aircraft" or watercraft;

(5) "Bodily injury" or "property damage" arising out of the operation of any of the equipment listed in Paragraph **f.(2)** or **f.(3)** of the definition of "mobile equipment"; or

(6) An "aircraft" that is not owned by any insured and is hired, chartered or loaned with a paid crew. However, this exception does not apply if the insured has any other insurance for such "bodily injury" or "property damage", whether the other insurance is primary, excess, contingent or on any other basis.

h. Mobile Equipment

"Bodily injury" or "property damage" arising out of:

(1) The transportation of "mobile equipment" by an "auto" owned or operated by or rented or loaned to any insured; or

(2) The use of "mobile equipment" in, or while in practice for, or while being prepared for, any prearranged racing, speed, demolition, or stunting activity.

i. War

"Bodily injury" or "property damage", however caused, arising directly or indirectly, out of:

(1) War, including undeclared or civil war; or

(2) Warlike action by a military force, including action in hindering or defending against an actual or expected attack, by any government, sovereign or other authority using military personnel or other agents; or

(3) Insurrection, rebellion, revolution, usurped power, or action taken by governmental authority in hindering or defending against any of these.

j. Damage to Property

"Property Damage" to:

(1) Property you own, rent, or occupy, including any costs or expenses incurred by you, or any other person, for repair, replacement, enhancement, restoration or maintenance of such property for any reason, including prevention of injury to a person or damage to another's property;

(2) Premises you sell, give away or abandon, if the "property damage" arises out of any part of those premises;

(3) Property loaned to you;

(4) Personal property in the care, custody or control of the insured;

(5) That particular part of real property on which you or any contractors or

subcontractors working directly or indirectly on your behalf are performing operations, if the "property damage" arises out of those operations; or

(6) That particular part of any property that must be restored, repaired or replaced because "your work" was incorrectly performed on it.

Paragraph **(2)** of this exclusion does not apply if the premises are "your work" and were never occupied, rented or held for rental by you.

Paragraphs **(3)** and **(4)** of this exclusion do not apply to "property damage" arising from the use of elevators.

Paragraphs **(3)**, **(4)**, **(5)** and **(6)** of this exclusion do not apply to liability assumed under a sidetrack agreement.

Paragraphs **(3)** and **(4)** of this exclusion do not apply to "property damage" to borrowed equipment while not being used to perform operations at the job site.

Paragraph **(6)** of this exclusion does not apply to "property damage" included in the "products-completed operations hazard".

k. Damage To Your Product

"Property damage" to "your product" arising out of it or any part of it.

l. Damage To Your Work

"Property damage" to "your work" arising out of it or any part of it and included in the "products-completed operations hazard".

This exclusion does not apply if the damaged work or the work out of which the damage arises was performed on your behalf by a subcontractor.

m. Damage To Impaired Property Or Property Not Physically Injured

"Property damage" to "impaired property" or property that has not been physically injured, arising out of:

(1) A defect, deficiency, inadequacy or dangerous condition in "your product" or "your work"; or

(2) A delay or failure by you or anyone acting on your behalf to perform a contract or agreement in accordance with its terms.

This exclusion does not apply to the loss of use of other property arising out of sudden and accidental physical injury to "your product" or "your work" after it has been put to its intended use.

n. Recall of Products, Work Or Impaired Property

Damages claimed for any loss, cost or expense incurred by you or others for the loss of use, withdrawal, recall, inspection, repair, replacement, adjustment, removal or disposal of:

- (1) "Your product";
- (2) "Your work"; or
- (3) "Impaired property";

if such product, work, or property is withdrawn or recalled from the market or from use by any person or organization because of a known or suspected defect, deficiency, inadequacy or dangerous condition in it.

o. Personal And Advertising Injury

"Bodily injury" arising out of "personal and advertising injury".

p. Electronic Data

Damages arising out of the loss of, loss of use of, damage to, corruption of, inability to access, or inability to manipulate electronic data.

As used in this exclusion, electronic data means information, facts or programs stored as or on, created or used on, or transmitted to or from computer software, including systems and applications software, hard or floppy disks, CD-ROMS, tapes, drives, cells, data processing devices or any other media which are used with electronically controlled equipment.

q. Employment-Related Practices

"Bodily injury" to:

- (1) A person arising out of any "employment-related practices"; or
- (2) The spouse, child, parent, brother or sister of that person as a consequence of "bodily injury" to that person at whom any "employment-related practices" are directed.

This exclusion applies:

- (1) Whether the insured may be liable as an employer or in any other capacity; and
- (2) To any obligation to share damages with or repay someone else who must pay damages because of the injury.

r. Asbestos

- (1) "Bodily injury" or "property damage" arising out of the "asbestos hazard".
- (2) Any damages, judgments, settlements, loss, costs or expenses that:

(a) May be awarded or incurred by reason of any claim or suit alleging actual or threatened injury or damage of any nature or kind to persons or property which would not have occurred in whole or in part but for the "asbestos hazard";

(b) Arise out of any request, demand, order or statutory or regulatory requirement that any insured or others test for, monitor, clean up, remove, encapsulate, contain, treat, detoxify or neutralize or in any way respond to or assess the effects of an "asbestos hazard"; or

(c) Arise out of any claim or suit for damages because of testing for, monitoring, cleaning up, removing, encapsulating, containing, treating, detoxifying or neutralizing or in any way responding to or assessing the effects of an "asbestos hazard".

s. Distribution Of Material In Violation Of Statutes

"Bodily injury" or "property damage" arising directly or indirectly out of any action or omission that violates or is alleged to violate:

- (1) The Telephone Consumer Protection Act (TCPA), including any amendment of or addition to such law; or
- (2) The CAN-SPAM Act of 2003, including any amendment of or addition to such law; or
- (3) Any Statute, ordinance or regulation, other than TCPA or CAN-SPAM Act of 2003, that prohibits or limits the sending, transmitting, communicating or distribution of material or information.

t. Aircraft Products

(1) "Bodily injury" or "property damage" included in the "products - completed operations hazard" and arising out of the design, manufacture, sale, handling or distribution of "aircraft products", or reliance upon any representation or warranty made with respect thereto, or to any liability arising out of the "grounding" of any "aircraft"; or

(2) Liability assumed by you under any contract or agreement if such liability arises out of "aircraft products" designed, manufactured, sold, handled or distributed by you or by others trading under your name.

COVERAGE B PERSONAL AND ADVERTISING INJURY LIABILITY

1. Insuring Agreement

- a. We will pay those sums that you or any insured becomes legally obligated to pay as damages because of "personal and advertising injury" to which this insurance applies; but only to the extent that such "personal and advertising injury" is in excess of the "self-insured retention" that has been exhausted solely by the payment of "claim expenses" and that portion of judgments or settlements to which this insurance would have applied in the absence of the "self-insured retention".

- b. You are responsible for payment of expenses for any defense counsel selected by or on behalf of you or any insured, including "claim expenses", until the "self-insured retention" has been exhausted solely by the payment of "claim expenses" and that portion of judgments or settlements to which this insurance would have applied in the absence of the "self-insured retention".

If we make a payment relating to the defense counsel or defense of any claim against you or any insured within the "self-insured retention", it will be on your behalf, and you must reimburse us within seven business days of the date you receive notice that such payments have been made.

"Claim expenses" and other defense expenses incurred subsequent to the exhaustion of the "self-insured retention" are payable by us, as provided in Supplementary Payments.

- c. If the claim is within the amount of the "self-insured retention", then subject to subsection d. below, you shall have the duty to defend any "suit" brought against you or any insured seeking damages because of "personal and advertising injury" to which this insurance applies. Such duty shall continue until the "self-insured retention" has been exhausted solely by the payment of "claim expenses" and that portion of judgments or settlements to which this insurance would have applied in the absence of the "self-insured retention".

If, however the amount you have paid on your behalf or on behalf of any insured, for "claim expenses" or judgments and settlements for a claim exceeds the amount of the "self-insured retention", then we shall have the right and duty to defend you or such insured against such claim. Our right and duty to defend ends when we have used up the Limits of

Insurance in the payment of judgments or settlements to which this Coverage Part applies.

- d. If the amount you have paid, on your behalf or on behalf of any insured, for "claim expenses" and judgments or settlements for a claim does not exceed the amount of the "self-insured retention", we shall not be obligated to assume charge of, participate in, or pay for the investigation or defense of any claim or "suit".

However, if such claim or "suit", in our opinion, involves or is reasonably likely to involve payment by us under this Coverage Part, we shall:

- (1) Require you or the insured against whom the claim is made or "suit" is brought, to obtain our written consent regarding the selection of any defense counsel;
- (2) At our own expense, have the right but not the duty to investigate and to assign counsel in addition to any defense counsel assigned by or on behalf of you or the insured. Such additional counsel shall have the right to participate in the investigation, defense or settlement of any claim or "suit" on our behalf; and
- (3) Have the right but not the duty to assume control of the defense, and we shall have that right even if we have not elected to assign additional defense counsel.

If we assume control of the defense:

- (a) We shall have the right to select or dismiss defense counsel for the purpose of continuing the defense of any "suit"; and
- (b) You shall continue to pay, or reimburse us for, any "claim expenses" pursuant to the defense of you or any insured.

During the course of controlling the defense we shall have the right but not the duty to settle the claim or "suit" by paying all or part of the "self-insured retention" or Limits of Insurance. Such payment is on your behalf, and you are responsible for reimbursing us for payments of damages and "claim expenses" within the "self-insured retention" we have made within seven business days of the date you receive notice that such payments have been made.

If we avail ourselves of the foregoing right(s), you and any other insured, your and any other

insured's claim servicing agency and we shall cooperate in such investigation, defense or settlement.

Any right or opportunity we have exercised to participate in or control the defense ends at our discretion, but in all events ends when we have used up the limit of insurance in the payment of judgments or settlements to which this Coverage Part applies.

e. In no event shall:

(1) The "self-insured retention" be reduced by your or any insured's overhead, cost of investigation of claim by salaried "employees", or "employee" time; nor any expenses or appeals not incurred with our written consent pursuant to the Duties In The Event of Occurrence, Offense, Claim or Suit Condition in Section **IV** or the Appeals Condition in Section **IV**; or

(2) We have any obligation or liability to pay sums or performs acts or services unless explicitly provided for under Supplementary Payments – Coverages **A** and **B**.

f. The amount we will pay for damages is limited as described in Section **III** – Limits Of Insurance. We have no other obligation to pay anything unless explicitly provided for under Supplementary Payments – Coverages **A** and **B**.

g. This insurance applies to "personal and advertising injury" caused by an offense arising out of your business but only if the offense was committed in the "coverage territory" during the "policy period".

2. Exclusions

This insurance does not apply to:

a. Knowing Violation Of Rights Of Another

"Personal and advertising injury" arising out of an offense committed by, at the direction or with the consent or acquiescence of the insured with the expectation of inflicting "personal and advertising injury".

b. Material Published With Knowledge Of Falsity

"Personal and advertising injury" arising out of oral, written or electronic publication of material, if done by or at the direction of the insured with knowledge of its falsity.

c. Material Published Prior To Policy Period

"Personal and advertising injury" arising out of oral, written or electronic publication of material whose first publication took place before the beginning of the "policy period".

d. Criminal Acts

"Personal and advertising injury" arising out of a criminal act committed by or at the direction of the insured.

e. Contractual Liability

"Personal and advertising injury" for which the insured has assumed liability in a contract or agreement. This exclusion does not apply to liability for damages that the insured would have in the absence of the contract or agreement.

f. Breach Of Contract

"Personal and advertising injury" arising out of a breach of contract, except an implied contract to use another's "advertising idea" in your "advertisement".

g. Quality Or Performance Of Goods – Failure To Conform To Statements

"Personal and advertising injury" arising out of the failure of goods, products or services to conform with any statement of quality or performance made in your "advertisement".

h. Wrong Description Of Prices

"Personal and advertising injury" arising out of the wrong description of the price of goods, products or services.

i. Infringement Of Intellectual Property Rights

"Personal and advertising injury" arising out of any violation of any intellectual property rights such as copyright, patent, trademark, trade name, trade secret, service mark or other designation of origin or authenticity.

However, this exclusion does not apply to infringement, in your "advertisement", of:

(1) Copyright;

(2) Slogan, unless the slogan is also a trademark, trade name, service mark or other designation of origin or authenticity; or

(3) Title of any literary or artistic work.

j. Insureds In Media And Internet Type Businesses

"Personal and advertising injury" committed by an insured whose business is:

(1) Advertising, broadcasting, publishing or telecasting;

(2) Designing or determining content of web sites for others; or

(3) An Internet search, access, content or service provider.

However, this exclusion does not apply to Paragraphs **20.a.**, **b.** and **c.** of "personal and

advertising injury" under the Definitions Section.

For the purposes of this exclusion, placing an "advertisement" for or linking to others on your website, by itself, is not considered the business of advertising, broadcasting, publishing or telecasting.

k. Electronic Chatrooms Or Bulletin Boards

"Personal and advertising injury" arising out of an electronic chatroom or bulletin board the insured hosts, owns, or over which the insured exercises control.

l. Unauthorized Use Of Another's Name Or Product

"Personal and advertising injury" arising out of the unauthorized use of another's name or product in your e-mail address, domain name or metatag, or any other similar tactics to mislead another's potential customers.

m. Pollution

"Personal and advertising injury" arising out of the actual, alleged or threatened discharge, dispersal, seepage, migration, release or escape of "pollutants" at any time.

n. Pollution-Related

Any loss, cost or expense arising out of any:

- (1) Request, demand, order or statutory or regulatory requirement that any insured or others test for, monitor, clean up, remove, contain, treat, detoxify or neutralize, or in any way respond to, or assess the effects of, "pollutants"; or
- (2) Claim or suit by or on behalf of a governmental authority for damages because of testing for, monitoring, cleaning up, removing, containing, treating, detoxifying or neutralizing, or in any way responding to, or assessing the effects of, "pollutants".

o. War

"Personal and advertising injury", however caused, arising directly or indirectly out of:

- (1) War, including undeclared or civil war;
- (2) Warlike action by a military force, including action in hindering or defending against an actual or expected attack, by any government, sovereign or other authority using military personnel or other agents; or
- (3) Insurrection, rebellion, revolution, usurped power, or action taken by governmental authority in hindering or defending against any of these.

p. Internet Advertisements And Content Of Others

"Personal and advertising injury" arising out of:

- (1) An "advertisement" for others on your website;
- (2) Placing a link to a website of others on your website;
- (3) Content, including information, sounds, text, graphics, or images from a website of others displayed within a frame or border on your website; or
- (4) Computer code, software or programming used to enable;
 - (a) Your website; or
 - (b) The presentation or functionality of an "advertisement" or other content on your website.

q. Right Of Privacy Created By Statute

"Personal and advertising injury" arising out of the violation of a person's right of privacy created by any state or federal act.

However, this exclusion does not apply to liability for damages that the insured would have in the absence of such state or federal act.

r. Violation Of Anti-Trust law

"Personal and advertising injury" arising out of a violation of any anti-trust law.

s. Securities

"Personal and advertising injury" arising out of the fluctuation in price or value of any stocks, bonds or other securities.

t. Discrimination

"Personal and advertising injury" arising out of discrimination.

u. Employment-Related Practices

"Personal and advertising injury" to:

- (1) A person arising out of any "employment-related practices"; or
- (2) The spouse, child, parent, brother or sister of that person as a consequence of "personal and advertising injury" to that person at whom any "employment-related practices" are directed.

This exclusion applies:

- (1) Whether the insured may be liable as an employer or in any other capacity; and
- (2) To any obligation to share damages with or repay someone else who must pay damages because of the injury.

v. Asbestos

- (1) "Personal and advertising injury" arising out of the "asbestos hazard".
- (2) Any damages, judgments, settlements, loss, costs or expenses that:
 - (a) May be awarded or incurred by reason of any claim or suit alleging actual or threatened injury or damage of any nature or kind to persons or property which would not have occurred in whole or in part but for the "asbestos hazard";
 - (b) Arise out of any request, demand, order or statutory or regulatory requirement that any insured test for, monitor, clean up, remove, encapsulate, contain, treat, detoxify or neutralize or in any way respond to or assess the effects of an "asbestos hazard"; or
 - (c) Arise out of any claim or suit for damages because of testing for, monitoring, cleaning up, removing, encapsulating, containing, treating, detoxifying or neutralizing or in any way responding to or assessing the effects of an "asbestos hazard".

w. Distribution Of Material In Violation Of Statutes

"Personal and advertising injury" arising directly or indirectly out of any action or omission that violates or is alleged to violate:

- (1) The Telephone Consumer Protection Act (TCPA), including any amendment of or addition to such law;
- (2) The CAN-SPAM Act of 2003, including any amendment of or addition to such law; or
- (3) Any Statute, ordinance or regulation, other than TCPA or CAN-SPAM Act of 2003, that prohibits or limits the sending, transmitting, communicating or distribution of material or information

SUPPLEMENTARY PAYMENTS – COVERAGES A AND B**1. You will pay:**

- a. With respect to any claim or "suit" against you or any other insured that you have a duty to defend, all "claim expenses" you incur, within the amount of the "self-insured retention". Even if we elect to assume control of the defense, you will continue to pay such expenses, or reimburse us for such expenses within the amount of the "self-insured

retention", at our sole discretion and direction. If we pay such expenses, you must reimburse us for all such expenses within seven business days of the date you receive notification that such payment has been made.

- b. Prejudgment interest awarded against you or any insured on that portion of the judgment or settlement that is within or equal to the amount of the "self-insured retention". Your payment will be in the ratio that your liability for the judgment rendered or settlement made bears to the whole amount of such judgment or settlement.
- c. Interest on that portion of a judgment or settlement that accrues after entry of the judgment and before you have paid, offered to pay, or deposited in court the part of the judgment that is within or equal to the amount of the "self-insured retention". Your payment will be in the ratio that your liability for the judgment rendered or settlement made bears to the whole amount of such judgment or settlement.

Paragraphs **b.** and **c.** above will not reduce the amount of the applicable "self-insured retention".

2. We will pay:

- a. With respect to any claim you investigate or settle, or any "suit" against you or any other insured you have a duty to defend, all "claim expenses" in excess of the "self-insured retention".

We will pay all "claim expenses" we incur if we have elected to associate with the defense counsel assigned by or on behalf of you or any other insured, whether within or in excess of the "self-insured retention".

- b. The following in the ratio that our liability for the judgment rendered or settlement made bears to the whole amount of such judgment or settlement:
 - (1) Prejudgment interest awarded against you or any other insured on that portion of the judgment or settlement we pay that is in excess of the amount of the "self-insured retention".
 - (2) Interest on that portion of a judgment or settlement that accrues after entry of the judgment and before you have paid, offered to pay, or deposited in court the part of the judgment that is in excess of the amount of the "self-insured retention".
 - (3) Up to \$1,000 for the cost of bail bonds required because of accidents or traffic law violations arising out of the use of any vehicle to which the Bodily Injury Liability

Coverage applies. We do not have to furnish these bonds.

- (4) The cost of appeal bonds or bonds to release attachments, but only for bond amounts within the applicable limit of insurance. We do not have to furnish these bonds.
- (5) All reasonable expenses incurred by the insured at our request to assist us in the investigation or defense of the claim or "suit", including actual loss of earnings up to \$500 a day because of time off from work.
- (6) All costs taxed against the insured in the "suit".

These payments will not reduce the limits of insurance.

- 3. If we defend you or any other insured against a "suit" and an indemnitee of such insured is also named as a party to the "suit", we will defend that indemnitee if all of the following conditions are met:
 - a. The "suit" against the indemnitee seeks damages for which the insured has assumed the liability of the indemnitee in a contract or agreement that is an "insured contract";
 - b. This insurance applies to such liability assumed by the insured;
 - c. The obligation to defend, or the cost of the defense of, that indemnitee, has also been assumed by the insured in the same "insured contract";
 - d. The allegations in the "suit" and the information we know about the "occurrence" are such that no conflict appears to exist between the interests of the insured and the interests of the indemnitee;
 - e. The indemnitee and the insured ask us to conduct and control the defense of that indemnitee against such "suit" and agree that we can assign the same counsel to defend the insured and the indemnitee; and
 - f. The indemnitee:
 - (1) Agrees in writing to:
 - (a) Cooperate with you and us in the investigation, settlement or defense of the "suit";
 - (b) Immediately send you and us copies of any demands, notices, summonses or legal papers received in connection with the "suit";
 - (c) Notify any other insurer whose coverage is available to the indemnitee; and

- (d) Cooperate with you and us with respect to coordinating other applicable insurance available to the indemnitee; and

- (2) Provides us with written authorization to:

- (a) Obtain records and other information related to the "suit"; and
- (b) Conduct and control the defense of the indemnitee in such "suit".

So long as the above conditions are met,

- (1) Attorneys fees incurred by you in the defense of that indemnitee, necessary litigation expenses incurred by us and necessary litigation expenses incurred by the indemnitee at your request will be borne by you as "claim expenses" until the "self-insured retention" is exhausted; and
- (2) Attorneys fees incurred by us in the defense of that indemnitee, necessary litigation expenses incurred by us and necessary litigation expenses incurred by the indemnitee at our request will be borne by us as "claim expenses" by us after the "self-insured retention" has been exhausted.

Notwithstanding the provisions of paragraph **2.b.(2)** of Section **I – Coverage A – Bodily Injury And Property Damage**, such payments will not be deemed to be damages for "bodily injury" and "property damage" and will not reduce the limits of insurance; however, such payments will reduce the "self-insured retention" to the same extent that other "claim expenses" reduce the "self-insured retention."

Your obligation to defend an insured's indemnitee and to pay for attorneys fees and necessary litigation expenses as Supplementary Payments ends when you have used up the applicable "self-insured retention" in the payment of judgments, settlements, or "claim expenses"; or when the conditions set forth above, or the terms of the agreement described in paragraph **f.** above, are no longer met.

Our obligation to defend you or any other insured's indemnitee and to pay for attorneys' fees and necessary litigation expenses as Supplementary Payments ends when:

- a. We have used up the applicable limit of insurance in the payment of judgments or settlements; or
- b. The conditions set forth above, or the terms of the agreement described in Paragraph **f.** above, are no longer met.

SECTION II - WHO IS AN INSURED**1. If you are designated in the Declarations as:**

- a. An individual, you and your spouse are insureds, but only with respect to the conduct of a business of which you are the sole owner.
- b. A partnership or joint venture, you are an insured. Your members, your partners, and their spouses are also insureds, but only with respect to the conduct of your business.
- c. A limited liability company, you are an insured. Your members are also insureds, but only with respect to the conduct of your business. Your managers are insureds, but only with respect to their duties as your managers.
- d. An organization other than a partnership, joint venture or limited liability company, you are an insured. Your "executive officers" and directors are insureds, but only with respect to their duties as your officers or directors. Your stockholders are also insureds, but only with respect to their liability as stockholders.
- e. A trust, you are an insured. Your trustees are also insureds, but only with respect to their duties as trustees.

2. Each of the following is also an insured:**a. Employees And Volunteer Workers**

Your "volunteer workers" only while performing duties related to the conduct of your business, or your "employees", other than either your "executive officers", (if you are an organization other than a partnership, joint venture or limited liability company) or your managers (if you are a limited liability company), but only for acts within the scope of their employment by you or while performing duties related to the conduct of your business.

However, none of these "employees" or "volunteer workers" are insureds for:

(1) "Bodily injury" or "personal and advertising injury":

- (a)** To you, to your partners or members (if you are a partnership or joint venture), to your members (if you are a limited liability company), or to a co-"employee" while in the course of his or her employment or while performing duties related to the conduct of your business, or to your other "volunteer workers" while performing duties related to the conduct of your business;

(b) To the spouse, child, parent, brother or sister of that co-"employee" or "volunteer worker" as a consequence of paragraph **(1)(a)** above;

(c) For which there is any obligation to share damages with or repay someone else who must pay damages because of the injury described in paragraphs **(1)(a)** or **(1)(b)** above; or

(d) Arising out of his or her providing or failing to provide professional health care services.

If you are not in the business of providing professional health care services, paragraph **(d)** does not apply to any nurse, emergency medical technician or paramedic employed by you to provide such services.

(2) "Property damage" to property:

(a) Owned, occupied or used by, or

(b) Rented to, in the care, custody or control of, or over which physical control is being exercised for any purpose by

you, any of your "employees", "volunteer workers", any partner or member (if you are a partnership or joint venture), or any member (if you are a limited liability company).

b. Real Estate Manager

Any person (other than your "employee" or "volunteer worker"), or any organization while acting as your real estate manager.

c. Temporary Custodians of Your Property

Any person or organization having proper temporary custody of your property if you die, but only:

(1) With respect to the liability arising out of the maintenance or use of that property; and

(2) Until your legal representative has been appointed.

d. Legal Representative If You Die

Your legal representative if you die, but only with respect to duties as such. That representative will have all your rights and duties under this Coverage Part.

3. Newly Acquired or Formed Organization

Any organization you newly acquire or form, other than a partnership, joint venture or limited liability company, and over which you maintain financial

interest of more than 50% of the voting stock, will qualify as a Named Insured if there is no other similar insurance available to that organization. However:

- a. Coverage under this provision is afforded only until the 90th day after you acquire or form the organization or the end of the "policy period", whichever is earlier;
- b. Coverage **A** does not apply to "bodily injury" or "property damage" that occurred before you acquired or formed the organization; and
- c. Coverage **B** does not apply to "personal and advertising injury" arising out of an offense committed before you acquired or formed the organization.

4. Mobile Equipment

With respect to "mobile equipment" registered in your name under any motor vehicle registration law, any person is an insured while driving such equipment along a public highway with your permission. Any other person or organization responsible for the conduct of such person is also an insured, but only with respect to liability arising out of the operation of the equipment, and only if no other insurance of any kind is available to that person or organization for this liability. However, no person or organization is an insured with respect to:

- a. "Bodily injury" to a co-"employee" of the person driving the equipment; or
- b. "Property damage" to property owned by, rented to, in the charge of or occupied by you or the employer of any person who is an insured under this provision.

5. Nonowned Watercraft

With respect to watercraft you do not own that is less than 51 feet long and is not being used to carry persons for a charge, any person is an insured while operating such watercraft with your permission. Any other person or organization responsible for the conduct of such person is also an insured, but only with respect to liability arising out of the operation of the watercraft, and only if no other insurance of any kind is available to that person or organization for this liability.

However, no person or organization is an insured with respect to:

- a. "Bodily injury" to a co-"employee" of the person operating the watercraft; or
- b. "Property damage" to property owned by, rented to, in the charge of or occupied by you or the employer of any person who is an insured under this provision.

Owners, Lessees or Contractors - see page 15

6. Additional Insureds When Required By Written Contract, Written Agreement Or Permit

The following person(s) or organization(s) are an additional insured when you have agreed, in a written contract, written agreement or because of a permit issued by a state or political subdivision, that such person or organization be added as an additional insured on your policy, provided the injury or damage occurs subsequent to the execution of the contract agreement.

A person or organization is an additional insured under this provision only for that period of time required by the contract or agreement.

However, no such person or organization is an insured under this provision if such person or organization is included as an insured by an endorsement issued by us and made part of this Coverage Part.

a. Vendors

Any person(s) or organization(s) (referred to below as vendor), but only with respect to "bodily injury" or "property damage" arising out of "your products" which are distributed or sold in the regular course of the vendor's business; and only if this Coverage Part provides coverage for "bodily injury" or "property damage" included within the "products-completed operations hazard".

- (1) The insurance afforded the vendor is subject to the following additional exclusions:

This insurance does not apply to:

- (a) "Bodily injury" or "property damage" for which the vendor is obligated to pay damages by reason of the assumption of liability in a contract or agreement. This exclusion does not apply to liability for damages that the vendor would have in the absence of the contract or agreement;
- (b) Any express warranty unauthorized by you;
- (c) Any physical or chemical change in the product made intentionally by the vendor;
- (d) Repackaging except when unpacked solely for the purpose of inspection, demonstration, testing, or the substitution of parts under instructions from the manufacturer, and then repackaged in the original container;
- (e) Any failure to make such inspections, adjustments, tests or servicing as the vendor has agreed to make or

normally undertakes to make in the usual course of business, in connection with the distribution or sale of the products;

- (f) Demonstration, installation, servicing or repair operations, except such operations performed at the vendor's premises in connection with the sale of the product;
- (g) Products which, after distribution or sale by you, have been labeled or relabeled or used as a container, part or ingredient of any other thing or substance by or for the vendor; or
- (h) "Bodily injury" or "property damage" arising out of the sole negligence of the vendor for its own acts or omissions or those of its employees or anyone else acting on its behalf. However, this exclusion does not apply to:
 - (i) The exceptions contained in subparagraphs (d) or (f); or
 - (ii) Such inspections adjustments or servicing as the vendor has agreed to make or normally undertakes to make in the usual course of business, in connection with the distribution or sale of the products.

- (2) This insurance does not apply to any insured person or organization, from whom you have acquired such products, or any ingredient, part or container, entering into, accompanying or containing such products.

b. Lessors of Equipment

- (1) Any person or organization from whom you lease equipment; but only with respect to their liability for "bodily injury" or "property damage" or "personal and advertising injury" caused, in whole or in part, by your maintenance, operation or use of equipment leased to you by such person or organization.
- (2) With respect to the insurance afforded to these additional insureds, this insurance does not apply to any "occurrence" which takes place after the equipment lease expires.

c. Lessors of Land or Premises

Any person or organization from whom you lease land or premises, but only with respect to liability arising out of the ownership, maintenance or use of that part of the land or premises leased to you.

With respect to the insurance afforded these additional insureds, the following additional exclusions apply:

This insurance does not apply to:

- (1) Any "occurrence" which takes place after you cease to lease that land; or
- (2) Structural alterations, new construction or demolition operations performed by or on behalf of such person or organization.

d. Architects, Engineers or Surveyors

Any architect, engineer, or surveyor, but only with respect to liability for "bodily injury", "property damage" or "personal and advertising injury" caused, in whole or in part, by your acts or omissions or the acts or omissions of those acting on your behalf:

- (1) In connection with your premises; or
- (2) In the performance of your ongoing operations performed by you or on your behalf.

With respect to the insurance afforded these additional insureds, the following additional exclusions apply:

This insurance does not apply to "bodily injury", "property damage" or "personal and advertising injury" arising out of the rendering of or the failure to render any professional services by or for you, including:

- 1. The preparing, approving, or failing to prepare or approve, maps, shop drawings, opinions, reports, surveys, field orders, change orders or drawings and specifications; or
- 2. Supervisory, inspection, architectural or engineering activities.

e. Permits issued By State or Political Subdivisions

Any state or political subdivision, but only with respect to operations performed by you or on your behalf for which the state or political subdivision has issued a permit.

With respect to the insurance afforded these additional insureds, this insurance does not apply to:

- (1) "Bodily injury", "property damage" or "personal and advertising injury" arising out of operations performed for the state or municipality; or
- (2) "Bodily injury" or "property damage" included within the "products-completed operations hazard".

f. Any Other Party

Any other person or organization who is not an insured under paragraphs **a.** through **e.** above, but only with respect to liability for "bodily injury", "property damage" or "personal and advertising injury" caused, in whole or in part, by your acts or omissions or the acts or omissions of those acting on your behalf:

- (1) In the performance of your ongoing operations;
- (2) In connection with your premises owned by or rented to you; or
- (3) In connection with "your work" and included within the "products-completed operations hazard", but only if;
 - (a) The written contract or agreement requires you to provide such coverage to such additional insured; and
 - (b) This Coverage Part provides coverage for "bodily injury" or "property damage" included within the "products-completed operations hazard".

With respect to the insurance afforded to these additional insureds, this insurance does not apply to:

"Bodily injury", "property damage" or "personal and advertising injury" arising out of the rendering of, or failure to render, any professional architectural, engineering or surveying services, including:

- (1) The preparing, approving, or failing to prepare or approve, maps, shop drawings, opinions, reports, surveys, field orders, change orders or drawings and specifications; or
- (2) Supervisory, inspection, architectural or engineering activities.

The limits of insurance that apply to additional insureds under this provision is described in Section III – Limits Of Insurance. Such limits of insurance apply only in excess of the "self-insured retention".

No person or organization is an insured with respect to the conduct of any current or past partnership, joint venture or limited liability company that is not shown as a Named Insured in the Declarations.

SECTION III LIMITS OF INSURANCE**1. The Most We Will Pay**

Subject to item **1.a.** of the **Insuring Agreement**, the Limits of Insurance shown in the Declarations and the rules below fix the most we will pay regardless of the number of:

- a. Insureds;

- b. Claims made or "suits" brought; or

- c. Persons or organizations making claims or bringing "suits".

2. The General Aggregate Limit

The General Aggregate Limit is the most we will pay for the sum of:

- a. Damages under Coverage **A**, except damages because of "bodily injury" or "property damage" included in the "products-completed operations hazard"; and
- b. Damages under Coverage **B**.

3. Products-Completed Operations Aggregate Limit

The Products-Completed Operations Aggregate Limit is the most we will pay under Coverage **A** for damages because of "bodily injury" and "property damage" included in the "products-completed operations hazard".

4. Personal and Advertising Injury Limit

Subject to **2.** above, the Personal and Advertising Injury Limit is the most we will pay under Coverage **B** for the sum of all damages because of all "personal and advertising injury" sustained by any one person or organization.

5. Each Occurrence Limit

Subject to **2.** or **3.** above, whichever applies, the Each Occurrence Limit is the most we will pay for damages under Coverage **A** because of all "bodily injury" and "property damage" arising out of any one "occurrence".

6. How Limits And Self Insured Retention Apply to Additional Insureds

If you have agreed in a contract or agreement that another person or organization be added as an insured on your policy:

- a. You are responsible for payment of any "self-insured retention" on behalf of such person or organization; and
- b. The most we will pay on behalf of such insured or any other insured endorsed to this Coverage Part is the lesser of:
 - (1) The limits of insurance specified in the contract or agreement; or
 - (2) The Limits of Insurance shown in the Declarations.

Any amount we pay shall be in excess of the "self-insured retention" and is part of and not in addition to the Limits of Insurance shown in the Declarations and described in this Section.

The Limits of Insurance of this Coverage Part and the amount of the "self-insured retention" apply separately to each "policy period". If the "policy

period" is extended after issuance for an additional period, such additional period will be deemed to be part of the "policy period" for purposes of determining the applicable Limits of Insurance and "self-insured retention".

SECTION IV COMMERCIAL GENERAL LIABILITY CONDITIONS

1. Bankruptcy

Your bankruptcy or insolvency, or the bankruptcy of any other insured or of the insured's estate will not relieve:

- a. Us of our obligations under this Coverage Part, or
- b. You of your obligations to defend any claim or "suit" against you or any other insured.

2. Duties In The Event Of Occurrence, Offense, Claim Or Suit

a. Notice of Occurrence Or Offense

You or any insured must see to it that we are notified as soon as practicable of an "occurrence" or an offense which may result in a claim. To the extent possible, notice should include:

- (1) How, when and where the "occurrence" or offense took place;
- (2) The names and addresses of any injured persons and witnesses; and
- (3) The nature and location of any injury or damage arising out of the "occurrence" or offense.

b. Notice Of Claim Or Suit

If a claim is made or "suit" is brought against any insured, you or any insured must:

- (1) Immediately record the specifics of the claim or "suit" and the date received; and
- (2) Notify us as soon as practicable if the claim or "suit" is likely to exceed the "self-insured retention".

You or any insured must see to it that we receive written notice of the claim or "suit" as soon as practicable.

c. Assistance And Cooperation Of The Insured

You and any other involved insured must:

- (1) Immediately send us copies of any demands, notices, summonses or legal papers received in connection with the claim or "suit" involving or likely to involve a sum in excess of the "self-insured retention";
- (2) Authorize us to obtain records and other information;

- (3) Cooperate with us in the investigation or settlement of the claim or defense against the "suit";

- (4) Assist us, upon our request, in the enforcement of any right against any person or organization which may be liable to the insured because of injury or damage to which this insurance or the "self-insured retention" may also apply;

- (5) Advise us of the name and address of defense counsel retained to represent the insured's interest with respect to the "self-insured retention". Further, if the claim or "suit", in our opinion, involves or is reasonably likely to involve payment by us under this Coverage Part, we shall require you or the insured against whom a claim is made or "suit" is brought, to obtain our written consent regarding the selection of any defense counsel;

- (6) Furnish us the following information:

- (a) Quarterly loss runs identifying all open and paid claims and "claim expenses". Such loss runs shall be furnished until all claims and "claim expenses" are paid;

- (b) Complete information on all claims reserved for 50% or more of the amount of the "self-insured retention". This information must be furnished within 30 days from the date such reserve is established;

- (c) Complete information on all claims (including multiple claims) arising out of an "occurrence" or offense which might require payment in excess of the "self-insured retention". This information must be furnished within 30 days from the date such possibility first arises;

- (d) Complete information on any claim arising out of an "occurrence" or offense involving a minor child, or any of the following injuries:

- (i) Death,

- (ii) Quadriplegia,

- (iii) Paraplegia,

- (iv) Brain Damage,

- (v) Loss of Vision,

- (vi) Loss of Limb, or

- (vii) Hospitalization for more than 30 days.

This information must be furnished within 30 days from the date such claim is first made; and

(7) Maintain adequate claim records and supporting data which document reserves for payment of claims, dates and amounts of any settlements, including specific identification of "claim expenses" incurred and paid.

d. Acceptance Or Rejection of Settlement Within The "Self-Insured Retention"

You, any insured as described in Section II - Who Is an Insured or any insured endorsed to this Coverage Part shall, as respects the "self-insured retention", exercise good faith in evaluating whether to accept or reject a settlement offer extended by a party making a claim. The failure to exercise such good faith by you, and any such insured will relieve us of any obligation to pay any sum in excess of the amount of the settlement that could have been accepted.

e. Obligations At The Insureds Own Cost

No insureds will, except at the insured's own cost, make or agree to any settlement for a sum in excess of the "self-insured retention" without our consent.

If any insured makes a payment, assumes any obligation, or incurs any expense, other than for first aid, without our consent, such payment, obligation or expense will be at the insured's own cost.

f. Insureds Other Insurance

If we cover a claim or "suit" under this Coverage Part that may also be covered by other insurance available to an insured, such insured must submit such claim or "suit" to the other insurer for defense and indemnity.

g. Knowledge Of An Occurrence, Offense, Claim Or Suit

Paragraphs **a.** and **b.** apply to you or to any insured only when such "occurrence", offense, claim or "suit" is known to:

- (1) You or any insured that is an individual;
- (2) Any partner, if you or an insured is a partnership;
- (3) Any manager, if you or any insured is a limited liability company;
- (4) Any "executive officer" or insurance manager, if you or an insured is a corporation;
- (5) Any trustee, if you or an insured is a trust; or
- (6) Any elected or appointed official, if you or an additional insured is a political subdivision or public entity.

Paragraph **g.** applies separately to you and any insured.

3. Legal Action Against Us

No person or organization has a right under this Coverage Part:

- a. To join us as a party or otherwise bring us into a "suit" asking for damages from an insured; or
- b. To sue us under this Coverage Part unless all of its terms have been fully complied with.

A person or organization may sue us to recover on an agreed settlement or on a final judgment against an insured; but we will not be liable for damages that are not payable under the terms of this Coverage Part or that are in excess of the applicable limit of insurance. An agreed settlement means a settlement and release of liability signed by us, the insured and the claimant or the claimant's legal representative.

4. Other Insurance

This insurance is excess over any other insurance, whether primary, excess, contingent or on any other basis, except when purchased specifically to apply in excess of this insurance.

If this insurance is excess over other insurance, we will pay only our share of the amount of the loss, if any, that exceeds the sum of:

- (1) The total amount that all such other insurance would pay for damages in the absence of this insurance; and
- (2) The total of all deductible and self-insured amounts under all that other insurance.

5. Premium Audit

- a. We will compute all premiums for this Coverage Part in accordance with our rules and rates.
- b. Premium shown in this Coverage Part as advance premium is a deposit premium only. At the close of each audit period we will compute the earned premium for that period and send notice to the first Named Insured. The due date for audit and retrospective premiums is the date shown as the due date on the bill. If the sum of the advance and audit premiums paid for the "policy period" is greater than the earned premium, we will return the excess to the first Named Insured.
- c. The first Named Insured must keep records of the information we need for premium computation, and send us copies at such times as we may request.

6. Representations

a. When You Accept This Policy

By accepting this policy, you agree:

- (1) The statements in the Declarations are accurate and complete;

(2) Those statements are based upon representations you made to us; and

(3) We have issued this policy in reliance upon your representations.

b. Unintentional Failure To Disclose Hazards

If unintentionally you should fail to disclose all hazards relating to the conduct of your business that exist at the inception date of this Coverage Part, we shall not deny coverage under this Coverage Part because of such failure.

7. Separation Of Insureds

Except with respect to the Limits of Insurance, your responsibility under the "self-insured retention" and any rights or duties specifically assigned in this Coverage Part to the first Named Insured, this insurance applies:

a. As if each Named Insured were the only Named Insured; and

b. Separately to each insured against whom claim is made or "suit" is brought.

8. Transfer Of Rights Of Recovery Against Others To Us

a. Transfer of Rights Of Recovery

If the insured has rights to recover all or part of any payment, including Supplementary Payments, we have made under this Coverage Part, those rights are transferred to us. The insured must do nothing after loss to impair them. At our request, the insured will bring "suit" or transfer those rights to us and help us enforce them.

b. How Recoveries Shall Be Applied

Recoveries shall be applied to reimburse:

(1) First, any interest (including the Named Insured) that paid any amount in excess of our Limits of Insurance;

(2) Second, us, along with any other insurers having a quota share interest at the same level; and

(3) Third, such interests (including the Named Insured) of whom this insurance is excess.

However, a different apportionment may be made to effect settlement of a claim by agreement signed by all interests.

c. Apportionment Among All Interests

Reasonable expenses incurred in the exercise of rights of recovery shall be apportioned among all interests in the ratio of their respective losses for which recovery is sought.

d. Waiver Of Rights Of Recovery (Waiver Of Subrogation)

If the insured has waived any rights of recovery against any person or organization for all or part of any payment, including Supplementary Payments, we have made under this Coverage Part, we also waive that right, provided the insured waived their rights of recovery against such person or organization in a contract, agreement or permit that was executed prior to the injury or damage.

9. When We Do Not Renew

If we decide not to renew this Coverage Part, we will mail or deliver to the first Named Insured shown in the Declarations written notice of the nonrenewal not less than 30 days before the expiration date.

If notice is mailed, proof of mailing will be sufficient proof of notice.

10. Maintenance of Self-Insured Retention

You shall do whatever is required, including provision of sufficient funds, to maintain the "self-insured retention" in full effect during the currency of this policy. If the "self-insured retention" becomes invalid, suspended, unenforceable or uncollectable for any reason, including bankruptcy or insolvency, we shall be liable only to the extent we would have been had such "self-insured retention" remained in full effect.

The first Named Insured shall give us written notice as soon as practicable of any change in the operating status of any "self-insured retention", or when the sum of all incurred losses and "claim expenses" equals or exceeds 70% of the "self-insured retention".

11. Appeals

a. For amounts within the "self-insured retention":

(1) If we or you with our consent, elect to appeal a judgment, then any resultant additional expenses, settlements or judgments to which this insurance applies shall reduce the amount of the "self-insured retention". We shall be liable for such additional expenses, settlements or judgments that are in excess of the "self-insured retention".

(2) If you or any insured, without our consent, elects to appeal a judgment, any resultant additional expenses, settlements or judgments shall not reduce the amount of the "self-insured retention". We shall not be liable for such resultant additional

expenses, settlements or judgments, whether or not they are in excess of the "self-insured retention".

b. For amounts in excess of the "self-insured retention":

- (1)** If you or any insured elects to appeal, and such appeal is with our consent, then we shall be liable for any additional expenses, settlements or judgments to which this policy applies.
- (2)** If you or any insured elect to appeal, and such appeal is without our consent, then we shall not be liable for any additional expenses, settlements or judgments.
- (3)** If you or any insured elect not to appeal a judgment, then we may, at our option, make such appeal at our cost and expense, and we shall be liable for any additional expenses, settlements or judgments to which this policy applies.

We will in no event be obligated to post or obtain any appeal bond, but we will pay for the cost of such a bond obtained by the insured on appeals we consent to, and taxable costs, disbursements and interest incidental thereto.

SECTION V – DEFINITIONS

- 1. "Advertisement"** means the widespread public dissemination of information or images that has the purpose of inducing the sale of goods, products or services through:
 - a. (1)** Radio;
 - (2)** Television;
 - (3)** Billboard;
 - (4)** Magazine;
 - (5)** Newspaper; or
 - b.** Any other publication that is given widespread public distribution.

However, "advertisement" does not include:

 - a.** The design, printed material, information or images contained in, on or upon the packaging or labeling of any goods or products; or
 - b.** An interactive conversation between or among persons through a computer network.
- 2. "Advertising idea"** means any idea for an "advertisement".
- 3. "Aircraft"** includes but is not limited to heavier-than-air flying vehicles, helicopters, gliders, missiles or spacecraft.
- 4. "Aircraft products"** means "aircraft" and any other goods or products manufactured, sold, handled or

distributed or services provided or recommended by the insured or by others trading under his or her name for use in the manufacture, repair, operation, maintenance or use of any "aircraft".

"Aircraft products" includes:

- a.** Warranties or representations made at any time with respect to the fitness, quality, durability, performance or use of "aircraft products"; and
 - b.** The providing of or failure to provide warnings or instructions.
- 5. "Asbestos hazard"** means an exposure or threat of exposure to the actual or alleged properties of asbestos and includes the mere presence of asbestos in any form.
 - 6. "Auto"** means a land motor vehicle, trailer or semitrailer designed for travel on public roads, including any attached machinery or equipment. But "auto" does not include "mobile equipment".
 - 7. "Bodily injury"** means physical:
 - a.** Injury;
 - b.** Sickness; or
 - c.** Disease

sustained by a person and, if arising out of the above, mental anguish or death at any time.

- 8. "Claim expenses"** means:
 - a.** All expenses incurred by or on behalf of you or any other insured with our written consent; and
 - b.** All expense incurred by us on behalf of you or any other insured, if we assume control of the defense pursuant to paragraph **1.c** of the Insuring Agreement.

But "claim expenses" include only those expenses incurred in the investigation or defense of claims or "suits". The following are not "claim expenses":

 - (1)** Claim fees paid to your or any other insured's claim servicing agency;
 - (2)** Any expenses associated with appeals made by you or any other insured without our consent for judgments or settlements, whether greater or lesser than the amount of the "self-insured retention";
 - (3)** Salaries of your "employees", any other insured's "employees", and our "employees", except the costs and expenses of our staff defense counsel and legal assistants; or
 - (4)** Damages.
- 9. "Coverage territory"** means:
 - a.** The United States of America (including its territories and possessions), Puerto Rico and Canada;

b. International waters or airspace, but only if the injury or damage occurs in the course of travel or transportation between any places included in **a.** above; or

c. All other parts of the world if the injury or damage arises out of:

(1) Goods or products made or sold by you in the territory described in **a.** above;

(2) The activities of a person whose home is in the territory described in **a.** above, but is away for a short time on your business; or

(3) "Personal and advertising injury" offenses that take place through the Internet or similar electronic means of communication

provided the insured's responsibility to pay damages is determined in the United States of America (including its territories and possessions), Puerto Rico or Canada, in a "suit" on the merits according to the substantive law in such territory or in a settlement we agree to.

10. "Employee" includes a "leased worker". "Employee" does not include a "temporary worker".

11. "Employment-Related Practices" means:

a. Refusal to employ a person;

b. Termination of a person's employment; or

c. Employment-related practices, policies, acts or omissions, such as coercion, demotion, evaluation, reassignment, discipline, defamation, harassment, humiliation or discrimination directed at a person.

12. "Executive officer" means a person holding any of the officer positions created by your charter, constitution, by-laws or any other similar governing document.

13. "Grounding" means:

a. The withdrawal of one or more "aircraft" from flight operations; or

b. The imposition of speed, passenger or load restrictions on such "aircraft" by reason of the existence of or alleged or suspected existence of any defect, fault or condition in such "aircraft" or any part thereof:

(1) Sold, handled or distributed by the insured; or

(2) Manufactured, assembled or processed by any other person or organization:

(a) According to specifications, plans, suggestions, orders or drawings of the insured; or

(b) With tools, machinery or other equipment furnished to such persons or organizations by the insured;

Whether such "aircraft" so withdrawn or restricted are owned or operated by the same or different person or organizations.

14. "Impaired property" means tangible property, other than "your product" or "your work", that cannot be used or is less useful because:

a. It incorporates "your product" or "your work" that is known or thought to be defective, deficient, inadequate or dangerous; or

b. You have failed to fulfill the terms of a contract or agreement;

if such property can be restored to use by:

a. The repair, replacement, adjustment or removal of "your product" or "your work"; or

b. Your fulfilling the terms of the contract or agreement.

15. "Insured contract" means:

a. A contract for a lease of premises. However, that portion of the contract for a lease of premises that indemnifies any person or organization for damage by fire, lightning or explosion to premises while rented to you or temporarily occupied by you with permission of the owner is not an "insured contract";

b. A sidetrack agreement;

c. Any easement or license agreement;

d. An obligation, as required by ordinance, to indemnify a municipality, except in connection with work for a municipality;

e. An elevator maintenance agreement;

f. That part of any other contract or agreement pertaining to your business (including an indemnification of a municipality in connection with work performed for a municipality) under which you assume the tort liability of another party to pay for "bodily injury" or "property damage" to a third person or organization, provided the "bodily injury" or "property damage" is caused, in whole or in part, by you or by those acting on your behalf. Tort liability means a liability that would be imposed by law in the absence of any contract or agreement.

Paragraph **f.** does not include that part of any contract or agreement:

(1) That indemnifies a railroad for "bodily injury" or "property damage" arising out of construction or demolition operations, within 50 feet of any railroad property and affecting any railroad bridge or trestle, tracks, road-beds, tunnel, underpass or crossing;

(2) That indemnifies an architect, engineer or surveyor for injury or damage arising out of:

(a) Preparing, approving, or failing to prepare or approve, maps, shop drawings, opinions, reports, surveys, field orders, change orders or drawings and specifications; or

(b) Giving directions or instructions, or failing to give them, if that is the primary cause of the injury or damage; or

(3) Under which the insured, if an architect, engineer or surveyor, assumes liability for any injury or damage arising out of the insured's rendering or failure to render professional services, including those listed in **(2)** above and supervisory, inspection, architectural or engineering activities.

16. "Leased worker" means a person leased to you by a labor leasing firm under an agreement between you and the labor leasing firm, to perform duties related to the conduct of your business. "Leased worker" does not include a "temporary worker".

17. "Loading or unloading" means the handling of property:

a. After it is moved from the place where it is accepted for movement into or onto an "aircraft", watercraft or "auto";

b. While it is in or on an "aircraft", watercraft or "auto"; or

c. While it is being moved from an "aircraft", watercraft or "auto" to the place where it is finally delivered;

but "loading or unloading" does not include the movement of property by means of a mechanical device, other than a hand truck, that is not attached to the "aircraft", watercraft or "auto".

18. "Mobile equipment" means any of the following types of land vehicles, including any attached machinery or equipment:

a. Bulldozers, farm machinery, forklifts and other vehicles designed for use principally off public roads;

b. Vehicles maintained for use solely on or next to premises you own or rent;

c. Vehicles that travel on crawler treads;

d. Vehicles, whether self-propelled or not, maintained primarily to provide mobility to permanently mounted:

(1) Power cranes, shovels, loaders, diggers or drills; or

(2) Road construction or resurfacing equipment such as graders, scrapers or rollers;

e. Vehicles not described in **a., b., c. or d.** above that are not self-propelled and are maintained primarily to provide mobility to permanently attached equipment of the following types:

(1) Air compressors, pumps and generators, including spraying, welding, building cleaning, geophysical exploration, lighting and well servicing equipment; or

(2) Cherry pickers and similar devices used to raise or lower workers;

f. Vehicles not described in **a., b., c. or d.** above maintained primarily for purposes other than the transportation of persons or cargo.

However, self-propelled vehicles with the following types of permanently attached equipment are not "mobile equipment" but will be considered "autos":

(1) Equipment, of at least 1,000 pounds gross vehicle weight, designed primarily for:

(a) Snow removal;

(b) Road maintenance, but not construction or resurfacing; or

(c) Street cleaning;

(2) Cherry pickers and similar devices mounted on automobile or truck chassis and used to raise or lower workers; and

(3) Air compressors, pumps and generators, including spraying, welding, building cleaning, geophysical exploration, lighting and well servicing equipment.

19. "Occurrence" means an accident, including continuous or repeated exposure to substantially the same general harmful conditions.

20. "Personal and advertising injury" means injury, including consequential "bodily injury", arising out of one or more of the following offenses:

a. False arrest, detention or imprisonment;

b. Malicious prosecution;

c. The wrongful eviction from, wrongful entry into, or invasion of the right of private occupancy of a room, dwelling or premises that a person occupies, committed by or on behalf of its owner, landlord or lessor;

d. Oral, written or electronic publication of material that slanders or libels a person or organization or disparages a person's or organization's goods, products or services;

e. Oral, written or electronic publication of material that violates a person's right of privacy;

- f. Copying, in your "advertisement", a person's or organization's "advertising idea" or style of "advertisement"; or
- g. Infringement of copyright, slogan, or title of any literary or artistic work, in your "advertisement".

21. "Policy period" means the period beginning with the inception date shown in the Declarations and ending with the earlier of:

- a. The date of cancellation of this Coverage Part; or
- b. The expiration date shown in the Declarations.

22. "Pollutants" mean any solid, liquid, gaseous or thermal irritant or contaminant, including smoke, vapor, soot, fumes, acids, alkalis, chemicals and waste. Waste includes materials to be recycled, reconditioned or reclaimed.

23. "Products-completed operations hazard":

- a. Includes all "bodily injury" and "property damage" occurring away from premises you own or rent and arising out of "your product" or "your work" except:

(1) Products that are still in your physical possession; or

(2) Work that has not yet been completed or abandoned. However, "your work" will be deemed completed at the earliest of the following times:

(a) When all of the work called for in your contract has been completed.

(b) When all of the work to be done at the job site has been completed if your contract calls for work at more than one job site.

(c) When that part of the work done at a job site has been put to its intended use by any person or organization other than another contractor or subcontractor working on the same project.

Work that may need service, maintenance, correction, repair or replacement, but which is otherwise complete, will be treated as completed.

- b. Does not include "bodily injury" or "property damage" arising out of:

(1) The transportation of property, unless the injury or damage arises out of a condition in or on a vehicle not owned or operated by you, and that condition was created by the "loading or unloading" of that vehicle by any insured;

(2) The existence of tools, uninstalled equipment or abandoned or unused materials; or

(3) Products or operations for which the classification, listed in the Declarations or in a policy schedule, states that products-completed operations are subject to the General Aggregate Limit.

24. "Property damage" means:

a. Physical injury to tangible property, including all resulting loss of use of that property. All such loss of use shall be deemed to occur at the time of the physical injury that caused it; or

b. Loss of use of tangible property that is not physically injured. All such loss of use shall be deemed to occur at the time of the "occurrence" that caused it.

As used in this definition, computerized or electronically stored data, programs or software are not tangible property. Electronic data means information, facts or programs:

a. Stored as or on;

b. Created or used on; or

c. Transmitted to or from;

computer software, including systems and applications software, hard or floppy disks, CD-ROMS, tapes, drives, cells, data processing devices or any other media which are used with electronically controlled equipment.

25. "Self-insured retention" refers to the amount(s) set forth in the Declarations as such, and is defined below:

a. As respects the All Coverages (including Products-Completed Operations) Aggregate Retention, "self-insured retention" means the amount you must pay as damages and "claim expenses" for all "personal and advertising injury" and all "occurrences" taking place during the "policy period";

b. Subject to a. above, as respects the Products-Completed Operations Aggregate Retention, "self-insured retention" means the amount you must pay as damages and "claim expenses" for all "occurrences" taking place during the "policy period" and arising out of the "products-completed operations hazard";

c. Subject to a. above, as respects the General Aggregate Retention, "self-insured retention" means the amount you must pay as damages and "claim expenses" for all "personal and

advertising injury" and all "occurrences" arising out of other than the "products-completed operations hazard"; and

- d. Subject to **b.** or **c.** above, whichever applies, as respects the Personal and Advertising Injury Retention, or the Each Occurrence Retention, "self-insured retention" means the amount you must pay as damages and "claim expenses" for "personal and advertising injury", or any one "occurrence", respectively, before we will pay anything.

You are responsible for payment of any sums in satisfaction of the "self-insured retention" regardless of whether you or any other insured is found legally liable for damages.

Your obligation to pay the "self-insured retention" shall apply fully and separately to each "policy period" shown in the Declarations and shall not be reduced by:

- a. The payment of any deductible amount, any participation of the insured or any amount retained by the insured under any other policy of insurance for any other applicable "policy period";
- b. Any payment made on your behalf by another, including any payment from any other applicable insurance;
- c. Any defense costs or damages to which this insurance does not apply; or
- d. Any amount we pay pursuant to **1.b.** of the Insuring Agreement, unless you reimburse us.

However, if the "policy period" is extended after issuance for an additional period of less than 12 months, the additional period will be deemed part of the last preceding period for purposes of determining the applicable "self-insured retention".

- 26.** "Suit" means a civil proceeding in which damages because of "bodily injury", "property damage" or "personal and advertising injury" to which this insurance applies are alleged. "Suit" includes:

- a. An arbitration proceeding in which such damages are claimed and to which the insured must submit or does submit with our consent; or
- b. Any other alternative dispute resolution proceeding in which such damages are claimed and to which the insured submits with our consent.

- 27.** "Temporary worker" means a person who is furnished to you to substitute for a permanent "employee" on leave or to meet seasonal or short-term workload conditions.

- 28.** "Volunteer worker" means a person who

- a. Is not your "employee";
- b. Donates his or her work;
- c. Acts at the direction of and within the scope of duties determined by you; and
- d. Is not paid a fee, salary or other compensation by you or anyone else for their work performed for you.

- 29.** "Your product":

- a. Means:

- (1) Any goods or products, other than real property, manufactured, sold, handled, distributed or disposed of by:

- (a) You;

- (b) Others trading under your name; or

- (c) A person or organization whose business or assets you have acquired; and

- (2) Containers (other than vehicles), materials, parts or equipment furnished in connection with such goods or products.

- b. Includes:

- (1) Warranties or representations made at any time with respect to the fitness, quality, durability, performance or use of "your product"; and

- (2) The providing of or failure to provide warnings or instructions.

- c. Does not include vending machines or other property rented to or located for the use of others but not sold.

- 30.** "Your work":

- a. Means:

- (1) Work or operations performed by you or on your behalf; and

- (2) Materials, parts or equipment furnished in connection with such work or operations.

- b. Includes:

- (1) Warranties or representations made at any time with respect to the fitness, quality, durability, performance or use of "your work", and

- (2) The providing of or failure to provide warnings or instructions.

POLICY NUMBER:

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

AMENDMENT OF OTHER INSURANCE CONDITION - PRIMARY OR PRIMARY AND NON-CONTRIBUTORY WHEN REQUIRED BY CONTRACT

This endorsement modifies insurance provided under the following:

COVERAGE COMMERCIAL GENERAL LIABILITY COVERAGE PART (EXCESS)
COMMERCIAL GENERAL LIABILITY COVERAGE PART (EXCESS – BROAD FORM)

With respect to other insurance available to any person or organization who is an additional insured under this Coverage Part, the following is added to Paragraph 4., **Other Insurance** of **Section IV – Commercial General Liability Conditions**:

4. Other Insurance

If other valid and collectible insurance is available to the insured for a loss we cover under Coverages **A** or **B** of this Coverage Part, our obligations are limited as follows:

a. Primary Insurance When Required By Contract

If you have agreed in a written contract, written agreement or permit that this insurance be primary, then subject to the "self-insured retention", this insurance is primary except when Paragraph **c.** below applies. If other insurance is also primary, we will share with all that other insurance by the method described in Paragraph **d.** below.

b. Primary And Non-Contributory To Other Insurance When Required By Contract

If you have agreed in a written contract, written agreement, or permit that this insurance is primary and non-contributory with the additional insured's own insurance, then subject to the "self-insured retention", this insurance is primary except when Paragraph **c.** below applies and we will not seek contribution from that other insurance.

Paragraphs **a.** and **b.** do not apply to other insurance to which the additional insured has been added as an additional insured.

c. Excess Insurance

- (1)** This insurance is excess over any of the other insurance, whether primary, excess, contingent or on any other basis:

(a) Your Work

That is Fire, Extended Coverage, Builder's Risk, Installation Risk or similar coverage for "your work";

(b) Aircraft, Auto Or Watercraft

If the loss arises out of the maintenance or use of aircraft, "autos" or watercraft to the extent not subject to Exclusion **g.** of Section **I** – Coverage **A** – Bodily Injury And Property Damage Liability; or

(c) Property Damage to Borrowed Equipment Or Use Of Elevators

If the loss arises out of "property damage" to borrowed equipment or the use of elevators to the extent not subject to Exclusion **j.** of Section **I** – Coverage **A** – Bodily Injury And Property Damage Liability.

- (2)** When this insurance is excess over other insurance, we will pay only our share of the amount of the loss, if any, that exceeds the sum of:

(a) The total amount that all such other insurance would pay for the loss in the absence of this insurance; and

(b) The total of all deductible and self-insured amounts under all that other insurance.

- (3) We will share the remaining loss, if any, with any other insurance that is not described in this Excess Insurance provision and was not bought specifically to apply in excess of the Limits of Insurance shown in the Declarations of this Coverage Part.

d. Method Of Sharing

If all of the other insurance permits contribution by equal shares, we will follow this method also. Under this approach each insurer contributes equal amounts until it has paid its applicable limit of insurance or none of the loss remains, whichever comes first.

If any of the other insurance does not permit contribution by equal shares, we will contribute by limits. Under this method, each insurer's share is based on the ratio of its applicable limit of insurance to the total applicable limits of insurance of all insurers.

WORKERS COMPENSATION AND EMPLOYERS LIABILITY INSURANCE POLICY

**WAIVER OF OUR RIGHT TO RECOVER FROM OTHERS
ENDORSEMENT**

We have the right to recover our payments from anyone liable for an injury covered by this policy. We will not enforce our right against the person or organization named in the Schedule.

This agreement shall not operate directly or indirectly to benefit anyone not named in the Schedule.

Schedule

Blanket Waiver of Subrogation

If you are required by a written contract or agreement, which is executed before a loss, to waive your rights of recovery from others, we agree to waive our rights of recovery.

This waiver of rights applies to any person or organization for whom the Named Insured has agreed by written contract to furnish this waiver, but shall not be construed to be a waiver with respect to any other operations in which the Insured has no contractual interest.

Any person or organization for which the employer has agreed by written contract, executed prior to loss, may execute a waiver of subrogation. However, for purposes of work performed by the employer in Missouri, this waiver of subrogation does not apply to any construction group of classifications as designated by the waiver of right to recover from others (subrogation) rule in our manual.

THIS ENDORSEMENT ONLY APPLIES TO POLICIES IN KANSAS WHEN ALLOWED BY LAW (KSA 16-1801 THRU 16-1807)

Does not apply to work performed in the following state(s):
CA, KY, NH, NJ, TX

This endorsement changes the policy to which it is attached and is effective on the date issued unless otherwise stated.

(The information below is required only when this endorsement is issued subsequent to preparation of the policy.)

Endorsement Effective 10-04-2020 Policy No. EWC 059 18 86-00 Endorsement No.

Insured DFP HOLDINGS LLC

Insurance Company THE CINCINNATI CASUALTY COMPANY

Premium \$INCL

Countersigned by _____

WC 00 03 13