

## REPAIR SHOP PROGRAM AGREEMENT

This Repair Shop Program Agreement ("Agreement") is entered into as of the \_\_\_\_\_, by and between Progressive Casualty Insurance Company, an Ohio corporation, on behalf of itself and all other participating subsidiaries of The Progressive Corporation, ("Progressive") and \_\_\_\_\_, a (n) \_\_\_\_\_ ("Contractor").

In consideration of the mutual covenants and agreements set forth herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

### **I. Designation; Referrals; Repairs**

1.1 Program. Progressive hereby designates Contractor as a participant in Progressive's Repair Shop Program (the "Program"), which entitles Contractor to the benefits of this Agreement.

1.2 Definitions. Under this Agreement, the following definitions will apply:

- a. "Claimant" means any Progressive insured or any person who was involved in an accident with a Progressive insured.
- b. "Claimant Referral" means Contractor's receipt of an electronic notice of a repair order from Progressive indicating that Contractor's customer is a Claimant, and the delivery of a vehicle by such Claimant directly to Contractor for repairs.
- c. "Progressive Coordinated Repair" means Contractor's receipt of an electronic notice of a repair order from Progressive indicating that a Claimant has requested that Progressive coordinate repairs on the Claimant's behalf, and the delivery of the Claimant's vehicle to Contractor for repairs. Delivery of vehicles pursuant to a Progressive Coordinated Repair will normally take place when Contractor picks up the vehicle at a Progressive facility, as further described below, but Progressive may also require that the vehicle be picked up from storage or an accident site. Progressive Coordinated Repairs will not be initiated where prohibited by law.

1.3 Contractor's Acknowledgment. Under the Program, vehicles may be delivered to Contractor for repairs either by a Claimant Referral or pursuant to a Progressive Coordinated Repair. Contractor acknowledges, however, that under the Program, Progressive has no obligation to refer vehicles to Contractor and Claimants are not required to use Contractor's services.

1.4 Contractor's Obligations. Contractor will repair or cause to be repaired all Claimant motor vehicles delivered, referred or assigned to, or picked up by, Contractor during the term of this Agreement which have incurred physical damage due to collision, upset, accident or other casualty and will restore such vehicles to their pre-accident condition, according to the terms of this Agreement. Any vehicles at a repair facility operated by Contractor (a "Repair Facility") which are not subject to this Agreement, or are no longer subject to this Agreement, will be the sole responsibility of the vehicle owner.

1.5 Contractor's Right to Opt Out. Notwithstanding anything in this Agreement to the contrary, Contractor shall have the right, if and when the Progressive Coordinated Repair program is initiated in Contractor's geographic area, to decide not to participate in such program. Contractor may invoke this right, and decline to accept vehicles pursuant to Progressive Coordinated Repairs, at any time after initiation of such program by providing written notice thereof to Progressive.

### **II. Purpose**

The principal purpose of this Agreement is to develop the foundation for a productive working relationship between Progressive and Contractor, involving one or more Repair Facilities operated by Contractor, in order to:

- a. achieve a high level of Claimant satisfaction with the automotive physical damage repair process;
- b. ensure that vehicles referred or assigned to Contractor for repair hereunder are afforded a high level of attention and care by the Repair Facilities; and
- c. ensure that such repairs are completed properly, in a cost effective manner and in accordance with ICAR and industry standards and applicable Laws (defined below).

### III. Contractor Requirements

#### 3.1. Compliance; Professional Standards.

- a. In the performance of this Agreement and in operating the Repair Facilities, Contractor will:
  - i. comply with all applicable federal, state and local laws, rules, ordinances and regulations ("Laws");
  - ii. perform all work in a professional, competent and timely manner; and
  - iii. secure and maintain all licenses, permits and bonds required by Law for the operation of each Repair Facility.
- b. Contractor hereby certifies that no employee or agent of Contractor has been convicted of a felony involving breach of trust or dishonesty.

#### 3.2. Insurance. Contractor will procure and maintain, at all times throughout the term of this Agreement, the following minimum insurance coverage's:

- a. Garage Policy of insurance, including, without limitation, the following coverage's:
  - i. Garage Liability Insurance including Product Liability, Contractual Liability and Completed Operations coverage's, in an amount not less than \$1.0 million combined single limit per occurrence;
  - ii. Garage keepers Insurance in an amount not less than \$250,000 combined single limit per occurrence; and
  - iii. Automobile Insurance in an amount not less than \$1.0 million per occurrence, including, without limitation, the following coverage's: Bodily Injury and Property Damage Liability, Comprehensive, Collision, Uninsured and Underinsured Liability and Property Damage Coverage's, and Personal Injury Protection in those states where Personal Injury Protection applies;
- b. Excess Liability Insurance coverage in an amount not less than \$1.0 million combined single limit per occurrence; and
- c. Workers' Compensation coverage in an amount not less than that mandated under applicable state law.

Contractor will cause Progressive Casualty Insurance Company, its parent corporation and each of their respective subsidiaries and affiliates, to be named as Additional Insureds under each policy of such insurance maintained by Contractor (except Worker's Compensation) to the full extent of the coverage limits thereof. Any deductible or self insured retention under such policies shall not exceed \$5,000.00. Each such policy of insurance will be written on an occurrence basis and will provide that it will not be canceled or amended without at least thirty (30) days' prior written notice to Progressive. Contractor will provide Progressive with certificates of insurance, declaration pages from each insurance policy, and copies of the Additional Insured endorsements described above, upon execution of this Agreement, and thereafter Contractor shall provide to Progressive replacement certificates, declaration pages and endorsements at least fifteen (15) days prior to the expiration of such insurance policies evidencing the renewal of such policies or the replacement of such policies in accordance with the requirements of this Section.

Progressive shall not be liable to Contractor for any damage to any real or personal property (including vehicles) owned, leased or used by Contractor or any subcontractor, or for any injury (including death) to any employee of Contractor or any subcontractor, regardless of cause. Contractor, on its own behalf and on behalf of any party claiming under, by or through Contractor by way of subrogation or

otherwise, hereby waives any and all claims it may have against Progressive and its corporate affiliates, and each of their respective officers, directors, or employees, for any such damage or injury. Contractor shall provide to Progressive, at the same time as the issuance of certificates of insurance as required above, endorsements to each applicable insurance policy evidencing the insurance company's waiver of its rights of subrogation against Progressive and its corporate affiliates, and each of their respective officers, directors and employees.

3.3 Education and Training. Contractor agrees to provide continuing formal education for all of its management and technical personnel to ensure that proper repair techniques are mastered and utilized. If Contractor performs frame repairs, applicable Repair Facility personnel must be trained to repair both full frame and unibody constructed vehicles. Certification of appropriate repair shop personnel from I-CAR and ASE, and additional training available from manufacturers, distributors and suppliers of motor vehicles, vehicle components and repair equipment, are also recommended and strongly encouraged. All body and frame technicians will have passed the I-CAR MIG Welding Qualifications Test or will have completed comparable training and demonstrated equivalent capabilities.

#### **IV. Repair Facilities Requirements**

4.1 Repair Facilities. Contractor may own and/or operate one or more Repair Facilities. If Contractor owns and/or operates more than one Repair Facility, each Repair Facility which is subject to the terms of this Agreement shall be listed in a Multiple Repair Facilities Rider and attached to this Agreement. Repair Facilities not so listed on the attached Multiple Repair Facilities Rider are not included in the Program. As to each Repair Facility so listed, Contractor will provide to Progressive, and update as and when necessary, the address of such Repair Facility, days and hours of operation, the identity of the management personnel and shop liaison at such facility and other pertinent information. Each Repair Facility must maintain the capabilities and equipment described in this Article IV, and ensure that its personnel meet the qualifications and complete the training set forth in Section 3.3 above.

4.2 Shop Capabilities; Sublet Work. Contractor agrees that each Repair Facility will maintain the ability to provide high quality state-of-the-art automotive physical damage repair service. Notwithstanding the foregoing, Contractor will: (a) ensure that each of its subcontractors meets the applicable requirements of this Agreement as if such subcontractor was the "Contractor" hereunder; (b) ensure that any subcontracted repairs are performed in accordance with the terms and conditions of this Agreement, including, but not limited to, all applicable quality standards; and (c) warrant the subcontractor's repairs as if those repairs had been performed by Contractor. Contractor will be fully responsible for all subcontracted repairs under this Agreement.

4.3 Required Repair Equipment. Each Repair Facility maintained by Contractor must contain the necessary equipment to restore damaged vehicles to their pre-accident condition. At a minimum, each Repair Facility must contain the following items of equipment, or must sublet repairs subject to this Agreement to subcontractors that have the following items of equipment and can document the training required in Section 3.3 of this Agreement:

- a. If frame repairs are performed at the Repair Facility, unibody and full frame repair equipment capable of restoring damaged full frame and unibody vehicles to their pre-accident condition in terms of function, safety and appearance;
- b. A gas metal arc welder (GMAW/MIG);
- c. Painting systems, methods and materials that are capable of producing an OEM type finish;
- d. A spray booth conforming to all federal regulations and local zoning laws; and
- e. Air conditioning evacuation equipment.

All repair equipment must be maintained in good and safe working order and state of repair at all times, in accordance with all applicable legal and regulatory requirements.

#### **V. Standards of Conduct**

5.1 Conflicts of Interest. Contractor will report to Progressive any known or suspected conflicts of interest involving relationships between Contractor's, any Repair Facility's or any

subcontractor's personnel, on the one hand, and Progressive employees, on the other hand (for example, friends or relatives of Progressive employees who may be employed by Contractor or any of its Repair Facilities).

5.2 Salvage. Progressive employees and agents are prohibited from purchasing Progressive salvage. Contractor and/or the Repair Facility may purchase salvage from Progressive only if prior written authorization is received from the Head of Claims of the local Progressive Business Unit or his/her designee ("Local PGR Manager").

5.3 Gifts, etc. Contractor and/or Repair Facility personnel will not offer or give any gifts, gratuities, commissions, financial incentives, event tickets, meals, travel or entertainment, personal discounts, preferential treatment for goods or services, or any other favors or incentives to any Progressive employee, agent or Claimant (provided that Contractor and/or Repair Facility personnel may treat Progressive employees, as a group, to an occasional meal or local sporting event, subject to the prior approval of the Local PGR Manager).

5.4 Prior Authorization of Repairs. If any Repair Facility plans to repair a Progressive insured vehicle that is owned by Contractor, the Repair Facility, any subcontractor, or any of their respective employees, or a friend or relative of any such employee, or by an individual known by Contractor to be a Progressive employee, notification and prior authorization must be received from the Local PGR Manager before repairs are started.

5.5 Standards. In performing services hereunder, neither Contractor, nor any Repair Facility, nor any subcontractor will:

- a. charge to replace parts which were not damaged as a result of the accident or other occurrence;
- b. charge for labor hours or repair work that was not performed;
- c. cause additional damage to the vehicle which did not result from the accident or other occurrence;
- d. charge for OEM parts when recycled, reconditioned, salvage or after-market parts were used in the repair of the vehicle;
- e. give or receive any gift, compensation, rebate or other consideration to or from any Progressive claims personnel, agent or Claimant;
- f. arrange for or accept any "kickback", payment or other benefit from any subcontractor or vendor who provides any work, service, parts or supplies for any vehicle repaired hereunder (This section will not prevent Contractor from taking advantage of usual and customary prompt payment discounts and/or volume discounts);
- g. enter into a separate agreement with any Claimant to pay a rebate, lower the quality of repair of the vehicle in exchange for a rebate or other benefit, alter or inflate the cost of a repair to reduce or eliminate a deductible or allow repairs of prior or other unrelated damages in order that they may be paid under the covered claim; or
- h. file or assist others in filing false or fraudulent insurance claims with Progressive.

5.6 High Ethical Standards. In performing their respective responsibilities under this Agreement, and in all dealings with Claimants, Progressive and Contractor will act with integrity and adhere to high ethical standards. All Claimants will be treated courteously and with respect.

5.7 Responsibility for Subcontractors. Contractor will further ensure that each of its subcontractors adheres to the standards set forth in this Article V.

## **VI. Service and Repair Standards**

6.1 Service. Each Repair Facility will provide Progressive and/or its Claimants with a level of service (in terms of scheduling priority, cycle time and quality) which is equal to or exceeds that provided to any other insurance carrier(s) by the Repair Facility, and with pricing (rates) which are prescribed by Progressive, within a range of prevailing market rates.

6.2 Repairs. Contractor will complete all repairs necessary to restore the vehicle to its pre-accident condition in terms of form, fit, finish, appearance, durability, functionality and safety. All such repairs shall be completed in accordance with or shall exceed industry standards then in effect. Contractor will complete all structural and/or safety related repairs in accordance with ICAR standards. Contractor will be responsible to ensure that all subcontracted repairs satisfy these standards.

6.3 Web Tracker Compliance.

- a. Each Repair Facility must have internet access at its shop facility and must be able to accept and schedule repair orders electronically via Progressive's web tracker system ("Web Tracker"). Each Repair Facility will log each Web Tracker event onto the Web Tracker system within 24 hours of the occurrence of such event.
- b. When a vehicle arrives at the Repair Facility, the Repair Facility will log the vehicle into Web Tracker as "at shop." Once a vehicle is repaired, the Repair Facility will log the vehicle into Web Tracker as "repair complete". In the case of each vehicle delivered to the Repair Facility by a Claimant Referral, once the Claimant accepts the vehicle, the Repair Facility will log the vehicle into Web Tracker as "delivered to customer."
- c. Each Repair Facility will further comply with new Web Tracker requirements as enhancements or new functionalities become available.

6.4 Pick up and Delivery pursuant to Progressive Coordinated Repairs. Upon receiving electronic notice of a Progressive Coordinated Repair from Progressive, the Repair Facility will accept such Progressive Coordinated Repair electronically via Web Tracker. Upon such acceptance, the Repair Facility will pick up the vehicle (including towing, if necessary) from the Progressive facility or such other location specified by Progressive and, upon completion of the repairs required in accordance with this Agreement, the Repair Facility will deliver the vehicle to the Progressive facility or such other location as Progressive may reasonably specify. If the repairs do not pass the inspection of either Progressive or the vehicle owner, the Repair Facility will make arrangements to promptly return the vehicle back to the Repair Facility for any necessary work and to deliver the vehicle back to the Progressive facility upon completion thereof. All pickup and delivery services will be at no charge to Progressive or the Claimant, unless otherwise required by law. Contractor will have sole responsibility for each such vehicle during the time that the vehicle is in Contractor's care, custody or control, including, without limitation, for any damage to property (including such vehicle) or personal injury (including death) which might occur while such vehicle is being transported by Contractor.

6.5 Parts Use; Variation from Estimate. If Progressive's estimate (or a supplement) specifies an OEM part and Contractor desires to substitute a non-OEM part, or if Progressive's estimate (or a supplement) states that a part should be replaced and Contractor desires to repair the existing part instead, Contractor will notify Progressive and will not substitute such non-OEM part or repair, rather than replace, the existing part, without Progressive's prior written consent.

6.6 Quality Assurance Program

- a. Contractor will maintain and provide a quality assurance program at each Repair Facility, subject to Progressive's reasonable approval, which shall include, without limitation, a quality assurance check on all repaired vehicles prior to delivery to Progressive or the Claimant.
- b. Progressive will have the right at any time or times to review Contractor's performance under this Agreement. Areas of performance subject to review include, without limitation: (i) quality of repairs, (ii) service promptness, including pickup and delivery of vehicles pursuant to Progressive Coordinated Repairs and completion of repairs, (iii) cost control efforts, (iv) administrative compliance, and (v) repair cycle time reduction. Repair cycle time will be evaluated on acquisition speed (report to arrival), and in-shop duration (labor hrs/per shop day). Notwithstanding the foregoing, Contractor acknowledges that repair quality is of paramount importance and may never be compromised for other goals. The reviews may include management reports, review of Paper Files, evaluation of data compiled by Web Tracker, customer surveys and both scheduled and unscheduled review of vehicle repairs by Progressive claims managers and/or quality control

personnel. Progressive personnel will be given full access to each Repair Facility at all times to conduct such audits and to inspect vehicles that are under repair, as well as repairs that have been completed. The Repair Facility inspections may be scheduled in advance or occur unannounced. Contractor and the Repair Facilities will provide Progressive personnel the assistance and cooperation they need to complete their tasks. Results will be reviewed with Contractor and the Repair Facility.

## **VII. Estimates, Supplements, Inspections**

7.1 Estimates. Progressive will write all initial estimates in accordance with the policy contract provisions.

### 7.2 Supplements.

- a. Progressive will write all supplemental estimates ("supplements").
- b. Prior to beginning repairs, Contractor will contact Progressive via Web Tracker if Contractor believes that the items listed on the initial Progressive estimate are not sufficient to allow Contractor to repair the vehicle to pre-accident condition in accordance with the requirements of this Agreement or if Contractor disagrees with the estimate for any reason. If there is potential for undiscovered damage, then within 48 hours after the vehicle arrives at the Repair Facility, Contractor will (i) tear down the vehicle in order to identify any additional work that may be required and (ii) if appropriate, request a supplement from Progressive via Web Tracker.
- c. If, at any point during the course of repairs, hidden damage is discovered or if Contractor believes that the repair process described on the initial estimate should be modified or adjusted, Contractor will immediately contact Progressive via Web Tracker. Contractor may continue with repairs and may order additional parts, as needed, after Contractor contacts Progressive via Web Tracker regarding the need for a supplement; provided, however, that Contractor will immediately discontinue repairs at Progressive's request. A Progressive representative will reinspect the vehicle promptly after receipt of such notice. Upon completion of the reinspection, the parties will determine and agree upon any additional repair work that may be necessary and any resulting supplement.

7.3 Inspection. Contractor will allow Progressive to inspect vehicles before, during and after the repairs are completed to confirm that repairs are completed as specified on the estimate, confirm any additional damages discovered by Contractor and/or determine the quality of repairs completed.

## **VIII. Pricing**

Contractor's final charges for the repairs will be equal to the total amount shown on the Progressive estimate, including any written supplements or revisions made or approved in writing by Progressive. Vehicles repaired under this Agreement will not be subject to storage charges, unless otherwise agreed by Progressive in writing. Towing charges for a Claimant Referral will be reimbursed at the lesser of Progressive's local towing reimbursement policy as in effect from time to time and Contractor's actual cost charged by a third party towing company. Vehicles picked up or delivered pursuant to a Progressive Coordinated Repair will not be subject to towing or other transportation charges.

## **IX. Repair Authorization; Final Invoice and Payment**

9.1 Claimant Referral. If the vehicle is delivered -to the Repair Facility as a result of a Claimant Referral, the following will apply:

- a. Prior to beginning repairs, Contractor will be required to obtain the vehicle owner's permission;
- b. Prior to beginning repairs, Contractor will also contact Progressive's local claims office to verify that coverage and liability are in order. Progressive's procedure is to estimate all vehicles involved in a loss immediately, regardless of pending coverage and liability issues. As a result, a Claimant Referral may be made even though there is a serious

liability or coverage issue. Progressive shall have no responsibility for payment on any particular vehicle unless Contractor has confirmed Progressive's position regarding payment and Progressive has indicated that it accepts coverage and liability for the loss; and

- c. Contractor is responsible for collecting the full cost of repairs from the vehicle owner. Payments will be issued to the vehicle owner and his/her lienholder, if applicable, unless Contractor provides Progressive with a direction to pay Contractor directly, in form acceptable to Progressive, executed by the vehicle owner and any lienholder. If Contractor provides Progressive with a completed direction to pay Contractor directly, duly executed by the vehicle owner and lienholder (if any), Progressive will issue the payment to Contractor and the vehicle owner jointly. Unless otherwise directed by the local claims office, Contractor should not assume that any payments will be issued directly to Contractor as sole payee.

9.2 Progressive Coordinated Repair. If the vehicle is delivered to or picked up by the Repair Facility pursuant to a Progressive Coordinated Repair, the following will apply:

- a. The electronic notice from Progressive to the Repair Facility to pick up the damaged vehicle will constitute the authority to begin repairs, subject to the provisions of this Agreement;
- b. All communications regarding the repair of such vehicle will be with Progressive, and Contractor will not initiate contact with the Claimant directly unless required to do so by Law and then only with prior notice to Progressive; and
- c. Payment for the repairs will be made by Progressive to Contractor promptly upon the vehicle being returned to Progressive at Progressive's facility with all required repairs completed to Progressive's satisfaction.

9.3 Final Invoice. Upon completion of the repair work, Contractor will provide the Claimant (in the case of a Claimant Referral) or Progressive (in the case of a Progressive Coordinated Repair) with a final shop invoice. The invoice will specify the work that was done, the amount charged and whether non-OEM replacement parts are included in the repair. The form and content of such invoice and notice regarding the use of non-OEM parts must comply with all applicable legal requirements.

## **X. Warranties**

10.1 Limited Lifetime Warranty. Contractor hereby grants to Progressive and to each Claimant a limited lifetime warranty of all work performed by Contractor or any subcontractor pursuant to this Agreement (the "Warranty"). Under this Warranty, the Contractor, at no cost to Progressive or the Claimant, will (a) remedy any defects in workmanship and/or any workmanship that fails to meet generally accepted industry standards in effect at the time of the work with respect to form, fit, finish, appearance, durability, functionality and safety ("Industry Standards"), and (b) replace any and all parts which are defective or otherwise fail to meet Industry Standards. All work performed and replacement parts used by Contractor under this Warranty will conform to Industry Standards. Contractor will also pay for associated repair costs and the cost of a rental vehicle necessitated by repair work covered by this Warranty. Notwithstanding anything to the contrary herein, this Warranty: (i) does not cover normal wear and tear or damage caused by improper maintenance, neglect or abuse; (ii) covers each part only for the time period after installation which is equivalent to the duration of the applicable manufacturer's warranty for such part (it being understood that the Contractor will replace such defective parts in accordance with this Warranty and will seek recovery under any manufacturer's warranty separately); and (iii) applies as long as the Claimant owns or leases the vehicle (except that, with respect to parts only, the duration of the warranty period may be limited under the immediately preceding clause (ii)).

10.2 Written Warranty. Contractor will provide each Claimant with a comprehensive written parts and workmanship warranty for all work performed on the vehicle, including, without limitation, any subcontracted work, which written warranty will, at a minimum, conform to the Warranty provided in Section 10.1 hereof. The form and scope of Contractor's written warranty will be subject to Progressive's prior review and approval.

10.3 Delivery of Progressive Guarantee. For each Claimant Referral, when the Claimant picks up the repaired vehicle, the Repair Facility will deliver to the Claimant (i) Progressive's written lifetime guarantee in a form to be provided by Progressive, and (ii) a final copy of the Progressive estimate.

#### **XI. Problem Solving**

11.1 Resolving Repair Complaints. The parties will cooperate to resolve all complaints pertaining to the operation of Contractor's Repair Facilities, the quality of its repair work, the selection of parts and materials, and actions of its personnel. The parties will use all reasonable effort to resolve all Claimant complaints promptly and in a fair and equitable manner. Contractor will immediately notify Progressive of each such complaint that is brought to the attention of Contractor or the Repair Facility. Good judgment must be exercised at all times and the Claimant's best interests must be given full recognition.

11.2 Insurance Claims. Contractor and its Repair Facilities may not attempt to adjust any claim or handle any complaints from a Claimant which relate to the provisions of a Progressive insurance policy or the actions or procedures of Progressive. All such complaints must be referred to Progressive's designated representative ("Progressive Contact") immediately. The Repair Facility may communicate potential or existing complaints to the Progressive Contact or to the Progressive claim representative handling the specific file.

#### **XII. Recordkeeping; Inspection Rights**

12.1 Web Tracker Compliance; Paper File. Each Repair Facility will maintain current vehicle event status information pursuant to Progressive's Web Tracker requirements or such other system as Progressive may specify from time to time. Each Repair Facility will also maintain a related paper file for all repair work performed under this Agreement, including, without limitation, all pertinent information regarding the vehicle, including, but not limited to, work orders, photographs taken, invoices for parts delivered, Progressive's initial estimate, all written supplements, parts ordering information/documentation, authorizations, disclosures and disclaimers ("Paper File").

12.2 File Retention. Photos and other documentation in the Paper File (collectively, the "Claim File") will be retained by the Repair Facility for a minimum of five years ("Minimum Retention Period"). In the event of any dispute or litigation between any Claimant and Progressive or the Repair Facility which is not concluded prior to the expiration of the Minimum Retention Period, all materials in the related Paper File will be retained until such claim or litigation is finally resolved. Progressive, or its representatives, will have the right to inspect, audit and make copies of the Paper File at any and all times during normal business hours.

#### **XIII. Confidentiality**

13.1 Confidentiality Agreement. Contractor acknowledges that the property-casualty insurance markets are highly competitive and that the provisions of this Agreement have been designed, in large part, to implement Progressive's strategy for competing in those markets. Accordingly, Contractor agrees to maintain the provisions of this Agreement in strict confidence and that it will not, directly or indirectly, copy, reveal, discuss, disseminate, transmit or otherwise disclose this Agreement, or any of the provisions hereof, to any third party without the prior written consent of Progressive.

13.2 Other Confidential Information. From time to time, Progressive may disclose to Contractor information that is confidential or proprietary to Progressive ("Confidential Information"). Confidential Information includes, but is not limited to, any information or documentation relating to the business, affairs, marketing or operating strategies, operating methods, claim adjusting techniques or other procedures of Progressive. Contractor agrees to hold the Confidential Information in strict confidence and will not disclose, copy, disseminate, reveal or transmit any of the Confidential Information to any third party without the prior written consent of Progressive and will use the Confidential Information solely to provide repair services pursuant to this Agreement.

13.3 Nonpublic Personal Information. "Nonpublic Personal Information" shall be defined with reference to the Gramm-Leach-Bliley Act of 1999, 15 U.S.C. §§ 6801 et seq., and applicable federal and

state laws and regulations implementing the act (hereinafter, "Privacy Laws"). For purposes of this Agreement, Nonpublic Personal Information shall include any information: (i) a Claimant provides to either party to obtain vehicle repairs; (ii) about a Claimant resulting from any such transaction; (iii) otherwise obtained about a Claimant in connection with providing the vehicle repairs to such Claimant; and (iv) any list, description, or other grouping of Claimants that is derived using any of the foregoing information.

In order to secure vehicle repairs hereunder, Progressive or Claimant may disclose to the Contractor and/or Repair Facility, or the Contractor and/or the Repair Facility may otherwise obtain, certain Nonpublic Personal Information regarding Claimant, including but not limited to his/her name, address and telephone number. Repair Facility agrees that: (i) it will use and disclose any such Nonpublic Personal Information only in the ordinary course of its repair business and only to the extent necessary to carry out the purpose(s) for which it was disclosed, and Repair Facility will inform any such recipient of the confidential nature of such information; (ii) it will hold all Nonpublic Personal Information in strict confidence and safeguard it from unauthorized use or disclosure; and (iii) it will not further disclose Nonpublic Personal Information without the authorization of Progressive or the Claimant to whom the Nonpublic Personal Information relates.

#### **XIV. Advertising**

Contractor will not produce, publish or distribute, or cause to be produced, published or distributed, any advertisement, brochure, promotional materials or other materials in which Progressive's name is mentioned, Progressive's trade names, service marks, trade dresses or logos are used, or language is used from which any connection between Contractor or any Repair Facility and Progressive, or any of its affiliates, may reasonably be inferred or implied, without Progressive's prior written consent, which consent may be withheld or conditioned in Progressive's sole discretion. Consent by Progressive may only be granted by Progressive's Corporate TotalPro Process Leader, whose address is 6055 Parkland Blvd., Mayfield Heights, Ohio 44124.

#### **XV. Indemnification**

Contractor will bear full and sole responsibility for all repair work performed on Claimant vehicles pursuant to the terms of this Agreement, including, without limitation, subcontracted repairs. Contractor will indemnify, defend and hold harmless Progressive, its affiliates and Claimants, and each of their respective directors, officers, employees and agents, (collectively, "Indemnified Parties") from and against any and all suits, actions, claims, liabilities, losses, damages, payments, judgments, settlements, penalties, fines, costs and expenses (including reasonable attorneys' fees) asserted against or incurred by the Indemnified Parties, or any of them, arising out of or relating to: (i) any bodily injury (including death) to any person or damage to the property, tangible or intangible, of any person or entity, to the extent that such injury or damage has resulted from or is attributable to the willful or negligent acts or omissions of Contractor, or any of its subcontractors, officers, employees or agents, and/or any defective or faulty repair work performed by Contractor or its subcontractors, and/or the failure of Contractor to perform repair work required to be performed by Contractor pursuant to this Agreement; (ii) any failure on the part of Contractor or any subcontractor to comply with any Laws, including, without limitation, any Laws relating to the privacy of Nonpublic Personal Information and Laws relating to aftermarket parts use and disclosure requirements; and/or (iii) Contractor's or any subcontractor's failure to comply with any of the terms and provisions of this Agreement.

#### **XVI. Termination**

16.1 Termination for Convenience. Either party may terminate this Agreement, with or without cause, at any time by providing the other party with not less than thirty (30) days' prior written notice of termination. If Contractor owns or operates more than one Repair Facility, either party may terminate this Agreement as to all such Repair Facilities or as to any one or more of such Repair Facilities pursuant to this Section 16.1.

16.2 Termination for Cause. Either party may terminate this Agreement at any time upon written notice to the other party ("Defaulting Party") if the Defaulting Party fails to observe or perform, in any material respect, any of its covenants or obligations under this Agreement, and such failure continues for seven (7) or more days after the Defaulting Party has received written notice thereof. If Contractor

owns or operates more than one Repair Facility, Progressive may terminate this Agreement as to all such Repair Facilities or as to any one or more such Repair Facilities pursuant to this Section 16.2.

16.3 Post-Termination Obligations. Upon any termination of this Agreement, Contractor and each affected Repair Facility will:

- a. at Progressive's election, either promptly complete the repairs as to each vehicle then at the Repair Facility in accordance with the requirements of this Agreement, or promptly return each such vehicle to Progressive together with all funds paid by either Progressive or the Claimant for the repair of such vehicle; and
- b. return to Progressive all procedural manuals and promotional materials furnished by Progressive.

16.4 Survival. The provisions of Articles X, XII, XIII, XIV, XV and XVII, and this Article XVI, will survive any termination of this Agreement.

**XVII. Dispute Resolution Procedures**

In the event the parties are unable to resolve any claim, dispute or controversy hereunder ("Dispute"), the parties will resolve the Dispute not by litigation or other judicial means, but through a Dispute Resolution Process consisting of a progression of the following: discussions at the management level, mediation, and if unsuccessful, binding arbitration. In the event of any Dispute, either party may initiate the Dispute Resolution Process by delivering written notice thereof to the other party. Any mediation or arbitration proceedings will be conducted in accordance with the applicable rules of the Center for Public Resources ("CPR"), as then in effect, except as otherwise agreed by the parties. Nothing herein will prohibit either party from: (a) seeking a temporary restraining order, preliminary injunction or other provisional relief if, in its judgment, such action is necessary to avoid irreparable damage or to preserve the status quo or from bringing and pursuing legal action to specifically enforce the provisions of this Article; or (b) terminating this Agreement pursuant to Section 16.1 above. In any such arbitration proceeding, the tribunal may award only compensatory damages and is not empowered to award punitive or exemplary damages. Attorneys' fees and disbursements may be awarded to the prevailing party. Any such award shall be binding upon the parties hereto, and will not be appealable to any court or other tribunal. The arbitration award may be entered in any court of competent jurisdiction and enforced through the court processes.

**XVIII. Miscellaneous**

18.1 Independent Contractor. In performing services pursuant in this Agreement, Contractor will act as, and will be deemed to be, an independent contractor and will have sole and exclusive control of the work and the manner in which it is performed. Contractor is not to be considered the agent or employee of Progressive and no partnership, agency or joint venture relationship exists, or will be deemed to exist, between the parties hereto.

18.2 Savings Clause. In the event any one or more of the provisions contained herein are hereafter held to be unenforceable in any respect for any reason under the law of any state or of the United States of America, it may be adjusted by a court of competent jurisdiction rather than voided, if possible, in order to achieve the intent of the parties to this Agreement to the fullest extent possible. No such unenforceability will affect any other provision of this Agreement, all of which will remain in full force and effect in accordance with their respective terms.

18.3 Notices. All notices and other communications hereunder will be in writing and will be deemed to have been duly given when delivered in person or by telegram, telex or e-mail, or three days after being mailed by registered or certified mail (postage prepaid, return receipt requested), or one day after being sent via a courier of national reputation to the respective parties, as follows:

If to Progressive: Progressive Casualty Insurance Company

If to Contractor: \_\_\_\_\_

Attention : \_\_\_\_\_

Fax #: \_\_\_\_\_

E-Mail : \_\_\_\_\_

or to such other address as the party to whom notice is given may have previously furnished to the other in the manner set forth above (provided that notice of any change of address will be effective only upon receipt thereof). Notwithstanding the foregoing, all requests with respect to advertising shall be sent to Progressive at the address set forth in Article XIV.

18.4 Entire Agreement. This Agreement constitutes the entire understanding and agreement between the parties hereto with respect to the subject matter hereof and supersedes all prior or contemporaneous promises, representations, agreements, understandings, negotiations and discussions, both written and oral, between the parties hereto with regard to such subject matter, including, without limitation, any prior TotalPro agreements.

18.5 Benefits; Binding Effect; Assignment. This Agreement will inure to the benefit of and be binding upon the parties hereto and their respective successors and permitted assigns. Except as expressly provided herein, neither party may assign this Agreement, or any of its rights or interests herein, or delegate any of its obligations hereunder, without the prior written consent of the other party; *provided, however*, that, without such consent, the benefits of this Agreement may be extended to any or all of Progressive's corporate affiliates.

18.6 Amendments and Waivers. This Agreement may not be modified or amended except by an instrument in writing signed by both parties. Either party hereto may, only by an instrument in writing, waive compliance by the other party hereto with any term or provision hereof. The waiver by any party hereto of any term or provision of this Agreement, or of any breach thereof, will not be construed as a waiver of any other term or provision or of any subsequent breach thereof.

18.7 No Third Party Beneficiary. Except as expressly provided herein, nothing contained in this Agreement is intended, or will be construed, to confer upon or give to any person other than the parties hereto and their respective successors and permitted assigns any rights or remedies under or by reason of this Agreement.

18.8 Amendments. This Agreement may not be released, discharged, altered, amended or modified except by a writing signed by both of the parties hereto.

18.9 Non-exclusivity. This Agreement will not be exclusive as to either party and does not establish any exclusive rights or territories.

18.10 Riders. The following Riders are attached to this Agreement and incorporated herein for all purposes: \_\_\_\_\_

**IN WITNESS WHEREOF**, the parties hereto have each executed and delivered this Agreement, in multiple counterparts, as of the day and year first above written.

PROGRESSIVE CASUALTY INSURANCE COMPANY

By: \_\_\_\_\_

Title: \_\_\_\_\_

