

Printing Sales Contracts: Samples from the Industry

A Product of Printing Industries of America's
Human Relations Department

Printing Industries of America, Inc.
Sewickley, Pennsylvania

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Foreword

Printing Industries of America has long been known to members as a great resource for best practices information and networking. This book is yet another resource for graphic communications firms to learn from each other in the area of sales contracts. The contents of this book come from Printing Industries of America member companies who participated in a survey during the summer of 2008, which collected contracts that relate to customers. In addition, we are including sample language regarding subcontracting in the Appendix from the law firm of Ferrara, Fiorenza, Larrison, Barrett & Reitz in Syracuse, New York.

We specifically caution our readers to refrain from attempting to “lift” any of the materials that follow and implement them on an “as-is” basis. That is not the purpose of this resource. Rather, the reader should view this publication as a source of ideas, potentially one among many, and as a general guide for structuring and implementing their sales contracts. Implementing any of the contracts included herein as-is, without considering your company’s individualized goals, strategies for achieving those goals, management style, financial status, and especially applicable federal, state, and local laws is a prescription for failure and could inadvertently wind up damaging your company, financially or otherwise. We urge you to use this resource as a starting point and review with local legal counsel to ensure compliance with all applicable laws and regulations. Printing Industries of America is not responsible for any legal liabilities, damages, penalties, or losses in any form or amount whatsoever, arising from use of any of the materials or information in this book.

We are grateful to all of Printing Industries of America members who submitted contracts for this project. Plus, the following members who assisted us in the evaluation of the contracts submitted.

Keith Pattison
Dartmouth Printing Company
Hanover, New Hampshire

Tim D. Roberts, Jr.
ROI Printing Companies
Baltimore, Maryland

John H. Evans, Jr.
Sterling C. Sommer, Inc.
Tonawanda, New York

Woodrow (Woody) Dixon
Williamson Printing Corporation
Dallas, TX

Without the above individuals’ dedication and efforts, this publication would not be possible.

Stephen Esser
Chairman, Printing Industries of America Labor Policy Committee
President, Kutztown Publishing Co., Inc.
Kutztown, Pennsylvania

Introduction

Companies in the graphic communications industry must be flexible in order to survive. The technology revolution experienced in prepress, press, and now bindery are proof positive of this. The same holds true in customer relationships and legal agreements and protections. Because of these and other changes in the industry, sales contracts must change as well to reflect new services and customer demands. Not to mention changes in contract law.

While we don't have complete historical evidence, the use of sales contracts in the commercial print industry has been light for much of the industry's history. However, due to increased complexity of jobs, ownership of materials, and legal requirements and case law, more and more graphic communications firms have requested sample sales contracts from Printing Industries of America in recent years. Because the industry is so diverse and state legal requirements are becoming more complex, we decided to publish this collection of sample contracts from the industry. As noted in the Foreword, this publication does not serve to set any standards of contracts for the industry, but rather as a source of ideas that the reader may use to customize to fit their company. The reader must also seek the advice of experienced legal counsel in the states in which you operate and/or sell to ensure that your agreement will protect your interests.

Companies that have not used sales contracts in the past have often use the industry's Business Practices (formerly known as Trade Customs). The Business Practices can easily be used in conjunction with a sales contract in our industry. The reader should note that industry representatives will be working on updating the Business Practices in 2009, and we expect publication late in the year.

This project not only included the collection of contracts but also surveyed firms' use of the industry's Business Practices and their contracts. Below are some of the results.

Number of firms responding:	51
Average size of firm:	83 employees
Median size of firm:	51 employees
Commercial Printing:	86%
Book Printing:	8%
Magazine:	2%
Labels and Wrappers:	2%
Bindery and Postpress:	2%
Currently use the industry's Business Practices:	41%
Currently use the industry's old Trade Customs:	16%

None of the firms using a printing sales contract reported that they had to enforce it in court of law.

Section I
Fulfillment Agreements

Fulfillment Agreement I

FULFILLMENT AGREEMENT

(1) Introduction: This agreement has been compiled by ABC PRINTING COMPANY and is based upon the Mailing & Fulfillment Service Association's trade customs.¹

(2) Fulfillment Defined: Fulfillment is the receipt, storage, assembly and shipment or transmission of product and/or data for another party including the processing of returns if so agreed.

(3) Proposals: Not binding unless accepted within 30 days.² Proposals are based on program specifications provided by the client and agreed to by ABC PRINTING COMPANY on the date of the proposal. Specification changes, prior to the acceptance of the proposal or during the completion of work, entitles ABC PRINTING COMPANY to adjust pricing accordingly. Proposals may include charges for freight, packing materials, postage, telephone company charges, communication transmissions, taxes, pickups or deliveries, or credit card processing fees and other activity related fees that are required to complete the client application.

(4) Termination: On termination of a program, ABC PRINTING COMPANY will be compensated in full for any work or services performed through the date that services are terminated, plus costs involved in scraping or preparing the material for shipment, the cost of preparing a final inventory, and the cost of any goods or services purchased or produced prior to termination. Fulfillment projects may be canceled by the client at any time by notice in writing or via e-mail with the understanding that ABC PRINTING COMPANY will be compensated in full for any work or services performed prior to cancellation, plus the cost of any goods or services purchased or produced for the fulfillment program. It is understood that ABC PRINTING COMPANY has the right to hold all inventory until all outstanding invoices have been satisfied.

(5) Postage/Freight Payments: Clients provide postage and freight charge advances, prior to mailing and shipping, based on mutually agreed to estimates of anticipated needs and as stipulated in the proposal. ABC PRINTING COMPANY may either mark-up or provide discounts to published shipping prices based on the term stipulated in the signed proposal.

(6) Bank Fees, Processing Charges and Retention: When caging, cashiering and merchant accounts are involved in a fulfillment program the client is responsible for all bank charges and fees including, but not limited to, deposit fees, check clearing fees, check verification fees, merchant account fees, and credit card processing fees and other fees to service client's orders. In instances where ABC PRINTING COMPANY uses its own merchandising account, ABC PRINTING COMPANY may retain or require deposit of funds in a sufficient amount and for a reasonable period, up to 120 days, to honor credit card charge-backs, refund requests, returns, etc.

(7) Right of Refusal: ABC PRINTING COMPANY may refuse at any time to handle or distribute any copy, photographs or illustrations of any kind that in ABC PRINTING COMPANY'S sole judgment is an invasion of privacy, is degrading, libelous, unlawful, profane, obscene, pornographic, tends to ridicule or embarrass, or is in bad taste, or which in ABC PRINTING COMPANY'S sole judgment is an infringement on a trademark, or

¹ Since the published trade customs may change over time, you might want to specify the date of the version of the trade customs referenced here.

² You may want to specify that the acceptance must be "in writing" or "by mail."

trade name, or service mark, or copyright belonging to others, or is in violation of the FTC Mail or Telephone Order Merchandise Trade Regulation Rules.

(8) Databases: A client's databases in ABC PRINTING COMPANY'S possession, for storage or otherwise, are the exclusive property of the client and shall be used only at the client's instructions. ABC PRINTING COMPANY shall provide reasonable and prudent protection against the loss of a client's data. A minimum suggested security program shall contain utilization of anti-virus software, firewall protection and other current technologies; a security training programs for specific employees, and a current security policy. Additional security measures will be negotiated and stipulated in the proposal. This includes adequate backup procedures for all files and programs. ABC PRINTING COMPANY shall pay for the cost of transferring a copy of a replacement file in the event of systems failure, loss by fire, vandalism, theft, or other such causes (excluding destruction of the data due to client's negligence or willful misconduct), provided that the client has duplicate data files or has the source material from which the client can compile replacement data. ABC PRINTING COMPANY shall not be liable for compiling such data nor for any intangible or special value attached thereto.

(9) Client-Provided Materials: ABC PRINTING COMPANY assumes that all materials provided will meet manufacturers' specifications as stipulated in the proposal referenced in paragraph (3) above. Materials which do not meet manufacturers' specifications may be subject to pricing at special rates. Client will be notified when a deficiency is discovered and approval will be obtained for handling at special rates before proceeding with work, and a new delivery schedule may result.

- (a) Client is expected to provide ABC PRINTING COMPANY with sufficient inventory or adequate sources of supply to meet anticipated demand. The client is asked to provide advanced notification to ABC PRINTING COMPANY for incoming shipments. Cost for backorders, delay notices, canceled orders and increased client service resulting from out of stock conditions will be billed to client.
- (b) Collect shipments are accepted only if client obtains prior written clearance from ABC PRINTING COMPANY and, in such event, a service charge may be added to the actual freight charges.
- (c) Each incoming carton or skid must bear an identity, item code, quantity and a sample clearly visible. Each skid must have only one material version, unless clearly marked and separated. Multiple items should not be included within a single carton, skid or container unless noted thereon and on accompanying paperwork.
- (d) All items must be clearly and accurately coded. ABC PRINTING COMPANY shall not be responsible for picking and packing errors which result from the erroneous marking of items or the client's failure to code them.
- (e) Delivery tickets must accompany the material delivered, and should show the number of skids or cartons, the quantity per skid or carton, the corresponding item number, and the total delivery quantity.
- (f) If the client asks that shipper counts on incoming material be accepted until processing, ABC PRINTING COMPANY is not responsible for shortages discovered at that time.

(10) Spoilage, Counts, and Shrinkage: ABC PRINTING COMPANY is not responsible for normal spoilage of material that occurs naturally during processing.

There are three categories of shrinkage allowances typical in the fulfillment industry:

- (a) If ABC PRINTING COMPANY is not authorized to perform counts of the literature or products received, nor is there independent verification, then no realistic shrinkage expectations can be developed and the fulfillment company is not responsible for inventory shrinkage.
- (b) If ABC PRINTING COMPANY performs test counts, spot checks and weight counts, the industry standard for shrinkage is 5% to 10% of the printed material received and 2% to 3% of products received.

(c) If ABC PRINTING COMPANY has been paid to count/verify valuable items on receipt and to maintain the counted material in a special secured environment, the standard shrinkage allowances do not apply, and ABC PRINTING COMPANY is responsible for losses that could have been prevented by exercising reasonable and prudent care.

Any liability for losses that ABC PRINTING COMPANY assumes is limited to the cost of the materials and does not include indirect or consequential claims, such as loss of sales or opportunity.

(11) Packaging: Unless otherwise agreed upon, prices quoted assume usage of ABC PRINTING COMPANY'S standard cartons, envelopes, and packaging materials. Custom or specified materials may involve additional materials and handling charges and longer lead times.

(12) Excess Materials: Absent specific instructions from the client on the disposition of excess materials, ABC PRINTING COMPANY may collect reasonable storage charges. If the client fails to respond to a disposition request and fails to pay applicable storage charges ABC PRINTING COMPANY may, after 60 days, destroy the stored material.

(13) Order Processing and Delivery Schedules: ABC PRINTING COMPANY is not responsible for failure to meet agreed on processing schedules if such failure can be traced to fire, accidents, acts of God, mechanical breakdown, acts of terrorism, failures on the part of the U.S. Postal Service or other common carriers, or other events that are outside the control of ABC PRINTING COMPANY.³

(14) Insurance: Client retains title to and the insurable interest in its materials. ABC PRINTING COMPANY is responsible only for losses that are the direct result of its own willful or negligent acts.

(15) Errors in Fulfillment: ABC PRINTING COMPANY is responsible to correct misdirected or erroneous shipments provided the errors were the fault of ABC PRINTING COMPANY. Its liability is limited to the cost of re-shipping a corrected order and, if the client requests, retrieval or remanufacture of the material shipped in error. ABC PRINTING COMPANY is not liable for loss of business or incidental or consequential damages or costs.

(16) Delinquent Invoices: If money is owed ABC PRINTING COMPANY it may, at its option, hold up the order processing and shipping process until past due payment has been received. It may also hold the client's data, materials, or other property against payment of delinquent invoices. "Delinquent" is defined as "past the agreed or specified payment date."

(17) Verbal Orders: Final specifications for verbal orders are those understood by ABC PRINTING COMPANY at the time the work was completed.

(18) Hold Harmless: The client defends and holds ABC PRINTING COMPANY harmless from and against all damages, costs, expenses (including reasonable attorneys' fees), liabilities, or losses arising out of or resulting from (a) ABC PRINTING COMPANY acting as client's agent and (b) ABC PRINTING COMPANY'S performance of the fulfillment function on behalf of or in accordance with specifications established and agreed upon by the client.

ABC PRINTING COMPANY approved revision 01/01/08

³ You might also consider adding "labor disputes" to this list.

Fulfillment Agreement II

Agreement for Fulfillment Services

ABC Printing Company, Inc. (ABC) agrees to provide storage and fulfillment services for **XYZ Company (XYZ)**, subject to the agreed upon terms, conditions and billing structure as detailed below. The terms of this agreement shall be continually in force for a period of 2 years from the effective date of this agreement. Additionally, this agreement will automatically extend for additional 1 year terms, unless XYZ, at least 90 days prior to expiration of the agreement, delivers written notice to ABC of their intention to cancel services. There will also be a 60 day notification of any change in base charges, or transaction charges, covered by this agreement. This agreement remains in effect until a revised agreement is signed.

XYZ agrees to pay a base monthly charge which covers the cost of storage space, record keeping and other costs related to the maintaining of proper stocking and distribution of XYZ's materials. In addition, there will be transaction charges for each order filled by ABC Printing on behalf of XYZ and for the receipt of shipments of fulfillment inventory materials into ABC from outside sources. There will be no receiving charges for materials that are printed or produced by ABC and placed into the fulfillment inventory.

◆ **Initial setup charge for system:** **No Charge**

ABC will create a basic on-line ordering system, set up inventory SKU's for all items, and make available standard reports for data accessibility. Further customization and integration with other systems is available at an additional cost.

◆ **Initial receipt of inventoried materials:** **Freight Charges Only**

ABC will not charge for the receipt of initial inventory materials from other locations. If ABC is asked to coordinate the shipment of all products from XYZ's current fulfillment supplier, ABC will only charge XYZ the actual freight costs to do so.

◆ **Base Monthly Charge:**

Base system maintenance/support:	\$ per month
For each skid spot used (400 skids or more):	\$ per month
For each SKU edit or add:	\$ per SKU

◆ **Incoming bulk or carton shipments—Transaction Charges:**

1 carton or mixed skids:	\$ per item
1 skid:	\$ per skid
2–5 skids:	\$ per skid
6 or more skids:	\$ per skid

◆ **Outgoing bulk or carton orders—Transaction Charges:**

Base rate to initiate order and create a record:	\$ each order
Additional per SKU Line:	\$ per SKU
Additional for shipments to a P.O. box:	\$ per shipment
Additional for same day shipment (ordered before 2:00 P.M.):	\$ per order
Delivery charge for Madison area deliveries:	\$ per delivery
Orders received via fax or phone rather than electronically:	\$ per order
Postage or freight charges:	\$ Actual

Additional hourly charges, at the rate of \$XX.00 per hour, may be incurred for, but are not limited to, the following: requests to verify counts on incoming materials; special packaging and kitting needs; transaction orders requiring special handling; foreign shipments; other services not generally covered by this agreement.¹

ABC will provide billing on a monthly basis, with a complete record of all transactions for the billing period. The record will be provided in a format and manner that is most convenient for meeting XYZ's needs for transaction records. Access to inventory records, order tracking and order placement will be provided electronically through the Internet.

The parties agree that any issue pertaining to this agreement, including interpretation, performance or claims of breach shall be governed by laws of the state of Wisconsin.

This agreement is subject to the receipt guidelines and industry trade customs as attached:²

Date of Agreement: _____

Effective Date of Agreement: _____

XYZ Company

ABC Printing Company
(name), COO/CFO

Print Name

¹ This could be interpreted as limiting ABC's ability to charge more than the specified \$XX.00 per hour for these other services. If there could be other services that ABC would like to charge more for, the contract could say instead, "In the event ABC finds it must charge more for other services not covered by this Agreement, the additional hourly charge shall be specified separately in an amendment to this Agreement."

² The trade customs should specify such things as indemnification, ownership of materials, insurance, etc. If the Mailing & Fulfillment Service Trade Customs are used, they will be sufficient to cover these additional important items.

Guidelines for Receipt of Customer-Provided Materials to ABC Printing Company

The following information should be provided to all outside sources regarding inbound receipt of product and materials received by ABC Printing Company. Copies of our complete shipping standards can be forwarded to your vendors upon request.

Materials must be stacked and packed according to the following specifications:

- 1. All pallets must be either 40×48-in. or 42×48-in. in size.**
- 2. Product *must not* be stacked higher than 52-in. (from ground level) on the pallet.**
- 3. Contents of the cartons including product description, code or item number, quantity and sample must be facing outward on *at least two* of the four sides.**
- 4. Product must be wrapped and secured to the pallet.**
- 5. All partial cartons must be marked as “Partial Carton,” placed on the top layer of the pallet, and properly labeled as described in #3.**
- 6. All pallets must be in good condition with bottom runners intact and no broken boards.**

All products and materials received from outside sources should also conform to the following standards:

- 1. Packing slips or delivery tickets *must* accompany the material delivered, and should show the number of skids or cartons, the quantity per skid or carton, the corresponding item #, and the total delivery quantity.**
- 2. It is recommended that all material receipts be spot-checked, weighed, or counted to verify the accuracy of the shipper’s counts. For printed materials, these are frequently subject to question because of the standard 10% allowance on such material. Fulfillment houses are frequently asked to accept printers’ or manufacturers’ counts until processing. In such instances, we shall not be responsible for shortages discovered at that time.**
- 3. All fulfillment, printing, binding, assembly, and direct mail handling and processing involves spoilage. Allowances for spoilage should be taken into consideration in ordering material. Every effort will be made to handle our customer’s material carefully to prevent undue spoilage. Nevertheless, we shall not be responsible for shortages of material as a result of normal spoilage in processing.**

[Fulfillment Trade Customs from the Mailing and Fulfillment Service Association are then attached.]

Fulfillment Agreement III

The ABC PRINTING Company Fulfillment Services Agreement

This Service Agreement is made by and between THE ABC PRINTING COMPANY, a [insert state] corporation having offices at [insert address] and CUSTOMER NAME HERE (herein "Client"), effective this [insert date].

WITNESSETH

WHEREAS, ABC PRINTING COMPANY is a provider of various direct marketing services, including but not limited to product and literature fulfillment, printing, and database management; and

WHEREAS, Client desires to utilize the services offered by THE ABC PRINTING COMPANY;

NOW THEREFORE, in consideration of the mutual covenants, conditions, and promises contained herein, the parties agree as follows:

THIS AGREEMENT supersedes any and all prior agreements between the parties hereto, whether written or oral.

1. Inventory Management: THE ABC PRINTING COMPANY shall store such properties as shall be delivered to, by, or for the Client or any of its subsidiaries or affiliates (all of which shall hereinafter be called "Properties"). The Properties shall consist of items of personal property of the kind used by the Client. It is agreed that THE ABC PRINTING COMPANY shall use as much space as necessary to store the Properties and the Client will compensate THE ABC PRINTING COMPANY in accordance with the pricing schedule set forth in Exhibit A attached hereto and made a part hereof.

2. Reasonable Care: THE ABC PRINTING COMPANY shall use reasonable care in its storage and handling of the Properties and will be liable to the Client for the replacement value of Properties which are stolen, destroyed, or otherwise disappear, and/or any damage to the Properties resulting from the lack of reasonable care or willful misconduct on the part of THE ABC PRINTING COMPANY or its agents or employees.

3. Acceptance of Order: Client agrees that THE ABC PRINTING COMPANY may refuse at any time to mail any copy, photographs, illustrations, or products of any kind that in THE COMPANY'S sole judgment it believes not to be in compliance with specific terms of the order, is fraudulent, is an invasion of privacy, is degrading, libelous, unlawful, profane, obscene, pornographic, tends to ridicule or embarrass, or is in bad taste, or which is an infringement on a trademark, or trade name, or service mark, or copyright belonging to others or is in violation of the FTC's Mail or Telephone Order Merchandise Trade Regulation Code.

4. Term of Agreement: The term of this Agreement shall be for a period of one (1) year from the effective date hereof. Upon the expiration of the original one (1) year term of this Agreement, both parties have the right to extend the Agreement by mutually written notice, provided the terms and conditions are satisfactory to both parties.

5. Term Extension: Either party shall provide written notice to the other party whether they wish to extend the original one year term of this Agreement at least ninety (90) days before the expiration of the original term of this Agreement. The first day of such ninety (90) day period shall be the day after the notice is deposited, postage prepaid, and registered, in the mail addressed to each party's last known address.

6. Termination: This Agreement may be terminated without cause by either party hereto, upon ninety (90) days written notice given by either party to the other. If the Agreement is terminated, THE ABC PRINTING COMPANY shall be compensated in full for any work or services performed through the date that services will be terminated, plus costs invoiced in scrapping or preparing the material for shipment, the cost of preparing a final inventory, and the cost of any supplies, goods, or services purchased prior to cancellation. Fulfillment and bulk mail processing requires a significant commitment of skilled personnel, systems, and space that take time to redeploy and absorb, thus requiring advance notice of cancellation.

7. Prices Based on Specifications: Prices set forth in Exhibit A are based upon THE ABC PRINTING COMPANY's understanding of the specifications submitted and samples provided by Client. If there is a change in specifications, instructions, systems, method of shipping, or volume resulting in additional costs, the work performed will be billed at the then current or minimum rates, and the entire program or order processing may be delayed.

8. Price Quotes: All prices described in Exhibit A shall be guaranteed for a period of six (6) months from the effective date, hereof, except for provided exceptions in Paragraph 7 herein. Any price increase after the initial six (6) months period shall be given by THE ABC PRINTING COMPANY to Client in writing at least thirty (30) days in advance of such increase. Should such increases not be acceptable to Client, Client may exercise its option to terminate this Agreement pursuant to Paragraph 6 hereof, in which event the increase shall be ineffective during the time from notice to terminate.

9. Minimum Fee: THE ABC PRINTING COMPANY'S minimum charge on any invoice for a project is \$200.00. When possible and practical we will endeavor to group incidental charges together on the monthly invoice. All charges except those for storage and freight shall be applicable towards this minimum. We will invoice for service once per month for ongoing fulfillment work and "as complete" for special projects.

10. Credit Terms: As compensation for THE ABC PRINTING COMPANY'S performance of its obligations hereunder during the term hereof Client shall pay to THE ABC PRINTING COMPANY all invoiced amounts within thirty (30) days from the invoiced date. All charges shall be invoiced as work is completed. Any invoiced amount unpaid after thirty (30) days shall accrue interest at one and one-half percent (1½%) per month from the date of invoice.

11. Postage/Freight Costs: Prices quoted herein do not include postage or freight. Payment of postage and freight shall be paid by Client in advance. For ongoing programs, an escrow fund or advance equal to anticipated postage/freight for thirty (30) to sixty (60) days shall be established. The intent being that the postage fund amount shall never drop below a thirty (30) day supply of postage/freight.

12. Service Standards: THE ABC PRINTING COMPANY agrees that all services rendered by it under this Agreement shall be performed in an efficient manner in accordance with the following Service Standards:

- 12.1** All time periods shall begin to run upon THE ABC PRINTING COMPANY'S receipt of all needed components. In determining whether the Service Standard has been met; Saturdays, Sundays, and legal holidays observed by Client and/or THE ABC PRINTING COMPANY shall be excepted.
- 12.2** Time periods for production shall be agreed on in advance and signed off by the client prior to the commencement of work.
- 12.3** Inventory received by THE ABC PRINTING COMPANY and evidence thereof shall be delivered to Client either through phone, fax, or writing if requested by client, or by entry into our computer system within forty-eight (48) hours of said receipt. This Service Standard is exclusive of Saturdays, Sundays, and legal holidays observed by either Client or THE ABC PRINTING COMPANY or by equipment malfunctions (i.e., hardware, software, machinery, etc.) at either Client or THE ABC PRINTING COMPANY or any other participating vendor or service bureau.

12.4 THE ABC PRINTING COMPANY shall provide all labor and equipment necessary to render such services, including without limiting the generality of the foregoing: order fillers, shipping clerks, truck drivers, receiving clerks, machine operators, supervisors, trucks, and other equipment. THE ABC PRINTING COMPANY shall supply all necessary shelving, wrapping materials, work tables, and equipment ordinarily found in a fulfillment/ mailing facility. THE ABC PRINTING COMPANY shall have full discretion as to the number of employees it wishes to employ in order to discharge its obligations under this Agreement.

13. Materials: THE ABC PRINTING COMPANY assumes and conditions all quotations on the condition that all material provided will permit efficient handling on automated equipment, and meets equipment manufacturers' specifications. All materials which are not up to acceptable operations standards due to poor folding, facing trimming, packing, sticking together of material, insufficient leeway between enclosures and envelopes, square envelope flaps or other causes, will be subject to pricing at special rates. Client will be notified when a deficiency is discovered and approval will be obtained for handling at special rates before proceeding with work; and a new delivery schedule may result.

13.1 Collect shipments will be accepted only if approval is given by THE ABC PRINTING COMPANY in advance, and a service charge of fifteen percent (15%) will be added to the actual freight charges.

13.2 Each incoming carton or pallet must bear an identity, item code, quantity, and a sample clearly visible. Each pallet must have only one material version, unless clearly marked and separated. Multiple items should not be included within a single carton, pallet, or container unless noted thereon and on accompanying paperwork. Any pallets with product stacked more than 4 feet, 4 inches high (measured from the floor), or weighing more than 2,500 lbs., and other than a standard size 40 by 48-in. pallet, shall be subject to a restacking fee.

13.3 All items must be clearly coded. THE ABC PRINTING COMPANY will not be responsible for picking, packing or mailing errors, which result from Client's failure to code or from any incorrectly marked items.

14. Spoilage, Counts, and Shrinkage: All fulfillment, bindery, assembly, and direct mail handling and processing involves spoilage. Allowance for spoilage should be taken into consideration in ordering material. Every effort will be made to handle Client's material with frugality and to prevent undue spoilage. Nevertheless, THE ABC PRINTING COMPANY cannot accept responsibility for shortages of material as a result of normal spoilage in processing. Industry standard for spoilage is approximately 3% to 5%.

14.1 Delivery tickets must accompany materials delivered, and should show the number of skids or cartons, the quantity per skid or carton, and the total delivery quantity.

14.2 It is recommended that all material receipts be spot-checked, weighed, or counted by THE COMPANY (additional service fee applies) to verify the accuracy of the shippers counts. For printed materials these are frequently subject to question because of the standard shrinkage allowance on such material.

14.3 THE ABC PRINTING COMPANY is often asked to accept printer's or manufacturer's counts until processing and can assume no responsibility for shortages discovered at the time of processing.

14.4 There shall be three (3) categories of shrinkage allowances:

- (a) If THE ABC PRINTING COMPANY is not authorized to perform counts of material received, no verification shall be made, there shall be no ability to develop shrinkage estimates, and THE COMPANY shall not be responsible for inventory shrinkage.

- (b) If THE ABC PRINTING COMPANY performs test counts, spot checks, or weight counts, the industry standard for shrinkage is 3% to 5% of the material received. This is a common method of verifying material receipts in the fulfillment industry.
- (c) If THE ABC PRINTING COMPANY is paid to individually count items upon receipt, and maintain the counted material in a secured environment, the standard shrinkage allowances do not apply. In such instances, THE ABC PRINTING COMPANY will be responsible for losses that could have been prevented by exercising such reasonable and prudent care. In doing such, extra charges shall apply.

14.5 In all instances, the liability for any losses shall be limited to Client's actual cost of materials, and not incidental costs, such as development costs, loss of sales or retail value.

15. Addressing/Labels: Addressing/Labels must be within equipment manufacturers published specifications for addressing/labeling equipment. Quoted prices assume that address placement will be in the position most advantageous to production speed, or additional charges will be billed.

16. Packaging and Inserting: A reasonable effort will be made to insert material in the sequence and facing the direction the customer request, but quoted prices assume the most advantageous assembly order and production speeds. Unless otherwise agreed upon, specific sequence or facing may result in additional charges being billed.

17. Overages: The Client must advise THE ABC PRINTING COMPANY as to the disposition of material extras in advance of completing a job. Extras may be returned to Client, stored, or destroyed. If returned to Client, Client shall pay shipping charges. Storage and delivery charges will be added when applicable, and material may be automatically destroyed after sixty (60) days if Client has failed to respond to disposition requests or failed to pay for storage. Premium storage rates may be applied to old materials or materials for which disposition has not been designated.

18. Delivery Schedules: THE ABC PRINTING COMPANY will make all reasonable efforts to meet scheduled delivery dates, but because of the many factors outside its control accepts no liability for failure to meet scheduled dates beyond this requirement. In addition, THE ABC PRINTING COMPANY has no control over routine U.S. Postal Service, United Parcel Service, FedEx, or other common carriers' delivery schedules and cannot guarantee when mail or shipment will be delivered to them. All orders are accepted contingent to delay due to fire, accident, acts of God, technical problems with hardware, software, mechanical breakdown, or other causes beyond THE ABC PRINTING COMPANY'S control. Since the time element is an integral part of this business, quoted prices are based upon a specific set of time schedules for completion. *Any requested deviation from the schedules described or agreed upon by both parties at commencement of assignment may alter the quoted price. Later material may affect the completion date of the order by a greater degree than the actual elapsed time the material is late.*

19. Delinquent Payments: If delinquent amounts are owed by Client to THE ABC PRINTING COMPANY for services performed or for postage or shipping charges, THE ABC PRINTING COMPANY may, at its option, hold Client's list, printing or other Properties as security against payment of delinquent invoices. "Delinquent" is defined as "past the agreed or specified payment date." If Client fails to pay any invoice or obligations hereunder when due, Client hereby agrees to pay monthly late payment charges equal to one and one-half percent (1½%) per month eighteen percent (18%) per annum of the outstanding balance due as liquidated damages.

20. Attorney's Fees: Client shall pay all costs and reasonable attorney's fees incurred in collection of all past due invoices, accounts, or other obligations incurred.

21. Property Title/Insurable Interest: Client shall retain title to and the insurable interest for its material and Properties. THE ABC PRINTING COMPANY merely rents storage space, and shall be held harmless for acts, not of its doing, that create losses. It is the responsibility of THE ABC PRINTING COMPANY to carry insur-

ance to protect against acts of negligence on the part of its employees in the normal course of business. If specific insurance coverage is desired by Client, such coverage must be specified by this Agreement and by separate insurance rider and premium. In such instances, the liability for losses will be limited to the agreed upon insurance amount.

22. Errors: In case of errors in the services provided by THE ABC PRINTING COMPANY for Client, THE COMPANY shall be liable only to the extent of distributing a correction or correcting a job as soon as possible to rectify the mistake, and allowable damages shall be limited to THE ABC PRINTING COMPANY charges for the work performed. In no case is THE ABC PRINTING COMPANY liable for loss of business, implied damages, or costs in excess of billing for services related to the specific job.

23. Mailing Lists: Client's mailing list(s) and database in THE ABC PRINTING COMPANY'S possession, for storage or otherwise, is the exclusive property of the Client and shall be used only at its instructions. THE ABC PRINTING COMPANY assumes responsibility for replacement of such lists in the event of system failure, loss by fire, vandalism, theft, or other such causes, only if the Client has a duplicate list or has the source material from which the list is compiled, and then only to the extent of the costs involved in replacing the lost list. THE ABC PRINTING COMPANY does not accept liability or responsibility for compiling such lists nor for any intangible or special value attached thereto. In any event, THE ABC PRINTING COMPANY cannot protect against all possible occurrences. It has the responsibility, however, to provide reasonable and prudent protection against the loss of a client's list, in much the same manner that their clients would themselves. This includes adequate backup procedures for all files and programs.

24. Personal Property Taxes: Client shall hold THE ABC PRINTING COMPANY free and harmless from all personal property taxes which may be assessed against the Properties stored pursuant to this Agreement.

25. Notices: All notices under this Agreement shall be deemed duly given at the address herein set forth or to such other address as any party to this Agreement may designate in writing from time to time:

- (a) upon delivery if delivery by hand; or
- (b) upon date of postmark if sent by U.S. Mail to a party hereto; or
- (c) upon the date signed from a receipt by a party hereto if sent by U.S. Mail, Certified, Return Receipt Requested.

The individuals representing the above parties hereto who are to receive notices are:

For Client:

[insert name, position]
ABC PRINTING COMPANY

26. Confidentiality: The parties covenant and agree not to disclose the terms and conditions of this Agreement to any third party except as required in the normal conduct of their respective businesses or as agreed to by the other party or required by applicable law or regulations.

27. Nondisclosure: THE ABC PRINTING COMPANY acknowledges that in performing its obligations under this Agreement, it will have access to certain confidential and proprietary information and property of Client. As such, THE ABC PRINTING COMPANY agrees not to copy, alter, change, or permit any person to have access to such information except as permitted under this Agreement or with the specific authority of the Client. THE ABC PRINTING COMPANY shall take all appropriate steps to ensure that its employees, agents, and representatives maintain the proprietary and confidential nature of said property, which at a minimum shall consist of the same measures THE ABC PRINTING COMPANY does exercise to protect its own proprietary and confidential property. The obligations contained in this Paragraph shall survive the term of this Agreement.

28. Governing Authority: This Agreement shall be deemed to have been entered into and executed in [insert name of County, State] and shall be construed, performed, and enforced in all respects in accordance with the laws of the state of [insert state name] including applicable provisions of the [insert applicable law] as adopted by that state.

29. Severability: If any provision of this Agreement, now or hereafter be or become invalid or unenforceable, the remainder of this Agreement shall be valid and enforceable to the full extent permitted by law.

30. Authorization: The parties represented warrant that they are fully authorized to execute this Agreement and any schedules, attachments, exhibits, and amendments hereto.

31. Hold Harmless: Client agrees to defend and hold THE ABC PRINTING COMPANY harmless in any disagreement, suit, or court action brought against THE ABC PRINTING COMPANY for alleged damages, costs or losses caused while acting as Client's agent or in performance of the functions on behalf of or in accordance with specifications established with and condoned by Client.

32. Successors & Assigns: This Agreement shall inure to the benefit of and be binding upon both parties their successors and assigns.

33. Amendment: This document comprises the entire Agreement between Client and THE ABC PRINTING COMPANY with respect to the products and services to be provided hereunder. Attachment "A" is a listing of quoted prices valid for six months. No modifications or amendment to this Agreement shall be valid unless in writing and signed by duly authorized representatives of Client and THE ABC PRINTING COMPANY.

IN WITNESS WHEREOF, the parties hereto, by their respective officers thereunto duly authorized, have hereunto caused their corporate names to be subscribed the day and year herein above written.

THE ABC PRINTING COMPANY

CLIENT:

Business Entity Guarantee: The above Client hereby certifies that it exists as a _____ (identify type of business structure and state of organizations, i.e., (STATE) Corporation, (STATE) Proprietorship, (STATE) Partnership, etc.). The above signer hereby certifies to be fully authorized to bind and obligate said business.

Section II
Commercial Agreements

Printing/Service Agreement I

CONTRACT FOR PRINTING

ABC PRINTING COMPANY

Success in printing requires attention to detail. Organize all information related to your printing job on a specification sheet so you and we know exactly what you want.

INSTRUCTIONS

GENERAL INFORMATION

1. Contact Information

Your contact information, plus designer contact information if available.

2. Fund Code

Cost center or fund code for final printing costs to be allocated. This may be split between several codes.

3. Project Description

Provide the name and describe the piece. Example: Departmental Annual Report – 16 page plus-cover brochure.

4. Purchase Order Number

Customer PO number.

5. Previous Order Number

Customer PO number or ABC PRINTING job number.

6. Requested Delivery Date

Note if the order is for a time sensitive event.

7. Projected Order Date

Date you expect to have files ready.

8. Delivery Locations/Details

Specific delivery information. This must be a physical location. Include contact person, full address and phone number for verifying shipment.

9. Quantity

Final quantity you need printed.

TECHNICAL INFORMATION

10. Format and Size

Include final trim or folded sizes, plus size of page spreads or unfolded brochure and the number of pages or panels. On booklets, count each side of each page that prints as a page. If the cover is on a heavier stock, count that as a “plus cover.” On folded brochures, count each side of each panel.

Example 1: 8 pages on 80# text & 4 pages on 80# cover is an 8 page + cover booklet.

Example 2: 9×16 brochure folding to 4×9 is an 8-panel brochure.

11. Paper Stock(s)

Include stock for all parts of job including brand name, color, finish, weight, text, cover, etc.

12. Ink

Include Pantone numbers, varnishes or in-line coating (spot or overall) for front & back, cover & text. Note bleeds (image or ink runs off page). Describe screen tints, bleeds, reverses, solids, crossovers, traps, special-built tint colors, etc.

13. Prepress

Any scanning or preparatory work done by printer. Specify halftones, duotones, and four-color separations along with the size and number of each. On duotones, indicate which color will be dominant. Note if photos need to be silhouetted or if retouching or color correcting is needed. Provided high-resolution images should generally be 300 DPI.

14. Type of Proofs

Specify random color, color composite proof, blueline, folded stock dummy and if a press check is required. If multiple rounds of color correction are expected, identify how many rounds.

15. Artwork Submitted via

Note platform (Mac/PC), and all layout software and versions used. Supplied files must include fonts and all supporting art.

16. Bindery

Trimming, folding (type of fold), scoring, perforations, collating, numbering, drilling (number of holes and hole diameters), stitching, shrink-wrapping. Include die cutting, foil stamping, embossing, UV coating, laminating, etc.

17. Mail Services

List preparation, sorting, ink jet addresses, etc.

18. Other

Include any other relevant information for this project.

GENERAL INFORMATION

This should be completed by customer.

1. CONTACT INFORMATION

NAME

DEPARTMENT

PHONE

FAX

EMAIL

2. COST CENTER OR FUND CODE

3. PROJECT DESCRIPTION

4. PURCHASE ORDER NUMBER

5. PREVIOUS ORDER (PO/JOB NUMBER)

6. REQUESTED DELIVERY DATE
7. PROJECTED ORDER DATE
8. DELIVERY LOCATIONS AND DETAILS
9. QUANTITY OF PRESS RUN

TECHNICAL SPECIFICATIONS

10. FORMAT AND SIZE
 - Flat & fold size, folded
 - Panels vs. pages
11. PAPER STOCK(S)
 - Include stock for
 - All parts of job
12. INK COLOR(S) AND USES
 - Pantone #s, process, varnishes & coatings, include bleeds, screens, ink coverage
13. PREPRESS
 - Scanning — indicate halftone, duotone, 4 color; size & number each and any other work
14. TYPE OF PROOFS NEEDED
15. ART WORK SUMMITTED VIA
 - If disk, include layout program(s) and version
16. FOLDING, BINDING AND FINISHING
17. MAIL SERVICES
18. OTHER

Editor's Note: A copy of the Graphic Communications Trade Customs and Business Practices was attached.¹

¹ The attachment of the copy of the trade customs is important as that document contains legal provisions that are not included elsewhere in this contract. In addition to the trade customs, there should also be some documentation of the fees to be charged the customer under the contract.

Printing/Service Agreement II

SERVICES AGREEMENT

This Services Agreement (this “Agreement”) is made and entered into as of this ____ day of _____ (“*Effective Date*”), by and between ABC PRINTING, a (STATE) corporation (“Seller”), and XYZ COMPANY, a (STATE) corporation referred to herein as “Buyer.”

RECITALS:

- A. Seller is engaged in, among other things, the business of providing professional printing and converting services; and
- B. Buyer desires to purchase from Seller and Seller desires to provide to Buyer certain professional services and related Deliverables (as hereinafter defined), all on the terms and conditions set forth herein; and
- C. The parties desire to enter into this Agreement to set forth their mutual understandings with respect to such matters.

NOW, THEREFORE, in consideration of the mutual covenants and promises contained herein, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Buyer and Seller hereby agree to the foregoing and as follows:

1. Services, Deliverables and Equipment.

- (a) **General.** This Agreement represents the terms and conditions under which Seller shall perform certain printing, ultraviolet coating, die cut, foil stamping, embossing, folding and gluing (collectively, the “Services”) and provide non-erected boxes (“Deliverables”) as Buyer may from time to time order pursuant to written purchase orders submitted to Seller in accordance with the terms of this Agreement.
- (b) **Exclusivity.** During the term of this Agreement, Buyer shall purchase substantially all of its requirements for the Services and Deliverables from Seller.

- 2. **Specifications.** The specifications for the initial deliverables are included in Exhibit A. As new Services and Deliverables are developed, the related specifications will be included with the price quote.

3. Prices.

- (a) The initial prices for the Services (“Prices”) are set forth on Exhibit 13 attached hereto. The Prices do not include flight and handling charges and any applicable sales, use manufacturers’ or excise tax or any other charges, duties, fees or taxes, now or hereinafter imposed by any governmental authority, all of which are the responsibility of Buyer.
- (b) Notwithstanding the foregoing or anything else to the contrary, effective on each subsequent anniversary of the Effective Date during the Term, or renewal thereof, Seller reserves the right to increase non-paper and other non-raw material Prices upon at least thirty (30) calendar days prior written notice to Buyer, provided that such increase shall not exceed the most recent annual increase in percentage points (or fraction thereof) of the official Consumer Price Index, All Urban Consumers, published by the Bureau of Labor Statistics, United States Department of Labor.

(c) Notwithstanding the foregoing or anything else to the contrary, Seller reserves the right to change Prices at any time (but not more frequently than twice during any consecutive twelve (12) month period) upon at least thirty (30) calendar days prior written notice to Buyer in order to reflect actual changes in the cost to Seller of raw materials used to perform the Services and provide the Deliverables hereunder. Any notice of an increase in the price pursuant to this *Section 3(c)* shall be accompanied by reasonably detailed evidence of the basis for the increased costs to be passed through to Buyer.

4. Payments and Reporting.

(a) Payments for the purchase of Services are net 30 days from the date of Seller's invoice, without offset of deduction. Seller shall invoice Buyer for the Services when they are shipped. Overdue payments shall bear interest at a rate of one and one-half percent (1.5%) per month, or the highest rate permitted by applicable law, from the date due until paid. Buyer shall also pay on demand any costs incurred by Seller (including, but not limited to, reasonable attorney's fees and legal expenses) in connection with the collection of any amounts due from Buyer to Seller which are not paid as agreed herein.

(b) Seller will provide web-based mutually agreed upon reporting of production, inventory, and quality data within six months of the signing of the agreement for reporting on "next business day" basis. Such systems will be designed to support data sharing with Buyer.

5. Orders. Buyer shall transmit its orders for Services ("Orders") to Seller by written purchase order via U.S. mail, facsimile or electronic transmission. All such Orders shall conform to the requirements of this Agreement and shall represent a commitment on behalf of Buyer to purchase the quantities of Services set forth in the Order. Seller shall promptly acknowledge all such Orders in writing (by mail, facsimile or electronic transmission) within one (1) business day of receipt.

6. Shipments; Risk of Loss. Seller shall ship any Deliverables relating to the performance of the Services, F.O.B. Seller's facility, with freight costs to be paid by Buyer. The Deliverables shall be shipped via common carrier, unless Buyer directs a different mode of transportation. Title and risk of loss or damage to the Deliverables shall pass to Buyer upon delivery by Seller to the common carrier. All actions against the common carrier shall be the responsibility of Buyer and shall be pursued by Buyer at Buyer's option and sole expense. Any claim for loss or damage during transit shall be made against the common carrier only. Acceptance by Buyer of the Deliverables waives any claim for loss or damage resulting from a delay, regardless of the cause of the delay. If a shipment is delayed or suspended by Buyer, Buyer shall pay the invoice price for the Services as per the normal payment terms, together with Sellers handling, storage charges, demurrage and similar charges in effect, if any.

7. Deferral of Shipments. In the event that Buyer is in default with respect to any of the provisions of this Agreement, and Seller has notified Buyer of such default in writing, Seller, after the expiration of ten (10) days from the date of said notice without the Buyer curing the default, without incurring liability to Buyer and without limiting any other right or remedy of Seller, may then defer further shipments of the Deliverables to Buyer (including Deliverables under open Orders) until such default is remedied.

8. No Conflicting or Additional Terms. No conflicting, additional or different terms, provisions or conditions contained in any proposals, quotations, purchase orders, confirmations, acknowledgments, acceptances, invoices or similar documents used by the parties to facilitate specific purchases of the Services pursuant to this Agreement shall have any applicability with respect to the purchase and sale of the Services hereunder; provided, however, that specific information covering quantities, specifications, delivery dates, methods of transportation and other miscellaneous information used to implement the purchase and sale of the Services and any related Deliverables hereunder shall apply to the extent not inconsistent with this Agreement.

9. Services Warranty.

- (a) **General.** Seller warrants to Buyer that it shall perform the Services in a good and workmanlike manner and in accordance with the Specifications. The foregoing limited warranty runs only to Buyer and not to other purchasers or end users of the Services or any related Deliverables. If the Services fail to comply with the foregoing limited warranty, Buyer must give written notice and a specific description of such nonconformity to Seller within thirty (30) days after completion of the Services and shipment of the Deliverables or such claim shall be deemed waived. Seller shall, at its option, remedy any nonconformity by re-performing any defective Services or by the issuance of a credit for the defective Services, THE REMEDY OF RE-PERFORMANCE OR CREDIT SHALL CONSTITUTE BUYER'S EXCLUSIVE REMEDY FOR BREACH OF SELLER'S LIMITED WARRANTY WITH RESPECT TO THE SERVICES.
- (b) **Disclaimer.** THE LIMITED WARRANTY SET FORTH IN THIS SECTION 9 IS THE ENTIRE AND EXCLUSIVE WARRANTY REGARDING THE SERVICES (AND ANY RELATED DELIVERABLES) AND IS IN LIEU OF ALL OTHER EXPRESS AND IMPLIED WARRANTIES WHATSOEVER, INCLUDING BUT NOT LIMITED TO IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

10. Term and Termination.

- (a) **Term.** The term of this Agreement shall commence on the Effective Date and shall continue for a period of three (3) year(s) thereafter, subject to earlier termination as set forth herein (the "*Initial Term*"). Thereafter, this Agreement shall automatically continue for successive one (1) year periods (each a "*Renewal Term*"), subject to the termination provisions contained herein, unless either party delivers written notice of non-renewal to the opposite party within sixty (60) days prior to the expiration of the then-current term. The Initial Term and each Renewal Term, if any, shall collectively be referred to as the "Term" of this Agreement.
- (b) **Termination.** Notwithstanding the terms of *Section 10(a)* above, this Agreement may be terminated in accordance with the following provisions:
- (i) Seller may terminate this Agreement immediately at any time upon written notice to the Buyer if Buyer fails to pay for any Service as required by this Agreement, and such failure continues for a period of ten (10) days after written notice is given to Buyer requesting it to cure such failure;
 - (ii) Either party may terminate this Agreement immediately at any time upon written notice to the other party if such other party fails to perform any of its material duties or obligations hereunder, and such failure continues for a period of thirty (30) days after written notice is given to such other party requesting it to cure such failure; and
 - (iii) Either party may terminate this Agreement immediately at any time upon written notice to the other party if the other party: (1) commences or has commenced against it a proceeding under any bankruptcy, insolvency, debtor's relief law or similar law; (2) has a receiver appointed for it or for any of its property; (3) becomes insolvent or unable to pay its debts as they mature or ceases to pay its debts as they mature in the ordinary course of business; or (4) makes a general assignment for the benefit of its creditors.
- (c) **Effect of Termination.** The termination of this Agreement shall not: (i) terminate the obligation of Buyer to pay to Seller any amounts due Seller hereunder at the date of such termination; (ii) terminate the obligation of Seller to perform any Services ordered by Buyer pursuant to this Agreement prior to the date of termination; or (iii) otherwise release either party from any liability or obligation which at the time of such termination shall have already accrued to the other party or which thereafter may

accrue in respect of any act or omission occurring prior to such termination. In addition, such termination shall not affect in any way the survival of any right, duty or obligation of any party which is expressly stated elsewhere in this Agreement to survive the termination of this Agreement.

11. Inventory Obligations. If this Agreement, or any Order submitted hereunder, terminates for any reason, Buyer shall purchase from Seller, at the price then in effect hereunder, all Deliverables then in Seller's possession which were created by Seller in reliance on any Orders. In addition, Buyer shall either, at its option, within thirty (30) days following the date of termination, as applicable:

- (a) Direct Seller to use all raw materials and component parts, not otherwise usable by Seller in the ordinary course of its business, which have been purchased by Seller in reliance on such Orders to perform the Services, and to complete all work-in-process which has been produced in reliance on such Orders, and in such event Buyer shall purchase all Deliverables resulting therefrom at the Price then in effect hereunder; or
- (b) Buyer shall reimburse Seller for the cost of such raw materials and component parts, and for the costs of direct material, direct labor and reasonable manufacturing overhead incurred in producing all work-in-process which has been produced in reliance on such Orders.

Seller shall use reasonable commercial efforts to cancel any outstanding orders or contracts with its vendors which were entered into in reliance on Buyer's Orders and which provide for the purchase of raw materials and component parts used in the performance of the Services which are not otherwise useable by Seller in the ordinary course of its business. Buyer shall indemnify Seller for and hold it harmless from any costs incurred by Seller in canceling such orders or contracts and any obligations of Seller thereunder arising out of such cancellation.

Buyer shall provide **XX** month rolling forecasts of demand for the Services and Deliverables. Seller shall have the right to forward print and convert the Deliverables in accordance with the demand forecasts supplied by the Buyer. Buyer agrees to pay Seller for the amount of unshipped Deliverables that have been in inventory for more than 90 days. Buyer shall also pay Seller storage charges of \$8.50 per pallet for Deliverables that remain in Seller's warehouse locations for more than 90 days.

12. Limitation of Liability.

- (a) **Limitation of Types of Recoverable Damages.** NEITHER PARTY SHALL BE LIABLE UNDER ANY CIRCUMSTANCES TO THE OTHER PARTY, OR TO ANY THIRD PARTY FOR ANY CONSEQUENTIAL, INCIDENTAL, INDIRECT, EXEMPLARY, PUNITIVE OR SPECIAL DAMAGES, INCLUDING WITHOUT LIMITATION ANY LOST PROFITS OR LABOR COSTS, ARISING FROM THE PERFORMANCE OF THE SERVICES, THE SALE OR USE OF THE DELIVERABLES, FROM UNFORSEEN OR UNAVOIDABLE DELAY IN DELIVERY, FROM ANY BREACH OF THIS AGREEMENT OR FROM ANY OTHER CAUSE WHATSOEVER, REGARDLESS OF WHETHER THE CLAIM GIVING RISE TO SUCH DAMAGES IS BASED UPON BREACH OF WARRANTY (EXPRESSED OR IMPLIED) BREACH OF CONTRACT, TORT OR ANY OTHER THEORY OF LIABILITY, EVEN IF A PARTY HAS BEEN ADVISED OF THE POSSIBILITY THEREOF EXCEPT DUE TO WILLFUL ACTS OR GROSS NEGLIGENCE.
- (b) **Cap on Damages.** EACH PARTY'S AGGREGATE LIABILITY TO THE OTHER PARTY FOR ANY CAUSE OF ACTION ARISING OUT OF OR RELATING TO THIS AGREEMENT SHALL NOT EXCEED THE PRICE OF THE SERVICES PAID OR TO BE PAID BY BUYER UNDER THIS AGREEMENT EXCEPT THAT WHICH IS DUE TO WILLFUL ACTS OR GROSS NEGLIGENCE.

- 13. Gain Sharing.** The parties agree to cooperate and work together to develop the scheduling, tracking and quality control tools required to enhance the workflow of Services and reduce lead times and costs. After recovering its costs and expenses associated with any cost savings initiatives, Seller shall share equally (50/50) with Buyer all cost savings resulting from mutually identified cost savings initiatives. The plan will include the following provisions:
- Potential cost savings proposals will be identified and evaluated by both companies. This should be a continuous process.
 - The cost savings proposals which will be a part of this plan require joint discussion and approval. Cost savings initiatives which can be accomplished solely by one company without input from the other company will result in cost savings to that company.
 - Mutually agreed upon cost savings will be shared 50/50 after any costs incurred to generate the savings are returned to the company that incurred the costs.
 - Once additional expenses have been covered, cost savings will be distributed in a mutually agreed upon and equitable manner either through price reductions, rebates, or direct transfers of dollars. The manner in which they will be shared will depend on the nature of the cost savings. For example:
 - a. Mutually agreed upon cost savings which reduce manufacturing costs can be passed on to buyer through a price reduction or a rebate. Buyer will retain its portion of the cost reduction through lower manufacturing costs.
 - b. Mutually agreed upon cost savings which directly impact Buyer, such as a reduction in freight costs could be allocated to Seller via a rebate.
 - Seller and Buyer will set up quarterly meetings to discuss the gain sharing process and reconcile any dollars that need to be transferred from one company to the other.
- 14. Disputed Payment Amounts.** If an invoice amount is disputed in good faith by Buyer, then Buyer will pay all undisputed amounts due; and as soon as possible, but in any event within the thirty-five calendar pay period for payment, send a written notice of the items that are disputed in good faith to the Seller. The parties in accordance with a dispute resolution process to be agreed upon by Buyer and Seller will address such items promptly.
- 15. Representations and Warranties.**
- (a) **Organization and Capacity.** Each party represents and warrants to the other party that: (i) it is duly organized and validly existing under the laws of the state or country of its incorporation; (ii) its execution, delivery and performance of this Agreement has been authorized by all requisite action on its part; (iii) this Agreement has been validly and duly executed and delivered by such party and this Agreement constitutes a binding obligation, enforceable against such party in accordance with its terms, and (iv) this Agreement does not violate any law applicable to such party. In addition, each individual signing this Agreement on behalf of a party hereto represents and warrants that he or she is authorized to execute this Agreement on behalf of such party and to bind such party to this Agreement. This warranty shall survive the expiration or termination of this Agreement.
 - (b) **No Violation or Conflict.** Buyer represents and warrants to Seller that the execution, delivery and performance of this Agreement by Buyer does not and shall not: (i) violate or conflict with any assignments, grants, licenses, encumbrances, obligations or agreements (whether written, oral or implied) which Buyer has entered into or by which it is bound; nor (ii) require any authorization, consent approval, exemption or other action by or notice to any third party; nor (iii) violate or conflict with, or constitute a default under, and shall not result in the termination of, any term or provision of any con-

tract, commitment, understanding, arrangement, agreement or restriction of any kind or character to which Buyer is a party or by which Buyer may be bound or affected. This warranty shall survive the expiration or termination of this Agreement.

- (c) **Warranty of Title to Marks.** Buyer represents and warrants to Seller that any trademark, copyright, service mark, trade name, trade designation or other intellectual property right that Buyer requests Seller to use and/or affix to the Deliverables is owned by Buyer or used by Buyer with the consent and approval of and according to the requirements of the owner. This warranty shall survive the expiration or termination of this Agreement.

16. Confidentiality

- (a) **General.** Each party acknowledges that during the course of performing its duties and obligations under this Agreement, it may come into contact with confidential, non-public information, data or materials pertaining to the other party and its business operations. For the purposes of this Agreement, the term “*Confidential Information*” means any material, data or information of any nature whatsoever of a party to this Agreement (the “*Disclosing Party*”) that is provided or disclosed to the other (the “*Receiving Party*”), except for any information that is: (i) publicly available or later becomes available other than through a breach of this Agreement; (ii) known to the *Receiving Party* or its employees, agents or representatives prior to such disclosure or is independently developed by the *Receiving Party* or its employees, agents or representatives subsequent to such disclosure; or (iii) subsequently lawfully obtained by the *Receiving Party* or its employees, agents or representatives from a third party without obligations of confidentiality. Confidential Information shall include, without limitation, the following categories of material, data or information whether written, oral, visual, schematic, pictorial, electronic or otherwise, whether or not marked or otherwise identified as confidential: financial and operational information, information relating to actual or potential customers and customer lists, customer usage or requirements, business and customer usage forecasts and projections, accounting, finance or tax information, pricing information, any information relating to the corporate and/or operational structure of the parties and all other non-public information relating to the *Disclosing Party*’s business or operations. The *Receiving Party* shall exercise the same degree of care and protection with respect to the Confidential Information of the *Disclosing Party* that it exercises with respect to its own Confidential Information, but in no event less than a reasonable standard of care. *Receiving Party* shall not, directly or indirectly, disclose, copy, distribute, republish or allow any third party to have access to any Confidential Information of the *Disclosing Party*. Notwithstanding the above: (iv) *Receiving Party* may disclose Confidential Information to those of its employees, agents and representatives whose duties require such disclosure, provided such employees, agents and representatives are informed of this Agreement and agree to be bound by the terms hereof, and *Receiving Party* uses its best efforts to cause such employees, agents and representatives to observe the terms of this Agreement; and (v) either party may disclose Confidential Information if so required by law (including court order or subpoena), provided that such disclosure is made in accordance with the terms of *Section 16(c)*.
- (b) **Return of Confidential Information.** Unless otherwise authorized, upon the earlier of termination of this Agreement or request of the *Disclosing Party*, with respect to the *Disclosing Party*’s Confidential Information the *Receiving Party* shall promptly return such Confidential Information and provide certification to the *Disclosing Party* that all such Confidential Information has been returned.
- (c) **Notification Obligation.** If the *Receiving Party* becomes aware of any unauthorized use or disclosure of the Confidential Information of the *Disclosing Party*, the *Receiving Party* shall promptly and fully notify the *Disclosing Party* of all facts known to it concerning such unauthorized use or disclosure. In addition, if the *Receiving Party* or any of its employees or agents are requested or required (by interrogatories, requests for information or documents in legal proceedings, subpoena or other similar process) to disclose any of the Confidential Information of the *Disclosing Party*, the *Receiving Party*

shall not disclose the Confidential Information without providing the Disclosing Party reasonable prior written notice of any such request or requirement so that the Disclosing Party may seek a protective order or other appropriate remedy and/or waive compliance with the provisions of this Agreement. Notwithstanding the foregoing, the Receiving Party shall exercise its best efforts to preserve the confidentiality of the Confidential information including, without limitation, by cooperating with the Disclosing Party to obtain an appropriate protective order or other reliable assurance that confidential treatment shall be accorded the Confidential Information by such tribunal.

(d) Survival; No Limitation of Liability. The terms of this *Section 16* shall survive the expiration or termination of this Agreement for a period of three (3) years.

- 17. Insurance.** Seller shall maintain in effect at all times during the term of this Agreement one or more insurance policies with insurance carriers of good standing. Such insurance shall include, without limitation, worker's compensation in statutory amounts, and products/completed operations liability, errors and omissions and comprehensive general liability insurance in amounts not less than One Million Dollars (\$1,000,000) per occurrence and Two Million Dollars (\$2,000,000) annual aggregate for all claims against all losses, claims, demands, proceedings, damages, costs, charges and expenses for Injuries or damage to any person or property arising out of or in connection with Seller's performance or non-performance under this Agreement and shall designate Buyer as an "additional insured" on such insurance policies, except for workers compensation and errors and omissions policies.
- 18. Independent Contractors and Staffing.** The parties are independent contractors, and neither party has nor shall have any power, nor represent that it has any power, to bind the other party or to create any obligation or responsibility, express or implied, on behalf of the other party, or in the other party's name. Notwithstanding the foregoing, Seller shall provide Buyer, one (1) Seller employee (Seller's Employee) at the Buyer's (designated) address or some other location as the parties may mutually agree for the purposes of implementing and facilitating the Services and Deliverables. All costs and risks of employment, including wages and benefits, shall be the sole responsibility of the Seller. Buyer shall provide a work space for the Seller's Employee and shall have the right at its sole discretion to require removal or replacement of the Seller's Employee. The Seller's Employee shall conform to all reasonable Buyer work and safety rules and regulations.
- 19. Force Majeure.** If the performance by either party of this Agreement or any obligation hereunder is prevented, restricted or interfered with by any act of God, fire or other casualty, strikes or labor disputes, embargo, power or supplies, war or violence, acts of terrorism, delay of common carrier, inability to obtain supplies, raw materials component parts or services through regular sources of supply, any law, order, regulation, ruling, proclamation, ordinance, demand or requirement of any governmental authority or similar event beyond such party's reasonable control (each, an "Event of Force Majeure"), such party shall promptly give the other party written notice thereof setting forth in such notice the date of the commencement of the Event of Force Majeure. The existence of an Event of Force Majeure shall justify the suspension of performance hereunder by such party and shall extend the time for such performance for a period equal to the period of delay; provided, however, that if such period of delay exceeds thirty (30) days from the date of commencement of the Event of Force Majeure, then Buyer may terminate this Agreement immediately upon written notice to Seller. The Seller and Buyer shall mutually agree upon a plan for undertaking a disaster recovery program to provide for substitute performance of the obligations hereunder as may from time to time be required.
- 20. Notices.** Any notices required or permitted to be delivered pursuant to this Agreement shall be in writing and shall be deemed delivered: (a) upon delivery if delivered in person; (b) three (3) business days after deposit in the United States mail, registered or certified mail, return receipt requested, postage prepaid; (c) upon transmission if sent via facsimile, with a confirmation copy sent via overnight mail; (d) one (1) business day after deposit with a national overnight courier; (e) upon transmission if sent via e-mail, with a

confirmation copy sent via overnight mail, in each case addressed to the addresses set forth below. Either party may change its address by written notice to the other party in accordance with this *Section 20*.

- 21. Assignment.** This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and permitted assigns. Neither party may assign or otherwise transfer its rights or delegate its obligations under or related to this Agreement without the prior written consent of the other party, which consent shall not be unreasonably withheld or delayed. Also, neither party shall have the right to assign, transfer or delegate this Agreement without the other party's consent to an affiliate or any third party that is a successor-in-interest to all or substantially all of such party's business or assets.
- 22. Equitable Relief** Notwithstanding anything contained in this Agreement to the contrary, the parties shall be entitled to seek injunctive or other equitable relief whenever the facts or circumstances would permit a party to seek such equitable relief in a court of competent jurisdiction.
- 23. Severability.** If any provision of this Agreement is held by a court of competent jurisdiction to be illegal, null and void or unenforceable for any reason, such determination shall not affect the remainder of this Agreement, and such remainder shall remain in full force and effect.
- 24. Headings.** The headings and captions used in this Agreement are for convenience only and shall not be considered part of the subject matter hereunder or used to interpret or construe any provision hereof
- 25. Successors and Assigns.** The rights and liabilities of the parties hereto shall bind and inure to the benefit of their respective successors and permitted assigns.
- 26. Waiver.** No delay or omission by either party hereto to exercise any right occurring upon any noncompliance or default by the other party with respect to any of the terms of this Agreement shall impair any such right or power or be construed to be a waiver thereof. A waiver by either of the parties hereto of any of the covenants, conditions or agreements to be performed by the other shall not be construed to be a waiver of any succeeding breach thereof or of any covenant, condition or agreement herein contained.
- 27. Governing Law.** This Agreement shall be governed by and construed in accordance with the internal laws of the State of (STATE), without regard to principles of conflict of laws. Any suit or proceeding arising out of or relating to this Agreement shall be brought only in (STATE). EACH PARTY HEREBY CONSENTS TO THE EXCLUSIVE PERSONAL JURISDICTION AND VENUE OF THE COURTS, STATE AND FEDERAL, LOCATED IN, (STATE).
- 28. Counterparts.** This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.
- 29. Entire Agreement.** This Agreement sets forth the entire, final and exclusive agreement between the parties as to the subject matter hereof and supersedes and terminates any and all prior and contemporaneous agreements, understandings or contracts, whether oral or in writing, between the parties. No change, termination, waiver, amendment or modification of any of the provisions hereof shall be binding upon the parties, unless in writing signed by duly authorized representatives of the parties.

[Remainder Intentionally Blank — Signature Page to Follow]

IN WITNESS WHEREOF, the parties hereto have caused this Services Agreement to be executed by their respective duly authorized representatives as of the day and year first above written.

Accepted this _____ day of _____, 20 ____, ABC PRINTING

BY: _____

PRINT NAME: _____

TITLE: _____

Accepted this _____ day of _____, 20 ____, for XYZ COMPANY

BY: _____

PRINT NAME: _____

TITLE: _____

EXHIBIT A

SPECIFICATIONS OF DELIVERABLES

EXHIBIT B

PRICING

Printing/Service Agreement III

XYZ BANK PRINTING AGREEMENT

This Agreement entered into this (DAY) day of (MONTH), (YEAR) by and between ABC PRINTING COMPANY of (CITY, STATE) company organized and existing under the laws of the State of (STATE), hereinafter referred to as “ABC PRINTING” and XYZ BANK of (XYZ), a corporation organized and existing under the laws of the State of (STATE), with its operations headquarters in (CITY, STATE), hereinafter referred to as XYZ BANK. This Agreement shall apply to XYZ BANK locations including agent affiliates.

WITNESSETH:

WHEREAS, ABC PRINTING provides printed forms and delivery services and desires to enter into this Agreement for the rendering of those services specified herein; and;

WHEREAS, XYZ BANK is a (STATE) Corporation and desires to enter into this Agreement for the use and purposes stated herein.

NOW, THEREFORE, in consideration of the mutual covenants and promises contained herein, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto agree as follows:

1. TERM

1.1 The term of this Agreement shall be from (MONTH, DAY, YEAR) through (MONTH, DAY, YEAR) subject to the terms and conditions stated herein.

1.2 Extensions. XYZ BANK and ABC PRINTING agree to have this Agreement automatically extended annually for an additional 12-month period of time unless either Company gives a thirty (30) calendar day written notice prior to the end of the initial or extended term.

2. STATEMENT OF GOALS

XYZ BANK and ABC PRINTING agree to work together to apply their combined skills and expertise to mutually address and find solutions to the problems and opportunities related to the procurement and delivery of printed forms needs at XYZ BANK. The primary goal of this relationship is to reduce the total cost of management for printed forms and printed forms related activities while simultaneously improving the quality and service performance at XYZ BANK. XYZ BANK and ABC PRINTING agree to work together to identify and implement opportunities for the improvement and growth of delivery of ABC PRINTING services provided herein. Each party is committed to the mutual success of the other party in this relationship.

3. AFFILIATES

3.1 Definition. The term “XYZ BANK Affiliate” shall mean all entities now or in the future, controlling, controlled or under common control, directly or indirectly by XYZ BANK or XYZ BANK parent company.

3.2 Rights of Affiliates. ABC PRINTING acknowledges and agrees that all obligations of ABC PRINTING and all rights and privileges under this agreement extended to XYZ BANK shall also be extended to XYZ BANK Affiliates.

4. ABC PRINTING'S PERFORMANCE AND RESPONSIBILITIES

- 4.1 XYZ BANK is committed to excel in the delivery of quality services to its customers, both external and internal. ABC PRINTING shall commit itself to endeavor to establish and maintain processes and procedures to measure and report customer satisfaction and to support continuous improvement in quality by preparing and submitting reports measuring the performance of the services specified herein as mutually agreed between the parties.
- 4.2 ABC PRINTING agrees to ship all inventoried products ordered by XYZ BANK within 24 hours after receipt of order except for special order items. ABC PRINTING further agrees to measure this performance and report it monthly to XYZ BANK based on a 95% completion target. XYZ BANK agrees to give a timely release to print any item subject to approval.
- 4.3 ABC PRINTING shall comply with all applicable laws, regulations and orders, including, but not limited to, equal employment opportunity laws and regulations, the Fair Labor Standards Act and the Immigrations Reform and Control Act.
- 4.4 Upon the request of XYZ BANK and with ABC PRINTING's concurrence, ABC PRINTING agrees to immediately remove¹ any of ABC PRINTING's non-performing employee(s) or agent(s) under this agreement to XYZ BANK and replace such employee(s) or agent(s) as soon as possible.
- 4.5 The parties mutually agree that ABC PRINTING shall not actively recruit or initiate contact with, for the purposes of recruiting, any XYZ BANK employee or any employee working at XYZ BANK on a contract or temporary basis.
- 4.6 ABC PRINTING will provide daily review of backordered items and will notify XYZ BANK of any items that stay on the backordered listing for two (2) business days and the expected delivery date or proposed remedy.
- 4.7 ABC PRINTING will work with XYZ BANK to develop performance reports to meet XYZ BANK's needs and provide them on a monthly basis in an informal account review. There will be an annual account review in (LOCATION) to reexamine the goals and performance of the partnership.

5. PRICING See Exhibit A.

6. REPORTING

- 6.1 ABC PRINTING will provide monthly usage reports by cost center.
- 6.2 ABC PRINTING will provide monthly reporting for fill rates and the number of lines and orders not filled for next day delivery by cost center.
- 6.3 ABC PRINTING will provide monthly reporting on returns by cost center.
- 6.4 ABC PRINTING may be asked to provide ad hoc reporting from time to time and will do their best to provide requested information within a reasonable time frame, within the limits of ABC PRINTING's computer system. All requests for reports will be coordinated through the purchasing department at XYZ BANK.
- 6.5 All reporting will be done at no charge to XYZ BANK.

¹ This provision could be more specific: is the employee simply to be removed from working on XYZ Bank matters, or is the employee to be discharged altogether?

7. RETURNS

- 7.1** All returns required due to ABC PRINTING mistakes will be done at no charge to XYZ BANK. Such returns made by XYZ BANK are to be in accordance with the instructions of ABC PRINTING. Any freight cost incurred when not using instructed carrier or method will be the responsibility of XYZ BANK. Approved returns for materials received due to XYZ BANK errors will be at the expense of XYZ BANK.
- 7.2** All returns will be credited during the current billing cycle of the XYZ BANK notification of a return. Credit to be issued within 24 hours after ABC PRINTING has receipt of return item. All returns must be within four (4) weeks of ship date.

8. REQUISITION FORM

ABC PRINTING will prepare a XYZ BANK requisition form containing the items found in Exhibit A to facilitate the ordering process.

9. INVOICING AND PAYMENT

- 9.1** ABC PRINTING shall invoice XYZ BANK with a single summary billing invoice monthly.
- 9.2** Payment terms will be Net 30 days from the date of the invoice.

10. DELIVERY AND FREIGHT

- 10.1** All deliveries to XYZ BANK's headquarters will be made in accordance to the specific instructions of the purchasing department. The ABC PRINTING delivery person or subcontractor will make deliveries to specified central mailroom location(s).
- 10.2** Deliveries to all other locations will be made by ABC PRINTING or ABC PRINTING contracted carrier. XYZ BANK reserves the rights to audit freight charges and specify carriers as needed.
- 10.3** All delivery and freight charges to and from the ABC PRINTING designated warehouse to XYZ BANK designated locations are the responsibility of XYZ BANK.
- 10.4** Title and risk of loss shall pass to XYZ BANK upon successful signed receipt of product to the carrier at the shipping location.

11. TERMINATION

This Agreement may be terminated by either party, with or without cause, with written notification to the other party ninety (90) days in advance of such termination. This Agreement may be terminated immediately by either party with written notification to the other party if the other party: a) shall commit a material breach of its obligations under this Agreement or shall fail to comply with any material law, statute, rule or regulation applicable to said party and the breach shall remain unresolved for a period of (10) calendar days following written notification to the other party; b) shall become insolvent, bankrupt or generally unable to pay its debts as they become due; c) shall commit a fraudulent act; d) in the case of ABC PRINTING, shall, other than with an affiliated entity, either (i) merge with another entity, (ii) suffer a transfer involving fifty percent (50%) or more of any class of its voting securities, or (iii) transfer all, or substantially all, of its assets. Any of the infractions above that cannot be reasonably resolved in ten (10) days will not cause a default as long as the party initiates appropriate action to cure the problem and diligently follows through on that action. The provisions of the Agreement and related obligations concerning indemnification, retention of records, audit, confidentiality and representations and warranties shall survive the termination of this Agreement. Upon termination of contract, XYZ BANK will be responsible for the purchase of all XYZ BANK items maintained by ABC PRINTING. This includes the cost of XYZ BANK items being produced by ABC

PRINTING or its subcontractors at the time of notification of termination including handling and freight to a XYZ BANK location.

12. CONFIDENTIALITY

Each party shall at all times hold in confidence, and shall at no time disclose to any person, except its respective employees having a specific need to know in the performance of their work, the terms of this Agreement or any proprietary or confidential information of one party disclosed to the other hereunder. Employees provided by ABC PRINTING may be required to sign additional confidentiality agreements as deemed necessary by XYZ BANK in the interest of protecting proprietary information including, but not limited to, business systems, the development of new products and services, and confidential customer information. Notwithstanding the above to the contrary, either party may disclose confidential information to the extent: a) required to enforce its rights hereunder; b) required by law or court order; c) required by governmental agency.

13. LIMITATION OF LIABILITY

13.1 Notwithstanding any other provision of this AGREEMENT, neither ABC PRINTING nor XYZ BANK shall be liable to the other for any consequential damages including, but not limited to lost profits, even if the parties have knowledge of the possibility of such damages, arising out of the party's negligence in its performance or non-performance of its duties under this AGREEMENT as long as all print copy is in compliance with approved proofs.

13.2 Notwithstanding any other provision of this AGREEMENT, ABC PRINTING's liability, if any, shall be limited to replacement of PRODUCT.

14. INDEMNIFICATION

XYZ BANK hereby indemnifies and agrees to defend and hold ABC PRINTING and its officers, directors, agents and employees, harmless, and ABC PRINTING agrees to indemnify, defend and hold XYZ BANK and their officers, directors, agents, employees and customers, harmless from any and all losses, claims, damages, liabilities or expenses (including reasonable attorneys' fees) of any kind or nature, in whole or in part, or arising, directly or indirectly, from the negligent or other wrongful conduct of the indemnifying party.

15. FORCE MAJEURE

Neither party shall be liable for damages for delay in the services described herein arising out of causes beyond its control and without its fault or negligence, including, but not limited to, natural disasters, acts of the public enemy, acts of the Government, fires, floods, epidemics, strikes, labor disturbances or freight embargoes (but not including delays caused by subcontractors or suppliers). In the case of ABC PRINTING, ABC PRINTING shall, within ten (10) days from the beginning of such delay, notify XYZ BANK in writing of the cause of the delay and ABC PRINTING's plan to cure such delay. If a delay exceeds ninety (90) days, XYZ BANK may transfer requirements to another supplier, without any cost obligation to ABC PRINTING until such time that ABC PRINTING is able to perform according to XYZ BANK needs.

16. RETENTION OF RECORDS

At all times during this Agreement ABC PRINTING shall maintain, in a reasonably accessible location, all records, correspondence, reports, data and invoice and billing records, whether hard copy or stored in computer memory, pertaining to the services provided to XYZ BANK as described herein. After termination of this Agreement, such documents and data shall be maintained for a period of five (5) years or as required by Federal and State laws.

17. AUDIT

Throughout the term of this Agreement and during the retention period thereafter, all of the information referenced above in Section 16 and all other sections herein may be inspected, audited and copied by XYZ BANK, its duly authorized agents, representatives or employees or by federal or state agencies having jurisdiction over XYZ BANK, at such reasonable time as XYZ BANK may determine and with reasonable advance notification to ABC PRINTING. Inspections shall be conducted at ABC PRINTING's offices during normal business hours.

18. NOTICES

All material notices or other communications or notices required under this Agreement shall be given to the parties in writing as follows: a) by registered or certified United States mail, return receipt requested and postage prepaid to the applicable addresses below, or to such other addresses as the parties may substitute by written notice given in the manner prescribed in this Section; b) by hand delivery, including courier service delivery, to such addresses; or c) by verified and confirmed receipt of facsimile machine transmission, to the numbers provided below.

To XYZ BANK

Company Name

Address

Telephone:

Fax:

19. ASSIGNMENT

Except for the right to subcontract provided hereunder, neither party may assign this Agreement or any of the rights or obligations hereunder without the prior written consent of the other party, and any such attempted assignment shall be void. Notwithstanding the foregoing, XYZ BANK may assign any of its rights and obligations hereunder to a XYZ BANK affiliate, the surviving corporation with or into which XYZ BANK may merge or consolidate, or an entity to which XYZ BANK transfers all, or substantially all, of its business and assets, and ABC PRINTING may assign any of its rights and obligations hereunder to a ABC PRINTING affiliate, the surviving corporation with or into which ABC PRINTING may merge or consolidate, or an entity to which ABC PRINTING transfers all, or substantially all, of its business and assets.

20. GOVERNING LAW

This Agreement shall be interpreted and construed in accordance with the laws of the State of (STATE). Each party hereby submits to the jurisdiction of such courts and waives any objection to venue with respect to actions brought in such courts of said state.

21. MISCELLANEOUS

21.1 Amendment and Waivers. This Agreement may not be modified, waived or amended unless mutually agreed to in writing between the parties.

- 21.2 Caption References and Headings.** All section headings in this Agreement are for convenience or reference only and are not intended to define, alter, modify, amend, limit or restrict the scope of any provision or the contractual obligations of the parties.
- 21.3 Severability.** If any provision of this Agreement shall be held invalid for any reason, then said provision shall be severed from the remaining provisions of this Agreement and shall not affect the validity or enforceability of the other provisions herein, unless the invalidity of said provision deprives any party of the economic benefit intended to be conferred by this Agreement.
- 21.4 Waiver.** Any waiver by either party of any provision of this Agreement shall not imply a subsequent waiver of that or any other provision, and any failure to enforce strict performance of any provision of this Agreement shall not be construed as a waiver or relinquishment to enforce strict performance in respect to such provision on any future occasion.
- 21.5 Entirety.** This Agreement, together with all Exhibits referenced herein constitutes the entire Agreement between the parties and supersedes all other proposals, oral or written, between the parties on this subject.
- 21.6 Authority.** The parties hereto have caused this Agreement to be executed by its authorized representative, and the parties hereto have full right and authority to enter into this Agreement.
- 21.7 No Partnership.** XYZ BANK and ABC PRINTING shall not be deemed to be partners or joint ventures hereunder. ABC PRINTING shall be an independent contractor, and all personnel supplied under this Agreement shall be employees of ABC PRINTING and not of XYZ BANK.
- 21.8 Unlawful Discrimination.** Neither party shall unlawfully discriminate on the basis of race, color, national origin, age, gender, disability, citizenship, veteran status or union affiliation² in the assignment of temporary employees for the performance of the services described herein.
- 21.9 Arbitration.** The parties agree that, in the event of any contract dispute, claim or dispute between ABC PRINTING and XYZ BANK arising under this Agreement which the parties cannot resolve short of a legal proceeding, the parties agree to submit to binding and final arbitration which is not subject to review or appeal to any court. The arbitration shall be held in City of (CITY), (STATE) or other mutually acceptable location and shall be in accordance with the rules, in effect at the time of arbitration, of the American Arbitration Association. In the event of arbitration, the prevailing party shall be entitled to reimbursement from the other party of its reasonable attorney's fees, costs and expenses. This paragraph shall not apply to disputes between ABC PRINTING and its employees.

IN WITNESS WHEREOF, the parties have executed this Agreement of the day and year first above written in (CITY), (STATE).

XYZ BANK

By: _____

Name: _____

Title: _____

Date: _____

² You may want to insert at the end of this list "or any other basis protected by law."

ABC PRINTING COMPANY

By: _____

Name: _____

Title: _____

Date: _____

EXHIBIT A

Pricing

1. The prices for the items contained in the bid for XYZ BANK are firm for one year with the exception of paper price fluctuations. Such prices can be adjusted in accordance to documented CPI or Yellow Sheet price schedules at a rate of 65% of manufacturing cost being attributed to paper costs. After three years the prices may be adjusted annually to reflect changes in documented manufacturers cost to ABC PRINTING. Any increase/decrease will be limited to the exact monetary change in the cost of the item to ABC PRINTING.
2. All artwork, drawings, printing plates, cutting dies, etc. associated with the production of XYZ BANK products will be deemed the property of XYZ BANK and compensation for such products are included in the purchase price of the products. Such property can be requested at any time by XYZ BANK for inspection, correction, or reassignment.

Descriptions	Estimated Annual Purchase Quantity	Proposed Prices Based on Agreed Run Quantities
		\$

3. Minimum run quantities to obtain above pricing is based on the following:
 - a. Order a minimum of _____ each of the (FORM NAME) forms (any combination) per order. (This will be approximately (#) months of anticipated usage).
 - b. Order a minimum of _____ (TICKET NAME) Tickets per order (any combination). (This will be approximately _____ months of anticipated usage).
 - c. Order all other forms based on the anticipated annual quantity requirements.

Printing/Service Agreement IV

Commercial Printing Service Agreement

This Service Agreement (“Agreement”) is entered into this (XX) day of (MONTH) 200X, although effective as of January 1, 200X (the “Effective Date”) by and between ABC PRINTING COMPANY, a corporation located at (ADDRESS), hereinafter referred to as PRINTER, and XYZ COMPANY, a corporation located at (ADDRESS) hereinafter referred to as “Customer.” The parties agree as follows:

Section 1. General Scope.

PRINTER agrees to: (i) store Customer’s static hardcopy marketing brochures, publications, and literature at PRINTER (hereinafter referred to as “Transferred Inventory”); (ii) store Customer’s digital marketing brochures, publications, and literature in electronic format designated by Customer; (iii) host a web site listing all of Customer’s marketing brochures, publications, and literature available for order by Customer and its designated users, which web site shall be linked to Customer’s Intranet; (iv) develop custom thumbnails to designate each Customer marketing brochure, publication, and literature on the hosted web site; and (v) provide “print-on-demand” or other print services of Customer’s digital marketing brochures, publications, and literature or make available digital copies on the web site Per customer’s instructions in restricted “print only” or “read only” formats. PRINTER’s services will be performed under the terms and conditions of this Agreement and at the fees set forth herein. All Customer marketing brochures, publications, and literature, whether hardcopy or electronic, shall remain the property of Customer and nothing in this Agreement shall be construed to create any right, title or interest in any of Customer’s materials, whether developed by Customer, ABC PRINTING or a third party at the request of Customer.

Section 2. Term.

This Agreement shall commence on the Effective Date and shall continue through January 1, 20XX (the “Initial Term”), unless earlier terminated as provided herein. This Agreement shall automatically renew for consecutive one year terms (the “Renewal Term(s)”) unless notice of termination is given to the other party as required in Section 8 of this Agreement.

Section 3. Fees.

The fees for services performed under this Agreement are set forth in Appendix B, Contract Price List.

Section 4. Product and Services.

A. Online Procurement Site.

1. Site Development. PRINTER will develop and activate an online procurement web site (the “Site”) that links to Customer’s Intranet. Customer (and Customer’s employees) may order Product (term defined in Section 4. C. of this Agreement; also refers to each Customer document title) at this Site. Digital Product will actually be stored on Customer’s server. In conjunction therewith, PRINTER will also develop a thumbnail image for each Product (i.e., each Customer document title). Just prior to testing and again just prior to productive mode of the Site, PRINTER will scan the Site for computer viruses, bombs, Trojans, bots and any other computer software or hardware disabling device or mechanism from this Site.

2. **Site Maintenance.** PRINTER will also develop a new thumbnail image for each Product requested by Customer, maintain the path from the Site to Customer's Intranet, and update the bulletin board on the home page of the Site with current information as requested by Customer. PRINTER will also regularly monitor the Site for and remove all computer viruses, bombs, Trojans, bots and any other computer software or hardware disabling device or mechanism. PRINTER hereby grants Customer a worldwide, transferable, non-cancellable, full paid-up license to use, modify, create derivative works of the software and object code developed for each thumbnail image while this Agreement is in effect and after termination or expiration of this Agreement.
3. **Fees.** After the Site goes into productive mode, PRINTER will invoice CUSTOMER for its development costs, and CUSTOMER will pay bona fide fees thirty (30) days after receipt of invoice.

B. Storage, Handling & Disposition of Products.

Procedures relating specifically to PRINTER's storage, handling and disposition of Customer's static hard-copy and digital Product set forth below:

1. Transferred Inventory.

Procedures relating specifically to PRINTER's storage, handling and disposition of Customer's static hardcopy Product is set forth in the attached Appendix A, Transferred Inventory.

2. Custom Products.

From time to time, Customer may request PRINTER to prepare marketing brochures and publications, and literature (hereinafter referred to as "**Custom Products**"). Procedures relating specifically to PRINTER's development of Custom Products are set forth in Section 5. The procedure relating specifically to PRINTER's storage, handling and disposition of Custom Products is set forth in Section 5 of this Agreement.

3. Other Products.

From time to time, Customer may request print marketing brochures and publications, and literature supplied by P&H in digital format (hereinafter referred to as "**Other Products**"). The procedure relating specifically to PRINTER's storage, handling and disposition of Other Products is set forth in Section 5 of this Agreement.

Transferred Inventory, Custom Products, and Other Products may be referred to collectively throughout this Agreement as "Product" or "Products."

Section 5. Product Production, Storage and Order Processing charges.

- A. Custom Products.** From time to time, Customer may request PRINTER to create Custom Products. Pre-press proofs shall be submitted by PRINTER to Customer along with original copy. Corrections are to be made by Customer on the most current set of proofs, and returned to PRINTER marked "**O.K.,**" "**O.K. with corrections,**" or "**Make changes and show reviewed proof**" and signed and dated by the Customer. Fees for Custom Products are set forth in Appendix B. Changes in print quantities or in the number of forms in combination will be considered a revision to a Custom Product and may require that new prices be established by mutual agreement.
- B. Other Products.** From time to time, Customer may request PRINTER to print Other Products. Other Products will be produced and shipped directly to the Customer or stored, produced and shipped at a PRINTER distribution facility for release upon Customer's request.
- C. Transferred Inventory.** PRINTER agrees to store the Transferred Inventory per Appendix A of this Agreement. From time to time, Customer may request PRINTER re-print Transferred Inventory in the manner and quantities requested by Customer. Fees for re-print services are set forth in Appendix b, Sec-

tion XIV. Fees for print press services will be separately quoted by PRINTER. If Customer and PRINTER do not agree on pricing, PRINTER shall not be obligated to produce such affected Products under this Agreement. Instead, PRINTER shall forward the digital Product to Customer in any manner designated by Customer.

Pricing will be provided to Customer prior to production, including the following breakdown of price:

- a. total commercial printing cost;
- b. number of units being produced;
- c. cost per unit.

Also included shall be an order history, including previous pricing, number of units ordered and twelve-month usage figures. Customer and PRINTER may agree to blend the pricing across items to provide a cost effective and marketable program to the end users.

D. Storage Charges. At Customer's request and subject to the provisions of this Section, Custom Products, Other Products, and Transferred Inventory may be stored by PRINTER for distribution.

- 1. Transferred Inventory.** Storage Fees for Transferred Inventory are set forth in Appendix B, Sections V and VI. PRINTER will distribute Transferred Inventory per Customer's instructions at the fee set forth in Appendix B, Sections IX until Transferred Inventory is depleted or destroyed by Customer.
- 2. Custom Products, Other Products.** Finance costs of PRINTER produced Custom Products and Other Products are included in the selling prices of those Products and are based on the assumption the Products will be depleted within one year. Prior to the storage expiration, Customer will be notified of the pending expiration. Storage Fees for Custom Products and Other Products are set forth in Appendix B, Sections VII and VIII.

Section 6. Payment and Billing.

Billing will take place on the 15th of each month and invoices will be payable by Customer upon receipt of a complete and accurate invoice listing all fees and services provided during the previous month. Late payments (excluding those amounts which are the subject of a bona fide dispute) shall be subject to interest accruing at 1% per month, to the extent permitted by law.

Section 7. Order and Delivery.

- A.** Customer and any employee of Customer may place an order to print or release from inventory specific quantities of Product. An order will be made by Customer through the Customer online procurement website prepared by PRINTER.
- B.** In most cases, orders for Products in inventory will be shipped within two business days. All local deliveries (within the Metro area) will be made by PRINTER vehicles and personnel and at no additional charge to customer. Unless otherwise specified, out-of-town deliveries will be made as directed by Customer. Customer will pay actual shipping costs. Upon special request and upon a guaranty of payment of additional charges, shipment from inventory can be expedited. PRINTER shall not be liable for delays in deliveries caused by a recognized delivery service or common carrier.
- C.** In the event that a defective Product is shipped, Customer will notify PRINTER within thirty (30) days of receipt of defective Product. Defective Product will be corrected and reprinted at no cost to Customer. Corrected (non-defective) Products will be printed, boxed, packed and shipped to Customer at no additional charge within ten (10) business days of notice of defective Product. If Product is damaged during shipment, the usual and customary shipper's insurance claim process shall be utilized.

Section 8. Termination

- A. This Agreement will terminate automatically in the event that either party (i) terminates or suspends its business, (ii) becomes voluntarily or involuntarily subject to any bankruptcy or receivership proceedings under Federal or state statutes, which proceedings are not dismissed within 60 days.
- B. Upon breach of a material provision of this Agreement, the non-breaching party may terminate this Agreement if such breach is not cured within thirty (30) days of notice thereof or such other cure period as specifically provided herein.
- C. Upon any termination of this Agreement, PRINTER will suspend its services except to complete work in progress authorized by Customer prior to receipt of Customer's termination notice. PRINTER shall preserve Products and return to Customer all Products, thumbnail images and links to Customer's Intranet, and return all such materials to Customer at Customer's direction. Customer will pay PRINTER for Products developed by PRINTER for Customer, storage fees for Customer's static Products, all authorized work in progress, all special materials purchased for Products previously authorized to be printed or delivered, and reasonable shipping costs. PRINTER shall be responsible for completing and shipping Products as ordered. Any special services required upon termination will be billed at the rates set forth in this Agreement. PRINTER may require prepayment of Products prior to shipment. Inventory storage and fulfillment charges, if any, will be pro-rated to the date of termination. PRINTER will issue a final invoice to Customer listing all fees and services provided during the previous month and prior to termination, and Customer agrees to pay invoice within thirty (30) days of receipt.

Section 9. Warranty, Limitation on Warranty.

- A. PRINTER expressly warrants to Customer that all Products produced by PRINTER will be manufactured in accordance with Customer specifications, free from defects per industry standards, and free from all liens and encumbrances. Printing services will be performed in a timely manner and consistent with printing industry standards, including but not limited to standards developed by Printing Industries of America.
- B. Production schedules will be established and adhered to by the Customer and PRINTER. Where production schedules are not adhered to by the Customer through no fault or delay by PRINTER, final delivery date(s) will be subject to renegotiation. Where production schedules are not adhered to by PRINTER, the Customer will be entitled to an appropriate adjustment in fees and/or shipping costs.
- C. Products or services produced by PRINTER not conforming to the foregoing warranties shall be promptly corrected, replaced, or re-performed at no cost to Customer. Claims for defects must be made within 30 days of delivery of Product. Claims for shortages or damages must be made within 30 days of delivery of affected Product. Failure to make such claims within the stated period shall constitute irrevocable acceptance and an admission that the goods fully comply with the terms, conditions and specifications. PRINTER DISCLAIMS ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE AND WARRANTY OF MERCHANTABILITY.
- D. Neither party shall be liable for the consequential, incidental, punitive or exemplary damages of the other party, including lost profits or interruption of business. The liability of either party for losses, damages, liabilities, suits and action (whether based in contract, on negligence, on strict liability or otherwise) regardless of the form of bringing such action, shall not exceed in the aggregate, the total amount (exclusive of taxes, shipping, transportation, postage and other separate charges) actually paid to PRINTER by Customer for the Products or services which are the subject of the bona fide dispute.

Section 10. Confidentiality¹

- A.** Except as otherwise required by law, each party shall maintain in confidence and safeguard any Confidential Information disclosed by the other party. “Confidential Information” shall mean PRINTER fees set forth on Attachment B, Customer’s draft and electronic marketing brochures and publications, and literature, drawings, specifications, data, financial information, thumbnails, software code, user names, passwords, pass codes, and any other information designated as confidential, as well as the security and preservation of Customer’s static marketing brochures and publications, and literature. Each party shall use the same measures that it uses to protect its own confidential or proprietary information (but not less than reasonable measures) to protect Confidential Information. PRINTER shall limit access to Confidential Information to its officers and employees or subcontractors who are directly involved in providing the Products or Services to Customer and who have entered into written agreement with PRINTER to safeguard and protect Confidential Information and not use or otherwise disclose Confidential Information to anyone except as permitted under this Agreement.
- B.** For purposes of this Agreement, the term Confidential Information shall not include, (i) information which is in the public domain, (ii) information that at the time of receipt was known to the receiving party as evidenced by prior written records of such party, (iii) information that at any time is received in good faith by one party from a third party which was lawfully in possession of the same and had the legal authorization to disclose it, (iv) information that both parties mutually agree in writing to release from the terms of this Agreement. In the event the receiving party is required by a court of competent jurisdiction to release Confidential Information of the other party, the receiving party agrees to immediately notify the disclosing party of such judicial order or decree thereby enabling the disclosing party the opportunity to challenge such order or decree. The disclosing party shall have the right to perform an appropriate and reasonable audit to confirm the receiving party is complying with its obligations hereunder, and that if a material breach of those obligations is discovered as part of the audit, the receiving party shall promptly reimburse the disclosing party for the actual cost of such audit.

Section 11. Indemnification and Insurance.

- A.** PRINTER agrees to indemnify, defend and hold harmless Customer, its employees, officers, directors, agents and representatives from and against any and all claims, liability, loss, damages, costs, fines, legal actions, judgments, settlements and penalties (including reasonable attorney fees and litigation expenses) for personal injury or death of any person or for damage to property of Customer or a third party to the extent caused by the negligent acts or omissions of PRINTER, its employees, representatives or agents.
- B.** PRINTER agrees to indemnify, defend and hold harmless Customer from any and all claims, actions, damages, costs, and expenses (including reasonable attorney’s fees and litigation expenses) arising from a claim of infringement of any third party’s trade secrets, proprietary information, trademark, copyright, or patent rights in connection with Custom Products provided hereunder.
- C.** Customer agrees to indemnify, defend and hold harmless PRINTER from any and all claims, actions, damages, costs, and expenses (including reasonable attorney’s fees and litigation expenses) arising from a claim that Customer’s Transferred Inventory or Other Products provided to PRINTER infringe a U.S. copyright of a third party.
- D. Insurance.** PRINTER agrees to maintain, so long as this Agreement remains in effect, a policy of worker’s compensation insurance coverage with coverage limits per statutory requirements of the state in which the Products are to be manufactured or services are to be performed. PRINTER further agrees to maintain with an insurance company accorded a rating of A-VIII or better by A.M. Best, (i) general liability cover-

¹ You may want to include a provision for injunctive relief and liquidated damages in the event of breach of this provision.

age in limits not less than \$1,000,000 per occurrence providing coverage against liability for damage which may arise out of or based upon any act, error or omission of PRINTER or any of its employees, agents or subcontractors under this Agreement and (ii) property and casualty coverage in limits of not less than \$2,000,000 per occurrence for losses to inventory or Customer property in PRINTER's care, custody and control. Coverage for Products will be limited to the replacement costs of such Products.

E. Upon execution of this Agreement and upon policy renewal, PRINTER shall furnish to Customer a certificate of insurance showing the coverage required in this Agreement. Customer shall be provided with at least 30 days notice of cancellation, termination or non-renewal of any policy.

Section 12. Miscellaneous.

A. Governing Law. This Agreement shall be governed by and construed and enforced in accordance with the laws of the State of (STATE) without regard to conflict of law principles.

B. Force Majeure. A party to this Agreement may be temporarily excused from performance hereunder in the event of a "force majeure". For purposes of this Agreement, an event of force Majeure will include, but not be limited to, labor strikes or lockouts, natural disaster, delays of carriers, acts of God, governmental action, state of war, acts of terrorism or any other causes beyond the reasonable control of such party, and only for so long as the event of Force Majeure continues or until that party is able to secure an alternative source, supplier or location, whichever occurs earlier.

C. Taxes. Customer is responsible for paying all sales and use taxes for Product produced, stored, or shipped pursuant to this Agreement.

D. Severability. If a provision of this Agreement shall be held to be invalid or unenforceable, it shall be replaced by a provision which comes as close as possible to the intended result of the invalid provision and the economic purpose thereof, and which is valid and enforceable. The invalidity or unenforceability of any provision hereof shall in no way affect the validity or enforceability of any other provision of this Agreement.

E. Entire Agreement. This Agreement and the attached Appendix A and Appendix B constitute the entire agreement of the parties relating to the matters hereof and supersedes all prior representations or agreements, whether written or oral, with respect to such matters. The terms of this Agreement shall supersede any terms contained on preprinted forms of either party.

F. Amendment: Waiver. No amendment or modification of this Agreement and no waiver by any party of the breach of any covenant contained herein shall be binding unless executed in writing by the party against whom enforcement of such amendment, modification or waiver is sought. No waiver shall be deemed a continuing waiver or a waiver in respect of any subsequent breach or default, either of a similar or different nature, unless expressly so stated in writing.

G. No Rights of Third Parties. Nothing expressed or implied in this Agreement is intended or will be construed to confer upon or give any person or entity other than the parties hereto any rights under or by reason of this Agreement or any transaction contemplated hereby.

H. Successors and Assigns. Neither party shall assign or transfer this Agreement in whole or in part without the prior written consent of the other party. Subject to the foregoing, this agreement shall bind and inure to the benefit of the permitted successors and assigns of each party.

I. Notices. All notices, demands, requests or other communications that may be or are required to be given, served or sent by either party to the other party will be in writing and will be mailed by first class, registered or certified mail, return receipt requested, postage prepaid or transmitted by hand delivery, telegram, or overnight courier to the main corporate office of either party or such other location as either party may designate in writing from time to time.

In witness whereof, the parties hereto have executed this Agreement as of the date first set forth above.

ABC Printing Company, Inc. _____

BY:

NAME: _____

TITLE: _____

DATE: _____

BY:

NAME: _____

TITLE: _____

DATE: _____

APPENDIX A

TRANSFERRED INVENTORY

PRINTER AGREES TO ACCEPT SHIPMENT OF ITEMS DESCRIBED BELOW (REFERRED TO AS TRANSFERRED INVENTORY) ON THE FOLLOWING TERMS AND CONDITIONS:

1. **General Terms.** PRINTER's acceptance of the Transferred Inventory is subject to all applicable terms of the Agreement. Distribution of Transferred Inventory will be prepared and shipped per Customer's instructions. PRINTER will use the shipper designated by Customer, if any.
2. **Receipt.** Customer shall be responsible for all shipping and insurance costs until the product reaches the PRINTER dock. Transferred Inventory must meet the following criteria:
 - a. Each carton must be clearly labeled with item number, item description, quantity per carton and quantity per pack (or appropriate packing unit). Cartons of the same item must be consolidated (i.e. not scattered among several pallets) and different items must not be included within an individual carton.
 - b. Pallets must be 42 inches by 48 inches and must include packing list showing items and quantities on each pallet. Each shipment must contain a master list showing all items and quantities for that shipment.
 - c. PRINTER shall inspect and verify the products received match the information supplied by Customer. Any verification or inspection of Transferred Inventory by PRINTER will be limited solely to confirming that the number of skids, cartons or packages received are the same as the number of skids, cartons or packages shown on the accompanying delivery ticket, and PRINTER shall have no liability for any shortages, defects, damages, non-conformance with specifications, or other problems associated with the Transferred Inventory as initially delivered to PRINTER.
3. **Quantities and Quality of Products.**
 - a. Only goods currently being used by Customer and reasonably anticipated to be consumed within one year are to be transferred. Any obsolete or excessive inventory that is transferred will be treated as a Slow Mover and subject to Section 6 of Appendix A.
 - b. Quantity of Transferred Inventory must not exceed a one-year supply, and must not be less than one carton of any individual Product.
 - c. PRINTER warrants that the Transferred Inventory will be stored in a secure and clean facility, and will reimburse Customer for the cost of re-printing any Transferred Inventory lost, damaged or destroyed. The foregoing contains the entire warranty of PRINTER with respect to the Transferred Inventory. PRINTER DISCLAIMS ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE AND WARRANTY OF MERCHANTABILITY.

4. Description of Transferred Inventory and Timetable.

An estimated 400 separate document titles (each with an individual SKU) will be transferred to the PRINTER distribution facility in (ADDRESS) after this Agreement is finalized. The parties acknowledge and agree the foregoing is only an estimate. Actual amounts delivered may differ from the estimate. Transfer Fees for Transferred Inventory are set forth in Appendix B, Sections X, XI and XII.

5. Storage of Initial Transferred Inventory.

Storage charges for Transferred Inventory are set forth in Appendix B, Section V.

6. Storage, Distribution, and Billing of Transferred Inventory.

Transferred Inventory shall be placed into PRINTER's warehouse inventory on a paid for stock basis. Storage charges for Transferred Inventory are set forth in Appendix B, Sections V and VI. Distribution fees for Transferred Inventory are set forth in Appendix B, Section IX. Handling fees for the Transferred Inventory are set forth in Appendix B, Section IX.

APPENDIX B**CONTRACT PRICE LIST****I. Setup charge (one time)**

\$XX.xx

This includes opening up a catalog for housing static inventory items (items that are not variable), setting up storefront with company-specific logos and colors, setting up the initial home page, users, security, locations, payment methods, and shipping.

II. Addition of up to 400 static products into catalog

\$XX.xx

This includes the placement of already created thumbnails by customer for each item (I will provide specs for thumbnail creation). Set up of static inventory includes a product SKU, a description, quantity, category, pricing per lot.

III. Variable Data: Optional

\$ 250/hr

Any product builds (i.e., designs) that would be considered non static (variable) would be charged at a rate of \$250/hr. Further estimates would be more specific after completing an interview about such items with customer.

IV. Custom Programming: Optional

\$ 250/hr

Custom interface programming of either the store front, or custom reports (those reports which fall outside of the standard reports) available to customers online would be programmed by Printable Technology and billed at an hourly rate.

V. E-commerce Website Monthly Maintenance Fee

For first year. \$0.00/month

VI. E-commerce Website Monthly Maintenance Fee

For second year. \$250.00/month

VII. Product Storage Fees

\$350.00/month max

VIII. Pick & Pack Fees

\$5.00/up to 10 line items

\$0.50/line for 11 or more items.

This fee includes box, label, sealing, and affixing freight label.

Does not include Freight.

IX. Transfer of Inventory

No Charge

Inventory must be packaged and labeled as to contents and quantity counts and packed on skids. PRINTER will pick up the inventory in its truck and take to its warehouse.

X. Delivery of Inventoried Materials to Customer

No Charge

Charges would apply if PRINTER makes deliveries via common carrier or a delivery services other than in a PRINTER truck.

XI. Placing Material Printed by PRINTER into Inventory

No Charge

XII. Placing Material Not Printed by PRINTER into Inventory

\$5.00/SKU

Does not apply to Transferred Inventory so long as it is delivered as specified in Section X above.

XIII. Print on Demand

\$35.00 minimum

2 page 6.5×11 printed 4 colors on 80# Gloss or Matte text paper:

25 pieces. \$XX.00

50 pieces. \$YY.00

100 pieces. \$ZZ.00

XIV. Boxed Calendars for Shipment

\$2.50/box of 50

Calendars to be shrink wrapped ten (10) per package and then placed in standard PRINTER boxes, sealed with clear tape and placed in storage until shipping instructions are received. Not all calendars will be boxed, some will be placed in envelopes for individual mailing.

Printing/Service Agreement V

Commercial Agreement

SCOPE

Identification of Contracting Parties

Agreement dated this ____ day of _____ (YEAR) by and between XYZ Inc., (ADDRESS) (“XYZ”) and ABC PRINTING Incorporated, (ADDRESS) (“ABC PRINTING”).

Identification of Products and Services

Subject to the terms hereof, ABC PRINTING agrees to perform for XYZ, and XYZ agrees to pay for 100% of all tooling and manufacturing of approved printed and bound items for the following XYZ Divisions:

(LIST)

Product Safety

ABC PRINTING is responsible for manufacturing products that meet all safety requirements for XYZ’s markets including the United States, Canada, and Europe. For printed product, ABC PRINTING will use non-toxic inks, laminates, coatings, and varnishes. The definition of “non-toxic” to be used is that of the countries in which the product will be sold, and not of the country of manufacture.

TERM and TERMINATION

Term of Agreement

This agreement shall become effective on June 1, 2005 (when signed by both parties) and shall continue until May 31, 2009. This Agreement may be renewed by written agreement of the parties.

Termination of Agreement

- a. Either party may terminate this Agreement for a material breach specified in a written notice to the other party, and where breach has not been remedied within 30 days of said notice. Without limitation of events that may constitute a material default hereunder, a party’s bankruptcy, insolvency, or inability to meet its obligations as they become due shall be deemed a material breach of this Agreement. XYZ may terminate this Agreement upon 60 days written notice to ABC PRINTING for any reason.
- b. In addition to the foregoing, ABC PRINTING acknowledges and agrees that XYZ’s rights to certain products to be manufactured hereunder are licensed from third parties (the “Licensors”). Said Licensors require approval rights over XYZ’s suppliers, including ABC PRINTING . These approval rights may include the obligation that ABC PRINTING execute a supplier’s agreement and be subject to audit, among others. ABC PRINTING agrees to execute the supplier’s agreements, an example of which is attached hereto as **Exhibit 1**, as well as such other agreements as may be required by XYZ’s Licensors during the term hereof.

Notwithstanding the foregoing, ABC PRINTING reserves the right to reject any supplier agreement it deems unacceptable, provided however, that in such event, XYZ may at its option remove such Licensor's product from this Agreement or terminate the Agreement in its entirety.

- c. ABC PRINTING agrees to comply with XYZ's Supplier Code of Conduct as stated in **Exhibit 2**. Additionally, ABC PRINTING must comply with local laws including but not limited to those regarding non-discriminatory employment practices, worker safety, compensation, and the environment. XYZ has the right to hire an outside firm to conduct unannounced on-site audits. If ABC PRINTING fails an on-site audit, XYZ may choose to put ABC PRINTING on warning and conduct a follow-up audit or to terminate ABC PRINTING's contract, depending on the severity of the issue. In cases where a follow-up audit is conducted, ABC PRINTING agrees to reimburse XYZ for auditing expenses up to \$3,000 per follow-up inspection.

Film/File Preparation

ABC PRINTING will charge XYZ for standard prepress, file processing services, and other services as agreed by an authorized XYZ buyer. All film (platemaking or otherwise), supplied Computer to Plate (CTP) electronic files, molds, and tooling shall be and remain XYZ's sole property, and ABC PRINTING will not cause any mortgage, lien, or encumbrance to be put upon same. ABC PRINTING acknowledges XYZ's right to remove same at any time. ABC PRINTING will not charge XYZ for restripping film or processing files for work that is moved from other XYZ suppliers to ABC PRINTING as a result of this contract.

Pricing and Price Increases

ABC PRINTING agrees to submit final price scales to XYZ that are consistent with the agreed upon Proforma pricing. Over the course of this contract, XYZ agrees to pay for labor increases at 50% of the CPI and material increases at 100% unless otherwise stated. Labor increases will be effective every June 1 of each contract year. The CPI means the Consumer Price Index (1982-4=100), All Urban Wage Earners and Clerical Workers, U.S. City Average, published by the Bureau of Labor Statistics, U. S. Department of Labor. If the CPI as defined is revised or discontinued, the calculation described will be made using the successor price index designated by the Bureau of Labor Statistics. Prices for materials supplied by ABC PRINTING will be subject to annual review, with pricing adjustments to be allowed June 1st of each contract year commencing June 1, 2006, subject to, and in an amount not to exceed, the actual documented percentage cost increases incurred by ABC PRINTING.

Volume Rebates

At the end of the first full year of the Agreement and each anniversary thereafter, ABC PRINTING shall pay to XYZ in the form of a check, a rebate calculated pursuant to the schedule listed below:

XYZ Annual Sales Rebate Percentage

\$0 to \$500,000	None
\$500,000 to 1 million (MM)	1%
\$1 MM to \$1.5 MM	2%
\$1.5 MM to \$2 MM	3%
\$2 MM to \$3 MM	4%
over \$3MM	5%

For example, on XYZ Sales of \$1.2 MM, XYZ would be entitled to a rebate in the amount of \$12,000.

“**XYZ Annual Sales**” as used herein is determined as follows: (i) the aggregate charges billed by ABC PRINTING for services and materials performed during the respective Fiscal Period under the Existing Agreements or other agreements, purchase orders, or the like, between any of XYZ Inc. and its affiliates and ABC PRINTING and any of its affiliates and paid for by XYZ in accordance with the respective terms of such agreements(s) under which the particular services and/or materials are provided. In the event that XYZ Inc. or any of its affiliates acquires a business after the date hereof, that has requirements already produced by ABC PRINTING at the time of acquisition, the parties will discuss and mutually agree whether or not the billings of the acquired business will be included for purposes of determining XYZ Annual Sales amount hereunder.

The rebate payment(s) shall be made in the form of two checks. The rebate check for sales from June 1 through April 30 is due by May 31. The rebate check for sales from May 1 through May 31 is due by June 30 and will be sent to the attention of [NAME].

ORDERING and SHIPMENT PROCESS

Order Instructions

Orders for Products and Services shall be made in writing and transmitted by hard copy, facsimile, EDI, or other acceptable electronic transmission. Orders shall specify the purchase order number, the Products or Services to be purchased or licensed, the quantities, and the desired delivery location. Orders will be subject to acceptance by ABC PRINTING. ABC PRINTING shall as soon as possible acknowledge acceptance of Orders for Products or Services at the time of receipt of Order in writing via EDI, electronic transmission, email, or facsimile. ABC PRINTING will ship product as required by XYZ's Shipping Compliance Document attached hereto as **Exhibit 3**.

It is ABC PRINTING's responsibility to notify XYZ in a timely manner regarding any governmental licenses necessary to produce, ship, or receive any order. Where applicable, ABC PRINTING agrees to provide customs duty and tax estimates on all quotations.

Order Acceptance

All Products ordered are subject to acceptance by XYZ. Such acceptance shall be made within a reasonable time after delivery of the Products, but in any event within ninety (90) days of receipt of the Products. XYZ reserves the right to reject any Products which fail to conform to the manufacturer's published specifications. Acceptance of products by XYZ at the time of delivery does not limit XYZ's rights to seek other remedies available to it at a later date.

Service Level

ABC PRINTING agrees to make every effort to meet the target lead times for forecasted units from the receipt of a XYZ purchase order to shipment of finished goods as follows:

Paperback books with 1-color text: 2 weeks or 10 working days

ABC PRINTING agrees to provide standard manufacturing lead times and minimum order quantities on all quotations.

Order Cancellation

All Standard Purchase Orders shall be cancelable by Buyer up to the manufacture date. If ABC PRINTING procures custom-made materials for a cancelled order, XYZ is responsible to pay ABC PRINTING for those materials.

Overages/Underages

If ABC PRINTING ships deliverables in excess of the overage allowed, in addition to any and all other available remedies, XYZ shall have no obligation to pay for same. If ABC PRINTING ships less than the agreed upon underage, XYZ may require ABC PRINTING to make up the underage without incurring set up charges.

Acceptable overages/underages are as follows:

Quantity	Percentage
0–5,000	+/- 4%
5,000–25,000	+/- 3%
25,000–50,000	+/- 2%
50,000+	+/- 1%

Passing of Title

Title to all deliverables hereunder shall pass to XYZ upon delivery at the F.O.B. point specified on the ABC PRINTING quotation.

Work Stoppage

ABC PRINTING shall perform work for XYZ in the following plant locations: (ADDRESS) . Neither party shall be liable for delays or non-performance of this agreement occasioned by strikes, fires, accidents, or causes beyond its control, and arising without its fault or negligence (any such event an element of “force majeure”). In the event of a stoppage or delay by ABC PRINTING resulting from any such cause, ABC PRINTING shall perform such parts of the work as it is capable of performing at its plant or another plant, providing mutually agreed upon, which shall not result, in any increased costs to XYZ or unreasonable delay. If it does, XYZ may obtain the services from third parties, or furnish itself the required services. ABC PRINTING shall resume work as soon as practicable. If work returns to ABC PRINTING, ABC PRINTING will be responsible for restripping and other costs for converting to its requirements. If work is moved to another vendor as a result of lack of capacity at ABC PRINTING, the moved work shall count toward XYZ’s Annual Sales.

STORAGE

ABC PRINTING agrees to store XYZ materials at no charge for the following timeframes:

Film and electronic files: 3 years from the last printing

Paper and furnished materials: 18 months from the last use

Items or materials in storage beyond said duration are considered inactive. ABC PRINTING agrees to supply XYZ with quarterly reports that describe inactive stored items by ISBN, amount, and duration. XYZ agrees to review title list and authorize destruction for titles that are out of print. ABC PRINTING will not destroy items without written authorization from XYZ.

BILLING AND PAYMENT

Billing, Payment, Invoice Terms

XYZ will pay ABC PRINTING according to the following terms: 2% 10 Net 60 days

Should any portion of an invoice become disputed, XYZ agrees to pay the undisputed portion according to its terms, and XYZ will notify ABC PRINTING promptly of the dispute. Both parties agree to use their best efforts to resolve the disputed portion of such invoice within 30 days.

OTHER

Maintenance of Records

ABC PRINTING agrees to maintain accurate and complete records of Products and Services payable by XYZ under this Agreement. Such records shall be maintained in accordance with recognized commercial accounting practices so they may be readily audited. ABC PRINTING shall permit XYZ to examine and audit these records, including the verification of ABC PRINTING's actual cost of Products and Services from the original manufacturer or ABC PRINTING's supplier, and all supporting records in ABC PRINTING's main offices at all reasonable times. All payments, if any, made under this Agreement by XYZ shall be subject to adjustments as determined by such audit(s). ABC PRINTING shall retain all such records for a period not less than two (2) calendar years after the termination of this Agreement.

General Compliance

ABC PRINTING warrants that it is in compliance with all applicable federal, state and local laws, regulations and standards relating to the design, manufacture, testing, labeling, sale and transportation of the supplies or items, and provision of the services, purchased hereunder. ABC PRINTING explicitly warrants that it is in compliance with all applicable federal, state and local law with respect to nondiscrimination in employment and also complies with all applicable affirmative action requirements. ABC PRINTING agrees to defend and indemnify XYZ for any claim, liability, loss, etc. resulting from ABC PRINTING's failure to comply with the foregoing.

Warranties

XYZ shall be entitled to any and all manufacturer's warranties for Products furnished by ABC PRINTING under this Agreement. In addition, ABC PRINTING warrants that the Services provided hereunder shall meet XYZ's specifications and shall be performed in a professional and workmanlike manner, consistent with applicable industry standards.

Limited Bodily Injury Indemnity

ABC PRINTING shall indemnify and hold harmless XYZ, its personnel and agents, from and against any claims, demands, losses, damages or expenses relating to any bodily injury, death of any person or damage to property resulting from the negligent or willful acts or omissions of ABC PRINTING, its personnel or agents in the course of providing Products or performing Services hereunder; provided XYZ shall have given ABC PRINTING notice of any claim hereunder within a reasonable time period of its knowledge of such claim.

Copyright Infringement Indemnification

ABC PRINTING warrants that no Product or Service provided hereunder infringes, separately or in combination with other materials or processes, on the intangible rights of others. ABC PRINTING shall defend, or at its option, settle any claim or proceeding brought against XYZ to the extent that it is based on an assertion that a Product or Service furnished to XYZ by ABC PRINTING constitutes an infringement of a patent, copyright or

trade secret of any third party, and shall pay all costs, expenses and damages finally awarded, provided that ABC PRINTING shall have no liability if XYZ's failure to notify ABC PRINTING within a reasonable period of its knowledge in writing of any such claim or proceeding materially prejudices ABC PRINTING in its defense of the claim or proceedings. Should a Product or Service become, or in ABC PRINTING's opinion be likely to become, the subject of a claim of infringement, ABC PRINTING shall have the right, at its option, either (i) to procure for XYZ the right to continue using the Product or Service, or (ii) replace or modify the Product or Service so that it becomes non-infringing or, (iii) if after good faith efforts to achieve (i) and (ii) above such remedies are not reasonably available, give XYZ a refund for the Products or Service and accept its return and compensate XYZ for other losses incurred.

Insurance

ABC PRINTING agrees to maintain through the term of this Agreement the following minimum insurance coverages and conditions:

1. Workers' Compensation/Employers Liability
 - a. Workers' Compensation with coverages as may be required by the jurisdiction in which Custom Products are manufactured or Services are performed.
 - b. Employers Liability with limits of \$1,000,000 each accident; \$1,000,000 for disease – policy limit, and \$1,000,000 for disease per employee.
2. Commercial General Liability, including Product Liability, with limits of \$1,000,000 per occurrence.
3. All-risk Property insurance with limits of not less than \$1,000,000 per occurrence for loss of or damage to Customer owned property in the care, custody or control of ABC PRINTING.
4. All insurance coverages listed in 1-3 above will be maintained with insurers with an A.M. Best rating of A-VIII or better. If an insurer providing ABC PRINTING with coverage fails to maintain the appropriate A.M. Best rating, ABC PRINTING will endeavor to replace such coverage and insurer; and such insurer impairment will not impact any other provisions of this Agreement.
5. Coverages listed in 1–3 above will be deemed to be in effect unless XYZ is otherwise notified in writing by ABC PRINTING. Certification of coverage will be provided within 10 days of receipt of a written request, and sent to XYZ. XYZ Inc. is to be named as an additional insured under the Commercial Liability Insurance Policy as respects this agreement. XYZ Inc. will receive 30 days notice of cancellation of such policy.

Confidentiality

ABC PRINTING in the performance of its duties for XYZ has access to XYZ's "Confidential Information," defined for purposes of this Agreement as any information used in XYZ's business which gives XYZ an opportunity to obtain an advantage over competitors who do not know such information (e.g., customer lists, marketing plans, financial data, business plans, etc.), whether or not designated as Confidential Information. ABC PRINTING agrees that it will never, directly or indirectly, use XYZ's Confidential Information, except in furthering XYZ's business, nor will ABC PRINTING disclose or disseminate XYZ's Confidential Information to anyone who is not an officer, director, employee, attorney or authorized agent of XYZ without the prior written consent of XYZ's legal department, unless the specific item of XYZ's Confidential Information (a) is now, or hereafter becomes, through no breach of this Agreement, general public knowledge, or (b) prior to ABC PRINTING disclosure, dissemination or use, was lawfully acquired by ABC PRINTING without any obligation to retain the information in confidence. ABC PRINTING agrees to execute any agreement relating to the protection of XYZ's Confidential Information or the confidential information of any third party, upon XYZ's request. ABC PRINTING shall limit access to Confidential Information to its officers and employees or subcontractors who are

directly involved in providing the Products or Services to XYZ, and ABC PRINTING shall not use or otherwise disclose Confidential Information to anyone except as permitted hereby. The terms of this clause shall survive the termination or expiration of this Agreement.

Use of XYZ's Name

ABC PRINTING agrees that it shall not use XYZ's name or service marks in any of its promotional or marketing efforts without XYZ's prior written approval.

Independent Contractor Status

It is expressly agreed and understood that ABC PRINTING shall at all times act strictly and exclusively as an independent contractor and that its employees shall not be considered under the provisions of this Agreement or otherwise as having employee status with XYZ, or as being entitled to participate in or receive any benefit under any benefit plan or program made available by XYZ to its employees. ABC PRINTING is not granted any right or authority to assume or create any obligation or responsibility, express or implied, on behalf of or in the name of XYZ, or to bind XYZ to any agreement, contract or arrangement of any nature, except as expressly provided herein. ABC PRINTING shall be solely and entirely responsible for its acts during the performance of this Agreement.

Severability

Should any provision of this Agreement be held invalid, illegal or unenforceable, it shall be deemed to be modified so that its purpose can be lawfully effectuated and enforced and the balance of the Agreement shall remain in full force and effect.

Agreement Modifications

This Agreement, including **Exhibits 1 to 3**, constitutes the entire Agreement of the parties and supersedes all prior communication, representations, and Agreements or understandings, either oral or written, between the parties with respect to the subject matter hereof. This Agreement may not be altered, modified, amended or otherwise changed except by supplemental written Agreement or Amendment signed by duly authorized representatives of both parties.

Non-Recourse

It is expressly understood and agreed by ABC PRINTING that none of XYZ's covenants or undertakings herein are made or intended as personal covenants or undertakings by any of the officers, directors, or employees from time to time of XYZ, and any liability of XYZ for damages for breach or nonperformance or otherwise arising under or in connection with this Agreement is hereby expressly waived by ABC PRINTING against each and every one of the officers, directors, or employees of XYZ from time to time personally and individually, and in such instance ABC PRINTING shall look solely to XYZ and its assets and not to any individual officers, directors, or employees or any individual officer's, director's or employee's assets for discharge of any such liability. XYZ's assets shall not include the capital account of any individual officer, director, or employee of XYZ.

Dispute Resolution

The parties agree that in the event of a dispute or alleged breach they will work together in good faith to resolve the matter internally by escalating it to higher levels of management and, if necessary, to use a mutually agreed upon alternative dispute resolution mechanism prior to resort to litigation.

Governing Law

This Agreement shall be governed by and construed under the laws of the State of (STATE). The courts of the State of (STATE), (COUNTY) County shall have exclusive jurisdiction over any dispute between the parties arising hereunder and the parties hereby submit to said jurisdiction.

Attorneys' Fees

If either party prevails in any legal action or other proceeding to interpret or enforce the terms of this Agreement, then that party shall be entitled to recover reasonable attorneys' fees and any other costs incurred, in addition to any other relief to which it is entitled.

Rights Cumulative

Except as expressly provided in this Agreement, and to the extent permitted by law, any remedies described in this Agreement are cumulative and not alternative to any other remedies available at law or in equity.

Successor and Assigns

Neither party shall assign this Agreement in whole or in part without the prior written consent of the other party.

Notices

Any notice required or permitted to be given under this Agreement shall be in writing and deemed to have been given when delivered personally or sent by registered or certified mail, postage prepaid, return receipt requested, duly addressed to the party at the address indicated above or to such other address as that party may subsequently designate by written notice to the other party.

Signature

The parties hereto have caused this Agreement to be executed by the authorized officers of each of the parties as of the date and year set forth above.

XYZ INC.

ABC PRINTING

(NAME)

Vice President

Manufacturing and Corporate Purchasing

By: _____

By: _____

Exhibits attached:

- 1: Supplier's Agreement for Licensed Products (example)
- 2: XYZ's Supplier Code of Conduct
3. XYZ's Domestic Shipping Compliance Documents

Section III
Magazine Agreements

Magazine Agreement I

MAGAZINE AGREEMENT

(Date)

ABC PRINTING CO. (“Printer”), a (STATE) corporation, and XYZ COMPANY (Publisher”), a (STATE) corporation, with addresses as they appear below, agree as of the above date as follows;

1. SUBJECT OF AGREEMENT

Publisher shall purchase from Printer, and Printer shall produce at Printer’s plant, Publisher’s requirements for production of the magazine(s) entitled XYZ MAGAZINE (herein referred to as the “work” or the “magazine”). The work shall be performed by Printer and paid for by the Publisher in accordance with the following schedules attached hereto and made a part hereof: Specifications Schedule, Price Schedule, and, to the extent Printer is to be involved with any mailing of the work, the Mailing Specifications Schedule.

2. TERM OF AGREEMENT

The initial term of this Agreement shall be (X) year(s), commencing with production (DATE). Upon expiration of the initial term, this Agreement shall be renewed month to month thereafter unless either party gives written notice to the other of its intent to terminate this Agreement not less than three months prior to the date for commencing production of the last issue of the initial term as set forth in the Production Schedule, or of any renewal term.

3. PUBLISHER’S RIGHT TO TERMINATE

- A. If Printer defaults under this Agreement with respect to quality or delivery of the work, Publisher shall give Printer written notice describing the default and giving Printer thirty (30) days in which to cure such default. If Printer is unable to cure the default within that period, Publisher shall have the right to terminate this Agreement upon ninety (90) days written notice to Printer.
- B. Any default with respect to quality shall be based upon either (i) complaints by advertisers that the quality of their advertisements in the magazine is unacceptable or (ii) complaints by Publisher that the quality of editorial material in the magazine is unacceptable; provided, such complaints are based on repeated occurrences of unacceptable quality when judged by trade standards and course of dealing. Any default with respect to delivery shall be based upon Printer’s repeated failure to comply with delivery schedules agreed upon by the parties, provided such default is not caused by any act of Publisher or any contingency described in Section 16.
- C. In the event of termination hereunder, or in the event of a sale of all or substantially all of Publisher’s assets or stock, Publisher shall be immediately liable for all Printer’s accrued costs and all unpaid invoices as of the date of notice of termination or of such sale; Printer shall have the option, in its sole discretion, to change credit terms for work to be performed hereunder after such notice. Printer shall not be obligated to release paper to Publisher which Printer supplied and which is on hand or on order, but if, in Printer’s sole discretion, such paper is not suitable for Printer’s other production needs, then Publisher shall be obligated to accept delivery and pay for such paper.

4. PRICES

- A.** Charges for Printer's work are set forth in the Price Schedule. The prices are based upon (i) Printer's labor costs effective as of the commencement of the work, (ii) Printer's material costs as of the date of this Agreement, and (iii) Publisher's specifications set forth in the Specifications Schedule. Prices may be adjusted under Section 5, and, whenever possible, Printer shall provide reasonable advance notice of price adjustments. Changes in quantities or specifications, including author's alterations, which result in additional cost will be charged to Publisher at Printer's standard rates in effect on the date of such change, and, if such change(s) materially increase the pricing of the work, will subject credit terms to renegotiation. Printer shall not be required to comply with any quantity or specification changes requested by Publisher which are not within Printer's capabilities.
- B.** Publisher recognizes that tie prices are exclusive of storage charges (see Section 15), and sales and other taxes. Any taxes imposed on Printer by federal, state or local taxing authorities, or sales, manufacturing, processing or selling, shall be added to the price paid by Publisher.

5. PRICE ADJUSTMENTS

- A.** Prices which reflect Printer's labor costs shall remain firm from the date of this Agreement through (DATE) and thereafter may be adjusted as follows: if at any time after the date of this Agreement, Printers cost of performance hereunder is increased due to increases in employee compensation, benefits or other terms of employment, then the prices which affect labor costs shall be adjusted in proportion to such increased cost of performance effective on the date of the cost adjustment to Printer, but no earlier than the date stated above.
- B.** If at any time after the date of this Agreement, Printer's cost of performance hereunder is increased due to increases in state or federal social security taxes or other taxes related to labor utilization, or to changes in governmental regulations, then the prices shall be adjusted in proportion to such increased cost of performance effective the date of the cost adjustment to Printer.
- C.** If at any time after the date of this Agreement, Printer's cost of materials for the work, including, but not limited to, film, plates, paper, ink, adhesives, fuel surcharges, energy or utilities shall increase over the cost as of such date, then the prices which reflect such cost shall be adjusted in proportion to such increase effective on the date of the cost adjustment to Printer.

6. PAYMENT TERMS

- A.** Payment shall be 1% net 10, thirty (30) days from invoice date. To be eligible for a Quick Pay Discount of 1%, payment must be received within ten (10) calendar days of invoice date. Past due invoices are subject to a service charge of one and one-half percent (1½%) per month on tie outstanding balance. Upon Publisher's notice to Printer pursuant to Section 17, disputed items shall not be subject to a service charge; provided however, Publisher shall not withhold payment for undisputed items. Thus foregoing service charge provision shall not be construed as a grant to Publisher of an extension of time within which payment is required under this Agreement.
- B. PAYMENT BY CREDIT CARD:** MasterCard, Visa, Amex and Discover are an accepted form of payment. Printer will supply the necessary authorization form for your signature. A 3% convenience fee will apply for all payments made via credit card. Printer shall issue an invoice or invoices to Publisher as follows:
 - I.** Preparatory work, plates, presswork, binding, mailing and shipping charges, and paper furnished by Printer — upon Printer's completion of each issue.

- II. Storage of materials furnished by Publisher end of finished and semi-finished work produced by Printer in advance of the first of each month for which such charge applies.
- III. In advance of the mailing date for work to be mailed, Publisher shall deposit in the appropriate Postal Service office sufficient certified funds to cover all mailing costs. Invoices for freight will be billed separately and are due upon receipt.
- C. In addition to all statutory or equitable liens, Printer is hereby granted a security interest in and lien for all work, goods and materials of Publisher in Printer's possession in the event of a failure by the Publisher to pay when due any obligation under this Agreement. Such failure shall be considered a default which may be cured by the Publisher bringing its account current.
- D. Publisher will not offset against, deduct from, adjust or otherwise reduce any Account Receivable owing to Printer by Publisher of any claim or right against Printer related in any way to Publisher Inventory. Publisher will timely pay each Account Receivable owing to Printer in accordance with the terms and conditions of the Agreement notwithstanding the existence of any claim, defense, right of deduction or offset against Printer arising out of Publisher's Inventory held by Printer.

7. PRODUCTION SCHEDULE

- A. Publisher will provide Printer on an annual basis with a detailed schedule outlining Publisher's anticipated print needs for the year, in order for Printer to reserve on Publisher's behalf, the necessary manufacturing line associated with the production of Publisher's work.
- B. Publisher's delay in furnishing and/or returning promptly all copy, specifications, artwork, proofs, or other material in accordance with the Production Schedule may result in an extension of scheduled delivery date and/or additional charges to Publisher for accelerated production at Printer's regular overtime rates.

8. PROOFS

Printer shall furnish Publisher the proofs and materials set forth in the Specifications Schedule. Publisher shall return to Printer one set of proofs for each completed page indicating any and all changes (editorial and art). Press standing time awaiting Publisher's approval shall be charged to Publisher at Printer's standard rates then in effect for press standing time. Printer shall not be liable for errors or subsequent corrective costs for work completed per Publisher's approval or for errors due to Publisher's failure to order proofs, refusal to accept proofs, failure to return proofs marked with changes, or Publisher's instructions to proceed without submission of proofs. Printer's Film, Paper and Furnished Material Specifications are hereby incorporated by reference.

9. MATERIALS FURNISHED BY PUBLISHER

- A. Printer's manufacturing prices are based on receiving first run mill stock, Should Publisher desire to supply other than first run mill stock, there must be a written agreement between Printer and Publisher prior to the delivery to Printer of said stock. Should Printer decide to run, at its option, said stock, any additional costs due to delays, impaired production or the necessity to repair or replace such materials because of Publisher's failure to meet such standards shall be charged to Publisher at Printer's standard rates. Publisher is responsible for independently seeking recourse from its suppliers with respect to such defective materials, Semi-finished materials furnished by Publisher shall include manufacturing waste allowances Printer deems adequate and shall be adjusted to Printer's count. Printer will be absolved for any reproduction deviations found in the printed product as a result of poor paper quality. Printer agrees to supply evidence of sub-quality paper conditions to Publisher.
- B. Paper stock, film (negatives and positives), and other materials furnished by Publisher shall be property packed, free from dirt, grit, torn sheets, bad splices, etc., and shall comply with the specifications and

Printers quality and manufacturing standards. With respect to electronic manuscripts or images, it is the Publisher's responsibility to maintain a copy of the original file. The Printer is not responsible for accidental damage to media supplied by the Publisher or for the accuracy of furnished input or final output. Until digital input can be evaluated by the Printer, no claims or promises are made regarding Printer's ability to work with job submitted in digital format and no liability is assumed for problems that may arise. Any additional translating, editing or programming needed to utilize Publisher's supplied files will be charged at Printer's prevailing rates.

- C.** Printer shall not be liable for the fitness of any materials furnished by Publisher unless directed by Publisher, at additional cost to Publisher, to take corrections, repairs, or substitutions Printer deems necessary. In no event does Printer assume responsibility for the color fidelity of finished work made from film furnished by Publisher unless proofed by Printer.
- D.** Any calculation of consumption of Publisher-furnished paper shall be adjusted for (i) if variance between actual weight and the basis weight specified and (ii) damaged, defective or otherwise nonconforming paper delivery to Printer. The value of under consumption, if any, of one kind of paper shall be credited against over consumption, if any, of other kinds of paper.
- E.** Publisher hereby grants a security interest in paper, stock and other materials furnished by Publisher hereunder to secure the payment and performance of the obligations set forth in Paragraph 6 hereof. Any failure of Publisher to pay when due, any obligation under the Agreement shall constitute a default affording the Printer, without notice or demand, the ability to exercise the rights and remedies of a secured party under the Uniform Commercial Code and all other rights and remedies available to a secured party under applicable law.
- F.** To the extent that a claim arises against the supplier of materials provided by the Publisher to the Printer, Publisher may pursue such claims against its supplier but in any event will reimburse Printer for additional costs related to defective materials within two weeks of demand for reimbursement by Printer.

10. RESPONSIBILITY FOR MAGAZINE

- A.** The Publisher agrees to indemnify and render Printer harmless from any and all loss, claims or damages (but not consequential damages), including reasonable attorney's fees which Printer may suffer or incur in the event any claim is made against Printer by any person, firm, corporation or otherwise for obscenity, lewdness, libel, slander, infringement of copyright violation of privacy, patent infringement, breach of contract or any other cause of whatsoever nature arising from or as a result of the printing, publishing, or distribution of the magazine printed hereunder or of any material of whatsoever nature included herein. Should any such situation arise, the Publisher further agrees upon Printer's request to defend on behalf of Printer by attorneys acceptable to Printer, but at Publishers cost and expense, any such action, proceedings, claims and/or demands brought or made against Printer.
- B.** Publisher shall not be liable to Printer for any such indemnification unless Printer has notified the Publisher of said claim, action, proceeding or demand as soon as practicable upon receipt of knowledge of same and afforded the Publisher the opportunity to defend said claim, action, proceeding or demand.
- C.** Publisher shall be responsible for complying with all Postal Service requirements concerning the appropriate class of mail and with the Mailing Specifications Schedule. Printer shall not be liable to Publisher for any damages or claims whatsoever because of Postal Service rejection of mail by reason of sortation errors in any manner attributable to Publisher's noncompliance with the Mailing Specifications Schedule or applicable Postal Service requirements. Unless otherwise stated in the Schedules that are a part hereof, special sorting, bundling, tagging and/or bagging for presort discounts; multiple mail lists or list merging will result in additional charges to Publisher.

11. QUANTITY VARIATION

Variations in quantity of (XX) percent over and (ZZ) percent under quantities ordered shall constitute acceptable delivery, and the excess or deficiency shall be charged or credited at the additional thousands rate slated in the Price Schedule,

12. DISCLAIMER OF EXPRESS WARRANTIES

Printer warrants that the magazine shall be produced according to the terms of this Agreement and standards acceptable in the printing industry, but **NO OTHER EXPRESS OR IMPLIED WARRANTY IS MADE WITH RESPECT TO THE WORK.** By reason of differences in equipment, paper, inks and other conditions between the color proofing and production pressroom operations, a reasonable variation in color between color proofs and the completed job and a reasonable variation on press may exist.

13. RISK OF LOSS

The risk of loss of finished and semi-finished work shall pass to Publisher upon the earlier of Printer's delivery to carrier or Postal Service, or delivery into storage, regardless of whether the transport medium or storage facilities are owned and/or operated by Printer and regardless of whether Printer charges Publisher for storage. The risk of loss for property furnished and/or owned by Publisher and for semi-finished work shall be on Publisher while such property is in storage on Printer's premises either before or after the manufacturing process and while in transit to or from Printer's premises. Printer shall bear the risk of loss during the manufacturing process subject to the limitations and exclusions of its all-risk insurance coverage therefore. Publisher specifically waives its rights of recovery against Printer for damage to Publisher's property occurring while risk of loss hereunder is on Publisher. It shall be Publisher's responsibility at its cost to obtain insurance to protect itself against risk of loss hereunder.

14. PASSAGE OF TITLE

Title to finished and semi-finished work shall pass to Publisher at the time the risk of loss for such work passes to Publisher pursuant to Section 13. Artwork, drawings, sketches, dummies, film positives, negatives and separations furnished by Printer shall become the property of Publisher upon completion of manufacture and payment in full by Publisher. All printing plates shall remain the property of Printer.

15. STORAGE

Charges for storage of finished or semi-finished work produced by Printer or materials furnished by Publisher shall be made to Publisher at Printer's standard rates then in effect, including an in-and-out charge. Publisher's advertising and editorial materials which are in film form shall be stored without charge for a period of thirteen (13) months from the time of last use and thereafter destroyed unless claimed by Publisher. Unless otherwise directed, finished and semi-finished magazines produced by Printer and Publisher-furnished inserts shall be stored for a period of three (3) months, at no charge, after date into inventory and thereafter destroyed or otherwise disposed of unless claimed by Publisher upon written notice from Printer. Upon Publisher's request, Printer shall (unless Publisher is in default) store magazine materials other than film, and charges shall be applied monthly as follows:

- a. For materials furnished by Publisher, except paper stock — on the first of the second month after the date of receipt by Printer.
- b. For semi-finished magazine materials produced by Printer — on the first of the second month after the date of invoice for such materials.
- c. For finished magazine produced by Printer — on the first of the first month after date into inventory.

16. CONTINGENCIES

- A.** Printer shall not be liable for any delay or failure to perform hereunder if such delay or failure to perform arises out of causes beyond its control including, without limitation, labor trouble; force majeure; governmental acts and regulations; inability to obtain materials, energy or carrier space; unforeseen equipment breakdown; or delays of suppliers or carriers. Printer shall give notice to Publisher of such condition within a reasonable time after it arises.
- B.** If Printer's operations are suspended for any of the above causes, Publisher shall have the right to have the work performed elsewhere; however, Publisher shall not make arrangements to have the work performed elsewhere for a longer period than is reasonably necessary, and it is agreed that when Printer resumes operations, all subsequent work under this Agreement shall be returned to Printer within thirty (30) days. Publisher shall have the right to remove from Printer's plant any and all work (whether or not completed), proofs, film, standing type, and other materials upon payment to Printer for all work and materials furnished or ordered by Printer to the date written notice of Publisher's election to have the work completed elsewhere is received by Printer, Printer shall not be liable for any differences in costs and/or quality specified in this Agreement and those the Publisher obtains from another printer.
- C.** If shortages occur in Printer's supply of paper for reasons beyond its control, Printer may allocate its supply of paper among the customers for whom Printer is then performing work, in such manner and amount as shall, in Printer's judgment, fairly prorate the supply among them.

17. CLAIMS

All claims for defective or damaged work, erroneous charges, late delivery or for shortages must be made by Publisher in writing fully setting forth the nature of the alleged defect, damage, erroneous charge, late delivery or shortage, within thirty (30) days after Printer's shipment of the work. Publisher's failure to so notify Printer shall constitute an irrevocable acceptance of the work and a waiver of any defect, damage, late delivery or shortage. General transportation claims must be made by Publisher directly against the carrier. Newsstand transportation shortage claims will be processed under the Printer's established Newsstand Magazine Claim Responsibilities and Procedures Policy.

18. LIMITATION OF REMEDIES

Publisher's sole and exclusive remedy for Printer's negligence, breach or any other claim arising out of or connected with this Agreement shall be the return of the selling price paid for that portion of the work, which is nonconforming, or, upon mutual agreement, reprinting a correction in subsequent work. In no event shall Printer be liable for special, indirect or consequential damages.

19. PRINTER'S RIGHTS UPON PUBLISHER'S DEFAULT

If during the term of this Agreement any amount due Printer from Publisher under this or any other agreement shall remain unpaid at due date, or if Publisher defaults in the performance of any covenant or condition of this Agreement, Printer shall have the right to terminate this Agreement, to declare immediately due and payable all obligations of the Publisher for the work theretofore furnished by Printer under this Agreement, to retain possession of any work or materials (including but not limited to work-in-process and undelivered work) owned by Publisher or furnished by or on behalf of Publisher, to change credit terms with respect to any further work furnished by Printer, and to suspend or discontinue any further work until overdue amounts are paid in full and cash or security satisfactory to Printer covering further work, as may be required by Printer, is deposited in advance with Printer. The foregoing rights of Printer shall be in addition to and not in substitution for any other rights of Printer, and suspension or discontinuance of work by Printer pursuant to this section shall not in any way prejudice any claim or right of action which Printer may have by

reason of any breach of this Agreement by Publisher. Printer shall also have the rights of a secured creditor as granted under Paragraphs 6 and 9.

20. FINAL AGREEMENT

This Agreement, together with the schedules now or hereafter made a part hereof, is intended by the parties as a final expression of their agreement and is intended also as a complete and exclusive statement of the terms of their agreement. All work performed by Printer for Publisher shall be deemed to be only upon the terms and conditions contained in this Agreement, notwithstanding any terms and conditions that may be contained in any letter, purchase order or other form of acceptance by Publisher.

21. AMENDMENT

Except as provided in Section 5, this Agreement and the schedules now or hereafter made a part hereof shall not be amended or altered in any manner unless such amendment or alteration is in writing and signed on behalf of the parties by their duly authorized representatives.

22. ASSIGNMENT

Neither party to this Agreement shall assign any right or rights hereunder without the prior written consent of the other party. Subject to this consent, this Agreement shall inure to the benefit of and shall bind the successors and assigns of the parties hereto.

23. RIGHT TO ASSURANCE

Whenever either party in good faith has reason to question the other party's ability or intent to perform, it may demand adequate written assurance from the other party of its ability or intent to perform. In the event that a demand is made and no adequate assurance is given within thirty (30) days or such other shorter period as the circumstances reasonably require, the demanding party may treat this failure as an anticipatory repudiation of this Agreement and suspend performance or exercise any other appropriate remedy.

24. BANKRUPTCY

If either party makes an assignment for the benefit of creditors, or admits in writing its inability to pay its debts as they become due, or files a voluntary petition for bankruptcy or reorganization, or is adjudicated as bankrupt or insolvent, or applies for or consents to the appointment of a receiver for its property, the other party may terminate this Agreement by written notice. Such termination shall not relieve either party from any obligations accrued hereunder up to the date of receipt of notice of termination.

25. WAIVERS

No waiver by either party of any default by the other in the performance of or compliance with any provision, condition or requirement herein shall be deemed to be a waiver of, or in any manner release such other party from compliance with any provision, condition or requirement in the future; nor shall any delay or omission of either party to exercise any right hereunder in any manner impair the exercise of any such right accruing to it thereafter.

26. SUIT COSTS

If either party commences an action against the other party arising out of or in connection with this Agreement, the prevailing party shall be entitled to have and recover from the losing party reasonable attorney's fees and costs of suit as determined by the court.

27. SEVERABILITY

The unenforceability, invalidity or illegality of any provision of this Agreement shall not affect or impair the continuing enforceability, validity and legality of any other provision.

28. CHOICE OF LAW AND FORUM

The parties agree that any legal action relating directly or indirectly to this Agreement or subject matter hereof may be brought in the Circuit Court, in the County of (COUNTY), State of (STATE), or in the Federal District Court of the Eastern District of (STATE). The parties agree that entry into this Agreement constitutes the transaction of business in (COUNTY) County, (STATE), and that it establishes sufficient minimum contacts for jurisdiction purposes and for extra territorial service of process under (STATE) law and the parties consent to extra territorial service of process. The parties agree that entry into this Agreement constitutes doing business and it establishes venue in (COUNTY) County, (STATE). If an action is commenced pursuant to the provisions of this Agreement, then the parties further agree that this Agreement shall be governed in all respects and aspects by the laws of the State of (STATE).

29. EXHIBITS, RIDERS AND SCHEDULES

(#) Exhibit(s) (NAME) and (NAME) Rider(s) (#) and (#) Pricing Attachment(s) (NAME) and (NAME) Subject and Term Agreement(s) (NAMES) are attached hereto, made a part hereof and incorporated herein by this reference.

PUBLISHER:

By:

Title: _____

Date: _____

PRINTER:

By:

Title: _____

Date: _____

Magazine Agreement II

Magazine Agreement Proposal

Name

Address

State

Ladies and Gentlemen:

We are pleased to submit for your consideration the following proposal for the printing and mailing of your publication [*Name of Magazine*]:

FREQUENCY: Publication to be printed on a mutually agreeable schedule.

QUANTITY: guarantees full count on each order.

PREPRESS WORKING MATERIALS: The customer will provide prepress working materials in one of three different digital formats: application files, postscript or pdf files. Files will be processed with our imposition software and imposed for the appropriate presswork and binding. Additional operator intervention (due to improper file construction, missing files or elements, or corrupt files) required to correct inconsistencies in the customer's electronic files will be charged on the basis of actual cost. The customer may receive one complete set of position proof, for approval, prior to printing. The customer may provide, or purchase from, press quality proof for matching four-color process on press.

AUTO PROCESSED FILES: The customer will provide prepress working materials in one of two different digital formats (according to the format settings outlined in the prepress assistance page on the web site): postscript or pdf files. Customer's files will include all necessary embedded fonts and graphics. All elements of the job must be processed electronically. Files will be processed with our imposition software and imposed for the appropriate presswork and binding. Up to ten percent (10%) of the total page count per issue maybe rejected before standard page replacement charges apply. Additional operator intervention (due to improper file construction, missing files or elements, or corrupt files) required to correct inconsistencies in the customer's electronic files will be charged on the basis of actual cost. Customer will soft proof pages via the Internet using InSite®. The appropriate number of pages must be customer approved prior to printing. The customer may provide, or purchase from, press quality proof for matching four-color process on press.

DIGITAL STORAGE: Processed digital files will be stored for fourteen (14) months after an issue's printing, at which time they will be destroyed unless we are otherwise instructed by you in writing. Packing and shipping will be charged on the basis of actual cost.

PAPER: We will supply (PAPER STOCK) for the body and (PAPER STOCK) for the cover. Substitution of comparable papers from other mills may be necessary from time to time to assure continuity of your publication.

BINDING: Publication parts will be folded, gathered, (##) saddle-stitched with (##) two/three wires or perfect bound (##) and trimmed flush on three sides to (#) inches.

MAILING AND DELIVERY: Customer may supply an electronic mailing list in suitable form for our processing for ink-jetting or labeling. Addressed copies will be sorted, bundled and sacked or palletized to gain maximum practical advantage of postage rates and then delivered into the mails at (**LOCATION**). ABC PRINTING will supply documentation for Postal Service presort discounts. Remainder of copies will be delivered per customer instructions. Any copies stored at ABC PRINTING for more than one month will incur a storage fee.

Prices, each issue, complete as described above, with paper charged separately:

FORM PRICING FOR 16-, 8-, AND 4-PAGE SIGNATURES (ink included)

Paper Description

Makeready		Run Per M/Per Form	
Printing	Paper	Printing	Paper
16-pages, 1/1			
16-pages, 2/1			
16-pages, 2/2			
16-pages, 4/1			
16-pages, 4/2			
16-pages, 4/4			
16-pages, 5/1			
16-pages, 5/2			
16-pages, 5/4			
16-pages, 5/5			
8-pages, 1/1			
8-pages, 2/1			
8-pages, 2/2			
8-pages, 4/1			
8-pages, 4/2			
8-pages, 4/4			
8-pages, 5/1			
8-pages, 5/2			
8-pages, 5/4			
8-pages, 5/5			
4-pages, 1/1			
4-pages, 2/2			
4-pages, 4/4			
4-pages, 5/5			

4-page cover, 1/1
4-page cover, 2/2
4-page cover, 4/4
4-page cover, 5/5
4-page cover/4c/UV, 1st /back
4-page cover/Sc/UV, 1st /back

PMS surcharge \$

PREPRESS PRICE LIST

Application files, per page

Postscript/pdf files, per page

Auto processing, per page

Plating, per plate

Pick-up, per page

Digital color press proof per page

Digital color press proof, per 8-page flat

File conversion (includes pick-up), each

Post-RIPped PDFs (1st CD)

 Additional CDs (ordered at the same time)

Archived post-RIPped PDFs (1st CD)

 Additional CDs (ordered at the same time)

Position proofs, per page

Plate changes:

 Sheetfed, per plate, per change

 Web press, per plate, per change

MakereadyRun per 1000

Saddle stitch:

1–4 pockets

5–8 pockets

9–10 pockets

Version change, each

Perfect binding:

1–4 pockets

5–8 pockets

9–12 pockets

13–16 pockets

17–20 pockets

21–25 pockets

(Less than 1/8-in. spine or over 25 pockets will require special pricing)

Version change, each

Addressing/Mailing

Addressing publication:

Up to 9,999

10,000 and above

List Processing

Additional make ready will apply for each mail list submitted

Mailing labels, each

Mailing labels with indicia, each

(minimum charge of \$0.00)

Ink-jetting addresses

Ink jetting addresses and indicia
(minimum charge of \$0.00)

Label-Aire Labeling (for use with for co-mailing—when white box is not on magazine), per thousand

Polybagging:

Polybag

Polybag with one insert

Additional inserts, per thousand, per insert (maximum 3)

Extra to hand feed on polybagger, per thousand, per insert

(More than three inserts or inserts weighing more than 6 oz. require special pricing)

Back issue handling:

Mailing 1–200 copies, hand labeling and inserting prices plus 10%

Mailing more than 200 copies, machine prices plus 10%

Bulk shipping: 1–200 copies,
200 copies and above,

Miscellaneous:

Jiffy envelopes, each

Cartons, each

Shipping and handling charge per package

Hand insert into 9×12 supplied envelopes, each

Hand insert into 9×12 customer-supplied envelopes, each

Hand apply label and postage to envelopes, each

Hand apply return address labels

Shrink-wrapping bundles

Counting/strapping bundles, each

Palleting, each

Storage: per copy, per month
(minimum charge per month)

Insert handling fee (gathered in), per thousand

Tipping supplied inserts to front or back of signatures:

Set up

Tipping, per thousand

Hand tipping, per thousand

Applying belly-band, per thousand

Blow in card insertion:

Set up

Insert, one or two cards, per thousand

Folding flap on envelopes or cards, per thousand

Folding 4-page insert, per thousand

Folding 8-page insert, per thousand

Additional charge for substitution of-

Sheetfed:

Fluorescent ink, per page, per thousand copies

(minimum charge of \$)

Metallic gold ink, per page, per thousand copies

(minimum charge of \$)

Metallic silver or bronze ink, per page, per thousand copies

(no minimum charge)

Web:

Metallic gold ink, per page, per thousand copies

(minimum charge of \$)

Metallic silver or bronze ink, per page, per thousand copies

(minimum charge of \$)

NOTE: So far as production costs are involved, the prices are firm for the contract period. Since paper is sold at “price prevailing at time of shipment,” there may be adjustments from time to time based on the paper’s actual invoice cost.

GUARANTEE AND REMEDIES: We guarantee all work and materials will be of merchantable quality, and that paper will be as specified above. In the event, however, of a defective product, shortage, or erroneous charge, all claims must be made by the customer in writing fully setting forth the nature of the claim and submitted to us within thirty (30) days after the shipment of the issue. The customer’s failure to notify shall constitute an irrevocable acceptance of the work, and a waiver of any defect, damage, shortage or erroneous charge. If there is a valid claim, then remedies shall be limited to, at the option,¹ replacing that portion of the printed product that is defective or a partial credit of the cost of the printed product based on the proportion of the product that is defective; in no event shall lost profits, loss of time, or other consequential damages be recoverable.

MAILING/SHIPPING CHARGES: Prior to the mailing or shipping of a publication, the customer shall either establish a CAPS account with the USPS for the payment of postage, or send a deposit to us. CUSTOMER’s deposit shall be a cash amount to pay the costs of postage and other transportation expenses, with such amount to be determined by ABC PRINTING COMPANY. In the event that the customer fails to deposit the amount required, the parties agree that ABC PRINTING COMPANY shall have no obligation to mail or ship the printed publication and the customer agrees that ABC PRINTING COMPANY shall not be liable for any damages, of whatever nature, that may result from the fact that the publication is not mailed or shipped.

TERMS OF PAYMENT WITH APPROVED CREDIT: If the customer has approved credit, as evidenced by written communication from ABC PRINTING COMPANY, then the customer agrees to pay the invoice for printing services net thirty (30) days from the date of such invoice and if such invoice is not fully paid in such time period, then the customer agrees to pay interest on the unpaid balance at the rate of one percent (1%) per month until the balance of the invoice is paid in full.

TERMS OF PAYMENT WITHOUT APPROVED CREDIT: If ABC PRINTING COMPANY has not provided written approval of credit to the customer, then the customer shall pay a deposit, upon submission of the printing job, equal to one hundred percent (100%) of the estimated cost of the printing job, plus shipping, as determined by ABC PRINTING. Any balance for such printing services or shipping is to be paid upon receipt of the invoice, and if payment is not received within ten (10) days of the mailing date of the invoice, then the customer agrees to pay interest on the unpaid balance at the rate of one percent (1%) per month until the balance of the invoice is paid in full.

DEFAULT: If the customer should fail to comply with the provisions of this proposal, the parties agree that ABC PRINTING may retain in its possession any and all materials constituting or relating to the publication that is the subject of this proposal; and, further agree that all amounts due and payable under this proposal shall be accelerated and shall be immediately due and payable without further demand;

¹ You should specify at whose option.

and, further agree that the costs and expenses of collecting the sums due and owing under this proposal, including attorney's fees, court costs, and all other costs of collection shall be paid by the customer.

INDEMNIFICATION: The customer warrants that the content of all matter submitted to ABC PRINTING COMPANY does not infringe on any person or entity's intellectual property rights, does not constitute libel, and otherwise is in full conformity with all applicable laws. In the event of any prosecution or litigation for libel, infringement of copyright, or of any nature whatsoever as a result of the publication of any material or materials, the customer shall indemnify and hold harmless ABC PRINTING COMPANY and shall bear all expenses for the defense of the officers and employees of ABC PRINTING COMPANY—including, but not limited to legal fees, court costs, travel and living expenses away from home, compensation from time lost from work, judgments and fines—connected with such action or actions. At no time shall the customer's indemnity apply if ABC PRINTING COMPANY has caused the infringement, libel, or violations of the law by having altered the material in question.

VENUE: The parties agree that the Circuit Court of [LOCATION] shall be the court in which any and all judicial actions concerning the provisions of this contract proposal, or related to the relationship between the customer and shall be filed and determined; and that such court, shall be the exclusive venue therefore.

DURATION OF AGREEMENT: This proposal, when acceptance is indicated by your signing and returning the copy to us and upon completion of satisfactory credit arrangements, shall become an agreement covering production for a period beginning [DATE]. It shall, thereafter, be automatically extended for terms of the same duration unless either party notifies the other of the intention not to renew at least sixty (60) days before the termination of the current period. The parties agree that a facsimile copy of this proposal, including the facsimile signature of the parties to this proposal shall be considered and treated as the equivalent of the original of this proposal and the signature page thereof. Either party may cancel this agreement for cause upon sixty (60) days written notice.

Magazine Agreement III

PRINTING AGREEMENT

THIS PRINTING AGREEMENT (this “Agreement”) is made and entered into this ___ day of (month), 20(year) by and between XYZ Company, (the “Publisher”), with its principal place of business located at (ADDRESS) and **ABC PRINTING COMPANY** (the “Printer”), with its principal place of business located at (ADDRESS).

RECITALS:

- A.** Publisher is the owner and publisher of a magazine entitled (NAME OF PUBLICATION) (the “Magazine”).
- B.** Publisher is desirous of having Printer perform, and Printer is desirous of performing, certain printing and production work with respect to the Magazine.

NOW, THEREFORE, in consideration of the promises and mutual covenants hereinafter contained, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1.0 Recitals: The Recitals set forth above are incorporated herein by reference to the same as if set forth verbatim.

2.0 Work: Printer shall perform the following work (the “Work”) and the Publisher will pay for the Work in connection with the production of the the Magazine which are subject to change by Publisher from time to time in accordance with this agreement and the following schedules attached hereto and made a part hereof:

2.1 Schedule A—Quotation # (QUOTE #).

2.2 Schedule B—ABC PRINTING COMPANY Terms and Conditions of Sale.

3.0 Volume: Publisher hereby agrees that, during the term of this Agreement, it will utilize the services of Printer exclusively for all Work required by it in the printing and production for the Magazine.

Schedule: Publisher shall provide Printer a print schedule for each year at least 60 days in advance of last print date detailed on current year schedule.

4.0 Adjustments to Prices: The prices for the Work set forth on **Schedule A** hereto shall be adjusted as follows:

4.1 Manufacturing rates will be set for the duration of the contract.

4.2 Paper is price prevailing at time of shipment; 30 day notification of increase.

5.0 Quality Control: Printer agrees to produce and maintain high quality standards of reproduction consistent with industry SWOP standards, all at least equal to the standard of quality heretofore achieved for other similar magazines produced at the Printer.

6.0 Print Order: Publisher will furnish Printer with a print order for each edition which will equal the number of net good copies needed to meet Publisher’s distribution requirements. Printer will be allowed to over-run/underun as indicated and included on **Schedule A** as part of the billable print order and to bill for these services.

7.0 Discontinuance Of Publication-Notice: If Publisher intends to discontinue publication of the Magazine, or any of the separate versions, zones, etc. which are the subject of this Agreement, Publisher will give Printer as much advance notice as possible, but at least sixty (60) days written notice prior to the invoice date of the last issue to be printed. In such event, this Agreement shall terminate with the printing of such last issue with respect to that edition of the Magazines, if applicable.

8.0 Postage and Freight: All postage, freight, or other shipping charges shall be paid by Publisher. Publisher shall maintain an account at the United States Post Office with sufficient funds to cover postal charges for each issue or will have verified funds available if using ABC PRINTING COMPANY permit #21. All freight charges will be itemized on invoice sent to Publisher that are incurred by Printer and not directly invoiced to Publisher for payment.

9.0 Changes in Standards, Format or Paper:

9.1 Printer shall make no major changes in ink, paper, binding, wrapping, packaging or other specifications from those existing at the beginning of the term hereof without Publisher's prior written approval. However, Printer shall be entitled, without Publisher's prior approval, to make minor changes in materials or specifications, which will have no adverse effect on the quality or appearance of the Magazine.

9.2 Publisher shall provide Printer 60 day notification when making any changes to paper stock, (i.e. size, grade, etc.) to allow Printer to deplete already purchased material for the Magazine.

10.0 Term of Contract:

10.1 This Agreement shall be effective for all issues and versions of the Magazine produced from (DATE) through (DATE).

10.2 If Printer shall fail in any material way to perform the work in accordance with a mutually agreed upon production schedule and Work Specifications established herein, and in the Schedules attached hereto, except for any cause specified in Paragraph 19, and if Publisher did not cause or contribute to such failure in a material way, Publisher shall give written notice thereof to Printer. If within sixty (60) days after receiving such notice Printer shall not cure such failure or make arrangements satisfactory to Publisher for the prevention of a recurrence thereof, then Publisher may terminate this Agreement by at least sixty (60) days' written notice of such termination to Printer.

11.0 Force Majeure: Neither Printer nor Publisher shall be liable to the other in the event and to the extent of a failure of either party to perform as provided in this Agreement in consequence of causes beyond the control of either party. Each party shall give prompt notice to the other of any conditions or circumstances of which either party has knowledge which may reasonably be expected to lead to any disability. If it shall appear that the printing and production of the Magazines will be delayed due to any of the foregoing causes, Publisher shall be free to purchase elsewhere all work to be produced by Printer hereunder. Publisher agrees not to make commitments therefore for a period longer than necessary, and Printer shall resume production of such work as promptly as practicable after Printer determines it is able to effect such resumption.

12.0 Insurance: Printer shall carry at its expense insurance, subject to the usual exclusions, limitations, conditions, and deductible provisions, on all Work in process and partially completed Work not shipped and on all property belonging to Publisher while it is in Printer's possession. Printer's liability for loss of Publisher's property, including paper, shall not exceed the amount recoverable from insurance. If any of Publisher's property has extraordinary value, Publisher will notify Printer so special arrangement can be made via mutual agreement.

13.0 Entire Agreement, Amendments, and Assignments: This Agreement, including the Exhibits and Schedules, constitutes the entire Agreement between the parties, shall be binding on the Printer, the Publisher, and the successors of each of said parties and may not be amended except in writing signed by both parties. Except as set forth herein, the parties may not assign this Agreement, or either party's rights or obligations hereunder, directly or indirectly, by operation of law or otherwise, without first obtaining the other party's consent in writing, which consent shall not be unreasonably withheld, except that either party shall have the right to assign the benefits of the Agreement to any affiliate provided that such party will not be relieved of its obligations under this Agreement.

14.0 Bankruptcy: To the extent permitted by applicable law, if either party shall make an assignment for the benefit of creditors, or shall admit in writing its inability to pay its debts as they become due, or shall file a voluntary petition for bankruptcy or reorganization, or be adjudicated bankrupt or insolvent, or shall apply for or consent to the appointment of a receiver for it or its property, the other party may terminate this Agreement by written notice. Such termination shall not relieve either party from any obligations accrued hereunder up to date of receipt of notice of termination.

15.0 Prior Agreements: This Agreement, including the Exhibits and Schedules, shall supersede any other agreements currently in effect between the parties and all rights and liabilities of Publisher and Printer shall be governed exclusively by the terms and conditions contained in this Agreement. This Agreement may not be amended except in writing signed by both parties.

16.0 Absence of Conflict: Each party represents and warrants to the other that execution and performance under this Agreement will not constitute a breach of any existing agreement or duty to or by which such party is bound, nor a violation of any law or rule or regulation applicable to such party.

17.0 Notices Any notices by either party to the other party which are required, or may be given under this Agreement, shall be sufficiently given and deemed received three (3) days after deposit with the U.S. Postal Service, if sent by registered or certified mail, return receipt requested, postage prepaid, addressed as follows:

17.1 If to Printer:

17.2 If to Publisher:

Attn:

or to such other address as shall have been designated in writing by the other party.

18.0 Applicable Law: This Agreement shall be performed and construed in accordance with the laws of the State of [STATE] applicable to contracts to be performed entirely therein. Any controversy or claim arising out of, or relating to, this Agreement, or breach thereof, shall be settled solely by arbitration in such place as may be agreed upon by the parties in accordance with the Rules of the American Arbitration Association, (except as otherwise provided in paragraph (b) below) and judgment upon the award rendered by the Arbitrator(s) shall be binding and final and may be entered in any court having jurisdiction thereof.

19.0 Waivers: No waiver by either party or any default by the other in the performance of, or compliance with, any provision, condition, or requirement herein shall be deemed to be a waiver of, or in any manner release such other party from compliance with any provision, condition, or requirement in the future; nor shall any delay or omission of either party to exercise any right hereunder in any manner impair the exercise of any such right accruing to it thereafter.

IN WITNESS WHEREOF, the parties intending to be legally bound have caused this Agreement to be executed by their duly authorized representatives as of the day and year first written above.

[See note below]*

XYZ COMPANY

Name: _____

Title: _____

Date: _____

ABC PRINTING COMPANY

Name: _____

Title: _____

Date: _____

Section IV
Book Agreements

Book Agreement

Book Print Manufacturing Services Agreement

This Agreement is made and entered into this day (DATE) of (MONTH), (YEAR) by and between XYZ COMPANY (CUSTOMER), with offices at (CITY, STATE), and ABC PRINTING (Printer) a (STATE) Corporation with offices located at (CITY, STATE).

Printer is in the business of book manufacturing and desires to manufacture books and other related materials for CUSTOMER. CUSTOMER, on its behalf and on behalf of its affiliates, agrees to buy and Printer agrees to provide manufacturing services and related services for books and other printed materials in accordance with the terms and conditions set forth herein.

1. Term. This Agreement shall become effective on the (DATE) day of (MONTH) (YEAR) and shall expire on the (DATE) day of (MONTH) (YEAR) (the “Initial Term”). CUSTOMER may, at its discretion, elect, in writing delivered to Printer no later than 90 days before the end of this period, that CUSTOMER has chosen to continue this Agreement for an additional one year period from the (DATE) day of (MONTH) (YEAR) to the (DATE) day of (MONTH) (YEAR), such one year period being the “Renewal Term.” Upon the expiration of this Agreement or the earlier termination thereof by CUSTOMER pursuant to the terms of Paragraph 2, at CUSTOMER’s option all work then in progress on any Product shall be completed by Printer according to the terms and conditions hereof and CUSTOMER shall make payment for such post-term services at the prices set forth in this Agreement as of the date of such termination or expiration. All electronic and other print files, plates, dies, films and other items Printer has received from CUSTOMER shall be maintained by Printer after the Term of this Agreement until such time as CUSTOMER directs they be promptly returned to CUSTOMER.

2. Termination. Should either party breach an obligation owed to the other hereunder, the aggrieved party may provide a written notice to the other party of the events constituting such breach. The notified party will have thirty (30) days after receipt of such notice to remedy the breach to the reasonable satisfaction of the aggrieved party, and a failure to do so may result at the option of the aggrieved party in the termination of the Agreement immediately upon receipt of a termination notice from such aggrieved party, which must be delivered within thirty (30) days of the expiration of the cure period. In the event of a cure having been so performed on a timely basis, the right to terminate in regard to the specific events set forth in the first such notification shall be deemed void and of no effect.

3. Products and Pricing. Printer agrees to manufacture the class or classes of print product awarded to it and referenced in Attachment A and as the same may be amended by the mutual agreement of the parties hereto from time to time (the “Products”). Pricing for individual titles or issues of Products shall be calculated as set forth in the parameterized pricing templates (“Scales”) as submitted by Printer on (DATE) and agreed to by CUSTOMER with a copy of the transmittal provided as Attachment B. In the event Printer was awarded business by CUSTOMER based on a quotation submitted to CUSTOMER in response to a presentation of a collection of specifications of certain Products, Printer hereby represents and warrants as a material inducement to CUSTOMER to execute this Agreement that the Scales submitted for approval of CUSTOMER reflect the prices most recently quoted by Printer. Pricing as calculated pursuant to the Scales, shall not increase during the Initial Term and any Renewal Term of this agreement with the exception of pricing for printer-provided cover and text stock, the pricing for which can be increased not more frequently than quarterly to the extent that Printer can provide CUSTOMER with reasonable evidence that Printer’s cover and text stock pricing increased

during that time over prior levels. No minimum guarantee of Product manufacture applicable to the initial or any renewal Term hereof has been made by CUSTOMER.

4. Orders. Printer shall receive a purchase order (hereafter referred to as “Order”) and electronic print files from a CUSTOMER business unit as a precondition to initiating production on any Product. CUSTOMER’s delivery of the final electronic print file necessary to initiation of such production will be noted so that Printer shall reasonably understand that CUSTOMER considers the Turnaround Time (as defined below) to have begun if measured pursuant to Paragraph 5 (b) below by reference to the receipt of such file. All Orders will be communicated either in writing or electronically by facsimile or email. CUSTOMER may cancel any Order, or part thereof at any time. CUSTOMER shall be responsible for payment to Printer of the actual unrecoverable third party out of pocket and unrecoverable internal costs incurred by Printer as a direct result of such full or partial Order cancellation. CUSTOMER shall be responsible for payment of such cancellation costs promptly upon receipt of reasonable proof of Printer having incurred such costs. CUSTOMER shall be able to postpone the manufacturing process for a commercially reasonable time in regard to any Order or part prior to such postponed Order or part thereof going “on press” without any liability for such delay, although the Turnaround Time shall be extended for the length of the postponement.

5. Manufacturing Commitments

Printer agrees to meet the following commitments in manufacturing Products for CUSTOMER as well as those set forth in Paragraph 11:

- (a) **Location.** Printer will manufacture Products awarded under this contract in Printer’s facilities at, (“Printer Facilities”). Printer may manufacture all or part of Products at other facilities owned by Printer if CUSTOMER provides its prior written consent in regard to any specific or class of Product, such consent not to be unreasonably withheld or delayed, provided that such consent in no way shall be interpreted as relieving Printer of the obligation to meet time deadlines or price obligations set forth in this Agreement including, without limitation, any increase in freight costs that would otherwise be borne by CUSTOMER for any such affected Order. In no event may Printer manufacture all or part of Products at the facilities of other suppliers via subcontracting or other arrangement without the express prior written consent of CUSTOMER, such consent not to be unreasonably withheld or delayed and subject to the same proviso as set forth in the immediately preceding sentence.
- (b) **Schedule Commitments.** Printer will manufacture Products within the following Turnaround Times without regard to complexity or length of any such Product:

Number of Volumes in Set	Binding Style	Turnaround Time
One or two	Case/Hardcover	4 weeks
	Perfect/Softcover	3 weeks
	Saddle-stitched, Spiral, Plastic comb, or Wire-o	3 weeks
More than two	Case/Hardcover	8 weeks
	Perfect/Softcover	5 weeks
	Saddle-stitched, Spiral, Plastic comb, or Wire-o	5 weeks

CUSTOMER units, at their discretion, may permit longer Turnaround times than those stated above if explicitly provided on the face of an Order. Turnaround Time will be measured from the later of Printer’s receipt of an Order or the final electronic print files in regard to any Product on such Order, to the shipment date from Printer’s facility of copies of the Product in the quantities Ordered by CUSTOMER that meet the test of Acceptance as defined in Paragraph 11, or, if a Product is not to be shipped upon the completion of its manufacture the date of delivery of products thought in good faith by Printer to meet the test of Acceptance

set forth in Paragraph 11 into storage by Printer as directed by CUSTOMER. Delivery dates may be extended on a day for day basis if CUSTOMER’s approval of proofs is delayed due to CUSTOMER’s fault based on the time frames set forth in Paragraph 9. CUSTOMER may, at the time an Order is submitted, request expedited processing for particular Orders, in which case the manufacturing and shipping time shorter than the above Turnaround Time shall be determined by Printer on a case-by-case basis.

(d) Acceptable Quantities. In order to qualify for Acceptance as hereinafter provided in Paragraph 11, Printer must deliver each Order in quantities that fall within the tolerances specified in the table below, unless CUSTOMER authorizes different tolerances on the Order or otherwise in advance. Until otherwise notified by CUSTOMER, Printer may assume all Orders from CUSTOMER’s Professional and Education business unit within the Customer Health division shall allow under-runs in the same percentage as overruns stated in the below table. Except as otherwise set forth earlier in this Paragraph, allowable quantities are calculated as the percentage specified below multiplied by the final quantity indicated on each respective Order. Printer must deliver the minimum quantity specified on the Order and not exceed allowable overruns. Printer may bill CUSTOMER only for actual quantities delivered within this tolerance.

Run Length	Non Hardcover of All Types Allowable Under-run	Non Hardcover of All Types Allowable Over-run	Hardcover Allowable Under-run	Hardcover Allowable Over-run
50,000 and up	0%	1%	0%	1%
5,000–49,999	0%	2%	0%	3%
2,000–4,999	0%	3%	0%	4%
1,000–1,999	0%	4%	0%	5%
1–999	0%	5%	0%	5%

(e) Other. All CUSTOMER printing will be done right-grain unless approved in advance by CUSTOMER.

6. Postage, Freight and Delivery. Pricing does not include preparation by Printer of completed Products for mailing, postage, or freight. Deliveries within (XX) miles of Printer’s Facility at which manufacture of the Product is completed will be provided by Printer free of charge. For deliveries beyond such radius, CUSTOMER may specify commercial carrier(s) to be used and may be billed directly for freight in such event. If commercial carriers are used, CUSTOMER shall make all claims for goods damaged in transit directly and solely against such freight carriers. To the extent Printer delivers any Product, risk of loss remains with Printer until time of delivery to CUSTOMER or its designated recipient.

7. Additional Charges. Pricing does not include sales, use or other excise taxes, all of which may be added to CUSTOMER’s invoice and is to be paid by CUSTOMER. If CUSTOMER does not take delivery of finished Products for more than 180 days after completion of the manufacturing process, Printer may assess storage charges of \$(XX) per skid per month. No charges in addition to those specified in this and above paragraphs shall be assessed to CUSTOMER.

8. Payment Terms. Printer may invoice upon shipment of finished Product or delivery of the same into storage at Printer’s location, if so requested by CUSTOMER. Payment terms will be 2% 10, Net 30. Printer will create separate invoice accounts for all CUSTOMER units as requested by CUSTOMER. Invoices will reference CUSTOMER’s Purchase Order number, the applicable CUSTOMER business unit and other information reasonably requested by CUSTOMER. Printer will provide a summary of charges on the invoice with cost elements assigned to CUSTOMER general ledger account codes. Each CUSTOMER unit will provide Printer its general ledger account codes and definitions. If a CUSTOMER unit does not provide appropriate information regarding its general ledger account codes, Printer is not required to provide the summary described immediately above.

9. Customer Approvals and Materials. CUSTOMER shall specify on the face of the Order the proofs and interim manufacturing reviews necessary for each Product so that CUSTOMER may review proofs, samples and other interim work. Printer will not proceed with production until CUSTOMER approvals are received. Printer shall specify to CUSTOMER upon delivery of any such proof, sample or interim work a commercially reasonable time for CUSTOMER to review the same before approval of any such item is presumed. Printer shall have no liability for errors approved by CUSTOMER.

10. Paper Use Commitments.

Printer agrees to the following with regard to paper used in the production of Products:

- (a) **Source.** At its option, CUSTOMER may furnish paper (Customer-Furnished paper) or specify paper type, weight, mill of manufacture and supplier of paper (Publisher-Directed paper). All paper supplied or directed for purchase shall be “first quality” and be guaranteed by the mill of manufacture to be free of defects. Printer will provide storage for sufficient paper to ensure no delays in manufacturing Products. Printer will not charge any additional fees for paper handling or storage.
- (b) **Paper Requirements.** Pricing Scales will be used to determine the paper requirements for each Order (Contractual Paper Requirements), unless CUSTOMER approves in writing a deviation from the Contractual Paper Requirements.
- (c) **Usage Reporting.** Printer will issue a usage report within five (5) days of the completion of the production for each Order showing actual consumption vs. Contractual Paper Requirements for each type of paper used on that Order. Printer will reconcile over- and under-consumption for each CUSTOMER unit every quarter to determine net over- or under-consumption for that unit. In the case of Customer Furnished paper, Printer shall issue a report on a monthly basis within five (5) days after the last day of the month listing all receipts of Customer Furnished paper including inventory in the printer’s storage facility at that point in time. Usage and inventory reports required under this Paragraph will be provided to CUSTOMER’s designated paper supply chain partner.
- (d) **Over-Consumption.** Printer shall not be able to seek any payment from CUSTOMER for consumption of any Publisher-Directed paper and shall provide a prompt credit to the appropriate CUSTOMER unit for CUSTOMER’s cost of Customer-Furnished Paper in excess of Contractual Paper Requirements used in regard to the production of any Order. The value of under-consumption, if any, of any type of paper shall be used on a unit by unit basis as a credit against over-consumption, if any. To the extent there exists unused credits for over-consumption of Customer-Furnished Paper when this Agreement expires or earlier terminates, all such credits shall be immediately paid by Printer to CUSTOMER in a lump sum by check.
- (e) **Continuous Improvement.** Under-Consumption and Gain Sharing. Printer agrees for the Term of this Agreement to work with CUSTOMER to reduce overall paper usage for production of CUSTOMER’s Products. Printer agrees to meet with CUSTOMER quarterly to evaluate the success of procedures implemented and to review new strategies for going forward. In the case of net under-consumption of paper in any given quarter, which is not absorbed by the credits required above for unit by unit over-consumption CUSTOMER shall pay the printer fifty (50) percent of the value for the paper under-consumed at CUSTOMER’s then-current invoice price. Within 30 days of each anniversary of the contract, Printer and CUSTOMER shall mutually revise Scales so that Contractual Paper Requirements reflect actual paper consumption for the two quarters prior to the contract anniversary.

11. Acceptance, Warranty, Limitation of Liability. Printer hereby warrants and represents that the finished quality of the Products will be consistent with industry standards for general appearance and accuracy of reproduction of final CUSTOMER-approved proofs and will pass without reasonable objection in the professional book trade (it being acknowledged that professional books have a higher standard of appearance and accuracy than ordinary trade printing due to the demands of its professional end users). Further, Printer hereby repre-

sents and warrants that in manufacturing each Product it shall comply with the relevant sections of the Specifications for Web Offset Publications, Tenth edition, and subsequent errata. Should any Product not meet any of the above standards in the reasonable opinion of CUSTOMER it shall not be deemed "Accepted." Upon any breach of this warranty and representation, CUSTOMER may elect one of the following remedies: (i) receive reimbursement of the price paid for defective Product (or the portion thereof with respect to which damages are claimed) followed by the prompt return of such defective Product to the Printer at Printer's sole cost and expense, or (ii) receive a replacement of any defectively printed Product at no cost and expense. Without limiting the generality of the foregoing, Printer shall not be liable for any special, incidental or consequential damages, including but not limited to the customer's loss of sales, advertising revenues or profits arising from such breach of warranty. Claims for shortages, defective or damaged goods shall be made by CUSTOMER in writing within 30 days after receipt of the Product and are otherwise waived, provided such thirty (30) day period shall not begin to run on Products delivered into storage by Printer until such time as CUSTOMER receives delivery of the first large sample of any such Order.

12. Service Level Agreement. Printer acknowledges that CUSTOMER desires the following service levels on a calendar quarterly basis. Printer will use best efforts to provide a high level of service consistent with this performance:

- **Order Acknowledgment Interval:** 100% by next business day. Calculated as acknowledgments sent by Printer the next business day after Order is received divided by the total number of Orders submitted in the measurement period.
- **Manufacturing Schedule Compliance:** At least 99% of Orders fulfilled in Turnaround Times that are less than or equal to the commitments in Paragraph 5(b). Calculated as the number of Orders manufactured within the committed Turnaround Times divided by the total number of Orders issued in the measurement period.
- **"First Time" Manufacturing Quality:** No more than 0.5% Unacceptable Orders. An Order is deemed Unacceptable if any one or more Products within the Order are not deemed to meet the Acceptance standards of Paragraph 11. Calculated as the number of Unacceptable Orders delivered (rather than sent to storage at CUSTOMER's direction for the entire measurement period) divided by the total number of Orders placed in the measurement period. As used in this provision, "First Time" shall refer to the initial delivery of an Order to CUSTOMER. Orders rejected by CUSTOMER and re-presented by Printer are not included in this calculation.
- **"First Time" Billing Accuracy:** At least 99.5%. This will be calculated as percent of invoices accurately generated (per Paragraph 8, Payment Terms) the first time divided by the total number of invoices generated in the measurement period. In order for an invoice to be considered properly generated, it must not be disputed by CUSTOMER within 30 days or if disputed within 30 days, be shown to be accurate with such proof accepted by CUSTOMER. Invoices that remain in dispute beyond 90 days will be considered inaccurately generated for the purposes of calculating this SLA metric.

Printer and CUSTOMER acknowledge that neither will produce a report measuring Printer's performance against the service levels defined above.

13. Penalties for Service Level Failures. Failure to provide service at a sufficiently high level of performance, in the reasonable opinion of CUSTOMER will be considered a material and incurable breach of this Agreement. Printer acknowledges that since there will be no formal tracking of service level metrics, CUSTOMER does not need to establish that Printer failed to meet any service levels in order to declare a service level failure. As a result of CUSTOMER's determining that such a material and incurable breach has occurred, CUSTOMER may, upon not less than five (5) business days notice, terminate the contract at any time in the following 180 days after CUSTOMER has notified Printer in writing that it has made such a determination.

14. Customer Service and Account Management. Printer will provide weekly updates on the status of CUSTOMER's orders. Printer will provide each of CUSTOMER's units an individual weekly status report and review meeting. Printer will organize a quarterly review meeting with a CUSTOMER team consisting of at least one representative from each unit served by Printer. The purpose of this meeting will be to review paper consumption, SLA metrics, root cause of any failures, corrective action plans to address such failures and opportunities for improvement. If as a result of such a meeting the parties agree that there is an area of mutual interest that warrants further investigation or development, the parties shall set up a schedule and milestones to monitor the progress of such investigation or development. The parties will review or modify such schedules and milestones on a mutually agreed upon timetable.

15. Account Team. Printer will provide an account team with a sufficient number of resources and experience to support CUSTOMER's needs. Printer shall identify initial core account team members to CUSTOMER. Printer acknowledges it will use all reasonable means to maintain the initial core account team in place. If Printer decides to replace a core account team member, for example, to support other accounts, it will seek to provide a seamless transition which will include a four week overlap of the existing account team member and his or her replacement. Should any of the account team members leave the employ of Printer, CUSTOMER shall have reasonable rights of approval over any member added to the team as a replacement. Further, should CUSTOMER become dissatisfied with the performance of any member, Printer shall use all commercially reasonable efforts to promptly replace that member with another Printer employee reasonably acceptable to CUSTOMER.

16. Insurance. Printer shall obtain, pay for and keep in force while providing services hereunder, and thereafter as provided below, the following insurance:

- (a) Statutory workers' compensation covering all state and local requirements;
- (b) Employers liability with a limit of \$1,000,000 for one or more claims arising from each accident;
- (c) Commercial general liability, including coverage for completed operations, products liability and contractual obligations in an amount not less than \$1,000,000 per occurrence and in the aggregate for bodily injury and property damage arising out of premises and operations and products and completed operations;
- (d) Comprehensive automobile covering all vehicles in an amount of not less than \$1,000,000 per occurrence and in the aggregate for claims arising out of bodily injury and property damage; and
- (e) Printers liability for errors and omissions with a limit of \$1,000,000 providing coverage for a period of at least two years following completion of the services.

Printers shall cause its insurers to: (i) name Customer and their affiliates and their respective directors, officers, employees, agents, successors and permitted assigns and their employees as Additional Insureds under its commercial general liability and printers liability policies and, if applicable, umbrella or excess liability policies; and (ii) give Customer thirty (30) days written notice of cancellation or nonrenewal of any policy of insurance required hereunder.

Printers shall cause its insurers to furnish certificates of insurance on standard ACORD forms (or comparable) evidencing that the above insurance is in effect and otherwise complies with the requirements of this article. All insurance companies shall have A.M. Best ratings of not less than A-IX. The carrying by Printer of the insurance required herein shall in no way be interpreted as relieving Printer of any other obligations it may have under this agreement.

16. Audit Right. Upon reasonable prior notice CUSTOMER shall have the right through its internal staff or by outside audit consultants, to audit Printer's books and records in regard to its consumption of either or both Customer-Furnished or Publisher-Directed paper in regard to Orders during any period of the Term, provided

that no more than two (2) such audits may be conducted by CUSTOMER within any consecutive twelve (12) month period.

17. Indemnities.¹ CUSTOMER shall defend and indemnify Printer against any third party claim made against the Printer regarding the content of any Product produced hereunder, provided that (i) the Printer actually manufactured such Product by using the content provided by CUSTOMER; (ii) the Printer promptly provided notice of any such claim to CUSTOMER upon receipt thereof by Printer; and (iii) CUSTOMER shall control the defense and/or settlement of any such claim.

18. Force Majeure. Neither party shall be liable for any delays or other non-performance resulting from circumstances or causes beyond its reasonable control (other than causes related to such party's financial condition or with respect to the payment of money), including, without limitation, an act of God, strike or labor dispute, war or other violence, any law, order or requirement of any governmental agency or authority, provided that such party has informed the other party of such force majeure event upon the occurrence thereof (including a reasonable estimate of the additional time required for performance) and such party uses best efforts and all due diligence to effect the required performance as soon as reasonably practicable.

19. Confidentiality.² Printer and CUSTOMER each acknowledge that the other possesses and will continue to possess information that has been developed or received by it, has commercial value in its or its customers business and is not generally available to the public. Except as otherwise specifically agreed in writing by the parties, "Confidential Information" shall mean (i) this Agreement and the terms hereof and thereof, (ii) all information marked confidential, restricted or proprietary by either party, and (iii) any other information that is treated as confidential by the disclosing party and would reasonably be understood to be confidential, whether or not so marked. Each Party shall have the right to disclose the Agreement terms and conditions without notice to or consent of the other party as necessary to enforce any of that party's rights or to perform their obligations as set forth in this Agreement or in connection with any audit.

During the term of this Agreement and for the two year period thereafter, Printer and CUSTOMER shall not disclose, and shall maintain the confidentiality of, all Confidential Information of the other CUSTOMER and Printer shall each use at least the same degree of care to safeguard and to prevent disclosing to third parties the Confidential Information of the other as it employs to avoid unauthorized disclosure, publication, dissemination, destruction, loss, or alteration of its own Confidential Information (or the Confidential Information of its customers) of a similar nature, but not less than reasonable care. This provision shall not apply to any particular information which the receiving party can demonstrate (i) is, at the time of disclosure to it, generally available to the public other than through a breach of the receiving party's confidentiality obligations; (ii) after disclosure to it, is published by the disclosing Party or otherwise becomes generally available to the public other than through a breach of the receiving party's confidentiality obligations; (iii) is lawfully in the possession of the receiving party at the time of disclosure to it; (iv) is received from a third party the receiving party reasonably believes has a lawful right to disclose such information; or (v) is independently developed by the receiving party without reference to Confidential Information of the furnishing party.

20. Assignment. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, executors, administrators, successors and assigns. This Agreement and the rights and obligations hereunder may not be assigned by either party without the prior written consent of the other, such consent not to be unreasonably withheld or delayed.

¹ May want to specify in this provision that CUSTOMER will pay for all attorneys' fees and costs associated with the defense of such third-party claims and shall indemnify and hold harmless Printer from any and all damages of any kind associated with such claims.

² May want to provide for injunctive relief and liquidated damages in the event of a breach of this provision. May also want to specify that this provision shall survive termination of the Agreement.

21. Choice of Law. The laws of the State of (STATE), not including its conflict of laws provisions, shall apply to this Agreement. Each party irrevocably agrees that any legal action, suit or proceeding brought by it in any way arising out of this Agreement must be brought solely and exclusively in the courts of (STATE), and each party irrevocably submits to the sole and exclusive jurisdiction thereof with respect to any action, suit or proceeding brought by it or against it by the other party.

22. Entire Agreement. This Agreement, including any Attachments, Schedules and Exhibits referred to herein and attached hereto, each of which is incorporated herein for all purposes, constitutes the entire agreement between the parties with respect to the subject matter hereof. There are no agreements, representations, warranties, promises, covenants, commitments or undertakings other than those expressly set forth herein. This Agreement supersedes all prior agreements, representations, warranties, promises, covenants, commitments or undertakings, whether written or oral, with respect to the subject matter contained in this Agreement. No amendment, modification, change, waiver or discharge hereof shall be valid unless in writing and signed by an authorized representative of the party against which such amendment, modification, change, waiver or discharge is sought to be enforced.

23. Notices. Except as otherwise explicitly provided herein to the contrary, all notices required under this Agreement shall be in writing and shall be delivered in hard copy using one of the following methods and shall be deemed delivered upon receipt: (i) by hand, (ii) by an express overnight courier with a reliable system for tracking delivery, (iii) by facsimile or (iv) by registered or certified mail, return receipt requested, postage pre-paid. Unless otherwise notified, all notices shall be delivered as follows:

In the case of CUSTOMER:

Customer

With a copy to:

Customer

and

In the case of Printer:

24. Time is of Essence; Severability. In regard to all provisions of this Agreement time is of the essence. In the event that any provision in this Agreement or in any other instrument referred to herein shall be held invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions hereof or thereof will not in any way be affected or impaired thereby.

25. Waiver. No delay on the part of any party in exercising any right, power or privilege hereunder shall operate as a waiver thereof, nor shall any waiver on the part of such party of any such right, power or privilege, nor any single or partial exercise of any right, power or privilege, preclude any other or further exercise thereof or the

exercise of any other such right power or privilege, nor shall any waiver constitute a continuing waiver unless expressly provided. All waivers must be in writing and be signed by the party waiving any right power or privilege hereunder. Further, publication or continued publication or payment by the Publisher following notice or claim of facts which, if true, would constitute a breach hereunder by Author, shall not constitute or imply any waiver by the Publisher of any defenses, rights or remedies of the Publisher.

Customer

By: _____

Name: _____

Title: _____

ABC PRINTING COMPANY

By: _____

Name: _____

Title: _____

Attachment A

AWARDED PRODUCTS

Perfect-bound books with the following specifications:

Attachment B

TRANSMITTAL OF PRICING SCALES

Section V
Confidentiality Agreements

Confidentiality Agreement I

PRINT SUPPLIER CONFIDENTIALITY AGREEMENT

This Confidentiality Agreement (the "Agreement") is made and entered into this (DAY) day of (MONTH) 200X by and between XYZ COMPANY and ABC PRINTING COMPANY, a Virginia corporation (the "Company").

WHEREAS, as part of XYZ COMPANY'S duties as a supplier of the Company, XYZ COMPANY has access to the Company's proprietary and confidential information.

NOW, THEREFORE, in consideration of XYZ COMPANY'S duties as a supplier, and for other good and valuable consideration, the adequacy and receipt of which is hereby acknowledged, the parties do hereby agree as follows:

XYZ COMPANY covenants and agrees that any and all information concerning the customer, vendors, customer contacts and information, customer lists, prospect lists, pricing, personnel, business and services of the Company of which XYZ COMPANY and/or its associates has knowledge or access as a result of XYZ COMPANY'S and/or its associates relationship with the Company shall be deemed confidential in nature and shall not, without the prior written consent of the Company, be directly or indirectly used, disseminated, disclosed or published other than in connection with the usual conduct of the business of the Company. Such information shall expressly include, but shall not be limited to, information concerning the Company's business, sources of contacts, business records, customer lists and other customer and prospect information, personnel records and other personnel information, vendor information, business documents and forms, software, databases, all financial information regarding the Company and/or its customers, officers, directors, or other employees. Upon completion of services, XYZ COMPANY shall deliver to the company all originals and copies of disks, documents, forms, records or other information in whatever form it may exist, concerning the Company or its business, customers, products or services. XYZ COMPANY shall also destroy any copies made of data, including copies stored on XYZ COMPANY'S own computers. This provision applies at all times present and future without limitation, whether or not XYZ COMPANY is still engaged to do business with the Company. In construing this provision it is agreed that it shall be interpreted broadly so as to provide the Company with the maximum protection.

The parties hereto agree that the covenants and restrictions set forth above are reasonable and necessary for the protection of the significant investment of the Company in developing, maintaining and expanding its business.

Date: _____ Vendor Representative: _____

Date: _____ ABC PRINTING Representative: _____

Confidentiality Agreement II

PRINTING CLIENT CONFIDENTIALITY AGREEMENT

This Confidentiality Agreement (“Agreement”) entered into between ABC PRINTING COMPANY, having a business address at (ADDRESS) and XYZ COMPANY (“Participant”), having a business address at (ADDRESS). This Agreement shall be effective as of (“Effective Date”).

RECITALS

- 1) ABC PRINTING and the Participant desire to discuss certain matters regarding potential business opportunities which might be beneficial to each of the parties.
- 2) In connection with these discussions, certain confidential and proprietary information regarding ABC PRINTING, Participant or the clients of either party (“Clients”) may be disclosed by one party to the other to permit the other party to evaluate the potential business opportunity.
- 3) The parties desire to establish the terms under which they will disclose certain confidential and proprietary information and the restrictions upon the use and disclosure of such information.

AGREEMENT

The parties agree as follows:

1) Term of Agreement/Termination.

- a) **Term.** The term of this Agreement shall commence upon the Effective Date shown above and shall continue for a period of 12 months.
- b) **Termination.** Either party may terminate this Agreement, with or without cause, by providing the other party with written notice of termination, such termination to be effective upon receipt of such notice.
- c) **Effect of Termination.** All obligations of this Agreement shall continue to apply to Confidential Information provided during the term of this Agreement for a period of two (2) years after its expiration or termination.

2) Confidential Information.

Confidential Information shall mean:

- a) Any data or information that is competitively sensitive material, and not generally known to the public, including, but not limited to, product planning information, marketing strategies, marketing plans, finance, operations, customer relationships, customer profiles, sales estimates, business plans, and internal performance results relating to the past, present or future business activities of ABC PRINTING or the Participant, its parent corporation, its subsidiaries and affiliated companies and the customers, clients and suppliers of any of the foregoing;
- b) Any scientific or technical information, design, process, procedure, formula, or improvement that is commercially valuable and secret in the sense that its confidentiality affords ABC PRINTING or the Participant a competitive advantage over its competitors;

- c) All confidential or proprietary data, concepts, methods, documentation, reports, data specifications, computer software, source code, object code, flow charts, databases, inventions, information, mailing lists, know-how, show-how and trade secrets, whether or not patentable or copyrightable;
- d) All drafts of agreements and exhibits and appendices thereto between ABC PRINTING and the Participant; and
- e) Any of the above described information which is considered proprietary or confidential by ABC PRINTING for Participant's Clients. Confidential Information includes without limitation, all documents, inventions, substances, engineering and laboratory notebooks, drawings, diagrams, specifications, bills of material, equipment, prototypes and models, and any other tangible manifestation of the foregoing which now exist or come into the control or possession of either party.

3) Confidentiality Obligations.

- a) Except as expressly authorized by prior written consent of the other party, each party shall:
 - i) limit access to any Confidential Information of the other party received by it to its employees who have a need-to-know in connection with the evaluation of the potential business transaction, and only for use in connection therewith; and
 - ii) advise its employees having access to the Confidential Information of the other party of the proprietary nature thereof and of the obligations set forth in this Confidentiality Agreement; and
 - iii) take appropriate action by instruction or agreement with its employees having access to the Confidential Information of the other party to fulfill its obligations under this Confidentiality Agreement; and
 - iv) safeguard all Confidential Information of the other party received by it using a reasonable degree of care, but not less than that degree of care used by it in safeguarding its own similar information or material; and
 - v) use all Confidential Information of the other party received by it solely for purposes of evaluating the potential business opportunities between the parties and for no other purpose whatsoever; and
 - vi) not disclose any Confidential Information of the other party received by it to third parties; and
 - vii) not disclose the existence of the discussions to any third party.
- b) At any time, upon the request of one party, the other party shall surrender to the requesting party all memoranda, notes, records, drawings, manuals, records, and other documents or materials (and all copies of same) pertaining to or including the Confidential Information of the requesting party. Upon the return of such materials, the party returning materials agrees to certify, in writing, that all of the foregoing materials have been surrendered to the requesting party.
- c) Neither party shall use any Confidential Information received from the other party about a Client of the other party to solicit additional business from such Client; this shall not be interpreted, however, to prevent the party receiving such Confidential Information from doing business with such a Client if the receiving party has a pre-existing relationship with the subject Client.
- d) **Exceptions to Confidentiality.** The obligations of confidentiality and restriction on use in Section 2 shall not apply to any Confidential Information that:
 - i) was in the public domain prior to the date of this Agreement or subsequently came into the public domain through no fault of such party; or

- ii) was lawfully received by the party from a third party free of any obligation of confidentiality to such third party; or
- iii) was already in the possession of the party prior to receipt thereof, directly or indirectly, from the other party; or
- iv) is required to be disclosed in a judicial or administrative proceeding after all reasonable legal remedies for maintaining such information in confidence have been exhausted including, but not limited to, giving the other party as much advance notice of such disclosure as practical so the other party may attempt to stop such disclosure; or obtain a protective order concerning such disclosure; or
- v) is subsequently and independently developed by employees, consultants or agents of a party without reference to, or use of, the Confidential Information disclosed under this Agreement.

4) Other Obligations.

Nothing in this agreement shall be interpreted as imposing an obligation upon either party to disclose any information, confidential or otherwise. The parties further agree that any information provided pursuant to this agreement is provided as is, with no warranties whatsoever.

5) Equitable Relief.¹

The Participant and ABC PRINTING agree that money damages would not be a sufficient remedy for breach of the confidentiality and other obligations of this Agreement. Accordingly, in addition to all other remedies that either party may have a party shall be entitled to specific performance and injunctive or other equitable relief as a remedy for any breach of the confidentiality and other obligations of this Agreement. The parties agree to waive any requirement for a bond in connection with any such injunctive or other equitable relief.

6) Governing Law

This agreement and performance thereunder shall be governed by the laws of the State of (STATE), excluding application of its conflicts of laws rules.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first written above.

For:
ABC PRINTING
Signed:
Name:
Title:

(Date)

For:
XYZ COMPANY
Signed:
Name:
Title:

(Date)

¹ If the amount of damages would be difficult to measure, the parties may also want to add a liquidated damages clause).

Confidentiality Agreement III

CONFIDENTIALITY AGREEMENT

THIS CONFIDENTIALITY AGREEMENT (“Agreement”) entered into this (XX) day of (MONTH), (YEAR), by and between XYZ COMPANY, a (STATE) Corporation (“Corporation”) and ABC PRINTING COMPANY (“Supplier”)

WHEREAS, Corporation will provide to Supplier confidential and proprietary information to the Corporation’s business and products, including but not limited to, financial documents, business plans, trade secrets, new products, copyrights, computer software, patentable inventions and specifications (“Confidential Information”). Confidential Information shall further mean information not generally known to the public that is disclosed to Supplier or made known to Supplier by Corporation as a consequence of both parties’ mutual interest in possible business transactions;

NOW THEREFORE, in consideration of the promises and mutual covenants and agreements contained herein, the sufficiency of which is hereby acknowledged, the Parties hereby agree as follows:

- 1. Confidentiality and Ownership.** In consideration for Corporation providing the Supplier with Confidential Information, the Supplier hereby agrees that any related information communicated to the Supplier by Corporation or its employees or other agents is confidential and proprietary information and is the sole property of Corporation. At all times the Supplier shall keep in confidence and trust all Confidential Information which shall be communicated to, acquired by or learned by the Supplier in the course of its discussions with Corporation or its employees or agents. In addition, the Supplier will not discuss or disclose any Confidential Information or any information indirectly or directly related thereto to any person, partnership, Supplier, association, group or other entity without the prior written consent of Corporation, except the Supplier may allow the Confidential Information to be reviewed, on a need-to-know basis, by its employees and agents engaged in connection with Supplier’s review of the products and/or components offered for review by Corporation.
- 2. Limited Use.** The Supplier agrees not to use the Confidential Information for any purpose other than its evaluation in connection with its review of the products and/or components offered for review by Corporation.
- 3. Standard of Care.** The standard of care to be utilized by the Supplier in the performance of its obligations hereunder shall be the standard of care utilized by Corporation in treating Corporation’s own information which it does not wish disclosed outside of Corporation.
- 4. Equitable Relief.** Supplier acknowledges that the Confidential Information and all other information about Corporation’s business or product is a valuable, special, and unique asset of Corporation. Supplier agrees that in the event of a breach or threatened breach of the provisions of this Agreement, Corporation shall be entitled to an injunction restraining Supplier from using or disclosing in whole or in part the Confidential Information.
- 5. Limitation of Restriction.** The obligations set forth herein shall not apply to Confidential Information which, before being divulged by Corporation (i) has become publicly known through no wrongful act of Supplier; (ii) has been rightfully received from a third party without restrictions on disclosure and without breach of this Agreement; or (iii) has been disclosed pursuant to the requirement of a governmental agency or law. Disclosure of Confidential Information by Corporation to Supplier shall not prevent Supplier from

pursuing its own projects or products which may be of a similar nature so long as Supplier discloses to Corporation, prior to Corporation disclosing Confidential Information to Supplier, of the existence of such projects or products.

- 6. Attorneys Fees.** If any action at law or in equity is necessary to enforce or interpret the terms of this Agreement, the prevailing party shall be entitled to reasonable attorneys' fees, costs and necessary disbursements in addition to any other relief to which it may be entitled.
- 7. Governing Law.** This Agreement shall be deemed to be a contract made under the laws of the State of (STATE), and for all purposes shall be interpreted and construed in its entirety in accordance with the laws of the State of (STATE).
- 8. Entire Agreement.** This Agreement embodies the entire understanding and obligations of the parties with respect to the Confidential Information. No amendment or modification of this Agreement shall be valid or binding upon the parties unless made in writing and signed by each of the Parties.
- 9. Severability.** In case any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal or unenforceable in any request, such invalidity, illegality or unenforceability shall not affect any other provision hereof, and shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein.
- 10. Counterparts.** This Agreement may be executed in any number of counterparts and all of such counterparts shall constitute one agreement which shall be binding upon the Parties, notwithstanding that the Supplier and Corporation may not have executed the same counterpart.

IN WITNESS WHEREOF the Parties have caused this Agreement to be executed and effective as of the date first above written.

By: _____

Title: _____

Date: _____

By: _____

Title: _____

Date: _____

Section VI
Appendix

Cooperative Production Support Services Agreement

From: Ferrara, Fiorenza, Larrison, Barrett & Reitz

Syracuse, NY

(315) 437-7600

<http://www.ferrarafirm.com>

COOPERATIVE PRODUCTION SUPPORT SERVICES AGREEMENT

BY AND BETWEEN

ABC COMPANY, INC.

AND

XYZ CORPORATION, INC.

This Agreement, effective _____, 2007 ("Agreement") is made by and between ABC Company, Inc., a [state] corporation with a principal place of business located at _____, (hereinafter "ABC"), and XYZ Corporation, Inc., a [state] corporation with a principal place of business located at _____, (hereinafter "XYZ").

WHEREAS, ABC is engaged in the graphic arts and print production related business, and as a part of this business regularly supplies certain of its customers with graphic arts and print related services; and

WHEREAS, XYZ is engaged in a similar business, possessing equipment and production capabilities which are able to produce graphic arts and print related materials similar in quality and scope to those produced by ABC; and

WHEREAS, ABC and XYZ desire to enter into a production support relationship to ensure that they are each able to provide uninterrupted services to their various customers in the event they become temporarily unable to provide services to their customers;

IT IS THEREFORE in consideration of the mutual covenants contained herein agreed as follows.

1. Description of Services. The parties agree to provide production support and assistance to each other on an as needed basis in accordance with the terms of this Agreement and its relevant schedule(s) which are attached to and made a part hereof.

Production assistance will be provided in accordance with the terms of purchase orders which will be identified specifically as a schedule to this Agreement, and which will detail the service to be rendered, product to be produced, and all specifications related to same. Such purchase order/schedule shall also indicate required delivery date(s), costs, payment terms and all details related to same. It is expressly understood and acknowledged

that neither party shall be obligated to perform any services or render production assistance to the other unless and until a specific purchase order/schedule is agreed upon and executed by the parties.

2. Independent Relationship. It is expressly intended by the parties hereto, and ABC and XYZ each hereby specifically warrants, represents and agrees to the other, that each is an independent contractor. Under no circumstances shall either party look to the other as its employer, or as a partner, agent, or principle. Neither party shall be entitled to any benefits accorded to the other party's employees including, without limitation, worker's compensation, disability insurance, vacation or sick pay. It is further intended and agreed between the parties that each party shall retain complete and exclusive direction and control over its employees and otherwise shall have sole control of the manner and means of performing its obligations under this Agreement. Each party shall seek to perform the services contemplated by this Agreement in such a manner so as not to cause a detriment to the other party or its customers' business. If either party should at any time indicate in any manner its policies or procedures with regard to the specific means by which the other party shall perform its obligations under this Agreement, such communications shall be construed to be advisory only; the ultimate determination regarding the methods by which the purposes of this Agreement are to be accomplished is entirely committed to both parties. Either party may at its own expense, use employees or other subcontractors to perform services under this Agreement. This Agreement shall not be construed as a joint venture or business partnership of any kind, but is, rather an arms length customer-supplier arrangement.

3. Confidentiality/Competition.¹ It is understood that in the course of performing this Agreement, each party will obtain proprietary and confidential information concerning the business and affairs of the other, and each agrees to hold such information in strict confidence and, without written consent of the other, not to disclose or make use of such information except as may be necessary for the performance of this Agreement. The parties warrant that they will not, for a one year period following the production of any work pursuant to this Agreement, directly solicit or perform work for a customer of the other, to an extent greater than they had prior to the work performed hereunder.

4. Indemnification. Both parties shall protect, defend, indemnify and hold harmless each other, their affiliates, and their officers, directors, employees, successors and assigns from and against any and all losses, damages, liabilities (including, without limitation), consequential and punitive damages, claims, judgments, settlements, and expenses (including, without limitation), reasonable attorneys' fees, costs, disbursements and other out of pocket costs and expenses incurred in investigating and/or defending against the assertion of such liabilities which may be asserted against or incurred by either party and their affiliates and their officers, directors, employees, successors and assigns, after the date hereof and which concern or arise out of the performance of this Agreement including, without limitation, ABC's or XYZ's breach of this Agreement, breach of its representations, warranties and covenants contained in this Agreement, and claims arising out of or concerning Product liability, trademark infringement, wrongful interference, torts, breach of contracts, and statutory violations of state/federal laws. ABC's and XYZ's obligation to defend, indemnify and hold harmless under the terms of this provision includes, without limitation, third party claims for injunctive and/or equitable relief stemming from a party's assumption of the other party's obligations under this Agreement.

If any action, suit or proceeding shall be commenced, or any claim or demand shall be asserted, for which ABC or XYZ is entitled to indemnification and/or defense pursuant to this Agreement, the party seeking indemnification shall notify the other of its demand for indemnification and/or defense with reasonable promptness.

5. Force Majeure. In the event that either party is unable to perform the services contemplated hereunder, or in the event that either party's performance is delayed, as a result of any event beyond the party's control arising without its fault or negligence, including, without limitation, fires, floods, epidemics, quarantine restrictions, acts of god, acts or omissions of the other party, acts of a public enemy, strikes, work slowdowns or stop-

¹ May want to include a provision for injunctive relief in the event this provision is breached in any regard.

pages, freight embargos, or unforeseeable emergencies accidents or any other factor or event beyond either party's control, neither party shall be liable to the other as a result of such non-performance or delay in performance; provided, however, that, in the event either party is unable to perform the services contemplated hereunder as a result of a force majeure event contemplated by this Section 5, the other party shall be permitted to contract for such services with another company or take other reasonable steps necessary to secure its products during the force majeure event, and, in the event such inability to perform continues for a period of fifteen (15) or more consecutive days, either party may terminate this Agreement upon written notice to the other.

6. Assignment. This Agreement may be assigned by either party with the prior written consent of the other.

7. Arbitration. Any controversy or claim arising out of or relating to this Agreement, or the breach thereof, shall be settled by arbitration administered by the American Arbitration Association ("AAA") under its Commercial Arbitration Rules (except as may be modified by this Agreement), and judgment on the award rendered by the arbitrator(s) may be entered in any court having jurisdiction thereof, if necessary. This is the only remedy for alleged breach of this Agreement. Any demand for arbitration under this Agreement must be submitted to the [location] regional office of the AAA, and the location of any hearing conducted pursuant to this provision shall be in the [county and state location]. This Agreement shall be governed by the laws of the State of _____.

8. Notices. All notices, requests, demands and other communications here under shall be in writing to the parties at the addresses given below, unless another address shall be furnished to the other party in writing:

Notices to ABC Company, Inc. shall be sent to:

Notices to XYZ Corporation, Inc. shall be sent to:

9. Separability, Modification and Waiver. Should any part of this Agreement be declared by any court of competent jurisdiction to be invalid for any reason whatsoever, such decision shall not affect the validity of any remaining portion, which remaining portion shall continue in full force and effect as if this Agreement had been executed with the invalid portion hereof eliminated, it being the intention of the parties that they would have executed the remaining portion of this Agreement without including any such part, parts or portions which may for any reason be hereafter declared invalid. This Agreement may not be altered except in writing executed by both parties. Any invalidity, in whole or in part, or any provision of this Agreement, or any provision of the schedules to this Agreement, shall not affect the validity of any other of the provisions. No modification of this Agreement and no waiver of any of its terms, conditions or provisions shall be valid and binding unless in writing duly executed by authorized representatives of both parties thereto. Failure of either party to enforce any provision of this Agreement is not construed as a waiver of that provision or of either party's rights to enforce that provision or any other provision of this Agreement.

10. Term and Termination. This Agreement will commence on the date first written above and may be terminated in full by either party upon sixty (60) days written notice to the other. If not terminated or modified sooner, this Agreement shall terminate _____.

IN WITNESS WHEREOF, the parties have caused this Agreement to be duly executed as of the date first written above.

ABC COMPANY, INC.

XYZ CORPORATION, INC.

Signature:

Name:

Title:

Date:

About Printing Industries of America

Printing Industries of America, along with its affiliates, delivers products and services that enhance the growth, efficiency, and profitability of its members and the industry through advocacy, education, research, and technical information.

Printing Industries of America developed from the 1999 merger of the Graphic Arts Technical Foundation (GATF), founded in 1924, and Printing Industries of America (PIA), founded in 1887. This consolidation brought together two powerful partners: the world's largest graphic arts trade association representing an industry with more than 1 million employees and \$156 billion in sales and a nonprofit, technical, scientific, and educational organization dedicated to the advancement of the graphic communications industries worldwide.

Printing Industries of America's staff of researchers, educators, and technical specialists help members in more than 80 countries maintain their competitive edge by increasing productivity, print quality, process control, and environmental compliance and by implementing new techniques and technologies.

In addition to striving to advance a global graphic communications community through conferences, Internet symposia, workshops, consulting, technical support, laboratory services, and publications, Printing Industries of America promotes programs, services, and an environment that helps its members operate profitably.

Many of Printing Industries' members are commercial printers, allied graphic arts firms such as electronic imaging companies, equipment manufacturers, and suppliers. Its special industry groups, sections, and councils were developed serve the unique needs of specific segments of the print and graphic communications industries and provides members with current information on their specific segment, helping them to meet the business challenges of a constantly changing environment. These groups focus on the web offset printing, label printing, binding, financial executives, sales and marketing executives, and digital printing.

Printing Industries Press publishes books on nearly every aspect of the field; training curricula; audiovisuals and CD-ROMs; and research and technology reports. It also publishes *Printing Industries of America: The Magazine*, a monthly publication providing articles on industry technologies, trends, business management practices, economics, benchmarks, forecasts, legislative and regulatory affairs, human and industrial relations issues, sales, marketing, customer service techniques, and management resources. The magazine represents the consolidation of *GATFWorld* and *Management Portfolio*, formerly bi-monthly publications of the association.

For more information about Printing Industries of America, special industry groups, sections, products, and services, visit www.printing.org.

Printing Industries of America Affiliates

Canadian Printing Industries Association

Ottawa, Ontario
Website: www.cpia-aci.ca

Graphic Arts Association

Trevese, PA
Website: www.gaa1900.com

Pacific Printing and Imaging Association

Portland, OR
Website: www.pacprinting.org

Printing & Graphics Association MidAtlantic

Columbia, MD
Website: www.pgama.com

Printing and Imaging Association of MidAmerica

Dallas, TX
Website: www.piamidam.org

Printing & Imaging Association of Georgia, Inc.

Smyrna, GA
Website: www.piag.org

Printing Association of Florida, Inc.

Orlando, FL
Website: www.pafgraf.org

Printing Industries Alliance

Amherst, NY
Website: www.printnys.org

Printing Industries Association, Inc. of Arizona

Phoenix, AZ
Website: www.piaz.org

Printing Industries Association of San Diego, Inc.

San Diego, CA
Website: www.piasd.org

Printing Industries Association, Inc. of Southern California

Los Angeles, CA
Website: www.piasc.org

Printing Industries Association, Inc. "Serving Northern Kentucky & Ohio"

Westerville, OH
Website: www.pianko.org

Printing Industries of Colorado

Greenwood Village, CO
Website: www.printcolorado.org

Printing Industries of the Gulf Coast

Houston, TX
Website: www.pigc.com

Printing Industries of Michigan

Southfield, MI
Website: www.print.org

Printing Industries of New England

Southborough, MA
Website: www.pine.org

Printing Industries of Northern California

San Francisco, CA
Website: www.pinc.org

Printing Industries of St. Louis

St. Louis, MO
Website: www.pistl.org

Printing Industries of the Midlands, Inc.

Urbandale, IA
Website: www.pimidlands.org

Printing Industries of Utah

W. Jordan, UT
Website: www.piof Utah.com

Printing Industries of Virginia, Inc.

Ashland, VA
Website: www.piva.com

Printing Industries of Wisconsin

Pewaukee, WI
Website: www.piw.org

Printing Industry of Illinois/Indiana Association

Chicago, IL
Website: www.pii.org

Printing Industry of Minnesota, Inc.

Minneapolis, MN
Website: www.pimn.org

The Printing Industry of the Carolinas, Inc.

Charlotte, NC
Website: www.picanet.org

Printing Industry Association of the South, Inc.

Nashville, TN
Website: www.pias.org

Publications of Interest from Printing Industries of America

- *Best Practices of the Best Workplaces in the Americas*, compiled by Printing Industries of America, 2006 edition item no. 1827, 2007 edition item no. 18277
- *Customer Service in the Printing Industry*, by Richard E. Colbary, item no. 1594
- *Ergonomics Training Program*, compiled by Printing Industries of America, et al., item no. 4725
- *Incentive, Bonus, and Recognition Plans*, compiled by Printing Industries of America, item no. 1823
- *Managing Mavericks: The Official Printing Industry Guide to Effective Sales Management*, by Leslie J. Ades, item no. 1302
- *2008–2009 PIA/GATF Ratios* (complete series), item no. 00FM08025
 - Volume 1—Management Guide to PIA Ratios*, item no. 00FM08001
 - Volume 2—All Printers by Sales Volume & Geographic Areas*, item no. 00FM08002
 - Volume 3—All Printers by Product Specialty*, item no. 00FM08003
 - Volume 4—Sheetfed Printers by Sales Volume & Geographic Area*, item no. 00FM08004
 - Volume 5—Web Offset Printers, Heatset*, item no. 00FM08005
 - Volume 6—Web Offset Printers Non-Heatset*, item no. 00FM08006
 - Volume 7—Combination Offset—Sheetfed/ Web*, item no. 00FM08007
 - Volume 8—Book Manufacturers’ Ratios*, item no. 00FM08008
 - Volume 9—Printers with Sales Over \$15,000,000*, item no. 00FM08009
 - Volume 10—Binders’ Ratios*, item no. 00FM08010
 - Volume 11—Printers with Sales Under \$2,000,000*, item no. 00FM08011
 - Volume 13—Forms and Document Printers’ Ratios*, item no. 00FM08013
 - Volume 14—Label Printers’ Ratios*, item no. 00FM08014
 - Volume 15—Digital Printers’ Ratios*, item no. 00FM08015
 - Volume 16—Commercial and Advertising Printers*, item no. 00FM08016
- *Sales Compensation and Incentive Plans: Samples from the Industry*, compiled by Printing Industries of America, item no. 1730
- *Sample Union Contract Language Manual*, compiled by Printing Industries of America, item no. 1824
- *Survey of Printing Management and Administrative Compensation, 2007–2008 Edition*, compiled by Printing Industries of America, item no. 00BT08042 (Also available as downloadable PDF, item no. 00BT08042PDF)
- *Survey of Sales Compensation, 2007–2008 Edition*, compiled by Printing Industries of America, item no. 00BT08041 (Also available as downloadable PDF, item no. 00BT08042PDF)
- *To Be a Profitable Printer*, by Michael Moffitt, item no. 1743

Editor’s Note: Wage and benefit surveys for production employees are offered by most Printing Industries of America affiliates.

Colophon

The *Printing Sales Contracts: Samples from the Industry* book was produced digitally as an on-demand publication at the Printing Industries of America headquarters in Sewickley, Pennsylvania. Content for this book was provided as Microsoft Word files; the submissions received minimal editing and were then imported into QuarkXPress 7.3 for page layout. The typefaces used for the interior are New Caledonia, New Century Schoolbook, and Helvetica. The cover was created on an Apple Macintosh using QuarkXPress and Adobe Photoshop.

Adobe PDF files were made from the QuarkXPress files and then transmitted by internal network to Printing Industries of America's on-demand printing department. The interior and covers of the book were printed on a Xerox iGen3 Digital Production Press. Finally, the book was bound inline using the Bourg Book Factory.