

**CONTRACT FOR Paper Printing Grades and Copy Paper**

**(Contract # 505ENT-M27- ENVELOPES -00)**

**BETWEEN**

**THE STATE OF WISCONSIN,**

**Department of Administration** *(Agency)*

**AND**

\_\_\_\_\_ *(Contractor)*

**Initial Term: One (1) Year from Effective Date**

**Renewal Term: Two (2) One (1)-Year Renewals**

This Contract is between the State of Wisconsin ("State") as represented by the Department of Administration, State Bureau of Procurement, ("State") and \_\_\_\_\_, ("Contractor").

This Contract and the following documents incorporated by reference into the Contract constitute the entire agreement of the parties and supersedes all prior communications, representations or agreements between the parties, whether oral or written. This Contract may not be modified or amended except by mutual agreement of both parties in writing. Any conflict or inconsistency will be resolved by giving precedence in the following descending order:

- a. The terms of this Contract.
- b. The terms of (RFB) # 28479-WEG, including any amendments thereto.
- c. The terms of Contractor's Proposal, including any exceptions to the (RFB) if accepted by the State in writing.

The State of Wisconsin's requirements are provided in its Request for Bid ("RFB") #28479-WEG including any amendments thereto, and Contractor's response, as, accepted by the State.

**IN WITNESS WHEREOF**, the Parties hereto by their duly authorized representatives have executed this Contract with full knowledge of and agreement with the terms and conditions of this Contract.

**State of Wisconsin**

Signature: \_\_\_\_\_

Agency Name: \_\_\_\_\_

Name: \_\_\_\_\_

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

Date: \_\_\_\_\_

**Contractor**

Signature: \_\_\_\_\_

Company Name: \_\_\_\_\_

Name: \_\_\_\_\_

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

Date: \_\_\_\_\_

## STATE OF WISCONSIN COMMODITIES CONTRACT

- 1. DEFINITIONS.** Words and terms shall be given their ordinary and usual meanings. Unless negotiated otherwise by the parties, where capitalized, the following words and terms shall have the meanings indicated. The meanings shall be applicable to the singular, plural, masculine, feminine and neuter of the words and terms.

**“Acceptance”** means a manifestation of assent by the State to the terms, Services, Goods or other items offered by the Contractor under the Contract after Inspection by the State.

**“Agency”** or **“State Agency”** means an office, department, agency, institution of higher education, association, society or other body in the State of Wisconsin government created or authorized to be created by the State Constitution or any law, which is entitled to expend moneys appropriated by law, including the legislature and the courts, but not including an authority, as defined in Wis. Stat. s. 16.70(2).

**“Business Day”** means any day on which the Contracting Agency is open for business.

**“Confidential Information”** means all tangible and intangible information and materials being disclosed in connection with this Contract, in any form or medium without regard to whether the information is owned by the State or by a third party, which satisfies at least one of the following criteria: (i) Personally Identifiable Information; (ii) Proprietary Information; (iii) non-public information related to the State’s employees, customers, technology (including data bases, data processing and communications networking systems), schematics, specifications, and all information or materials derived therefrom or based thereon; or (iv) information expressly designated as confidential in writing by the State. Confidential Information includes all information that is restricted or prohibited from disclosure by state or federal law.

**“Contracted Personnel”** means a Contractor’s employees or other personnel (including officers, agents and Subcontractors) provided by the Contractor to render Services under this Contract.

**“Contracting Agency”** means the Agency entering into this Contract on behalf of the State.

**“Day”** means calendar day unless otherwise specified in this Contract.

**“Default”** means the omission or failure to perform a contractual duty or provide Goods or Services as contractually required.

**“Goods”** means articles of trade or items of merchandise, supplies, raw materials, or finished products, and may also include incidental or related Services as the situation may require.

**“Inspection”** means an examination of Goods provided under this Contract in order to determine their fitness for use

**“Personally Identifiable Information”** means an individual’s last name and the individual’s first name or first initial, in combination with and linked to any of the following elements, if that element is not publicly available information and is not encrypted, redacted, or altered in any manner that renders the element unreadable: (a) the individual’s Social Security number; (b) the individual’s driver’s license number or state identification number; (c) the number of the individual’s financial account, including a credit or debit card

account number, or any security code, access code, or password that would permit access to the individual's financial account; (d) the individual's DNA profile; or (e) the individual's unique biometric data, including fingerprint, voice print, retina or iris image, or any other unique physical representation, and any other information protected by state or federal law.

**"Proprietary Information"** means information, including a formula, pattern, compilation, program, device, method, technique or process to which all of the following apply:

- a. The information derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by, other persons who can obtain economic value from its disclosure or use.
- b. The information is the subject of efforts to maintain its secrecy that are reasonable under the circumstances.

**"Properly-submitted Invoice"** is one that is submitted in accordance with instructions contained on the State's Purchase Order, includes a reference to the proper Purchase Order number, and is submitted to the proper address for processing.

**"Purchase Order"** means the State's standard document of a purchase of Goods or Services.

**"Services"** means all work performed, and labor, actions, recommendations, plans, research, customizations, modifications, documentation, and maintenance and support provided by the Contractor necessary to fulfill that which the Contractor is obligated to accomplish under this Contract.

**"State"** means the State of Wisconsin.

**"Subcontract"** means an agreement, written or oral, between the Contractor and any other party to fulfill the requirements and performance obligations of this Contract.

**"Subcontractor"** means an entity that enters into a Subcontract, with the Contractor for the purpose of delivering Goods or rendering Services to the State.

**"Work Center"** means a charitable organization or nonprofit institution which is licensed under s. 104.07 and incorporated in this State or a unit of county government which is operated for the purpose of carrying out a program of rehabilitation for severely handicapped individuals and for providing the individuals with remunerative employment or other occupational rehabilitating activity of an educational or therapeutic nature, and which is engaged in the production of materials, supplies or equipment or the performance of contractual services in connection with which not less than 75% of the total hours of direct labor are performed by severely handicapped individuals.

2. **APPLICABLE LAW.** This Contract shall be governed by the laws of the State of Wisconsin. Venue for any action brought under this Contract shall lie in Madison, Dane County, Wisconsin.
3. **TERM.** The initial term of this Contract shall be for one (1) year from the effective date. This Contract is eligible for two (2) mutually agreed upon one (1) year renewals, unless terminated as provided herein.
4. **TERMINATION FOR CAUSE.** The State may terminate this Contract after providing the Contractor with thirty (30) Days written notice of the Contractor's right to cure a failure of the Contractor to perform under the terms of this Contract.

The Contractor may terminate this Contract after providing the State with one hundred twenty (120) Days written notice of the State's right to cure a failure of the State to perform under the terms of this Contract.

- 5. TERMINATION FOR CONVENIENCE.** The State may terminate this Contract at any time, without cause, by providing a written notice to the other party at least thirty (30) Days in advance of the intended date of termination.

Contractor may terminate this Contract at any time, without cause, by providing a written notice to the other party at least one hundred twenty (120) Days in advance of the intended date of termination.

In the event of a termination for convenience, the Contractor shall be entitled to receive compensation for any completed or partially completed Services rendered or Goods provided under the Contract. Compensation for partially completed Services shall be no more than the percentage of completion of the Services requested, as determined by the State in its sole discretion, multiplied by the corresponding payment for completion of such Services as set forth in the Contract. Alternatively, at the sole discretion of the State, the Contractor may be compensated for the actual Service hours provided. The State shall be entitled to a refund for Goods or Services paid for but not received or implemented, such refund to be paid within 30 Days of written notice to the Contractor requesting the refund.

**6. CONTRACT CANCELLATION:**

(a) The State reserves the right to cancel this Contract in whole or in part without penalty, and without prior notice, if the Contractor:

- Files a petition in bankruptcy, becomes insolvent, or otherwise takes action to dissolve as a legal entity
- Makes an assignment for the benefit of creditors
- Fails to maintain and keep in force all required insurance, permits and licenses as provided in this Contract;
- Fails to maintain the confidentiality of the State's information that is considered to be Confidential Information, or
- Performs in a manner that threatens the health or safety of a State employee, citizen, or customer.

(b) The State reserves the right to cancel this Contract in whole or in part without penalty, with 30 days' notice, if the Contractor:

- Fails to follow the sales and use tax certification requirements of s. 77.66 of the Wisconsin Statutes;
- Incurs a delinquent Wisconsin tax liability;
- Fails to submit a non-discrimination or affirmative action plan as required herein.
- Fails to follow the non-discrimination or affirmative action requirements of subch. II, Chapter 111 of the Wisconsin Statutes (Wisconsin's Fair Employment Law); or
- Becomes a state or federally debarred contractor.

- 7. GENERAL:** These standard conditions, the accompanying detailed specifications, all purchase orders, all statutory requirements, and all conditions contained in the bid

documents become, by reference, a part of any award or contract. If a specific clause or specification of the above is contrary to these conditions, that clause or specification prevails. Further, the written contract and/or order with referenced parts and attachments shall constitute the entire agreement and no other terms and conditions in any document, acceptance, or acknowledgment shall be effective or binding unless expressly agreed to in writing by the contracting authority. All references to the "State" mean the State of Wisconsin.

Public printing is defined by state law as all graphic reproduction by whatever process and the necessary material and binding, that is paid for with state funds or funds handled through state accounting and disbursing channels.

8. **OBLIGATIONS OF STATE:** The obligations of the State of Wisconsin include placing orders, providing copy, reading proof, and paying for work officially ordered, received, and accepted. When specified, the state agency may furnish paper.
9. **OBLIGATIONS / RESTRICTIONS OF CONTRACTOR:** The contractor is responsible for producing the type of work described in the bid and contract and for providing all materials, service, shipping, insurance, and other costs incidental to and necessary for manufacturing and delivering the printed product. After acceptance of order, the contractor is responsible for completion, including work it is unable to accomplish in its own plant, with no additional cost to the State.

The State may require contractors to furnish a reasonable amount of technical assistance to state agencies. The State may require contractors to furnish reports of contract activity.

*Ownership of Materials:* All materials and electronic files produced or procured by the contractor for the State become State property. Contractor will immediately transfer possession of all items when so requested by the State. In the absence of another written agreement, all costs associated with the return of materials shall be borne by the contractor. All materials returned must be properly wrapped and identified by order number.

*Security:* Contractors must take all reasonable precautions necessary to protect against the unlawful use and distribution of printed materials and the control of production materials (e.g. plates, film, type, paper, copy and electronic documents). The only distribution authorized appears on the official purchase order. Samples of work requiring special security measures, which are furnished as audit or correspondence samples, must be hole punched or similarly voided to assure non-use. Shipment security is the responsibility of the contractor.

*Liability:* The contractor must assume all costs and responsibility for the use of any patented equipment, processes or procedures used or incorporated in the manufacturing, distribution or sale of materials, or services bid. The contractor shall indemnify, hold harmless and defend the State of Wisconsin and its agencies, officers, officials, employees and agents from all liability arising out of the contractor's performance under the contract.

*Labor Laws:* The contractor, by submitting a bid, guarantees that the articles described and sold to the State will be manufactured or produced in accordance with applicable state and federal labor laws.

*Subletting:* The contractor may not transfer, assign, or sublet any state work without the

prior consent of the State, nor may any of the work be performed outside of the contractor's plant without advance approval. Such approval must be requested and approved in writing. The contractor is responsible for subcontracted work. No price increase will be granted for subletting. Unauthorized subletting may result in cancellation of the contract.

*Vendor Name or Logotype:* Printing contractors will not affix their company label, name, logotype, union bug or other identifying information to any printing for the State.

*Promotional Advertising / News releases:* Reference to or use of the State of Wisconsin, any of its departments, agencies or other sub-units, or any state official or employee for commercial promotion is prohibited. News releases pertaining to this procurement shall not be made without prior approval of the State of Wisconsin. Release of broadcast e-mails pertaining to this procurement shall not be made without prior written authorization of the contracting agency.

- 10. BIDDING:** The State of Wisconsin reserves the right to accept or reject any or all bids, to waive any technicalities in any bid submitted, and/or to rebid if necessary, as deemed in the best interest of the State of Wisconsin. Conditional or alternate bids may be rejected.

Official Sealed Bids must be date and time stamped by the soliciting purchasing office on or before the date and time that the bid is due. Bids date and time stamped in another office will be rejected. Receipt of a bid by the mail system does not constitute receipt of a bid by the purchasing office.

As of the announced date and hour of the bid opening, all bids become firm and cannot be altered. Until the award is made, bidders who identify errors in their bids may withdraw their bids. Bid prices are firm for acceptance for 30 days from bid opening, and in the case of award, for the full contract period.

All Official Sealed Bid openings are public. Records may not be available for public inspection prior to issuance of the notice of intent to award or the award of the contract.

*Collusion:* By submitting a quotation on a bid inquiry, the bidder implies unconditional acceptance of the statement: "We as bidders depose that we as individuals, the business firm which we represent, or any agent or representative of said firm, have not in any manner, directly or indirectly, entered into any agreement or participated in any collusion or otherwise taken any action in restraint of free competition in connection with this bidding; that the bid submitted has been independently arrived at without collusion with any bidder or any other competitor; that no attempt has been made to induce any other person or firm to submit or not to submit a bid, or to adjust their bid; and that these are accurate statements subject to penalty for perjury."

*Supplemental Data:* Supplemental data necessary to analyze bids may be requested by the State and must be furnished prior to the awarding of any contract.

*Business Ownership:* Bidders may be required to furnish information on the ownership of their companies as well as related parent, co-ownership, and affiliate companies at the time of bid submission. Any major changes in ownership or affiliation during the contract period will be considered a transfer of the contract, and will require approval of the State.

- 11. AWARD:** Awards will be made to the lowest responsive, responsible bidder. Responsibility is determined at the time bids are evaluated, using criteria which may include: previous performance; equipment available and operable in the bidder's plant to satisfactorily handle the type and volume of work being bid; production, technical, and supervisory personnel; experience in type of work bid; location of the plant; delivery of proofs; extra time required for delivery, and ease of communication with printer.

State representatives are to have reasonable communication with and access to the plant(s) of contractors and bidders during regular hours of operation when needed.

*Reciprocity:* Awards for printing will not be made to vendors located in states or foreign entities that implement in-state preferences for the purchase of printing. Proof of reciprocity rests with the bidder.

*Performance Bond:* A successful bidder may be required to post a performance bond. Any performance bond must be underwritten by a firm authorized to conduct business in the State of Wisconsin. Failure to perform satisfactorily may result in cancellation, rejection, reprinting of any order, cancellation of the contract, forfeiture of the performance bond, and/or removal from bidder lists.

- 12. FOREIGN CORPORATION:** A foreign corporation (any corporation other than a Wisconsin corporation) which becomes a party to this Agreement is required to conform to all the requirements of Chapter 180, Wis. Stats., relating to a foreign corporation and must possess a certificate of authority from the Wisconsin Department of Financial Institutions, unless the corporation is transacting business in interstate commerce or is otherwise exempt from the requirement of obtaining a certificate of authority. Any foreign corporation which desires to apply for a certificate of authority should contact the Department of Financial Institutions, Division of Corporation, P. O. Box 7846, Madison, WI 53707-7846; telephone (608) 266-3590.

- 13. ORDERING:** Each printing job is ordered separately, using an official State of Wisconsin Purchase Order. Orders are issued directly from the agencies to the contractor. Changes to an order are provided in writing. If required by the contractor or agency accounting policy, the Purchase Order will be used if the change involves cost. The contractor is expected to review each order for accuracy and completeness and to advise the ordering agency of any discrepancies. Orders must be acknowledged promptly, referencing the order number and delivery date. The acknowledgement becomes a firm delivery commitment.

The contractor must notify the ordering agency when a change in delivery date is anticipated. This notice should be made by telephone and confirmed in writing.

The State reserves the right to cancel any purchase order after it has been written and at any time during the production process. If the order is cancelled before any work has been done, no payment will be made. If the work has already begun when the order is cancelled, the contractor may bill for the labor, materials, and service that have been performed up to the time the cancellation notification was received.

- 14. POST CONTRACT OBLIGATIONS.** Upon the termination of this Contract for any reason, or upon Contract expiration, each party shall be released from all obligations to the other party arising after the date of termination or expiration, except for those that by their terms survive such termination or expiration.

**15. CONTRACTOR COMPLIANCE AND RESPONSIBILITY FOR ACTIONS.** The Contractor shall at all times comply with and observe all federal, state, and local laws, ordinances, and regulations that are in effect during the term of this Contract that may affect the Contractor's work or obligations hereunder.

The Contractor shall be solely responsible for its actions and those of its agents, employees, or Subcontractors. Neither the Contractor nor any of the foregoing parties has authority to act or speak on behalf of the State.

**16. DELAY AND REMEDY.** If the Contractor fails to remedy any delay or other problem in its performance of its Contract obligations after receiving reasonable notice from the State to do so, the Contractor shall reimburse the State for all reasonable costs incurred as a direct consequence of the Contractor's delay, action, or inaction. In case of failure to deliver Goods or Services in accordance with this Contract, the State, upon written notice to the Contractor, may procure such Goods or Services from other sources as necessary, and the Contractor shall be responsible for the additional cost, including the cost of re-procurement, purchase price and administrative fees. This remedy shall be in addition to any other legal remedies available to the State

**17. WORK CENTER CRITERIA.** The Contractor shall implement processes that allow Agencies to satisfy the State's obligation to purchase goods and services produced by Work Centers certified under the State's Work Center Law, §16.752, Wis. Stat. The Contractor shall include goods provided by Work Centers in its catalog for Agencies and block the sale of comparable items to Agencies.

**18. NON-APPROPRIATION.** The State reserves the right to cancel this Contract in whole or in part without penalty if the Legislature fails to appropriate funds necessary to complete the Contract.

**19. CONTRACTOR'S INSURANCE RESPONSIBILITY.** The Contractor shall maintain the following insurance coverage:

- Worker's compensation insurance, as required under Chapter 102 of the Wisconsin Statutes, for all of the Contractor's employees and Contracted Personnel engaged in the work performed under this Contract;
- Commercial liability, bodily injury and property damage insurance against any claim(s) that may occur in carrying out the terms of this Contract, with a minimum coverage of one million dollars (\$1,000,000) liability for bodily injury and property damage including products liability and completed operations; and
- Motor vehicle insurance for all owned, non-owned and hired vehicles that are used in carrying out the terms of this Contract, with a minimum coverage of one million dollars (\$1,000,000) per occurrence combined single limit for automobile liability and property damage.
- Certificate of Insurance, showing up-to-date coverage, shall be on file in the Contracting Agency before the Contract may commence.

The State reserves the right to require higher or lower insurance limits where warranted.

**20. NONDISCRIMINATION / AFFIRMATIVE ACTION:** In connection with the performance of work under this contract, the contractor agrees not to discriminate against any employee or applicant for employment because of age, race, religion, color, handicap, sex, physical condition, developmental disability as defined in s. 51.01(5), Wis. Stats., sexual orientation



as defined in s. 111.32(13m), Wis. Stats., or national origin. This provision shall include, but not be limited to, the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. Except with respect to sexual orientation, the contractor further agrees to take affirmative action to ensure equal employment opportunities.

- a. Contracts estimated to be over fifty thousand dollars (\$50,000) require the submission of a written affirmative action plan by the contractor. An exemption occurs from this requirement if the contractor has a workforce of less than fifty (50) employees. Within fifteen (15) working days after the contract is awarded, the contractor must submit the plan to the contracting state agency for approval. Instructions on preparing the plan and technical assistance regarding this clause are available from the contracting state agency.
- b. The contractor agrees to post in conspicuous places, available for employees and applicants for employment, a notice to be provided by the contracting state agency that sets forth the provisions of the State of Wisconsin's nondiscrimination law.
- c. Failure to comply with the conditions of this clause may result in the contractor's becoming declared an "ineligible" contractor, termination of the contract, or withholding of payment.
- d. Pursuant to s. 16.75(10p), Wis. Stats., contractor agrees it is not, and will not for the duration of the contract, engage in a prohibited boycott of the State of Israel as defined in s. 20.931(1)(b). State agencies and authorities may not execute a contract and reserve the right to terminate an existing contract with a company that is not compliant with this provision. This provision applies to contracts valued \$100,000 or over.
- e. Pursuant to 2019 Wisconsin Executive Order 1, contractor agrees it will hire only on the basis of merit and will not discriminate against any persons performing a contract, subcontract or grant because of military or veteran status, gender identity or expression, marital or familial status, genetic information or political affiliation.

**21. STATE PAYMENT OFFSETS FOR CONTRACTOR'S DELINQUENCY.** The State shall offset payments made to the Contractor under this Contract in an amount necessary to satisfy a certified or verifiable delinquent payment owed to the State or any state or local unit of government. The State also reserves the right to cancel this Contract as provided in Section 6, Contract Cancellation, if the delinquency is not satisfied by the offset or other means during the term of the Contract.

**22. REMEDIES AND DAMAGES:** When a contractor fails to comply with contract requirements, when a delivered item is improperly produced or otherwise not to specifications, or when time is of the essence and there is insufficient time to reprint, the contractor may be assessed damages for any order or part of an order that is overdue or defective. A late delivery charge in an amount not more than five percent (5%) per day of the net due printer for each working day the contractor is late may be charged to the contractor. The late delivery fee may be deducted from any payments due the contractor.

Contractors whose default has caused additional expense to the agency may be assessed liquidated damages to compensate the agency for actual damages incurred.

In addition to the provisions stated above, in the event contractor shall default in any of the

covenants, agreements, commitments, terms or conditions herein contained, the State shall have all other rights and remedies which it may have at law or in equity against contractor.

No failure to exercise and no delay in exercising any right, power or remedy hereunder on the part of the State or contractor shall operate as a waiver thereof, nor shall any single or partial exercise of any right, power or remedy preclude any other or further exercise thereof or the exercise of any other right, power or remedy. No express waiver shall affect any event or default other than the event or default specified in such waiver, and any such waiver, to be effective, must be in writing and shall be operative only for the time and to the extent expressly provided by the State or contractor therein. A waiver of any covenant, term or condition contained herein shall not be construed as a waiver of any subsequent breach of the same covenant, term or condition.

No remedy or election hereunder shall be deemed exclusive but shall, wherever possible, be cumulative with all other remedies at law or in equity.

**23. CONTRACTOR INDEMNIFICATION.** Contractor shall hold the State harmless and shall defend and indemnify the State, its Agencies, officers and employees against any and all claims, suits, actions, liabilities and costs of any kind, including attorney's fees, for personal injury or damage to property arising from the acts or omissions of the Contractor, its agents, officers, employees or Subcontractors.

**24. CONFIDENTIAL INFORMATION.**

**(a) Disclosures**

In connection with the performance of work hereunder, it may be necessary for the State to disclose to the Contractor Confidential Information. The Contractor shall not use such information for any purpose other than the limited purposes set forth in this Contract, and all related and necessary actions taken in fulfillment of the obligations thereunder. The Contractor shall hold all such information in confidence, and shall not disclose such information to any persons other than its directors, officers, employees, and agents who have a business-related need to have access to such information in furtherance of the limited purposes of this Contract and who have been apprised of, and agree to maintain, the confidential nature of such information in accordance with the terms of this Contract.

Contractor shall institute and maintain such security procedures as are commercially reasonable to maintain the confidentiality of such information while in its possession or control including transportation, whether physically or electronically. If Contractor becomes aware of a data security breach, it shall notify the State immediately and cooperate with the State regarding recovery, remediation, and the necessity to involve law enforcement, if any.

Contractor shall ensure that all indications of confidentiality contained on or included in any item of such information shall be reproduced by Contractor on any reproduction, modification, or translation of such Confidential Information. If requested by the State, Contractor shall make a reasonable effort to add a proprietary notice or indication of confidentiality to any tangible materials within its possession that contain such information of the State, as directed.

The Contractor shall maintain all such information for a period of three (3) years from the date of termination of this Contract, and shall thereafter return or destroy said information as directed by the State.

**(b) Equitable Relief; Indemnification in Event of Contractor Breach**

*Indemnification:* In the event of a breach of this Section by Contractor, Contractor shall indemnify, defend and hold harmless the State of Wisconsin and any of its officers, employees, or agents from any claims arising from the acts or omissions of the Contractor, and its Subcontractors, employees and agents, including but not limited to disallowances or penalties from federal oversight agencies, and any court costs, expenses, and reasonable attorney fees, incurred by the State in the enforcement of this Section and, with respect to Personally Identifiable Information, the costs of monitoring the credit of all persons whose Personally Identifiable Information was disclosed.

*Equitable Relief:* The Contractor acknowledges and agrees that the unauthorized use, disclosure, or loss of Confidential Information may cause immediate and irreparable injury to the individuals whose information is disclosed and to the State, which injury will not be compensable by money damages and for which there is not an adequate remedy available at law. Accordingly, the parties specifically agree that the State, on its own behalf or on behalf of the affected individuals, may seek injunctive or other equitable relief to prevent or curtail any such breach, threatened or actual, without posting security and without prejudice to such other rights as may be available under this Contract or under applicable law.

**25. INTELLECTUAL PROPERTY INFRINGEMENT AND LABOR STANDARDS.** The Contractor guarantees that any items provided to the State hereunder were manufactured or produced in accordance with applicable state and federal labor laws, and that the sale or use of said items shall not infringe any United States patent, copyright, or other intellectual property rights of others. The Contractor shall at its own expense indemnify, defend and hold the State harmless from any claims brought against the State for any alleged patent, copyright or other intellectual property right infringement due to the sale or use of such items, provided that the Contractor is promptly notified of such suit, and is given all related documents. The Contractor shall pay all costs, damages, and profits recoverable in any such infringement lawsuit.

**26. PACKAGING:** All printed matter must be firmly packed in cartons to protect against jamming and shifting, spoilage, loss, or damage during delivery. Each order must be packed separately. When specified, cartons must be delivered on skids or pallets. Packaging materials, including cartons, skids, and pallets, must be furnished by the contractor.

Corrugated board cartons (200 lb. test or stronger) must be uniform in size and suitable for shelf storage and employee handling. Oversized, overweight, or weak cartons are unacceptable. Loaded cartons must not weigh more than 40 pounds each.

Each carton in a shipment must be clearly labeled with: Purchase order number; ordering agency; delivery address (as shown on purchase order); item contained; numbering sequence contained, if applicable; and total order and quantity per carton.

**27. DELIVERY:** Delivery Requirements: Printing must be delivered as specified. All deliveries are F.O.B. inside destination door to any Wisconsin state agency location. Contractors are not required to deliver elsewhere within a building. Unless otherwise noted on the order,

delivery hours are 8:00 a.m. to 3:00 p.m., Monday through Friday, except state holidays.

Unless otherwise specified, contractors are required to ship to only one destination on each order. When an order specifies delivery to more than one point, the contractor may charge for the additional deliveries. Freight bills must accompany the invoice to verify the extra charges.

*Overruns and underruns:* Overruns or underruns are not to exceed 3% on quantities ordered up to 10,000 and 1% on quantities ordered over 10,000, unless otherwise stated in the bid/contract documents. The contractor will be paid for the actual quantity delivered within this tolerance.

*Unavoidable Emergencies:* The contractor will be excused for delays due to uncontrollable causes, such as natural disasters, national emergencies, strikes, or fires. Production problems are not considered unavoidable emergencies. The contractor must notify the ordering agency in writing, of such developments immediately, stating the reason, justification, and estimated extent of the delay. Under these conditions the State may, in its sole discretion, purchase from other sources until the situation is remedied and the State is notified in writing.

*Guaranteed Delivery:* Failure of the contractor to adhere to delivery schedules as specified or to promptly replace rejected materials shall render the contractor liable for all costs in excess of the contract price when alternate procurement is necessary. Excess costs shall include the administrative costs.

- 28. SHIPPING.** Except as otherwise specified herein, Goods shall be shipped, F.O.B. Destination, and the State shall accept legal title of Goods at the point of delivery. Freight charges shall not be paid by the State, but rather shall be prepaid by the Contractor. Unless otherwise specified, the Contractor shall determine the mode of freight and shall accept responsibility for payment of freight charges and processing of freight claims.
- 29. RISK OF LOSS.** The Contractor shall bear all risks of loss, injury or destruction of the Goods ordered herein that occur prior to delivery. Such loss, injury or destruction shall not release the Contractor from any obligation hereunder.
- 30. IDENTIFICATION.** All invoices, packing lists, packages, shipping notices, instruction manuals, and other written documents affecting an order hereunder shall contain the applicable State Purchase Order number. Packing lists shall be enclosed in each and every box or package shipped pursuant to an order, indicating the contents therein. Standard commercial packaging, packing and shipping containers shall be used. If requested by the State, all shipping containers shall be legibly marked or labeled on the outside with State Purchase Order number, product description, and quantity, or as otherwise directed by the State.
- 31. LIENS, CLAIMS AND ENCUMBRANCES.** The Contractor warrants and represents that all Goods ordered hereunder are free and clear of all liens, claims or encumbrances of any kind.
- 32. WARRANTY OF ITEMS OFFERED.** Goods delivered and Services rendered shall be strictly in accordance with the order placed and may not deviate in any way from the terms, conditions or specifications of this Contract, without the prior written approval of the State. Equipment, materials, or supplies delivered under this Contract are subject to Inspection and testing upon receipt.

The Contractor warrants that the Goods provided shall conform to the specifications in this Contract, are fit and sufficient for the purpose manufactured, of good material and workmanship, and free from defect. Goods offered must be new and unused and of the latest model or manufacture, unless otherwise specified by the State. Items shall be equal in quality and performance to the standards indicated herein. Goods delivered that do not conform to the Contract terms, conditions, and specifications may be rejected and returned at the Contractor's expense. The Contractor shall assign to the State its right to recover under any warranties applicable to the Goods offered. Descriptions used herein are specified solely for the purpose of indicating standards of quality, performance, and/or use desired.

- 33. QUALITY:** All printing is expected to meet the following minimum standards: Work must be in register consistent with the type of work being done. Inking must be consistent and uniform throughout in density and color. Colors must be as specified. Folding and punching must be in register. Pages must align with artwork, when applicable. Other finishing must be according to specifications (e.g., packaging, labeling).

Work that does not meet the specified contract standards for quality may be rejected and, if time allows, reprinting may be required at the contractor's expense. No payment will be made for rejected printed matter or services. When time does not allow for a reprint, the State has the right to use the job without compensation to the contractor.

- 34. RECEIPT OF GOODS.** The State's receipt of Goods upon delivery is for the sole purpose of identification. Such identification shall not be construed as Acceptance of the Goods if they do not conform to contractual requirements. If there are any apparent defects in the Goods at the time of delivery, the State shall promptly notify the Contractor of its rejection of said Goods. Without limiting any other rights, the State, at its option, may require the Contractor to:

- a. Repair or replace any or all of the defective and rejected Goods at Contractor's expense,
- b. Refund the price of any or all of the defective and rejected Goods, and
- c. Accept the return of any or all of the defective and rejected Goods.

If rejected, the Goods shall remain the property of the Contractor.

- 35. INDEPENDENT CONTRACTOR.** The Contractor shall act as an independent contractor in providing any and all Goods and Services under this Contract and, except as otherwise outlined herein, shall maintain complete control over its employees, Contracted Personnel, and Subcontractors, if any.
- 36. STATE EMPLOYEES.** The Contractor may not contract with or employ a State employee or an individual retained as a full-time contractor by the State during the term of this Contract.
- 37. ANTITRUST ASSIGNMENT.** By entering into this Contract, the Contractor conveys, sells, assigns and transfers to the State all rights, title and interest in and to all causes of action, claims and demands of whatever nature it may now have or hereafter acquire under the antitrust laws of the United States and the State, relating specifically to that proportionate amount of the particular Goods or Services purchased or acquired by the State under this Contract.

**38. REFUND OF CREDITS.** Within sixty (60) Days of the State's request, the Contractor shall pay to the State any credits resulting from an order that the State determines cannot be applied to future invoices.

**39. OWNERSHIP RIGHTS.** Unless an ownership interest is granted or reserved in this Contract, a State Purchase Order issued under this Contract shall allow the State unrestricted authority to reproduce, distribute, and use any submitted report, data, or material, and any software or modifications and any associated documentation that is designed or developed and delivered to the State as part of the performance of the Contract.

**40. PROMPT PAYMENT.** The State shall pay the Contractor Properly-submitted Invoices within thirty (30) Days of receipt, provided that the Goods or Services to be provided to the State have been delivered, rendered, or installed, and accepted as specified in the solicitation document or this Contract.

If the State fails to pay a Properly-submitted Invoice within thirty (30) Days of receipt, it shall pay a late payment penalty as provided in §16.528, Wis. Stats. However, if the State declares a good faith dispute in regard to an invoice pursuant to § 16.528 (3)(e), Wis. Stats., it may pay any undisputed portion of said invoice, and will be exempt from the prompt payment requirement for the disputed portion.

**41. INVOICING AND PAYMENTS:** A separate invoice for each order must be sent directly to the ordering agency promptly after the job is delivered. Invoices presented for payment must be submitted in accordance with instructions contained on the purchase order, including reference to purchase order number and submittal to the correct address for processing. Invoices will not be dated as received or processed for payment until all accompanying items required are received by the State.

The State of Wisconsin normally will pay properly submitted vendor invoices within thirty (30) days of receipt providing goods have been delivered and accepted as specified.

*Auditing:* Invoices are approved for payment only if they comply with bid, specifications, order, and sample. Adjustments to invoice amounts are made as follows:

Unauthorized charges for tax or pre-paid freight included in bid pricing may be corrected and paid with no prior notification to vendor; a copy of the corrected invoice will be sent to the contractor with payment. The contractor will credit these charges from the state account promptly. All other credit requests will be accomplished according to agency accounting practices, accompanied by a good faith dispute. A good faith dispute creates an exception to prompt payment.

*Overtime:* No compensation for overtime will be allowed for the contractor's failure to meet normal production requirements. Overtime may be allowed to meet unusual requirements when authorized by the State.

*Taxes:* The State of Wisconsin and its agencies are exempt from federal tax and Wisconsin state and local taxes except for Wisconsin excise or occupation tax on specific controlled commodities which do not include printing. The State of Wisconsin may be subject to another state's taxes depending upon the laws of the State from which the purchase is made. The State's federal registration number is 39-73-1021-K. State sales tax exemption numbers may be requested of individual agencies.

**42. STATE TAX EXEMPTION.** The State is exempt from payment of Wisconsin sales or use tax on all purchases.

**43. PROMOTIONAL ADVERTISING AND NEWS RELEASES.** Reference to or use of the State of Wisconsin, the Great Seal of the State, the Wisconsin Coat of Arms, any Agency or other subunits of the State government, or any State official or employee, for commercial promotion is strictly prohibited. News releases or release of broadcast e-mails pertaining to this Contract shall not be made without prior written approval of the State.

**44. NOTICE AND CHANGE OF CONTACT INFORMATION.** Any notice required or permitted to be given hereunder shall be deemed to have been given on the date of delivery or three (3) Business Days after mailing by postal service, certified or registered mail-receipt requested.

In the event the Contractor moves or updates contact information, the Contractor shall inform the State of such changes in writing within ten (10) Business Days. The State shall not be held responsible for payments on Purchase Orders delayed due to the Contractor's failure to provide such notice

**45. RECORDS, RECORDKEEPING AND RECORD RETENTION.** Pursuant to §19.36 (3) of the Wisconsin Statutes, all records of the Contractor that are produced or collected under this Contract are subject to disclosure pursuant to a public records request. The Contractor shall establish and maintain adequate records of all documentation developed or compiled and expenditures incurred under this Contract. All expenditure records shall be kept in accordance with Generally Accepted Accounting Procedures (GAAP). All procedures shall be in accordance with federal, state and local laws or ordinances. The Contractor, following final payment, shall retain all records produced or collected under this Contract for three (3) years.

**46. EXAMINATION OF RECORDS.** The State shall at any time during normal business hours, upon reasonable notice, have access to and the right to examine, audit, excerpt, transcribe, and copy, on Contractor's premises, any of the Contractor's records and computer data storage media involving transactions directly pertinent to this Contract. If the material is on computer data storage media, the Contractor shall provide copies of the data storage media or a computer printout of such if the State so requests. Any charges for copies of books, documents, papers, records, computer data storage media or computer printouts provided by the Contractor shall not exceed the actual cost to the Contractor. This provision shall survive the termination, cancellation, or expiration of this Contract.

**47. BREACH NOT WAIVER.** A failure to exercise any right, or a delay in exercising any right, power or remedy hereunder on the part of either party shall not operate as a waiver thereof. Any express waiver shall be in writing and shall not affect any event or Default other than the event or Default specified in such waiver. A waiver of any covenant, term or condition contained herein shall not be construed as a waiver of any subsequent breach of the same covenant, term or condition. The making of any payment to the Contractor under this Contract shall not constitute a waiver of Default, evidence of proper Contractor performance, or Acceptance of any defective item or work furnished by the Contractor.

**48. ASSIGNMENT OF CONTRACT.** The Contractor shall provide prior written notice to the State before assigning this Contract to another party. The State reserves the right to withhold approval of any such assignment. The terms and conditions of this Contract as well as any rights obligations and liabilities associated with such shall survive any and all assignments, mergers, or acquisitions by a third party until cancelled in writing by both parties.

- 49. SEVERABILITY.** If any provision of this Contract is found by a court of competent jurisdiction to be invalid or unenforceable, the remainder of the Contract shall remain valid and in full force and effect. The invalid provision shall be replaced by a valid provision that comes closest in intent to the invalid provision.
- 50. CONTRACT DISPUTE RESOLUTION.** In the event of any dispute or disagreement between the parties under this Contract, whether with respect to the interpretation of any provision of this Contract, or with respect to the performance of either party hereto, each party shall appoint a representative to meet for the purpose of endeavoring to resolve such dispute or negotiate for an adjustment to such provision. No legal action of any kind, except for the seeking of equitable relief in the case of the public's health, safety or welfare, may begin in regard to the dispute until this dispute resolution procedure has been elevated to the Contractor's highest executive authority and the equivalent executive authority within the Contracting Agency, and either of the representatives in good faith concludes, after a good faith attempt to resolve the dispute, that amicable resolution through continued negotiation of the matter at issue does not appear likely.
- 51. NO GUARANTEE OF QUANTITY.** The State may obtain related Goods and Services from other sources during the term of this Contract. The State makes no express or implied warranties whatsoever that any particular quantity or dollar amount of Goods or Services will be procured through this Contract.
- 52. TERMINATION OF PURCHASE ORDER.** The State may terminate a specific Purchase Order issued under this Contract if it determines that the Contractor is unable to deliver the Goods required in a timely manner, in order to meet the business needs of the State.
- 53. FORCE MAJEURE.** Neither party shall be in default by reason of any failure in performance of this Contract in accordance with reasonable control and without fault or negligence on their part. Such causes may include, but are not restricted to, acts of nature or the public enemy, acts of the government in either its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes and unusually severe weather, but in every case the failure to perform such must be beyond the reasonable control and without the fault or negligence of the party.
- 54. TIME IS OF THE ESSENCE.** Timely provision of the Goods or Services required under this Contract shall be of the essence of the Contract, including the provision of the Goods or Services within the time agreed or on a date specified.
- 55. NO AGENCY RELATIONSHIP.** The Contractor shall not take any action, or make any omission, that may imply, or cause others reasonably to infer that the Contractor is acting as the State's agent in any matter or in any way not expressly authorized by this Contract.
- 56. DISCLOSURE.** If a state public official (as defined in §19.42 (14) of the Wisconsin Statutes) or an organization in which a state public official holds at least a 10% interest is or becomes a party to this Agreement, it shall be voidable by the State unless appropriate disclosure is made to the State of Wisconsin Government Accountability Board, 212 East Washington Avenue, Madison, Wisconsin 53703 (Telephone 608-266-8005).
- 57. OTHER DOCUMENTS.** The parties to this Contract understand and agree that standard forms or templates may be used for various purposes, including but not limited to, purchase orders, invoices, quotes, 'Website Terms and/or Conditions' or 'click to accept' agreement(s), some of which may contain boilerplate or standard terms and conditions ("Other Documents"). However, any use of Other Documents are not a part of this Contract



and are deemed to be for administrative convenience only and the terms therein are of no effect, have no force of law and do not modify the terms of this Contract.