

## PRINTING SERVICES AGREEMENT

This Agreement ("Agreement") is entered into on this \_\_\_\_ day of July 2018, by and between Delaware Technical and Community College, 100 Campus Drive, Dover, Delaware 19904 ("DTCC") and Walsworth Publishing Co., 306 N. Kansas Avenue, Marceline, Missouri 64658 ("Vendor"). At times herein DTCC and Vendor may be referred to collectively as the "Parties".

WHEREAS, DTCC desires to enter into an agreement with a reputable partner that is capable of delivering printing, distribution, and mailing services to DTCC ("Services").

WHEREAS, Vendor responded to DTCC's invitation to bid DTCC18005-CWMAGAZINE ("ITB"), attached hereto as Exhibit A and incorporated by reference herein as if fully restated, with a bid for printing, distribution, and mailing services for DTCC's College magazine, respectively ("Bid"), attached hereto as Exhibit B and incorporated by reference herein as if fully restated herein;

WHEREAS, DTCC desires to award the Services set forth in the ITB to Vendor;

NOW THEREFORE, the Parties agree as follows:

1. Term. This Agreement shall commence on the date hereof and terminate on September 30, 2019 unless terminated earlier pursuant to paragraphs 12, 13, 14, 16 and 17 hereof, or other provisions of this Agreement. The foregoing notwithstanding DTCC shall have an option to extend this Agreement for four additional editions of the magazine for Fall 2019, Spring 2020, Fall 2020, and Spring 2021.

DTCC shall exercise its option to extend this Agreement by providing written notice to Vendor by September 15 of each year for the Fall editions and January 15 of each year for the Spring editions. DTCC may update all Exhibits and the scope of work of the ITB if it exercises its option to extend the terms of this Agreement hereunder.

2. Scope of Services. Vendor agrees to provide the Services in a good, professional manner. The services shall include, but not be limited to, those obligations of Vendor specified in its original response ("Bid") to the ITB. The ITB, including all attachments, addenda, and appendix, and Bid are incorporated by reference herein as if fully set forth. Vendor further agrees to perform such other duties as may be necessary or desirable, in DTCC's reasonable judgment, to implement and maintain high quality. Vendor agrees to provide the Services consistent with the scope of work, technical requirements, and response times set forth on Exhibit C hereto which is incorporated by reference as if fully set forth herein.

3. Compensation. In consideration of performance of the Services set forth in paragraph 2 hereof, DTCC hereby agrees to make payment to Vendor in a total amount, if all DTCC options are exercised, which shall not exceed ONE HUNDRED THOUSAND AND EIGHTY FOUR DOLLARS AND ZERO CENTS (\$101,084.00) for the Services, allocated as follows:

(A) \$16,276.00 Fall 2018 Edition;

- (B) \$16,276.00 Spring 2019 Edition;
- (C) \$16,829.00 Fall 2019 Edition. (DTCC option-exercise by September 15, 2019)
- (D) \$16,829.00 Spring 2020 Edition. (DTCC option-exercise by January 15, 2020)
- (E) \$17,437.00 Fall 2020 Edition. (DTCC option-exercise by September 15, 2020)
- (F) \$17,437.00 Spring 2021 Edition. (DTCC option-exercise by January 15, 2021)

Vendor will submit to DTCC monthly invoices for Services rendered hereunder as the work is completed, and DTCC hereby agrees to make payment to Vendor within thirty (30) days after its receipt of such invoice subject to DTCC's acceptance of the final product. Vendor is responsible for registering with the State of Delaware vendor financial system by following the instructions on Exhibit D entitled "W-9 Substitute Form".

4. Governance. Vendor agrees that all personnel, prices, policies, and all other matters pertaining to the Services shall be subject to DTCC's prior approval.

5. DTCC Responsibility. DTCC shall make payment on all invoices within thirty (30) days of receipt.

6. Independent Contractor. In the performance of this Agreement, Vendor shall be acting as an independent contractor and not as an agent or employee of DTCC. Vendor shall not subcontract nor permit anyone other than employees of Vendor to perform any of the services without the prior written consent of DTCC.

7. Government Approvals and Compliance. Vendor shall obtain and pay for all necessary permits and licenses, including, but not limited to, a State of Delaware Business License, pertaining to the services and equipment and shall post such documents as required by law. Vendor agrees to comply with all federal, state and local laws, ordinances, rules and regulations without additional cost or expense to DTCC. Vendor agrees to indemnify, hold harmless, and defend DTCC, its agents, employees, officers, and trustees, harmless from and against all liability, demands, claims, expenses, suits, losses, damages, causes of action, fines, and judgments (including attorneys' fees) resulting directly or indirectly from Vendor's non-compliance herewith.

8. Taxes. Vendor shall accept full and exclusive liability for the payment of any and all wages, tax contributions for unemployment insurance, retirement benefits, and life pensions, and annuities which may now or hereafter be imposed by the United States or any state, whether measured by the wages, salaries, or remuneration paid to persons employed by Vendor or otherwise in preparation of the Services. Vendor shall comply with all federal and state laws on such subjects and all rules and regulations promulgated thereunder, and shall maintain suitable forms, books, and records and save DTCC harmless from the payment of any and all such taxes and contributions, or penalties.

9. Personnel. Vendor's employees assigned to perform services under this Agreement shall remain employees of Vendor and shall in no event be considered agents or employees of DTCC. Vendor agrees that its employees assigned to perform services under this Agreement will have and maintain appropriate credentials and certifications related to the services performed.

10. Indemnification. Vendor will indemnify, release, hold harmless, and defend DTCC, its agents, employees, officers, and trustees, from and against all liability, demands, claims, expenses, suits, losses, damages, causes of action, fines, and judgments (including attorneys' fees) resulting from the acts or omissions of Vendor's respective agents, employees, subcontractors or assigns arising out of or in connection with Vendor's performance or failure to perform under this Agreement or in connection with any breach thereof, unless caused by the gross negligence or willful misconduct of DTCC. Vendor shall give prompt written notice of any demand, claim or suit arising hereunder and permit DTCC, at its option, to defend against the same.

11. Non Assignment. Neither party may assign or transfer this Agreement or any obligation hereunder without the prior written approval of the other party, except that, upon written notice, a party may assign or transfer to an entity acquiring all or substantially all of the assets of that party, whether by acquisition of assets or shares, or by merger or consolidation. Any assignment in violation of this Section shall be void. Subject to the foregoing, this Agreement shall be binding upon and inure to the benefit of the successors and assigns of the parties.

12. Insurance. Vendor agrees to maintain general liability insurance in the amounts of at least one million (\$1,000,000) per occurrence and at least three million (\$3,000,000) in the aggregate covering the Services at all times during this Agreement. In addition, Vendor agrees at all times during this Agreement to maintain at least one the following lines of insurance in the amounts of at least one million (\$1,000,000) per occurrence and at least three million (\$3,000,000) in the aggregate: Medical or Professional liability; Miscellaneous Errors and Emissions; or Product Liability. The parties further acknowledge that failure to maintain such coverage or failure to maintain such coverage by Vendor in the minimum amounts set forth herein shall be a breach of this Agreement. Certificates of insurance shall be filed with DTCC before Vendor starts its performance hereunder. Certificates shall name DTCC an additional insured (except for worker's compensation insurance) and contain a provision that no cancellation or material change in the policies will become effective except upon thirty (30) days written notice to DTCC. If Vendor fails to maintain such insurance or deliver the certificates, DTCC may immediately terminate this Agreement.

13. Ownership of DTCC Intellectual Property. Vendor agrees any data, reports, documents (digital or hard copy), copyrights, logos, trademarks, or other materials that are conceived, developed, written, or contributed by Vendor pursuant to this Agreement, either individually or in collaboration with others, shall belong to and shall remain the sole property of

DTCC. Vendor warrants that any information, documents, materials, or data provided by it for use by DTCC pursuant to this Agreement shall not contain any proprietary material owned by any other party that is protected under the Copyright Act or any other similar law. Vendor shall be solely responsible for ensuring that any materials provided by Vendor pursuant to this Agreement satisfy this requirement. Vendor agrees that all logos, trademarks, text, mailing lists, and material provided by DTCC to Vendor is the intellectual property of DTCC and Vendor shall have no ownership or license in the same. Vendor shall use its best efforts to prevent infringement, appropriate, or unauthorized use of DTCC's intellectual property. Vendor agrees to indemnify, release, hold harmless, and defend DTCC its agents, employees, officers, and trustees, from and against all liability, demands, claims, expenses, suits, losses, damages' fees resulting from any unauthorized or improper use or infringement of DTCC's intellectual property by Vendor or any person acquiring such information, directly or indirectly, from Vendor. If Vendor fails in its obligations to protect DTCC's intellectual property, DTCC may immediately terminate this Agreement without waiving or relinquishing a right or remedy to seek damages from breach.

14. Confidentiality. Vendor agrees that all information communicated to Vendor by DTCC, with respect to the Services, including, but not limited to, all mailing lists and any information gained by Vendor or its representatives by reason of association or employment with Vendor or its associates, is confidential. Vendor agrees that neither it nor any of its agents or employees shall disclose any confidential information to any other person unless specifically authorized in writing by DTCC to do so, except to the extent disclosure is required by subpoena or an order from a court of competent jurisdiction. Vendor shall use its best efforts to prevent inadvertent disclosure of any confidential information to any third party. Vendor agrees to indemnify, release, hold harmless, and defend DTCC its agents, employees, officers, and trustees, from and against all liability, demands, claims, expenses, suits, losses, damages' fees resulting from any use or disclosure of confidential information by Vendor or any person acquiring such information, directly or indirectly, from Vendor. If Vendor fails to maintain confidentiality, DTCC may immediately terminate this Agreement without waiving or relinquishing a right or remedy to seek damages from breach.

15. Advertising. Vendor agrees that it will not, in the course of the performance of this Agreement or thereafter, use DTCC's name in any advertising or promotional media as a customer or client of Vendor, without the prior written consent of DTCC.

16. Termination. This Agreement may be terminated as follows:

A. If Vendor fails to fulfill in timely and proper manner its obligations under this Agreement, or if the Vendor violates any of the covenants, agreements, or stipulations of this Agreement, DTCC shall have the right to terminate this Agreement by giving written notice to the Vendor of such termination and specifying the effective date thereof, at least twenty (20) days before the effective date of such termination. In that event, all finished or unfinished documents, data, studies, surveys, drawings, maps, models, photographs, and reports or other material prepared by the Vendor under this Agreement shall, at the option of DTCC, become its property, and the Vendor shall be

entitled to receive just and equitable compensation for any satisfactory work completed on such documents and other materials which is usable to the State. On receipt of the contract cancellation notice from DTCC, the Vendor shall have no less than five (5) days to provide a written response and may identify a method(s) to resolve the violation(s). A vendor response shall not effect or prevent the contract cancellation unless DTCC provides a written acceptance of the vendor response. If DTCC does accept the Vendor's method and/or action plan to correct the identified deficiencies, DTCC will define the time by which the Vendor must fulfill its corrective obligations. Final retraction of the DTCC's termination for cause will only occur after the Vendor successfully rectifies the original violation(s). At its discretion DTCC may reject in writing the Vendor's proposed action plan and proceed with the original contract cancellation timeline.

B. By DTCC, without cause and for any reason, upon twenty (20) days written notice. If this Agreement is terminated pursuant to this subparagraph B, Vendor shall continue to provide services to the effective date of termination.

15. Funding Out. This Agreement is contingent on the continuation, and availability of the funding appropriated by the General Assembly of State of Delaware to DTCC. Accordingly, if the funding or appropriations cease or are exhausted based upon previously available funds or appropriations, the Agreement will terminate due to lack of funding. In such circumstances, DTCC shall terminate this Agreement by giving Vendor written notice of such unavailability of funds. All payment obligations of DTCC will cease upon the date of termination specified in such notice; provided, however, that Vendor shall be paid all amounts due and owing under this agreement through the date of termination.

16. Non waiver. The failure of either party to insist upon the performance of any terms or conditions of this Agreement, or to exercise any right or privilege conferred hereby, shall not be construed as a waiver of such terms, conditions, rights or privileges, but the same shall instead continue and remain in full force and effect.

17. Notices. All notices or other communications shall be in writing and shall be deemed to have been duly given if sent certified mail, return receipt requested, to the respective addresses herein designated, or to such other addresses as may be designated, in the manner provided for in this paragraph by either party:

IF TO DTCC:

Christine Gillan

Vice President for Strategic Communication and Marketing

Office of the President

Delaware Technical and Community College

100 Campus Drive

Dover, Delaware 19904

Cgillan1@dtcc.edu

(302) 857-1689

If to Vendor:

GENE SHUFFLER

Walsworth Publishing Co.

306 N. Kansas Avenue

Marceline, Missouri 64658

Email: GENE.SHUFFLER@WALSWORTH.COM

Phone: 660-376-3543

18. Anti-discrimination. The parties agree that, in the performance of this Agreement, no person shall, on the basis of race, color, creed, religion, sex, national origin, age, disability, genetic information, marital status, veteran status, sexual orientation, gender orientation, gender identity or pregnancy, be subjected to any discrimination prohibited by law.

19. Family Educational Rights and Privacy Act. Vendor shall not disclose or release any educational record or other information concerning a student to any person, group or entity other than DTCC without the student's prior written consent and shall otherwise comply with the provisions of the Family Educational Records Privacy Act of 1974, as amended, and DTCC's policies concerning student access to educational records and confidentiality of student records. Vendor shall defend, indemnify and hold DTCC harmless from all liability associated with Vendor's breach of this provision.

20. Choice of Law and Venue. This Agreement shall be deemed to be entered into and shall be construed in accordance with the laws of the State of Delaware. Vendor hereby consents to the personal jurisdiction of the Delaware Courts which shall have the exclusive jurisdiction of any disputes under this Agreement and appoints the Delaware Secretary of State as its agent for the service of process on its behalf.

21. Severability. If it is determined that any provision hereof is in conflict with the law, then such provision shall be given effect only to the extent permitted by law. Nevertheless, the remaining provisions shall remain in full force and effect.

22. Binding Effect. The terms, covenants, and conditions herein shall bind and insure to the benefit of the parties hereto and their respective heirs, distributees, executors, administrators, successors, and, except as otherwise provided herein, their assignees.

23. Force Majeure. Neither party shall be deemed in default hereunder, nor shall it hold the other party responsible for, any cessation, interruption or delay in the performance of its



obligations hereunder (excluding payment obligations) due to earthquake, flood, fire, storm, natural disaster, act of God, war, terrorism, armed conflict, labor strike, lockout, boycott or other similar events beyond the reasonable control of such party, provided that the party relying upon this provision: (i) gives prompt written notice thereof, and (ii) takes all steps reasonably necessary to mitigate the effects of the force majeure event; provided further, that in the event a force majeure event extends for a period in excess of thirty (30) days in the aggregate, either party may immediately terminate this Agreement upon written notice.

24. Interpretation. Any conflict or inconsistency between the provisions of the following documents shall be resolved by giving precedence to such documents in the following order: (a) this Agreement (including any amendments or modifications thereto); (b) the ITB; and (c) Vendor's Bid.

25. Entire Agreement. This Agreement and the Exhibits attached hereto contain the entire Agreement of the parties and may not be modified except in writing and signed by both parties.

IN WITNESS WHEREOF, the parties, through their acknowledged and duly authorized agents, hereto have set their hands and seals of this Agreement as of the date set forth below.

DELAWARE TECHNICAL AND COMMUNITY COLLEGE

Signature on File


  
\_\_\_\_\_  
(SEAL) Date: 7/23/18

Dr. Mark T. Brainard

President

WALSWORTH PUBLISHING CO.

Signature on File

  
\_\_\_\_\_  
(SEAL) Date: 07/30/18

Signature on File

*notary public*



ANGELA D. WARNER  
My Commission Expires  
November 12, 2018  
Linn County  
Commission #14426900