

UCS

C500704

AGREEMENT

between

GARY D. SPIVEY
State Reporter

and

WEST PUBLISHING CORPORATION

2005 DEC -7 11:11 AM L-5002
2005 NOV -2 10:54 AM
GOA CENTRAL
PUBLISHED
PUBLISHED

TABLE OF CONTENTS

	<u>PAGE</u>
SECTION 1.	THE COMBINED WEEKLY ADVANCE SHEETS 2
SECTION 2.	PERMANENT BOUND VOLUMES OF OFFICIAL REPORTS; INTERIM VOLUMES 4
SECTION 3.	COMPUTER SYSTEM 6
SECTION 4.	TRANSMITTAL OF MATERIAL; DATA PREPARATION OFFSET ... 8
SECTION 5.	DELIVERY, PRICE AND PAYMENT FOR ADVANCE SHEETS AND BOUND VOLUMES 9
SECTION 6.	OFFICIAL STYLE MANUAL; SPECIAL VOLUMES 12
SECTION 7.	COPYRIGHT; LICENSES 13
SECTION 8.	SUBSCRIPTIONS FURNISHED TO THE UNIFIED COURT SYSTEM WITHOUT CHARGE 13
SECTION 9.	COMPUTER TAPE AND OTHER ELECTRONIC MEDIA; ON-LINE COMPUTER RETRIEVAL DATA BASE EDITION; OPINION SERVICE 14
SECTION 10.	ADDITIONAL MEDIA OR FORMATS 18
SECTION 11.	CD-ROM EDITION 19
SECTION 12.	PARALLEL UNOFFICIAL CITATIONS; CITATION VERIFICATION . 23
SECTION 13.	SALE OF REPORTS 24
SECTION 14.	PROMOTION OF SALES 25
SECTION 15.	TERM OF CONTRACT 26
SECTION 16.	CHANGE IN CONTRACTOR 26
SECTION 17.	TRANSFER OF BOUND VOLUME INVENTORY 28
SECTION 18.	TYPES OF PUBLICATION PROHIBITED 29
SECTION 19.	INDEMNIFICATION 29

SECTION 20.	BOND OF CONTRACTOR	29
SECTION 21.	TIME OF ESSENCE AND LIQUIDATED DAMAGES	30
SECTION 22.	SETTLEMENT OF DISPUTES	31
SECTION 23.	ADVERTISEMENTS; APPROVAL	32
SECTION 24.	SUBCONTRACTING	32
SECTION 25.	REPORTER'S ACCESS TO CONTRACTOR'S FACILITIES	32
SECTION 26.	REPORTS	33
SECTION 27.	CHANGE OF TYPE OR STYLE	33
SECTION 28.	MODIFICATION; ANNULMENT	33
SECTION 29.	TAX EXEMPTION	34
SECTION 30.	APPENDICES	34
SECTION 31.	CONSENT TO BREACH NOT WAIVER	34
SECTION 32.	ENTIRE AGREEMENT; PARTIAL INVALIDITY	34
SECTION 33.	NOTICES	35
SECTION 34.	GOVERNING LAW	35
SECTION 35.	SURVIVAL	35
SECTION 36.	AUDIT; RECORDS	35

AGREEMENT

For the Printing and Publication of the Reports of the Court of Appeals, the Reports of the Appellate Division, and the Miscellaneous Reports of the State of New York; the Combined Weekly Advance Sheets and Cumulative Tables and Index thereof; a CD-ROM Edition thereof; an On-line Computer Retrieval Data Base Edition thereof; an Opinion Service and an Official Style Manual, for five years from and after January 1, 2006.

AGREEMENT made this 25th day of October, 2005, by and between GARY D. SPIVEY, State Reporter, of One Commerce Plaza, Suite 1750, Albany, New York 12210 and his successors in office (hereinafter "REPORTER"), and West Publishing Corporation (hereinafter "CONTRACTOR"), having its office and principal place of business at Eagan, MN.

WITNESSETH:

WHEREAS, Judiciary Law § 434 (4) requires REPORTER to let, not earlier than the 16th of October, 2005, nor later than the 1st of November, 2005, a Contract for the printing and publication of the Reports of the Court of Appeals (designated "New York Reports"), the Reports of the Appellate Division (designated "Appellate Division Reports"), and the Miscellaneous Reports (together known as the "Official Reports"), the Combined Weekly Advance Sheets and Cumulative Tables and Index thereof, a CD-ROM Edition thereof, and an On-line Computer Data Base Edition thereof, to commence January 1, 2006 and to continue through December 31, 2010, unless sooner annulled; and

WHEREAS, REPORTER, as required by Judiciary Law § 434 (3), has caused to be published once in each of the first weeks of June, July and August, 2005, respectively, in designated newspapers published in the cities of New York, Albany, Rochester and Buffalo, a notice that sealed proposals would be received on or before the first day of September, 2005, for the printing and publication of the said above-designated Official Reports, together with the Combined Weekly

Advance Sheets and Cumulative Tables and Index thereof, an On-line Computer Retrieval Data Base Edition thereof, a CD-ROM Edition thereof, an Opinion Service and an Official Style Manual, for the term designated; and

WHEREAS, REPORTER has caused to be published timely in the New York State Contract Reporter a notice of this contract opportunity in compliance with Article 4-C of the Economic Development Law; and

WHEREAS, REPORTER has accepted the proposal of the above-named CONTRACTOR for the publication of said Official Reports, the Combined Weekly Advance Sheets and Cumulative Tables and Index thereof, a CD-ROM Edition thereof, an On-line Computer Retrieval Data Base Edition thereof, an Opinion Service, and an Official Style Manual, which proposal REPORTER deems to be the most advantageous to the public and to the State of New York, regard being had to the proper execution of the work (Judiciary Law § 434 [4]);

NOW, THEREFORE, in consideration of the promises herein contained, the parties agree as follows:

SECTION 1. THE COMBINED WEEKLY ADVANCE SHEETS

In accordance with and subject to the following provisions, stipulations and conditions, CONTRACTOR shall, from week to week, print, publish, distribute and sell in serial form combined Advance Sheets of the New York Reports, the Appellate Division Reports, and the Miscellaneous Reports, containing prepared opinions, memoranda, abstracts, headnotes, summaries, tabular lists, points of counsel, appearances of counsel, new filings digests, statements of issues likely to be raised on capital appeal, notes, references and other matter furnished by REPORTER. The determination of what matter shall be included in said Reports is in the sole and absolute discretion of REPORTER.

(a) From time to time as decisions are announced and as soon as practicable thereafter,

REPORTER shall deliver to CONTRACTOR copy, in machine readable form, of the prepared opinions, memoranda and tabular lists of the Court of Appeals and the Appellate Divisions, and prepared opinions of the courts whose decisions are to be reported in the Miscellaneous Reports, together with other matter prepared by REPORTER. From said copy of the prepared opinions, memoranda, tabular lists and other matter delivered to CONTRACTOR by REPORTER pursuant to the first sentence of this Subdivision, CONTRACTOR shall prepare and proofread the Tables of Cases Reported, the Digest-Index, the Tables of Statutes and Rules Construed, the Tables of Distribution of Pages in Weekly Advance Sheets, research references, and such additional tables and indices as REPORTER may direct, to be incorporated into the Weekly Advance Sheets. Said Tables of Cases Reported, Digest-Index, Tables of Statutes and Rules Construed, Tables of Distribution of Pages in Weekly Advance Sheets and research references are created by CONTRACTOR, who is solely responsible for their proofreading, accuracy and completeness. Every other issue of the Weekly Advance Sheets shall include a "Current Awareness Commentary" prepared by CONTRACTOR in a manner substantially similar to those appearing in Advance Sheets Nos. 38 and 41 (2004), which are on file at the office of REPORTER. CONTRACTOR shall deliver electronic page proofs of the Appellate Division memoranda to REPORTER for approval within five (5) working days after REPORTER transmits prepared memoranda of the Appellate Division to CONTRACTOR. CONTRACTOR shall deliver electronic page proofs of all other Advance Sheet matter to REPORTER for approval within three (3) working days after REPORTER transmits said matter to CONTRACTOR. Advance Sheet matter shall be published in the Advance Sheets within two (2) weeks after REPORTER transmits said matter to CONTRACTOR.

(b) Cumulative Tables and Index Advance Sheets containing the cumulated indexes and tables of the Weekly Advance Sheets of the New York Reports, Appellate Division Reports and Miscellaneous Reports shall be prepared, printed and published by CONTRACTOR every other month. CONTRACTOR is solely responsible for their preparation, proofreading, accuracy, completeness, and

printing.

(c) The Weekly Advance Sheets and the Cumulative Tables and Index Advance Sheets shall be printed and published with the same or better quality of paper, covers, bindings, and typographical execution, in the same general form and size of page and margins, and in the same general style and typography as Advance Sheets Nos. 38 and 41 and the Cumulative Tables and Index Advance Sheet dated December 31, 2004, which are on file at the office of REPORTER.

SECTION 2. PERMANENT BOUND VOLUMES OF OFFICIAL REPORTS; INTERIM VOLUMES

In accordance with the following provisions, stipulations and conditions, CONTRACTOR shall print and bind the permanent bound volumes of the New York Reports, the Appellate Division Reports and the Miscellaneous Reports, all of which shall contain the prepared opinions, memoranda, tabular lists and other matter published in the Weekly Advance Sheets, together with changes or corrections made by REPORTER, as well as the Table of Cases Affected, Cumulative Errata Table and other notes, references and other matter furnished by REPORTER. The determination of what matter shall be included in said Reports is in the sole and absolute discretion of REPORTER.

(a) Immediately after the last case for a volume of the Reports is published in the Weekly Advance Sheets, REPORTER shall prepare and deliver to CONTRACTOR copy for any other tables, indexes, references and notes, and such other matter as he may select to be included in the bound volume. Computer files of this matter shall be sent back to REPORTER within five (5) working days after receipt by CONTRACTOR and, within two (2) working days after the redelivery to CONTRACTOR of the corrected computer files, electronic page proofs shall be delivered to REPORTER for REPORTER's approval. Further, immediately after the last case for a volume of the Reports is published in the Weekly Advance Sheets, CONTRACTOR shall prepare and deliver to

REPORTER general cross-reference copy slips and a computer file of the preliminary Digest-Index for that volume from the material previously furnished by REPORTER in connection with the preparation of the Weekly Advance Sheets. Said files shall include a list of main heads and subheads applicable to said Digest-Index. REPORTER then will prepare and deliver to CONTRACTOR general and specific cross-references to be inserted into the Digest-Index. Within ten (10) working days after REPORTER delivers to CONTRACTOR said general and specific cross-references, CONTRACTOR shall prepare the Table of Cases Reported, the final Digest-Index and the Table of Statutes and Rules Construed for that volume, and shall deliver to REPORTER computer files thereof. Within two (2) working days after REPORTER redelivers to CONTRACTOR the corrected files, CONTRACTOR shall deliver electronic page proofs to REPORTER for REPORTER's approval.

(b) Within fifteen (15) working days after the receipt by CONTRACTOR of the approved page proofs, CONTRACTOR shall print, bind and distribute the permanent bound volume of said Reports in accordance with Section 5 below.

(c) The permanent bound volumes of the New York Reports, Appellate Division Reports and Miscellaneous Reports shall be printed and published in volumes of approximately 1,300 pages, using No. 1 quality book paper, free from groundwood, special opacity grade of thirty-five (35) lbs. basic weight (fifty [50] lbs. for New York Reports), in the same form and size of page and margin and in the same general style of typography and of equal quality, color and workmanship as Volume 2 NY3d, Volume 10 AD3d and Volume 4 Misc 3d. The permanent volumes shall be bound in Library Buckram and shall be equivalent in binding and typographical execution to Volume 2 NY3d, Volume 10 AD3d and Volume 4 Misc 3d.

(d) With the prior written approval of REPORTER, CONTRACTOR may substitute better quality paper, covers, bindings and other materials.

(e) Prior to the publication of each permanent bound volume of the New York

Reports, CONTRACTOR shall print and bind an interim volume containing specified prepared opinions, memoranda, tabular lists and other matter published in the Weekly Advance Sheets, as well as changes and corrections made by REPORTER. The interim volumes shall be printed and published with the same or better quality of paper, covers, bindings and typographical execution, in the same general form and size of paper and margins, and in the same general style and typography as Interim Volume 3 NY3d, which is on file in the office of REPORTER.

SECTION 3. COMPUTER SYSTEM

(a) CONTRACTOR shall provide the REPORTER with all equipment, hardware, software, programs, services and support (hereinafter "computer system") determined by REPORTER to be reasonable and necessary for the publication of the Official Reports, Weekly Advance Sheets, Cumulative Tables and Index Advance Sheets, bound volumes, CD-ROM Edition, On-line Computer Retrieval Data Base Edition, Opinion Service, and Official Style Manual during the term of this agreement. All such equipment shall be owned (or leased) and maintained by CONTRACTOR and shall be provided, installed and maintained in REPORTER's office entirely at CONTRACTOR's expense.

(b) The computer system provided by CONTRACTOR shall meet or surpass the standards and capabilities of the computer system it is replacing and shall perform all of the functions of, and be equal to or exceed the quality of, the computer system supplied by the predecessor contractor as of May 31, 2005, together with planned upgrades, pursuant to the printing and publishing contract which expires on December 31, 2005, which system and a description thereof, including planned upgrades, are available for inspection by prospective bidders at REPORTER's office.

(c) CONTRACTOR shall provide any equipment, hardware, software, programs, services, support and training which the REPORTER determines to be necessary to outfit any of

REPORTER's employees added during the term of this Contract.

(d) If, in the judgment of REPORTER, the workload of REPORTER's office increases, or any equipment, hardware, software, programs, services, support or training supplied by CONTRACTOR proves to be inadequate to meet the needs of REPORTER's office, CONTRACTOR agrees to supply and install, at no expense to REPORTER, whatever additional equipment, hardware, software, programs, services, support or training is necessary to fully meet the needs of REPORTER's office. Reporter will provide to CONTRACTOR no later than July 1 of each year of this Contract an estimate of its needs for the next 18 months.

(e) At no cost to REPORTER, CONTRACTOR shall train all of REPORTER's present and future employees during the term of this Contract in the proper operation of the computer system provided under this Contract, and shall provide REPORTER with operation and training manuals for said computer system.

(f) In the event REPORTER's office is moved, or if for any reason it becomes necessary to move said computer system during the term of this Contract, CONTRACTOR shall move and reinstall the computer system entirely at CONTRACTOR's expense.

(g) CONTRACTOR shall be solely responsible for the maintenance, service, repair and upkeep of all equipment, hardware and software provided pursuant to this Contract. CONTRACTOR agrees to promptly commence maintenance, service, repair or replacement work, whenever notified by REPORTER that such work is necessary, in order to minimize any disruption of REPORTER's operations. REPORTER shall not be liable to reimburse CONTRACTOR for the expense of any maintenance, service, repair or replacement unless the damage was caused by the negligence of REPORTER's employees, and, in that event, REPORTER shall be liable only for the cost of the maintenance, service, repair or replacement made necessary by said negligence.

(h) CONTRACTOR shall prevent the possibility of lost data by backup procedures and

file security and recovery programs, and CONTRACTOR shall retain a backup archive copy of all material transmitted by REPORTER until the permanent bound volume containing the particular material is printed and distributed, after which the archive copy of the material included in the permanent bound volume may be destroyed.

SECTION 4. TRANSMITTAL OF MATERIAL; DATA PREPARATION OFFSET

(a) The material to be published in the Official Reports shall be transmitted to CONTRACTOR by entry into CONTRACTOR's computer via electronic transmission or other means satisfactory to REPORTER. CONTRACTOR shall pay the entire cost of transmitting said material, including but not limited to the cost of telecommunications, telephone lines, installation, modems, computer discs or magnetic tape, and postage or courier charges. If said material is transmitted to CONTRACTOR electronically, CONTRACTOR's computer shall be available to REPORTER from 8:00 A.M. until 6:00 P.M., five (5) days per week (Monday-Friday), and the material so transmitted must remain available to REPORTER for additions or corrections transmitted electronically until released by REPORTER for publication in the Official Reports.

(b) Other material such as lists of Judges, memorials, diagrams, tables and special features which, because of style or content, are difficult to transmit electronically, shall be mailed or sent by facsimile, air express or courier by REPORTER to CONTRACTOR for publication at CONTRACTOR's expense. An electronic file shall be returned by CONTRACTOR within five (5) working days after its receipt by CONTRACTOR and, upon return of the corrected file to CONTRACTOR, electronic page proofs shall be forwarded by CONTRACTOR to REPORTER for REPORTER's approval within two (2) working days after their receipt by CONTRACTOR.

(c) To offset the cost to the Unified Court System of preparing the material to be published in the Official Reports in a digitized and coded format for transmittal, CONTRACTOR

agrees to pay the Unified Court System \$500,000 dollars per year for each year of this Contract, payable in a manner to be determined by the Unified Court System no later than December 31 of each calendar year, commencing December 31, 2006 and continuing through December 31, 2010. If this Contract is terminated prior to December 31, 2010, a prorated amount (ratio of number of days prior to termination to 365 days) for the year in which termination occurs shall be payable upon termination.

SECTION 5. DELIVERY, PRICE AND PAYMENT FOR ADVANCE SHEETS AND BOUND VOLUMES

(a) In accordance with directions from REPORTER, CONTRACTOR agrees to furnish and deliver so many copies of the New York Reports (including interim volumes), Appellate Division Reports and Miscellaneous Reports, including the Advance Sheets and Cumulative Tables and Index thereof, as may be required to furnish subscriptions to the public law libraries, public officers, Judges, Surrogates and Justices, other than the State Law Library, mentioned in Judiciary Law § 434 (6) (or such number as may be specified by law at the date of publication of each volume). Payment for all such copies shall be made by REPORTER's office at the subscription rates set forth in this Contract. CONTRACTOR also shall furnish and deliver, free of charge, one (1) copy of each permanent and interim volume, Advance Sheet, and Cumulative Tables and Index of the New York Reports, Appellate Division Reports and Miscellaneous Reports, and a subscription to the CD-ROM Edition thereof, to the Secretary of State to enable the Secretary of State to comply with the laws of the United States respecting copyrights. CONTRACTOR also agrees to furnish and deliver to the New York State Law Library three (3) copies of each permanent volume of the New York Reports, Appellate Division Reports and Miscellaneous Reports, or so many copies as may be directed by the New York State Law Library, which copies shall be paid for by the New York State Law Library at a price not to exceed

twenty-two dollars (\$22.00) per volume. CONTRACTOR further agrees to furnish and deliver to REPORTER's office, free of charge, twenty (20) copies of each permanent and interim volume of the New York Reports, Appellate Division Reports and Miscellaneous Reports, together with thirty (30) copies of the Weekly Advance Sheets and Cumulative Tables and Index thereof.

(b) Complete subscriptions to the permanent bound volumes of the Official Reports, including the Weekly Advance Sheets and Cumulative Tables and Index thereof, and including the interim volumes for NY3d, shall be offered for sale and sold to the public at \$19.67 dollars delivered per permanent bound volume, plus sales taxes, if any, delivered as they are published under this Contract.

(c) Individual permanent bound volumes may be offered for sale to the public from CONTRACTOR's inventory, at a price no greater than the price per permanent bound volume established by Subdivision (b) of this Section for complete subscriptions.

(d) The price of the Weekly Advance Sheets and Cumulative Tables and Index thereof, when offered for sale and sold to the public without the bound volumes of the Official Reports, shall be \$118.56 dollars delivered per year, plus sales taxes, if any, delivered as they are published under this Contract.

(e) The price of the individual copies of single numbers of the Weekly Advance Sheets and Cumulative Tables and Index Advance Sheets when offered for sale and sold to the public shall be \$3.00 dollars per copy; and the price of individual copies of single numbers of the interim volumes of NY3d when offered for sale and sold to the public shall be \$10.00 dollars per copy.

(f) CONTRACTOR may make only one application each calendar year to increase the price of complete subscriptions and/or Advance Sheets and Cumulative Tables and Index Only subscriptions. Said application must be made in writing to REPORTER on or before November 1st and any price increase approved shall become effective on the next anniversary date of this Contract. In

support of any such application for a price increase, CONTRACTOR must furnish REPORTER, upon request, with copies of CONTRACTOR's records, invoices and contracts necessary to document and establish, in REPORTER's judgment, the facts and figures that constitute the grounds for the application. Failure to furnish records and documentation requested by REPORTER pursuant to this Subdivision shall constitute grounds for denial of the application. The requested price increase may be approved by REPORTER and the Chief Judge of the Court of Appeals upon a showing of good cause and upon such terms as REPORTER may require. Said approval shall not be withheld unreasonably. CONTRACTOR shall be permitted to raise these prices only to recoup its demonstrated inflationary cost increases incurred during the previous year, as evidenced by changes in the U.S. Bureau of Labor Statistics Producer Price Index for Book Publishing -- Technical, Scientific and Professional Books Code #2731-3, and to compensate CONTRACTOR for any additional work, services and computer hardware and software requested by REPORTER which CONTRACTOR was not required to furnish pursuant to the original terms of this Contract. CONTRACTOR shall not be permitted to raise these prices because the current price does not result in the desired level of profits or is less than, or too low in relation to, production costs for any reason other than inflationary cost increases as described above. Impermissible reasons for a price increase shall include, but not be limited to, the fact that CONTRACTOR's original bid was less than production costs or was too low to generate desired profits.

(g) Author's Corrections: Whenever changes or additions are made in the final pages published in the Advance Sheets, other than for correction of CONTRACTOR's errors, REPORTER shall pay CONTRACTOR \$0.00 for each line so changed in any volume of the Reports.

(h) For all services rendered, materials furnished and the computer system supplied under the terms of this Contract, CONTRACTOR shall be compensated exclusively by the income received from the publication and sale of the Official Reports, including the Weekly Advance Sheets and Cumulative Tables and Index thereof, the CD-ROM Edition thereof, and the On-line Computer Retrieval

Data Base Edition thereof, except that, in addition, CONTRACTOR may receive additional compensation for Author's corrections as provided in Subdivision (g) of Section 5 and for the printing of a new edition of the Official Style Manual, the supplements thereto, and Special Volumes as provided in Section 6 below.

SECTION 6. OFFICIAL STYLE MANUAL; SPECIAL VOLUMES

(a) CONTRACTOR agrees to print and deliver to REPORTER and to other addresses supplied by REPORTER 10,000 copies of a new edition (estimated publication date 2007) of the New York Law Reports Style Manual, in the same general form and size of page and margin as, the same general style and typography as, and equal in binding, covers, paper and typographical execution to the sample copy of the 2002 Style Manual on file in REPORTER's office, at a price of \$0.00 per page, and to print and deliver to REPORTER and to other addresses supplied by REPORTER 10,000 copies of a Supplement (estimated publication date 2009) to the Style Manual, in the same general form and size of page and margins as, the same general style and typography as, and equal in paper and typographical execution to the sample copy of the 2004 Supplement on file in REPORTER's office, at a price of \$0.00 per page.

(b) CONTRACTOR agrees to print and deliver to REPORTER special compilations and imprinted volumes at the prices specified:

(1) Stamped Judges' Volumes (custom-made volumes collecting the opinions of individual judges, with judge's name stamped on the cover in gold color) at \$0.00 dollars per volume for retiring Judges and \$140.00 per volume for all others.

(2) Stamped Regular Volumes (regular volumes with name stamped on the cover in gold color) at \$0.00 dollars per volume for retiring Judges and current price plus \$5.00 for

all others.

(3) Stamped Autograph Volumes (regular volumes with name stamped on the cover in gold color and blank pages on the inside) at \$0.00 dollars per volume for retiring Judges and current price plus \$15.00 for all others.

SECTION 7. COPYRIGHT; LICENSES

(a) The copyright of the headnotes, of the Digest-Index, and of all other notes, references or matter prepared by REPORTER shall be vested in the Secretary of State for the benefit of the People of the State of New York, as provided in Judiciary Law § 438. Said copyrighted material may not be reproduced without a license from the Secretary of State.

(b) The Secretary of State has the authority to grant a nonexclusive license to others for use in any form of the copyrighted headnotes, Digest-Index, and all other notes, references or matter prepared by REPORTER's office, subject to the provisions of Judiciary Law § 438.

(c) REPORTER shall use REPORTER's best efforts to obtain from the New York State Secretary of State a nonexclusive license permitting CONTRACTOR to use the copyrighted materials appearing in the New York Official Reports. CONTRACTOR agrees to apply for such license simultaneously with the execution of this Contract and to make its best efforts to obtain such license prior to the effective date of this Contract.

SECTION 8. SUBSCRIPTIONS FURNISHED TO THE UNIFIED COURT SYSTEM WITHOUT CHARGE

CONTRACTOR will provide to the New York State Unified Court System, without charge 1,100 complete subscriptions to the bound and interim volumes of the Official Reports, including the Weekly Advance Sheets and Cumulative Tables and Index thereof.

**SECTION 9. COMPUTER TAPE AND OTHER ELECTRONIC MEDIA; ON-LINE
COMPUTER RETRIEVAL DATA BASE EDITION; OPINION SERVICE**

(a) Computer tapes or other electronic media employed by CONTRACTOR in its computerized typesetting process or in the production of the CD-ROM Edition, the On-line Computer Retrieval Data Base Edition, or the Opinion Service during the course of this Contract shall be and shall remain the property of CONTRACTOR, except that REPORTER shall be entitled upon request to a copy of such tapes or other media at no cost. CONTRACTOR shall have the right of sale, lease, license, or other disposition, including but not limited to on-line electronic and CD-ROM distribution, of such tapes or other electronic media to interested users, such as on-line data base vendors, subject to the rights granted pursuant to Judiciary Law § 438 and subject to REPORTER's approval of any re-use or re-distribution of such media. CONTRACTOR shall not unreasonably refuse, condition or delay such sale, lease, license, or other disposition of such media comprising the text of court opinions, the price for which shall be mutually agreed upon by CONTRACTOR and such interested users. If CONTRACTOR and any such interested user are unable to agree upon the price to be paid for such sale, lease, license, or other disposition, the price will be determined by the Chief Judge of the Court of Appeals or her designee, which decision shall be final and binding on CONTRACTOR and such interested user.

(b) CONTRACTOR shall, entirely at its own expense, publish and make available for public sale the said Official Reports in an On-line (including Internet) Computer Retrieval Data Base Edition within 90 days after the effective date of this Contract (January 1, 2006).

(c) The On-line Computer Retrieval Data Base Edition must, at a minimum, be substantially equivalent, in REPORTER's judgment, in content, format, functionality and currentness with the On-line Computer Retrieval Data Base Edition provided by the predecessor contractor as of the effective date of this Contract. The current On-line Computer Retrieval Data Base Edition and a description thereof are available in REPORTER's office for inspection by prospective bidders. In

addition, no later than January 1, 2007, the On-line Computer Retrieval Data Base Edition must, at a minimum, be substantially equivalent, in REPORTER's judgment, in content, format, functionality, accessibility (including menu placement and default settings) integration (including integration with citator services and records and briefs) and currentness with any other New York case law on-line data base provided by CONTRACTOR; and shall include a Cumulative Digest-Index which must, at a minimum, be substantially equivalent, in REPORTER's judgment, in content, format, and functionality to the Digest-Index in the On-line Computer Data Base Edition of the Official Reports as of the effective date of this Contract, and which must, at a minimum, be substantially equivalent in content, format, functionality, integration (including integration with citator services) and currentness to any other on-line case law Digest or equivalent classification system provided by CONTRACTOR. Also no later than January 1, 2007, the On-line Computer Data Base Edition shall include a Table of Cases, Front Matter file and Table of Cases Affected substantially equivalent, in REPORTER'S judgment, in content, format and functionality to the Table of Cases, Front Matter file and Table of Cases Affected in the On-line Computer Data Base Edition of the Official Reports as of the effective date of this Contract.

(d) REPORTER shall retain complete control over the content and format of the On-line Computer Retrieval Data Base Edition of the Official Reports and may require CONTRACTOR to add, delete or modify any feature, text or graphical material therein. CONTRACTOR shall make any changes in the form or composition of any record in the On-line Computer Retrieval Data Base Edition of the Official Reports as the REPORTER may direct, such changes to be entirely at CONTRACTOR's expense. CONTRACTOR also agrees to implement the following improvements to the On-line Computer Data Base Edition: (1) Addition of a "Cite Title As" field to each First and Second Series opinion or memorandum, in the same style as currently provided for the Third Series, within 6 months

after REPORTER provides the case title data to populate the field; and (2) addition of "Scope Notes" (a sample of which is on file in REPORTER's office) for the Digest-Index, within 6 months after REPORTER supplies the Scope Notes data.

(e) CONTRACTOR shall not claim copyright or other proprietary right with respect to the text of any slip opinion, decision or any other official court or REPORTER-supplied record published in the On-line Computer Retrieval Data Base Edition of the Official Reports; the copyright to any REPORTER-supplied material published in the Official Reports belongs to the State pursuant to Judiciary Law § 438.

(f) The price of the On-Line Computer Retrieval Data Base Edition shall be as follows:

(1) For the general public: a price not to exceed the price charged by CONTRACTOR for use of any other substantially equivalent, in REPORTER's judgment, compilation of New York cases. At REPORTER's request, CONTRACTOR shall provide a confidential report describing the pricing of the On-line Computer Retrieval Data Base Edition and comparing it with the pricing of any other compilation of New York cases offered by CONTRACTOR.

(2) For the Court of Appeals and Court of Appeals Judges: N/A dollars per document retrieved; or N/A dollars per search; or N/A dollars per hour of connect time; or \$0.00 dollars per year for unlimited usage; or N/A dollars per other pricing methodology [describe].

(3) For each Appellate Division Department and for Appellate Division Justices: N/A dollars per document retrieved; or N/A dollars per search; or N/A dollars per hour of connect time; or \$0.00 dollars per year for unlimited usage; or N/A dollars per other pricing methodology [describe].

(4) For other Justices and Judges of the New York State Unified Court System (UCS): N/A dollars per document retrieved; or N/A dollars per search; or N/A dollars per hour of connect time; or \$0.00 dollars per year for unlimited usage; or N/A dollars per other pricing methodology [describe].

(5) For the Office of Court Administration, N/A dollars per document retrieved; or N/A dollars per search; or N/A dollars per hour of connect time; or \$0.00 dollars per year for unlimited usage; or N/A dollars per other pricing methodology [describe].

(6) For other non-UCS Governmental users, N/A dollars per document retrieved; or N/A dollars per search; or N/A dollars per hour of connect time; or \$348.00 dollars per year for unlimited usage; or N/A dollars per other pricing methodology [describe].

(g) In the event that CONTRACTOR provides lower pricing to the above-listed users for on-line (including Internet) access to the Official Reports under any other contract or arrangement, including but not limited to any agreement between the New York State Unified Court System and CONTRACTOR for access to CONTRACTOR's computer-assisted legal research service, the above listed users shall be entitled to such lower pricing rather than the pricing specified in this contract.

(h) CONTRACTOR may apply only once each calendar year to increase the price stated in this Contract of the On-line Computer Retrieval Data Base Edition of the Official Reports. Said application must be made in writing to REPORTER on or before November 1st and any price increase approved shall become effective on the next anniversary date of this Contract. In support of any such application for a price increase, CONTRACTOR must furnish REPORTER, upon request, with such copies of CONTRACTOR's records, invoices and contracts as are necessary to document and establish, in REPORTER's judgment, the facts and figures that constitute the grounds for the application. Failure to furnish records and documentation requested by REPORTER pursuant to this Subdivision shall constitute grounds for denial of the application. The requested price increase may be approved by REPORTER and the Chief Judge of the Court of Appeals upon a showing of good cause. Said approval shall not be withheld unreasonably. CONTRACTOR shall be permitted to raise these prices only to recoup its demonstrated inflationary cost increases incurred during the previous year and to compensate CONTRACTOR for any additional work, services and computer hardware and software requested by

REPORTER which CONTRACTOR was not required to furnish pursuant to the original terms of this Contract. CONTRACTOR shall not be permitted to raise these prices because the current price does not result in the desired level of profits or is less than, or too low in relation to, production costs for any reason other than inflationary cost increases as described above. Impermissible reasons for a price increase shall include, but not be limited to, the fact that CONTRACTOR's original bid was less than production costs or was too low to generate desired profits.

(i) CONTRACTOR shall, entirely at its own expense, publish and make available an Opinion Service within 90 days after the effective date of this Contract (January 1, 2006). The Opinion Service must, at a minimum, be substantially equivalent, in REPORTER's judgment, in content, format, functionality and currentness to the Opinion Service provided by the predecessor contractor as of the effective date of this Contract. The content of the Opinion Service shall be determined by REPORTER in his sole discretion. The Opinion Service shall be made available to such users, and upon such terms, as REPORTER may direct.

SECTION 10. ADDITIONAL MEDIA OR FORMATS

REPORTER reserves the right to make said Official Reports available for public sale in media or formats not described in this Contract. In the event that REPORTER decides to do so, CONTRACTOR shall be entitled to submit a proposal within 30 working days after REPORTER's written request for a proposal for the publication and sale of said Official Reports in such media or formats. If REPORTER and the Chief Judge of the Court of Appeals accept CONTRACTOR's proposal, the price of said Official Reports in such media or formats will be subject to the prior written approval of REPORTER and the Chief Judge, whose approval shall not be unreasonably withheld. However, REPORTER reserves the right to award a separate contract for said Official Reports in such additional media or formats to another contractor in the event either that CONTRACTOR chooses not

to submit a proposal for said Official Reports in such additional media or formats or CONTRACTOR's proposal is not accepted by REPORTER and the Chief Judge.

SECTION 11. CD-ROM EDITION

(a) CONTRACTOR shall, entirely at its own expense, publish and make available for public sale the said Official Reports, Second and Third Series, on CD-ROM within 90 days after the effective date of this Contract (January 1, 2006). CONTRACTOR may also submit a proposal for the publication and sale of a CD-ROM Edition of the Official Reports, First Series, all terms of which are subject to the approval of REPORTER and the Chief Judge of the Court of Appeals. If REPORTER and the Chief Judge of the Court of Appeals accept CONTRACTOR's proposal, then the initial price of the CD-ROM Edition of the First Series, and any subsequent price increases, will be subject to the prior written approval of REPORTER and the Chief Judge, whose approval shall not be unreasonably withheld. In the event CONTRACTOR does not submit a proposal on or before January 1, 2007 to publish and sell the Official Reports, First Series, in CD-ROM format on or before January 1, 2008, or if CONTRACTOR's proposal is not accepted by REPORTER and the Chief Judge, REPORTER reserves the right to award a nonexclusive contract to another contractor to publish and sell said First Series in CD-ROM format.

(b) The CD-ROM Edition of the Official Reports must, at a minimum, be substantially equivalent, in REPORTER's judgment, in content, format, functionality, compatibility with operating systems, currentness, documentation and customer support to the CD-ROM Edition provided by the predecessor contractor as of the effective date of this Contract. A copy and description of the current CD-ROM Edition are available in REPORTER's office for inspection by prospective bidders. In addition, no later than January 1, 2007, the CD-ROM Edition must, at a minimum, be substantially equivalent, in REPORTER's judgment, in content (including coverage of First Series), format,

functionality, compatibility with operating systems, integration (including integration with on-line services), currentness, documentation and customer support to any other New York case law CD-ROM data base provided by CONTRACTOR.

(c) REPORTER shall retain complete control over the content and format of the CD-ROM Edition of the Official Reports, and may require CONTRACTOR to add, delete or modify any feature, text or graphical material therein. CONTRACTOR shall make any changes in the form or composition of any record in the CD-ROM Edition of the Official Reports as the REPORTER may direct, such changes to be entirely at CONTRACTOR's expense.

(d) CONTRACTOR shall be responsible at its own expense for obtaining any licensing required for software used in the CD-ROM Edition of the Official Reports.

(e) CONTRACTOR shall not claim a copyright or other proprietary right with respect to the text of any slip opinion, decision or any other official court- or REPORTER-supplied record published in the CD-ROM Edition of the Official Reports; the copyright to any REPORTER-supplied material published in the Official Reports belongs to the State pursuant to Judiciary Law § 438.

(f) CONTRACTOR shall make the CD-ROM Edition of the Official Reports available for public sale under both monthly and quarterly subscriptions. In addition, CONTRACTOR shall make available both single-user and network licenses.

(g) CONTRACTOR agrees to furnish and deliver copies of the CD-ROM Edition of the Official Reports, Second and Third Series, as follows:

(1) The purchase price for the general public shall be \$0.00 dollars delivered; monthly updates shall be \$744.00 dollars delivered per year; quarterly updates shall be \$663.00 dollars delivered per year; the purchase price for a network version shall be \$0.00 dollars delivered, per user, and quarterly network updates shall be \$165.00 (after the purchase of a single user license for \$663.00) dollars delivered, per user, per year, and monthly network updates shall be \$186.00 (after the purchase

of a single user license for \$744.00 dollars delivered, per user, per year.

(2) The purchase price for the Court of Appeals and Court of Appeals Judges shall be \$0.00 dollars delivered; monthly updates shall be \$0.00 dollars delivered per year; quarterly updates shall be \$0.00 dollars delivered per year; the purchase price for a network version shall be \$0.00 dollars delivered, per user, and quarterly network updates shall be \$0.00 dollars delivered, per user, per year, and monthly network updates shall be \$0.00 dollars delivered, per user, per year.

(3) The purchase price for each Appellate Division department and for Appellate Division Justices shall be \$0.00 dollars delivered; monthly updates shall be \$0.00 dollars delivered per year; quarterly updates shall be \$0.00 dollars delivered per year; the purchase price for a network version for each department shall be \$0.00 dollars delivered, per user, and quarterly network updates shall be \$0.00 dollars delivered, per user, per year, and monthly network updates shall be \$0.00 dollars delivered, per user, per year.

(4) The purchase price for other courts and other Justices and Judges of the New York State Unified Court System (UCS) shall be \$0.00 dollars delivered; monthly updates shall be \$348.00 dollars delivered per year; quarterly updates shall be \$207.00 dollars delivered per year; the purchase price for a network version for other courts and other Justices and Judges of the New York State Unified Court System shall be \$0.00 dollars delivered, and quarterly network updates shall be \$21.00 (after the purchase of a single user license for \$207.00) dollars delivered, per user, per year, and monthly network updates shall be \$21.00 (after the purchase of a single user license for \$348.00), per user, per year.

(5) The purchase price for the Office of Court Administration shall be \$0.00 dollars delivered; monthly updates shall be \$0.00 dollars delivered per year; quarterly updates shall be \$0.00 dollars delivered per year; the purchase price for a network version shall be \$0.00 dollars delivered, per user, and quarterly network updates shall be \$0.00 dollars delivered, per user, per year,

and monthly network updates shall be \$0.00 dollars delivered, per user, per year.

(6) The purchase price for other, non-UCS Governmental subscribers shall be \$0.00 dollars delivered; monthly updates shall be \$348.00 dollars delivered per year; quarterly updates shall be \$207.00 dollars delivered per year; the purchase price for a governmental agency's network version shall be \$0.00 dollars delivered, per user, and quarterly network updates shall be \$21.00 (after the purchase of a single user license for \$207.00) dollars delivered, per user, per year, and monthly network updates shall be \$21.00 (after the purchase of a single user license for \$348.00) dollars delivered, per user, per year.

(7) CONTRACTOR shall provide REPORTER with complimentary subscriptions for one network subscription with monthly updates, with licensing for all employees in REPORTER's office, and two single-user subscriptions with monthly updates during the term of this Contract.

(h) CONTRACTOR may apply only once each calendar year to increase the price of the CD-ROM Edition of the Official Reports. Said application must be made in writing to REPORTER on or before November 1st, and any price increase approved shall become effective on the next anniversary date of this Contract. In support of any such application for a price increase, CONTRACTOR must furnish REPORTER, upon request, with such copies of CONTRACTOR's records, invoices and contracts as are necessary to document and establish, in REPORTER's judgment, the facts and figures which constitute the grounds for the application. Failure to furnish records and documentation requested by REPORTER pursuant to this Subdivision shall constitute grounds for denial of the application. The requested price increase may be approved by REPORTER and the Chief Judge of the Court of Appeals upon a showing of good cause. Said approval shall not be withheld unreasonably. CONTRACTOR shall be permitted to raise these prices only to recoup its demonstrated inflationary cost increases incurred during the previous year and to compensate CONTRACTOR for any

additional work, services and computer hardware and software requested by REPORTER that CONTRACTOR was not required to furnish pursuant to the terms of this Contract. CONTRACTOR shall not be permitted to raise these prices because the current price does not result in the desired level of profits or is less than, or too low in relation to, production costs for any reason other than inflationary cost increases as described above. Impermissible reasons for a price increase shall include, but not be limited to, the fact that CONTRACTOR's original bid was less than production costs or was too low to generate desired profits.

(i) On or after January 1, 2008, CONTRACTOR may discontinue publication and sale of the CD-ROM Edition. Upon such discontinuation, REPORTER reserves the right to award a nonexclusive contract to another contractor to publish and sell a CD-ROM Edition, and CONTRACTOR agrees to provide a copy of the CD-ROM Edition database to the succeeding contractor in accordance with Section 16 (b) and the subscription list for the CD-ROM Edition to REPORTER in accordance with Section 16 (c).

SECTION 12. PARALLEL UNOFFICIAL CITATIONS; CITATION VERIFICATION

(a) The CONTRACTOR shall be solely responsible for providing, at its own expense, parallel citations to the New York Supplement and the Northeastern Reporter for each Court of Appeals decision reported in the New York Court of Appeals Reports, and parallel citations to the New York Supplement for each decision reported in the New York Appellate Division and Miscellaneous Reports. These parallel citations shall be provided for the book, CD-ROM and on-line versions of the Official Reports. CONTRACTOR shall provide parallel citations for publication in the Weekly Advance Sheets within five (5) working days after decisions are transmitted for publication to CONTRACTOR by REPORTER, and CONTRACTOR shall supply additional parallel citations for bound volumes (for

decisions where parallel citations were not available at the time of Advance Sheet publication) within ten (10) working days after REPORTER's transmittal to CONTRACTOR of final changes for each bound volume. CONTRACTOR shall be solely responsible for supplying any hardware or software necessary to programmatically assign such parallel citations, and, if necessary, will manually assign such parallel citations. CONTRACTOR shall be solely responsible for the accuracy and proofreading of said parallel citations.

(b) CONTRACTOR shall verify the accuracy of every case citation in the opinions and memoranda published in the Advance Sheets and shall report any suspected errors to REPORTER for resolution within five (5) working days after the opinions or memoranda are provided to CONTRACTOR for publication in the Advance Sheets.

SECTION 13. SALE OF REPORTS

(a) CONTRACTOR agrees that during the term of this Contract it will print and keep on hand at its place of business, for open and public sale, copies of all permanent bound volumes of the Second and Third Series of the Official New York Reports, Appellate Division Reports and Miscellaneous Reports in sufficient quantities to meet all reasonable current and future demands of persons desiring to purchase any of the said Reports at the price fixed by this Contract. CONTRACTOR further agrees that for such purposes and to meet future demands for bound volumes, it will print and keep on hand at its place of business sufficient additional copies of the bound volumes of each Report as they are completed, over and above the number of bound volumes ordered by subscribers, to supply estimated future sales for a period of one (1) year. CONTRACTOR further agrees that it will reprint the volumes published under this Contract and the Second and Third Series volumes published under previous contracts whenever the inventory shall become less than an estimated one (1) year's supply. CONTRACTOR may substitute folded and gathered sheets (unbound) volumes for some or all of the

quantities of bound volumes which CONTRACTOR is required to maintain pursuant to this Section, provided that CONTRACTOR binds them in covers and bindings equivalent to the original bound volumes prior to sale. CONTRACTOR shall own said bound volume inventory and shall store and maintain said inventory entirely at CONTRACTOR's expense and at no cost to the State of New York. During the term of this Contract, CONTRACTOR shall sell the Official Reports at the New York State Law Reporting Bureau, One Commerce Plaza, 17th Floor, Suite 1750, Albany, New York 12210, and at

West Publishing Corp.
610 Opperman Drive
Eagan, MN 55123

(b) In order that REPORTER may verify that CONTRACTOR is maintaining in inventory the required number of copies of each bound volume in accordance with Subdivision (a) of this Section, CONTRACTOR agrees to furnish to REPORTER, upon request, and within a reasonable time, not to exceed thirty (30) days, a written statement listing the number of copies of each bound volume and each folded and gathered sheets (unbound) volume currently in CONTRACTOR's inventory.

(c) REPORTER may modify the inventory requirements of this section upon a showing satisfactory to REPORTER that CONTRACTOR has the ability to reprint on demand sufficient quantities of bound volumes to satisfy demand on a timely basis.

SECTION 14. PROMOTION OF SALES

CONTRACTOR agrees to use its best efforts to promote the sale of the Official Reports published under this Contract, including but not limited to utilizing its entire New York State sales staff for this purpose. Said sales staff shall consist of at least four (4) New York-based persons who shall promote the sale of said Reports in all areas of New York State. CONTRACTOR may sell the Official Reports on credit, requiring only a moderate cash down payment and the remainder in moderate monthly

payments. CONTRACTOR also agrees to use its best efforts to promote the sale of the Official Reports through direct mail advertising and by publication of advertisements in appropriate legal publications, such as legal newspapers and bar association journals. CONTRACTOR shall devote no less effort or resources to the promotion or sale of the Official Reports than it devotes to any other New York case law product or service. At REPORTER's request, CONTRACTOR shall provide a confidential report describing the efforts or resources devoted to the promotion or sale of the Official Reports and comparing such efforts or resources to those devoted to any other New York case law product or service offered by CONTRACTOR.

SECTION 15. TERM OF CONTRACT

This Contract shall extend for a term from January 1, 2006 through December 31, 2010, unless terminated earlier pursuant to its terms.

SECTION 16. CHANGE IN CONTRACTOR

(a) In order to insure continuity of publication, in the event CONTRACTOR is not awarded the contract for the publication of the aforesaid Reports after December 31, 2010 or in the event that this Contract is terminated prior to December 31, 2010, CONTRACTOR agrees to cooperate fully with any succeeding contractor and to immediately turn over to the succeeding contractor all partially completed bound volumes, printed signatures, material in type or comparable form, and other work in progress. All such material shall be turned over immediately to the succeeding contractor in usable form upon payment by the succeeding contractor to CONTRACTOR for the material turned over in signature form at \$0.01 per page plus \$0.0125 for each page in the printed signature for the bound volumes.

(b) In addition, the outgoing CONTRACTOR shall provide copies of the On-line Computer Retrieval Data Base Edition database, the CD-ROM Edition database, and the Opinion

Service database to the succeeding contractor who is awarded the contract for the publication of the Official Reports commencing January 1, 2011, or, in the event that this Contract is terminated prior to December 31, 2010, as follows:

(1) the copy must be on media and in formats mutually agreed upon by CONTRACTOR and the succeeding contractor. Any dispute concerning the choice of media or formats will be determined by the Chief Judge of the Court of Appeals or her or his designee if the CONTRACTOR and succeeding contractor do not agree upon the media or format choices by November 15, 2010, or within 30 days after the date of termination if this Contract is terminated prior to December 31, 2010. The decision of the Chief Judge of the Court of Appeals or her or his designee shall be final and binding on CONTRACTOR and the succeeding contractor hereto;

(2) the copies must be provided on or before December 1, 2010, or within one (1) week after the award of a successor publishing contract if this Contract is terminated prior to December 31, 2010;

(3) within one (1) week after the termination of this Contract, CONTRACTOR shall also provide the succeeding contractor with an updated copy containing all decisions published in the Official Reports, the On-line Computer Retrieval Data Base Edition, the CD-ROM Edition, and the Opinion Service through December 31, 2010, or the termination date if this Contract is terminated prior to December 31, 2010;

(4) the price of said copies and updated copies will be agreed upon by CONTRACTOR and the succeeding Contractor. If CONTRACTOR and the succeeding Contractor are unable to agree upon the price to be paid for said copies and updated copies within ten (10) days after the date each copy is turned over to the succeeding Contractor, the price will be determined by the Chief Judge of the Court of Appeals or her or his designee, whose decision shall be final and binding on CONTRACTOR and the succeeding contractor hereto.

(c) CONTRACTOR acknowledges that the subscription list to the Official Reports is the property of the State and must be delivered to REPORTER upon request for use by any designated successor contractor.

(d) CONTRACTOR agrees to cooperate fully with any succeeding contractor in order to prevent any disruption in REPORTER's operations resulting from the transition from the computer system provided by CONTRACTOR to the computer system provided by the succeeding contractor.

SECTION 17. TRANSFER OF BOUND VOLUME INVENTORY

(a) By January 15, 2006, CONTRACTOR shall acquire from the prior contractor sufficient copies of all of the previously bound volumes and previously printed, folded and gathered sheets (unbound) of the Second and Third Series of the Official New York, Appellate Division and Miscellaneous Reports to satisfy the bound volume inventory requirements of Section 13 (a) of this Contract. If CONTRACTOR and the prior contractor are unable to agree upon the price to be paid for such inventory before January 15, 2006, CONTRACTOR agrees to submit the determination of the price and number of bound volumes required to be maintained to satisfy the bound volume inventory requirements of Section 13 (a) of this Contract to the Chief Judge of the Court of Appeals or her designee, whose decision shall be final and binding on CONTRACTOR and the prior contractor.

(b) In the event CONTRACTOR is not awarded the contract for the publication of the aforesaid Official Reports after December 31, 2010, or in the event this Contract is terminated prior to December 31, 2010, CONTRACTOR agrees to sell to the succeeding contractor so much of its bound volume inventory as is required to be maintained by the Official Reports publishing contract between REPORTER and the succeeding contractor which commences January 1, 2011. Said inventory, if any inventory is required, shall be delivered by CONTRACTOR to the succeeding contractor within fifteen (15) days following the termination of this Contract. If CONTRACTOR and the succeeding contractor

are unable to agree upon the price to be paid for and the amount of said inventory within fifteen (15) days after the termination of this Contract, CONTRACTOR agrees to submit the determination of the price and number of bound volumes required to be maintained to satisfy the bound volume inventory requirements, if any, of the next publishing contract, to the Chief Judge of the Court of Appeals or her or his designee, whose decision shall be final and binding on CONTRACTOR and the succeeding contractor hereto.

SECTION 18. TYPES OF PUBLICATION PROHIBITED

It is expressly understood and agreed that CONTRACTOR shall not print, publish or sell permanent bound or interim volumes, Weekly Advance Sheets, Cumulative Tables and Index Advance Sheets, On-line Computer Retrieval Data Base Edition, CD-ROM Edition, Opinion Service, or Official Style Manuals in any form other than as provided in this Contract. Further, CONTRACTOR shall not add to the Official Reports any references to any of CONTRACTOR's other publications or add anything at all to the material supplied by REPORTER for publication in said Official Reports or Official Style Manuals, except upon the prior written approval of REPORTER.

SECTION 19. INDEMNIFICATION

CONTRACTOR agrees to indemnify and save harmless REPORTER and REPORTER's office and its employees from any liability imposed upon them arising from the negligence, either active or passive, or fault of CONTRACTOR.

SECTION 20. BOND OF CONTRACTOR

Attached hereto and made a part hereof is a \$75,000 bond executed by CONTRACTOR as required by Judiciary Law § 434 (10).

SECTION 21. TIME OF ESSENCE AND LIQUIDATED DAMAGES

(a) Time is of the essence in this Contract. CONTRACTOR acknowledges that REPORTER has made CONTRACTOR fully aware that punctuality and reliability of CONTRACTOR's performance are of vital importance to the proper functioning of REPORTER's office and to maintaining and improving the currentness of the Official Reports, and that delays due to circumstances within CONTRACTOR's reasonable control will not be tolerated.

(b) Notwithstanding the above, it is understood and agreed by the parties hereto that any reasonable delay in performance by CONTRACTOR which is due to causes beyond CONTRACTOR's control and without CONTRACTOR's fault or negligence shall not constitute a violation of this Contract.

(c) Because time is of the essence and because the actual damages which REPORTER and the New York State Law Reporting Bureau would sustain in the event CONTRACTOR fails to properly perform CONTRACTOR's obligations under this Contract would be difficult to measure, the parties agree to the following liquidated damages and further agree that such damages shall not be regarded as a penalty: CONTRACTOR agrees to pay REPORTER, on behalf of the State of New York, liquidated damages in the sum of Six Hundred Dollars (\$600) for each and every day for which CONTRACTOR fails to fully and timely perform its obligations under Sections 1, 2, 3, 4, 5 (a), 8, 9, 11, 12, 13, 14, 16 and 17 of this Contract. Performance shall be considered "timely" if it conforms to this Contract, or, where no time is so specified, as determined by REPORTER. In the event this Contract is terminated because of CONTRACTOR's default or breach of any of the provisions of this Contract, any daily liquidated damages payable in accordance with this Section shall cease to accumulate as of the date of said termination.

(d) The daily liquidated damages described in Subdivision (c) of this Section shall be in addition to any damages to which REPORTER may be entitled under law arising out of

CONTRACTOR's failure to properly perform any of its other obligations under this Contract. The additional damages which REPORTER may recover from CONTRACTOR on behalf of the State shall include, but not be limited to, any increased costs which may be incurred by REPORTER in securing another contractor to complete this Contract.

SECTION 22. SETTLEMENT OF DISPUTES

(a) It is agreed by the parties that the printing and publication of the Official Reports, including the On-line Computer Retrieval Data Base Edition, CD-ROM Edition and Opinion Service, shall be done under the supervision and direction of REPORTER and shall be subject at all times to the approval of the Chief Judge of the Court of Appeals, to whom shall be referred any matter or matters in dispute under this Contract. All decisions of the Chief Judge shall be final and binding on the parties hereto on all matters submitted to her or him.

(b) Notwithstanding the provisions of Subdivision (a) of this Section, decisions concerning the following matters shall be made as specified below:

(1) increases in the price of bound volumes, Weekly Advance Sheets and Cumulative Tables and Index Advance Sheets shall be determined in accordance with Section 5 (f) of this Contract;

(2) the price of an On-line Computer Retrieval Data Base Edition of said Official Reports shall be determined in accordance with Section 9 of this Contract;

(3) all matters concerning a CD-ROM Edition of the said Official Reports, including price, shall be determined in accordance with Section 11 of this Contract;

(4) the price of the Official Reports in additional media or formats shall be determined in accordance with Section 10 of this Contract;

(5) damages shall be determined in accordance with Section 21 of this Contract;

and

(6) all matters concerning modification or annulment of this Contract shall be determined in accordance with Section 28 of this Contract.

SECTION 23. ADVERTISEMENTS; APPROVAL

No advertisement or other matter shall be published in the Advance Sheets, Cumulative Tables and Index Advance Sheets, permanent bound or interim volumes, On-line Computer Retrieval Data Base Edition, CD-ROM Edition, Opinion Service or Official Style Manual unless approved beforehand in writing by REPORTER. No advertisement or other matter significantly referencing the Official Reports shall be published unless approved beforehand by REPORTER, whose approval shall not be unreasonably delayed or withheld.

SECTION 24. SUBCONTRACTING

CONTRACTOR may not subcontract or utilize any other firm or person to perform any of CONTRACTOR's obligations under this Contract, except upon the prior written consent of REPORTER.

SECTION 25. REPORTER'S ACCESS TO CONTRACTOR'S FACILITIES

CONTRACTOR shall provide REPORTER and REPORTER's authorized representatives with access to its plants, offices and other facilities at reasonable times during CONTRACTOR's usual working hours for the purpose of inspecting CONTRACTOR's facilities, equipment, supplies, work force, work in progress and other matters relating to CONTRACTOR's past, present and future performance under this Contract. If, in accordance with Section 24 above, REPORTER authorizes CONTRACTOR to subcontract or utilize any other firm or person to perform any of CONTRACTOR's

obligations under this Contract, such right of inspection also shall apply to such other firm's or person's plants, offices and other facilities and CONTRACTOR shall include a provision to this effect in its subcontract or other contractual arrangement with such other firm or person.

SECTION 26. REPORTS

CONTRACTOR shall make a confidential detailed written report to REPORTER on a quarterly basis setting forth all sales, subscriptions and on-line usage pursuant to this Contract and also shall furnish REPORTER with all records relating to said sales, subscriptions and usage. CONTRACTOR also shall provide a written report to REPORTER on a monthly basis setting forth statistics on the usage of the Opinion Service. In addition, CONTRACTOR shall, upon request, furnish REPORTER all records and documents necessary to determine CONTRACTOR's compliance with the terms of this Contract.

SECTION 27. CHANGE OF TYPE OR STYLE

During the term of this Contract, REPORTER reserves the right to alter the size and style of type of said New York Reports, Appellate Division Reports, and Miscellaneous Reports, and of the Weekly Advance Sheets and Cumulative Tables and Index thereof, and to alter the form and style of matter such as headnotes, summaries, Digest-Index, tabular lists, tables, appearances and points of counsel, new filings digests, statements of issues likely to be raised on capital appeals, or any such other matter as he may direct to be included therein.

SECTION 28. MODIFICATION; ANNULMENT

It is expressly agreed that, in accordance with Judiciary Law § 434 (12), REPORTER may either modify this Contract in the interest of justice or annul this Contract. Said modification or

annulment shall be made by a written instrument signed by REPORTER, approved by the Chief Judge of the Court of Appeals, and filed in the office of the Secretary of State. In the event this Contract is so annulled, REPORTER may thereupon immediately enter into a new Contract, which shall also be approved by the Chief Judge of the Court of Appeals. It further is expressly agreed that this Contract may at any time be abrogated and annulled by an act of the Legislature of the State of New York.

SECTION 29. TAX EXEMPTION

Purchases by the State of New York are not subject to any sales or federal excise taxes. Exemption certificates will be furnished upon request. New York State also is exempt from the transportation tax; no exemption certificates are required for this tax.

SECTION 30. APPENDICES

Attachments I and II are appended hereto and made a part of this Contract.

SECTION 31. CONSENT TO BREACH NOT WAIVER

No term or provision hereof shall be deemed waived and no breach excused, unless such waiver or consent shall be in writing and signed by the party claimed to have waived or consented. Any consent by any party to, or waiver of, a breach by the other shall not constitute a consent to, waiver of, or excuse for any other different or subsequent breach.

SECTION 32. ENTIRE AGREEMENT; PARTIAL INVALIDITY

This Contract, together with Attachments I and II attached hereto, constitutes the entire agreement of the parties. Any provision of this Contract found to be prohibited by law shall be ineffective to the extent of such prohibition without invalidating the remainder of this Contract.

SECTION 33. NOTICES

All notices to be given under this Contract shall be in writing and delivered to the other party at its address set forth herein (or such other address as the party may provide in writing from time to time), either personally or by certified mail, return receipt requested. Any such notice shall be deemed to have been delivered when delivered, if by personal delivery, or when deposited with the U.S. Postal Service, if mailed.

SECTION 34. GOVERNING LAW

This Contract shall be governed exclusively by the provisions herein and by the laws of the State of New York.

SECTION 35. SURVIVAL

The terms of Sections 7, 9, 11, 16, 17, 18, 19, 21, 22, 23, 26, 34 and 36 of this Contract shall survive the termination of this Contract.

SECTION 36. AUDIT; RECORDS

The Comptroller of the State of New York and REPORTER shall have the right to audit the books of account of CONTRACTOR with respect to the expenditures made or expenses incurred pursuant to this Contract and such books of account shall be open to inspection by the Comptroller of the State of New York and by REPORTER at any mutually convenient time or times. Financial records of CONTRACTOR pertaining to the Contract shall be retained by CONTRACTOR for a minimum of six (6) years after expiration of the Contract.

UCS

C500704

IN WITNESS WHEREOF, the respective parties have hereunto set their hands the day
and year above written.

BY: STATE REPORTER

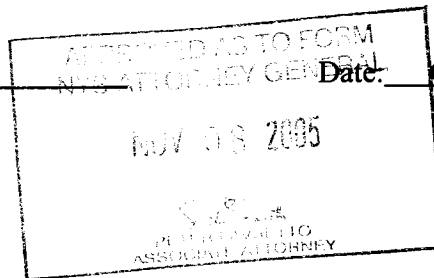
BY: CONTRACTOR

Gary D. Spivey
Name: Gary D. Spivey
Title: State Reporter

Thomas C. Leighton
Name: Thomas C. Leighton
Title: V.P., Content Acquisition

Date: October 25, 2005

Date: October 25, 2005

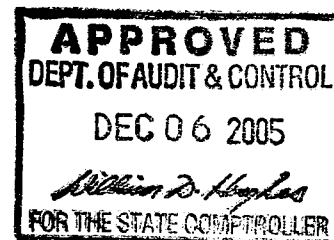


The above and foregoing Contract is hereby approved by me this 26th day of October, 2005.

Judith S. Kaye
Name: Judith S. Kaye
Title: Chief Judge of the Court of Appeals

NYS Contract # C500704

USC certifies that the original or a photocopy of this signature page will be attached to every exact copy of this contract.

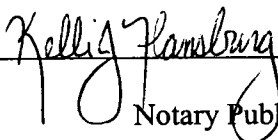


2005 NOV -2 AM 9:45 2005 DEC -7 AM 11:17

COA CENTRAL PURCHASING ALBANY 2005 NOV -2 AM 9:45

STATE OF NEW YORK)
 :
COUNTY OF ALBANY)

On this 25th day of October, 2005, before me personally came Gary D. Spivey, known by me to be the individual described in and who executed the foregoing instrument and also known to me to be the State Reporter who duly acknowledged that he executed said instrument.



Notary Public

KELLI J. FLANSBURG
Notary Public, State Of New York
No. 02FL5008886
Qualified In Rensselaer County
Commission Expires March 1, 2007

STATE OF NEW YORK)

:

COUNTY OF ALBANY)

On this 25th day of October, 2005, before me personally came Thomas C. Leighton, to me known who, being by me duly sworn, did depose and say that he is the Vice President, Content Acquisition, West Publishing Corporation, the corporation described in and which executed the above instrument; that West does not have a corporate seal; and that he has been duly authorized and empowered to make, enter into, sign, seal and deliver contracts on behalf of West.



Notary Public

KELLI J. FLANSBURG
Notary Public, State Of New York
No. 02FL5008886
Qualified In Rensselaer County
Commission Expires March 1, 2007