

PUBLISHING SERVICES CONTRACT

PCH15-__

BETWEEN

**STATE OF WASHINGTON
OFFICE OF REPORTER OF DECISIONS**

**Temple of Justice
PO Box 40929
Olympia, Washington 98504-0929**

AND

**Matthew Bender & Company, Inc.
701 E. Water Street, Charlottesville, VA 22902**

This Contract is entered into by and between the Reporter of Decisions, a constitutional officer of the Supreme Court of the Washington State government, hereinafter referred to as "Reporter," and [name of Contractor] a [name of state] corporation licensed to conduct business in the state of Washington, hereinafter referred to as the "Publisher" or the "Contractor," for the purpose of publication of the Advance Sheets and Bound Volumes of the Washington Reports and Washington Appellate Reports, and the Cumulative Subject Index, in hard copy versions.

1. **STATEMENT OF WORK AND REQUIREMENTS:** The Contractor shall provide the personnel, goods, and services necessary or incidental to the performance of the work set forth in Exhibit A.
2. **TERM OF CONTRACT:** The term of the Contract shall be five (5) years, commencing with opinions delivered to the Publisher on July 1, 2014 and terminating June 30, 2019 unless sooner terminated as provided in this Contract. Provided, that the term of this Contract may be extended by mutual agreement of the parties for not more than one (1) two-year extension. References to "the Contract" or "this Contract" include any extensions of the Contract.
3. **PRICING:**
 - 3.1 The prices charged by the Publisher for Bound Volumes, Advance Sheets, and the Cumulative Subject Index shall be no greater than as set forth in Volume 2 of the Publisher's response to RFP 15-01, with one revision: Rather than the producer price index stated in the Publisher's response, the applicable producer price index is the United States Department of Labor, Bureau of Labor and Statistics, Producer Price Index, "Book Publishers – Technical, Scientific, and Professional Books," PCU 511130511130-3.

- 3.2 Shipping and handling charges are included in the prices stated. Sales taxes imposed by law during the course of this agreement shall be added to the prices.
- 3.3 All prices authorized by the terms of the Contract are subject to all applicable federal economic stabilization laws, orders, and regulations.

- 4. **RIGHTS AND OBLIGATIONS:** All rights and obligations of the parties to this Contract are subject to and governed by: the terms of this Contract; Exhibit A, Statement of Work and Requirements; Exhibit B, General Terms and Conditions; Exhibit C, Supreme Court Order No. 25700-B-447 relating to numbering paragraphs of opinions in the Official Reports; RFP 15-01; and the Contractor's Response to RFP 15-01, all of which are incorporated herein by reference.

In the event of an inconsistency in this Contract, unless otherwise provided herein, the inconsistency shall be resolved by giving precedence in the following order:

- 4.1 Applicable federal and state statutes and regulations;
 - 4.2 Terms of this Contract;
 - 4.3 Exhibit A, Statement of Work and Requirements;
 - 4.4 Exhibit B, General Terms and Conditions;
 - 4.5 Exhibit C, Supreme Court Order No. 25700-B-447 relating to numbering paragraphs of opinions in the Official Reports;
 - 4.6 Exhibit D, Office of Reporter of Decisions Style Sheet
 - 4.7 RFP 15-01;
 - 4.8 Contractor's Response to RFP 15-01; and
 - 4.9 Any other provision, term, or material incorporated herein by reference or otherwise incorporated.
- 5. **SUBSCRIPTION LIST:** The Reporter of Decisions shall provide to the Publisher a complete schedule setting forth (i) the names and bill-to addresses of every current subscriber to the Washington Reports Advance Sheets, Washington Appellate Reports Advance Sheets, Washington Reports Bound Volumes, Washington Appellate Reports Bound Volumes, and Cumulative Subject Index and (ii) the specific quantities of each such item to which the subscriber subscribes and the ship-to address or addresses pertaining thereto. If available, the Reporter of Decisions shall also provide to the Publisher a digital copy of all such subscriber information as required to be provided by this section at the times set forth. The Reporter of Decisions shall use his or her best efforts to obtain the schedule by June 1, 2014.
- The Publisher's obligation to provide the Reporter of Decisions with a copy of subscription lists is governed by Exhibit A, Subsection 6.8.2, *infra*.
- 6. **INTENT FOR CREATING NEW WEB SITE:** The parties intend to create a new web site that would contain the official text of the state's appellate court opinions. As of the date of this contract, the details for the web site are still under discussion. The parties intend to address the creation and maintenance of this web site in a contract addendum.
 - 7. **COUNTERPARTS:** This Agreement may be executed in one or more counterparts, all of which together shall constitute one original document. In lieu of the original, a facsimile or

scanned copy of the original shall be as effective and enforceable as the original. A facsimile or .PDF signature shall be deemed an original for purposes of evidencing execution of this Agreement.

7. **ENTIRE AGREEMENT:** This Contract, including Exhibits, documents, and other items incorporated by reference, contains all of the terms and conditions agreed to by the parties. No other understandings, oral or otherwise, regarding the subject matter of this Contract shall be considered to exist or to bind any of the parties to this agreement unless otherwise stated in this Contract.

IN WITNESS WHEREOF: The undersigned have affixed their signatures in execution thereof.

REPORTER OF DECISIONS

MATTHEW BENDER & COMPANY, INC.

Richard F. Neidhardt, Reporter

[name and title]

DATE: _____

**STATE OF WASHINGTON
OFFICE OF THE REPORTER OF DECISIONS
Temple of Justice
PO Box 40929
Olympia, WA 98504-0929**

**PUBLISHING SERVICES CONTRACT
PCH 15-___**

**EXHIBIT A
STATEMENT OF WORK AND REQUIREMENTS**

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PART 1 GENERAL CONSIDERATION

Section 1.1 Introduction

Publisher is to publish and sell Advance Sheets and Bound Volumes of the Washington Reports and Washington Appellate Reports, and the Cumulative Subject Index, in hard copy versions. These specifications shall apply to all opinions delivered to the Publisher as specified by the Contract.

Section 1.2 Definitions

- 1.2.1 "Advance Sheets" means the softbound periodical publications containing the most recent opinions of the Washington Supreme Court and/or the softbound periodical publications containing the most recent opinions of the Washington Court of Appeals. The contents are listed in section 3.3, *infra*.
- 1.2.2 "Advance Sheet Binders" means the devices used to compile and hold together a single volume's worth of Advance Sheets. Identical binders are used for the Washington Reports Advance Sheets and the Washington Appellate Reports Advance Sheets.
- 1.2.3 "Bound Volumes" means the material in the Advance Sheets, with additions and corrections, published in a permanent hardcover form. The contents are listed in section 3.4, *infra*.
- 1.2.4 "Court" means the Supreme Court of the State of Washington.
- 1.2.5 "Cumulative Subject Index" means the annual, softbound, edited, officially published compilation of headnote catchline entries from 93 Wn.2d 1 and 25 Wn. App. 1 through the last Advance Sheets of Wn.2d and Wn. App. published in the preceding month of February. The Cumulative Subject Index is currently published in three volumes; a fourth volume may be necessary during the period of this contract.
- 1.2.6 "Database" means an individual electronic file of each Advance Sheet and an individual electronic file of each Bound Volume the Publisher produces pursuant to this Contract

beginning with Washington Reports Second Series volume 180 Advance Sheet No. 6 and Washington Appellate Reports volume 179 Advance Sheet No. 5 (if Washington Appellate Reports volume 179 ends up having only four advance sheets, then the applicable publication will be Washington Appellate Reports volume 180 Advance Sheet No. 1. The "Database" includes all Editorial Enhancements the Publisher adds to the Official Reports.

- 1.2.7 "Editorial Enhancements" means the edited case captions, catchwords, headnotes, subject of action index entries, justices/judges listings, case summary paragraphs (i.e., editorial statements summarizing the nature of the action and disposition of the case at every court level), attorney listings, and all other matter, except Publisher Research References, modified or added to the text of the opinions in the Official Reports.
- 1.2.8 "Official Reports" means the Washington Reports and the Washington Appellate Reports published in Advance Sheet and Bound Volume form.
- 1.2.9 "Publisher Research References" means a list of citations to other Publisher-produced resources that publish the case or explicate issues raised in the case.
- 1.2.10 "Reporter" or "Reporter of Decisions" means (1) the Reporter of Decisions, a constitutional officer of the Supreme Court of the Washington State government or (2) the Office of Reporter of Decisions.
- 1.2.11 "Washington Appellate Reports" (abbreviated "Wn. App.") means the contents of the officially published opinions and other actions of the Washington Court of Appeals in Advance Sheet and Bound Volume form.
- 1.2.12 "Washington Reports" means the contents of the officially published opinions and other actions of the Washington Supreme Court in Advance Sheet and Bound Volume form. "Washington Reports" includes (1) all the volumes of the Second Series of the Washington Reports (abbreviated "Wn.2d"), (2) the 200 volumes of the First Series of the Washington Reports (abbreviated "Wash."), and (3) the three (3) volumes of the Washington Territory Reports (abbreviated "Wash. Terr.").

Section 1.3 Publisher as Independent Contractor

In the performance of any work pursuant to this Contract, the Publisher shall be an independent contractor. The Contractor and his or her employees or agents performing under this Contract are not employees or agents of the Reporter of Decisions. The Contractor will not hold himself/herself out to be an officer or employee of the Reporter of Decisions or of the state of Washington by reason hereof, nor will the Contractor make any claim of right, privilege, or benefit which would accrue to an employee under chapter 28B.16 RCW or chapter 41.06 RCW or which would accrue to an employee of the judicial branch of the state of Washington specifically exempted by chapter 41.06 RCW.

Section 1.4 Bond

Within five (5) business days from the date this Contract for publication of the Official Reports and Cumulative Subject Index is signed, the Publisher shall furnish a bond, satisfactory to the Reporter of Decisions, in the penal sum of \$100,000 for the faithful performance of the Contract. The bond will be refundable six (6) years beyond the Term of Contract as set forth in Section 2, *supra*.

Section 1.5 Delivery Services

The Publisher shall provide, at the Publisher's expense, for delivery and collection of manuscript, proof, and other materials required to fulfill the editorial and manufacturing responsibilities set forth in this contract. The Reporter of Decisions and the Publisher may agree to utilize electronic delivery media for the delivery of manuscript, page-proof copy, and other materials, in which event the Publisher shall bear the expense of all communication charges, software, and specialized computer equipment required by the Publisher, the Reporter of Decisions, the Supreme Court, and/or the Court of Appeals.

Section 1.6 Copies

- 1.6.1 The Publisher shall furnish to the Reporter of Decisions, at the Publisher's expense, 150 copies of the Cumulative Subject Index, 150 copies of each Advance Sheet, and 175 copies of each Bound Volume in accordance with the provisions of RCW 40.04.110. Of those required copies, the Publisher shall mail direct, at the Publisher's expense, 42 copies of each Bound Volume to recipients on a distribution list provided to the Publisher by the Reporter of Decisions. The Reporter of Decisions shall have the right to modify the distribution list at any time.
- 1.6.2 If the Publisher chooses to include a list of Publisher Research References in the Advance Sheets and/or Bound Volumes (*see* subsection 3.5.7, *infra*), the Publisher shall provide the Reporter of Decisions with one (1) copy of any of the Publisher's publications to which reference is regularly made in its Publisher Research References. For any publication that is available in both hard copy and electronic forms, the Reporter may choose to receive the copy in either the hard copy or electronic form. If the Publisher Research References include a citation to an on-line case law service, the Publisher shall provide the Reporter with one free public access terminal to the on-line service in the Washington State Law Library. If the Publisher Research References include a citation to a CD-Rom case law disc, the Publisher shall provide the Reporter of Decisions with one copy of the case law disc that may be made available for public access in the Washington State Law Library.

Section 1.7 Customer Service

The Publisher shall maintain a customer service toll-free telephone line and e-mail address. The Publisher shall answer all customer service inquiries within a maximum period of two (2) work days from the time the inquiries are received.

Section 1.8 Nonendorsement

The Publisher is free to advertise, market, take orders for, and sell Advance Sheets, Bound Volumes, and the Cumulative Subject Index. The Publisher, in any advertisement, literature, promotional material, brochure, sales presentation, or the like, agrees (i) not to state or imply that the execution of this Contract constitutes any kind of an endorsement of the Publisher or of the Publisher's products or services by the State of Washington, the Reporter of Decisions, the Supreme Court, or the Court of Appeals and (ii) to make no reference to the State of Washington, Reporter of Decisions, the Supreme Court, or the Court of Appeals without the express written consent of the Reporter of Decisions.

PART 2 PUBLICATION TIME REQUIREMENTS

Section 2.1 Advance Sheet Schedule

The Advance Sheets for the Washington Reports and the Advance Sheets for the Washington Appellate Reports are each published every 14 days on alternate weeks. "Published" or "publication" in the context of this section means composed, printed, and shipped. The Reporter of Decisions shall have the option of changing the publication schedule at any time during the term of this Contract. Six (6) months' written notice of such a change shall be provided by the Reporter of Decisions. The first Advance Sheet under the Contract is to be published no later than July 3, 2014.

Section 2.2 Lead Time Requirements for Advance Sheets

- 2.2.1 Unless otherwise directed by the Reporter of Decisions, the Publisher shall process opinions in the order received but shall publish opinions in chronological order based on each opinion's filing date. Opinions are to be published in Advance Sheets within the number of calendar days specified in subsections 2.2.3 and 2.2.4, *infra*.
- 2.2.2 It is the intent of the Reporter of Decisions to minimize the number of days between the filing of opinions and the delivery of opinions to Washington Reports and Washington Appellate Reports subscribers. The Publisher shall at all times use its best efforts to effect reductions in the number of days between the filing of opinions and the publication of opinions in Advance Sheets.
- 2.2.3 The Publisher shall comply with the maximum number of calendar days stated by the Publisher in its response to the RFP to (1) edit an opinion from the date of its receipt, (2) headnote an opinion from the date of its receipt, and (3) finish processing the opinion and publish it in an Advance Sheet from the date the set of headnotes is approved and returned to the Publisher.
- 2.2.4 Notwithstanding subsection 2.2.3, *supra*, the Reporter of Decisions and the Publisher may from time to time meet and, based on good faith negotiations, agree to reductions in the number of days between the filing of opinions and the publication of the opinions in Advance Sheets.

Section 2.3 Bound Volumes

- 2.3.1 The Publisher shall publish and deliver the Bound Volumes of the Washington Reports and Washington Appellate Reports within 90 calendar days after delivery of final opinion page manuscript by the Reporter of Decisions. The term "opinion page manuscript" refers to page proofs of opinions in the Advance Sheets that have been edited and corrected by the Reporter of Decisions as specified in section 3.10, *infra*, and includes nonopinion material as set forth in section 3.4, *infra*.
- 2.3.2 Not less frequently than once a year throughout the term of the Contract, the Reporter of Decisions and the Publisher shall agree on a publication schedule for the Bound Volumes. The Publisher shall immediately notify the Reporter of Decisions in writing with an explanation of any delay in the scheduled publication of any Bound Volume.
- 2.3.3 Upon termination of the Contract for any reason, the Publisher shall be responsible for publishing Wn.2d and Wn. App. Bound Volumes of all Supreme Court and Court of Appeals opinions that it was responsible for publishing in the Advance Sheets before the Contract terminated.

PART 3 EDITORIAL DUTIES AND RESPONSIBILITIES

Section 3.1 Material To Be Published

- 3.1.1 Decisions of the Supreme Court and decisions of the Court of Appeals shall be published in two separate series of volumes. The decisions of the Supreme Court shall be entitled "Washington Reports, 2nd Series," and the decisions of the Court of Appeals shall be entitled "Washington Appellate Reports."
- 3.1.2 The Publisher shall publish and sell advance reports of Washington Supreme Court opinions in Advance Sheets entitled "Official Advance Sheets Washington Reports" and Washington Court of Appeals opinions in Advance Sheets entitled "Official Advance Sheets Washington Appellate Reports."
- 3.1.3 The Publisher shall publish only those opinions authorized for publication under the Revised Code of Washington, the Washington Rules of Court, and the publication practices of the Supreme Court and Court of Appeals, as those statutes, rules, and practices may be revised or amended from time to time. The Publisher shall also publish, republish at another place, or refrain from publishing (i) those opinions of the Supreme Court and the Court of Appeals as the Supreme Court may order, (ii) those opinions of the Court of Appeals as the respective Division of the Court of Appeals may order, and (iii) those opinions of the Supreme Court and the Court of Appeals as the Reporter of Decisions may direct to carry out Supreme Court and Court of Appeals publication orders, policies, and practices.
- 3.1.4 No advertisements of any nature whatsoever may be published in the Cumulative Subject Index or in the Bound Volumes and Advance Sheets of the Washington Reports and Washington Appellate Reports.
- 3.1.5 The Publisher shall publish the "Cumulative Subject Index" in the month of May during each year that this Contract remains in effect.
- 3.1.6 The Publisher shall maintain an inventory of Advance Sheet Binders for sale to the subscribers of the Official Reports. If requested, the Reporter of Decisions can supply a sample binder to the Publisher.

Section 3.2 Pagination and Size of Volumes

- 3.2.1 Subject to the discretion of the Reporter of Decisions, the Publisher shall continue to utilize the system of uniform pagination reflected in the current publication of Advance Sheets and Bound Volumes of the Washington Reports, 2nd Series and the Washington Appellate Reports. The volume and page numbers of opinions in the Bound Volumes shall be the same as the in the Advance Sheets in which the opinions appeared.
- 3.2.2 Pagination of volumes in the Advance Sheets shall be monitored and adjusted so that, allowing for opinions later omitted from a Bound Volume by court order, Bound Volumes will contain a minimum of 900 opinion pages, including Editorial Enhancements, unless a lower number of pages is agreed to by the Reporter of Decisions. No Bound Volume may contain more than 999 opinion pages, including Editorial Enhancements.

- 3.2.3 Opinion paragraphs shall be numbered consecutively in the Advance Sheets and Bound Volumes of the Washington Reports, 2nd Series and the Washington Appellate Reports. Paragraph numbering shall conform to the standards established by Supreme Court Order No. 25700-B-447, included as Exhibit C of this Contract.
- 3.2.4 The Reporter of Decisions reserves the right to impose a system of vendor neutral citations as directed by the Supreme Court. If this right is exercised, the Publisher will be required to include that information, in the manner specified by the Reporter, in all of the works published under this Contract. The Reporter of Decisions shall provide three (3) months' written notice of such a change before it is to be implemented.

Section 3.3 Contents of Advance Sheets

Materials published in the Advance Sheets of the Washington Reports and the Washington Appellate Reports shall include, but are not limited to, the following: [order below does not indicate order in which contents are to appear in the Advance Sheets]

- 3.3.1 Front cover and following pages, including: title; list of court rules adoptions, amendments, and rescissions; list of proposed court rules adoptions, amendments, and rescissions; list of adoptions, amendments, and rescissions of other rules as directed by the Reporter of Decisions; list of cases reported; notations of petitions for review and selected motions for discretionary review; list of unpublished opinions; notices of orders; copyright statement in the name of the State of Washington or the Supreme Court
- 3.3.2 Advance sheet index
- 3.3.3 Report of case, including running heads for case name, for volume and page numbers of the Washington Reports or Washington Appellate Reports containing the case, for the month and year of decision, for type of opinion (e.g., Per Curiam; Opinion of the Court; Lead Opinion [surname of authoring justice or judge], C.J. or J.; [surname of authoring justice or judge], C.J. of J., concurring, concurring in result, dissenting, or dissenting in part; case caption, catchlines, headnotes, editorial statements summarizing the nature of the action and disposition of the case at every court level, attorney listings, and the body of the majority opinion and any concurring or dissenting opinions
- 3.3.4 Notations of the dispositions of petitions for review and selected motions for discretionary review
- 3.3.5 Notations of unreported opinions
- 3.3.6 Adoptions, amendments, and rescissions of Washington Rules of Court
- 3.3.7 Proposed adoptions, amendments, and rescissions of Washington Rules of Court
- 3.3.8 Adoptions, amendments, and rescissions of other rules as directed by the Reporter of Decisions
- 3.3.9 Notice of various types of orders, including withdrawing opinion, vacating opinion, dismissing appeal, removing case from publication, reconsideration granted, opinion amendment, etc.
- 3.3.10 Notices of attorney discipline
- 3.3.11 Supreme Court issue summaries
- 3.3.12 Such other materials as the Supreme Court, the Court of Appeals, or the Reporter of Decisions may furnish and direct to be published

Section 3.4 Contents of Bound Volumes

Materials published in the Bound Volumes of the Washington Reports and the Washington Appellate Reports shall include, but are not limited to, the following: [order below does not indicate order in which contents are to appear in the Bound Volumes]

- 3.4.1 Title page
- 3.4.2 Errata page and copyright statement
- 3.4.3 Listing of members of the Washington Court Reports Commission
- 3.4.4 Table of contents
- 3.4.5 Listings of Justices and Judges (appellate and trial court, including Supreme Court Justices pro tempore)
- 3.4.6 Table of cases reported
- 3.4.7 Roll of attorneys
- 3.4.8 Historical listing of Justices and Judges (published in every 5th Wn.2d bound volume and in every 10th Wn. App. bound volume)
- 3.4.9 Memorials and commemorations (which almost always include a black and white photograph)
- 3.4.10 Report of case, including running heads for case name, for volume and page numbers of the Washington Reports or Washington Appellate Reports containing the case, for volume and page numbers of the Pacific Reporter containing the case, for the month and year of decision, for type of opinion (e.g., Per Curiam; Opinion of the Court; Lead Opinion [surname of authoring justice or judge], C.J. or J.; [surname of authoring justice or judge], C.J. of J., concurring, concurring in result, dissenting, or dissenting in part; case caption, catchlines, headnotes, editorial statements summarizing the nature of the action and disposition of the case at every court level, attorney listings, the body of the majority opinion and any concurring or dissenting opinions, and postopinion information
- 3.4.11 Notations of the dispositions of petitions for review and selected motions for discretionary review
- 3.4.12 Notations of unreported opinions
- 3.4.13 Adoptions, amendments, and rescissions of Washington Rules of Court
- 3.4.14 Volume index
- 3.4.15 Such other materials as the Supreme Court, the Court of Appeals, or the Reporter of Decisions may furnish and direct to be published

Section 3.5 Editorial Standards and Requirements

- 3.5.1 The Publisher shall maintain a log or other record recording the date each opinion is received from the Supreme Court and the Court of Appeals and the publication date of each opinion in the Wn.2d or Wn. App. Advance Sheets. A copy of the log or other record shall be provided to the Reporter of Decisions as requested by the Reporter of Decisions.
- 3.5.2 The Publisher shall cooperate with the Reporter of Decisions to the maximum extent reasonably possible (i) to ensure integrity and accuracy in the publication of opinions and (ii) to make any requested corrections or other changes in text and all other materials submitted to or prepared by the Publisher before publication of the Advance Sheets and Bound Volumes.

- 3.5.3 The Publisher, at its own expense, shall perform a thorough edit of each published opinion before its publication in the Advance Sheets. Such editing requires at a minimum:
- 3.5.3.1 Checking the accuracy of all citations and quotations.
 - 3.5.3.2 Checking the style of every aspect of the opinion to ensure conformity with the reference resources listed in subsections 3.5.3.5 and 3.5.4, *infra*. Style involves type (roman, italic, bold, underline, etc.), capitalization, spacing, use of symbols and numerals, punctuation within citations, etc.
 - 3.5.3.3 Checking to ensure conformity with standard English. Specifically, grammar, syntax, and spelling must be checked. Some common grammar corrections involve placement of commas, location of adverbs (such as "only"), subject and verb agreement, and verb tenses.
 - 3.5.3.4 Reading each opinion for content with an eye toward possible improvements to the clarity, coherence, and continuity of the writing. The scope of such editing is limited and is set forth in the Washington Opinion Reference Manual, a copy of which will be provided to the Publisher. Reading for content requires notifying the Reporter of Decisions of the following noninclusive list of types of errors:
 - 3.5.3.4.1 Improper disclosure of the identity of a witness or party
 - 3.5.3.4.2 Citation to unpublished and depublished opinions
 - 3.5.3.4.3 An apparent irregularity with respect to (i) the certification of the opinion for publication or partial publication or (ii) the signing of the opinion
 - 3.5.3.4.4 In partially published opinions, references to the unpublished portion of the opinion
 - 3.5.3.5 Conforming each opinion to, and ensuring that each opinion complies with, the standards established by the following reference resources:
 - 3.5.3.5.1 The latest edition of the Office of Reporter of Decisions Style Sheet. The current Style Sheet is included as Exhibit D, *infra*.
 - 3.5.3.5.2 The edition of The Bluebook: A Uniform System of Citation (The Bluebook) adopted by the Office of Reporter of Decisions Style Sheet is the basic citation resource for opinions and reports except for the additions and exceptions set forth in the Style Sheet.
 - 3.5.3.5.3 The Reporter of Decisions' Opinion Citation and Style Guide, which supplements the Style Sheet and The Bluebook. A copy of the Opinion Citation and Style Guide will be provided to the Publisher.
 - 3.5.3.5.4 The latest edition of the Chicago Manual of Style is the style manual for punctuation and other style matters not covered by the Reporter of Decisions Style Sheet, The Bluebook, and the Opinion Citation and Style Guide.
 - 3.5.3.5.5 Webster's Third New International Dictionary of the English Language is the authority for spelling.
 - 3.5.4 Although the Publisher need not have every official source available as a reference in its library, at a minimum its editors must have the following official sources available to verify citations in published Washington opinions:
 - Washington Reports (including Territory, First Series, and Second Series)
 - Washington Appellate Reports
 - Revised Code of Washington
 - Washington Administrative Code

United States Supreme Court Reports

United States Code

- 3.5.5 As set forth in the Washington Opinion Reference Manual, the Publisher may make a very limited number of corrections or other changes to opinions without the Reporter of Decisions' specific approval; for all other corrections or changes, the Publisher must promptly notify the Reporter of Decisions to obtain specific approval. The current procedure is as follows: the Publisher scans opinion pages with questions and e-mails them to the Reporter; the Reporter writes answers on the opinion pages and scans and e-mails them back to the Publisher.
- 3.5.6 After each advance sheet is composed, paginated, and paragraph numbered, the Publisher shall proofread the copy to ensure that all corrections or other changes to opinion text have been made accurately and that otherwise each opinion mirrors the copy of the opinion as it was received by the Publisher. The proofreading shall be done at a level of accuracy satisfactory to the Reporter of Decisions.
- 3.5.7 In the Advance Sheets and Bound Volumes, the Publisher may (but is not required to) include a list of Publisher Research References after the listing of counsel and before the start of the opinion. Such Publisher Research References shall be no more obtrusive or extensive than the typical lists of Publisher Research References published in Wn.2d and Wn. App. from July 1, 2007 through June 30, 2014.
- 3.5.8 The Reporter of Decisions shall inspect all work, whether editorial or manufacturing, submitted by the Publisher in order to determine compliance with the terms and specifications previously agreed to by the Publisher. Inferior, unprofessional, or otherwise unsatisfactory work will be rejected and returned to the Publisher. The Publisher shall promptly correct any deficiencies at no additional cost to the Court or subscribers. Inspection and acceptance of completed work by the Reporter of Decisions shall not be deemed a waiver of the Publisher's duty to correct, at the Publisher's own expense, defects discovered later.

Section 3.6 Editorial Enhancements

- 3.6.1 The Publisher shall add Editorial Enhancements to all opinions. All Editorial Enhancements shall comply with the guidelines established in the Opinion Citation and Style Guide and the Washington Opinion Reference Manual. Headnotes shall be written in the general style and format published in Wn.2d and Wn. App. from July 1, 2007 through June 30, 2014. The persons who draft the headnotes must be licensed attorneys or graduates of an accredited law school. The Opinion Citation and Style Guide contains a detailed section explaining headnoting policies and techniques. The Reporter of Decisions shall also provide guidance and advice as necessary to the persons who draft headnotes.
- 3.6.2 All Editorial Enhancements and material for such Enhancements shall be produced, obtained, and edited by the Publisher at the Publisher's expense.
- 3.6.3 All Editorial Enhancements prepared by the Publisher are subject to correction and revision by, or at the direction of, the Reporter of Decisions under such terms as the Reporter of Decisions, in his or her discretion, shall specify.

Section 3.7 Copyright

3.7.1 The Reporter of Decisions may copyright in the name of the Supreme Court or the State of Washington the following elements of the Official Reports that the Publisher is obligated to originate under the terms of this Contract:

Headnote catchlines

Headnote bodies

Subject of Action catchlines

Case summary paragraphs

Nature of Action:

District Court:

Municipal Court:

Superior Court:

Court of Appeals:

Supreme Court:

Table of cases (in Advance Sheets and Bound Volumes)

Indexes (in Advance Sheets and Bound Volumes)

The entire contents of the Cumulative Subject Index

Other materials that may be added to the Official Reports that are copyrightable under existing law

The foregoing Reporter Copyrighted Elements shall be referred to hereinafter as the "RCEs."

3.7.2 The claim of copyright over any materials in the Official Reports and the Cumulative Subject Index published under this Contract is limited to the RCEs listed in subsection 3.7.1, *supra*. In particular, no claim of copyright will be asserted in the following materials in the Official Reports: case captions, attorney listings, headnote rubric numbers (i.e., the boldface bracketed numbers showing the headnote locations within opinions), the text of the opinions, the volume numbers of the Official Reports, the pagination of the opinions, and the paragraph numbering of the opinions.

3.7.3 The backside of the title page of each Wn.2d and Wn. App. bound volume, the inside front cover of each Wn.2d and Wn. App. advance sheet, and the backside of the title page of the Cumulative Subject Index shall contain a copyright statement as specified by the Reporter.

3.7.4 Provided the Publisher substantially complies with the terms of this Contract, the Reporter grants to the Publisher the licenses as provided in this subsection.

3.7.4.1 During the term of, and after the expiration of, this Contract, the Reporter grants a license to the Publisher to use the RCEs in the Official Reports that the Publisher originated under the terms of this Contract.

3.7.4.2 During the term of, but not after the expiration of, this Contract, the Reporter grants a license to the Publisher to use the entire contents of the Cumulative Subject Index.

3.7.4.3 Such licenses are nonexclusive, irrevocable, royalty-free, and worldwide, and include the rights to reproduce, distribute copies of, make derivative works from, and to display the copyrighted materials, in whole or in part, for any purpose and in any media, now known or later developed, including the Internet and the World Wide Web.

3.7.4.4 The licenses are not assignable and not sublicensable with the exception that they may be assigned and/or sublicensed to affiliates of the Publisher and that they

may be assigned to any entity acquiring or merging with the Publisher or any entity which acquires from the Publisher the line of business to which this Contract relates. In any such sublicense or assignment, the Publisher shall include a provision binding the sublicensee or assignee to the terms of this subsection as if that party were the "Publisher," and providing that the sublicensee or assignee may only further assign or sublicense the license under the conditions set out herein. For purposes of this subsection, "affiliate" means any company, corporation, business, or entity: (i) in which the Publisher owns or controls at least fifty percent (50%) of the voting stock, or fifty percent (50%) interest in income; (ii) which owns or controls at least fifty percent (50%) of the voting stock of the Publisher; or (iii) which is owned or controlled by any person or entity that owns or controls at least fifty percent (50%) of the voting stock of the Publisher.

Section 3.8 Copies of the Database

- 3.8.1 The Publisher shall provide the Reporter with one (1) copy of the full text Database per unit of publication (i.e., one (1) copy per advance sheet and one (1) copy per bound volume). Such copy shall be in a format that can readily be converted for publication in CD-ROM and on-line. Such copy shall become the physical property of the Reporter.
- 3.8.2 The Publisher shall maintain a copy of the Database for no less than ten (10) years following the termination of this Contract. During such period, if the copy of the Database in the Reporter's possession is damaged, lost, or corrupted, the Publisher shall upon request provide an additional copy at no extra cost to the Reporter.
- 3.8.3 The individual Database files shall be delivered to the Reporter within five (5) business days respectively of the publication date of each advance sheet and the date of shipment of each bound volume.

Section 3.9 Licensing Database

- 3.9.1 During the term of this Contract, the Reporter may license the Database to the Statute Law Committee (SLC) but may not license the Database to any other entity or person. This restriction shall cease upon the termination of this Contract, and thereafter the Reporter may license the Database without restriction to any entity or person at the Reporter's sole discretion. The Reporter shall provide the Publisher with a copy of the licensing agreement between the Reporter and the SLC (SLC License). The SLC License shall comply with the following:
 - 3.9.1.1 The SLC License shall limit the SLC's use of the Database to publication (1) in the SLC's case law CD-ROM, and (2) on the state public access website (presently hosted by the Municipal Research and Services Center at www.legalwa.org).
 - 3.9.1.2 Except as provided in subsection 3.9.1.3, *infra*, the SLC License shall, during the life of this Contract only, suppress the RCEs. "To suppress the RCEs" means to make the RCEs not visible to, or downloadable by, any third party.
 - 3.9.1.3 Notwithstanding the suppression requirement of subsection 3.9.1.2, *supra*, if the Contract is extended the SLC License may authorize the SLC to publish (i) beginning July 1, 2019, all RCEs in cases in the Database with filing dates on or before July 1, 2015, and (ii) beginning July 1, 2020, all RCEs in cases in the Database with filing dates on or before July 1, 2016.

- 3.9.1.4 The SLC License shall provide for the suspension of the SLC's rights in the Database in the event the SLC violates the terms of the SLC License by substantially failing to suppress the RCEs, and shall require such suspension of rights to remain in effect until the violations are remedied and deficiencies in the SLC's process to suppress the RCEs are corrected.

Section 3.10 Inspection and Correction for Bound Volumes

- 3.10.1 Within five (5) business days after the publication of each Advance Sheet, the Publisher shall send to the Reporter one (1) set of Advance Sheet page proof. Such page proof shall mirror the Advance Sheets and shall be provided on paper measuring 8 1/2 by 11 inches with printing on one side only.
- 3.10.2 The Reporter of Decisions will inspect, revise, correct, and supplement the Advance Sheet page proof before publication of the Bound Volume. The Advance Sheet page proof, as changed by the Reporter of Decisions, shall be returned to the Publisher as opinion page manuscript, which commences the time period for publication of Bound Volumes as specified in subsection 2.3.1, *supra*, and subsection 6.2.1, *infra*.
- 3.10.3 The Publisher shall make all changes directed by the Reporter of Decisions and then shall forward the changed page proof of the Bound Volume pages to the Reporter of Decisions for final approval. The Reporter of Decisions shall have 10 business days to review, revise, and approve the page proof of the Bound Volume pages. The Reporter of Decisions will return all revised pages to the Publisher, which shall make the revisions for publication in the Bound Volume.
- 3.10.4 The Publisher shall provide the Reporter of Decisions with a proof copy of the front cover and spine of each Bound Volume. Revisions and corrections made by the Reporter of Decisions shall be incorporated into the cover and/or spine of the published Bound Volume.
- 3.10.5 If an error or errors of significance are detected after publication of a Bound Volume of the Washington Reports or the Washington Appellate Reports, whether the error is caused by the Publisher or otherwise, the Publisher upon discovery or notification of the error shall promptly, at the sole discretion of the Reporter of Decisions and at the Publisher's own expense, (i) issue a "crack, peel, and affix" correcting printout to all Bound Volume subscribers or (ii) reprint and reissue the Bound Volume in its entirety.

Section 3.11 Cumulative Subject Index

- 3.11.1 The Cumulative Subject Index is published annually in May. The Index incorporates all headnote catchline entries from 93 Wn.2d 1 and 25 Wn. App. 1 through the last Wn.2d and Wn. App. Advance Sheets published in the month of February of the calendar year in which the Index is to be published.
- 3.11.2 The Publisher must edit the Cumulative Subject Index for content. The most common corrections involve the following situations:
- 3.11.2.1 An index entry at one indent level cannot have a page reference if it also has subentries at the next lower indent level. In most cases, adding the catchwords "In General" will fix the problem.
- 3.11.2.2 To avoid duplication of entries, the Cumulative Subject Index contains many cross-references. When the compilation of new index entries into the Cumulative

Subject Index database yields both a cross-reference and index entries under the same topic, the Publisher must delete the index entries from the Cumulative Subject Index.

- 3.11.3 The Publisher shall provide the Reporter of Decisions with one proof copy of the Cumulative Subject Index before it is published. The Reporter of Decisions shall have 10 business days in which to review and edit the proof. The Reporter of Decisions shall transmit the revisions and corrections to the Publisher which shall incorporate such changes into the final published Cumulative Subject Index.
- 3.11.4 The Cumulative Subject Index has been published in three volumes. The 2013 edition totals 2677 pages. It is growing at a rate of just over 100 pages per year.
- 3.11.5 The Reporter of Decisions will provide the Publisher with one hard copy of the 2013 edition of the Cumulative Subject Index. The Reporter does not have an electronic copy of any Cumulative Subject Index after 1995 (the last edition produced by the State), which is available as a WordPerfect file.

Section 3.12 Information for Reporter

- 3.12.1 Subscription figures. The Publisher shall provide the Reporter of Decisions with the following subscription figure information for all publications (i) annually no later than August 1 (subscription figures relating to July 1 of that year) and (ii) within ten business days of the Reporter's request (current subscription figures):

Paid subscriptions:

Wn.2d: current Bound Volumes and Advance Sheets

Wn. App.: current Bound Volumes and Advance Sheets

Complimentary subscriptions:

Wn.2d: current Bound Volumes and Advance Sheets

Wn. App.: current Bound Volumes and Advance Sheets

Individual sales within the past 12 calendar months:

Wn.2d: back Bound Volumes out of inventory

Wn. App.: back Bound Volumes out of inventory

Cumulative Subject Index

Advance Sheet binders

3.12.2 Prices

- 3.12.2.1 The Publisher shall provide the following price information to the Reporter of Decisions for all publications within ten business days of the Reporter's request:

Wn.2d: current Bound Volume, back Bound Volumes out of inventory, annual Advance Sheet subscription, single Advance Sheet

Wn. App.: current Bound Volume, back Bound Volumes out of inventory, annual Advance Sheet subscription, single Advance Sheet

Cumulative Subject Index: charge for one index

Advance Sheet binders: charge for one binder

- 3.12.2.2 Within ten business days of the Reporter's request, the Publisher shall inform the Reporter whether it makes available reduced "bundled pricing" to subscribers (e.g., a discount for subscribers who subscribe to multiple products). If the publisher does offer "bundled pricing," it shall provide the complete details of such pricing and the number of subscribers who purchase each available "bundle."

- 3.12.3 Technical Specifications. Within ten business days of the Reporter's request, the Publisher shall provide the Reporter of Decisions the following technical specifications (weight, brand name, finish, etc.) for all materials (including, but not limited to paper, cover stock, and board) used to produce the Advance Sheets, Advance Sheet binders, Bound Volumes, and the Cumulative Subject Index.

Section 3.13 Retention of Materials

The Publisher shall retain in secure storage all hard copy materials relating to the content of Advance Sheets, Bound Volumes, and the Cumulative Subject Index for a period of five (5) years after publication of the bound volume or Cumulative Subject Index to which the materials pertain. The foregoing requirement remains in effect after the expiration or termination of this Contract.

PART 4 PRINTING REQUIREMENTS

Section 4.1 Print Specifications Generally

- 4.1.1 Pagination, typographical style, paper quality, and binding for Bound Volumes shall generally conform to Volume 173 of the Washington Reports, 2nd Series and Volume 166 of the Washington Appellate Reports.
- 4.1.2 Pagination and typographical style for the opinion pages of the Advance Sheets shall generally conform to the Advance Sheets published in 2014 before the start of the Contract. The term "opinion pages" includes Editorial Enhancements. Paper quality for the Advance Sheets shall be the same or better than that used in Advance Sheets published in 2014 before the start of the Contract. Paper color and cover stock color shall also closely match the colors used for the Advance Sheets published in 2014.

Section 4.2 Bound Volume Signature Pages

Within five (5) business days after publication of each Wn.2d Bound Volume, the Publisher shall send to the Reporter seven (7) unbound sets of the final printed pages of the Bound Volume. The foregoing requirement does not apply to the Washington Appellate Reports Bound Volumes.

Section 4.3 Availability of Back Issues

During the term of the Contract and after the expiration of the Contract:

- 4.3.1 The Publisher shall make available within a reasonable time a sufficient number of copies of each Bound Volume of the Washington Reports and the Washington Appellate Reports produced under the Contract to supply all demands for six (6) years from the date of publication of each volume. The price of a Bound Volume sold pursuant to this subsection shall be no greater than the price of the most recent Bound Volume produced under this Contract.
- 4.3.2 The Publisher shall make available within a reasonable time a sufficient number of copies of each Advance Sheet of the Washington Reports and the Washington Appellate Reports produced under the Contract to supply all demands until the corresponding Bound Volume is printed, bound, and distributed. The price of a single Advance Sheet sold pursuant to this subsection shall be no greater than the price of the most recent single advance sheet produced under the Contract.

- 4.3.3 The Publisher shall make available within a reasonable time a sufficient number of copies of the Cumulative Subject Index produced under the Contract to supply all demands until the next annual Cumulative Subject Index is printed and distributed. The price of a copy of the Cumulative Subject Index sold pursuant to this subsection shall be no greater than the price for which the Cumulative Subject Index was sold when produced.

PART 5 DELIVERY OF OPINIONS AND RELATED MATERIAL

Section 5.1 Means of Delivery of Materials

- 5.1.1 The Reporter of Decisions shall deliver every opinion of the Supreme Court, and the Clerks of each of the three Divisions of the Court of Appeals shall deliver every published, partially published, and unpublished opinion of their respective Division of the Court of Appeals, by means of a computerized electronic delivery medium.
- 5.1.2 The Reporter of Decisions and the Clerks of each of the three Divisions of the Court of Appeals shall furnish to the Publisher other materials to be published and such additional documents as are required to permit the Publisher to fulfill its obligations under the Contract as hard copy or by means of a computerized electronic delivery medium.

Section 5.2 Delivery of Hard Copy Materials

Hard copy of materials furnished to the Publisher will be sent via the United States Postal Service as first class mail. At the Publisher's option and expense, alternative mail services, including overnight courier services, may be used for delivery of such materials.

Section 5.3 Delivery of Electronic Materials

- 5.3.1 Unless the parties agree otherwise, the computerized electronic medium for the delivery of electronic copies of opinions and other materials or documents to the Publisher's computer shall be Internet e-mail with electronic files as attachments. Any communication charges shall be paid by the Publisher.
- 5.3.2 The word processing program used by the Reporter of Decisions and the Court of Appeals is currently Microsoft Word 2013, however there may be future upgrades to Word if the Supreme Court chooses to do so. The Internet e-mail program used by the Reporter of Decisions and the Court of Appeals is Microsoft Outlook.
- 5.3.3 Security, network configuration, and library specifications shall be as agreed upon. The Reporter of Decisions and the Court of Appeals shall provide the hardware needed to transmit opinions as specified in subsection 5.3.1, *supra*. Specialized hardware and software required by the Publisher to be utilized by the Reporter of Decisions and/or the Court of Appeals, such as a "turnkey" system, shall be provided by the Publisher. The Publisher shall provide hardware and software needed to receive transmissions pursuant to these specifications. The Reporter of Decisions and the Court of Appeals shall supply the Publisher with modem specifications, as needed.
- 5.3.4 The Reporter of Decisions and the Publisher may from time to time meet and review currently available technology relating to the transmission of opinions and other data for the Official Reports by electronic media, particularly with respect to reducing the number of days between the filing of opinions and the delivery of the Official Reports

to subscribers. The Reporter of Decisions and the Publisher shall negotiate in good faith on utilizing currently available technology to improve the currency, accuracy, and integrity of the Official Reports.

- 5.3.5 The Reporter of Decisions may find it necessary to unilaterally upgrade or change the word processing program and/or the Internet e-mail program specified in subsection 5.3.2, *supra*, communications protocols, data format, or other communications parameters due to computer systems changes that may be implemented by the Administrative Office of the Courts (AOC), the Supreme Court, or the Court of Appeals during the term of this Contract. The Reporter of Decisions shall provide the Publisher with written notice of such computer program or system upgrades or changes within two (2) business days of receiving the information, in which case the Publisher shall prepare to accommodate such upgrades or changes at its own expense.

PART 6 PERFORMANCE SECURITY; TERMINATION

Section 6.1 Headnote Documents

- 6.1.1 The Publisher is to deliver a headnote document (i.e., a document setting forth the case caption, catchwords, headnotes, subject of action index entries, justices/judges listings, case summary paragraphs, and attorney listings) to the Reporter of Decisions within 21 calendar days of receipt of the electronic copy of the opinion. The Reporter of Decisions will be damaged if a headnote document is not received within 21 calendar days, and as the amount of damages would be difficult to estimate, Publisher agrees, as liquidated damages, to pay the Reporter of Decisions \$500 per day for each day that one or more opinions are past the 21-calendar-day period without the headnote documents being delivered to the Reporter of Decisions.
- 6.1.2 Persistent failure to meet the scheduled date for delivery of the headnote documents that is attributable either to the Publisher or to the Publisher's agents or subcontractors shall constitute a material breach of this Contract.

Section 6.2 Advance Sheet and Bound Volume Publication and Delivery

- 6.2.1 The Publisher is to publish the Advance Sheets within five (5) calendar days of the scheduled date of publication (based on the lead time responses to section 2.2, *supra*). The Publisher is to publish the Bound Volumes within 90 calendar days from the date final opinion page manuscript is delivered to the Publisher by the Reporter of Decisions (as specified in subsection 2.3.1, *supra*). The failure of the Publisher to meet the delivery dates will result in damages to the Reporter of Decisions and subscribers that would be difficult to assess. Therefore, Publisher agrees, as liquidated damages, to pay the Reporter of Decisions \$2,500 on each occasion of late publication.
- 6.2.2 Persistent failure to meet the scheduled publication dates for Advance Sheets and Bound Volumes that is attributable either to the Publisher or to the Publisher's agents or subcontractors shall constitute a material breach of this Contract.

Section 6.3 Disaster Contingency Plan

The Publisher shall implement and provide the Reporter of Decisions with a Disaster Contingency Plan as detailed in the Publisher's response to the RFP for production of the Washington Reports and Washington Appellate Reports should any event or circumstance (e.g., a natural disaster) cause a business interruption either for the Publisher or for any agent or subcontractor of the Publisher. The disaster contingency plan shall describe in detail alternative arrangements for editorial work, composition, printing, binding, and distribution of Advance Sheets and Bound Volumes of the Washington Reports and Washington Appellate Reports.

Section 6.4 Editorial Performance Assurances

To the extent reasonably possible, the Publisher shall assign editorial responsibilities to the staff listed in the Publisher's response to the RFP. The Publisher shall utilize the computerized editorial assistance tools (e.g., cite checking, spell checking, tabling, proofreading, quotation verification, etc.) to ensure conformity with the requirements of section 3.5, *supra*, as specified in the Publisher's response to the RFP.

Section 6.5 Manufacturing Performance Assurances

- 6.5.1 The Publisher shall comply with the manufacturing performance assurances specified in the Publisher's response to the RFP, including how and where the composition, printing, and distribution responsibilities set forth in the specifications will be fulfilled.
- 6.5.2 The Publisher shall keep the Reporter of Decisions advised in writing as to the names and addresses of all subcontractors or agents utilized in the manufacture of the Washington Reports and the Washington Appellate Reports, including any agents or subcontractors to be utilized under the Disaster Contingency Plan specified in section 6.3, *supra*, and shall specify the responsibilities of each subcontractor or agent.

Section 6.6 Computer Software and Program Availability

- 6.6.1 All computer programs or other software, whether proprietary to the Publisher or commercially available to the general public by purchase and license or otherwise, that are utilized in the production of the Washington Reports and the Washington Appellate Reports shall be specified in writing by the Publisher. The Publisher shall update this information throughout the term of the Contract.
- 6.6.2 If computer programs or software proprietary to the Publisher are used in production of the Washington Reports and the Washington Appellate Reports, or if proprietary modifications are made to computer programs and software commercially available to the general public by purchase and license or otherwise, then copies of such programs or software, or such programs or software as modified, shall be placed in the custody of an escrow agent, acceptable to the Reporter of Decisions, along with all relevant documentation. Under the terms of the escrow agreement, the escrow agent shall provide the proprietary computer programs or software to the Reporter of Decisions in the event that the Reporter of Decisions must make alternative arrangements for publication of the Official Reports or the Cumulative Subject Index because the Publisher is unable to fill orders for the Official Reports or the Contract terminates prematurely due to the Publisher's default, breach, or abandonment of the Contract. Upon such occurrence, the Reporter of Decisions shall have a license to use or to authorize a third party to use the proprietary computer programs or software for the

limited purpose of producing the Official Reports and the Cumulative Subject Index until the completion of the term of this contract as specified in Contract Section 2. In no event shall the license extend beyond such term.

- 6.6.3 Unless the Reporter of Decisions in his or her sole discretion determines that computer programs or software being utilized in production of the Washington Reports and the Washington Appellate Reports are commercially available to the general public by purchase and license or otherwise at a reasonable cost, the Reporter of Decisions shall have the right to be made a licensee or colicensee of the Publisher at the Publisher's expense for any computer program or software being utilized in production of the Washington Reports and the Washington Appellate Reports for the limited purpose of producing the Washington Reports and the Washington Appellate Reports, in Advance Sheet and Bound Volume form, until the completion of the term of this Contract, as specified in Contract Section 2. The Reporter of Decisions shall also have the right to require the Publisher to provide to the Reporter of Decisions an electronic database of any such Advance Sheet or Bound Volume of the Washington Reports or Washington Appellate Reports that may be in progress toward publication by the Publisher according to the terms of this Contract. The database, if required by the Reporter of Decisions, is to be provided in a standardized, machine-readable format, together with documentation relating thereto, that would enable the Reporter of Decisions to independently produce the same.
- 6.6.4 All nonproprietary computer programs and software (including but not limited to labeling and collateral specification data and documentation) used by the Publisher or any subcontractor of the Publisher to produce the Washington Reports and the Washington Appellate Reports are to be furnished to the Reporter of Decisions without cost to the Reporter of Decisions. Such programs and software may be used by the Reporter of Decisions, or any entity selected by the Reporter of Decisions through the Supreme Court or otherwise, to carry out any reproduction or reprinting of the Washington Reports and Washington Appellate Reports as required by this Contract until the completion of the Contract term, as specified in Contract Section 2.

Section 6.7 Inspection

The Reporter of Decisions, or his or her designee, reserves the right to inspect all manufacturing and editorial premises, including the premises occupied by the Publisher's subcontractors. The Publisher shall provide for such right of inspection in any contracts or arrangements with subcontractors or agents.

Section 6.8 Termination or Abandonment

- 6.8.1 This Contract shall terminate at the end of the Contract term as extended. The Contract may also be terminated, in whole or in part, whenever the Reporter of Decisions, in his or her sole judgment, reasonably exercised, determines that the Publisher has failed to perform the Contract or a substantial part thereof. Before the Contract may be terminated for nonperformance, the Reporter of Decisions must notify the publisher of the failure to perform and provide 60 calendar days for the Publisher to cure the failure. Should the Publisher fail to cure the failure within 60 calendar days, termination of the Contract, in whole or in substantial part, shall be effected by the presentment to the Publisher of a written notice of termination. Such notice shall specify the extent to

which performance of the Contract is terminated and the date upon which such termination will become effective. Under such circumstances, the Reporter of Decisions will retain all legal remedies available to it, including damages for increased costs on behalf of all subscribers, for the remaining term of the Contract.

- 6.8.2 No fewer than 60 calendar days before the termination of the Contract at the end of the Contract term or within five (5) business days after the termination of the Contract for cause as specified in subsection 6.8.1, *supra*, or on abandonment of the Contract by the Publisher, the Publisher shall provide the Reporter of Decisions with a copy of subscription lists in hard copy and electronic form. The subscription lists shall be current and shall include all subscription information pertaining to all products sold and distributed pursuant to this Contract. At a minimum, the subscription lists shall identify the full name of each subscriber, the bill-to address of each subscriber, the ship-to address of each subscriber (if different from the bill-to address), and the number of subscriptions of each subscriber to each of the following products:

Wn.2d: current Bound Volumes and Advance Sheets

Wn. App.: current Bound Volumes and Advance Sheets

Cumulative Subject Index

6.9 Assessing and Collecting Liquidated Damages

6.9.1 Amounts due Reporter as liquidated damages may be deducted by Reporter from any money payable to or under this Contract, or Reporter may bill Publisher as a separate item and Publisher shall promptly make payments on such bills.

6.9.2 The assessment of liquidated damages shall not constitute a waiver or release of any other remedy Reporter may have under this Contract for Publisher's breach of this Contract, including without limitation, Reporter's right to terminate this Contract, and Reporter shall be entitled in its discretion to recover actual damages caused by Publisher's failure to perform its obligations under this Contract. However, Reporter will reduce such actual damages by the amounts of liquidated damages received for the same events causing the actual damages.

**State of Washington
Office of the Reporter of Decisions
Temple of Justice
PO Box 40929
Olympia, WA 98504-0929**

**PUBLISHING SERVICES CONTRACT
PCH15 ____**

**EXHIBIT B
GENERAL TERMS AND CONDITIONS**

DEFINITIONS: As used throughout this Contract, the following terms shall have the meanings set forth below:

- A. "Reporter" or "Reporter of Decisions" shall mean the Reporter of Decisions of the state of Washington, any division, section, office, unit or other entity of the Reporter, or any of the officers, other officials, employees, volunteers, or others acting as representatives lawfully representing the Reporter.
- B. "Contract" or "Agreement" shall mean this Contract with appendices and exhibits.
- C. "Contracting Officer" shall mean the Reporter and/or his delegates within the Reporter of Decisions authorized in writing to act in his behalf.
- D. "Contractor" or "Publisher" shall mean that individual or other entity performing services under this Contract and shall include all employees of the Contractor.
- E. "Notice" shall mean written document given by a party to the other in accordance with the provision set forth below under NOTICE.
- F. "Subcontractor" shall mean one not in the employment of the Contractor, who is performing all or part of those services under this Contract under a separate contract with the Contractor.
- G. "Property" shall mean any tangible work products, other physical assets, or intellectual property fixed in a tangible medium of expression.

ADVANCE PAYMENTS PROHIBITED: No payment in advance or in anticipation of services to be provided under this Contract shall be made by the Reporter of Decisions.

AMERICAN WITH DISABILITIES ACT (ADA) OF 1990, PUBLIC LAW 101-336, also referred to as the "ADA" 28 CFR Part 35: The Contractor must comply with the ADA, which provides comprehensive civil rights protection to individuals with disabilities in the areas of employment, public accommodations, state and local government services, and telecommunications.

ASSIGNMENT: Contractor may not assign or transfer this Contract or any of its rights hereunder, or delegate any of its duties hereunder, without the prior written consent of the Reporter of Decisions, provided that any permitted assignment shall not operate to relieve Contractor of any of its duties and obligations hereunder, nor shall such assignment affect any remedies available to Reporter that may arise from any breach of the provisions of this Contract or warranties made herein including but not limited to, rights of setoff. Reporter may assign this Contract in whole or in part without the consent of Contractor. Any attempted assignment,

transfer or delegation in contravention of this Section of the Contract shall be null and void. This Contract shall inure to the benefit of and be binding on the parties and their permitted successors and assigns.

CHANGES AND MODIFICATIONS: Any change or modification to this Contract must be in writing and signed by both parties.

COVENANT AGAINST CONTINGENT FEES: The Contractor warrants that no person or selling agent has been employed or retained to solicit or secure this Contract upon an agreement or understanding for a commission, percentage, brokerage or contingent fee, excepting bona fide employees or bona fide established agents maintained by the Contractor for purposes of securing business. The Reporter of Decisions shall have the right, in the event of breach of this clause by the Contractor, to annul this Contract without liability or, in its discretion, to deduct from the Contract price or consideration or recover by other means the full amount of such commission, percentage, brokerage or contingent fee.

CONFLICT OF INTEREST: The Reporter of Decisions may, by written notice to the Contractor, terminate this Contract if it is found after due notice and examination by the Reporter of Decisions that there is a violation of the Ethics in Public Service Act, chapter 42.52 RCW; or any similar statute involving the Contractor in the procurement of, or performance under, this Contract.

In the event this Contract is terminated as provided above, the Reporter of Decisions shall be entitled to pursue the same remedies against the Contractor as it could pursue in the event of a breach of the Contract by the Contractor. The rights and remedies of the Reporter of Decisions provided for in this clause shall not be exclusive and are in addition to any other rights and remedies provided by law.

GOVERNING LAW: This Contract shall be governed by the laws of the state of Washington. In the event of a lawsuit involving this Contract, venue shall be proper only in Thurston County. The Contractor, by execution of this Contract, acknowledges the jurisdiction of the courts of the state of Washington in this matter.

INDEMNIFICATION: The Contractor shall defend, protect, and hold harmless the state of Washington, the Reporter of Decisions, or any employees thereof, from and against all claims, suits or actions arising from the Contractor's acts which are libelous or slanderous, which result in injury to persons or property, which violate a right of confidentiality, or which constitute an infringement of any copyright, patent, trademark, or tradename through use or reproduction of material of any kind.

INDUSTRIAL INSURANCE COVERAGE: Before performing work under this agreement, the Contractor shall provide or purchase industrial insurance coverage for the Contractor's employees, as may be required by an "employer" as defined in Title 51 RCW, and shall maintain full compliance with Title 51 RCW during the course of this Contract. Should the Contractor fail to secure industrial insurance or fail to pay premiums, as may be required under Title 51 RCW, the Reporter of Decisions may deduct the amount of premiums and any penalties owing

from the amounts payable to the Division of Industrial Insurance. This provision does not waive any right under RCW 51.12.050 to collect from the Contractor amounts paid by the Reporter of Decisions.

The Reporter of Decisions will not be responsible for payment of industrial insurance premiums or for any other claim or benefit for this Contractor or any Subcontractor or employee of the Contractor which might arise under the industrial insurance laws during the performance of duties and services under this Contract. If the Washington State Department of Labor and Industries, upon audit, determines that industrial insurance payments are due and owing as a result of work performed under this Contract, those payments shall be made by the Contractor; the Contractor shall indemnify the Reporter of Decisions and guarantee payment of such amounts.

Industrial insurance coverage through the Department of Labor and Industries is optional for sole proprietors, partners, corporate officers, and others, per RCW 51.12.020.

LIMITATION OF AUTHORITY: Only the Contracting Officer or his delegates (delegation to be made in writing before action) shall have the express, implied, or apparent authority to alter, amend, modify, or waive any clause or condition of this Contract on behalf of the Reporter of Decisions. Furthermore, any alteration, amendment, modification, or waiver of any clause or condition of this Contract is not effective or binding unless made in writing and signed by the Contracting Officer or his delegate.

NONDISCRIMINATION: During the performance of this Contract, the Contractor shall comply with all federal and state nondiscrimination laws, regulations, and policies.

NONCOMPLIANCE WITH NONDISCRIMINATION LAWS: In the event of the Contractor's noncompliance or refusal to comply with any nondiscrimination law, regulation, or policy, this Contract may be rescinded, canceled, or terminated in whole or in part, and the Contractor may be declared ineligible for further Contracts with the Reporter of Decisions. The Contractor shall, however, be given a reasonable time in which to cure this noncompliance.

NOTICE: Any notice or demand or other communication required or permitted to be given under this Contract or applicable law shall be effective if and only if it is in writing, properly addressed, and either delivered in person, or by a recognized courier service, or deposited with the United States Postal Service as first-class certified mail, postage prepaid, return receipt requested, via facsimile or by electronic mail, to the parties at the addresses and fax number, and e-mail addresses provided in this Contract. For purposes of complying with any provision in this Contract or applicable law that requires a "writing," such communication, when digitally signed with a Washington State Licensed Certificate, shall be considered to be "in writing" or "written" to an extent no less than if it were in paper form. In the event the individual named by a party changes or no longer serves in the capacity provided, the party making such change will provide prompt written Notice of change.

OWNERSHIP AND TREATMENT OF ASSETS: Title to all property furnished by the Reporter of Decisions shall remain in the Reporter of Decisions. Title to all property furnished by the Contractor, for the cost of which the Contractor is entitled to be reimbursed as a direct item of cost under this Contract, shall pass to and vest in the Reporter of Decisions upon delivery of such property by the Contractor. Title to other property, the cost of which is reimbursable to the Contractor under this Contract, shall pass to and vest in the Reporter of Decisions upon (i) issuance for use of such property in the performance of this Contract, or (ii) commencement of use of such property in the performance of this Contract, or (iii) reimbursement of the cost thereof by the Reporter of Decisions in whole or in part, whichever first occurs.

Any property of the Reporter of Decisions furnished to the Contractor shall, unless otherwise provided herein or approved by the Reporter of Decisions, be used only for the performance of this Contract.

The Contractor shall be responsible for any loss or damage to property of the Reporter of Decisions which results from the negligence of the Contractor or which results from the failure on the part of the Contractor to maintain and administer that property in accordance with sound management practices.

Upon loss or destruction of, or damage to, any Reporter of Decisions property, the Contractor shall notify the Reporter of Decisions thereof and shall take all reasonable steps to protect that property from further damage.

The Contractor shall surrender to the Reporter of Decisions all property of the Reporter of Decisions before settlement upon completion, termination or cancellation of this Contract.

OVERPAYMENTS: Contractor shall promptly, but in all cases within 30 days, pay to Reporter the full amount of any erroneous payment or overpayment upon Notice of an erroneous payment or overpayment to which Contractor is not entitled.

PUBLICITY: The Contractor agrees to submit to the Reporter of Decisions all advertising and publicity matters relating to this Contract in which the Reporter of Decisions' name is specifically mentioned. The Contractor agrees not to publish or use such advertising and publicity matters without the prior written consent of the Reporter of Decisions.

REGISTRATION WITH DEPARTMENT OF REVENUE: The Contractor shall complete registration with the State of Washington, Department of Revenue and be responsible for payment of all taxes due on payments made under this Contract.

REGISTRATION, LICENSING, and ACCREDITATION: The Contractor shall comply with all applicable local, state, and federal licensing, accreditation, and registration requirements/standards necessary for the performance of this Contract.

RIGHTS IN DATA: Except as otherwise provided in Exhibit A, data which originates from this Contract shall be "works for hire" as defined by the U.S. Copyright Act of 1976 and shall be owned by the Reporter of Decisions. Data shall include, but not be limited to, reports,

documents, pamphlets, advertisements, books, magazines, surveys, studies, computer programs, films, tapes, and/or sound reproductions. Ownership includes the right to copyright, patent, register, and the ability to transfer these rights. In the event that any of the deliverables under this Contract include material not included within the definition of "works for hire," the Contractor hereby assigns such rights to the Reporter of Decisions as consideration for this Contract.

Data which is delivered under this Contract, but which does not originate therefrom, shall be transferred to the Reporter of Decisions with a nonexclusive, royalty-free, irrevocable license to publish, translate, reproduce, deliver, perform, dispose of, and to authorize others to do so; Provided, that such license shall be limited to the extent which the Contractor has a right to grant such a license. The Contractor shall advise the Reporter of Decisions, at the time of delivery of data furnished under this Contract, of all known or potential invasions of privacy contained therein and of any portion of such document which was not produced in the performance of this Contract. The Reporter of Decisions shall receive prompt written notice of each notice or claim of copyright infringement received by the Contractor with respect to any data delivered under this Contract. The Reporter of Decisions shall have the right to modify or remove any restrictive markings placed upon the data by the Contractor.

RIGHT OF INSPECTION: The Contractor shall provide right of access to its facilities to the Reporter of Decisions, or any of its officers, or to any other authorized agent or official of the state of Washington or the federal government at all reasonable times, in order to monitor and evaluate performance, compliance, and/or quality assurance under this Contract.

SAFEGUARDING OF INFORMATION: The use or disclosure by the Contractor of any information obtained as a result of performance under this Contract concerning the Reporter of Decisions or the Court for any purpose not directly connected with the administration of the Reporter of Decisions', the Court's, or the Contractor's responsibilities with respect to services provided under this Contract is prohibited except by written consent of the Reporter of Decisions or the Court.

SAVINGS: In the event funding from state, federal, or other sources is withdrawn, reduced, or limited in any way after the effective date of this Contract and before normal completion, the Reporter of Decisions may terminate the Contract under the "Termination for Convenience" clause, without the 30-day notice requirement, subject to renegotiation under those new funding limitations and conditions.

SEVERABILITY: If any provision of this Contract or any provision of any document incorporated by reference shall be held invalid, such invalidity shall not affect other provisions of this Contract which can be given effect without the invalid provision, and to this end the provisions of this Contract are declared to be severable.

SUBCONTRACTING: Neither the Contractor nor any subcontractor shall enter into subcontracts for any of the work contemplated under this Contract without notifying the Reporter of Decisions in advance of the work commencing by the subcontractor.

TERMINATION:

- A. Termination for Default: The Reporter of Decisions may, by written notice, terminate this Contract, in whole or in part, for failure of the Contractor to perform any of the obligations or provisions required by the Contract. In the event of default, the Contractor shall be liable for damages as authorized by law, including but not limited to, any cost difference between the original Contract and the replacement or cover Contract and all administrative costs directly related to the replacement Contract, e.g., cost of the competitive bidding, mailing, advertising and staff time; Provided, that if (i) it is determined for any reason the Contractor was not in default, or (ii) the Contractor's failure to perform is without Contractor's and/or subcontractor's control, fault, or negligence, the termination shall be deemed to be a Termination for Convenience.
- B. Termination for Convenience: Except as otherwise provided in this Contract, the Reporter of Decisions may terminate this Contract by providing written notice of such termination to the Contractor, specifying the effective date thereof, at least thirty (30) calendar days before such date. If this Contract is so terminated, the Reporter of Decisions shall be liable only for payment for services rendered before the effective date of termination.

TERMINATION PROCEDURE: Upon termination of this Contract, the Reporter of Decisions, in addition to any other rights provided in this Contract, shall require the Contractor to deliver to the Reporter of Decisions any property specifically produced or acquired for the performance of such part of the Contract as has been terminated. The provisions of the "Treatment of Assets" clause shall apply in such property transfer.

The Reporter of Decisions shall pay to the Contractor the agreed upon price, if separately stated, for completed work and services accepted by the Reporter of Decisions, and the amount agreed upon by the Contractor and the Reporter of Decisions for (i) completed work and services for which no separate price is stated, (ii) partially completed work and services, (iii) other property or services which are accepted by the Reporter of Decisions, and (iv) the protection and preservation of property, unless the termination is for default, in which case the Contracting Officer shall determine the extent of liability of the Reporter of Decisions. The Reporter of Decisions may withhold from any amounts due the Contractor such sum as the Reporter of Decisions determines to be necessary to protect the Reporter of Decisions against potential loss or liability.

The rights and remedies of the Reporter of Decisions provided in this section shall not be exclusive and are in addition to any other rights and remedies provided by law or under this Contract.

After receipt of notice of termination, and except as otherwise directed by the Reporter of Decisions, the Contractor shall:

- A. Stop work under this Contract on the date and to the extent specified, in the notice;
- B. Place no further orders or subcontracts for materials, services, or facilities except as may be necessary for completion of such portion of the work under the Contract as is not terminated;
- C. Assign to the Reporter of Decisions, in the manner, at the times, and to the extent directed by the Reporter of Decisions, all of the rights, title, and interest of the Contractor under the orders and subcontracts so terminated, in which case the Reporter of Decisions has the right,

at its discretion, to settle or pay any or all claims arising out of the termination of such orders and subcontracts;

- D. Settle all outstanding liabilities and all claims arising out of such termination of orders and subcontracts, with the approval or ratification of the Reporter of Decisions to the extent the Contracting Officer may require, which approval or ratification shall be final for all purposes of this clause;
- E. Transfer title to the Reporter of Decisions and deliver in the manner, at the times, and to the extent directed by the Reporter of Decisions any property which, if the Contract had been completed, would have been required to be furnished to the Reporter of Decisions;
- F. Complete performance of such part of work as shall not have been terminated by the Reporter of Decisions; and
- G. Take such actions as may be necessary, or as the Reporter of Decisions may direct, for the protection and preservation of the property related to this Contract which is in possession of the Contractor and in which the Reporter of Decisions has or may acquire an interest.

WAIVER: Waiver of any default of any term or condition of this Contract shall not be deemed to be a waiver of any other prior or subsequent default. Waiver of breach of any provision of the Contract shall not be deemed a waiver of any other or subsequent breach and shall not be construed as a modification of the terms of this Contract unless stated to be such in writing, signed by the Contracting Officer and attached to the original Contract.