

**PUBLICATION CONTRACT FOR  
THE CALIFORNIA OFFICIAL REPORTS**

*For the State of California:*

**Ronald M. George, Chief Justice of California**

**Debra Bowen, Secretary of State**

**Edmund G. Brown Jr., Attorney General**

**Howard Miller, President of the State Bar**

**Edward W. Jessen, Reporter of Decisions**

*For Matthew Bender & Company, Inc.,  
a member of the LexisNexis Group*

**Steven C. Zubrzycki, Vice President,  
Global Licensing and Content Acquisition**

## **GENERAL TERMS**

### **Introduction**

This contract is entered into between the State of California (hereafter the State) and Matthew Bender & Company, Inc., a member of the LexisNexis Group (hereafter Matthew Bender or LexisNexis). Pursuant to the provisions of sections 68902-68905 of the California Government Code, the State is authorized to let a contract for publication of the Official Reports of the Opinions of the Supreme Court, the Courts of Appeal, and the Appellate Divisions of the Superior Courts (hereafter Official Reports) for a term of not less than two nor more than seven years on the terms most advantageous to the State and to the public.

The advertisements required by section 68904 of the Government Code soliciting publication proposals for the Official Reports were made and the State thereafter determined, in accordance with section 68904 of the Government Code, that the proposal of Matthew Bender constituted the terms most advantageous to the State and to the public. The State and Matthew Bender mutually agree that Matthew Bender will publish and sell the Official Reports on the terms and conditions of this publication contract.

### **Constitutional provisions, statutes, rules, style manual, and proposal**

California Constitution, article VI, section 14, Government Code sections 68902 through 68905, and California Rules of Court, rules 8.1100 through 8.1125, as all those provisions may from time to time be revised and amended, are incorporated by reference into this contract. The California Style Manual, Fourth Edition, as it may be revised, supplemented, amended or replaced by a new edition from time to time, is also incorporated by reference, as is Matthew Bender's publication proposal. In the event of a conflict between this contract and the publication proposal, this contract will prevail.

### **Commencement and duration of publication contract**

The term of this publication contract is five years, commencing with opinions delivered to Matthew Bender on July 1, 2010, and terminating with opinions delivered on June 30, 2015, subject to a two-year extension exercisable at the sole option of the State for a total contract term of seven years or less. Matthew Bender will be given notice of the State's exercise of the option for a two-year extension at least 90 days prior to the date the contract would otherwise terminate.

## **Places of performance**

For all work performed in California under this contract, Matthew Bender agrees to comply with all requirements of California law, including the California Fair Employment and Housing Act, and the Drug-Free Workplace Act of 1990, as those acts may from time to time be revised and amended.

### *Editorial production*

The LexisNexis Colorado Springs office will be the center of editorial production.

#### *— Location*

LexisNexis  
555 Middle Creek Parkway  
Colorado Springs, Colorado 80921

Under the disaster contingency plan (see pp. 7 and 8), editorial work will be performed through telecommunication and electronic transmission of documents to members of the Official Reports editorial team working from their homes. Secondly, if any event or circumstance prevents telecommunication and electronic transmission of documents, the editorial work will shift to the LexisNexis Charlottesville, Virginia facility.

### *Print production and distribution*

Print production and initial distribution of the bound volumes of the Official Reports will be subcontracted to RR Donnelley at its Willard, Ohio facility.

#### *— Location*

RR Donnelley  
Willard Manufacturing Division  
1145 Conwell Ave.  
Willard, Ohio 44890

Print production and initial distribution of the advance pamphlets will be subcontracted to Cadmus Communications, a Cenveo Company at its Baltimore, Maryland facility.

#### *— Location*

Cadmus Communications, A Cenveo Company  
1323 Greenwood Road  
Baltimore, Maryland 21208

The R.R. Donnelley Willard, Ohio site and the Cadmus Communications Baltimore, Maryland site each will be utilized as the alternative site for the other under the disaster contingency plan (see pp. 7 and 8).

*CD-ROM version customer service*

The LexisNexis Albany, New York site will be responsible for production and customer service for the CD-ROM version of the Official Reports (see page 19).

— *Location*

LexisNexis Matthew Bender  
1275 Broadway  
Albany, New York 12204

Under the disaster contingency plan (see pp. 7 & 8), the LexisNexis Charlottesville, Virginia, office is designated as the site for CD-ROM production, and the LexisNexis Dayton, Ohio, facility will provide customer service under the disaster contingency plan.

*Online publication and customer service*

The Official Reports on lexis.com will be maintained from the LexisNexis Data Center at the LexisNexis Dayton, Ohio, facility. Customer support for online products is also centered in the Dayton, Ohio facility.

— *Location*

LexisNexis  
9443 Springboro Pike  
Dayton, Ohio 45401-0933

A second, remote LexisNexis Data Center in Springfield, Ohio, will be a backup and disaster recovery facility for the other (see pp. 7 and 8).

*Marketing*

Marketing responsibility for the Official Reports will be based in the LexisNexis Charlottesville, Virginia site.

— *Location*

LexisNexis  
701 E. Water Street  
Charlottesville, Virginia 22902

The LexisNexis Dayton, Ohio site is the alternate site for marketing under the disaster contingency plan (see pp. 7 and 8).

*Contract administration*

LexisNexis offers the Reporter of Decisions one point of contact for any contract-related issues. Government Content Acquisition, located at the LexisNexis Charlottesville, Virginia, site will handle contract administration for the Official Reports.

— *Location*

LexisNexis  
701 E. Water Street  
Charlottesville, Virginia 22902

— *Contact person*

Nikki Daugherty, Director Government Content Acquisition

The LexisNexis Dayton, Ohio site is the designated alternative site for Government Content Acquisition under the disaster contingency plan (see pp. 7 and 8).

**Independent contractor; subcontractors and agents**

In the performance of any work pursuant to this contract, Matthew Bender is an independent contractor. Matthew Bender must keep the Reporter of Decisions advised in writing of the names and addresses of all subcontractors or agents, including subcontractors or agents, if any, that would perform work under the disaster contingency plan.

**Bond**

Within five business days from the date the contract for publication of the Official Reports is executed, Matthew Bender must furnish a bond, satisfactory to the State, in the penal sum of \$10,000 for the faithful performance of the contract. Such bond must be submitted to the Reporter of Decisions.

**Choice of law and venue**

This contract must be interpreted in accordance with California law. Any dispute arising from this contract must be determined according to California law, and any legal action pertaining to this contract must be instituted in California.

**Assignment; termination and abandonment**

This contract must not be assigned in whole or in part without the written consent of the State. The consent of the State, however, is not required for changes of subcontractors or agents.

In the event Matthew Bender fails to perform this contract, or a substantial part thereof, the State may, in its sole judgment reasonably exercised, terminate the contract by presenting written notice to Matthew Bender. The notice must specify the basis for termination and the date on which termination will become effective. Upon termination, the State will retain all legal remedies available to it, including damages for increased expense on behalf of the State and public for the remaining term of the contract.

## **Copies of publications**

For each Official Reports advance pamphlet and bound volume, Matthew Bender must provide the Reporter of Decisions, at Matthew Bender's expense, with up to 12 copies. Matthew Bender must also provide the Reporter of Decisions with up to 12 copies of, or access for up to 12 users of, any computer versions of the Official Reports. This material, or access, will be limited to the exclusive use of the Reporter of Decisions and staff, but the material will not be returned on termination of this contract.

For any Matthew Bender publication, including publications by other components of the LexisNexis Group, to which reference is regularly made in the Official Reports, either within opinions or in the publisher's enhancement of the opinions (i.e., summaries and headnotes), Matthew Bender must provide the Reporter of Decisions, at Matthew Bender's expense, with up to six copies. These copies will be for the exclusive use of the Reporter of Decisions and staff, and Matthew Bender may require the return of copies at its own expense on termination of this contract.

Matthew Bender must also provide the Reporter of Decisions and staff, at Matthew Bender's expense, with reasonable access to the lexis.com online research service. This access is limited to the Reporter of Decisions and staff.

## **Delivery services**

Matthew Bender must provide, at Matthew Bender's expense, for delivery and collection of manuscript and other materials required to fulfill editorial and manufacturing responsibilities described in this contract. The method for delivery must provide for routine delivery not more than 24 hours after dispatch. The term "delivery" also includes transmission of manuscript, copy, and other materials by computer.

For delivery by computer, Matthew Bender will provide a joint document sharing Web site based on Microsoft SharePoint technology to be used exclusively by the Reporter of Decisions and the Official Reports editorial team. The SharePoint site will be hosted on LexisNexis internal servers, with access granted to the Reporter of Decisions. Both the Reporter of Decisions and the Official Reports editorial team will be able to upload and download documents to be shared between offices. Organization and maintenance of the SharePoint site will be the responsibility of the Official Reports editorial team. Alternatively, Matthew Bender may provide for the exchange of documents through e-mail or file transfer protocol.

## **Inspections and meetings**

The Reporter of Decisions, on behalf of the State, has a continuing right to inspect, at reasonable intervals, all premises used in performance of editorial and manufacturing obligations described in this contract. This right of inspection also includes the premises of subcontractors.

Matthew Bender is responsible for all reasonable expenses relating to any meeting or inspection pertaining to the Official Reports, including the reasonable transportation, lodging, and related travel expenses of State personnel necessary to the purpose of any meeting or inspection.

## **Disaster contingency plan**

### *Editorial production*

As specified above (see p. 3), should any event or circumstance cause a business interruption at the LexisNexis Colorado Springs facility, editorial work will be performed through telecommunication and electronic transmission of documents to members of the Official Reports editorial team working from their homes. If any event or circumstance prevents telecommunication and electronic transmission of documents, the editorial work will shift to the LexisNexis Charlottesville, Virginia, facility.

### *Print production*

As specified above (see p. 3), the advance pamphlets of the Official Reports will be printed by subcontract with RR Donnelley at its Willard, Ohio, site. Bound Volumes for the Official Reports will be printed by subcontract with Cadmus Communications, a Cenveo Company, at its Baltimore, Maryland, site. The R.R. Donnelley Willard, Ohio, site and the Cadmus Communications Baltimore, Maryland, site are each designated as the alternate site for the other should any event or circumstance cause a business interruption at either facility.

### *CD-ROM version production*

The CD-ROM version of the Official Reports (see page 19) will normally be produced at the Matthew Bender Albany, New York, facility. Matthew Bender also has a center for production of this material at the Charlottesville facility. Should any event or circumstance cause a business interruption at the Albany facility, production will shift to the Matthew Bender Charlottesville, Virginia, facility (see p. 4).

*Online computer version*

The online computer version of the Official Reports will be provided at the LexisNexis Computing Complex in Dayton, Ohio. The Official Reports will be subject to existing safeguards and redundancies for the LexisNexis Computing Complex to prevent against service disruptions, and the Official Reports will also be subject to existing business continuity plans and business recovery plans for the computing complex (see p. 4).

**GENERAL PUBLISHING DUTY; LICENSING  
AND PROPRIETARY CONSIDERATIONS**

**Material to be published**

Decisions of the Supreme Court will be reported in the continuation of California Reports, Fourth Series. Decisions of the Courts of Appeal will be reported in the continuation of California Appellate Reports, Fourth Series. Decisions of the Appellate Divisions of the Superior Courts must be reported with the decisions of the Courts of Appeal, but in a category identified as the “California Supplement.” Decisions of the Commission on Judicial Performance must be reported with the decisions of the Supreme Court, but in a category identified as the “CJP Supplement.”

Matthew Bender must publish in the Official Reports opinions and other material (e.g., court rules) only as directed by the Reporter of Decisions in accord with the California Rules of Court and publication practices of the Supreme Court.

**Delivery of opinions and other material**

The Reporter of Decisions will deliver to Matthew Bender computer versions of all opinions and other material required to fulfill the obligations of this contract. Delivery of computer versions of Supreme Court and Court of Appeal opinions will normally be made on the day opinions are filed, or on the date after filing on which opinions are certified for publication, by posting the opinions to the California judicial branch’s Web site. Matthew Bender must rely, to the extent possible, on computer versions of opinions and other material furnished by the Reporter of Decisions.

After the initial delivery of opinions and other material, transmittal of manuscript, documents, and other materials required to fulfill editorial and manufacturing responsibilities will be governed by “Delivery services,” page 6.



## **Intellectual property rights; copyright and licenses**

Opinion summaries, headnotes, tables, other editorial features, classification headings for headnotes, and related references and statements prepared by Matthew Bender may be copyrighted by Matthew Bender. If Matthew Bender declines to obtain a copyright on its own behalf, it must obtain a copyright on behalf of the California Supreme Court. All expenses of obtaining copyright, either on its own behalf or for the Supreme Court, will be the responsibility of Matthew Bender, and copies of all documents pertaining to copyright must be provided to the Reporter of Decisions.

No copyright or other proprietary right may be procured or claimed by Matthew Bender for the text of any opinion reported in the Official Reports.

No copyright or other proprietary right may be procured or claimed by Matthew Bender with respect to any element of any citation for any opinion reported in the Official Reports. This includes any method of intra-opinion designation (i.e., “point page” references). All elements of all Official Reports citations for California Reports (first series), California Reports, Second Series, California Reports, Third Series, California Reports, Fourth Series, California Appellate Reports (first series), California Appellate Reports, Second Series, California Appellate Reports, Third Series, and California Appellate Reports, Fourth Series, are in the public domain.

The State grants Matthew Bender a royalty-free license during the term of this contract for use of all intellectual property rights to the Official Reports, including copyright, held by former publishers on opinion summaries, headnotes, tables, other editorial features, classification headings for headnotes, and related references and statements in California Reports (first series), California Reports, Second Series, California Reports, Third Series, California Reports, Fourth Series, California Appellate Reports (first series), California Appellate Reports, Second Series, California Appellate Reports, Third Series, and California Appellate Reports, Fourth Series. The State, however, will not be liable for any conduct by former publishers that impedes the State’s issuance, or Matthew Bender’s use of, this license. The substance of the license granted by the State is as follows:

The State grants to Matthew Bender a royalty-free, perpetual license to use all intellectual property rights, including copyright, with respect to opinion summaries, headnotes, tables, other editorial features, classification headings for headnotes, and related references and statements in California Reports (First Series), California Reports, Second Series, California Reports, Third Series, California Reports, Fourth Series, California Appellate Reports (First Series), California Appellate Reports, Second Series, California Appellate Reports, Third Series, and California Appellate Reports, Fourth Series and to use the classification scheme for headings used in such reports in all materials prepared under this contract (the “State Licensed Materials”). The rights granted pursuant to this license include the right to exercise and authorize exercise of any and all of the rights of the owner of all copyrights in the State Licensed Materials, as more specifically set forth in 17 U.S.C. 106, in all media now known or hereafter developed. The license granted by the State is assignable and sub-licensable. During the term of this Official Reports publication

contract this license shall be the exclusive license granted by the State with respect to these rights in the State Licensed Materials.

For intellectual property rights acquired by former publishers prior to the effective date of the 1998 Official Reports publication contract, the State's grant of the above license is based on section XI of the final judgment entered by the United States District Court for the District of Columbia on March 7, 1997, in *United States et al., v. Thomson Corporation et al.* (Civil No. 96-1415 [PLF]). Section XI provides for transfer to the State of a "license, which shall be perpetual in term, sublicensable, assignable, and royalty-free, to the use of any intellectual property rights which [the incumbent publisher] holds pertaining to the headnotes, case notes, and/or case summaries in the product(s) at issue." Exhibit A.3 of the final judgment defines the Official Reports as among the "product(s) at issue." The license was conditioned on exercising an option provided by the final judgment to terminate the Official Reports publication contract in effect at that time, and that option was exercised.

For intellectual property rights acquired by former publishers after the effective date of the 1998 Official Reports publication contract, the State's grant of the above license is based on the provision of the 1998 contract granting the State a "royalty-free, perpetual license, which shall be sublicensable and assignable, for use of all intellectual property rights, including copyright," created during the contract's term.

Matthew Bender must grant the State a royalty-free, perpetual license, which will be sublicensable and assignable, for use of all intellectual property rights, including copyright, on opinion summaries, headnotes, classification headings for headnotes, and related references and statements created during the term of this contract. The substance of the license granted by Matthew Bender is as follows:

Matthew Bender grants to the State a royalty-free, perpetual license to use all intellectual property rights, including copyright, with respect to opinion summaries, headnotes, tables, other editorial features, classification headings for headnotes, and related references and statements which are created by or on behalf of Matthew Bender in fulfillment of its obligations pursuant to this Official Reports publication contract (the "Publisher Licensed Materials"). The rights granted pursuant to this license shall include the right to exercise and authorize exercise of any and all of the rights of the owner of all copyrights in the Publisher Licensed Materials, as more specifically set forth in 17 U.S.C. 106, in all media now known or hereafter developed. The license granted by Matthew Bender shall be assignable and sub-licensable. (For sake of clarity, unless otherwise agreed, the Publisher Licensed Materials do not include any materials developed for the LexisNexis online services and lexis.com, such as LexisNexis headnotes and case summaries.)

Unless this contract is terminated, the State will limit use of the Publisher Licensed Materials to reasonable, noncommercial purposes. The State will reasonably limit portions of the Publisher Licensed Materials selected for use, and the State will provide Matthew Bender with reasonable advance notice of each intended use.

If the State terminates this contract, both the State and any successor publisher of the Official Reports must be held harmless for any infringement of Matthew Bender's intellectual property rights in the Official Reports, including copyright, relating to any sublicense or assignment of those rights made by the State in good faith to facilitate continued publication and availability of the Official Reports. The State and any successor publisher must be held harmless even if the termination of the contract by the State is ultimately found to be without cause.

### **Official Reports subscription lists**

Matthew Bender must provide copies to the State of all Official Reports subscription lists on termination of this contract. The copies must include all relevant information reasonably needed by a successor publisher to fulfill subscription obligations for the print version of the Official Reports and any computer version utilizing a subscription list. The required information includes, but is not limited to, the names and addresses of subscribers, types and categories of subscriptions for each subscriber, and subscription cost information.

### **Marketing and advertising of Official Reports**

Matthew Bender must make extraordinary efforts to market and advertise the Official Reports during the term of this contract, including the extraordinary efforts to increase subscription lists.

The publisher must report as periodically required by the Reporter of Decisions on current marketing and advertising efforts, and on the effectiveness of marketing and advertising efforts in general. Reports must include information as to the number of Official Reports subscribers for the print version, and correlative information for computer versions of the Official Reports. These reports will be regarded by the State as confidential and will be provided only as necessary to justices of the California Supreme Court, Official Reports contracting parties, or an advisory committee convened on behalf of the contracting parties.

If the Reporter of Decisions, on behalf of the State, determines that Matthew Bender's marketing and advertising do not conform to the requirements of this contract, or do not reflect good faith, fair dealing, and cooperation, Matthew Bender will be advised in writing and given a reasonable opportunity to correct the deficiencies before the contract is terminated by the State on that basis.

No advertisements may be published in the bound volumes of the Official Reports. Advertising may, however, be published on the back cover of the Official Reports advance pamphlets with advance written approval of the Reporter of Decisions.

## **REQUIREMENTS AND STANDARDS FOR EDITORIAL WORK**

### **Staffing and cost**

All editorial work specified in this contract must be done at Matthew Bender's expense.

The Official Reports editorial team is composed of:

- Senior Director, Content Development, Caselaw
- Director, Content Development, Western and Official Reports
- Team Lead, Content Development, Official Reports
- Four Caselaw Enhancement Attorney Editors
- Three Shepards Attorney Editors with California expertise
- Editorial Coordinator, Official Reports, California
- Editorial Reviser, Official Reports, California
- Three Content Editors
- Seven Copy Editors
- Legal Data Collection and Conversion team
- Print Composition Team

### **Cooperation with Reporter of Decisions**

Matthew Bender must cooperate with the Reporter of Decisions to the maximum extent reasonably possible in performing the editorial work required by this contract. Matthew Bender's processes and procedures for performing editorial work must be compatible with those of the Reporter of Decisions. Satisfactory performance of editorial work will require extensive day-to-day communication with, and deference to, the Reporter of Decisions and staff. As described above under "Delivery services," page 6, Matthew Bender will provide a joint document sharing Web site based on Microsoft SharePoint to facilitate cooperation with the Reporter of Decisions.

If, at any time the Reporter of Decisions, on behalf of the State, determines that Matthew Bender's editorial work is unsatisfactory, Matthew Bender will be advised in writing and given a reasonable opportunity to correct any deficiencies before the contract is terminated by the State on that basis.

## **Postfiling verification, correction, styling, and proofreading**

Matthew Bender must accurately report opinion text and only make changes to text as specified by this contract, or as otherwise directed by the Reporter of Decisions. Matthew Bender must identify and promptly refer to the Reporter of Decisions all discrepancies, anomalies, and inconsistencies in opinion text that are discernible from diligently performing editorial work required by this contract.

Matthew Bender must provide for thorough proofreading, copyreading, and correction of all opinions as soon as practicable after delivery by the Reporter of Decisions. The proofreading and copyreading must be done at a level of accuracy satisfactory to the Reporter of Decisions. Matthew Bender must verify the accuracy of all citations to authority in opinions, and the accuracy of all quotations of authority in opinions (e.g., other opinions, statutes, rules, law reviews, and treatises).

All opinions must be conformed to style and standards as directed by the Reporter of Decisions. Style and standards are principally set forth in the California Style Manual, Fourth Edition. Matthew Bender's styling responsibilities include: (i) checking titles of opinions and designations of parties; (ii) checking and styling the counsel listing; (iii) checking and styling trial court information; (iv) checking and styling names of justices; (v) executing partial publication orders; (vi) executing orders of modification and clerical correction directives from the Reporter of Decisions; (vii) adding parallel case citations, where available, to the National Reporter System, state reports of other jurisdictions, specialized case reporters as specified or authorized by the Reporter of Decisions, and any other form of parallel citation specified or authorized by the Reporter of Decisions; (viii) creating opinion titles for citation purposes (i.e., "running head" titles); (ix) correctly styling all citations of authority in opinions; and, (x) correcting errors in spelling and grammar.

All opinions must be diligently inspected for: (i) improper disclosure of the identity of a witness or party; (ii) citation to unpublished and depublished opinions; (iii) citation of opinions in which review has been granted by the Supreme Court; (iv) any facial impropriety with respect to the certification of the opinion for publication or partial publication; (v) in partially published opinions, references in concurring, dissenting, or concurring and dissenting opinions to the unpublished portion of the majority or lead opinion; and, (vi) all multiple-opinion decisions in which the lead opinion is signed by less than a majority (i.e., less than four justices of the Supreme Court and less than two justices of the Court of Appeal). All such lapses must be promptly referred to the Reporter of Decisions.

## **Summaries and headnotes**

Opinion summaries, headnotes, classification headings for headnotes, and related references must be added to all opinions reported in the Official Reports. All headnotes and summaries must have the level of editorial quality reflected in volumes 38 through 44 of California Reports, Fourth Series, and volumes 168 through 172 of California Appellate Reports, Fourth Series.

Headnotes for the California Reports, Fourth Series, and California Appellate Reports, Fourth Series, must be classified to the California Digest, subject to the license described above, pages 7 and 8.

To its headnotes, Matthew Bender must append references to such authorities as directed or approved by the Reporter of Decisions, but only in the amount and manner specified and approved by the Reporter of Decisions.

## **Postpublication revision and correction**

The text of opinions and all editorial enhancements to opinions (e.g., tables, summaries, and headnotes) are subject to inspection, revision, and correction by the Reporter of Decisions. This includes the editing described by rule 8.1105(f), California Rules of Court. Any unsatisfactory work will, at the discretion of the Reporter of Decisions, be returned to Matthew Bender for prompt correction at no cost to the State and no additional cost to Official Reports subscribers.

Where errors of significance are detected after publication of Official Reports bound volumes, whether errors are caused by Matthew Bender, the appellate courts, the Reporter of Decisions, or a former publisher, Matthew Bender must, at the discretion of the Reporter of Decisions and at Matthew Bender's own expense, (i) issue a "crack, peel, and affix" correcting material to subscribers, or (ii) for volumes printed by Matthew Bender, reprint and reissue the volume in its entirety. Matthew Bender must also promptly reflect such corrections in the computer versions of the Official Reports.

## **PRINT VERSION REQUIREMENTS**

### **Pagination and size of volumes**

Matthew Bender must continue to utilize the system of uniform pagination reflected in the current publication of advance pamphlets and bound volumes for the California Reports, Fourth Series, and the California Appellate Reports, Fourth Series. This means that volume and page designations for opinions in the advance pamphlets are retained for the bound volumes, notwithstanding that some opinions in the advance pamphlets will be deleted from the bound volumes in accord with the California Rules of Court, publication practices of the Supreme Court, and directions from the Reporter of Decisions.

The average number of actual opinion pages included in each Official Reports bound volume must be 1,150. The term “actual opinion pages” includes associated classification headings, summaries, and headnotes.

Pagination of the advance pamphlets must be continuously monitored and adjusted by Matthew Bender to ensure that the specified average number of actual opinion pages per volume is satisfied over the course of each year of the contract. Matthew Bender must report the results of this monitoring and adjusting as requested by the Reporter of Decisions.

### **Advance pamphlets; review granted pamphlets**

#### *In general; specifications*

Matthew Bender must publish advance reports of opinions of the California Supreme Court, Courts of Appeal, Appellate Divisions of the Superior Courts, and Commission on Judicial Performance in combined advance pamphlets entitled “Advance Sheets of the California Official Reports.”

Advance pamphlet material relating to the Supreme Court must appear in the first portion of the pamphlet. Matter relating to the other appellate courts must appear following the Supreme Court matter. Where opinions from two volumes of the California Reports, Fourth Series, or the California Appellate Reports, Fourth Series, are published in the same advance pamphlet, a distinguishing border must be printed on the outside of the pages of the opinions from the second volume to facilitate identification and ease of access.

Pagination, typographical style, paper quality, paper weight, and binding for the Official Reports advance pamphlets must conform to 2009 advance pamphlets Nos. 1 to 35.

#### *Contents of advance pamphlets*

Pages of the Official Reports advance pamphlets comprising Supreme Court material must contain: (i) title page; (ii) multivolume cumulative table of opinions; (iii) opinions of the Supreme Court with classification headings, summaries, and headnotes prepared by the publisher; (iv) Supreme Court minutes; (v) opinions of the Commission on Judicial Performance with classification headings, summaries, and headnotes prepared by the publisher; and, (vi) other material that the Supreme Court or Reporter of Decisions may direct to be published, including additions or amendments to the California Rules of Court, local appellate court rules, appellate court internal operating policies and procedures, specified Supreme Court orders, and other policies, guidelines, standards, and rules.

Pages of the Official Reports advance pamphlets comprising Court of Appeal material must contain: (i) title page; (ii) multivolume cumulative table of opinions; (iii) opinions of the Courts of Appeal and Appellate Divisions of the Superior Courts certified for publication in whole or in part, with classification headings, summaries, and headnotes prepared by the publisher; (iv)

cumulative subsequent history table and derivative tables; and, (v) such other materials as the Supreme Court or Reporter of Decisions may direct to be published.

In addition, Matthew Bender will continue providing these editorial enhancements, which were implemented at the initiative of Matthew Bender for the prior publication contract: (i) Cumulative tables of constitutional provisions and statutes; (ii) subject matter tables of opinions; and, (iii) amendments to the Judicial Council civil and criminal jury instructions.

*Publication frequency*

Official Reports advance pamphlets must be published every 10 days.

*Lead-time requirements for advance pamphlets*

Unless otherwise directed by the Reporter of Decisions, Matthew Bender must promptly prepare and publish opinions in the order received. Opinions are received when made available to the publisher as a computer file.

If the State determines that opinions are not being published with reasonable promptness, Matthew Bender must be advised and given a reasonable opportunity to publish opinions more promptly before the contract is terminated by the State on that basis. Publication will not, under any circumstances, be considered prompt if Matthew Bender persistently allows more than 25 judicial days to pass between receipt of the most recent opinion in an advance pamphlet and publication of that pamphlet.

*Advance pamphlet printing and distribution; penalty*

Cadmus Communications, a Cenvéo Company, will print and distribute advance pamphlets. Matthew Bender will utilize a secure file transfer protocol (FTP) site to transmit the computer files, including shipping labels, to Cadmus for each advance pamphlet publishing event. Cadmus will also generate computer facsimiles of the advance pamphlet cover for approval by Matthew Bender.

Substantially all subscribers must receive Official Reports advance pamphlets within four days of the scheduled date of publication.

Failure to publish and substantially complete distribution of Official Reports advance pamphlets to subscribers within five days of the scheduled date of publication will result in damages to the State and the public that would be difficult to accurately assess. Therefore, as liquidated damages, Matthew Bender must pay the State \$15,000 on each occasion of late publication or distribution. A delay solely attributable to the United States Postal Service will not cause assessment of the penalty.



*Reprinting for tracking pamphlets*

Matthew Bender must continue the current practice of reprinting for tracking. After the Supreme Court grants review, published Court of Appeal opinions are no longer regarded as published under rule 8.1105, California Rules of Court, but these opinions must nonetheless remain available in the Official Reports while review is pending. To accomplish this, two pamphlets will be issued each year, the first in January to cumulate and reprint all opinions for which review was granted and remains pending as of December 31 of the prior year. The second pamphlet each year will be issued in July. The July pamphlet will cumulate and reprint only opinions in which review was granted between January and June of the current year. Each edition of the pamphlet contains explanatory information and tables as directed by the Reporter of Decisions.

Reprinting for tracking pamphlets must be treated as part of the subscription for Official Reports advance pamphlets and not priced or billed as a separate component of the Official Reports.

**Bound volumes**

*General specifications*

Pagination, typographical style, paper quality, paper weight, and binding for bound volumes of the Official Reports must conform to volumes 38 through 44 of California Reports, Fourth Series, and volumes 168 through 172 of California Appellate Reports, Fourth Series. Matthew Bender will, however, use adhesive binding rather than the Smyth sewn binding used in the volumes specified as examples to which bound volumes must otherwise conform.

*Contents of bound volumes*

Bound volumes for the California Reports, Fourth Series, must contain the following: (i) list of contents inside the front cover; (ii) title page; (iii) rosters of judges of the Supreme Court, Courts of Appeal, and Superior Courts; (iv) table of cases; (v) opinions of the Supreme Court with classification headings, summaries, headnotes, and subsequent history entries, if any; (vi) opinions of the Commission on Judicial Performance with classification headings, summaries, headnotes, and subsequent history entries, if any; (vii) memorials, if any; and, (viii) such other materials as the Supreme Court or the Reporter of Decisions may direct to be published.

Bound volumes for the California Appellate Reports, Fourth Series, must contain the equivalent of all items specified in the preceding paragraph, except that the included opinions must be those of the Courts of Appeal and the Appellate Divisions of the Superior Courts, and the roster of judges shall contain the judges of the Courts of Appeal and the Appellate Divisions of the Superior Courts.

In addition, Matthew Bender will continue providing these editorial enhancements, which were implemented at the initiative of Matthew Bender for the prior publication contract: (i) Staff list following the roster of judges; (ii) table of statutes following the table of cases; and, (iii) subject matter table at the end of each volume.

*Lead-time requirements for bound volumes*

Matthew Bender must publish and deliver bound volumes of the Official Reports within 60 days after delivery of final opinion page manuscript by the Reporter of Decisions. The term “opinion page manuscript” refers to (i) page proofs of opinions in the advance pamphlets that have been edited and corrected by the Reporter of Decisions, or (ii) computer files of opinions in the advance pamphlets that have been edited and corrected by the Reporter of Decisions.

*Penalty for late publication of bound volumes*

Failure of Matthew Bender to publish the bound volumes within 75 days from the date the Reporter of Decisions transmits opinion page manuscript will result in damages to the State and the public that would be difficult to accurately assess. Therefore, as liquidated damages, Matthew Bender must pay the State the amount of \$25,000 on each occasion of late publication.

*Availability of back volumes; inventory requirements*

Matthew Bender must make available a sufficient number of copies of each bound volume of the Official Reports to supply all demands for six years from the date of publication of each volume. Volumes supplied pursuant to this requirement must be sold at prices no greater than the then-current applicable price authorized under the contract for publication of the Official Reports in effect at that time.

## **REQUIREMENTS FOR COMPUTER VERSION OF OFFICIAL REPORTS**

### **In general; lexis.com and CD-ROM**

Opinions reported in computer versions of the Official Reports must, with reasonable promptness, conform to, incorporate, and reflect all editorial requirements and enhancements specified in this contract for the advance pamphlets and bound volumes. Computer versions of the Official Reports will be provided via the lexis.com online legal research service and CD-ROM.

If the State determines that any computer version is not being provided with reasonable promptness, Matthew Bender must be advised and given a reasonable opportunity to provide the computer version more promptly before the contract is terminated by the State on that basis.

## **Retrospective coverage**

Computer versions of the Official Reports will provide retrospective coverage of California Reports, Fourth Series, California Reports, Third Series, California Reports, Second Series, California Reports (first series), California Appellate Reports, Fourth Series, California Appellate Reports, Third Series, California Appellate Reports, Second Series and California Appellate Reports (first series). Matthew Bender warrants that all computer versions of the Official Reports will provide opinion text conforming to Official Reports advance pamphlets and bound volumes, except for variances approved by the Reporter of Decisions.

## **Customer support for computer versions**

Customer support for the lexis.com online legal research service will be provided by a trained customer support staff located in Dayton, Ohio. Customer support will be available 24 hours a day, seven days a week.

Customer service and assistance for subscribers to the CD-ROM computer version Official Reports, including account and subscription queries, will be through a customer operations department located in Albany, New York. Service will be provided between 5:00 a.m. and 5:00 p.m. Pacific Time, Monday through Friday.

## **Public Access Official Reports Web site**

Matthew Bender will, for the duration of this contract, continue providing the Public Access Official Reports Web site of California opinions that will be available to the public at no charge and linked to the “Opinions” page of the judicial branch’s Web site. The public access Web site must maintain at least the same approximate functionality, authenticity of opinion text, and search/find utilities that Matthew Bender provided under the prior Official Reports publication contract, except for adding the following specific improved functionality, enhancements, and increased coverage: (i) A unique, intuitive new URL to be mutually agreed upon between Matthew Bender and the Reporter of Decisions; (ii) a newly designed “landing page” for the Web site; (iii) opinion availability 60 days after publication in the advance pamphlets; (iv) add the “main applied headnote” from the Official Reports for each opinion to summarize the primary legal issue of the opinion; (v) add special sessions, memoriams, and commemorations; (vi) improve search functionality by providing subcategories for searching by terms (natural language or word and phrase), by citations, by decision dates, and by party names, by authoring justice, and by primary legal issue; (vii) increase the search results limit from 10 to 25; and, (viii) subject to consultation with, and approval by, the Reporter of Decisions, a new and enhanced left-side navigation bar for the Web site.

## **PRICE**

### **Print and CD-ROM version prices; limited subscriptions at no charge**

Official Reports advance pamphlets, annual subscription: \$ 320.00.

Official Reports bound volumes, each volume: \$ 21.80.

CD-ROM computer version of Official Reports, annual single-user subscription: \$1,386.00.

Matthew Bender will provide the Supreme Court and Courts of Appeal with 120 complimentary subscriptions to the print version of the Official Reports.

### **Price adjustment**

Subject to the next paragraph, prices charged for the print version of the Official Reports will be subject to annual adjustment, upward or downward, in accord with the United States Department of Labor, Bureau of Labor Statistics Producer Price Index for Technical, Scientific and Professional books, Series ID PCU5111305111303. No change in price for the print version may be made without prior written consent by the Reporter of Decisions on behalf of the State.

Matthew Bender will not adjust prices upward for the first two years of the contract term (July 1, 2010, through June 30, 2012). For the third year of the contract term, commencing July 1, 2012, the price adjustment will be calculated as set forth in the preceding paragraph. If that calculation results in an upward price adjustment exceeding 5 percent, the actual adjustment for that year will be limited to a 5 percent increase in the prices in effect on June 30, 2012. Likewise, for the fourth year of the contract term commencing July 1, 2013, if the upward price adjustment calculation exceeds 5 percent, the actual adjustment will be limited to a 5 percent increase in the prices in effect on June 30, 2013. The fifth year of the contract term commencing July 1, 2014, will not be subject to a limitation on the upward price adjustment.

All prices and adjustments to prices authorized by the terms of the Official Reports publication contract are subject to all applicable federal economic stabilization laws, orders, and regulations. Sales taxes imposed by law during the course of the publication for the Official Reports must be added to any applicable price.

### **Discretion to charge lower prices**

The comprehensive statement of prices, as adjusted pursuant to this contract, does not prohibit Matthew Bender from voluntarily charging lower prices, provided that in doing so public sector subscribers are treated at least as favorably as private sector subscribers in like circumstances. The comprehensive statement of prices does not prohibit Matthew Bender from including the Official Reports in any cooperative purchasing plans or agreements with subscribers, nor does it prohibit including the Official Reports in promotional discounts or discounts resulting from “bundling” the Official Reports with other products or services.

**EXECUTION**

This contract is 21 pages, including the cover page and signature page. To facilitate execution by the contracting parties, there are six duplicate originals of this contract. Each original has been signed by one of the contracting parties.

*For the State of California*

\_\_\_\_\_ Dated \_\_\_\_\_, 2010  
Ronald M. George, Chief Justice

\_\_\_\_\_ Dated \_\_\_\_\_, 2010  
Debra Bowen, Secretary of State

\_\_\_\_\_ Dated \_\_\_\_\_, 2010  
Edmund G. Brown Jr., Attorney General

\_\_\_\_\_ Dated \_\_\_\_\_, 2010  
Howard Miller, State Bar President

\_\_\_\_\_ Dated \_\_\_\_\_, 2010  
Edward W. Jessen, Reporter of Decisions

*For Matthew Bender & Company, Inc., a member of the LexisNexis Group*

\_\_\_\_\_ Dated \_\_\_\_\_, 2010  
Steven C. Zubrzycki, Vice President,