

**APPENDIX C**

**CONTRACT FOR THE PRINTING AND PUBLICATION OF THE OFFICIAL  
REPORTS OF THE SUPREME JUDICIAL COURT OF MASSACHUSETTS AND THE  
MASSACHUSETTS APPEALS COURT**

**BETWEEN**

**COMMONWEALTH OF MASSACHUSETTS  
OFFICE OF THE REPORTER OF DECISIONS  
John Adams Courthouse  
One Pemberton Square, Suite 2500  
Boston, MA 02108-1750**

**AND**

**MATTHEW BENDER & COMPANY, INC.,  
A MEMBER OF THE LEXISNEXIS GROUP  
701 East Water Street  
Charlottesville, VA 22902**

**SCOPE OF WORK AND REQUIREMENTS**

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## PART 1 GENERAL MATTERS

**1.01 Introduction.** Matthew Bender & Company, Inc., a member of the LexisNexis Group, hereinafter referred to as the Publisher, and the Reporter of Decisions of the Supreme Judicial Court of Massachusetts and the Massachusetts Appeals Court, hereinafter referred to as the Reporter, have mutually agreed that the Publisher shall print or release, distribute, and sell the Official Reports of the Supreme Judicial Court of Massachusetts and the Massachusetts Appeals Court, hereinafter referred to as the Official Reports, in Advance Sheet and Bound Volume formats, in accordance with the provisions and conditions hereinafter set out.

**1.02 Definitions.** The following expressions are used in this Contract and in the schedules appended hereto and shall have the meanings respectively set out below.

(a) Advance Sheets shall mean weekly installments of copies of judicial opinions of the Appellate Courts together with such other material, including corrections, amendments, or supplementations, as the Reporter may in writing direct or authorize the Publisher to include therein, which the Publisher shall publish with permanent pagination in the manner prescribed by this Contract.

(b) Appellate Courts shall mean the Supreme Judicial Court and the Appeals Court of the Commonwealth of Massachusetts.

(c) Bound Volume shall mean any volume of either Series covered by this Contract which the Publisher shall manufacture and deliver in the manner prescribed by this Contract.

(d) Series shall mean either of the sequentially numbered sets of volumes commonly known, respectively, as Massachusetts Reports and Massachusetts Appeals Court Reports.

**1.03 Term of Contract.** The term of the Contract shall be five (5) years beginning with opinions delivered to the Publisher on July 5, 2019, and terminating June 26, 2024, unless terminated at an earlier date as provided in this Contract. Two additional one-year terms may be added at the option of the Reporter.

**1.04 Pricing; Collection of Sales Tax.** The Publisher shall make the Advance Sheets available for sale, in eBook format, to the public for a one-year subscription term at prices no greater than that established in the Publisher's response to RFP2019. The Publisher shall make the Bound Volumes available for sale to the public at a price no greater than that established in the Publisher's response to RFP2019. Shipping and handling charges are included in the price stated.

If the Contract is extended beyond June 26, 2024, the price for the Advance Sheets shall be adjusted commencing with the issuance of the July 5, 2024, weekly edition, in amounts no greater than those established in the Publisher's response to RFP2019 as set forth in Appendix D. In the event of such a Contract extension, the price of the Bound Volumes shall be established at

a price no greater than that established in the Publisher's response to RFP2019 as set forth in Appendix D.

If the Contract is extended beyond July 1, 2025, the price for the Advance Sheets shall again be adjusted commencing with the issuance of the July 11, 2025, weekly edition, in amounts no greater than that established in the Publisher's response to RFP2019 as set forth in Appendix D. In the event of such a second Contract extension, the price of the Bound Volumes again shall be established at a price no greater than that established in the Publisher's response to RFP2019 as set forth in Appendix D.

The Publisher shall assess, collect, and pay over to the Commonwealth all applicable sales tax on sales of Advance Sheets and Bound Volumes. Payment to the Commonwealth of such taxes shall be made at the time and in the manner required by law. The taxes imposed by law during the course of this agreement shall be added to the prices.

**1.05 Electronic Transfer of Files.** All files to be included in the Official Reports under this Contract shall be transmitted electronically from the Reporter, except such items incapable of being transmitted to the Publisher by such a process. The latter exception encompasses, but is not limited to, items such as photographs, maps, and tables. If direct telecommunication becomes impossible because of telephone line or equipment failure, alternative methods of transferring the files may be undertaken as a temporary measure at the discretion of the Reporter.

In order to implement electronic transfer, the Publisher shall provide and maintain equipment approved by the Reporter. The Reporter shall be responsible for the coding, keying, proofreading, and correction of the files transmitted to the Publisher as specified below.

The same means of transmission shall apply to both Appellate Courts. The electronic files shall be transmitted to the Publisher on a schedule determined by the Reporter. The Reporter shall prepare the files using word processing software and any publication tagging process supplied by the Publisher. The Reporter will transmit the files for publication in the Advance Sheets in a format mutually agreed upon by the Reporter and the Publisher. The Publisher shall maintain an appropriate software program, mutually agreed upon by the Reporter and the Publisher, to receive the files.

## PART 2 PUBLICATION SCHEDULES

**2.01 Advance Sheets.** The Publisher shall publish the Advance Sheets for the Official Reports weekly (i.e., compose, format, and make available for download), fifty-two weeks per year. The publishing week begins on Thursday, and opinions, orders, amendments to rules, and other material released from Thursday through Wednesday of the publishing week will be numbered chronologically by the Reporter and transmitted electronically to the Publisher by 2:00 P.M. Eastern time on Wednesday. The Publisher will compose the Advance Sheets on Wednesday afternoon and electronically transmit the composed pages to the Reporter in portable document format (PDF) files on Wednesday night. On Thursday the Reporter will proofread the pages and return all corrections to the Publisher by 2:00 P.M. Eastern time. The Publisher and the Reporter will transmit back and forth corrected pages and any pages needing further correction by a means approved by the Reporter, and the Reporter will give final approval on Thursday by 5:00 P.M. Eastern time. The Publisher will compose the eBook Advance Sheets and transmit copies electronically in .epub format files to the Reporter on Friday morning. The Reporter will review the eBook Advance Sheets files to ensure that page breaks and corrections made in the proofreading cycle are correct, and will spot check any hyperlinks included for accuracy. The Reporter and the Publisher will transmit back and forth corrected files, and the Reporter will give final approval on Friday by 12:00 P.M. Eastern time. After the Reporter has given final approval, the Publisher will transmit to the Reporter final versions of the eBook Advance Sheets in .epub and .mobi format files for the use of the Reporter. The Publisher shall make the Advance Sheets in eBook format available for download to the public, on Friday evening.

The first edition of the Advance Sheets under the Contract is to be published no later than July 12, 2019.

**2.02 Bound Volumes.** The Publisher shall set in type, correct, and prepare in final form the Bound Volumes of the Massachusetts Reports and the Massachusetts Appeals Court Reports.

The Publisher shall perform the following steps in the manufacturing of each Bound Volume with such time allowed for each step as the Reporter, after consultation with the Publisher, shall establish by written instructions to the Publisher.

First, the Publisher shall prepare a final version of pages containing all material in the weekly Advance Sheets (including all corrections incorporated) and shall submit to the Reporter weekly at the time of distributing the Advance Sheets one (1) copy of the final version of said pages, without any crop marks or borders, in PDF files for examination and for the use of the Reporter in preparation for publication of the Bound Volume. The Reporter reserves the right to display such files on a Web site but may do so no sooner than thirty (30) days after release of the Advance Sheets by the Publisher.

Second, after a volume of Advance Sheets has closed, the Publisher shall submit to the

Reporter one (1) copy of page proofs of the entire volume in a PDF file. The Reporter will correct those page proofs and return to the Publisher the corrected proof. The Publisher and the Reporter will transmit back and forth corrected pages and any pages needing further correction until the Reporter has approved all pages. The Publisher shall then transmit to the Reporter one copy (1) of a final version of the entire volume, with no crop marks or borders, in a PDF file. The Reporter reserves the right to display such files on a Web site but may do so no sooner than thirty (30) days after publication of a Bound Volume by the Publisher.

Third, the Publisher shall submit to the Reporter for his approval a complete set of unbound signatures.

Fourth, the Publisher shall submit to the Reporter for his approval a sample cover, and the Publisher shall then print and bind the volume.

By December of each year of the Contract, the Reporter and the Publisher shall agree on a publication schedule for the Bound Volumes in the following year. The Publisher shall immediately notify the Reporter by electronic mail (e-mail) with an explanation of any delay in the scheduled publication of any Bound Volume.

In the event of termination of the Contract for any reason, the Publisher shall remain responsible for publishing any volumes of the Massachusetts Reports or Massachusetts Appeals Court Reports that it was responsible for publishing in the Advance Sheets before the Contract terminated.

### PART 3 EDITORIAL REQUIREMENTS

**3.01 Material to Be Published.** The opinions of the Supreme Judicial Court and Appeals Court shall be published in two separate Series of volumes, entitled Massachusetts Reports and Massachusetts Appeals Court Reports. Each separate Series will commence with the publication of Advance Sheets and culminate with the publication of Bound Volumes.

Advertisements of the Publisher's products shall not appear in the Advance Sheets and Bound Volumes.

**3.02 Length and Pagination of Supreme Judicial Court Bound Volumes.** The Reporter will carefully monitor the total number of pages contained in a Massachusetts Reports Bound Volume and timely notify the Publisher when a Bound Volume has reached capacity. A Bound Volume will have a minimum of 850 opinion pages. No Bound Volume will have more than 1,000 total pages, including preliminary pages, tables of cases, opinion pages, rescript opinion pages, orders regarding further appellate review, other orders, opinions of the justices, rules of the Supreme Judicial Court, rules of civil procedure, rules of criminal procedure, rules of appellate procedure, memorials, and index.

The pagination of a Bound Volume of Massachusetts Reports is uniformly established and provides room for expansion so that the various types of material published always appear in the same numerical sequence:

Opinion Text	1-1000
Rescripts	1001
Orders (FAR)	1101
Orders (Other)	--
Opinions of the Justices	1201
Rules of the SJC	1301
Rules of Civil Procedure	1401
Rules of Criminal Procedure	1501
Rules of Appellate Procedure	1601
Memorials	--
Index	--

**3.03 Length and Pagination of Appeals Court Bound Volumes.** The Reporter will carefully monitor the total number of pages contained in a Massachusetts Appeals Court Reports Bound Volume and timely notify the Publisher when a Bound Volume has reached capacity. A Bound Volume will have a minimum of 825 opinion pages and a maximum of 900 opinion pages. No Bound Volume will have more than 1,000 total pages, including preliminary pages, tables of cases, opinion pages, rescript opinion pages, orders (decisions pursuant to rule 1:28), other orders, rules of the Appeals Court, memorials, and index.

The pagination of a Bound Volume of Massachusetts Appeals Court Reports is uniformly

established and provides room for expansion so that the various types of material published always appear in the same numerical sequence:

Opinion Text	1-900
Rescripts	901
Orders (FAR)	1101
Orders (Other)	--
Rules of the Appeals Court	1201
Memorials	--
Index	--

**3.04 Contents of Supreme Judicial Court Advance Sheets in eBook Format.** The Advance Sheets of the Massachusetts Reports in eBook format shall contain: (a) a cover page or screen with the Commonwealth seal, the description of the publication, the volume and date of release of the download, the name and title of the Reporter, and the name of the Publisher; (b) a list of the cases newly reported in the issue, with hyperlinks to the full text of each case; (c) the report of each case (full opinion) with an electronic equivalent to a running head in print, the case caption, the county of origin of the action, the date of oral argument, the date of release, the panel, catchwords, headnotes with corresponding page ranges and hyperlinks to those page ranges, a statement of prior procedural history, a listing of counsel, the majority opinion, and any concurring or dissenting opinions, and with hyperlinks between text and footnotes; (d) the report of each case (rescript opinion) with an electronic equivalent to a running head in print, the case caption, the date of release, catchwords, the opinion, and a listing of counsel, and with hyperlinks between text and footnotes; (e) orders with respect to applications for leave to obtain further appellate review; (f) any other orders; (g) Opinions of the Justices, with catchwords, headnotes with corresponding page ranges and with hyperlinks to those page ranges, a statement of the history of the opinion, the text of the opinion, and a listing of the Justices subscribing to that opinion, and with hyperlinks between the text and footnotes; (h) rules of the Supreme Judicial Court; (i) rules of civil procedure; (j) rules of criminal procedure; and (k) rules of appellate procedure. Because the purpose of Advance Sheets is to provide permanent pagination in a timely manner and facilitate citation to cases, the Advance Sheets of the Massachusetts Reports in eBook format will indicate page breaks identical to those that will appear in the print bound volume. Each weekly download of the Advance Sheets of the Massachusetts Reports in eBook format shall be cumulative and shall contain a cumulative table of cases with hyperlinks to the full text of each case. Each weekly download of the Advance Sheets of the Massachusetts Reports in eBook format shall incorporate all amended, corrected, or supplemented pages to that point in the volume.

**3.05 Contents of Appeals Court Advance Sheets in eBook Format.** The Advance Sheets of the Massachusetts Appeals Court Reports in eBook format shall contain: (a) a cover page or screen with the Commonwealth seal, the description of the publication, the volume and date of release of the download, the name and title of the Reporter, and the name of the Publisher; (b) a list of the cases newly reported in the issue, with hyperlinks to the full text of each case; (c) the report of each case (full opinion) with an electronic equivalent to a running



head in print, the case caption, the docket number, the county of origin of the action, the date of oral argument, the date of release, the panel, catchwords, headnotes with corresponding page ranges and hyperlinks to those page ranges, a statement of prior procedural history, a listing of counsel, the majority opinion, and any concurring or dissenting opinions, and hyperlinks between text and footnotes; (e) the report of each case (rescript opinion) with an electronic equivalent to a running head in print, the case caption, the docket number, the date of release, catchwords, the opinion, and a listing of counsel, and with hyperlinks between text and footnotes; (f) decisions pursuant to Appeals Court rule 1:28 (short notations of unpublished opinions); (g) any other orders; and (h) rules of the Appeals Court. Because the purpose of Advance Sheets is to provide permanent pagination in a timely manner and facilitate citation to cases, the Advance Sheets of the Massachusetts Appeals Court Reports in eBook format will indicate page breaks identical to those that will appear in the print bound volume. Each weekly download of the Advance Sheets of the Massachusetts Appeals Court Reports in eBook format shall be cumulative and shall contain a cumulative table of cases with hyperlinks to the full text of each case. Each weekly download of the Advance Sheets of the Massachusetts Appeals Court Reports in eBook format shall incorporate all amended, corrected, or supplemented pages to that point in the volume.

**3.06 Contents of Supreme Judicial Court Bound Volumes.** A Bound Volume of the Massachusetts Reports shall contain: (a) a hard bound cover and properly stamped spine with the title of the publication, the volume number, the year or years that the volume covers; a title page containing the words "Massachusetts Reports," the volume number, the title, the months of the year(s) that the volume covers, the name and title of the Reporter, the name of the Publisher, and the year of publication; (b) a reverse of the title page containing the name of the Publisher and the date of printing; (c) a listing of the Justices and the Attorney General of Massachusetts; (d) a statement of the order in which opinions are reported, the circumstances in which opinions are withdrawn, and occasional errata; (e) a table of cases; (f) the title of the volume on the top one-half of the first page of opinions reported; (g) the report of each case (full opinion) with a running head, the case caption, the county of origin of the action, the date of oral argument, the date of release, the panel, catchwords, headnotes with corresponding page ranges, a statement of prior procedural history, a listing of counsel, the majority opinion, and any concurring or dissenting opinions; (h) the report of each case (rescript opinion) with a running head, the case caption, the date of release, catchwords, the opinion, and a listing of counsel; (i) orders with respect to applications for leave to obtain further appellate review; (j) any other orders; (k) Opinions of the Justices, with catchwords, headnotes with corresponding page ranges, a statement of the history of the opinion, the text of the opinion, and a listing of the Justices subscribing to that opinion; (l) rules of the Supreme Judicial Court; (m) rules of civil procedure; (n) rules of criminal procedure; (o) rules of appellate procedure; (p) memorials; and (q) an index.

**3.07 Contents of Appeals Court Bound Volumes.** A Bound Volume of the Massachusetts Appeals Court Reports shall contain: (a) hard bound cover and properly stamped spine with the title of the publication, the volume number, and the year or years that the volume covers; a title page containing the words "Massachusetts Appeals Court Reports," the volume number, the title, the months of the year(s) that the volume covers, the name and title of the

Reporter, the name of the Publisher, and the year of publication; (b) a reverse of the title page containing the name of the Publisher and date of printing; (c) a listing of the Justices and the Attorney General of Massachusetts; (d) a statement of the order in which opinions are reported, the circumstances in which opinions are withdrawn, and occasional errata; (e) a table of cases; (f) the title of the volume on the top one-half of the first page of opinions reported; (g) the report of each case (full opinion) with a running head, the case caption, the docket number, the county of origin of the action, the date of oral argument, the date of release, the panel, catchwords, headnotes with corresponding page ranges, a statement of prior procedural history, a listing of counsel, the majority opinion, and any concurring or dissenting opinions; (h) the report of each case (rescript opinion) with a running head, the case caption, the docket number, the date of release, catchwords, opinion, and listing of counsel; (i) decisions pursuant to Appeals Court rule 1:28 (short notations of unpublished opinions); (j) any other orders; (k) rules of the Appeals Court; (l) memorials; and (m) an index.

## **PART 4 PRINTING AND BINDING AND ELECTRONIC DELIVERY REQUIREMENTS**

**4.01 Advance Sheets in eBook Format.** The Publisher, as part of its undertaking pursuant to this Contract, shall, from the material furnished to it by the Reporter, perform the composing, proofreading, correcting, and publication of the Advance Sheets in eBook format and shall provide and pay for all services and facilities necessary therefor in a prompt, proper, faithful, and workmanlike manner.

The following specifications for the publication and sale of Advance Sheets in eBook format are made a part of this Contract.

(a) Judicial opinions, together with headnotes, rules of court, and such supplementary material as the Reporter may direct by written instructions, shall be composed, proofread, corrected, made available for download, and sold by the Publisher in eBook form.

(b) The Publisher shall use default typefaces and fonts that are in substantial conformity to the Advance Sheets currently extant, unless the Reporter, by written instructions, shall direct otherwise. The dimensions, layout, and other aspects of the Advance Sheets in eBook format shall conform as much as possible to the Advance Sheets currently extant, unless the Reporter, by written instructions, shall direct otherwise.

(c) There shall be a separate download each week for the Advance Sheets of the Massachusetts Reports in eBook format and for the Advance Sheets of the Massachusetts Appeals Court Reports in eBook format. Each download shall be cumulative from the beginning of the volume, and shall include corrections, amendments, or supplementation to material previously made available for download. The Publisher shall indicate separately each week what new material is included in that week's download.

(d) The Advance Sheets in eBook format shall include indications of print page breaks that shall be permanent. There shall be separate pagination for each court, which shall be the permanent pagination for the final Bound Volume within which the material published in the Advance Sheets is to be placed. Pagination for each court shall be assigned by the Publisher and shall be in two or more numerical series to be established by the Reporter in a manner to assure that the parts of each Bound Volume appear in the following order: opinions with headnotes, rescript opinions, orders or summary dispositions, advisory opinions, rules, and memorials.

(e) The preparation of proofs necessary for the publication of the Advance Sheets in eBook format shall be the responsibility of the Publisher. The Publisher shall transmit such proofs to the Reporter in the manner provided by section 2.01. The Reporter shall, in the manner provided by section 2.01, review the proofs and approve all material for publication.

(f) Without the previous consent of the Reporter, expressed in writing, no advertising or

other material shall be included with any weekly download of Advance Sheets in eBook format.

(g) The Publisher, at its own expense, shall maintain on its premises equipment necessary for the publication of the Advance Sheets in eBook format that is compatible with the word processing systems employed by each of the Appellate Courts. Such equipment shall include such ancillary or linking equipment and have such capacity as is necessary to enable the Publisher to receive and compose the opinions of the appellate courts in a manner conforming to the time schedule and specifications for publication of Advance Sheets in eBook format, as set out in this Contract.

**4.02 Bound Volumes.** The Publisher, in the manner prescribed in this Contract and in the schedules appended hereto, shall do all typesetting, correcting, proofreading, and printing of the Bound Volumes, embodying sequential and chronological text, which Bound Volumes shall be identified by a designation in writing by the Reporter, all of the said Bound Volumes being additions to the two Series, and containing opinions of the Appellate Courts in cases to be decided during the period beginning July 3, 2019, and continuing through June 26, 2024, and also including any Bound Volume or Bound Volumes in process on June 26, 2024. The opinion text contained in the said Bound Volumes shall consist substantially of material contained in the Advance Sheets to be manufactured and sold by the Publisher pursuant to this Contract. A Bound Volume shall be deemed to be in process for the purpose of this paragraph if any material chronologically falling within such Bound Volume has been furnished to the Publisher by the Reporter with a direction in writing that it be placed in such Bound Volume.

(a) Each Bound Volume shall contain, in a chronological order to be established by written instructions of the Reporter, judicial opinions of one of the Appellate Courts and such other material as the Reporter may furnish to the Publisher for inclusion therein.

(b) The Publisher shall do all required work and provide and pay for all necessary labor, materials, and facilities in a prompt, proper, faithful, and workmanlike manner and in strict conformity with the provisions of this Contract and with the specifications contained herein.

(c) The type used and the style and arrangement of each Bound Volume shall be in substantial conformity to Volume 462 of the Massachusetts Reports, unless the Reporter shall, by written instruction, direct the Publisher otherwise.

(d) The paper stock used in each Bound Volume shall be that commercially known as Book Paper 50#, color Pub White A74, acid-free English finish law book paper, equal in quality to that used in Volume 462 of the Massachusetts Reports.

(e) Each Bound Volume shall contain approximately nine hundred sixty (960) pages of printed material. The size of page and dimensions of the printed matter thereon shall be in conformity to Volume 462 of the Massachusetts Reports.

(f) The binding of each Bound Volume of Massachusetts Reports shall be Optima Brown

of the same style, color, and character of workmanship as that of Volume 462 of the Massachusetts Reports and shall be of material as nearly uniform as possible with the said Volume 462. The markings on the spine shall conform to the general character of the markings on the said Volume 462. The binding of each Bound Volume of Massachusetts Appeals Court Reports shall be Record Buckram Green of the same style, color, and character of workmanship and of material as nearly uniform as possible with that of Volume 80 of the Massachusetts Appeals Court Reports, and the markings on the spine shall conform to the general character of the markings on the said Volume 80. With respect to Bound volumes of both Series, binding shall be according to the standards for library binding of the Library Binding Institute.

(g) The Publisher shall make good any defect, omission, or mistake in the performance of its work on the Bound Volumes covered by this Contract and, if requested by the Reporter to do so, shall publish a corrected version of any Bound Volume that contains substantial errors resulting from deficiencies in the Publisher's performance of its obligations under this Contract.

## PART 5 DISTRIBUTION AND INVENTORY REQUIREMENTS

**5.01 Advance Sheets in eBook Format.** The Publisher, as part of its undertaking pursuant to this Contract, shall make available for download Advance Sheets in eBook format and shall provide and pay for all services and facilities necessary therefor in a prompt, proper, faithful, and workmanlike manner.

(a) The Reporter shall transmit material to the Publisher and the Publisher shall, at or before the close of business on Friday of each week, make available to subscribers for download the cumulative Advance Sheets in eBook format, containing the text of all materials received from the Reporter through 2:00 P.M. Eastern time on Wednesday of that same calendar week.

(b) The Publisher shall make available to subscribers for download the first issue of the Advance Sheets in eBook format pursuant to this Contract no later than Friday, July 12, 2019. This issue shall include the opinions of the Appellate Courts released during the week ending Wednesday, July 10, 2019, together with such other material as may be included therein by the Reporter pursuant to this Contract.

(c) Unless the Reporter exercises his option to extend the contract, the Publisher shall make available to subscribers for download the last issue of the Advance Sheets in eBook format pursuant to this Contract on Friday, June 28, 2024. This issue shall include the opinions of the Appellate Courts released during the week ending Wednesday, June 26, 2024, together with such other material as may be included therein by the Reporter pursuant to this Contract.

(d) The Publisher shall furnish, without charge, a digital library containing the Advance Sheets in eBook format for use by the Supreme Judicial Court and the Appeals Court, with a maximum of one hundred fifty (150) licenses, or alternatively shall permit the Reporter to install the final .epub format files transmitted each week in accordance with section 2.01 of this Contract on the Appellate Courts' computer network for the use of the Appellate Courts without charge. The Publisher shall maintain a separate digital library containing the Advance Sheets in eBook format for use by the Trial Court of the Commonwealth, with up to one thousand (1,000) licenses. With respect to this latter digital library, the Publisher agrees to begin furnishing weekly issues of the Advance Sheets in eBook format upon request by the Trial Court, and to continue such service in effect for no less than sixty days, pending receipt of payment by the Commonwealth therefor. The Publisher also agrees to cumulate, insofar as feasible, its charges for such subscriptions in a single monthly invoice to the Central Law Book Account of the Trial Court, or to such other account as the Reporter shall designate in writing.

(e) The Publisher shall undertake and have full charge of the sale at retail to the general public of the Advance Sheets in eBook format; shall take upon itself the calling to the attention of the Bar of Massachusetts and others who may be interested in such sale, by circular or otherwise, that they are for sale by the Commonwealth; and shall sell them to the public at a price no greater than that established in the Publisher's response to RFP2019. Shipping and handling charges are included in the price stated.

(f) If the Publisher, as a result of the termination of this Contract or for any other reason, shall fail to furnish to any subscriber who has paid the subscription price the Advance Sheets in eBook format that such subscriber is thereby entitled to receive, the Publisher shall thereupon refund to such subscriber such portion of the subscription price as represents the portion of the subscription year during which the Publisher has so failed.

**5.02 Bound Volumes.** (a) The Publisher shall complete and deliver, at the times and in the manner provided in this Contract, the total shipment of copies of each Bound Volume no later than ninety (90) days following the delivery to the Publisher by the Reporter of the last installment of material to be included in such Bound Volume. With respect to any Bound Volume, the said ninety (90) days shall be enlarged by the number of days during which the Reporter retains any page proof of that Bound Volume submitted to him by the Publisher without returning to the Publisher a corrected copy thereof.

(b) The Publisher shall deliver all copies of all Bound Volumes to or as directed in written instructions by the Reporter. On completion of each Bound Volume, the Publisher shall furnish the Commonwealth with up to three hundred sixty-five (365) copies thereof which the Publisher shall distribute as follows: (i) the Publisher shall, within thirty (30) days following the date that binding is completed, distribute single copies to each of such State and municipal offices as the Reporter shall designate by written instructions. Such distribution shall be accomplished through the United States Postal Service or such other service as the Reporter shall approve by written instructions; (ii) the Publisher shall deliver the remainder of the said copies to the Commonwealth at such location or locations in the city of Boston, not exceeding four such locations, as the Reporter shall designate by written instructions.

(c) After delivery and distribution of the copies referred to in paragraph (a) of this section, the Publisher shall undertake and have full charge of the sale at retail to the general public of the remaining copies of each Bound Volume and of prior volumes of both Series; shall take upon itself the calling to the attention of the Bar of Massachusetts and others who may be interested in such sale, by circular or otherwise, that they are for sale by the Commonwealth; and shall sell them to the public at a price no greater than that established in the Publisher's response to RFP2019. Shipping and handling charges are included in the price stated.

(d) The Publisher shall, during the term of this Contract, print and keep in its inventory copies of all existing bound volumes of Massachusetts Reports and Massachusetts Appeals Court Reports in quantities sufficient to meet all reasonable current and future demands of persons seeking to purchase any of these Reports at the prices fixed by this Contract.

(e) The Publisher shall print and keep in its inventory sufficient additional copies of the Bound Volumes of these Reports as they are completed, above the number of Bound Volumes ordered by subscribers, to supply estimated future sales for a period of one (1) year.

(f) The Publisher shall reprint the Bound Volumes printed under this Contract, and Bound

Volumes printed under previous contracts, whenever the inventory shall fall below an estimated one (1) year's supply.

(g) The Publisher may substitute unbound volumes for some or all of the quantities of Bound Volumes, which the Publisher is required to maintain pursuant to this Contract, provided that the Publisher binds them in covers and bindings equivalent to the original Bound Volumes prior to sale.

(h) The Commonwealth shall own the Bound Volume inventory, and the Publisher shall store and maintain the inventory. The Publisher shall retain the sale price of each copy of any volume sold by it. The sum so retained by the Publisher shall constitute its entire compensation for its services and expenses as sales agent under this section. At the termination of the Contract, the Publisher shall cooperate with the Reporter and the new Publisher in transferring the inventory to the new Publisher.

(i) The Publisher shall transport and provide adequate storage facilities for existing inventories of volumes of both Series, published before the effective date of this Contract, as well as for future inventories of the volumes of both Series, within ten days following instructions in writing by the Reporter to do so. The Publisher shall retain such inventories during such time as the Reporter shall require, which time shall not extend beyond the completion of the Publisher's work under this Contract. At the time the Publisher takes possession or relinquishes possession of such inventories or any portion thereof, and at such other times as the Reporter shall determine, a physical count of all volumes shall take place, which shall be witnessed by representatives of both the Reporter and the Publisher.

(j) The storage facilities for the inventories of all volumes of reports shall be at such location or locations as the Reporter shall approve by written instructions.

## **PART 6 SPECIAL VOLUMES**

**6.01 Special Volumes for Retiring Judges.** The Publisher agrees to print and deliver to the Reporter and to others designated by the Reporter a special collection of an individual retiring judge's opinions at prices per volume no greater than those established in the Publisher's response to RFP2019 for an individual judge's own volumes (limit of six [6] volumes) and for all others requesting volumes.



## PART 7 OTHER MATTERS

**7.01 Customer Service.** The Publisher shall maintain a customer service toll-free telephone line or e-mail address for the purpose of answering customer service inquiries.

### **7.02 Insurance.**

(a) Performance Bond. The Publisher shall obtain a performance bond payable to the Commonwealth in the sum of \$50,000, with a surety company qualified to do business in Massachusetts. The bond shall be accompanied by the usual attesting certificate from the insurance company.

(b) Certificate of Insurance. Before taking possession of any existing inventories of volumes of both Series or any portion thereof, the Publisher shall procure insurance, with such carriers and upon such terms as, in the judgment of the Reporter, shall be sufficient to indemnify the Commonwealth for any loss of or damage to such inventories or such portion thereof, and the Publisher shall pay the premiums for such insurance in a timely manner when due.

**7.03 Advertising.** The Publisher may advertise and sell the Advance Sheets and Bound Volumes but, in doing so, should not state that the Reporter or the Commonwealth is in some way, by executing the Contract, endorsing the Publisher's products or services. The Reporter must be given the opportunity to approve any type of advertising or promotion of the sale of the Advance Sheets and Bound Volumes.

**7.04 Discretion of Reporter to Decide Questions.** The Reporter shall decide all questions that may arise (a) as to the quality, quantity, acceptability, fitness, and rate of progress of the work to be performed under this Contract and the schedules appended hereto, including all matters relating to the style, typesetting, proofreading, correction, printing, binding, and final publication of each Bound Volume, and (b) as to the interpretation of this Contract and the fulfillment hereof on the part of the Publisher, and his determination or decision in writing shall be final and conclusive. The determination and decision of the Reporter on any question referred to in the preceding sentence shall be a condition precedent to the right of the Publisher to receive any payment due from the Commonwealth under this Contract.

**7.05 Composition, Proofreading, and Manufacturing.** The Publisher should take special care in (a) assigning all composition work to the staff listed in the Publisher's response to the RFP; (b) assuring that the page proofs composed by the Publisher's staff receive an initial proofreading by a competent proofreader (the page proofs also will be thoroughly proofread by the Reporter's staff before publication in the Advance Sheets and, later, in the Bound Volumes); and (c) complying with all manufacturing assurances specified in the Publisher's response to the RFP. The Publisher should advise the Reporter in writing as to the names of all agents and subcontractors utilized in the manufacturing process.

**7.06 Inspection.** The right to inspect the Publisher's editorial, manufacturing, and

warehouse facilities, including any facilities occupied by the Publisher's subcontractors, is reserved by the Reporter.

**7.07 Subscriber Lists; Accounting.** When requested by the Reporter, the Publisher shall furnish to the Reporter complete listings of subscribers to the eBook Advance Sheets and the Bound Volumes. Each listing so furnished shall be brought up to date by the Publisher not less frequently than every three (3) months and, upon request of the Reporter, shall be made available to the Reporter. The listings so furnished shall be the property of the Commonwealth, and the Commonwealth may use said listings for any purpose without incurring any liability to the Publisher.

The Publisher shall furnish to the Reporter a report containing an accounting by the Publisher for copies of Bound Volumes sold during each calendar month not later than the last day of the month next following. The Publisher shall include in the report an accounting for any copies of volumes it has delivered but for which it has not received payment.

**7.08 Database.** The type setting or other composition necessary for the printing of the Bound Volumes and Advance Sheets under this Contract shall not be used nor permitted to be used, directly or indirectly, by the Publisher to publish further material for sale to the public without written permission of the Reporter.

**7.09 Disaster Recovery Plan.** The Publisher shall have in place, at the date of the commencement of the Contract term, a disaster recovery plan that will describe in detail alternative arrangements for composition, printing, binding, and distribution of the Massachusetts Reports and Appeals Court Reports in the event of a disaster that causes an interruption in the work of the Publisher or an agent or subcontractor of the Publisher.

**7.10 Failure to Meet Deadlines.** Any persistent failure to meet the Advance Sheet or Bound Volume publication deadlines that is attributable to the Publisher or an agent or subcontractor of the Publisher shall constitute a material breach of the Contract.

**7.11 Termination.** The Contract may be terminated whenever the Reporter, in his reasonably exercised judgment, determines that the Publisher has failed to perform the Contract or a substantial part thereof.

**7.12 Change in Publisher.** In the event the Reporter does not exercise the option to renew this Contract after June 26, 2024, or in the event the Publisher is not awarded the Contract to publish the Reports after June 26, 2024, or in the event this Contract is terminated at any time prior to June 26, 2024, the Publisher shall cooperate fully with any Publisher selected by the Reporter to publish the Reports, including the transfer of any existing book inventory and all of the type setting or other composition necessary for the printing of the Bound Volumes and publication of the Advance Sheets under this Contract.

**7.13 Effective Notice.** Any notice required by this Contract to be given by the

Reporter to the Publisher and any determination, direction, instruction, or decision which the Reporter is empowered to make under this Contract shall be effective and binding on the Publisher if contained in a writing sent by first class United States mail, postage prepaid, addressed to the Publisher at 701 East Water Street, Charlottesville, VA 22902 or, alternatively, at such other address as the Publisher may hereafter specify by a notice in writing delivered to the Reporter and received by him at the Massachusetts Supreme Judicial Court, John Adams Courthouse, 1 Pemberton Square, Suite 2500, Boston, Massachusetts 02108-1750. Any notice required or permitted by this Contract to be given by the Publisher to the Reporter shall be effective if contained in a writing delivered to the Reporter and received by him at the Massachusetts Supreme Judicial Court, Office of the Reporter of Decisions, John Adams Courthouse, 1 Pemberton Square, Suite 2500, Boston, Massachusetts 02108-1750.

**7.14 Integration Clause.** This Agreement, including RFP2019 and Appendices A, B, C, and D attached, and the Publisher's response to RFP2019, contains the entire agreement of the parties with respect to the subject matter of this Agreement, and supersedes all prior negotiations, agreements, and understandings with respect thereto. This Agreement may only be amended by a written document duly executed by all parties.