

The Supreme Court of Ohio

AGREEMENT FOR SERVICES

By this Agreement for Services (“Agreement”), entered into by and between the Supreme Court of Ohio (“Court”) and West Publishing Corporation, dba West, a Thomson Reuters business (“Contractor”), both parties agree as follows:

Section 1: Statement of Work and Confidentiality

A. In accordance with this Agreement and supplemental exhibits listed below, Contractor shall serve as the Official Publisher of the Ohio Official Reports from January 1, 2021, through December 31, 2027. Contractor shall be responsible for all tasks, personnel, and materials required for the production and distribution of the bound volumes of Ohio St.3d, biweekly advance sheets, and Galleys as described herein. The following exhibits are attached hereto and are incorporated by reference as if fully rewritten herein, but only to the extent that they are not inconsistent with the terms of this Agreement:

1. Exhibit 1: Statement of Work (“SOW”)
2. Exhibit 2: RFP # 2021-02 and any subsequent addendums issued;
3. Exhibit 3: Contractor’s proposal response to RFP # 2021-02.

B. Contractor agrees to perform promptly any work reasonably requested of it within the scope of this Agreement. This work is to be performed in a timely and professional manner, in accordance with accepted and established practices for the type of work performed under this Agreement.

C. Contractor agrees not to disclose to any person, other than an employee of the Court, any documents marked confidential or proprietary or any confidential or proprietary information that is obtained through, or results from, work performed under this Agreement.

Section 2: Work Procedures

Contractor agrees to coordinate all aspects of the work referenced in the SOW with the Reporter of Decisions, Douglas M. Nelson or his designee. Contractor agrees to abide by the project schedule as agreed upon by the Court and Contractor and as identified in the SOW and all amendments to the schedules established by the SOW.

Section 3: Effective Date and Contract Term Default and Termination

A. This Agreement shall take effect January 1, 2021. It shall remain in effect until December 31, 2027.

B. The Court reserves the right to extend this Agreement for two additional years, pursuant to two separate one-year renewal increments.

Section 4: Default and Termination

A. If the Court determines that it no longer requires the services as defined herein, the Court may terminate this Agreement for its convenience after issuing a ninety-day written notice to Contractor.

B. Except as provided in Section 5 of this Agreement, Contractor shall be in default under this Agreement if either of the following occurs and is not remedied within five business days of the date of written notice of any such event given by the Court: (1) Contractor fails to timely perform or observe any of its obligations under this Agreement, or (2) Contractor withdraws from the project and cannot provide a replacement acceptable to the Court.

Section 5: Force Majeure

A. As used in this section, “force majeure” means acts of God, such as lightning, earthquakes, fires, storms, hurricanes, tornadoes, floods, washouts, droughts, and any other severe weather or natural calamity; epidemics, pandemics, restraint of government and people, explosions, war, strikes, and other like events; or any other cause that could not be reasonably foreseen in the exercise of ordinary care and that is beyond the reasonable control of the party.

B. If either party is delayed in or prevented from performing or observing any of its obligations under this Agreement, other than a payment obligation, because of force majeure, the following shall apply:

1. If delayed, the time for performance or observance of the obligation shall be extended for a period equal to the time lost because of the force majeure event;
2. If prevented, the party shall be excused from performing or observing the obligation, to the extent the party took all commercially reasonable steps to mitigate or avoid the effects of the force majeure event.

C. A party that is delayed in or prevented from performing or observing any of its obligations under this Agreement because of force majeure shall provide the other party with prompt written notice.

Section 6: Confidentiality and Public Records Requests

Contractor understands all documents contained or incorporated into this Agreement or created pursuant to this Agreement are presumed to be public records. The Court is required to allow the public to inspect and obtain copies of public records in accordance with Rules 44 through 47 of the Rules of Superintendence for the Courts of Ohio. However, if Contractor believes a document contains trade-secret information and submits the legal basis for that determination, the Court may restrict public inspection and copying of the document. In weighing whether information is a trade

secret that may be protected from disclosure under Rules 44 through 47 of the Ohio Rules of Superintendence and *State ex rel. Seballos v. School Employees Retirement Sys.*, 70 Ohio St.3d 667 (1994), the definition of “trade secret” in R.C. 1333.61(D) and the factors described in *State ex rel. The Plain Dealer v. Ohio Dept. of Ins.*, 80 Ohio St.3d 513 (1997) should be considered.

Section 7: Change or Modification

This Agreement constitutes the entire agreement between the parties and any changes or modifications shall be made in writing, signed by the parties, and attached to this Agreement. Contractor may not assign any rights, duties, or obligations described in this Agreement without the written approval of the Court.

Section 8: Construction

This Agreement shall be construed and interpreted and the rights of the parties determined in accordance with the laws of the State of Ohio.

Section 9: Forum and Venue

All actions arising out of this Agreement shall be instituted in a court of competent subject-matter jurisdiction in Franklin County, Ohio.

Section 10: Severability

Whenever possible, each provision of this Agreement shall be interpreted in such a manner as to be effective and valid under applicable law, but if any provision of this Agreement is held to be prohibited by or invalid under applicable law, such provision shall be ineffective only to the extent of such prohibition or invalidity, without invalidating the remainder of such provisions of this Agreement.

Section 11: Responsibility for Claims

Contractor will indemnify and hold harmless the Court from liability for injury, loss, or damage to third parties or their property occurring during performance of activities under this Agreement to the extent caused by Contractor’s negligence or willful misconduct. Further, the Court shall not be responsible for injury or damage to Contractor’s premises caused by third parties, including guests of the event. By operation of Ohio law, the Court cannot and therefore does not indemnify Contractor in any way.

Section 12: Warrant of Contractor Regarding R.C. 9.24

Contractor warrants that it is not subject to an “unresolved” finding for recovery under R.C. 9.24. If the warranty is deemed to be false, this Agreement is void *ab initio* and Contractor must immediately repay to the Court any funds paid under this Agreement.

Section 13: Resolution of Disputes

The Court and Contractor recognize that litigation is an expensive, resource-consuming process for resolving business disputes. Therefore, the Court and Contractor agree that if any controversy or dispute arises out of or relates to this Agreement, or any breach of this Agreement, they will attempt in good faith to settle the dispute expeditiously through mediation within thirty days. The Court and Contractor shall attempt to mutually agree as to the provider of neutral services.

Section 14: Independent Contractor

Contractor acknowledges and agrees with the Court that Contractor is an independent contractor and not a public employee pursuant to R.C. 145.01 et. seq.

Section 15: Applicable Policies

In the work performed under this Agreement, Contractor agrees to comply with the Court's policies on Equal Employment Opportunity (Adm. P. 5), Discrimination and Sexual Harassment (Adm. P. 24(A)), and Drug and Alcohol Free Workplace (Adm. P. 22). Copies of these policies are attached at Appendix A.

Section 16: Miscellaneous

- A. *Counterpart Signatures.* This Agreement may be executed by electronic signature and in one or more counterparts, each of which shall be deemed an original and all of which shall constitute one and the same Agreement.
- B. *Subsequent Employment.* This Agreement does not create or promise an express or implied contract of future employment with the Court.
- C. *Agreement Controlling.* Where there is a conflict between the terms of this Agreement and the incorporated documents, this Agreement shall control.
- D. *Signatory Authority.* The parties to this Agreement warrant that the signatories below have full authority to bind their respective entities to the terms of this Agreement.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date of the last signature below.

THE SUPREME COURT OF OHIO



Jeffrey C. Hagler

Address: 65 South Front Street
Columbus, Ohio 43215-3431
Telephone Number: 614-387-9500

12/15/2020
Date

WEST PUBLISHING CORPORATION



John S. Nelson, Director

Address: 610 Opperman Drive, D6-N1900
Eagan, MN 55123
Telephone Number: 763-326-4505

12/16/2020
Date

Exhibit 1

Statement of Work

Throughout the term of the Agreement, including any supplemental renewals, Contractor shall be responsible for all tasks, personnel, and materials required for the production and distribution of the bound volumes of the Ohio Official Reports, biweekly advance sheets, and Galleys as described herein.

1. Preparation and Publication of the Ohio Official Reports

- 1.1 Materials published within the Ohio Official Reports shall include, but are not limited to: opinions, entries, announcement lists, proposed rules, final rules, notices, bar-examination results, lists of judges, tables of contents, tables of cases, tables of rules and statutes, tables of orders announced, indexes, diagrams, charts, digests, memorials, addresses, reports, photographs (both color and black-and-white), and other content as specified by the Court's Reporter of Decisions, Douglas M. Nelson, or his designee.
- 1.2 Unless otherwise determined by the Court, the current series designation of the Ohio Official Reports, "Ohio St.3d", shall be maintained. Bound volumes of the Ohio Official Reports produced after January 1, 2021, shall be numbered consecutively to, and as a continuation of, the current bound volumes. The exact numbering of the initial volumes published under the Agreement will be determined in December 2020.
- 1.3 Each bound volume of the Ohio Official Reports shall contain approximately nine-hundred pages. Contractor and the Court shall make all reasonable effort to produce individual bound volumes that contain approximately the same number of pages as to give the bound volumes a uniform appearance. All other dimensions shall also equal the current bound volumes of the Ohio Official Reports and incorporate the current layouts, both inside and out.
- 1.4 Each page shall be in a single column format (approximately 30 picas wide) with text, excluding footnotes. The font type shall be Century Expanded BT, size 10.
- 1.5 To avoid confusion with official syllabus paragraphs, headnotes to accompany the text of Supreme Court opinions shall not be published; however, headnotes may be compiled as a digest in advance-sheets issues and bound volumes.
- 1.6 Material specifications for the Ohio Official Reports shall be as follows:
 - a. Hardbound cover material: ROXITE F BUCK VLM GRAY 67198
 - b. Foils: FOIL BLACK HIGH GLOSS P900GX, FOIL RED PANEL P416GX, FOIL GOLD S145-RFX STANDARD
 - c. Paper: Orion Matte 60# paper
 - d. Binding: Sewn (Stitched)

2. Preparation and Publication of Advance Sheets

- 2.1 Advance sheets shall be published on a biweekly cycle.
- 2.2 Materials shall be published in the specific issue of the advance sheets as directed by the Reporter.
- 2.3 The same page numbers used in the advance sheets shall be maintained for the pages of the corresponding Ohio Official Reports bound volume. Advance-sheets pages shall be in the same single-column, point-size, and style formats as the Ohio Official Reports bound volumes. The font type shall be Century Expanded BT, size 10.
- 2.4 Material specifications for the advance sheets shall be as follows:
 - a. Advance Sheet cover stock: 17 X 11 NEENAH GRAY 110# INDEX U by Neenah and use of Black and Blue digital ink
 - b. Paper Manufacturer: Twin Rivers
 - c. Brand: Frabrite 76
 - d. Basis Weight: 27#
 - e. PPI: 904
 - f. Brightness: 76
 - g. Opacity: 82

3. Galleys and Their Correction

- 3.1 All documentation to be included in Galleys shall be exchanged between the Court and Contractor in an electronic format. If Contractor cannot provide or accept materials electronically, the materials shall be exchanged in hard copy at Contractor's expense.
- 3.2 Materials that are provided to Contractor to be included in the Ohio Official Reports shall be returned to the Reporter's Office electronically within two weeks of their receipt.
- 3.3 The Court will review and send the corrected Galleys to Contractor in accordance with timelines established by the Reporter's Office and Contractor. The content will then be published in the advance sheets in the issue designated by the Reporter of Decisions. Generally, opinions shall be published in chronological order with lower-numbered cases published before higher-numbered cases, unless the Reporter of Decisions requires a different publication order.
- 3.4 Contractor's staff shall assist in the proofreading and spellchecking of materials.

4. Reservation of Electronic Rights and Copyright

- 4.1 At Contractor's expense, Contractor shall obtain, and maintain throughout the life of the Agreement and any subsequent renewals, a copyright for The Supreme Court of Ohio to

be documented in all materials properly copyrightable by the state. The Court claims a copyright in all materials that are properly copyrightable that are provided to Contractor for inclusion in the Ohio Official Reports. A notice of copyright for The Supreme Court of Ohio shall be prominently placed in each bound volume and issue of the advance sheets. The foregoing obligations are subject to acceptance of the State's copyright claims by the U.S. Copyright Office. Contractor may copyright in its own name permissible enhancements that Contractor makes, such as tables, indexes, and digests.

4.2 The Court reserves the right to electronically transmit and post its materials and those of other Ohio courts (without any publisher's enhancement) via the Court's website and all other means. Materials posted to the Court's website may be maintained indefinitely as a publicly accessible database.

5. Additional Requirements

5.1 No advertisements shall be permitted in the Ohio Official Reports or advance sheets, except as permitted by the Court in writing.

5.2 Contractor shall use its U.S.P.S facility to distribute all materials pursuant to the Agreement.

5.3 Contractor shall maintain the confidentiality of all materials provided to it under the Agreement, before the release of any official publication or other dissemination.

5.4 Contractor shall maintain an adequate inventory of published Ohio Official Reports for three years, and advance sheets for three months, for the purpose of meeting reasonably anticipated demand for these products.

5.5 Contractor shall provide ongoing support through its Global Content Operations department, Monday – Friday, 9:00 a.m. – 5:00 p.m. EST. Additionally, Contractor shall provide, maintain, and monitor a dedicated e-mail address for Court staff as an alternate method for receiving ongoing support and maintaining communication with Contractor.

5.6 Both the Ohio Official Reports and advance sheets shall be made available for purchase by outside parties upon request. For the first year of the Agreement, costs shall be as follows:

Ohio Official Reports (Ohio St.3d)	\$68.10 per volume
Advance Sheets	\$158.00 per annual subscription

Following the first year of the Agreement, the purchase price of these materials shall be as provided in paragraph 5.7 of the Agreement.

All costs are exclusive of tax and transportation.

5.7 Following the first year of the Agreement, the purchase price for both the Ohio Official Reports and advance sheets may be modified to account for changes in costs to the

materials or manufacturing processes. A minimum of thirty days before the implementation of any proposed cost modifications, Contractor shall provide written notice to the Court of its intent. The notice shall include the updated purchase price, reasons supporting the update, and the date on which the updated price will take effect. The purchase price for either the Ohio Official Reports or advance sheets shall not exceed the current market price for such goods. If the Court determines that the proposed purchase price of the materials exceeds the current market price for such goods, the Court reserves the right to determine the purchase price of said materials.

5.8 Contractor shall provide the Court with the following items:

- a. [REDACTED] copies of each bound volume of Ohio St.3d;
- b. [REDACTED] copies of each advance sheet;
- c. [REDACTED] copies of annotated Ohio Revised Code volumes and updates;
- d. [REDACTED] copies of the annual Ohio Rules of Court (Federal);
- e. [REDACTED] copies of the annual Ohio Rules of Court (State).

All materials shall be mailed to the Court, or to any individual addressee identified by the Court.

5.9 Contractor may produce editions of the Ohio Official Reports in mediums other than paper for its profit, but this right is not exclusive. Contractor shall not designate any such edition as “official” unless approved by the Court’s Reporter of Decisions or his designee.