



Judicial Council of California
ADMINISTRATIVE OFFICE OF THE COURTS

FINANCE DIVISION

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TO: POTENTIAL PROPOSERS

FROM: Administrative Office of the Courts
Office of the General Counsel

DATE: August 9, 2006

SUBJECT/PURPOSE OF MEMO: REQUEST FOR PROPOSALS
OFFICIAL PUBLISHER OF JUDICIAL COUNCIL JURY INSTRUCTIONS

ACTION REQUIRED: You are invited to review and respond to the attached Request for Proposals (“RFP”), as posted at <http://www.courtinfo.ca.gov/reference/rfp/>:
Project Title: Official Publisher of Judicial Council Jury Instructions
RFP Number: OGC-0206-SS

SOLICITATIONS MAILBOX: solicitations@jud.ca.gov

DUE DATE & TIME FOR SUBMITTAL OF QUESTIONS: Deadline for submittal of questions pertaining to solicitation document is:
1:00 p.m. on August 18, 2006

SUBMISSION OF PROPOSALS: Proposals should be sent to:
Judicial Council of California
Administrative Office of the Courts
Attn: Nadine McFadden, RFP #OGC-0206-SS
455 Golden Gate Avenue, 7th Floor
San Francisco, CA 94102

DUE DATE & TIME FOR SUBMITTAL OF PROPOSALS: Proposals must be received by: **1:00 p.m. on August 25, 2006**

RFP TITLE: OFFICIAL PUBLISHER OF JUDICIAL JURY INSTRUCTIONS

RFP NUMBER: OGC-0206-SS

1.0 GENERAL INFORMATION

1.1 Background

The Judicial Council of California, chaired by the Chief Justice of California, is the chief policy making agency of the California judicial system. The California Constitution directs the Council to improve the administration of justice by surveying judicial business, recommending improvements to the courts, and making recommendations annually to the Governor and the Legislature. The Council also adopts rules for court administration, practice, and procedure, and performs other functions prescribed by law. The Administrative Office of the Courts (AOC) is the staff agency for the Council and assists both the Council and its chair in performing their duties.

1.2 The Advisory Committees on Jury Instructions

The Judicial Council's Task Force on Jury Instructions has written, and the advisory committees continue to update, comprehensive sets of standard civil and criminal jury instructions, with the goal that they that would both accurately state the law and would be more easily understandable to jurors. The civil instructions (CACI) were first published in September 2003 and the criminal instructions (CALCRIM) were published in January 2006. The Advisory Committee on Civil Jury Instructions authored three updates to the CACI instructions in 2004 and two updates in 2005. These updates were approved by the Judicial Council after circulation for public comment. CALCRIM will be updated by the Advisory Committee on Criminal Jury Instructions beginning in 2006. It is anticipated that the civil and criminal instructions will be updated twice a year going forward. The instructions are not mandatory; however, their use is "strongly encouraged" (see Cal. Rules of Court, rule 855).

2.0 RFP'S PURPOSE AND ATTACHMENTS

2.1 The Judicial Council seeks a contractor to be the official publisher of Judicial Council Jury Instructions beginning in December 2006. The term of the Judicial Council's agreement with the current official publisher of the jury instructions (LexisNexis/ Matthew Bender & Co., Inc.) will expire in December 2006, necessitating the issuance of this RFP. No minimum amount of work is guaranteed. The official publisher will be selected for a potential five (5) year term to publish the Judicial Council's jury instructions. The contract would be awarded for two (2) years, with up to three (3) successive one-year options. The publisher would be entitled to call itself the official publisher of the instructions.

2.2 Included as part of this RFP are the following attachments:

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- 2.2.1 Attachment 1, Administrative Rules Governing Request for Proposals. Proposers shall follow the rules, set forth in Attachment 1, in preparation of their proposals.
- 2.2.2 Attachment 2, Contract Terms. The contract with the successful firm will be signed by the parties on a State of California Standard Agreement form and will include terms appropriate for this project. Terms and conditions for the requested services are attached as Attachment 2.
- 2.2.3 Attachment 3, Vendor's Acceptance of the RFP's Contract Terms. Proposers must either indicate acceptance of Contract Terms, as set forth in Attachment 2, or clearly identify exceptions to the Contract Terms, as set forth in Attachment 2. If exceptions are identified, then proposers must also submit (i) a red-lined version of Attachment 2, that clearly tracks proposed changes to this attachment, and (ii) written documentation to substantiate each such proposed change.

3.0 SCOPE OF SERVICES

- 3.1. Services are expected to be performed beginning December 2006 and continuing to December 2008. The contract would be awarded for two (2) years, with possibility of three (3) successive one-year options, exercised at the AOC's discretion.
- 3.2. The work to be performed is described in detail in Attachment 2.
- 3.3 Rights of Official Publisher
 - 3.3.1 The official publisher may call itself the "Official Publisher of the Judicial Council Jury Instructions."
 - 3.3.2 The official publisher may use the designation "Official Publisher of the Judicial Council Jury Instructions" in the production of the instructions either electronically or in hard copy and directly or through a licensing agreement with a third party.
 - 3.3.3 The official publisher may use the designation "Official Publisher of the Judicial Council Jury Instructions" in advertising.
 - 3.3.4 The official publisher may sell publications and license the integrated software program to the public.

4.0 EVALUATION OF PROPOSALS

Proposals will be evaluated by the AOC using the following criteria, in order of descending priority:

- 4.1 Past record of performance on contracts with (i) the AOC, other government agencies or public bodies, and (ii) with private industry, including such factors as quality of work, ability to meet schedules, cooperation, responsiveness, and other managerial and attitudinal considerations.
- 4.2 Compliance with solicitation requirements including Contract Terms.
- 4.3 Capacity to provide services for prolonged period of time.
- 4.4 Project management.
- 4.5 Credentials of staff to be assigned to the project.
- 4.6 Percentage royalties for the different formats.
- 4.7 Quality of print publication (paper, cover, binding).

5.0 SPECIFICS OF A RESPONSIVE PROPOSAL

The following information shall be included as part of the proposal:

- 5.1 Past record of performance on contracts with (i) the AOC, other government agencies or public bodies, and (ii) with private industry, including such factors as quality of work, ability to meet schedules, cooperation, responsiveness, and other managerial and attitudinal considerations.
 - Provide a list of at least five (5) references, covering at least the last three (3) years, in private industry as well as public entities, to document the quality of past performance. Include for each contact information for a knowledgeable person who may be contacted to establish the proposer's and its team's experience and qualifications.
- 5.2 Compliance with solicitation requirements including Contract Terms
 - Complete and submit Attachment 3, Vendor's Acceptance of the RFP's Contract Terms. If changes to Attachment 2, Contract Terms, are proposed, then also submit red-lined version of Attachment 2, as well as written justification supporting any such proposed changes.
 - The quality of the proposal will be evaluated in terms of how it complies with the Contract Terms and the other RFP requirements. Preference will be given to the proposal with the fewest or least significant proposed changes, omissions, deviations, alternatives, or exceptions to the Contract Terms and other RFP requirements.

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- Provide the following information:
 - Proposer's point of contact for matters pertaining to the solicitation process, including name, address, telephone and fax numbers.
 - Proposer's corporate name and state incorporated, including executive office address.
 - Proposer's point of contact for notices, should a contract be awarded, including name, title, address, and telephone number.
 - Name of the CD-ROM on which Proposer will publish CACI.
 - Name of the CD-ROM on which Proposer will publish CALCRIM.
 - Name of Proposer's Interactive Computer Program.
 - Name and URL of Proposer's Commercial Online Database (if any).

5.3 Capacity to provide services for an extended period of time.

- Provide an audited or reviewed profit and loss statement and balance sheet, in accordance with reporting requirement of the American Institute of Certified Public Accountants (AICPA), for the last three (3) years.

5.4 Project management.

- Describe the proposer's project management approach, based upon its organization, and how it will efficiently and effectively accomplish project goals.
- Describe the approach to working and communicating effectively with all levels of personnel, including persons within the project team, participating locations, managers, staff, and employees, and support with past examples. Describe plan to communicate effectively with the AOC during its business hours.
- Describe the management approach to coordinate the work of those involved with the project.

5.5 Credentials of staff to be assigned to the project.

- Describe assigned staff's knowledge of the requirements necessary to complete this project. Describe the background and experience of

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assigned staff, as well as each individual's ability and experience in conducting the proposed activities.

5.6 Percentage royalties for the different formats.

- Identify the percentages of net revenues that would be payable to the AOC for book/CD-ROM/integrated software and commercial online database (if applicable) formats. The required royalty types are specified in Exhibit B of Attachment 2.
- Special consideration may be given to a publisher who agrees to pay the AOC an advance on royalties. Identify the advance on royalties that would be payable to the AOC during the first and subsequent years of the Agreement.

5.7 Quality of print publication (paper, cover, binding).

- Include specifications regarding the paper, cover, and binding of the print publications to be created. Provide a sample publication created using these specifications.

6.0 SUBMITTAL OF PROPOSALS

6.1 Responsive proposals should provide straightforward, concise information that satisfies the requirements noted in item 5.0, above. Expensive bindings, color displays, and the like are not necessary or desired. Emphasis should be placed on conformity to the AOC's instructions, requirements of this RFP, and completeness and clarity of content.

6.2 Proposers will submit one (1) original and four (4) copies of the proposal signed by an authorized representative of the company, including name, title, address, and telephone number of one individual who is the responder's designated representative.

6.3 Proposals must be delivered to the individual listed under Submission of Proposals, as set forth on the cover memo of this RFP.

6.4 Only written responses will be accepted. Responses should be sent by registered or certified mail or by hand delivery.

6.5 In addition to submittal of the originals and copies of the proposals, as set forth in item 6.2, above, proposers are also required to submit an electronic version of the entire proposal (excluding physical specimens and financial statements) on CD-ROM.

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7.0 RIGHTS

The AOC reserves the right to reject any and all proposals, in whole or in part, as well as the right to issue similar RFPs in the future. This RFP is in no way an agreement, obligation, or contract and in no way is the AOC or the State of California responsible for the cost of preparing the proposal. One copy of a submitted proposal will be retained for official files and becomes a public record.

8.0 ADDITIONAL REQUIREMENTS

It may be necessary to interview prospective service providers to clarify aspects of their submittal. If conducted, interviews will likely be conducted by telephone conference call. The AOC will notify prospective service providers regarding the interview arrangements.

9.0 CONFIDENTIAL OR PROPRIETARY INFORMATION

The Administrative Office of the Courts' policy is to follow the intent of the California Public Records Act (PRA). If a vendor's proposal contains material noted or marked as confidential and/or proprietary that, in the AOC's sole opinion, meets the disclosure exemption requirements of the PRA, then that information will not be disclosed pursuant to a request for public documents. If the AOC does not consider such material to be exempt from disclosure under the PRA, the material (including any samples provided) will be made available to the public, regardless of the notation or markings. If a vendor is unsure if its confidential and/or proprietary material meets the disclosure exemption requirements of the PRA, then it should not include such information in its proposal. Samples provided will not be returned.

ATTACHMENT 1
ADMINISTRATIVE RULES GOVERNING REQUESTS FOR PROPOSALS

A. General

1. This solicitation document, the evaluation of proposals, and the award of any contract shall conform with current competitive proposing procedures as they relate to the procurement of goods and services. A vendor's proposal is an irrevocable offer for sixty (60) days following the deadline for its submission.
2. In addition to explaining the Administrative Office of the Courts' (AOC's) requirements, the solicitation document includes instructions which prescribe the format and content of proposals.

B. Communications with AOC Regarding the RFP

1. Except as specifically addressed elsewhere in this RFP, including directions pertaining to the submittal of Proposals, vendors shall use the "Solicitations Mailbox," identified on the cover memo of this Request for Proposals (solicitations@jud.ca.gov), for any communications with the AOC regarding the RFP and award. Vendors must include the RFP Number in subject line of any communication.

C. Questions Regarding the RFP

1. If a vendor's question relates to a proprietary aspect of its proposal and the question would expose proprietary information if disclosed to competitors, the vendor may submit the question via email to the Solicitation Mailbox, identified on the cover memo of this RFP, conspicuously marking it as "CONFIDENTIAL." With the question, the vendor must submit a statement explaining why the question is sensitive. If the AOC concurs that the disclosure of the question or answer would expose proprietary information, the question will be answered, and both the question and answer will be kept in confidence. If the AOC does not concur regarding the proprietary nature of the question, the question will not be answered in this manner and the vendor will be notified.
2. Vendors interested in responding to the solicitation may submit questions via email to the Solicitation Mailbox, identified on the cover memo of this RFP, on procedural matters related to the RFP or requests for clarification or modification of this solicitation no later than the due date and time, set forth on the RFP cover memo. If the vendor is requesting a change, the request must set forth the recommended change and the vendor's reasons for proposing the change. Questions or requests submitted after the due date and time will not be answered. Without disclosing the source of the question or request, a copy of

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the questions and the AOC's responses will be posted on the Courtinfo website (<http://www.courtinfo.ca.gov/reference/rfp/>).

D. Errors in the RFP

1. If, prior to the date fixed for submission of proposals, a vendor discovers any ambiguity, conflict, discrepancy, omission, or error in this solicitation document, the vendor shall immediately notify the AOC via email to the Solicitation Mailbox, identified on the cover memo of this RFP and request modification or clarification of the RFP. Without disclosing the source of the request, the AOC may modify the solicitation document prior to the date fixed for submission of proposals by posting an addendum to the solicitation on the AOC's web site "Courtinfo" (<http://www.courtinfo.ca.gov/reference/rfp/>)
2. If a vendor fails to notify the AOC of an error in the RFP known to vendor, or an error that reasonably should have been known to vendor, prior to the date fixed for submission of proposals, vendor shall propose at its own risk. Furthermore, if vendor is awarded the agreement, vendor shall not be entitled to additional compensation or time by reason of the error or its later correction.

E. Addenda

1. The AOC may modify the solicitation document prior to the due date and time for submission of proposals, as set forth in the RFP cover memo, by posting an addendum on the Courtinfo website (<http://www.courtinfo.ca.gov/reference/rfp/>).
2. If any vendor determines that an addendum unnecessarily restricts its ability to propose, the vendor shall immediately notify the AOC via email to the Solicitation Mailbox, identified on the cover memo of this RFP (solicitations@jud.ca.gov), no later than one (1) day following issuance of the addendum.

F. Withdrawal and resubmission/modification of proposals

1. A vendor may withdraw its proposal at any time prior to the deadline for submitting proposals by notifying the AOC in writing of its withdrawal. The notice must be signed by the vendor. The vendor may thereafter submit a new or modified proposal, provided that it is received at the AOC no later than the proposal due date and time listed on the cover letter of this RFP. Modifications offered in any other manner, oral or written, will not be considered. Proposals cannot be changed or withdrawn after the proposal due date and time listed on the coversheet of this RFP.

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G. Errors in the Proposal

1. If errors are found in a proposal, the AOC may reject the proposal; however, AOC may, at its sole option, correct arithmetic or transposition errors or both on the basis that the lowest level of detail will prevail in any discrepancy. If these corrections result in significant changes in the amount of money to be paid to the vendor (if selected for the award of the agreement), the vendor will be informed of the errors and corrections thereof and will be given the option to abide by the corrected amount or withdraw the proposal.

H. Rights to Reject or Award Proposals

1. The AOC may reject any or all proposals and may or may not waive an immaterial deviation or defect in a proposal. The AOC's waiver of an immaterial deviation or defect shall in no way modify the solicitation document or excuse a vendor from full compliance with solicitation document specifications. The AOC reserves the right to accept or reject any or all of the items in the proposal, to award the contract in whole or in part and/or negotiate any or all items with individual vendors if it is deemed in the AOC's best interest. Moreover, the AOC reserves the right to make no selection if proposals are deemed to be outside the fiscal constraint or against the best interest of the State of California.
2. In addition to the right to reject any and all proposals, in whole or in part, the AOC also reserves the right to issue similar RFPs in the future. This RFP is in no way an agreement, obligation, or contract and in no way is the AOC or the State of California responsible for the cost of preparing the proposal. One (1) copy of a submitted proposal will be retained for official files and becomes a public record.
3. Vendors are specifically directed NOT to contact any AOC or its personnel or consultants for meetings, conferences, or discussions that are specifically related to this RFP at any time prior to any award and execution of a contract. Unauthorized contact with any AOC or its personnel or consultants may be cause for rejection of the vendor's proposal.

I. Evaluation process

1. An evaluation team will review in detail all proposals that are received to determine the extent to which they comply with solicitation document requirements.
2. If a proposal fails to meet a material solicitation document requirement, the proposal may be rejected. A deviation is material to the extent that a response

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is not in substantial accord with solicitation document requirements. Material deviations cannot be waived. Immaterial deviations may cause a proposal to be rejected.

3. Proposals that contain false or misleading statements may be rejected if in the AOC's opinion the information was intended to mislead the state regarding a requirement of the solicitation document.
4. During the evaluation process, the AOC may require a vendor's representative to answer questions with regard to the vendor's proposal. Failure of a vendor to demonstrate that the claims made in its proposal are in fact true may be sufficient cause for deeming a proposal non-responsive.

J. Protest procedure

1. General

Failure of a vendor to comply with the protest procedures set forth in this Section J, will render a protest inadequate and non-responsive, and will result in rejection of the protest.

2. Prior to Submission of Proposal

An interested party that is an actual or prospective proposer with a direct economic interest in the procurement may file a protest based on allegedly restrictive or defective specifications or other improprieties in the solicitation process that are apparent, or should have been reasonably discovered prior to the submission of a proposal. Such protest must be received prior to the due date and time for submittal of proposals, as set forth on the RFP cover memo. The protestor shall have exhausted all administrative remedies discussed in this Attachment 1 prior to submitting the protest. Failure to do so may be grounds for denying the protest.

3. After Notice of Intent to Award/Not to Award

A vendor submitting a proposal may protest the AOC's intent to award based upon allegations of improprieties occurring during the proposal evaluation or selection period if it meets all of the following conditions:

- a. The vendor has submitted a proposal that it believes to be responsive to the solicitation document;
- b. The vendor believes that its proposal meets the administrative and technical requirements of the solicitation, proposes services of proven quality and performance, and offers competitive cost/pricing; and,

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- c. The vendor believes that the AOC has incorrectly selected another vendor submitting a proposal for an award.

Protests must be received no later than five (5) business days after the protesting party receives a notice of intent not to award.

4. Form of Protest

A vendor who is qualified to protest should submit the protest to the individual addressed under Submission of Proposals, as set forth in the RFP cover memo, who will forward the matter to the appropriate Contracting Officer.

- a. The protest must be in writing and sent by certified, or registered mail, or overnight delivery service (with proof of delivery), or delivered personally to the address noted on the RFP cover memo under Submission of Proposals. If the protest is hand-delivered, a receipt must be requested.
- b. The protest shall include the name, vendor, address, telephone and facsimile numbers, and email address of the party protesting or their representative.
- c. The title and number of the solicitation document under which the protest is submitted shall be identified.
- d. A detailed description of the specific legal and factual grounds of protest and any supporting documentation shall be included.
- e. The specific ruling or relief requested must be stated.

The AOC, at its discretion, may make a decision regarding the protest without requesting further information or documents from the protestor. Therefore, the initial protest submittal must include all grounds for the protest and all evidence available at the time the protest is submitted. If the protestor later raises new grounds or evidence that was not included in the initial protest but which could have been raised at that time, the AOC will not consider such new grounds or new evidence.

5. Determination of Protest Submitted Prior to Submission of Proposal

Upon receipt of a timely and proper protest based on allegedly restrictive or defective specifications or other improprieties in the solicitation process that are apparent, or should have been reasonably discovered prior to the submission of a proposal, the AOC will provide a written determination to the protestor prior to the date and time for submittal of proposals, as set forth on

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the RFP cover memo. If required, the AOC may extend such proposal due date and time to allow for a reasonable time to review the protest. If the protesting party elects to appeal the decision, the protesting party will follow the appeals process outlined below and the AOC, at its sole discretion, may elect to withhold the contract award until the protest is resolved or denied or proceed with the award and implementation of the contract.

6. Determination of Protest Submitted After Submission of Proposal

Upon receipt of a timely and proper protest, the AOC will investigate the protest and will provide a written response to the vendor within a reasonable time. If the AOC requires additional time to review the protest and is not able to provide a response within ten (10) business days, the AOC will notify the vendor. If the protesting party elects to appeal the decision, the protesting party will follow the appeals process outlined below. The AOC, at its sole discretion, may elect to withhold the contract award until the protest is resolved or denied or proceed with the award and implementation of the agreement.

7. Appeals Process

The Contracting Officer's decision shall be considered the final action by the AOC unless the protesting party thereafter seeks an appeal of the decision by filing a request for appeal with the AOC's Business Services Manager, at the same address set forth under Submission of Proposal on the RFP cover memo, within five (5) calendar days of the issuance of the Contracting Officer's decision.

The justification for appeal is specifically limited to:

- a. Facts and/or information related to the protest, as previously submitted, that were not available at the time the protest was originally submitted;
- b. Contracting Officer's decision contained errors of fact, and that such errors of fact were significant and material factors in the Contracting Officer's decision; or
- c. Decision of the Contracting Officer was in error of law or regulation.

The vendor's request for appeal shall include:

- a. Name, vendor, address, telephone and facsimile numbers, and email address of the vendor filing the appeal or their representative;
- b. Copy of the Contracting Officer's decision;

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- c. Legal and factual basis for the appeal; and
- d. Ruling or relief requested. Issues that could have been raised earlier will not be considered on appeal.

Upon receipt of a request for appeal, the AOC's Business Services Manager will review the request and the decision of the Contracting Officer and shall issue a final determination. The decision of the AOC's Business Services Manager shall constitute the final action of the AOC.

8. Protest Remedies

If the protest is upheld, the AOC will consider all circumstances surrounding the procurement in its decision for a fair and reasonable remedy, including the seriousness of the procurement deficiency, the degree of prejudice to the protesting party or to the integrity of the competitive procurement system, the good faith efforts of the parties, the extent of performance, the cost to the AOC, the urgency of the procurement, and the impact of the recommendation(s) on the AOC. The AOC may recommend any combination of the following remedies:

- a. Terminate the contract for convenience;
- b. Re-solicit the requirement;
- c. Issue a new solicitation;
- d. Refrain from exercising options to extend the term under the contract, if applicable;
- e. Award a contract consistent with statute or regulation; or
- f. Other such remedies as may be required to promote compliance.

K. Disposition of materials

- 1. All materials submitted in response to this solicitation document will become the property of the State of California and will be returned only at the AOC's option and at the expense of the vendor submitting the proposal. One copy of a submitted proposal will be retained for official files and become a public record. Any material that a vendor considers as confidential but does not meet the disclosure exemption requirements of the California Public Records Act should not be included in the vendor's proposal as it may be made available to the public.

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L. Payment

1. Payment terms will be specified in any agreement that may ensue as a result of this solicitation document.

M. Award and Execution of Agreement

1. Award of contract, if made, will be in accordance with the solicitation document to a responsible vendor submitting a proposal compliant with all the requirements of the solicitation document and any addenda thereto, except for such immaterial defects as may be waived by the AOC.
2. The AOC reserves the right to determine the suitability of proposals for contracts on the basis of a proposal's meeting administrative requirements, technical requirements, its assessment of the quality of service and performance of items proposed, and cost/pricing.
3. The AOC will make a reasonable effort to execute any contract based on this solicitation document within sixty (60) days of selecting a proposal that best meets its requirements. However, exceptions taken by a vendor may delay execution of a contract.
4. A vendor submitting a proposal must be prepared to use the attached Contract Terms rather than its own contract form.
5. Upon award of the agreement, the agreement shall be signed by the vendor(s) in two (2) original contract counterparts and returned, along with the required attachments, to the AOC no later than ten (10) calendar days of receipt of agreement form or prior to end of June if award is to encumber funds prior to fiscal year-end. The period for execution may be changed by mutual agreement of the parties. Agreements are not effective until executed by both parties and approved by the appropriate AOC officials. Any work performed prior to receipt of a fully executed agreement shall be at vendor(s)' own risk.

N. Failure to Execute the Agreement

1. Failure to execute the agreement within the time frame identified above shall be sufficient cause for voiding the award. Failure to comply with other requirements within the set time shall constitute failure to execute the agreement. If the successful vendor(s) refuse or fail to execute the agreement, the AOC may award the agreement to the next qualified vendor(s).

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O. Decision

1. Questions regarding the AOC's award of any business on the basis of proposals submitted in response to this solicitation document, or on any related matter, should be addressed to Solicitations Mailbox (solicitations@jud.ca.gov).

P. News releases

1. News releases pertaining to the award of a contract may not be made without prior written approval of the AOC's Business Services Manager.

ATTACHMENT 2
CONTRACT TERMS

Judicial Council of California
Commercial Publication Agreement
For
Judicial Council of California Criminal and Civil Jury Instructions
(“Agreement”)

This Agreement is entered into as of [Month] [Day], 2006 (“**Effective Date**”) by and between the Judicial Council of California (“**Judicial Council**”), (acting through the Administrative Office of the Courts (“**AOC**”)), having its executive offices located at 455 Golden Gate Avenue, San Francisco, CA 94102 and [Publisher’s Corporate Name], a [state] corporation having its executive offices located at [street address], [city], [state] [zip code] (“**Publisher**”).

WHEREAS, the Judicial Council has developed CALCRIM through its task force on jury instructions and CACI through its advisory committee on civil jury instructions, and the Judicial Council wishes to license these to Publisher for commercial publication and sale as further described herein;

WHEREAS, the AOC desires to have the Works available in printed form and to protect the integrity of the Works for the benefit of the legal community and the members of the public who rely on the Works;

WHEREAS, Rule 855(c) of the California Rules of Court provides that the AOC may take steps necessary to ensure that publication of the Works by commercial publishers does not occur without its permission; and

WHEREAS, Publisher desires to license the Works from the Judicial Council for purposes of commercial publication and sale in the format(s) described herein.

NOW THEREFORE, in consideration of the mutual promises contained herein, it is hereby agreed as follows:

1. Defined Terms. Capitalized terms have the meanings assigned to them in Exhibit C.

2. Licenses.

2.1 Grant of License for Book Publication. Subject to the terms and conditions of this Agreement, the AOC grants to Publisher, and Publisher accepts from the AOC, a worldwide, non-exclusive, non-transferable, non-sublicensable (except as expressly permitted by Section 2.3 (Sublicense Rights)) royalty-bearing license and right to publish (i.e., reproduce and distribute), market and sell the Works in Book form in the English language.

2.2 Grants of License for Electronic Format Publications.

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a. Standalone CD-ROM and Commercial Online Database. Subject to the terms and conditions of this Agreement, the AOC grants to Publisher, and Publisher accepts from the AOC, a worldwide, non-exclusive, non-transferable, non-sublicensable (except as expressly permitted by Section 2.3 (Sublicense Rights)), royalty-bearing license and right to publish (i.e., reproduce, distribute and publicly display), market and sell electronic versions of the Works in the English language only in the following formats: (i) in Standalone CD-ROM format; and (ii) as part of the Commercial Online Database.

b. Interactive Software Program. Subject to the terms and conditions of this Agreement, the AOC grants to Publisher, and Publisher accepts from the AOC, a worldwide, non-exclusive, non-transferable, non-sublicensable (except as expressly permitted by Section 2.3 (Sublicense Rights)), royalty-bearing license and right to integrate the Works into the Interactive Software Program and publish (i.e., reproduce, distribute and publicly display), market and license copies of the Works as integrated into the Interactive Software Program to end users.

c. Restrictions. No rights are granted to any other electronic, digital, optical or other technologies, formats, platforms, media or means of transmission or distribution, whether now existing or developed in the future. Publication in the Standalone CD-ROM and Commercial Online Database formats shall be with the same content, organization, order, and text as the Book edition and in the same context as the Book edition (that is, as a complete verbatim version of a Work intended to make the exact text of the Work available in visual form for reading; without modification of the Work other than reasonable technical formatting modifications to enable the Work to be displayed in the applicable format; and without addition of Publisher Content, or any other text, sound, computerized effect, hypertext link, or other content), except, in each case, as expressly approved in writing by the AOC for the applicable Publisher's Edition prior to publication of such edition.

2.3 Sublicense Rights.

a. Books. The license granted to Publisher in Section 2.1 (Grant of License for Book Publication) includes the non-transferable, non-exclusive right during the term of this Agreement to distribute the Works in Book form through subdistributors, provided that each such subdistributor enters into a written binding agreement with Publisher whereby such subdistributor agrees to act in accordance with the terms and conditions of this Agreement and in which the AOC is named as an intended third-party beneficiary of the agreement with the right to enforce its provisions.

b. Standalone CD-ROM and Interactive Software Program. The licenses granted to Publisher in Section 2.2(a)(i) and 2.2(b) (Interactive Software Program) include the non-transferable, non-exclusive right to (i) distribute the Standalone CD-ROM format of the Works and the Interactive Software Program through subdistributors, provided

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that each such subdistributor enters into a written binding agreement with Publisher whereby such subdistributor agrees to act in accordance with the terms and conditions of this Agreement and in which the AOC is named as an intended third-party beneficiary of the agreement with the right to enforce its provisions; and (ii) permit end users of the Standalone CD-ROM format of the Works and the Interactive Software Program to use and modify the Works for individual or internal use only and to reproduce and print a reasonable number of copies of the Works (or portions thereof) in connection with such use (but not otherwise reproduce, republish, broadcast or otherwise distribute the Works without the prior written permission of the AOC). All distributions of Standalone CD-ROM and the Interactive Software Program to end users shall be pursuant to a written binding agreement between Publisher and the end user containing terms no less restrictive or protective of the AOC's rights and interests than those contained herein.

c. Commercial Online Database. The license granted to Publisher in Section 2.2(a)(ii) includes the right to (i) reproduce and display the Works solely on the Publisher Site, (ii) permit end users to access the Works solely through the Publisher Site, and (iii) permit end users to use and modify the Works for individual or internal use only, and to download, reproduce and print a reasonable number of copies of the Works (or portions thereof) in connection with such use (but not otherwise reproduce, republish, broadcast or otherwise distribute the Works without the prior written permission of the AOC).

d. Publisher Responsibility. Each subdistributor agreement shall obligate the applicable subdistributor to distribute the Publisher's Edition to end users only (accompanied by a written, binding end user license agreement for Interactive Software Program or Commercial Online Database format), and shall not permit such subdistributor to distribute to other subdistributors. Publisher shall be responsible for any act or omission of any subdistributor or end user where such act or omission, if committed by Publisher, would be a breach of any obligation set forth in this Agreement.

2.4 Grant of License for Publisher's Internal Use. Subject to the terms and conditions of this Agreement, the AOC grants to Publisher a worldwide, non-exclusive, non-transferable, non-sublicensable, royalty-free license and right to use and reproduce the Works internally (i.e., only by Publisher employees and agents) solely for the purpose of creating, developing, maintaining, and testing the Publisher's Editions, demonstrating the Publisher's Editions to potential end users, and training end users in the use of the Publisher's Editions.

2.5 Use of Trade Name. Subject to the terms and conditions of this Agreement, the AOC grants to Publisher the non-exclusive, non-transferable, non-sublicensable right to reproduce the name "Judicial Council of California" on the cover and/or jacket of Publisher's Editions distributed in tangible form (e.g., book or CD-ROM) as author of the Works and on marketing and promotional materials promoting sales of Publisher's Editions, provided that the AOC has

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provided prior written consent to all aspects (including without limitation, manner, form, placement, size and design details) of each such use. Publisher shall not attribute the Works or Publisher's Editions, whether on or within Publisher's Editions, in any marketing or promotional materials or activities, or otherwise, to any organizations or individuals other than those pre-approved in writing by the AOC, with the exception that Publisher may reproduce its own trademark and/or logo on and within Publisher's Edition in such a manner as not to confuse the public as to the source or authorship of the Works. Publisher may not use on, within or in connection with promoting and marketing Publisher's Editions the terms "Judicial Council of California," "Administrative Office of the Courts," or the name of any committee, organization or individual who participated in preparing the Works, except as expressly permitted by this Agreement.

2.6 Ownership. All copyright, trademark and other intellectual and proprietary rights in and to the Works, and any derivative works thereof, are and shall remain the sole and exclusive property of the AOC. It is expressly understood that no title to or ownership interest in the Works, any derivative works thereof, the name "Judicial Council of California," or any portion of any of the foregoing, is hereby transferred to Publisher. Publisher shall, at the AOC's request, reasonably cooperate with the AOC in doing all acts necessary to effect, protect, extend and enforce the AOC's rights in the Works. If Publisher's Editions contain Publisher Content, Publisher and its third-party licensors shall retain ownership of such copyrights. Publisher may register the copyright in the Publisher Content and, if applicable, in the compilation comprised of the Work(s) and the Publisher Content, provided Publisher attributes to the AOC the copyright to the Work(s) in any such registrations in a manner approved by the AOC. Notwithstanding the foregoing, Publisher hereby assigns (and shall cause any independent contractors to assign) to the AOC all its (and their) rights and title to any and all Editorial Revisions. Once made, Editorial Revisions shall be considered part of the Work such that Publisher may publish them in accordance with this Agreement.

2.7 Rights of Official Publisher of the Judicial Council Jury Instructions. In accordance with the terms and conditions of this Agreement, Publisher may use the designation of "Official Publisher of the Judicial Council Jury Instructions" in the production of Publisher's Editions either electronically or in hard copy and directly or through a licensing agreement with a third party and in pre-approved advertising.

2.8 Reservation of Rights. All rights not expressly granted to Publisher in this Agreement are reserved by the AOC. Nothing in this Agreement shall be construed to prohibit or prevent the AOC from distributing the Works through its website or otherwise providing, licensing or authorizing use of the same to third parties (for free or a fee, in the AOC's sole discretion).

2.9 Delivery. The AOC will deliver to Publisher one (1) electronic copy of each Work. Thereafter, during the term of this Agreement, the AOC may from time to time deliver to Publisher one (1) electronic copy of any Update to a Work, and such Updates shall be subject to the same use restrictions as the initial Work.

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2.10 Future Modification. The AOC shall have the right (but no obligation), from time to time and in its discretion, to modify or otherwise alter the Works. The AOC shall have no responsibility for reproducing or reconstructing a Work as it existed at any particular time, or for retaining archival copies of a Work.

2.11 Interactive Software Program. Publisher grants to the Judicial Council, the AOC, and the bench officers a non-exclusive, non-sublicensable license to use copies of the Interactive Software Program provided pursuant to Sections 5.3 (Judicial Council Copies) and 5.4 (Bench Copies).

3. Publishing Requirements.

3.1 No Advertisements. Publisher shall not insert, print or display any advertisements in or on any Publisher's Editions or in any publication containing a Work or any portion thereof, without the AOC's prior written consent. If the AOC elects to provide its consent, the AOC may require, as a condition of such consent, that Publisher pay a share of any revenue derived from such advertising to the AOC.

3.2 Modifications Approved by the AOC. Publisher may not make any modifications whatsoever to the wording, formatting, numbering, sequence, order, arrangement, punctuation, spelling or any other element of a Work, or create any derivative works based upon a Work, without the prior written consent of the AOC.

3.3 Updated Versions. Publisher must publish Updated Versions of a Work, in all Authorized Formats, within eight (8) weeks of receiving an Update from the AOC. Updated Versions in Book format may be published by use of pocket-part supplements or by a complete update in newly published revised softcover volumes, at Publisher's discretion.

3.4 Right to Inspect Publisher's Editions. Publisher will ensure that the commercial quality of Publisher's Editions meets high standards of publication, including any specifications included in Exhibit A.

a. Before Publication. Prior to publication, distribution or display of each Publisher's Edition (and each Updated Version), Publisher shall provide to the AOC for the AOC's review: (i) the title, cover, jacket and packaging for such Publisher's Edition, (ii) the trademarks, logos, imprints, other identification, credits and attribution as used in or on such Publisher's Edition and its packaging (including without limitation evidence of meeting all requirements of Section 3.5 (Attribution and Credit Requirements)) and user interface, (iii) any other subject matter (e.g., text, data, front and back matter, instruction manual, end user license agreement, package inserts, hypertext links), other than the Work, to be included in or distributed or displayed with such Publisher's Edition, along with a demonstration (in the case of software, Standalone CD-ROMs, online database formats and the like) of how a Work is linked to and from, is combined with, or otherwise functions with such other subject matter,

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and (iv) materials that show the final appearance and content, and if applicable, relationship with other subject matter, of Publisher's Edition and all of the foregoing items (i) through (iii) (e.g., complete page layouts, page proofs, electronic files, and online access to pre-launch database pages). Publisher may substitute electronic mock-ups in a format readily accessible by the AOC (and will provide hard-copy printouts of such mock-ups, if requested by the AOC) that accurately and effectively reflect the appearance of a final Publisher's Edition in place of hard copy materials in meeting its obligations to show the final appearance and content under this Section 3.4. The AOC shall have the right to require modifications to any of the foregoing prior to publication of the Publisher's Edition, and to approve any such modifications prior to publication. Publisher shall make such modifications prior to publication of the Publisher's Edition, provided however, that if Publisher determines that it does not wish to comply with the AOC's required modifications, Publisher shall have the right to terminate this Agreement (and all licenses and rights granted to Publisher herein) within thirty (30) days of receipt of the AOC's modifications, effective on delivery of such written notice to the AOC. Upon such termination, (i) Publisher shall have no further obligation to pay future installments of the advance payment specified in Section 4.3 (Advance), (ii) for the avoidance of doubt, the AOC shall have the right to retain any advance payments already paid prior to termination to cover its transactional costs incurred in connection with this Agreement, and (iii) neither party shall have any further obligation or liability to the other under this Agreement except as provided in Section 7.4 (Effect of Termination).

b. After Publication. After the initial publication of each Publisher's Edition, the AOC shall have the right to inspect, at any time, such Publisher's Edition and to require modifications to such Publisher's Edition to the extent such edition differs from the version approved by the AOC prior to publication or fails to comply with (or otherwise violates) any of the terms and conditions of this Agreement. Publisher shall facilitate such inspection by providing full access (at no charge to the AOC) to Publisher's Editions at the AOC's request, including without limitation, access to the Commercial Online Database. Publisher shall make further modifications as may be requested by the AOC as soon as reasonably practicable after notification thereof.

3.5 Attribution and Credit Requirements.

a. Copyright Notice. In conjunction with each display or distribution of any Publisher's Edition, Publisher shall include the following notice (or such substitute notice that the AOC may provide to Publisher from time to time) conspicuously placed on the copyright notice page, in the front matter, in the About Box or at the start of access to any portion of a Work:

“Copyright © 200[6] by the Judicial Council of California. All rights reserved. See [page __] for a listing of Judicial Council Task

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Force members, and advisory committee members who have contributed to these jury instructions.”

Publisher shall not assert any claim to copyright of a Work. Publisher shall not include any other copyright notices in a Work without the express prior written consent of the AOC.

b. Credit to Contributors. In the front matter (or equivalent location for non-Book formats) of each of the Publisher’s Editions, preceding any other attribution, Publisher shall include prominent acknowledgement of Judicial Council members, task force members, advisory committee members and others who have contributed to that Work. Current lists of committee members are located at <http://www.courtinfo.ca.gov/jc/comlists/cjicom.htm> and <http://www.courtinfo.ca.gov/jc/comlists/crimjicom.htm>, and may be updated from time to time by the AOC. The AOC will provide the lists of original Task Force members upon Publisher’s request.

c. No Suggestion of Endorsement. Publisher shall not publish Publisher’s Editions in any series, imprint or standard format or design, or bundled or combined with any other work, without the AOC’s prior written consent. The design, format and appearance (including, without limitation, cover design and color) of Publisher’s Editions shall be sufficiently different from any other published jury instructions so as not to confuse or mislead the public into believing (i) a Work is associated with instructions or any other publications not prepared or recommended by the AOC or (ii) that the AOC sponsors, endorses or recommends any other jury instructions or any other publications.

d. General Statement. In the front matter (or equivalent location for non-Book formats) of each of Publisher’s Editions, preceding any other attribution, Publisher shall include a prominent general statement pre-approved by the AOC that states, referencing Rule 855 of the California Rules of Court, that these are the jury instructions approved and recommended by the Judicial Council for use in California courts.

e. Disclaimer of Accuracy. In the front matter (or equivalent location for non-Book formats) of each of Publisher’s Editions, Publisher shall include a statement pre-approved by the AOC that, although the Publisher’s Edition is published under license with the Judicial Council, the Judicial Council neither warrants nor represents that the Publisher’s Edition contains an accurate reproduction of the Judicial Council’s jury instructions.

3.6 Project Managers. The AOC may assign Project Managers to monitor and evaluate Publisher’s performance under this Agreement. Publisher will assign a lead legal editor to meet on a regular basis with the Project Managers or other assigned AOC staff. If the AOC is

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dissatisfied with any of Publisher's personnel, for any reason or no reason, Publisher will replace them with qualified personnel. Otherwise, Publisher will endeavor to minimize turnover of personnel assigned to this project. The lead legal editor will meet with staff to determine the format (for example size of type, bold elements, running heads, ears, pagination) of the Publisher's Editions prior to publication. Publisher shall direct to the Project Managers all requests and communications regarding approvals or consents by the AOC or relating to the AOC evaluation of Publisher's Editions. Notwithstanding the above, any optional or written notices provided for in this Agreement shall be sent in accordance with Section 8.1 (Notices).

4. Payment and Royalties.

4.1 Royalties.

a. Book, Standalone CD-ROM, Interactive Software Program. Publisher shall pay to the AOC (or its designee) royalties as set forth in Exhibit B for all copies of Publisher's Edition(s) in Book, Standalone CD-ROM, and Interactive Software Program format sold or otherwise distributed by Publisher, excluding damaged or returned copies and complimentary copies distributed pursuant to Sections 5.3 (Judicial Council Copies) and 5.4 (Bench Copies).

b. Commercial Online Database. Publisher shall pay to the AOC (or its designee) royalties as set forth in Exhibit B for Publisher's Editions in Commercial Online Database form. However, no royalties shall be payable for use of the Commercial Online Database by students and faculty of accredited law schools if the revenues derived by Publisher from such use represent a discount of 90% or more off Publisher's retail list price for the content included in such license (given that such license is extended on a non-profit basis).

c. Affiliates. In the event Publisher licenses a Work (or any portion thereof) to a subdistributor for further distribution or sale pursuant to Section 2.3 (Sublicense Rights) of this Agreement, and such subdistributor is a subsidiary, affiliate, parent, division or other entity related to Publisher, the royalties payable to the AOC hereunder shall be calculated as if such related entity were not related and the license was granted on an arm's length basis.

4.2 No Royalty Copies. No royalty shall be payable on: (a) up to fifty (50) copies of each of Publisher's Editions (excluding the Commercial Online Database version) distributed at no charge for review or promotional purposes, (b) the complimentary copies delivered pursuant to Sections 5.3 (Judicial Council Copies) and 5.4 (Bench Copies), (c) any copies sold to the AOC at the AOC's discount, and (d) Publisher's internal use in accordance with Section 2.4 (Grant of License for Publisher's Internal Use).

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4.3 Advance. Publisher shall pay to the AOC (or its designee) a nonrefundable advance against royalties payable pursuant to Section 4.1 (Royalties) of [REDACTED] dollars (\$ [REDACTED]), payable on signature of this Agreement. Thereafter, for each subsequent year, Publisher shall pay to the AOC an additional nonrefundable advance against royalties payable pursuant to Section 4.1 (Royalties) of [REDACTED] dollars (\$ [REDACTED]) due within five (5) days of each anniversary date of the Effective Date of this Agreement. No further royalty payments shall be due pursuant to Section 4.1 (Royalties) for any such year until the amount of such accrued royalties exceeds the advance actually paid to the AOC for such year pursuant to this section. If an unearned portion of an advance remains at the end of a contract year, that unearned portion will roll over to the subsequent year.

4.4 Time of Payment. Publisher shall make royalty payments to the AOC for each calendar quarter (i.e., the 3-month periods ending March 31, June 31, September 30, and December 31, respectively) within sixty (60) days after the last day of such calendar quarter. All sums not paid when due shall accrue interest daily at the lesser of an annual rate of eighteen percent (18%) or the highest rate permissible by law on the unpaid balance until paid in full.

4.5 Reporting. Publisher shall submit to the AOC, at the end of each calendar quarter, regardless of whether the advance has been recouped, a clearly itemized statement reporting, separately for each of Publisher's Editions, for the calendar quarter: where applicable, the number of copies of the Publisher's Edition printed, sold or otherwise distributed, the number of returns for refund or credit, the amount of royalties owed to AOC for the Publisher's Edition for the applicable quarter, the amount of advance not earned out (if any), the number of copies distributed gratis, and the amount of Net Revenues. In addition, at the AOC's request from time to time, Publisher will provide to the AOC the standard retail list pricing for any Publisher's Edition and any other product or service incorporating the Works (or any portion thereof), and any other information reasonably requested by AOC. At the AOC's request from time to time, Publisher will explain its method of proportionate attribution of revenue used in determining Net Revenues.

4.6 Accounting. Publisher shall keep and maintain complete and accurate books, records and accounts relating to this Agreement and shall conduct such internal audits as are reasonably required to verify continuing full compliance with this Agreement. AOC or its designated auditor shall have the right, from time to time, to inspect, audit and analyze such books, records and accounts and to access any Standalone CD-ROM, Interactive Software Program, or online versions of the Works (or any portion thereof) to verify Publisher's compliance with the terms and conditions of this Agreement. Any such audit shall be conducted during the regular business hours of Publisher, and shall be at AOC's expense; provided that if such audit reveals an underpayment of three percent (3%) or more, or any other material breach of this Agreement, Publisher shall promptly pay to AOC all costs and expenses of such audit, and AOC may perform additional audits until an audit shows no underpayment or noncompliance. Publisher shall promptly pay AOC the amount of any underpayment (and correct any other noncompliance) revealed by any such audit.

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4.7 Address. Publisher will make each royalty check payable to “State of California” and remit it to:

Judicial Council of California
Administrative Office of the Courts
General Ledger Accounting
455 Golden Gate Avenue
San Francisco, CA 94102-3688

5. Other Publisher Obligations.

5.1 AOC Web Versions. Publisher will deliver an updated AOC Web Version of a Work as soon as reasonably possible (but in no event more than ten (10) days, unless mutually agreed) after it receives an Update to that Work from the AOC. The AOC may post the AOC Web Versions on the California Courts web site or otherwise reproduce and distribute them for public and internal court use at no charge. Publisher will deliver each AOC Web Version (including all charts, tables, and other Editorial Revisions) in .pdf, Microsoft Word, and any other agreed-upon format.

5.2 Software Development. In a timely manner, Publisher will integrate the Works into the Interactive Software Program. Publisher will test and debug the Interactive Software Program prior to its release.

5.3 Judicial Council Copies. At no cost, Publisher will deliver up to fifty (50) copies of each Work in both Book and Standalone CD-ROM format to the Judicial Council. At no cost, Publisher will deliver up to fifty (50) copies of the Interactive Software Program to the Judicial Council. After publishing an Updated Version, Publisher will at no cost deliver up to fifty (50) copies of the Updated Version in Book, Standalone CD-ROM, and Interactive Software Program formats to the Judicial Council in a timely manner. The AOC shall be entitled to buy additional copies of each Publisher’s Edition (but not for resale), at a discount of fifty percent (50%) off the Suggested Retail Price, or (if more favorable to the AOC), at Publisher’s maximum standard discount then in effect.

5.4 Bench Copies. At no cost, Publisher will deliver a copy of each Work in Book format to all California state bench officers. At no cost, Publisher will deliver a copy of the Interactive Software Program and/or each Work in Standalone CD-ROM format to all California state bench officers who request copies. After publishing an Updated Version, Publisher will at no cost deliver a copy of the Updated Version in Book format to all California state bench officers. Publisher will also at no cost deliver a copy of the updated Interactive Software Program and/or the Updated Version in Standalone CD-ROM format to all California state bench officers who request copies.

5.5 Cite Checking. Publisher will provide cite checking services to verify case and statutory citations, and internal and external cross references. Publisher will note any errata or suggested corrections on the proof pages (if not earlier marked up and delivered to the AOC for consideration).

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5.6 Maintenance. Publisher will assist the Judicial Council in maintaining the currentness and continuing integrity of the Works by providing information to the Judicial Council to assist in the accurate and thorough updating of the instructions and the commentary. This type of information generally would consist of lists of statutory changes and recent case law targeted to particular instructions, as well as other similar assistance.

5.7 Training. At reasonable times as requested by the AOC, Publisher will provide assistance in training for bench officers, for example, on the Interactive Software Program or the Commercial Online Database.

5.8 Marketing. Publisher must actively promote, market, and sell the Works in Book and Interactive Software Program format. Publisher may promote, market, and sell the Works in Standalone CD-ROM and Commercial Online Database format.

6. Limitation of Liability.

6.1 Warranty Disclaimer. THE AOC RELATED PARTIES EXPRESSLY DISCLAIM ALL WARRANTIES, EXPRESS, IMPLIED OR STATUTORY, INCLUDING WITHOUT LIMITATION THE IMPLIED WARRANTIES OF NONINFRINGEMENT, MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, SATISFACTORY QUALITY, TIMELINESS AND ACCURACY, AND ALL WARRANTIES THAT MAY ARISE OUT OF COURSE OF DEALING, COURSE OF PERFORMANCE OR USAGE OF TRADE. THE AOC RELATED PARTIES MAKE NO REPRESENTATION OR WARRANTY THAT THE WORKS WILL BE REVISED, UPDATED, ADDED TO, OR CORRECTED AFTER THE EFFECTIVE DATE, THAT ACCESS TO THE AOC SITE WILL BE UNINTERRUPTED, OR THAT THE WORKS AS DELIVERED BY THE AOC WILL BE FREE FROM VIRUSES OR OTHER DEFECTS.

6.2 Consequential Damages. TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW AND NOTWITHSTANDING ANYTHING IN THIS AGREEMENT TO THE CONTRARY OR ANY FAILURE OF ESSENTIAL PURPOSE OF ANY LIMITED REMEDY OR LIMITATION OF LIABILITY, THE AOC RELATED PARTIES SHALL HAVE NO LIABILITY FOR ANY INDIRECT, CONSEQUENTIAL, EXEMPLARY, SPECIAL OR INCIDENTAL DAMAGES OF ANY KIND, OR FOR ANY DAMAGES RESULTING FROM LOST PROFITS, LOSS OF REVENUE, LOSS RESULTING FROM BUSINESS INTERRUPTION OR LOSS OF PROGRAMS, USE OR DATA, COMPUTER FAILURE, MALFUNCTION OR OTHERWISE, ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE SUBJECT MATTER HEREOF OR PUBLISHER'S ACCESS TO OR USE OF THE AOC SITE OR ANY CONTENT AVAILABLE ON OR THROUGH OR DOWNLOADED FROM THE AOC SITE, HOWEVER CAUSED, EVEN IF THE AOC RELATED PARTY HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

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6.3 AOC's Liability. IN NO EVENT SHALL THE AOC'S LIABILITY FOR ANY CLAIM HEREUNDER EXCEED THE AMOUNTS PAID BY PUBLISHER TO THE AOC HEREUNDER.

6.4 Other Claims. Publisher at its own expense shall fully indemnify, hold harmless and defend the AOC Related Parties against any claim, suit or proceeding by a third party (including any related damages, expenses, liabilities, settlements, judgments and reasonable attorneys' fees and costs) arising from or relating to this Agreement or sale, distribution or use of Publisher's Editions.

6.5 Acknowledgment. Publisher acknowledges that the limitations of liability contained in this Section 6 (Limitation of Liability) are a fundamental part of the basis of the AOC's bargain hereunder, and the AOC would not enter into this Agreement absent such limitations.

6.6 Publisher's Representations and Warranties. Publisher represents and warrants that the following statements are true:

a. No Gratuities. Publisher has not directly or indirectly offered or given any gratuities (in the form of entertainment, gifts, or otherwise), to any AOC Related Party with a view toward securing this Agreement or securing favorable treatment with respect to any determinations concerning the performance of this Agreement.

b. No Conflict of Interest. Publisher has no interest that would constitute a conflict of interest under California Government Code §§1090 *et seq.* or §§87100 *et seq.*, or under California Rules of Court 6.103 or 6.104, which restrict employees and former employees from contracting with the Judicial Council or AOC;

c. No Interference with other Agreements. This Agreement does not constitute a conflict of interest or default under any other of Publisher's agreements;

d. Compliance with Laws.

1. General. Publisher is in compliance in all material respects with all laws, rules and regulations applicable to Publisher's business.

2. Specific.

i. Non-discrimination. Publisher does not unlawfully discriminate against any employee or applicant for employment because of age (40 and over), ancestry, color, creed, disability (mental and physical) including HIV and AIDS, marital and domestic partner status, medical condition (including cancer and genetic characteristics), national origin, race, religion, request for family and medical care leave, sex (including gender identity), and sexual orientation;

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ii. No Harassment. Publisher does not engage in unlawful harassment, including sexual harassment, with respect to any persons with whom Publisher may interact in the performance of this Agreement, and Publisher takes all reasonable steps to prevent harassment from occurring;

iii. Employment and Labor Laws. Publisher will also comply with the federal Americans with Disabilities Act (42 U.S.C. 12101, *et seq.*), California's Fair Employment and Housing Act, California Government Code §§12990 *et seq.*, and California Code of Regulations, title 2, §§7285 *et seq.*; and

iv. Drug Free Workplace. Publisher provides a drug-free workplace as required by California Government Code §8355 through §8357.

6.7 Representations and Warranties to Remain True. During the term of this Agreement, Publisher will not take an action, or omit to perform any act, that may result in a representation and warranty becoming untrue. Publisher will promptly notify the AOC if any representation and warranty becomes untrue.

7. Term and Termination.

7.1 Term. This Agreement shall take effect on the Effective Date and continue in effect for two years ("Initial Term"), unless terminated earlier in accordance with its terms. The AOC may, at its option, upon delivery of written notice to the Publisher at least thirty (30) days prior to the end of the Initial Term (or the then-current renewal term), renew this Agreement for up to three consecutive one-year terms, at the end of which renewal terms this Agreement shall terminate, unless it was terminated earlier in accordance with its terms.

7.2 Termination by the AOC. The AOC shall have the right to terminate this Agreement (and all licenses and other rights granted herein) upon ten (10) days' prior written notice to Publisher on the occurrence of any of the following: (i) Publisher or any of its officers or employees breaches any term or condition of this Agreement, including without limitation Section 4 (Payment and Royalties), and fails to correct such breach within thirty (30) days (or ten (10) days for breach of a payment provision) following written notice specifying such breach; (ii) Publisher's Edition in Book form goes out of print (i.e., is out of stock for at least three (3) months) or is otherwise not available for purchase from Publisher within the United States, or (iii) Publisher ceases conducting business in the normal course, becomes insolvent, makes a general assignment for the benefit of creditors, suffers or permits the appointment of a receiver for its business or assets, avails itself of or becomes subject to any petition or proceeding under any statute of any state or country relating to insolvency or the protection of the rights of creditors, or any other insolvency or bankruptcy proceeding or other similar proceeding for the settlement of the other party's debt is instituted.

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In addition, the AOC shall have the right to terminate this Agreement (and all licenses and other rights granted herein) with respect to any Authorized Format if Publisher's Edition in such format goes out of print (i.e., is out of stock for at least three (3) months) or is otherwise not available for purchase, license or access from Publisher within the United States.

7.3 Termination by Publisher. Publisher shall have the right to terminate this Agreement (and all licenses and other rights granted herein) (i) in accordance with Section 3.4(a) (Before Publication) or (ii) upon ten (10) days' prior written notice to the AOC in the event the AOC materially breaches any term or condition of this Agreement and fails to correct such breach within thirty (30) days following written notice specifying such breach.

7.4 Effect of Termination. On any expiration of termination of this Agreement, (i) Publisher shall immediately pay to the AOC all amounts payable hereunder (without waiting for the end of the applicable calendar quarter); (ii) all rights and licenses granted to Publisher shall terminate and automatically revert to the AOC; (iii) Publisher shall cease all reproduction, distribution, display, sale, marketing or other use of the Works and the terms "Official Publisher of the Judicial Council Jury Instructions" and "Judicial Council of California"; (iv) Publisher shall destroy all copies of the Works in its possession or control (including any electronic copies) and all copies of Publisher's Editions not already sold, provided the AOC shall have the right to purchase copies of Publisher's Editions at Publisher's manufacturing cost prior to such destruction; (v) nothing herein shall be construed to release either party of any obligation hereunder that matured prior to the effective date of such termination; and (vi) the AOC shall have the right to retain any advance payments paid prior to expiration or termination. On any expiration of termination of this Agreement, the definitions and the following provisions of this Agreement shall survive: Sections 2.6 (Ownership), 4 (Payment and Royalties), 6 (Limitation of Liability), 7.4 (Effect of Termination), and 8 (General Provisions). The AOC shall not be liable to Publisher for damages of any kind solely as a result of terminating this Agreement in accordance with its terms, and termination of this Agreement by the AOC shall be without prejudice to any other right or remedy of the AOC under this Agreement or applicable law.

8. General Provisions.

8.1 Notices. All notices required or permitted under this Agreement must be in writing and reference this Agreement. Notices shall be delivered in person, via a reputable express carrier, or by registered or certified mail (postage pre-paid). A notice shall be effective on receipt; however, any correctly addressed notice that is refused, unclaimed, or undeliverable because of an act or omission of the party to be notified will be deemed effective as of the first date that the notice was refused, unclaimed, or deemed undeliverable. All notices shall be addressed to the parties at their addresses set forth below, provided either party may change its address for receipt of notice by giving notice at any time to the other party in the manner permitted by this paragraph.

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- If to the AOC:
 - Grant Walker
 - Manager, Business Services
 - Address: Administrative Office of the Courts
 - 455 Golden Gate Avenue
 - San Francisco, CA 94102-3688
 - Phone: (415) 865-7978
- If to Publisher:
 - Name: [REDACTED]
 - Title: [REDACTED]
 - Address:
 - [Publisher Name]
 - [Street Address]
 - [City], [State] [Zip Code]
 - Phone: [area code] [phone #]
- With copies to (which shall not constitute notice) applicable Project Managers.

8.2 Attorneys' Fees. The AOC shall have the right to collect from Publisher its reasonable expenses incurred in enforcing this Agreement or enjoining any breach of this Agreement, including without limitation attorneys' fees and costs and court costs.

8.3 Governing Law; Jurisdiction. This Agreement and performance hereunder shall be governed by the laws of the State of California with no regard to its choice-of-law provisions. Any dispute regarding this Agreement shall be subject to the exclusive jurisdiction of the California state courts in and for San Francisco County, California, U.S.A. (or, if there is federal jurisdiction, the United States District Court for the Northern District of California), and the parties agree to submit to the personal and exclusive jurisdiction and venue of these courts.

8.4 Severability. If any provision of this Agreement shall be held to be invalid, illegal or unenforceable under any applicable statute or rule of law, the validity, legality and enforceability of the remaining provisions shall in no way be affected or impaired thereby.

8.5 Negotiated Agreement. This Agreement has been arrived at through negotiation between the parties. Neither party is the party that prepared this Agreement for purposes of construing this Agreement under California Civil Code §1654.

8.6 Waiver. A party's waiver of enforcement of any of this Agreement's terms or conditions shall be effective only if in writing. A party's specific waiver shall not constitute a waiver by that party of any earlier, concurrent, or later breach or default.

8.7 Authority; Binding Effect. Publisher warrants that: (i) it has the corporate authority to enter into this Agreement and to perform its obligations under this Agreement, (ii) its representative who signs this Agreement has the authority to do so, and (iii) this Agreement constitutes a valid and binding obligation of Publisher, enforceable in accordance with its terms.

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8.8 Interpretation. All headings are for reference purposes only and do not affect the interpretation of this Agreement. Any consent or approval by the AOC referenced in this Agreement may be withheld by the AOC in the AOC's sole discretion.

8.9 Counterparts. This Agreement may be executed (including, without limitation, by facsimile signature) in counterparts, each of which shall be considered an original.

8.10 Assignment. Publisher may not assign or otherwise transfer, whether voluntarily, by operation of law or otherwise, this Agreement or any of its rights, duties or obligations hereunder, without the prior written consent of the AOC. Any attempted or purported assignment or other transfer not complying with the foregoing shall be null and void. The AOC may assign or otherwise transfer this Agreement in whole or in part. Subject to the foregoing, this Agreement shall inure to the benefit of and bind the successors and, where permitted, assigns of the parties.

8.11 Complete Agreement. This is the complete and exclusive statement of the agreement between the parties, which supersedes and merges all prior proposals, understandings and all other agreements, oral and written, between the parties relating to this Agreement. This Agreement may not be modified, amended or altered except by written instrument duly executed by both parties.

8.12 Confidentiality; Publicity. Publisher agrees not to disclose the terms of this Agreement except in confidence to its legal and financial advisors under written or fiduciary obligations preventing further disclosure. Publisher will not make any public statement, press release or other public announcement relating to the terms or existence of this Agreement without the prior written approval of the AOC.

8.13 Relationship of Parties. This Agreement will not be deemed to create a partnership or joint venture between the parties and neither party will have authority to commit or bind the other party.

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IN WITNESS WHEREOF, the parties hereto have signed this Agreement by their duly authorized representatives.

Publisher: [Publisher name]

By: _____

Print name: _____

Title: _____

Administrative Office of the Courts

By: _____

Name: Grant Walker

Title: Business Services Manager

ATTACHMENT 2
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Exhibit A
Publisher's Editions

Authorized Formats:

(i) Books:

Publisher will publish CALCRIM in a Book entitled "Judicial Council of California Criminal Jury Instructions – [date] Edition (CALCRIM)."

Publisher will publish CACI in a Book entitled "Judicial Council of California Civil Jury Instructions -- [date] Edition (CACI)."

Each of these Books will be a softcover bound volume containing the complete Work. The paper used will be 750 ppi, and subject to the approval of the AOC. The cover will be made of a 50/50 mixture of vinyl and paper to ensure durability.

(ii) Standalone CD-ROM:

Publisher will publish CALCRIM in a CD-ROM entitled [**Name of CD-ROM**]."

Publisher will publish CACI in a CD-ROM entitled [**Name of CD-ROM**]."

Other content may also be distributed and sold on the Standalone CD-ROM, subject to the AOC's prior approval in accordance with Section 3.4 (Right to Inspect Publisher's Editions), but such content will not be able to be accessed with a Work or commingled with a Work.

(iii) Interactive Computer Program:

Publisher will integrate the Works into [**Name of program**], Publisher's interactive computer software program for creating jury instructions. The Interactive Computer Program will be compatible for use on Windows-compatible computers. Publisher will use industry-standard methods, such as License Key Codes, to prevent unauthorized duplication of the Interactive Software Program. Publisher may combine both civil and criminal jury instructions into one program, or make each a separate program.

(iv) Commercial Online Database:

Publisher will place CACI and CALCRIM on [**name of service**], Publisher's on-line legal research service accessible at www.[**URL**].com.

END OF EXHIBIT

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Exhibit B
Royalties

1. CACI

Book: % of Net Revenues.

Standalone CD-ROM: % of Net Revenues.

Commercial Online Database: % of Net Revenues.

Interactive Software Program: % of Net Revenues.

2. CALCRIM

Book: % of Net Revenues.

Standalone CD-ROM: % of Net Revenues.

Commercial Online Database: % of Net Revenues.

Interactive Software Program: % of Net Revenues.

END OF EXHIBIT

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Exhibit C
Defined Terms

“AOC Related Parties” means the AOC, the Judicial Council, and each of their officers, judges, task forces, committees, consultants, employees, agents and other representatives.

“AOC Web Version” means an electronic web version of the Works, including Editorial Revisions, created by Publisher for public and internal use by AOC Related Parties.

“Authorized Format” means Book, Standalone CD-ROM, Interactive Software Program, and Commercial Online Database formats.

“Book” means an ink-on-paper, printed and bound paperback or hardcover book.

“CACI” means the work generally known as the “Judicial Council of California Civil Jury Instructions.” CACI includes jury instructions, preface, user guide, directions for use, any and all Editorial Revisions, Updates, corrections, suggestions, discussions for use, sources and authority, secondary sources, commentary, tables, tables of contents, indices or other text revisions or additions, if any, that the AOC specifies in writing are part of CACI.

“CALCRIM” means the work generally known as the “Judicial Council of California Criminal Jury Instructions.” CALCRIM includes jury instructions, preface, user guide, directions for use, any and all Editorial Revisions, Updates, corrections, suggestions, discussions for use, sources and authority, secondary sources, commentary, tables, tables of contents, indices or other text revisions or additions, if any, that the AOC specifies in writing are part of CALCRIM.

“Commercial Online Database” means the database available through subscription and accessible via the Internet by end users and known as [name of service], as further described in Exhibit A.

“Editorial Revisions” means any and all editorial revisions, corrections, suggestions, bench notes, authority, secondary sources, commentary, lesser included offenses, related issues, tables, tables of contents, cross-reference tables, indices or other text revisions or additions made to a Work by or for Publisher.

“Interactive Software Program” means a software program that provides an interactive medium for the compilation and completion of sets of the jury instructions (civil, criminal, or both) for use in the trial courts.

“Net Revenues” means any and all revenues payable to Publisher for or derived by Publisher from any access to or sale, distribution or use of (including, without limitation, downloading, searching, or printing of) all Publisher’s Editions of a Work (or any portion thereof), including

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without limitation revenues from access to and use of the Work in Book, Interactive Software Program, and Standalone CD-ROM form, on-line display, off-line transmission, and subscription fees, in each case less any refunds actually paid or credited to end users. If a Work (or any portion thereof) is combined, integrated or otherwise bundled with any other product(s) and sold at a bundled pricing, the revenues derived therefrom will be equitably pro-rated between the AOC and the author(s) of such other product(s) based on the (then-current) respective suggested retail prices for the Work and such other product(s), or on such other method of proportionate attribution of revenue determined in a manner that is equitable to the AOC and the other providers of content.

“Project Managers” means personnel assigned by the AOC monitor and evaluate Publisher’s performance under this Agreement, including attorneys staffing the Civil and Criminal Jury Instruction Advisory Committees.

“Publisher Content” means any content, the copyright of which is held by Publisher or its third party licensors, in addition to and distinctly separate from the Works that Publisher includes in a Publisher’s Edition.

“Publisher Site” means the website located at the following URL:

“Publisher’s Edition” means a version of a Work published by Publisher in any Authorized Format.

“Standalone CD-ROM” means an compact disc that contains one or both Works (and Publisher Content if applicable) but that does not contain a software program for compiling and completing sets of jury instructions.

“Suggested Retail Price” means Publisher’s published standard retail list price for the applicable Publisher’s Edition at the time of sale or distribution.

“Updated Version” means a version of a Work published by Publisher containing the most recent Updates.

“Updates” means any revisions, updates and additions to a Work created by or for the AOC from time to time, as provided to Publisher by the AOC, in each case limited to only those instructions identified by the AOC as the then-current final version of such instructions.

“Work” means either CACI or CALCRIM, and **“Works”** means both.

END OF EXHIBIT

ATTACHMENT 3
VENDOR'S ACCEPTANCE OF THE RFP'S CONTRACT TERMS

Mark the appropriate choice, below:

_____ Vendor accepts Attachment 2, Contract Terms, without exception.

OR

_____ Vendor proposes exceptions/modifications to Attachment 2, Contract Terms. Summarize any and all exceptions to Attachment 2, Contract Terms, below. Enclose both a red-lined version of Attachment 2, Contract Terms, that clearly shows each proposed exception/modification, and provide written documentation to substantiate each proposed exception/modification.

Signature

Printed Name

Title

Date