

**REQUEST FROM WEST FOR APPROVAL TO INCREASE
CD-ROM PRICING**

| | <u>STATE</u> | <u>PUBLIC</u> |
|---------------------|--------------|---------------|
| Base subscription | \$252.60 | \$417.48 |
| Quarterly updating | \$82.44 | \$139.08 |
| Semiannual updating | \$123.72 | \$211.32 |

- On April 24, 2014, West emailed notice of an increase of 3.1% in pricing of both the print and CD-ROM administrative code products effective May 1, 2014.
- The contract addresses price increases for the print product, but not for the CD-ROM.
- West requests that the Code Commission consider approving a 3.1% increase in the CD-ROM pricing (reflected in table above) effective May 1, 2014, and proposes amending the contract to address the CD-ROM pricing issue.
- Current contract language from Section III F:

Beginning May 1, 2014, and in May of each year following for the remainder of the term of the Contract, the annual price of printed sets and volumes may be increased by West by an amount no greater than the change in the Producer Price Index for Book Publishing - Industry Code 2731 ("PPI") for the previous year or 5.0%, whichever is less. West will provide notice of the price increase and the effective date on or before May 1 of each year.

For an increase greater than 5% of the previous year's PPI, West must obtain approval of the Commission.

Industries at a Glance

SHARE ON:    FONT SIZE:   PRINT: 

BROWSE INDUSTRIES

[IAG HOME](#)[CONSTRUCTION](#)[EDUCATION AND HEALTH SERVICES](#)[FINANCIAL ACTIVITIES](#)[INFORMATION](#)[LEISURE AND HOSPITALITY](#)[MANUFACTURING](#)[NATURAL RESOURCES AND MINING](#)[OTHER SERVICES \(EXCEPT PUBLIC ADMINISTRATION\)](#)[PROFESSIONAL AND BUSINESS SERVICES](#)[TRADE, TRANSPORTATION, AND UTILITIES](#)[CONTACTS IN BLS](#)

IAG INDEXES

[ALPHABETICAL INDEX](#)[INDUSTRY ORDER INDEX](#)

SEARCH IAG

Publishing Industries (except Internet): NAICS 511

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About the Publishing Industries (except Internet) subsector

The publishing industries (except internet) subsector is part of the [information](#) sector.

Industries in the Publishing Industries (except Internet) subsector group establishments engaged in the publishing of newspapers, magazines, other periodicals, and books, as well as directory and mailing list and software publishing. In general, these establishments, which are known as publishers, issue copies of works for which they usually possess copyright. Works may be in one or more formats including traditional print form, CD-ROM, or proprietary electronic networks. Publishers may publish works originally created by others for which they have obtained the rights and/or works that they have created in-house. Software publishing is included here because the activity, creation of a copyrighted product and bringing it to market, is equivalent to the creation process for other types of intellectual products.

North American Industry Classification System

The publishing industries (except internet) subsector consists of these industry groups:

- Newspaper, Periodical, Book, and Directory Publishers: NAICS 5111
- Software Publishers: NAICS 5112

- BUREAU OF LABOR STATISTICS DATA

Producer Price Index Industry Data

12-
Month
Percent
Change

Series Id: PCU5111305111303

Industry: Book publishers

Product: Technical, scientific, and professional book publishing

Base Date: 198012

Download:

 [xlsx](#)

| Year | Jan |
|------|--------|
| 2012 | 4.1 |
| 2013 | 3.1 |
| 2014 | 3.8(P) |

P : Preliminary. All indexes are subject to revision four months after original publication.

VIRGINIA ADMINISTRATIVE CODE CONTRACT

WHEREAS, the Virginia Code Commission ("Commission") and Lawyer's Cooperative Publishing, a division of Thomson Legal Publishing, Inc., now West, a division of Thomson Reuters ("West" or "Publisher") entered into a series of contracts beginning January 13, 1994, for the preparation of the Virginia Administrative Code ("Code"); and

WHEREAS, the contract executed in August 2008 will expire on April 30, 2013; and

WHEREAS, the Commission and West desire to enter into a new contract for the publication of the Virginia Administrative Code beginning May 1, 2013, for a period of seven years until April 30, 2020, and to provide for future options to renew;

NOW, THEREFORE, for good and valuable consideration; the receipt of which is hereby acknowledged, the parties agree as follows:

I. PARTIES

The Commonwealth of Virginia, acting by and through the Commission, enters into this Contract with West Publishing Corporation for the preparation and distribution of the Virginia Administrative Code, containing regulations, cumulative supplementary pamphlets and general indices and the respective updates for all regulations until April 30, 2020, under the terms and conditions expressed herein. West is the official Publisher of the Virginia Administrative Code for the duration of this Contract. The Commonwealth shall have the option to extend this Contract at four-year intervals unless West notifies the Commission, in writing, one year prior to the expiration of the first renewal term or any subsequent renewal term of its intent not to publish the Virginia Administrative Code.

The parties agree that this signed document represents the complete and final expression of the parties' agreement regarding the matters set forth herein and may be modified only by written agreement of the parties.

All words in this contract are used in an ordinary general sense or, where applicable, to reflect statutory language and meaning; the parties are not relying on any prior or contemporaneous oral or written communications or on any side discussion of terms to clarify the meaning of terms or attribute any special meaning to any term, but instead have included all necessary clarifications in the Contract itself.

II. FUNDING

The parties agree that the Commonwealth shall not bear any expenses or costs not expressly allocated or assigned to the Commonwealth pursuant to this Contract. West understands and agrees that the publication of the Virginia Administrative Code shall not result in an expenditure of general fund revenue except funds used to purchase sets, volumes or slices by individual state agencies.

III. PRICING AGREEMENT

A. The following maximum price schedule shall apply to the preparation and publication of the Code. The prices stated in this Contract shall remain the same for the term of the Contract except for adjustments made under subsection F of this Section.

Without limiting the foregoing, it is expressly understood that all risks associated with the size or growth in size of the materials designated by the Commission for inclusion in the Virginia Administrative Code publication are assumed in their entirety by the Publisher. One of the purposes of

this provision is to assure that the Commission, throughout the term of this Contract, will be entitled to determine, in its sole discretion and without any impact on the firm fixed price hereunder, what material is appropriate for inclusion or exclusion in the Virginia Administrative Code publication. Both parties recognize that the decisions made by the Commission will affect the prices bid or the willingness of vendors to bid in future solicitations, but the Commission is otherwise free to make the above decisions without impact on price.

B. Soft-covered, perfect bound print volumes:

| <u>Year 1 Pricing</u> | <u>STATE</u> | <u>PUBLIC</u> |
|--|---------------------|----------------------|
| Full Set | \$375 | \$450 |
| October Cumulative Supplementary Pamphlet (Set of 4) | \$215 | \$252 |
| Individual Supplementary Pamphlets | \$53.75 | \$63 |
| October Index A-I | 0* | 0* |
| October Index J-Z | 0* | 0* |
| Individual Recomp/Replacement Volumes | \$36 | \$42 |
| *No cost with subscription to full set during first 3 years of contract term. \$28 for individual subscriptions. | | |

C. CD-ROM:

| | <u>STATE</u> | <u>PUBLIC</u> |
|---------------------|---------------------|----------------------|
| Base subscription | \$245 | \$405 |
| Quarterly updating | \$80 | \$135 |
| Semiannual updating | \$120 | \$205 |

D. On-line subscription: The Publisher shall make the Virginia Administrative Code available, on a fair and reasonable basis, to any on-line data information service. The prices charged to the customers for the on-line subscription are at the sole discretion of those entities supplying such services, their successors and/or assigns.

E. The prices established in subsections B and C include the following:

1. Twenty-five free CD-ROM discs and their periodic supplementation to the Commission for distribution at its direction; and
2. Five free printed sets and their periodic supplementation to the Commission for distribution at its direction.
3. The CD-ROM discs mentioned in subsection E1 of this section shall be delivered in the manner requested by the Virginia Code Commission.

F. Beginning May 1, 2014, and in May of each year following for the remainder of the term of the Contract, the annual price of printed sets and volumes may be increased by West by an amount no greater than the change in the Producer Price Index for Book Publishing - Industry Code 2731 ("PPI") for the previous year or 5.0%, whichever is less. West will provide notice of a price increase and the effective date on or before May 1 of each year.

For an increase greater than 5% of the previous year's PPI, West must obtain approval of the Commission.

G. Upon any State or public purchaser's acceptance of a CD-ROM copy of the applicable price set forth in subsection C of this section, such State or public user shall own the CD-ROM copy it has accepted and shall have all of the rights provided under 17 U.S.C. § 117 in connection with that copy.

IV. FORMAT AND BINDING

A. The Publisher shall prepare and distribute a Virginia Administrative Code that shall be published in softcovered, perfect bound volumes. The regulations in the Virginia Administrative Code shall be compiled using an agency organization, grouping agencies together by germaneness of subject matter as approved by the Commission.

B. Each volume shall contain a user's guide, a table of contents of the entire set and a specific table of contents for each subject matter in the volume. The user's guide shall contain explanations of features of the Code and briefly explain how to use the features more effectively: authorities, contents list, cross-references, editor's notes, emergency regulation notes, annotations, indexes, history notes and repealed regulations. It shall also include a toll-free telephone number for index assistance and current status information. The table of contents of the entire set shall, at a minimum, include a listing of each subject matter volume, the agencies grouped under each subject matter heading and the volume in which each such subject matter and agency can be found. The table of contents specific to the volume shall include, at a minimum, the subject matter headings, each agency grouped under each subject matter heading and under each agency a listing of the specific agency regulation sections, with catchlines, grouped in numerical order and according to chapter or article division.

C. The format and numbering system devised for the Code shall represent a comprehensive system for the codification of regulations as approved by the Commission. In managing repealed regulations, the full text of regulations that have been repealed shall be removed from the printed version, leaving a note, catchline and section number for the regulations.

V. SPECIFICATIONS

A. Printed Version.

1. The Virginia Administrative Code shall consist of a set of an appropriate number of volumes, as approved by the Commission, which shall be soft-covered, perfect bound. The number of pages in each volume shall be as approved by the Commission. Supplementation shall be cumulative, once per year. The cumulative supplementary pamphlets will be in a soft-covered, perfect bound format. New or replacement volumes shall follow the specifications for original volumes going forward.

2. The printing specifications for the Virginia Administrative Code shall be those enumerated in Appendix A to this Contract.

B. CD-ROM Version.

1. The Publisher shall offer the Virginia Administrative Code on a single CD-ROM disc, using local search and retrieval software enabling users to word search the entire Code text. The product shall also offer a "cut and paste" feature, allowing users to incorporate search results into documents.

2. The contents, documentation and features of the CD-ROM product shall be those enumerated in Appendix B of this Contract.

VI. DATABASE

A. The Publisher agrees to maintain all regulations in a single, electronic database. The Publisher shall be given the regulatory information currently available from the Commission in an

electronic format and shall convert it programmatically with 99.97 percent accuracy. The Publisher shall also receive material not available in electronic form, which will be scanned and coded, or keyboarded and coded, with a double proofing operation of the converted material to achieve 98 percent accuracy.

B. The entire electronic database or portions of the database shall be provided to the Commonwealth of Virginia by electronic transmission when requested by the Commission.

C. The database shall be coded so that it will be possible to easily extract the information in any fashion, to any medium, for any end product. The system shall allow for the information to be easily "sliced" to produce new end products.

D. The Commission may develop its own database for the Code, subject to any restrictions in this agreement.

VII. EDITORIAL ENHANCEMENTS

A. The Publisher shall include in each agency regulation the following:

1. The catchline of the regulation, as provided by the agency or as approved by the Commission;

2. The statutory authority for individual regulations, stating the legislative act under which the agency was given the specific authority to promulgate the regulation, and also citing the specific Code of Virginia section under which the regulation was promulgated;

3. The text of the regulation;

4. The authority references or history notes, including the latest Virginia Register number, if any, from which the regulation was derived and the effective date of the original regulation; prior amendments to the regulation to the extent they can be determined; every subsequent change to the regulation, or addition of new regulations specifying the state register it was published in and the effective date of the change or addition; amendment notes that would be written by editors and a brief summary of the changes made by the amendment; and repeal notes, describing what a repealed regulation pertained to prior to its repeal;

5. The editorial notes, as required to explain anything that might make the Code easier for the customer to use, for example, correcting an incorrect cross-reference in the text of the regulation or minor changes made pursuant to § 30-150 of the Code of Virginia;

6. The cross-references to other regulations in the Virginia Administrative Code and to the Code sections in the Code of Virginia;

7. The research and practice references to major national and state legal publications, including American Jurisprudence, Annotated Law Reports, and law reviews;

8. References to Opinions of the Attorney General of Virginia issued after October 1, 1984; and

9. The annotations of state and federal court cases decided after October 1, 1984.

B. It is agreed that the work of preparing, editing and printing the Code and each of the annual cumulative supplementary pamphlets and replacement volumes shall be performed under the supervision and direction of the Commission.

VIII. SUPPLEMENTATION

A. The Publisher shall prepare and publish a cumulative annotated supplementary pamphlet to the Virginia Administrative Code set for the term of this Contract. The Publisher agrees to maintain its

ability to issue updates or supplementary pamphlets at any time intervals, and at varying time intervals for print products, CD-ROM products, and on-line services. The Publisher shall work with the Commission and the demands of the private sector market to determine the most appropriate intervals for delivering print supplementary pamphlets, and CD-ROM and on-line updates. Supplementary pamphlets or updates shall be annual, or more frequently if directed by the Commission.

B. The updating of the Publisher's Code database shall be an ongoing process. As the Publisher receives an electronic copy of the final regulations in the Register, it shall immediately update the database. New regulations shall be added, amendments executed and repealed regulations removed from print with some marker in the database indicating the repealed status. The historical notes, editorial notes, amendment notes and other annotation material mentioned in Section VII of this Contract shall also be added or modified during the update and as they become available.

C. The Publisher shall maintain a toll-free telephone number for customer inquiry concerning the current state of a particular regulation. The Publisher will provide the Virginia Register volume and issue number in which any change to the particular regulation was published to inquiring customers. The Publisher will email or fax the customer of a copy of the new version of the regulation at a reasonable per page fee.

D. Each cumulative supplementary pamphlet shall include all of the new regulations, amendments made to existing regulations and repealed regulations removed with appropriate editorial notes. Also, each cumulative supplementary pamphlet shall include updates of all of the other items mentioned in Section VII of this Contract. The full text of such regulations added or amended shall be set out in each cumulative supplementary pamphlet. The codification, arrangement and numbering of the regulations shall follow and conform to the codification, arrangement and numbering of the original Virginia Administrative Code. A reliable proofreading and verification system shall be mutually agreed upon by the Publisher and the Commission in order to assure 98 percent accuracy. The Commission's agreement with use of a particular system shall not be construed to relieve the Publisher of its obligation to attain 98 percent accuracy.

E. The cumulative supplementary pamphlets shall be packaged with filing instructions to ensure ease-of-use by the user.

F. The cumulative supplementary pamphlets shall be prepared annually by the Publisher and shall be delivered not later than October of each year.

IX. REPLACEMENT VOLUMES

A. The Publisher and the Commission agree that at least four replacement volumes shall be published each year as directed by the Commission.

B. The Publisher agrees to combine the regulations and annotations and editorial notes set out in each volume with the statutes and annotations and editorial notes in the supplement including all newly added regulations or newly modified regulations preceding the publication of the replacement volumes.

C. The replacement volumes shall be shipped within thirty days of the date of the shipment of the cumulative supplementary pamphlets.

D. Subject to the direction of the Commission, the Publisher shall:

1. Completely and accurately edit the materials to be set out in the volumes to be replaced;
2. Correct all errors and omissions found therein;
3. Give effect to all amendments and repeals relating thereto;

4. Make appropriate changes in headings, analyses and references; and

5. Examine and revise annotations in light of statutory changes and correct all errors found therein.

E. Unless approved by the Commission, the format and general characteristics of the replacement volumes shall be substantially similar to the original Code volumes. The binding will be soft-covered, perfect bound. Volumes and subject title table of contents as displayed in the original Code are to be included in future replacement volumes produced under this Contract. The format for individual pages and paper weight of replacement volumes shall be substantially similar to the current format.

X. INDICES

The Publisher shall prepare a General Index for publication in print as approved by the Commission. The General Index shall be updated and published annually and shall conform to the specifications in Section V of this Contract. The General Index shall be bound with flexible, perfect bound covers and shall be delivered at the same time as the cumulative supplement for the Code. Additional specifications for the General Index are:

1. Lines will be produced by an actual reading of the body of the Code and other material, not merely from headings and descriptions. The General Index shall render all regulations accessible both by subject area and by regulatory agency.

2. All regulations of the Code, and other appropriate material, will be separately indexed. Blanket references may be used only where a group of regulations includes the same general subject matter or where separate indexing of each regulation would serve no useful purpose.

3. All major headings used in the Code shall be represented, but the Index will not be a mere alphabetical arrangement of those headings. The Publisher's editors will break down the large divisions employed by the compilers and arrange index lines under such group headings as a user may reasonably expect to look for in an index prepared in an alphabetical and catchword system. The Index shall include key words embracing names of places, things and events covered thereby.

4. Headings, subheadings, lines and sublines under the headings are to be alphabetically arranged.

5. A subject shall be indexed under each descriptive word either by a direct reference or by a cross-reference, when it may be reasonably indexed under more than one descriptive word.

6. The lines under each heading shall begin with a descriptive word, so as to be readily located without necessitating a reading or scanning of all entries under the heading.

7. Popular names, short titles or topical expressions of regulations will be included in the Index when known or found by the Publisher, and as directed by the Commission.

8. Where a heading consists of an expression for which there is a common synonym, adequate cross-references shall be made.

9. Where a group of lines consisting of one flush line and two or more indented lines have been entered under a chosen heading and also may properly be entered under other headings, adequate cross-references shall be made, the object being to gather all related matter together in one place, rather than scattering the lines under various headings necessitating numerous cross-references to each of the various headings. Single flush lines with less than two indented lines shall be duplicated under all appropriate headings.

10. Adequate cross-references shall be made where matter under one heading might reasonably be expected to be found under another heading.

11. Cross-references will correctly refer to the place in the Index at which a user will find references to Code material. Double-jump references will be avoided.

12. Cross-references will be made where, in the judgment of the Index editors or the Commission, such references would be helpful to the user.

13. Repealed laws will be deleted from the Index and references to new laws and new subjects in amended laws shall be integrated in each updated General Index.

14. The paper used for the Index will be approved by the Commission.

15. A toll-free telephone number printed, on the user's guide to the Index or in documentation for electronic media, shall be made available to users of the Code to obtain assistance in locating regulations.

16. West will include West email address in filing instructions for customers to communicate suggestions to Publisher.

17. Customers will be able to purchase the General Index separately.

18. The Publisher shall provide to the Commission, on request, a listing of all index entries, sorted numerically by section number.

XI. TERMINATION

A. In addition to any other remedies provided by law or in this Contract, the Commonwealth has the right to terminate this Contract upon the occurrence or continuation of any of the following events, such termination to be effective immediately upon mailing written notice of termination to the Publisher or to be effective at such later time as the Commonwealth may choose:

1. Failure of the Publisher to make delivery of any portion of its work by the dates and times specified in this Contract;

2. Failure of the Publisher to deliver publications required under this Contract that are not in good and new condition or do not conform to specifications;

3. Failure of the Publisher to cure any other default in performance of the Contract within thirty calendar days after written notice thereof is mailed by the Commonwealth to the Publisher;

4. Whenever the Publisher misrepresents facts or conditions to the Commonwealth;

5. Whenever there has been pending for more than sixty calendar days proceedings against or by the Publisher under bankruptcy or insolvency laws, for corporate reorganization, receivership, dissolution or similar proceedings; or

6. Whenever the Publisher makes a general assignment for the benefit of creditors.

West shall give immediate notice to the Commission upon the occurrence of any of the events listed in subdivisions 1 through 6 above.

B. If the performance by either party under this Contract is delayed due to causes beyond its control, including, but not limited to fires, abnormal/adverse weather conditions or unavoidable casualties not caused by either party, the period of performance will be extended for a period of time equal to the delay; however, if any such delay continues for more than ninety calendar days, the party whose performance is not affected may terminate this Contract immediately upon giving written notice of termination to the other party.

C. Upon termination or expiration of this Contract, the Publisher shall, at the Commission's request and at no additional charge, provide the Commission with all documents, electronic files or other records generated in the performance of this Contract, including, without limitation, a list, in electronic form, of the names and addresses of all subscribers to the Code. Upon request, the Publisher shall also cooperate fully with the Commission in identifying the documents, electronic files or other records that the Commission might want to request. This subsection shall not be construed as requiring the Publisher to turn leftover inventory over to the Commission.

D. If at any point after May 1, 2015, the publication is assessed by the Publisher to be financially unsupportable, the Publisher may terminate this agreement by providing the Commission with 12 months written notice of its findings and its intent. The Publisher will work with the Commission to assist with the transitioning of the publication over to whatever provider or medium the Commission selects.

XII. GENERAL TERMS AND CONDITIONS

A. Applicable Laws and Courts: This Contract is governed solely and in all respects by the laws of the Commonwealth of Virginia, and any litigation with respect thereto will be brought in the courts of the Commonwealth. The contractor shall comply with applicable federal, state and local laws and regulations.

B. Anti-Discrimination: By signing this Contract, the Publisher certifies to the Commonwealth that it will conform to the provisions of the Federal Civil Rights Act of 1964, as amended, as well as the Virginia Fair Employment Act of 1975, as amended, where applicable, the Virginians With Disabilities Act, the Americans With Disabilities Act and § 2.2-4311 of the Code of Virginia (Virginia Public Procurement Act).

1. During the performance of this Contract, the Publisher agrees as follows:

a. The Publisher will not discriminate against any employee or applicant for employment because of race, religion, color, sex, national origin, age, disability, or any other basis prohibited by state law relating to discrimination in employment, except where there is a bona fide occupational qualification reasonably necessary to the normal operation of the Publisher. The Publisher agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause.

b. The Publisher, in all solicitations or advertisements for employees placed by on behalf of the Publisher, will state that the Publisher is an equal opportunity employer.

c. Notices, advertisements and solicitations placed in accordance with federal law, rule or regulation shall be deemed sufficient for the purpose of meeting the requirements of this section.

2. For the purposes of this contract, the Publisher will include the provisions of subdivision 1 in every subcontract or purchase order over \$10,000, so that the provisions will be binding upon each subcontractor or vendor.

C. Ethics In Public Contracting: By signing this Contract, the Publisher certifies that the submission of its proposal was made and the acceptance of this Contract is made without collusion or fraud and that it has not offered or received any kickbacks or inducements from any other publisher, supplier, manufacturer or subcontractor in connection to its bid or proposal, and that it has not conferred on any public employee having official responsibility for this procurement transaction any payment, loan, subscription, advance, deposit of money, services or anything of more than nominal value, present or promised unless consideration of substantially equal or greater value was exchanged.

D. Section 2.2-4311.1 of the Code of Virginia and the Federal Immigration Reform and Control Act of 1986: The Publisher certifies that it does not and will not during the performance of this contract knowingly employ an unauthorized alien as defined in the Immigration Reform and Control Act of 1986 or otherwise violate the provisions of the Immigration Reform and Control Act of 1986.

E. Debarment Status: The Publisher certifies that it is not currently debarred from submitting proposals on contracts by any agency of the Commonwealth of Virginia, nor is it an agent of any person or entity that is currently debarred from submitting proposals on contracts by any agency of the Commonwealth of Virginia.

F. Antitrust: By entering into this Contract, the Publisher conveys, sells, assigns, and transfers to the Commonwealth of Virginia all rights, title and interest in and to all causes of the action it may now have or hereafter acquire under the antitrust laws of the United States and the Commonwealth of Virginia, relating to the particular goods or services purchased or acquired by the Commonwealth of Virginia under said contract.

G. Drug-free workplace: During the performance of this contract, the Publisher agrees to (i) provide a drug-free workplace for the Publisher's employees; (ii) post in conspicuous places, available to employees and applicants for employment, a statement notifying employees that the unlawful manufacture, sale, distribution, dispensation, possession, or use of a controlled substance or marijuana is prohibited in the Publisher's workplace and specifying the actions that will be taken against employees for violations of such prohibition; (iii) state in all solicitations or advertisements for employees placed by or on behalf of the Publisher that the Publisher maintains a drug-free workplace; and (iv) include the provisions of the foregoing clauses in every subcontract or purchase order of over \$10,000, so that the provisions will be binding upon each subcontractor or vendor. For the purposes of this section, "drug-free workplace" means a site for the performance of work done in connection with a specific contract awarded to a contractor, the employees of whom are prohibited from engaging in the unlawful manufacture, sale, distribution, dispensation, possession, or use of any controlled substance or marijuana during the performance of the contract.

H. Precedence of Terms: Subsections A through F, R and U of these General Terms and Conditions shall apply in all instances. In the event there is a conflict between any of the other General Terms and Conditions and any Special Terms and Conditions in this solicitation, the Special Terms and Conditions shall apply.

I. Invoices: Invoices for items ordered, delivered and accepted shall be submitted by the Publisher directly to the payment address shown on the purchase order or contract. All invoices shall show the state contract number or purchase order number.

J. Payment Terms: Any payment terms requiring payment in less than thirty calendar days will be regarded as requiring payment thirty calendar days after invoice or delivery, whichever occurs last. This shall not affect offers of discounts for payment in less than thirty calendar days, however.

K. Payment to Subcontractors: The Publisher is hereby obligated:

1. To pay the subcontractor(s) within seven calendar days of the Publisher's receipt of payment from the Commonwealth for the proportionate share of the payment received for work performed by the subcontractor(s) under the contract; or

2. To notify the agency and the subcontractor(s), in writing, of the Publisher's intention to withhold payment and the reason.

The Publisher is obligated to pay the subcontractor(s) interest at the rate of one percent per month (unless otherwise provided under the terms of the contract) on all amounts owed by the

Publisher that remain unpaid seven calendar days following receipt of payment from the Commonwealth, except for amounts withheld as stated in subdivision 2 of this subsection. The date of mailing of any payment by U.S. Mail is deemed to be payment to the addressee. The Publisher shall supply its federal employer identification number. These provisions apply to each sub-tier contractor performing under the primary contract and shall be included in their contract. The Publisher's obligation to pay an interest charge to a subcontractor may not be construed to be an obligation of the Commonwealth.

L. Testing and Inspection: The Commission reserves the right to conduct any test or inspection it may deem advisable to assure supplies and services conform to the specification.

M. Assignment of Contract: This Contract is not assignable by the Publisher in whole or in part without the written consent of the Commission.

N. Changes to the Contract: Changes can be made to the Contract in any one of the following ways:

1. The Commission, after consulting with the Publisher, may order changes within the general scope of the contract at any time by written notice to the Publisher. Changes within the scope of the contract include, but are not limited to, things such as the method of packing or shipment and the place of delivery or installation. The Publisher shall comply with the notice upon receipt. The Publisher shall be compensated for any additional costs incurred as the result of such order and shall give the Commission a credit for any savings. Said compensation shall be determined by one of the following methods:

a. By mutual agreement between the parties in writing; or

b. By agreeing upon a unit price or using a unit price set forth in the contract, if the work to be done can be expressed in units, and the Publisher accounting for the number of units of work performed, subject to the Commission's right to audit the Publisher's records or to determine the correct number of units independently; or

c. By ordering the Publisher to proceed with the work and to keep a record of all costs incurred and savings realized. A markup for overhead and profit may be allowed if provided by the contract. The same markup shall be used for determining a decrease in price as the result of savings realized. The Publisher shall present the Commission with all vouchers and records of expenses incurred and savings realized. The Commission shall have the right to audit the records of the Publisher as it deems necessary to determine costs or savings. Any claim for an adjustment in price under this provision must be asserted by written notice to the Commission within thirty calendar days from the date of receipt of the written order from the Commission. If the parties fail to agree on an amount of adjustment, the question of an increase or decrease in the contract price or time for performance shall be resolved in accordance with the procedures for resolving disputes provided by the Disputes Clause of this contract or, if there is none, in accordance with the disputes provisions of the Commonwealth of Virginia's Vendor's Manual. Neither the existence of a claim or a dispute resolution process, litigation or any other provision of this contract shall excuse the Publisher from promptly complying with the changes ordered by the Commission or with the performance of the contract generally.

2. The parties may agree in writing to modify the scope of the contract. An increase or decrease in the price of the contract resulting from such modification shall be agreed to by the parties as a part of their written agreement to modify the scope of the contract.

O. Contractual Disputes: The publisher agrees that the Commission shall be the single entity with whom to resolve or negotiate any question or dispute concerning the proper interpretation of this Contract. Contractual claims, whether for money or other relief, shall be submitted in writing no later

than sixty calendar days after final payment; however, written notice of the contractor's intention to file such claim shall be given at the time of the occurrence or beginning of the work upon which the claim is based. Nothing herein shall preclude a contract from requiring submission of an invoice for final payment within a certain time after completion and acceptance of the work or acceptance of the goods. Pendency of claims shall not delay payment of amounts agreed due in the final payment. The Commission will render a final decision in writing within thirty calendar days after its receipt of the Publisher's written claim.

The Publisher shall not institute legal action prior to receipt of the Commission's decision on the claim, unless the Commission fails to render such decision within thirty calendar days. The decision of the Commission shall be final and conclusive unless the Publisher, within six months of the date of the final decision on the claim, invokes appropriate action under § 2.2-4364 of the Code of Virginia or the Administrative Appeals Procedure under § 2.2-4365 of the Code of Virginia.

Any dispute, claim or cause of action filed by Publisher (or any party making such claim on behalf of or under the rights of Contractor, his agent or subcontractor) shall be governed by §§ 2.2-4363, 2.2-4364, and 2.2-4365 of the Code of Virginia, and any period of limitation set forth therein.

During the pendency of any good faith dispute regarding the rights or duties of the Commonwealth under this Contract, the Commonwealth shall have the right to continue its disputed action or omission until the claims process is concluded. If it is then established that the Commonwealth's position was in error in whole or in part, the Publisher shall be compensated for its actual losses caused thereby and performance by all parties shall otherwise continue.

P. Default: In case of failure to deliver goods or services in accordance with the terms and conditions of this Contract, the Commission, after due oral or written notice, may procure them from other sources and hold the Publisher responsible for any resulting additional purchase and administrative costs. The remedy shall be in addition to any other remedies which the Commission may have.

Q. Taxes: Sales to the Commonwealth of Virginia are normally exempt from state sales tax. State sales use tax certificates of exemption, Form ST-12, will be issued upon request. Deliveries against this contract shall be free of federal excise and transportation taxes. The Commonwealth's excise tax exemption registration number is 54-73-0076K.

R. Sovereignty of State: Nothing in this Contract shall be construed as or operate as an express or implied waiver of the Commonwealth's sovereignty or Eleventh Amendment immunity or as a pledge of its full faith and credit.

S. Confidentiality: The Commonwealth will agree that when any software product has been developed by the Publisher or acquired from a third party at the Publisher's expense and is proprietary to the Publisher or such third party, that it shall hold and use the software product in the same manner as it would deal with its own confidential information. The Commonwealth shall not knowingly divulge, nor knowingly permit any of its employees, agents, or representatives to divulge, any propriety information with respect to the software product, the technology embodied therein, or any other proprietary documentation, models, descriptions, forms, instructions or other proprietary information relating thereto, except as specifically authorized by the Publisher, in writing, or as may be required by the laws of the Commonwealth of Virginia.

The Commonwealth shall take all reasonable steps necessary or appropriate to ensure compliance with this subsection by the Commonwealth and its employees, agents and representatives, including copying reproducible legends and markings on all physical components of the software product.

In the event of any disagreement between the parties regarding the status of any information or materials as proprietary or nonproprietary or in the event the Commonwealth proposes to take any action that the Publisher claims is inconsistent with its rights in connection with proprietary material, the Publisher shall immediately notify the Commonwealth of its intention to file a claim and shall, within ten working days after learning of the proposed action, file its claim under the Contractual Disputes clause seeking a formal decision of the Commission or other authority preventing the proposed action. Any claims not so presented shall be deemed waived.

T. Infringement Actions:

1. The Publisher, at its own expense, shall defend any suit brought against the Commonwealth, its agents, officers and employees for the infringement of patents, copyrights or trade secrets enforceable in the United States if the claim of infringement is alleged to relate to or arise from the Publisher's or Commonwealth's use of any equipment, software, materials or information prepared, developed or delivered in connection with performance of this Contract. In such suit, the Publisher shall indemnify the Commonwealth, its agents, officers and employees for any loss, liability or expense incurred as a result of such suit.

2. The Commission shall notify the Publisher of such suit within a reasonable time after learning of it and shall give the Publisher the full right and opportunity to conduct the defense of the suit, subject however to the requirements of §§ 2.2-510 and 2.2-514 of the Code of Virginia or any successor statute. If principles of governmental or public law are involved, the Commonwealth may, at its option and expense, participate in the defense of the suit.

3. The Publisher shall not be required to indemnify the Commonwealth for liability arising (i) solely out of the Commonwealth's own specifications or design or (ii) solely from the combination of equipment, software, materials or information furnished under this agreement with any equipment, software, materials or information not supplied by the Publisher or its subcontractors.

4. If any product or service becomes, or in the Publisher's opinion is likely to become, the subject of a claim of infringement, the Publisher may, at its option and expense, provide noninfringing substitutes that are satisfactory to the Commonwealth, or at the Publisher's option and expense, may obtain the right for the Commonwealth to continue the use of such product or service. The option provided in this subsection shall not be construed as releasing or diminishing the Publisher's obligations under subdivision 1 of this subsection.

U. **Nonappropriation:** Any payment obligations in connection with this contract shall be subject to appropriated funds being available for expenditure for this purpose. Payments during subsequent fiscal periods shall be dependent upon the same action. In the event of non-appropriation of funds by the Legislature for the items under this contract, the Commonwealth will terminate the Contract by June 30th of the then current fiscal year. Written notice will be provided to the Publisher as soon as possible after legislative action is completed.

XIII. SPECIAL TERMS AND CONDITIONS

A. Customer Service.

1. **Toll-free Line.** The Publisher shall provide a toll-free telephone line for the purpose of (i) obtaining index assistance or current information status; (ii) passing along suggestions, problems, comments, etc.; and (iii) placing orders.

2. **Bar Meetings.** The Publisher shall have at least one representative at the annual State Bar meeting available to discuss and explain code matters to Bar members as well as to take orders for Code materials.

3. E-mail Address. The Publisher shall provide contact information to accommodate and encourage Code, Index and other suggestions from Code users.

4. Payment. The Publisher will make reasonable payment plans available for those buying Code materials. It shall also provide for purchases to be made through the use of major credit cards.

5. Marketing. The Publisher agrees to market the Virginia Administrative Code.

B. Trade Dress and Goodwill. The Commonwealth shall own all rights and interest in the trade dress and goodwill associated with all administrative code publications contemplated by this Contract, and the Publisher agrees that it will do nothing inconsistent with such ownership. The Commonwealth shall have the right to control the quality of the code publications. The Commonwealth acknowledges that the Publisher retains ownership of its trademarks. The Publisher shall identify to the Commission, in writing, any Publisher trademark or service mark proposed to be included on or in any Code publication and shall obtain the Commission's written approval before the use of such mark on any Code publication.

C. Copyright.

1. It is the intent of the parties to this Contract to grant to the Commonwealth, to the greatest extent permitted by § 30-147 of the Code of Virginia, complete and exclusive rights and ownership interest in the Administrative Code publications and in all copyrightable materials created in the performance of this Contract. In the event § 30-147 is later amended or repealed, the Publisher agrees retroactively to transfer to the Commonwealth any further rights as may be transferred consistent with such amendment or repeal. In the event any provision of this subsection C is held inconsistent with applicable law, the parties shall retroactively amend this Contract to accomplish the above intent to the fullest extent permissible.

2. The Publisher shall at its own expense take all necessary steps promptly to obtain and register all copyright rights in all copyrightable parts of the Administrative Code publications and in all other copyrightable materials created in the performance of this Contract. With respect to catchlines, historical citations (including, without limitation, source notes, citations to statutory authority and citations to the Virginia Register in which each regulation was originally published), numbers of sections, articles, chapters and titles, frontal analyses, reviser's or editor's notes, and all copyrightable material that is jointly created by the Publisher and the Commonwealth, the Publisher shall irrevocably assign all its rights therein to the Commonwealth, the Publisher shall register the copyright therein in the name of the Commonwealth, and the sole and exclusive worldwide ownership interest in those copyrights shall be held by the Commonwealth. With respect to any copyright rights not covered by the preceding sentence, the Publisher shall register all such rights in the Publisher's own name, but the Publisher shall, and by this Contract does, transfer to the Commonwealth an irrevocable, transferable, fully paid-up, perpetual license to use, publish, duplicate, distribute, modify, publicly display and publicly perform all works protected by such copyrights as well as any derivative works prepared therefrom. This license with respect to copyrights registered in the Publisher's name shall be the exclusive license within Virginia (the Publisher retaining no rights for itself in Virginia) and shall be nonexclusive in all other places.

3. The rights and licenses granted to the Commonwealth in this subsection C are perpetual and shall survive the expiration of this Contract. Further, in the event of any breach by the Commonwealth, the Publisher's remedies shall not include the right to rescind or otherwise terminate the rights and licenses provided to the Commonwealth by this subsection C.

4. By this Contract, the Commonwealth grants back to the Publisher an exclusive license to publish the Virginia Administrative Code (including all related supplements and replacement volumes)

in Virginia in any and all media in accordance with the terms and conditions of this Contract except: the Publisher shall be given exclusive rights only to the extent such rights are supported by applicable copyright law and obtained by the Commonwealth under paragraphs 1, 2 and 3 of this subsection C. The Publisher hereby acknowledges and agrees that nothing in this Contract shall prohibit the Commonwealth from complying with the Virginia Freedom of Information Act or similar laws, as the same may be amended from time to time.

In addition to the above exclusive copyright license, the Commonwealth agrees that the Code Commission shall not enter into a contract with any other entity to have such other entity publish a public domain version of the Virginia Administrative Code prior to the expiration or termination of this Contract. This restriction shall apply to the Code Commission only and shall not restrict the actions of other State agencies. In the event Publisher objects to any advertisement, publication or other action of a third party, Publisher shall pursue such enforcement options as Publisher deems appropriate and available against such third party and shall not call upon the Code Commission or the Commonwealth to take any action against such third party.

5. The license and rights granted by the Commonwealth as described in paragraph 4 of this subsection C shall continue for the duration of this Contract and shall expire upon the termination or expiration of this Contract. Upon any expiration of the license, all such rights shall revert to the Commonwealth, and the Publisher shall deliver to the Commonwealth an error-free electronic file in standard, machine-readable format containing the entire then-current version of the Administrative Code for unrestricted use by the Commonwealth.

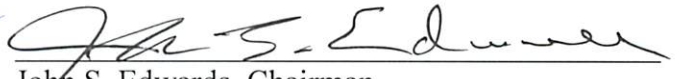
6. The Publisher agrees to execute and deliver such further documents as the Commonwealth may reasonably request for the purpose of acknowledging, implementing or recording the copyright interests that are to be retained or obtained by the Commonwealth pursuant to this subsection C. The Publisher further acknowledges and agrees that the license and rights obtained by it under this Contract are not transferable without prior written consent of the Commonwealth.

IN WITNESS WHEREOF, the parties have executed this Contract, consisting of 14 pages and two appendices, by their authorized representatives and as of the date and year referenced below.



Ellen Gillespie, Sr. Director
Contract Management
West, a Thomson Reuters business

Date: 4/29/13



John S. Edwards, Chairman
Virginia Code Commission
Commonwealth of Virginia

Date: 4-30-13

APPENDIX A

TEXT:

| | |
|------------------------------------|--|
| Page Trim Size: | 6-5/8 x 9-5/8 |
| Type Page Size: | 30 x 50 picas including running head and folio |
| Type Style: | To follow South Carolina Code and Regulation style: Baskerville |
| Type Size: | Text: 11/12 Baskerville with 1 Em paragraph indent |
| Schemes: | 9/10 Baskerville |
| Section Number: | 14 Baskerville bold run-in with section head |
| Section Head: | 11/12 Baskerville Bold upper and lower case with 1-1/2 line space above and 1/2 line space below |
| Case Notes: | 9/10 Baskerville double column by 13-1/2 picas with 1 pica between columns |
| Case Note Head: | 9/10 Baskerville bold upper case 1-1/2 line space above and 1/2 line space below center by full measure |
| Article Head: | 11/12 Baskerville cap and small cap centered 1-1/2 line space above and 1 line space between article number and article title and 1 line space below |
| History or Amendment Notes: | 9/10 Baskerville bold with 1 line space above |
| Cross Reference and Research Head: | 9/10 Baskerville bold with 1 line space above; text paragraph indent 9/10 Baskerville |
| Running Heads: | 11 Baskerville cap and small caps centered |
| Section Ears: | 10 Baskerville bold 12 pt. space to text area |
| Folios: | 9 Spectra bold 6 pt. space from text area |
| Paper: | 35# English Finish 852 PPI |
| Foil: | No more than 3 colors - colors to be determined |

INDEX:

Page size: 28 x 52
Trim size: 5.875 x 9.5
Font size: Headings/references = 9 pt.

APPENDIX B

1. Contents of the CD-ROM disc shall contain:
 - a. The full Code database;
 - b. Search and retrieval software; and
 - c. On screen help.
2. Documentation of the CD version shall include:
 - a. A learning guide;
 - b. A systems reference manual;
 - c. An installation guide; and
 - d. A quick reference card.
3. The product shall have the following features:
 - a. The ability to rapidly search for any words or numbers throughout the Code;
 - b. Full Boolean search (and, or, not) and positional (within a variable number of words);
 - c. Comprehensive, "merged" database;
 - d. Hypertext (linked) references between referencing and referenced material;
 - e. The ability to electronically extract portions from the Code and import those portions into a word processor;
 - f. A powerful, easy-to-learn user interface; and
 - g. The ability to print entire Code sections to an attached printer.

2014 VIRGINIA ADMINISTRATIVE CODE PRICING

| PRINT PRODUCT - YEAR 2 PRICING (Effective May 1, 2014) | | |
|--|--------------|---------------|
| | STATE | PUBLIC |
| Full Set | \$386.62 | \$463.95 |
| October Cumulative Supplementary Pamphlet (Set of 4) | \$221.66 | \$259.80 |
| Individual Supplementary Pamphlets | \$55.42 | \$64.94 |
| October Index A-I | 0* | 0* |
| October Index J-Z | 0* | 0* |
| Individual Recomp/Replacement Volumes | \$37.12 | \$43.30 |
| *No cost with subscription to full set during first 3 years of contract term. \$28 for individual subscriptions. | | |