



Board of Trustees

Meeting of Wednesday, November 18, 2015

12:15 P.M.

San Diego Law Library

1105 Front St., San Diego, CA 92101

AGENDA

- 1) **Call to Order**
- 2) *** Opportunity for General Public Comment**
- 3) **Minutes**
 - a. Previous Meeting of October 14, 2015.
- 4) **Financial Report**
 - a. Finance Report
- 5) **Bylaws Revision Approval**
- 6) **LexVid Contract Review**
 - a. Foundation Program
- 7) **Branch Update**
 - a. MOU Drafts for EC & SB Branch Partnerships
- 8) **Other Reports**
 - b. Foundation Liaison Report (Judge Gill, Low)
 - c. Legislative Committee (Adkins)
 - d. Membership Program Committee (Adkins)
- 9) **Director's Report**
 - a. Library Update
 - 1) Small Claims Clinic
 - 2) Open House – December 10, 2015
 - b. Law Library press & praise
 - c. Outreach activities
 - d. Facilities maintenance reports
 - e. Patron compliments/ complaints
 - f. Incident reports
 - g. Monthly Activity Report
- 10) **Board Member Reports**
- 11) **Adjournment**

****Items with asterisks will be discussion items only****

At the beginning of the meeting, the presiding officer will ask if Board members or members of the public wish to pull other items for discussion. Items not pulled for discussion are passed in a consent resolution at the beginning of the meeting. Persons wishing to make public comment at the meeting are requested to make arrangements with the Administrative Office prior to the meeting. Persons desiring to comment on an agenda item will speak when that item comes up for discussion. An individual desiring to bring another matter to the Board's attention should be prepared to speak at the beginning of the meeting. Members of the public should limit remarks to five minutes. Materials for each agenda item, except closed session items, are available for public inspection from the San Diego Law Library Administrative Office, 1150 Front Street, San Diego, CA 92101-3904, and (619) 531-4449.

San Diego County Public Law Library
Board of Trustees
San Diego Law Library
1105 Front Street, San Diego, CA 92101
November 18, 2015
12:15 p.m.

Agenda Summary and Action Requested

| No. | ITEM | SUMMARY | RECOMMEND |
|-----|---|--|----------------|
| 1. | Call to Order | | Action. |
| 2*. | Opportunity for General Public Comment | | N/A |
| 3. | Minutes of Previous Meetings | A. Approval of Minutes of October 14, 2015 | Action. |
| 4. | Financial Report | A. Financial Report | Information. |
| 5. | Bylaws Revision Approval | A. Bylaws Revision Approval | Action. |
| 6. | LexVid Contract Review | A. Foundation Program | Information. |
| 7. | Branch Update | A. MOU Drafts for EC & SB Branch Partnerships | Information. |
| 8. | Other Reports | A. Foundation Liaison Report (Judge Gill, Low) | Information. |
| | | B. Legislative Committee (Adkins) | Information. |
| | | C. Membership Program Committee (Adkins) | Information. |
| 9. | Director's Report | A. Library Update | Information. |
| | | a. Small Claims Clinic | Information. |
| | | b. Open House – December 10th | Information. |
| | | B. Law Library press & praise | Information. |
| | | C. Outreach activities | Information. |
| | | D. Facilities maintenance reports | Information. |
| | | E. Patron compliments/ complaints | Information. |
| | | F. Incident reports | Information. |
| 10. | Board Member Reports | A. Any new business not an Agenda Item. | Information. |
| 11. | Adjournment | | Action. |

Item 3: Minutes

a. Previous Meeting of October 14, 2015

**Law Library Board of Trustees
Minutes of the Meeting
October 14, 2015**

The Law Library Board of Trustees held a regular meeting, pursuant to notice thereof, on **October 14, 2015** at the **San Diego Law Library**, located at **1105 Front St., San Diego, CA 92101**.

Present: The following Board members were present: Honorable Julia Craig Kelety, President; Honorable David Berry, Vice President; Jeffrey D. Cawdrey, Esq., Treasurer; Honorable Joseph Brannigan; Honorable Yvonne E. Campos; Mara Elliott, Esq.; and Honorable David M. Gill.

Absent: Lorena Slomanson, Esq., Assistant Secretary; and Nathan Low, Esq.

Also Present: John W. Adkins, Director of Libraries and Secretary to the Board; Marcia O'Hara, Assistant Director of Finance & Personnel; and Cyndi Quisenberry, Administrative Support Officer.

Guests: None

1) Call to Order

Judge Julia Kelety, Board President, convened the meeting at 12:22 pm.

2) * Opportunity for General Public Comment

a. No Public Comments

3) Minutes

a. Previous Meeting of September 16, 2015

MOTION (1): Judge Kelety called for a motion to approve the minutes of September 16, 2015. Judge Gill moved to approve the minutes; Judge Brannigan seconded the motion, Mr. Cawdrey abstained and the minutes passed by acclamation.

4) Financial Report (O'Hara)

a. Financial Reporting

- o No Report due to Ms. O'Hara's absence.

5) Approval of Annual Report

- Mr. Adkins provided the final version of the Annual Report to the Board.

MOTION (2): Judge Kelety called for a motion to approve the Fiscal Year 2014-2015 Annual Report. Judge Gill so moved, Judge Berry seconded, and the Fiscal Year 2014-2015 Annual Report passed unanimously.

**Law Library Board of Trustees
Minutes of the Meeting
October 14, 2015**

6) Audit Report

- This is an informational item, and approval is not needed.
- Mr. Adkins gave some background on how the audit was compiled.

7) Bylaws Review Discussion

- Ms. Elliott reviewed the current bylaw changes.
 - Changes were made to keep us compliant with the Brown Act.
- Approval of the revised Bylaws will be added to the November agenda.
- Mr. Adkins proposed changes relevant to the title of Assistant Secretary. These changes will be reflected in the revised Bylaws.

8) Other Reports

- a. Foundation Liaison Report (Judge Gill; Nathan Low)
 - The Witkin Awards event occurred on October 8, 2015. Profit was \$15,000.
 - Wonderful photographer.
 - Need to work on controlling the introductions.
- b. Legislative Committee Report
 - Mr. Adkins reported that SB711 was signed into law.
 - The next legislative issue to tackle is to get a piece of the general fund.
- c. Ad Hoc Membership Committee
 - Mr. Adkins has provided materials to the committee, and is planning a meeting.

9) Branch Update

- a. Working on which part of the collection to donate.
- b. We have received The Daily Transcript archives and have deposited them at the East County Branch. These archives go back to 1974.
- c. The SDLL received a donation of international legal materials donated by Prof. Sломanson.
 - Will be seeing the MOU which will explain how it will all work for East County. Will be doing a similar plan for South Bay.
 - Judge Berry suggested that we postpone the SB MOU and focus on the East County. Mr. Adkins feels that it is better to do it all at once for the following reasons:
 1. Easier for patrons throughout the county;
 2. Better for library staff;
 3. Creates a cohesive action plan for branch operations.

**Law Library Board of Trustees
Minutes of the Meeting
October 14, 2015**

10) Secretary's Report

- a) Law Library press & praise
 - Article about Senator Wolk signing SB711.
 - Daily Transcript closing article.
 - Daily Transcript Gets New Life article.

- b) Outreach activities
 - 1 Class, 1 Lecture, 5 Promotional Programs, and 16 Legal Clinics.
- c) Facilities Maintenance Reports
 - 10 Facilities Maintenance Reports
- d) Patron compliments/ complaints
 - 5 Patron Compliments/Complaints
- e) Incident reports
 - 5 Incident Report
- f) Monthly Activity Report

11) Other Business

- a. No other business

12) Adjournment

- The meeting adjourned at 1:05 pm.

Item 4: Financial Report

San Diego County Public Law Library
Balance Sheet
As of September 2015

As of
September 2015

| |
|-----------|
| Low Cash |
| 2,567,497 |

ASSETS

Current Assets

Checking/Savings

0001 - Cash and investments

| | |
|---------------------------------------|--------------|
| 0010 - County Treasury | 2,539,735.16 |
| 0020 - Petty Cash | 225.00 |
| 0041 - Payroll Checking | 50,558.79 |
| 0042 - Credit Card Checking Account | 30,656.80 |
| 0051 - Wells Fargo Checking Account | 0.00 |
| 0060 - Citibank Operating Account | 1,837.77 |
| 0090 - County Held Construction Funds | 35,575.74 |

Total 0001 - Cash and investments 2,658,589.26

Total Checking/Savings 2,658,589.26

Accounts Receivable

0110 - Accounts Receivable 418,763.74

Total Accounts Receivable 418,763.74

Other Current Assets

| | |
|--|-----------|
| 0070 - Due from LLJF | 10.00 |
| 0160 - Deposit with others - long term | 0.00 |
| 0420 - Prepaid Expenses | 21,954.13 |
| 1500 - Over/under | -26.73 |

Total Other Current Assets 21,937.40

Other Assets

| | |
|--|-------------|
| Board Designated Facilities Improvement Fund | 700,000.00 |
| Due to Facilities Improvement Fund | -167,473.00 |
| Amount reimbursed to Facilities Improv Fund | -532,527.00 |

Total Other Assets 0.00

Fixed Assets

| | |
|------------------------------------|---------------|
| 0200 - Renovation Work in Progress | 78,510.77 |
| 0300 - Equipment | |
| 0340 - Equipment | 406,900.67 |
| 0350 - Improvements | 4,791,348.00 |
| 0360 - Furniture | 336,908.07 |
| 0370 - IT Equipment | 380,318.61 |
| 0399 - Accumulated Depreciation | -1,773,836.00 |

| | |
|---|---------------------|
| Total Fixed Assets | 4,220,150.12 |
| Other Assets | |
| 0155 · Prepaid Subscriptions | 34,594.59 |
| TOTAL ASSETS | 7,354,035.11 |
| LIABILITIES & EQUITY | |
| Liabilities | |
| Current Liabilities | |
| Accounts Payable | |
| 0511 · Accounts Payable | 37,550.48 |
| Total Accounts Payable | 37,550.48 |
| Credit Cards | |
| 0513 · Credit Card Debt | |
| 0513-GC - BoA - Gina Catalano | 1,183.69 |
| 0513-JA · Citibank MC - J. Adkins | 172.40 |
| 0513-SS American Express- S Schweter | 3,102.10 |
| Total 0513 · Credit Card Debt | 4,458.19 |
| Other Current Liabilities | |
| 0515 · Deposits on Account | |
| 0517 · Security Deposits | 117,711.00 |
| 0523 · Extended Services Deposits | 8,153.12 |
| Total 0515 · Deposits on Account | 125,864.12 |
| 0519 · Sales Tax Payable | 0.00 |
| 0520 · Accrued Payroll | 177,356.74 |
| 0525 · Payroll Liabilities | 838.32 |
| 0530 · Accrued Expenses | 3,386.72 |
| 0530 · Capital Lease Payable | 16,181.00 |
| Total Other Current Liabilities | 323,626.90 |
| Total Current Liabilities | 365,635.57 |
| Long Term Liabilities | |
| 0650 · AOC Advance | 223,022.00 |
| Total Long Term Liabilities | 223,022.00 |
| Total Liabilities | 588,657.57 |
| Equity | |
| 0700 · Fund Balance | |
| 0740 · Fund Balance Available | 5,376,771.50 |
| Total 0700 · Fund Balance | 5,376,771.50 |

| | | |
|----------------------------|--------------------|--------------|
| 3000 | Opening Bal Equity | 115,441.77 |
| 3900 | Retained Earnings | 1,207,624.54 |
| | Net Income | 65,539.73 |
| | Total Equity | 6,765,377.54 |
| TOTAL LIABILITIES & EQUITY | | 7,354,035.11 |

| San Diego County Public Law Library | | | | |
|--|------------------------------------|---------------|-----------------|-------------------|
| Profit and Loss | | | | |
| Sep-15 | | | Approved | Projection |
| | | Actual | Budget | of Actual |
| Income: | | Sep-15 | FY 2016 | FY 2016 |
| Income from Outside Sources: | | | | |
| 9821 | Filing Fees: Superior Court | 649,725 | 2,545,000 | 2,545,000 |
| 9950 | Membership Fees | 1,753 | 55,000 | 55,000 |
| 9190 | Interest | 2,374 | 9,000 | 9,000 |
| 9979 | Donations | 811 | 1,000 | 1,000 |
| 9990 | Grants | - | 15,000 | 15,000 |
| 9970 | Sponsorship Income | - | 5,000 | 5,000 |
| | Restricted Hervey Technology Grant | | - | - |
| Sub-Total Outside Sources: | | 654,663 | 2,630,000 | 2,630,000 |
| Income from Library Sources: | | | | |
| 9181 | Fines | 1,835 | 7,000 | 7,000 |
| 9730 | Extended Services | 45 | 700 | 700 |
| 9967 | Copier Income | 5,157 | 35,000 | 35,000 |
| 9994 | Class fees | 1,370 | 6,000 | 6,000 |
| 9996 | Miscellaneous - Taxable | 1,114 | 5,000 | 5,000 |
| 9995 | Nontaxable | 405 | 2,000 | 2,000 |
| Sub-Total Library Sources: | | 9,926 | 55,700 | 55,700 |
| TOTAL INCOME: | | 664,589 | 2,685,700 | 2,685,700 |
| EXPENDITURES: | | | | |
| Personnel: | | | | |
| 1101 | Regular Employees | 306,603 | 1,250,000 | 1,250,000 |
| 1102 | Part-time Employees | 9,408 | 10,000 | 10,000 |
| 1160 | PERS Employer Contributions | 24,030 | 118,000 | 118,000 |
| 1165 | Employer's FICA Expense | 4,763 | 22,000 | 22,000 |
| Library Contributions - Health Benefits | | | | |
| 1170-AC | Active employees | 31,733 | 140,000 | 140,000 |
| 1170-RT | Retirees | 34,450 | 140,000 | 140,000 |

| | | | | | | |
|---------|---|---------|--|-----------|--|-----------|
| 1170-LI | LTD/Life/Dental | 1,910 | | 12,000 | | 12,000 |
| 1175 | Workers' Compensation | 2,994 | | 18,000 | | 18,000 |
| 1185 | Unemployment Expense | - | | 4,000 | | 15,000 |
| | Sub-Total Personnel: | 415,891 | | 1,714,000 | | 1,725,000 |
| | <u>Materials:</u> | | | | | |
| 2215 | Electronic Resources | 22,726 | | 102,000 | | 102,000 |
| 2326 | Microforms | - | | 1,300 | | 1,300 |
| 2328 | Compact Discs | 1,022 | | 8,000 | | 8,000 |
| 2345 | Books - New | - | | 1,000 | | 1,000 |
| 2346 | Special Funds | - | | - | | - |
| 2347 | Books - Disposable | 65,271 | | 320,000 | | 320,000 |
| 2348 | Books - Continuations | 24,767 | | 110,000 | | 110,000 |
| 3470 | CA Use/Sales Tax | 531 | | 3,000 | | 3,000 |
| | Sub-Total Materials: | 114,317 | | 545,300 | | 545,300 |
| | <u>Operations:</u> | | | | | |
| 2244 | Library Insurance | - | | 35,000 | | 35,000 |
| 2300 | Memberships | 100 | | 5,000 | | 5,000 |
| 2302 | Copier/Print solution | 6,264 | | 33,500 | | 33,500 |
| | Miscellaneous: | | | | | |
| 2304-CC | Credit Card Acct. Charges | 743 | | 6,000 | | 6,000 |
| 2304-RE | Recruiting | - | | 1,000 | | 1,000 |
| 2304-MC | Misc | 962 | | 5,000 | | 5,000 |
| | Staff Appreciation | 3,259 | | 5,000 | | 5,000 |
| 2305 | Catalog Data Searches/Supplies | 3,991 | | 6,000 | | 6,000 |
| 2306 | Postage | 1,168 | | 4,000 | | 4,000 |
| 2307 | Printing/Copying | | | 1,000 | | 1,000 |
| 2308 | Binding | 207 | | 1,000 | | 1,000 |
| 2309 | Collection Supplies (incl. tattle tape) | 451 | | 4,000 | | 4,000 |
| 2311 | IT Supplies/Repairs | 56 | | 8,550 | | 8,550 |
| 2312 | Office Supplies | 1,230 | | 8,000 | | 8,000 |
| 2315 | Professional & Special Services: | | | | | |
| 2315-AU | Audit | 9,000 | | 9,000 | | 9,000 |
| 2315-LE | Legal | - | | 4,000 | | 4,000 |

| | | | | |
|---------|--|----------------|------------------|------------------|
| 2315-PA | Payroll | 616 | 5,000 | 5,000 |
| 2315-SE | Security | 13,979 | 64,000 | 64,000 |
| 2315-LL | Loose-leaf filing | 1,800 | 14,000 | 14,000 |
| 2315-OT | Professional Services-Other | 395 | 500 | 500 |
| 2315-PV | Preservation | 35 | 1,000 | 1,000 |
| 2315-WE | Website | - | - | - |
| 2359 | Employee Auto/Bus Passes/Parking | 3,002 | 23,000 | 23,000 |
| 2365 | Professional Memberships | 180 | 4,000 | 4,000 |
| 2362 | Conferences/Seminars | 1,399 | 12,000 | 12,000 |
| 2370 | Public Relations | 955 | 8,000 | 8,000 |
| 2390 | IT: | | | |
| 2391 | Computer Software | - | 10,700 | 10,700 |
| 2392 | IT Outsourcing | 7,455 | 25,000 | 25,000 |
| 2393 | IT Maintenance | 3,669 | 50,200 | 50,200 |
| 2394 | T-1/Internet | 7,485 | 50,600 | 50,600 |
| | Hervey Technology Expense (see note) | | | - |
| 2453 | Facilities | 439 | 2,000 | 2,000 |
| 4501 | Equipment: | | 1,000 | 1,000 |
| 4501-IT | IT Equipment | - | 82,550 | 82,550 |
| | Hervey Technology Equipment | | - | - |
| 4501-OF | Office | - | 1,000 | 1,000 |
| 4501-OT | Other | - | - | - |
| 5000 | Depreciation | | 0 | |
| | Reimbursement to reserves for purchase of Furniture & Technology | | 0 | - |
| | Sub-Total Operations: | 68,840 | 490,600 | 490,600 |
| | TOTAL EXPENDITURES: | 599,048 | 2,749,900 | 2,760,900 |
| | OPERATING BALANCE: | 65,541 | (64,200) | (75,200) |

| FILING FEES PAYMENT RECORDS - 2015/2016 | | | | | | | |
|---|-------------|----------------------|-------------|------------|-------------|-----------------|--------------------|
| 3 Month Completed | | | | | | | |
| AOC | | MONTH | | AOC | | | |
| Last year | | | | This Year | | | |
| | \$254,898 | | JULY | | \$234,080 | | |
| | \$225,364 | | AUGUST | | \$206,405 | | |
| | \$216,443 | | SEPTEMBER | | \$209,239 | | |
| | \$238,708 | | OCTOBER | | | | |
| | \$178,204 | | NOVEMBER | | | | |
| | \$214,553 | | DECEMBER | | | | |
| | \$200,164 | | JANUARY | | | | |
| | \$187,935 | | FEBRUARY | | | | |
| | \$241,728 | | MARCH | | | | |
| | \$236,148 | | APRIL | | | | |
| | \$217,076 | | MAY | | | | |
| | \$220,698 | | JUNE | | | | |
| | \$2,631,919 | | TOTAL | | \$649,724 | | |
| | \$219,327 | | Monthly Avg | | \$216,575 | | |
| Filing Fees are 6.7% lower than last fiscal year | | | | | | | |
| Filing Fees are 2.0% higher than budgeted. | | | | | | | |
| Monthly Average History: | | | | | | | Projection: |
| | | Current Year: | Budget | Actual YTD | Difference | % of budget YTD | |
| 15 | \$219,327 | | | | | | |
| 14 | \$231,426 | | | | | | |
| 13 | \$253,315 | | | | | | |
| 12 | \$275,394 | July | 212,000 | \$234,080 | 22,080 | 110.42% | 234,080 Actual |
| 11 | \$321,023 | Aug. | 212,000 | \$206,405 | (5,595) | 97.36% | 206,405 Actual |
| 10 | \$331,851 | Sept. | 212,000 | \$209,239 | (2,761) | 98.70% | 209,239 Actual |
| 09 | \$348,740 | Oct. | 213,000 | | (213,000) | 0.00% | 213,000 Projection |
| 08 | \$321,354 | Nov. | 212,000 | | (212,000) | 0.00% | 212,000 Projection |
| 07 | \$287,630 | Dec. | 212,000 | | (212,000) | 0.00% | 212,000 Projection |
| 06 | \$267,751 | Jan. | 212,000 | | (212,000) | 0.00% | 212,000 Projection |
| 05 | \$236,929 | Feb. | 212,000 | | (212,000) | 0.00% | 212,000 Projection |
| 04 | \$223,022 | Mar. | 212,000 | | (212,000) | 0.00% | 212,000 Projection |
| 03 | \$226,902 | Apr. | 212,000 | | (212,000) | 0.00% | 212,000 Projection |
| 02 | \$216,397 | May | 212,000 | | (212,000) | 0.00% | 212,000 Projection |
| 01 | \$197,101 | June | 212,000 | | (212,000) | 0.00% | 212,000 Projection |
| 00 | \$202,556 | | | | | | |
| 99 | \$188,610 | | | | | | |
| 97 | \$171,946 | | \$2,545,000 | \$649,724 | (1,895,276) | | \$2,558,724 |
| 96 | \$162,831 | | | | | | |
| 95 | \$160,868 | | | | | | |
| 94 | \$168,862 | | | | | | |

Item 5:
Bylaws Revision

**San Diego County Public Law Library
Board of Trustees
Bylaws**

I. Name

- A) The organization shall be called "The Board of Trustees of the San Diego County Public Law Library."

II. Creating Statutes and Provisions

- A) The Board of Trustees (Board) exist by virtue of the provisions of Chapter 5 of the California Business and Professions Code, sections 6300 through 6363, as amended from time to time, and exercises the powers and authority and assumes the responsibilities delegated to it under that Code.
- B) The Board shall approve a Mission Statement for the San Diego County Public Law Library.
 - 1) A current version shall be appended to these bylaws. A copy of the Mission Statement shall be made to any one requesting it.
- C) Regular Procedure
 - 1) These bylaws may be amended by a vote of five Board members present at any duly noticed regular or special meeting.
 - 2) The Board shall review these by-laws at least once every three years.
- D) Use of Robert's Rules of Order
 - 1) In all instances when these Bylaws are silent with regard to the conduct of Board business, then the latest available edition of Robert's Rules of Order shall control the parliamentary rules of the San Diego County Public Law Library Board of Trustees. If Robert's Rules of Order is silent as well, then a resolution passed by the majority present at a meeting shall be controlling with regard to this matter only.

III. Members

- A) Superior Court
 - 1) The San Diego County Superior Court shall elect up to five members to

the Board.¹

- 2) A member of the Board from the Superior Court shall serve a term of three years. Terms begin in January. Judicial members may be re-elected for succeeding terms, as the Superior Court desires.
- 3) Terms shall be overlapping, with no more than two members elected each year. If a member shall resign from the Board prior to the end of the term, then the Superior Court shall elect one of its members to serve the balance of the term.

B) Attorney Members

- 1) The San Diego County Board of Supervisors (County Board) shall appoint up to four members to the Board of Trustees for three-year, overlapping terms.² At least one attorney shall be a member of the San Diego County Bar Association.
- 2) Terms of attorney members begin in January. Attorney members may be re-appointed for succeeding terms, as the County Board desires.³

C) Unfilled Vacancy and Removal of a Trustee

- 1) The Appointing Authority may appoint a person to serve in the capacity of a trustee when there is an unfilled position on the Board.⁴
- 2) The Board may remove a trustee from the Board if he or she fails to attend three consecutive meetings.⁵
- 3) The Secretary shall notify the proper appointing authority of any impending vacancies in a timely manner.

IV. Officers of the Board

A) President/President Elect (Vice President)

¹ Cal. Bus. & Prof. Code §6301.1(a)

² Cal. Bus. & Prof. Code §6301.1(b)

³ The County Board has a standing rule that its board appointees serve until new appointments are made. Thus, attorney appointments to the Board would serve beyond January if no subsequent appointments had yet been made unless the attorney formally resigns. The Board can fill the position temporarily, as set out by statute and these bylaws, if the attorney formally resigns.

⁴ Cal. Bus. & Prof. Code 6301.1(c)

⁵ Cal. Bus. & Prof. Code §6305.

- 1) The Board shall appoint one of its members to serve as Vice President/President Elect of the Board, who shall begin service as President at the first meeting of the calendar year subsequent to that election as Vice President/President Elect. If the Vice President/President Elect should choose not to serve, then an election for the office of President for that calendar year shall be held.
 - 2) The President shall serve for a term of one year.
 - 3) The President may not serve three consecutive terms, unless the Vice President/President Elect should choose not to serve as President, whereupon the President may serve a third term if elected in accordance with Bylaws IV.A.1.
- B) Secretary
- 1) The Board shall elect one from its members to serve as Secretary of the Board.
 - 2) The Secretary shall serve a term of one year.
 - 3) The Secretary may serve any number of consecutive terms.
 - 4) **The Director shall serve as Assistant Secretary of the Board, *ex officio*.**
- C) Treasurer
- 1) The Board shall elect one from its members to serve as Treasurer of the Board.
 - 2) The Treasurer shall serve a term of one year.
 - 3) The Treasurer may serve any number of consecutive terms.
- D) Election of Officers
- 1) An election for officers shall be held at the regularly scheduled January meeting once every year.
 - 2) If a position on the Board is vacant at the time of a regularly scheduled election, the election may be delayed until the Board has its full complement of members, whereupon the officers previously serving shall continue in that capacity. If a regularly scheduled election is delayed and one of the officer posts is vacant, the Board may elect a

temporary officer for that post.

- 3) If an officer post is vacated prior to the end of the term, the Board may hold an election at the next regularly scheduled meeting.

V. Committees

A) Membership of Committees

- 1) All standing committees shall be composed only of Board members.
- 2) All ad hoc committees, other than committees of the whole, shall be limited to no more than four Board members.

B) Powers of Committees

- 1) No committee will have other than advisory powers unless, by suitable action of the Board, it is granted specific power to act.

C) Types of Committees

- 1) Standing committees have continuing subject matter jurisdiction. The members shall be chosen as defined in these bylaws. Members shall serve for a term of one year, but may be reappointed consecutively for any number of terms.
 - (a) There are two standing committees: Personnel and Budget.
 - (b) A standing committee is subject to the Ralph M. Brown Act (Brown Act).
- 2) Ad hoc committees are temporary committees which serve a limited or single purpose that is not perpetual and dissolve once the committee's task is completed. An ad hoc committee is composed solely of less than a quorum.
 - (a) The Board may create ad hoc committees by motion.
 - (b) A motion creating an ad hoc committee may specify how its members are chosen or may even specify which members of the Board shall serve on the committee. If there is no specific statement on the membership of the committee, then the President shall appoint the members of the committee.

(c) An ad hoc committee is not subject to the Brown Act.⁶

D) Personnel Committee

- 1) The President shall appoint members of the Board to serve on a Personnel Committee, one of whom shall be designated Chairman.
- 2) The Personnel Committee shall be charged with oversight of the personnel policy of the Law Library.
- 3) The Personnel Committee shall make appropriate recommendations on salary, compensation and fringe benefits of the Law Library staff to the Board as a whole.

E) Budget Committee

- 1) The President shall appoint members of the Board to serve on a Budget Committee.
- 2) The Budget Committee shall be charged with oversight of the budgetary and accounting policy of the Law Library.
- 3) The Budget Committee shall annually make budget recommendations on to the Board as a whole, including any cost of living adjustment for staff.

VI. Meetings

A) Time of Meetings

- 1) All meetings shall be held in conformity with the Brown Act.
- 2) Regularly scheduled meetings
 - (a) The Board shall determine the dates, times, and location for its regularly scheduled monthly meetings.
 - (b) Each December, the Secretary or delegate shall establish a calendar for the subsequent year creating a regularly scheduled meeting each calendar month. The schedule may be varied slightly to avoid conflict with holidays.

⁶ Cal. Gov't Code §§54950 through 54963.

- (c) The Secretary shall post the an agenda describing the matters to be discussed in a location accessible to the public and on the Law Library’s website at least 72 hours in advance of the meeting.⁷

3) Special meetings

- (a) The President of the Board, or a majority of Board Members, may call a special meeting to handle a discrete matter or matters.
- (b) Except as follows, there shall be at least twenty-four hours’ notice of a special meeting. The notice and any accompanying agenda shall be posted at least 24 hours prior to the special meeting⁸ in a location accessible to the public and on the Law Library’s website.
- (c) A special meeting may not be called regarding the salaries, salary schedules, or compensation of a local agency executive.⁹
- (d) No items of business not agendized may be discussed.

4) Emergency Meetings

- (a) An emergency meeting may be held if prompt action is needed due to actual or threatened disruption of public facilities.¹⁰
- (b) News media who have requested written notice of special meetings must be given telephonic notice of the meeting at least one hour in advance.
- (c) The notice and agenda should be posted in a location accessible to the public and on the Law Library’s website as soon as possible.

5) Place of Meetings

- (a) All meetings shall be held in the Board Room of the San

⁷ Cal. Govt. Code § 54954.2(a)(1).

⁸ Cal. Govt. Code § 54956.

⁹ Cal. Govt. Code § 54956(b)

¹⁰ Cal. Govt. Code § 54956.5

Diego County Public Law Library, located at 1105 Front Street, San Diego, California.

- (b) A Board meeting may be held at another location by order of a Board resolution passed at a previous regularly scheduled Board meeting.

6) Conduct of Meeting

(a) Presiding Officer

- (1) The President shall preside over Board meetings.
- (2) If the President is not present, the presiding officer shall be chosen from the other voting members of the Board in the following order: the Vice President, the Secretary, other members of the Board in the order of seniority on the Board.

(b) Recording Officer

- (1) The Secretary or designee shall record the minutes of each meeting and perform the other responsibilities required by the statute.¹¹

(c) Quorum

- (1) A quorum for the conduct of business shall consist of five members of the Board.¹²
- (2) If two or more Board member positions are vacant, then four members sitting in session shall constitute a quorum.¹³
- (3) Proxy votes are not available. However, a Board member who will miss a meeting may express his or her opinion to another member or the Secretary for statement at the meeting during discussion.

¹¹ Cal. Bus. & Prof. § 6307.

¹² Cal. Bus. & Prof. Code § 6304

¹³ Cal. Bus. & Prof. Code § 6304

- (4) An affirmative vote of a majority of the members of the Board is required to take action.¹⁴

(d) Agenda

- (1) At the President's direction, the Executive Director of the Law Library shall prepare the agenda for regularly scheduled Board meetings and send the agenda to all Board members at least seventy-two hours before the meeting.¹⁵
- (2) Materials shall be sent to all members and shall be available for public inspection as soon as available. Those materials relevant to closed session matters, such as personnel matters, shall not be made available for public inspection.
- (3) Agenda materials shall be available at the meeting location and on the Law Library's website.
- (4) Any Board member may have an item included on the agenda if the request is made to the President at least seventy-two hours before the meeting.
- (5) The public may comment on any item of business before the Board votes.

(e) Conduct of Meetings

- (1) The order of business for regular meetings shall include, but not be limited to, the following items which shall be covered in the sequence shown so far as circumstances will permit:
 - i. Call to order.
 - ii. **Opportunity for General Public Comment.**¹⁶

¹⁴ Cal. Bus. & Prof. Code § 6304§6304

¹⁵ Cal. Govt. Code § 54954.2.

¹⁶ Cal. Gov't Code § 54954.3 (a)

- iii. Disposition of the minutes of the previous regular and/or special meeting.
- iv. The Director's financial report.
- v. Discussion Items
- vi. Committee reports
- vii. **Board Member Reports**
- viii. Adjournment.

(f) Non-Agenda Items, which may include:

- (1) A continued item from a properly posted agenda at a meeting held five days or less before the date action is taken on the item. Upon a vote of two-thirds vote of the Board, or if less than two-thirds of the members are present, a unanimous vote; or
- (2) That the need to take action arose after the agenda was posted;
- (3) Upon a determination of a majority that an emergency exists.¹⁷

7) Voting

- (a) The presiding officer of a meeting may vote on any measure and may offer or second any motions, resolutions, or amendments. The presiding officer need not announce his or her vote unless determinative of the outcome.
- (b) A member of the Board should abstain from voting on any measure which may present a conflict of interest. Such abstention shall not affect the quorum.
- (c) Unless otherwise noted in these bylaws or by Board resolution requiring a super-majority with regard to a specific item, an affirmative vote of five members is required to take action, except for actions related to

¹⁷ California Government Code §54954.2(b)

obtaining a quorum or adjourning a meeting.

- (d) The Secretary shall record the count for any vote containing both yeas and nays.¹⁸

VII. Director of Libraries and Staff

A) The Director of Libraries¹⁹

- 1) The Director of Libraries ("Director") is the chief administrative officer of the San Diego County Public Law Library, serving at the discretion of the Board and with compensation determined by the Board.
- 2) The Board shall establish rules and approve the salary and compensation for the Director annually.

B) Other Staff

- 1) The Director shall appoint and specify the duties of other employees and shall be held responsible for the proper direction and supervision of the staff, and delegation of duties to it.
- 2) In accordance with general policy approved by the Board, the Director shall determine staff compensation, evaluations, and promotions, subject to budget approved by the Board.

C) Duties of the Director and the Staff

- 1) The Director and the staff shall be responsible for the care and maintenance of the Library's property, for an adequate and proper selection of books in keeping with the stated policy of the Board, for the efficiency of library service to the public, and for its financial operation within the limitations of the budgeted appropriation.
- 2) All duties carried out by staff shall conform to the policies established by the Board, including the Mission Statement.
- 3) **The Director shall serve as Assistant Secretary of the Board, *ex officio*.**

¹⁸ Cal. Bus. & Prof. § 6307.

¹⁹ Cal. Bus. & Prof. Code § 6345.

VIII. Financial Rules²⁰

- A) The fiscal year shall be July 1 to June 30.
- B) The annual budget for the San Diego County Public Law Library shall be approved by the Board prior to the beginning of the fiscal year. The Board may alter the budget during the year during a noticed meeting and subject to approval by a properly constituted quorum of the Board.
- C) The Director and staff of the Law Library shall endeavor to stay within the budget established by the Board. The Director shall report all instances when expenses go beyond the amount budgeted to the Board.
 - 1) The Director shall have authority to increase a budget line in a new fiscal year to allow one-time purchases that were budgeted and supposed to occur in the previous fiscal year, provided that those purchases were included in estimates of year-end figures when budgeting for the new fiscal year. Such budget increases and purchases shall be reported routinely as "year-end rollover" purchases in the Director's regularly scheduled financial report.
- D) The County Auditor shall be advised that it is the Board's desire that the Auditor disregard instances of the Law Library's expenditures exceeding its budget figures (called "appropriations" by the Auditor), other than notifying the Law Library in the routine manner. No action need be taken by the County Auditor in such instances.²¹
- E) The Director is authorized to make purchases of any amount within a budget line previously approved by the Board.
- F) The following people are authorized to act as check and warrant request signers:
 - 1) The Director.
 - 2) The President.
 - 3) The Treasurer.
 - 4) Other Board member(s) authorized by Board resolution.

²⁰ Amended March 25, 1992, July 29, 1992, November 23, 1994, and September 25, 1996. Amended March 24, 2004, to reflect changed procedures created when the Library's accounts were brought in-house and the Library began to produce its own checks.

²¹ Cal. Bus. & Prof. Code § 6325; also see Board resolution, June 10, 1976.

- G) The following dispositions of funds shall require two signatures:
- 1) Approval of wire transfers made to the County Auditor to be drawn from the Law Library Trust Fund.
 - 2) All checks over \$5,000.
 - 3) Payroll checks made in addition to those processed by the Library's payroll service.²²
 - 4) Checks from accounts established from income from sources other than civil court filing fees, including the Mastercard/Visa account.
- H) Any check written to a library staff member who can sign checks must be signed by at least one trustee.
- I) The following dispositions of funds shall require one signature. In no event shall such a disposition be made to the signer or to any party in which the signer has a property interest.
- 1) Checks under \$5,000, made from the Library's regular accounts. A summary of all such checks must be countersigned by the Treasurer or other trustee before the checks are disbursed.
 - 2) Revolving fund check, of not more than \$50,000 for expenditures not exceeding \$10,000 each.²³
- J) Financial rules for affiliated organizations, including the Law Library Justice Foundation, shall be handled within the bylaws of those respective organizations.

²² In an emergency situation, such as a lost or stolen payroll check, an emergency check may be written from the revolving fund, with subsequent approval of the Board's Treasurer.

²³ Cal. Bus. & Prof. Code § 6326.

Item 6:
LexVid Contract

LexVid Publisher Agreement

This Publisher Agreement (and any policies or other documents expressly incorporated by reference herein, are collectively referred to as this “Agreement,”) entered into as of _____, 2015 (the “Effective Date”) is by and between LexVid Services, Inc. (“LexVid”), having a principal place of business at 1963 Missouri Street, San Diego, CA 92109 and the San Diego Law Library having a place of business at 1105 Front Street, San Diego, CA 92120 (“Publisher”).

LexVid provides Education Services, professional services and other products to customers online at www.lexvid.com. Publisher is a nonprofit organization that seeks to provide Publisher Content to LexVid for online distribution.

1. Definitions.

- 1.1 “**Customer**” means a user of Education Services.
- 1.2 “**Education Services**” means the LexVid online continuing education and professional publication marketplace and credit management system operated by LexVid, including documentation, updates and upgrades that may be provided by LexVid from time to time for such services.
- 1.3 “**Publisher’s CLE Channel**” means the web pages created by LexVid and branded for Publisher which is used to host and sell Publisher Content as set forth in this Agreement, and any related similarly branded webpages used to help promote and sell Publisher Content, including but not limited to biography pages and review listings.
- 1.4 “**Publisher Content**” means Publisher’s continuing education programs (including, without limitation, related text, graphics, pictures, sound, video, data and other content) produced by LexVid and/or submitted to LexVid for LexVid’s use with Education Services, including but not limited to in-person events, webcasts, webinars, telephone seminars, audiocasts, electronic documents, and shippable items.
- 1.5 “**Publisher Transaction**” has the meaning set forth in Section 4.6 below.
- 1.6 “**Speakers**” mean the individuals working with Publisher to prepare and/or present Publisher Content.
- 1.7 “**Fees**” means the fees to be paid by LexVid to Publisher as specified herein.
- 1.8 “**Term**” means the term of this Agreement and includes all renewals.

2. Publisher Obligations.

- 2.1 **License Grant.** Subject to the terms and conditions of this Agreement, Publisher hereby grants a non-exclusive, revocable (except as set forth in the termination provisions set forth below) worldwide right and license, under all copyrights, patents, patent applications, trade secrets and other necessary intellectual property rights, to: (a) host, install, deploy, use, make, execute, reproduce, store, modify, publicly display, distribute, promote, publicly perform, run, digitize, publish, market, prepare derivative works of Publisher Content; and (b) resell and distribute the Publisher Content as part of or in

conjunction with Education Services including, but not limited to website downloads, streaming, and subscription services. The above grant includes, without limitation, the right and license to use all pictorial, graphic and audiovisual works including icons, screens and characters created as a result of execution of the Publisher Content.

- 2.2 **Commentary.** Publishers and Speakers may, but are not required to, provide written feedback, suggestions, discussion submissions, answers, or any other communication regarding Publisher Content after publication (“Commentary”). Nevertheless, Publisher grants LexVid a royalty-free, worldwide, irrevocable license to use or incorporate any Commentary so provided into the Education Services.
- 2.3 **File Transference.** Publisher will transfer files related to or included in Publisher Content, including but not limited to Speaker images, biographies, slide shows, and outlines, in an industry standard file format.
- 2.4 **Publisher Warranty.** On an ongoing basis, Publisher represents and warrants that:
 - 2.4.1 Publisher shall provide LexVid with contact information for each speaker to allow LexVid the opportunity to obtain a speaker release in a form attached hereto as Exhibit 1, acceptable to LexVid and Publisher (the “Speaker Release”), from all participating speakers of any proposed Publisher Content and LexVid will provide a copy of the executed Speaker Release to Publisher.
 - 2.4.2 Publisher shall provide LexVid prior written notice of any facts, which would make the foregoing representations untrue.
3. **Suspension.** LexVid reserves the right to suspend the offering of Publisher Content or take other appropriate remedial action: (a) to address any violation or suspected violation of this Agreement or (b) if LexVid reasonably determines that Publisher Content is harmful to LexVid’s services and/or products environment. LexVid will use reasonable efforts to notify Publisher and provide an opportunity to cure before taking any such action, if practicable and if allowed by law. A suspension under this Section will not constitute a termination of this Agreement, nor will it relieve the Parties of obligations or liabilities under this Agreement.
4. **LexVid Obligations.**
 - 4.1 **Production and Listing of Publisher Content.** Subject to LexVid’s discretion on a case-by-case basis, and only upon obtaining a copy of a Speaker Release as set for in Section 2.4.1, LexVid will make video productions of Publisher Content at LexVid’s sole expense in a high-quality format and edit Publisher Content for online viewing. Such Publisher Content will be listed and distributed as part of Education Services. LexVid will provide Publisher with download access to video files produced by LexVid.
 - 4.2 **CLE Credit Issuance.** LexVid will issue the applicable continuing legal education credit in California and in other states as determined by LexVid for Customer completion of Publisher Content.

- 4.3 **Operation of CLE Channel.** Subject to the terms and conditions of this Agreement, LexVid will create Publisher's CLE Channel and will list and sell Publisher Content via Publisher's CLE Channel.
- 4.4 **Publisher Content Pricing and Discounts.** LexVid will sell the Publisher Content as part of the Education Services, including sales through Publisher's CLE Channel, for the dollar amount selected by LexVid (the "Retail Price"). LexVid may offer Publisher Content to Customers at a discount or as part of a free trial offer.
- 4.5 **Exclusive Publisher Discount Code.** LexVid will create a discount coupon code (the "Coupon Code") to be distributed exclusively by Publisher. The Coupon Code will enable customers to purchase Education Services, including Publisher Content, at a 10% discount on the Retail Price. LexVid may update the Coupon Code from time to time.
- 4.6 **Purchase Tracking and Reporting.** LexVid will use the Coupon Code and a custom tracking URL to identify all payments attributable to Publisher, whether or not related to Publisher Content ("Publisher Transactions"). LexVid will provide Publisher with a monthly report containing this information on an ongoing basis.
- 4.7 **LexVid Compliance with Laws.** LexVid will comply with all laws and regulations applicable to LexVid in its distribution of the Publisher Content, including all laws and regulations applicable to solicitation and marketing of Publisher Content, receipts, web site content, data privacy, and collection and transmission of technical or personal data.
- 4.8 **Warranty Disclaimer.** LEXVID MAKES NO DIRECT, EXPRESS, IMPLIED OR STATUTORY WARRANTY WITH RESPECT TO SERVICES AND DISCLAIMS ANY IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT OR ANY WARRANTY ARISING FROM COURSE OF DEALING, USAGE OR TRADE PRACTICE. LexVid does not warrant that the Education Services and the Publisher Content stored through use of the Education Services are not susceptible to intrusion, attack or computer virus infection. WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, PUBLISHER ACKNOWLEDGES THAT THE EDUCATION SERVICES (INCLUDING ANY SERVERS OR OTHER HARDWARE, SOFTWARE AND ANY OTHER ITEMS USED OR PROVIDED BY LEXVID IN CONNECTION WITH HOSTING THE EDUCATION SERVICES OR PERFORMANCE OF ANY SERVICES HEREUNDER) ARE PROVIDED "AS IS" AND THAT LEXVID MAKES NO WARRANTY THAT THE EDUCATION SERVICES WILL BE FREE FROM BUGS, FAULTS, DEFECTS OR ERRORS OR THAT ACCESS TO THE SHARING NETWORK WILL BE INTERRUPTED.
- 4.9 **LexVid Compliance with Laws.** LexVid will comply at all times with all laws and regulations applicable to LexVid as a provider of the Publisher Content.

5. **Fees and Payment.**

- 5.1 **Fees.** Fees due and payable under this Agreement are as follows:

- 5.1.1 LexVid will pay for all video production and post-production costs for each video file included in Publisher Content set forth in Section 4.1. LexVid shall be entitled to recoup the Production Costs up to an amount of \$200 per hour of Publisher Content from fees paid by customers using the Coupon Code.
- 5.1.2 50% of the total revenue received from Publisher Transactions, less any applicable refunds and Production Costs (“Fees”), will be paid to Publisher as set forth below.
- 5.1.3 LexVid acknowledges that there is no guarantee it will recoup the costs set forth in Section 5.1.1 and such costs are non-recourse as to Publisher.
- 5.2 **LexVid Payment.** LexVid will provide payment of Fees owed to Publisher under Section 5.1 within thirty (30) days of the end of the month in which the Publisher Transactions occurred.
- 5.3 **Payment Due at Termination.** Upon termination of this Agreement for any reason:
 - 5.3.1 LexVid will pay Publisher all Fees due to Publisher within thirty (30) days.
 - 5.3.2 If Publisher terminates the Agreement and LexVid has not recouped its Production Costs, Publisher will extend the license granted in Section 2.1 so that it will be irrevocable for a term of twelve (12) months or until LexVid has recouped its Production Costs, whichever is earlier. Publisher’s only obligation shall be to continue to have the Coupon Code and link to LexVid on its website. LexVid shall have an ongoing obligation to provide the reports to Publisher as set forth in section 4.6.
- 5.4 **Taxes.** The fees do not include taxes unless stated otherwise. LexVid will pay all applicable sales, use, VAT, excise, import, export, property, withholding or similar taxes or duties due in connection with this Agreement (e.g., in connection with Education Services, other services and/or products of this Agreement).

6. Confidentiality.

- 6.1 “Confidential Information” means any information disclosed by one party (“Discloser”) to the other party (“Recipient”), either directly or indirectly, in writing, orally or by inspection, which is designated as “Confidential,” “Proprietary” or some similar written designation or otherwise reasonably identifiable as confidential information. Information communicated orally will be considered Confidential Information if the information is identified as being Confidential Information at the time of disclosure. This Agreement imposes no obligation upon a Recipient with respect to Confidential Information that: (a) is or becomes publicly available through no breach of this Agreement by Recipient; (b) is already in the possession of Recipient at the time of disclosure as shown by Recipient’s files and records immediately before the time of disclosure; (c) is obtained by Recipient from a third party without Recipient’s breach of obligations of confidentiality, or (d) is independently developed by Recipient without use of or reference to Discloser’s Confidential Information, as demonstrated by Recipient’s documents. Confidential Information of LexVid includes administration tools, processes,

documentation, whitepapers, guides, data sheets and training materials. This Agreement is LexVid's Confidential Information. Recipient will only use Discloser's Confidential Information to exercise its rights or perform its obligations under this Agreement and will protect Discloser's Confidential Information by using the same degree of care that Recipient uses to safeguard its own confidential or proprietary information of a like nature from unauthorized use, disclosure, or dissemination, but not less than a reasonable degree of care. Recipient will restrict access to Discloser's Confidential Information to Recipient's employees or consultants who require such access in the course of their assigned duties and responsibilities and who have been informed of Recipient's obligations of confidence and have agreed in writing to preserve confidentiality of such information under terms and conditions no less restrictive than those set forth herein. If Discloser's Confidential Information is required to be disclosed under any law or judicial order, Recipient will (to the extent permitted by law) give Discloser prompt notice thereof and use its commercially reasonable efforts to seek or cooperate with Discloser in seeking a protective order. Notwithstanding the foregoing or anything to the contrary elsewhere in this Agreement, either party may disclose Confidential Information to their suppliers, and Publisher may disclose Confidential Information to the San Diego Law Library Foundation Board, solely to the extent necessary to perform their obligations under this Agreement.

- 6.2 **Results.** Publisher hereby acknowledges and agrees that LexVid may: (a) aggregate various benchmarking results of use of the Publisher Content, other services and/or products of this Agreement with results of other customers' use thereof (collectively "Results") and (b) do anything with the Results for any purpose (e.g., publish), so long as such results of use of the Publisher Content are not separately identifiable within the Results and Publisher is not identified.
7. **Intellectual Property.**
- 7.1 **LexVid Rights.** Subject to the limited rights granted to Publisher hereunder, LexVid reserves all right, title and interest in and to its Education Services, including all related intellectual property rights. The intellectual property rights in and to the Education Services as well as any LexVid intellectual property which may be used in the performance of this Agreement for Publisher (not including any Publisher Content which may be included therein) is LexVid's or its licensors' exclusive property.
- 7.2 **Publisher Rights.** The parties agree that Publisher owns or controls certain rights in Publisher Content and owns the copyright of, holds licenses to, or has written permission to disseminate the copyrighted audio, video, and text material associated with such Publisher Content, and nothing in this Agreement will create any intellectual property rights to the Publisher Content in LexVid except the non-exclusive license provided in Section 2.1.
8. **Publicity.** LexVid may from time to time during the term of this Agreement or thereafter issue press releases or other publicity or promotional materials naming Publisher for marketing purposes and may include Publisher's name in its presentation materials and/or web page- based Publisher lists.
9. **Limitation of Liability. EXCEPT FOR FEES OWED TO PUBLISHER HEREUNDER, THE PARTIES' LIABILITY FOR ANY CLAIM ARISING UNDER OR RELATING TO THIS**

AGREEMENT OR LEXVID SERVICES AND/OR PRODUCTS, UNDER ANY THEORY OF LIABILITY, INCLUDING CONTRACT, STRICT LIABILITY, INDEMNITY, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE, WILL NOT EXCEED ONE HUNDRED DOLLARS. UNDER NO CIRCUMSTANCES WILL EITHER PARTY BE LIABLE FOR ANY SPECIAL, INDIRECT, INCIDENTAL, EXEMPLARY, PUNITIVE, OR CONSEQUENTIAL DAMAGES, SUCH AS, BUT NOT LIMITED TO, LOSS OF REVENUES OR COST OF COVER, HOWEVER CAUSED, EVEN IF A PARTY WAS AWARE OF THE POSSIBILITY OF SUCH DAMAGES, IRRESPECTIVE OF THE THEORY OF LIABILITY, IRRESPECTIVE OF THE TYPE OF ACTION, AND NOTWITHSTANDING FAILURE OF ESSENTIAL PURPOSE OF ANY REMEDY. THIS SECTION WILL NOT APPLY TO THE EXTENT PROHIBITED BY APPLICABLE LAW.

10. Term.

10.1 **Termination.** This Agreement shall remain effective until terminated by a party with 30 days written notice of termination to the other party. Upon termination for any reason, the obligations of the parties will end, except for applicable obligations under Section 2.5 (“Provider Warranty”); Section 5.3 (“Payment Due at Termination”); Section 6 (“Confidentiality”), Section 7 (“Intellectual Property”), Section 9 (“Limitation of Liability”) and Section 11 (“General Provisions”).

11. General Provisions.

11.1 **Notices.** Any notice or other written communication required in this Agreement will be deemed properly given when deposited in the United States mail, certified mail return receipt requested, with appropriate postage affixed. Faxed notices will be deemed acceptable if promptly followed by an original copy mailed as herein set out. Email notices will be deemed acceptable if promptly followed by an original copy mailed as herein set out. Notices will be sent to the individuals at the most recent addresses or fax numbers provided below or as updated by notice to the other party:

For LexVid:

LexVid Services, Inc.

1963 Missouri Street

San Diego, CA 92109

Attention, President

bryan@lexvid.com

For Provider:

San Diego Law Library

1105 Front Street

San Diego, CA 92120

ATTN: John Adkins

jadkins@sdlawlibrary.org

- 11.2 **Assignment.** Neither party may assign this Agreement without the other party's written consent,
- 11.3 **Force Majeure.** Except for obligation to make payment, neither party is liable for failure to perform obligations if such failure is as a result of fire, flood, earthquake, storm, hurricane or other natural disaster, war, invasion, act of foreign enemies, hostilities (regardless of whether war is declared), civil war, rebellion, revolution, insurrection, military or usurped power or confiscation, terrorist activities, nationalization, government sanction, blockage, embargo, labor dispute, strike, lockout or interruption or failure of electricity or telephone service, or other events beyond the reasonable control of the non-performing party and not caused by its negligence.
- 11.4 **Independent Contractors.** The parties will be independent contractors as to each other, and not partners, joint ventures, agents, or employees. Neither party will have the right or power to act for or bind the other to any obligation of any nature.
- 11.5 **Third-Party Beneficiaries.** There are no third-party beneficiaries to this Agreement.
- 11.6 **No Waiver.** The failure of a party to enforce any provision of this Agreement will not be deemed a waiver of the right of that party to future enforcement of the same or other provisions.
- 11.7 **Severability.** Each provision of this Agreement is considered severable. If one provision conflicts with existing or future law and is or becomes invalid or unenforceable, or is found by a court of competent jurisdiction to be invalid, illegal, or otherwise unenforceable, the other terms or provisions will not be affected, but such invalid, illegal, or unenforceable terms or provisions will be modified to the extent necessary or appropriate in the court's opinion to effectuate the intention of the parties. All other provisions of this Agreement will remain in full force and effect.
- 11.8 **Governing Law and Jurisdiction.** This Agreement will be governed by the laws of the State of California, excluding any applicable conflicts of law provisions. Jurisdiction and venue for any legal action arising from this Agreement will be in the state and federal courts sitting in San Diego County, California.
- 11.9 **Entire Agreement.** This Agreement contains the sole and entire Agreement of the parties with respect to the subject matter. All prior discussions, negotiations, understandings, or agreements are

incorporated into or superseded by this Agreement. This Agreement may not be modified or amended except in a writing signed by both parties reciting that it is an amendment hereto.

11.10 **Counterparts.** This Agreement may be executed in counterparts, which together form one legal instrument. Any executed copy of this Agreement made by reliable means (e.g., photocopy, PDF or facsimile) is considered an original.

11.11 **Dispute Resolution.** Any dispute between the parties arising out of this Agreement will be first submitted to senior management of both parties for a good faith attempt at amicable resolution. If the parties cannot settle the dispute within twenty (20) days after such meeting of senior management, the dispute will be mediated by a mutually acceptable mediator to be selected by the parties within thirty (30) days after written notice by either party demanding mediation. A party must not unreasonably withhold consent to the selection of a mediator, and the parties will equally share costs of the mediation. The use of any of the above-mentioned procedures will not be construed under the doctrines of laches, waiver, or estoppel to affect the rights of either party adversely. Nothing in this Section will prevent Publisher from collecting Fees due, nor will it prevent either party from resorting to judicial proceedings, if: (a) good faith efforts to resolve the dispute under these procedures have been unsuccessful; (b) the claim or dispute involves intellectual property rights; or (c) interim relief from a court is necessary to prevent serious and irreparable injury to that party or to others.

IN WITNESS WHEREOF, the parties have duly executed this Agreement by their duly authorized officers to be effective as of the Effective Date.

LexVid Services, Inc.

San Diego County Law Library

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____



SPEAKER RELEASE AND GRANT OF RIGHTS

Program Title:

Location of Program:

Please sign and return this form to: Jeffrey Webb, (email) jeff@lexvid.com

This is to confirm that the undersigned has agreed to participate in the LexVid Services, Inc. (together with its assigns, "LexVid") in conjunction with the San Diego Law Library program series described above on the following terms:

- 1. You hereby grant LexVid and the San Diego Law Library (collectively "Producer") permission to record, edit, transcribe, duplicate, distribute and perform your presentation delivered at the above-referenced programs, in any and all media now existing or hereafter developed, throughout the world.
2. As a condition of publication and in consideration of your admission as a speaker to the program, you hereby grant Producer the nonexclusive worldwide rights to reproduce, publish, distribute, and sell any written or visual material submitted in connection with or derived from a transcript of, your oral presentations, in whole or in part, in any media now existing or hereafter developed, whether as part of a compilation, derivative work, or otherwise, and to license these rights to others. You hereby grant Producer the right to edit any transcript of your presentations.
3. You also grant Producer the right to use your name, image and voice, and, if Producer so chooses, your photograph and biography, in connection with the presentations and other materials.
4. You represent and warrant that your presentations and any other material you submit are original with you, that their publication will not infringe on the rights of others, and that you have full power and authority to grant this license. Should your presentations or other materials require permission from a third party for use by Producer, you agree to obtain that permission from the copyright owner consistent with this Agreement.

If the foregoing terms are satisfactory, please sign and date this Speaker Release and Grant of Rights below and return it to the program coordinator. Execution of this Agreement does not obligate Producer to publish your presentation or other materials.

I hereby agree to the above terms, irrevocably grant to Producer the rights described above, and consent to the use of my presentations, other materials and image consistent with the provisions of this Speaker Release and Grant of Rights:

Signature: _____ Date: _____

Name (Typed or written clearly): _____

Address: _____

Title of Presentation/Paper:

U.S. GOVERNMENT EMPLOYEES ONLY, PLEASE CHECK ONE:

[] This Work was written on my own time and was not part of my assigned duties as a U.S. Government employee.

[] This Work was written as part of my assigned duties as a U.S. Government employee.

LexVid Publisher Agreement

This Publisher Agreement (and any policies or other documents expressly incorporated by reference herein ~~or therein~~, are collectively referred to as this “Agreement,”) entered into as of ~~April 28th~~ _____, 2015 (the “Effective Date”) is by and between LexVid Services, Inc. (“LexVid”), having a principal place of business at 1963 Missouri Street, San Diego, CA 92109 and the San Diego Law Library having a place of business at 1105 Front Street, San Diego, CA 92120 (“Publisher”).

LexVid provides Education Services, professional services and other products to customers online at www.lexvid.com. Publisher is a nonprofit organization that seeks to provide Publisher Content to LexVid for online distribution.

1. Definitions.

- 1.1 “**Customer**” means a user of Education Services.
- 1.2 “**Education Services**” means the LexVid online continuing education and professional publication marketplace and credit management system operated by LexVid, including documentation, updates and upgrades that may be provided by LexVid from time to time for such services.
- 1.3 “**Publisher’s CLE Channel**” means the web pages created by LexVid and branded for Publisher which is used to host and sell Publisher Content as set forth in this Agreement, and any related similarly branded webpages used to help promote and sell Publisher Content, including but not limited to biography pages and review listings.
- 1.4 “**Publisher Content**” means Publisher’s continuing education programs ~~and professional publications~~ (including, without limitation, related text, graphics, pictures, sound, video, data and other content) produced by LexVid and/or submitted to LexVid for LexVid’s use with Education Services, including but not limited to in-person events, webcasts, webinars, telephone seminars, audiocasts, electronic documents, and shippable items.
- 1.5 “**Publisher Transaction**” has the meaning set forth in Section 4.6 below.
- 1.6 ~~1.5~~ “**Speakers**” means the individuals working with Publisher to prepare and/or present Publisher Content.
- 1.7 ~~1.6~~ “**Fees**” means the fees to be paid by LexVid to Publisher as specified herein ~~and fees owed by Publisher to LexVid, including but not limited to production related services if and when applicable.~~
- 1.8 ~~1.7~~ “**Term**” means the term of this Agreement and includes all renewals.

2. Publisher Obligations.

2.1 **License Grant.** Subject to the terms and conditions of this Agreement, Publisher hereby grants a non-exclusive, revocable (except as set forth in the termination provisions [set forth below](#)) worldwide right and license, under all copyrights, patents, patent applications, trade secrets and other necessary intellectual property rights, to: (a) host, install, deploy, use, make, execute, reproduce, store, modify, publicly display, distribute, promote, publicly perform, run, digitize, publish, market, prepare derivative works of Publisher Content; and (b) resell and distribute the Publisher Content as part of or in conjunction with Education Services including, but not limited to website downloads, streaming, and subscription services. The above grant includes, without limitation, the right and license to: ~~(a) use Publisher's trade names, product names and trademarks in connection with the marketing and distribution of Publisher Content and~~ (b) [use](#) all pictorial, graphic and audio visual works including icons, screens and characters created as a result of execution of the Publisher Content.

2.2 **Commentary.** Publishers and Speakers may, but are not required to, provide written feedback, suggestions, discussion submissions, answers, or any other communication regarding Publisher Content after publication ("Commentary"). Nevertheless, Publisher grants LexVid a royalty-free, worldwide, ~~transferable, sublicense, irrevocable, perpetual~~ license to use or incorporate any Commentary so provided into the Education Services.

~~2.3 **Publisher Compliance with Laws.** Publisher will comply with all laws and regulations applicable to Publisher in its provision of the Publisher Content, including all laws and regulations applicable to solicitation and marketing of Publisher Content, receipts, web site content, data privacy, and collection and transmission of technical or personal data. Publisher is solely responsible for ensuring that the Publisher Content and its provision of same to LexVid complies at all times with all applicable laws and regulations.~~

[2.3](#) **2.4-File Transference.** Publisher will transfer files related to or included in Publisher Content, including but not limited to Speaker images, biographies, slide shows, and outlines, in an industry standard file format.

[2.4](#) **2.5-Publisher Warranty.** On an ongoing basis, Publisher represents and warrants that:

~~2.5.1 Publisher owns the Publisher Content (including all intellectual property rights therein) or has the rights thereunder necessary to grant LexVid the rights intended to be granted hereunder;~~

~~2.5.2 the Publisher Content does not and shall not infringe or misappropriate any copyright, patent, trade secret or any other intellectual property rights or similar rights of any third party;~~

~~2.5.3 Publisher and the Publisher Content comply with all governmental laws, statutes, ordinances, administrative orders, rules and regulations and Publisher has procured all necessary licenses and paid all fees and other charges required so that LexVid can exercise the rights and license granted under this Agreement; and~~

2.4.1 Publisher shall provide LexVid with contact information for each speaker to allow LexVid the opportunity to obtain a speaker release in a form attached hereto as Exhibit 1, acceptable to LexVid and Publisher (the “Speaker Release”), from all participating speakers of any proposed Publisher Content and LexVid will provide a copy of the executed Speaker Release to Publisher.

2.4.2 ~~2.5.4~~ Publisher shall provide LexVid prior written notice of any facts which would make the foregoing representations untrue.

~~2.6 **Indemnification by Publisher.** Publisher agrees to defend, indemnify and hold harmless LexVid and its officers, directors, stockholders, employees, agents, representatives and successors and assigns against any and all claims, demands, causes of action, losses, liabilities, damages, costs and expenses, incurred by the same (including but not limited to costs of defense, investigation and reasonable attorney’s fees) arising out of, resulting from or related to: (a) any use or distribution of Publisher Content, which causes an infringement of any patent, copyright, trademark, trade secret, or other property, publicity or privacy rights of any third parties arising in any jurisdiction anywhere in the world; (b) any breach by Publisher of the terms of this Agreement, including without limitation breach of the warranties set forth in Section 2.5; and (c) any use of Publisher Content by a third party as authorized under this Agreement. If requested by LexVid, Publisher agrees to defend LexVid in connection with any third party claims, demands, or causes of action resulting from, arising out of or in connection with any of the foregoing.~~

3. **Suspension.** LexVid reserves the right to suspend the offering of Publisher Content or take other appropriate remedial action: (a) to address any violation or suspected violation of this Agreement or (b) if LexVid reasonably determines that Publisher Content is harmful to LexVid’s services and/or products environment. LexVid will use reasonable efforts to notify Publisher and provide an opportunity to cure before taking any such action, if practicable and if allowed by law. A suspension under this Section will not constitute a termination of this Agreement, nor will it relieve ~~Publisher~~the Parties of obligations or liabilities under this Agreement. ~~To the extent that Publisher violates the terms of this Agreement, Publisher will be fully responsible to LexVid and its suppliers for any resulting damages, including any related fines, penalties, remediation and costs of investigation and defense.~~

4. **LexVid Obligations.**

4.1 **Production and Listing of Publisher Content.** Subject to LexVid’s discretion on a case-by-case basis, and only upon obtaining a copy of a Speaker Release as set for in Section 2.4.1, LexVid will make video productions of Publisher Content at LexVid’s sole expense in a high-quality format and edit Publisher Content for online viewing. Such Publisher Content will be listed and distributed as part of Education Services. LexVid will provide Publisher with download access to video files produced by LexVid.

- 4.2 **CLE Credit Issuance.** LexVid will issue the applicable continuing legal education credit in California and in other states as determined by LexVid for Customer completion of Publisher Content.
- 4.3 **Operation of CLE Channel.** Subject to the terms and conditions of this Agreement, LexVid will create Publisher's CLE Channel and will list and sell Publisher Content via Publisher's CLE Channel.
- 4.4 **Publisher Content Pricing and Discounts.** LexVid will sell the Publisher Content as part of the Education Services, including sales through Publisher's CLE Channel, for the dollar amount selected by LexVid (the "Retail Price"). LexVid may offer Publisher Content to Customers at a discount or as part of a free trial offer.
- 4.5 **Exclusive Publisher Discount Code.** LexVid will create a discount coupon code (the "Coupon Code") to be distributed exclusively by Publisher. The Coupon Code will enable customers to purchase Education Services, including Publisher Content, at a 10% discount on the Retail Price. LexVid may update the Coupon Code from time to time.
- 4.6 **Purchase Tracking and Reporting.** LexVid will use the Coupon Code and a custom tracking URL to identify all payments ~~owing~~ attributable to ~~Publisher's marketing efforts, whether or not related to~~ Publisher Content ("Publisher Transactions"). LexVid will provide Publisher with ~~reasonable access to reports~~ a monthly report containing this information on an ongoing basis.
- 4.7 **LexVid Compliance with Laws.** LexVid will comply with all laws and regulations applicable to LexVid in its distribution of the Publisher Content, including all laws and regulations applicable to solicitation and marketing of Publisher Content, receipts, web site content, data privacy, and collection and transmission of technical or personal data.
- 4.8 **~~4.1~~ Warranty Disclaimer.** LEXVID MAKES NO DIRECT, EXPRESS, IMPLIED OR STATUTORY WARRANTY WITH RESPECT TO SERVICES AND DISCLAIMS ANY IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT OR ANY WARRANTY ARISING FROM COURSE OF DEALING, USAGE OR TRADE PRACTICE. LexVid does not warrant that the Education Services and the Publisher Content stored through use of the Education Services are not susceptible to intrusion, attack or computer virus infection. WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, PUBLISHER ACKNOWLEDGES THAT THE EDUCATION SERVICES (INCLUDING ANY SERVERS OR OTHER HARDWARE, SOFTWARE AND ANY OTHER ITEMS USED OR PROVIDED BY LEXVID IN CONNECTION WITH HOSTING THE EDUCATION SERVICES OR PERFORMANCE OF ANY SERVICES HEREUNDER) ARE PROVIDED "AS IS" AND THAT LEXVID MAKES NO WARRANTY THAT THE EDUCATION SERVICES WILL BE FREE FROM BUGS, FAULTS, DEFECTS OR ERRORS OR THAT ACCESS TO THE SHARING NETWORK WILL BE INTERRUPTED.

4.9 ~~4.2~~ **LexVid Compliance with Laws.** LexVid will comply at all times with all laws and regulations applicable to LexVid as a provider of the Publisher Content.

5. **Fees and Payment.**

5.1 **Fees.** Fees due and payable under this Agreement are as follows:

5.1.1 LexVid will ~~charge Publisher \$200 per hour pay for all video production and post-production costs~~ for each video file included in Publisher Content, ~~rounded to the nearest quarter hour, for video production and post-production services~~ set forth in Section 4.1. LexVid shall be entitled to recoup the Production Costs up to an amount of \$200 per hour of Publisher Content from fees paid by customers using the Coupon Code.

5.1.2 ~~LexVid will pay Publisher~~ 50% of the total revenue received by LexVid from Publisher Transactions, less any applicable refunds, ~~for and~~ Production Costs (“Fees”), will be paid to Publisher Transactions, as set forth below.

5.1.3 LexVid acknowledges that there is no guarantee it will recoup the costs set forth in Section 5.1.1 and such costs are non-recourse as to Publisher.

5.2 ~~Reporting and~~ **LexVid Payment.** LexVid will provide payment of Fees owed, ~~less Fees due by to~~ Publisher under Section ~~5.1.1, 5.1~~ within thirty (30) days of the end of the month in which the Publisher Transactions occurred ~~when such amount owed by LexVid equal or exceed \$100. When amounts owed to LexVid exceed amounts owed to Publisher, such amounts need not be paid by Publisher, but will be carried over and added to Publisher’s account for the following month.~~

5.3 **Payment Due at Termination.** Upon termination of this Agreement for any reason:

5.3.1 LexVid will pay Publisher all Fees due to Publisher within thirty (30) days.

5.3.2 ~~If amounts owed to LexVid exceed amounts owed to Publisher, Publisher can choose to pay LexVid the outstanding balance owed by Publisher, or, in lieu of such payment, If Publisher terminates the Agreement and LexVid has not recouped its Production Costs, Publisher will extend the license granted in Section 2.1 so that it will be irrevocable for a term of eighteen (18) months from the date of termination of this Agreement. twelve (12) months or until LexVid has recouped its Production Costs, whichever is earlier. Publisher’s only obligation shall be to continue to have the Coupon Code and link to LexVid on its website. LexVid shall have an ongoing obligation to provide the reports to Publisher as set forth in section 4.6.~~

5.4 **Taxes.** The fees do not include taxes unless stated otherwise. ~~Unless Publisher provides LexVid with a valid tax exempt certificate within ten (10) business days following the Effective Date of this Agreement, Publisher~~ LexVid will pay all applicable sales, use, VAT, excise, import, export, property,

withholding or similar taxes or duties due in connection with this Agreement (e.g., in connection with Education Services, other services and/or products of this Agreement), ~~except such taxes and duties that are based on LexVid's net income. If Publisher experiences a change in its tax exempt status during the Term, Publisher will promptly give LexVid notice of such change.~~

6. Confidentiality.

6.1 “Confidential Information” means any information disclosed by one party (“Discloser”) to the other party (“Recipient”), either directly or indirectly, in writing, orally or by inspection, which is designated as “Confidential,” “Proprietary” or some similar written designation or otherwise reasonably identifiable as confidential information. Information communicated orally will be considered Confidential Information if the information is identified as being Confidential Information at the time of disclosure. This Agreement imposes no obligation upon a Recipient with respect to Confidential Information that: (a) is or becomes publicly available through no breach of this Agreement by Recipient; (b) is already in the possession of Recipient at the time of disclosure as shown by Recipient’s files and records immediately before the time of disclosure; (c) is obtained by Recipient from a third party without Recipient’s breach of obligations of confidentiality, or (d) is independently developed by Recipient without use of or reference to Discloser’s Confidential Information, as demonstrated by Recipient’s documents. Confidential Information of LexVid includes administration tools, processes, documentation, whitepapers, guides, data sheets and training materials. This Agreement is LexVid’s Confidential Information. Recipient will only use Discloser’s Confidential Information to exercise its rights or perform its obligations under this Agreement and will protect Discloser’s Confidential Information by using the same degree of care that Recipient uses to safeguard its own confidential or proprietary information of a like nature from unauthorized use, disclosure, or dissemination, but not less than a reasonable degree of care. Recipient will restrict access to Discloser’s Confidential Information to Recipient’s employees or consultants who require such access in the course of their assigned duties and responsibilities and who have been informed of Recipient’s obligations of confidence and have agreed in writing to preserve confidentiality of such information under terms and conditions no less restrictive than those set forth herein. If Discloser’s Confidential Information is required to be disclosed under any law or judicial order, Recipient will (to the extent permitted by law) give Discloser prompt notice thereof and use its commercially reasonable efforts to seek or cooperate with Discloser in seeking a protective order. Notwithstanding the foregoing or anything to the contrary elsewhere in this Agreement, ~~LexVid~~ either party may disclose Confidential Information to their suppliers, and ~~Publisher’s~~ may disclose Confidential Information to ~~its suppliers~~ the San Diego Law Library Foundation Board, solely to the extent necessary ~~for LexVid and its suppliers~~ to perform their obligations under this Agreement.

6.2 **Results.** ~~Provider~~ Publisher hereby acknowledges and agrees that LexVid may: (a) aggregate various benchmarking results of use of the Publisher Content, other services and/or products of this Agreement with results of other customers' use thereof (collectively "Results") and (b) do anything with the Results for any purpose (e.g., publish), so long as such results of use of the Publisher Content are not separately identifiable within the Results and Publisher is not identified.

7. **Intellectual Property.**

7.1 **LexVid Rights.** Subject to the limited rights granted to Publisher hereunder, LexVid reserves all right, title and interest in and to its Education Services, including all related intellectual property rights. The intellectual property rights in and to the Education Services as well as any LexVid intellectual property which may be used in the performance of this Agreement for Publisher (not including any Publisher Content which may be included therein) is LexVid's or its licensors' exclusive property.

7.2 **Publisher Rights.** The parties agree that Publisher owns or controls certain rights in Publisher Content and owns the copyright of, holds licenses to, or has written permission to disseminate the copyrighted audio, video, and text material associated with such Publisher Content, and nothing in this Agreement will create any intellectual property rights to the Publisher Content in LexVid except the [non-exclusive](#) license provided in Section 2.1.

8. **Publicity.** LexVid may from time to time during the term of this Agreement or thereafter issue press releases or other publicity or promotional materials naming Publisher for marketing purposes and may include Publisher's name in its presentation materials and/or web page- based Publisher lists.

9. **Limitation of Liability.** ~~LEXVID~~[EXCEPT FOR FEES OWED TO PUBLISHER HEREUNDER,](#) ~~THE PARTIES'S~~ LIABILITY FOR ANY CLAIM ARISING UNDER OR RELATING TO THIS AGREEMENT OR LEXVID SERVICES AND/OR PRODUCTS, UNDER ANY THEORY OF LIABILITY, INCLUDING CONTRACT, STRICT LIABILITY, INDEMNITY, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE, WILL NOT EXCEED ONE HUNDRED DOLLARS . UNDER NO CIRCUMSTANCES WILL ~~LEXVID~~[EITHER PARTY](#) BE LIABLE- ~~TO PUBLISHER~~ FOR ANY SPECIAL, INDIRECT, INCIDENTAL, EXEMPLARY, PUNITIVE, OR CONSEQUENTIAL DAMAGES, SUCH AS, BUT NOT LIMITED TO, LOSS OF REVENUES OR COST OF COVER, HOWEVER CAUSED, EVEN IF ~~LEXVID~~[A PARTY](#) WAS AWARE OF THE POSSIBILITY OF SUCH DAMAGES, IRRESPECTIVE OF THE THEORY OF LIABILITY, IRRESPECTIVE OF THE TYPE OF ACTION, AND NOTWITHSTANDING FAILURE OF ESSENTIAL PURPOSE OF ANY REMEDY. THIS SECTION WILL NOT APPLY TO THE EXTENT PROHIBITED BY APPLICABLE LAW.

10. **Term.**

10.1 **Termination.** This Agreement shall remain effective until terminated by a party with 30 days written notice of termination to the other party. Upon termination for any reason, the obligations of the parties will end, except for applicable obligations under Section 2.5 ("Provider Warranty"), ~~Section 2.6 ("Indemnification by Provider")~~; Section 5.3 ("Payment Due at Termination"); Section 6 ("Confidentiality"), Section 7 ("Intellectual Property"), Section 9 ("Limitation of Liability") and Section 11 ("General Provisions").

11. General Provisions.

- 11.1 **Notices.** Any notice or other written communication required in this Agreement will be deemed properly given when deposited in the United States mail, certified mail return receipt requested, with appropriate postage affixed. Faxed notices will be deemed acceptable if promptly followed by an original copy mailed as herein set out. Email notices will be deemed acceptable if promptly followed by an original copy mailed as herein set out. Notices will be sent to the individuals at the most recent addresses or fax numbers provided below or as updated by notice to the other party:

For LexVid:

LexVid Services, Inc.

1963 Missouri Street

San Diego, CA 92109

Attention, President

bryan@lexvid.com

For Provider:

San Diego Law Library

1105 Front Street

San Diego, CA 92120

ATTN: John Adkins

jadkins@sdlawlibrary.org

- 11.2 **Assignment.** Neither party may assign this Agreement without the other party's written consent, ~~except that (a) either party may assign the Agreement without the other party's consent on notice to any affiliate, and (b) either party may assign this Agreement (in whole, but not in part) without such consent on written notice to the other party in conjunction with a Change of Control. "Change of Control" means a transaction or series of related transactions to: (i) sell, convey or otherwise dispose of all or substantially all of the property or business of the entity; (ii) merge or consolidate with any other entity (other than a wholly owned subsidiary); or (iii) transfer any voting securities of the entity, unless the stockholders of the entity who own more than 50% of the voting power of the entity immediately prior to such transaction will own more than 50% of the voting power of the surviving entity following such transaction or transactions. This Agreement will be binding upon and inure to the benefit of the parties and their respective successors and assigns.~~

- 11.3 **Force Majeure.** Except for obligation to make payment, neither party is liable for failure to perform obligations if such failure is as a result of fire, flood, earthquake, storm, hurricane or other natural disaster, war, invasion, act of foreign enemies, hostilities (regardless of whether war is declared), civil war, rebellion, revolution, insurrection, military or usurped power or confiscation, terrorist activities, nationalization, government sanction, blockage, embargo, labor dispute, strike, lockout or interruption or failure of electricity or telephone service, or other events beyond the reasonable control of the non-performing party and not caused by its negligence.
- 11.4 **Independent Contractors.** The parties will be independent contractors as to each other, and not partners, joint ventures, agents, or employees. Neither party will have the right or power to act for or bind the other to any obligation of any nature.
- 11.5 **Third-Party Beneficiaries.** ~~Except as set forth in Section 2.6, there~~ There are no third-party beneficiaries to this Agreement.
- 11.6 **No Waiver.** The failure of a party to enforce any provision of this Agreement will not be deemed a waiver of the right of that party to future enforcement of the same or other provisions.
- 11.7 **Severability.** Each provision of this Agreement is considered severable. If one provision conflicts with existing or future law and is or becomes invalid or unenforceable, or is found by a court of competent jurisdiction to be invalid, illegal, or otherwise unenforceable, the other terms or provisions will not be affected, but such invalid, illegal, or unenforceable terms or provisions will be modified to the extent necessary or appropriate in the court's opinion to effectuate the intention of the parties. All other provisions of this Agreement will remain in full force and effect.
- 11.8 **Governing Law and Jurisdiction.** This Agreement will be governed by the laws of the State of California, excluding any applicable conflicts of law provisions. Jurisdiction and venue for any legal action arising from this Agreement will be in the state and federal courts sitting in San Diego County, California.
- 11.9 **Entire Agreement.** This Agreement contains the sole and entire Agreement of the parties with respect to the subject matter. All prior discussions, negotiations, understandings, or agreements are incorporated into or superseded by this Agreement. This Agreement may not be modified or amended except in a writing signed by both parties reciting that it is an amendment hereto.
- 11.10 **Counterparts.** This Agreement may be executed in counterparts, which together form one legal instrument. Any executed copy of this Agreement made by reliable means (e.g., photocopy, PDF or facsimile) is considered an original.
- 11.11 **Dispute Resolution.** Any dispute between the parties arising out of this Agreement will be first submitted to senior management of both parties for a good faith attempt at amicable resolution. If the parties cannot settle the dispute within twenty (20) days after such meeting of senior management, the

dispute will be mediated by a mutually acceptable mediator to be selected by the parties within thirty (30) days after written notice by either party demanding mediation. A party must not unreasonably withhold consent to the selection of a mediator, and the parties will equally share costs of the mediation. The use of any of the above-mentioned procedures will not be construed under the doctrines of laches, waiver, or estoppel to affect the rights of either party adversely. Nothing in this Section will prevent ~~LexVid~~[Publisher](#) from collecting Fees due, nor will it prevent either party from resorting to judicial proceedings, if: (a) good faith efforts to resolve the dispute under these procedures have been unsuccessful; (b) the claim or dispute involves intellectual property rights; or (c) interim relief from a court is necessary to prevent serious and irreparable injury to that party or to others.

IN WITNESS WHEREOF, the parties have duly executed this Agreement by their duly authorized officers to be effective as of the Effective Date.

LexVid Services, Inc.

San Diego County Law Library

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

Document comparison by Workshare Compare on Tuesday, July 14, 2015
10:27:32 AM

| Input: | |
|---------------|--|
| Document 1 ID | \\Casdgs01\21236\UserProfile\My Documents\NDEcho\SDLL - LexVid Publisher Agreement(1).docx |
| Description | \\Casdgs01\21236\UserProfile\My Documents\NDEcho\SDLL - LexVid Publisher Agreement(1).docx |
| Document 2 ID | \\Casdgs01\21236\UserProfile\My Documents\NDEcho\SDLL - LexVid Publisher Agreement.docx |
| Description | \\Casdgs01\21236\UserProfile\My Documents\NDEcho\SDLL - LexVid Publisher Agreement.docx |
| Rendering set | Standard |

| Legend: | |
|-------------------|---------------------------|
| | <u>Insertion</u> |
| | Deletion |
| | Moved from |
| | <u>Moved to</u> |
| | Style change |
| | Format change |
| | Moved deletion |
| Inserted cell | |
| Deleted cell | |
| Moved cell | |
| Split/Merged cell | |
| Padding cell | |

| Statistics: | |
|--------------|-------|
| | Count |
| Insertions | 41 |
| Deletions | 56 |
| Moved from | 2 |
| Moved to | 2 |
| Style change | 0 |

| | |
|----------------|-----|
| Format changed | 0 |
| Total changes | 101 |