

## **LICENSE AGREEMENT AND RELEASE**

In consideration of the mutual promises and covenants recited herein and in reliance on the representations and warranties recited herein California Public Employees' Retirement System ("CalPERS") on the one hand, and Los Angeles Times Communications LLC ("LA TIMES") on the other hand (each a "Party" and collectively the "Parties"), hereby covenant and agree as set forth below. This License and Release Agreement (the "Agreement") is effective the date the last one of the Parties has executed the Agreement and provided it to the other Party (the "Effective Date").

### **RECITALS**

**WHEREAS**, LA TIMES has alleged that CalPERS engaged in the unauthorized use of certain LA TIMES Content, as defined below;

**WHEREAS**, CalPERS denies any wrongdoing and disclaims any liability with regard to the LA TIMES Content; and

**WHEREAS**, CalPERS and LA TIMES desire to resolve all disputes between them regarding CalPERS' alleged use of LA TIMES Content by entering into this Agreement governing any and all past use by CalPERS of any LA TIMES Content.

**WHEREAS**, CalPERS and LA TIMES desire to enter into a retrospective license as well as a prospective license for the use of LA TIMES Content.

**THEREFORE**, in consideration of the mutual covenants, agreements and understandings contained hereinafter, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

#### **1. Definitions**

1.1 "LA TIMES" shall mean Los Angeles Times Communications LLC, a Delaware limited liability company, any subsidiaries and all past and present officers, directors, managers, employees, agents, attorneys and representatives and the successors and assigns thereof.

1.2 "LA TIMES Content" shall mean any and all registered or unregistered copyright protected works first published in the *Los Angeles Times* before August 1, 2017, in which LA TIMES claims an interest, including without limitation any articles published in the *Los Angeles Times* print or online editions before August 1, 2017. LA TIMES Content does not include articles licensed from wire services (e.g., The Associated Press).

1.3 "CalPERS" shall mean California Public Employees' Retirement System, a government agency of the State of California, and all past or present members of the Board of Administration and their official designees, officers, directors, agents, managers, employees, individuals contracted as consultants (investment advisors and fiduciary

counsel), insurers, attorneys and representatives of CalPERS, and the successors and assigns thereof.

1.4 “Claims” shall mean any and all manner of accounts, actions, causes of action, claims, controversies, counterclaims, damages, debts, defenses, demands, judgments, liabilities, losses and suits, whether in law or in equity, known or unknown, liquidated or unliquidated, direct or indirect, due or to become due, contingent or otherwise, but which are in any case based on facts occurring prior to the Effective Date.

## **2. Representations and Warranties**

2.1 LA TIMES represents and warrants that it either owns the LA TIMES Content or has a license to the LA TIMES Content with the initial right (as exercised here) to negotiate, litigate, settle or license any and all of the rights, including any registered or unregistered copyright rights in the LA TIMES Content, and Claims related to such rights to any third party.

2.2 CalPERS represents and warrants that it ceased and desisted all alleged unauthorized use, production, reproduction, distribution, display or other exploitation of any and all LA TIMES Content on or before August 1, 2017.

## **3. LA TIMES Content License**

3.1 LA TIMES (“Licensor”) hereby grants to CalPERS (“Licensee”), subject to the terms and conditions hereinafter contained, a non-exclusive, non-transferable, worldwide, retroactive license to use, produce, reproduce, distribute, display and otherwise exploit any LA TIMES Content (the “License”).

3.2 The term of the License shall begin on the earliest date of enforceability of any copyrights to LA TIMES Content and shall terminate upon the Effective Date (the “Term”). The License shall therefore cover all prior use, production, reproduction, distribution, display or other exploitation of LA TIMES Content by Licensee during the Term.

3.3 All rights, licenses, and privileges not expressly granted to Licensee by Licensor herein shall remain solely and exclusively with Licensor.

3.4 On the Effective Date, all rights conveyed by Licensor to Licensee shall cease, and all such rights shall revert to Licensor. Licensee may, however, retain a full set of any and all LA TIMES Content in its possession on the Effective Date for a period of up to three years so long as such LA TIMES Content is retained solely for the purpose of preserving evidence in connection with potential Claims by third parties against CalPERS, and not distributed, reproduced or used in any other way.

#### **4. LA Times Unlimited Digital Access ("UDA") License**

4.1 LA TIMES (the "UDA Licensor") hereby grants up to a total of 1,500 CalPERS employees (the "UDA Licensees"), subject to the terms and conditions hereinafter contained, a non-exclusive, non-transferable, worldwide, license to LA TIMES's "Unlimited Digital Access" product, or equivalent product as offered to the public by LA TIMES during the UDA Term (defined below), in the form of an online subscription to the *Los Angeles Times* (the "UDA License").

4.2 Within 30 days of the Effective Date, CalPERS shall provide LA TIMES with a list of the names and email addresses of the UDA Licensees. Within 30 days of receipt of such list (the "UDA Activation Date"), LA TIMES shall enable the UDA License for the UDA Licensees by emailing the necessary activation link to the UDA Licensees who will then select an individual password in order to access LA TIMES's digital content on the same terms and conditions, as may be regularly updated, for other LA TIMES "Unlimited Digital Access" customers.

4.3 The UDA License shall remain in full force and effect for two years from the date of the UDA Activation Date (the "UDA Term").

4.4 The Parties shall use their best efforts to work together during the UDA Term to resolve any technical or other issues related to the UDA License.

#### **5. Releases and Covenants Not to Sue**

5.1 Conditioned upon the receipt of the full Payment set forth in Paragraph 6 of this Agreement and subject to the other terms in this Agreement, LA TIMES hereby releases, forever discharges and covenants not to sue CalPERS from any and all Claims, irrespective of how, why, or by reason of what facts, which could or may be claimed to exist, whether known or unknown, suspected or unsuspected, liquidated or unliquidated, claimed or unclaimed, whether based on contract, tort, breach of any duty, copyright or other legal or equitable theory of recovery, each as though fully set forth herein at length, arising prior to the Effective Date relating to the Claims that were made or could have been made by LA TIMES against CalPERS arising out of or related to the use, production, reproduction, distribution, display or other exploitation of LA TIMES Content. It is understood and agreed that CalPERS may plead the release provided in this Agreement as a complete defense and bar to any Claim brought in contravention of this release.

5.2 CalPERS hereby releases, covenants not to sue and forever discharges LA TIMES from any and all Claims, irrespective of how, why, or by reason of what facts, which could or may be claimed to exist, whether known or unknown, suspected or unsuspected, liquidated or unliquidated, claimed or unclaimed, whether based on contract, tort, breach of any duty, copyright or other legal or equitable theory of recovery, each as though fully set forth herein at length, arising prior to the Effective Date relating to Claims arising out of or related to the LA TIMES Content. It is understood and agreed that LA TIMES may plead

the release provided in this Agreement as a complete defense and bar to any Claim brought in contravention of this release.

5.3 The Parties understand that Section 1542 of the California Civil Code provides:

**A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR.**

Section 1542 of the California Civil Code and any similar law, statute, provision, or policy of any other state including, without limitation, any law, statute, provision, or policy regarding the waiver or release of claims unknown at the time of this Agreement, are hereby expressly waived by the Parties as to any and all claims that are released by this Agreement. Each Party hereby agrees, represents, and warrants that such Party realizes and acknowledges that factual matters now unknown to such Party may have given or may hereafter give rise to causes of action, claims, demands, debts, controversies, damages, costs, losses, and expenses that are presently unknown, unanticipated, and unsuspected, and each Party further agrees, represents, and warrants that this Agreement has been negotiated and agreed upon in light of that realization and that, except as expressly limited above, each Party nevertheless hereby intends to release, discharge, and acquit each other Party from any such unknown causes of action, claims, demands, debts, controversies, damages, costs, losses, and expenses on the terms set forth in this Agreement.

5.4 This Agreement may not be used by any party not a party to the Agreement against CalPERS, or LA TIMES, except for the releases as provided in section 5 of this Agreement.

## **6. Payment**

As a condition of the granting of releases by LA TIMES herein, and as good and valuable consideration for and in full and complete satisfaction of the License and UDA License, CalPERS agrees to pay Los Angeles Times Communications LLC the sum of \$445,000.00 within fourteen days of the Effective Date.

## **7. Mutual Representations and Warranties**

Each Party represents and warrants that it has read and understands the provisions of this Agreement, has received advice from independent counsel of its own choice regarding the Agreement, has signed this Agreement freely and without duress, and has full authority to execute this Agreement and to consummate the transactions contemplated by this Agreement.

**8. No Admissions**

This Agreement does not constitute an admission of liability or wrongdoing by any Party hereto, and may not be used for any purpose in any future litigation or other dispute resolution process, except in an action (and to the extent necessary) to enforce the terms of this Agreement.

**9. Representations by Each Party**

9.1. Each Party represents and warrants it has all requisite power and authority to execute, deliver, and perform its obligations under this Agreement.

9.2. Each Party represents and warrants the execution, delivery, and performance of this Agreement has been duly authorized.

**10. Joint Authorship**

The Parties agree that in the event of a dispute, the Parties shall be considered joint authors of this Agreement and no provision shall be interpreted against either Party because of authorship.

**11. Previously-Incurred Legal Fees**

Each Party hereto shall pay its own costs and expenses, including legal fees, including, but not limited to, those incurred in negotiation, preparation and execution of this Agreement.

**12. Consideration**

The Parties expressly acknowledge that all terms of this Agreement are supported by good, valid and legally sufficient consideration so as to make this Agreement binding and valid.

**13. Severability**

In the event that any term or provision of this Agreement is determined by a court of competent jurisdiction to be illegal, invalid, or unenforceable for any reason whatsoever, such illegality, invalidity or unenforceability shall not affect the remaining terms or provisions of this Agreement, which remaining terms and provisions shall remain in full force and effect.

**14. Counterparts**

This Agreement may be executed in any number of separate counterparts, each of which shall be deemed an original, but all of which, when taken together, shall constitute

one agreement, which shall be binding upon and effective as to all of the Parties. Signatures communicated electronically or by facsimile are permissible and enforceable.

**15. No Waiver**

No waiver of any breach of any term or provision of this Agreement shall be construed to be, or shall be, a waiver of any other breach of this Agreement. No waiver shall be binding unless in writing and signed by the Party or Parties waiving the breach.

**16. Section Headings**

The paragraph, section and article headings used in this Agreement are intended solely for convenience and reference and shall not in any manner amend, limit, modify, or otherwise be used in the interpretation of any of the provisions of this Agreement.

**17. Successors**

This Agreement, along with its terms and conditions, shall be binding on and shall inure to the benefit of each of the Parties and to their heirs, executors, administrators, successors-in-interest and assigns.

**18. Integration**

This Agreement constitutes and contains the entire agreement of CalPERS and LA TIMES with respect to the subject matter hereof, and there are no other agreements, understandings or representations with respect to this subject matter which are not expressly set forth herein.

**19. Written, Signed Amendment Required**

This Agreement may not be modified or amended except by written agreement, signed by CalPERS and LA TIMES.

**20. Governing Law; Venue**

This Agreement shall be governed by and construed in accordance with the laws of the State of California applicable to contracts to be wholly performed therein. The exclusive forum for any disputes arising out of or relating to this Agreement shall be an appropriate state or federal court situated in Los Angeles County in the State of California.

**IN WITNESS WHEREOF**, the Parties have executed this Agreement on the dates set forth opposite their respective signatures.

Dated: March \_\_, 2018

LOS ANGELES TIMES COMMUNICATIONS, LLC

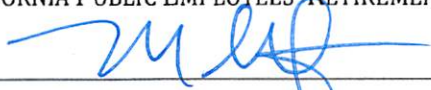
By: \_\_\_\_\_

Print Name: \_\_\_\_\_

Title: \_\_\_\_\_

Dated: March 29 2018

CALIFORNIA PUBLIC EMPLOYEES' RETIREMENT SYSTEM

By:  \_\_\_\_\_

Print Name: Matthew Jacobs

Title: General Counsel

**20. Governing Law; Venue**

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**IN WITNESS WHEREOF**, the Parties have executed this Agreement on the dates set forth opposite their respective signatures.

Dated: March <sup>30</sup>\_\_, 2018

LOS ANGELES TIMES COMMUNICATIONS, LLC

By: Jeff Glasser

Print Name: Jeff Glasser

Title: Vice President, Legal

Dated: March \_\_, 2018

CALIFORNIA PUBLIC EMPLOYEES' RETIREMENT SYSTEM

By: \_\_\_\_\_

Print Name: \_\_\_\_\_

Title: \_\_\_\_\_