

**IN THE CHANCERY COURT FOR THE TWENTIETH JUDICIAL DISTRICT  
DAVIDSON COUNTY, TENNESSEE**

PUBLIC.RESOURCE.ORG )  
and DAVID L. HUDSON, JR., )  
 )  
Petitioners, )  
 )  
v. )  
 )  
MATTHEW BENDER & )  
COMPANY, INC., )  
*a division of the LexisNexis Group,* )  
 )  
Respondent. )

No. 22-1025-TH

FILED  
2022 JUL 27 AM 8:46  
CLERK OF CHANCERY CT  
DAVIDSON COUNTY  
D.C.A.M.

**PETITION FOR ACCESS TO PUBLIC RECORDS AND  
TO OBTAIN JUDICIAL REVIEW OF DENIAL OF ACCESS**

**TO THE HONORABLE CHANCELLORS OF THE  
CHANCERY COURT FOR THE TWENTIETH JUDICIAL DISTRICT:**

Petitioners Public.Resource.org (Public Resource) and David L. Hudson, Jr. (collectively, Petitioners) petition this Court under the Tennessee Public Records Act, Tenn. Code Ann. §§ 10-7-503 and 10-7-505 (the Act), for access to and a copy of certain public records—specifically, the complete and current electronic version of the Tennessee Code Annotated—and to obtain judicial review of the actions of Respondent Matthew Bender & Company, Inc., a division of the LexisNexis Group (Lexis), in denying Petitioners access to those records, and state as follows:

**INTRODUCTION**

1. Petitioners seek to vindicate and protect the public’s right of access to the complete and current electronic version of the Tennessee Code Annotated—the law of Tennessee—in the hands of the private company hired by the State to publish it. The state government of Tennessee has contracted with Lexis, a for-profit corporation, to compile, arrange, classify,

annotate, edit, index, print, bind, publish, sell, and distribute the Tennessee Code Annotated (TCA). Petitioners seek access to the complete and current electronic version of this public record. Remarkably, the State does not have this electronic public record. As the TCA's publisher, Lexis does have this public record. Lexis has denied to Petitioners their right of access to the TCA as a public record under the Act. Petitioners seek redress for that denial in this Petition.

2. For two decades, Tennessee courts have recognized that records of non-governmental organizations that are the functional equivalent of government are public records subject to the public's statutory right of access under the Act. Since the Tennessee Supreme Court's decision in *Memphis Publ'g Co. v. Cherokee Children & Family Servs., Inc.*, 87 S.W.3d 67 (Tenn. 2002), the Act has provided Tennesseans a right of access to public records in the hands of non-governmental entities that are the functional equivalent of government. Lexis is the functional equivalent of state government for purposes of its work producing the TCA.

3. Indeed, since long before the *Cherokee* decision extended the reach of the Act to organizations that are the "functional equivalent" of government, Tennessee courts have recognized access to documents that clearly constitute public records in the hands of non-governmental entities. In *Creative Restaurants, Inc. v. City of Memphis*, 795 S.W.2d 672 (Tenn. Ct. App.), *appeal denied* (Tenn. 1990), the Tennessee Court of Appeals mandated access to subleases of public property in the hands of a municipality's leasing agent and its private-practice attorney. Just as subleases of public property are public records, so is the TCA, the law of Tennessee.

4. The TCA is the official compilation of the Constitution, statutes, codes, and session laws of the State of Tennessee. Together with decisions issued by the appellate courts of Tennessee, the TCA is the law of Tennessee.

5. Under a 2019 work-for-hire agreement, Lexis publishes the TCA under the strict and close supervision of the Tennessee Code Commission (Commission), a statutory entity that specifies what the TCA must include in exacting detail—every jot and tittle of the TCA to be published by Lexis must meet the Commission’s approval.

6. Given its tremendous responsibilities, the Commission and its agent, Lexis, should be fully accountable to the public, particularly for their work on the TCA – the very text of the law of Tennessee. Tennessee law provides tools to ensure the accountability of government officials and agencies, including the right of access to public records.

7. Notwithstanding the quintessentially governmental functions Lexis performs concerning the TCA, Lexis maintains that it is not subject to the Act and that records it has concerning the TCA are not public records – including the very public record it has contracted to produce. It has refused a request under the Act by Petitioners, who have diligently sought records to inform the public about the law that governs Tennessee.

8. Specifically, Lexis has refused Petitioners’ request under the Act for the complete and current electronic version of the TCA. Indeed, Lexis even refused Petitioners’ request for a copy of the State contract under which it publishes the TCA. Petitioners were forced to make their request under the Act to Lexis for an electronic copy of the TCA after the Commission asserted to Petitioners, in denying a request under the Act, that the Commission does not have an electronic copy of the TCA in its possession, even though Lexis is expressly contractually obligated to provide one to the Commission.

9. Having been rebuffed by Lexis in violation of the Act, Petitioners bring this action to vindicate their and the public's right of access to this public record.

## **FACTS**

### **I. Parties**

10. Public Resource is a nonprofit organization that facilitates public access to government records and primary legal materials. Public Resource is committed to making the codes of all fifty states available in a common and usable format, including updates and annotations, to allow the public to see their laws and how those laws change over time.

11. David L. Hudson, Jr., is a resident of Nashville, Tennessee, and a Justice Robert Jackson Fellow with the Foundation for Individual Rights in Education and First Amendment Fellow with the Freedom Forum.

12. Lexis is a for-profit corporation organized under the laws of the Commonwealth of Massachusetts. It is located at 230 Park Avenue, Floor 7, New York, NY 10169-0935. Lexis may be served with process by serving its Registered Agent: CT Corporation System, 300 Montvue Road, Knoxville, TN 37919-5546.

### **II. Jurisdiction and Venue**

13. This Court has subject matter jurisdiction of this petition and venue is proper in this Court under Tenn. Code Ann. § 10-7-505(b).

14. Tennessee law and procedure, and practice in this Court, require that Petitioners plead jurisdiction and venue over their cause of action, as they have done in the immediately preceding paragraph. To do so accurately, Tennessee law and procedure requires that they cite to the applicable provision of the TCA, as Petitioners have done in the immediately preceding paragraph. The fact that Petitioners are required by law to cite to the publication at issue in this

action, the TCA, strongly supports the proposition that the work of Lexis in producing and publishing the TCA is a government function and that Lexis is, for purposes of producing and publishing the TCA, the functional equivalent of government.

### **III. The TCA and the Tennessee Code Commission**

15. The laws of the State of Tennessee are compiled in the Tennessee Code.

16. The TCA includes, among other things, the text of the Tennessee Code and non-binding annotations, including references to secondary sources that discuss the Code; references to cases in which courts have interpreted the Code (called “Notes of Decisions”); cross-references to other sections of the Code or to relevant regulations; and detailed historical notes.

17. The TCA is the definitive, authoritative, authorized, and official version of all Tennessee statutory law.

18. The Tennessee Supreme Court, other Tennessee courts, and federal courts routinely and virtually uniformly cite to the TCA to make any reference to Tennessee statutory law. They virtually never cite to any unannotated version of Tennessee statutory law.

19. The TCA is assembled and published by the Tennessee Code Commission and under its express authority, granted by the Tennessee General Assembly, as a matter of statutory law.

20. By statute, the members of the Commission include the Chief Justice of the State of Tennessee, the Attorney General and Reporter of the State of Tennessee, the Director of Legal Services of the General Assembly of Tennessee, all serving *ex officio*, plus two members appointed by the Chief Justice. Tenn. Code Ann. § 1-1-101.

21. The Commission’s Executive Secretary is the Revisor of Statutes, a member of the Office of Legal Services (OLS). Tenn. Code Ann. § 1-1-102(b).

22. OLS is an agency of the Tennessee General Assembly charged with providing all staff services for the Commission. Tenn. Code Ann. § 1-1-103.

23. The Commission is

authorized and directed to formulate and supervise the execution of plans for the compilation, arrangement, classification, annotation, editing, indexing, printing, binding, publication, sale, distribution and the performance of all other acts necessary for the publication of an official compilation of the statutes, codes and session laws of the state of Tennessee of a public and general nature, now existing and to be enacted in the future, including an electronically searchable database of such code, which official compilation shall be known as "Tennessee Code Annotated."

Tenn. Code Ann. § 1-1-105.

24. The Commission has

full power and authority on behalf of the state of Tennessee to perform all acts and to negotiate and enter into all contracts necessary for and expedient to the successful production and publication of a revised compilation of the statutory laws of Tennessee, including the power and authority to enter into contracts with a law book publisher for the editing, compiling, annotating, indexing, printing, binding, publication, sale and distribution of the revised compilation and the performance and execution of all other publication plans formulated by the commission.

Tenn. Code Ann. § 1-1-106.

25. Section 107 further provides that

[a]ny contract with a law book publisher for the purposes referred to in §§ 1-1-105 and 1-1-106 shall prescribe the specifications for the publication of the revised compilation, including the size of type to be used in the text of the statutes and the annotations, the grade and weight of the paper to be used, the size of the volumes, appropriate provisions for the insertion of pocket supplements and the publication of replacement volumes, the price at which Tennessee Code Annotated shall be sold in Tennessee when originally published, and such other provisions as are necessary for the full performance of the publication plans formulated by the commission.

Tenn. Code Ann. § 1-1-107.

26. If the Commission finds that the manuscript of the TCA “printed, edited, annotated, indexed and bound” by a law book publisher under a contract is acceptable, the Commission “shall prepare an appropriate written certificate of approval” and “acting through its executive secretary or other authorized officer, shall certify in writing” that the Commission has approved the manuscript. Tenn. Code Ann. § 1-1-110.

27. The official status of the TCA has been expressly established by the Tennessee General Assembly for almost seven decades. Since 1953, Tennessee statutory law has provided that “[n]o compilation or codification of the statutes of Tennessee not bearing a copy of the certificate of approval of the code commission as provided in § 1-1-110 shall be recognized as an official compilation of the statutory law of Tennessee.” Tenn. Code Ann. § 1-1-112.<sup>1</sup>

28. The Commission cannot subsidize the publication of the TCA out of public funds; rather, it “shall require that the cost of publication be borne by the publisher, and the publisher shall be required to depend for compensation upon the proceeds of the sale of the publication.” Tenn. Code Ann. § 1-1-113.

29. The State of Tennessee claims copyright protection for the TCA.

#### **IV. The Commission’s Exclusive Contract with Lexis**

30. The TCA is produced by Lexis under a 2019 Restated Agreement for Publication with the Commission (the Agreement). Ex. 1.

31. The Agreement is the latest amendment to an agreement between the Commission and Lexis dated December 11, 1996.

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<sup>1</sup> This is established by reference to the TCA annotation for Tenn. Code Ann. § 1-1-112 entitled, “History,” which states “Acts 1953, ch. 80, § 5; T.C.A. (orig. ed.), § 1-112.”

32. Under the Agreement, Lexis “shall perform and provide all editorial services necessary for the publication of T.C.A.,” and “shall provide and be responsible for all ongoing publishing requirements associated with the maintenance of T.C.A.” Ex. 1 at Section 1.1.

33. Notwithstanding Lexis’s responsibilities under the Agreement, the Commission must approve the following aspects of the TCA, among others:

- a. the organization and arrangement of replacement volumes of the TCA (Section 1.4);
- b. the form of annotations (Section 1.6);
- c. the addition of any new annotations (Section 1.7(d));
- d. the removal of any archaic or obsolete references or annotations (Section 1.9);
- e. any additional reference tables (Section 1.11);
- f. any changes to the content or arrangement of replacement volumes or the style of numbering replacement volumes (Section 2.2);
- g. the publication of all replacement volumes and their retail prices (Section 2.2);
- h. the number and size of volumes published (Section 3);
- i. the contents of each volume (Section 3); and
- j. any price changes (Section 5.2).

Ex. 1.

34. Exhibit A to the Agreement, entitled “General Requirements for the Publication of the Code and Code CD-ROM,” provides an exhaustive list of technical specifications that “may be changed with the written approval of the Commission,” including (among many others):

- a. the size of the pages;
- b. the type face;
- c. the type size;
- d. the margins;
- e. the paper weight; and
- f. the number of columns of text on the pages.



Ex. 1 at Ex. A.

35. Under the Agreement, Lexis “shall maintain the present style and format of the Code, and adhere to the Style Guidelines adopted by the Commission,” and the Commission’s “Style Guidelines for Codification of Public Chapters” includes provisions governing:

- a. acronyms;
- b. alphabetization;
- c. dates;
- d. designation and referencing of the Tennessee Code;
- e. gender neutralization;
- f. hyphenation;
- g. numbers;
- h. obsolete terms;
- i. punctuation;
- j. time; and
- k. miscellaneous words and phrases.

Ex. 1 at Ex. A.

36. Under the Agreement, Lexis will also “implement style changes requested by the Commission.” Ex. 1 at Ex. A.

37. Section 7 (“Supervision”) of the Agreement provides that Lexis

agrees that all compilations, codifications, annotations, and other matters to be included in T.C.A. shall be submitted to the Executive Secretary in advance of publication, in order that such items may be checked, proofread, verified and certified by the Executive Secretary prior to publication as provided by the minimum requirements.

Ex. 1.

38. The Agreement further provides: “In the event of disagreement as to material to be included in such T.C.A., or as to any codification, annotation or other matter of editorial content, [Lexis] shall abide by and follow the decision of the Commission as communicated by

the Executive Secretary,” and “[i]n the event of any other dispute between [Lexis] and the Commission concerning publication of the T.C.A. or performance under th[e] Agreement, the decision of the Commission shall prevail.” Ex. 1 at Section 7.

39. The Agreement requires that Lexis provide the Commission, after each legislative session, the complete and current electronic version of the TCA:

After each regular or extraordinary session. Publisher shall prepare and provide to the Commission. [sic] at no cost to the State of Tennessee a mutually agreeable electronic format containing an accurate representation of the material contained in the bound volumes of T.C.A. and its cumulative supplements, as amended in such regular or extraordinary session, for the use of the Commission and the General Assembly within ten (10) days of the publication of the supplements from any regular or extraordinary session or at such earlier time as the electronic format may otherwise be distributed to search service companies. Such electronic format shall contain all editorial revisions and the prior and new materials shall be merged in a continuous format. The electronic format shall be delivered pursuant to written request of the Executive Secretary. The various elements of this material shall be structured and easily identified to facilitate ease of use in automated systems being used by the General Assembly to provide bill drafting, statutory research, and other automated services. The physical characteristics of this electronic format must be compatible with computer equipment currently installed in the Office of Legislative Information Systems of the General Assembly, and Publisher shall consult with the Commission, the Executive Secretary and the Office of Legislative Information Systems concerning such characteristics. Publisher shall provide such assistance as may be necessary to enable the Commission to make full use of the electronic format.

Ex. 1 at Section 2.9.

40. The Commission may terminate the Agreement for cause or for convenience without cause “if for any reason the Commission determines, in its sole discretion, that such termination is in the best interest of the State.” Ex. 1 at Section 9.

#### **V. Petitioners’ Requests for the TCA as a Public Record**

41. Public Resource and Professor Hudson have attempted to obtain the complete and current electronic version of the TCA under the Act.

**A. Petitioners' Public Records Request to the State**

42. On October 8, 2021, Vanderbilt Law School Professor Gautam Hans, working with Public Resource, submitted a public records request to the Revisor of Statutes of Tennessee requesting “[a] copy of each electronic version of the most current Tennessee Code Annotated, reproduced in its entirety.” Ex. 2.

43. Responding for the Revisor of Statutes, the Office of the Attorney General and Reporter of Tennessee denied Professor Hans’s public records request on October 19, 2021, advising him “that the Revisor of Statutes does not [have] an electronic version of the most current Tennessee Code Annotated *in its entirety*.” Ex. 3 (emphasis in original).

44. Professor Hans’s counsel replied on January 24, 2022, seeking several clarifications concerning the Attorney General’s response, including its use of the phrase “*in its entirety*,” and confirmation “whether the State has any electronic documents or files responsive to [Professor Hans’] request.” Ex. 4.

45. The January 2022 letter also cited Section 2.9 of the Agreement, which provides that Lexis “shall prepare and provide to the Commission at no cost to the State of Tennessee a mutually agreeable electronic format containing an accurate representation of the material contained in the bound volumes of T.C.A. and its cumulative supplements.” Ex. 1 at Section 2.9.

46. The Attorney General responded on February 2, 2022, repeating that neither the Revisor of Statutes and Executive Secretary of the Commission nor the OLS had any documents or records responsive to Professor Hans’s records request. Ex. 5. The Attorney General also advised that the Executive Secretary “has never requested that an ‘electronic format’ of the Tennessee Code Annotated be delivered” to the Commission under Section 2.9 of the Agreement. *Id.*

47. Based on these statements in formal response to a request for public records under the Act, Petitioners understand and believe that the State of Tennessee does not have in its possession the complete and current electronic version of the TCA.

***B. Petitioners' Public Records Request to Lexis***

48. Given the State's responses to Professor Hans's public records request, and Lexis's exclusive contract with the State to compile, arrange, classify, annotate, edit, index, print, bind, publish, sell, and distribute the TCA, Petitioners wrote Lexis requesting access under the Act to "[e]ach electronic version of the most current Tennessee Code Annotated, reproduced in its entirety" on May 16, 2022. Ex. 6 (the Request).

49. On May 20, 2022, Lexis denied the Request, arguing that the Act does not apply to Lexis because Lexis "is not the functional equivalent of a government entity." Ex. 7.

**CLAIM FOR RELIEF**

50. Petitioners repeat paragraphs 1–49.

51. As of the filing of this Petition, Lexis has not provided Petitioners access to and a copy of the complete and current electronic version of the TCA.

52. Upon information and belief, the complete and current electronic version of the TCA is in the possession, custody, or control of Lexis.

53. The complete and current electronic version of the TCA is "document[], paper[], . . . book[], . . . electronic data processing file[] and output, . . . or other material, regardless of physical form or characteristics, made or received pursuant to law or ordinance or in connection with the transaction of official business by any governmental agency" and is, therefore, a public record under the Act.

54. None of the exemptions under the Act are applicable to the public record sought by Petitioners.

55. Lexis has not denied that the complete and current electronic version of the TCA is a public record under Tennessee law.

56. Lexis has not cited or relied on any exception to the Act as justifying its denial of access under the Act.

57. Lexis is the functional equivalent of a government agency; thus, the complete and current electronic version of the TCA in Lexis's possession, custody, or control is a public record subject to the access requirements of the Act.

58. Lexis is the agent of the State of Tennessee and the Commission for the purpose of possession of the complete and current electronic version of the TCA.

59. Lexis has denied that it is the functional equivalent of a government agency.

60. Lexis has not cited or relied on any other legal basis as justifying its denial of access under the Act.

61. Lexis has refused and denied Petitioners access to and a copy of the record sought, violating its duties under the Act as the custodian of the public record sought.

62. Lexis knew, and continues to know, that the record sought by Petitioners is a public record and it has willfully refused and failed to provide access to and a copy of the record.

#### **PRAYER FOR RELIEF**

WHEREFORE, Petitioners pray that this Court:

(1) Immediately issue an order requiring Lexis to appear before this Court within ten days and show cause, if any they have, why this petition should not be granted, as provided by Tenn. Code Ann. § 10-7-505(b);

(2) Grant Petitioners a declaratory judgment that the document sought by their request—the complete and current electronic version of the TCA—is a public record under Tennessee law and that Lexis’s failure to grant the public access to and a copy of this public record constitutes a violation of the Act;

(3) Grant Petitioners a declaratory judgment that Lexis willfully refused to grant access to and a copy of the complete and current electronic version of the TCA as a public record;

(4) Order Lexis to immediately make a copy of the complete and current electronic version of the TCA available to Petitioners;

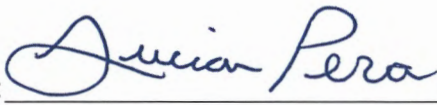
(5) Grant Petitioners their reasonable costs and attorney fees pursuant to Tenn. Code Ann. § 10-7-505(g);

(6) Grant Petitioners discretionary costs under Tenn. R. Civ. P. 54;

(7) Grant Petitioners such equitable relief as may be necessary to secure the purposes and intentions of the Act and specifically Tenn. Code Ann. § 10-7-505, including, if necessary, the exercise of the full injunctive remedies and relief available to the Court; and

(8) Grant Petitioners all such further relief to which they may be entitled.

ADAMS AND REESE LLP

By: 

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*Attorneys for Petitioners*

STATE OF CALIFORNIA )  
 )  
COUNTY OF SONOMA )

Carl Malamud, being duly sworn, states:

1. I am the president and founder of Public.Resource.org.
2. I have reviewed this petition, and the facts stated in it are true to the best of my knowledge, information, and belief.

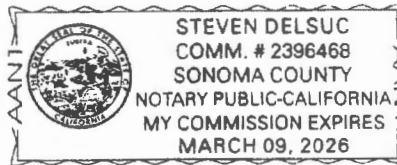
  
\_\_\_\_\_  
CARL MALAMUD

Subscribed and sworn to before me this 19 day of July, 2022.

  
\_\_\_\_\_  
NOTARY PUBLIC

My Commission Expires:

03/09/2026



**CALIFORNIA  
JURAT  
ATTACHED**

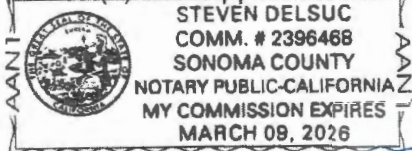


A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California  
County of Sonoma

Subscribed and sworn to (or affirmed) before me on this 19<sup>th</sup>  
day of July, 2022 by Carl A Malamud

proved to me on the basis of satisfactory evidence to be the  
person(s) ~~who appeared before me.~~



(Seal)

Signature [Signature]

STATE OF TENNESSEE )  
 )  
COUNTY OF DAVIDSON )

David L. Hudson, Jr., being duly sworn, states:

1. I am a resident citizen of Nashville, Tennessee, and a Justice Robert Jackson Fellow with the Foundation for Individual Rights in Education and First Amendment Fellow with the Freedom Forum.

2. I have reviewed this petition, and the facts stated in it are true to the best of my knowledge, information, and belief.

  
\_\_\_\_\_  
DAVID L. HUDSON, JR.

Subscribed and sworn to before me this 26<sup>th</sup> day of July, 2022.

  
\_\_\_\_\_  
NOTARY PUBLIC

My Commission Expires:

July 7, 2025



# EXHIBIT 1

## RESTATED AGREEMENT FOR PUBLICATION

**THIS RESTATED AGREEMENT FOR PUBLICATION** ("Agreement"), made this \_\_\_ day of \_\_\_\_\_, 2019, by and between the Tennessee Code Commission ("Commission") and Matthew Bender & Company, Inc. ("Publisher").

### WITNESSETH :

A. On December 11, 1996, the Commission and the Publisher entered into an Agreement for Publication for publishing and maintaining Tennessee Code Annotated under the authority of Tennessee Code Annotated, Sections 1-1-106 and 1-1-107.

B. The Agreement for Publication has been subsequently amended in writing on February 1, 2005; November 13, 2013; and December 19, 2018.

C. The parties desire to further amend the Agreement for Publication by entering into this Restated Agreement for Publication that incorporates and replaces all previous agreements, amendments, and appendices, effective January 1, 2020.

NOW, THEREFORE, in consideration of the premises and mutual covenants herein contained, the parties agree as follows:

### **1. EDITORIAL DUTIES OF PUBLISHER.**

**1.1 General.** Publisher shall perform and provide all editorial services necessary for the publication of T.C.A. Publisher shall provide and be responsible for all ongoing publishing requirements associated with the maintenance of T.C.A. Publisher shall bear all editorial and publication costs associated with the production and maintenance of T.C.A., without any contribution, subsidy or expense by the State of Tennessee (hereinafter "State"), or any other consideration from the State than that provided in this Agreement. Duties of Publisher shall extend to all T.C.A. publications in whatever form

covered by this Agreement. As used in this Agreement, T.C.A. shall include, as appropriate, the existing bound volumes of the Tennessee Code Annotated and supplements thereto, any replacement volumes and ancillary publications or any other publications authorized under this Agreement containing material copyrighted by the State under this Agreement, to the extent of such incorporation, in whatever form or medium. General requirements for the publication of T.C.A. are as stated in Exhibit A, attached hereto and incorporated herein by reference.

**1.2 Name of Publication.** The name of the publication shall be "TENNESSEE CODE ANNOTATED".

**1.3 User's Guide.** Publisher shall provide a User's Guide for T.C.A. containing instructions for use of T.C.A. which shall be usable and easily understood by both lay and professional persons. User's Guides shall be included in each bound volume of T.C.A. covering the use of the volume and supplements. A guide for users shall be set out in other parts of T.C.A. or other publications under this Agreement as requested by the Executive Secretary.

**1.4 Organization and Arrangement.** Publisher shall submit a written plan for the organization and arrangement of all the replacement volumes published pursuant to § 2.2 for approval by the Commission, if such organization and arrangement differs from present volumes.

**1.5 Numbering of Sections.** Publisher shall continue the section numbering system currently in use in T.C.A. The number in the first tier shall represent the title; the number in the second tier shall represent the chapter; and the number in the third tier shall represent the part and section. The system shall provide for either alphabetic or numeric characterization for subdivisions of individual sections.

**1.6 Annotations.** Publisher shall compile a complete annotation to each statute appearing in T.C.A. from all cases which are available up to the time work is completed upon volumes designated for replacement or upon the supplements or other publications requiring annotations required by this Agreement, as the case may be. All case annotations shall include all published opinions of the Supreme Court of Tennessee, the Court of Appeals of Tennessee, and the Court of Criminal Appeals of Tennessee, and of all federal courts construing Tennessee statutes arising out of Tennessee. References to such annotations shall include both the official publication and the national reporter system reference where available. The form of annotations will be subject to the approval of the Commission. Annotations will be consecutively numbered, in a manner comparable to the arrangement of annotations in the United States Code Annotated. No other references to cases shall be included.

**1.7 References.** Publisher shall provide the following services for references in T.C.A.:

- (a) Continue collateral references to law reviews;
- (b) Continue annotations to the Opinions of the Tennessee Attorney General;
- (c) Update existing references with the exception of Section to Section Reference notes ("SSR") which shall no longer be included in the T.C.A.;
- (d) Add any new annotations as determined by Publisher's editorial staff and approved by the Executive Secretary or as recommended by the Commission or Executive Secretary; and
- (e) Check for continuing validity of any existing references and annotations prior to publication of replacement volumes and the annual supplements.

**1.8 Index.** A comprehensive General Index ("Index") shall be updated and published annually in a soft-cover format similar to the current Index and shall be available at the same time that the annual supplements to the T.C.A. are published. The Commission may require at a future date the publication of the Index in a hardcover format with annual supplements to such Index volumes.

A mutually agreeable electronic format of the Index shall be furnished to the Commission on the request of the Executive Secretary at no cost to the State. This electronic format is separate from that specified in § 2.4.

The Index shall contain "topical expressions," "descriptive fact words," "definitions," "popular names" and short titles sufficient to provide easy access to sections of the Code. The Index shall include an index to the uncodified public acts. Additions to this index will be indicated by the Executive Secretary when public chapters are classified.

**1.9 Limitations on Editorial Changes.** In performing editorial services, Publisher shall not alter the sense, meaning or effect of any statute, but shall copy the exact language of the text of such statutes, except that with notice to and approval by the Executive Secretary of the Commission (as provided for in T.C.A. § 1-1-102(b)), Publisher may make changes of the kind authorized by T.C.A., § 1-1-108, as the same may be hereafter amended. Publisher shall call to the attention of the Executive Secretary any

sections which it believes may have been repealed by implication either by judicial action or by enactment of subsequent legislation or which it believes are obsolete or unconstitutional. Publisher shall take only such action with respect to such sections as the Executive Secretary may approve.

Publisher shall provide to the Executive Secretary in memorandum, or other form, a listing of editorial changes made in the public acts and in existing supplement or bound volume material, and a disposition table or chart indicating the placement and treatment of public acts.

The Publisher, through an experienced editorial staff, shall review material in each volume prior to its replacement or enactment and refer to the Commission the laws in such volume which it considers to be archaic, obsolete or unconstitutional. Any archaic or obsolete references or annotations shall be removed prior to replacement with the approval of the Commission.

**1.10 Legislative History.** Publisher shall insert after each section the source and history of that section, including the number of that section as it appeared in any previous official code, including the Code of 1850, the 1932 Code, the 1950 Code Supplement, and the unofficial codes known as Shannon's Code and Williams' Tennessee Code where the number in that codification differs from the number in the Code of 1932 or the 1950 Code Supplement. Publisher shall also insert the public act or acts constituting the source of the section and the amendments or modifications thereto.

**1.11 Tables.** Publisher will prepare and include in T.C.A. an appropriate table of contents, frontal analysis, and a table showing the distribution of statutes. Publisher shall publish as a part of T.C.A. parallel reference tables to the Code of 1858, Shannon's Code, the 1932 Code, Williams' Tennessee Code, the 1950 Supplement to the Code of Tennessee, and current replacement volumes of T.C.A., together with Tables showing where the public acts for various years appear in T.C.A. Appropriate mortality tables and such other tables as may from time to time be requested by the Commission shall also be included. Publisher shall include parallel reference tables for the two-tier and three-tier numbering systems. Publisher shall include a table showing the population data for each county in the State of Tennessee and for the State of Tennessee as a whole from the federal census data commencing with the year 1900 and including all subsequent reports up to the most recent available. In addition, Publisher shall include such additional reference tables, including those currently published in T.C.A., as Publisher shall determine to be appropriate with the approval of the Commission, or which the Commission may reasonably request.

**1.12 Constitutions of the United States and the State of Tennessee.** Publisher shall include in T.C.A. the Constitution of the United States and the Constitution of the State of Tennessee, with appropriate annotations thereto in all respects conforming to the statutory annotations as set forth in §

1.6 hereof: provided, that annotations to the United States Constitution need only refer to federal court cases arising in the State of Tennessee. Publisher shall prepare separate indices for each Constitution.

**1.13 Publications Requirements.** Publisher agrees to perform the obligations described in and perform in accordance with this agreement and Exhibit A, attached to this agreement.

**1.14 Court Rules.** Publisher shall continue to publish the Tennessee Court Rules Annotated as a two-volume set. Pricing for the Rules are as set out in Exhibit B, attached hereto and incorporated herein by reference.

**1.15 Specialty Products.** Publisher will enter into a separate contract with the State of Tennessee, Department of General Services Central Procurement Office controlling pricing for all specialty or "slice" products of the Code purchased by state agencies. For all other specialty or "slice" products, publisher may produce at its sole discretion.

**1.16 Internet.** Publisher shall provide a free public access version of the unannotated version of the Tennessee Code on the Internet.

## **2. PUBLICATION DUTIES OF PUBLISHER.**

**2.1 Scope.** Publisher shall provide all printing and distribution services necessary to publish and distribute T.C.A. and all other publications described in this Agreement. Publisher shall secure all materials needed to compile the T.C.A., except copies of legislative acts and any mutually agreeable electronic formats furnished by the Commission. Publisher agrees to maintain at all times an adequate staff and adequate publishing and distribution facilities necessary to carry out its duties hereunder.

**2.2 Replacement Volumes.** By October 31 of each year, Publisher shall recommend a schedule of replacement volumes to the Commission for its approval. Publisher shall consult with the Executive Secretary for suggestions prior to submitting its recommendations.



If the content or arrangement of a volume proposed in such replacement is different from the content or arrangement of the volume to be replaced, the changes shall be specified by Publisher and approved by the Commission. The present style of numbering volumes shall be continued, unless a change is authorized by the Commission. The Commission also reserves the right to change volumes to be replaced if circumstances, such as legislative actions, make such changes desirable.

Publisher shall possess sufficient production capacity to provide other replacement volumes in a timely manner as directed by the Commission. Such volumes shall match in materials and form the current publication as closely as possible. The publication of all replacement volumes and their retail prices require the prior approval of the Commission.

**2.3 Advance Legislative Service.** Publisher shall provide an Advance Legislative Service ("ALS"). The Publisher shall issue an Advance Legislative Service periodically to the subscribers during a regular legislative session and after an extraordinary legislative session unless otherwise directed by the Executive Secretary. The service shall be soft-cover pamphlets containing all public acts. Such service shall include marginal notes, a cumulative subject index based on headings which are in use in the General Index, a cumulative table of the Codes sections amended or repealed, and a cumulative table of effective dates of public acts, and the final service shall be published within thirty (30) days of receipt of the last act of a session of the General Assembly, and the mutually agreeable electronic format containing the last act, subject to approval by the speakers of their transfer.

**Advance Code Service.** Publisher shall provide an Advance Code Service ("ACS") quarterly as a part of the annual upkeep service (Supplements and ALS). The ACS shall consist of three (3) soft-cover cumulative pamphlets spaced evenly between annual supplements. The ACS shall contain all relevant annotations to T.C.A. developed by Publisher between annual supplements. It shall also include codified versions of any public acts passed at special sessions of the General Assembly, any new court rules or rule amendments adopted since the last court rules supplement, and errata or other notices.

**2.4 Supplements.** Unless the Commission otherwise directs, Publisher shall publish the supplements to T.C.A. within eighty (80) days of receipt of all enactments from the previous regular or extraordinary session.

In addition to the Codification Bill specified in § 2.7 below, Publisher shall deliver to the Executive Secretary, at no cost to the State of Tennessee, a mutually agreeable electronic format that accurately represents the new legislation, including identifiers and codes which define each unique element of information contained, whenever the Commission requests compliance with § 2.9.

Publisher shall also prepare and provide to the Commission two (2) bound copies of the annual supplements without cost.

Publisher shall also provide the Executive Secretary with a copy of the annual supplements and any replacement volumes for the purpose of checking and proofreading, in addition to any pre-publication proofs. Such supplements and volumes shall be supplied at the time the general distribution is made of such materials.

**2.5 CD-ROM.** The Publisher shall:

(a) Publish, sell, and distribute the Tennessee Code Annotated on a single CD-ROM (Code CD-ROM). The Publisher must render and perform all services necessary for the preparation and publication of the Code CD-ROM, in all forms, and shall bear all editorial and publication costs, without any contribution, subsidy or expense of the State of Tennessee. The Code CD-ROM shall be substantially similar in content provided and search functionality to the product being produced by Publisher as of the effective date of this Restated Agreement. Other general requirements for the Code CD-ROM are as stated in Exhibit A. In the event of any dispute between the Publisher and the Commission, the decision of the Commission will prevail. Notwithstanding the immediately preceding sentence, if the number of paid CD-ROM subscribers falls below 20 ("twenty") in number, the Publisher may at its sole discretion discontinue production of the Code CD-ROM. Prior to discontinuing the Code CD-ROM publication, Publisher shall provide 60 days advance notice to the Executive Secretary and the then current subscribers;

(b) Include on the Code CD-ROM the Code Material and the opinions of the Attorney General and Reporter. (As used herein the "Code Material" is defined to include the Tennessee Code Annotated, the annotations, catch lines, and legislative history, the Tennessee Constitution, the Tennessee Court Rules Annotated, and the general index). The Code CD-ROM may include other Tennessee legal resources, subject to the approval of the Commission;

(c) Make available for the Commission's review and approval, upon request, the proofs of all Code Materials before the Code CD-ROM is distributed. The Publisher shall bear sole responsibility to assure that the statutory text on the CD-ROM has been certified and is in compliance with the contract; and

(d) Upon request of the Executive Secretary, provide the Office of Legal Services for the Tennessee General Assembly complimentary subscriptions to the online service of its affiliate LexisNexis for legal research by employees of the Office of Legal Services, in a number and manner reasonably agreeable to the Executive Secretary. Such subscriptions will be subject to LexisNexis normal terms of use.

**2.6 Proofreading.** Publisher shall provide page proofs to the Commission staff for proofreading at a reasonable time prior to the printing of supplements or replacement volumes, the time schedule being subject to the approval of the Executive Secretary.

Publisher shall provide a schedule of printing supplements and replacement volumes and necessary deadlines prior to the time page proofs of such supplements and volumes are provided to the Commission staff, and such schedule shall be subject to approval of the Executive Secretary to ensure adequate time for the in-state review and proofreading of such materials prior to publication.

**2.7 Codification Bill.** Publisher shall provide to the Executive Secretary, at no cost, copies of the Codification Bill in the number to be specified by the Executive Secretary.

Publisher shall provide a proof of a Codification Bill to be reviewed by the Executive Secretary prior to November 1 preceding the legislative session with printed copies containing revisions provided by the Executive Secretary to be delivered by December 10. Any Codification Bill required on account of an extraordinary session will be prepared and delivered by Publisher to the Executive Secretary in the number specified by the Executive Secretary unless directed otherwise.

**2.8 Errata Notices.** Publisher shall furnish to subscribers and other purchasers errata notices of any substantial publishing errors contained in supplements or replacement volumes, as directed by the Executive Secretary. Such notices would be notations included in other subscriber publications, notice cards mailed to subscribers, or paste-over "flimsies" designed to cover up incorrect material, according to the severity of the error.

**2.9 Electronic Format.** After each regular or extraordinary session, Publisher shall prepare and provide to the Commission, at no cost to the State of Tennessee a mutually agreeable electronic format containing an accurate representation of the material contained in the bound volumes of T.C.A. and its cumulative supplements, as amended in such regular or extraordinary session, for the use of the

Commission and the General Assembly within ten (10) days of the publication of the supplements from any regular or extraordinary session or at such earlier time as the electronic format may otherwise be distributed to search service companies. Such electronic format shall contain all editorial revisions and the prior and new materials shall be merged in a continuous format. The electronic format shall be delivered pursuant to written request of the Executive Secretary. The various elements of this material shall be structured and easily identified to facilitate ease of use in automated systems being used by the General Assembly to provide bill drafting, statutory research, and other automated services. The physical characteristics of this electronic format must be compatible with computer equipment currently installed in the Office of Legislative Information Systems of the General Assembly, and Publisher shall consult with the Commission, the Executive Secretary and the Office of Legislative Information Systems concerning such characteristics. Publisher shall provide such assistance as may be necessary to enable the Commission to make full use of the electronic format.

The Executive Secretary may specify in a written request that either electronic format with annotations or electronic format without annotations be provided. Such electronic format shall become the property of the Commission, and the Commission shall determine the use of such electronic format, including transfer of such electronic format to a successor publisher, but such electronic format will not be sold or distributed to the public by the Commission.

### **3. SPECIFICATIONS.**

Publisher shall publish T.C.A. in the number of volumes approved in writing by the Commission. The volumes shall continue to be similar to the volumes of the present Code, with an average of seven hundred twenty-five (725) to seven hundred fifty (750) pages. The actual size of any particular volume depending upon the statutory provisions deemed advisable to be included in that volume. The final decision as to contents of each volume shall rest with the Commission as communicated by the Executive Secretary. Larger or smaller volumes in particular instances may be published with the written approval of the Commission through the Executive Secretary.

Each volume shall be trimmed page size of nine and one half inches (9 1/2") in length and six and one-half inches (6 1/2") in width.

All sets of the Code, replacement volumes and supplements will be made to conform in all respects to existing volumes of the Code. Materials shall be equal or superior quality to existing volumes in accordance with the technical specifications of Exhibit A.

#### **4. SCHEDULES AND DELIVERY.**

**4.1 Replacement Volumes.** Replacement volumes shall be scheduled as established in writing between the Commission, through its Executive Secretary, and Publisher.

**4.2 Supplements.** Supplements shall be delivered within eighty (80) days of receipt by Publisher of all legislative enactments from the previous session of the General Assembly. The Executive Secretary shall advise Publisher by March 1 of each year in what form acts will be sent to Publisher.

**4.3 Comprehensive General Index.** The Index required by § 1.8 shall be delivered no later than the annual supplements.

**4.4 Electronic Formats.** The electronic formats described in §§ 1.8, 2.1, 2.4, and 2.9 shall be prepared no later than ten (10) days after the supplements from any regular or extraordinary session are delivered, as provided in § 4.2, or at such earlier time as the electronic formats may otherwise be distributed to search service companies. The electronic formats for the use of the Commission and General Assembly shall be delivered pursuant to written request of the Executive Secretary. Publisher agrees to provide such assistance as may be necessary to enable the Commission to make full use of the electronic formats.

**4.5 Advance Legislative Service.** The Advance Legislative Service shall be delivered within thirty (30) days of receipt of the last act contained in each volume or pamphlet.

**4.6 Advance Code Service.** The Advance Code Service shall be delivered on a schedule approved by the Executive Secretary.

#### **5. PRICES.**

**5.1 Setting of Prices.** For the contract period beginning January 1, 2020, and ending on December 31, 2029, prices for each component of T.C.A. shall be as established in the schedule attached hereto as Exhibit B – 10 YEAR PRICING, and incorporated herein by reference, unless the parties otherwise agree by amendment to the Restated Agreement for Publication. For the contract period beginning on January 1, 2029, and thereafter, if the term of this Agreement is extended pursuant to

Section 10.1, prices for each component of the T.C.A. (e.g., supplements, replacement volumes, complete sets) will be established for each year of this Agreement by a letter from the Commission, each of which letter is incorporated herein. Prices for each year will be set by the Commission after consideration of an itemized request from Publisher which shall include information on prices of similar code components in other states from Publisher and other publishers, projected increases or decreases in the number of pages, or other requirements relevant to cost, industry cost changes as reflected in the Printing, Trades, Machinery and Equipment component of the Producer's Price Index as published by the U.S. Department of Labor, and any other nonconfidential, relevant information the Commission requests.

**5.2 Price Changes.** For the contract period beginning January 1, 2020, and ending on December 31, 2029, the prices may change only in accordance with the schedule attached as Exhibit B – 10 YEAR PRICING unless the parties otherwise agree by amendment to the Agreement. Thereafter, if the term of this Agreement is extended pursuant to Section 10.1, price changes may be requested by Publisher or the Commission by October 31 of the year preceding the year the change takes effect. The Commission may, in its absolute and sole discretion, approve a price change initiated by either party. Notwithstanding any provision herein to the contrary, in the event the Commission approves, disapproves, or modifies a price change, then the Publisher is obligated to perform at the price approved by the Commission. The Publisher is required to provide the Commission with all relevant information relating to a price change.

**5.3 Purchases By Units of State Government.** Purchases by units of State Government may be made through one (1) or more state agencies, departments or officials. All of such units shall be entitled to a twenty-five percent (25%) discount from the regular retail price of any set of T.C.A., replacement volume, supplement, or index thereto, or any ancillary publication. The Commission shall have the right of final determination as to whether a particular unit is entitled to the discount provided in the preceding sentence. If Publisher questions a claim for discount, it may consult the Executive Secretary.

**5.4 Electronic Format.** Publisher agrees to provide Commission with the electronic formats specified in §§ 1.8, 2.1, 2.7, and 2.9, without cost to the Commission. The price of electronic formats provided to search service companies, as provided for in § 8, shall be set by Publisher, which shall furnish the Commission with financial data on its costs and prices in preparing and furnishing these electronic formats.

## **6. COPYRIGHT.**

The work of Publisher shall be work made for hire. All the contents of T.C.A., including all supplements and replacement volumes, and those parts of any other publications authorized by the

Commission containing T.C.A. copyrightable materials, to the extent of such incorporation, shall be copyrighted in the name of the State, and all copyrights thereto shall be vested, held, and renewed in the name of the State of Tennessee. This copyright shall cover all copyrightable parts of T.C.A. in all relevant media, including print and electronic (electronic formats and CD-ROM, including identifiers and codes). Further, Publisher shall take all necessary actions to renew any existing copyrights in the name of the State of Tennessee. Publisher shall provide evidence of the registration and/or renewal of all copyrights to the Executive Secretary. Neither the Commission nor the State of Tennessee shall be liable to any third party who purchases any electronic format or CD-ROM of T.C.A. Publisher shall save and hold the State of Tennessee harmless for any and all legal claims, damages, and judgments arising out of the use of any computer format or CD-ROM of T.C.A.

#### **7. SUPERVISION.**

Publisher agrees that all compilations, codifications, annotations, and other matters to be included in T.C.A. shall be submitted to the Executive Secretary in advance of publication, in order that such items may be checked, proofread, verified and certified by the Executive Secretary prior to publication as provided by the minimum requirements. In the event of disagreement as to material to be included in such T.C.A., or as to any codification, annotation or other matter of editorial content, Publisher shall abide by and follow the decision of the Commission as communicated by the Executive Secretary. In the event of any other dispute between Publisher and the Commission concerning publication of the T.C.A. or performance under this Agreement, the decision of the Commission shall prevail.

#### **8. EXCLUSIVE RIGHT TO PUBLISH AND SELL.**

The Commission grants to Publisher the exclusive right to publish and sell T.C.A. and ancillary publications in all forms and media as authorized in this Agreement, all in accordance with the terms and provisions of this Agreement; subject, however, to the right of termination contained in § 9. Publication shall include publication in all relevant media, printed or electronic, but the Commission reserves the right to allow state agencies, reviewers, holders of legal seminars, or other similar users to reproduce portions of T.C.A.

Electronic formats may be provided only to search service companies, such as West Publishing Company with Westlaw or LEXIS/NEXIS, or a similar operation. Electronic formats shall be sold on an equal basis to any search service company, provided, Publisher shall not be required to sell electronic formats for the purpose of placing the material on the Internet or similar network unless approved by the

Commission. Publisher is required to notify the Commission promptly in writing of any request to sell the electronic formats for the purpose of placing the material on the Internet. Upon request of the Commission, Publisher shall furnish to the Commission information on its costs and prices for such electronic formats, and such other information as the Commission may require. Neither T.C.A. subscribers nor the State of Tennessee shall subsidize the cost of producing these electronic formats.

Any publication of T.C.A. or portions thereof, shall identify it as "Tennessee Code Annotated" or "T.C.A." without any additional qualifier or name which would indicate to a user that T.C.A. was not a state copyrighted publication, and include notice of the state's copyright.

## **9. TERMINATION.**

**9.1 Termination for Cause.** The Commission may terminate this Agreement for cause whenever the Commission determines that Publisher has failed to perform one (1) or more of its contracted duties and responsibilities in a timely and proper manner or in a manner satisfactory to the Commission, and is unable to cure such failure within a reasonable period of time as specified by the Commission, or if Publisher fails to adhere to any of the terms of this Agreement. Such termination shall be referred to herein as "Termination for Cause".

In the event of termination for cause as provided by this Section, the Commission may procure, upon such terms and in such manner as the Commission shall deem appropriate, services similar to those terminated, and Publisher shall be liable to the State for any excess costs for such similar services. In addition, Publisher shall be liable to the State for administrative costs or other damages incurred by the Commission in procuring such similar services.

The rights and remedies of the State provided in this Section shall not be exclusive and are in addition to any other rights and remedies provided by law or under this Agreement. Notwithstanding the above, Publisher shall not be relieved of its liability to the State for damages sustained by virtue of breach of the Agreement by Publisher.

**9.2 Termination for Convenience.** The Commission may terminate this Agreement for convenience without cause by giving written notice to Publisher at least one hundred twenty (120) days before the effective date of such termination, if for any reason the Commission determines, in its sole discretion, that such termination is in the best interest of the State.



Should the Commission terminate this Agreement for convenience, it will allow Publisher to complete and sell publications previously authorized and commenced as of the date of notice of termination.

**9.3 Force Majeure.** Performance of any duty on the part of Publisher may be excused by the Commission in its sole discretion if it determines in writing that the performance of the specified duty was prevented by fire, strike, flood, war, act of God or other circumstance beyond the control of Publisher.

## **10. MISCELLANEOUS.**

**10.1 Term.** This Restated Agreement shall take effect January 1, 2020 and shall remain in effect until December 31, 2029, unless terminated earlier pursuant to § 9 herein. The Commission retains an option to renew this Agreement on a year-to-year basis after December 31, 2029.

**10.2 Amendments.** This Agreement may be amended from time to time. All of such amendments shall be made in writing, and shall become effective only upon the approval of a majority of the Commission.

**10.3 Counterparts.** This Agreement may be executed in counterparts, each of which shall constitute an original, but all of which taken together shall constitute but one (1) instrument.

**10.4 Headings.** Section headings are for convenience only and shall not affect the interpretation or construction of this Agreement.

**10.5 Subscriber Information.** Publisher shall furnish the Commission on an annual basis with the number of subscribers in its possession to T.C.A. in any medium, together with a designation of the type of subscription. Publisher shall also furnish the Commission with a listing of persons receiving the state discount provided in § 5.3, on the request of the Executive Secretary. Publisher, upon notice by the Commission and within its sole discretion, shall transmit a list of all subscribers and their addresses to the Commission and/or any designee.

**10.6 Financial Responsibility.** Publisher shall submit satisfactory evidence to the Executive Secretary of its compliance with the required seven hundred fifty thousand dollar (\$750,000) performance bond.

**10.7 Marketing.** Publisher shall provide sales personnel within the State of Tennessee to market T.C.A.

Publisher shall market the T.C.A. with effective advertising and promotion of the publication.

**10.8 Subscriber Assistance.** Publisher shall maintain a toll-free telephone number at which T.C.A. subscribers can consult Publisher concerning billing, editorial, or indexing questions. Publisher shall also provide postage paid response/suggestion cards similar to those currently in use for the convenience of subscribers.

Publisher shall annually provide the Commission with a summary of problems reported to it concerning T.C.A.

**10.9. Duties Upon Termination or Expiration.** If this Agreement is terminated pursuant to § 9 herein or expires pursuant to § 10.1 herein, Publisher shall cooperate in any transition to a successor publisher. In addition to the specific provisions regarding transfer of electronic formats in § 2.9, Publisher shall negotiate in good faith with any successor publisher for the transfer of any existing inventory and shall otherwise cooperate with the Commission concerning the transfer.

**10.10. Indemnification.** Publisher agrees to protect, indemnify, save and hold harmless the State and the Code Commission, all State departments, agencies, boards, and commissions, as well as officers, agents, servants, and employees of the State, from any and all claims, demands, expenses, and liability arising whether directly or indirectly out of the Contract, and from any and all costs, expenses, and attorneys' fees (including costs of work done by the Attorney General or his designees) incurred as a result of any claims, demand, lawsuit or cause of action.

The Commission shall give the Publisher written notice of such claim or suit, if the Commission is notified first, and full right and opportunity to conduct the Publisher's defense thereof: but the Commission does not hereby accord to the Publisher, through its attorneys, any rights to

represent the State of Tennessee and State Departments, agencies, boards and commissions, as well as officers, agents, servants, and employees of the State, in any legal matter, such right being governed by T.C.A. § 8-6-106.

The State, its Departments, agencies, boards, and commissions, as well as its officers, agents, servants, and employees of the State, shall, at the option of the Attorney General, be represented by the Attorney General, his designee, or outside counsel selected by the Attorney General and the Publisher shall be responsible for all fees, costs and expenses associated with that representation.

**10.11. Audits.** Publisher shall maintain documentation of all charges against the State under this Contract. The books, records, and documents of the Publisher, insofar as they relate to work performed or money received under the Contract, shall be maintained for a period of five (5) full years from the date of the final payment, and shall be subject to audit at any reasonable time and upon reasonable notice, by the State or the Comptroller of the Treasury or their duly appointed representatives. These records shall be maintained in accordance with generally accepted accounting principles.

**10.12. Non-Discrimination.** No person on the grounds of handicap, age, race, color, religion, sex, national origin, or any other classification protected by Federal and/or Tennessee State constitutional and/or statutory law shall be excluded from participation in, or be denied benefits of, or be otherwise subjected to discrimination in the performance under the Contract or in the employment practices of the Publisher. The Publisher shall, upon request, show proof of such non-discrimination, and shall post in conspicuous places, available to all employees and applicants, notices of non-discrimination.

**10.13. Interpretation and Venue.** The Contract shall be governed by and construed in accordance with the laws of the State of Tennessee. Any legal proceedings against the State regarding the Contract shall be brought in the State of Tennessee administrative or judicial forum with appropriate jurisdiction. Venue shall be in Davidson County, Tennessee.

**10.14. Prohibited Payments.** Publisher warrants that no part of the total Contract amount shall be paid directly or indirectly to an employee or an official of the State of Tennessee as wages, compensation, or gifts in exchange for acting as officer, agent, Employee, subcontractor, or consultant to the Publisher in connection with any work contemplated or performed relative to the Contract.

**10.15. Maximum Liability.** Notwithstanding any provision herein to the contrary, in no event is the State or Commission financially responsible to Publisher under this Contract.

**IN WITNESS WHEREOF**, the Commission and Publisher have caused this Agreement to be duly executed and delivered in the City of Nashville by their duly authorized officers as of the date first aforementioned.

TENNESSEE CODE COMMISSION

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Chief Justice Jeffrey S. Bivins, Chair

TENNESSEE CODE COMMISSION

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Justice Cornelia A. Clark, Member

TENNESSEE CODE COMMISSION

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Karen J. Garrett, Member

TENNESSEE CODE COMMISSION

---

Susan Short Jones, Member



TENNESSEE CODE COMMISSION

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The Honorable Herbert H. Slatery III, Member

MATTHEW BENDER & COMPANY, INC., A MEMBER OF LEXISNEXIS  
GROUP

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

Its: \_\_\_\_\_

## EXHIBIT A

### General Requirements for the Publication of the Code and Code CD-ROM

#### CODE

(1) All sets of the Code, replacement volumes and supplements will be made to conform in all respects to existing volumes of the Code. Materials shall be equal or superior quality to existing volumes in accordance with the following technical specifications:

- (a) General description: Burst with pocket part in back cover
- (b) Trimmed page size (size of page in the book): 6-5/8 x 9-5/8 (binding edge)
- (c) Type page size: 30 x 50
- (d) Type face: Century
- (e) Type size: text 30 - 10 on 12; analysis: 14-1/2 - 8 on 9; notes: 14-1/2 - 8 on 9; index: 14-1/2 - 8 on 9; running head: 30 - 8 on 0
- (f) Margins: head: 4 picas; front: 5-1/2 picas; foot: 5 picas; back (binding): 5 picas
- (g) Text paper: 40# Michie Law Book 640 or equivalent (if over 640 pages in volume); 50# Michie Law Book 446 or equivalent (if 640 or less pages in volume)
- (h) Binder's board: Davey 0 .008
- (i) Cloth: Sturdite Box Grain - Quality 18
- (j) Pocket board: 110#
- (k) End Sheets: 80# Lining paper, white
- (l) Headbands: Mercerized Machine size #10, soft finish
- (m) Case stamping: Blind stamped border on front and back cover  
Blind stamped panels on spine for type areas. Gold stamped type on spine
- (n) End sheet re-enforcing: 1-1/2" Gum Holland
- (o) Wrapping: individually shrink wrapped

The binding shall be Dupont Fabrikoid, Box Grain #2800, dark green in color, or other equivalent material approved in writing by the Commission. The words "TENNESSEE CODE ANNOTATED" shall be printed at the top of the spine. Each volume shall be numbered, and words indicating the contents shall be printed under the number. The name and/or logo of the publisher may be in small type at the bottom of the spine of each volume. Signatures shall be endsewed with three (3) tapes, and shall be super lined and with headbands. The first and last signatures shall be reinforced.

The page to be used in the Code shall be as follows: The text of the statutes shall be printed single column to the page. The annotations and the frontal analyses shall be printed double column to the page. These specifications may be changed with the written approval of the Commission.

Each volume shall be fitted with a pocket part flap similar to the present Code for supplements. Each replacement volume shall contain its own index.

The publisher shall publish as a part of the Code parallel reference tables to the Code of 1858, Shannon's Code, the 1932 Code, Williams' Tennessee Code, the 1950 Supplement to the Code of Tennessee, two-tier code section numbers to three-tier code section numbers, and current replacement volumes of the Code, together with tables showing where the public acts for the various years appear in the Code. Appropriate mortality tables, population tables, and such other tables as may from time to time be requested by the Commission shall also be included.

The price of supplements to be sold in Tennessee shall be determined by agreement between the Commission and the publisher on the basis of such elements as increased number of pages resulting from cumulative statutory material and annotations, publication costs, and such other elements as may be relevant to the determination of a fair and reasonable price in line with prices of similar code supplements furnished in other states by publishers of state codes. Supplements shall be published following any extraordinary session of the General Assembly in the same manner as the regular sessions unless the Commission otherwise directs.

To the extent practicable with the publisher's printing procedure, materials shall be used which are recyclable and the supplements shall be stapled rather than glued, except for free standing supplements

(2) The annual bound supplements are to be grouped into volumes and bound with hard cover to provide volumes of reasonable size in a manner similar to the binding of law reviews or similar publications.

(3) Publisher shall maintain the present style and format of the Code, and adhere to the Style Guidelines adopted by the Commission, which are as follows:

**STYLE GUIDELINES  
FOR  
CODIFICATION  
OF  
PUBLIC CHAPTERS**

I. **ACRONYMS.** Remove periods from acronyms.

- "O.S.H.A." becomes "OSHA"

**II. ALPHABETIZATION.** Alphabetize definitional sections, if the meaning or effect of such sections will not be affected.

**III. DATES.**

**A.** Revise dates to appear in the standardized form: "July 1, 2011".

- *"the first of July" or "July 1st" becomes "July 1"*
- *"the first day of July each year" becomes "July 1 each year"*

**B.** Insert a comma after the year when a month, day and year are used in a sentence.

**IV. DESIGNATION AND REFERENCING OF CODE.**

**A.** Change designations of subsections and subdivisions to match the standard style.

- (a)(1)(A)(i)(a)(1)(A)(i), etc.

**B.** Substitute "this title" or "this part", etc. for "title x" or "part x" if referenced within the title, chapter, part, section, subsection or subdivision being cited.

**C.** Remove references to "Tennessee Code Annotated" when citing a code title, chapter, part, section, subsection or subdivision.

- *"Tennessee Code Annotated, § 1-1-108" becomes "§ 1-1-108"*

**V. GENDER NEUTRALIZATION.**

- A.** Make terms gender neutral, if appropriate.
- *"councilman" becomes "council member"*
  - *"fireman" becomes "firefighter"*
  - *"chairman" becomes "chair"*
- B.** DO NOT change alderman, aldermanic, councilmanic, materialman, warehouseman or airman, journeyman, ombudsman, workmanlike.
- C.** Change "himself" or "herself" according to context.
- *"hold himself out to be" becomes "hold out to be"*

**VI. HYPHENATION.**

- A.** Hyphenate in accordance with the dictionary appointed by the publisher and commission staff. Hyphenation is discouraged whenever such use is optional.
- B.** Hyphenate pairs of words that are used as adjectives.
- *"part time job" becomes "part-time job" (but works part time)*
- C.** DO NOT hyphenate "vice president" "vice chair" "attorney at law" or "attorney general".
- D.** Generally, DO NOT hyphenate words beginning with "pre", "non" or "re".
- *predetermined, nonmalignant, reelected*

## VII. NUMBERS.

- A. Represent figures in letter and number form in parentheses, where appropriate.
- *thirty (30) days*
  - *a vote of two-thirds (2/3) of the body*
  - *one hundred dollars (\$100)*
- B. DO NOT break hyphenated adjectives using figures to insert the parenthetical number.
- *"twenty-four (24) hour period" becomes "twenty-four-hour period"*
- C. Hyphenate numbers from twenty-one to ninety-nine.
- D. Retain ordinal numbers such as "first", "second", etc., unless it is a day of the month.
- *"July first" becomes "July 1"*
- E. Retain decimal and two zeros for dollar amounts \$1.00 to \$99.00 but delete ".00" for higher amounts.
- *"\$101.00" becomes "\$101"*

## VIII. OBSOLETE ITEMS.

Delete manifestly obsolete items. To be considered for deletion, the item's obsolescence must be so obvious as to be inarguable.

## IX. PUNCTUATION.

Place periods and commas inside of quotation marks and place colons, semicolons, question marks and exclamation points outside of quotation marks.

**X. TIME.**

Write out time expressions followed by a parenthetical translation.

- *"5:00 p.m." becomes "five o'clock p.m. (5:00 p.m.)"*
- *"midnight" becomes "twelve o'clock (12:00) midnight"*
- *"noon" becomes "twelve o'clock (12:00) noon"*

**XI. MISCELLANEOUS WORDS AND PHRASES.**

- A.** Change plurals indicated by an (s) to the singular and plural.
- *"word(s)" becomes "word or words"*
- B.** Delete the word Tennessee when it is not needed.
- *"Hamilton County, Tennessee" becomes "Hamilton County"*
- C.** Delete "of Tennessee" when it is not needed.
- *"secretary of state of Tennessee" becomes "secretary of state"*
- D.** Delete the phrase "the provisions of" when it is not needed.
- *"the provisions of this section apply" becomes "this section applies"*
- E.** Delete "of the state" when it is not needed.
- *"the grand divisions of the state" becomes "the grand divisions"*



- F. Delete phrases such as "of this section" when not needed; however, retain the phrases "of this chapter" and "of this title".
- *"subsection (b) of this section" becomes "subsection (b)"*
- G. Punctuation in the phrase "provided, however" to be preceded with a semi-colon and followed by a comma.
- *"...;provided, however, that"*
  - *"...;provided further, however,"*
  - *"...;provided, that"*
- H. Standardized phrasing regarding age shall be "years of age".
- *"twelve (12) years old" becomes "twelve (12) years of age"*
  - *"the age of twelve (12)" becomes "twelve (12) years of age"*
- I. Change "shall mean" or "shall include" to "means" or "includes" in definitions.
- J. Correct names of commissioners, departments, the houses of the legislature, legislative committees, etc. to their formal names.
- *"the general services department" becomes "the department of general services";*
  - *"commissioner of the department of safety" becomes "commissioner of safety"*
  - *"the house" becomes "the house of representatives"*
  - *"senate general welfare committee" becomes "general welfare, health and human resources committee of the senate"*
- K. Insert short titles and cites when missing.
- *"pursuant to title 4, chapter 5" becomes "pursuant to the Uniform Administrative Procedures Act, compiled in title 4, chapter 5"*
- L. Change "United States of America" and "U.S." to "United States".
- M. If term is defined, use defined term.

- *If "commissioner" is defined for a chapter as "commissioner of revenue", then throughout chapter, use only "commissioner" instead of "commissioner of revenue" unless the full term is need for clarity.*

(4) Publisher will implement style changes requested by the Commission.

#### CODE CD-ROM

(1) Publisher shall provide the Commission with a list of the subscribers to the Code CD-ROM in the same manner as required for the Code.

(2) Contents:

(a) The CD shall include software required for search and retrieval of the T.C.A. Material along with various control files and installation software.

(b) Prior written notice to the Commission shall be required in order to include additional information or material on the CD-ROM. In the event the Commission rejects the inclusion of said material or information, it shall so notify Publisher in writing within thirty days after receipt of said notice. Rejected material shall not be placed on CD-ROM.

(3) Updates: The CD-ROM publication shall be updated quarterly with the most recent T.C.A. These updates will be replacement CD-ROM discs. The quarterly replacements will be made available to subscribers in three-month regular intervals.

(4) Search Capabilities:

(a) The T.C.A. Material shall be loaded onto the CD-ROM platter as separate databases so that the databases can be searched either together or individually.

(b) Every word in the databases will be searchable including short words normally not searchable by other software products. Both boolean searching (AND, OR, NOT) as well as proximity searching (a search term within a specific range of another search term) will be easily made.

(c) The information in each database will be broken down into fields or segments allowing searches to be restricted to certain parts of the database for more precise recall. In the Code Material some example fields would be statutory text, rules, annotations, and catchlines. In the Case Reports database some example fields would be name of court, name of judge, case date, and case text.

(5) Hypertext: In addition to the full text search capability, Publisher shall provide hypertext links in the databases allowing rapid cross referencing to related materials. To access material that is linked from a referencing source, the user simply moves the cursor to the link token and

strikes the enter key. In the Code Material, each frontal analysis (listing of inclusive titles, chapters, sections, etc.) will contain links to the subservient material. Also, internal references from within a statute or a cross reference note will be linked to those referenced code sections. References from within a Case Report to other Case Reports will be provided with links. Links will also be provided across databases (i.e. between Code Material and Case Reports). A reference to a code section from within a Case Report will contain a link allowing access to that code section at the stroke of a key. Conversely, a reference to a Case Report from an annotation of the T.C.A. will contain a direct link to the full text of that Case Report.

(6) Cut and Paste: An electronic cut and paste capability will allow the user to extract small or large passages of information from the disc and save them in a generic word processing format.

(7) Documentation and Support: Publisher shall provide instructional information and assistance to product users and update users as to any approved changes as to the functions of the product. A group of knowledgeable, experienced professionals will handle CD-ROM support calls associated with any aspect of the service via a toll-free telephone line.

(8) Pricing: During the term of the contract, the Publisher is free to charge whatever price it chooses for the non-TCA Material features of the Tennessee Law CD-ROM.

(9) Complimentary Subscriptions: During the term of the contract, for as long as the Publisher continues to produce the CD-ROM product, Publisher will provide to the Code Commission up to 350 complimentary subscriptions to the Tennessee Law on Disc for use by employees and entities of the Tennessee Judiciary, the Attorney General's Office and the Office of Legal Services. The designee of the Commission must: (a) have executed a subscription agreement in form and substance acceptable to the Commission; (b) have an appropriate personal computer and CD reader or be in the process of acquiring them; and (c) have agreed to use the Tennessee Law on Disc for government use only.

EXHIBIT B - 10 YEAR PRICING

Product	2019	2020	2021	2022	2023	2024	2025	2026	2027	2028	2029
CUMULATIVE SUPPLEMENT	\$128.77	\$134.00	\$139.00	\$144.50	\$150.50	\$156.50	\$162.50	\$169.00	\$176.00	\$183.00	\$190.50
SUPPLEMENT, SINGLE VOLUME	\$12.62	\$13.00	\$13.50	\$14.00	\$14.50	\$15.00	\$15.50	\$16.50	\$17.00	\$17.50	\$18.50
GENERAL INDEX	\$37.87	\$39.00	\$40.50	\$42.50	\$44.00	\$46.00	\$47.50	\$49.50	\$51.50	\$53.50	\$56.00
REPLACEMENT VOLUME (each)	\$30.93	\$32.00	\$33.00	\$34.50	\$36.00	\$37.50	\$39.00	\$40.50	\$42.00	\$44.00	\$45.50
COURT RULES	\$49.24	\$51.00	\$53.00	\$55.00	\$57.50	\$59.50	\$62.00	\$64.50	\$67.00	\$70.00	\$72.50
RULES SUPPLEMENT	\$11.36	\$11.50	\$12.00	\$12.50	\$13.00	\$13.50	\$14.00	\$14.50	\$15.00	\$16.00	\$16.50
ADVANCE CODE SERVICE	\$37.87	\$39.00	\$40.50	\$42.50	\$44.00	\$46.00	\$47.50	\$49.50	\$51.50	\$53.50	\$56.00
NEW CODE SET	\$410.31	\$426.50	\$443.50	\$461.50	\$480.00	\$499.00	\$519.00	\$539.50	\$561.50	\$583.50	\$607.00
INDIVIDUAL VOLUMES (each)	\$30.93	\$32.00	\$33.00	\$34.50	\$36.00	\$37.50	\$39.00	\$40.50	\$42.00	\$44.00	\$45.50
UPKEEP PACKAGE TOTAL (CUMULATIVE SUPPLEMENT, INDEX, FOUR REPLACEMENT VOLUMES, COURT RULES AND SUPPLEMENT AND ACS)	\$388.83	\$402.50	\$417.00	\$435.00	\$453.00	\$471.50	\$489.50	\$509.00	\$529.50	\$552.00	\$573.50
Difference		\$13.67	\$14.50	\$18.00	\$18.00	\$18.50	\$18.00	\$19.50	\$20.50	\$22.50	\$21.50
			<b>5 Year Increase</b>			\$82.67	<b>10 Year Increase</b>			\$184.67	

# EXHIBIT 2

## PUBLIC RECORDS REQUEST FORM

The Tennessee Public Records Act (TPRA) grants Tennessee citizens the right to access open public records that exist at the time of the request. The TPRA does not require records custodians to compile information or create or recreate records that do not exist.

*(Governmental Entity Name and Name and Contact Information for the Public Records Request Coordinator)*

**To:** Revisor of Statutes, Office of Legal Services, 932 Cordell Hull Bldg., Nas

*(Insert Requestor's Name and Contact Information (include an address for any TPRA required written response))*

**From:** Gautam Hans, Vanderbilt Law School, 131 21st Ave. So., Nashville, TN :

Is the requestor a Tennessee citizen?  Yes  No

**Request:**  Inspection (The TPRA does not permit fees or require a written request for inspection only<sup>1</sup>.)

Copy/Duplicate

If costs for copies are assessed, the requestor has a right to receive an estimate. Do you wish to waive your right to an estimate and agree to pay copying and duplication costs in an amount not to exceed \$ \_\_\_\_\_? If so, initial here: \_\_\_\_\_.

**Delivery preference:**  On-Site Pick-Up  
 Electronic

USPS First-Class Mail  
 Other: \_\_\_\_\_

### Records Requested:

Provide a detailed description of the record(s) requested, including: (1) type of record; (2) timeframe or dates for the records sought; and (3) subject matter or key words related to the records. Under the TPRA, record requests must be sufficiently detailed to enable a governmental entity to identify the specific records sought. As such, your record request must provide enough detail to enable the records custodian responding to the request to identify the specific records you are seeking.

A copy of each electronic version of the most current Tennessee Code Annotated, reproduced in its entirety. Examples of such relevant versions include, but are not limited to, files in the following formats: Microsoft Word, XML, PDF, and any other editable document or database.

 10.08.21

Signature of Requestor and Date Submitted

Signature of Public Records Request Coordinator and Date Received

Print Form

Reset Form

<sup>1</sup> Note, Tenn. Code Ann. § 10-7-504(a)(20)(C) permits charging for redaction of private records of a utility.

# EXHIBIT 3

STATE OF TENNESSEE

## Office of the Attorney General



**HERBERT H. SLATERY III**  
ATTORNEY GENERAL AND REPORTER

P.O. BOX 20207, NASHVILLE, TN 37202  
TELEPHONE (615)741-3491  
FACSIMILE (615)741-2009

October 19, 2021

Gautam Hans  
Vanderbilt Law School  
31 21<sup>st</sup> Avenue So.  
Nashville, TN 37203

RE: Public Records Request

Dear Mr. Hans:

The Revisor of Statutes within the Office of Legal Services is in receipt of your letter on October 3, 2021, requesting copies of the following records pursuant to Tennessee's Public Records Act:

A copy of each electronic version of the most current Tennessee Code Annotated, reproduced in its entirety. Examples of such relevant versions include, but are not limited to, files in the following formats: Microsoft Word, XML, PDF, and any other editable document or database.

Tenn. Code Ann. § 10-7-503(a) provides the following:

(2)(B) The custodian of a public record or the custodian's designee shall promptly make available for inspection any public record not specifically exempt from disclosure. In the event it is not practicable for the records to be promptly available for inspection, the custodian shall within seven (7) business day:

- (i) Make such information available to the requestor;
- (ii) Deny the request in writing or by completing a records request response form developed by the office of open records counsel. The response shall include the basis for the denial; or
- (iii) Furnish the requestor a completed records request response form developed by the office of open records counsel

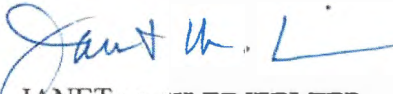


stating the time reasonably necessary to produce such record or information.

Please be advised that the Revisor of Statutes does not an electronic version of the most current Tennessee Code Annotated *in its entirety*. Additionally, to the extent the Revisor of Statutes may have records concerning various sections of the most current Tennessee Code Annotated, such records are confidential work papers produced by the Revisor of Statutes in her capacity as staff to the Tennessee Code Commission and, therefore, are confidential pursuant to Tenn. Code Ann. § 3-12-105.

Accordingly, we must respectfully deny your request.

Sincerely,



JANET M. KLEINFELTER  
Deputy Attorney General

# EXHIBIT 4



January 24, 2022

**BY EMAIL**

Janet M. Kleinfelter, Esq.  
Deputy Attorney General  
Office of the Attorney General  
State of Tennessee  
P.O. Box 20207  
Nashville, TN 37202

**Attorneys at Law**

Alabama  
Florida  
Georgia  
Louisiana  
Mississippi  
South Carolina  
**Tennessee**  
Texas  
Washington, DC

**Lucian T. Pera**

Direct: 901.524.5278  
E-Fax: 901.524.5378  
lucian.pera@arlaw.com

**Re: Public Records Request of Professor Gautam Hans**

Dear Janet:

I hope you are safe and well.

I represent Professor Gautam Hans of Vanderbilt University School of Law in connection with his request made to the State under the Tennessee Public Records Act. You responded by letter of October 19, 2021, and denied this request. I write today to seek a bit of clarification concerning your response.

Professor Hans requested:

A copy of each electronic version of the most current Tennessee Code Annotated, reproduced in its entirety. Examples of such relevant versions include, but are not limited to, files in the following formats: Microsoft Word, XML, PDF, and any other editable document or database.

In response, you wrote that “the Revisor of Statutes does not an electronic version of the most current Tennessee Code Annotated in its entirety.” In a good faith effort to be sure that our clients have communicated effectively, I would appreciate your confirming a few facts for us.

First, my client is seeking these records from the State of Tennessee, no matter in whose possession these records may be. To the extent that you are responding only on behalf of the Revisor of Statutes, rather than the State, we need to know that. For purposes of this request, we consider that the State would certainly include the Revisor of Statutes, the entire Office of Legal Services (including its Director), and the Tennessee

Code Commission (and its Executive Secretary). If that is not how you interpreted Professor Hans' request, please consider this letter a corrected or further request for those same documents from all these parts of the State government. In that event, of course, we would expect a response within 7 days, as required by Tenn. Code Ann. § 10-7-503(a)(2)(B).

Second, I am not completely clear about your use of the phrase, "in its entirety." While this may be obvious, I want to be clear that, if the State has one electronic file that comprises the current Tennessee Code Annotated or 100 electronic files that together comprise the Tennessee Code Annotated, he is requesting each one of them. If there are 100 electronic files that together comprise the Tennessee Code Annotated, and the State has 90, we are requesting them. I would appreciate your confirming whether the State has any electronic documents or files responsive to this request.

One thing that led me to have concern about whether the State has any responsive documents or files is that, later in your letter, you assert another ground for denial of the request, and introduce that denial by saying, "to the extent the Revisor of Statutes may have records..."

Another reason we wanted to confirm the State's position that it has no responsive documents is that the State's contract with the publisher of the Tennessee Code Annotated provides that, "[a]fter each regular or extraordinary session, Publisher shall prepare and provide to the [Tennessee Code] Commission, at no cost to the State of Tennessee, a mutually agreeable electronic format containing an accurate representation of the material contained in the bound volumes of the T.C.A. and its cumulative supplements, as amended in such regular or extraordinary session, for the use of the Commission and the General Assembly...." (2019 Contract with Matthew Bender § 2.9 at pp. 8-9.)

You have also denied the request on a substantive ground – that any "such records are confidential work papers produced by the Revisor of Statutes in her capacity as staff to the Tennessee Code Commission and, therefore, are confidential pursuant to Tenn. Code Ann. § 3-12-105." That statute provides:

(a) All books, papers, records, and correspondence of the office of legal services pertaining to its work shall be kept in the office of legal services and all such materials are public records except:

(1) Intraoffice memoranda made by the director of the office of legal services or the director's staff; and

(2) Work papers and correspondence, including correspondence by electronic mail, with any person receiving service from the office of legal services.

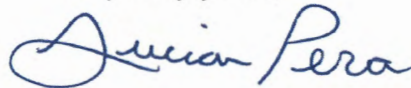
(b) Such papers and correspondence may become public records whenever the director of the office of legal services or the general assembly shall so order.

Tenn. Code Ann. § 3-12-105. Professor Hans' request does not seek any "intraoffice memoranda," so section (a)(1) is inapplicable. He also does not seek any "work papers" or "correspondence" with "anyone receiving service from the office of legal services," so section (a)(2) is inapplicable. For this reason, we see Section 3-12-105 as an express mandate that the records we seek are, in fact, public records. I would be grateful if you could explain how you interpret this section to be a basis for denial of Professor Hans' request.

Most importantly, my client needs to know whether there are, in fact, any responsive documents in the State's possession. Without knowing that, I am not in a position to advise my client appropriately concerning his legal rights in this matter.

I look forward to your prompt response.

Very truly yours,

A handwritten signature in blue ink that reads "Lucian Pera". The signature is written in a cursive, flowing style.

Lucian T. Pera

c: Professor Gautam Hans

# EXHIBIT 5

STATE OF TENNESSEE

RECEIVED

FEB 07 2022

## Office of the Attorney General



HERBERT H. SLATERY III  
ATTORNEY GENERAL AND REPORTER

P.O. BOX 20207, NASHVILLE, TN 37202  
TELEPHONE (615)741-3491  
FACSIMILE (615)741-2009

February 2, 2022

Lucian T. Pera  
Adams and Reese LLP  
Crescent Center  
6075 Poplar Avenue, Ste. 700  
Memphis, TN 38119

RE: Public Records Request of Professor Gautam Hans

Dear Lucian:

I am responding to your letter of January 24, 2022, in which you have raised several questions concerning the public records request made by Professor Gautam Hans on October 8, 2022, requesting copies of the following documents:

A copy of each electronic version of the most current Tennessee Code Annotated, reproduced in its entirety. Examples of such relevant versions include, but are not limited to, files in the following formats: Microsoft Word, XML, PDF, and any other editable document or database.

Your letter first letter indicates that your client is seeking the requested records "from the State of Tennessee, no matter in whose possession these records may be." However, the Public Records Act does not contemplate that a public records request may be made generally to the "State of Tennessee." Rather, the Act specifically provides that [t]he custodian of a public record or the custodian's designee shall promptly make available for inspection any public record not specifically exempt from disclosure." Tenn. Code Ann. § 10-7-503(a)(2)(B). And a "records custodian" is defined as "any office, official, or employee of any governmental entity lawfully responsible for the direct custody and care of a public record." Tenn. Code Ann. § 10-7-503(a)(1)(C).

Professor Hans's October 8 public records request was made to Ms. Seals, the Revisor of Statutes, who also serves as the Executive Secretary for the Tennessee Code Commission. My response of

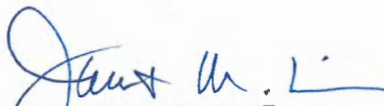
October 19, 2022 was on behalf of Ms. Seals both in her capacity as the Revisor of Statutes and as Executive Secretary for the Tennessee Code Commission. To the extent you are now making a request for copies of these documents to the Office of Legislative Legal Services, including its Director, please be advised that neither the Office, nor its Director, has any documents responsive to this request.

Second, your client requested a “copy of each electronic version of the most current Tennessee Code Annotated, reproduced in its entirety.” As I stated in my October 19 letter to Professor Hans, Ms. Seals, both in her capacity as the Revisor of Statutes and as Executive Secretary for the Tennessee Code Commission, does not have any records responsive to this request. And specifically in response to your letter, Ms. Seals does not have “one electronic file that comprises the current Tennessee Code Annotated or 100 electronic files that together comprise the Tennessee Code Annotated.”

And while Section 2.9 of the 2019 Contract with Matthew Bender provides that, “[a]fter each regular or extraordinary session, Publisher shall prepare and provide to the Commission, as no cost to the State of Tennessee, a mutually agreeable electronic format containing an accurate representation of the material contained in the bound volumes of the T.C.A. and its cumulative supplements, as amended in such regular or extraordinary session,” that same provision of the Contract also specifically provides that “[t]he electronic format shall be delivered pursuant to written request of the Executive Secretary. Additionally, the Contract further provides that “[s]uch electronic format shall become the property of the Commission, and the Commission shall determine the use of such electronic format, including transfer of such electronic format to a successor publisher, but such electronic format will not be sold or distributed to the public by the Commission.” Ms. Seals, as the Executive Secretary for the Tennessee Code Commission, has never requested that an “electronic format” of the Tennessee Code Annotated be delivered pursuant to Section 2.9 of the Contract. Furthermore, had Ms. Seals ever requested an “electronic format,” distributed of such electronic format is prohibited under the terms of the Contract.

Finally, Tenn. Code Ann. § 3-12-105(a)(2) provides that “[w]ork papers and correspondence, including correspondence by electronic mail, with any person receiving service from the office of legal services.” Ms. Seals is employed by the Office of Legal Services and in her roles as Revisor of Statutes and Executive Secretary provides services to the Tennessee Code Commission. Accordingly, her work papers with respect to such services are not public records pursuant to Tenn. Code Ann. § 3-12-105(a)(2).

Respectfully,

  
JANET M. KLEINFELTER  
Deputy Attorney General



# EXHIBIT 6



May 16, 2022

**BY EMAIL (matthew.lung@lexisnexis.com)**

Matthew Lung, Esq.  
Deputy Head of Legal – North America LexisNexis  
Legal and Professional  
Legal Department  
1801 Varsity Drive  
Raleigh, NC 27606

**Attorneys at Law**

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Georgia  
Louisiana  
Mississippi  
South Carolina  
**Tennessee**  
Texas  
Washington, DC

**Lucian T. Pera**  
Direct: 901.524.5278  
E-Fax: 901.524.5378  
lucian.pera@arlaw.com

**Re: Request for Records under the Tennessee Public Records Act**

Dear Mr. Lung:

I represent David L. Hudson, Jr., a Justice Robert Jackson Fellow with the Foundation for Individual Rights in Education and First Amendment Fellow with the Freedom Forum, and Carl Malamud, President and Founder of Public.Resource.Org. I write today to request access to and copies of public records under the Tennessee Public Records Act, Tenn. Code Ann. § 10-7-503(a), and the Tennessee Supreme Court's 2002 decision construing the Act in *Memphis Publ'g Co. v. Cherokee Children & Family Servs., Inc.*, 87 S.W.3d 67 (Tenn. 2002).

Specifically, my clients request access under the Act to the following records in the possession of your company:

Each electronic version of the most current Tennessee Code Annotated, reproduced in its entirety. Examples of such relevant versions include, but are not limited to, files in the following formats: Microsoft Word, XML, PDF, and any other editable document or database.

Copies of any final, executed versions of any contracts or agreements between your company and the Tennessee Code Commission (or the State of Tennessee or any officer, official, employee, or agent of the Tennessee Code Commission or the State) concerning the to editing, annotating, or publishing of the Tennessee Code Annotated that date from 1995 to the present.

My clients are aware that, at one time, your company did publish and sell to the public the document or documents we seek on a CD-ROM. Providing the requested documents

in that format would likely satisfy my client's request, assuming, of course, that the documents produced reflect the most current Tennessee Code Annotated.

Further, our request is intended to seek these records from LexisNexis, Matthew Bender & Company, Inc., and any affiliates of these two companies.

We understand that the State of Tennessee has contracted exclusively with your company (or Matthew Bender & Company, Inc.) to edit, annotate, and publish the Tennessee Code Annotated. Under well-settled Tennessee law, electronic versions of this publication are public records subject to the access requirements of our Public Records Act. This is true, regardless of the fact that your company is not a part of Tennessee government, because, as concerns the Tennessee Code Annotated, your company is the functional equivalent of government. We believe the same is clearly true of the company's contract to publish the Tennessee Code Annotated.

Under the Tennessee Supreme Court's 2002 decision in *Memphis Publ'g Co. v. Cherokee Children & Family Servs., Inc.*, 87 S.W.3d 67 (Tenn. 2002), your company is, for purposes of its contracted work on the Tennessee Code Annotated, the "functional equivalent" of government. Thus, all of its records concerning this work are public records subject to the access requirement of the Act. To be clear, however, my clients' public record request currently seeks only the documents described above.

The *Cherokee* decision held that records in the hands of a private, non-governmental, not-for-profit corporation were public records because that company was the "functional equivalent" of government. That company had contracted with the Tennessee Department of Human Services (TDHS) to perform certain functions related to government-subsidized child care services in Shelby County. Before that contract, the services at issue in *Cherokee* had been performed by TDHS; after the contract was terminated, those services were again performed by TDHS. If the governmental functions outsourced by TDHS led to the private company in *Cherokee* being found to be the "functional equivalent" of a government agency, then the editing, annotation, and publishing of the Tennessee Code Annotated would surely also be considered the "functional equivalent" of government.

Tennessee law provides for an award of attorney fees and expenses in the event that the custodian of a public record willfully denies access to public records under the Act. Tenn. Code Ann. § 10-7-505(g).

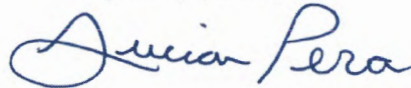
Finally, please be aware that Tennessee law requires that a custodian of public records must respond to a request under the Act within 7 days and that failure to meet this

Matthew Lung, Esq.  
May 16, 2022  
Page 3

deadline constitutes a violation of the access requirement of the Act entitling the requestor to bring suit. Tenn. Code Ann. § 10-7-503(a)(2)(B) and (a)(3). Thus, we expect to receive your response within 7 days.

I look forward to your prompt response.

Very truly yours,

A handwritten signature in blue ink that reads "Lucian Pera". The signature is written in a cursive style with a large initial "L".

Lucian T. Pera

c: Mr. Carl Malamud, [Public.Resource.org](http://Public.Resource.org)  
David L. Hudson, Jr.

# EXHIBIT 7

May 20, 2022

**VIA E-MAIL ONLY (LUCIAN.PERA@ARLAW.COM)**

Lucian T. Pera, Esq.  
Adams and Reese LLP  
Crescent Center  
6075 Poplar Avenue, Suite 700  
Memphis, Tennessee 38119

**Re: Request for Records under the Tennessee Public Records Act**

Dear Mr. Pera:

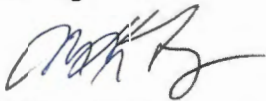
I am sending you this letter as Counsel for LexisNexis, in response to your correspondence of May 16, 2022. After considering your recent request, LexisNexis maintains the previously stated position in response to you and another of your clients that the Tennessee Public Records Act, Tenn. Code Ann § 10-7-503(a), does not apply to LexisNexis. Pursuant to the factors set forth in *Memphis Publishing Co. v. Cherokee Children & Family Services*, 87 S.W.3d 67, 70-71 (Tenn. 2002), and the Tennessee Supreme Court's subsequent decision in *Gatreaux v. Internal Medicine Education Foundation*, 336 S.W.3d 526, 529-31 (Tenn. 2011), LexisNexis is not the functional equivalent of a government entity.

As the Tennessee Supreme Court unambiguously stated in *Cherokee*:

We caution that our holding clearly is not intended to allow public access to the records of every private entity which provides any specific, contracted for services to government agencies. A private business does not open to its records to public scrutiny merely by doing business with or performing services on behalf of, state, or municipal government.

87 S.W.3d. at 79. Because LexisNexis is not the functional equivalent of a government agency, LexisNexis is not subject to the Tennessee Public Records Act and is therefore not in a position to fulfill your May 16, 2022 request for records.

Best regards,



Matthew Lung  
Deputy Head of Legal – North America  
LexisNexis  
Legal and Professional

**FIAT AND SHOW CAUSE ORDER**

TO THE CLERK AND MASTER:

Issue the following Show Cause Order:

Against Respondent Matthew Bender & Company, Inc., a division of the LexisNexis Group, setting a hearing for \_\_\_\_\_, 2022, at \_\_\_\_\_.m, and requiring Respondent to appear at that time and show cause, if any they have, why this Petition should not be granted.

\_\_\_\_\_  
CHANCELLOR

Date: \_\_\_\_\_

Time: \_\_\_\_\_