



"Leadership in Public School Governance"

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WASB EMPLOYEE HANDBOOK

Subscription & License Agreement: TERMS & CONDITIONS FOR SCHOOL DISTRICT CUSTOMERS

IMPORTANT – READ CAREFULLY:

BY COMPLETING THE ACCEPTANCE PROCESS, YOU REPRESENT AND WARRANT THAT YOU (i) ARE AUTHORIZED TO BIND THE CONTRACTING PARTY, DEFINED BELOW AS "CUSTOMER"; AND (ii) HAVE READ, UNDERSTAND AND AGREE ON BEHALF OF CUSTOMER TO BE BOUND BY ALL OF THE TERMS AND CONDITIONS OF THIS SUBSCRIPTION AND LICENSE AGREEMENT. OTHERWISE, DO NOT COMPLETE THE ACCEPTANCE PROCESS, AND DO NOT PERMIT ANY OFFICER, EMPLOYEE OR AGENT OF THE CUSTOMER TO ACCESS THE "WASB EMPLOYEE HANDBOOK."

This Subscription & License Agreement (this "**Agreement**") is between the subscribing School District ("**Customer**") (i.e., the School District paying the subscription fee) and the Wisconsin Association of School Boards, Inc. ("**WASB**"). The Agreement is a legal and binding instrument entered into as of the earlier of the date ("**Effective Date**") the Customer, through any of its employees, agents or officers, either (1) acknowledges acceptance of this Agreement to WASB; (2) provides WASB with a list of Customer's proposed **Authorized Users** asking WASB to issue or enable usernames and passwords under this Agreement for such persons; or (3) first accesses the WASB EMPLOYEE HANDBOOK ("**Service**") through the internet using a WASB-designated username and password. Accordingly, accessing the Service constitutes acceptance of this Agreement. WASB reserves the right to amend this Agreement from time to time with notice to Customer. Customer and WASB hereby further agree to all of the following terms and conditions:

1. **The Service.** A subscription to the Service grants the Customer, through its individual Authorized Users, a limited, non-exclusive, and non-transferable license to access and use the **Current Version** of the Service during the time period covered by the subscription (i.e., the **Term** of the **Agreement**, as further defined herein) in a manner consistent with this Agreement and with the Current Version of the Privacy Statement Related to the WASB Employee Handbook. The Current Version of the Service is the Service as it exists at any given moment. The Service is an internet-based employee handbook for Wisconsin public school districts and selected employment-related policies. WASB reserves the right to modify any aspect of the Service and any of its components or features at any time without notice to Customer, provided that the Current Version of the core aspect of the Service remains accessible to the Customer in a manner that is consistent with this Agreement.
2. **Definition of User and Authorized User.** A **User** is any person who accesses the Service for any reason. However, only **Authorized Users** have the right to access and use the Service under this Agreement. A User is an Authorized User if, at the time the User is accessing the Service, he or she meets the following three criteria: (1) the User is an administrator in the District or the primary administrative assistant to the District Administrator or the School Board in the Customer's school district; (2) the User has been issued an account by the WASB consisting of a non-transferable, User-specific username and password; and (3) the User is accessing or otherwise using the Service during the Term of this Agreement in his or her official capacity as an official, employee or agent of the Customer, exclusively for Customer's internal purposes. An individual is no longer an Authorized User if any of the three criteria identified in this paragraph is not met, regardless of whether the username and password issued by WASB still enable the person to access to the Service. By separate written agreement and at WASB's sole discretion, WASB may identify and acknowledge other individuals who may be granted the status, rights, and obligations of an Authorized User under Customer's subscription and limited license.
3. **Term.** The Term of this Agreement shall commence on the Effective Date and continue until the end of the subscription and license period as separately stated by WASB through written communication to Customer's District Administrator or Customer's main business office. Typically, and unless otherwise expressly specified by WASB in written communications to Customer, subscription periods will expire annually on each June 30. As a special provision applicable only during the

2011 calendar year, and notwithstanding any provisions to the contrary elsewhere in this Agreement, any Customer's enforceable rights to access and use the Service under this Agreement shall commence on July 1, 2011, although WASB expects to make the Service available to Customers for an additional period between May 2011 and July 1, 2011. In the event a Customer has subscribed prior to the initial launch of the Service and the Service is not launched and available by May 15, 2011, the issue will be addressed by extending the subscription and license period on a day-for-day basis.

4. **Termination for Cause.** WASB reserves the right to terminate this Agreement immediately if Customer or any of its officers, employees or agents breaches any material obligations under this Agreement.
5. **Effect of Expiration or Termination.** Upon expiration or termination of this Agreement, Customer and all of its officers, employees and agents will immediately discontinue all access to and use of the Service. WASB shall not be liable for any damages resulting from a termination of this Agreement as provided for herein; provided, however, the termination of this Agreement shall not affect any claim arising prior to such termination.

Customer Rights and Restrictions:

6. During the Term of this Agreement, and upon Customer's payment of all applicable subscription fees, WASB will enable Customer to access and use the Current Version of the Service as contemplated herein, and Customer may access and use the Service pursuant to and in accordance with the provisions of this Agreement and with the Privacy Statement Related to the WASB Employee Handbook. At all times the Service remains the exclusive property of the WASB. WASB retains in all respects the title, ownership and intellectual property rights in and to the Service.
7. Customer is responsible for prompt payment of all subscription fees. Customer shall also be responsible for all applicable taxes or duties, if any, imposed by any government entity.
8. In the event Customer needs to add a new, Authorized User account under Customer's limited license, Customer shall contact WASB such that the User can be added to the account and issued a personal username and password.
9. Each Authorized User shall use only his or her own, designated and non-transferable username and password to access the Service. Neither the Customer nor any User nor any other person may allow any person other than an Authorized User to access or use the Service. Users are responsible for securely managing their password(s) for access to the Service. If any person becomes aware of any unauthorized access to his or her Service account, or suspects the theft or loss of his or her password in a manner that would be reasonably likely to enable unauthorized access to his or her Service account, the person agrees to contact WASB as soon as reasonably possible. Each User, and, ultimately, the Customer are responsible for any use of the Services under the usernames issued to any of Customer's officers, employees, or agents.
10. In the event an Authorized User ceases to be an Authorized User for any reason, Customer will promptly notify the WASB of the User's change in status, generally within thirty (30) days of the change of status. Failure to provide such notice within thirty (30) days shall not be construed as a breach of this Agreement that would be sufficient to warrant termination. This notice requirement does not change the obligation of Users who access the Service under Customer's limited license to cease accessing and using the Service immediately upon losing their status as an Authorized User, as defined elsewhere in this Agreement.
11. Customer and Customer's Authorized Users may, consistent with the limited license granted by this Agreement, copy or download the content of the *Employee Handbook* and sample school board policies that is provided through the Service for the Customer's own internal use, except as otherwise prohibited in Section 12 of this Agreement. To the extent not expressly prohibited elsewhere in this Agreement, any content that Customer or any Authorized User chooses to use, derive or adapt from the Service for official use by the Customer may be published or distributed by the Customer to meet the Customer's legitimate business needs (such as making draft and final *Employee Handbook* provisions and official school district records available to employees, students and the public), and the limited, licensed right provided for in this sentence shall exist into perpetuity beyond the Term of this Agreement.
12. Customer's limited license to access and use the Service grants Customer and Customer's Authorized Users the right to access and reproduce content provided through the Service either digitally, electronically, or in paper format, exclusively for Customer's direct and internal use. Without first obtaining express written permission from WASB (permission provided in advance by email shall be sufficient), and unless otherwise expressly required by law, neither the Customer, nor any User nor any other person may distribute, transfer, copy, download or otherwise use, share or give content provided by or through the Service to any third party for any use that is not directly connected to Customer's legitimate business needs and operations. The requirement that Customer and any other person obtain advance, written permission from WASB under this paragraph includes, but is not limited to, any educational uses of the Service or its content that involve non-Customer third parties.
13. Neither Customer, nor any of its officers, employees or agents, nor any other person may resell, transfer, trade, give or share Customer's license under this Agreement with any other person or entity.

14. Customer and its Authorized Users shall be solely responsible for any decision to use or adapt (or to not use or adapt) content provided through the Service for any purpose. Customer agrees and acknowledges that the provisions in the *Employee Handbook* and sample policies may or may not be suitable for direct use or adaptation in a particular school district or other specific setting.
15. The Service may periodically be updated with tools, utilities, improvements, modifications, third-party applications, or general updates to improve and enhance the features or performance of the Service. Customer agrees to receive these updates automatically as part of the Service.
16. Customer agrees that WASB may use the feedback, suggestions, or ideas provided by Customer and any of Customer's User(s) in any way, including in future modifications of the Service, other products or services, or in advertising or marketing materials. Customer and Customer's Users grant WASB a perpetual, worldwide, fully transferable, sublicensable, non-revocable, and royalty-free license to use, in any way, the feedback, suggestions, or ideas that may be provided to WASB through any means.
17. Customer and its Users agree that, in the event any person or entity makes a request for access to the Service or its contents under the Wisconsin Public Records Law, such request for access will, unless inconsistent with the records custodian's legal obligations, be denied on grounds that may include the following: (1) the Service and the substantive content made available through the Service are not records of the District, and ownership and control of the Service remains exclusively with WASB at all times; (2) that the Service and the content provided through the Service are protected by copyright; (3) the Service is available for purchase; and/or (4) any other legally appropriate grounds. The limitations in the preceding sentence do not apply to Public Records requests for copies of specific content derived from the Service that the Customer and its Authorized Users have directly used, or adapted for use, on behalf of the Customer in a manner consistent with this Agreement. Customer agrees to notify the WASB of any Public Records request or other request for direct, electronic access to the Service or for access to or copies of substantial portions of content copied or derived from the Service that would exceed 50 printed pages, if the Customer intends to grant such request due to a legal obligation.
18. Neither Customer, nor any of its officers, employees or agents, nor any other person other than WASB may reverse engineer, decompile or otherwise attempt to decipher any code in connection with the Service or any other aspect of a WASB website.
19. Neither Customer, nor any of its officers, employees or agents, nor any other person may access and/or use the Service in any manner that could damage, disable, overburden, impair or otherwise interfere with or disrupt the WASB websites, networks or security systems, including manually or through the use of trojan horses, scripts, viruses, worms, etc.
20. No other license or rights, express or implied, are granted to Customer or any of Customer's Users hereunder except as expressly set forth in this Agreement.

Additional Terms & Conditions:

21. **Interruptions in Service or Unavailability of Service.** Customer's and Authorized Users' access to the Service under this Agreement will be provided electronically via the internet. Customer is solely responsible, at its own cost, for providing for its own internet connection(s) and the related hardware and software that enable internet access for Customer's Authorized Users. Customer agrees that WASB is not responsible for ensuring, and has not promised, guaranteed or implied, that the Service will be accessible at all times, from all locations, or through all network, hardware and software configurations that Customer and its Authorized Users may attempt to use. WASB will work with Customer and make reasonable efforts to resolve any technical issues that interfere with or prevent Customer's access to the Service. Further, in the event of any temporary unavailability of the Service or interruption in Customer's ability to access the Service, Customer may contact WASB and WASB will make reasonable efforts to provide Customer with an alternate means of accessing content.
22. **Scope of Content Provided through the Service.** The core aspect of the Service consists of an employee handbook and sample policies. For purposes of this document, the term "policies" may include policies, procedures, rules, and/or forms.
23. **The Creation of Employee Handbooks and School Policies Necessarily Entails Certain Legal Risks, and The Service Does Not Constitute Legal or Professional Advice.** The substantive information/content provided to Customer through the Service has been reviewed by one or more attorneys employed by WASB prior to the time said content is first made available through the Service with the goal of identifying and resolving any clear and established conflict(s) with existing applicable law. In addition, WASB's development of said content is informed by WASB's general knowledge of, and general experience with, the overall environment in which public school boards and public school districts operate in Wisconsin. However, the content that represents the core aspect of the Service addresses substantive issues and school policy topics which involve the need for legal interpretation or over which there is generally legal ambiguity or other uncertainty. To the extent Customer adopts or implements the *Employee Handbook* or the policies provided with the Service, Customer does so at its own risk. Further, some of the content provided by the Service represents information

on an array of options/choices, not all of which would have identical advantages and disadvantages, carry the same level of risk, or necessarily be consistent with one another or with other existing policies/procedures/practices in Customer's school district. Customer is solely responsible for determining the suitability of specific content provided through the Service for possible adoption, adaptation or other use in Customer's school district. The Service, standing by itself, does not constitute or provide legal advice or other professional advice that is specific to any individual school board's or school district's circumstances. No attorney-client or other professional relationship is created or intended under this Agreement, through Customer's purchasing of the subscription/license, or through the accessing/use of the Service by any person. Customer should consult the services of a competent professional when in need this type of assistance. Customer agrees that WASB is not acting as Customer's attorney, agent or fiduciary in connection with Customer's use of the Service.

24. **Contracting Party.** This Agreement is between Customer and WASB. All officials, employees or agents of Customer are subject to all terms and conditions of this Agreement, and Customer has the responsibility of informing its officers, employees, and Users of all such terms and conditions.
25. **Authority.** Each party hereby represents and warrants to the other party that it has all necessary authority to enter into and perform its obligations under this Agreement without the consent of any third party or breach of any contract or agreement with any third party.
26. **Assignment.** Customer may not assign its rights or delegate its duties under this Agreement either in whole or in part, and any such attempted assignment or delegation shall be void.
27. **Force Majeure.** Neither Customer nor WASB will be responsible for any delay, interruption or other failure to perform under this Agreement due to acts beyond the control of Customer or WASB, as applicable.
28. **Choice of Law and Venue.** This Agreement and any dispute arising out of or in connection with this Agreement shall be governed by and construed under the laws of the State of Wisconsin, without regard to the principles of conflict of laws. The venue for any dispute arising out of this Agreement shall be Dane County, Wisconsin (for state court) or the Western District of Wisconsin (for federal court).
29. **No Waiver.** The failure of either Customer or WASB in any one or more instance(s) to insist upon strict performance of any of the terms of this Agreement will not be construed as a waiver or relinquishment of the right to assert or rely upon any such term(s) on any future occasion(s).
30. **Severability.** If any provision of this Agreement is declared by a court or tribunal of competent jurisdiction to be invalid, illegal, or unenforceable, such provision shall be severed from this Agreement and the other provisions shall remain in full force and effect. To the extent a provision is deemed omitted, the parties agree to comply with the remaining terms of this Agreement in a manner consistent with the original intent of the Agreement.
31. **No Third Party Beneficiaries.** No person or entity not a party to this Agreement will be deemed to be a third party beneficiary of this Agreement or any provision hereof.
32. **Entire Agreement.** This Agreement sets forth the entire agreement and understanding of the parties relating to the subject matter hereof and supersedes all prior and contemporaneous oral and written agreements and understandings with respect to the same. No waiver or amendment of any term or condition of this Agreement shall be valid or binding on either party unless agreed to in writing by both parties.
33. **Captions and Headings.** Captions and headings are used herein for convenience only, are not a part of this Agreement, and shall not be used in interpreting or construing this Agreement.

DISCLAIMER OF WARRANTIES, LIMITATIONS OF LIABILITY AND INDEMNIFICATION

34. **DISCLAIMER OF WARRANTIES.** CUSTOMER HEREBY ACKNOWLEDGES AND AGREES THAT THE SERVICE IS PROVIDED BY WASB AND ITS SERVICE PROVIDERS AND SUPPLIERS ON AN "AS IS" BASIS, AND CUSTOMER'S AND ANY USER'S ACCESS TO AND USE OF THE SERVICE IS AT ITS SOLE RISK. WASB DOES NOT WARRANT, PROMISE OR GUARANTEE SUITABILITY OF SPECIFIC CONTENT FOR USE BY OR IN ANY INDIVIDUAL PUBLIC SCHOOL DISTRICT, SCHOOL BOARD, CESA, SCHOOL OR OTHER EDUCATIONAL PROGRAM. WASB EXPRESSLY DISCLAIMS ALL WARRANTIES OF ANY KIND, WHETHER EXPRESS OR IMPLIED, INCLUDING ANY WARRANTY THAT THE SERVICES ARE FIT FOR A PARTICULAR PURPOSE, WARRANTY OF TITLE, WARRANTY OF MERCHANTABILITY, OR WARRANTY OF NON-INTERFERENCE WITH OR NON-INFRINGEMENT OF ANY INTELLECTUAL PROPERTY RIGHTS. WASB FURTHER DISCLAIMS ANY REPRESENTATIONS OR WARRANTIES REGARDING THE QUALITY OR ACCURACY OF CONTENT IN OR THIRD-PARTY CONTENT REACHED THROUGH THE SERVICE; THAT THE SERVICE IS FREE FROM BUGS, ERRORS, OR INTERRUPTIONS OF SERVICE; AND THAT CUSTOMER'S USE OF THE SERVICES WILL SATISFY OR ENSURE COMPLIANCE WITH ANY LEGAL OBLIGATIONS OR LAWS OR REGULATIONS. TO THE EXTENT ANY EXCLUSIONS OR DISCLAIMERS OF ANY IMPLIED WARRANTIES ARE IMPERMISSIBLE AS APPLIED TO ANY CUSTOMER UNDER WISCONSIN LAW, ANY IMPLIED WARRANTIES ARE LIMITED TO SIXTY (60) DAYS FROM THE DATE CUSTOMER, THROUGH ANY OFFICER, EMPLOYEE OR AGENT, FIRST ACCESSES OR USES THE SERVICE.
35. **LIMITATION ON LIABILITY AND WAIVER OF OTHER RECOVERY.** EACH PARTY'S (I.E., CUSTOMER'S AND WASB'S) CUMULATIVE AND MAXIMUM LIABILITY TO THE OTHER UNDER ALL CLAIMS AND CAUSES OF ACTION ARISING UNDER OR RELATED TO THIS AGREEMENT, IN ANY WAY, SHALL BE CAPPED AT THE TOTAL DOLLAR AMOUNT CUSTOMER HAS PAID TO WASB AS SUBSCRIPTION FEES FOR THE SERVICE DURING THE TWELVE (12) MONTHS PRIOR TO SUCH CLAIMS OR CAUSES OF ACTION BEING BROUGHT. WASB'S MAXIMUM LIABILITY TO CUSTOMER, AS DEFINED IN THE PREVIOUS SENTENCE, IS INCLUSIVE OF ALL TYPES OF DAMAGES THAT MAY BE AWARDED. TO THE FULLEST EXTENT PERMITTED BY WISCONSIN LAW, CUSTOMER AGREES THAT IN NO EVENT SHALL WASB BE LIABLE FOR ANY INDIRECT, SPECIAL, CONSEQUENTIAL OR INCIDENTAL, MULTIPLE, EXEMPLARY, PUNITIVE OR OTHER DAMAGES RELATED TO THIS AGREEMENT, HOWEVER CAUSED, AND REGARDLESS OF THEORY OF LIABILITY, INCLUDING WHETHER OR NOT FOR BREACH OF CONTRACT, FOR NEGLIGENCE, AN ACTION ON WARRANTY, OR OTHERWISE, AND REGARDLESS OF WHETHER OR NOT WASB HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

THERE ARE TWO EXCEPTIONS TO THE LIMITATIONS ON LIABILITY AND THE WAIVERS IDENTIFIED IN THE PRECEDING PARAGRAPH OF THIS SECTION. FIRST, SAID LIMITATIONS AND WAIVERS SHALL NOT APPLY TO ANY CLAIM OR RECOVERY BY WASB RELATING TO ANY ALLEGATION(S) THAT CUSTOMER OR ANY OF ITS OFFICERS, AGENTS OR EMPLOYEES HAS PERMITTED ANY THIRD PARTY TO ACCESS THE SERVICE; MATERIALLY RECREATED, DUPLICATED, TRANSFERRED OR REPRODUCED SUBSTANTIAL PORTIONS OF THE CONTENT PROVIDED BY THE SERVICE FOR FUTURE ACCESS IN A MANNER THAT VIOLATES THIS AGREEMENT; OR RESOLD, TRANSFERRED, TRADED, GAVE OR SHARED CUSTOMER'S LIMITED LICENSE UNDER THIS AGREEMENT WITH ANY THIRD-PARTY PERSON OR THIRD-PARTY ENTITY. SECOND, CUSTOMER'S SOLE ENFORCEABLE REMEDY AND MAXIMUM RECOVERY AGAINST WASB IN THE EVENT OF CUSTOMER'S DISSATISFACTION WITH THE QUALITY OR SCOPE OF THE SERVICE AND ITS CONTENT, OR WITH THE AVAILABILITY OF THE SERVICE, IS TO CANCEL THE SERVICE, TERMINATE THIS AGREEMENT AND RECEIVE A PRO-RATED PORTION OF THE SUBSCRIPTION AND LICENSE FEE COVERING THE UNUSED PORTION OF THE THEN-CURRENT SUBSCRIPTION PERIOD, PROVIDED, HOWEVER, THAT IF SAID CANCELLATION/TERMINATION OCCURS MORE THAN FORTY-FIVE (45) CALENDAR DAYS AFTER CUSTOMER, THROUGH ANY OFFICER, EMPLOYEE OR AGENT, FIRST ACCESSES THE SERVICE DURING THE CUSTOMER'S INITIAL SUBSCRIPTION PERIOD, WASB'S MAXIMUM LIABILITY AND CUSTOMER'S MAXIMUM RECOVERY SHALL BE THE LESSER OF SAID PRORATED AMOUNT OR \$500.

36. **INDEMNIFICATION AND LIMITATION ON CLAIMS IN CONTRIBUTION.** CUSTOMER SHALL ASSUME NONE OF WASB'S OWN LEGAL LIABILITY, AND WASB SHALL ASSUME NONE OF CUSTOMER'S OWN LEGAL LIABILITY. CUSTOMER SHALL NOT BRING OR ASSERT ANY CLAIM OR RIGHT OF JOINT OR SEVERAL LIABILITY OR OF CONTRIBUTION AGAINST WASB ARISING IN CONNECTION WITH CUSTOMER'S ALLEGED LEGAL LIABILITY IN ANY MATTER OR PROCEEDING BROUGHT AGAINST CUSTOMER BY ANY THIRD PARTY.

If you have a question or concern about this Agreement, WASB's privacy practices, or any product or service of WASB, including the *Employee Handbook*, the Customer and any of the Customer's Authorized Users can contact WASB by mail at Wisconsin Association of School Board, Inc., 122 West Washington Ave., Suite 400, Madison, WI 53703, or by calling WASB at 877-705-4422 or 608-257-2622.