

## BoardBook Premier™ Subscription Agreement

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This BoardBook Premier™ Subscription Agreement (“Agreement”) is by and between the Texas Association of School Boards, Inc. (“TASB” or “Supplier”) and the below-named customer (“Subscriber”). The Agreement consists of (a) the **Order Form**, executed by Subscriber; and (b) the **General Terms and Conditions** (v.TASB.05/01/2020), attached and incorporated by reference as Exhibit A. (All undefined capitalized terms herein shall have such meaning as described in the General Terms and Conditions.)

### ORDER FORM

#### BoardBook™ Premier Product Level

Written product subscription is attached or available upon request.

Tier 1

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#### Initial Term<sup>(a)</sup>

Actual Dates

#### Initial Term Cost<sup>(b)</sup>

USD

\$

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#### Renewal Term<sup>(a)</sup>

Month/Day –Month/Day

9/1/2020 – 8/31/2021

#### Renewal Term Cost<sup>(b)</sup>

USD

\$1,250

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<sup>(a)</sup> A subscription term, whether initial or renewal, cannot exceed a year. An initial term may include Subscriber’s migration from BoardBook Classic™ to BoardBook Premier™. Unless otherwise agreed in writing, any cost quote for a renewal term applies to the first renewal only. Subsequent renewal terms are subject to price adjustment, as permitted by the Agreement.

<sup>(b)</sup> Unless otherwise extended in writing by TASB, price quotes will expire after 90 days if not accepted.

#### Subscriber Coordinator Information

Fort Bend Independent School District

Name: Gary Rosier

Title: Executive Assistant to the Board of Trustees

Phone: 281-634-1008

Email: Garrett.Rosier@fortbendisd.com

#### Subscriber Billing Information

Fort Bend Independent School District

Name: Latrell Franklin

Title: Director of Accounts Payable and Fixed Assets

Address: 16437 Lexington Blvd, Sugar Land, TX 77479

Phone: 281-634-1050

Email: AccountsPayable.Invoices@fortbendisd.com

The undersigned parties accept and agree to be legally bound by the entire BoardBook Premier™ Subscription Agreement and the persons executing this Agreement agree that they are fully authorized to enter into this Agreement. If Subscriber is eligible for Active, Associate, or Affiliate Membership within TASB, membership is a condition precedent to entering into this Agreement.

Except as otherwise provided by the General Terms and Conditions, this Agreement can only be modified by a separate written instrument executed by the parties; any unilateral change or insertion by

Subscriber will be deemed void and unenforceable. Subscriber’s payment and use of the product will be treated as acceptance of this Agreement if the Agreement has not been fully signed by the parties.

**ACCEPTANCE BY SUBSCRIBER:**

**Subscriber Entity:** MJP Fort Bend ISD

**Authorized Signature:** Mitzi Patin

**Printed Name:** Mitzi Patin

**Title:** Executive Director Information Systems

**Date:** November 19, 2020 | 3:20 PM PST

**Purchase Order Number (optional):** \_\_\_\_\_

TASB Member? (Active/Associate/Affiliate)      Yes or      No

Governmental entity?      Yes or      No      Sales Tax Exempt?      Yes or      No

If yes, provide a copy of your Sales Tax Exemption Certificate. Will be attached as a separate file

*(Note: Nebraska, Oklahoma, South Dakota, and Tennessee customers will be referred to the appropriate supplier.)*

**ACCEPTANCE BY SUPPLIER:**

**Texas Association of School Boards, Inc.**



\_\_\_\_\_  
Dianne Gorvin  
Director, BoardBook Division

11/20/2020

Date

**Signed Order Form may be returned by:**

Email: [boardbook@boardbook.org](mailto:boardbook@boardbook.org)  
Fax: 512.467.3658  
U.S. Mail: Texas Association of School Boards  
Attn: BoardBook  
P.O. Box 400  
Austin, TX 78767-0400

## Exhibit A — BoardBook Premier™ General Terms and Conditions

WHEREAS, the Texas Association of School Boards, Inc. (“**TASB**” or “**Supplier**”) is the lead supplier of BoardBook® services, including BoardBook Premier™, (collectively “**BoardBook**”) and makes BoardBook available under these General Terms and Conditions (the “**GTC**”); and

WHEREAS, customer (“**Subscriber**”) accepts the GTC as evidenced through its execution of the BoardBook Premier™ Subscription Agreement (“**Agreement**”);

NOW, THEREFORE, in exchange for good and valuable consideration, the receipt of which is hereby acknowledged, TASB and Subscriber (also referred to as “party” or “parties”) agree as follows:

1. **Product.** BoardBook is a paperless meeting application used to create electronic meeting agendas and assemble board meeting materials. As a Software-as-a-Service (SaaS) product, BoardBook is internet-based and web-hosted. BoardBook is offered at different product levels, and the range of features and options vary based on the product selected by Subscriber. BoardBook is delivered through Supplier, in conjunction with one or more third-party affiliates.

2. **Access and Use.** Subject to the terms and conditions of this Agreement, Subscriber is granted a limited, non-exclusive, non-transferable right to access and use BoardBook for its internal business use only, to the degree and extent permitted by the product-level subscription ordered.

### 3. Intellectual Property.

(a) Except for the limited access and use rights granted herein, Subscriber acknowledges and agrees that it has no right, title, or interest in and to the BoardBook® and BoardBook Premier™ trademarks, service marks, tradenames or software application, including its programming codes, documentation, interfaces, sequences, or derivatives thereof (collectively the “**BoardBook IP**”). Subscriber acknowledges that the BoardBook IP includes trade secrets and proprietary information owned or under the legal rights of Supplier and other third parties and that such BoardBook IP is subject to the protection of federal and state copyright laws, as well as other laws protecting intellectual property and trade secret information. Subscriber will not directly or indirectly allow any of its users or third-parties to copy, modify, reverse compile, disassemble, reverse engineer, assign, rent, sublicense, or distribute all or any portion of the BoardBook IP. To the extent any design improvement or modification is made to the BoardBook IP at the suggestion or request of Subscriber, Subscriber hereby disclaims any right, title, or interest to such change, beyond the access and use rights otherwise granted herein, and assigns same to Supplier (or the third party designated by Supplier) without any right or claim to payment or consideration therefor.

(b) In the event of any claim or proceeding against Subscriber alleging that the BoardBook IP, as provided through this Agreement, infringes on the rights of any third party, Supplier will indemnify Subscriber, provided that Subscriber promptly notifies Supplier in writing and grants Supplier full authority to defend and settle such matter. Supplier shall have full authority to select counsel of its own choosing and Subscriber shall cooperate with such counsel. Notwithstanding the foregoing, Supplier shall not be liable or responsible for any content uploaded or entered into BoardBook by Subscriber or any of its users.

4. **Technical Support.** Supplier will provide Subscriber with online or telephone-based technical support during its normal and customary business hours (U.S. Central Time), which times may be posted on the BoardBook website. Upon the initial activation of a BoardBook account, Supplier will provide at least one remote training session up to two (2) hours in length. Supplier will not be responsible for supporting non-BoardBook software applications installed on Subscriber’s computers or network. In the

event that Subscriber requires legal advice on any issue, including but not limited to the content of meeting agendas, Subscriber must consult its duly appointed legal advisor. No attorney-client relationship is established under this Agreement.

#### **5. Subscriber Data.**

(a) Content uploaded or entered into the BoardBook application by or through Subscriber shall be deemed the property of Subscriber ("**Subscriber Data**"). Depending on the BoardBook subscription Subscriber Data may include, but is not limited to, (i) account credential information (e.g., email addresses, etc.); (ii) meeting agendas, minutes, supporting documents, and resource files; and (iii) policies, procedures, manuals, or similar content. Subscriber understands that BoardBook is NOT intended to serve as a repository for highly sensitive information, including personally identifiable information (e.g., Social Security numbers, medical or diagnostic information, credit card or bank information, student records, etc.). Thus, Subscriber will exercise due care and discretion in the content it uploads in BoardBook.

(b) Nothing in this Agreement grants Supplier any proprietary rights to Subscriber Data, except that Subscriber hereby grants Supplier a royalty-free, perpetual, irrevocable, and non-exclusive right and license, under its rights in the Subscriber Data, to use, copy, modify, display, archive, store, publish, transmit, distribute, and reproduce, and to create derivative works from, any and all Subscriber Data for the limited purpose of carrying out their duties under this Agreement. Moreover, as to Subscriber Data posted on BoardBook platforms that are open to the general public, Supplier may access and use such content for any and all legitimate business purposes, subject to any copyright or other legal restrictions related thereto. It is understood that any access and use of public-facing Subscriber Data shall be at Supplier's sole risk and that Subscriber shall not be held responsible for Supplier's use thereof.

(c) BoardBook is not intended to serve as Subscriber's permanent data storage facility. Subscriber is responsible for archiving Subscriber Data that must be retained onto a platform or location outside of BoardBook. Although Supplier aims to maintain Subscriber Data for a rolling period of at least five (5) years, no guaranty is made that Subscriber Data always will be available for such length of time. Upon termination of this Agreement, Subscriber shall have access to Subscriber Data for a period of 30 days, after which point Subscriber Data shall be subject to deletion. Upon request, Supplier will cooperate with Subscriber in transferring or converting Subscriber Data into a useful format, within the capabilities and limitations of the BoardBook technology; however, no promise is made that Subscriber Data will be transferred in any particular format.

#### **6. Confidentiality.**

(a) Except as otherwise provided in this Agreement, Supplier agrees to treat Subscriber Data as Subscriber's proprietary confidential information. To the fullest extent authorized by law, Subscriber agrees to treat the BoardBook IP as Supplier's proprietary confidential information. Notwithstanding the foregoing, either party may disclose the other party's confidential information (the "source party") where required by law or regulation, but only to the extent and for the purpose of such required disclosure, after providing the source party with advance written notice when legally possible, such that the source party is afforded the opportunity to pursue its legal rights.

(b) The parties recognize and agree that money damages are an inadequate remedy for any breach of confidentiality and further recognize that any such breach would result in irreparable harm to the source party. Therefore, in the event of breach, it is agreed that the source party may seek injunctive relief to enjoin such activity, without need of posting bond or other financial security, in addition to seeking other available remedies.

## **7. Account Use/Operation.**

(a) Account access to BoardBook is limited to Subscriber's authorized users in accordance with the product subscription. (Authorized users have log-in credentials.) Subscriber is responsible for maintaining the confidentiality of its account access credentials and passwords and will immediately notify Supplier of any known unauthorized access or use. Subscriber is responsible for ensuring that its authorized users comply with all terms and conditions of this Agreement. Upon request of Supplier, Subscriber will designate a primary account contact and will notify Supplier of any change thereto.

(b) The obligation of Subscriber to conduct its board meetings in accordance with applicable law and policy, including any open meetings law, resides entirely with Subscriber. It is also Subscriber's sole obligation under this Agreement to ensure that it has all legal rights and permissions required to upload, store, copy, and display Subscriber Data in BoardBook and that Subscriber Data is accurate and complete. Subscriber is solely responsible for determining who has access to view, copy, download, or otherwise access Subscriber Data and for managing rights to access Subscriber Data, including account-level access credentials. Supplier is not responsible or liable to any third party for the content or accuracy of any Subscriber Data posted or stored by or through Subscriber. Subscriber agrees that it will not use BoardBook to communicate or place any message or content that (i) is harassing, defamatory, or obscene; (ii) infringes on the intellectual property rights, including copyrights, of others; (iii) contains an image, likeness, or audio or visual recording of an individual without permission to do so, or that violates any privacy rights of any individual; (iv) contains software viruses or any other codes, files, or programs designed to damage or disrupt any software, hardware, or equipment; or (v) otherwise gives rise to civil or criminal liability. Supplier shall have the right to immediately suspend account access, without right of partial refund, if it determines this provision of the Agreement has been breached. Consistent with its rights and responsibilities under the Digital Millennium Copyright Act, Supplier hereby provides notice that it maintains the right to suspend or terminate the BoardBook account of any repeat infringer.

## **8. Representations/Warranties.**

(a) Supplier represents that BoardBook will be performed in good faith, consistent with commercially reasonable industry standards applicable to the service.

(b) NOTWITHSTANDING THE FOREGOING, AND TO THE FULLEST EXTENT ALLOWED BY LAW, BOARDBOOK IS PROVIDED "AS IS" AND "AS AVAILABLE." NO WARRANTY IS MADE, EXPRESS OR IMPLIED, AS TO THE MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE OF BOARDBOOK OR THAT BOARDBOOK WILL BE UNINTERRUPTED OR ERROR-FREE.

## **9. Limitations on Liability.**

TO THE FULLEST EXTENT PERMITTED BY LAW, LIABILITY IS LIMITED AS FOLLOWS:

(a) EXCEPT FOR LIABILITY ARISING UNDER SECTION 3 (INTELLECTUAL PROPERTY), THE MAXIMUM AMOUNT OF MONEY DAMAGES RECOVERABLE THROUGH THIS AGREEMENT BY ANY PARTY, UNDER ANY CLAIM OR PROCEEDING BASED IN CONTRACT, TORT, OR OTHER THEORY, IS LIMITED TO THE AGGREGATE AMOUNT OF ALL FEES ACTUALLY PAID OR DUE BY SUBSCRIBER DURING THE 12-MONTH PERIOD PRECEDING THE DATE OF THE CLAIM.

(b) IN NO EVENT SHALL ANY PARTY BE LIABLE FOR ANY SPECIAL, INCIDENTAL, CONSEQUENTIAL, EXEMPLARY, OR PUNITIVE DAMAGES (INCLUDING, WITHOUT LIMITATION, DAMAGES FOR LOSS OF BUSINESS PROFITS, BUSINESS INTERRUPTION, OR LOSS OF BUSINESS INFORMATION) ARISING OUT OF THE USE OR INABILITY TO USE BOARDBOOK.

(c) Any delay or failure to perform as required by this Agreement (other than for payment of amounts due) caused by conditions beyond the reasonable control of the performing party shall not constitute a breach of this Agreement, and the time for performance, if any, shall be deemed to be extended for a period equal to the duration of the conditions preventing performance.

**10. Term/Termination.**

(a) The initial BoardBook subscription term under this Agreement shall be as stated on the Order Form and this term shall not exceed a period of one (1) year. After the initial term, the subscription shall automatically renew for successive annual periods unless the Agreement is terminated as provided herein. Either Subscriber or TASB may stop the automatic renewal of this Agreement by giving the other party 30 days prior written notice of termination before renewal.

(b) Upon automatic renewal, if Subscriber fails to make required payment for the BoardBook subscription within 30 days of renewal, Subscriber will be deemed to have terminated this Agreement and BoardBook access can be deactivated without notice. If Subscriber opts to terminate this Agreement during the middle of a subscription term for convenience, no prorated refund shall be due. If Subscriber is eligible for TASB membership and fails to timely renew its TASB membership, TASB may treat such failure as a material breach of obligation and immediately terminate this Agreement without any right of refund. Either party may terminate this Agreement due to the other party's material breach of obligation under this Agreement and seek any and all remedies allowed by law, consistent with this Agreement. No party will be liable for delays or failures in performance resulting from causes beyond the reasonable and foreseeable control of that party, including but not limited to acts of God, epidemics, labor disputes or disturbances, material shortages or rationing, riots, acts of war, governmental regulations, or utility failures.

(c) Upon the termination of this Agreement, for any reason, Subscriber shall immediately cease any further use of BoardBook and, to the extent permitted by law, return or destroy any BoardBook IP in its possession.

**11. Governing Law.** This Agreement is governed by the laws of Texas, without regard to conflict of laws provisions thereof.

**12. Third-Parties/Relationships.** Subscriber agrees that Supplier's third-party developer(s) or sub-suppliers of the BoardBook IP are third-party beneficiaries to this Agreement, as it applies to the BoardBook IP, and shall have all such rights and duties to the degree specifically stated herein, but that no other third-party beneficiaries are created hereby. The parties further agree that no principal-agent, partnership, joint venture, or employment relationship is created by or through this Agreement. BoardBook is provided as an independent contractor arrangement only.

**13. Headings.** Headings used in this Agreement are for ease of reference only and will not be used to interpret any aspect of this Agreement.

**14. Entire Agreement.** Use of BoardBook, including the BoardBook website, is subject to compliance with all privacy and security policies, service level agreements, and other terms and conditions posted on the BoardBook website or otherwise made available to Subscriber in writing ("**Additional Terms**"); provided, however, that any such Additional Terms cannot diminish or conflict with the protections afforded to Subscriber in this Agreement. In the event of any conflict or inconsistency among the provisions of the Order Form, GTC, Additional Terms, or any other provision of this Agreement, the GTC shall take precedence in reconciling the conflict or inconsistency unless Supplier agrees in writing otherwise. This Agreement constitutes the complete and exclusive expression of the contract among the parties; and all previous representations, discussions, and understandings, whether written or oral, are

superseded by said Agreement. If Subscriber is converting from BoardBook Classic™ to BoardBook Premier™, this Agreement supersedes the prior subscription agreement once this Agreement takes effect. If any provision of this Agreement is determined to be illegal, void, or unenforceable, the remainder of the Agreement shall continue to be in force and effect.

15. **Amendments.** Supplier may amend or replace the terms of the Agreement, including pricing and the GTC, by providing Subscriber with at least 30 days prior written notice of the change before renewal of the subscription, and the notice must include the actual change to the Agreement. Subscriber's continued use of BoardBook after the effective date of the change shall constitute acceptance by course of conduct, without necessity of obtaining the Subscriber's signature. Subscriber may opt out of any amendment or change through timely termination of the Agreement, as provided herein.

16. **Notices.** Any notice required by this Agreement shall be in writing and deemed duly tendered when delivered to the respective party. Unless otherwise directed in writing, formal notice to Subscriber shall be sent to the person at the address identified on the Order Form. Formal notice for Supplier shall be sent to the Texas Association of School Boards, Attn: BoardBook Director, at the following address: P.O. Box 400, Austin, TX 78767-0400 (mailing address); or 12007 Research Blvd., Austin, TX 78759-2349 (physical address).

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