



HELPING DISTRICTS SET DIRECTION THROUGH POLICY

## ***License Agreement with Neola, Inc.***

### **I. Parties**

This is an agreement (Agreement) between Neola, Inc. (Neola) and the Board of Education of the \_\_\_\_\_ School District (District).

### **II. Background**

Neola owns certain materials including materials referred to as “Templates.” Among these Templates are

- A. Templates for Board Bylaws and Policies,
- B. Templates for Administrative Guidelines and Forms, and
- C. Templates for Updates to the Board Bylaws and Policies and Administrative Guidelines and Forms.

Neola licenses certain modified versions of the Templates for Board Bylaws and Policies, which are referred to as Board-Adopted Editions of the Bylaws and Policies, and modified versions of the Templates for Administrative Guidelines and Forms, which are referred to as Superintendent-Approved Editions of the Administrative Guidelines. These modified versions may include materials specifically tailored for licensees (e.g. a school board in a school district). Neola also licenses, through an Update Service, certain modified versions of the Templates for Updates, which modified versions supplement or replace portions of the Board-Adopted Editions of Bylaws and Policies or Superintendent-Approved Editions of Administrative Guidelines and Forms. As used herein, the Board-Adopted Editions of the Bylaws and Policies, the Superintendent-Approved Editions of the Administrative Guidelines, and any and all modified versions of the Board-Adopted Editions of the Bylaws and Policies and/or the Superintendent-Approved Editions of the Administrative Guidelines that result from Neola’s Update Service or the District’s initiative that is not related to a Neola Update may collectively be referred to as Licensed Materials.

Neola creates the Licensed Materials by modifying the Templates through interaction with the District, and then Neola makes the Licensed Materials available to the District for the District’s use through digital publishing of the Licensed Materials. The process of modifying the Templates and the digital publishing of the Licensed Materials occurs through a web-based portal. Neola may provide this web-based portal through its own resources or it may contract with a third-party vendor to provide this web-based portal. At the time of signing this Agreement, Neola provides this web-based portal through BoardDocs, which is a product of Emerald Data Solutions, Inc.

### III. District Intentions and Commitments

The District desires, through this Agreement, to:

**(Note: Select and initial the chosen District Intentions.)**

A. license a Board-Adopted Edition of Bylaws and Policies that will be created as set forth in Addendum B and have Neola digitally publish the same as set forth in Addendum B;

\_\_\_\_\_  
Initial Date

B. license a Superintendent-Approved Edition of Administrative Guidelines that will be created as set forth in Addendum C and have Neola digitally publish the same as set forth in Addendum C; and

\_\_\_\_\_  
Initial Date

C. subscribe to Neola's Update Service and thereby license future modified versions of the Board-Adopted Editions of the Bylaws and Policies and/or the Superintendent-Approved Editions of the Administrative Guidelines that will be created as set forth in Addendum E and have Neola digitally publish the same as set forth in Addendum E.

\_\_\_\_\_  
Initial Date

**(Note: End of options.)**

The District acknowledges that the content of Neola's Templates is dynamic because the passage of new laws and promulgation of new regulations occur continually, and these new laws and new regulations may require revision of the Licensed Materials to maintain legal compliance. As a result, and in order to protect its investment in the initial license of these materials, the District acknowledges a need to keep the Licensed Materials current and therefore the District desires to annually renew the Update Service as provided herein.

The District also acknowledges the obligation to use Neola's protocol for modifying and digitally publishing the Licensed Materials. This protocol includes the use of a web-based portal. The District therefore desires to perform certain of its obligations under this Agreement by cooperating in the formation of the Licensed Materials through Neola's designated web-based portal. The District also desires to access the Licensed Materials through Neola's designated web-based portal. The District further acknowledges that in order to maintain the digital publishing of the Licensed Materials, the District must pay Neola an ongoing annual digital publishing Service Fee (the current amount of the fee is set forth in Addendum A).

In view of the following, and for good and valuable consideration, the sufficiency of which is hereby acknowledged, including the fees set forth in the Addenda hereto, the District hereby purchases a license to the Licensed Materials as set forth herein and subscribes to Neola's Update Service as set forth herein. The District also agrees to pay Neola for any of the additional fees set forth in the Addenda including, but not limited to, those fees set forth in Addendum A, which relate, at least in part, to additional consulting fees. The District acknowledges that Neola, at its discretion, may increase the fees set forth in Addenda, particularly with respect to the Update Service. Neola acknowledges that it will provide at least thirty (30) days notice before any increase is to be effective. The Parties acknowledge that as part of creating the Board-Adopted and Superintendent-Approved Licensed Materials through a development process set forth in Addendum B the District will gain the benefit of two (2) Updates, as set forth in Addendum E, at no additional cost to the District.

#### **IV. Policy and Guideline Development and Update Service**

- A. Development Services - In consideration for the District's performance under this Agreement including, but not limited to, performance of all applicable obligations set forth in the Addenda hereto and payment of all applicable fees provided in the Addenda hereto, and in accordance with the District's desires stated above:
1. Neola and the District shall, according to the protocol set forth in Addendum B, develop a modified version of Neola's Templates for Board Bylaws and Policies, which modified version will be licensed to the District as provided below. Neola shall, according to the protocol set forth in Addendum B, digitally publish this Board-Adopted Edition of the Bylaws and Policies; and
  2. Neola and the District shall, according to the protocol set forth in Addendum C, develop a modified version of Neola's Templates for Administrative Guidelines, which modified version will be licensed to the District as provided below. Neola shall, according to the protocol set forth in Addendum C, digitally publish this Superintendent-Approved Edition of the Administrative Procedures and Forms.
- B. Update Service - In consideration for the District's performance under this Agreement including, but not limited to, performance of all applicable obligations set forth in the Addenda hereto and payment of all applicable fees provided in the Addenda hereto, and in accordance with the District's desires stated above, and to the extent that Neola prepares Update Templates, Neola and the District shall, according to the protocol set forth in Addendum E, update the Board-Adopted Edition of the Bylaws and Policies and the Superintendent-Approved Edition of the Administrative Guidelines based upon the Update Templates, which updated version will be licensed to the District as provided below. Neola shall, according to the protocol set forth in Addendum E, digitally publish this updated version of the Board-Adopted Edition of the Bylaws and Policies and/or Superintendent-Approved Edition of the Administrative Guidelines and Forms.

#### **V. License**

Neola hereby grants the District a personal, non-exclusive, non-transferable perpetual license to the District's Board-Adopted Editions of the Bylaws and Policies and Superintendent-Approved Editions of the Administrative Guidelines, as well as any versions thereof that are updated in accordance with this Agreement, all of which may be collectively referred to as Licensed Materials, consistent with the District's intentions as set forth in *Section III – District Intentions and Commitments* above.

This license is limited and restricted to those rights that are necessary for the District to conduct its business and are specifically limited and restricted pursuant to the *Limitations and Prohibitions* provided in *Section VI* below.

Neola owns all copyrights and other intellectual property rights in the Templates and modified versions thereof including the Board-Adopted Edition of the Bylaws and Policies, and Superintendent-Approved Edition of the Administrative Guidelines and Forms, and all intermediary drafts leading thereto, as well as any modified versions of the Board-Adopted Editions of the Bylaws and Policies and/or the Superintendent-Approved Editions of the Administrative Guidelines that result from the Update Service; the protocol of which is set forth in Addendum E.

Neola is not obligated to assign any rights, including copyrights, in any materials to the District. Neola specifically retains all title and ownership in all copies of the Templates and the modified versions thereof including the Board-Adopted Edition of the Bylaws and Policies, the Superintendent-Approved Edition of the Administrative Guidelines and Forms, and all intermediary drafts leading thereto, as well as any modified versions of the Board-Adopted Editions of the Bylaws and Policies and/or the Superintendent-Approved Editions of the Administrative Guidelines that result from the Update Service.

Any "work" made pursuant to this Agreement is not a "work for hire" within the context of Title 17 of the United States Code, and therefore Neola retains all ownership in all "works" created under this Agreement. To the extent that the District collaborates in the creation of any work under this Agreement, the District hereby agrees to assign its rights therein to Neola except as provided below with respect to District-Specific Materials.

Neola acknowledges that the District maintains all ownership in District-Specific Materials or District-specific revisions or deletions in a template that is otherwise copyrighted to Neola (District-Specific Materials). District-Specific Materials include the following:

- A. materials from the District's existing materials that the District requests be incorporated during the drafting process;
- B. new materials that the District develops in their entirety and exclusive of Neola; and
- C. revisions or deletions that substantively depart from Neola's Templates.

The District acknowledges that Neola recommends against the use or incorporation of District-Specific Materials, and while Neola will, at the request of the District, incorporate District-Specific Materials into the Licensed Materials, the District acknowledges that it bears all risks associated with the District's decision to request that such District-Specific Materials be incorporated. Neola reserves the right to, but

is not obligated to, advise the District to seek its own legal review of District-Specific Materials.

Should Neola choose to use District-Specific Materials for purposes outside this Agreement, the District hereby grants Neola a non-exclusive, perpetual license to use, copy, distribute, prepare derivative works of, publicly perform, and publicly display the District-Specific Materials. The District, however, may limit or restrict any license of District-Specific Materials by providing Neola a written communication at the time the materials are provided to Neola regarding the limitation or restriction.

## **VI. Limitations and Prohibitions**

### **A. Copying**

The District is hereby granted permission to make and distribute paper copies of the Templates, the Board-Adopted Edition of the Bylaws and Policies, the Superintendent-Approved Edition of the Administrative Guidelines and Forms, and any intermediary drafts leading thereto, so long as the copies are made for use by the District, or as may otherwise be required by the law, without the express written permission of Neola.

All other copying or distributing of any Neola material, licensed or otherwise, is expressly prohibited without written consent from Neola. Requests for additional copying should be made in writing to Neola in a timely manner.

### **B. No Transferring**

The District is prohibited from assigning, licensing, sub-licensing, or otherwise transferring this license in whole or part. Furthermore, the District is prohibited from selling, renting, leasing, or otherwise transferring the Templates or modified version thereof including the Board-Adopted Edition of the Bylaws and Policies, the Superintendent-Approved Edition of the Administrative Guidelines and Forms, and all intermediary drafts leading thereto.

### **C. Copyright Marking**

The District must retain Neola's copyright marking on any printed copy of the Licensed Materials so long as Neola's intellectual property is still included in any version of the Board-Adopted Edition of the Bylaws and Policies, and/or the Superintendent-Approved Edition of the Administrative Guidelines and/or Forms.

## **VII. Termination**

This Agreement is effective upon its signing by both parties.

Either party may elect to terminate or cancel this Agreement at any time. The party wishing to terminate this Agreement must do so by providing notice of its intention in writing to the other party.

If the District wishes to terminate the Update Service, the District must provide written notice of the same to Neola on or before January 1 or July 1 of any succeeding year. If the District elects to terminate this Agreement, the District is obligated to pay any and all charges for services rendered before the date of the notification.

If the District elects to terminate this Agreement prior to completing its payment obligations under this Agreement, Neola and the District shall jointly determine the amount due and payable by the District based upon materials provided to the District as well as the amount of consultation provided to the District.

Except in the event of a breach by the District, but the District nonetheless elects to terminate this Agreement, and so long as the District completes its payment obligations under this Agreement, then the District may continue to use the Licensed Materials, royalty-free, so long as the use is consistent with terms and conditions provided herein.

Likewise, except in the event of a breach by the District, and so long as the District has made payment for any Finalized Version of revisions obtained under the Update Service, then the District may continue to use, royalty-free, the Finalized Version of the revisions so long as the use is consistent with terms and conditions provided herein.

If Neola elects to terminate this Agreement prior to delivery of the licensed materials, a partial refund may be made upon receipt of all drafting materials from the District. If Neola elects to terminate this Agreement during the Update Service, then the District may use, royalty-free, the materials as provided by Neola so long as the use is consistent with terms and conditions provided herein.

Except in the event of a breach by Neola, while the District may continue to use the materials after termination of this Agreement subject to the terms and conditions herein, Neola's obligations under this Agreement will cease upon the termination.

If the license agreement between Neola and the District is terminated for any of the reasons described in this section, the District will maintain Neola's copyright marking so long as Neola's intellectual property is still included in the revised version of the Board-Adopted Edition of the Bylaws and Policies, and/or the Superintendent-Approved Edition of the Administrative Guidelines and/or Forms so that the District's use is consistent with the terms and conditions set forth herein.

If the license agreement between Neola and the District is terminated for any of the reasons described in this section, the District is still bound by *VI – Limitations and Prohibitions*.

If the District terminates this Agreement, Neola will provide the District with copies of its currently adopted policies, as well as any drafts of proposed revisions currently

under consideration, in digital format. However, although the District has digitally published their Board Bylaws and Policies, Administrative Guidelines, and Forms through Neola, Neola will not be obligated to support the District's digital access to any materials in the event the District terminates this Agreement.

### **VIII. Defenses**

Neola agrees to provide legal assistance or consultation to the District, its officers, and employees so that the District, its officers, and employees can better defend a third-party claim that arises out of Neola's alleged failure to license materials that accurately reflect compliance with applicable Federal or State law. Nothing herein, however, obligates Neola to provide the sole or primary defense to the District, its officers, and employees. Neola may, at its sole discretion, withdraw its assistance in the event that Neola's counsel determines, and so advises Neola, that the disputed matter is not about alleged failure to license materials that accurately reflect compliance with applicable Federal or State law.

The District shall be solely responsible for defending itself, its officers, and employees against any third-party claims having to do with legal compliance issues in District-Specific Materials.

Neola shall be responsible for defending against any third-party claim of infringement of intellectual property based upon content of the licensed materials that is recommended by Neola and subsequently included in the District's Board-Adopted Edition of the Bylaws and Policies and Superintendent-Approved Edition of the Administrative Guidelines.

The District shall be solely responsible for defending itself, its officers, and employees against any third-party claims of infringement of intellectual property based upon any District-Specific Materials.

### **IX. Limited Liability and Hold Harmless**

To the extent permitted by the applicable law, Neola will not be liable to the District, its officers, and employees for any third-party claim, damage, injury, or cost arising from the following:

- A. the District's, its officers', and employees' failure to use or implement the licensed materials, provided that such licensed materials are in compliance with applicable State or Federal law;
- B. the District's, its officers', and employees' failure to correctly interpret the licensed materials, provided that such licensed materials are in compliance with applicable State or Federal law; or
- C. the District's, its officers', and employees' decision to make substantive changes or revisions to the licensed materials.

Although not obligated, Neola may recommend that the District seek its own legal review of any District-Specific Materials. Whether or not the recommendation is made, the District, its officers, and employees agree that Neola has no obligation to verify or approve the accuracy, validity, or completeness of the District-Specific Materials.

Further, the District, its officers, and employees shall not submit for publication by Neola any materials, including District-Specific Materials, that the District does not have the right and/or permission to publish.

Neola shall indemnify and hold the District harmless for any damages arising from a third-party claim of infringement of intellectual property that was based solely upon content of the licensed materials that was recommended by Neola and subsequently included in the District's Board-Adopted Edition of the Bylaws and Policies or the Superintendent-Approved Edition of the Administrative Guidelines. The District shall indemnify and hold Neola harmless for any damages arising from a third-party claim of infringement of intellectual property based upon the content of the District-Specific Materials or upon the content of any other materials contributed by the District and subsequently incorporated into the District's version of a Neola template, even though it was determined that the content contributed by the District did not substantively alter the Neola template.

## **X. Confidentiality**

Nothing in this agreement obligates either party to disclose confidential information.

Each party acknowledges that, during the term of this agreement, it may inadvertently gain access to certain confidential information of the other party concerning the other party's business plans, employees and students' personal information, clients, technology, and products. Confidential information will include, but not be limited to, each party's proprietary software and customer, employee, and/or student information. Each party agrees that it will not use in any way, for its own account or the account of any third party, except as expressly permitted by this agreement, nor disclose to any third party (except as required by law or to that party's attorneys, accountants and other advisors on a need to know basis), any of the other party's confidential information, will take reasonable precautions to protect the confidentiality of such confidential information, and in the unlikely event of an accidental disclosure of confidential information, immediately notify the other party and return or destroy the information as directed by the other party.

## **XI. Insurance**

Neola agrees to secure and maintain at all times during the term of this agreement, at Neola's expense, Professional Liability Insurance covering Neola for all acts or omissions that may give rise to liability for services under this agreement with a \$1,000,000.00 limit of liability. The Neola Associate designated to work with the District shall be covered by this insurance, which shall be provided by a reputable and financially viable insurance carrier. Such insurance shall not be cancelled except upon thirty (30) days written notice to the District. Neola shall provide the District with a certificate evidencing such insurance coverage. Further, Neola agrees to notify the District within seven (7) business days of any material change in the insurance coverage required to be maintained by Neola.

## **XII. General**

This agreement is interpreted under Ohio law, and, where applicable, Federal law, is severable and divisible, and is enforceable in law or equity.



Neither this Agreement nor any right or interest herein may be assigned, transferred, or encumbered by either party without the prior written consent of the other party. Neola shall make no partial assignments of this Agreement including, without limitation, the partial assignment of any right to receive payments or compensation from the District.

Neola is, for all purposes arising under this Agreement, an independent contractor and Neola retains control over the manner and means of carrying out Neola's responsibilities herein. Neola and its officers, agents, or employees may not, under any circumstances, hold themselves out to anyone as being officers, agents, or employees of the District. No officer, agent, or employee of Neola or the District shall be deemed an officer, agent, or employee of the other party. Neither Neola, nor any of its officers, agents, or employees thereof, shall be entitled to any benefits to which employees of the District are entitled, including, but not limited to, overtime, retirement benefits, workers compensation benefits, injury leave, or other leave benefits.

This Agreement represents the only agreement between the parties with respect to the subject matter described herein. All other prior oral or written agreements respecting this subject matter are superseded.

Further, any revisions to this Agreement must be made in writing and approved by both parties, except that Neola, at its own discretion, may and without the consent or approval of the District, may alter the fees set forth in the Addenda, alter the mode or manner in which digital publishing is accomplished, and/or alter the mode or manner by which the Update Service is accomplished. This District acknowledges Neola's right and privileges in this regard and retains the right to terminate this Agreement if it does not agree with any alterations that Neola may make.

***This Agreement is effective as of the date of the last signature of the individuals who have signed below. By their signature, the individuals acknowledge their individual authority to bind their respective party and by their signature so bind their respective party to the duties and obligations defined herein.***

\_\_\_\_\_ School District

Neola, Inc.

\_\_\_\_\_  
signature

\_\_\_\_\_  
signature

Printed Name:\_\_\_\_\_

Sandra E. Krueger

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

Corporate Secretary

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

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

***Please note, this Agreement will be considered void if not executed by \_\_\_\_\_.***