

## **AGREEMENT**

### **Positive Behavioral Interventions and Support Evaluation System – PBISEval™ Internet Access Subscription**

IMPORTANT -- READ CAREFULLY: This Agreement ("Agreement") is a legal agreement between your organization or entity (hereinafter referred to as "Licensee") and the State of Oregon, acting by and through the State Board of Higher Education on behalf of the University of Oregon, an institution of higher education located in Eugene, Oregon ("Oregon") for use of the Positive Behavioral Interventions and Support Evaluation System ("PBISEval" or PBIS Evaluation). This Agreement is effective as of the date of the Licensee's authorized signature below ("Effective Date").

### **BACKGROUND**

1. PBIS Evaluation is a web-based progress monitoring service that permits specific district and state-level organizations such as the Licensee to monitor and review selected area-wide administrative data and generate automated reports (collectively "Data") in a manner that does not disclose personally identifiable information (also see Attachment A).
2. PBIS Evaluation was developed at Oregon, and Oregon may license it to Licensee in accordance with this Agreement; and  
NOW, THEREFORE, in consideration of the promises, conditions, and representations contained herein, Licensee agrees as follows:

### **LICENSEE INFORMATION**

Organization: \_\_\_\_\_  
Address: \_\_\_\_\_  
Address: \_\_\_\_\_

Note: This Agreement must also indicate the requested names of the Authorized User(s) as well as the Preferred Account Name and Password in the space provided in Appendix A for the Licensee organization above.

### **DEFINITIONS**

1. "SWPBIS" means School-Wide Positive Behavioral Interventions and Support (Attachment A)
2. "SWIS" means School-Wide Information System (Attachment A)
3. "Authorized Users" are those individuals specifically and officially affiliated with the Licensee whose duties justify their need to access the PBIS Evaluation, and who have agreed in writing to maintain the confidential status of and to restrict access to the PBIS Evaluation as set forth in this Agreement. For example, those serving in the capacity of district or state SWIS or SWPBIS coordinators or evaluators, and those serving as formal evaluators for district or state SWIS or SWPBIS coordinators, are eligible to participate as Authorized Users.
4. "Authorized Site" is one office location or building comprising the Licensee's administrative offices. Extensions or related offices located in separate locations are considered separate Authorized Sites and will require a separate agreement for access to PBIS Evaluation

unless otherwise agreed to in writing by Oregon.

## TERMS AND CONDITIONS

### 1. Licensee's Rights

Oregon hereby grants to Licensee the non-exclusive, non-transferable right to do the following for non-commercial education and research purposes only:

- A. Access the PBIS Evaluation website
- B. Generate reports using the PBIS Evaluation website

Licensee shall not use the PBIS Evaluation for any other purpose and Licensee must contact Oregon to request permission to use the PBIS Evaluation in any other manner.

### 2. Oregon's Retained Rights

Oregon reserves and retains all rights of every kind and nature except those specifically granted to Licensee in this Agreement, including but not limited to the right to grant any rights to the PBIS Evaluation to other persons or entities upon such terms and conditions as Oregon shall accept.

### 3. Access and Permitted Use

A. Access. Access within the Authorized Site is restricted to Authorized Users. Only those Authorized Users whose names have been submitted by the Licensee to Oregon shall have access to the PBIS Evaluation and any violation shall constitute a default. Licensee is responsible for providing reasonable security to ensure that only Authorized Users have access to PBIS Evaluation. Licensee shall not transfer, sublicense or provide unauthorized access to PBIS Evaluation or documentation supporting it to any third parties without prior written authorization of Oregon.

B. Licensee shall be solely responsible for obtaining any consent which may be necessary under federal or state laws, or school district policy, to enable and permit Licensee to use the Data or further share such Data with third parties.

### 4. Payment

A. Oregon will invoice Licensee by billing the Licensee's Organization as indicated above or a Third Party Payer (as defined below) and such fee for services (as is further specified in Attachment A) shall be due and payable upon receipt ("License Fee"). Licensee may designate an entity other than Licensee (such as a state department of education or a research project) to pay the License Fee on Licensee's behalf ("Third Party Payer"), provided that the Third Party Payer submits a signed Billing Agreement to Oregon to confirm that they will pay such License Fee. The Licensee or its Third Party Payer agrees to pay Oregon the appropriate License Fee within 30 days of receipt of the invoice from Oregon. Any payments provided by Licensee or by the Third Party Payer to Oregon shall be irrevocable by Licensee or by the Third Party Payer, except as provided in Section 5B(ii), and shall be made in U.S. dollars. Upon receipt of a completed, signed

Agreement and receipt of License Fee, PBIS Evaluation system access will be activated.

- B. Licensee agrees to pay Oregon the appropriate License Fee specified on supplemental invoices, received, if any, if the Licensee adds additional Authorized Sites.
- C. Licensee shall complete all financial administration required by Licensee.

5. Term and Termination

A. Term. The term of this Agreement shall commence on the Effective Date and shall continue for 12 months (“License Term”) or until otherwise terminated in accordance with this Section 5.

B. Termination.

(i) Termination for Default. Breach of any material term or condition of this Agreement by Licensee shall be grounds, at Oregon’s sole discretion, for immediate termination of this license.

(ii) Termination for Convenience. Either party may cancel the Agreement at any time by providing the other party with sixty (60) days prior written notice. In the case of such termination by Oregon, the Licensee shall receive a pro-rated refund of the unused License Fee, such amount to be based on remaining months of service as determined by Oregon. In the case of such termination by Licensee, License Fees shall be non-refundable.

C. No Use after Termination. Upon termination of this Agreement, Licensee and all Authorized Users shall cease using any portion of PBIS Evaluation.

D. Licensee’s Obligations after Termination. Termination of this Agreement shall not extinguish any of Licensee’s obligations under this Agreement which by their terms continue after the date of termination.

6. License Renewal

A. At the end of the initial License Term, Licensee may renew for additional one year terms by payment of an additional License Fee in response to an invoice from Oregon “License Renewal”. Any renewal is subject to the approval of Oregon which may be granted or withheld in its sole discretion.

B. If the License Renewal payment is not received within 60 days following the end of the current License Term, access to PBIS Evaluation will expire. Oregon reserves the right to modify the terms of this Agreement for any renewal period including the modification of the fees for any renewal period upon thirty (30) days prior written notice.

7. Delivery

A. It is the responsibility of the Licensee and the Authorized Users to establish and maintain Internet connections for access to the PBIS Evaluation website and to provide and install suitable Internet web browsers and any other software necessary to access

PBIS Evaluation.

B. Oregon shall use reasonable efforts to provide continuous availability of the PBIS Evaluation System database through the Internet. It is understood that availability will be subject to periodic interruption due to maintenance of the server(s), installation or testing of software, the loading of new information files, and downtime related to equipment or services outside the control of Oregon including public and private telecommunications services or Internet nodes or facilities.

8. Indemnification, No Warranty, and Limitation of Liability

A. Indemnification. To the extent permitted by law, Licensee hereby agrees to indemnify and hold harmless Oregon and its officers, directors, agents, volunteers and employees, from and against any and all claims, demands, damages, costs, and other related items ("Claims") arising or in any way connected with the use of or access to PBIS Evaluation by Licensee or by any third party use of or access to PBIS Evaluation through Licensee. Licensee assumes all liability for decisions made using Data reported from PBIS Evaluation.

B. NO WARRANTY AND LIMITATION OF LIABILITY. OREGON PROVIDES ACCESS TO PBIS Evaluation ON AN "AS IS" BASIS. LICENSEE AGREES TO BEAR ALL RISKS ASSOCIATED WITH THE USE OF PBIS Evaluation. OREGON MAKES NO REPRESENTATIONS OR WARRANTIES, EXPRESS OR IMPLIED. BY WAY OF EXAMPLE, BUT NOT LIMITATION, OREGON MAKES NO REPRESENTATIONS OR WARRANTIES OF MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE (EVEN IF OREGON KNOWS OF SUCH PURPOSE), OR THAT THE USE OF PBIS Evaluation WILL NOT INFRINGE ANY PATENTS, COPYRIGHTS, TRADEMARKS OR OTHER RIGHTS OF THIRD PARTIES. LICENSEE HEREBY DISCHARGES AND RELEASES OREGON AND ALL OF ITS RESPECTIVE AGENTS, EMPLOYEES AND VOLUNTEERS, FROM ANY AND ALL LIABILITY, CLAIMS, CAUSES OF ACTIONS, DAMAGES OR DEMANDS OF ANY KIND AND NATURE WHATSOEVER WHICH MAY ARISE FROM OR IN CONNECTION WITH LICENSEE'S USE OF PBIS Evaluation.

C. Licensee acknowledges and agrees that Oregon's liability, if any, is subject to the limitations and conditions of the Oregon Tort Claims Act, Oregon Revised Statutes sections 30.260-30.300, and the Oregon Constitution, Article XI, Section 7.

9. General

A. Assignment

This Agreement may not be assigned or transferred by Licensee.

B. Entire Agreement, Modification, and Waiver

This Agreement sets forth the entire agreement between the parties with respect to the subject matter hereof, and may not be modified or amended except by written agreement executed by the parties hereto. No waiver, consent, modification, or change of any terms of this Agreement shall be binding unless the same is in writing and signed by both

parties and all necessary approvals have been obtained. Such express waiver, consent modification, or change, if made, shall be effective only in the specific instance and for the specific purpose set forth in such signed writing.

C. Licensee's Authority

Licensee represents and warrants that the individual executing this Agreement on behalf of Licensee is duly authorized to execute and deliver this Agreement on behalf of Licensee in accordance with duly adopted organizational documents or agreements and if appropriate a resolution of Licensee, and that this Agreement is binding upon Licensee in accordance with its terms.

D. Force Majeure

Oregon's failure to perform any term or condition of this Agreement as a result of conditions beyond its control such as, but not limited to, war, strikes, fires, floods, acts of God, governmental restrictions, power failures, or damage or destruction of any network facilities or servers, shall not be deemed a breach of this Agreement.

By authorized signature below, Licensee accepts and agrees to be bound by the terms and conditions of this Agreement:

For Licensee:

\_\_\_\_\_, \_\_\_\_\_  
Name Date

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

\_\_\_\_\_  
Title

## ATTACHMENT A

### Positive Behavior Support Evaluation System – PBISEval™

District and State Level Evaluation of  
School-wide Positive Behavior Support:  
*PBIS Evaluation*

#### Background:

School-wide positive behavior interventions and support (“SWPBIS”) is a behaviorally-based discipline approach designed to improve the educational and social environment for all students by making problem behavior less effective and relevant, and desired behavior more functional. Thousands of schools across the United States have adopted (or are adopting) SWPBIS as an approach for improving their social culture and educational effectiveness. A central feature of SWPBIS is the regular collection and use of data for decision making. The School-Wide Information System (“SWIS”) is a separate web-based information system which helps school personnel collect and use office referral data to design school-wide and individual student interventions as part of a SWPBIS program.

#### **PBIS Evaluation**

PBIS Evaluation is a web application designed for use by school district and state-level evaluation units focusing on SWPBIS. The purpose of PBIS Evaluation is to provide state and district evaluators with timely, accurate and targeted information that can be used to assess (a) if SWPBIS is being implemented with fidelity, and (b) if implementation is associated with improvements for children. This emphasis on continuous evaluation extends beyond individual schools to districts, regions and states. One of the most effective ways to improve educational settings is to define clearly what outcomes are valued (e.g. academic success, social competence), then regularly assess those outcomes and the practices that led to them. PBIS Evaluation has been created to make that process feasible and useful.

Historically, schools have not had efficient and valid ways to regularly monitor (a) progress toward use of effective practices, and (b) the impact of those practices on students. The PBIS Evaluation application enables school districts and state evaluation units to monitor important measures of progress. PBIS Evaluation is designed for use by evaluators (either at the state or district level) who are assessing the implementation of SWPBIS.

PBIS Evaluation is a password-protected web application that allows state and district evaluators to obtain summary information at the (a) individual school, (b) district, or (c) state level to answer the following questions:

1. What (and how many) schools are involved in implementing SWPBIS?
2. To what extent are schools implementing SWPBIS at criterion?
3. To what extent are schools perceived as safe environments?
4. What are the office discipline referral patterns?
5. Is there a difference in the office discipline referral patterns or school safety perceptions for schools that are or are not implementing SWPBIS at criterion?

# Positive Behavior Support Evaluation System – PBISEval™

(Continued)

Data used to address these questions come from:

1. Office discipline referral patterns reported through [www.swis.org](http://www.swis.org)
2. Team Implementation Checklist data reported through [www.pbisassessment.org](http://www.pbisassessment.org)
3. School Safety Survey data reported through [www.pbisassessment.org](http://www.pbisassessment.org)
4. School-wide Evaluation Tool data reported through [www.pbisassessment.org](http://www.pbisassessment.org)
5. SAS Self-Assessment Survey data reported through [www.pbisassessment.org](http://www.pbisassessment.org)
6. Benchmarks of Quality data reported through [www.pbisassessment.org](http://www.pbisassessment.org)

Data from these sources are summarized and reported without student names, staff names or school names.

**FEES:** \$1,000 per year for state-level, \$750 for regional-level, and \$500 per year for district-level data access.

**NOTE:** Schools involved in implementation should be using SWIS, found at [www.swis.org](http://www.swis.org) (available under a separate license from the University of Oregon), and entering implementation data using the [www.pbisassessment.org](http://www.pbisassessment.org) website. Summary information is available at the district, regional and state levels in PBIS Evaluation *only* if the data have been entered into the SWIS and/or PBIS Assessment web applications by the local schools and *only* if such schools have given permission to have their data summarized for evaluation purposes.

Access to PBIS Evaluation is available through execution of annual licensing agreements. Only those state or district individuals formally involved in assessment of SWPBIS evaluation and impact (e.g. district and state level SWIS and SWPBIS coordinators) are eligible to request a license, and such license shall be authorized to include only the specific data for which the evaluation unit has authority and is involved, for example the specific schools within a district or districts within a state. For more information about PBIS Evaluation and the process for adopting PBIS Evaluation, please visit the PBIS Evaluation home page at [www.PBISEval.org](http://www.PBISEval.org)

## APPENDIX A

### Authorized Users:

SWIS or SWPBIS coordinators or evaluators:

1. Name: \_\_\_\_\_  
Email: \_\_\_\_\_
2. Name: \_\_\_\_\_  
Email: \_\_\_\_\_

3. Name: \_\_\_\_\_  
Email: \_\_\_\_\_

4. Name: \_\_\_\_\_  
Email: \_\_\_\_\_

**Each user must complete the Evaluator Information Form. Please return the Evaluator Forms with this License Agreement.**

**Do you want an organizational account for your District/Region/State Team? This will allow one shared account for saving cohorts. If so, please enter a universal email address (e.g. [pbiseval@oregondistrict.us](mailto:pbiseval@oregondistrict.us)) and password:**

**User Name:** \_\_\_\_\_

**Password:** \_\_\_\_\_