



## HR Suite Subscriber Agreement

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### TERMS OF SERVICE – SUBSCRIBER AGREEMENT

#### 1. Acceptance of Terms

By electronically signing this Agreement, or by using any part of our services, you are stating that you have read and understand this Agreement, and that you agree to be bound by the terms in effect and as periodically updated by HR Performance Solutions (HRPS). The terms “you” and “your” shall refer to the credit union electronically signing this Agreement. The terms “we,” “us,” and “our” shall refer to HRPS.

If you do not agree to all the terms of this agreement, please leave the current web page and do not continue with the sign up process. HRPS will promptly cancel this transaction and you may not access, use, or install any part of our services.

#### 2. Service Terms and Limitations

a. **Description of Services.** Upon your acceptance of this Agreement, HRPS grants you a limited, non-transferable, non-exclusive, revocable right to obtain access to HR Suite Policy Manual (“Service”). Unless explicitly stated otherwise, any new features that augment or enhance the current Service shall be subject to this Agreement.

b. **Availability of Services.** HRPS shall use commercially reasonable efforts to provide access to the Service twenty-four hours a day, seven days a week throughout the term of this Agreement. You accept that from time to time the Service may be inaccessible or inoperable for various reasons, including scheduled maintenance procedures or upgrades or certain unscheduled Service or equipment malfunctions that are beyond the control of HRPS such as the interruption or failure of telecommunication or digital transmission links, hostile network attacks, network congestion, or other failures.

c. **Service Level.** In the event that HRPS discovers or is notified by you of the existence of Non-Scheduled Downtime, we will use commercially reasonable efforts to determine the source of the problem and attempt to resolve it as quickly as possible.

d. **Equipment.** You are solely responsible for ensuring compatibility with the Service, providing and maintaining all hardware, software, electrical, and other physical requirements for your use of the Service, including, without limitation, telecommunications and internet access connections and links, web browsers, equipment, programs, and services required to use and access the Service.

#### 3. Security, Your Accounts, and Passwords

HRPS shall operate and maintain the Service in good working order with access restricted to qualified employees of your organization and to technical staff who may assist you. You shall undertake and perform reasonable measures designed to ensure the security, confidentiality, and integrity of all messages and content that you receive, transmit through, or store on the Service. You shall be solely responsible for any authorized or unauthorized access to your account by any person that has occurred as a result of your utilization of these Services. You agree to bear all responsibility for the confidentiality of your passwords and all use or changes incurred from use of the Service through your passwords. Additionally, you agree to immediately notify HRPS of any unauthorized use of your password or account or any other security breach and ensure that you exit from your account at the end of each session. HRPS cannot and will not be liable for any loss or damage arising from your failure to comply with this Section. HRPS strongly discourages use of Social Security Numbers or other confidential identifiers as Usernames or Passwords and is not responsible for their misuse. Finally, you warrant to HRPS that your representations as to your identity will be truthful.

#### **4. Privacy**

HRPS will not disclose any information about your company accounts, including their contents, without your prior consent unless HRPS has a good faith belief that such action is necessary to (i) comply with legal process or other legal requirements of any governmental authority; (ii) protect and defend the rights or property of HRPS; or (iii) enforce this Agreement. HRPS may provide certain information in aggregate form collected from and relating to you to third parties such as advertisers and business partners. Please see our privacy policy at <https://hrsuite.hrnonline.com/privacy.php> for more information.

#### **5. Confidential Information**

Each party may provide to the other certain confidential, proprietary, and trade secret business or technical information in connection with this Agreement ("Confidential Information"). The parties expressly agree that the Service, any accompanying technical documentation, User Content, and the terms of this Agreement shall be deemed to be Confidential Information at all times unless expressly agreed otherwise. Each party agrees to preserve the Confidential Information that is provided as the result of this Agreement, and shall not, without the prior written consent of the other party, disclose or make available to any person, or use for its own or for any other person's benefit, other than as necessary in performance of its obligations under this Agreement, any Confidential Information. You shall have the right to disclose the terms of this agreement to your insurance companies as well as to your legal, financial, and accounting advisors. You are also able to disclose the Agreement if such disclosure: (1) is in response to a valid order of a court or other government body of the United States; (2) is otherwise required by law; or (3) is otherwise necessary to establish rights and enforce obligations under this Agreement, but only to the extent that any such disclosure is necessary.

## 6. Your Obligations

a. **Registration.** In consideration of your use of the Service, you agree to provide true, accurate, current, and complete information about yourself and your organization. Further, you represent and warrant that you: (i) are over 18 years of age, (ii) have the power and authority to enter into and perform obligations under this Agreement, and (iii) are authorized by your League to use this Service.

b. **Responsibility for Content.** You understand that all information, data, text, software, sound, photographs, graphics, messages, or other materials ("Content"), whether publicly posted or privately transmitted, are the sole responsibility of the person from whom such Content originated. This means that you, and not HRPS, are entirely responsible for all Content that you upload, post, e-mail or otherwise transmit via the Service. HRPS does not control the Content posted via the Service and, as such, will not be liable in any way for any Content. Although we do not prescreen Content, HRPS and our designees shall have the right (but not the obligation) in our sole discretion to refuse or remove any Content that is available via the Service. Without limiting the foregoing, HRPS and its designees shall have the right to remove any Content that violates this Agreement or is otherwise objectionable.

c. **Confidentiality of Information.** You agree that the master content and any content customized content that contains the essential master content is the property of HRPS, and may be used only for the purpose of developing the Operations Manual for your credit union. You agree not to reproduce, duplicate, modify, copy, sell, resell, distribute, create derivative works, or exploit any portion of the Service, use of the Service, or access to the Service. Failure to comply with this section can result in immediate termination of your access to the Service.

d. **Prohibited Uses.** You understand that you are solely responsible for any and all acts and omissions that occur under your account or passwords, and you agree not to engage in any unacceptable use of the Service which includes, without limitation, use of the Service to: (i) disseminate, store or transmit unsolicited messages, "spam," chain letters, or unsolicited commercial e-mail; (ii) disseminate or transmit material that is unlawful or material that, to a reasonable person, may be abusive, harmful, invasive of another's privacy, obscene, pornographic, defamatory, harassing, grossly offensive, vulgar, threatening, or malicious; (iii) disseminate, store or transmit files, graphics, software or material that actually or potentially infringes the copyright, trademark, patent, trade secret or other intellectual property right of any person or entity; (iv) create a false identity or to otherwise attempt to mislead any person as to the identity or origin of any communication; (v) export, re-export or permit downloading of any message or content in violation of any export or import law, regulation or restriction of the United States and its agencies and authorities, or without all required approvals, licenses or exemptions; (vi) interfere, disrupt or attempt to gain unauthorized access to other accounts on the Service or any other computer network; (vii) disseminate, store or transmit viruses, Trojan horses or any other malicious code or program; (viii) upload, post, email or otherwise transmit any Content that you do not have a right to transmit under any law or under contractual or

fiduciary relationships; (ix) harm minors in any way; (x) interfere with or disrupt the Service or servers or networks connected to the Service; or (xi) disobey any requirements, procedures, policies, or regulations related to the Service.

## 7. Fees and Payment Terms

a. **Payment.** The fee to access the content of the manual is paid by your League and HRPS will not charge you for access as long as the agreement with your League is in effect and as long you are an affiliated member of your League in good standing. Should the agreement between HRPS and your League be terminated, your access to the Service will be terminated as described in Paragraph 10. Should you cease to be a member of your League, your access to the manual may be terminated as described in Paragraph 10.

Should the agreement between HRPS and your League be terminated, or should you disaffiliate with your League, **you may restore your access to the Service by paying HRPS the applicable renewal fee for HR Suite clients and by signing an appropriate agreement with HRPS. You shall pay HRPS for each Service application upon commencement of such Service. Services provided for an annual term (or those for longer periods) will be payable in full, in advance. Thereafter, you will be billed 45 days in advance for Services provided and renewable on an annual (or longer) basis. Those Services provided on a monthly basis will be invoiced monthly, in advance. Services will be renewed at then current HRPS rates and terms. We expressly reserve the right to change fees at any time but will give you 45 days' advance notice.**

## 8. General Practices Regarding Use and Storage

You acknowledge that HRPS may establish general practices and limits concerning use of the Service, including, without limitation, the maximum disk space allotted on HRPS's servers on your behalf. You agree that HRPS has no responsibility or liability for the deletion or failure to store any messages and other communications or other Content maintained or transmitted by the Service and that no security system can guarantee information, guarantee complete security, or prevent all unauthorized access.

## 9. Service Modifications

HRPS reserves the right to periodically and at any time modify or discontinue, temporarily or permanently, the Service (or any part thereof) with or without notice. If HRPS discontinues the Service for more than 15 days or modifies the Service to the extent that it no longer fulfills its original purpose, and you are not in default in any of your obligations at the time HRPS does so, you shall be entitled to receive all documents involved in an electronic format which you may thereafter use in any manner for your own business operations. Other than your right to receive documents in an electronic format, you agree that HRPS shall not be liable to you or to any third party for any modification, suspension, or discontinuance of the Service.

## 10. Termination

Either party may terminate this Agreement at any time upon written notice to the other personally delivered or sent by certified mail, postage prepaid, nationally recognized delivery service with delivery confirmed or telexed or by telecopy with receipt confirmed to the other party at its principal place of business.

In the event that your League should terminate its agreement under which it is paying for your access to the services provided for in this agreement, you will be notified within 60 days prior to the service discontinuation.

In the event that you disaffiliate with your League, your access to the Service may be terminated immediately upon notification.

Should the agreement between HRPS and your League be terminated, or should you disaffiliate with your League, **you may continue your access to the Service by paying HRPS the current applicable Service renewal fee and by signing an appropriate agreement with HRPS. See Paragraph 7.**

***Effect of Termination.*** Within thirty days of such termination, each party will return or destroy the other party's Confidential Information as defined below. Sixty days after termination, HRPS will remove your Content from its servers. The provisions of Sections 3, 4, 5, 8, 10, 11, 12, 13, 14, 15, 17, 19, 22 and 23 shall survive the termination of this Terms of Service Agreement. Notwithstanding the forgoing, and notwithstanding that HRPS has no liability to you for its failure to store or backup Content, any Content, or other messages. Communication or information stored on HRPS servers may be deleted (automatically or manually) by HRPS any time after 60 days after the expiration or termination of the Services provided to you under this Agreement.

## 11. Disclaimer of Warranties

a. ***No Legal Advice Provided.*** HRPS Services and materials are designed to provide accurate and authoritative information with regard to the subject matter covered. In producing these materials, HRPS is not engaged in rendering legal or other professional services. If legal advice or other expert assistance is required, the services of a competent professional should be sought.

b. ***Errors and Omissions.*** As no published work can be totally current, all information should be checked against the most recent developments by a qualified professional. HRPS uses care in publishing materials and makes every attempt to provide accurate information. However, we cannot guarantee their accuracy or completeness. Errors and omissions may occur. HRPS will make reasonable efforts to correct any errors or omissions but makes no representation regarding the accuracy of information provided.

c. ***No Creation of Warranties.*** Except for the express warranties set forth in this agreement, your use of the service is on an "as is" basis without warranty of any kind and is at your own risk. Hrps will use its commercially reasonable efforts to maintain

acceptable performance of the service. However, we provide no warranties whatsoever and do not make and hereby disclaim, any and all express and implied warranties, including but not limited to, warranties of merchantability, fitness for a particular purpose, non-infringement, and any warranties arising from course of dealing, usage or trade practice.

d. HRPS does not warrant that the service or information obtained by you through the service will (i) meet your requirements or expectations, (ii) be uninterrupted, timely or error-free, (iii) be completely secure, or (iv) that errors in the service will be corrected. nor do we make any warranty as to any results that may be obtained by use of the service.

e. Any material downloaded or otherwise obtained through the use of the service is done at your own discretion and risk. You will be solely responsible for any damage to your computer system or loss of data that results.

f. No advice or information, whether oral or written, obtained by you from HRPS or through or from the service shall create any warranty not expressly stated in this agreement.

## **12. Indemnification**

You agree to indemnify, hold harmless, and defend HRPS, its shareholders, directors, officers, employees, agents, affiliates, co-branders or other partners from and against any action, cause, claim, damages, debt, demand, or liability, including reasonable costs and attorney's fees, asserted by any person or entity, arising out of or relating to: (i) your use of the Service, including any data or work transmitted or received by you; (ii) your connection to the Service; and (iii) any unacceptable use by you of the Service, including, without limitation, any statement, data, or content made, transmitted or republished by you which is prohibited.

## **13. Limitation of Liability**

You agree that if you are dissatisfied with the Service, your sole and exclusive remedy shall be to discontinue use of the Service and terminate this Agreement by notice to us in accordance with Section 10.

Under no circumstances shall HRPS be liable to you or any other person for any direct, indirect, incidental, consequential, special, or punitive damages for any matter arising from or relating to this agreement, the service, or the internet generally. This exclusion from liability includes, but is not limited to, damages for loss of profits, goodwill, use, data, or other intangible losses (even if HRPS has been advised of the possibility of damages) resulting from: (i) your use or inability to use the service; (ii) any changes to or inaccessibility of the service; (iii) delay, failure, unauthorized access to or alteration of any transmission or data; (iv) any material or data sent or received or not sent or received; (v) the cost or procurement of substitute services; or (vi) any data, statements, conduct, or material from a third person accessed on or through the service. This exclusion from

liability applies whether such liability is asserted on the basis of contract, tort, or anything else.

#### **14. Reliance on Warranty and Liability Limitations**

The parties acknowledge that HRPS has set its prices and entered into its agreement with your league in reliance upon the limitations of liability and the disclaimers of warranties and damages set forth herein. The parties agree that the limitation and exclusions of liability and disclaimers specified in this agreement will survive termination of this agreement.

#### **15. Exclusions and Limitations**

Some states prohibit the exclusion of certain warranties or the limitation or exclusion of incidental or consequential damages, thus some of the above limitations may not apply to you. If the foregoing limitations are held to be unenforceable, HRPS's cumulative liability under this agreement, including any cause of action in contract, tort, or strict liability, shall be strictly limited to the service fees paid by your league during the 12 months prior to such event. You release HRPS from all obligations, liabilities, claims or demands in excess of the limitation.

#### **16. Business Dealings with Partners, Links, Advertisers, and Other Third Parties**

Your business dealings with partners, advertisers, links to other web sites, and other third parties found on or through the Service, including payment and delivery of goods or services, and any other terms, conditions, warranties, or representations associated with such dealings, are solely between you and such third parties. You agree that HRPS shall not be responsible or liable for any loss or damage of any sort incurred as the result of such dealings or as the result of the presence of such third parties on the Service. HRPS is not responsible for the availability of such external sites or resources and is not responsible or liable for any content, products, or other materials on or available from such resources.

#### **17. Proprietary Rights**

You acknowledge and agree that the Service contains proprietary and confidential information that is protected by applicable intellectual property and other laws. Exclusive of your Content and Data, HRPS shall retain all right, title, and interest (including copyright, trademark, and other proprietary and intellectual property rights) relating to the Services, all legally protectable elements, and derivative works. You also agree that information contained in advertisements or information presented to you through the Service or third parties is protected by copyright, trademark, patents and other proprietary rights. You shall retain all right, title, and interest in your Content and Data. HRPS may

place copyright and/or proprietary notices, including hypertext links, within the Services. You may not alter or remove such notices without HRPS's written permission.

Your Content and Data shall not include anything that actually or potentially infringes or misappropriates the copyright, trademark, or intellectual property right of any other person, or contains anything that is obscene, defamatory, harassing, offensive or malicious. You agree not to display or use in any manner, any HRPS trademarks without HRPS's prior written permission. User will not, directly or indirectly, reverse engineer, decompile, or otherwise attempt to derive source code or other trade secrets from HRPS. You agree not to reproduce, duplicate, modify, copy, sell, resell, distribute, create derivative works, or exploit any portion of the Service, use of the Service, or access to the Service. You agree not to access the Service by any means other than through the interface provided by HRPS.

## **18. Digital Signature Provisions**

You represent and warrant that the individual electronically agreeing to the terms of this Agreement is empowered to agree to this Agreement on your behalf. You further agree that clicking the "AGREE" button below constitutes an electronic signature as defined by the Electronic Signatures in Global and National Commerce Act and that the Agreement is completely valid, has legal effect, is enforceable, and is binding on and non-refutable by you.

## **19. Notices & Amendments**

Notices to you may be made via either email or regular mail and shall be deemed to be delivered when sent. The Service may also provide notices of changes to this Agreement or other matters by displaying notices or links to notices to you on the Service. Your access to or use of the Service after the date such amended terms are delivered to you shall constitute acceptance of such amended terms.

## **20. Assignment**

You may not assign any of your rights, duties, or obligations under this Agreement to any person or entity, in whole or in part, and any attempt to do so shall be deemed void and/or a material breach of this Agreement.

## **21. Waiver**

No waiver of any Agreement provision, right or remedy shall be effective unless in writing and signed by the party against whom such waiver is sought to be enforced. No delay in exercising, no course of dealing with respect to, or no partial exercise of any right or remedy hereunder shall constitute a waiver of any other right or remedy, or future exercise thereof.

## **22. Mediation and Arbitration**

If a dispute arises out of or relates to this Agreement, or the breach thereof, and the dispute cannot be settled through negotiation, the parties agree first to try in good faith to settle the dispute by mediation administered by the American Arbitration Association under its Commercial Mediation Rules. Any controversy or claim arising out of or relating to this Agreement, or its breach, that is not resolved through mediation shall be settled by arbitration administered by the American Arbitration Association under its Commercial Arbitration Rules, and judgment on the award rendered by the arbitrator(s) may be entered in any court having jurisdiction. Any mediation or arbitration shall be held in Wayne County, Michigan, or in such other place as the parties may agree, in writing.

## **23. Applicable Law**

This Agreement shall be governed in all respects by the laws of the State of Michigan without regard to its conflict of law provisions.

## **24. Force Majeure**

If the performance of any part of this Agreement by either party is prevented, hindered, delayed, or otherwise made impracticable by reason of any flood, riot, fire, judicial or governmental action, labor dispute, act of God or any other cause beyond the control of either party, that party shall be excused from such to the extent that it is prevented, hindered, or delayed by such cause.

## **25. Headings**

The captions and headings of this Agreement are included for ease of reference only and will be disregarded in interpreting or construing this Agreement.

## **26. Entire Agreement**

This Agreement constitutes the complete and exclusive statement of the agreement between the parties with respect to the Service and supersedes any and all prior or contemporaneous communications, representations, statements, and understandings, whether oral or written, between the parties concerning the Service. You may also be subject to additional terms and conditions that apply when you use affiliate services, third-party content or third-party products. We reserve the right to change, amend or modify Agreement without notice or consent.