

## TERMS AND CONDITIONS OF USE

The terms and conditions set forth below (collectively, this "Agreement") apply to your use of the K12PaymentCenter™ website, call center, payment service and related facilities (collectively, the "Facilities"). By checking the consent box on the registration page or by using the Facilities, you agree to the terms and conditions of this Agreement. As used herein, "we," "our" or "us" means Education Management Systems, Inc., and "you" or "your" means any person or entity using the Facilities. This Agreement affects your rights and you should read it carefully.

### 1. USE OF FACILITIES.

(A) You can use the Facilities to prepay your student's school for goods and services sold by the school (i.e., school meals) ("Prepayments"). The Facilities may not be used by anyone who is not at least 13 years old.

(B) You also may be able to use the Facilities to obtain information about the balance of Prepayments at your student's school. You authorize us and your student's school to share information in connection with our operation of the Facilities.

(C) Certain school districts have an optional premium service level. A one-time fee may be required to establish a premium account. The amount of the fee will depend on the contracted arrangements between us and your student's school district. It is exclusive of any fees required when you make payments to your student's school district. Your student will not receive credit for this fee and this fee is non-refundable.

(D) The use of electronic checks to make payments within the Facilities is governed by the following terms. When you make a payment through the Facilities by electronic check, you are requesting an electronic fund transfer from your designated bank account. Upon receipt of such request, we will make electronic transfers via the Automated Clearing House ("ACH") system from your U.S. bank account in the amount specified. Your request constitutes your authorization for such electronic transfers to be made by us. We reserve the right to charge a service ("collection") fee for any ACH transactions that result in a returned ACH item, such as but not limited to those caused by insufficient funds in your bank account, closure of your bank account, or if the bank account number or other information you provided is incorrect. Should we impose a service fee, it will be above and beyond any fees that your financial institution may charge. Furthermore, you authorize us to collect that fee via the ACH system using the bank information you have provided. We reserve the right to resubmit for collection any ACH debit authorized by you that is returned for insufficient or uncollected funds. In the event that we are unable to collect the monies or fees, we reserve the right to debit your child's school account. You must provide a valid bank account to be electronically debited by us. Please be advised that we reserve the right to reject any accounts at certain banks for the use of our Facilities. In addition, we may require additional information and confirmation at our sole discretion or at the discretion of your School. In general, consumer and business checking and savings accounts are permitted for designation and use of us; note that some cash management, sweep, and/or investment accounts will not permit use of the Facilities. It is very important that you contact us as well as contact your financial institution/bank at once if someone has transferred or may transfer money from your account without your permission. Under applicable banking regulations, the extent of your liability for an unauthorized transaction is largely determined by your promptness in notifying your bank if a transfer or withdrawal in your monthly statement is incorrect or unauthorized. Please be sure to review your terms and conditions as provided to you by your financial institution/bank related to your Electronic Fund Transfer Rights and Error Resolution.

### 2. PASSWORDS.

You will receive a user password to use the Facilities. You shall be responsible for protecting the confidentiality of the user password and should not permit any other person to use your password.

### 3. PAYMENTS TO SCHOOLS.

(A) You may make payments by using a credit card. Your student's school receives directly the proceeds of all payments. We do not hold any proceeds of payments or transfer any funds on your behalf. Use of payments at your student's school is governed exclusively by your agreement or arrangement with the school, and we are not responsible for the school's handling of payments after the school receives the funds.

(B) Payments will be processed promptly for your student's use. However, a number of factors, several of which are outside of our control, will contribute to when the funds are received by the school. Reasonable attempts will be made to credit your student's account the day it is received. We make no representations or warranties regarding the amount of time needed to complete processing, such as delays in the banking system, network connection failure or computer failure. If you have any questions regarding payments, please contact student Nutrition Department at the School Board Office.

(C) You may be required to pay a "service fee" for using our web site to make payments. The amount of the fee will depend on the contracted arrangements between us and your student's school district. You will be notified of the fee before you complete the payment process.

### 4. REFUNDS.

If you or your student are not satisfied with any good or service purchased with a payment, you agree to resolve the issue with the student's school. You agree to abide by the policies and procedures of your student's school district. If the school notifies us that you are to receive a credit for the amount of a returned or exchanged good or service, you agree that we may credit your student's account and that the amount of the credit will be used towards future purchases from your student's school. If you would like a refund of any Prepayment amount that has not been used by your student to purchase goods or services, you must contact your student's school. You agree that we are not responsible for any good or service purchased from your student's school, and that we have no duty or obligation to refund any Prepayment amount for any reason.

### 5. DISCLAIMER OF WARRANTIES; LIMITATION OF LIABILITY.

(A) THE FACILITIES ARE PROVIDED ON AN "AS IS" AND "AS AVAILABLE" BASIS. YOUR USE OF THE FACILITIES IS AT YOUR SOLE RISK. WE MAKE NO WARRANTY AND DISCLAIM LIABILITY (1) THAT THE FACILITIES WILL BE UNINTERRUPTED, ERROR FREE OR FREE FROM VIRUSES, TECHNICAL MALFUNCTIONS OR OTHER DEFECTS OR HARMFUL COMPONENTS, (2) AS TO THE RESULTS THAT MAY BE OBTAINED FROM USE OF, OR AS TO THE ACCURACY, RELIABILITY OR CONTENT OF, ANY INFORMATION OR SERVICE PROVIDED THROUGH THE FACILITIES, OR (3) WITH REGARD TO ANY GOODS OR SERVICES OFFERED BY OR PURCHASED FROM YOUR STUDENT'S SCHOOL. WE MAKE NO WARRANTIES OF ANY KIND, EITHER EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, WARRANTIES OF TITLE, NON-INFRINGEMENT, MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, ALL OF WHICH ARE EXPRESSLY DISCLAIMED. YOU AGREE THAT WE WILL NOT BE LIABLE FOR ANY INFORMATION OR WARRANTY PROVIDED TO YOU BY YOUR STUDENT'S SCHOOL, FOR ANY ACTIONS OR OMISSIONS OF YOUR STUDENT'S SCHOOL, OR FOR ANY CHANGES IN OR DISCONTINUANCES OF THE SERVICES PROVIDED BY YOUR STUDENT'S SCHOOL.

(B) THIS DISCLAIMER OF LIABILITY APPLIES TO ANY CLAIMS, LOSSES, ACTIONS, DAMAGES OR INJURY RESULTING FROM ANY FAILURE OF PERFORMANCE OF THE FACILITIES, ERROR, OMISSION, INACCURACY, INTERRUPTION, DEFECT, UNTIMELINESS OR NON-AUTHENTICITY OF ANY INFORMATION, DELAY OR INTERRUPTION IN OPERATION OR TRANSMISSION, INTERCEPTION OF TRAFFIC SENT OR RECEIVED, COMMUNICATION LINE FAILURE, SECURITY BREACH, EAVESDROPPING, THEFT OR DESTRUCTION OR UNAUTHORIZED ACCESS TO, ALTERATION OF, OR USE OF INFORMATION, OR THE USE OF THE FACILITIES.

(C) IN NO EVENT WILL WE BE LIABLE FOR ANY PUNITIVE DAMAGES, OR ANY DIRECT, INDIRECT, INCIDENTAL, SPECIAL, CONSEQUENTIAL OR SIMILAR DAMAGES ARISING OUT OF THE USE OF OR INABILITY TO USE THE FACILITIES. IN ADDITION, YOU AGREE THAT WE WILL NOT BE LIABLE FOR ANY DAMAGES, WHETHER DIRECT, INDIRECT, INCIDENTAL, SPECIAL OR CONSEQUENTIAL, ARISING FROM OR RELATED TO THE GOODS AND SERVICES SOLD BY YOUR STUDENT'S SCHOOL.

(D) IN NO EVENT WILL WE BE LIABLE FOR ANY DELAY OR FAILURE TO PERFORM ANY OBLIGATIONS RELATED TO THE FACILITIES WHICH ARE OCCASIONED BY OCCURRENCES OR CONTINGENCIES CONSIDERED "FORCE MAJEURE", INCLUDING, BUT NOT LIMITED TO, DELAY CAUSED BY STRIKE, LOCK OUT, LABOR DISPUTES, DISASTERS, FIRE, FLOOD, ACCIDENT, INVASION, RIOT, WAR, REVOLUTION, EMBARGO, RESTRAINT, ACTS OF GOD, DISEASE, EPIDEMIC, PUBLIC HEALTH CRISIS, SUBSTANTIAL INCREASES IN THE PRICE OF GOODS OR MATERIALS OR OTHER COSTS, FAILURE OF ELECTRONIC EQUIPMENT, SOFTWARE AND/OR INTERNET SERVICE, INABILITY TO OBTAIN TRANSPORTATION OR MATERIALS, SHORTAGE OF FUEL, FAILURE OF TECHNOLOGY, BREACH OR DEFAULT BY A SUPPLIER, DEMAND OF THE UNITED STATES OR ANY OTHER GOVERNMENT, YOUR FAILURE TO PERFORM ANY OBLIGATIONS UNDER THIS AGREEMENT, OR ANY OTHER CAUSE OR CONTINGENCY BEYOND OUR CONTROL WHICH SHALL PREVENT OR MATERIALLY IMPAIR US FROM PERFORMING IN THE NORMAL AND USUAL COURSE OF OUR BUSINESS IN A PROFITABLE FASHION.

#### 6. PRIVACY.

We may collect information about you and your use of the Facilities. Use and disclosure of such information is governed by the Privacy Policy which is posted on the Facilities. By using the Facilities, you consent to the terms of our Privacy Policy.

#### 7. TERMINATION.

You may terminate this Agreement at any time by providing reasonable prior written notice to us. We may immediately terminate this Agreement without notice for any reason, including but not limited to if you engage in any conduct which we, in our sole discretion, consider to be unacceptable or if you breach this Agreement. Sections 5, 6, 8, 10 and 11(C) will survive termination of this Agreement.

#### 8. TRADEMARKS.

K12PaymentCenter™ and all related logos, products and services described in the Facilities are trademarks or registered trademarks of ours. The Facilities are our property and may contain copyrighted material, trademarks and other proprietary information, including, but not limited to, text, software, photos, video, graphics, music and sound. The content, and the selection, coordination, arrangement and enhancement of such content, are our property. You may not modify, publish, transmit, distribute, participate in the transfer or sale, create derivative works, or in any way exploit, any of the content, in whole or in part. Nothing contained herein shall be construed as conferring, by implication, estoppel or any other legal theory, a license or right to any patent, trademark, copyright or other intellectual property right of ours.

#### 9. LINKS TO OTHER FACILITIES.

We may provide links on our web site to other facilities which are not under our control. In general, any Web site which has an address (or URL) which does not contain "K12PaymentCenter" is such a facility. These links are provided for convenience only and are not intended as an endorsement by us of the organization or individual operating the Web site or a warranty of any type regarding the web site or the information on the facilities.

#### 10. INDEMNIFICATION.

You agree to defend, indemnify and hold us, and our affiliates, and our and their respective officers, employees, agents and contractors, harmless from and against all claims, demands, liabilities, expenses and damages, including reasonable attorneys' fees, arising out of or resulting, directly or indirectly, from your use of the Facilities, any act or omission by you or your student with respect to the Facilities, a Prepayment and/or any act or omission by your student's school.

#### 11. MISCELLANEOUS TERMS.

(A) Entire Agreement. This Agreement, other agreements, policies and any operating rules posted on the Facilities or provided to you through the Call Center constitute the entire agreement between you and us with respect to your use of the Facilities, and supersede all prior or contemporaneous understandings or agreements (written or oral) between the parties with respect to such subject matter. If any provision in this Agreement is held by the arbitrator or other applicable authority to be contrary to law, then such provision shall be construed, as nearly as possible, to reflect the intentions of the parties with the other provisions remaining in full force and effect.

(B) Change in Terms. We reserve the right at any time to change, add to or delete any aspect or feature of the Facilities and the terms and conditions of this Agreement, including, but not limited to, with respect to fees for use. We will provide notice of any such changes either by posting notice to the Facilities, by email or as otherwise required by law. Any use of the Facilities by you after such notice shall be deemed to constitute acceptance by you of such changes.

(C) Applicable Laws. This Agreement is governed by the laws of the State of North Carolina without regard to its conflict of law's provisions. Any dispute or claim arising out of or in relation to this Agreement or the Facilities, or the interpretation, making, performance, breach or termination thereof, shall be finally settled by binding arbitration in Wilmington, North Carolina, under the Commercial Arbitration Rules of the American Arbitration Association by a single arbitrator appointed in accordance with said Rules. Judgment on the award rendered by the arbitrator may be entered in any court having jurisdiction thereof. You and we agree that, any provision of applicable law notwithstanding, neither party will request, and the arbitrator shall have no authority to award, punitive or exemplary damages against the other party.

(D) Waiver. Any waiver of our rights must be in writing and signed by us. No waiver of any breach or default hereunder shall be deemed to be a waiver of any preceding or subsequent breach or default.

#### **Privacy Statement**

In this policy, "we," "our" or "us" means Education Management Systems, Inc. and "you" or "your" means any person or entity using the K12PaymentCenter™ website or the related call center (collectively, the "Facilities"). Please read the following closely to learn more about our privacy policy.

#### I. INFORMATION WE COLLECT.

We are committed to maintaining the privacy of your personal information. In order to perform the services required of us, at times we collect nonpublic personal information about you from the following sources:

- Information we receive from you on registration or other forms or from use of the Facilities;
- Information about your payments to your student's school;
- If you visit our website, information about you through "cookies" (pieces of electronic information placed on your computer's hard drive in order to facilitate online activities); and
- Information from your student's school.

"Nonpublic personal information" is nonpublic information that is personally identifiable and obtained in connection with your use or our operation of the Facilities. For example, nonpublic personal information may include information about your payment to your student's school.

## II. INFORMATION WE MAY DISCLOSE.

In the course of performing the services required of us, we may disclose, or be compelled to disclose, certain nonpublic personal information to others ("third parties") as follows.

We may disclose all of the nonpublic personal information we collect to companies that perform services on our behalf.

We may disclose all of the nonpublic personal information we collect as permitted by law, such as to servicing and processing companies, or in response to a subpoena.

We reserve the right to disclose all of the nonpublic personal information we collect to the following types of third parties:

- Your student's school
- Financial service providers, such as banks
- Your student's school district

It is NOT our intention to disclose any information other than that information that is required to perform transactions.

Ben Hooks, President

Education Management Systems, Inc.

[support@ems-isis.com](mailto:support@ems-isis.com)