

# E-SCHOOL ACADEMY TERMS OF USE

Last Updated: July 25, 2020

## 1. E-School Academy Website(s).

1.1 Purpose of E-School Academy Website. To further its purpose of providing educational and other services (“Services”) pursuant to its mission as an Oklahoma statewide virtual charter school, E-School Academy operates and maintains one or more websites (“Website(s)”). Use of the Website(s) is primarily for current and prospective students, parents, employees, and contractors of E-School Academy to access and/or provide the Services as well as members of the general public seeking information about E-School Academy and the Services. Access to or use of the Website(s) for purposes other than access to or provision of the Services or obtaining information about E-School Academy and the Services is strictly prohibited, unless otherwise expressly provided by law or by the express agreement of E-School Academy.

1.2 Purpose of Terms. These Terms of Use (“Terms”) govern access to or use of the Website(s) from within the United States and its territories and possessions including all information, content, materials, applications, and programs made available thereon (“Content”) in the State of Oklahoma, United States, by E-School Academy and its affiliates and contractors.

**1.3 Agreement to Terms. These Terms constitute a legally-binding agreement between users of the Website(s) and E-School Academy. By accessing or using the Website(s) and Content, a user confirms his or her agreement to be bound by these Terms. If a user does not agree to these Terms, the user may not access or use the Website(s) or Content.**

1.4 Changes to Terms. E-School Academy may change these Terms without prior notice to users. Changes will be effective upon E-School Academy’s posting of the updated Terms on the Website(s). Continued access or use of the Website(s) and Content after such posting confirms a user’s consent to be bound by the Terms.

1.5 Privacy Policy. E-School Academy’s collection and use of personal information in connection with the Website(s) and Content, including compliance with applicable federal and state privacy laws, is described in E-School Academy’s Privacy Policy which is available on the Website(s).

1.6 Other Governing Law. E-School Academy is a public virtual charter school and, as such, is subject to various federal and state laws and the terms of E-School Academy’s charter. To the extent any provision of said federal and state laws or of E-School Academy’s charter directly conflicts with any of these Terms, said provision of law or E-School Academy’s charter shall control.

## 2. Use of E-School Academy Website(s) and Content.

2.1 License. Subject to a user’s compliance with these Terms, E-School Academy grants the user a limited, non-exclusive, non-sublicensable, revocable, non-transferable license to: (i) access and use the Website(s) on the user’s personal device; and (ii) access and use any Content that may be made available on the Website(s) to the user, in each case solely for the

user's personal, noncommercial use. E-School Academy is a public virtual charter school and, as such, certain Content may be restricted to access and use only by current and/or prospective students, parents, employees, and/or contractors of E-School Academy for purpose of providing the Services. Any rights not expressly granted herein are reserved by E-School Academy and its affiliates and licensors.

2.2 Restrictions. A user may not, unless otherwise expressly provided by law or by the express agreement of E-School Academy: (i) remove any copyright, trademark, or other proprietary notices from any portion of the Website(s) or Content; (ii) reproduce, modify, prepare derivative works based upon, distribute, license, lease, sell, resell, transfer, publicly display, publicly perform, transmit, stream, broadcast, or otherwise exploit copyrighted, trademarked, or other proprietary material on the Website(s) or Content; (iii) decompile, reverse engineer, or disassemble the Website(s) or Content; (iv) link to, mirror, or frame any portion of the Website(s) or Content; (v) cause or launch any programs or scripts for the purpose of scraping, indexing, surveying, or otherwise data mining any portion of the Website(s) or Content or unduly burdening or hindering the operation and/or functionality of any aspect of the Website(s), Content, or Services; or (vi) attempt to gain unauthorized access to or impair any aspect of the Website(s), Content, or Services.

2.3 Security. A user is prohibited from violating or attempting to violate the security of the Website(s) and Content, including, without limitation, (i) accessing data not intended for the user or logging onto a server or account which the user is not authorized to access; (ii) attempting to probe, scan, or test the vulnerability of a system or network or to breach security or authentication measures without proper authorization; (iii) attempting to interfere with service to any user, host, or network, including, without limitation, via means of submitting a virus to the Website(s) or Content, overloading, flooding, spamming, mail-bombing, or crashing; (iv) sending unsolicited email or other communications, including promotions and/or advertising of products or services; or (v) forging any TCP/IP packet header or any part of the header information in any email or newsgroup posting. Violations of the security of the Website(s), Content, Services and associated servers, accounts, systems, and/or networks may result in civil or criminal liability. E-School Academy will investigate occurrences that may involve such violations and may involve, and cooperate with, law enforcement authorities in prosecuting users who are involved in such violations. A user must not use any device, software, or routine to interfere or attempt to interfere with the proper functioning of the Website(s), Content, or any activity being conducted thereon. A user must not to use or attempt to use any engine, software, tool, agent, or other device or mechanism (including browsers, spiders, robots, avatars, or intelligent agents) to navigate or search the Website(s) or Content other than those search engines and search agents that are generally available third-party web browsers (e.g., Netscape Navigator or Microsoft Explorer) or are provided on the Website(s).

2.4 Links. The Website(s) or Content may provide or third parties may provide hypertext links to other sites or resources on the Internet. Any references on the Website(s) or Content to any names, marks, products, or services of third parties, or hypertext links to third-party sites or information are provided solely as a convenience to the user and do not in any way constitute or imply E-School Academy's endorsement, sponsorship, or recommendation of the third party, its information, products, or services unless E-School Academy states otherwise in writing. Unless otherwise expressly provided by law, E-School Academy is not responsible for

the practices or policies of such third parties, nor the content of any third-party sites, and does not make any representations regarding third-party products or services or the content or accuracy of any material on such third-party sites. If a user links to any such third-party sites, the user does so entirely at the user's own risk. The user acknowledges and agrees that E-School Academy shall not be responsible or liable, directly or indirectly, for any damage or loss caused or alleged to be caused by or in connection with the user's use of or reliance on any such content, goods, or services available on or through any such outside site or resource.

2.5 Third-Party Services and Content. The Website(s) and Content may be made available or accessed in connection with third-party services and content (including advertising) that E-School Academy does not control. The user acknowledges that different terms of use and privacy policies may apply to use of such third-party services and content. E-School Academy does not endorse such third-party services and content and in no event shall E-School Academy be responsible or liable for any products or services of such third-party providers. Additionally, Apple Inc., Google, Inc., Microsoft Corporation, BlackBerry Limited, and parents, affiliates, successors, or assigns of the same will be third-party beneficiaries to these Terms if a user accesses the Website(s) or Content using Applications developed for Apple iOS, Android, Microsoft Windows, or Blackberry-powered mobile devices, respectively. These third-party beneficiaries are not parties to this contract and are not responsible for the provision or support of the Website(s) or Content in any manner. A user's access to the Website(s) and Content using devices is subject to terms set forth in the applicable third-party beneficiary's terms of service.

2.6 Ownership. Unless otherwise expressly provided by law or by the express agreement of E-School Academy, the Website(s), Content and all rights therein are and shall remain E-School Academy's property or the property of E-School Academy's affiliates or licensors. Neither these Terms nor a user's use of the Website(s), Content, or Services convey or grant to the user any rights: (i) in or related to the Website(s) or Content except for the limited license granted above; or (ii) to use or reference in any manner E-School Academy's name(s), logo(s), product and service name(s), trademark(s) or service mark(s), or those of E-School Academy's affiliates and licensors.

### **3. Access to E-School Academy Website(s).**

3.1 User Accounts. In order to access and use certain aspects of the Website(s), Content, and Services, a user may be required to register for and maintain an active personal user account ("Account"). A user must be at least 18 years of age, or the age of legal majority in the user's jurisdiction (if different than 18), or have the express permission of a parent or legal guardian to obtain an Account, unless E-School Academy expressly permits otherwise. Account registration may require furnishing of certain personal information to E-School Academy through the Website(s), such as a user's name, address, phone number and age. Privacy protections with respect to all such user-furnished information are addressed in E-School Academy's Privacy Policy which is available on the Website(s). The user shall maintain accurate, complete, and up-to-date information in the user's Account. Failure to maintain accurate, complete, and up-to-date Account information may result in a user's inability to access or use the Website(s), Content, or Services. The user is responsible for all activity that occurs under the user's Account and agrees to maintain the security and secrecy of the user's Account username and password at all times. Unless otherwise permitted by E-School Academy, a user may only possess one Account. E-

School Academy may refuse to grant a particular user name to a user for any reason, including if E-School Academy, in its discretion, determines that such user name (i) impersonates someone else; (ii) is protected by trademark or other proprietary right law; or (iii) is obscene, vulgar, or otherwise offensive.

3.2 User Requirements and Conduct. The Website(s), Content, and Services are available for use by persons under the age of 18 only with the supervision of a parent or legal guardian who agrees to be bound by the Terms. A parent or legal guardian who agrees to the Terms for the benefit of a minor under the age of 18, agrees to be responsible for such minor's use of the Website(s), Content, and Services, including any liability that may be incurred. A user may not authorize third parties to use the user's Account and may not allow persons under the age of 18 to use the Website(s), Content, or Services unless they are accompanied and supervised by a parent or legal guardian. A user may not assign or otherwise transfer the user's Account to any other person or entity. The user agrees to comply with all applicable laws when accessing or using the Website(s), Content, and Services, and to only access or use the Website(s), Content, and Services for lawful purposes. A user may not access or use the Website(s), Content, or Services cause nuisance, annoyance, inconvenience, or property damage to any party. In certain instances a user may be asked to provide proof of identity or other method of identity verification to access or use the Website(s), Content, and Services and the user agrees that the user may be denied access to or use of the Website(s), Content, and Services if the user refuses to provide proof of identity or other method of identity verification.

3.3 User Content. E-School Academy may permit users from time to time to submit, upload, publish, or otherwise make available to E-School Academy through the Website(s), Content, and Services certain textual, audio, and/or visual content and information, including support requests ("User Content"). Any User Content remains the property of the user unless otherwise expressly provided by law. By providing User Content to E-School Academy, however, the user grants E-School Academy a worldwide, perpetual, irrevocable, transferable, royalty-free license, with the right to sublicense, use, copy, modify, create derivative works of, distribute, publicly display, publicly perform, and otherwise exploit in any manner such User Content in all formats and distribution channels now known or hereafter devised (including in connection with the Website(s), Content, and Services and on third-party sites and services), without further notice to or consent from the user and without the requirement of payment to the user or any other person or entity. Notwithstanding the foregoing provisions, all User Content that constitutes Education Records shall be governed by the Family Educational Rights and Privacy Act, codified at 20 U.S.C. § 1232g, and the regulations promulgated pursuant thereto, codified at 34 CFR Part 99 ("FERPA"), as described in E-School Academy's Privacy Policy, which is available on the Website(s). These Terms do not constitute and should not be interpreted as a waiver of any rights under FERPA.

With respect to all User Content, the user represents and warrants that: (i) the user either is the sole and exclusive owner of all User Content or has all rights, licenses, consents, and releases necessary to grant E-School Academy the license to the User Content as set forth above; and (ii) neither the User Content, nor the user's submission, uploading, publishing, or otherwise making available of such User Content, nor E-School Academy's use of the User Content as permitted herein will infringe, misappropriate, or violate a third party's intellectual property or

proprietary rights or rights of publicity or privacy, or result in the violation of any applicable law or regulation.

The user shall not provide User Content that is defamatory, libelous, hateful, violent, obscene, pornographic, unlawful, or otherwise offensive, as determined by E-School Academy in its sole discretion. E-School Academy may, but shall not be obligated to, review, monitor, or remove User Content, at E-School Academy's sole discretion and at any time and for any reason, without notice to the user.

3.4 Network Access and Devices. The user is responsible for obtaining the data network access necessary to use the Website(s), Content, and Services. The user's mobile network's data and messaging rates and fees may apply if the user accesses or uses the Website(s), Content, or Services from the user's device. The user is responsible for acquiring and updating compatible hardware or devices necessary to access and use the Website(s), Content, and Services and any updates thereto. E-School Academy does not guarantee that the Website(s), Content, or Services, or any portion thereof, will function on any particular hardware or devices. In addition, the Website(s), Content, and Services may be subject to malfunctions and delays inherent in the use of the Internet and electronic communications.

#### **4. Disclaimers; Limitation of Liability; Indemnity; Non-Waiver.**

4.1 DISCLAIMER. THE WEBSITE(S), CONTENT, AND SERVICES ARE PROVIDED "AS IS" AND "AS AVAILABLE." E-SCHOOL ACADEMY DISCLAIMS ALL REPRESENTATIONS AND WARRANTIES, EXPRESS, IMPLIED, OR STATUTORY, NOT EXPRESSLY SET OUT IN THESE TERMS, INCLUDING THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND NON-INFRINGEMENT. IN ADDITION, E-SCHOOL ACADEMY MAKES NO REPRESENTATION, WARRANTY, OR GUARANTY REGARDING THE RELIABILITY, TIMELINESS, QUALITY, SUITABILITY, OR AVAILABILITY OF THE WEBSITE(S), CONTENT, OR SERVICES OR THAT THE WEBSITE(S), CONTENT, AND SERVICES WILL BE UNINTERRUPTED OR ERROR-FREE. THE USER AGREES THAT THE ENTIRE RISK ARISING OUT OF THE USER'S USE OF THE WEBSITE(S), CONTENT, AND SERVICES REMAINS SOLELY WITH THE USER, TO THE MAXIMUM EXTENT PERMITTED UNDER APPLICABLE LAW.

4.2 NON-WAIVER OF SOVEREIGN IMMUNITY AND LIMITATION OF LIABILITY. **E-SCHOOL ACADEMY IS A PUBLIC VIRTUAL CHARTER SCHOOL AND DOES NOT WAIVE ITS SOVEREIGN IMMUNITY TO THE FULLEST EXTENT PROVIDED BY LAW, NOTWITHSTANDING ANY OF THESE TERMS.** WITH RESPECT TO THE WEBSITE(S), CONTENT, AND SERVICES, E-SCHOOL ACADEMY SHALL NOT BE LIABLE FOR INDIRECT, INCIDENTAL, SPECIAL, EXEMPLARY, PUNITIVE, OR CONSEQUENTIAL DAMAGES, INCLUDING LOST PROFITS, LOST DATA, PERSONAL INJURY, OR PROPERTY DAMAGE RELATED TO, IN CONNECTION WITH, OR OTHERWISE RESULTING FROM ANY USE OF THE WEBSITE(S), CONTENT, OR SERVICES, REGARDLESS OF THE ACTS OR OMISSIONS OF E-SCHOOL ACADEMY EVEN IF E-SCHOOL ACADEMY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

E-SCHOOL ACADEMY SHALL NOT BE LIABLE FOR ANY DAMAGES, LIABILITY, OR LOSSES ARISING OUT OF: (I) ANY USER'S USE OF OR RELIANCE ON THE WEBSITE(S), CONTENT, OR SERVICES OR INABILITY TO ACCESS OR USE THE WEBSITE(S), CONTENT, OR SERVICES; OR (II) ANY TRANSACTION OR RELATIONSHIP BETWEEN A USER AND ANY THIRD PARTY, EVEN IF E-SCHOOL ACADEMY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. E-SCHOOL ACADEMY SHALL NOT BE LIABLE FOR DELAY OR FAILURE IN PERFORMANCE OF THE WEBSITE(S), CONTENT, OR SERVICES RESULTING FROM CAUSES BEYOND E-SCHOOL ACADEMY'S REASONABLE CONTROL.

THE LIMITATIONS AND DISCLAIMERS IN THIS SECTION DO NOT PURPORT TO LIMIT LIABILITY OR ALTER ANY RIGHTS THAT CANNOT BE EXCLUDED UNDER APPLICABLE LAW.

4.3 INDEMNITY. THE USER AGREES TO INDEMNIFY AND HOLD E-SCHOOL ACADEMY AND ITS AFFILIATES AND THEIR MEMBERS, MANAGERS, OFFICERS, EMPLOYEES, AND AGENTS HARMLESS FROM ANY AND ALL CLAIMS, DEMANDS, LOSSES, LIABILITIES, AND EXPENSES (INCLUDING ATTORNEYS' FEES) ARISING OUT OF OR IN CONNECTION WITH: (I) THE USER'S USE OF THE WEBSITE(S), CONTENT, OR SERVICES; (II) THE USER'S BREACH OR VIOLATION OF ANY OF THESE TERMS; (III) E-SCHOOL ACADEMY'S USE OF THE USER'S USER CONTENT; OR (IV) THE USER'S VIOLATION OF THE LAW OR THE RIGHTS OF ANY THIRD PARTY.

## **5. Miscellaneous Provisions.**

5.1 Choice of Law. These Terms are governed by and construed in accordance with the laws of the State of Oklahoma, United States, without giving effect to any conflict of laws provision.

5.2 Injunctive Relief. E-School Academy may enforce these Terms by seeking injunctive relief against a user in the state and federal courts in and for Oklahoma County, Oklahoma. Seeking such relief in no way waives or limits E-School Academy's right to seek any other remedies or relief that are provided for by law.

5.3 Notices. E-School Academy may give notice by means of a general notice on the Website(s), Content, or Services, electronic mail to a user's email address in the user's Account, telephone or text message to any phone number provided in connection with the user's Account, or by written communication sent by first class mail or pre-paid post to any address connected with the user's Account. Such notice shall be deemed to have been given upon the expiration of 48 hours after mailing or posting (if sent by first class mail or pre-paid post) or 12 hours after sending (if sent by email or telephone). A user may give notice to E-School Academy, with such notice deemed given when received by E-School Academy, at any time by first class mail or pre-paid post to E-School Academy's registered agent for service of process or through other means of written contact made available by E-School Academy.

5.4 General. A user may not assign these Terms without E-School Academy's prior written approval. E-School Academy may assign these Terms without the user's consent to an affiliate or successor. Any purported assignment in violation of this section shall be void. No joint venture, partnership, employment, or agency relationship exists between the user, E-School Academy, and any third party as a result of these Terms or the user's use of the Website(s), Content, and Services. If any provision of these Terms is held to be invalid or unenforceable, such provision shall be stricken and the remaining provisions shall be enforced to the fullest extent under law. E-School Academy's decision, for any reason, not to enforce any right or provision in these Terms shall not constitute a waiver of such right or provision unless acknowledged and agreed to by E-School Academy in writing.