



Educational Message Services, Inc.

Celebrating **21** Years of Narrowcasting

# Terms of Use Agreement

**For:** **PreventionPays™ Text Messaging**

## Services Contacts:

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**Educational Message Services, Inc.**  
1252 Devon Lane Ventura, CA 93001

This Terms of Use Agreement is by and between Educational Message Services, Inc. (EMS), herein referred to as "Service Provider" and any and all parties represented by evidence of purchased of use license at <http://www.preventionpaystext.com/new-products/k911k8qzigi6ii7kvkmlxeh3sq0i4>

referred to herein as "End User".

WHEREAS, EMS is the sole owner of PreventionPays Text Message Services (PPTMS)

WHEREAS, EMS provides Tier 1 mobile communication aggregate services taking in all US mobile carrier service providers and delivers short message service, also known as "text messaging", throughout the US,

WHEREAS, End User desires Service Provider to provide a Text Message Internet-to-Mobile-to-Internet Network Platform with interoperability designed for service sites, thereby acquiring enterprise short code texting / SMS application capacity to reach people using mobile carrier service providers to both send and receive text messages, short message service (SMS),

WHEREAS, EMS agrees to perform all duties and obligations set forth in this agreement and as more fully described in attached file, Service Obligations pg. 5 herein, and in accordance with the terms of this Agreement,

NOW, THEREFORE, in consideration of the foregoing and the premises and covenants hereinafter expressed, the parties hereto mutually agree as follows:

**1. Scope of Services**

EMS will provide to END USER solely for their work underway in the United States, all the means and credentials necessary to administer the PPTMS utilizing SMS short code and keyword. (See EMS Service Obligations)

**2. Ownership**

EMS owns PPTMS both platform and software. EMS will grant a limited license to use the PPTMS to END USER. END USER will own any and all data collected or tracked pursuant to this agreement.

**3. Period of Performance**

This Agreement shall be effective as of receipt date and shall terminate 6 consecutive calendar months later,

**4. Termination**

This Agreement may be terminated by either party, with or without cause, upon thirty days written notice to the other party.

**5. Confidential Information and Trade Secrets and Conflict of Interest**

END USER and their associates, agents and employees will not at any time, in any fashion, form, or manner, either directly or indirectly, divulge, disclose, or communicate to any person, firm, or corporation, whose services or products include providing or representing entities which provide SMS services in the US or Canada, in any manner whatsoever any information of any kind, nature, or description concerning any sharing of "technical information" regarding operations of PPTMS. Technical information as referred to herein includes; Login credentials, verbal descriptions of system functioning, any information either verbal or visual related to or about the PPTMS user interface display and operation, representation of PPTMS capacity or programming features, and method of data management.

**Initials** \_\_\_\_\_

END USER warrants by signature hereon that they and/or their agents are in no way associated to any other service provider of SMS applications development and are not currently or in the foreseeable future as defined by dates hereon considering SMS system development and subsequent commercialization or distribution of SMS services to other in any manner whatsoever. END USER warrants that no such conflict exists and thereby can accept the training on technical operations of the PPTMS system without any such conflict.

EMS does acknowledge and appreciates that sharing general information collected in PPTMS data summary reports and supports the sharing of report information amidst 501(C)(3) organizations and/or government agencies. EMS expressly does not permit END USER or their associates sharing any information whatsoever with other groups, companies or agencies offering SMS or Text Messaging as a commercial service.

The parties hereby agree that, as between them, the foregoing matters are important, material and confidential, and gravely affect the effective and successful conduct of the business of Educational Message Services, Inc., and its goodwill, that any violation of the terms of this section is a material breach of this agreement.

#### **6. Protection of Property Physical and Intellectual**

The uses PPTMS considered in this agreement are limited to the scope and work defined herein and stated. Any other use by END USER is not granted, implied or permitted without express written consent of EMS. Any breach will be prosecuted to the full extent of the law.

The parties identified herein support promotional efforts and activities concerning PPTMS. END USER shall determine as to the manner and/or scope of how to promote efforts and activities of EMS and/or PPTMS, including and without limitation, the use of EMS or PPTMS in print material, news releases, publications, articles and electronic media as supporting this contract. EMS reserves the right to approve any uses of EMS name or logo including but not limited to PPTMS. EMS must authorize in writing approved uses of promotional or informational materials prior to any distribution of any materials containing EMS logos, name, service marks, or trademarks.

#### **7. Relationship of the Parties**

The parties agree that in performing their responsibilities under this agreement they are in the position of independent contractors. As such END USER is not entitled to or covered by EMS's benefits including medical, dental, unemployment or pension benefits. Nothing contained herein shall be construed to imply a joint venture relationship or partnership relationship between END USER and EMS. END USER does not retain the right to control and direct EMS as to details and the means by which assignments are accomplished.

#### **8. Assignments and Delegation**

Neither party shall assign license or encumber this Agreement nor any rights, duties or obligations hereunder to any other person/or entity without express prior written approval of the other party.

#### **9. Arbitration and Remedies**

In the event of any dispute under the terms of this Agreement, the following rules shall apply:

- A. Any Dispute shall first be submitted to mediation with a mediator selected jointly by the parties.
- B. If the parties are unable to settle the dispute through mediation, then any controversy or claim arising out of or relating to this Agreement or any agreements or instruments relating hereto or delivered in connection herewith, or arising out of or relating to any aspect of the past, present or future relationships of the parties hereto, but including any claim based on

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or arising from an alleged tort seeking money damages as a remedy, shall, at the request of any party, be determined by binding arbitration in accordance with and under the rules of the American Arbitration Association. Judgment upon the award rendered by the arbitrator may be entered in any court having jurisdiction.

EMS shall be entitled to specific performance and injunctive or other equitable relief as a remedy for any noticed breach of this agreement. including but not limited to customary attorney's fees as may be assessed in any litigation, legal preparation, discovery, process actions or services as provided by accredited legal council retained by EMS for any matters related to this agreement. Such remedy shall not be deemed to be the exclusive remedy but shall be, in addition to all other remedies listed herein, available at law or equity to EMS.

**10. Entire Agreement**

This agreement contains the entire agreement between the parties concerning the subject matter of this Agreement. It supersedes all negotiations, statements, promises, or understanding, if any, made prior to the execution of this Agreement. Any such negotiations, promises, or understanding shall not be used to interpret or modify this Agreement.

**11. Agreement – Personal**

Nothing in this Agreement, whether expressed or implied, is intended to confer any rights or remedies under or by reason of this Agreement on any person other than the parties to it and their respective successors and assigns, nor is anything in this Agreement intended to relieve or discharge the obligation or liability of any third persons to any party to this Agreement nor shall any provision give any third person any right of subrogation or action over or against any party to this Agreement.

**12. Notices**

All notices, requests, demands and other communications shall be given in writing and shall be deemed to have been duly given on the date of service if served personally on the party to whom notice is to be given, or if served by facsimile or email on the date on which it is sent, or on five (5) days after mailing if mailed to the party to whom notice is to be given, by certified first class mail, postage prepaid, and properly addressed as herein follows:

Service Provider: Educational Message Services, Inc. 1252 Devon Lane Ventura, California 93001 <a href="mailto:tom@emsmail.org">tom@emsmail.org</a>	Client: End User

Any party may change its address for purposes of this Agreement by giving the other party written notice

**13. Amendment**

This agreement may be amended only by a written document signed by each of the parties hereto. This Agreement may be executed simultaneously or in counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same agreement.

**14. Limited Liability**

With regard to the services to be performed by END USER pursuant to the terms of this Agreement, EMS shall not be liable to END USER, or to anyone who may claim any right due to their relationship with END USER for any acts or omissions in the performance of the services on part of END USER.

**15. Due Authorizations**

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Both END USER and EMS represent and warrant that they have the full right and authority to enter into this Agreement and to perform all of their respective obligations hereunder.

**16. Compliance with State and Federal Law**

END USER agrees to comply with all state and federal laws applicable to it

**17. Governing Law**

This Agreement shall be construed in accordance with the laws of the State of California, without regard to its conflict of laws principles.

**18. Assurances**

EMS requires users of PPTMS be certified in operational methods and as such affords assurances and protects parties using text messaging for health and safety programs and as desired. Changes may occur due to limitations and rules as published by agencies with control and authority regarding mobile communications as referred to herein as; Short Message Services and as otherwise referred to as Text Messaging, in the United States of America and Canada.

EMS privacy policy assures that PPTMS data and information remains strictly private and is not shared outside of the parties mentioned herein in any manner whatsoever.

EMS's operation of PPTMS follows all Federal Communication Commission's Customer Proprietary Network Information (CPNI) rules together with the California Online Privacy and Disclosure Act.

EMS is in compliance with HIPAA guidelines serving to assure safe information gathering, processing and archiving. PPTMS system uses 128-bit Secure Socket Layer (SSL) encryption to secure all data being transmitted to and from the system/website. Confidential information will not be stored on the hardware in use in client settings. PPTMS and the data transmitted by the software is stored on a dedicated server platform which is owned by EMS and located in a secure Data Center facility, which is temperature controlled, with internal systems analysis and self-auditing procedures.

EMS wholly owns PPTMS and provides that gathered information is not subject to any other ownership privileges by any company, agency or individual. PPTMS employs safeguard encryption and security protocols to protect any information and/or data from unauthorized access.

EMS follows the guidelines as outlined by the Common Short Codes Administration. EMS, through its affiliations, offers access to all mobile carriers in the United States and is committed to adding/provisioning new carriers as they become available.

**EMS' Service Obligations to Participating Sites**

Educational Message Services (EMS) will provide access to PPTMS for defined uses during the term of this agreement to END USER.

EMS will provide web to text and text to web interoperability with all PPTMS features and capacity. Specific to END USER program/s specifications

EMS obliges to provide for any number of workstations and users as may be selected by END USER during the term of this agreement. This includes but is not limited to all technical support for set up and on going operational uses.

EMS provides 24/7 technical support and guaranteed safe service and data protection.

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END USER will have access to all EMS' associated program data and resources.

EMS will provide to END USER, solely for their work underway in the United States, all the means and credentials necessary to administer the PPTMS utilizing SMS short code and keyword

EMS will provide training on PPTMS uses for selected individuals as identified by END USER

EMS will certify individuals on all platform uses as outlined herein.

EMS will provide on-going operational and spot training to END USER as may be requested.

EMS will provide END USER with unlimited text messages on a monthly basis solely for purposes described herein and as referred to as crisis intervention or direct follow up with individuals.

EMS will provide the short code "20121" and keyword/s for uses by END USER.