

# OHIO CHILD CARE TIME, ATTENDANCE AND PAYMENT (TAP) SYSTEM

## EQUIPMENT AGREEMENT

WHEREAS, KinderSystems, Inc. (the “Contractor”) manages and operates a statewide computer information system, titled Ohio Child Care Time, Attendance and Payment (TAP) System, to facilitate the collection of publicly funded child care time and attendance information, which is used in the preparation of publicly funded child care payments; and

WHEREAS, you (the “Program”) are the recipient of publicly funded child care funds, and are currently utilizing TAP to collect publicly funded child care time and attendance information;

WHEREAS, the Contractor is providing the Program, as part of the TAP system, with a Samsung Galaxy Tab A8 or comparable attendance device (the “Attendance Device”), and a stand used to sign/check in and sign/check out the child or children each caretaker is responsible for at the Program; and

WHEREAS, the Program’s agreement to this Equipment Agreement (the “Agreement”) is a condition for the Contractor to provide the Attendance Device to the Program.

Please read this Agreement carefully before using the Attendance Device. By using the Attendance Device in any manner, the Program acknowledges that it has read and agrees to be legally bound by and a party to, without modification, the Agreement detailed herein. The individual reviewing this Agreement on behalf of the Program and accepting the Agreement on behalf of the Program represents and warrants that he or she has the authority to agree to the Agreement on the Program’s behalf. Use of the Attendance Device is expressly conditioned upon the Program’s assent to all of the terms of the Agreement.

Contractor may, at its sole discretion, modify or revise this Agreement at any time by providing written notice to the Program. The Program agrees to be bound by any such revisions or modifications.

Now therefore it is agreed between the Contractor and the Program as follows:

### A. Contractor Responsibilities

1. The Contractor has shipped the necessary equipment and installation instructions to the Program’s most recent address supplied by the Ohio Department of Children & Youth services (the “Program’s Address”).
2. The Contractor shall provide toll free telephone support as well as email support for all issues related to the devices and stands and operation thereof. For any and all questions

related to the installation, use, maintenance or operation of the Attendance Device the Program may contact the Contractor at [supportOH@kindersystems.com](mailto:supportOH@kindersystems.com) or (833) 866-1708.

3. The Contractor shall be responsible for any required repair, replacement or upgrade of the Attendance Device in order to maintain the proper functioning of the Attendance Device throughout the duration of this Agreement subject to the limitations detailed in section B of this Agreement.
4. Upon thirty (30) days' prior notice by the Program of the need to move the Attendance Device, due to relocation or remodeling, the Contractor shall advise the Program of any required site preparation necessary to operate the Attendance Device, which shall be done by the Program and any cost associated with the preparation will be the sole responsibility of the Program.

#### B. Program Responsibilities

1. Equipment Use and Care. Program agrees to follow all installation, operation and maintenance instructions provided by the Contractor or accompanying the Attendance Device, as amended or updated from time-to-time, in the use and care of the Attendance Device and agrees to advise the Contractor or its authorized representatives of any conditions that may require servicing.
2. If the Attendance Device needs repair as a result of abuse or misuse, the Program agrees that the Contractors' Repair and Replacement Policy located at [www.ohiocctap.info](http://www.ohiocctap.info) shall apply to the Attendance Device.
3. Program agrees that it shall provide reasonable security measures to protect the Attendance Device from damage, theft or unauthorized use. Program agrees that the Attendance Device will only be used in connection with the TAP System and for no other purposes (e.g., unauthorized applications, games, visits to ANY websites, etc.).
4. Program agrees that it shall provide suitable electric current (standard 120 volt outlets) to charge the Attendance Device and provide a suitable place for Attendance Device installation.
5. Program agrees to be solely responsible for all electrical and WiFi services necessary for the operation of the Attendance Device.
6. Program agrees that it will at all times keep the Attendance Device in its sole possession and control.
7. The Attendance Device shall not be removed from the Program's possession and control without prior authorization from Contractor.
8. Program agrees that it shall keep the Attendance Device free and clear of all liens and encumbrances.

9. Attendance Device Access. Program agrees that Contractor or its designee shall have free and clear access to the Attendance Device at all reasonable times for the purpose of maintenance, repair, inspection or removal.
10. Attendance Device Repair. Program agrees that it shall not make or attempt to make any repairs to the Attendance Device and that it shall promptly notify Contractor in the event that an Attendance Device is not functioning properly.
11. The Program shall provide a secure location for the Attendance Device and the Program shall be responsible for providing adequate furniture for the installation of the Attendance Device.
12. The Program agrees that it shall be responsible for any loss or damage to the device, whether or not such loss or damage results from its fault or negligence, or that of its employees, or whether such loss or damage occurs through theft or intentional acts of its employees or third parties. In the event of loss or damage to the Attendance Device, the Program agrees that the Contractors' Repair and Replacement Policy located at [www.ohiocctap.info](http://www.ohiocctap.info) shall apply to the Attendance Device.
13. The Program agrees to return to the Contractor the Attendance Device provided by the Contractor pursuant to this Agreement should: (a) the Program cease operations; (b) the Program ceases providing publicly funded child care pursuant to the TAP System; (c) upon the Contractor's written request; (d) upon the termination of this Agreement. In such an event, the Program agrees to promptly (but no more than twenty (20) days following the event triggering the requirement to return the Attendance Device) ship or deliver the Attendance Device to the Contractor's Support Center located at, 3121 Emerald Lane, Suite 1000, Jefferson City, MO 65109. In the event that an Attendance Device is not returned to the Contractor within twenty (20) days following the event triggering the requirement to return the Attendance Device, the Program agrees that the Contractors' Repair and Replacement Policy located at [www.ohiocctap.info](http://www.ohiocctap.info) shall apply to the Attendance Device.
14. The Program shall designate a "Site Contact". This Site Contact will be responsible for serving as a liaison with the Contractor, for the installation, maintenance, de-installation and/or relocation of the Attendance Device. The Site Contact will also serve as the Contractor's interface with the Program for resolving problems with the device. If the Site Contact changes, the program must notify the Contractor in writing of a new Site Contact within thirty (30) days.
15. The Program shall submit a written request to move the Attendance Device, due to remodeling or relocation, to the Contractor via Contractor's e-mail address set forth in Section A, paragraph 2 above, or at Contractor's address set forth in Section K at least thirty (30) days prior to the requested relocation. Upon receipt of the Contractor's written consent to move the Attendance Device, the Program shall move the Attendance Device from the current location to the new site at no cost to the Contractor.

C. Limitation of Liability

Contractor will not be responsible or liable for any cost, expense or damage arising out of the use of the Attendance Device by Program including, but not limited to, lost profits or damages to persons or property. Program will bear all risks including the entire risk of loss, theft, damage or destruction of the Attendance Device and all liability for the use, possession, operation, storage and condition of the Attendance Device; provided, however, that Program will not be liable for personal injury and/or damages to property resulting from the gross negligence or willful acts of the Contractor, its employees, subcontractors or agents.

D. Indemnification

Program will indemnify and hold Contractor, its parent corporations, affiliates, employees, subcontractors and agents harmless from all losses, costs, expenses and damages, including attorneys' fees, incurred because of or incident to the Attendance Device or the use, possession, operation, storage and condition thereof; provided, however, that Program's obligation to indemnify and hold harmless will not apply in cases in which the Contractor will be found liable for personal injury and/or damage to property resulting from the gross negligence or willful acts of the Contractor, its employees, subcontractors or agents.

E. Warranties

CONTRACTOR WARRANTS THAT SERVICES PROVIDED UNDER THIS AGREEMENT WILL BE PERFORMED IN ACCORDANCE WITH INDUSTRY STANDARDS BY QUALIFIED PERSONNEL IN A TIMELY AND PROFESSIONAL MANNER.

CONTRACTOR MAKES NO WARRANTIES REGARDING THE FUNCTIONALITY, PERFORMANCE OR SAFETY OF THE ATTENDANCE DEVICE. THE ONLY WARRANTIES APPLICABLE TO THE ATTENDANCE DEVICE ARE THOSE MADE BY THE MANUFACTURER OF THE ATTENDANCE DEVICE.

THE EXPRESS WARRANTIES SET FORTH IN THIS SECTION ARE THE ONLY WARRANTIES GIVEN BY CONTRACTOR WITH RESPECT TO THE SERVICES AND ATTENDANCE DEVICE PROVIDED PURSUANT TO THIS AGREEMENT. CONTRACTOR MAKES NO OTHER WARRANTIES EXPRESS OR IMPLIED, OR ARISING BY CUSTOM OR TRADE USAGE AND SPECIFICALLY MAKES NO WARRANTY OF MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE.

F. Governing Laws

This Agreement will be governed by and construed in accordance with the Laws of the State of Ohio and any action commenced hereunder shall be brought in State of Ohio. Further, Program consents to the jurisdiction of the courts located in State of Ohio.

G. Assignment

Neither this Agreement, nor any right or obligation thereunder, shall be assigned to third parties by the Program without the prior written consent of Contractor.

H. Independent Contractors. The parties shall, at all times, be independent contractors, and nothing contained herein shall be deemed to create any association, partnership, joint venture, or relationship of principal and agent or employer and employee between the parties.

I. Entire Agreement

This Agreement supersedes any and all prior representations, conditions, warranties, understandings, proposals, or previous agreements between the parties hereto, either oral or written relating to the matters of this Agreement hereunder and constitutes the sole, full and complete agreement between the parties.

J. Termination/Modification

1. This Agreement may be modified at any time by the Contractor with thirty (30) days' written notice to the Program. If the Program rejects the amendment in a written notice delivered to the Contractor, then this Agreement will be deemed terminated at that point in time and the Attendance Device will be collected in accordance with Section B, paragraph 2 or 11 of this Agreement.
2. This Agreement may be terminated by either party. In such case, the terminating party shall give written notice to the other party not less than thirty (30) days prior to the date upon which termination shall become effective. In the event of such termination, the Attendance Device will be collected or returned to the Contractor at a time determined by the parties, but such time shall be no later than twenty (20) days after the termination date of this Agreement.
3. Should the Contractor determine that Federal or State funds are unavailable for maintenance of the Attendance Device; the Contractor may deem this Agreement terminated immediately. The Contractor agrees to give notice to the Program as soon as it becomes aware that funds are unavailable to maintain the Attendance Device, resulting in the termination of this Agreement. In the event of such termination, the device shall be returned to the Contractor as set forth in Section B, paragraph 2 or 11 of this Agreement.

K. Notifications. Any notices to be provided pursuant to this Agreement shall be in writing and: (i) if being provided to the Program, shall be sent to the Program's Address; and (ii) if being provided to the Contractor, shall be sent to KinderSystems, Inc., 3121 Emerald Lane, Suite 1000, Jefferson City, MO 65109, Attention: Customer Success Manager. Notices will be deemed delivered: (a) if via email, upon the written acknowledgment of receipt by the recipient; (b) five (5) days after mailing by certified mail, return receipt requested; (c) two business days after delivery to a nationally recognized overnight delivery service (e.g., FedEx, UPS, DHL); or (d) upon personal delivery.

L. Additional Conditions.

1. The Contractor is the sole owner of the Attendance Device and stand installed at the Program pursuant to this Agreement. The Attendance Device may not be sold, rented, pledged, used as collateral or disposed of by the Program. The Attendance Device may not be moved by the Program without the Contractor's prior approval pursuant to the terms of this Agreement.
2. The Program agrees that it shall hold the Contractor harmless from any claim, demand or cause of action for damages or injury to any person based on a defect, latent or apparent, in the Attendance Device.